

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

WRIT PETITION NO. _____ OF 2016.

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

1. Human Rights and Peace for Bangladesh (HRPB), represented by its Secretary Asaduzzaman Siddiqui, Advocate, Supreme Court of Bangladesh of Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka, Bangladesh.
2. 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.
3. Advocate Sarwar Ahad Chowdhury, Advocate, Supreme Court of Bangladesh, Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka, Bangladesh.
4. Advocate Md. Mamun Aleem, Advocate, Supreme Court of Bangladesh, Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka, Bangladesh.
5. Advocate Mahabubul Islam, Advocate, Supreme Court of Bangladesh, Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka, Bangladesh and at House- La 56, Badda Post Office Road.

.....Petitioners.

-V E R S U S-

1. Bangladesh represented by The Cabinet Secretary, Cabinet Division, Bangladesh Secretariat, Dhaka.
2. The Senior Secretary, President Secretariat, Bangabhaban, P.S.: Ramna, District: Dhaka.
3. The Senior Secretary, Secretariat of the Prime Minister's Office, Tejgaon, P.S.: Tejgaon, District: Dhaka.
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
6. The Secretary, Legislative and Drafting Wing, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Dhaka, Bangladesh.
7. The Secretary, Local Government, Rural Development and Co-operatives, Bangladesh Secretariat, Police Station-Shahbag, Dhaka, Bangladesh.
8. The Secretary, Bangladesh Election Commission, Election Commission Secretariat, Sher E Bangla Nagar, Dhaka, Bangladesh.

....Respondents.

AND

IN THE MATTER OF:

Illegal and malafide amendment of স্থানীয় সরকার (ইউনিয়ন পরিষদ) (সংশোধন) আইন, ২০১৫ (Act No. 28 of 2015) by which the provision of election of Union Parishad Chairman has been introduced by way of political party nomination (as published in the Official Gazette on 26.11.15) (ANNEXURE-'A').

AND

IN THE MATTER OF:

Article 7, 11, 59 and 60 of the Constitution
of the People's Republic of Bangladesh.

GROUND S:

I. For that the enactment of ‘স্থানীয় সরকার (ইউনিয়ন পরিষদ) (সংশোধন) আইন, ২০১৫’ has brought vital changes in the ‘স্থানীয় সরকার (ইউনিয়ন পরিষদ) আইন, ২০০৯’ by which the provision of election of Union Parishad Chairman has been introduced by way of political party nomination which has undermined sprit of local government as well as its independence and impartiality frustrating free and fair election at grassroots level. For that the Impugned Amendment Act 2015 has made the local government weaker due to impugned election process: a new system; ‘Chief’ to be partisan while his/her ‘Members’ are non-partisan; eventually though elections of ‘member’ are greatly influenced by political parties.

II. For that all the issues in local elections are local issues and thus, participation of political parties here is irrelevant. Ideologies connected with political parties cannot be allowed to wrap voters' judgment and that partisan local polls create the scope of ‘unhealthy influence of political parties’ and that the party labels lead to unnecessary party alignments and conflicts, and solutions to local problems should not be subjected to party-line political squabbles.

III. For that the impugned Amendment Act 2015 has tarnished the sprit and scheme of Article 11, 59 and 60 of the Constitution and hence it is inconsistent and contradictory with the provisions of above mentioned Articles of the Constitution of Bangladesh. Since it being inconsistent, it is liable to be declared void as being violative of Article 7(2), 11, 59 and 60 of the Constitution of Bangladesh.

IV. For that conducting credible election in a partisan manner is always a challenge in developing democracies around the world. Firstly, election results are frequently manipulated by the party in power and partisan local election always creates a scope for electoral manipulation for the party in power. Secondly, candidates from opposition parties are often not allowed to compete in local elections in developing countries like ours, especially when there is a chance for the party-in-power to lose the elections. Thirdly, it always becomes difficult for the election commission to ensure a level playing field for all candidates in partisan local elections. Candidates and leaders from the party in power always try to interpose a ‘code of conduct’, which destroys the level playing field, thereby changing the election outcome in true sense.

V. For that there has been no express provision in the Constitution of Bangladesh by its Articles 11, 59 and 60 to form the local government

bodies by politically nominated persons, hence, the Parliament is not free to legislate any Act on local government ignoring the spirit and scheme of Articles 11, 59 and 60 and such the Impugned Amendment Act 2015 is liable to be set aside.

VI. For that the impugned Amendment Act 2015 has destroyed the independency of local government and thereby the Union Parishad has been turned into a political institution rather than an institution for the common people, which would ultimately affect them from enjoying their civic and other rights. For that the removal of the Chairman from his / her post by the council would also be an impossible due to political influence and connection with high ups and also for that the said political nomination would make the elected representative as the chairman tend to be biased to such nominating Political Party, which would frustrate the purpose of local government as enshrined in the Constitution of Bangladesh. That the said nomination by political party will would also jeopardize the local government bodies for its being politicized and biased by its politically nominated-cum-elected chairman as its Chief Executive, Speaker of the Council and Chief Judicial Officer at a time.

VII. For that in the case of Kudrat-E-Elahi Panir Versus Bangladesh, it has observed that: “Local Government, as a concept and as an institution, was already known to have possessed certain common characteristic, namely, local elections, procedure for public accountability, independent, substantial source of income, clear areas for independent action and certainty of powers and duties and the conditions under which they would be exercised.” That due to the Impugned Amendment Act 2015, the Local government has lost its characters specifically it has lost its independence and impartiality due to undue influence and interference in election by specially political party-in-power on one hand, and passive role of local administration and the Election Commission as well. That in spite of there having a ruling as above by the Hon’ble Appellate Division of the Supreme Court, the Impugned Amendment Act 2015 has been passed just to frustrate the constitutional scheme and weak the local government institutions of Bangladesh. Hence, it is liable to be declared null and void by Your Lordships.

VIII. For that the most serious injury would be the assault on local judicial system as judicial body at Union Parishad Level will be chaired by a partisan person: the Chairman. So, in the given context, the common people will not get impartial and independent justices from such a politically biased person being the head of Union Parishad. That it is pertinent to mention here that the Judicial Spectrum is independent from the Executive at National Level but at Union Parishad Level it being absent, the situation of judicial

independence has been more vulnerable to such a politically nominated person.

IX. For that recent political party nominated *Union Parishad Election* has been witnessed death of hundreds of lives of common people of Bangladesh along with record-number casualties around the country along with grassroots political enmity, instead of amity and festive mood, known-unknown killings, widespread violence, vote rigging, ballot box snatching, illegal sealing of ballot papers, and other irregularities everywhere, which has destroyed peoples' hope in a free and fair election.

X. For that the Impugned Amendment Act 2015 has been passed hurriedly with no such dialogue taken place between the government and the stakeholders, which consequently reveals real motives of the government for an attempt to bring local government system firmly under the party in power.

XI. For that in this context, the chief executives, elected under the new arrangement, being party men, would have a strong connection with the central government and, as such, the balance of power between the legislature and executive would be lopsided. Politically nominated Chairman will neither be responsible to the assembly nor be removed by it, as the removal power, ultimately, will rest with the government. Naturally, the usual interferences by central government and local leaders, who have turned out to be a catalysts in the nomination process, enhance domination will impair local government system, and the local governance and as such the Impugned Amendment Act 2015 should be declared void.

XII. For that these local partisan leaders may become involved in confrontational politics at the local level, and may pave the way for a dangerous divide at the grass root level and accordingly extreme polarization will also affect local decision-making, which may encourage policy-making based on partisanship, clientelism, and the 'reciprocal benefits' of vested quarters as well.

XIII. For that due to election-with-political-symbol, quality candidates have lost interests and after being elected, even if so at some places, they remain inactive in their duties/assigned activities since they are not getting enough space within the bodies for which they have been elected. That politically biased election.

XIII. For that despite the Parliament is sole constitutional body to legislate Act(s) for local government, the previous Governments had not framed appropriate legislations suitable for strong local government body/bodies due to their respective vested interest surrounding local government body/bodies remains alive. That on the other hand, the present Government has enacted such legislation ("the

Impugned Amendment Act 2015”) which would necessarily ensure victory of a candidate nominated by the party-in-power. That it is also submitted that it has been done just to grip all strength of local government body at Union Parishad level through its Chief Executive/Chairman since he/she will be a political party-nominated or specially party-in-power nominated “Yes-Man”, the election of whom to such post ultimately would frustrate the spirit of the scheme of local government as enshrined in the Constitution of Bangladesh.

XIV. For that democracy in a polity depends on, at first and foremost, free and fair election at a regular interval. Free and fair election is imperative to effective practice of democracy at grassroots level. A political party nominated local government election at Union Parishad Level backed by parochial political culture would penetrate norms, values and importance of free and fair election as well as local government institutions. Effective local governance is *sine qua non* with functional democracy. Hence, it is imperative to have a functional local government at Union Parishad Level. Replacement of non-partisan local government elections with mixed partisan ones would neither make the system more functional nor democratic, rather it would *de facto*, turn the whole system of Union Parishad into a implied politically biased institution. Hence, the Impugned Amendment Act 2015 should be declared void for the interest of democracy and people’s power at grassroots level.

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 স্থানীয় সরকার (ইউনিয়ন পরিষদ) (সংশোধন) আইন, ২০১৫ (Act No. 28 of 2015) published in the Official Gazette on 26.11.15) (as of ANNEXURE-‘A’), should not be declared to be void, illegal and *ultra vires* to the Constitution of the People’s Republic of Bangladesh.

Present Status:

The case was filled and moved by Advocate Manzill Murshid, President, HRPB. After hearing the parties the Hon’ble High Court Division summarily rejected the petition.
