IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Muzammel Hossain.
Chief Justice.
Mr. Justice Surendra Kumar Sinha.
Mr. Justice Syed Mahmud Hossain.

CIVIL APPEAL NO.27 of 2011.

(From the judgment and order dated 15.12.2009 passed by the High Court Division in Election Petition No.8 of 2009)

Md. Abul Kashem. : .....Appellant.

-Versus-

Mahmudul Hasan @ Major General Mahmudul Hasan (Rtd.) and others. : .....Respondents.

For the Appellant.	:	Mr. Rokanuddin Mahmud, Senior Advocate, instructed by Mr. Mvi. Md. Wahidullah, Advocate-on-Record.
For Respondent No.1.	:	Mr. Amirul Islam, Senior Advocate (with Mr. A.J. Mohammad Ali, Senior Advocate), instructed by Mr. Syed Mahbubur Rahman, Advocate-on-Record.
Respondent No.7.	:	Mrs. Nahid Sultana, Advocate-on-Record.
For Respondent No.8.	:	Mr. Md. Abdur Nur, Advocate-on-Record.
Respondent Nos.2-6 & 9-10.	:	Not represented.
Dates of Hearing.	**:**	The10.01.2012,11.01.2012,17.01.2012, 24.01.2012 and 31.01.2012.
Date of Judgment	**:**	**14th February,2012.**

J U D G M E N T

SYED MAHMUD HOSSAIN, J: This appeal, by leave, by the appellant, arises out of the judgment and order dated 15.12.2009 passed by the High court Division in Election Petition No.08 of 2009 allowing the same on contest.

The facts involved in the appeal, in brief, are as follows:

In the election of the 9th Parliament for Tangail-5 Constituency held on 29.12.2008, the appellant and respondent Nos.1-4 were the contesting candidates. At the initial stage of the election process, the Deputy Commissioner, Tangail acting as Returning Officer received objections and information about disqualification of the appellant on two counts, namely default in paying bank loan and telephone bills.

The first source was a letter dated 30.11.2008 issued by the Sonali Bank Limited, Bango Bhandhu Avenue, Corporate Branch, Dhaka(Respondent No.7) under memo No.BBA/GAD-1/14930 stating that the appellant was a bank loan defaulter for an amount of Tk.15,44,32,437.31 as on 30.11.2008.

The second source was a letter issued by the Joint Director of Credit Information Bureau (shortly, CIB) of the Bangladesh Bank, (Respondent No.8) under Memo No.CIB-1(90)/208-30295 dated 3-12-2008 about enlistment of the appellant in the CIB Report as a loan defaulter. However, on the following day i.e. on 04.12.2008, the appellant, managed to have sent a fax message signed by the Joint Director, CIB to the Returning Officer to the effect that the appellant was not a bank loan defaulter.

The third source was a letter dated 02.12.2008 under memo No. T-R/mm/Nirbachan/08 sent by the Accounts Officer, Telephone Revenue, BTCL, Mymensingh (Respondent No.10) about the non-payment of telephone bills by the appellant

for an amount of Tk.31,110/= against telephone No.45701 earlier taken by the appellant.

Respondent No.1 also claimed that the appellant took loan from the Pubali Bank Limited and the outstanding loan stood at Tk. 31,71,00,000/-.

Ignoring the information, the Returning Officer, Tangail accepted the nomination paper of the appellant. After that, the election was held on 29.12.2008 and the appellant was declared as the returned candidate by gazette notification dated 01.01.2009.

After publication of the election results, respondent No.1 submitted a representation on 11.01.2009 and also on 28.01.2009 to the Chief Election Commissioner to take action against the appellant, but to no avail. So, respondent No.1 filed the election petition before the High Court Division.

The appellant filed written statement and also an additional written statement. He has denied the allegations about his disqualification. He has contended that there is no cause of action to file this case and that the case was not maintainable as respondent No.1 did not prefer any appeal to the Election Commission against the decision of the Returning Officer taken on 4.12.2008 accepting the nomination paper of the appellant.

In respect of loan of the Sonali Bank and the relevant CIB report, his case is that he did not take any personal loan from the Sonali Bank; rather MAQ Enterprise Ltd., a public limited company, took some loan from the Sonali Bank, Corporate Branch, Bango Bandhu Avenue, Dhaka. He is

the Managing Director of the said Company and also the guarantor of the loan. The shares held by him in that Company is less than 25% of the share capital. So, he is not a loan defaulter under the provision of the Bank Companies Act, 1991.

However, he has admitted that the said company was shown as a defaulter in the CIB report. So, the Company filed Writ Petition No. 491 of 2007 and obtained Rule Nisi and an order of injunction restraining the Bangladesh Bank and the Sonali Bank from publishing the name of the Company as a defaulter in the CIB report with a direction to delete the name of the Company from that report. Sonali Bank illegally sent the letter dated 30.11.2008 to the Returning Officer raising objection about the candidature of the appellant in violation of the said injunction.

The appellant has further stated that the Bangladesh Bank issued three letters to the Returning Officer, Tangail about the entries in the CIB Report. The first letter was dated 02.12.2008 under Memo No. wmAvBwe-1(10)/2008-29876 in which the name of only one candidate named Abul Hossen was included. But by the second letter dated 03.12.2008 the said first memo was amended and the appellant was mentioned as a defaulter. After that, in the third letter dated 04.12.2008 under Memo No. wmAvB-1(10)2008-30406 Bangladesh Bank informed the Returning Officer that the letter dated 03.12.2008 stood amended and that the appellant was not a defaulter.

With regard to payment of telephone bills, the appellant has stated that he regularly paid all the bills to the concerned authority including bills for the months of March, April and May 2001. But BTTB issued three supplementary bills for the said three months for the amounts of TK.731/-, TK.2853/- and TK.2256/- respectively. So, the appellant raised objection in writing firstly on 06.02.2002 about the said three bills. But the Telephone line was disconnected in 2002. He again raised objection about the supplementary bills on various dates for rectifying the supplementary bills and for getting reconnection. The last letter was sent on 17.05.2004. These objections were not responded to by BTTB/(BTCL).

With regard to the loan of Pubali Bank amounting to Tk.31,71,00,000/-, the appellant has stated that the allegations in this respect are vague and incorrect and no information on this account was sent by CIB to the Returning Officer.

The appellant has claimed that he was duly elected Member of Parliament securing the highest number of votes with a difference of more than seventy-six thousand votes compared to that of respondent No.1. So, the election petition is liable to be dismissed.

Respondent No.8 being the Joint Director, CIB, has filed a written statement and an additional written statement. He has admitted the issuance of three letters dated 2nd, 3rd, and 4th December,2008 by CIB to the Returning Officer. These three letters were issued on the basis of the data base and also pursuant to the order passed by the

High Court Division in Writ Petition No.491 of 2007. After election, the Bangladesh Bank caused an inquiry by a Committee in response to a letter dated 02.03.2009 issued by the Election Commission. The Inquiry Committee found that a loan was given by the Uttara Bank, Narayanganj Branch to the company, namely, M/S. Nordisk Agency Ltd. One "Abul Kashem" was recorded as the guarantor of the said loan, but his particulars were not traceable. So in the first letter dated 02.12.2008 the name of the appellant "Md. Abul Kashem" was not included as a loan defaulter. But as a measure of precaution, the CIB issued the second letter dated 03.12.2008 wherein the name of Abul Kashem was included as a loan defaulter. But on the following day i.e. on 04.12.2008, the Uttara Bank sent to the CIB a letter stating that the information of the Database should be amended by excluding the name of M.A. Kashem as the guarantor of the said loan. Accordingly the CIB issued to the Returning Officer the third letter dated 04.12.2008 stating about the amended position.

With regard to the loan of Sonali Bank Ltd. it is stated in the Inquiry Report that in Writ Petition No. 491 of 2007 the High Court Division passed an order on 22.01.2007 staying operation of the CIB report initially for a period of 3 months and subsequently extended from time to time and the extension was valid till 25.12.2008.

Respondent No.8 has further stated that the CIB informed the Election Commission that "‡KvU KZK wb®úwË bv nIqv chš wmAvBwe †_‡K UvsMvBj-5 Avm‡b cwZØwÜZvKvix Rbve †gvt Avej Kv‡kg‡K FY †Ljvcx h³ †`Lv‡bvi AeKvk †bB|"

Respondent No.9, the Director (Revenue) of the Bangladesh Telecommunication Limited (BTCL) also filed a separate written statement. His case, in short, is that because of arrear of telephone bills for an amount of TK. 31,110/-, the telephone connection of the appellant against Telephone No. 54701 was disconnected in the year 2002. The Mymensingh Telephone Revenue Office also issued supplementary bills for the months of March, April and May, 2001 demanding Tk.731/-, Tk.3853/- and Tk.2256/- respectively. The appellant filed separate applications dated 06.06.2002, 06.08.2002, 3.09.2002 and 17.5.2009 for correction and settlement of the said bills and re-connection of his telephone line. Then the Accounts Officer (Telephone Revenue), Mymensingh (Respondent No. 10) sent a reply dated 22.06.2004 to the objection of the appellant stating that the bills could not be exempted. The said Office sent another notice dated 12.05.2004 requesting the appellant to pay the arrear bills, failing which criminal action would be taken. But neither the said reply nor the notice could be served because of non-availability of the appellant. However, objection raised by the appellant along with his reminders is still under investigation. So the information given by the Telephone Revenue Office, Mymensingh to the Returning Officer, Tangail was not correct.

The High Court Division in Election Petition No.08 of 2009 by the impugned judgment and order dated 15.12.2009 passed the following orders:

I. The case is allowed on contest against the appellant and respondent Nos.8 and 9 and ex-parte against the rest.

II. The election of the appellant, Md. Abul Kashem is declared to be void.

III. The Election Commission is directed to declare petitioner-respondent No.1 or other contesting candidates, who in view of the records secured the second highest votes in that election, as the returned candidate from that constituency within seven days from receipt of the copy of the impugned judgment and order.

Against the impugned judgment and order, the appellant filed Civil Petition for Leave to Appeal No.1476 of 2010 in which leave was granted on 18.08.2010 resulting in Civil Appeal No.27 of 2011 of this Division.

Mr. Rokanuddin Mahmud, learned Senior Advocate appearing on behalf of the appellant, submits as follows:

I. In view of sub-article (1)(e) of Article 12 of the Representation of People Order,1972, the appellant ought not to have been identified with loan liabilities of the company of which he is only a Director since he himself personally was not a defaulter.

II. The High Court Division has committed illegality in not considering the chain of regularization of the loan according to the letter dated 26.12.2006 and as per the order of injunction of the High Court Division in Writ Petition No.491 of 2007 the Bangladesh Bank and the concerned Branch of the Sonali Bank were restrained from publishing the name of the company in the Credit Information Bureau (CIB) report as defaulter.

III. The loan was regularized till 26.12.2006 and as such, the appellant cannot be regarded as loan defaulter and respondent No.8, CIB of Bangladesh Bank informed the Election Commission that after passing the order of injunction, there is no scope for showing the appellant as defaulter till disposal of the Rule by the High Court Division and the Election Tribunal committed illegality in taking a different view.

IV. The High Court Division has wrongly relied upon explanation-V to sub-Article (1)(e)(a) of Article 12 the R.P.O. and considered the relevant sections of Bank Companies Act,1991 for designating the appellant as loan defaulter although an Explanation appended to the section cannot expand the meaning of the section and as such, there was no scope for designating the appellant as loan defaulter within the meaning of Bank Companies Act,1991.

V. The High Court Division interpreted the words ‘who’ as ‘which’ and ‘him’ as ‘it’ in clause

(m) of the proviso to Article 12(1) of the RPO although there is no scope for such interpretation as clause (m) was substituted by Representation of People (Amendment) Ordinance,2008.

VI. The High Court Division failed to identify discrepancies among the statement of BTCL in its written statement, in which, it is claimed that telephone was disconnected in 2002 owing to outstanding bill of Tk.31,110/- and the notice demanding the amount could not be served for non availability of the appellant and the High Court Division found that the appellant defaulted in payment of outstanding bill of the telephone and as such, the impugned judgment and order should be set aside. The findings of the High Court Division regarding non-payment of telephone bill are erroneous and contrary to the evidence on record.

Mr. M. Amirul Islam, learned Senior Advocate with Mr. A. J. Mohammad Ali, learned Senior Advocate, appearing on behalf of respondent No.1, supporting the impugned judgment, submits as follows:

I. Having considered the evidence on record and the relevant provision of law the High Court Division came to a finding that the appellant is a loan defaulter and as such, he was not qualified to be a Member of the Parliament.

II. The High Court Division on detailed consideration of the evidence on record came to a finding that the appellant defaulted in payment of telephone bills.

III. The findings of the High Court Division on the points of loan defaulter and bill defaulter are so exhaustive that no interference is called for by this Division.

To begin with, it is necessary to have a glimpse on the submissions of the learned Advocate on which leave was granted as under:

I. In view of sub-article (1)(e)(m) of article 12 of the Representation of People Order, 1972, the petitioner ought not to have been identified with the loan liabilities of the company of which he is only a director, since he himself personally was not a defaulter so far allegations of non-payment of the telephone bills are concerned.

II. The petitioner was not notified about such non-payment from the telephone department specially when he does no longer reside in his house of the local area where the said telephone was installed, as such, his nomination cannot be cancelled on the ground of such non-payment of telephone bills of which he was not notified.

Whether the appellant is a bank loan defaulter ?

The appellant is the Managing Director of MAQ Enterprise Ltd., a Public Limited Company in which he holds some shares. The company took loan from Sonali Bank’s Corporate Branch, Bangabandhu Avenue, Dhaka and the appellant is the guarantor of the loan. The said Branch of Sonali Bank by a letter dated 30.11.2008

(exhibit-1) informed the Returning Officer that the appellant defaulted in paying loan taken from it by MAQ Enterprise Limited. CIB, Bangladesh Bank by its letter dated 03.12.2008 [exhihbit-3(a) and another copy marked as exhibit-E(1)] informed the Returning Officer that according to CIB report, appellant No.1 was a loan defaulter and that on the next day by another letter dated 04.12.2008 (exhibit-E) CIB informed that the appellant was not a defaulter. By producing a certified copy of the order sheet of Writ No.498 of 2007 (exhibit-6), respondent No.1 admitted the averment of the appellant that there was an injunction issued by the High Court Division restraining CIB and Sonali Bank from publishing the name of the writ-petitioner, MAQ Enterprise Limited, represented by the appellant in the CIB report as defaulter. Therefore, the Returning Officer accepted the nomination of the appellant as valid.

In order to address the issue of whether the appellant is a loan defaulter, it is necessary to consider Article 12(1) of the Representation of People Order,1972 (in short, RPO) and section 5 (ga ga) of the Bank Companies Ain, 1991. Relevant portion of the Article 12(1) of RPO as amended by the Ordinance Nos.42 and 45 of 2008 (subsequently, converted to Amending Act,13 of 2009) is quoted below :

> **"12.(1)** Any elector of a constituency may propose or second for election to that constituency, the name of any person qualified to be a member under clause(1) of Article 66 of the Constitution:
>
> Provided that a person shall be disqualified for
>
> election as or for being, a member, if he-
>
> (a)-(k).....
>
> (l) being a loanee, other than a loanee who has taken small loan for agricultural purposes, has defaulted in repaying before from the day of submission of nomination paper any loan or an installment thereof taken by him from a bank or financial institution;
>
> (m) is a director of a company or a partner of a firm who has defaulted in repaying before from the day of submission of nomination paper any loan or an installment thereof taken by him from a bank or financial institution;
>
> (n)-(o).....
>
> **Explanation** I-IV.....
>
> **Explanation V-** A person or a company or a firm shall be deemed to have defaulted in repaying a loan or an installment thereof referred to in sub-clauses (l) and (m) of Article 12(l) if he or it is a defaulter within the meaning of the expression 'defaulter loanee' as defined in Bank-Company Act, 1991 (Act No.14 of 1991) and for financial institution, as defined by Bangladesh Bank under Financial Institution Act, 1993 (Act No.27 of 1993). The list of defaulter may be obtained from CIB of Bangladesh Bank or from the concerned bank or financial institution.
>
> **Explanation** VI-VII.....
>
> **(2**)-(7).....**"**

According to clause(m) of the proviso to Article 12(1), the director of a company or the partner of a firm will be disqualified if the company or the firm becomes a loan defaulter. According to Explanation-V,

the definition of a defaulter loanee is provided for in Bank Companies Act, 1991 and the Explanation provides that a person, that is, an individual, a company and also a firm may be treated as defaulter loanee and that necessary information may be collected from CIB or the concerned bank or financial institution.

Section 5 (Ga Ga) of the Bank Companies Act,1991 defines a defaulter loaneee (‡Ljvcx FY MnxZv) as follows :

> “aviv-5t msÁv|- welq A_ev cm‡½i cwicšx †Kvb wKQ bv _wK‡j, GB AvB‡b-
>
> (K)-(M).....
>
> (MM). Ò‡Ljvcx FY MnxZvÓ A_ †Kvb e¨w³ ev cwZôvb hvnvi wb‡Ri ev ¯v_ mswkó cwZôv‡bi AbK‡j c`Ë AMxg, FY ev Dnvi Ask ev Dnvi Dci AwRZ m` evsjv‡`k e¨vsK KZK RvixKZ msÁv Abhvqx †gqv‡`vIxY nIqvi 6(Qq) gvm AwZewnZ nBqv‡Qt
>
> Z‡e kZ _v‡K †h, †Ljvcx FY MnxZv †Kvb cvewjK wjwg‡UW †Kv¤úvbxi cwiPvjK bv nB‡j A_ev D³ †Kv¤úvbx‡Z Zvnvi ev Dnvi †kqv‡ii Ask 25% Gi AwaK bv nB‡j, D³ cvewjK wjwg‡UW †Kv¤úvbx ¯v_ mswkó cwZôvb ewjqv MY¨ nB‡e bvt
>
> Av‡iv kZ _v‡K †h, cvewjK wjwg‡UW †Kv¤úvbx e¨ZxZ Ab¨ †Kvb cwZôv‡b FY MnxZvi †kqv‡ii Ask AbwaK 20% nB‡j D³ cwZôvb GB `dvi Aaxb ¯v_ mswkó cwZôvb ewjqv MY¨ nB‡e bv|

Having considered the definition, it appears that an individual may be a ‡Ljvcx FY MnxZv if the following conditions are fulfilled:-

(i) An individual/body (cwZôvb) has taken a loan in his/its own name.

(ii) The individual is either a director or guarantor in that body.

(iii) The loan or part of it and interest accrued on the loan remains unpaid for more than six

months after it becomes due as defined by Bangladesh Bank.

In the present case, the appellant did not take any loan from Sonali Bank in his own name. Admittedly, the appellant is the Managing Director of the loanee company, MAQ Enterprise Limited. So, according to the provision to section 5(Ga Ga) quoted before, the appellant in his capacity as a Director/Managing Director, falls within the purview of the definition given in section (GA Ga) for the purpose of deciding his status for the loan taken by his company.

Now it is to be seen whether the loan liability in question attracts the expression "evsjv‡`k e¨vsK KZK RvixKZ msÁv Abhvqx †gqv‡`vËxb nIqvi 6 gvm AwZewnZ nBqv‡Q|" The quoted words eventually show that the loan must be ‡gqv‡`vËxY as per the criteria fixed by the Bangladesh Bank and 6 months must have elapsed after it has fallen due. Exhibit-1, the letter dated 30.11.2008 sent to the Returning Officer by the Sonali Bank, Corporate Branch, Bangabandhu Avenue, Dhaka reads as follows:

> "welqt- AÎ kvLvi †Ljvcx FY MnxZv cwZôvb †gmvm g¨vK G›Uvi cvBR wjt 141/1 †m¸b ewMPv, XvKv Gi e¨e¯vcbv cwiPvjK Rbve Gg,G, Kv‡kg wcZv-giûg †gŠt †gvt BqwQb Avjx Gi Avmb RvZxq msm` wbevP‡b cv_x nIqv cm‡½|"

> wk‡ivbv‡gv³ wel‡q Avcbvi m`q AeMwZi Rb¨ Rvbv‡bv hv‡"Q †h, AÎ kvLvi †Ljvcx FY MnxZv cwZôvb †gmvm g¨vK G›Uvi cvBR Gi eve¯v cwiPvjK Rbve Gg,G,Kv‡kg, wcZv-giûg †gŠt †gvt BhmwQb Avjx, wVKvbv-GbB(Gb)6G, †ivW bs-86, ¸jkvb g‡Wj UvDb, XvKv Avmb RvZxq msm` wbevP‡b Uv½vBj-5 Avm‡b m¤ve¨ cv_x e‡j Rvbv‡M‡Q| †gmvm g¨vK G›Uvi cvBR Gi †Ljvcx F‡Yi e‡Kqv wb‡P †ck Kiv nj(MM).

3OÐ11ÐO8Bs ZwiL wfwËK †jRvi w¯nwZ e‡KqvtÐ

F‡Yi weeiY	cwigvb	‡kbxKi‡bi gvb
K¨vk †µwWU †cRÐ138	5,68,09,382.57 UvKv	g›`/K (Bad & Loss)
K¨vk †µwWU nvB‡cvÐ139	2,11,19,323.34 UvKv	g›`/K (Bad & Loss)
K¨vk †µwWU nvB‡cvÐ108	52,34,078.40 UvKv	g›`/K (Bad & Loss)
eK wnmve (m` wenxb)	7,11,89,653.01 UvKv	g›`/K (Bad & Loss)
‡gvU=	15,44,32,437.31	g›`/K (Bad & Loss)

.....

Exhibit-1 shows that MAQ Enterprise is the loanee and the appellant is its Managing Director. Exhibit-1 states that outstanding loan was TK.15,44,32,437.31 as on 30.11.2008 against three accounts and blocked account and the loan has been classified as ‘Bad and Loss’.

**Meaning of †gqv‡`vËxb according to Bangladesh Bank:** On the point of a loan becoming due or †gqv‡`vËxb and bad and loss (g›`/KFY) “Master Circular-Loan Classification and Provisioning” issued by the Bangladesh Bank as BRDD Circular No.05 dated 05.06.2006 is relevant.

It is contended that the circular relied upon by the High Court Division does not have the force of law and that the High Court Division wrongly relied upon that circular. This circular is based upon (MM) of section 5 of the Bank Companies Act quoted above:

It appears that Bangladesh Bank was entrusted with the authority of giving definition of †gqv‡`vIqvZ|

Therefore, “Master Circular-Loan Classification and Provisioning” cannot be brushed aside.

From the statements made in Writ Petition No.491 of 2007, it appears that there were outstanding dues but it was claimed that the dues were regularized and the Sonali Bank’s Corporate Branch issued a certificate to that effect on 26.12.2006. It is also stated that the name of the appellant’s company was illegally included in the CIB list and that Annexure-E to the writ petition proved that MAQ Enterprise Limited was not a defaulter borrower. The relevant portion of the letter is extracted below:

bsÐweweG/wRGwWÐ1/g¨vK G›UvicvBR/108 ZvwiLt 26Ð12Ð2006Bs

cZ¨qbcÎ

GB g‡g cZ¨vqb Kiv hv‡”Q †h, AÎ kvLvi FYMwnZv cwZôvb †gmvm g¨vK G›UvicvBR wjt Gi e¨e¯nvcbv cwiPvjK Rbve Gg, G, Kv‡kg Gi Av‡e`‡bi †cw¶‡Z †mvbvjx e¨vs‡Ki 12Ð12Ð06 Bs Zvwi‡L AbwôZ cwiPvjbv cwil‡`i 932Zg mfvq wb‡gv³ k‡Z m` gIKd mweav Ab‡gvw`Z nq, hv cavb Kvhvj‡qi 26Ð12Ð2006Bs Zvwi‡Li 3355 msL¨K c‡Îi gva¨‡g kvLv‡K wbwðZ Kiv nq|

(K)ÐÐÐÐÐÐÐÐÐ

(L)ÐÐÐÐÐÐÐÐÐ

(M)ÐÐÐÐÐÐÐÐÐ

D‡jwLZ m` gIK‡di kZvbhvqx FYMwnZv KZK m¤úY kZvejx cvj‡bi AsMxKvi K‡i e‡Kqv WvDb †c‡g›U eve` A`¨

26Ð12Ð2006Bs Zvwi‡L Zv‡`i FY wnmv‡e 50.00(cÂvk) j¶ UvKv Rgv w`‡q‡Qb| Ab‡gv`bc‡Îi kZvejx cvjb Kivq FY wnmvewU eZgv‡b wbqwgZ Av‡Q|

¯ev¶i/A¯úó
(‡gvt Ave gQv)
DcÐgnve¨e¯nvcK|

There is nothing on record to identify that the loan in question was classified by Bangladesh Bank, namely, Continuous Loan, Demand Loan, Fixed Term or Short Term Loan or Micro Credit. Annexure-E to the writ petition reveals that the loan was regularized up to 26.12.2006, that is, the loan was to be paid by the company after 26.12.2006. Therefore, the burden lies on the appellant to prove that the loan was paid or renewed or rescheduled or the due installments were paid within due time after 26.12.2000. Curiously enough, the appellant failed to adduce any evidence to discharge his burden. Nothing has been stated in Writ Petition No.491 of 2007 or in the written objection of this case that any payment was made or step whatsoever was taken after 26.12.2006 and before the date of scrutiny of the nomination papers, that is, on 04.12.2008. The letter dated 14.12.2010 was issued by the Corporate Branch of Sonali Bank in response to the

request of MAQ Enterprise to the head office of the Sonali Bank with the recommendation of remission of interest and rescheduling. Such a letter even if sent by the Branch to the Head Office, Sonali Bank, burden lies on the appellant to prove that the loan which was outstanding on 26.12.2006 was actually repaid or renewed or rescheduled before the date of scrutiny of the nomination papers. It is to be noted that Article 12(1) of RPO refers to a Director of a Company. Sonali Bank in its letter dated 13.11.2010 (Exhibit-1) raised objection to the candidature of the appellant with reference to his capacity as a Director, not as a guarantor. From the discussion made before, it appears that the appellant as the Managing Director of MAQ Enterprise Limited falls within the purview of section-5 (Ga) (Ga) of Bank Companies Act, 1991 read with clause (m) of the proviso to article 12(1), RPO and its Explanation-V.

Classification of the loan of MAQ Enterprise Limited as “Bad and Loss” as stated in exhibit-1 having not been denied or otherwise disapproved of by appellant, means that according to Bangladesh Bank

circular the loan remained unpaid for at least 12 months or more after it became "past due/over due". With regard to the legal authority of the Corporate Branch of the Sonali Bank to identify a person as defaulter, Explanation-V of Article 12(1) of the RPO is relevant. This explanation clearly provides that the list of defaulter may be obtained from CIB of Bangladesh Bank or from the concerned bank or financial institution. In this connection it is necessary to quote Section 27(Ka)(Ka) of the Bank Companies Act, 1991 which runs as follows:

Òavi vÐ 27 KKt †Ljvcx FY Mnx Zvi Zvwj Kv, BZ¨vw`|Ð 1) c‡Z¨K e¨vsKÐ †Kv¤úvbx ev Avw_K cwZôvb, mgq mgq, Dnvi †Ljvcx FY Mnx Zv‡`i Zvwj Kv evsjv‡`k e¨vs‡K †ciY Kwi‡e|

2) DcÐavi v (1)Gi Aax b cvß Zvwj Kv evsjv‡`k e¨vsK †`‡ki mKj e¨vsKÐ †Kv¤úvbx I Avw_K cwZôv‡b †ciY Kwi‡e|

3) †Kvb †Ljvcx FY Mnx Zvi AbK‡j †Kvb e¨vsKÐ‡Kv¤úvbx ev Avw_K cwZôvb †Kvbi¡c FY mweav c`vb Kwi‡e bv|

4) Avcv ZZt ejer Ab¨ †Kvb AvB‡b hvnv wKQB _vKK bv †Kb, †Ljvcx FY Mnx Zvi wei“‡× FY c`vbKvix e¨vsKÐ‡Kv¤úvbx ev, †¶Î gZ, Avw_K cwZôvb cPwjZ AvBb Abmv‡i gvgjv `v‡qi Kwi‡e|Ó

Section 27 ka ka of Bank Companies Act, 1991 provides for identification and preparation of a list of defaulter loanees by the bank itself and then to

send it to Bangladesh Bank. The purpose of sending such list to the Bangladesh Bank having regulatory authority, is clearly stated in sub-sections (2) and (3) to the effect that Bangladesh Bank shall distribute such list to other banks and financial institutions which are prohibited from giving loan to the defaulter.

Sonali Bank had the legal authority to send the letter dated 30.11.2010 (Exhibit-1) to the Returning Officer, Tangail, in connection with the election process under RPO particularly for making decision on the validity of nomination paper of the appellant in view of clause (m) of proviso to Article 12(1) and Explanation V thereof read with section 27 Ka Ka of Bank Companies Act, 1991. In the light of the finding made above it is abundantly proved that the appellant was a bank loan defaulter on the date of submission of his nomination paper.

What is the effect of pendency of Writ Petition No.494 of 2007 and the order of interim injunction passed therein ? The High Court Division came to a finding that the order of injunction would not absolve

the appellant from the definition of bank loan defaulter. The High Court Division further came to a finding that exclusion of the name of the company from the list of CIB record did not absolve the company from the loan liability and that the disqualification of a candidate for the purpose of parliamentary election is a personal matter independent of the liability of his company. The High Court Division also held that since he held the office of Managing Director as an individual the liability arising from such position of the company attracted the application of disqualification contained in clause (m) of the proviso to Article-12(1) of RPO.

The findings of the High Court Division that disqualification of the candidate for the purpose of parliamentary election is a personal matter independent of the liability of his company is not correct. The appellant became a bank loan defaulter as his company defaulted in paying the loan of the bank. So his liability is not independent of the liability of the company.

The finding of the High Court Division that the case of ***Abdul Halim Gazi Vs. Afzal Hossain and others***, (2005) 25 BLD(AD) 239 did not apply to the facts and circumstances of the present case is not correct.

Having gone through the case of <u>Abdul Halim Gazi</u> (ibid) it appears that challenging the result of election, the respondent obtained a Rule Nisi against the appellant who was elected Chairman. It was contended that the appellant was a bank loan defaulter and concealing the said fact, he participated in the election in violation of Section 10(2)(g) of the Pourashava Ordinance, 1977. It was stated that the appellant along with his two brothers was the owner of M/S. Gazi Enterprise and M/S. Gazi Salt Industries which took loan from Jhalakathi Branch of Janata Bank and did not pay the loan. Consequently, the bank filed Artha Rin Adalat Case Nos.3 of 2000 and 2 of 2004 on 26.02.2002. Against the decisions of Artha Rin Adalat the appellant along with others filed Writ Petition No.4675 of 2002 and 4676 of 2002 before the High Court Division but both the Rules issued in both the writ petitions were discharged. The appellant also filed

Writ Petition Nos.4237 of 2001 and 4238 of 2001 before the High Court Division against the decision of the Artha Rin Adalat and rules issued were discharged on 24.04.2004.

Challenging the judgments delivered in the aforesaid writ petitions, the appellant filed Civil Petition for Leave to Appeal Nos.247, 248, 249 and 250 of 2004. This Division stayed the operations of the judgments and orders passed by the High Court Division in those writ petitions arising out of the decisions of the Artha Rin Adalat. The orders of stay passed by this Division in those Civil Petitions for Leave to Appeal were in force till disposal of the writ petition filed by the respondent challenging the election of the appellant. While making the rule absolute in the writ petition challenging the election of the appellant the High Court Division found that the appellant was bank loan defaulter.

Therefore it appears that the High Court Division ignoring the orders of stay passed by the Appellate Division in the Civil Petitions for leave to appeal arising out of the decisions made in the Artha Rin

Suits found the appellant as a loan defaulter. The High Court Division, in fact, was of the opinion that the orders of stay passed by the Appellate Division would not exonerate the appellant from the mischief of bank loan defaulter. Reversing the finding of the High Court Division this Division held as under:

> ***"In view of the facts and position of law mentioned by us we are of the view that the High Court Division committed error of law in holding that the writ respondent NO.7 (appellant) is a bank defaulter. We are rather of the view that the matter is pending before the Appellate Division and so it has not reached its finality and therefore the decision arrived at by the High Court Division declaring the Appellant as Bank Loan defaulter, at this stage, is premature and erroneous."***

From the above decision of this Division it is established that during continuance of the orders of stay passed by the Appellate Division against the judgments of the High Court Division arising out of the decisions of the Artha Rin Adalat the appellant could not be designated as a bank loan defaulter. This Division, therefore, set aside the judgment of the High

Court Division passed in the writ petition arising out of election dispute.

In the case in hand, as soon as the name of the appellant's company, MAQ Enterprise Limited, was included in the CIB list, the petitioner-company filed Writ Petition No.491 of 2007 challenging inclusion of its name in the CIB Report. On 22.01.2007, the High Court Division issued rule and restrained the respondents by an order of injunction from publishing the name of the MAQ Enterprise Limited in the CIB report of Bangladesh Bank on account of loan obtained by the company from the respondent-Sonali Bank, Corporate Branch, Bangabandhu Avenue, Dhaka in Account No.CC/H/108,CC/H/139, CC/P/138 and a block account. The High Court Division further directed to delete the name of MAQ Enterprise Limited from CIB report for a period of three months. The order of stay was subsequently extended from time to time. The Returning Officer on consideration of the order of injunction passed by the High Court Division in Writ Petition No.491 of 2007 accepted the nomination papers of the appellant as valid. The High Court Division found that though an

interim order of injunction was passed by the High Court Division in Writ Petition No.491 of 2007 and though the respondents were directed to delete the name of MAQ Enterprise Limited from the CIB report, the appellant is a defaulter. In the writ petition the writ petitioner, MAQ Enterprise Limited, not only impleaded Bangladesh Bank as one of the respondents but also inpleaded the General Manager Credit Information Bureau(CIB) Bangladesh Bank, Bangladesh Bank Bhaban, Motijheel Commercial Area and the Sonali Bank, Corporate Branch, Bangabandhu Avenue Dhaka as two other respondents. In the light of the decision made by this Division in the case of ***Abdul Halim Gazi*** *(ibid)* it can be conveniently said that the question of MAQ Enterprise Limited being a bank loan defaulter has not reached finality because of the order of injunction passed by the High Court Division in Writ Petition No.491 of 2007. According to section 27 ka ka of Bank Companies Act, 1991, the Bangladesh Bank prepared CIB report on the basis of information supplied by the concerned bank company or financial institutions. In the present case also on the basis of information

supplied by the Sonali Bank the name of MAQ Enterprise Limited was included in the CIB list. During continuance of the interim order of injunction it could not be said that the question of MAQ Enterprise Limited being a bank loan defaulter has reached finality. Neither Bangladesh Bank nor the Sonali Bank Corporate Branch, Bangabandhu Avenue Dhaka could designate MAQ Enterprise Limited as bank loan defaulter during continuance of the interim order of injunction. If MAQ Enterprise Limited is not a defaulter then the question of the appellant being a bank loan defaulter does not arise at all. The High Court Division could not comprehend the ***ratio decidendi*** of the case of ***Abdul Halim Gazi*** *(ibid)* and came to a wrong finding that this decision did not apply to the facts and circumstances of the present case.

Though the appellant is a bank loan defaulter within the meaning of section 5 ka ka of the Bank Companies Act, 1991 read with clause (m) of the proviso to Article 12(1), RPO and its Explanation-V, he could not be designated as bank loan defaulter till the question of defaulter reaches finality in Writ

Petition No.491 of 2007 in which an order of injunction was passed.

It is contended that in clause (m) of the proviso to Article 12(1) there is no scope for reading ‘who’ as ‘which’ and ‘him’ as ‘it’. In order to appreciate the contention it is necessary to quote:

“12(1).....

Provided that a person shall be disqualified for election as or for being, a member, if he-

(a)-(l)....

(1) being a loanee, other than a loanee who has taken small loan for agricultural purposes, has defaulted in repaying before fifteen days from the day of submission of nomination paper any loan or an installment thereof taken by him from a bank or financial institution;

(m)is a director of a company or a partner of a firm who has defaulted in repaying before fifteen days from the day of submission nomination paper any loan or an installment thereof taken by him from a bank or financial institution;”

Clause (m) quoted above reveals that the words ‘who’ and the expression ‘any loan or any installment taken by him’ are confusing. In the literal meaning,

the words ‘who’ and ‘him’, ordinarily refer to a natural person or an individual. In literal meaning, Clause (m) would mean that if ‘the director’ of a company himself or ‘a partner’ of a firm himself has taken a loan and defaulted in paying the loan he is disqualified. Such a literal interpretation is ridiculous. In that event such a loan would be a personal loan irrespective of that person’s status as a director of a company or a partner of a firm. The disqualification enumerated in the proviso to Article 12(1) shows that the personal loan of an individual has been separately dealt with in clause(l). The intention of clause (m) is to provide for a situation where a company (or partnership firm) takes loan, and the loan is defaulted by the company (or the firm), and in such a situation, every director of the defaulter company (or partner of the firms) comes within the mischief of the disqualification. This is a glaring drafting mistake in clause(m). Explanation-V makes the mistake clearer in its words “A person or a company or firm shall be deemed to have defaulted in repaying a loan or an installment thereof referred to in sub-clauses(1)

and (m).....” So the words ‘who’ and ‘taken by him’ occurring in clause (m) are to be read as ‘which’ and ‘taken by it’ respectively.

Let us have a comparison of the present clause (m) of Article 12(1) with corresponding repealed clause (b) of Article 12(1)

Repealed clause (b) to Article 12(1) (b)	**Existing clause(m)to Article 12(1)**
Article 12(1)(b) “is a director of a company or a partner of a firm which has defaulted in repaying on the day of submission of nomination paper any loan or any installment thereof taken by it from a bank;”	**Art.12(1)(m)** “is a director of a company or a partner of a firm who has defaulted in repaying before fifteen days from the day of submission of nomination paper any loan or an installment thereof taken by him from a bank or financial institution;”

In comparison with the latest amendment with the repealed provisions, it appears that in fact, there was drafting mistake in clause (m) to Article 12(1) of the RPO.

It is contended that the High Court Division by taking aid of Explanation-V to Article 12(1) of the RPO found that the appellant is a bank loan defaulter

although an Explanation cannot control the section. In support of this contention, Mr. Rokonuddin Mahmud, the learned Advocate cited a good number of cases. At the very outset Mr. Rokonuddin Mahmud has referred to **the Interpretation Statutes and Documents (Second Edition)** by Mahmudul Islam. It has been stated that an ‘Explanation’ added to a statutory provision is not a substantive provision in any sense of the terms. It is merely meant to explain or clarify certain ambiguities which may have crept in the main provision. The ordinary function of an explanation is to clarify, to facilitate the proper understanding of a provision to serve as a guide.

In the case of ***Chief Administrator of Auqaf, Punjab, Lahore Vs. Koura alias Karam Ilahi and another, PLD 1991 SC 596***, it is held as under:

> “It may be observed that an explanation is usually appended to a section, to clear the ambiguity and explain the meanings of the words used therein--- Unless compelled by the language, the explanation should not be construed to enlarge the scope of the section to which it is added.”

In the case of ***Naveed Textile Mills Ltd. Vs. Assistant Collector (Appraising) Custom House, Karachi and others, PLD 1985 SC 92***, it has been held as under:

> “We have heard the learned Counsel at length. We are in agreement with him that the ordinary function of an explanation is to clarify, to facilitate the proper understanding of a provision, to serve as a guide, as held in the case of Muhammad Hussain Patel. Nevertheless, it does not exhaust or complete the function and the purpose of an explanation. In the privy council case of Krishna Ayyangar: In re (1), it was held that ‘The construction of the Explanation must depend upon its terms, and no theory of the purpose can be entertained unless it is to be inferred from the language’. In another case from Indian Jurisdiction, State of Bombay V. United Motors(2), the Explanation was found to contain a legal fiction, to provide a simpler and workable test directed at facilitating the operation of the statute itself.
>
> The way this explanation is being construed by the learned counsel for the petitioners, has the effect of conferring on the Textile Commissioner, an altogether different jurisdiction, not identical with the one already conferred by the enacting provision, that is, to look for substitutes in the case of auto cone-winders, while in all other cases

> only to ascertain whether the imported article is locally manufactured or not, a much simpler exercise."

In the Case of the ***State of Bombay and another Vs. the United Motors(India)Ltd. and others, AIR 1953 SC 252***, it has been held as under:

> "It is to be noted that the Explanation does not say that the consumption should be by the purchaser himself. Nor do the words 'as a direct result' have reference to consumption. They qualify 'actual delivery'. The expression 'for the purpose of consumption in that State' must, in our opinion be understood as having reference not merely to the individual importer or purchaser but as contemplating distribution eventually to consumers in general with the State. Thus all buyers within the State of delivery from out of State sellers, except those buying for re export out of the State, would be within the scope of the Explanation and liable to be taxed by the State on their inter State transactions. It should be remembered here that the Explanation deals only with inter-State sales or purchase and not with purely local or domestic transactions."

In the case of ***S. Sundaram Vs. V.R. Pattabiraman, AIR 1985 SC 582***, it has been held as under:

> "45. We have now to consider as to what is the impact of the Explanation on the

proviso which deals with the question of wilful default. Before, however, we embark on an enquiry into this difficult and delicate question, we must appreciate the intent, purpose and legal effect of an Explanation. It is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision Sarathi in 'Interpretation of Statutes' while dwelling on the various aspect of an Explanation observes as follow:

(a) The object of an explanation is to understand the Act in the light of the explanation.

(b) It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute.

52. Thus from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is-

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c)to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation in order to suppress the mischief and advance the object of the Act it can help or assist the Court in Interpreting the true purport and intendment of the enactment, and

(e) it cannot however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

In the case of ***Dipak Chandra Ruhidas Vs. Chandan Kumar Sarker, AIR 2003 SC 3701***, it has been held as under:

"Referring to various case laws and treatises on Interpretation of Statutes, it was held:

'Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is-

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it

consistent with the dominant object which it seems to subserve.

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful.

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

In the case of ***Coventry and Solihull Waste Disposal Co Ltd V. Russell (Valuation Officer)[2000]1 All ER, 97***, it has been held as under:

"The majority in the Court of Appeal held that it was a sufficient answer to the appellant's argument to construe the words 'in connection with' as meaning 'having to do with'. This explanation of the meaning of the phrase was given by Macfarlane J in *Re* ***Nanaimo Community*** Hotel Ltd [1944]4 DLR 638. It was adopted by Somervell LJ in Johnson v Johnson

[1952] 1 All ER 250 at 251-252, [1952]P 47 at 50-51. It may be that in some contexts the substitution of the words ‘having to do with’ will solve the entire problem which is created by the use of the words ‘in connection with’. But I am not, with respect, satisfied that it does so in this case, and Mr. Holgate QC did not rely on this solution to the difficulty. As he said, the phrase is a protean one which tends to draw its meaning from the words which surround it. In this case it is the surrounding words, when taken together with the words used in the 1991 amending order and its wider context, which provide the best guide to a sensible solution of the problem which has been created by the ambiguity.

In the Court of Appeal both Robert Walker and Hobhouse LJJ declined to attach any importance to the explanatory note which was attached to the 1991 amending order. But Waller LJ said that it supported the view which he took, which was favourable to the respondent’s argument. In my opinion an explanatory note may be referred to as an aid to construction where the statutory instrument to which it is attached is ambiguous. In Pickstone V Freemans Plc Lord Oliver of Aylmerton said that the explanatory note attached to a statutory instrument, although it was not of course part of the instrument, could be used to identify the mischief which it was attempting to remedy.”

In the case of ***D.G. Mahajan Vs. State of Maharashtra, AIR 1977 SC 915***, it is held:

> “It is true that the orthodox function of an explanation is to explain the meaning and effect of the main provision to which it is an explanation and to clear up any doubt or ambiguity in it. But ultimately it is the intention of the legislature which is paramount and mere use of a label cannot control or deflect such intention.”

In the case of ***Farooq Ahmed Khan Leghari Vs. Federation of Pakistan and others, PLD 1999 SC 57,*** it has been held the Explanation is generally appended to a provision of a statute in order to explain the scope of same, and therefore, it is declaratory and explanatory in nature. Such rule, however, is not a rule of universal application as Explanation sometime is used for other purposes i.e. to extend the scope of the provision to which it is appended or it may provide a fictional situation by pressing into service deeming technique.

The cumulative effect of the cases referred to above is that an ‘Explanation’ added to a statutory provision is not a substantive provision in any sense of the terms. It is merely meant to explain or clarify certain ambiguities which may have crept in the main provision. It is used to clarify and to facilitate the

proper understanding of a provision to serve as a guide.

An ‘Explanation’ is, however, treated as part of the enactment and accordingly it should be read and construed with the section with which it is appended. In the instant case, clause (m) of the proviso to article 12(1) provides that a director of a company or a partner of a firm will be debarred from participating in the election if the company or the firm, as the case may be, defaulted in payment of loan or any installment thereof taken by it from a bank or a financial institution. According to Explanation-V a person or a company or a firm shall be deemed to have defaulted in repaying loan or installment thereof referred to any sub-clauses(m) and (n) of the proviso to Article 12(1) if he or it is a defaulter within the meaning of the expression defaulter loanee and that the meaning of defaulter loanee will be found in Bank Companies Act, 1991, and for financial institution as defined by Bangladesh Bank under Financial Institution Act, 1993. The Explanation further provides that such list of defaulter may be obtained from the Credit Information Bureau of Bangladesh Bank or from the concerned bank or financial institution. The provision relating to disqualification has been enumerated in clause (m) of the proviso to Article 12(1) of the RPO and what would be definition of defaulter has been provided for in

Explanation-V. When the word “defaulted” has been mentioned in the clause(m) of the proviso to Article 12(1) of the RPO it cannot be said that Explanation-V controls the proviso. Explanation-V merely states what would be the definition of a defaulter loanee. As such it can not be said that the Explanation-V entirely controls clause (m) and that without Explanation-V clause (m) becomes meaningless. Therefore the submissions made by the learned Advocate for the appellant as regards Explanation-V to the proviso to article 12(1) of RPO falls through.

Whether the appellant is a defaulter for not paying the telephone bills?

The provision of law on this aspect is contained in clause(n) of the proviso to Article 12(1) of the RPO which is quoted below:

(n) personally has failed to pay the telephone, gas, electricity, water or any other bill of any service providing organization of the Government before fifteen days from the day of submission of nomination paper.

The provision quoted above requires that if any telephone bills remain unpaid before 15 days of the day of submission of nomination paper, the defaulter is disqualified.

The appellant in his written statement made some vague statement to the effect that the objection raised by respondent No.1 is still under investigation and therefore the information furnished by the Accounts Officer, Maymansingh, was not proper. D.W.4 authorized

representative of the appellant did not produce any document to show that the appellant raised any objection to the issuance of main bills of Tk.31,110/-. P.W.4 verbally stated in vein with the information contained in Exhibits-4 and 4(a) furnished by the Accounts Officer, Mymensingh. Exhibits-C(series) produced by the appellant show that he raised objection only to supplementary bills of March, April and May, 2001. Therefore, if any investigation has been pending since 2002 to 2009 it relates at best to the supplementary Bills and not the main bill of Tk.31,110/- which have not been paid and as such, the telephone line was disconnected.

The appellant gave false statement to the Returning Officer by a letter dated 04.12.2008 (Exhibit-G) stating that he had no telephone line in his name in Tangail. The letter dated 04.12.2008 (Exhibit-G)is quoted below:

“eivei
‡Rjv wiUvwbs Awdmvi
I
‡Rjv ckvmK, UvsMvBj|

welqt †Uwj‡dvb wej cms‡M|

gnvZ¥b,
webxZ wb‡e`b GB †h, Avwg 134, UvsMvBj 5 wbevPbx GjvKv nB‡Z cwZØ›`Zv Kivi Rb¨ g‡bvbqbcÎ `vwLj Kwiqv‡Q| g‡bvbqb cÎ evQvB Gi mgq, †Uwj‡dvb wej e‡Kqv msµvšZ ïbvbx d‡j Avgvi wei“‡× †Uwj‡dvb wej e‡Kqvi Awf‡hvM DÌvwcZ nBqv‡Q| e‡Kqv wej msµv‡šZ mswkó KZc¶ †Kvb

cKvi cgvbvw` `wLj K‡i bvB| Avwg XvKvq Ae¯nvb Kwi| UvsMvB‡j Avgvi †Kvb †Uwj‡dvb bvB| †Uwj‡dvb wej e‡Kqv msµv‡šZ †Uwj‡dvb KZc¶ KLbI Avgvi bv‡g †Kvb †bvwUk †cib K‡ib bvB|

AZGe, cv_bv GB †h, †Uwj‡dvb wej e‡Kqv msµvšZ Awf‡hvM nB‡Z Avgv‡K Ae¨vnwZ `v‡b gwR nq|

wb‡e`K

Avej Kv‡kg
wcZv gZ†gvt BqvwQb
Avjx
mvsÐ Avjvjci
Dc‡Rjv Ð†`j`qvi
‡Rjv ÐUvsMvBj|
4Ð12Ð2008″

The appellant also stated in Exhibit-4(b) about earlier three letters (Exhibit-C series) sent by him to BTCL. Exhibit-4(b) is quoted below:

“eivei,

wnmve i¶Y KgKZv
wU GÛ wU
gqgbwmsn|

welqt UvsMvBj G·‡P‡Äi 54701 b¤i †Uwj‡dv‡bi mvwc‡g›Uvix wej evwZj Ges cbt ms‡hvM cms‡M|

wcq g‡nv`q,

Avcbvi m`q `wó AvKlb ceK Dc‡i D‡jwLZ welq RvbvB‡ZwQ †h, Avgvi 06Ð06Ð2002, 06Ð08Ð2002 Ges 03Ð09Ð2002 Bs Zvwi‡Li c‡Î (Kwc msh³) Dc‡iv³ †Uwj‡dv‡bi 03(wZb) wU mvwc‡g›Uvix wej evwZj mn cbt ms‡hvM†`lqvi Rb¨ Avcbv‡K we‡klfv‡e Ab‡iva KwiqvwQjvg| wKš AwZ `t‡Li welq, `xN 19 gvm AwZµvšZ nIqv m‡ËI †Kvb KvhKi e¨e¯nv MnY bv Kwiqv Avcbviv wbieZv cvjb

Kwiqv Awm‡Z‡Qb| d‡j Avgvi †Uwj‡dvbwUi ms‡hvM `xNw`b awiqv wew”Qb Ae¯nvq Av‡Q|

Dc‡i ewYZ Ae¯nvi Av‡jv‡K Avcbv‡K cbivq mwbe× Ab‡iva Kwi‡ZwQ†h, D‡jwLZ 03(wZb)wU mvwc‡g›Uvix wej ewZj Kibmn †Uwj‡dvbwUi cbt ms‡hvM†`Iqvi c‡qvRbxq e¨e¯nv MnY Kwiqv ewaZ Kwi‡eb|

ab¨ev`v‡šZ
Avcbvi wek¯Z
¯ev/A¯úó
(Gg,G, Kv‡kg)

Having considered Exhibit-G, Exhibits-C series and Exhibit-4(1), it appears that the appellant could not afford to deny having a telephone in his written statement and at the hearing of the case before the High Court Division. It also appears that the appellant by resorting to falsehood filed Exhibit-G dated 04.12.2008 stating that he did not have any telephone in Tangail and was successful in getting his nomination papers accepted. Such a deceptive behavior is not expected of a public representative who would represent the people of his locality to the Parliament which is supreme law-making body of the country.

Mr. Rokonuddin Mahmud, the learned Advocate for the appellant, however, submitted that because of wrong advice the appellant filed Exhibit-G to the Returning Officer and that the appellant should not be penalized for such act. The submissions of the learned Advocate did not absolve him of being a defaulter on account of non payment of telephone bill which is established from the evidence on record. The findings of the High Court

Division that the appellant is a telephone bill defaulter is based on proper appreciation of relevant provision of law and the evidence on record.

The High Court Division came to a finding that the election of the appellant was void as he was disqualified from being elected as a Member of Parliament on the ground of his default in payment of bank loan and telephone bill. Though the findings that the appellant was a bank loan defaulter were not correct, we find substance in respect of other findings of the High Court Division. In this connection it is necessary to quote Article 63 of the RPO as under:

“63.(1) The High Court Division shall declare the election of the returned candidate to be void if it is satisfied that-

(a) the nomination of the returned candidate was invalid; or

(b) the returned candidate was not, on the nomination day, qualified for, or was disqualified from, being elected as a member; or

(c) a corrupt or illegal practice has been committed by the returned candidate or his election agent or by any other person with the connivance of the candidate or his election agent; or

(d) The returned candidate has spent more money than what is allowed under Article 44B(3)”

Clause(b) of sub-article-1 of Article 63 provides that the returned candidate was, on the nomination day not qualified for, or was disqualified from, being elected as a member.

The provisions of clause (b) of Article 63(1) attracts clause-(n) to the proviso of Article-12(1) of the RPO. Therefore, the High Court Division came to a correct finding that the appellant defaulted in paying telephone bill and that accordingly, the he was disqualified from being elected as per clause (n) of proviso to Article 12(1) of the RPO. It is important to note here that if the allegation brought by respondent No.1 was within the ambit of the provisions of clause-(c) to sub-article (1) of Article-63 then the High Court Division would be required to give a finding that because of corrupt or illegal practices committed by the returned candidate or his election agent or by any other person with the connivance of the candidate or his election agent, the result of the election has been materially affected. But in the case in hand such a finding in not necessary because sub-clause(b) is independent of clause(c)of Article 63(1) of the RPO.

In the light of the finding made before, we do not find any substance to interfere with the impugned

judgment because the ultimate decision of the High Court Division is correct.

Accordingly the appeal is dismissed without any order as to costs.

CJ.

J.

J.

The 14th February,2012
/M.N.S/