

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

WRIT PETITION NO. 3992 OF 2015

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Md. Younus Ali

.....Petitioner

-VERSUS-

Government of Bangladesh and others

..... Respondents

Mr. Mansurul Haque Shafi, Advocate

..... For the Petitioner

Mr. Mohammad Waliul Islam Oli, D.A.G with
Mr. Md. Ershadul Bari Khandakar, D.A.G with
Ms. Nilufar Yesmin, A.A.G with
Mr. Md. Moshir Rahman (Rahat), A.A.G with
Mr. Md. Motasim Billah Parvez, A.A.G with
Mr. Md. Faridul Islam, A.A.G

.....For the Respondents

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

**Heard on 06.01.2026 and
Judgment on 20.01.2026**

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under
Article 102 of the Constitution of the People's Republic of Bangladesh in
the following term:

Let a Rule Nisi be issued calling upon the respondents to show cause as to why the Memo No. বিচার-৭/২ এন-৯৭/৭৪-১৯৩ dated 08.04.2015 cancelling the petitioner's license as Nikah Registrar as in Annexure-D should not be declared to have been issued without 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.

The Rule is returnable within 4 (four) weeks.

Pending hearing of the Rule, let the operation of the impugned order dated 08.04.2015 as in Annexure-D be stayed for a period of 6 (six) months from date."

Facts necessary for disposal of the instant Rule, in short, are that, the petitioner obtained license as Nikah Registrar vide memo no. 866(5) dated 03.05.1997 issued under the signature of the respondent no. 3 i.e. the District Registrar, Narayanganj. The Respondent No. 2 vide memo dated 22.04.1998 requested the Respondent no. 3 to issue work order in the name of the petitioner for the Haijadi Union, Narayanganj and accordingly the work order was issued on 01.06.1998. Since then the petitioner had been performing his duties as Nikah Registrar of Haijadi Union; no allegation or any objection was ever raised against him in performing his duties. All on a sudden the respondent no. 2 vide memo dated 08.04.2015 cancelled the license of the petitioner on the allegation of misconduct as per Rule 11 of the Muslim Marriage and Divorce (Registration) Regulation 2009. Being aggrieved by and dissatisfied with the letter of cancellation and there having no other alternative and efficacious remedy, the petitioner filed the instant writ petition and obtained a Rule and an order of stay of the impugned order dated 08.04.2015.

Learned Advocate Mr. Md. Mansurul Haque Shafi appeared on behalf of the petitioner. Upon placing the writ petition and referring to the annexures therewith, he submitted that, in the impugned order it was alleged that there was an allegation against the petitioner that he does not reside in his working area i.e. in Haijadi Union, which is not true. The petitioner is a permanent resident of Haijai Union having his own land in the said area and he is also a voter of the same area; in his National ID card his address is also mentioned as village: Totarbag, P.O. Haijadi, Araihasar, Narayanganj. Moreover, the Chairman of the Haijadi Union Parishad has issued a certificate stating that this petitioner is a permanent resident of Haijadi Union. As such, the allegation of not residing in his working area does not sustain at all.

Learned Advocate for the petitioner then argued that, the petitioner was not aware of the complaint made against him; no show cause notice was ever served upon him although serving a show cause notice is mandatory as per the provision of Section 11 of the Muslim Marriage and Divorce (Registration) Act 1974 and the Rule 11 of the Muslim Marriage and Divorce (Registration) Regulation 2009.

Learned Advocate for the petitioner next submitted that, the petitioner got license for this post 18 years ago upon fulfillment of requisite qualifications and on completion of necessary scrutiny process and after all these years that license cannot be cancelled on the basis of a baseless, wild allegation and without giving him a reasonable opportunity

to defend himself. As such the impugned order of cancellation is liable to be declared unlawful and without any lawful authority.

He finally submitted that, the petitioner's license of Nikha Registrar was cancelled by the authority in a mala fide manner with a view to accommodate someone else depriving the petitioner and therefore the impugned order is liable to be set aside.

On the other hand, Md. Moshiur Rahman, learned Assistant Attorney General entered appearance on behalf of the Respondent no. 1. He contested the Rule by filing an affidavit in opposition. He strongly argued that the submission of the petitioner's advocate that no show cause notice was served upon him is absolutely untrue. He submitted that, on the basis of a complaint, an investigation was initiated against the petitioner by the Sub-registrar, Arai hazar, Narayanganj; the petitioner appeared before the investigation committee and submitted a statement in writing on 06.07.2014. Subsequently an investigation report was submitted on 11.08.2014 with the finding of his misconducts and on the basis of that report a show cause notice was issued on 14.11.2014 against the petitioner in accordance with Rule 11(3) of Muslim Marriage and Divorce (Registration) Regulation, 2009 and the notice was sent by registered post to his address on 24.11.2024 but it came returned with the comment that the recipient does not reside at the given address.

Learned Assistant Attorney General further submitted that the petitioner admitted in his written statement that he resides in Bastul village and there is a criminal case pending against him regarding his

performance as a Nikha Registrar. Hence the license was lawfully cancelled on the ground of misconduct and following the provisions of law. He prays for the Rule to be discharged.

Heard the learned Advocate for the petitioner as well as the learned Assistant Attorney General for the Respondent and perused the writ petition, affidavit in opposition and the documents annexed therewith.

Petitioner's license as a Nikah Registrar was cancelled by the impugned letter dated 08.05.2015 (Annexure-D). Relevant part of the impugned letter is quoted below:

“উপযুক্ত বিষয়ে নির্দেশিত হয়ে জানানো যাচ্ছে যে, নারায়ণগঞ্জ জেলার আড়াইহাজার উপজেলার হাইজাদী ইউনিয়নের নিকাহ রেজিস্ট্রার জনাব মোঃ ইউনুছ মিয়া নিজ অধিক্ষেত্রে তথা হাইজাদী ইউনিয়নে বসবাস করেন না মর্মে আনীত অভিযোগ তদন্তে প্রমাণিত হওয়ায় উহা মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ এর ১১বিধি অনুযায়ী অসদাচারণ হওয়ায় তার নিকাহ রেজিস্ট্রী লাইসেন্স বাতিল করা হলো এবং উক্ত অধিক্ষেত্রে নিকাহ রেজিস্ট্রারের পদ শূন্য ঘোষণা করা হলো। উক্ত শূন্য অধিক্ষেত্রে নিকাহ রেজিস্ট্রারের লাইসেন্স প্রদানের নিমিত্ত বিধি মোতাবেক উপদেষ্টা কমিটি কর্তৃক প্যানেল প্রস্তুত করতঃ সরাসরি মন্ত্রণালয়ে প্রেরণের জন্য সাব-রেজিস্ট্রার, আড়াইহাজার-কে বলা হলো। একইসাথে নিকাহ রেজিস্ট্রারের লাইসেন্স প্রদান না করা পর্যন্ত উক্ত অধিক্ষেত্রে নিকাহ রেজিস্ট্রী সংক্রান্ত দায়িত্ব পালনের জন্য মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ এর বিধি ৬(১০)মোতাবেক সংলগ্ন কোন ওয়ার্ড/ইউনিয়ন/পৌরসভার নিকাহ রেজিস্ট্রার-কে নিজ দায়িত্বের অতিরিক্ত দায়িত্ব প্রদানে জেলা রেজিস্ট্রার, নারায়ণগঞ্জ-কে বলা হলো।”

It transpires from the impugned memo that, the license of the petitioner was cancelled on the ground that he does not reside in his

jurisdiction, which is a misconduct as per the Rule 11 of the মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯।

For better understanding Rule 11 of the মুসলিম বিবাহ ও তালাক (নিবন্ধন) বিধিমালা, ২০০৯ is quoted below:

“১১। লাইসেন্স বাতিল বা স্থগিতকরণ। -(১) এই বিধিমালার অধীন প্রদানকৃত লাইসেন্স অসদাচারণের জন্য অথবা আইনের ধারা ১১ তে বর্ণিত যে কোন কারণে বাতিল বা স্থগিত করা যাইবে।

ব্যাখ্যা: - 'অসদাচারণ' বলিতে আইন বা বিধিমালার যে কোন বিধান লংঘন, একাধিক এলাকার নিকাহ রেজিস্ট্রার হওয়া বা যে কোন ধরণের তথ্যের মিথ্যা বর্ণনা নৈতিক স্বলনকে বুঝাইবে।

(২) এই বিধিমালার প্রদানকৃত লাইসেন্স বাতিল বা স্থগিত করিবার ক্ষেত্রে, সরকার কর্তৃক সংশ্লিষ্ট নিকাহ রেজিস্ট্রারকে, কেন তাহার বিরুদ্ধে প্রস্তাবিত ব্যবস্থা গ্রহণ করা হইবে না, তৎমর্মে লিখিতভাবে কারণ দর্শাইবার জন্য পনের দিনের সময় প্রদানপূর্বক নোটিশ প্রদান করিতে হইবে এবং উক্ত নোটিশে সংশ্লিষ্ট নিকাহ রেজিস্ট্রারের বিরুদ্ধে আনীত অভিযোগসমূহের উল্লেখ থাকিতে হইবে।

(৩) কোন নোটিশ সংশ্লিষ্ট নিকাহ রেজিস্ট্রারের সর্বশেষ জ্ঞাত ঠিকানায় রেজিস্ট্রী ডাকযোগে প্রেরিত হইল, তাহাকে নোটিশ পাঠানো হইয়াছে বলিয়া গণ্য হইবে।

(৪) উপ-বিধি (২) এর অধীন জারীকৃত নোটিশে উল্লিখিত সময়-সীমার মধ্যে কোনরূপ কারণ দর্শানো না হইলে অথবা কোন কারণ দর্শানোর প্রেক্ষিতে কোন আপত্তি বা জবাব দাখিল করা হইলে, সরকার উহা পরীক্ষা-নিরীক্ষার পর, যেদ্রুপ উপযুক্ত মনে করিবে সেইদ্রুপ আদেশ প্রদান করিতে পারিবে এবং উক্ত আদেশ চূড়ান্ত বলিয়া গণ্য হইবে।

It also appears from the Annexure II (c) of the affidavit in opposition that a fifteen day show cause notice was sent to the petitioner on 24.11.2014 by registered post to his official address, which was

returned back with the note that the recipient could not be found. The petitioner denies of receiving any show cause notice.

It is now upon us to determine whether this notice was served in accordance with law and whether the license was cancelled lawfully.

In order to prove that he is a permanent resident of Haijadi Union the petitioner has produced his National ID card, voter list of the area and a certificate from the Chairman of the concerned union (Annexure E, E-1 and E-2). From these documents it appears that the petitioner is a permanent resident of Haijadi Union, Narayangaj. Upon submitting these documents the petitioner obtained license of the Nikah Registrar in the year 1997 as per Rule 8 of the Regulation 2009 and had been performing his functions for the last 18 years without any objection from any quarters.

It has been submitted by the Respondent that show cause notice was issued upon the petitioner on the basis of an investigation report submitted by the Sub-registrar and Investigation Officer on 11.08.2014 (Annexure II-b to the affidavit in opposition). On perusal of this report it appears that, the investigation was initiated at the complaint made by a resident of the concerned Haijadi union. It was alleged by the complainant that, the petitioner is involved in child marriage registration, conducting marriage registration through brokers in his absence, claiming huge amount of money from the parties and has been living outside his jurisdiction for the last fifteen years. It was also alleged that the petitioner conducted a child marriage registration on receiving huge amount of

money and for this a criminal case was filed against him in Araihaazar police station, which is still pending. It has also been mentioned in the investigation report that, the petitioner in his statement in writing stated that he has been conducting his service as a Nikah Registrar for the last 17 years residing temporarily in ‘Bastul’ village under Jampur Union and that he is in bail in relation to a criminal case under Child Marriage Restraint Act and also that he conducts his service of marriage registration by appointing temporary Kazis by himself. In the end the investigating officer arrived at the finding that, the accused Nikah Registrar is involved with unlawful activities and for that necessary action may be initiated against him.

On perusal of a hand written statement of the petitioner dated 06.07.2014 (Annexure II-a) it appears that in that statement it has been stated that, the allegations brought against him are not true; that he resides in his birthplace; however he temporarily lives in ‘Bastul’ village under Jampur Union of Sonargaon Upazila. In that statement he also admitted the pendency of a criminal case against him and that four persons conduct his duties as Kazi.

There appears to be apparent discrepancy between the petitioner’s statement and the investigation report. In the statement the petitioner stated that, “আমি আমার নিজ জন্মস্থানে বসবাস করি। আমার বিরুদ্ধে অভিযোগ সত্য নয়। আমি অস্থায়ীভাবে সোনারগাঁও উপজেলার জামপুর ইউনিয়নের বঙ্গল গ্রামে বসবাস করি।” Whereas in the investigation report it has been stated that, “অপরদিকে বিবাদী/অভিযুক্ত কাজী মোঃ ইউনুছ মিয়া তাহার লিখিত বক্তব্যে বলেছেন যে, তিনি প্রায় ১৭ (সতের)

বৎসর যাবৎ উক্ত জামপুর ইউনিয়নে বঙ্গল গ্রামে অস্থায়ীভাবে বসবাস করিয়া নিকাহের কাজ চালাইয়া আসিতেছেন।” This is absolutely contradictory to what has been stated by the petitioner in writing. This misquoting in the report makes the report untrustworthy and suggests that it has been prepared on purpose.

It also appears that though a number of allegations were brought against the petitioner, which found to be true by the investigating officer, the show cause notice was issued only with the allegation that he resides outside his jurisdiction and accordingly the license was cancelled on the basis of the said ground only. When a number of allegations are brought against someone in the investigation report, the show cause notice ought to have incorporated all the allegations. Omission to do so makes the show cause notice arbitrary and whimsical.

As per the provision of *Rule 39 of the Regulation 2009*, all the Nikah Registrars shall perform their duties under the supervision and control of the concerned District Registrar, who shall at least once a year visit the office of each Nikah Registrar. Moreover, the Inspector General of Registration shall have the overall supervision over the offices of all Nikah Registrars. Therefore it is very implausible that no objection was ever raised against the petitioner for being absent in his jurisdiction over the period of 18 (eighteen) years. In the result the allegation of his absence found to be baseless and unfounded.

In view of the fact and circumstances discussed hereinabove we find that the show cause notice issued to the petitioner was arbitrary and appeared to be issued with mala fide exercise of power. Hence the

impugned cancellation order issued on the basis thereof is declared to have been done without any lawful authority.

With the foregoing discussions and findings we find substance in the Rule.

In the result, the Rule is made absolute.

However, without any order as to costs.

The impugned order dated 08.04.2015 cancelling the petitioner's license of Nikha Registrar is hereby declared to have been issued without lawful authority and is of no legal effect and hereby set aside.

The respondents are directed to allow the petitioner to continue his function as the Nikah Registrar of Haijadi Union, Narayanganj immediately upon receipt of this order.

Let a copy of this judgment and order be communicated to the concerned authorities concerned at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.