

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

Writ Petition No. 785 of 2016

In the matter of :

An application under Article 102 (2) of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of :

Md. Anwar Hossain Sikder and others
..... Petitioners

-Versus-

Secretary, Ministry of Liberation War Affairs,
Dhaka and others.

.....Respondents

Mr. Md. Toufiq Inam, Advocate
..... For the petitioners

Mr. Amit Das Gupta, DAG with
Ms. Rokeya Akhter, AAG,
Ms. Abantee Nurul, AAG,
Ms. Annah Khanom, AAG and
Mr. A.K.M. Nur Nabi, AAG
..... For Respondent no. 1

Present:

Mr. Justice Zubayer Rahman Chowdhury

And

Mr. Justice Ahmed Sohel

Date of Hearing : 22.10.2019, 17.11.2019 &
25.11.2019

Date of Judgment : 03.12.2019

Zubayer Rahman Chowdhury, J :

Seventeen Freedom Fighters hailing from Upazila Kochua, District Chandpur, have filed the instant writ petition challenging the action of the respondents in withholding payment of the honorary allowance granted to

them as Freedom Fighters. At the same time, the petitioners have sought for a direction upon the concerned respondents to publish their names in the official Gazettes as Freedom Fighters.

The Rule is being opposed by respondent no. 1 by filing an affidavit-in-opposition. It is to be noted that the petitioners, in their turn, have filed two separate supplementary affidavits.

Briefly stated, relevant facts leading to issuance of the Rule are that the petitioners hail from Kochua Upazila/Thana under the District of Chandpur. During the War of Liberation, the petitioners fought against the occupation Pakistani Armed Forces in various sectors. After the independence of Bangladesh, the Government issued Provisional Freedom Fighters Certificate to the petitioners, as evidenced by Annexure A series to the writ petition.

Subsequently, the Government decided to publish a consolidated list of Freedom Fighters for the entire country. In pursuance of the aforesaid decision, Committees were formed at the Upazila and the District level for the purpose of enlisting the names of Freedom Fighters. Accordingly, the Upazila Selection Committee, upon making necessary verifications, prepared a list of Freedom Fighters belonging to various Upazilas under the said District, which was then forwarded to the Zila Selection Committee, Chandpur, who endorsed the same and forwarded it to the Ministry of Liberation War Affairs, Dhaka for publication in the official Gazette. It is to be noted that the names of all the seventeen writ petitioners appeared in the said list that was sent to the Ministry.

A Website was published by the Ministry of Liberation War Affairs containing the names of Freedom Fighters of different Districts in Bangladesh, wherein the names of all seventeen the petitioners appeared in the list of Freedom Fighters hailing from Chandpur District. At a subsequent point of time, considering their financial difficulties, the Government decided to grant honorary allowance to the Freedom Fighters. Accordingly, the petitioners have been enjoying the allowance granted by the Government for the last five to ten years.

However, all on a sudden, the respondents stopped/withheld payment of the honorary allowance to the petitioners on and from July 2015 without assigning any reason. Upon making queries, it transpired that the respondents had stopped payment of the honorary allowance as the petitioners' names have not been published in the official Gazette. The petitioners approached the concerned respondents and requested them to reconsider their decision and grant them the honorary allowance. However, as there was no positive response, the petitioners issued a Notice Demanding Justice on 07.01.2016, but to no effect. Being constrained, the petitioners moved this Court and obtained the instant Rule.

Mr. Md. Toufiq Inam, the learned Advocate appearing on behalf of the petitioners, having placed the application together with the documents annexed thereto, submits that the action of the respondents in stopping the honorary allowance to the petitioners is not only discriminatory, but also arbitrary and malafide. Elaborating his submission, Mr. Inam submits forcefully that the petitioners were enlisted as Freedom Fighters following

necessary verification and/or scrutiny at the Upazila level, which was conducted by the Upazila Committee, who forwarded the list to the Zila Bacchai Committee. After further verification and scrutiny, the said list containing the names of Freedom Fighters, including those of the petitioners, was forwarded to the Ministry of Liberation War Affairs for publication in the official Gazette. However, although some of the names appearing in the said list had been published in the official Gazette, the petitioners names were not published in the Gazette, for reasons best known to the respondents.

The learned Advocate further submits that although the petitioners were granted allowances at a very belated stage, yet, without assigning any reason and in a most arbitrary manner, it was stopped without issuance of any prior notice. Mr. Inam submits that once the petitioners have been granted allowance by the Government, the prima-facie presumption as to their identity as Freedom Fighters would weigh heavily in their favour. Moreover, according to Mr. Inam, having received the honorary allowance from the Government, there was a legitimate expectation on the part of the petitioners to have a notice issued to them prior to stoppage of the honorary allowance.

Referring to Annexure X series of the supplementary affidavit dated 04.11.2019, Mr. Inam submits that although the petitioners' names appeared in the list, yet only a few names from the said list were selected for publication in the official Gazette, which clearly demonstrates the pick and chose policy that was adopted by the Government.

Referring to the second supplementary affidavit dated 24.11.2019, Mr. Inam submits that pursuant to the issuance of the instant Rule, the Ministry of Liberation War Affairs has issued a Memo dated 09.04.2017 to the effect that prior to stoppage of the honorary allowance of a Freedom Fighter, a show cause notice has to be issued to the concerned Freedom Fighters. Mr. Inam submits forcefully that this particular action of the Ministry fortifies the petitioners' case that the honorary allowance was stopped without issuance of any show cause notice.

Referring to Annexure Z of the supplementary affidavit dated 24.11.2019, Mr. Inam submits that petitioner no. 5, one Md. Abdur Rob, son of late Wahab Ali Bepari, died on 12.11.2019 during pendency of this Rule and he was given a State funereal with full military honours. Mr. Inam submits with regret that the arbitrary and malafide action of the respondents has led to this sad episode where one of the petitioners (petitioner no. 5) passed away during pendency of the Rule without seeing the result of the writ petition.

As noted earlier, the Rule is being opposed by respondent no. 1 by filing an affidavit-in-opposition. Mr. Amit Das Gupta, the learned Deputy Attorney General appears along with Ms. Abantee Nurul, the learned Assistant Attorney General on behalf of respondent no 1.

The learned Assistant Attorney General (briefly, AAG) submits that the granting of honorarium to the Freedom Fighters is presently regulated by the “বীর মুক্তিযুদ্ধা সম্মানী ভাতা বিতরণ নীতিমালা, ২০১৩”. She submits that as per Rule 7 (ka), the persons who have received honorary allowance shall continue to receive such allowance. However, if any person is found not

to be a Freedom Fighter by the Ministry, his name will be deleted from the list and he will not be entitled to receive any allowance. The learned AAG submits that the scrutiny Committee, which was formed in 2004, has been abolished. Subsequently, although new committees were formed in 2009, 2011 and 2016, the petitioners did not appear before any of the Committees which were formed after 2004 to prove their identity as Freedom Fighter and therefore, the concerned Ministry had rightly stopped payment of the honorary allowance. She submits that as per Rule 11 of the Circulars dated 14.09.2015 and 24.11.2015, issued by respondent no. 1, the honorary allowances of the petitioners has been stopped as their names were not enlisted in the Gazette. She further submits that the petitioners' case rests on the list prepared by the Zilla Committee in 2004. However, according to the learned AAG, since the earlier Committees have been abolished long before and as the petitioners did not appear before any of the subsequent Committees, they are not entitled to receive the honorarium as Freedom Fighters.

The learned AAG further submits that the জাতীয় মুক্তিযুদ্ধ কাউন্সিল (JAMUKA) has the power and authority to scrutinize the list of Freedom Fighters sent by the respective Zila Committee and finalize the same. She submits that JAMUKA excluded the petitioners' names from publication in the official Gazette as they did not have any supporting documents, such as the Lal Muktibarta nor did they have any certificate signed by the Prime Minister. She lastly submits that as the petitioners failed to fulfil the required criteria for being enlisted as Freedom Fighters, their names were not published in the official Gazette.

The issue which warrants adjudication is very sensitive in nature, requiring careful consideration and analysis. It is on record that at one point of time, the petitioners duly appeared before the respective Upazila Committee and, after necessary verifications and scrutiny, their names were included in the list of Freedom Fighters. The said list was then sent by the Upazila Committee to the concerned Zila Committee, who once again verified the list and then forwarded the same to the Ministry of Liberation War Affairs. It is also on record that the respective Upazila Committee and the Zila Committee were formed by the Government, consisting of Government officials and Freedom Fighters of the concerned area/locality. Hence, it would be deemed that the list had been prepared at the behest of the Government, albeit in accordance with law.

There is considerable force and substance in the argument of Mr. Inam that after the list had been sent to the Ministry of Liberation War Affairs, the respective Committees had become *functus officio* and therefore, the question of abolition of such Committees, as contended by the learned AAG, is irrelevant and immaterial. We are also aware that জাতীয় মুক্তিযুদ্ধ কাউন্সিল (JAMUKA) has been vested with the authority to scrutinize the list sent by the Zila Committee and thereafter publish the same in the official Gazette. We do not question the authority so conferred upon (JAMUKA). However, what we are concerned about is the manner in which JAMUKA has apparently exercised such authority. Let me elaborate.

From Annexure X of the supplementary affidavit dated 04.11.2019, filed on behalf of the petitioners, it appears that one Md. Ahad Uddin

Mollah's name was published in the Gazette by the concerned Ministry. Similarly, the names of three others Freedom Fighters namely, Md. Idris Majumdar, Md. Anwar Hossain and Abdul Karim was also published in the official Gazette by the Ministry. However, from Annexure B to the writ petition, being the Memo dated 28.08.2004, it appears that the above noted names, published in the official Gazette, also appear in the very same list which contains the names of the other Freedom Fighters including the petitioners belonging to Kochua Upazila in the District of Chandpur. To begin with, the name of Md. Ahad Uddin Mollah appears at serial no. 111, the name of Sobedar Md. Idris Majumdar appears at serial no. 113, the names of Md. Anwar Hossain and Abdul Karim appear at serial no. 117 and 130 respectively in the said list. It is, therefore, evident that the Ministry had applied a pick and choose policy in publishing only a few names from the list sent by the জেলা যাচাই বাছাই কমিটি।

JAMUKA has the authority to scrutinize the list and make necessary verifications. What they cannot do is to apply a pick and choose policy and publish some names from the list and exclude others, and that too without assigning any reason. In our view, such a power can never be presumed to have been conferred upon JAMUKA and therefore, the purported exercise of such power is not only arbitrary, but is also without any lawful authority.

It is on record that the petitioners have not been issued with any prior show cause notice before stoppage of their honorary allowance. This aspect of the case is fortified by Annexure Y of the supplementary affidavit dated 24.01.2019, being the Memo issued by the respondent no.

1 on 09.04.2017 to the effect that the stoppage of honorary allowance of the Freedom fighters cannot be done without issuance of a prior show cause notice.

The role played by the valiant Freedom Fighters and the supreme sacrifice that they have made during the historic War of Liberation is indeed unique and historic. Regrettably, in our view, we have failed to honour the Freedom Fighters in their true perspective. At various times, on various occasions, successive Governments have prepared different lists of Freedom Fighters according to their own preference and view and granted honorarium to some, while excluding others, who were also Freedom Fighters. A classic example is right before this Court, as evidenced by Annexure Z to the supplementary affidavit dated 24.11.2019. Petitioner no. 5 of the instant writ petition, Md. Abdur Rob, whose honorium was stopped on the ground that his name had not been published by JAMUKA in the Gazette, died on 12.11.2019 during pendency of the Rule. He was granted a State funeral with full military honours. Although the concerned respondents, in particular JAMUKA, were extremely reluctant to acknowledge him as a Freedom Fighter during his life time and even went to the extent of opposing the instant Rule by filing an affidavit-in-opposition, yet, immediately upon his death, the very same Authority was prompt to grant him a “State funeral” with full military honours. This goes to show the mockery that is being played with the Freedom Fighters of the country. This is not only regrettable and unfortunate, but unacceptable as well.

There is one very important social aspect which appears to have been ignored and/or over-looked by all concerned. The Freedom Fighters, who had taken part in the War of Liberation, in almost every single case, had left their family members behind - father, mother, grand-father, grand-mother, wife, son, daughter, brothers and sisters, to name a few categories of relatives. Without exception, every such family was hounded and persecuted by the occupied Pakistani army and their local allies, namely the notorious Al-Badr and Razakars. They were either killed or tortured or compelled to leave their home-stead. As such, the family members of the Freedom Fighters also made sacrifices for the cause of their motherland. Needless to observe that neither the Freedom Fighters nor their family members expected or had even hoped for any kind of return from the country. The act of participation in the War of Liberation was purely voluntary, driven by their passion for freedom and their love for their motherland.

We cannot remain oblivious of the fact that almost all the Freedom Fighters participated in the nine months long struggle with little or no food at all, for days together. They also had to face inclement weather during this period. However, not for once did they relent from their struggle. It is only because of their untold suffering and struggle and their supreme sacrifice that an independent country came into existence on the world stage. It is extremely unfortunate and regrettable that even after almost 50 years of our independence, the nation has not been able to evaluate the supreme sacrifice made by the Freedom Fighters and their

family members and honour them in their true perspective and grant the honour and recognition to which the Freedom Fighters and their families are entitled as of right, and not as a matter of courtesy and discretion of the State. All that has been done by successive Governments is to issue certificates to Freedom Fighters and bestow some financial remuneration.

Regrettably, what is being done today by JAMUKA, comprising mostly of Government officials who, in all likelihood, have no knowledge, far less any first hand experience, about the “War of Liberation”, is anything but acceptable. Sitting in their air-conditioned offices, they are deciding as to whether a person is to be deemed as a “Freedom Fighter” or not. Time has come for this charade to be brought to an end.

The learned DAG has brought to our notice that by Circular dated 12.01.2017, the Ministry of Liberation War Affairs has prepared the উপজেলা যাচাই বাছাই কমিটি and the জেলা/মহানগর যাচাই বাছাই কমিটি। We appreciate this gesture taken by the Government. However, in doing so, certain guide-lines should be followed. The Government shall have the authority to exclude the name of any person published in the official Gazette, in the event of proof that the person concerned is not a Freedom Fighter. However, that exclusion has to be made upon issuance of prior notice to the concerned Freedom Fighter and also upon affording him an opportunity to present his case with proper documents. In other words,

due process of law, as enshrined in Article 31 of the Constitution, must be followed in each and every case.

Let it be made very clear that the Freedom Fighters are entitled to receive the highest consideration and accommodation from the State. They are not to be shown any favor; rather, they are entitled to the honorarium as a matter of right. This is the least the country can do for their valiant sons, who risked their lives, fought a long and hard battle against a much superior and well-equipped army and finally achieved the independence of the country.

Accordingly, the Rule is made absolute.

The respondents are directed to publish the names of the petitioners forwarded by the জেলা বাছাই কমিটি, Chandpur within a period of 90 (ninety) days from the date of receipt of the certified copy of this judgment.

The respondents are further directed to grant the honorary allowance to the petitioners on and from July, 2015.

With respect to petitioner no. 5, who has died during pendency of the Rule, the respondents are directed to grant the allowance to his immediate family members namely, his wife and children, subject to furnishment of necessary proof regarding their identity of being the legal heirs of late Md. Abdur Rob.

There will be no order as to cost.

Let a copy of the judgment be sent to the Secretary, Ministry of Liberation War Affairs, the Secretary, Ministry of Finance and the

Secretary, Ministry of Law, Justice and Parliamentary Affairs for the information and necessary action.

The office is directed to communicate the judgment and order.

Ahmed Sohel, J :

I agree.