

Bench:

Mr. Justice Bhishmadev Chakraborty
And
Mr. Justice Murad-A-Mowla Sohel

Writ Petition No. 9637 of 2012

Abdul Karim petitioner

-Vs-

The Government of Bangladesh and others

..... respondents

Mr. Mohammad Shazzad Ali Chowdhury, Advocate

..... for the petitioner

Mr. Oziullah, Senior Advocate with Mr. Azimuddin
Patwary, Advocate for respondent 4

Judgment on 26.2.2026.

Bhishmadev Chakraborty, J:

On an application under Article 102 of the Constitution this Rule *Nisi* was issued calling upon the respondents to show cause under what authority of law respondent 4 is holding the post of Nikah Registrar of number 1 Ramgarh Union within the District of Khagrachari and why he should not be removed from the said post being disqualified to hold the same and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of issuing the Rule, the operation of the appointment of respondent 4 dated 05.06.2012 (annexure-C to the writ petition) was stayed for a limited period which was subsequently extended and still subsists.

The material facts for disposal of the Rule as stated in the writ petition, in brief, are that the petitioner is a permanent citizen of Bangladesh and resides in No.1 Ramgarh Union of Ramgarh Upazilla within the District of Khagrachari. He

passed Alim examination from Madrasha Board in 2006. He filed an application to respondent 3, the Upazila Nirbahi Officer of Ramgarh, Khagrachari Hill District for appointing him in the vacant post of Nikah Registrar of the aforesaid union. He filled up the form as required by law giving his all particulars including his academic certificates. The Advisory Committee prepared a panel of three members including petitioner's name to appoint one of them as Nikah Registrar of the union. Respondent 3 then sent the said proposal to respondent 1, but the latter appointed respondent 4 Sayed Ahmed son of Haji Nona Miah as Nikah Registrar through appointment letter dated 05.06.2012. It has been further stated that as per Rule 8(Kha) of Muslim Marriages and Divorces (Registration) Rules, 2009 (the Rules, 2009) the age of a Nikah Registrar must be above 21 years and not less than 45 years. But as per dakhil certificate of respondent 4, his date of birth is 02.02.1993 and as such on the date of filing application and getting appointment as Nikah Registrar he was below 21 years of age. Respondent 1 appointed him as Nikah Registrar by violating the provisions of law which is malafide, without jurisdiction and as such his appointment is required to be cancelled.

Respondent 4 filed affidavit-in-opposition to contest this Rule. There he denied the material facts stated in the writ petition further contending that his actual date of birth is 02.02.1990 but in Dakhil and Alim examinations and other academic documents the date has been written 02.02.1993 wrongly. He has sworn an affidavit on 09.09.2011 showing his correct date of birth 02.02.1990. It has been further stated that in the meantime, he started working as a Nikah Registrar of the aforesaid union by purchasing different kinds of forms and he has already

solemnized two marriages within his territory. The concerned authority on scrutinizing his papers legally appointment him as Nikah Registrar of the aforesaid union. It has been further stated that the writ petitioner had other remedy under the provisions of Muslim Marriages and Divorces (Registration) Act, 1974 (the Act, 1974) and Rules, 2009 to file application to the concerned authority to cancel his licence but without doing so the petitioner approached this Court and as such the writ petition is found not maintainable.

Mr. Mohammad Shazzad Ali Chowdhury, learned Advocate for the petitioner taking us through the materials on record and related law submits that the provisions laid in Rule 8(Kha) of the Rules, 2009 is mandatory and nobody can file an application for appointing him Nikah Registrar, if he does not qualify as per Rule 8 of the Rules, 2009. Here it is clear from annexures-D and D1 that the date of birth of respondent 4 is 02.02.1993 and he was 19 years of age at the day of submitting application to get appointment as Nikah Registrar. He refers to the cases of the project Head, Aleem Jute Mills Limited vs. Mia Eklash Uddin Ahmed and others, 13 ADC (2016) 107 and Bangladesh Agricultural Development Corporation and others vs. Md. Abdus Salam and others, 15 ADC (2018) 56 and submits that if any discrepancy or any doubt arises as to the age of a particular person in that case the certificate issued by the Board shall prevail. Here, it appears from annexure-D1, the certificate of Dakhil issued by Board that age of respondent 4 was below 21 years at the time of granting licence of Nikah Registrar to him by respondent 1. He cannot get appointment without required qualification as enumerated in Rule 8(Kha) of the Rules, 2009. The affidavit sworn by respondent 4 as contained in annexure-1 to the affidavit-in-opposition

bears no evidentiary value and cannot be accepted. Moreover, on its basis respondent 4 has not corrected the certificate issued by the Madrasha Board. Respondent 4 had no required qualification at the time of filing application but respondent 1 issued license to him to act as Nikah Registrar and as such respondent 4 is holding the post without jurisdiction and lawful authority and as such his appointment is required to be cancelled. The Rule, therefore, would be made absolute.

Mr. Oziullah, learned Senior Advocate for respondent 4 on the other hand opposes the Rule. He submits that in the affidavit sworn by this respondent he stated that his actual date of birth is 02.02.1990 but in the certificates issued by the Board it was wrongly written as 02.02.1993. As per affidavit he was qualified at the material time to file application to be appointed as Nikah Registrar and the authority correctly granted him licence. He then takes us through the prayer of the writ petition and Rule issuing order and submits that none of the petitioner and respondent 4 is a servant of the republic as per the definition clause of article 152 of the Constitution. As per the constitution a ‘public officer’ means a person holding or acting in any office of emoluments in the service of the Republic. A Nikah Registrar do not come within the meaning of ‘public officer’ and as such the instant writ petition in the form of *quo warranto* does not lie. He refers to the cases of Md. Abdur Rahman vs. Group Captain (Retd) Shamim Hossain and others, 49 DLR 628; Abu Bakkar Siddique vs. Justice Shahabuddin Ahmed and others, 49 DLR 1 and Fazlur Rahman and 38 others vs. Government of Bangladesh and others, 53 DLR 237 and relied on the *ratio* laid in the aforesaid cases that the word “public office” in article 102(2)(b)(ii) of the Constitution

mean persons holding constitution and elected offices and not the persons holding any office in the statutory authorities entrusted with the conduct and management of the business of the Government. Respondent 4 holding only licence of registration and divorces of marriages which do not include public office and as such the writ of *quo warranto* is not maintainable. He then refers to Rule 11 of the Rules, 2009 and submits that the petitioner had alternative remedy to file an application to the concerned authority who could have cancelled or revoked the licence of respondent 4 under aforesaid Rule. In that view of the matter, the instant writ petition is also not maintainable. The Rule, therefore, would be discharged.

In reply to the above submissions of the learned Advocate for respondent 4, Mr. Chowdhury taking us through the provisions of the Constitution, the provisions of the Act, 1974, the Rules 2009 and Constitutional Law of Bangladesh by Mr. Mahamudul Islam (third edition) submits that ‘the writ lies against a person who claimed or usurped an office, franchise or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined’. He refers word ‘franchise’ in Law Lexicon for its meaning. He then refers to the cases as referred to by the learned Advocate for respondent 4 and submits that the facts upon which principle laid in those cases in fact do not match this case. At paragraph 16 in 49 DLR 1 case it has been held that even it is found that writ of *quo warranto* under Article 102(2)(b)(ii) of the Constitution is not maintainable, the Court may treat it as a writ of *certiorari* as contemplated under article 102(2)(a)(ii) of the Constitution. He finally submits that the authority has the right to remove a Nikah Registrar from his post by

cancelling his licence and in that sense he is holding a public office. In view of the above position of law and fact, the Rule would be made absolute.

We have considered the submissions of both the sides, gone through the writ petition, annexures appended thereto, affidavit-in-opposition, the provisions of law and *ratio* of the cases as cited by the parties.

The petitioner claimed that at the time of filing application to get licence of Nikah Registrar, the age of respondent 4 was below 21 years and he had no required qualification for such appointment. The provisions of Rule 8 (Kha) of the Rules, 2009 provides that to get appointment as Nikah Registrar, the age of an applicant would be within 21 years to 45 years. The aforesaid provision of law is mandatory and a pre requisite for a candidate to file an application for appointment of Nikah Registrar. On perusal of the application of respondent 4 as contained in annexure-D to the writ petition and the certificate of Dakhil annexure-D1 his date of birth is found 02.02.1993 which proves that he was about 19 years of age at the time of filing the application and was disqualified under Rule 8(Kha) of the Rules, 2009 but his application was forwarded by respondent 3 to the concerned Ministry and the Ministry (Respondent 1) issued him licence temporarily on 05.06.2012 (annexure-C) to act as Nikah Registrar of the said Union. Respondent 4 has sworn an affidavit and filed it with the affidavit-in-opposition stating that his actual date of birth is 02.02.1990 but in the academic certificates issued by the Madrasha Board it was wrongly written as 02.02.1993. Such kind of affidavit bears no evidentiary value. Moreover, on its basis respondent 4 did not take any step to correct his certificate issued by the Board. It is now well settled position of law by our Apex Court in numerous cases that if

any contradiction or any ambiguity as to the age of a particular person arise, the certificate issued by the Board shall prevail. Thereafter, we can safely hold that the petitioner was below required age at the time of filing application for appointment as Nikah Registrar in the aforesaid union and issuance of the impugned licence. We failed to understand how respondent 3 forwarded such an application to respondent 1 and the latter granted him licence on its basis.

Now question comes whether as per argument made by the learned Senior Advocate for respondent 4, the writ in the present form of *quo warranto* under article 102(2)(b)(ii) of the Constitution is maintainable. He argued that a Nikah Registrar do not come within the meaning of ‘public officer’ as define in article 152 of the Constitution. He refers some cases in this context and relied on the *ratio* laid therein in support of his submission. We have gone through the provisions of law and *ratio* of the cases cited by him. It is found that respondent 1 issued licence to respondent 4 to act as Nikah Registrar of the aforesaid union. Though ‘public office’ has not been defined in article 152 of the Constitution but it has been mentioned in article 102(2)(b)(ii) of the Constitution. In article 152 the words ‘public officer’ has been defined as a person holding or acting in any office of emolument in the service of the Republic. On going through the provisions of law of the Act, 1974 and the Rules 2009 we can safely hold that yes Nikah Registrars (known as Kazi) in Bangladesh holds a form of ‘public office’ and their jobs are alike ‘public servant’ although their services are not strictly categorized as government service and they are not full time service holders because of the reasons-

- (i) under the Muslim Marriages and Divorces (Registration) Act, 1974 and Muslim Marriages and Divorces (Registration) Rules, 2009 the government appoints the Nikah Registrars to register marriages and divorces and that compulsory registration of marriages by the aforesaid Act is clearly a public duty undertaken by the Government;
- (ii) the Nikah Registrars operate under the supervision and control of a government-appointed Registrar and the Inspector-General of Registration;
- (iii) the government issues them licence to operate within specific, defined geographic areas and acting outside their jurisdiction is considered as misconduct;
- (iv) their duty is to maintain registers under section 8 of the Act, 1974 in prescribed forms and their license can be revoked by the Government under section 11 of the Act, 1974; and
- (v) they are also charged with the duty of making and authenticating documents and registers as per Act and Rules.

It cannot be said that they are not holding public office because of the fact they receive prescribed fees for every work in the office.

At the end of the day it can be safely held that respondent 4 through a licence of respondent 1, the Government (annexure-C to the writ petition) is holding 'public office' of Nikah Registrar namely "kazi office" and as such a writ of *quo warranto* is found maintainable as well. On going through the statements made in the writ petition, the grounds taken and prayer made therein this writ is found a mixed form of *quo warranto* and *certiorari*. The writ of *quo warranto* with mixed prayer of *certiorari* or writ of *certiorari* with mixed prayer of *quo*

warranto is maintainable as well. Therefore, we hold that respondent 1 issued the order appointing respondent 4 as Nikah Registrar of Ramgarh Union without lawful authority which is of no legal effect. We also find that the petitioner is an aggrieved person because he had submitted application to the Advisory Committee to get appointment as Nikah Registrar of the same union. He was found qualified to get appointment as Nikah Registrar and included in the panel. In the aforesaid factual and legal position, we find substance in the submission of Mr. Chowdhury.

Accordingly, the Rule is made absolute. No order as to costs. Respondent 4 is found holding the post of Nikah Registrar without lawful authority and without having required qualification. Therefore, the appointment of respondent 4 as Nikah Registrar of No.1 Ramgarh Union is cancelled.

However, the concerned authority, *i.e.*, the Advisory Committee shall proceed with the appointment of Nikah Registrar in the said union afresh by inviting applications from competent persons. Since by the passage of time respondent 4 has acquired the required age for filing application, the petitioner and respondent 4 will be at liberty to file application for the purpose, if they are not found otherwise disqualified.

Communicate this judgment and order to the concerned.

Murad-A-Mowla Sohel, J.

I agree