

In the Supreme Court of Bangladesh  
High Court Division  
(Special Original Jurisdiction)  
**Present**

**Madam Justice Kashefa Hussain**

**And**

**Madam Justice Kazi Zinat Hoque**

**Writ Petition No. 1771 of 2022**

**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. Abdul Munim

..... Petitioner.

Vs.

Election Commission of Bangladesh,  
represented by the Chief Election  
Commissioner, Bangladesh Election  
Commission Secretariat, Sher-E-  
Banglanagor, Agargaon, Dhaka and  
others.

..... Respondents.

Mr. Momtaz Uddin Fakir, Senior Advocate

with Mr. M Khaled Ahmed, Advocate

with Mr. Ashiqur Rahman, Advocate

with Mr. Al-Amin Sheikh, Advocate

.....for the petitioner

Mr. Sheikh Md. Shofiq Mahmud, Advocate

... for the respondent No. 1

Mr. Yousuf Khan Rajib, Advocate with

Mr. Anukul Talukder Dalton, Advocate

... for the respondent No. 7

**Heard on: 14.11.2022, 05.12.2022, 06.12.2022 and**

**judgment on: 11.12.2022.**

**Kashefa Hussain, J:**

Rule nisi was issued calling upon the respondents to show  
cause as to why the office orders being Memo No.

17.00.9108.035.46.487.21-95 dated 23.03.2022 as well as the office order being Memo No. 17.00.0000.079.41.036.21.257 dated 23.03.2022 respectively issued by the respondent No. 1, Bangladesh Election Commission, Election Commission, Secretariat and thereby canceled the result of Vote Center No. 41 of Balaganj Union Parishad, District-Sylhet and gave a direction for the re-election of the aforesaid Vote Center as contained in Annexure-‘F’ & ‘E’ to the writ petitioner shall not be declared illegal 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 petitioner Md. Abdul Munim Son of Abdul Motin of Village- Tilok Chandpur, 05 No. Balagonj Union Parishad, Upazilla Balagonj, District- Sylhet is a citizen of Bangladesh.

The respondent No. 1 is the Chief Election Commission, Bangladesh Chief Election Commission Secretariat, Sher-E-Banglanagor, Agargaon, Dhaka, the respondent No. 2 is the Deputy Director, (Deputy Secretary), BG Press, Tejgaon, Dhaka-1208, the respondent No. 3 is the Deputy Commissioner, Sylhet, the respondent No. 4 is the District Election Officer, Sylhet, the respondent No. 5 is the Returning Officer, Balagonj Upazilla, District- Sylhet, the respondent No. 6 is the Upizilla Nirbahi Officer, Balagonj, Sylhet and the Added respondent No. 7 is Md. Juned Miah, Son of Maji Md. Lal Miah Of Village- Balaganj Bazar, Chanpur, Police Station-Balaganj, District- Sylhet.

Plaint’s case inter alia is that on 11.11.2021 election of 05 No. Balagonj, Police Station- Balagonj, District-Sylhet was duly held,

wherein there were 09 election centers and after completion of poll the presiding officers counted the votes of their respective centers and after counting the votes distributed the result sheet as counted in prescribed form “ঞ” under Rule 39(1)(Kha) of the Local Government (Union Parishad) Election Rules, 2010. That all the presiding officers counted the votes in the said prescribed form and jotted down together and accordingly published result as winning candidate getting 7056 votes. That the Upazilla returning officer jotted down the result and declared the petitioner as winning candidate. That all mandatory provisions were fulfilled before publishing result but till today Gazette has not been published for taking oath by the respondents. That the election which was held on 11.11.2021 all elected chairman and member candidates’ name have been published in Gazette on 06.12.2012 and they took oath on 26.01.2022 but Gazette has not been published for the name of the petitioner till today. That the petitioner filed an application to the respondent no. 1 to take necessary steps for publishing Gazette but till today the respondent No. 1 did not take any proper step to publish Gazette. That on 11.11.2021 election of 05 No. Balagonj, Police Station-Balagonj, District-Sylhet was duly held, wherein there were 09 election centers and after completion of poll the presiding officers counted the votes of their respective centers and after counting the votes distributed the result sheet as counted in prescribed form “ঞ” under Rule 39(1)(Kha) of the Local Government (Union Parishad) Election Rules, 2010. That all the presiding officers counted the votes in the said prescribed form and jotted down together and accordingly published result as winning candidate getting 7056

votes, thus a direction should be given upon the respondents to take necessary steps to publish Gazette notification and also to dispose of the representation dated 24.01.2022. That the petitioner filed an application to the respondent No. 1 to take necessary action for publishing Gazette but till today the respondents did not take any proper steps to publish Gazette and as such a direction should be given upon the respondent to publish gazette in favour of the petitioner as winning candidate. That all mandatory provisions were fulfilled before publishing result but till today Gazette has not been published for taking oath by the respondents and as such a direction should be given upon the respondents to publish gazette petitioners name as a winning candidate. That the election which was held on 11.11.2021 all elected Chairman and member candidates name have been published in Gazette on 06.12.2021 and they took oath on 26.01.2022 but Gazette has not been published in the name of the petitioner till today and as such a direction should be given upon the respondents to publish gazette in petitioner's name. Hence the petitioner being aggrieved by the inaction and conduct of the respondents not taking necessary steps to publish gazette notification in favour of the petitioner as the winning candidate filed the instant writ petition.

Learned Senior Advocate Mr. Momtaz Uddin Fakir along with Mr. M Khaled Ahmed, learned Advocate with Mr. Ashiqur Rahman, learned Advocate with Mr. Al-Amin Sheikh, learned Advocate appeared for the petitioner while learned Advocate Mr. Sheikh Md. Shofiq Mahmud appeared for the respondent No. 1, Learned Advocate

Yousuf Khan Rajib along with Mr. Anukul Talukder Dalton, learned Advocate appeared for the added respondent No. 7.

Learned Senior Advocate Mr. Momtaz Uddin Fakir for the petitioner submits that the inaction of the respondents in not publishing the gazette notification inspite of the petitioner having won the election such inaction in publishing the gazette notification is totally arbitrary and unlawful. He submits that since it is evident from the material documents that the petitioner passed and won the election therefore it was the legal duty of the respondent No. 1 to publish the name of the winning candidate by gazette notification as soon as election was over. He submits that inspite of clear mandates of the Union Parishad Ain, 2009, the respondent No. 1 derogated from the clear provisions and committed gross illegality by showing apathy and inaction. In support of his arguments he takes us to Annexure-C which is the প্রাথমিক বেসরকারি ফলাফল dated 11.11.2021 wherefrom he shows that the election was duly held on 11.11.2021. He submits that it is clear from Annexure- C election was held on 11.11.2021 and result was announced on the same date. He next takes us to Annexure-C which is the consolidated result sheet. From annexure- C and C1 he shows that election was held on 11.11.2021 and result was announced on same date following the Union Parishad Ain, 2009. He submits that it is evident from Annexure-C and C1 that election was held regularly and lawfully on that date that is 11.11.2021. He contends that on the day of the election, election was duly held and there was no complain or allegation of any malpractice whatsoever regarding the election procedure nor were there any other allegations of other

irregularity over the election process. He submits that it is evident from the materials that there were no allegations of irregularity on that date from any of the respondents including the respondent No.7. He contends that in such circumstances it must be concluded that election was duly held and there was no irregularity or otherwise any illegality in the election process.

On this issue he draws this bench's attention upon Section 21 of the Union Parishad Ain, 2009. From section 21 of the Union Parishad Ain, 2009 persuades that section 21 expressly provides that following the Union Parishad election for chairman and member the gazette notification of the winning candidate shall be mandatorily published within the soonest possible time “যথা শীঘ্র সম্ভব, সরকারি গেজেটে প্রকাশ করিবে।” He assails that inspite of such clear provisions and inspite of the petitioner winning the election and which is evident from Annexure-C1 which is consolidated result sheet published by the respondents, nevertheless the respondents committed gross illegality in refraining from publishing the name of the petitioner in the gazette notification. He continues that in this particular case although the names of the other winning candidates have been published in the gazette on 06.12.2021 and they took oath on 26.01.2022, but however the respondents did not publish the petitioner's name. Upon drawing upon Annexure-C'1' he argues that after the publication of the Annexure-C1 the consolidated result sheet on 12.11.2021 after the elections, it is the respondent's legal duty to publish the name of the petitioner in the gazette notification within the shortage possible time as envisaged in section 21 of the Upzilla Parishad Ain of 2009. He

next takes us to annexure-D wherefrom he shows that following the inaction of the respondents in not publishing the name of the petitioner in the gazette notification, the petitioner made a representation to the concerned authorities/respondents dated 24.01.2022. He submits that however inspite of the representation of the petitioner, the respondents still did not publish the name of the petitioner in the gazette notification by way of the representation. The petitioner being aggrieved filed the instant writ petition before the High court division for obtaining appropriate orders thereto.

He next takes us to the application for stay filed by the petitioner and particularly draws attention to Annexure-E and F. He submits that Annexure-E is a memo issued for re-election by an order dated 23.03.2022 issued by the office of the respondent No. 1. He takes us to Annexure-F which was issued on the same date from the office of the respondent No.1 cancelling the election dated 11.11.2021. He points out that however supplementary Rule was also issued against these two annexures being Annexure-E and F and which was issued upon acting in total violation of the clear provisions of the Union Parishad Ain, 2009 including the Bidimala of 2010. He contends that nowhere in the scheme of the Ain nor in the Rules is it contemplated that fresh election may be announced at such a delayed time almost two months after the election. He further submits that since it is clear that there were no allegations on the election date 11.11.2021 and even consolidated result sheets was published on the following day and therefore the next legal duty of the respondents was to publish the petitioner's name in the gazette notification. He argues

that there is no scope in the scheme of the Union Parishad Ain, 2009 nor in the Bidimala, 2010 for the respondent No. 1 to act at such a delayed stage particularly since there are no allegations of any irregularity on the day of the election. He draws our attention to the Union Parishad Bidimala, 2010. He particularly draws upon some of the Rules in the Bidimala including Rule 37, 38, 39, 42 and 43 of the Bidimala. He submits that the Bidimala of 2010 categorically lays out the procedure by which election shall be conducted and further categorically sets out the mandatory process that must be followed. He first draws our attention to Rule 39 of the Bidimala, 2010 wherefrom he shows that Rule 39 contemplate certain circumstances in the face of which the concerned presiding officer may suspend the election evidently on the day of the election and also inform the concerned returning officer. He submits that it is evident from the materials that election was duly held and the presiding officer did not suspend the election. He continues that it is clearly apparent from the consolidated result sheet in Annexure-C1 and it therefore it may be safely presumed that election was duly held in accordance with the relevant law and the relevant Rules and procedure and results were duly announced in favour of the winning candidate. He also submits that Rule 37 also provides that in case of any allegation inter alia any distinct allegation of any irregularity in any election center on the day of the election the concerned authority (respondent No.1) may give a direction for reelection in that center. He submits that the essence and the scheme of the law is that it must be done within the shortage possible time, that is on the day of the election. He next takes us to



Rule 38 of the Bidimala which categorizes the procedure to be followed after the election is over (ভোট গ্রহন সমাপ্ত করণ). He points out that the duty of the concerned presiding officer whatsoever is to monitor the way in which the result of the election shall be announced. He then takes us to Rule 42 wherefrom he submits that Rule 42 contemplates the stage in which the name of the winning candidate shall be announced. He argues that in this particular case Annexure-C reflects that Rule 42 was complied with. He contends that the scheme of the law is that only after exhausting the procedural rules including rules 37, 38, 39 shall the name of the winning candidate be announced under Rule 42 of the বিধিমালা. He assails that in this case Rule 42 being exhausted by the respondents therefore it may be safely concluded that the preceding Rules particularly may Rule 37, 38 and 39 including the other procedures were regularly followed and exhausted. He submits that since the respondents could not show any evidence of irregularity on the Election Day that is on 11.11.2021 nor could they cite any ingredients of rule 37 therefore it is to be safely concluded by Annexure-C1 that the petitioner duly upon exhausting the prescribed Rules/ procedures won the election. He assails that the announcement of the name of the petitioner in the consolidated result sheet Annexure-C1 is a clear admission of the respondents that provisions of the Bidimala particularly rule 37, 38 and 39 was duly followed. He assails that therefore the sudden issuing of an order by the office of the respondent No. 1 for reelection and also cancelling of the previous election in the concerned center, such conduct is absolutely unlawful and beyond the jurisdiction of the

respondent No. 1. He submits that the Bidimala has particularly laid out the circumstances under which and when section the office of the respondent No. 1 may interfere. He submits that therefore in the absence of such circumstances such whimsical act of the respondents after four months of the election is totally unlawful and arbitrary since such inordinate delay of time is not envisaged anywhere within the scheme of the law nor in the Bidimala of 2010.

He next takes us to Rule 43 of the Bidimala, 2010 wherefrom he points out to Rule 43 which contemplate the duty of the respondent No. 1 following the election. He submits that rule 43 read with rule 21 and Rule 42 clearly contemplate that pursuant to an election being held accordingly under rule 21 and 42 the name of the winning candidate shall be published in the gazette notification under Rule 43 of the Rules. He submits that although there is no prescribed time designated for the purpose of publishing the name through gazette notification, but however Rule 21 contemplate that gazette notification shall be published within shortest possible time (যথাশীঘ্র সম্ভব) . He submits that therefore the respondent's inaction refraining from publishing the name of the petitioner in the gazette notification following Rule 43 and then suddenly issuing an order after more than 4 months by way of Annexure-E and F such order is totally arbitrary and beyond the jurisdiction of the office of the respondent No.1.

There was a query from this bench regarding the jurisdictional issue of the office of the respondent No. 1. The learned Advocate for the petitioner assails that except in case of allegations which will be followed by rule 37 of the Bidimala of 2010 the office of the

respondent No. 1 cannot interfere with the process of the election which interference is beyond the jurisdiction of the Respondents No.1. He submits that since it is clear that rule 37, 38, 39 and 42 inter alia other rules have been complied with therefore it was the next legal duty of the office of the respondent No. 1 to publish the name of the petitioner in the gazette notification in accordance with Rule 43 read with rule 21 of the বিধিমালা.

Upon another query from this bench the learned Senior Advocate for the petitioner takes us to section 22, 23 of the Union Parishad Ain, 2009. He draws upon chapter five (পঞ্চম অধ্যায়, নির্বাচনী বিরোধ) and points out that chapter 5 expressly provide the forum which may decide any matter arising out of any election dispute. He submits that it is clear from section 23 and 24 of the Union Parishad Ain, 2009 that the election tribunal and also the appellate tribunal respectively are the appropriate forum to file an application by any person following an election pursuant to publication of the gazette. He reasserts that in this particular case since there was no allegation by any presiding officer nor by any returning officer whatsoever of any irregularity within the meaning of rule 37 and since the other procedures were exhausted by way of annexure-C1 duly, therefore publishing the name of the winning candidate through gazette notification is the legal duty of the office of the respondent No. 1. He submits that in this case it is clear that the office of the respondent No. 1 by issuing Annexure-E and F acted beyond jurisdiction and therefore such action and such order cannot be sustainable. He points out that if any party is aggrieved they may file an application before

the election tribunal under the provisions of Rule 22 and 23 read with rule 53 and 55. He continues that these rules lay out the procedure under which the application may be made before the tribunal. He prays that therefore a direction may be given by this court to cancel Annexure- E and F and prays for direction which is also required upon the respondent No. 1 to publish the petitioner's name in the gazette notification in accordance with the relevant law and Rules. In support of his submissions he cited a few decisions inter alia in the case of Sadekul Islam Vs. Election Commission reported in 27 BLC (2022) 327 where one of us was a party and which was subsequently affirmed by the Appellate Division in Civil Petition for Leave to Appeal No. 1284 of 2022. He submits that similar principle as pressed by the petitioner was upheld in the decision in 27 BLC (2022) 327 inter alia other decisions. He takes us to the principle in 27 BLC (2022) 327 which was upheld by the Appellate Division wherefrom the primary principle is as under:

*“Cancellation of the election result of centre instead of publishing the same in the official Gazette, which it is mandated to do under Rule 43, is beyond the scope of law and thus, the EC acted without jurisdiction.”*

Citing Section 22 of the Ain he shows us that the appropriate forum is the election tribunal for any person or candidate whatsoever for raising question or objection on any matter arising out of an election. He concludes his submission upon assertion that the Rule bears merit ought to be made absolute.

On the other hand learned Advocate for the respondent No. 7 by way of filing affidavit in opposition vehemently opposes the Rule. Firstly he submits that the allegation of the petitioner that no steps was taken by the respondent No.1 on the election day is untrue. In support of his arguments he takes us to Annexure- 1, 2, 3 and 4 of the affidavit in opposition. He submits that from Annexure-1, 2, 3 and 4 it is clear that the respondent No. 7 made the allegation of irregularity which is contemplated under rule 37 inter alia other rules on the date of the election that is on 11.11.2021. He next takes us to Annexure-5 of the affidavit in opposition and shows us from Annexure-5 that it is clear that the number of votes secured by the petitioner is lesser than the number of votes secured by the respondent No. 7. He submits that Annexure-5 clearly shows that the petitioner got lesser votes than the respondent No. 7. He continues that it has been shown in annexure-5 that there was vote casting of 100% and which is impossible for practical purposes. He next takes us to Annexure-6 which is an enquiry committee formed by the respondents and which was followed by a report wherefrom an enquiry was duly conducted. He submits that it is clear from the enquiry report that the petitioner appeared before the enquiry committee. He argues that therefore the petitioner's contention that he had no knowledge of the subsequent development surrounding the vote is not true. In support of his submissions regarding his argument that the election commission has jurisdiction he cites a decision in the case of Abdur Rouf Miah Vs. Fazlur Rahman reported in 43 DLR (AD)(1991) 23. He submits that in this Apex court decision it was held that the office of the

respondent No. 1 has the power and jurisdiction to recount votes and it also has the power to issue an order for fresh election before issuance of gazette notification. He also cited a decision in the case of Jamshed Ali Vs. AKM Abdullah reported in 52 DLR(AD)(2000) 69 wherefrom the petitioner if at all aggrieved by the order of the respondent No. 1 by way of annexure-E and F could have filed an application before the election tribunal as the appropriate forum. In the same tune he contends that therefore writ is not maintainable.

He also draws our attention to the case of Jamshed Ali Vs. AKM Abdullah reported in 52 DLR(AD)(2000) 69. Relying on the Annexure-1, 2, 3, 4, 5 and 6 of the affidavit in opposition. He reasserts that therefore it is clear that the petitioner had full knowledge of the developments and that it is also evident that from the day of the election the Respondent No. 1 took taken cognizance of the matter. He contends that therefore the petitioners claim that the respondents were silent over the issue is evidently not true. He concludes his submission upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

Learned Advocate for the respondent No. 1 did not file any affidavit in opposition but however vehemently opposes the rule. He substantively supports the submissions of the learned Advocate for the respondent No. 7. There was a query from this bench regarding the question raised by the petitioner on the jurisdictional power of the respondent No. 1 to issue such order by way of annexure-E and F. On this issue the learned Advocate for the respondent No. 1 substantively supports the submissions of the learned Advocate for the respondent

No. 7. He argues that the action of the respondent No. 1 is within its jurisdiction. He concludes his submission upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

We have heard the learned Counsels, perused the application and materials before us. Initially while filing the writ petition the inaction of the respondents was under challenge pursuant to result of the election followed by announcement of petitioners name in the consolidated result sheet. It is the petitioner's contention that the respondents inspite of the petitioner being the winning candidate however refrained from fulfilling its duty to publish the petitioner's name as winning candidate by gazette notification and hence are in violation of the provisions of section 21 of the Upazila Parishad Ain read with rule 43 of the Union Parishad Ain, 2009.

In writ jurisdiction we are here to examine whether there has been any irregularity in the election conducted by the respondents. It is evident that after issuance of the Rule in pursuance to an earlier representation made by the petitioner the respondents issued two orders by way of annexure-E and F which is a part of the Supplementary Rule. By annexure-E the office of the respondent No. 1 issued an order for fresh election while by Annexure- F the office of the respondent No. 1 cancelled the results of the previous election held on 11.11.2021. We are here to examine the propriety of the action and orders of the respondent No. 1.

The respondent No. 7 upon filing an affidavit in opposition attempts to controvert the contention of the petitioner that there are no

allegations of irregularities on that particular day, that is the day of the election.

Truly enough the Ain read with the Rules expressly provide that if there are any allegation on that day at any voting/polling center the allegation shall be taken in cognizance in accordance with the Rules. Rules 37, 38, and 39 of the Union Parishad Bidimala, 2010 are reproduced hereunder:

“৩৭। কতিপয় পরিস্থিতিতে প্রিজাইডিং অফিসার কর্তৃক নির্বাচন বন্ধ রাখিবার ক্ষমতা।

(১) নিম্নলিখিত পরিস্থিতিতে কোন ভোটকেন্দ্রের প্রিজাইডিং অফিসার উক্ত কেন্দ্রে ভোটগ্রহণ বন্ধ করিয়া উহা রিটার্নিং অফিসারকে অবহিত করিবেন, যথা-

(ক) প্রিজাইডিং অফিসারের নিয়ন্ত্রণ বহির্ভূত কোন কারণে ভোটগ্রহণ এমনভাবে বাধাগ্রস্ত বা ভ্যাহত হয় যে, উহা বিধি ২৭ এর অধীন ধার্যকৃত ভোটগ্রহণের সময়ে পুনরায় আরম্ভ করা সম্ভব নহে; বা

(খ) ভোটকেন্দ্রে ব্যবহৃত কোন ব্যালট বাক্স প্রিজাইডিং অফিসারের হেফাজত হইতে বেআইনীভাবে অপসারণ করা হইলে বা দুর্ঘটনাক্রমে ক্ষতিগ্রস্ত হইলে বা ইচ্ছাকৃতভাবে নষ্ট করা হইলে বা হারাইয়া গেলে বা এই পরিমাণ হস্তক্ষেপ করা হয় যে, সেই ভোটকেন্দ্রের ভোটের ফলাফল নির্ধারণ করা যাইবে না।

(২) উপ-বিধি (১) এর অধীন ভোটগ্রহণ বন্ধ করিয়া দেওয়া হইলে, রিটার্নিং অফিসার অবিলম্বে উক্ত ঘটনা সম্পর্কে কমিশনকে অবহিত করিবেন এবং কমিশন একই নির্বাচনী এলাকার অন্যান্য ভোটকেন্দ্রের ভোটের ফলাফলের দ্বারা সংশ্লিষ্ট নির্বাচনের ফলাফল নির্ধারিত হইয়া গিয়াছে মর্মে সন্তুষ্ট না হইলে উক্ত ভোটকেন্দ্রে নূতনভাবে ভোট গ্রহণের নির্দেশ প্রদান করিবে।

(৩) উপ-বিধি (২) এর অধীন কমিশন কর্তৃক পুনরায় ভোট গ্রহণের নির্দেশ প্রদান করা হইলে, কমিশনের অনুমোদনক্রমে, রিটার্নিং অফিসার-



(ক) নূতন ভোগগ্রহণের জন্য একটি তারিখ নির্ধারণ করিবেন এবং কোন স্থানে ও কোন সময়ের মধ্যে উক্তরূপে নূতন ভোটগ্রহণ করা হইবে তাহা স্থির করিবেন; এবং

(খ) এইরূপে নির্ধারিত তারিখ এবং স্থিরকৃত স্থান ও সময় সম্পর্কে গণবিজ্ঞপ্তি জারী করিবেন।

(৪) উপ-বিধি (৩) এর অধীন নূতন ভোট প্রদানের ক্ষেত্রে, উপ-বিধি (১) এর অধীন বন্ধকৃত বোটের সময় প্রদত্ত কোন ভোট গণনা করা যাইবে না।

(৫) উপ-বিধি (৩) এর অধীন নূতন ভোট প্রদানের ক্ষেত্রে, ভোট প্রদানের অধিকারী সকল ভোটারকে এই বিধিমালার বিধানাবলী অনুসরণক্রমে ভোট প্রদানের সুযোগ প্রদান করিতে হইবে।

#### ৩৮। ভোটগ্রহণ সমাপ্তির পর করণীয়।-

(১) ভোটকেন্দ্রে ভোটগ্রহণ সমাপ্ত হইবার পর, সহকারী প্রিজাইডিং অফিসারগণ স্ব স্ব ভোটকক্ষের ব্যালট পেপার সম্বলিত ব্যালট বাক্সসমূহের ঢাকনার জন্য ব্যবহৃতব্য সীল নম্বর উপস্থিত প্রতিদ্বন্দ্বী প্রার্থীগণ বা তাহাদের নির্বাচনী এজেন্ট বা পোলিং এজেন্টদের লিখিয়া রাখিবার সুবিধার্থে উচ্চস্বরে ঘোষণা করিয়া উক্ত সীল দ্বারা বাক্সের ঢাকনা সীল করিবেন এবং প্রত্যেকটি সীলকৃত ব্যালট বাক্স প্রিজাইডিং অফিসারের নিকট জমা প্রদান করিবেন।

(২) প্রিজাইডিং অফিসার প্রতিদ্বন্দ্বী প্রার্থীগণ বা তাহাদের নির্বাচনী এজেন্ট বা পোলিং এজেন্ট উপস্থিত থাকিলে তাহাদের সম্মুখে পরীক্ষা করিয়া নিশ্চিত হইবেন যে, ব্যালট বাক্স বা ব্যালট বাক্সসমূহ বিধি ২৮ এর উপ-বিধি (৩) এর দফা (গ) তে বর্ণিত বিধান মতে বা উপ-বিধি (১) অনুসারে যেইভাবে বন্ধ করা হইয়াছিল সেই অবস্থায় অক্ষত রহিয়াছে এবং এইরূপে নিশ্চিত হইবার পর প্রিজাইডিং অফিসার ব্যবহৃত ব্যালট বাক্স বা বাক্সসমূহের মধ্যে হইতে সকল ব্যালট পেপার বাহির করিয়া হইবেন।

(৩) প্রিজাইডিং অফিসার ব্যবহৃত ব্যালট বাক্স বা বাক্সসমূহ হইতে ব্যালট পেপার বাহির করিয়া-

(ক) চেয়ারম্যান, সংরক্ষিত আসন এবং সাধারণ আসনের সংশ্লিষ্ট ওয়ার্ডের সদস্য নির্বাচনের ব্যালট পেপারগুলি পৃথক করিবেন; এবং

(খ) প্রতিদ্বন্দ্বী প্রার্থীগণের পক্ষে সুস্পষ্টভাবে ভোট প্রদানের চিহ্নবিশিষ্ট ব্যালট পেপারসমূহ নিম্নবর্ণিত ক্রটিযুক্ত অবৈধ ব্যালট পেপার হইতে পৃথক করিবেন, যথা-

(অ) সরকারি সীলমোহর এবং প্রদানকারী অফিসারের অনুস্বাক্ষরবিহীন ব্যালট পেপার;

(আ) প্রদানকারী অফিসারের অনুস্বাক্ষর ব্যতীত অন্য কোন লিখন আছে অথবা সরকারি সীলমোহর এবং ভোট প্রদানের চিহ্ন ব্যতীত অন্য কোন চিহ্ন আছে অথবা কাগজের টুকরা বা যে কোন প্রকারের বস্তু সংযোজিত আছে এইরূপ ব্যালট পেপার;

(ই) কোন প্রতিদ্বন্দ্বী প্রার্থীকে ভোট প্রদানের চিহ্নবিহীন ব্যালট পেপার;

(ঈ) কোন প্রতিদ্বন্দ্বী প্রার্থীর পক্ষে একাধিক ভোট প্রদানের চিহ্ন আছে এইরূপ ব্যালট পেপার; এবং

(উ) কাহার অনুকূলে ভোট প্রদান করা হইয়াছে তাহা স্পষ্ট নয় এইরূপ ব্যালট পেপার:

তবে শর্ত থাকে যে, কোন প্রতিদ্বন্দ্বী প্রার্থীর অনুকূলে ভোটচিহ্ন প্রদত্ত হইয়াছে বলিয়া গণ্য হইবে, যদি খোঁয়া যায় যে, ভোটচিহ্নটির অর্ধাংশের বেশি উক্ত প্রার্থীর প্রতীক সম্বলিত স্থানের মধ্যে স্পষ্টভাবে প্রদত্ত হইয়াছে এবং যেক্ষেত্রে উক্ত ভোটচিহ্ন দুইজন প্রার্থীর প্রতীক সম্বলিত স্থানের মধ্যে সমান দুইভাগে বিভক্ত হয়, সেইক্ষেত্রে উক্ত ব্যালট পেপার বাতিল ব্যালট পেপার হিসাবে গণ্য হইবে;

### ৩৯। ভোট গণনা।-

(১) প্রিজাইডিং অফিসার, বিধি ৩৮ এর উপ-বিধি(৩) এর বিধান অনুযায়ী ব্যালট পেপারসমূহ যাচাই বাছাই করিবার পর, প্রতিদ্বন্দ্বী প্রার্থীগণ অথবা তাহাদের নির্বাচনী এজেন্ট অথবা পোলিং এজেন্ট উপস্থিত থাকিলে, তাহাদের উপস্থিতিতে-

(ক) প্রত্যেক প্রতিদ্বন্দী প্রার্থীর পক্ষে প্রদত্ত বৈধ সকল ভোট পৃথকভাবে গণনা করিবেন:

(খ) চেয়ারম্যানের জন্য ফরম এ৩-তে, সংরক্ষিত আসনের সদস্যের জন্য ফরম এ৩-১ এ এবং সাধারণ আসনের সদস্যের জন্য ফরম এ৩-২ তে গণনার বিবরণী প্রস্তুত করিবেন এবং উক্ত বিবরণীতে প্রত্যেক প্রতিদ্বন্দী প্রার্থীর প্রাপ্ত ভোট সুস্পষ্টভাবে অংকে ও কথায় লিপিবদ্ধ করিবেন;

(গ) চেয়ারম্যান, ও সংরক্ষিত আসনের সদস্য এবং সাধারণ আসনের সদস্য নির্বাচনের উদ্দেশ্যে যে সকল ব্যালট পেপার বৈধ এবং অবৈধ হিসাবে চিহ্নিত হইয়াছে, সেই সকল ব্যালট পেপারসমূহ প্রত্যেক ক্ষেত্রে দুইটি করিয়া মোট ছয়টি আলাদা প্যাকেটে রাখিবেন এবং উক্ত প্যাকেটসমূহের প্রত্যেকটিতে ভোটকেন্দ্রের নামসহ প্যাকেটে রক্ষিত ব্যালট পেপারের সংখ্যা ও প্রকৃতি লিপিবদ্ধ করিয়া প্যাকেট ছয়টিকে একটি প্রধান প্যাকেটে রাখিয়া উহা সীলমোহরকৃত করিবেন; এবং

(ঘ) দফা (খ) এর অধীন প্রস্তুতকৃত বিবরণীসমূহ, দফা (গ) অনুসারে সীলমোহরকৃত ব্যালট পেপার সম্বলিত প্যাকেট এবং অন্যান্য কাগজপত্র ও দ্রব্যাদি বিধি ৪০ এর বিধান অনুসারে রিটার্নিং অফিসারের নিকট প্রেরণ করিবেন।

(২) প্রিজাইডিং অফিসার নিম্নলিখিত ক্ষেত্রে পুনরায় ভোট গণনা করিতে পারিবেন-

(ক) প্রয়োজনে, স্বীয় উদ্যোগে; বা

(খ) কোন প্রতিদ্বন্দী প্রার্থীর বা নির্বাচনী এজেন্টের বা পোলিং এজেন্টের সুনির্দিষ্ট লিখিত আবেদনের প্রেক্ষিতে, যদি তাহার নিকট আবেদনটি যুক্তিযুক্ত বলিয়া মনে হয়।

(৩) প্রিজাইডিং অফিসার, প্রতিদ্বন্দী প্রার্থীগণ অথবা তাহাদের নির্বাচনী এজেন্ট বা পোলিং এজেন্ট দাবী করিলে, উপ-বিধি(১) এর দফা (খ) এর অধীন প্রস্তুতকৃত গণনার বিবরণীর স্থায়িত অনুলিপি তাহাদিগকে প্রদান করিবেন। ”

For our purpose we have scrutinized Rule 37 of the Bidimala-2010. Rule 37 clearly contemplates that on the day of the election the concerned presiding officer upon informing the concerned returning officer shall suspend the election under certain circumstances. Such circumstances have been categorically stated under Rule 37 (ka and Kha). Rule 37(2) contemplates that once the election is suspended following the allegations under Rule 37(1)(ka) and (Kha) the returning officer shall without delay take necessary steps on the same day.

The petitioner's contention is that no such circumstances were alleged on the election day and which is evidenced by publication of the consolidated result sheet by way of Annexure-C1.

The respondents controvert the petitioner by way of drawing upon Annexure-1, 2, 3, 4 and 5 of the affidavit in opposition filed by the respondent No.7.

The Respondents also drew upon the Enquiry Report inter alia other materials annexed to the Affidavit in opposition. Relying upon the materials particularly the enquiry report, the Respondents assailed that it is clear that the petitioners were and are aware of all the subsequent developments arising out of irregularity on the voting day. The Respondents persistently laid stress on the fact that the petitioner appeared before the enquiry committee and which is evident from the findings and observation in the enquiry report.

Our considered view against this contention of the respondents is that whether the petitioner was aware of the developments and /or whether they were present in the enquiry before the enquiry

committee are all matters of fact and which are not so relevant for purpose of disposal of this writ petition.

As stated above our duty here is to examine whether all the procedures have been duly followed by the respondents. The respondents contended that there were irregularity on the day of the election which they tried to convince by drawing upon Annexure- 1, 2, 3, 4 and 5. Our considered view on this contention of the respondents is that whatever may have happened on that date, but nevertheless the respondents announced the petitioner's name as winning candidate and published the consolidated result sheet by way of annexure-C1 of the writ petition.

It is the express scheme of the law that the result shall be announced in accordance with Rule 42 of the Bidimala, 2010 read with the Ain, 2009. Rule 42 of the Rules clearly provides the circumstances under which consolidated result sheet may be announced. Rule 42 of the Bidimala is reproduced hereunder:

“৪২। ফলাফল একত্রীকরণ, নির্বাচিত প্রার্থীর নাম ঘোষণা, রিটার্ন প্রস্তুত এবং উহার সত্যায়িত কপি সরবরাহ ইত্যাদি।-

- (১) রিটার্নিং অফিসার, বিভিন্ন ভোটকেন্দ্র হইতে বিধি ৪০ এর উপ-বিধি (৬) এ উল্লিখিত ভোট গণনার বিবরণী এবং ব্যালট পেপারের হিসাব প্রাপ্তির পর, বা বিধি ৪১ এর উপ-বিধি (৬) এর অধীন পুনঃভোট গ্রহণের ফলাফল পাইবার পর, তদকর্তৃক নির্ধারিত সময়ে, প্রতিদ্বন্দী প্রার্থীগণের কিংবা তাহাদের নির্বাচনী এজেন্ট বা পোলিং এজেন্টগণের উপস্থিতিতে, প্রতিদ্বন্দী প্রার্থীগণের প্রত্যেকের অনুকূলে প্রদত্ত বৈধ ঠোটমূহ, আপত্তিকৃত ভোটসমূহ, চেয়ারম্যানের জন্য ফরম ঠ, সংরক্ষিত আসনের সদস্যের জন্য ফরম ঠ-১ এবং সাধারণ আসনের সদস্যের জন্য ফরম ঠ-২ তে একত্রীভূত করিবেন

এবং যে প্রার্থীর অনুকূলে সর্বাধিক সংখ্যক ভোট প্রদত্ত হইয়াছে তাহাকে নির্বাচিত ঘোষণা করিবেন।

- (২) রিটার্নিং অফিসার উপ-বিধি (১) এর অধীন গণনার ফলাফল প্রাপ্তির পর, উহা একটি গণবিজ্ঞপ্তির মাধ্যমে প্রকাশ করিবেন।
- (৩) উপ-বিধি (২) এর অধীন প্রকাশিত গণবিজ্ঞপ্তিতে প্রত্যেক প্রতিদ্বন্দী প্রার্থীর নাম ও উপ-বিধি (১) এর অধীন একত্রীকরণের ফলে প্রাপ্ত ফলে প্রাপ্ত মোট ভোটের সংখ্যা উল্লেখ থাকিতে হইবে।
- (৪) রিটার্নিং অফিসার উপ-বিধি (২) এর অধীন গণ-বিজ্ঞপ্তি প্রকাশিত হইবার পর অবিলম্বে কমিশনের নিকট নির্ধারিত ফরমে, একত্রীকরণ বিবরণীসহ নির্বাচিত প্রার্থীদের একটি তালিকা দাখিল করিবেন।
- (৫) রিটার্নিং অফিসার, নির্ধারিত পদ্ধতিতে একত্রীকরণ বিবরণী এবং নির্বাচিত প্রার্থীদের তালিকা প্রস্তুত করিবার পর, যে সকল প্যাকেট ও বিবরণী ফলাফল একত্রীকরণের জন্য খোলা হইয়াছিল, অবিলম্বে সেইগুলিকে পুনরায় ভর্তি করিয়া সীলমোহর করিবেন, এবং উপস্থিত প্রার্থী ও তাহাদের নির্বাচনী এজেন্টগণকে, তাহারা ইচ্ছা করিলে, অনুরূপ প্যাকেটগুলিতে তাহাদের দস্তখত ও সীলমোহর প্রদানের জন্য অনুমতি দিবেন।
- (৬) রিটার্নিং অফিসার, কোন প্রতিদ্বন্দী প্রার্থী বা তাহার নির্বাচনী এজেন্ট বা পোলিং এজেন্টগণের মধ্যে, যাহারা একত্রীকরণ বিবরণী ও নির্বাচিত প্রার্থীদের তালিকা পাইতে ইচ্ছুক তাহাদিগকে চেয়ারম্যান নির্বাচনের ক্ষেত্রে ফরম ঠ, সংরক্ষিত আসনের সদস্য নির্বাচনের ক্ষেত্রে ফরম-ঠ-১ এবং সাধারণ আসনের সদস্য নির্বাচনের ক্ষেত্রে ঠ-২ এ একীভূত ভোট গণনার বিবরণী ও নির্বাচিত প্রার্থীদের তালিকার সত্যায়িত কপি সরবরাহ করিবেন। ”

It may be reasonable to hold that whatever comments, findings or remarks the respondents may make at a subsequent stage by way of Annexure-1, 2, 3, 4 and 5 of the Affidavit in opposition filed by the respondent No. 7, but however we are also of the considered opinion

that since the respondents themselves announced the result by way of consolidated result sheet which is annexure-C1 therefore it is their statutory duty to publish the name of the winning candidate by way of gazette notification. It may be also reasonable to hold that result sheet was not published without having exhausted the procedures in particular Rule 37, 38 and 39 of the Bidimala-2010. The consolidated result sheet was announced evidently which is annexure-C1 was published following rule 42 only after the preceding sections were exhausted. Therefore whatever might have happened subsequently and the subsequent actions of the respondents cannot be relevant for purpose of disposal of the instant writ petition.

It is a clear mandate of the scheme of the Union Parishad Ain, 2009 particularly section 21 read with rule 43 of the Bidimala, 2010 that after fulfilling the provisions of the preceding sections that is Rule 37, 38, 39, 41 and 42, the next legal duty of the respondent No. 1 is to publish by way of gazette notification the name of the winning candidate. In this case it is evident that respondents have not yet published the name of the winning candidate. We are of the view that since Rule 42 was exhausted by the respondents therefore it may be implied that there was compliance so far as the procedural rules are concerned. It is the respondent No. 1's duty to comply with the provisions of Section 21 of the Ain read with rule 42 of the Bidimala, 2010. It may be pertinent to mention that in this particular case it is the respondent's duty to comply with the requirements of rule 43 since the preceding sections have all been exhausted.

Nevertheless a gazette notification above and only is not a conclusive evidence of regularity or legality and /or any procedure and is not a conclusive evidence of procedural or other substantive legality of any election which may have been held.

Our considered view is that in such circumstances the appropriate forum to decide the matter is the election tribunal constituted under the provisions of Section 22 and 23 of the Union Parishad Ain, 2009 read along with rules 53 and 55 of the Bidimala, 2010. We are of the considered view that once the respondent No. 1 has complied with his procedural duty under rule 43 of the Bidimala read with section 21 of the Union Parishad Ain, 2009 any person particularly aggrieved by such gazette notification, may prefer an application before the appropriate forum which is the election tribunal. We have also examined rule 90 of the Bidimala, 2010 which provides for some special power of the commission under certain circumstances (কতিপয় ক্ষেত্রে কমিশনের বিশেষ ক্ষমতা।). It is significant to note that the power which has been granted to the commission under certain circumstances may only be exercised if there are any allegation of irregularity or the election is suspended on the day of the election under rule 90 read with other rules whatever allegation followed by specification of the election whatsoever has to be suspended. It is clear that whatever the circumstances the respondent may have alleged, but however no such suspension of the election took place on that particular date and which is evident from the respondent No. 1 announcing the consolidated result sheet which is annexure-C1. It is only reasonable to reiterate that if there was any



allegations under rule 37 along with other rules, the elections ought to have been stopped and the presiding officer or returning officer ought to have informed the concerned authority immediately.

We have also perused some of the decisions cited by the learned Counsels. We have particularly drawn support from 27 BLC (2022) 327 wherein of us was a party. In that decision it was held:

*“Cancellation of the election result of centre instead of publishing the same in the official Gazette, which it is mandated to do under Rule 43, is beyond the scope of law and thus, the EC acted without jurisdiction. Moreover, under Section 22(1) of the Ain, read with Rule 53(1) of the Rules a candidate can raise question or objection in the matter before the Election Tribunal by presenting election petition.”*

We have scrutinized the judgment. Similar circumstances as the case before us existed in that judgment and which judgment was ultimately upheld by the Appellate Division and which is binding on us.

Therefore we of the considered opinion that the cancellation of the election result of the center instead of publishing the same in the official gazette, which it is mandated to do under rule 43, is beyond the scope of law and thus, the election commission acted without jurisdiction. We are also of the considered view as mentioned elsewhere in this judgment that since the result was announced by the respondents by way of Annexure-C1, therefore it is the next duty of

the respondents to publish the petitioner's name in the gazette notification. Therefore the respondents duty is to publish the gazette notification without further delay.

However it may be reiterated that gazette notification is a mere document by which the election result is announced. It is evidently not a conclusive evidence of any substantive legality or regularity that may have taken place in the election process. In case any person is aggrieved arising out of any matter in the election the person may avail the appropriate forum by way of election Tribunal, after the gazette notification was published.

After hearing the learned counsels and after examine into the materials and the relevant laws and Rules we are inclined to dispose of the rule with above observation and directions.

In the result, the Rule is disposed of. The office orders being Memo No. 17.00.9108.035.46.487.21-95 dated 23.03.2022 as well as the office order being Memo No. 17.00.0000.079.41.036.21.257 dated 23.03.2022 respectively issued by the respondent No. 1, Bangladesh Election Commission, Election Commission, Secretariat and thereby cancelling the result of Vote Center No. 41 of Balaganj Union Parishad, District-Sylhet and giving direction for the re-election of the aforesaid Vote Center as contained in Annexure-'F' & 'E' to the writ petitioner is declared illegal without lawful authority and is of no legal effect.

The respondent No. 1 is hereby directed to publish the name of the petitioner as winning candidate in the gazette notification without further delay within a period of 30(thirty) days of receiving of this

judgment. However if any party is aggrieved by the gazette notification if they are so advised are at liberty to file an application before the election tribunal under the relevant provisions of law.

The order of stay granted earlier by this court is hereby vacated.

Communicate this judgment at once.

**Kazi Zinat Hoque, J:**

I agree.

Arif(B.O)