

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. 10668 of 2021

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. Shamsul Haque, son of late Abdul Hossain and Shahorbanu of Village- Charberubari, Post Office- Berubari, Police Station- Nageshwari, District- Kurigram.

..... Petitioner.

Vs.

Bangladesh, represented by the Secretary, Ministry of Liberation War Affairs and others.

..... Respondents.

Mr. Ripon Kumar Barua, Advocate

.....for the petitioner

Mr. Noor Us Sadik Chowdhury, D.A.G

with Ms. Sayeda Sabina Ahmed Moli A.A.G

with Ms. Farida Parvin Flora, A.A.G

... for the respondent No. 1

Heard on: 21.11.2022, 29.11.2022 and judgment on: 04.12.2022.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show cause as to why the impugned inaction of the respondent Nos. 2 and 3 in not taking any steps to enlist the name of the petitioner as a Freedom Fighter and to publish his name in the Bangladesh Gazette of the freedom fighter despite having enlisted in the Freedom Fighter

Scrutiny List prepared by the Upazila Scrutiny Committee should not be declared illegal, without any lawful authority and is of no legal effect and as to why the respondent Nos. 2 and 3 should not be directed to include the name of the petitioner as a Freedom Fighter Scrutiny List prepared by the Upazila Scrutiny Committee and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner Md. Shamsul Haque, son of late Abdul Hossain and Shahorbanu of Village-Charberubari, Post Office- Berubari, Police Station- Nageshwari, District- Kurigram is a citizen of Bangladesh.

The respondent No. 1 is the Secretary, Ministry of Liberation War Affairs, Government Transportation Pool Building (5th and 6th Floor), Secretariat Link Road, Dhaka-1000, the respondent No. 2 is the Director General, Jatio Muktijoddha Council (JAMUKA), National Scout Bhaban (11th & 12th Floor), 60, Anjuman Mofidul Islam Road, Kakrail, Dhaka-1000, the respondent No. 3 is the Deputy Secretary (Gazette), Ministry of Liberation War Affairs, Government Transportation Pool Building (5th and 6th Floor), Secretariat Link Road, Dhaka-1000, the respondent No. 4 is the Deputy Commissioner, Kurigram, District- Kurigram, the respondent No. 5 Upazila Nirbahi Officer, Upazila- Nageshwari, District- Kurigram, the respondent No. 6 is the District Commander of Freedom Fighter, Kurigram and the respondent No. 7 is the Upazila Commander of Freedom Fighter, Nageshwari, Kurigram.

The petitioner's case inter alia is that in 1986-87 the then government decided to prepare a combined list of freedom fighters and at that time as many as 1,02,000/- freedom fighters were enlisted. Thereafter the Muktiyoddha Sangasd in 1996 took up the matter for preparing a list of genuine freedom fighters and the scrutinized names appeared in a weekly magazine named "সাণ্ঠাহিক মুক্তিবার্তা" and as many as 1,86,000 freedom fighters were enlisted. In the said list regular army, B.L.F, Guerilla Bahini led by Nap-Communist Party and the fighters who fought without leaving the country for India were also included. That in 2001 the Ministry of Liberation War Affairs was established. In the Rules of Business of the Ministry one of its objectives were mentioned as "প্রকৃত মুক্তিযোদ্ধাদের গেজেটেড তালিকা প্রস্তুত ও সংরক্ষণ" . Subsequently during the year 2003 to 2005 the government published number of Gazette Notifications with comprehensive list of freedom fighters. That in the meantime, in the year 2002 a statutory body has been established namely "Jatio Muktiyoddha Council" under the Jatio Muktiyoddha Council Ain, 2002. Accordingly, the respondent No. 2 is empowered by Section 7(Jha) of the atio Muktiyoddha Council Ain, 2002 to prepare the list of genuine freedom fighters, advise the government for issuing certificates and cancelling the false forged certificates. That since the year 2010 the respondent No. 2 started scrutinizing genuine freedom fighters in the country trough online and manual process. This way, the petitioner in 2013 applied before the respondent No. 2 along with all the necessary documents for inclusion of his name as Freedom Fighter and publish the Gazette Notification after proper scrutiny of the Certificates and

other documents submitted therewith. Thereafter, the name of the petitioner has been enlisted in the union-wise freedom fighter scrutiny list being Serial No. 27. That the respondent No. 6 earlier on 12.10.2010 issued a certificate on behalf of the petitioner wherein the respondent No. 6 clearly mentioned that the petitioner is a genuine freedom fighter and prayed for enlisting his name in the freedom fighter list. Subsequently, on 16.02.2016, the Chairman of the No. 4 Berubari Union Parishad, Nageshwari, Kurigram also recommended for enlisting the name of the petitioner in the freedom fighter list as he was a genuine freedom fighter. Moreover, the member of the Parliament of Kurigram-1, also recommended to the Minister of the Ministry of Liberation War Affairs to enlist the Petitioner's name in the freedom fighter list as he was a genuine freedom fighter. That thereafter, the respondent No. 1 on 25.03.2021 published a thana-wise comprehensive list of freedom fighter in which the name of the petitioner has not been included despite being a genuine freedom fighter. That the Government decided to scrutinize the real freedom fighters across the country and in this connection in the year 2005, the government of Bangladesh published a Gazette Notification of the freedom fighters, and the name of the petitioner was not listed in the said Gazette Notification. Freedom fighters who enlisted in the aforesaid Gazette Notification have been receiving various allowances and facilities regularly from the Government but the petitioner inspite of being a genuine freedom fighter is being deprived of these facilities. That the petitioner's name was not included in the last Lal Barta, Mukti Barta and Bangladesh though he is a recognized freedom

fighter of the country. However, the petitioner received certificates as freedom fighter from the then in-charge, National Militia Camp, Rangpur as well as from Sub Sector Commander, Mukti Bahini, Rangpur. Moreover, the petitioner also received certificate from late Mohammad Ataul Gani Osmani, Commander-in-Chief of Bangladesh Armed Forces but his name was not included in the freedom fighter till date. That it is stated that the petitioner has been trying to draw attention of the authority to include his name in the list of freedom fighters though his name has already included as freedom fighter in the list of Upazila Freedom Fighter. That inspite of the petitioner being a freedom fighter the respondents are showing complete inaction in not including him in the official gazette as a freedom fighter. Hence the petitioner being aggrieved filed the instant writ petition.

Learned Advocate Mr. Ripon Kumar Barua appeared for the petitioner while learned D.A.G Mr. Noor Us Sadik Chowdhury along with Ms. Syeda Sabina Ahmed Moli, A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondent No. 1.

Learned Advocate for the petitioner submits that the respondents in showing their indifference and apathy in not including him as a freedom fighter in the official gazette such inaction is totally unlawful and arbitrary. He submits that it is clear from the several documents issued from several authorities that the petitioner is a genuine freedom fighter having actively participated in the liberation war, 1971. By way of annexure-A, A1 and A2 the learned Advocate for the petitioner shows that Annexrue-A, A1 and A2 are the মুক্তিযোদ্ধা

certificates issued by relevant authorities including the Sub-sector Commander of the Mukti Bahini, Rangpur, Bangladesh. He next takes us to annexure- B, wherefrom he shows that the petitioner by name Md. Shamsul Haque was duly enlisted as a freedom fighter featuring in serial No. 27 and such enlistment was done by the Chairman of the No. 4 Berubari Union Parishad, Nageshwari, Kurigram. He next draws attention to three certificates by way of Annexure- D, D1 and D2 wherefrom he shows that several relevant authorities issued the মুক্তিযোদ্ধা certificates duly in the name of the petitioner. He submits that however the respondent No. 5 and respondent No. 7 arbitrarily and with malafide purpose refrained from including the name of the petitioner as a freedom fighter although other certificates clearly show that he is a bonafide freedom fighter and actively participated in the liberation war in 1971. He further contends that the respondent No. 1 the Ministry of Liberation War Affairs also arbitrarily did not include the name of the petitioner in the official gazette although it is clear from Annexures- A, A1, A2, B1, D, D1, and D2 etc. that the petitioner is a genuine freedom fighter. He next takes us to annexure- G of the supplementary affidavit which is notice issued by the Jatio Muktijoddha Council (JAMUKA), respondent No. 2 which is a notice to the petitioner to appear before JAMUKA inviting notice dated 13.09.2021. He also takes us to Annexure-H of the supplementary affidavit wherefrom he shows that he duly appeared before the respondent No. 2. He submits that although the JAMUKA, respondent No. 2 issued a notice upon him and asked him to appear and the petitioner duly complied with Annexure-H, but however pursuant to

his appearance at the hearing the respondents did not yet inform the petitioner of their decision. He submits that therefore such arbitrary inaction is a continuous violation of the petitioner's fundamental right and concludes his submission upon assertion that the Rule bears merits ought to be made absolute.

On the learned D.A.G on behalf of the respondent No. 1 vehemently opposes that rule. He submits that whether he was at all a freedom fighter participating in the liberation war or not are disputed matters of fact which must be settled by the respondent No. 2. Upon a query from this bench as to respondents inaction in not informing the petitioner of the outcome of the hearing dated 10.02.2022 the learned D.A.G concede that the respondents also have a duty to atleast inform the petitioner of their decision pursuant to the hearing. He concludes his submission upon assertion that the Rule bears no merits ought to be discharged for ends of justice.

We have heard the learned Counsels, perused the application and materials on record before us. We have perused the several documents in support of the petitioner's claim to be a genuine freedom fighter. These include Annexures. A, A1, A2. Annexure- A is a certificate dated 07.04.1972 issued by the National Milita Camp In-charge from which Annexure-A1 is a certificate issued by the Sub SEctor Comdr, Mukhti Bahini Rangpur, Bangladesh. Annexure A 2 is the স্বাধীনতা সংগ্রামের সনদপত্র issued by General Mohammad Ataul Goni Usmani. Next we have perused Annexure B1 which is the list of the Freedom fighters by the concerned Chairman of the No. 4 Berubari Union Parishad, Nageshwari, Kurigram. We have also examined

Annexure-D, D1, and D2. All these 3 (three) annexures are certificates. Annexure-D was issued by the কমান্ডার, বাংলাদেশ মুক্তিযোদ্ধা সংসদ, জেলা ইউনিট কমান্ড, কুড়িগ্রাম, Annexure-D1 was issued by the চেয়ারম্যান, ৪নং বেরুবাড়ী ইউনিয়ন পরিষদ, নাগেশ্বরী, কুড়িগ্রাম and annexure-D2 is the certificate issued by the local member of parliament. However it appears from Annexure- C that the concerned উপজেলা পরিষদ did not include the name of the petitioner in their list. Nevertheless pursuant to an application made by the petitioner to the respondent No. 2, JAMUKA through a notice asked the petitioner to appear before them which is annexure-G of the supplementary affidavit. Admittedly the petitioner also duly appeared before the JAMUKA on 10.02.2022 . Upon examination of the materials on record and the circumstances, we are of the considered view that whether a person ought to be enlisted as a freedom fighter or not are disputed matters of fact and which must be decided by the appropriate forum. It also appears that the although the petitioner duly appeared for the hearing of his case before JAMUKA, respondent No. 2 on 10.02.2022, but the respondent No. 2 did not dispose of the matter nor did they inform the petitioner informing him on the finding of their decision. We are of the considered view that pursuant to the hearing it is the petitioner's fundamental right to inform the petitioner of the decision taken by the respondent No. 2. Such inaction of the respondent No. 2 is arbitrary and whimsical and not desirable at all. It is the respondents duty to inform the petitioner of their decision.

Under the facts and circumstances we are inclined to dispose of the rule with some directions and observations.

In the result, the Rule is disposed of. The respondent No. 2 is hereby directed to inform in writing to the petitioner of their findings and decision. The respondent No. 2 is also hereby directed to take into consideration all the relevant documents produced by the petitioner Md. Shamsul Haque in accordance with the relevant laws within a period of 60(sixty) days from the of receiving this judgment.

Communicate this judgment at once.

Kazi Zinat Hoque, J:

I agree.

Arif(B.O)