

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

WRIT PETITION NO. 6959 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:

Kazi Azizur Rahman

..... Petitioner

-Versus-

Bangladesh, represented by the Secretary,
Ministry of Law, Justice and Parliamentary
Affairs, (Law and Justice Division), Bangladesh
Secretariat, Dhaka-1000 and others

..... Respondents

Mr. A. K. M. Faiz, Senior Advocate, with
Mohammad Bakir Uddin Bhuiyan, Advocate
Md. Moshir Rahman Shamim, Advocate
Md. Abu Hanif, Advocate and
S. M. Iqbal Bahar Bhuiyan, Advocates

..... For the petitioner

Mr. Amit Talukder, DAG

..... For the respondent Nos. 1 & 2

Mr. Ali Ahsan Mullah, Advocate

..... For the respondent No. 4

*Heard on: 13.10.2020, 29.11.2020, 09.12.2020,
20.01.2021 & 10.02.2021*

Judgment on: 24.02.2021

Present:

Ms. Justice Naima Haider

And

Mr. Justice Razik-Al-Jalil

Naima Haider, J:

In this application under Article 102 of the Constitution of the
People's Republic of Bangladesh, a Rule Nisi was issued calling upon the

respondents to show cause as to why the purported decision of the Nikah Registrar Appointment Advisory Committee taken in its Sessions No. 01/2013 dated 24.06.2013 (Annexure-G) and panel of appointment of Nikah Registrar contained in Memo No. 260 dated 24.06.2013 (Annexure-H) issued under signature of respondent No. 7 and the order contained in Memo No. বিচার-৭/২ এন-৩৬/২০১২-৫২৭ dated 02.07.2013 (Annexure- E) issued under signature of the respondent No. 2 shall not be declared to have been done without any lawful authority and are of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Subsequently, a supplementary Rule was issued calling upon the respondents to show cause as to why the order contained in Memo No. বিচার-৭/২ এন-৩৬/২০১২-৪২২ dated 02.06.2013 issued under signature of the respondent No. 2 curtailing the nikah registry area of the petitioner should not be declared to have been issued without any lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of supplementary Rule an interim order of stay was passed by this Court.

The relevant facts of the writ petition, in brief, are that : The petitioner, having requisite qualification was appointed as permanent nikah registrar vide Memo No. ১৪২-বিচার/২এন-২৪/৭৮ dated 16.02.1978 (Annexure – A) for whole Paharpur Union under previously Brahmanbaria Sadar at present–Bijoynagar Upazilla, District - Brahmanbaria consisting of 3 (three) wards and since appointment he has been discharging his functions

and duties of nikah registrar with the entire satisfaction of all concern including the Government.

Thereafter all on a sudden, one Abdul Wadud was appointed as nikah registrar for earlier Ward No. 1, subsequent extended Ward Nos. 1, 2 and 3 of said Paharpur Union vide Memo No. ১২-বিচার-৭/২এন-৭১/৭৬ dated 05.01.2004 which was the petitioner's nikah registry area and thereafter this petitioner has been functioning as nikah registrar of earlier Ward Nos. 2 & 3 (subsequent extended Ward Nos. 4 - 9 of Paharpur Union Parishad) and in the meantime, Government framed Muslim Marriages and Divorces (Registration) Rules, 2009 (hereinafter referred to as the Rules, 2009) and notification of which was published on 10th of August, 2009 in place of earlier Muslim Marriages and Divorces (Registration) Rules, 1975.

A benami application dated 21.04.2013 was submitted to the respondent No. 1 containing all false and misleading information on which the local Member of Parliament made recommendation to take steps which contradicts with the report contained in Memo No. 346 dated 14.05.2013 issued under the signature of the District Registrar, Brahmanbaria. Since appointment on 16.02.1978, this petitioner has been functioning as Nikah Registrar in the aforesaid nikah registry area and there was no vacancy in the aforesaid previous Ward Nos. 2 and 3 (Extended Ward Nos. 4 - 9) of Paharpur Union Parishad, Bijoy Nagar, Brahmanbaria at any point of time. Before issuance of the impugned order, the petitioner submitted an application on 01.07.2013 (Annexure-D) to the respondent No. 1 informing him that no vacancy was occurred in his nikah registry area but

the respondent No. 1 without considering the said application, issued the impugned order on 02.07.2013.

The respondent No. 7 did not serve and issue any notice inviting application for appointment of nikah registrar in the petitioner's nikah registry area rather in connivance with the respondent No. 4, he concealed notice with a view to give undue benefit only to the respondent No. 5 and the then Upazilla Chairman namely Mr. Bashir Ullah Juru by issuing a Certificate dated 20.10.2013 clarified that he did not get any such notice for appointment and even he was not notified about the meeting of the Advisory Committee allegedly held on 24.06.2013 and in the alleged Sessions No. 01 of 2013 dated 24.06.2013 of the Advisory Committee (Annexure- G to the supplementary affidavit dated 22.09.2013), there is no room or space for the aforesaid the then Upazilla Chairman namely Mr. Bashir Ullah Juru.

Bijoy Nagar Upazilla Parishad was formed on 03.08.2010 and since there was no elected Chairman in the newly formed Bijoy Nagar Upazilla, the then elected Upazilla Chairman of Brahmanbaria Sadar namely Mr. Bashir Ullah Juru was functioning as the Chairman of newly constituted Bijoy Nagar Upazilla of Brahmanbaria till 2015 and the concern authority used to communicate with the Upazilla Chairman of Brahmanbaria Sadar which is evident from the Memo No. 46.045.018.02.01.001.2011.1979 dated 01.02.2011 issued under signature of the Deputy Secretary of Upazilla-2 Section of the Ministry of Local Government, Rural Development & Co-operatives and also from the Memo No. 189 (3) dated 29.05.2012 issued under signature of the Sadar Sub-Registrar,

Brahmanbaria and new Upazilla Chairman took the charge of the office of Upazilla Chairman after winning in Upazilla Parishad General Election-2015.

Against this backdrop, the petitioner moved before this Division and obtained the Rule Nisi on 22-09-2013 and further a supplementary Rule Nisi on 03-12-2015. After passing of the order of stay on the impugned order, the District Registrar, Brahmanbaria vide Memo No. 165/1(3) dated 12.04.2016 (Annexure–M to the supplementary affidavit dated 19.10.2020) issued a restraining order upon the respondent No. 4 and since then the petitioner is functioning as nikah registrar in his area in question.

Respondent no.4 has entered appearance by filing an affidavit in opposition.

Mr. A. K. M. Faiz, learned Senior Advocate appearing with learned Advocate Mr. Mohammad Bakir Uddin Bhuiyan on behalf of the petitioner at the very outset submits that the principle of reasonableness is used in testing the validity of all administrative actions and an unreasonable action is taken to have never been authorized by the legislature and is treated as *ultra vires* and in the instant case in hand, the application dated 21-04-2013 is baseless and nameless and contents of which is contradicts with the report as contained in Memo No. 346 dated 14-05-2013 and on such a purposeful application, the local Member of Parliament made recommendation to take steps and consequently the impugned order was issued and the respondent No. 7 did not serve and issue any notice inviting application for appointment of nikah registrar rather the respondent No. 7

in connivance with the respondent No. 5 hide and concealed everything which is unwarranted, unfair and unjustifiable in any manner.

He next submits that an executive authority exercising a power must do it justly and fairly and it is an inherent part of all powers and as such, a power executed by the Government or executive authority must be presumed to be exercised fairly and not arbitrarily and in the instant writ petition, the decision of the Advisory Committee dated 24-06-2013, the panel of candidates and the impugned orders are palpably illegal, not in accordance with law rather tainted with fraud and suffers from mala fide intention of the respondents only to give illegal benefit to the respondent No. 4.

He further contends that Section 4 of the Muslim Marriages and Divorces (Registration) Act, 1974 gives the Government wide discretionary power to extend, curtail, or otherwise to alter the limits of an area for which a Nikah Registrar has been licensed but such power has legal limitation by restrictive principles of reasonableness and fair play, and in some cases by that of natural justice and the power is, therefore, not absolute and area mentioned in Rule 13 of the newly formed Rules, 2009 cannot be curtailed every now and then at the sweet will of the licensing authority and there must be some valid reasons for public purpose for such curtailment, and in that case the incumbent Nikah Registrar should be given prior intimation and option as to which area he would choose to keep under his license subject to fulfillment of the other conditions provided in the Rules and here the respondent No. 7 with malafide intention, to give undue benefit to the respondent No. 4, concealed everything in the process

of issuing impugned order and thus the respondents have committed illegality which invites interference of this Court.

Mr. Faiz further submits that the Government has the authority to exclude certain area from the jurisdiction of one Nikah Registrar and amalgamate with others but in so doing notice to show cause should be served upon the existing Nikah Registrar and must show the valid reasons therefor and when not done so, the order of delimitation is without lawful authority and is of no legal effect and in the instant case in hand, the respondent No. 2 curtail the area of the petitioner not for any public purpose but for the private purpose of the respondent No. 4 which is not permitted under any circumstances and it is a fundamental principle of natural justice that no action shall be taken against any person without giving him any opportunity of being heard and in the instant case in hand, no such notice is issued and served upon the petitioner before curtailing his nikah registry area by the impugned order and whole processes was done in violation of the fair procedure as laid down in Rule 6(1)(2) and (3) of Muslim Marriages and Divorces (Registration) Rules, 2009. Mr. Faiz lastly submits that the respondent No. 4 by filing an affidavit in opposition dated 02-11-2020 contested the Rule but he did not deny the material facts asserted in the writ petition as well as in the supplementary affidavit dated 22-09-2013 and 19-10-2020 as per provisions of Rule – 14 of Chapter – XIA of the Supreme Court of Bangladesh (High Court Division) Rules, 1973 rather the respondent No. 4 in paragraph No. 6 of his affidavit-in-opposition dated 02-22-2020 admitted that those are matters of facts and the other respondents did not file any affidavit-in-opposition denying the

facts of the writ petition, supplementary affidavit dated 22-09-2013 and 19-10-2020 and the settled and established principle of law is that when no affidavit-in-opposition is filed denying or controverting the case of the writ petitioner, the High Court Division had no option but to accept the case of the writ petitioner

In support of his submission, Mr. Faiz referred the case of *Saiful Islam -Vs - Bangladesh* reported in 66 DLR (HCD) Page - 310; *Kazi Abdul Matin -Vs - Bangladesh* reported in 5 CLR (HCD) Page-111; *Pubali Bank Limited -Vs- The Chairman, First Labour Court, Dhaka and another* reported in 12 BLD (1992) (AD) Page - 72; *Abu Hanifa -Vs - Shafiul Bashar* reported in 65 DLR (AD) Page - 243; *Bangladesh -Vs - Gazi Shafiqul Islam* reported in 19 BLC (AD) Page -163.

Mr. Ali Ahsan Mullah, learned Advocate for the respondent No. 4 taking us through the affidavit-in-opposition submits that No. 10 Paharpur Union Parishad under Bijoy Nagar Upazilla, District - Brahmanbaria is over populated and in the year 1978, Paharpur Union was divided into 3 (three) wards and presently it is divided into 9 wards and considering the number of population, Government curtailed earlier Ward No. 2 (Extended Ward Nos. 4 - 6) and created the new nikah registry area and from 05-01-2004, one Mr. Md. Abdul Wadud has been working as nikah registrar for extended Ward Nos. 1 - 3 and the petitioner has been working for the extended Ward Nos. 4 - 9 and the respondent No. 4 was appointed as nikah registrar for the extended Ward Nos. 4 - 6 vide Memo dated 02-07-2013 and his name was published in Gazette on 01-08-2013 and as such, the Rule is liable to be discharged.

On the other hand, learned Deputy Attorney General opposes the Rule without submitting any affidavit-in-opposition and denied the material assertions of the writ petition and the assertions made in the supplementary affidavits filed by the petitioner.

We have perused the writ petition, supplementary affidavits, the affidavit-in-opposition and other pleadings filed by the parties and we have also perused the documents annexed with the pleadings and considered the submissions of the learned Counsels of all the parties at length.

From the above facts, circumstances and submissions made by the respective parties, it is required to be determined whether in exercise of power as provided under the 2nd proviso to Section 4 of the Muslim Marriages and Divorces (Registration) Act - 1974, the respondent Government bifurcated the earlier Ward No. 2 (extended Ward Nos. 5 – 6) from the petitioner's nikah registry area, i.e. territorial jurisdiction fixed under Rule 13 of the Muslim Marriages and Divorces (Registration) Rules, 2009 and whether the appointment of respondent No. 4 was made in due compliance with the provisions of the Muslim Marriages and Divorces (Registration) Act-1974 and the Rules made there under i.e. the Muslim Marriages and Divorces (Registration) Rules, 2009

For better understanding, let us see the provision of Section 4 of the Muslim Marriages and Divorces (Registration) Act, 1974 which runs as follows:

“4. Nikah Registrar- For the purpose of Registration of Marriages under this Act, the Government shall grant licences to such number of persons, to be called Nikah Registrars, as it may deem fit necessary for such area as it may specify.

Provided that not more than one Nikah Registrar shall be licensed for anyone area.

Provided further that the Government may, whether it deems fit so to do, extend, curtail or otherwise alter the limits of any area for which a Nikah Registrar has been licensed.”

Under the aforesaid provisions of law, the respondent Government is empowered to alter or curtail the area of the Nikah Registrar and may appoint Nikah Registrar for such areas as provided under the Rule 13 of the existing Muslim Marriages and Divorces (Registration) Rules, 2009 which runs as under:

“১৩। অধিক্ষেত্র। এই বিধিমালার অধীন প্রদত্ত নিকাহ রেজিস্ট্রারের লাইসেন্সে যাহা কিছুই থাকুক না কেন, একজন নিকাহ রেজিস্ট্রারকে নিম্নবর্ণিত এলাকার জন্য লাইসেন্স প্রদান করা যাইবে, যথাঃ-

(ক) সিটি কর্পোরেশনের ক্ষেত্রে, একটি ওয়ার্ড;

(খ) ‘ক’ শ্রেণীর পৌরসভার ক্ষেত্রে, দুইটি ওয়ার্ড;

(গ) ‘খ’ শ্রেণীর পৌরসভার ক্ষেত্রে, তিনটি ওয়ার্ড;

(ঘ) ‘গ’ শ্রেণীর পৌরসভার ক্ষেত্রে, সমগ্র এলাকা;

(ঙ) ইউনিয়ন পরিষদ এলাকার ক্ষেত্রে একটি ইউনিয়ন।”

The issue in question was earlier agitated in a number of cases before the High Court Division. However, Mr. A. K. M. Faiz draws our attention and submits that curtailment in respect of Union Parishad area under the present existing Rules, 2009 this Court settled this law point in several decisions and expresses the same views. In the case of **Saiful Islam (Md) vs. Government of Bangladesh and other** reported in 66 DLR (HCD) Page - 310 it is observed that :

“ From a careful reading of the above quoted provisions of law it appears that in the newly framed Rules the words “not more than” are omitted. This omission has got a definite

meaning. It does mean that earlier in the Rules, 1975 the area of a Nikah Registrar was “not more than one union” but in the newly framed Rules, 2009 it has been fixed at only “one union”

“For all the reasons, we hold that the area mentioned in rule 13 of the newly framed Rules, 2009 cannot be curtailed every now and then at the sweet will of the licensing authority. There must be some valid reasons for such curtailment, and in that case the incumbent Nikah Registrar should be given prior intimation and option as to which area he would choose to keep under his license subject to fulfillment of the other conditions provided in the Rules. Any decision of the Government regarding curtailment, extension or change of territorial jurisdiction of a Nikah Registrar must be justified with the test of reasonableness and fair play”

In the case of **Kazi Abdul Matin vs. Bangladesh and other** reported in 5 CLR (HCD) Page - 111 it is observed that:

“It is also evident that the respondent No. 9 influenced the respondents only for his own, personal gain, not for any public purpose and pursuing the authorities to get appointment in place of petitioner at any cost by curtailing his nikah registry area as such the purpose for issuance of impugned orders suffers from malafide and ill motive of the respondents. Moreover, from the above conducts it is evident that there was no public cause to create a new area with ward No. 1 to 4 and to appoint a Nikah Registrar. Before doing so the authority does not scrutinize any such document or assessing the same. It also appears that only relaying upon the application of the respondent No. 9 and DO letter of the local Member of Parliament the authority concerned acts on it only to fulfill their ill desirers.”

“It is enough if the aggrieved party establishes that the authority did not apply its mind at the time of making the order. In the said back drop, we found that at the time of curtailing to the area of the Bholabo Union, Rupgonj Narayangonj and thereby creating a new jurisdiction with ward No. 1 to 4 of the Bholabo Union and issuing the impugned memo to appoint a Nikah Registrar authority did not apply its mind. Hence, it can be said that the memos being memo No, Bichar 7/2N-41/2003-1475 dated 10.11.2013 (Annexure-1) and memo No. Bichar – 712N41/2003-1544 dated 14.11.2003 (Annexure- J) and Memo No. Bichar- 7/2N-41/2003-06 dated 02.01.2014 (Annexure- N) all issued under signature of the responded No.04 has been issued without lawful authority and as such the same are liable to be struck down”

In the Muslim Marriages and Divorces (Registration) Rules, 2009, the Government introduced fair procedure for appointment of new Nikah Registrar and the content of Rule 4 of the Muslim Marriages and Divorces (Registration) Rules, 2009 runs as follows:

৪। সিটি কর্পোরেশন বহির্ভূত এলাকায় নিকাহ রেজিস্ট্রার লাইসেন্স মঞ্জুরীর জন্য উপদেষ্টা কমিটি।- [(১) সিটি কর্পোরেশন বহির্ভূত এলাকাধীন যে সংসদ সদস্যের নির্বাচনী এলাকায় নিকাহ রেজিস্ট্রার লাইসেন্স মঞ্জুর করা হইবে, তাহাকে উপদেষ্টা করিয়া নিম্ন বর্ণিত সদস্য সমন্বয়ে একটি উপদেষ্টা কমিটি গঠিত হইবে, যথাঃ

(ক) সংশ্লিষ্ট উপজেলার উপজেলা চেয়ারম্যান;

(খ) সংশ্লিষ্ট উপজেলার উপজেলা নির্বাহী কর্মকর্তা;

(গ) সংশ্লিষ্ট উপজেলার সাব-রেজিস্ট্রার, পদাধিকারবলে, যিনি উক্ত কমিটির সদস্য সচিবও হইবেন; এবং

(ঘ) যে ইউনিয়ন পরিষদ অথবা পৌরসভার ওয়ার্ডের জন্য লাইসেন্স মঞ্জুর করা হইবে সে ইউনিয়ন পরিষদের চেয়ারম্যান অথবা পৌরসভার চেয়ারম্যান বা কাউন্সিলর।

- [(২) সংশ্লিষ্ট উপদেষ্টা উক্ত কমিটির সভায় সভাপতিত্ব করিবেন, তবে তাঁহার অনুপস্থিতিতে, সংশ্লিষ্ট উপদেষ্টার পূর্বানুমোদনক্রমে, সংশ্লিষ্ট উপজেলা চেয়ারম্যান সভায় সভাপতিত্ব করিবেন।
- (৩) যদি কোন উপজেলা এলাকায় কোন সাব-রেজিস্ট্রার এর কার্যালয় না থাকে, তাহা হইলে উক্ত উপজেলা এলাকা যে সাব-রেজিস্ট্রার কার্যালয়ের আওতাধীন সেই এলাকার সাব-রেজিস্ট্রার উপ-বিধি (১)(গ) এর অধীন উক্ত কমিটির সদস্য সচিব হইবেন।
- (৪) যদি কোন উপজেলা এলাকায় একাধিক সাব-রেজিস্ট্রার এর কার্যালয় থাকে এবং উক্ত কার্যালয়সমূহে একাধিক সাব-রেজিস্ট্রার কর্মরত থাকেন, তাহা হইলে জেলা রেজিস্ট্রার কর্তৃক মনোনীত সাব-রেজিস্ট্রার উক্ত কমিটির সদস্য সচিব হইবেন।]

As per aforesaid provisions of Rule 4 of the Muslim Marriages and Divorces (Registration) Rules, 2009 a 5-Member Advisory Committee is to be formed for the area situated outside City Corporation and at the top there is a room for the concern Upazilla Chairman and as per provisions of Rule 6(3) of the Rules, 2009 the notice of appointment of new nikah registrar must be issued and served in the notice board of the office of each Member of the Advisory Committee or in the visible open space or directly to the Member of the Advisory Committee but in the instant case in hand, the respondent No. 7 did not serve and issue any notice for appointment of nikah registrar in the newly created area i.e. earlier Ward No. 02 (Extended Ward Nos. 4 – 6) which has been curtailed from the petitioner's territorial jurisdiction because the then Upazilla Chairman namely Mr. Bashir Ullah Juru by issuing a Certificate dated 20.10.2013 (Annexure - K to the supplementary affidavit dated 19.10.2020) clearly spelt out that he did not know anything and no notice was issued or served upon him and neither

the respondent No. 4 nor the other respondents deny the said crucial facts and the content of the said certificate runs as follows:

উপজেলা পরিষদ

সদর উপজেলা, ব্রাহ্মণবাড়িয়া

সূত্রঃ

তারিখঃ

প্রত্যয়ন পত্র

এই মর্মে প্রত্যয়ন করা যাইতেছে যে, ব্রাহ্মণবাড়িয়া জেলার অন্তর্গত বিজয়নগর থানার সাবেক ১৭ নং বর্তমানে ১০ নং পাহাড়পুর ইউনিয়ন এর সাবেক ২ নং ওয়ার্ড বর্তমানে ৪/ ৫/ ৬ নং ওয়ার্ডের নিকাহ রেজিস্ট্রারের নিয়োগের বিষয়ে আমাকে অবগত করার জন্য আমার কার্যালয়ে কোন নোটিশ আসে নাই এবং আমাকে জানানোও হয় নাই। আমার জানা মতে, ১০ নং পাহাড়পুর ইউনিয়ন পরিষদের অফিসেও এ বিষয়ে কোন নিয়োগ বিজ্ঞপ্তি টানানো হয় নাই। এই বিষয়ে আমি সহ এলাকাসী কেহ কিছুই জানে না। বিষয়টি সম্পূর্ণ গোপন করে প্রচলিত আইনের ব্যপ্তয় ঘটিয়ে নিকাহ রেজিস্ট্রার নিয়োগের প্যানেল তৈরী করা হইয়াছে। প্যানেল তৈরীর মিটিং এর বিষয়ে আমি কিছুই জানি না এবং আমাকে কোন নোটিশও দেওয়া হয় নাই। বিষয়টি অতি গোপনভাবে ইউনুছ আলী-কে লাভবান করার জন্য উক্ত কাজটি সম্পন্ন করা হইয়াছে। এ বিষয়ে আইনানুগ ব্যবস্থা নেওয়া উচিত বলে আমি মনে করি।

স্বাঃ ২০.১০.১৩

বশির উল্লাহ জরুফ

চেয়ারম্যান

উপজেলা পরিষদ

ব্রাহ্মণবাড়িয়া সদর ও বিজয়নগর

ব্রাহ্মণবাড়িয়া।

It appears that the respondent No. 7 with malafide intention in connivance with the respondent No. 4 concealed notice for appointment of nikah registrar with a view to give undue benefit to the respondent No. 4 only and now it reveals that the new area was created by the respondents not for any public purpose but for materializing the very private purpose of the respondent No. 4 at any costs violating the existing provisions of Rule 13(Umo) of the Rules, 2009.

From the above facts and circumstances, it appears that the whole process was commenced and concluded on the basis of a benami

application dated 21.04.2013 (Annexure–J) submitted to the respondent No. 1 containing false, misleading and motivated information which contradicts with the contents of the Report as contained in Memo No. 346 dated 14.05.2013 (Annexure – J) issued under the signature of the District Registrar, Brahmanbaria on which the local Member of Parliament made recommendation to take steps. In the aforesaid application dated 21.04.2013 (Annexure – J), it is stated that there was no Nikah Registrar in earlier Ward No. 02 (Extended Ward Nos. 4 - 6) of Paharpur Union whereas the District Registrar, Brahmanbaria in his aforesaid report contained in Memo No. 346 dated 14.05.2013 (Annexure – C) clearly stated that “বর্তমানে পাহাড়পুর ইউনিয়নের সাবেক ১ সম্প্রসারিত ১, ২ ও ৩ নং ওয়ার্ডে মোঃ আব্দুল ওয়াদুদ এবং সাবেক ২ ও ৩ নং সম্প্রসারিত ৪, ৫, ৬ ও ৭, ৮, ৯ নং ওয়ার্ডে মোঃ আজিজুর রহমান নিকাহ রেজিস্ট্রার হিসাবে কর্মরত আছেন।” and since appointment on 16.02.1978, this petitioner has been functioning as Nikah Registrar and there was no vacancy in the aforesaid earlier Ward Nos. 2 and 3 (Extended Ward Nos. 4 - 9) of Paharpur Union Parishad, Bijoy Nagar, Brahmanbaria and it further appears that before issuance of the impugned order (Annexure–E), the petitioner submitted an application on 01.07.2013 (Annexure – D) to the respondent No. 1 informing him that there is no vacancy in his nikah registry area and without considering the application dated 01.07.2013 (Annexure–D) and without applying his mind the respondent No. 2 most arbitrarily issued the impugned order dated 02-07-2013.

It is often said that mala fide or bad faith vitiates everything and a mala fide act is a nullity and above attending facts clearly established a

case of mala fide or bad faith on the part of the respondents. In the case of Kazi Abdul Matin -Vs -Bangladesh and other reported in 5 CLR (HCD) Page - 111 it is also observed that-

“Relying on some observations of the Indian Supreme Court in some decisions, Durga Das Basu J Held”, “it is common place of state that malafides does not necessarily involve a malicious intention. It is enough if he aggrieved party establishes: (i) that the authority making the impugned order did not apply its mind at all to the matter in question; or (ii) that the impugned order was made for a purpose of upon a ground other than that is mentioned in the order,” (Ram Chandra Vs Secretary to the Government of WB AIR 1964 Cal- 265).

“To render an action malafide, “there must be existing definite evidence of bias and action which cannot be attributed to be otherwise bonafide; actions not otherwise bonafide, however, by themselves would not amount to be malafide unless the same is an accompaniment with some other factors which would depict a bad motive or intent on the part of the doer of the act”, (Punjab Vs Khanna, AIR 2001 SC 343).”

It is apparent that the respondent No. 4 managed and influenced the respondents to issue the impugned order only for his own personal gain not for any public purpose and the respondent No. 4 pursuing the authorities got the impugned appointment letter in place of the petitioner by curtailing his nikah registry area and as such, the purpose for issuance of the impugned orders suffer from mala fide and ill motive of the respondents and moreover, from the above conducts, it is evident that there was no public cause to create a new area by curtailing earlier Ward No. 02 (Extended Ward Nos. 4 – 6) of Paharpur Union and appoint a Nikah

Registrar and before doing so, the respondent No. 2 did neither apply his mind nor examine the relevant documents and existing provisions of law nor even assess the same and it also appears that only on relying the misleading, purposeful and false information contained in the benami application dated 21-04-2013 (Annexure – J), the licensing authority acted on it only to fulfill the sweet will of the respondent No. 4 not for any public cause.

Against this backdrop and the aforesaid observations and discussions made hereinabove, we are constrained to hold that the Rule has substance and is bound to succeed.

In the result, the Rule is made absolute.

The impugned decision of Sessions No. 01/2013 dated 24.06.2013 (Annexure - G) and Memo No. 260 dated 24.06.2013 (Annexure- H) and Memo No. বিচার-৭/২ এন-৩৬/২০১২-৫২৭ dated 02.07.2013 (Annexure- E) and Memo No. বিচার-৭/২ এন-৩৬/২০১২-৪২২ dated 02.06.2013 (reproduced in paragraph No. 4 in the supplementary affidavit dated 18-11-2015) are hereby declared to have been issued without any lawful authority and are of no legal effect.

However, there will be no order as to costs.

Razik-Al-Jalil, J.

I agree.