

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 3936 OF 2025

IN THE MATTER OF:

An application under article 102 of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF:

Mr. Md. Ajmol Hossian,
....Petitioner (in person)

-VERSUS-

The Government of the People's Republic of Bangladesh represented by the Secretary, Ministry of Law, Justice and Parliamentary affairs, Bangladesh Secretariat, Ramna, Dhaka others.

... Respondents

Mr. Zainul Abedin, Senior Advocate with
Mr. Md. Bodruddoza (Badal), Senior Advocate and
Mr. Ahsanul Karim, Senior Advocate and
Mr. Kayser Kamal, and
Mr. Mohammad Shishir Manir, and
Mr. Ajmol Hossain, Advocate (In Person)
..... For the Petitioner

Mr. Mohammad Aneek R. Haque, Additional Attorney General with
Mr. Md. Mahfuzur Rahman (Milon) DAG, with
Mr. Rezaul Karim Reza, DAG and
Mr. Md. Nazmul Haque, AAG and
Mr. Manowarul Islam, AAG and
Mr. Al-Faishal Siddique, AAG and
Mr. Md. Emdadul Hanif, AAG and
Mr. Khorshed Alam(Selim), AAG and
Mr. K. M. Rezaul Firoj (Rintu), AAG and
Mr. Ashraful Alam, AAG

....For the respondents

The 28th April, 2025

Present:

**Mr. Justice Md. Akram Hossain Chowdhury
&
Mr. Justice Debasish Roy Chowdhury**

By the application under Article 102 of the Constitution of the Peoples Republic of Bangladesh and filing a supplementary affidavit thereto Mr. Md. Ajmol Hossain, an Advocate of the Bangladesh Supreme Court who being a regular member of the Supreme Court Bar Association and a conscious citizen of the Republic as claimed has sought for a rule calling upon the

respondent Secretary, Ministry of Law, Justice and Parliamentary Affairs as well as the secretary, legislative as to why the provisions of sections 3, 4, 6 and 9 of the সূপ্রীম কোর্টের বিচারক নিয়োগ অধ্যাদেশ, ২০২৫ should not be declared *ultra vires* to the constitution and without lawful authority and is of no legal effect.

In support of the said application, the Senior Counsel Mr. Zainul Abedin, Mr. Ahsanul Karim, Mr. Md. Badruddoza, Mr. Mohammad Shishir Manir and Mr. Md. Kayser Kamal, learned Advocates appeared with the petitioner before this Court who by their respective submissions tried to impress us to issue a rule on the grounds taken in the application.

Since, the National interest involved with the issue raised in the writ petition, hence we have called upon the learned Attorney General for Bangladesh to appear the Court about to hear him on the issue raised. However ultimately Mr. Mohammad Aneek R. Haque, learned Additional Attorney General with Mr. Md. Mahfuzur Rahman (Milon), learned Deputy Attorney General appeared before the Court on behalf of the Government who by making their submissions tried to assist the Court for coming to a decision on the matter in issue.

Mr. Zainul Abedin, learned Senior Counsel, in course of hearing firstly submits that even the Supreme Court Judges Appointment Ordinance, 2025 has been promulgated for the purpose of appointment of Judges of the Supreme Court by keeping therein a provision to constitute a Council about to select the prospective candidates to forward their names to the President, but that was done hurriedly and as such, no lawyer representative is there to make their opinion in the process, even the Lawyers are the entangle part of the judiciary and have given their constructive opinion to that respect while a meeting was held with the Law Ministry along with the other stakeholders. Learned Counsel to that extent submits that the Supreme Court Bar

Association's president and/or the Vice Chairman of the Bangladesh Bar Council who are even the elected representative of the Lawyers Community from all over the Bangladesh but they have not been made as a member in the council; whereas the representative of the subordinate Judiciary is there. Such discrimination is therefore should be declared *ultra vires* to the constitution. Learned Senior Counsel secondly submits that a Professor who appears to be a member of the Supreme Judicial Appointment Council under Section 3 of the of the Supreme Court Judges appointment Ordinance, 2025 but he/she is very much unaware about the competency of a Judge of subordinate judiciary and/or an Advocate of the Supreme Court who are to be selected by the Council for appointing him/them a Judge of the Higher Judiciary; even then how can the said Professor make his/her opinion thereto, other than a Lawyer representative of the Supreme Court Bar Association on the Bangladesh Bar Council and /or the Judges sitting in the Bench to make the opinion about the competency of the prospective candidate who are to be appointed as a judge of the Higher Judiciary.

Learned Counsel with regard to the provision of advertisement as laid down therein for calling the intended candidates in the judge's appointment process, he to that extent argues that can a Judge or an Advocate of the Supreme Court in response thereto make application to have the post of Judge in Higher Judiciary? Moreso, should not it will malign the dignity of the Supreme Court Judges? The learned Senior Counsel thus sought for a rule about to examine the said provisions as laid down in the Supreme Court Judges Appointment Ordinance, 2025 about to declare that such provisions are *ultra-vires* to the constitution.

Mr. Ahsanul Karim, learned Senior Counsel, on the same voice, in support of issuance of the rule makes his submission by placing a written

argument contending firstly that under Article 95 of the Constitution of the People's Republic of Bangladesh the Supreme Court Judges are to be appointed only by the President upon consultation with the Hon'ble Chief Justice but nothing else. Whereas, in the Ordinance, 2025 a Professor of Law Department or an expert thereof is included with others to make his/her opinion in the appointment process but how can he/she know about the competency of the prospective candidate to appoint a judge of the Higher Judiciary? Such provision thus does not at all match with the essence and expectation of our Constitution. Learned Counsel then added to his submission that the Article 95(2) of the Constitution even provided to ensure qualification of the intended candidate under the prescribed law but that does not mean to authorize any Council and/or the Chief Justice as well to make other person(s) member to that council who are not in any way involved with the judiciary. Learned Counsel finally submits that even the constitution itself has determined one of the qualifications as to the age of a prospective candidate by his experience of 10 (ten) years practice in High Court or ten years judicial experience in the Sub-ordinate Judiciary. Whereas, disregarding the said constitutional obligation and mandate, the Ordinance- 2025 has included a pre-condition inserting therein the age bar not less than 45 (forty five) years of a candidate which certainly appears contrary to the mandate of the constitution and hence, the said provision is to be declared ultra vires to the Constitution, since it has ousted some constitutional mandate. In example, the learned Counsel placed a list of judges who already have been appointment in the higher judiciary whose age were less than 45 years while they were appointed or elevated to the Bench. And thus, the learned Advocate sought for a rule thereto for examining the said discrepancies of the Ordinance, 2025; otherwise the constitutional right

of an intended candidate will be infringed. Learned Counsel in support of his above submission has referred the case reported in 20 DLR(SC) (1968)-229, 49 DLR(1997)-498 and the case as reported in 50 DLR(AD)(1998)-113; however in those cases it was actually held by their Lordships about how the discretion exercised in uprising the natural justice in making decision in those cases.

Mr. Mohammad Shishir Monir, learned Advocate by adding his submissions with the others in support of the writ petition contended that similarly in India “The National Judicial Appointment Commission Act, 2014” was enacted by amending the Constitution (ninety ninth Amendment) Act, 2014 but that act has been ultimately declared unconstitutional and void by the Supreme Court of India upholding the “Collegiums System.” Learned Counsel to that extent submits that the Indian Government by the said Act, 2014 even included some eminent persons in the commission but that Commission has been eventually declared unconstitutional, since they are not to be the expert at all in the selection process of the Judges. Similar attempt being taken herein by the Supreme Court Judges Appointment Ordinance, 2025 and as such, the same is also to be declared *ultra vires* to our constitution. The learned Counsel therefore with the other Senior Counsels urges to issue a thereto rule about to examine the above done by the Ordinance-2025, for the sake of fair selection in the judge appointment process. In support of his above submissions the learned Counsel placed before us the judgment passed by the Supreme Court of India in writ petition No. 13 of 2015 and the Article 124A as amended in the Constitution of India showing that it was even proposed to make the “National Judicial appointment Commission” by including therein the expert member and eminent persons to the appointment process of Higher Judiciary but that has

been eventually declared unconstitutional, since the said Act, 2014 proposed to include some experts other than the persons from legal arena, like as our Supreme Judicial Appointment Council proposed to make under the Ordinance, 2025.

Learned Senior Counsel Mr. Md. Bodruddoza (Badal) and learned Counsel Mr. Kayser Kamal also by adding their submissions with the others contended that can the ordinance-2005 violate the constitutional mandate by diminishing the Chief Justice position and power of his consultation with the President in the appointment process in Higher Judiciary by placing him into a competition in making decision by his casting vote? That certainly have to diminish have to the Hon'ble Chief Justice's prestige and position determined by the Constitution. Whereas the said Ordinance-2025 if in the next Parliament do not approve, the same definitely will go bye ultimately. Thus why the Nation now bear the trouble unnecessarily and therefore it to be declared nullity and ultra virus to the constitution.

In contrary, Mr. Mohammad Aneek R. Haque, learned Additional Attorney General by placing his submission Contends that since for the last 52 years of our independence and even after enactment of our Constitution, no such law has been promulgated or enacted to mitigate the Constitutional obligation as provided under Article 95(2)(c) of the Constitution and thus a Public perception at large emerged that the Judges of the Higher Judiciary appointed at the choice of the party in power and there had been much criticism over the matter as earlier appointed in the Higher Judiciary. And thus, a good attempt to that extent has been taken by the Supreme Court Judges Appointment Ordinance, 2025 in making fair appointment process in the Higher Judiciary and that has been done only to assist the Hon'ble Chief Justice to consult with the Hon'ble president who is the absolute authority

under Article 94 of the Constitution to appoint a Judge of the Higher Judiciary. Learned Additional Attorney General next submits that the Ordinance, 2025 has been thus promulgated by the respondents, as per the approval of the Hon'ble President to mitigate the Constitutional obligation as provided under Article 95(2)(c) and hence the Ordinance made thereto under Article 93(1) of the Constitution, since no parliament is in inexistence now.

He in support of his contentions above also submits that the similar law has been enacted in the appointing process of Higher Judiciary in United Kingdom namely, The Constitutional Reform Act, 2005 and 'The Supreme Court (Judicial Appointments) Regulations, 2013' and that many other countries, like them by this time, enacted such Law and Regulation. However, since for the last 52 years, no one from any political Government Came forward to enact any Law thereto, even the provision to that respect has been laid down in Article 95(2)(c) of the Constitution and thus, the present initiative has been taken for fair selection process for the appointment of the Judges in Higher Judiciary by promulgating the Ordinance, 2025 which is definitely a good initiative for the purpose of fair selection process about to consult the Hon'ble Chief Justice with the Hon'ble President but nothing else. Thus it cannot be stuck up, at this stage, since in the next parliament wherein upon threadbare discussion on the matter in issue by the public representatives the amendment can be made thereto, if so require in coming days. However, as per the constitutional obligation as made in under Article 95(2), the qualification for the purpose of appointment of a judge in Higher Judiciary to be held under a prescribed law and that is why the prescribed law through Ordinance, 2025 has been promulgated under article 93(1), sine no parliament now exist which thus cannot be said to be *ultra-vires* to the constitution, at this initial stage.

He also added that the professor of law department of the University or a legal expert has been included as a member in the council under the Ordinance, 2025, because he/she is the perfect person to ascertain the Educational qualification and Law back ground of the prospective candidate who is to be appointed as a judge of the Higher Judiciary which may not make any harm to the intended candidate. Thus the learned Additional Attorney General urges not to issue any rule, thereto but to reject the writ application, summarily.

Heard the learned Senior Councils as well as the other learned Advocates who appeared before us and the petitioner as well and also the learned Additional Attorney General who opposed the submissions as placed in support of the writ petition by the learned Counsels with the petitioner (in person).

The petitioner admittedly did not challenge the “Supreme Court Judges Appointment Ordinance, 2025” as a whole. But he specially challenged the sections 3, 4, 6 & 9 of the said Ordinance, 2025. Thus for better understanding the particular part of those sections relied upon are discussed hereunder:-

The Section 3 of the said ordinance provides- কাউন্সিল প্রতিষ্ঠা- which includes seven categories of representative to make their opinion to assist the Hon’ble Chief Justice about to consult him with the Ho’ble President in the appointment process of the judges of Supreme Court. They are conjointly called as “Supreme Judicial Appointment Council”. The petitioner herein specially challenged the representative’s name as described in sub section (২) wherein it provides that a Professor of Law or a Law expert to be nominated by the Chairperson. The petitioner’s contention and grievances to that extent is that the said professor, since in no way conversant with the Lawyer of the

Supreme Court nor with a judge of subordinate judiciary, how can he make his opinion about a prospective candidate. Further that no Lawyer representative of the Bar Association has been included therein under subsection (ঘ), other than বিচারবিভাগ হইতে নিযুক্ত হাইকোর্ট বিভাগের কর্মে প্রবীনতম বিচারক; But subsection (গ) provides that - হাইকোর্ট বিভাগে (বিচারকর্মবিভাগ হইতে নিযুক্ত ব্যতিত) কর্মরত বিচারকগণের মধ্যে হইতে কর্মে প্রবীনতম বিচারক।

From which it presumed that one of the member of the Council will be nominated from the Judge who has been elevated from the Lawyer Community.

Furthermore, sub section (চ) includes the name of the Attorney General who himself is a lawyer and a member of the Supreme Court Bar Association. He also the Chairman of the Bangladesh Bar Council and certainly he deals with the matters of Lawyer Community from all over the Bangladesh. Thus, it cannot be said that no lawyer representative is found to be a member of the Council to represent the Lawyer Community in the selection process.

In respect of Section 4 of the Ordinance, no submission has been placed by the learned Counsels for the petitioner. But they emphasis to their submissions particularly in respect of introducing the age bar limiting at the age of 45 years, as the pre-requisite condition of a prospective candidate who intends to be a judge of the Supreme Court, although the Constitution does not create any such embargo other than the Experience of 10 (ten) years as a judge of Subordinate Court or as an Advocate of the Supreme Court of Bangladesh. The Senior Counsel Mr. Ahsanul Karim to that extent placed before us a list of Judges who have already been appointed and showed their valuable contribution in the judiciary even their age were less than 45 years while they have been elevated to the Bench.

But the exact scenario is otherwise. The list as shown by the learned counsel, they are few in number out of more than hundreds. And that the opinion of the Council is not final. The President has the discretion to accept their opinion or send back it to them for reconsideration and as such, the said contention of the learned Counsels appears are not to be taken into consideration.

Moreover, there has been a provision in sub-section (Gha) of section 6 about to evaluate the knowledge, integrity, honesty, reputation and respect to law of the prospective candidate for considering him/her as a judge to be appointed. Further, in Sub-section (Kha) of section 6 it provides to ascertain the Educational qualification, Professional skillness and experience, Publication and Training thereto, and in that respect a Professor of Law and/or a legal expert who may be a competent member from the Lawyer community to assist the Hon'ble Chief Justice for making his consultation with the Hon'ble President and thus, it cannot be said, at this initial stage, that the Professor and/or a legal expert is not to be the competent member of the Council in the process of appointment.

So far the Section 9, no submission placed on behalf of the Petitioner.

The scheme of our Constitution for appointment of Judge to the Supreme Court is by a large should but some defects or lacunae have come to surface in the actual working of the scheme. The impression, nevertheless, has prevailed that the appointment of the judges to the Supreme Court has not been always made on merit and many unsatisfactory appointments were made to the High Court on political, or other grounds with the result that the fittest person were not appointed, which has badly affected at the image of the Judiciary of the country.

Therefore, on 21.01.2025 the Hon'ble President of Bangladesh Promulgated the Ordinance namely "Supreme Court Judge Appointment Ordinance, 2025" to plug the loopholes in the present system with a view to eliminate favoritism or the impact of any political or party consideration in the matter of appointment of judges.

That Article 95(1) of the Constitution stipulates that the Chief Justice shall be appointed by the Present, and the other Judges shall be appointed by the President after consultation with the Chief Justice. Pursuant to that under the Ordinance, 2025 the council namely, "Supreme Judicial Appointment Council" consisting of the persons known for their integrity, independence as judicial background in the matter of appointments with a view to eliminating the sway of political or other extraneous considerations and ensure scrutiny of appointments peoples for being recommended to the President.

Moreover, the process of selecting and recommending suitable candidates for judicial positions through the council will not only eliminate political interference in the appointment of judges but also more or less do away with the possibility of any Chief Justice bringing his personal likes or dislikes into the picture.

In any system of dispensation of justice, much depends upon the personality of judges; the most well-drafted codes and laws would prove to be illusive if those concerned with construing and implementing those laws are lacking in right caliber. Experience tells us that wrong appointments not only affect the image of the courts, they also undermine the confidence in, and respect for, the judiciary amongst the litigants, the members of the Bar and the general public at large.

Therefore, long after 52 years since our independence and crossing the constitutional hurdles so many times, in our opinion, the “Supreme Court Judge Appointment Ordinance, 2025 is desirable for a great interest of the nation.”

The preamble of the Ordinance, 2025 since explained the necessity of promulgation of the ordinance as the Parliament is not now exist. The People’s representatives i.e. the parliament members of the next parliament have the every opportunity to discuss on the Ordinance when it will be placed under discussion next Parliament, at the very first session.

So, at this very initial stage without seeking its affect, we are not inclined to examine it by issuing any rule, rather disposing of the same with the observation made above, since similar Act has already been enacted in United Kingdom and in our neighbouring Country Nepal, as well. But the Indian Parliament has declared their Judges appointment Act unconstitutional since there has been the year old “collegiums system” in the Judges Appointment process. Thus, the citations placed thereto are found very much distinguishable at the present context.

Hence, we are in a considered view that this Writ Petition is to be disposed of summarily with observation.

Resultantly the writ application filed under Article 102 of Constitution is disposed of summarily with the observation made herein above.