

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

**Present:**

**Ms. Justice Kazi Zinat Hoque**

**And**

**Ms. Justice Aynun Nahar Siddiqua**

**Writ Petition No. 6567 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 :**

Mohammad Ullah Ashraf

..... Petitioner

**-VERSUS-**

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

..... Respondents

Mr. Md. Mokleshur Rahman, Advocate

.....For the petitioner

Mr. Md. Abdur Rashid, Advocate with

Mr. Harunur Rashid, Advocate

..... For the respondent No.5

**Date of Hearing :28.07.2025, 10.08.2025,  
20.08.2025, 30.10.2025 and 09.11.2025.**

**Date of Judgment: 13.11.2025.**

**Kazi Zinat Hoque, J :**

In this application under Article 102 of the  
Constitution a Rule Nisi has been issued calling upon

the respondents to show cause as to why the letter bearing Memo No.10.00.0000.131.11.199.76.76-119 dated 07.04.2025 issued under the signature of the respondent No.2 granting Nikah Registrar License of No.08 Kadla Union of Upazilla- Kachua, District- Chandpur in favour of the respondent No.5, violating the provisions of Rule 6(6ka) of the Muslim Marriages and Divorces (Registration) rules, 2009 (Annexure-G) should not be declared to have been issued without lawful authority and is of no legal effect and as to why the respondent Nos. 1 to 4 should not be directed to prepare the panel of candidates afresh for granting Nikah Registrar License of No. 08 Kadla Union of Upazilla- Kachua, District- Chandpur and/or such other or further order or orders passed as to this Court may seem fit and proper.

### **Relevant Facts**

The relevant facts for disposal of the Rule are that the petitioner's father was a Nikah Registrar of No.8 Kadla

Union, Upazilla-Kachua, District-Chandpur who was granted Nikah Registrar license on 13.02.1978. He died on 23.06.2007. Prior to his death he filed an application for appointing his son as Nikah Registrar in respect of his area. Accordingly on 03.05.2007 the petitioner submitted application and on the basis of the said application several steps were taken. However, respondents have not issued any license in his favour. On 12.08.2010 a panel was prepared by respondent No.3 excluding the petitioner's name and vide letter dated 17.08.2010 the said panel was forwarded to respondent No.1 for granting license among the panel. Since as the son of deceased Nikah Registrar the petitioner had priority he filed Writ Petition No.6490 of 2010 before the High Court Division and a Rule Nisi was issued and interim order of stay was granted. After hearing the Rule was discharged vide judgment and order dated 28.11.2012. Civil Miscellaneous Petition for Leave to Appeal No.1208 of 2012 was preferred and order of stay

was granted by the Hon'ble Judge-In-Chamber on 19.12.2012 and regular Civil Petition for Leave to Appeal No.2838 of 2013 was preferred. In the meantime S.R.O No. 330-Ain/2013 dated 20.10.2013 was issued inserting Rule 6(6Ka) by amending the Muslim Marriages and Divorces (Registration) Rules, 2009 which provided that the son of a deceased Nikah Registrar should get preference subject to requisite qualifications. As such the petitioner withdrew the Civil Petition for Leave to Appeal No.2838 of 2013 and on 03.11.2013 and 19.03.2014 respectively he submitted application before respondent No.1 requesting him to grant Nikah Registrar license under the amended provision of law without any relief and as such the petitioner filed Writ Petition No.9455 of 2014 seeking direction to consider his application dated 03.11.2013 and 19.03.2014 respectively as per the provisions of Rule 6(6Ka) of the Rules of 2009 whereupon Rule Nisi was issued. After hearing the Rule was disposed

of vide judgment and order dated 05.11.2018 with the following direction and observation:

“The respondents are directed to consider the applications of the petitioner dated 03.11.2013 and 19.3.2014 (Annexure-J and J-1) as per the Rule 6 (6Ka) of the Muslim Marriages and Divorces (Registration) Rules, 2009 and amended in 2013 vide S.R.O. No.330-AIN/2013 published in the Bangladesh Gazette Extra Edition on 20.10.2013 within 90 (ninety) days from the date of receipt of the judgment and order.

However, there is no order as to cost.

Communicate the judgment and order at once.”

Thereafter the petitioner submitted applications on several dates before respondent Nos. 1, 2 and 3 requesting them to consider his prayer. However, the respondents did not pay any heed to such prayer. On 23.10.2024 respondent

No.3 sent a detail report to respondent No.1 and stated that the petitioner, the son of a deceased Nikah Registrar has the requisite qualification to be appointed as Nikah Registrar, the petitioner was all along waiting for positive response, however the respondents most illegally and arbitrarily issued a letter vide Memo No.10.00.0000.131.11.199.76.76-119 dated 07.04.2025 granting Nikah Registrar license in respect of No.08 Kadla Union, Upazilla-Kachua, District-Chandpur in favour of respondent No.5. It is the contention of the petitioner that Rule 6 (6Ka) of Rules, 2009 was violated and as such he was constrained to file this present writ petition.

### **Argument of learned Counsel**

Mr. Md. Mokleshur Rahman, learned Advocate for the petitioner, argued that Rule 6 (6ka) of the Muslim Marriages and Divorces (Registration) Rules, 2009 provides that son of a deceased Nikah Registrar should get preference for granting Nikah Registrar license subject to

the qualifications as has been provided in Rule 8 of the said Rules, 2009 but in the instant case, in spite of having all the requisite qualifications as provided in Rule 8 of the Rules, 2009, the petitioner have not been considered and included in the Panel and as such the impugned letter dated 07.04.2025 is illegal, malafide and violative to the provisions of Rule 6 (6ka) of the Muslim Marriages and Divorces (Registration) Rules, 2009. He further argued that being the son of a deceased Nikah Registrar as well as having the requisite qualification he should be granted Nikah Registrar's license in respect of his father's area. However, the respondents most illegally and arbitrarily issued the impugned Memo appointing respondent No.5 as Nikah Registrar.

Mr. Nur Muhammad Azami, learned Deputy Attorney General, representing the respondents, argued that the petitioner's brother is functioning as Nikah Registrar in neighboring Union. Therefore he argued that

more than one member of deceased Nikah Registrar should not be granted license because this provision has been made for welfare of family of Nikah Registrar after his death or retirement. He further argued that more than one son cannot and should not get appointment because this will frustrate the purpose of the law.

The Rule has been opposed by respondent No.5 by filing affidavit-in-opposition. Mr. Md. Abdur Rashid, learned Advocate appearing with Mr. Harunur Rashid, learned Advocate representing respondent No.5, argued that the petitioner is a habitual litigant, he has been filing one after another writ petition. Though he initially applied for the post of Nikah Registrar long ago (in 2007) he has been pursuing this matter though he has failed on various occasions he still approached the court on the self same cause. Therefore this writ petition is barred by the principle of *res judicata*. He also argued that the petitioner and his brother were involved with creation of forged and

fabricated Nikah Nama and as such criminal case has been filed and the same is still pending. The petitioner did not come with clean hands. Therefore, the Rule should be discharged.

### **Priority of Deceased or Retired Nikah Registrar's Son**

Muslim Marriages and Divorces (Registration) Rules 2009 were amended on 20 October 2013 inserting sub-rule (6ka) after rule 6(6). The new sub-rule (6ka) is reproduced below:

“যদি কোন সিটি ক-র্পা-রশন, পৌরসভা বা ইউনিয়ন পরিষদ এলাকার কোন নিকাহ রেজিস্ট্রার-র মৃত্যু বা অবসরজনিত কারণে লাই-স-ন্সর কার্যকরতার অবসান ঘট তাহা হই-ল উপ-বিধি (৪) এর অধীন নিকাহ রেজিস্ট্রারের লাইসেন্স প্রদানের উদ্দেশ্যে প্রার্থী বাছাই এর উপ-বিধি (৬) এর অধীন লাইসেন্স মঞ্জুরের ক্ষেত্রে সংশ্লিষ্ট নিকাহ রেজিস্ট্রারের পুত্র সন্তানকে, বিধি ৮ এর অধীন যোগ্যতা থাকা সা-প-ক্ষ, অগ্রাধিকার প্রদান করি-ত হই-ব।”

Admittedly the petitioner's brother is functioning as Nikah Registrar although in a neighboring union and the

Rule 6(6Ka) of the Bidhimala provides that পুত্র सन्तान-क (male child) which is singular and not plural. It is not the intention of the legislature that more than one son of a deceased or retired Nikah Registrar get appointment because this provision has been made for convenience of the family of deceased or retired Nikah Registrar. Therefore we find substance in the contention of the learned Deputy Attorney General.

### **Principle of Res Judicata in Writ Petition**

The present petitioner filed Writ Petition No.6490 of 2010. Thereafter a Rule nisi, at the instance of an aspiring candidate for appointment as Nikah Registrar, was issued to examine the legality of a panel of three candidates for granting license of Nikah Registrar for Kadla Union within Kachua Police Station of Chandpur District and forwarding the same to the Ministry of Law, justice and Parliamentary Affairs (Annexures: K and K-1). Subsequently Civil Miscellaneous Petition No.1208 of 2012 was preferred by

the petitioner and stay was granted for 8(eight) weeks. In the meantime, the petitioner was directed to file regular leave petition.

Then he filed Civil Petition for Leave to Appeal No.2838 of 2013 which was dismissed as not being pressed on 30<sup>th</sup> October, 2016. Subsequently he filed Writ Petition No. 13294 of 2016 which was discharged for non prosecution. He also filed Writ Petition No.9455 of 2014 which was disposed of with direction on 05.11.2018. The cause of action of all the writ petitions being same and earlier two writ petitions having been previously disposed of on merit this writ petition is barred by the principle of *res judicata*.

In the case of Mirza Muhammad Yaqub v. The Chief Settlement Commissioner Lahore and another (PLD 1965 SC 254) the Supreme Court of Pakistan held that the petitioner is not entitled to file multiple writ petitions on the same facts.

The Court further held :

“The general principle of res judicata is applicable to writ jurisdiction also”.

In CP No. D-1509 of 2019 the High Court of Sindh, Circuit Court, Hyderabad held:

“Based on a thorough analysis of the relevant case law, it can be concluded that the principle of res judicata applies to writ petitions. Therefore, any issue raised in a writ petition that has already been decided cannot be contested again, whether it pertains to a question of law or fact. This holds true if the matter in question in a subsequent writ petition is identical to what was already addressed in a previous writ petition. It is a well-established legal principle that a party cannot be subjected to multiple legal proceedings in the same jurisdiction. This demonstrates the universal applicability of the principle of *res judicata*.”

**Suppression of Material Facts.**

From Annexure Gha it is evident that in C.R. Case No. 250 of 2023 cognizance has been taken against the petitioner, his brother and others in connection with creation of forged and fabricated Nikah Nama. The said C.R. case is still pending. The petitioner did not disclose that a criminal case has been filed against him for his connection with the creation of a forged Nikah Nama. This is suppression of material facts. The petitioner has not come with clean hands. Therefore the Rule is liable to be discharged on this score as well.

In view of the facts and circumstances stated above, we do not find any merit in the Rule.

In the Result, the Rule is discharged without any order as to cost.

The interim order of stay is hereby recalled and vacated.

Communicate a copy of this judgment to the concerned respondents at once.

(Kazi Zinat Hoque, J):

I agree

(Aynun Nahar Siddiqua, J):

A.K