

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

WRIT PETITION NO. OF 2015.

IN THE MATTER OF:

An application under Article 102 of the Constitution of the Peoples Republic of Bangladesh.

AND

IN THE MATTER OF:

Public Interest Litigation.

AND

IN THE MATTER OF:

1. Advocate Md. Shakhwat Hossain Khan, President, Narayangonj Bar Association, Son of Late Md. Fazal Khan and Hosneara Begum, at present 3 Ishakhan Road, Kazipara, Khanpur, P.S. and Distrcit- Narayangonj.

2. Advocate Md. Hasan Ferdous, Secretary, Narayangonj Bar Association, Son of Late Md. Forkan Mollah and Homaira Begum, at present Razzak Tower(5th Floor), 23 Allama Ikbal Road, P.S. and Distrcit- Narayangonj.

..... Petitioners.

-V E R S U S-

1. Bangladesh, represented by the Secretary, Ministry Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, P.S. Shahbag, Dhaka, Bangladesh.

2. The Senior Assistant Secretary, Bichar Shakha-4, Ain O Bichar Shaka, Ministry Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, P.S. Shahbag, Dhaka, Bangladesh.

3. The Executive Engineer, Public works Department, Narayangonj Division, Narayangonj, Bangladesh.

4. The Registrar, Supreme Court of Bangladesh, Bangladesh Supreme Court Bhaban, P.S. Shahbag, Dhaka, Bangladesh.

.....Respondents.

AND

IN THE MATTER OF:

Illegal and unauthorized notification published in the official gazette on 12.09.13 under S.R.O.No. 301-AvBb/2013 and S.R.O.No. 300-AvBb/2013 in which the court of Upazila Assistant Judge and Upazila Judicial Magistrate Court have been shifted from Narayangonj to Araihasar Uppazila, District-Narayangonj, without consulting the Supreme Court of Bangladesh and at the instance of a political person, which is against the principal of separation of Judiciary (as of annexure-A and A-1)

GROUNDS

I. For that the Respondent exercising the executive power issued impugned notification shifting the civil and magistrate court from Narayangonj to Araihasar ignoring the consultation provision with the Supreme Court and has simply show utter disrespect to the highest Court of the land as well as the provision of Constitution of Bangladesh.

II. For that the action of the Respondents in shifting the Civil and magistrate Court from Narayangonj to Araihasar has defied the authority of our constitution and also have challenged the authority of the Hon'ble Supreme Court of Bangladesh as mandated under Article 116 of the Constitution. Hence should be declared without lawful authority and is of no legal effect.

III. For that in case of shifting the Upazila Assistant Judge and Judicial Magistrate Court at Upazila level the executive must comply with the opinion of the Supreme Court as the Hon'ble Court is the better know about the performance, integrity and functionaries of the subordinate judiciary. It is not the executive but the Supreme Court has the supervisory and controlling power over all courts subordinate to it under Article 109 of the Constitution. So shifting the Civil court without the permission of the Supreme Court is illegal and without lawful authority.

IV. For that shifting the Upazila Assistant Judge and Judicial Magistrate Court at upazila level in defiance of the opinion of the Supreme Court would simply undermine the image and prestige of the highest court of the land and under no circumstances should be allowed to stand without being attended and scrutinized by this Hon'ble Court.

V. For that in shifting the Upazila Assistant Judge and Judicial Magistrate Court at Upazila level the Respondents have not only undermined the authority of the Supreme Court conferred by the Constitution but also dared to challenge the provisions of rule of law. Hence should be declared without lawful authority and is of no legal effect.

VI. For that after publishing the gazette notification for Separation of Judiciary there is no scope to take any decision by the executive for shifting any court from Narayangonj to Araihasar upazila. It may be mentioned here that officially judiciary has been separated and it means it is no more within the control of executive. So any question of transfer of court or judge is totally vested to the Supreme Court of Bangladesh. Hence the impugned notification is illegal and without lawful authority.

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

a) A Rule Nisi calling upon the Respondents to show cause as to why the notification published in the official gazette on 12.09.13 under S.R.O.No. 301-AvBb/2013 and S.R.O.No. 300-AvBb/2013 in which the court of Upazila Assistant Judge and Upazila Judicial Magistrate have been shifted from Narayangonj to Arai hazar Uppazila, District-Narayangonj, without consulting the Supreme Court of Bangladesh (as of annexure-A and A-1), should not be declared illegal and to have been passed without lawful authority and is of no legal effect and pass such other and further order and / or orders as Your Lordships may deem fit and proper.

b) Pending hearing of the rule stay operation of the notification published in the official gazette 12.09.13 under S.R.O.No. 301-AvBb/2013 and S.R.O.No. 300-AvBb/2013 (as of annexure-A and A-1) till disposal of the rule.

c) Upon hearing the parties and perusing the cause shown, if any, make the Rule absolute.

Present Status

The case was filled and moved by Advocate Manzill Murshid, President, HRPB. After hearing the parties the Hon'ble Court issued Rule Nisi upon the respondents and granted ad-interim order. The matter is pending before the Hon'ble High Court Division.
