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

Present:
Mr.Justice A.H.M.Shamsuddin Choudhury
and
Mr.Justice Sheikh Md.Zakir Hossain.

Writ Petition No.3494/2010.

In the matter of:
An application undr Article 102 of the Constitution of the People's Republic of Bangladseh.
-And-
In the matter of
A.F. Shahab Uddin Ahmed
..... Petitioner.
Versus
National Shooting Federation, Bangladesh, South East Corner of Gulshan Model Town, P.S. Gulshan, Dhaka, and others.
..... Respondents.

Mr. Masood R. Sobhan, Advocate
..... For the Petitioner.
Mr. Rafiq-ul-Huq with
Mr. Belayet Hossain, Advocates
.....For the respondent No.6
Mr. Sheikh Fazle Noor Taposh and
Mr. Mehedi Hassan Chowdhury, Advocates
.....For the respondent No.1
Mr. A.B.M. Altaf Hossain, D.A.G.
.....For the respondents.

Heard on 26.8.2010, 7.11.2010, 6.12.2010.
and judgment on 12.12. 2010.

A.H.M.Shamsuddin Choudhury,J:

The Rule was under adjudication, issued on 4th May 2010, was in following terms;

"Let a Rule be issued, calling upon the respondents to show cause as to why the impugned decision, dated 14.02.2010, of the respondent No.1,

to lease out the ground and first floor of the front building of the Rifles Federation Complex, Gulshan, Dhaka, the respondent No.6 and the lease agreement signed between them on 09.04.2010, in alleged violation of the terms and conditions of RAJUK's registered lease deed, dated 25.10.1998, should not be declared to have been passed illegally, without lawful authority and is of no legal effect."

The petitioner's averments, briefly, are as follows;

The petitioner is a member of the Comilla Rifle Club, which is a member/affiliated club of the respondent no.1, National Shooting Federation, Bangladesh. He has been associated with the shooting sports for the last four decades and has discharged various functions entrusted to him by the National Shooting Council (NSC).

Respondent no. 1, he National Shooting Federation, Bangladesh, is an affiliated body of the respondent no. 2, the National Sports Council (NSC), established under the National Sports Council Act, 1974, which is the controlling authority of the respondent No.1. The respondent no. 6 is

the Nandan Food and Beverage Industries Limited, a private limited company and incorporated in Bangladesh.

Respondent No.4, the Rajdhani Unnayon Kartipakhya (RAJUK), leased the subject property to the respondent no. 1, for a period of 99 years at a token consideration of taka 1/- (one) only. The stipulation were to the effect that the right, title and interest of the demised property remains with the "LESSOR" and the "**National Shooting Federation of Bangladesh shall use the demise property for the purpose of their Shooting Range and shall not use the said property for any purpose under any circumstances whatsoever".**

The "LESSE shall not carry on or permit to be carried on in or upon the demised property **any trade or business whatsoever or use or permit the same to be used for any purpose other than that of Shooting Range.**

The LESSEE shall not be allowed to transfer, sell, mortgage, exchange, gift away or **otherwise assign, sublet, encumber or in any way part with or dispose of the demised property or any part thereof under any circumstances whatsoever".**

The National Shooting Federation, Bangladesh, is one of the 22 Federation/Councils mentioned in the schedule (part-1) of the National Sports Council Act, 1974, which have been formed for the development and regulation of sports as well as for coordination of sports activities in Bangladesh.

The 4th elected executive committee of respondent No. 1, in violation of the terms incorporated in the lease agreement, took a decision in its 4th meeting, held on 01.04.2009, that it would demise on lease part of the property i.e. ground and the 1st floor of the front building situated on the demised premises, to a company named Nandan Food and Beverage

Industries Limited, the respondent No.6, pursuant to which, an agreement has also been signed by the respondent Nos. 1 and 6 on 09.04.2009 for the lease of the aforementioned two floors for a period of 12 years for the purpose of setting up a Super Shop (Mega Mall), a Cold Room, Receiving Point and Storage etc.

The respondent no.1 wrote to RAJUK, the respondent no. 4, on 01.09.2009, seeking permission to use the premises of the National Shooting Federation on commercial use and the said respondent replied to say that there was no scope to grant such permission in violation of clause 1 of the RAJUK's registered lease agreement with the respondent no.1.

The respondent no.1 being one of the 22 Sports Federation of the Part-1 of the schedule of the National Sport Council Act, 1974 (Act LVII of 1974) and the petitioner being a member of Comilla Rifle Club which is a member/affiliated Club of Bangladesh Rifle Shooting Federation, has an

interest to see that nothing is done by the respondent no.1 in breach of the law of the land or in violation of any provision in the any agreement, prejudicing the interest of the Federation to which he had dedicated his entire youth. He is, therefore entitled to challenge the decision of the executive committee of the respondent no.1 by filling this petition invoking writ jurisdiction. The petitioner has a legitimate expectation that the demised premises of the Shooting Federation shall be used for the purpose of shooting range only, not for business or any other purpose and as such the respondents are required to be restrained form handing over the demised property to the respondent no.6 and not to enter into any other agreement with anyone else for the purpose of trade or business in future.

The respondent no.4, RAJUK, demised on lease the property to the respondent no. 1, for a period of 99 year at a token consideration of taka 1/- (one taka) only and clause 7 provides that the “LESSEE would not carry on

or permit to be carried on in or upon the demised property any trade or business whatsoever or use or permit the same to be used for any purpose other than that of Shooting Range". Whereas the executive committee of the respondent no.1, in violation of the aforesaid clause, resolved in its meeting, held on 14.02.2009, that it would lease part of the property i.e. the ground and first floors of the front building, to a Super Market Chain, the respondent no.6, pursuant to which an agreement has also been sealed between them on 09.04.2009, for the lease of the aforementioned floors for a period of 12 years and therefore, the agreement signed pursuant to that decision, is without lawful authority.

In order to carry on business in the demised premises the respondent no.1 has to obtain trade license from the Dhaka City Corporation (DCC) and therefore, the DCC is also required to be directed not to issue any trade

license to the respondent no.6 as the agreement to set up business would be in violation of the terms and conditions of the lease deed with RAJUK.

Leasing of the premises by the respondent no.1 to the respondent no.6 to set up a super market in clear violation of the terms and conditions of he lease agreement has exposed the respondent no. 1, to the high risk of having the registered deed dated 25.10.1980 with RAJUK cancelled, which would seriously prejudice the sports, for which the shooting complex was set up. The decision of the respondent no.1 to lease the demised property to the respondent no.6 is not only prejudicial to the organization but also without lawful authority and is of no legal effect.

The respondent no.1 has filed an affidavit-in-opposition figuring the following statement;

The respondent no. 1, has been named for the purpose of Section 20 and 20 A (c) of the Sports Council Act. Under section 20 of the Act

notwithstanding anything contained in the Articles of Association or constitution of the organization, specified in entries 1 to 22 in part 1 of the schedule, the government is entitled to appoint a president as head of the organization specified in the said schedule. As per Section 20A of the Act, The National Sports Council, (NSC) can dissolve Executive Committee of the organization specified in entries 1 to 22 of the schedule which were constituted prior to the date specified by the Government. The part 1 of he schedule contains the names of 23 sports organisations, inclusive of the respondent no. 1.

It is xo-facie clear that the sports organizations, specified or named in part 1 of the schedule of the said Act, have not been created under or by section 20 or section 20A of the said Act. Therefore, mere naming or specifying the said sports organizations in the said Act dos not suffice to hold that any of the sports organizations, named in the said schedule, is a

statutory body or a body corporate or a local authority. This aspect of law has been settled by the Supreme Court of Bangladesh in a decision reported in 45 DLR 360.

On 13.01.2009 an advertisement was published in the Daily Prothom Alo and Daily Star for renting the floor spaces of the said building of the respondent no.1. No one raised any objection against the advertisement. Thereafter, the said respondent decided to lease the floor spaces of the said building to a company named Nandan Food and Beverage since they were found to be the highest bidder.

The writ petitioner does not have any locus standi to file the above petition. He does not have any interest in the subject matter of the writ, nor is he a person aggrieved to maintain the above petition. Allegedly the writ petitioner is a member of a private club namely, Comilla Rifle Club, which is affiliated or recognized by the respondent no. 1. The petitioner is not a

member of the respondent no. 1. Even Comilla Riffle Club, of which the petitioner is a member, has not raised any question about the affairs of the respondent no. 1. Mr. Imran Chowdhury of Comilla Riffle Club was also a party to the decision taken on the 4th meeting of the 4th Executive Committee, dated 01.04.2009, for executing the impugned lease deed dated 09.04.2009.

In 1980 RAJUK granted a lease of 5.5 Bigha's Land to the respondent no. 1, for 99 years. Besides shooting purposes, for about 23 years, the respondent no. 1, has been using the land for commercial purposes by renting the whole or part of the premises and since then the respondent no. 1, is paying taxes for the said business. To use the premises for commercial purpose, the swearing respondent also took commercial electricity, water and gas connection. Thereafter it decided not to use the whole of the leasehold property for commercial purposes and in the year,

2000, it constructed a shooting range for the purpose of shooting upon the said leasehold property and in the front side of the lease hold property it had constructed a 3 storied building for using it for commercial purposes instead of using the whole of the property for commercial purposes. After construction of the 3 storied building, it has been renting the said premises for different events including marriage, birthday party etc and while carrying out the said business nobody raised any objection. On 03.02.2008, RAJUK had published an advertisement in the Daily Jugantor wherein it was mentioned that the area starting from Gulshan Shooting Club to Gulshan 2 circle, shall be treated as a commercial area. On 13.01.2009, an advertisement was published in the Daily Prothom Alo and Daily Star for renting the floor spaces of the said building and after publishing the said advertisement the deposing respondent had decided to lease the floor spaces of the building to Nandan Food and Beverage.

Dhaka Stadium, Mirpur Stadium, Kamalapur Stadium, National Sports Complex, Bhasani Hocky Stadium have been using their respective land for commercial purposes by renting the whole or part of the premises without obtaining any permission from RAJUK and in the same way, the respondent no. 1, has also been using the part of the premises for commercial purpose since 1987.

Although the said respondent was carrying out business at some part of the leasehold premises, it had always been short of fund and due to which shortage, they could not provide proper facilities to the players, coaching staff, employees and on 15.08.2006 some coaching staff had sent a letter to the General Secretary of the said respondent to increase their payments.

To increase the Federations revenue with a view to diversity the facilities of the players and the staff and also for the **facelifting** of the

Federation, the incumbent executive committee decided to rent the said commercial premises through open tender and therefore, on, 13.01.2009 an advertisements were published in the Daily Prothom Alo and Daily Star, yet no one raised any objection.

Thereafter, on, 24.01.2009 a meeting of the respondent no. 1, was held wherein it was decided that a Sub-Committee, consisting of 7 members, would be formed to scrutinize the tenders.

On 09.04.2009 the National Shooting Federation (NSF) entered into a lease agreement with Nandan Food and Beverage for renting the said premises for period of 6 years with provision for renewal for a further period of 6 years upon mutual consent.

NSF will get an amount of Tk. 2,42,92,260 (Two crore forty two lacs and ninety two thousand two hundred sixty) every year by leasing the spaces to Nandan Food and Beverage.

In a meeting held on 17.02.2010, it was decided that NSF can use the aforesaid space for the commercial purpose since RAJUK had already declared the area as commercial. The meeting also approved allotment.

On 02.03.2010, the State minister for Sports sent a letter to the State Minister of Housing, proposing that the aforesaid space be used for commercial purposes.

The President of the Parliamentary Standing Committee on Sports, had also sent a letter to the State Ministry of Housing with similar request.

After entering into the said lease agreement, NSF has taken different measures for opening up new widows of facilities for the players and therefore, in the 5th South Asian Championship, 2009, Bangladesh won 1 Gold medal, 6 Silver medals and 6 Bronze medals and in the 11th South Asian Games 2010 Bangladesh won 3 Gold medals, 6 Silver medals and 6 Bronze medals and in the 8th Commonwealth Games Bangladesh won 2

Gold medals, 2 Silver medals and 3 Bronzes medal while in the 3rd Indo-Bangladesh Games, Bangladesh won 6 Gold medals, 7 Silver medals and 9 Bronze medals.

The petitioner is a former range officer of the NSF and on 30.08.07, he was terminated from the said post and therefore, he had filed the current Petition with a malafide intention and for co-lateral purpose.

The respondent No.4 and 6 have also filed an affidavits-in-opposition, making more or less similar averments.

The respondent No.6, however, in addition, averred that the contract under challenge is not a statutory one, nor is it a sovereign act. This lease agreement has not been executed by National Shooting Federation in exercise of any statutory power.

That on obtaining lease from the respondent no.1, it invested Tk.7 crore for decorating and **istalling** machineries therein. It had also paid the

respondent no.1 Tk.1,20,00,000.00 for the lease period. The respondent no.6 obtained the lease pursuant to a tender notice published in various news papers. The respondent no.6 is not expected to know any violation of other lease agreement to which the respondent no.6 is not a party and does not have any privity. Therefore, the respondent no.6, having obtained the lease bonafide and having invested huge amount of money has acquired vested right which cannot be prejudiced

As the Rule matured to hearing, Mr. Mused R. Sobhan posited with stentorian emphasis that the maintainability issue as raised by the respondent is an outcome of erroneous interpretation of Article 102 of our Constitution. According to him the very fact that a plot worth several crores was conveyed to the NSF virtually free, by itself goes a long way to demonstrate that the said body is engaged in performing functions in connection with the affairs of the Republic. Imbued with profound

normative, he went on to say that a body need not be a statutory one to be amendable to judicial review, adding however, that the NSF is indeed a statutory emanation nevertheless. He concluded saying that it is not open to NSF to demise any part of the building on lease.

Mr. Rafiq-Ul Haq, the learned Senior Advocate, along with Mr. Fazle Noor Taposh and Mr. Mehedi Hassan Chowdhury, proffered that in so far as NSF is not a statutory body, it is not amenable to writ jurisdiction. He relied on a number of decision to lend weight to his submission. He also questioned the locus standi of the petitioner. According to him the leasing process is geared to enhance the interest of the sports of shooting.

The questions we reckon to be pertinent are whether; (1) the petitioner is stuffed with sufficient interest to move this court, (2) the body has to be a statutory emanation to be amenable to writ jurisdiction, (4) the respondents are liable to be thwarted with the craved directions.

The petitioner is admittedly a member of Comilla Rifle club. Admittedly, again, his club is affiliated with the respondent No. 1, ie, NSF. Besides that, the petitioner has been directly involved with the sports of shooting for decades together. So, the argument impeaching his locus standi, in our introspection, does not hold any water. In any event, since the respondent is a body that thrives on tax payers' money and attracts general public interest, we would have entertained the petition as a public interest litigation even if he was fully bare of locus standi.

Hawing resolved the first **inquisitory** in the petitioner's favour, we are about to embark upon the next question, which is a topical one not only in our jurisdiction but also in other parts of the world where the relics of English Common Law pervades: is it incumbent upon the petitioner to prove, in order to be able to engage judicial review device, that the body, the impugned decision emanated from, is a statutory emanation?

An immaculate answer with infallible and ingullible precision can not be attuned without a bird's eye survey of the history of the origin and progression of the doctrine of judicial review, for after all, we have inherited writ jurisdiction from the Common Law doctrine of Judicial Review, JR.

The origin of the Writs of Certiorari, Mandamus and Prohibition can be traced in such antiquities as the Common Law itself, more precisely, during the reign of Henry II, in the 12th century. By these Writs the Monarch, through the Star Chamber and the Court of King's Bench, kept the inferior bodies within their power.

In the earliest times, the Royal Writs were sealed governmental documents, drafted in a crisp, business like manner, by which the king conveyed notification or orders (Van Caenegem Royal Writs in England from the conquest to Glanviulle: Studies in the early history of Common Law, Seldon Society 1959).

From the earliest times, proceedings in the local courts and the local communities, as well as those instituted before borough courts were removable into the Kings Court at Westminster (Holsworth, Histury of English Law, II, 395). Usurpation of authorities by municipal corporation gave rise to activities to impugn the validity of byelaws (ibid 398), Quo Warrant proceedings, and later, applications for Writs of Scare Fascias were also aimed at the borough councils.

When the Justices of the Peace emerged as the principal organ of local administration, the court of Kings Bench, which, of all common law courts, was most closely connected with the business of government, assumed superintendence over their proceedings, a superintendence that was facilitated by the fact that the administrative functions of the justices of the Peace were discharged in a judicial form.

It was not, however, until the 17th century that what was to become the modern concept of judicial review, took shape (Edith G. Henderson, Foundation of English Administrative Law 1963).

The word Certiorari, a derivative of the phrase ‘certify”, was essentially a Royal demand for information, the king wishing to be

‘certified’ of some matter, orders, that the necessary information be provided for him. Thus the king wished to be more fully informed of allegations of extortion made by his subjects in Lincoln and thereafter appointed Commissioners to inquire into them (Placitorum Abbreviation 155 49 Hen 3).

From about 1280, the judicial forms of the Writ of Certiorari were in common use, issued on the application of ordinary litigants (Saldon Soe-Vo/s 55, 57, 58, 74, 76, 82 and 88 edited by GD Sayles).

Certiorari was historically associated with the King’s person as well as with the King’s Bench, it was of high importance for the control of inferior tribunals, particularly with respect to the administration of criminal justice. It was a writ of course for the king, but not for the subjects. The concept has been lucidly expressed in a modern Canadian Case in following terms:

“The theory is that the sovereign has been appealed to by someone of his subjects who complains of an injustice done him by an inferior court, whereupon the sovereign, saying that he wishes to be certified-certiorari- of

the matter, orders that the record etc be transmitted into a court in which he is sitting “(R-V-Titchmarsh, 1915, 22 DLR 272)”.

During the Tudor period, by the middle of the 17th Century, these Writs firmly received Prerogative characteristic, though it was not until 1759 that they were classified a group by Mansfied (R-V-Lowle 1759, 2Bnrn 834, which case seems to be the first one where reference to a “Certiorari” as a “Prerogative Writ”, used to correct the errors of the Justices of the Peace, was made). “When in 17th and 18th centuries the term ‘prerogative’ was applied to the Writ, this was because they were considered to be closely connected with the rights of the Crown; no doubt it was the reason they issued chiefly from the King’s Bench Court.” (De-Smith, Judicial Review).

Bracton described the emergent Court as ‘Aula Regea’, where the King’s justice ‘praprias causa Regis terminant’ (De Legibus f150 b). The origin of the term ‘prerogative’ is attributable to the political inclination of certain judges in the 17th century who sough to associate themselves with the King’s personal solicitude. Mansfield and Bracton were responsible, if

not for the invention of the ‘prerogative Writ’, at least for it’s acceptance as part of the lawyers’ vocabulary.

During the late Tudor and early Stewart period, the Writ of Certiorari frequently issued to bring the proceedings of inferior Courts of Common Law before the Chancellor. From the 14th to the 17th century the main purpose of Certiorari had been, in addition to controlling the functions of the Justices of the Peace, to supervise proceedings of inferior tribunals of specialized jurisdiction such as Commissioners of Swear, Court of Merchants, Courts of Admiralty, Court of Forest, to obtain information for administrative purposes, for example, to direct the Sherif to find out whether one who has been granted the ‘King’s protection in ferrying in the city, instead of journing forth in the King’s service’, the Escheator to certify into the Chancery the value of the Knights, to bring into the Chancery or the common law courts judicial records for wide diversity of purposes, to remove Coroners’ investigation and indictments into the King’s Bench and so on.

One casualty of the 17th century constitutional conflict was the use of executive organ i.e. the Kings Council and the Star Chamber to enable the

national government to control the acts of the local official, most importantly those of the Justices of the Peace, who were the most important functionaries in the local tiers of administration. With them the enforcement of criminal Law and the local administration were inextricably blended. Executive power were usually performed in judicial form. So in R-V-Glamarganshire Inhabitants (1700, Ltd. Raym 580), rate levied by county Justices of the Peace to pay for repairs to a bridge was reviewed by having recourse to Prerogative Writ.

During the 18th and early 19th century there was little administrative or political control over the activities of the Justices of the peace, but their exercise of power could be challenged in the courts of Kings Bench by recourse to the Prerogative Writs.

By the first half of the 19th century a reaction set in against prevalent tendency to treat nearly all of an inferior courts finding as touching it's jurisdiction, which made it possible to construct a coherent theory of the concept of jurisdiction, without which the scope of judicial review would have been seriously limited.

When new departments of central government emerged, towards the end of the 19th Century, the court of Kings Bench extended its controlling jurisdiction to include them as well.

Since all these bodies were exercising statutory powers, it was natural that disputes about the limits of their power should be settled by the courts by recourse to Prerogative Writs. Thus it was that judicial control which originally served to check the powers of inferior courts, which was adapted to review the exercise of statutory powers first by the local authorities and then, in the 20th Century, by Ministers of the Crown (Board of Education-V-R-ice 1911 AC 179, Local Government Board-V-Aldridge (1915 AC 120).

Though, with the passage of time, particularly towards the end of the 19th century, the court of King's Bench spread it's wings to bring under its supervisory control, by resorting to Prerogative Writs, the local authorities and the departments of central government, which, as the House of Lords stated in the case of Draymond-v-South West Water Authorities (1976 AC 609), was "a long step from reviewing the rate levied by the justices of the peace to reviewing statutory regulations made by a Secretary of State", yet,

in principle it is the same kind of control which the courts exercise, even today, whether they are reviewing a point of law raised in the Magistrates courts or the excess of jurisdiction by a government department or a local authority.

As early as 1922, the House of Lords held, “That supervision goes to two points, one is the area of inferior jurisdiction and the qualification and conditions of it’s exercise; the other is the observance of the law in the Course of it’s exercise” (R-v-Not Bell Liquors Ltd, 1922 Act 128).

It is obvious from the history of the development of the doctrine of judicial review that traditionally it only applied to public, as opposed to private law domain. The existence of a divide separating public and private law, according to jurists of acclaimable standing, probably causes greater controversies and it is not always easy to erect an acceptable fence between the two. The distinction between the public and the private law plays a crucial role in determining (1) when it is necessary to bring proceeding by way of judicial review and (2) by whom and against whom proceedings which raise public law issue can be brought.

For a great many years the way the courts have identified activities which are subject to law is by deciding whether or not they are activities to which the High Court's supervisory jurisdiction through judicial review may be invoked by an aggrieved person. In the past it was mainly done by asking what was the source of the power being exercised by the decision maker whose action was impugned. Where the power was statutory or derived from Prerogative, no problem to invoke judicial review would be encountered. Where, however, the power did not emanate from an Act of Parliament, a Prerogative or a Delegated Legislation, judicial review, generally, was not available. Prof. (Sir) Wade and Prof Forsyth's following expression represents the traditional as well as the changed view; "Judicial Review is designed to prevent access and abuse of power and neglect of duty by public authorities. In the past there was clear test for determining the limits of the Court's jurisdiction: power meant power conferred by Parliament. The law, however has been driven from these familiar moorings by the impetus of expanding judicial review which has been expanded to two kinds of non-statutory actions. One is where the bodies are unquestionably governmental, do things form which no statutory power

is necessary, such as issuing circulars or other forms of information. The other category is where judicial review is extended to bodies, which by the traditional test, would not be subject to judicial review, and which, in some cases, fall outside the sphere the government altogether. A variety of commercial, professional, sporting and other activities are regulated by powerful bodies which are devoid of statutory status and may yet have an effective monopoly. In their willingness to 'recognise the realities of executive powers' (per Lord Donaldson MR in Take-Over Panel case, below) and their desire to prevent its abuse, the Courts have undertaken to review the decisions of a number of such bodies, while in others they have refused". (Administrative Law, 9th Edition, page 638). The said learned authors went on to say, "This judicial forays into areas beyond the law have constitutional implication. The rule of law now operates in territory previously supposed to be beyond it's reach" (page 639).

So, today the English courts have come to recognize that the traditional approach is too restrictive and instead of looking at the source of the power exclusively they are now inclined to analyse the type of function performed by the decision maker. (R-V-Panel on Take over and Mergers,

ex-parte Datafin PLC (1987 2QB 864). So, where a body is carrying out a public function, such as that undertaken by a non-government regulatory organization in relation to an area of activity, which is subject to its control, the courts will consider intervening to require compliance with the principles of judicial review. This is so, even if the body is non-statutory, exercising powers which are not derived either from legislation or Prerogative.

There are, hence, presently, two kinds of situation namely source or origin based situation and function based situation that enjoy recognition by the English Court. (Sir John Donaldson MR expressed in “Panel of Take-over” case, supra. “I do not agree that the source of power is the sole test whether a body is subjected to judicial review.”)

‘Source or origin based approaches’ needs no explication as they are axiomatic. The “function based approach’ is erected on the theme that a body performs “public function” when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public, or section thereof, as having authority to do so. In the case of a self

regulatory body, the general consent to the exercise of it's power by business in a particular sector establishes it's legitimacy.

Lloyd LJ in Penal on Take-over, supra expressed, "But in between these extremes there is an area in which it is helpful to look not just at source of the power but at the nature of the power. If the body in question is exercising public law functions or if the exercise of its function have public law consequences, then that may, as Mr. Lever submitted, be sufficient to bring the body within the reach of judicial review. It may be said that to refer to "public law" in this context is to beg the question. But I do not think it does. The essential distinction, which runs through all the cases to which we referred, is between a domestic or private tribunal on the one hand and a body of persons who are under some public duty on the other. Thus in Reg. v. Criminal Injuries Compensation Board, Ex parte Lain [1967] 2Q.B. 864 Lord Parker C.J., after tracing the development of certiorari from its earliest days, said, at p. 882: "Private bodies exercise public functions when they intervene or participate in social or economic affairs in the public interest".

This may happen in a wide variety of ways. For instance a body is performing a public function when it provides ‘public goods’ or other collective services, such as health care, education and personal social services, from fund raised by taxation. They may also do so if they regulate commercial and professional activities to ensure compliance with proper standard. Public functions need not be the exclusive domain of the state. Charities, self-regulatory organizations and other nominally private institutions such as universities, the stock exchange, religious ecclesiastical bodies, may also perform some types of public function. As Sir Gordon Borrie observed, “non-governmental bodies such as these are just as capable of abusing their powers as is government”. (Regulation of Public and Private Power 1989 PL 552).

Hence such private, non-governmental bodies like IMRO, FIMBRA, and LAUTRO, which were officially recognized under the Financial Services Act 1986, for regulating sectors of financial markets, were part of a statutory system, were held to be amenable to judicial review, although their own powers or source of power were not statutory (Bank of Scotland-v-Investment Management Regulatory Organisations Ltd. 1989 SLT432).

Decisions of Stock-Exchange were likewise, held reviewable (R-v-International Stock Exchange of the United Kingdom and the Republic of Ireland Ltd. ex-parte Else, (1993 QB 534).

In the case of R-v-Press Complaints Commission ex-parte Stewart Brady, (1997, 9 Admin LR 274), as well as in the case of R-V-Code of Practice Committee of the British Pharmaceutical Industry ex-parte Professional Counselling Aids Ltd. (1990, 3 Admin L R 697), the High Court held that notwithstanding absence of statutory foundation, decision of these bodies were reviewable as they had public law elements.

The prevailing English judicial view is that as it is through the principles of judicial review that the rule of law and other constitutional principles are given practical effect, the supervisory jurisdiction of the High Court should ensure that bodies, whether nominally public or private, when performing public functions, comply with the law and achieve acceptable standard of administration.

Subsequent to the decision in the tide turning case of R-v-Panel on Take-over and Mergers, ex-parte Datafin Plc, (supra) where the question of a private body’s amenability to judicial review was extensively and

intensively explored, English Courts went on to elaborate a variety of overlapping criteria designed to particularise the broad based functional approach, enunciated by Sir Donaldson MR in the above cited case. They include the following testes:

(1) The but for "test-i.e. whether but for the existence of a non-statutory body, the government would itself almost inevitably have intervened to regulate the activity in question (R-V-Advertising standard Authority ex parte Insurance Service PLC, 1990 2 Admin LR 77 DC, where Lord Justice Glidewell stated that in the absence of the Advertising Standard Authority, its function, would no doubt be exercised by a government functionary).

(2) Whether the government has acquiesced or encouraged the activities of the body under challenge by providing "underpinning" for it's works, has woven the body into the fabric of public regulation (as observed by Sir Thomas Bingham M. R. In R-V-Disciplinary Committee of the Jockey Club, ex parte Aga Khan 1993 1 WLR 909, CA) or

that the body was established under the authority of the government (per Lord Justice Lloyd in Panel of Take-over, supra). Here the question is not what might happen, but what has actually occurred.

(3) Whether the body was exercising extensive or monopolistic powers, for instance, by effectively regulating entry into a trade, profession or sport.

(4) Whether the aggrieved person consensually submitted to be bound.

(Reproduced from “Principles of Judicial Review” by De Smith, Woolf of Jowels, page 68.)

Thus, the functions of Criminal Injuries Compensation Board, a non-statutory body, constituted merely administratively, to compensate victims of violent crimes, was held to be reviewable in R-V-Criminal Injuries Compensation Board, ex parte Lavin (1967 2QB 864). Lord Parker C.J. said, “the exact limit of the ancient remedy by way of Certiorari have never been and ought not to be specifically defined and should be extended to meet changing condition.”

In R-v-Penal of Takeover and Mergers, ex-parte Datafin Plc, supra, the court of Appeal discarded the contention that in view of the Panel's non-statutory character, which is an unincorporated association in the city of London, engaged to monitor rules promulgated by itself, which governs company take overs and mergers and is without a visible source of legal support, having neither statutory nor contractual powers, is not amenable to judicial review. Although it declined to interfere on merit, nevertheless, observed, by recognising that the penal was susceptible to judicial review as it wielded immense power de facto, since violation of the code, adjudged by itself, may lead to expulsion from the stock exchange or investigation by the Department of Trade and Industry or other sanction. In expressing a positive view on amenability, the Court said that it must "recognise the realities of executive power . . . . . in defence of citizenry, and be prepared to grant judicial review of the Panel's rulings so as to prevent abuse of the enormously wide discretion which it arrogates to itself" '(per Sir John Donaldson, MR).

Notwithstanding that the function of the Take-over Penal was outside the machinery of the government, the court emphasised that as a

matter of fact, the Penal performed an important public duty and the Secretary of state deliberately relied upon it as the “centerpiece of his regulation of that market” in conjunction with statutory regulation of investment business. Lloyd LJ in that case termed it as “an implied devolution of power” observing, “Possibly the only essential elements are what can be described as a public element, which can take many different forms, and the exclusion from the jurisdiction of bodies whose sole source of power is a consensual submission to their jurisdiction.”

Subsequent to the innovation of this generous formula by the Court of Appeal through the case of “Panel on Take-over”, based on the recognition of real executive power’ in defining “public element” the English courts intervened to review decisions taken by a host of non-governmental, non-statutory bodies like the General Medical Council (R-v-General Medical Council ex-parte Gee 1986, 1 WLR 1247), a private school administered under a trust deed when the impugned dismissal of the governor was carried out by the trustees (R-V-Trustees of Roman Catholic

Diocese of Westminster, ex-parte Andrew, 1990 COD 25), a voluntary school, whose articles were made under statute (R-v-Board of Governor of the London Oratory School, ex-parte Regis, The Times, 17th February 1988) a private city technology college, which was maintained under an agreement with the Secretary of State under statutory powers, whose refusal to admit pupil was held reviewable (R-v-Governors of Haberdashers Askeis Hateham College Trust, exparte Tyrell. 1995 COD 399 The Time, 19th October 1994), the Advertising Standard Authority, set up by advertising industry for voluntary self regulation, (R-v- Advertising standard Authority ex-parte Insurance Service PLC 1990 2 Admin LR 77 and R-v-Advertising Standard Authority ex-party Vernous Organisation Ltd, 1992 1WLR 1289, (where the Court said, if the Advertising Stander Authority had not existed, the government would, no doubt, have acted, like the Take-over Panel, and that the Authority played a part in a system

of government control), the Press Complaints Commission, a purely non-statutory body (R-v-Press Complaints commission, a purely non-statutory body (r-v- Press complaints commission, 1997 a Admin LR 274), the Investors compensation Scheme Ltd (R-v-Investors Compensation Scheme Ltd., ex-parte Bowden, 1996 AC 261, (where the House of Lords stated that though the body concerned is a joint stock company, it is, nonetheless amenable to review because it is charged with administrating the rules of the scheme which are made by the Securities and Investment Board, exercising statutory power delegated to them by the secretary of state, and as such, is interwoven with a system of statutory or governmental control), the Institute of Chartered Accountants (R-v- Institute of Chartered Accountants, 1998 All E R 14, (where the Court observed that, a non statutory though, the Institute performs important responsibilities under the companies act 1989), the Life Savings Society (R-v- Life saving society,

ex-parte Heather Mary Rose Howe, 1990 COD 440 (in which case the Court of Appeal indicated, obitar, that if decision of the non-statutory body was not based on contract and if it raised a public law issue, review may be available, although the , court refused to intervene because the applicant was seeking to remedy a private grievance in that she suffered harm to her reputation at the action of the body and hence no public law claim was involved).

The English courts, however, continued with their declination to review decision of bodies whose power are purely based on contacts. Hence, they had refused to review decision of private sporting bodies created by contracting parties like the Jockey Club (R-v-Jockey Club, ex parte Massingberd-Mundy 1993, 2 ALL E R 207), (R-v-Jockey Club, ex parte Aga Khan, 1993, 1 WLR 909), Football Association (R-v- Football Association Ltd, ex-parte Football League Ltd, 1993, 2 ALLLR 833),

(although in the case of Jones-v- Welsh Football Union, (The Times, 6th January 1998) the High Court's did intervene, and the court of appeal affirmed the High Court's decision, saying that sports now being a big business, it would be naive to pretend that it could be kept out of riewability as used to be the case many years ago).

The English courts also refused to intervene in non government ecclesiastical bodies like the Jewish synagogue (R-v-Chief Rabbi ex-parte Watchman) and the Muslim Mosque (R-v- Imam of Bury Park Jame Masjid ex-parte sulaiman Ali 1994, COD142). They also refused to review decision by Greyhound Racing Club (Greyhound Racing Ltd. 1983 IWLR 1302), Lloyd corporation's decision (Corporation of Lloyds-v-Brigs 1993 1 Lloyds Report 176), by an independent school (R-v- Fernhill Manor School ex-parte Brown 1992, 5. Admin LR 159, (stating that such schools are, generally, not amenable to judicial review as the relationship between those

attending and the school is based on contracts with parents and there is no sufficient statutory underpinning to render their decisions amenable to judicial review).

The Rt. Hon'ble The Lord Woolf M.R. and Prof Jeffery Jowell in their book, principles of Judicial Review, summarized the legal position generally and also in respect to contractual matters, in following terms (page73):

(1) The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a "public" or a "private" body.

(2) The principles of judicial review prima facie govern the activities of bodies performing public functions.

(3) However, not all decision taken by bodies in the course of their public function are the subject matter of judicial review. In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function.

(a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied: and

(b) Where there is a contract between the litigants, In such a case the express or implied terms or the agreement should normally govern the matter.

(c) This reflects the normal approach of English law, namely, that the terms of a contract will normally

govern the transaction, or other relationship between the parties, rather than the general law, Thus, where a special method of resolving disputes (such as arbitration or resolution by private or domestic tribunals) has been agreed by parties (expressly or by necessary implication). that regime, and not judicial review, will normally govern the dispute".

The English Courts had also invented a device to draw distinction between two types of functions performed by the same body, one type being amenable, while the other type is not, So in the case of R-v-Independent Broadcasting Authority (The Times, 4th March 1986), the authority's decision in so far it relates to the exercise of statutory power was concerned was, reviewable, while it's voting power in the applicant company was not.

Having dissected the English position, we should now concentrate our attention to our own system. Is it at variance with that of the U.K.?

There are two obvious and notable differences; the English position derives from the Common Law, whereas ours stem from Article 102 of the constitution, and secondly while in our constitutional scheme, two diverge types of situations reflected vide Article 102 (1) and Article 102(2) respectively, as to the availability of judicial review, depending on whether or not fundamental rights are engaged, no such distinction, for obvious reason, exists in the English judicial review jurisprudence.

That, said, however, it should not skip from out mind that our constitutional provisions are not totally divorced from those of the English Common Law. As a matter of fact, the nomenclatures Mandamus, Certiorari, Quo Warranto, Prohibition, Habeas Corpus do not have a place

in our Constitution. They have permeated into our Constitutional law through case Laws, engendered from the English Common Law.

Article 102 reads; “Power of High Court Division to issue certain order and directions. ete, (1) The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by part III of this constitution.

(2) the High Court Division may, if satisfied that no other equally efficacious remedy is provided by law

(a) on the application of any person aggrieved, make an order

(1) directing a person performing any functions in connection with the affairs of the Republic or of a local authority to refrain from doing that

which he is not permitted by law to do or to do that which he is required by law to do; or

(II) declaring that any act done or proceeding taken by a person performing functions in commotion with the affairs of the Republic or of local authority has been done or taken without lawful authority and is of no legal effect or

(b) on the application of any person, make an order-

(I) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner, or

(II) requiring person holding or purporting to hold a public office to show under what authority he claims to hold that office

(3) Notwithstanding anything contained in the foregoing clauses, the High Court Division shall have no power under this article to pass

any interim or other order in relation to any law to which article 47 applies.

(4) where on an application made under clause (I) or sub-clause (a) of clause (2), an interim order is prayed for and such interim order is likely to have the effect of –

(a) prejudicing or interfering with any measure designed to implement any development programme, or any development work; or

(b) being otherwise harmful to the public interest the high Court Division shall not make an interim order unless the Attorney General has been given reasonable notice of the given reasonable notice of the application and he (or an advocate authorized by him in that behalf) has been given opportunity of being heard, and the High

Court division is satisfied that the interim order would not have the effect referred to in sub-clause (a) sub-clause (b).

(5) In this article, unless the context otherwise requires, “person” includes a statutory public authority and any court or Tribunal, other than a court or tribunal established under a law relating to the defence services of Bangladesh or any disciplined force or a tribunal to which article 117 applies”.

So, as far as Article 102(I) is concerned ie, when fundamental rights are invoked, the question of status of the impugned person or authority loses it’s relevance because the phrases “any person or authority”, in the said sub-Article necessarily refers to a person or an authority, irrespective of his/it’s status. (Shri Anadi Mukla Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsov Smarak Trust-v-VR Rudani AIR 1989 (SC) 1607). Decision by such a person or an authority is,

irrespective of whether he /it is a public functionary or a private one, is hence reviewable, provided however, that infringement of one of the fundamental rights, figured in Articles 27-44, is in question. In so far as such a person need not be a public functionary, little complication arises in fundamental rights oriented cases.

On the other hand, intricacies appear when fundamental rights provisions are not engaged, i.e., when the petition is hoisted on Article 102(2). In such a circumstance the body or the person, whose decision has been impugned, must be the one that “performs the function in connection, either with the affairs of the ‘Republic’ or in connection with the affair of a local authority”.

In this respect, it is necessary to dispel a widely held, yet, a very obfuscating view, that the body concerned must necessarily be a statutory body or a local authority, as defined by Section 3(28) of the General Clause

Act 1897. Article 102(2) does definitely not say that the body itself has to be a statutory one or a local authority. What it really says is that the body or the person concerned shall be the one that “performs the functions in connection with affairs of the Republic or (in connection with the affairs of) a local authority”. (The Bengali version of Article 102(2) Makes it more clear). From that point of view the status of the body or the person is not necessarily decisive because a non-government officer or a non-local authority officer can also “perform function in connection with the affairs of the government or of a local authority”.

A “Local authority” has been defined by Section 3(28) of the General Clauses Act 1897 to inter alia, excluding such corporations, bodies or authorities, as are not constituted by the government under any law; law is defined by Article 152, and hence no scope of any manouevring exists to expand the area of local authority itself. But, when this is borne in mind

that Article 102(2) is not concerned with the status of the body or the person itself but with the question as to whether the body or the person "performs the function in connection with the affairs of the Public or of a local authority", we should not be taken alack with much hurdle to inject the 'public law' doctrine, enunciated in 'Panel of Take-Over' case, where the Court of Appeal stated that all such bodies are likely, in principle to be amenable to judicial review, since they are intended to 'perform functions' properly seen as falling within the responsibility of the state.

We can not be oblivious of the fact that there are scores of people and bodies, not officials of any local authorities, or of the Republic, who are, nevertheless, engaged in performing functions of such authorities or of the Republic, like contractors, consultants, agents, sub-agents, delegatees and so on, acting really as the alter ego of the local authorities or of the

government, who can, no doubt be susceptible to review under sub-Article (2).

It would be in defiance of the notion of purposive interpretation to say that by the passages, “a person performing the function in connection with the affairs of the Republic or a local Authority”, the framers of our Constitution meant to confine the list within public servant or the servants of local authorities. If that was their intent, they would have so limited the ambit with expressive words. The additional words “in connection with” is significant. If the framers meant to confine liabilities on the government or local authorities or their officials only, they would not have inserted those additional words and would have simply stated “performing functions of the Republic or of a local authority”. This is to be remembered that “Parliament does nothing in vain”. The list of people or bodies performing functions in connection with the affairs of the republic or of a local

authority can not be cloistered in this way. Hence, no reason exists as to why person, including non-natural ones, not in the employment of the government or of statutory bodies, yet performing important public functions for or in substitution of them, like private universities, private hospitals etc. (arguably the decision in the case of Manjurul Huq-v-Bangladesh and others, 44DLR 239, would have been different if the issue was not confined to the Canteen of the Bangladesh Diabetic Association), can not be held to be “performing functions in connection with the affairs of the Republic or (affairs of) a local Authority” as they are not only performing duties of utmost public importance and public character, but are doing so virtually in substitution of the government or of the local authorities either under licenses granted by the state or by the local authorities or as their agents or delegatees and that, had these private bodies not been there to perform the said public oriented duties, the

government or the local authorities would have, invariably, been required to step into their toes as it is one of the fundamental obligations of the state and of the local authorities to provide education, healthcare, sporting facilities etc.

So, no reason would justify keeping at bay the ratio expressed by the court of Appeal in the “Penal on Take-over” Case supra, as well other cases that followed “Panels” principle, while interpreting the ambit of both the sub-Articles of Article 102 of our Constitution. In fact, in addition to the ratio in the case of ‘Panel of Take-Over’, plentitude of authorities, cited below, are there from our as well as Indian jurisdiction to lend support to this view.

In the case of Zakir Hossain-v-Bangladesh, 55DLR 130, this Division expressed that in so far as providing, establishing and maintaining cellular phones remained confined to the exclusivity of authority of the

government under applicable statutes, a person who performs the government's said function as a grantee of the government's aforementioned power under an agreement and license, does in fact perform the governmental and sovereign function of the latter as it's agent and the person concerned, a mobile phone provider company is, hence a 'person performing functions in connection with the affairs of the Republic', as it's agent and is, as such amenable to review under Article 102(2) of the Constitution, notwithstanding it's own non-statutory status.

Similarly, by a perspicacious judgment in the case of Farzana Moazzem-v-Securities and Exchange Commission, 54 DLR 66, this Division proclaimed that a body, though not created by a statute, would nevertheless be amenable to writ jurisdiction if it performs the job as a subordinate functionary or as a instrumentality of a statutory body by performing several duties cited in a statute or in the preamble to a statute.

This decision obviously reflects a broad-based purposive and innovative interpretation, expanding the realm of ‘Judicial Review’, and is in total concord with the ratio expressed in the ‘Panel of Take-Over’ case, supra.

In Conforce Ltde.-v-Titas Gas Transmission and Distribution co. Ltd. 42 DLR (HC) 33, this Division held that Titas Gas, though a limited company was, nevertheless amenable to Writ jurisdiction because, it performs the function of distribution sale etc. of gas substance under the direct control of a statutory corporation and also under the government acting through the Ministry of Mineral Oil and Gas Resources.

Likewise the Indian Supreme Court in the case of Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsov Smarak Trust-V-VR Rudani AIR supra, expressing that the term authority used in Article 226 must receive a liberal meaning, observed ‘The word any person or authority used in Article 226 are therefore not to confine to

statutory authorities and instrumentalities of the state. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body.' The Supreme Court went on to say, 'The Law relating to mandamus made the most spectacular advance. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs . . . . . . Under Article 226 writs can be issued to any person or authority. It can be issued for the enforcement of any of the fundamental rights and for any other purpose.' The Court also emphasized, 'The judicial control over the fast expanding maze of bodies affecting rights of the people should not be put into watertight compartments'. The Court further observed, "It has to be appreciated that the appellants trust was managing the affiliated college to which public money is paid as government aid plays a major role in the control, maintenance and working

of educational institutions. The aided institutions like government institutions discharge public functions by way of imparting education to students. They are subject to rules regulations of the affiliating university. Their activities are closely supervised by the university authorities. Employment in such institutions therefore, is not devoid of any public character.'

The ratio of this case is also very akin to the concept of "public law domain" expressed by the Court of Appeal in "Take-Over Panel" case.

The Bombay High Court expressed similar view in the case of Sejal Rikeen Dalal-Vs-Stock Exchange, Bombay, (AIR 1991 Bom 30).

In Khatri-v-Bihar, (AIR 1981 S.C. 928) the Indian Supreme Court unambiguously expressed that granting relief in case of violation of fundamental rights the court is not helpless and it should be prepared to

devise new remedies and, if necessary, to develop new principles of liability for the purpose of vindicating those precious fundamental rights.

True it is that the Indian Constitutional scheme is not identical to ours in toto, but, on the question as to whose decisions are amenable to scrutiny under the judicial review microscope, there hardly exists any divergence.

We are, hence not tempted to accede to the generalized nature of the submission proffered on behalf of the respondents, suggesting that if the body concerned is not per se a statutory body or a local authority as per the definition given by Section 3(28) of the General Clauses Act 1897, ‘cul-de-sac. We hold that although the status of the body or the person, can not always be ignored, private bodies or persons can, in certain circumstances,

notwithstanding their non statutory status, perform functions in connection with the affairs of the Republic or the affairs of local authorities nonetheless, as narrated above. We are hence, inclined to endorse Mr. Mahmud's submission that the source or the origin of power of the body alone is not decisive because the nature of the function, founded on "function based" theory is also of utmost importance in deciding whether action or omission of the body concerned is or is not judicially reviewable. His profferment goes glove in hands with the ratio expressed in the 'Panel of Take-Over' case, and of course with the cases decided at our as well as Indian Jurisdictions, discussed above.

The respondent No. 1, the NSF is admittedly not a commercial or trading entity. It was animated and does exists for the solitary purpose of providing recreation, not for profit but as a public utility body, to enable interested people to participate in the sports of shooting. It thrives on tax

payers money indeed the subject land it has received for a consideration of Tk. 1, is the property of the state, and is thereby that of the tax payers.

Now, apart from the general notion that providing sports and other recreational facilities to the citizenry is one of the bounden obligations of the state, our constitution has underscored the states' obligation by figuring the following expressions at Article 15; "Provisions of basic necessities. It shall be a fundamental responsibility of the state to attain, through Planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people with a view to securing to its citizens; (C) the right to reasonable rest, recreation and leisure".

If the respondent no.1 was not in inexistence, the Government would in all possibility, have been required to perform the function, the earlier performs. Hence the contention that this body is not susceptible to writ jurisdiction, is in our view, otiose and exsanguinous.

Hence, it would be very difficult indeed to ward off the claim that the respondent No. 1 Federation is indeed engaged in "Performing the function in connection with the affairs of the Republic" by way of

providing right to recreation and leisure. In addition to putting reliance on the English and Indian decisions referred to above, we are particularly swamped by the enunciation, put on record by this Division in Farzana Moazzem-v-Securities and Exchange Commission, supra, where their Lordships came out with an unequivocal proposition that a body, though not created by statute, would, nevertheless be amenable to Writ jurisdiction if it performs the function as a subordinate functionary or as an instrumentality of a statutory body by performing several duties cited in a statute or in its preamble. Respondent No. 1 is certainly such an instrumentality of the respondent no. 2 Council.

Had it been engaged in the business of so proving recreation and leisure as a trading **compository**, that would have given rise to a different scenario, because it would then not provide the “right” to recreation and leisure, but would have “sold” these facilities for profit, not at the cost of

tax payers money to advance a cause sponsored by the government, but at it's own cost.

So, irrespective of whether this body is a statutory **quango** or mandarin or not, it, in our introspection is certainly performing jobs in "connection with the affairs of the Republic, by extending the right to recreation and leisure, as enunciated by Article 15(C), and in doing so it is, in truth, acting as an alter ego of the government.

Although, having held that a body need not be a statutory one to be amenable to JR, we need not explore the question as to whether the respondent no. 1 is or is not a statutory functionary, we would, nevertheless, travel a bit longer to explore that question as well in the interest of totality.

Our Constituent Assembly was quite mindful not to leave the concept "statutory public authority" undefined, but to define the some as

meaning “any authority, corporation or body, ctivities or the principal activities of which are authorised by any Act, ordinance, order or instrument having the force of law in Bangladesh.

Now, the Parliament enacted a legislation under the title National Sports Council Act 1974, with a view to “Provide for the Constitution of a council for the development and regulation of sports and co-ordination of sports activities in Bangladesh, and for matters connected therewith” (Quoted from the Preamble).

The Act defined “National Sports Organisations” as “Organisations constituted on a national basis for controlling sports and recognised as such by the council” (Section 2(d). “Sports” has been given the meaning as “a game for recreation involving bodily exercise and includes such other games as the government may, by notification in the official gazette, declare to be sports for the purposes of this Act (Section 2(f)).

Section 3(1) stipulates, “As soon as may be . . . . . the Government shall . . . . . constitute, in accordance with the provisions of this Act, a Council . . . . . for carrying out the purpose of this Act”.

Section 4(1) says; The Council shall consists of the following members-

(h) one representative from each of the organisations specified in Part III of the schedule, to be nominated by the President of that organisation”.

Section 10 provides “The functions of the Council shall be (a) the development and regulation of sports and co-ordination of sports activities.

(b) The grant of recognition to the national spoorts orgaisations and the affiliation of other sports organisations. Section 20 covenants; “notwithstanding anything contained in any other law for the time being in force, or in any agreement, contract, memorandum or articles of association or any other legal instrument, an organisation specified in any of the entries 1 to 12 in part I of the schedule shall have a President who shall be elected according to prescribed rules or, as the case may be, nominated by the

government and any provision to the contrary in the constitution or the memorandum or articles of association of such organisation shall stand modified and have effect accordingly".

So, as the respondent No. 1 is admittedly a national sports orgnisation, cited in the Act, it stand's constituted for controlling sports and is recognised as such by the Council.

As such, its activities of "Controlling the sports of shooting is in fact authorised by Section 2(d) of this Act, as its activities stand recognised by the Council per this Section, and the statute has vested on the government sufficient power to decide who shall be its President..

Furthermore, its primary and indeed solitary function is shooting, which has been declared by the government to be a "sports" as per section 2(f) of the Act. Hence its activities is authorised as a sport by this Act.

Its activities is authorised by this Act because it is operating as a shooting sports body as it has received recognition for this from the National Sports Council as per the above stated provision of this Act.

It is worthy of mention that without such recognition its shooting activities would not only become illegal, but criminal too, because no person can carry, let alone use, arms without a license, from which requirement the members of the respondent no. 1 Federation enjoy immunity.

Its participation in sporting competitions abroad is also because it receives authorisation for such competition under Section 10(e).

So, it is a fallacy to say that the respondent no. 1 Federation is not a statutory public authority.

So, even if it is accepted for argument's sake that Article 102 can only be engaged against a statutory public body or a local authority only, with which view we are not, for the reasons narrated above, in consensus, this body would still be amenable to writ jurisdiction as it is indeed a statutory emanation.

In this context, we would add that if Sports Council receives recognition as a statutory body, there can hardly be any reason to exclude such affiliated bodies of the Council which have been implanted with a new life by the same statute, and which are explicitly referred to by it.

This takes us to the final question, which is whether the impugned leasing process was with lawful authority or not. We need not travel a long way to find the answer. It is quite conspicuously, discernibly, explicitly and unambiguously stated in the lease agreement that the respondent Federation shall not sub-let any part of the premises, shall not use any part of it for any purpose other than shooting sports. And why should such on embargo not be there. After all the land was a public property, created and existed at tax

payers money: it has in fact been gifted to the Federation, virtually free of a price.

It is axiomatic that the purported contract between the respondent no.1 Federation and the respondent no. 6 is not a statutory one, but that is not the issue. The issue is whether it is open to the respondent no. 1 Federation to act in breach of law by flouting a provision contained in the agreement subject to which the respondent no. 4 conveyed the land to the respondent no. 1 Federation. If the respondent no. 1 Federation flouts the covenant by which it bound itself not to alienate the property, the lessor, RAJUK, shall be entitle to revoke the lease, which may even result in the eclipse of the respondent Federation. Most importantly, however, a body like the respondent no.1 should not be allowed to use the land for a purpose other than the one for which the land has virtually been gifted to it at the cost of the citizenry at large, nor should it be allowed to be stigmatised with the aspersion of being a law breacher. It will transmit a

grotesque signal to all if a body thriving at the instance of the government and headed by a person appointed by the government, is allowed to act in derogation of law.

For the reasons stated above and with the observation figured herein, we are making the Rule absolute, as it is aptly destined to be credited with such a glory.

The respondents are restrained from leasing the subject property to anybody under any circumstance.

Sheikh Md.Zakir Hossain,J.-

I agree.