

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

WRIT PETITION NO. 12257 of 2012

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 Shahjahan

.....Petitioner

Versus

Bangladesh represented by the Secretary,
Ministry of Local Government, Rural
Development and Co-operatives, Government of
the People's Republic of Bangladesh, Bangladesh
Secretariat, Ramna, Dhaka and others

.....Respondents

Mr. Md. Idrisur Rahman, Advocate

.....For the petitioner

Mr. Tufailur Rahman with

Mr. Abdullah Al Baki, Advocate

.....For the Respondent No.6

Mr. Motahar Hossain, D.A.G

.....For the Respondent No.1.

Heard on: 03.11.2013

Judgment on: 20.11.2013

Present:

Mr. Justice M. Moazzam Husain

And

Mr. Justice Md. Badruzzaman

M. Moazzam Husain, J

This Rule was issued calling in question an order *vide* Memo
No. স্হাসবি/ইউপি-৩৪/৭০/০৭(অংশ-২)/৫১০ dated 30.08.2012 issued by the
Respondent No.1 under the signature of Respondent No.2 whereby this
petitioner, a Union Parishad Chairman, was placed under temporary
suspension following a no-confidence motion passed against him on the
charge specially of corruption.

Facts, in brief, are that the petitioner is the Chairman, Borikandi Union Parishad, Nabinagar, Brahmonbaria, elected for a term from 2011 to 2015. He took over office as chairman following publication of the list of elected chairmen/members of Union Parishads in the official gazette on 19.06.2011. While he was functioning as such all the twelve members of the Union Parishad brought a no-confidence motion against him on allegations of gross misconduct including misappropriation of public fund by abuse of office. The no-confidence motion was addressed to the local Upazila Nirbahi Officer, (hereinafter referred to as the “UNO”) as per law. The UNO having received the same by his Memo No. 182 dated 04.03.2012 appointed a one-member inquiry committee comprising of Upazilla Livestock Officer to inquire into the matter and submit report. The inquiry officer accordingly issued a notice (Annex-C) on 11.03.2012 along with a copy of the said no-confidence motion asking the petitioner to show cause within 22.03.2012. Having received the show-cause notice the petitioner submitted in writing a reply (Annex-D) on 22.03.2012 denying all the allegations made therein.

The inquiry officer, however, was not satisfied with the reply submitted by this petitioner. He addressed the Chairman another notice on 22.3.2012 (Annex-E) saying that the reply given by him was not satisfactory and asked him to be present at the venue of local-inquiry (mentioned therein) to be held on dates fixed with preparations to meet charges against him. The local inquiry was accordingly held on the dates fixed. On inquiry a number of allegations were found proved. Thereafter, a meeting of the Parishad was held on 16.5.2012 in which the no-confidence motion was put to vote. And all the twelve members of the Parishad voted in favour of the motion thus the motion was finally carried through against the petitioner by 12/1 votes.

The inquiry officer by his office Memo dated 23.5.2012 submitted the report to the Respondent No.4 (UNO) who in his turn forwarded the

report to the Respondent No.3 (DC, Brahmonbaria). The Deputy Commissioner, by his office Memo dated 05.7.2012 forwarded the report to the Respondent No.1 with his opinion that allegations of corruption and misconduct under section 34(kha) and (gha) were found proved against the chairman and he was removable from his office. The Government having received the papers connected with no-confidence motion issued the order placing the chairman under temporary suspension under the signature of a Deputy Secretary (LGRD) which is under challenge before us.

Mr. Idrisur Rahman, learned Advocate, appearing for the petitioner submits that the Government has no authority to suspend the petitioner under section 34(4) of the Local Government (Union Parishad) Act, 2009. He did not, however, explain how the Government is so powerless and how the petitioner would have been benefited by other orders that might be passed against him. He next submits that in issuing the impugned order of suspension the authority violated the principle of natural justice inasmuch as he was not allowed right to defense enough for the gravity of the allegations. His final contention is that the impugned order is tainted with *mala fide* issued at the behest of quarters inimically disposed to the petitioner. We have closely examined the records. We find nothing therein which might be construed to mean that the petitioner has been deprived of his right to be heard. Rather the records show otherwise. Two show-cause notices were issued to the petitioner on two phases of inquiry and the petitioner, amongst other things, responded the queries by submitting written-reply. More so, he did never raise objections to the inquiry process. So far as *mala fide* is concerned, it is not a case merely to be made but must of necessity be made out which is sadly lacking.

Here is a case in which a Chairman of a Union Parishad has been placed under temporary suspension by the Government following a no-confidence motion passed against him and he is still moving under the

(L) cwil` ev ivxi `xP nwbKi vwb Kvhrjvx RwoZ _vxb, A_ev `pxZ ev Am`vPiY ev yvZK öj bRwb vwb Acivx vwx mve` tBqv `Ücß nBqv _vxb;

(M) Zrvni `wqZ; cvj b Kwi x A`Kvi Kxb A_ev kviwi K ev gvbwmK Amvgxi Kvi x `wqZ; cvj x Aqg nb;

(N) Am`vPiY ev qgZvi Ace`envxi vwx vwx nb A_ev cwilxi vwb A_`ev m`úuEi vwb qvZ mvab ev Dnvi AvZmvxi ev Accbvxdi Rb` `vqx nb;

(O) GB AvBxi aviv 26 (2) Abhvqx vbevpxi AxvM` wQxb ewj qv vbevpxi ci hw` cgyYZ nq;

(P) ewlR 12 (evi) wJ gwmK mfvi `x bb`Zg 9 (bq) wJ mfv MhYxvM` KviY e`ZxZ Abpvb Kwi x e`nb;

(Q) vbevpx e`xi wnmve `wLj bv Kxb wKsev `wLj Kv wnmv AmZ` Z_` cÜvb Kxb; A_ev

(R) vev AbgwZx vK Z`vM Kxb A_ev AbgwZvx vK Z`vxi ci vwx AbgwZfvx Ae`v Kxb| e`vL`vt GB Dc-avivq `Am`vPiY0 ewj x qgZvi Ace`venvi, KZx` Aexjv, `pxZ, `RbcßZ I BfvKv KkvmbI eSvBx|

(5) miKvi ev miKvi KZvubavfi Z KZv, miKwi vwx Avxk Øviv, Dc-aviv (4) G Dvj wLZ GK ev GKvwaK Kvi x vqvi g`vb ev m`m`x AcmviY Kwi x cwixt

Zx kZ`_v v Acmvi xi wmxv%Bev%wi evi cx`veia vZvxK Z`%vi x nBx I Awfhyx AvZc q mg_xi mpxvM w` x nBx|

(6) vwb vqvi g`vb ev m`m` Gi Acmvi xi cÜv, miKvi ev miKvi KZvubavfi Z KZv KZv Abgv`b jvxi ci wZvb Zvr`qYfvx Acmwi Z nBxb|

(7) cwilxi vwb vqvi g`vb ev m`m`x Dc-aviv (5) Abhvqx Zrvni c` nBx AcmviY Kiv nBx wZvb miKvi KZv vubavfi Z KZv i wBKU D³ Avxki Zwi L nBx 30 (w`k) w`xi gx` Avicj Kwi x cwixb Ges Avicj KZv D³ Avicj wJ w`úuEi bv nI qv ch%AcmviY AvxkuJ `vZ i vLx cwixb Ges Avicj Kvi x e³e` cÜvxi mpxvM `vxi ci D³ AvxkuJ cwieZ, ewZj ev enj i vLx cwixb|

(8) Avicj KZv KZv Dc-aviv (7) Gi Aaxb cÜv E Avxk Pev`v qv MY` nBx|

(9) GB AvBxi Ab`vb` weavx hvnv wQv`_vKK bv vwb, GB aviv Abhvqx Acmwi Z vwb e`w³ vwb cx` mskó cwilxi

KvhRvxi Aeikó vjxi Rb" wbevPZ nBevi vM" nBxb bv|”

Section 39 of the Act reads as follows:

“(1) GB avivi weavb mvxxxi cwi lxi vqvi g'vb, m`m` ev cwi lxi Dci mjbw`θ Awfxxxi Abv`€c0v Avbqb Kiv hvBx|

(2) Dc-aviv (1) Abjhvx Abv`€c0v cwi lxi msL`vMwi ó m`xi`i` vj wLZfvx Dcxjv wbevix Awdmvxi wBKU cwi lxi vlvb GKRb m`m` e`w³MZfvx`vLj Kwi xxb|

(3) Abv`€c0v c0Bi ci Dcxjv wbevix Awdmvi 10 (`k) Kvhfexxi gx` GKRb KgRZv`wxxM Kwi xxb Ges D³ KgRZv`AwfxxMmgxi wlx e³e` c0vxi Rb` 10 (`k) Kvhfexxi mgq c0vb Kwiqv Awfhj³ vqvi g'vb ev m`m`x KviY`kvxi vUk wxb|

(4) Reve m`BbK wexxiPZ bv nBx Dc-aviv (3) Abjhvx wbj³ KgRZv`Reve c0Bi AbwaK 30 (w`k) Kvhfexxi gx` Abv`€c0v vMkj Awfxxxi eYbv Kiv nxx, vMkj AwfxxM Z`%ai xxb|

(5) Z`Awfxxxi mZ`Zv c0yWYZ nBx Dc-aviv (3) Abjhvx wbj³ KgRZv`AbwaK 15 (cxi) Kvhfexxi gx` Awfhj³ vqvi g'vb ev m`m`mn msukó mKj wbevPZ m`xi`i wBKU mfvi vUk wY wvöZKiYceR cwi lxi wxi mfvi Avnevb Kwi xxb|

(6) xqvi g'vxi wei, Abv`€c0v vxi c'vj vqvi g'vb (µgvjnvx) Ges vvb m`xi`i wei, Abv`€c0v vxi vxi cwi lxi vqvi g'vb mfvg mfvcuZZ; Kwi xbt Zx kZ`_v vqvi g'vb ev c'vj vqvi g'vxi Abcw`E Dcw`E m`m`Mxi gx` GKRb m`m`x HK`gx`i wfvE` mfvcuZ wbevPZ Kiv hvBx|

(7) Dc-aviv (3) Abjhvx wbj³ KgRZv`mfvg GKRb chxjK wmvx Dcw`E`vKxb|

(8) Dc-aviv (1) Gi Dxx` AvúZ mfvwU wvq%wvfZ vvb KviY Qrov`vZ Kiv hvBx bv Ges vju wbevPZ m`m` msL`vi`β-Zuqsk m`m` mg%mfvi wvvg MwZ nBx|

(9) mfvi`i, nBevi wZb Nxi gx` Db³ AvxvPbvi gva`x wvxv%Y m`e bv nBx Abv`€c0vDi Dci vvcb e`vj xi gva`x vU M0Y Kwi x nBx|

- (10) mfvi mfvcwZ Abv̄-€cŕv̄ki cxf| ev wecxf| wwb cKvk" gZvgZ cKvk Kwi xxb bv Zxx wZwb e'vj xxi gva" Dc-avi v (9) Abhvqx wvU cŕvb Kwi x cwi xxb wK%Zwb wYfqK ev wZxq wvU w` x cwi xxb bv |
- (11) Abv̄-€cŕv̄wU Kgcxf| 9 (bq) Rb m`m` KZU wvxt MuZ nBx nBx|
- (12) Dc-avi v (3) Abhvqx wbh³ KgRZv̄mfv wv nBevi ci Abv̄-€cŕv̄ki Kwc, e'vj U wvvi, wvxi djvdjmn mfvi Kvh̄ei Yx cŕv̄t Kwi qv Avbj w½K KvMRcĀmn mi Kvxixi wBKU wŕY Kwi xxb |
- (13) mi Kvi, Dch³ we xPbv Kwi x, Abv̄-€cŕv̄t Abvgv` b A_ev Abvgv` b Kwi x |
- (14) Abv̄-€cŕv̄wU cŕv̄Rbxq msL`K wvxt MuZ bv nBx A_ev wvixxi Afv̄x mfv AbjôZ bv nBx D³ Zwi xxi ci 6 (Oq) gvm AvZµv%w nBx mskó wvvi g'vb ev m` xxi wei x Abje wv Abv̄-€cŕv̄t Avbqb Kiv hvBx bv |
- (15) cwi l xxi wvvi g'vb ev wv m` xxi `wqZfv̄i Mhxxi 6 (Oq) gvxi gx` Zv̄vi 6 (Oq) gvxi gx` Zv̄vi wei x Abv̄-€cŕv̄t Avbqb Kiv hvBx bv |"

A plain reading of the provisions of law laid down in the above two sections suggests that between the two, section 34 is more comprehensive and provides a self-contained scheme of disciplinary actions against chairman/member(s) of Union Parishad including initiation of proceedings on grounds specified therein, temporary suspension during proceedings, forwarding proposal for removal, approval or no-approval of the proposal by the government, and finally privilege of appeal against order of removal, if any, published in the official gazette.

Likewise procedure laid down under section 39 also leads to removal of the chairman/member(s) from office, but by democratic process. Under this section provisions are laid providing removal through no-confidence motion passed by a certain number of Members in Parishad. Section 39 provides how to bring no-confidence motion on specific allegations; procedure of inquiry; motion put to vote in Parishad and finally forwarding the same to the government for approval, if passed by requisite

number of votes. Law, however, empowers Government to accord or not to accord approval to the no-confidence motion sent to it. Although section 39 does not say anything of the government's power beyond approval or no-approval it is fairly deducible from the scheme of law contained in sections 34 and 39 that once approval is given to the no-confidence motion by the government the office of the outvoted chairman/member stands vacated. What is left thereafter for the government is to formally remove the concerned chairman/member from office by an order published in the official gazette.

In the scheme of sections 34 and 39 there is no scope for a chairman or member removed from office pursuant to proceedings under section 39 to seek relief in appeal. The appellate forum created under sub-section (7) of section 34, is exclusively meant for chairman/member against whom proceedings under section 34 is taken and is removed by order published in the official gazette as required under sub-section (5) of section 34.

Section 34(1) provides for power to place an indicted chairman/member under 'temporary suspension' during pendency of the proceedings, not after conclusion of proceedings. Suspension literally means- 'the act of debarring for a time from a function or privilege'. It means temporary deprivation of one's office or position. The suspended officer does not cease to be public servant; he is only prevented from discharging the duties of his office for the time being. A concluded proceeding logically and indeed is followed by a final order, ie, either order of discharge or any order awarding suitable punishment.

This was a case for the government either to approve or not to approve the no-confidence motion sent by the inquiry officer through the Deputy Commissioner and, if approved, to remove the chairman by an order published in official gazette. Nothing of the kind was done. The government instead, placed the chairman under temporary suspension

which is plainly incompatible with the stage of the proceedings and is grossly perverse.

The impugned order of temporary suspension has left an otherwise decided matter totally undecided. The issue might have been settled once for all by way of approval or no-approval to the no-confidence motion. But things were set to linger years together by an apparently wrong order passed for reasons yet not known.

Mr. Motahar Hossain, learned DAG, submits that the petitioner was removed from his office by vote of no-confidence on specific charges of corruption and the motion was passed by 12/1 votes that means by all the members of his Parishad. Such a chairman, he insisted, should not be reinstated in office on mere technical defect in the order. Mr. Tufailur Rahman, learned Advocate, appearing for added Respondent No.6, found it difficult to defend the order of temporary suspension in the peculiar facts but adopted the argument of the DAG that it is in the public interest that the petitioner should not be restored to office.

The allegations are grave. But the gravity of offence cannot justify an order not only defiant of law but also deterrent to progress of democratic practices sought to be established by the legislature. The order of temporary suspensions passed where it is plainly unwarranted by law whereas not explicable upon any proposition of innocence smacks of malice. The order, in the sense, is vitiated by malice in law. It seems to us to be an eminently fit case where interference is called for.

To sum up:

1. Sections 34 and 39 of the Local Government (Union Parishad) Act, 2009, provide for two separate but parallel procedures for removal of chairman or member(s) of the Union Parishad. Either of the proceedings may be resorted to for the purpose.
2. Since Parishad is a democratic institution ordinarily no-confidence proceedings should get preference over ordinary disciplinary

proceedings so that democratic values can take roots at all levels of the society.

3. Although the office of the indicted chairman/member stands vacated with approval given by the government to the no-confidence motion the vacancy should be given formal shape by an order of removal published in official gazette. This will, however, not entitle the chairman/member removed under section 39 to the right of appeal provided under sub-section (7) of section 34.
4. The chairman/member against whom no-confidence proceedings is initiated as per section 39 cannot be deprived of his/her right to vote on 'no-confidence motion'.

For what we have stated hereinabove, we find merit in this rule. At the same time, we do not think that relief can be given absolutely in terms of the rule without frustrating the result of otherwise valid proceedings. Fitness of things, therefore, requires that the impugned order of temporary suspension be declared void and the case be sent back to Respondent No.1 with necessary directions to cure the defects.

In the result, the impugned Memo of temporary suspension is declared void and ineffective and the Respondent No.1 is directed to pass appropriate orders as required by section 39(13) of the Local Government (Union Parishad) Act, 2009, on the no-confidence motion received by it and dispose of the matter in accordance with law within thirty days from date of receipt of this judgment.

This rule is thus disposed of with the aforesaid direction. No order as to cost.

Order of stay granted earlier is hereby vacated.

Communicate copies of this judgment at once.

Md. Badruzzaman, J

I agree