

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

WRIT PETITION NO. _____ OF 2012.

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. Human Rights and Peace for Bangladesh (HRPB)
Represented by it's President of the Executive Committee,
Manzill Murshid, 36, B-1, Mirpur Road, Boshundhora
Goli, P.S. Newmarket, Dhaka-1205.

2. Advocate Asaduzzaman Siddique, Hall No. 2, Supreme
Court Bar Association Bhaban, Post-Shahbag, Dhaka,
Bangladesh.

3. Advocate Sarwar Ahad Chowdhury of 3/14 Bashabari
Bosila road, Mohammadpur, P.S. Mohammadpur, Dhaka.

.....Petitioners

-V E R S U S-

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

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

3. The Joint Secretary (appointment, promotion and
Deputation), Ministry of Public Administration, Bangladesh
Secretariat, Ramna, Dhaka.

4. The Senior Assistant Secretary, Judicial Branch-3,
Ministry of Law, Justice and Parliamentary Affairs
Bangladesh Secretariat, Ramna, Dhaka.

5. The Registrar, Supreme Court of Bangladesh, Supreme
Court Bhaban, P.S.: Shahbag, District: Dhaka.

.....Respondents.

GROUND S

I. For that the impugned amendment of section 2(0) of '†Rj v RR I Aat`b Av`vj Zmgj Ges wefvMxq we†kl RR Av`vj Zmgj (KgRZP I KgPvi x) w†qM weagvj v, 1989, and the amendment of section 2(Q) of 'RjWmqj g`wR†óhx I tg†U†cwj Uvb g`wR†óhx Av`vj Zmgj (mrvqK KgRZP I KgPvi x) w†qM weagvj v, 2008, in which a Senior Assistant Secretary of the Ministry of Law, Justice Parliamentary Affairs has been selected as a member of the selection committee (evQvB KwgjW), is arbitrary in nature, amounting to denial of independence of judiciary and hence is violative of the Constitution.

II. For that the original Rules as it was found quite adequate for the purpose of appointment to the post of lower judiciary by the learned District judge but the subsequent amendment of the rule changes has been made for the purpose for abusing

the power. The Respondents purports to use such power in the name of Rules which is not permitted under the scheme of the law of the Constitution.

III. For that the impugned amendment is ex-facie illegal and the same is both malice in law and in fact and in violation of principles of independence of judiciary.

IV. For that the amendment of section 2(0) of '†Rjv RR I Aat`b Av`vj Zmgj Ges wefvMxq we†kl RR Av`vj Zmgj (KgRZP I KgPvi x) w†qvm weagvj v, 1989, and the amendment of section 2(Q) of 'RwMmqvj g`wR†óhx I tg†U†cwj Uvb g`wR†óhx Av`vj Zmgj (mnvqK KgRZP I KgPvi x) w†qvm weagvj v, 2008, in which a Senior Assistant Secretary of the Ministry of Law, Justice Parliamentary Affairs has been selected as a member of the selection committee (evQvB KwqWJ), is beyond the scope of law itself, has made interference into the judiciary.

V. For that the amendment of section 2(0) of '†Rjv RR I Aat`b Av`vj Zmgj Ges wefvMxq we†kl RR Av`vj Zmgj (KgRZP I KgPvi x) w†qvm weagvj v, 1989, and the amendment of section 2(Q) of 'RwMmqvj g`wR†óhx I tg†U†cwj Uvb g`wR†óhx Av`vj Zmgj (mnvqK KgRZP I KgPvi x) w†qvm weagvj v, 2008, in which a Senior Assistant Secretary of the Ministry of Law, Justice Parliamentary Affairs has been selected as a member of the selection committee (evQvB KwqWJ) is ultra vires of the independence of the judiciary as enshrined in Article 22 of the Constitution.

VI. For that the amendment of section 2(0) of '†Rjv RR I Aat`b Av`vj Zmgj Ges wefvMxq we†kl RR Av`vj Zmgj (KgRZP I KgPvi x) w†qvm weagvj v, 1989, and the amendment of section 2(Q) of 'RwMmqvj g`wR†óhx I tg†U†cwj Uvb g`wR†óhx Av`vj Zmgj (mnvqK KgRZP I KgPvi x) w†qvm weagvj v, 2008, in which a Senior Assistant Secretary of the Ministry of Law, Justice Parliamentary Affairs has been selected as a member of the selection committee (evQvB KwqWJ) is against the sprite of the directive issued by the highest Court of the land in the landmark Judgment of Masdar Hossian's case reported in 52 DLR (AD) 82; paragraph 76(7).

VII. For that the Respondents exercising the executive power has got authority to made appointment in the post of judiciary ignoring the provisions of present constitution of Bangladesh and have simply show utter disrespect to the highest Court of the land. Hence it is liable to be declared with out lawful authority.

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 impugned amendment of section 2(0) of '†Rjv RR I Aat`b Av`vj Zmgj Ges wefvMxq we†kl RR Av`vj Zmgj (KgRZP I KgPvi x) w†qvm weagvj v, 1989, and the amendment of section 2(Q) of 'RwMmqvj g`wR†óhx I tg†U†cwj Uvb g`wR†óhx Av`vj Zmgj (mnvqK KgRZP I KgPvi x) w†qvm weagvj v, 2008, in respect of provision to select a member of the selection committee (evQvB KwqWJ) from the post of Senior Assistant Secretary/equivalent post of Assistant Secretary, of the Ministry of Law, Justice Parliamentary Affairs (as of annexure B and B-1), should not be declared to be void and ultra vires to the constitution as being violative of the principle of independence of judiciary.

b) Pending hearing of the rule direct the respondents to maintain statuesque in respect of selection of the member of the selection committee (evQvB KwqWJ), from the post of

Senior Assistant Secretary or equivalent post of Assistant Secretary of the Ministry of law, justice and parliamentary Affairs, for the appointment of the lower judiciary.

c) Pending hearing of the rule direct the respondents to pass an order directing to all of the members of the selection committee (eVQvB KiqvU), who has been selected from the post of Senior Assistant Secretary/ equivalent post of Assistant Secretary of the Ministry of law, justice and Parliamentary Affairs, to stop further functioning as member of the selection committee.

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.
