

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

WRIT PETITION NO. _____ OF 2014.

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

1. Advocate Asaduzzaman Siddiqui,
Advocate, Supreme Court of Bangladesh,
Hall No. 2, Supreme Court Bar Association
Bhaban, Dhaka, Bangladesh.
2. Advocate A.H. Imrul Qausar,
Advocate, Supreme Court of Bangladesh,
110 Kazi Office Lane, P.S. Ramna, Dhaka,
Bangladesh.
3. Advocate Md. Mamun Aleem, Advocate,
Supreme Court of Bangladesh, Hall No. 2,
Supreme Court Bar Association Bhaban,
Dhaka, Bangladesh.
4. Advocate Md. Aklas Uddin Bhuiyan,
Advocate, Supreme Court of Bangladesh,
Hall No. 2, Supreme Court Bar Association
Bhaban, Dhaka and 93 Indira Road, P.S.:
Sher-E-Bangla Nagar, Dhaka.
5. Advocate Sarwar Ahad Chowdhury,
Advocate, Supreme Court of Bangladesh,
Hall No. 2, Supreme Court Bar Association
Bhaban, Dhaka, Bangladesh,
6. Advocate Mahabubul Islam, Advocate,
Supreme Court of Bangladesh, Hall No. 2,
Supreme Court Bar Association Bhaban,
Dhaka, Bangladesh.
7. Advocate Md. Nurul Eman Babul,
Advocate, Supreme Court of Bangladesh of
6/7 Court House Street, Ainjibi Samity
Bhaban, P.S.: Kotwali, District- Dhaka.
8. Advocate Shahin Ara Laily, Advocate
Supreme Court of Bangladesh, Hall No. 2,
Supreme Court Bar Association Bhaban,
Dhaka, Bangladesh.

9. Advocate Ripon Baroi, Son of Manohar Barai and Sushila Barai of 31 Central Road, P.S. Kalabagan, Dhaka-1205, Bangladesh.

.....Petitioners.

-V E R S U S-

1. Bangladesh, represented by The Cabinet Secretary, Cabinet Division, Secretariat, Police Station- Shahbag, Dhaka, Bangladesh.

2. The Senior Secretary, President Secretariat, Bangabhaban, Dhaka, Bangladesh.

3. The Senior Secretary, Prime Minister's Secretariat, Prime Minister Office, Tejgaon, Dhaka, Bangladesh.

4. The Senior Secretary, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Police Station-Shahbag, Dhaka, Bangladesh.

5. The Senior Secretary, Parliamentary Secretariat, Zatio Sangsad Bhaban, Sher-E-Bangla Nagar, Dhaka, Bangladesh.

....Respondents.

AND

IN THE MATTER OF:

The Constitution (Sixteenth Amendment) Act, 2014 (Act No. 13 of 2014) (ANNEXURE-'A').

AND

IN THE MATTER OF:

Article 7, 7B, 22, 65, 94, 96 of the Constitution of the People's Republic of Bangladesh.

GROUND S:

I. For that the primary objective of the 16th Amendment Act 2014 is to destroy the principle of Independence of Judiciary and to make the Judiciary ineffective to safeguard the Constitution; the principle of Independence of Judiciary as one of the basic features of the

Constitution enshrined, particularly, from Article 22, Article 94(4), Article 116A of the Constitution as expounded in the Case of *Anwar Hussain Chowdhury V Bangladesh* (popularly known as the 8th Amendment Case) [1989 BLD (SPL) 1], reiterated and reaffirmed in Masdar Hossain's Case [52 DLR (2000) 82], is compromised by the 16th Amendment Act 2014 giving overwhelming authority to the executive through Parliament to impeach the Supreme Court Judges which is a vicious blow on the Judiciary and a blatant interference that violently torn down the very fabric of the Constitution and demolished its structural integrity.

II. For that 16th Amendment Act 2014 is ultra vires to the Constitution as it is in direct conflict and contradictory to spirit of the preamble of the Constitution in as much as our constitutional pledge, as stated in the preamble, *inter alia*, that democracy and socialism meaning economic and social justice shall be fundamental principles of the Constitution; further pledge that it shall be a fundamental aim of the State to realise through the democratic process to socialist society, free from exploitation- a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens; moreover the affirmation in the preamble that it is our sacred duty to safeguard, protect and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh are being restricted, hampered due to the 16th Amendment Act 2014 by weakening the Judiciary, the most important and the conscience-keeper of the State.

III. For that power conferred upon the Parliament by the 16th Amendment Act 2014 is beyond the scope and jurisdiction of the Parliament and is contrary to the basic feature of the Constitution as investigation of misbehaviour or incapacity and recommending to the President for removal of Judges of the Supreme Court is not a legislative function of the Parliament nor it is an act of scrutiny of the Executive actions. The role of each organ of the State and Judiciary is clearly defined and deliberately and carefully kept separate under the Constitution to maintain harmony, integrity of each organ of State and Judiciary and to maximize the effectiveness of functionality of respective organs of State and Judiciary.

IV. For that the 16th Amendment Act 2014 has been enacted to open up the doors for manipulation, exerting control and ill-motivated audacious object to interfere in the functioning and integrity of the Judiciary.

V. For that 16th Amendment Act 2014 is ultra vires to the Constitution as it is in violation of rule of law, fundamental human rights and freedom, equality and justice as pledged in the Preamble of the Constitution.

VI. For that the 16th Amendment Act 2014 is ultra vires to the Constitution as it is in violation of Article 7B of the Constitution as no provisions relating to the basic structures of the Constitution shall be amendable by way of insertion, modification, substitution, repeal or by way of other means as much as since the separation of judiciary as well as the independence of judiciary are the most fundamental cornerstone of the basic structure of the Constitution, enactment of 16th Amendment Act 2014 literally destroyed them which cannot be done under Article 7B of the Constitution.

VII. For that the 16th Amendment Act 2014 is ultra vires to the Constitution as it blatantly and most significantly destroys the spirit and essence of the provision of Art 22 of the Constitution thereby blurs the separation of power between the organs of State and the Judiciary and clearly establishes dominance of the Executives through Parliament over the Judiciary which will create great imbalance within the constitutional bodies and thereby will make the Judiciary a mockery and toothless tearful silent witness; the principle of Independence of Judiciary and separation of judiciary being the fundamental to the basic structure of the Constitution, the same cannot be touched or be taken away in any manner whatsoever.

VIII. For that the 16th Amendment Act 2014 is ultra vires to the Constitution as by virtue of Article 70, the Members of Parliament cannot express their independent opinion/views against their party and the removal of the Judges of the apex court will certainly be prejudiced by the direct implication of Article 70 of the Constitution.

IX. For that the 16th Amendment Act 2014 is ultra vires to the Constitution as it has undermined the authority and dignity of the apex court due to the fact that the validity of the proceedings in Parliament cannot be questioned in any court by virtue of Article 78 of the Constitution and therefore the Judiciary will be at the mercy of the Executive through the Parliament and it cannot safeguard itself let alone safeguarding its duties under the Constitution.

X. For that if any amendment to the Constitution does not fit with the Constitution itself then the amendment is to be declared ultra vires because Constitution is a logical whole and if by exercising the amending power one of the basic pillars of the Constitution is sought to be curtailed it is the constitutional duty of the court to restrain it, and when Parliament and the executive, instead of implementing the Independence of Judiciary as well as separation of Judiciary, follow a different course not sanctioned by the Constitution, the higher judiciary is within its jurisdiction to bring back the Parliament and the Executive from constitutional derailment and pass necessary order to declare the amended Article 96 of the Constitution as inserted by the 16th Amendment Act 2014 as void for the violation of the basic constitutional mandate to uphold and preserve the integrity of the

Constitution and restoring the supremacy of the Constitution as the solemn expression of the will of the people.

XI. For that Independence of judiciary as well as separation of Judiciary cannot be secured by making mere solemn proclamation about it, it has to be ensured both in substance and in practice as the society and every citizen of Bangladesh has a stake in ensuring independence of the Judiciary and no price is too heavy to secure it and it is a must and it should be a must to make the Judiciary fully separate from the Executive in all respects in order to attain the cherished goal of all- that is - the "Independence of Judiciary" and without full and effective separation of Judiciary it is an impossibility to secure and achieve independence of Judiciary.

XII. For that the Supreme Court of Bangladesh is a creation of the Constitution which possesses supervisory power over the two organs of the State, Parliament and Executive, and the Supreme Court of Bangladesh being the guardian of the Constitution must not countenance any inroads upon the Constitution as it shall alone have overall control, supervision and management over power, function and jurisdiction of its own as well as the subordinate courts and magistrates exercising judicial functions as an independent institution and the legislator and executive will have no control, supervision and management over them in any manner whatsoever and hence amended Article 96 of the Constitution as inserted by the 16th Amendment Act 2014 is ultra vires to the Constitution.

XIII. For that the independence of the judiciary, especially its institutional independence, as affirmed and declared particularly by Articles 94(4) and 116A, is one of the basic pillars of the Constitution and cannot be demolished, whittled down, curtailed or diminished in any manner whatsoever and the Constitution does not give the Parliament nor the Executive the authority to curtail or diminish the independence of the Judiciary by recourse to amendment of the Constitution, other legislation, subordinate legislation, rules or any other manner.

XIV. For that the basic feature of the Constitution cannot be demolished by amending process as the Parliament being a legislative body is devoid of the constituent power to amend the provisions of the Constitution in derogation of the basic structure of the Constitution so as to destroy the Constitution and its power is for enacting amendments for the betterment of the Constitution not for destruction, as our Constitution is not only a controlled one but the limitation on legislative capacity of the Parliament is enshrined in such a way that a removal of any plank will bring down the structure itself and therefore, amended Article 96 of the Constitution as inserted by the 16th Amendment Act 2014 is void because they undermine and destroy the doctrine of separation of power and compromise the

Independence of Judiciary which directly dislodge and dismantle the very basic structure of the Constitution.

Wherefore it is most humbly prayed that your Lordships would graciously be pleased to -

a) Issue a Rule Nisi calling upon the Respondents to show cause as to why the Constitution (Sixteenth Amendment) Act, 2014 (Act No. 13 of 2014) (ANNEXURE-‘A’), should not be declared to be void, illegal and *ultra vires* to the Constitution of the People’s Republic of Bangladesh.

b) Pass an order directing the Respondents to maintain status-quo in respect of implementation of the amendment of Article 96 of the Constitution of Bangladesh and directing the Respondents to follow the procedure laid down in Article 96 of the Constitution prior to the enactment of the (Sixteenth Amendment) Act, 2014(Act No. 13 of 2014) (ANNEXURE-‘A’) in relation to the removal of a judge of the Supreme Court of Bangladesh till disposal of the Rule.

Present Status

The case was filed and moved by Advocate Manzill Murshid, President, HRPB. After hearing the parties the Hon’ble Court issued Rule Nisi upon the respondents. The matter is pending before the Hon’ble High Court Division.
