

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

Writ Petition No. 5232 of 2013

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Shafia Khatun

....Petitioner

Versus

The Government of Bangladesh and
others

....Respondents

Mr. Md. Shibbir Ahmed, Advocate

....For the Petitioner

No one

....For the Respondents

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice S M Masud Hossain Dolon

Heard on: 05.11.23, 14.11.23&15.11.23

Judgment on: 16.11.2023.

S.M. Masud Hossain Dolon, J:

On an application under article 102 of the Constitution, the
Rule Nisi was issued in the following terms:

"Let a Rule Nisi be issued calling upon the
respondents to show cause as to why the impugned
Letter vide Memo No. কমিটি/১৬৫/কুম/উঃ/২১৫ তারিখ-২০/০৩/২০১৩
issued and signed by the respondents No. 3 to include
the name of the respondent No. 9 as founder member
of Projapoti D.L. High School Police Station
Debiddar, District Comilla (Annexure-G) should not
be declared to have been made without any lawful

authority and why the respondents should not be directed to treat the petitioner as Founder Member of D.L. High School, District Comilla and /or pass such other or further order or orders as to this Court may seem fit and proper.”

Facts relevant for disposal of the Rule in short, are that the petitioner donated 10 decimal of land verbally in the year 1991 for the purpose of established Projapoti D.L. High School and the land gifted by executing a registered deed being Deed No. 2681 dated 05.10.1995. On 15.06.1994 the husband of the writ petitioner performed his duty as Founder Member of the school and undertaking to the concerned higher authority of the government for the purpose of approving the school. On 20.06.1994 the Deputy Director, Secondary and Higher Education Directorate, Zonal Office, Coatbari, Comilla inspected the school and submitted an inspection report wherein he stating that the husband of the writ petitioner is a Founder Member. On 20.01.1997, the Headmaster of Projapoti D.L High School sent a list of Managing Committee to the Deputy Director, Secondary and Higher Secondary Education Directorate, Zonal Office, Coatbari, Comilla on 20.01.1997 thereafter gazette notification published on 30.06.2009 by the Secondary and Higher Secondary Education Board, Comilla.

Following the application of the Headmaster dated 18.03.2012 the respondent No. 3 School Supervisor, Secondary and

Higher Secondary Board, Comilla sent a letter vide Memo No. কমিটি/১৬৫/কুম/উঃ and very unfortunately did not mention the name of Founder Member. On 20.03.2013 respondent No. 3 again sent a letter vide Memo No. কমিটি/১৬৫/কুম/উঃ২১৫, তারিখ ২০/০৩/২০১৩ wherein the respondent No. 3 directed to the Headmaster of the school to include the name of the respondent No. 9 as a Founder Member.

Thereafter, having found no other equally efficacious remedy the petitioner filed the instant writ petition and obtained the Rule.

Mr. Md. Shibir Ahmed learned Advocate for the petitioner submits that respondent No. 3 violated the Regulation 2(2)(Chha) of the Gazette Notification 30.06.2009 “বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি প্রবিধানমালা-২০০৯” and directed to include the name of the Respondent No. 9 who did not fulfill the requirement of law to be a founder member. The petitioner donated 10 decimals of land for the purpose of establishing the Projapoti D.L. High School and the actual price of the gifted land is above 50 lacs as a result the petitioner is legally entitled to perform as founder member so the impugned letter is illegal, unlawful, without jurisdiction.

He further submitted that at the time of establishing the school the respondent no. 9 did not provide any amount and as such after establishing the school there is no scope to treat him as founder member. The respondent no. 3 sent a letter to the

Headmaster of the School and directed to include the name of the Respondent No. 9 as founder member of the school which is violation of law and hence the same is illegal and may kindly be declared without lawful authority and is of no legal effect.

Learned Advocate lastly submits that petitioner was a donor of land and the school is established on the donated land and as such the legitimate expectation of the petitioner that she will be founder Member and the impugned order may be declared to illegal and void. It would be unfair to allow the Respondent No. 9 to include as Founder Member. Hence the impugned order may be declared illegal and without lawful authority.

No one appears for the respondent when the matter is taken up for hearing.

We have perused the writ petition and all other relevant papers submitted by the petitioner in connection with the contents of this writ petition. It appears that the main pertinent of the writ petition is that by issuing impugned order, the respondent no. 3 violated the Regulation 2(2)(Chha) of the বেসরকারী শিক্ষা প্রতিষ্ঠানের গর্ভনিং বডি ও ম্যানেজিং কমিটি প্রবিধানমালা-২০০৯ which runs as follows:-

২।(২)(ছ) প্রতিষ্ঠাতা অর্থ মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের শিক্ষা প্রতিষ্ঠান প্রতিষ্ঠাকারী কোন ব্যক্তি বা ব্যক্তিবর্গ, যিনি বা যাঁহারা সংশ্লিষ্ট শিক্ষা প্রতিষ্ঠান প্রতিষ্ঠার নিমিত্ত অন্ত্যন ১০(দশ) লক্ষ টাকা নগদে বা চেকের মাধ্যমে কিংবা সমমূল্যের স্থাবর সম্পত্তি শিক্ষা প্রতিষ্ঠানের অনুকূলে দান করিয়াছেন, তবে এই প্রতিবধানমালা বলবৎ হইবার অব্যবহিত পূর্বে বিদ্যমান মাধ্যমিক বা উচ্চ মাধ্যমিক স্তরের কোন বেসরকারী শিক্ষা প্রতিষ্ঠানের গর্ভনিং বডি বা ম্যানেজিং কমিটি সংক্রান্ত কোন প্রবিধানমালা

অনুযায়ী কোন ব্যক্তি বা ব্যক্তিবর্গ কোন বেসরকারী প্রতিষ্ঠানের প্রতিষ্ঠাতা থাকিলে উক্ত ব্যক্তি বা ব্যক্তিবর্গ এই প্রবিধানমালার উদ্দেশ্যপূরণকল্পে, সংশ্লিষ্ট বেসরকারী শিক্ষা প্রতিষ্ঠানের প্রতিষ্ঠাতা হিসাবে গণ্য হইবে।

On plain reading of the Regulation ২(২)(ছ) of the বেসরকারী শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি প্রবিধানমালা-২০০৯ it appears that the persons who donated not less than Tk 10 lac in cash or by cheque or immovable property valued at Tk 10 lac at the time of establishment of school shall be treated as founder of the school. In the instant case, the petitioner categorically stated that she gifted 10 decimals of land and the present market value is Tk 50 lac.

On carefully examination of the annexures and also scrutinized the Investigation Report dated 08.11.2018 and 05.06.2022 it is crystal clear that the petitioner donated 10 decimals of land at the time of establishing of the school and the present market value of the land is approximately at about 50 lac and the Respondent no. 9 was not donated Tk 10 lac or any land valued at Tk 10 lac to the school at the time it was established. Moreover Respondent No. 9, Abul Kashem Sarker was present before the investigation committee on 04.10.2018 vide memo no. উমাশিঅ/দেবি/কুমি/২৩৬ তারিখ-০৮-১১-২০১৮. Where Abul Kashem claimed that he was elected as founder member on 20.03.2013 due to he donated money but he was not claimed that he donated Tk. 10 lac or more at the time of establishment of the school. It appears that the money petitioner duly complied with all requirement of law and

as such on 20.03.2013 respondent No. 3 (school Supervisor, Secondary and Higher Secondary Board, Comilla) most illegally sent a letter to the Headmaster of the school to include the name of the respondent No. 9 Md. Abul Kashem Sarker as Founder Member hereby without lawful authority and is of no legal effect.

In view of the above facts and circumstances and the provision of law quoted above, we find substances in the submission of the learned Advocate for the petitioner.

Thus, we find merit in this Rule.

Accordingly, the Rule is made absolute. Hence, the impugned order vide Annexure-G is hereby declared to have been issued without any lawful authority.

Respondents are directed to include the name of the petitioner as Founder Member of D.L. High School, District Comilla within 60(sixty) days from the date of the receipt of this judgment.

However, there would be no order as to costs.

Md. Jahangir Hossain, J:

I agree.