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

WRIT PETITION NO.11078 OF 2014

IN THE MATTER OF:
An application under Article 102(1)(2) of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER:
Rama Prasanna Bhattacharjee, son of late Rajeeb Lochan Bhattacharjee, of Village-Bhumiura Surananda, Police Station-Rajnagar, District-Moulvibazar and others. .....***Petitioner***

-Versus-

Government of Bangladesh, represented by the Secretary, Ministry of Religious Affairs, Bangladesh Secretariat, Dhaka and others
…….. ***Respondents***

Mr. Probir Neogi, Senior advocate with **Mr. Suvra Chakravorty**, Advocate, **Ms. Anita Ghazi Rahman,** Advocate & **Mr. Manzur Al-Matin,** Advocate
......For the petitioners

Mr. A.F. Hassan Arif, Senior advocate with **Mr. Prabir Halder** , Advocate
.....For the respondent no.8

Present:
Mr. Justice Obaidul Hassan
And
Justice Krishna Debnath

Heard on 28.07.2016, 11.08.2016 & 16.08.2016
Judgment on 23.08.2016

Obaidul Hassan, J.

Rule Nisi has been issued calling upon the respondents to show cause as to why the impugned memo no.ধর্ম/সংস্থা/৬-২/২০০৮/২৭১ dated 14.09.2014 issued under the signature of respondent no.4 requesting respondents no.5 & 6 to assist respondent no.8 and his descendants in performing Durga

Puja under their supervision issued at the instance of Demi-Official Letter no.সকম/মন্ত্রী-১১/২০১৪-৪৬৭ dated 0-7.08.2014 issued under the signature of the Minister, Ministry of Social Welfare requesting the Minister, Ministry of Religious Affairs to issue directions enabling respondent no.8 and his descendants to perform Durga Puja under their control and supervision (quoted at paragraph no.12) shall not be declared to have been made without lawful authority and is of no legal effect and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

The facts relevant for the purpose of disposal of the Rule, in short, are that the petitioners no.1 and 2 are Purohits, and petitioner no.3 is the Nittyapujari of Panchgaon Durga Bari. They have challenged the memo no.ধর্ম/সংস্থা/৬-২/২০০৮/২৭১ dated 14.09.2014 issued under the signature of respondent no.4 requesting respondents no.5 and 6 to assist respondent no.8 and his descendants in performing Durga Puja under their supervision, the memo issued at the instance of Demi-Official Letter no.সকম/মন্ত্রী-১১/২০১৪-৪৬৭ dated 07.08.2014 issued under the signature of the Minister, Ministry of Social Welfare. More than two hundred and fifty years ago, one Sarbananda Das of Panchgaon, Rajnagar, Moulvibazar went to Kamrup Kamakhya of Assam after being ordered to do so in a

dream. On reaching Kamakhya he was blessed with the presence of the goddess Durga, who appeared in the colour red. Thereupon, the goddess gave Sarbananda Das a boon upon his request that she will bless the Durga Puja at Panchgaon Durga Mandir with her presence every year. After his return from Kamakhya, Sarbananda Das organized Durga Puja at the Panchgaon Durga Mandir and the said Puja has been so organized every year ever since. Before the partition of British India, the said Puja used to be organized out of the funds of the Zamindari of Sarbananda Das. However, in the early 1950s Zaminderis were abolished and therefore the assets of late Sarbananda Das was no longer sufficient to meet the expenditure of the Puja.

At that point of time, in order to hold the Puja properly, the family of late Sarbananda Das requested the villagers to share the burden of the expenditure of the Puja. Accordingly, since after the partition of British India, the common people of the village Panchgaon have been taking active part in organizing the Puja by supplying and raising funds as well as by laboring for ritual. Since then, the Puja has been transformed from a family ritual to a public ritual or a Sarbajanin Puja. Over the time extent of the Puja grew and apart from the residents of

the Panchgaon village, people from all over Bangladesh began to join the ritual. In order to maintain law and order, and to ensure proper arrangement of the Puja local administration and law enforcing agencies also became involved in the ritual. Thus, with the active participation of the people of the village, local administration and law enforcing agencies, the Panchgaon Durga Puja has been successfully arranged as a social event of national importance receiving devotees from all over the country as well as certain parts of India. The number of people participating in the puja grew, so did the amount of offerings. Such offerings included, among others, cash, expensive fabrics and clothing, etc. witnessing such increase in the volume of offerings, the জজমান (arranger) of the Puja, respondent no.8. Sanjay Das, a descendant of late Sarbananda Das, attempted to alter the age old practice of distributing the offerings among the Purohits and the Nittapujari, and to misappropriate a major portion thereof for himself and a number or his aids. Most of his aids are Indian citizens and they generally come to Bangladesh a few days prior to the Puja. As such attempt of misappropriating the offerings of the Puja was discovered, a complaint was lodged before respondent no.5, Deputy Commissioner, Moulvibazar, against Sanjay

Das and his aides by petitioners no.1 and 2 on 06.11.2005. On receiving the said complaint, respondent No.5 took steps to amicably settle the dispute.

On 27.12.2005 a meeting was held between the disputing parties wherein local dignitaries, including the Chairman of Panchgaon Union Parishad, were present. At the meeting, among other matters, it was agreed firstly, that the Purohits are entitled to the garments that are received an offering during the Puja. Secondly, that after meeting the expenses of the Puja, the remaining offerings will be divided in four shares, out of which three will go to the Purohits and Nittyapujaris (the petitioners) and the one remaining share shall be utilized for the welfare of the Puja Mandop; thirdly, that the Nittyapujari (petitioner no.3) and Sanjay Das (respondent no.8) will jointly manage the Puja and Sanjoy Das will be responsible for organizing and overseeing the puja; lastly, it was agreed that at that point of time there was no dispute among the parties and if a dispute arose, it would be referred to the Upazila Nirbahi Officer, Rajnagar (respondent no.7). After reducing the above agreement to writing, a memorandum of understanding dated 27.12.2005 was signed by the petitioners and respondent no.8. The Upazila Nirbahi Officer, Panchgaon (respondent no.7) by

memo no.সাঃ/ঘঃ৩(৭)/০৭ dated 02.01.2006 informed the Deputy Commissioner, Moulvibazar (respondent no.5) about the said agreement between the parties noting the mode of distributing and utilizing the offerings as agreed by the parties in the memorandum of understanding dated 27.12.2005. A copy of said memorandum between the parties was annexed to the memo dated 02.01.2006. It was also stated therein that there remained no dispute among the parties and that the matter was amicably settled.

In the year 2008, however, respondent no.8 threatened to prevent the petitioners from carrying out their duties as purohits and expressed his intent to violate the memorandum of understanding dated 27.12.2005. In order to prevent respondent no.8 from doing so, another complaint dated 14.09.2009 was filed before respondent no.5. In pursuant to the said complaint, another meeting was called by the Upazila Nirbahi Officer, Rajnagar (respondent no.7) at his office on 21.09.2008. At the said meeting the parties again agreed to abide by the terms of the memorandum of understanding dated 27.12.2005. Moreover, petitioner no.1 agreed to make donations for some repair works of the Puja Mandop and respondent no.8 promised to give accounts of the expenditures for

such repair work. The respondent no.7 undertook to monitor the repair works. A report stating the above agreement bearing memo no.উনিঅ/রাজ/পুজা/সাঃঘ/২(৩৫)/২০০৮ dated 29.09.2008 issued under the signature of respondent no.7 was sent to respondent no.5.

Thereafter, the dispute resurfaced again in the year 2013 and yet another meeting was held between the parties in the presence of the Chairman of Panchgaon Union Parishad and other local dignitaries. In the said meeting the parties agreed to abide by the memorandum of understanding dated 27.12.2005 (Annexure-B) and the decisions enumerated in memo no.উনিঅ/রাজ/পুজা/সাঃঘ/২(৩৫)/২০০৮ dated 29.09.2008 (Annexure-E). It was further agreed that respondent no.8 would produce the accounts from the bank account he is maintaining in his name for managing the funds raised for the development of the Mandap, and he along with the petitioners and five named persons of the village together would prepare the budget for the Puja. The said decisions were noted down in memo no. পাঁচ/পুজা/রাজ/২১/১৩ dated 07.09.2013 signed by the Chairman, Panchgaon Union Parishad. The said memo was also signed by the petitioners and respondent no.8. Thereafter, on the day before the puja was to begin for the year 2014, the

respondent no.8 produced the impugned memo dated 14.09.2014 before the petitioner by which the Ministry of Religious Affairs mentioned that the respondent no.8, Sanjoy Das and his descendents will supervise the puja and others were directed to provide necessary co-operation. The copy of this order was communicated with the Deputy Commissioner, Moulvibazar and the Superintendent of Police, Moulvibazar. Thereafter, upon being informed about the directions given in the aforesaid order, the petitioners protested against such arbitrary orders. They, however, agreed to settle the dispute after the Puja was successfully arranged since there was not enough time to settle the dispute before the Puja started. On the day after the completion of the Puja, respondent no.8 accompanied by a number of his family members came to the Mandap with 200 to 250 empty sacks and attempted to take away all the offerings. However, at the protest of the petitioners and the volunteers working for the Puja, the offerings were secured in the Mandap premises.

Thereafter, respondent no.7 directed the parties to meet at the office of the Union Parishad and tried to reach a settlement. Although, the petitioners were present at the designated time, the respondent no.8 did not show

up and the attempt to reach a settlement failed. Since no settlement could be reached, the Upazila Nirbahi Officer sealed all offerings at the Mandap premises which remains so sealed till date. Thereafter, the petitioners collected a copy of the impugned memo dated 14.09.2014 wherefrom it transpired that the said memo was issued at the dictates of the Minister, Ministry of Social Welfare as is apparent from the Demi-Official (DO) letter bearing memo no.সকম/মন্ত্রী-১১/২০১৪-৪৬৭ dated 07.08.2014 annexed to the impugned memo issued under the signature of the Minister, Ministry of Social Welfare requesting the Minister, Ministry of Religions Affairs to issue directions enabling respondent no.8 and his descendants to perform Durga Puja under their control and supervision.

Thereafter the learned advocate Mr. Manzur-al-Matin, served a demand justice notice dated 20.11.2014 upon the respondents no.2 to 5 and 7, but to no avail till date. In the circumstances, the petitioners came to this Court and challenged the memo no.ধর্ম/সংস্থা/৬-২/২০০৮/২৭১ dated 14.09.2014 issued under the signature of the respondent no.4 requesting respondents no.5 and 6 to assist the respondent no.8 and his descendants in performing Durga Puja under their supervision issued at the instance of DO letter dated 07.08.2014 issued under

the signature of the Minister, Ministry of Social Welfare requesting the Minister, Ministry of Religions Affairs to issue directions enabling respondent no.8 and his descendants to perform Durga Puja under their control and supervision and obtained Rule and order of stay.

Mr. Probir Neogi, the learned senior advocate appearing along with Mr. Suvra Chakravorty, the learned advocate for the petitioners submits that the impugned memo is ex-facie illegal inasmuch as it clearly shows that that it has been issued at the dictates of some other person not authorized by law to deal with the matter, and as such the same is liable to be declared to have been made without lawful authority and is of no legal effect. He also submits that the impugned letter arbitrarily attempts to unsettle a settled matter which has been settled through a series of meetings between the parties mediated by the local administration as is apparent from memorandum of understanding dated 27.12.2005 (Annexure-B) and the memo no.ঊনিঅ/রাজ/পুজা/সাঃঘ/২(৩৫)/২০০৮ dated 29.09.2008 (Annexure-E), and as such the same is liable to be declared to have been made without lawful authority and is of no legal effect. He furthers submits that the mode of distributing the accrued offerings arbitrarily prescribed by the Minister, Ministry of Social Welfare as

enumerated in DO letter dated 07.08.2014 (Annexure-G) is entirely against the established religion principles and practices, and as such the impugned memo endorsing such arbitrary directions has been issued in flagrant violation of the petitioners right to religion guaranteed under article 41 of the Constitution, and as such it is liable to be interfered with under writ jurisdiction. Mr. Neogi also submits that the letter dated 07.08.2014 (Annexure-G) annexed to the impugned memo is clearly self contradictory inasmuch as it admits that the concerned puja is entirely financed by the offerings placed by the visitors stating that "*বর্তমা-ন জমিদারী প্রথা নেই বিধায় সাধারণ ভক্ত-দর প্রণামী এবং উপাচার দি-য় এই প্রতিষ্ঠান পরিচালিত হওয়া প্র-য়াজন।"* in one breath; and in the other it states that the Puja is not Barowari and must be run solely by respondent no.8 and on the basis of this DO letter the impugned order has been passed and as such the same is liable to be declared to have been made without lawful authority and is of no legal effect. He further submits that the series of meetings were held between the parties, respondent no.8 has admitted himself to be the জজমান/পরিচালক of the puja and not Sebayet as it is apparent from memorandum of understanding dated 27.12.2005 (Annexure-B) and the memo no.উনিঅ/রাজ/পুজা/ সাঃঘ/২(৩৫)/২০০৮ dated 29.09.2008 (Annexure-

E), and as such designating him as the Sebayet of the Mandap is ex-facie illegal, arbitrary and without jurisdiction, and hence, the impugned memo is liable to be declared to have been issued without lawful authority and is of no legal effect. He also submits that the impugned order has been passed at the dictation of the Minister of Ministry of Social Welfare and on the basis of this dictation the order has been passed, thus the order ex-facie illegal as there is no any scope to pass any order by the Minister or the government or the dictation of others and as such the impugned order is liable to be declared to have been issued without lawful authority and is of no legal effect. He further submits that the petitioners are the Purohits and Nittyapujaris, they are the integral part of the Puja as per the memorandum of understanding dated 27.12.2005 and they have their legal right to agitate their grievance, as the religious right of the citizen has been guaranteed by Article 41 of our Constitution and as such the writ petition is maintainable and the impugned order passed by the respondent no.4 is liable to be declared to have been passed without lawful authority and is of no legal effect.

Mr. A.F. Hassan Arif, the learned senior advocate appearing along with Mr. Probir Halder, the learned

advocate for the respondent no.8 by filing an affidavit in opposition denied all the material allegations contended *inter alia* that the deponent is the 6th decedents of Sarbananda Das. This deponent is still the owner of vast quantum of landed property and he maintains the expenses of the Puja from his earnings. Since initiation of performing Durga Puja by Late Sarbananda Das as his family ritual till today the said Puja of Devi Durga has been performing and arranging as a family ritual which is evident form lists of the names of family rituals and public rituals prepared by Bangladesh Puja Udjapan Parishad, Rajnagar Upazila Branch for the year 2011, 2012 and 2014. He further submits that there was and is no practice of distributing offerings amongst the Purohits and Nittyapujari. The fact remains that late Sarbananda Das during his life time gifted out lands in favour of the then Purohits and Nittyapujaries. The present petitioners are their decedents. The predecessors of the petitioners sold out the said land to various persons and now they have become greedy over the offering to Devi Durga and with a *malafide* motive of enjoying share of the same have been taking various vexations steps including making of complaint with local administration. In particular filing of the instant wit petition is a part of the said activity.

Because, in the garb of challenging legality of a lawful order of the respondent no.4 the petitioners virtually has prayed for an order to release the offerings of the puja to the writ petitioners pursuant to so called private memorandum of understanding. He also submitted that being the disputed question of fact being not possible to resolve in writ jurisdiction inasmuch as those statements in no way relevant in deciding as to whether the impugned order has been passed without lawful authority or not, this deponent maintains reservation from making any comments thereupon.

He further submits that the Memorandum of understanding (Annexure-B) whether is genuine or not can only be decided by a civil court upon taking evidence and not in writ jurisdiction. That it is not known as to whether the respondent No.7 Upazila Nirbahi Officer sent report dated 02.01.2006 vide Annexure-C to the writ petition as because no copy of the same was endorsed to the respondent no.8. He also submitted that from a plain reading of the contents of Annexure-C it is revealed that the dispute in between the writ petitioners and this deponent is highly question of fact which cannot be resolved in writ jurisdiction as a court of special original jurisdiction. He further submitted that it is very wonder to

note that as to how the dispute of sharing the offerings of the puja by the writ petitioners can help in adjudicating the subject matter of the writ petition. He also submits that the impugned order for maintaining law and order situation during puja festival passed by the Hon'ble Minister of the Religious Affairs the dispute of sharing the offerings of the Puja by the writ petitioners in no way can help in adjudicating the subject matter of the writ petition. He also submits that the impugned order for maintaining law and order situation passed by the Hon'ble Minister of the Religious Affairs on the basis of the request of the Hon'ble Minister of the Ministry of Social Welfare who is also the Hon'ble Member of Parliament of the constituency within the area of which the Durga Puja is being performed cannot be a subject matter of adjudication under the writ jurisdiction. He also submitted that this deponent asserted that the alleged Durga Puja is his family rituals and he never agreed to give any share to the pujaries (petitioners) and the said report was procured by exercising influence upon the respondent no.7 by the writ petitioners in collusion of the then Chairman of Panchgaon Union Parishad namely Shamsur-Nur Azad.

He stated that though the respondent no.8 was present in the said meeting held on 21.09.2008 but he did

not put his signature in any minutes resolved in the said meeting. He also stated that though the signature of this deponent appears there in Annexure-F, it is emphatically stated by this deponent that he was compelled to put his signature beyond his will for fear of life and for the sake of safeguarding his prestige and dignity considering the prevailing situation at the relevant time. He further mentioned here that the said respondent no.3 being the representative of people in the parliament from the constituency within which the puja is being held form about 200-250 years before, having had personnel knowledge about the puja and for he is being the Member of the Parliament of the constituency of a heavy responsibility lies upon him to ensure that each and every religious rites of Hindu community can be performed peacefully and in a congenial atmosphere and as such he committed no illegality in issuing the DO letter.

Mr. A.F. Hassan Arif further submitted that the petitioner has no *locus standi* to challenge the order passed by the Minister of the Religious Affairs as contained in Annexure-G, because a dispute between two private parties has been resolved at the initiative of the minister which cannot be a subject matter of writ jurisdiction where evidence are necessary from either of the sides

and since the petitioners are admittedly Purohits and Nittyapujaris they have a dispute with the respondent no.8 regarding sharing the offerings. Thus, it can be resolved elsewhere, not in the writ jurisdiction and as such the Rule is liable to be discharged with cost. He further submits that a few lacs of people in every year gather in the homestead of the respondent no.8, and in the surrounding area of the puja mondap there are many tea gardens the Hon'ble Minister, Ministry of Social Welfare by issuing DO letter requested the Hon'ble Minister of the Religious Affairs in order to maintain the law and order situation of the area and to give shelter to the respondent no.8 so that the writ petitioners (priests) and others cannot create any sort of disturbance in the puja festival, especially in an uncommon puja festival, like the puja in question, all over the sub-continent. The Hon'ble Minister of the Ministry of Religious Affairs being the highest executive for the State to take care of religious affairs he has got every right to look after and to take necessary steps for performing the religious festival of Hindu community without any undue disturbance from any quarter and as such he has not acted without lawful authority in issuing the impugned memo and as such the Rule is liable to be discharged. He also submits that

nowhere and never it was and is heard that a priest or priests can have any legitimate right of claiming the share of offerings offered to the Goddess by the pious disciples. In the instant case the claim of the writ petitioners as has been unfolded in the writ petition beyond any hesitation can be said to be the unholy, illegal and unethical *malafide* motive of converting the family puja of the petitioner (writ respondent no.8) to a sarbojonin or Baroari puja on being motivated with greed of enjoying the offerings i.e. offered by the disciples towards the Goddess Devi Durga and as such since the claim of the writ petitioner is not supported either by any norms or by any law or by any customs this Court should discharged the Rule.

In support of his submissions Mr. Hassan Arif referred some decisions, those are the case of ***Smt. Sarjoo and others v. Pandit Ayodhya Prasad and others***, reported in ***AIR 1979 All. 74, The Bihar State Board of Religious Trust (Patna) v. Mahanth Sri Biseshwar Das*** reported in ***AIR 1971 SC 2057; Heir of deceased Maharaj Purshottamlalji Maharaj, Junagad v. Collector of Junagad District and others*** reported in ***AIR 1986 SC 2094*** and also the case of ***Smt. Nirupama Ghosh v. Smt. Purnima Ghosh and another,*** reported in ***AIR 1972 SC 1412***.

After completion of submissions by Mr. A.F. Hassan Arif, Mr. Probir Halder also made some submissions and referred some decisions, those are the cases of ***Ananda Chandra Chakrabarti v. Broja Lal Singha and others,*** *reported in* ***AIR 1923 Calcutta 142; Veerbasavaradhya and others v. Devotees of Lingadagudi Mutt and others,*** reported in ***AIR 1973 Mysore 280; Nafar Chandra Chatterjee and another v. Kailash Chandra Mondal and ors.*** reported in ***45 CWN, 201; and Chairman, Civil Aviation Authority of Bangladesh vs. Kazi Abdur Rouf and others,*** reported in ***46 DLR (AD) 145***.

In reply to the argument advanced by Mr. Hassan Arif, Mr. Probir Neogir submits that this is the writ of certiorari, the petitioners are under obligation to show that they have legal right which is guaranteed by our constitution. In this case admittedly the petitioners are Purohits and Nittyapujaris. As per the memorandum of understanding dated 27.12.2005 it is very clear that the petitioners have right over the puja in question and it has been mutually agreed and as such the petitioners are sufficiently interested to pursue the case and as such they have their right to file the writ petition as their right has been guaranteed by Article 41 of the Constitution. He further submits that since the time immemorial the

petitioners ancestors were the Purohits and Nittyapujaris of the puja in question. Since the predecessor of the respondent no.8 were the organizers or arrangers of puja it has become a custom that the Purohits and Nittyapujaris are always the integral part of the puja and they have sufficient legal right to pursue the writ petition. He further submits that the customs and usage are core of the Hindu Law. As per Article 152 of our Constitution the customs have been given a status of law and as such the petitioners have come before this Court to establish their legal right as has been guaranteed by the constitution itself. Mr. Probir Neogi further submits that the impugned order has been passed under the dictation of another minister and as such since the order has been passed being directed by the another person the same is liable to be declared to have been passed without lawful authority and is of no legal effect. In this regard Mr. Probir Neogi referred two decisions. One is in the case of ***Chandrika Jha v. State of Bihar and others*** reported in ***AIR 1984 SC 322*** and other one is in the case of ***Nagaraj Shivarao Karjagi v. Syndicate Bank Head Office, Manipal and another*** reported in ***AIR 1991 SC 1507,*** where their Lordships held that *"in the instant case, however, the impugned order issued by the Registrar to reconstitute the*

first Board of Directors was not made by him at his own discretion in the exercise of his powers under bye law 29 but was made at the behest of the Minister for Industries and it must accordingly be held to be invalid." In this case the registrar was empowered under bye law of the Central Co-operative Bank to nominate first Board of Directors, but it was done on the order of the Chief Minister of Bihar and thus their Lordships held that the order is illegal and without lawful authority. Mr. Neogi also referred a decision in the case of ***Commissioner of Customs, Chittagong vs. Giasuddin Chowdhury and another***, reported in ***50 DLR (AD)129.*** Mr. Probir Neogi also submits that the Minister was duty bound to pursue his official duty and he is also socially empowered to settle the dispute amongst the parties, but he has used his office to give a safe guard to a private individual and a settled norms of the puja of the locality Panchgaon, Rajnagar, Moulvibazar and as such he has done excess of his jurisdiction and as such the order passed by the Religious Ministry is liable to be declared to have been passed without lawful authority and is of no legal effect.

We have gone through the writ petition, affidavit in opposition relevant laws and the decisions cited by the parties and also considered the submissions made by the

respective lawyers of both the parties. It appears from the record that the petitioners and the respondent no.8 are from the same area i.e. from Panchgaon, Rajnagar Moulvibazar and admittedly the puja of Debi Durga has been performed in the house of late Sarbananda Das who was a Zaminder of that locality and since then the Purohits and Nittyapujaris had been performing their duties as they did during the Zaminderi period. The present petitioners' predecessors were the Purohits and Nittyapujaris and others in that area. The said puja was initially done by a particular person Mr. Sarbananda Das. Subsequently after 1950 when the Zaminderi was abolished the decadents of Mr. Sarbananda Das were not able to pursue this puja alone and the local people took participation in the puja and in this way the character of the puja has been changed from individual puja to Barowari. It reflects from the DO letter issued by Mr. Syed Mohsin Ali, Minister of the Social Welfare and elected Member of Parliament (MP) of that area. In his letter he has mentioned that "*এটা বারোয়ারী বা দেবোত্তর পূজা নয় বিধায় পারিবারিক শৃংঙ্খলা মে-ন পু-রাহিতগণ যথাযথ সেবা প্রদান কর-বন।*" In the next line he wrote that "*বর্তমা-ন জমিদারী প্রথা নেই বিধায় সাধারণ ভক্তদের প্রণামী এবং উপাচার দিয়ে এই প্রতিষ্ঠান পরিচালিত হওয়া প্রয়োজন। সংগৃহীত প্রণামির শতকরা সত্তর ভাগ মন্দি-রর উন্নয়-ন, দশ ভাগ পরিবার ও আত্নীয় স্বজন এবং অন্যান্য অতিথি-দর আপ্যায়-নর জন্য*

এবং দশ ভাগ আইন শৃংঙ্খলা বাহিনীর জন্য, ছয় ভাগ পু-রাহিতগণ, দুই ভাগ বলির কর্মীরা এবং বাকী দুই ভাগ বিভিন্ন খাতে ব্যয় হবে। এই ভাগ বাটোয়ারা সেবাইত সঞ্জয় দাস কর্তৃক পরিচালিত হ-ব।" From where it is very clear that once it was a family puja and subsequently the character of the puja has been changed and it has become a Barowari puja. No doubt there was a dispute between the parties, the petitioners and the respondent no.8, but it was resolved amicably in a meeting and the memorandum of understanding dated 27.12.2005 was signed. Both the parties undertook that they will abide by the terms and conditions of the memorandum of understanding dated 27.12.2005 and from then both the sides were happy with the understanding and they were pursuing the duties from their respective positions, but suddenly when the local MP the Social Welfare Minister gave a DO letter addressing the Minister of the Religious Affairs on 07.08.2014 the dispute arose.

In the past both the parties approached the local administration to solve their problem and accordingly the local administration on 27.12.2005 and thereafter on 14.09.2009 sat together and resolved their disputes amicably and the parties gave undertaking that they will be abide by the memorandum of understanding dated 27.12.2005.

The local MP has a right to solve a dispute amongst his voters or general people of his locality if they approach him. But when his very decision has got an official status by an order from the Ministry of Religious Affairs in pursuance of his (the Minister) DO letter then it became a subject matter of writ. Because although disputes between two parties, but ultimately government machinery has been involved to decide how the offerings would be shared by the parties and how the puja-orchonas would be observed by the devotees and thus the petitioners had no other alternative but to challenge this in writ jurisdiction to establish their legal right as guaranteed by the Article 41 of the Constitution. As such we hold that this writ petition is maintainable.

Furthermore, the respondent no.8 moved before the Appellate Division filing Civil Petition for Leave to Appeal no.3245 of 2014 challenging the ad-interim order passed by the High Court Division and in the Chamber Judge of the Appellate Division although stayed the order passed by the High Court Division, ultimately the full Court vide their Lordships order dated 24.02.2015 vacated the order of stay passed by the Chamber Judge on 15.12.2014 and asked the High Court Division to hear the matter on merit which indicates that our apex Court has found the writ

petition is maintainable. We further observed that had it been only the decision of the local MP regarding the offerings of the devotees for Debi Durga neither of the parties could have invoked the writ jurisdiction, but since he has sent a DO Letter to the Religious Affairs Minister and the minister passed the order in pursuance of the said DO letter to give protection to the respondent no.8 and its descendants in performing Durga Puja, the petitioners have come to this Court to invoke writ jurisdiction to examine the reasonableness of the order of the Religious Affairs Minister. If Mr. Mohosin the Social Welfare Minister would not have sent this letter to the Religious Affairs Minister, he would not have passed the impugned order and the petitioners would not have come to this Court to invoke its writ jurisdiction.

We have gone through the decisions referred by Mr. A.F. Hassan Arif and Mr Probir Halder. These decisions are not applicable in this case, because in the decision of ***Smt. Sarjoo and others v. Pandit Ayodhya Prasad and others,*** reported in ***AIR 1979 All. 74*** the dispute was relating the character of the temple whether the temple was private or public that was the fact of the case and there was a declaration ultimately and in the case of ***The Bihar State Board of Religious Trust (Patna) v. Mahanth Sri***

Biseshwar Das reported in ***AIR 1971 SC 2057*** is also the case to decide whether religious endowment is a public or private and in the case of ***Heir of deceased Maharaj Purshottamlalji Maharaj, Junagad v. Collector of Junagad District and others,*** reported in ***AIR 1986 SC 2094*** is again the question of whether trust is the public or private and also in the case of ***Smt. Nirupama Ghosh v. Smt. Purnima Ghosh and another,*** reported in ***AIR 1972 SC 1412*** the subject matter is whether it was absolute dedication or partial dedication. These kinds of facts were involved in all the above mentioned cases. These decisions are regarding apportionment and offerings and the character of the trust or endowment. So these cases are not at all applicable in the present case. In the case of ***Smt. Sarjoo and others v. Pandit Ayodhya Prasad and others,*** reported in ***AIR 1979 All. 74,*** referred by the respondents, the fact was that "*six plaintiffs, who described themselves as religious minded men and worshippers of the idol Devi Annanpurna Ji installed in the temple in dispute situated on the western side of the tank known as 'Paniwali Dharamshala' in the city of Jhansi instituted a suit under S.14 of the Religious Endowments Act, 1863 (hereinafter referred to as the Act) with the allegations that it was a very ancient temple in which they*

had made various improvements, that the defendants who claimed to be the Managers of the deity did not care to do Seva Poojah or clean the space in front of the temple, that it was a public temple and the plaintiffs had got it constructed anew, that they had spent money on Utsavas, Bhog Parshad and other matters connected with the temple in suit, that the plaintiffs requested the defendants to enter all the offerings in the account books and spend the same on matters connected with Seva Poojah of the temple in question but they misappropriated the offerings and they also put obstacles to the worship of the deity by the public and performance of Utsavas. Hence, they were alleged to be guilty of misfeasance, breach of trust and negligence in the performance of their duties. In the circumstances an application under S.18 of the Act was moved by the plaintiffs before the District Judge and it was allowed by him. On these allegations the reliefs claimed by the plaintiffs were (a) that the defendants be ordered to do proper Seva Poojah of the temple and also arrange for Utsavas as and when they fell due, (b) that the defendants be ordered to keep proper accounts of offering or other income and to spend out of it on matters of Bhog Byari, Utsavas and other matters connected with

the temple, (c) that the defendants be ordered to render accounts and in default (d) the defendants be removed from the management." and in the case of ***The Bihar State Board of Religious Trust (Patna) v. Mahanth Sri Biseshwar Das*** reported in ***AIR 1971 SC 2057*** referred by the respondent where it was held that *"the suit was for a declaration that the temple of Sri Ram Laxman and Jankiji with the properties dedicated to it under deed of Samarpannama dated the 28th November, 1916 (Ext.4) was a private trust and not a public one and also for permanent injunction restraining the Board from interfering with the administration of the trust property by the plaintiff."* So the facts of this case also do not fit at all in the present case and these decisions are not relevant at all. Mr. Probir Halder also referred some other cases. Those are ***Ananda Chandra Chakrabarti v. Broja Lal Singha and others,*** *reported in* ***AIR 1923 Calcutta 142; Veerbasavaradhya and others v. Devotees of Lingadagudi Mutt and others,*** reported in ***AIR 1973 Mysore 280, and Nafar Chandra Chatterjee and another v. Kailash Chandra Mondal and ors.*** reported in ***45 CWN, 201.*** These are also of nature of civil dispute and where the question was raised whether dedication vests the property in the idol, only when the founder has title. These decisions also

do not have any application with the fact of the present case. Mr. Probir Halder also cited another case of our jurisdiction namely ***Chairman, Civil Aviation Authority of Bangladesh vs. Kazi Abdur Rouf and others,*** reported in ***46 DLR (AD) 145*** where being a headmaster challenged the legality of a managing committee. The question was whether the headmaster has any *locus standi* to challenge this? The headmaster is a headmaster of the school or college under any provision of law under the Managing Committee. Thus, he has no *locus standi* to challenge this. This case also has no manner of application in the present case.

From the very letter of the Minister of Social Welfare it is very clear that Purohits and Nittyapurjaris have a share and the respondent no.8 also has a share from the offerings given by the devotees for Devi Durga. We are of the view that the petitioners and the respondent no.8 are in equal footing. Since the ministers have come forward to protect the interest of the respondent no.8 exercising their official power which is nothing but a private purpose, the petitioners have every right to come before this Court to examine the reasonableness of the action of the ministers. The writ petition is very much maintainable.

In this regard we are in respectful agreement with the view taken by his Lordship Mr. Justice Moazzem Hossain in the case of ***Md. Abul Bashar vs. Government of Bangladesh and others*** reported in ***4 LNJ 686.*** In the said decision his Lordship held that "*exercising of public power for any purpose other than what is contemplated in law is tantamount to acting beyond the limit of law ie, ultra vires as it is technically called. If we not so far wrong, exercise of public power for private purpose for that matter on a DO letter, so to speak, is not only illegal but also defiant of constitutional or legal mandates which is the raison d'être of administrative justice.*"

Now let us see what is DO letter? In the case of ***Machimpur Matsyajibi Shamity vs. Government of Bangladesh and others*** reported in ***4 CLR 241,*** we have observed that "*From the language it is very clear that DO letter is not an official communication made by any machinery of the Republic. The purpose of this letter was to attain official objective through making personal relation or influence, on the other hand by an official letter issued under approved authority various official interests are served and looked into. The DO letter by nature is mixed i.e. combination of personal and official. Whereas the official letter is impersonal in nature. The*

official letter is always on the basis of the subject matter, it can be classified as urgent, secret and general, but the DO letter when issued not by an official of the Republic can never be treated as official letter.

In the said case we also observed that *"the government servants are recruited in service of the republic to serve the country in accordance with law with sincerity, honesty and integrity are ensuring citizens' wellbeing. Their conduct and action must be beneficial to the general people of the country. There should not be any reflection in their action offering perception that they have favoured someone beyond the scope of law as because he is holding a high position in the society or he is a person close to mighty man."*

It is true that a minister is not a government servant, but when he works as a minister no doubt he is a public servant. He is oath bound to provide equal treatment to all the citizens without any fear or favour, his conduct and action must be beneficial to the general people of the country. There should not be any reflection in his action which visibly offers a perception that he has favoured someone beyond his jurisdiction by exercising public

power as because favoured person is his colleague in the cabinet or is a person of high position in the society.

What we have seen from the facts of this case? In the past there was a contract/agreement between the parties, nobody raised any question. When on the basis of a DO letter of Mr. Syed Mohsin Ali, the religious ministry issued the impugned order the dispute arose. The letter issued by the Religious Affairs Minster was beyond of his jurisdiction as it has been issued under the dictation, personal request of another i.e. the Social Welfare Minister who did not have any authority to dictate and intervene with the matter. The impugned order suffers from any legal backup.

A minister takes an oath before entering to his office. If the minister is a Member of Parliament (MP) then he takes two oaths. One as an MP and other one as a minister. The oath of the MP and a minister runs as follows:

Member of Parliament:

"An oath (or affirmation) in the following forms shall be administered by the speaker-

"I,.....having been elected a member of parliament to solemnly swear (or affirm) that I will faithfully discharge the duties upon which I am about to enter according to law.

That I will bear true faith and allegiance to Bangladesh.

And that I will not allow my personal interest to influence the discharge of my duties as a member of parliament."

Oath and affirmations of the Ministers, Ministers of State and Deputy Ministers:

(a) Oath (or affirmation) of office:

"I,....., do solemnly swear (or affirm) that I will faithfully discharge the duties of the office of Minister according to law:

That I will bear true faith and allegiance to Bangladesh:

That I will preserve, protect and defend the Constitution:

And that I will do right to all manner of people according to law, without fear or favour, affection or ill-will."

(b) Oath (or affirmation) of secrecy:

"I, ..., do solemnly swear (or affirm) that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Minister except as may be required for the due discharge of my duty as Minister."

From the above oaths and affirmations it is clear that the minister is oath bound to do right to all manner of people according to law, without fear or favour, affection or ill-will.

In this case the Minister of Social Welfare by issuing a DO letter has expressed his favoritism to the respondent no.8, which is a violation of the oath and affirmation of a minister. The Religious Affairs Minister has also acted in violation of his oath because he exercised his official power on the dictation of others. By his act he favoured his colleague in the cabinet and respondent no.8 as well.

The Minister, Religious Affairs by issuing the impugned memo in response to the DO letter issued by the Minister, Social Welfare did not act under lawful authority and the intention of making such communication was to hold back the right of the petitioners achieved through practice of customs and tradition and it was obviously not to secure any 'public interest'. Further, issuance of such memo dated 14.09.2014 by the respondent no.4 was the upshot of dictation or request of the Minister, Social Welfare who happened to be the local Mp. He too did it not in exercise of any lawful authority and going beyond jurisdiction. Presumably, personal influence of the respondent no.8 prompted the Minister, Social Welfare in dictating the Minister, Religious Affairs, respondent no.4. The impugned memo issued not pursuant to any government policy or in exercise of lawful authority in other words made an unfair space to the respondent no.8

to continue grabbing the offerings to be made in ritual activities in performing Puja, keeping the petitioners aside from exercising their rights they achieved by long practiced custom and tradition.

It transpires that finally, there had been a memorandum of understanding between the petitioners and respondent no.8 as to how the affairs relating to management of offerings made during the ritual activities on the eve of Durga Puja shall go on. And it happened considering the decades-long practice, tradition and customs that gave rise right to the petitioners to remain part in performing the impugned Puja which eventually transformed to one of 'Barwari' nature. Despite such negotiated memorandum what happened next? The rights of the petitioners already settled has been unlawfully and deliberately obstructed on the strength of the impugned memo having no legal force and in this way petitioner's right of performing religious rituals on the eve of Durga Puja has been visibly infringed. Now, the effect of the impugned memo based on other Minister's dictation communicated by issuing a DO letter must not be allowed to remain alive and the same requires to be buried for the purpose of restoring petitioners' validly acquired rights.

Intervention by the government machinery being requested or dictated through a DO letter issued by the Minister, Social Welfare having no authority to interfere with the affairs relating to rights of managing the offerings made during Puja is devoid of government policy. Issuing the impugned memo by exercising public power was not for any purpose contemplated in any law. It was simply aimed to protect particular person's undue interest, prohibiting petitioners' recognised rights.

Acting in the name of protecting one's personal and undue interest, two representatives of people, the two MPs also holding the office of cabinet members abused their public power that resulted in glaring breach of validly achieved rights of other citizens, the petitioner who has come up with the present writ petition expressing lawful grievance. Now, this court considers it appropriate and just to make the effect of the impugned memo issued by the Minster, Religious Affairs in response to the DO letter issued by other minister halted.

Now a days, it has become an everyday incidence that the local MPs and Ministers are in practice to issue DO letter to appoint Kazis, School/College/Madrasa Managing Committee Presidents etc. Even it is widely

known that officers in-charge of police stations are appointed taking DO letter of the local MPs and Ministers into account. Recently it has been widely circulated in the newspapers that even the Ministry of Public Administration cannot work independently for the cause of interference on part of the MPs and Ministers. The Ministry of Public Administration gives posting to the public servants in different ministries considering their competency. But the mighty Ministers and MPs create obstruction in implementing the orders passed by the Ministry of Public Administration. It is very unfortunate and frustrating that the Ministers and MPs want to keep the persons in his area or office as they are close to them which does not sound good. If this situation or practice is allowed to continue the Public Administration structure will collapse, people of the country will lose its confidence upon the administration. Ultimately people of the country will suffer. The hard-earned democracy which has been earned by laying high price will be frustrated. Time has come to think over the matter. The persons who are in the top position of the country should come forward to stop this kind of malpractice for the sake of upholding democracy and independent administration.

Mr. Probir Neogi has cited some decisions from which it has been clear that at the dictation of the higher authority, who has no power to dictate no order should be passed by any other authority which has not been contemplated in the law. The decisions are very much relevant with the present case.

Before parting, we also consider it necessary to say one thing that, since the dispute between the parties regarding the control, management and apportionment of the offerings offered for Devi Durga by the devotees, it is absolutely a local and private issue, the government machinery has nothing to do with this and if the law and order situation is under threat, the local Officer in-Charge or the Superintendent of Police of the concerned District is sufficiently empowered to look after it.

We find merit in the argument advanced by Mr. Probir Neogi, the learned senior advocate for the petitioner.

In the result, the Rule is made ***absolute.*** The memo no.ধর্ম/সংস্থা/৬-২/২০০৮/২৭১ dated 14.09.2014 issued under the signature of respondent no.4 is hereby declared to have been issued without lawful authority and is of no legal effect.

The office is directed to transmit copies of this judgment to the Senior Secretaries of the Ministry of Public Administration and the Home Affairs immediately.

Let a copy of this judgment be communicated at once.

Krishna Debnath, J.

I agree

Ismail H. Pradhan

BO