

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)

WRIT PETITION NO. 5020 of 2012

IN THE MATTER OF:

An application under section 102 (2) of
the Constitution of the People's
Republic of Bangladesh.

AND

IN THE MATTER OF:

Md. Mahabub Alam (T.R.C) Ex. Trainee
Recruit Constable (Male)
.....Petitioner

Versus

Bangladesh, represented by the
Secretary, Ministry of Home Affairs,,
Bangladesh Secretariat Building,
Ramna, Dhaka and others.
.....Respondents

Mr. Golam Kibria, Advocate
.....For the petitioner
Mr. Motahar Hossain, D.A.G
.....For the respondents.

Heard and Judgment on: 05.06.2014

Present:

Mr. Justice M. Moazzam Husain
And
Mr. Justice Md. Badruzzaman

M. Moazzam Husain, J

This rule was issued calling in question an office Memo No. 3/2011/838 dated 19. 9.2011 issued under the signature of Assistant Secretary, Ministry of Home Affairs affirming removal of the petitioner from his service and the proceedings in GR Case No. 425(2)11 arising out of Jamalpur PS Case No. 58 dated 19.7.2011 U/Ss 420/467/468/471 read with section 34 of the Penal Code initiated pursuant to the impugned Memo now pending before the Senior Judicial Magistrate, Cognizance Court, 'Ga' Anchal Jamalpur.

Facts, in short, are that the petitioner hails from Jamalpur district of Bangladesh. He is fathered by Md. Intaz Ali S/O Late Danes Ali Mollah, Village- Satkura, PS & District-Jamalpur. Intaz Ali is still alive and living his life with his family in acute economic hardships just depending on whatever little allowance he receives from the Government as an injured freedom-fighter. Intaz Ali originally belonged to EPR in the erstwhile East

Pakistan. With the outbreak of liberation war he deserted EPR and joined the freedom struggle. He was injured in front-fight and later has been awarded certificates/testimonials issued by the Ministry of Liberation War Affairs and Central Command Council of Bangladesh Muktiyoddha Sangsad in recognition of his gallantry in the war of liberation. As an injured freedom-fighter he gets allowances from the Government and ration from Mukjyoddha Welfare Trust.

The petitioner being son of a freedom-fighter offered himself as a candidate for the post of police constable in response to an employment notice issued under Memo No. R& M (Ree) 29-2010/4508(64) dated 27.11.2010 at the instance of the Bangladesh Police wherein there was a privilege of freedom-fighters' quota. He accordingly went through the recruitment test at Jamalpur Police Line. Having stood the test he was selected as a trainee constable in the freedom-fighters' quota. As per order under office Memo No. 183/RO dated 01.02.2011 the Officer-in-charge, Jamalpur, sent the petitioner to the PTC for a six-month's training. The petitioner was doing well in the training. While the training was at the verge of completion, all on a sudden on 19.7.2011 he was arrested in connection with Jamalpur PS Case No. 58 dated 19.7.2011 on the allegation of forgery and using forged certificate as genuine. He was produced before the court of Magistrate at Jamalpur on 20.7.2011 and was taken into custody. Learned Sessions Judge, however, was pleased to admit him to bail.

From story alleged in the FIR of the case the petitioner came to know that the provisional certificate bearing Sl. No. 48933 dated 09.3.2004 standing in the name of his father purportedly issued by the Ministry of Liberation War Affairs ('MoL' for short) which he filed with his application for the job was found fake on verification. The Respondents doubted *bona fide* of his father as a freedom-fighter; removed him from his service and at the instance of the Ministry of Home Affairs (to be referred to hereinafter as "MoH") initiated the criminal proceedings which is now pending in the court of the Senior Judicial Magistrate, Cognizance Court, 'Ga' Anchal Jamalpur.

None of the members of the petitioner's family including the petitioner himself was aware of the fakeness of the certificate until the disaster befell them. He sat with his father and others and in retrospect it was discovered that in 2004 petitioner's elder sister decided to make an application in the food department of the Government when she needed Muktiyoddha Certificate of her father issued by the Ministry of Liberation War Affairs. Unfortunately for the elder sister of the petitioner, her father was seriously ailing at the moment and totally unable to move.

Having no other alternative her father sent one of his local friends named Md. Zahurul Haque with some expenses to Dhaka for procuring a certificate from the concerned Ministry. Zahurul Haque went, if at all, to Dhaka and after lapse of quite some days came back with the certificate purportedly issued by the MoL. By the time the certificate reached the hands of the petitioner's sister last date for submitting application for the job expired. The certificate having lost its use for the time being finally found place in her father's file far beyond knowledge of anyone of the family that the same is fabricated and a family friend might do the mischief for a little amount of money. The certificate as a time-bomb continued in the file years together and was again needed for the job of the petitioner in 2010. The petitioner with blissful ignorance picked up the certificate and tagged the same along with his application for employment. It just exploded in time and to the surprise and misfortune of the petitioner and his family blew up his own and his family's dream for a better life.

Bewildered as the petitioner was, he frantically tried to satisfy the authority that an isolated certificate in the host of other genuine certificates cannot represent a true freedom-fighter. He had in his possession host of genuine documents of his father. In no time he made an application seeking review supported by the genuine documents and explaining the cause of the accidental intrusion of the fake certificate in his father's file. The authority outright rejected the same saying, *inter alia*, 'once the certificate is found false there is no scope for reconsideration'.

Mr. Golam Kibria, learned Advocate, submits that the quota is meant for children of the freedom-fighters and the petitioner is the son of a genuine freedom-fighter. The Respondents deprived him of his right to a government job so desperately needed for his family survival without giving him a prior notice or allowing him an opportunity to explain his position. The action, he argued, taken initially and on the review application by the authority is on the face of it *mala fide*, arbitrary and oppressive and a clear violation of the principle of natural justice. Had he been allowed opportunity to explain his position the petitioner would not have been removed from his service nor the criminal proceedings would have been initiated. Refusal to consider the genuine papers and documents of his father smacks of *mala fide* which has vitiated the actions against the petitioner taken in the form of removal from service and initiation of criminal proceedings against him. As for the criminal proceedings Mr. Kibria emphatically submits that the allegations made in the FIR does not constitute the offense of forgery in that there is absence

intention to make any unlawful gain. If there is no forgery question of using forged document does not arise. He stressed that the proceeding is misconceived and its continuation amounts to abuse of the process of the court.

Mrs. Purabi Rani Sharma, learned Assistant Attorney General appearing for the contesting respondent (I.G., Police) opposes the Rule and raised mainly two contentions. Her first contention is that writ petition is not maintainable as the petitioner is a public servant and his remedy lies in the Administrative Tribunal. Secondly, genuineness or otherwise of certificates/documents of the petitioner's father is a question of fact which is yet to be tested and cannot be decided in writ petition. Mrs Sharma, however, does not dispute the report submitted by the Ministry of Home Affairs submitted pursuant to a direction given by this court showing that certificates of the petitioner's father issued by Bangladesh Muktiyodda Sangsad countersigned by the then Prime Minister and the provisional certificate issued by the Ministry of Liberation_War Affairs are genuine.

Back on records, we notice series of certificates/testimonials and documents issued in favour of Intaz Ali, father of the petitioner which were issued by the concerned authorities from national down to local levels. We feel it apt to pick up some of the most important documents among them and enumerate below.

1) A photocopy of the certificate bearing No. 170700 issued under Memo No. (*Illegible*)/ Jamalpur/ pro-3/12/2002, 3112 dated 03.8.2011 by the Ministry of Liberation War Affairs signed and countersigned by the Secretary and the State Minister of the Ministry (Annex-A-1); **2).** Photocopy of a certificate bearing No. 31593 issued on 31 July 2000 by the Bangladesh Muktiyoddha Sangsad, Central Command Council signed by the Chairman of the Council and countersigned by the then Prime Minister herself who was the Chief Patron & Chief Advisor of the Council (Annex-A-2); **3)** Photocopy of the list of Jamalpur Freedom-fighters (Annex-5); **4)** Photocopy of Ration Card issued by Bangladesh Muktiyoddha Welfare Trust bearing Registration No. 3399 and Sl. No. 716 signed and countersigned by Manager and Director (Welfare) of the Trust (Annex-A-6); **5)** Photocopy of an identity Card bearing No. F(New) 422 issued under the signature of Manager countersigned by the General Mangar(Kalyan) and Director (Kalyan), by Muktiyoddha Kalyan Trust showing *inter alia* that Intaz Ali as injured freedom fighter was initially sanctioned Tk.600/- as allowance which now stood at Tk. 1800/by gradual enhancement. (Annex-7) **6)** Government Gazette Notification (Extraordinary) dated May 23, 2005 (Annex-L) disclosing a revised list of

freedom-fighters in which name of the petitioner's father appears at serial No. 315 in Jamalpur district part of the list. All the certificates and documents are duly attested by different persons of standing. And finally, **7)** the favourable report of the Ministry of Liberation War given pursuant to a direction from this court (Annex-I-1).

The high profile documents apart, there are a number of other testimonials including ones contained in Annex-A-3 and A-4 issued by Muktijyoddha Sangsad, Jamalpur Sadar Command showing *bona fide* of Intaz Ali as an injured freedom-fighter and wishing the petitioner as his son successes in life.

In this age of swarm of fake freedom-fighters this is one of very rare cases which has an apparent look of *bona fide* truly deserving privileges and opportunities provided by the Government either in service or otherwise.

It is amply clear to us that the petitioner is a son of a valiant freedom-fighter who is still alive and drawing allowances in the category of injured freedom-fighter. Government has not come up to contest the Rule. The grounds canvassed by the contesting Respondent appear to be absolutely formal and omnibus totally outflanked and outweighed by the set of highly credible certificates and documents placed on records by the petitioner. The action leading to removal *a fortiori* refusing review supported by a good number of certificates (one issued by the Ministry of Libration War Affairs) and documents including official gazette of the Government is not only arbitrary but plainly *mala fide*.

We cannot check temptation to reproduce the wordings that make up the Memo refusing the prayer for review just to portray the nature of intolerance and toughness that was shown in taking action against the son of a freedom-fighter which, we believe, would have been otherwise had the authority cast a glance on the papers. It is unclear what prompted them not to do this little favour to the family of a freedom-fighter. The Memo reads as follows:

MYcRvZ²Gx eisj v²k mi Kvi
~†vó'g²Gbvj q
cjj k kvLv-2

~†i K bs- ~tgt/cj-2/wewea-3/2011/838

Zwi Lt 19-09-2011

wel qt eisj v²k cjj k w²b w²i G, J Kb²ej (cj, l) c²x gjl, k²vi m²²²²i w²Uvq w²²²²i Rb² gjl, k²vi m²²²²K mb² c²† m²Z²Zv hv²v²B Ki, b |

m²† t cjj k w²UvqU²m²Gi c²† bs- Avi GÜGg (w² t)/25-2010(Ask -3)/3929, Zwi L- 7/09/2011

Dch², wel k² Rvb²²² hv²²² w² eisj v²k cjj k w²b w²i G, J Kb²ej (cj, l/g²nj v) c²x gjl, k²vi m²²²²i w²Uvq w²²²²i Rb² gjl, k²vi m²²²²K mb² c²† GKevi Rvj /fqv c²²w²YZ n²x Zv

CPNIRB... RB... Ges... enYZ... cjj... K... Rb... gyl... m... K... AvBbvM... Rb... Ab... Kiv nj |

^t/ A^c6
19/09/11
(dvi Rvbr...
mnKvi x miPe
xdivt 7171196 (At) |

gnvcvj k cwi`kR
cjj k...
(^Avt-GAvBvR, Avi GUGg) |

As for the attack on our jurisdiction, we are of the clear view that the action taken in the form of sudden arrest, removal from service without notice, flat refusal to entertain review petition and direction to initiate criminal proceedings smacks of clear *mala fide* which attracts writ jurisdiction. Furthermore, in this writ petition, if the Rule succeeds, a composite relief would be necessary including quashing of criminal proceedings which, apart from question of mala fide, has taken the case far beyond the jurisdiction of Administrative Tribunal. We have, therefore, no slightest of hesitation to reject the contention raised by Mrs. Sharma. We find no substance either when she says that the certificates are yet to be proved in that the Respondent has at least admitted two documents (at least one of which is issued by the Ministry) as correct. More so, there is an official gazette issued by the Government containing the name of the petitioner's father as a freedom-fighter which remains still valid and is attached with presumption of validity under law. Government not being found up to the court to disown the gazette or the certificate issued by the Ministry it is not for Respondent No.4 as a department of the Government to take a stand not taken by the Government. This instead of helping them further strengthened the case of *mala fide* canvassed by the petitioner.

Every single respondent has the right to contest the Rule. But when we do so we must not forget our boundless indebtedness to the freedom-fighters and avoid contest such cases for contest's sake. We must not jump to conclusion in their cases. When questions of rights of the freedom-fighters and survival of their families come to the fore it is more honorable to be slow in doubting validity/fakeness of their papers than to reject them outright without bothering to see how they explain the fault, if any, in their papers. We must not forget they are not subjects of our mercy or charity. They set up their claims as of right and we attend them as of duty. Here in this case the whole spirit seems to be missing.

The Respondent seems to be totally oblivion of the fact that they are dealing with a young man firmly and confidently claiming to be son of a

freedom-fighter. Overriding consideration here was to examine whether he was truly so not to discard him on a single isolated piece of paper.

Coming back to the criminal proceeding initiated against the petitioner, we are of the clear view that initiation and continuation of the case amounts to abuse of the process of court and is liable to be quashed for the precise reason that in cases of forgery there must be 'making a false document with intention to cause damage or injury to the public or to any person or to cause any person to part with his property or to support any claim of title or enter into any contract or with intent to commit fraud'. And in cases of using a forged document as genuine there must be prior knowledge of the user that the document is forged and the using must be dishonest and fraudulent. The peculiar facts of the case do by no stretch of imagination constitute the offence of forgery because the petitioner being son of a genuine freedom-fighter need not require any forged document which instead of supporting may backfire to his own peril. He being a person possessed of series of genuine documents of his father, as knowledge *a priori*, would always be far beyond the presumption of guilt and the prosecution would be destined to fail. The prosecution now pending against the petitioner is misconceived and preposterous and its continuation is nothing but a sheer abuse of the process of court.

For what we have stated above we find merit in this Rule. This Rule, therefore, is made absolute. The impugned Memo as well as removal of the petitioner from service are declared to be without lawful authority and are of no legal effect. The criminal proceedings in question now pending against him before the Senior Judicial Magistrate, Cognizance Court, 'Ga' Anchal Jamalpur, is quashed. The Respondents are directed to reinstate the petitioner in his service within 40 (forty) working days with his seniority from date of receipt of this judgment.

No order as to cost.

Communicate at once.

Md. Badruzzaman, J

I agree