

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

WRIT PETITION NO. 3009 OF 2015.

IN THE MATTER OF:

An application under Article 102(2)(a)(ii) of the
Constitution of the Peoples' Republic of Bangladesh.

-AND-

IN THE MATTER OF :

Meda Natun Hati Masthyajibi Samabay Samity Limited
... Petitioner

-Versus-

Government of Bangladesh and others
... Respondents

Mr. Md. Tamiz Uddin, Advocate
... For the Petitioner.

Mr. Salim Azad, Advocate
...For the Respondent No.6.

Heard on: 13.01.2016, 17.01.2016.

Judgment on: 17.01.2016 & 18.01.2016.

Present:

Mr. Justice M. Moazzam Husain

And

Mr. Justice Md. Badruzzaman

Md. Badruzzaman, J:

1. On an application under Article 102 of the Constitution of the People's Republic of Bangladesh this Rule *nisi* was issued calling upon the respondents to show cause as to why order dated 16.03.2015 passed by the Full Board of the Land Appeal Board in মামলা নং ৫-২৯/২০১৫(জমঃ) ফুল-বার্ড, সুনামগঞ্জ refusing to accept the review application filed by the petitioner (Annexure-I), affirming order dated 18.02.2015 passed by Member-2, Land Appeal Board in মামলা নং ৫-৯৮/২০১(জমঃ) আপিল, সুনামগঞ্জ allowing the appeal (Annexure-H to the petition) and reversing order dated 30.09.2014 passed by the Additional Commissioner (Revenue), Sylhet Division, Sylhet (Annexure-G) in রাজস্ব মিস আপীল নং ক-৪৩/২০১৪ dismissing the appeal by upholding the decision dated 15.07.2014 of District

Fisheries Management Committee, Sunamganj leasing out the fishery namely চন্ডিডহর প্রকাশিত ডুবি বিল situated within Mouza-Musapur, J.L No.67, under Shalla Upazilla, District- Sunamganj in favour of the petitioner samity (as evident from Annexure-E) should not be declared to have been passed without lawful authority and is of no legal effect.

2. At the time of issuance of the rule the operation of the impugned order was stayed.
3. The case of the petitioner, in brief, is that pursuant to a tender notice dated 20.02.2014 the petitioner and respondent No.6 applied for lease of the above mentioned fishery for a period of 3 years from 1421 B.S to 1423 B.S. The Deputy Commissioner, Sunamganj called for a report from the Upazila Nirbahi Officer who, after inquiry, found Respondent No.6 as nearer than the petitioner from the Fishery and forwarded a report on 8.4.2014 to the District Jolmohal Management Committee, Sunamganj (in short District Committee) for its decision. District Committee in its meeting dated 20.05.2014 without giving any decision in favour of Respondent No.6 decided to hold further inquiry for ascertaining the distance of the samity from the Fishery and appointed District Co-operative Officer, Sunamganj as inquiry officer. The District Co-operative Officer, after holding inquiry, found the petitioner samity as nearer samity than Respondent No.6 from the Fishery and submitted a report to that effect on 8.06.2014. The matter was again placed before the District Committee for its decision who, in its meeting dated 15.07.2014, decided to grant lease in favour of the petitioner fixing yearly rent at Tk.41,231/-.
4. Challenging the decision of District Committee dated 15.07.2014 respondent No.6 filed Revenue Misc. Appeal before the Divisional

Commissioner, Sylhet. The said appeal was heard by the Additional Divisional Commissioner who, after hearing, rejected the same by order dated 30.09.2014 by upholding the decision of District Committee. Being aggrieved by the said order Respondent No.6 filed an appeal to the Land Appeal Board which was heard by member No.2 of the Board and after hearing, was allowed by order dated 18.02.2015 by setting aside the decision of the District Committee. Being aggrieved, the petitioner filed a review application to the Full Board of the Land Appeal Board for review of the order passed by the member of the Board but the Full Board, after hearing, rejected the review application by its order dated 16.03.2015 affirming the order passed by the Member of the Board.

5. Being aggrieved by the decision of Land Appeal Board dated 16.03.2015 the petitioner has come up with this application for invoking our jurisdiction under judicial review under Article 102 of the Constitution of the People's Republic of Bangladesh and obtained the instant rule.
6. Respondent No.6 contested the rule and filed affidavit in opposition asserting that Upazila Jolmohal Management Committee (in short Upazila Committee), after physical inquiry, found Respondent No.6 as more nearer than the petitioner from the Fishery. Thereafter the Local M.P. issued a D.O letter by which he gave instruction to the lease authority to grant lease in favour of the petitioner and accordingly the Committee forwarded a report with D.O Letter to the District Committee for its decision. The District Committee without granting lease to Respondent No.6 under Rule 5(3) of the Government Fishery Management Rules, 2009 (herein after referred to as the Rules, 2009) and considering the D.O letter directed for further inquiry and thereafter illegally granted lease in favour of the petitioner on the basis of the

obliging report filed by the inquiry officer in which the petitioner was shown as more riparian to the Fishery than Respondent No.6 by ascertaining the distance from the office of the respective Samity.

7. Mr. Md. Tamiz Uddin, learned Advocate appearing for the petitioner submits that since the concerned District Committee, as per Rules, 2009, is the authority to take decision in granting or refusing lease of Government Closed Fishery covering an area of more than 20 acres, which was done in this case after proper inquiry through District Co-operative Officer, who found the petitioner samity as more nearer than Respondent No.6 from the Fishery and accordingly the leasing authority committed no illegality in granting lease in favour of the petitioner. But the Member of the Land Appeal Board as well as Full Board committed illegality in holding that ascertaining the distance of the Fishery from the office of the petitioner samity was not proper. Learned Advocate finally submits that since, in the meantime, the petitioner samity paid the lease money for two years to the government, lease deed was executed in its favour and possession of the Fishery was delivered to it and since then the petitioner has been enjoying the fishery, it has acquired a vested right in the Fishery which should not be taken away at this stage.
8. Mr. Salim Azad, learned Advocate appearing for Respondent No.6 strongly opposes the rule and submits that the writ petition itself is not maintainable as the petitioner unsuccessfully availed the forum of appeal and review as provided under the Rules, 2009 in that the Land Appeal Board having considered all materials on record gave its decision which cannot be disturbed in exercise of power of judicial review under Article 102 of the Constitution. Learned Advocate further submits that the Upazila Committee, after proper inquiry, found Respondent No.6 as

nearer to the Fishery and more eligible for getting lease of the Fishery and rightly recommended for granting lease in its favour to the District Committee but the D.O Letter issued by the local Member of Parliament, who is also the Advisor of District Committee, left no choice for the authority but to grant lease in favour of the petitioner which is *mala fide* and colourable exercise of power and as such, liable to be declared to have been granted without lawful authority and is of no legal effect. Accordingly, by depositing lease money by the petitioner or enjoyment of the Fishery by taking possession on the basis of the illegal lease order has not created any vested right in favour of the petitioner. Learned Advocate finally submits that since the lease order of the petitioner was illegal, law and equity demand that a direction should be given upon the respondents to cancel the lease order and grant lease in favour of Respondent No.6 for the remaining period and to deliver possession of the Fishery to Respondent No.6 after taking back its possession from the petitioner.

9. We have heard the learned Advocates and perused the records of the case. It appears that the petitioner and respondent No.6 contested the bidding process and the Upazila Committee, after inquiry, found Respondent No.6 as more closer to the Fishery than the petitioner. After such inquiry, when the matter was pending for recommendation by the Upazila Committee, the local M.P belonging to the ruling party by a D.O Letter directed the leasing authority for granting lease in favour of the petitioner. In such situation Upazila Committee, without giving any recommendation in favour of the petitioner forwarded the same to the District Committee for its decision stating as follows:

`wLx`i Rb` vj v mgevq KZ`x `wqZj c0vxi wel x Dcw`E m`m`MY AwfgZ
e`3 Kxb|

wm`v`%e ewY`Z Rj gnvxi Dci Ask MhYKvix 2uU miguZi Ae`EMZ w`KuU
m`xRigb Z`%eK c0Zx`b `wLx`i Rb` vj v mgevq Kg`KZ`x `wqZj
c0vxi wel x mfvq me`m`\$Z wm`v`%eU nq|o

11. The District Co-operative Officer being so assigned submitted a report on
08.06.2014 stating as follows:

oDch`P welq I m`xi w`f|x g`x`xi m`q AeMwZ Ges c0vRbxq e`e`E
Mh`xi Rb` RvbwQ w`v m`pvgM`A vj vi kvj v Dc`xj vi PwUWni c`KwikZ Wje wej
Rj gnvj uU 1421-1423 eivj v mb w`v`x BRvi v w`x Av`x`bKvix kvj v Dc`xj vi
w`v grm`Rtex mgevq miguZ wj t I w`v bZ`pnuU grm`Rtex mgevq miguZ wj t Gi
Ae`E D`3 Rj gnvj n`x KZ `f`xj Zv GB Kvhj`q n`x m`xRigx Z`%eiv
nq| m`xRigx Z`%eK`x msukó miguZ0xi Awdm Nxi I Rj gnvxi
Av`x`bKvixi Z` miguZ0xi c`KZv Ae`Eci Ges Rj gnvxi Ae`Eci `f`Zj
wep`x wba`v`fji Kvixi Kv`x c0Zxqgvb nq w`v m`pvgM`A vj vi kvj v Dc`xj vi
20(wek) GKl D`x`EAvqZb w`ukó PwUWni c`KwikZ Wje wej Rj gnvj n`x w`v
grm`Rtex mgevq miguZ wj t kvj v Ax`fjv w`v bZ`pnuU grm`Rtex mgevq miguZ
wj t kvj v Gi Ae`E AwakZi w`bKueZ`f|

A_v`P w`v bZ`pnuU grm`Rtex mgevq miguZ wj t kvj v Gi Ae`E kvj v Dc`xj vi
PwUWni c`KwikZ Wje wej Rj gnvj uU AwakZi w`bKueZ`f|o

12. A plain reading of the above report suggests that the District Co-
operative Officer ascertained the proximity of the contending societies
to the Fishery from their respective offices and found the petitioner as
closer to the Fishery than Respondent No.6. It appears that the inquiry
officer did not make any comment about the previous report, in which
Respondent No.6 was found closer to the Fishery than the petitioner. It
also appears that after receipt of the subsequent report the District

Committee decided to grant lease of the fishery in favour of the petitioner.

13. Now question arises as to whether the District Committee committed illegality in granting the lease order in question. To appreciate the issue we have to look into the relevant law connecting thereto.

14. "मि क्वि र्ज ग्वि ए ए च व 2009" (i.e Rules, 2009 as stated above) provides guidelines for settlement of Government Fisheries to the real fishermen. Rule 5 of the Rules, 2009 prescribes various criteria in granting/ taking lease of Government Closed Fishery covering an area over 20 acres. Sub-rule 6 of Rule 5 provides provisions for constituting committee comprising of 14 members drawn from different categories of Government officials including the Deputy Commissioner as its Chairman/President for leasing out/management of such Fishery. Sub-rule 7 of Rule 5 provides that local Member of Parliament would be the Advisor of the said District Committee. As per sub-rule 1 of Rule 5, only a samity or organization of real fishermen is eligible for applying to get settlement/lease of Fishery. Sub-rule 1 of Rule 5 makes specific provision that except nearby riparian samity/organization comprised of real fishermen none can file application for such lease. Sub-rule 4(Ga) of Rule says that in the Notification inviting such application, the concerned Deputy Commissioner must mention that only a riparian samity comprising of real fishermen will get preference for getting lease on the basis of its nearness to the Fishery, if it is otherwise qualified. Sub-rule 4(Cha) spelt out in certain terms that the Fishery have to be leased out to the samity which is closer to it.

15. It appears that the Rules, 2009 is silent about what criteria should be followed in ascertaining such distance where more than one samity

apply for getting lease. But the preamble of 'The Rules, 2009' made it clear that the same has been promulgated with a view to giving preference to the real fishermen in granting lease which along with other provisions of the Rules, 2009 suggest that the riparian samity of fishermen of which most of the members live closer to the Fishery would get priority in getting lease. A fishermen community may live far off from the Fishery but for some other reasons may set up its office at a place close to the Fishery. If nearness of the office is taken to be the standard of measuring comparative distance of the contending societies unfair competition in setting up offices nearest to the fisheries is bound to follow to the detriment of the purpose of the law. This is a proposition which cannot be accepted in any view of the matter.

16. Given the chronological facts, one after another, it can easily be inferred that the report of the inquiry officer as well as the decision taken by the District Committee comprised of Government officials were concurrently outweighed by the D.O Letter issued by the M.P, who appears to be the Advisor of the Committee itself and they had no option but to grant lease of the Fishery in favour of the petitioner samity in deprivation of the legal right of Respondent No.6. The decision of the District Committee, thus, appears to be tainted with undue pressure of the local M.P. But the Additional Divisional Commissioner without considering this aspect illegally up held the said decision in appeal preferred by Respondent No.6.
17. On perusal of the decision of the Land Appeal Board dated 18.2.2015 it appears that Member of the Board heard both the parties at length and considering the materials on records reversed the decision taken by the Additional Divisional Commissioner and came to his findings as under:

Fishery. The Land Appeal Board also observed that the proximity between the fisherman samity and the Fishery should be ascertained from the respective residences of the individual members of the samity precisely because Nitimala, 2009, seeks to give priority to riparian fishermen not the fishermen having riparian offices of their samity. Accordingly the Board disapproved the report of District Co-operative officer who ascertained the distance between the contending societies and the Fishery from their respective offices. Land Appeal Board finally came to the conclusion that since Upazila Committee in its meeting dated 8.4.2014 found Respondent No.6 nearer to the Fishery and thus was eligible for getting lease of the Fishery. The above finding and decision of the Land Appeal Board appears to be taken in consonance with the purpose and objective of the Rules, 2009.

19. On perusal of the impugned order dated 16.3.2015 passed in review application it appears that the Full Board after hearing the petitioner found that the Member of the Board took the right view in the issue of ascertainment of the proximity between the Fishery and the Samity and refused to interfere with the decision of the Member and accordingly rejected the review application. We find no illegality in the decision of the Full Board.

20. Now the other question i.e, whether the petitioner accrued vested right in the Fishery. As we have already held that the decision taken by the District Committee was tainted with biasness as there is apparent mark of external influence the lease granted in favour of the petitioner, therefore, is *ex facie* illegal which cannot accrue any vested right in favour of any otherwise less qualified Samity to the deprivation of the Samity more qualified in the eye of law.

21. It is to be noted here that the Land Appeal Board though found that Respondent No.6 was entitled to get lease of the Fishery and allowed its appeal by setting aside the order of the Additional Divisional Commissioner but it did not grant consequential relief directing the authority to grant lease in favour of Respondent No.6. Since it is the settled principle that a wrong, if detected, should not be allowed to continue and must be cured as soon as detected so as to avoid perpetual damage we are of the considered view that ends of justice would be met if Respondent No.6. is given an opportunity to enjoy the Fishery for the remaining lease period. Accordingly, we are inclined to grant consequential relief in favour of respondent No.6 in order to avoid further prolongation of its deprivation and to lessen the brunt of injustice.
22. For the reasons stated above we find no merit in this rule.
23. In the result, the rule is discharged with consequential relief to the respondent No.6.
24. Respondent No.2, the Deputy Commissioner, Sunamgonj is directed to grant lease in favour of respondent No.6 for 1423 B.S subject to payment of lease money of Tk. 41231/- by Respondent No.6 for the said year and to handover physical possession of the Fishery on the 1st day of Baishak 1423 B.S to Respondent No.6. The petitioner is also directed to surrender physical possession of the Fishery to Respondent No.2 on the 30th day of Chaitra, 1422 B.S.
25. The order of stay granted earlier is vacated.
26. There shall, however, be no order as to costs.

M. Moazzam Husain, J.

I agree.