SCOB [2019] HCD

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 2611 of 2018

Dr. Farhana Khanum
……. Petitioner.
Vs.
Bangladesh and others.
...…Respondents.
with
Writ Petition No. 2842 of 2018

Mohammad Kabir Chowdhury and others
……. Petitioners.
Vs.
Bangladesh and others.
…Respondents.
with
Writ Petition No. 11230 of 2012.

Md. Mizanur Rahman and others.
……. Petitioners.
Vs.
The Government of Bangladesh, represented by the Secretary, Cabinet Division, Bangladesh Secretariat, PS-Shahbagh, Dhaka and others.
...…Respondents.
with
Writ Petition No. 1954 of 2018.
Md. Shahjahan Siraj and others.
……. Petitioners.
Vs.
Bangladesh and others.
...…Respondents.
with
Writ Petition No. 7366 of 2011.
Md. Ziaul Kabir Dulu.
……. Petitioners.
Vs.
Bangladesh and others.
...…Respondents.

Present:
Mr. Justice Sheikh Hassan Arif
And
Mr. Justice Razik-Al-Jalil

Mr. M. Amir Ul Islam, Senior Advocate with
Mrs. Tania Amir, Senior Advocate with

Mr. Sheikh Rafiqul Islam with
Mr. Yadnan Rafique Rossy with
Mr. Mia Mohammad Ishtiaque, Advocates
… For the petitioner in Writ Petition No. 2611, 2842 and 1954 of 2018
.
Dr. Belal Husain Joy, Advocate
.....For the petitioner in Writ Petition No. 11230 of 2012.
Mr. Nasir uddin, Advocate
…For the petitioner in Writ Petition No.7366 of 2011.
Mr. Khurshid Alam Khan, Advocate
..for the respondent No.5 in Writ Petition No. 2611 of 2018, 2842 of 2018
Mr. Md. Mokleshur Rahman, D.A.G
Ms. Shuchira Hossain, A.A.G with
Ms. Samira Tarannum Rabeya, A.A.G
..For the respondent No. 4 in Writ Petition No. 2611 of 2018 and 2842 of 2018. For the respondent No. 5 in Writ Petition No. 11230 of 2012.
Mr. Md. Osman Ghani Bhuiyan, Advocate
..for the respondent No.06 in Writ Petition No. 7366 of 2011
Mr. Mohammad Ali Khan, Advocate
..For the respondent No.17 in Writ Petition No. 7366 of 2011.
Mr. Mohammad Ali Zinnah, Advocate
..For the respondent No. 16 in Writ Petition No. 7366 of 2011.

Heard on 22.07.2018, 29.07.2018, 24.10.2018, 30.11.2018, 17.01.2019 and 27.01.2019.
Judgment on: 07.02.2019.

Therefore, since the very definition of the term 'Coaching Business' has only attracted the involvement teachers of the above mentioned institutions as a mischief, this Nitimala in fact has not prohibited the 'coaching business', or 'coaching centers', run by any individual in his or her private capacity who is not a teacher of the above mentioned institutions. This means involvement of an individual, who is not a teacher of the above mentioned institutions, in such coaching centers or business has not been prohibited by this Nitimala. Therefore, the prohibition, as provided by this Nitimala, only applies to the teachers of the above mentioned institutions and not to any individuals or private citizens or persons, who are not teachers of such educational institutions. ... (Para 29)

From the above discussions, it appears that even in the absence of the said Nitimala, the petitioners and other teachers of non-government and government schools and colleges are not allowed to engage themselves in any sort of coaching business. This prohibition has not been provided by the said Nitimala of 2012, rather this has been given by their concerned service Rules which are delegated legislations and applicable to them. When the petitioners, or other teachers of government and non-government schools and colleges, joined their services, they joined as such fully knowing that the said Service Rules would be applicable to them. Therefore, by the said Nitimala, the government has in fact supplemented the provisions which are already in the statute books and in doing so, the government does not need to show any other sanction of statute or Act of parliament. It is the part of the constitutional power of the government as executive to run the governance and in running such governance, it is the duty and obligation of the government to take steps for implementation of the laws and regulations time to time enacted by the parliament or by the delegatees of the parliament. Under such obligations, the governments in modern countries issue various Circulars, Paripatra, Nitimala etc. and this has now become essential and normal administrative technic in modern countries. The only limitation in issuing such Nitimala or Nirdeshika is that by such Nitimala or Nirdeshika, the government cannot curtail the rights of any citizen which is already granted in his/her favour either by the Constitution or by law or by any other legal instruments. ... (Para 34)

Therefore, in the facts and circumstances of the present cases, the petitioners have failed to show that either the Constitution or any act of parliament or any delegated legislation of this Country has given them any right to get involved in coaching business. Rather, it has become evident from the above referred delegated legislations that in fact they have been prohibited by the law of the land from getting involved in coaching business. Thus, in so far as the said Nitimala is concerned, since the same has not curtailed any rights of the petitioners guaranteed either by the constitution or any law, it cannot be knocked down by this Court. Rather, it should be protected by this Court as it is the supplemental instrument to the already existing laws of the land. In this regard, the decisions of Indian Supreme Court in Bennett Coleman Co. v. Union of India, AIR 1973 SC 106, Bishamber Daval Chandra Mohan v State of UP, AIR 1982 SC -33 and Distt. Collector, Chittoor v Chittor Disttt. Groundnut Traders Assn, AIR 1989 SC 989 may be looked into as references. Therefore, on this point of unconstitutionality and unimplementablity of the said Nitimala of 2012, as argued by the learned advocates for the petitioners, we find no substance. ...(Para 35)

Therefore, it cannot be denied that when the teachers get involved themselves in coaching business, which is prohibited by law, they are disobeying the direction of law and they know it fully that such disobedience might cause injury to the students or their guardians in that by such engagement they are utilizing their resources, potentials and capabilities in such coaching centers rather than using them in the class rooms.

Therefore, this Court is of the view that, since this provision under Section 166 of the Penal Code has been incorporated in the Schedule to the Dudak Act, 2004, Dudak thinly had technical jurisdiction to enquire into the allegations as published in the news paper regarding the involvement of teachers in the coaching business. However, this thin and technical jurisdiction is only confined to the teachers of government colleges and schools and not to the teachers of non-government schools and colleges. ... (Para 41)

Though we are saying that technically Dudak had jurisdiction to enquire into the said matters, we are of the view that Dudak should have priority list as to which offences should get priority in their such enquiry and investigation when it is repeatedly reported in newspapers that Dudak does not have enough resources and logistic supports. We are of the view that leaving behind serious allegations of corruptions in National Banks, Customs Houses, Ports, Court Premises, Government Offices, Land Offices, etc. Dudak should not have inquired into the mere involvement of some teachers in coaching business relying on a newspaper report. When there are some other serious reports of corruption in the country, it does not also look well when Dudak shows such importance to some basically disciplinary matters when teachers of government schools are not attending classes on time. These apparently disciplinary issues should be kept at the bottom of Dudak's priority list in particular when almost each and every institution of this country is now suffering from huge corruption being committed by its employees and staffs. Though by engaging in coaching businesses the said teachers have disobeyed the direction of law, but it cannot be said that they have committed any 'corruption' as we understand the term in its general and common parlance. Therefore, we are of the view that, though thinly and technically Dudak had jurisdiction to enquire into the matters as published in the newspaper as regards involvement of the government teachers in coaching business, they should not have conducted such enquiry at all. Such enquires should have been done by the education directorate of the government or the concerned ministry itself. ... (Para 42)

JUDGMENT

SHEIKH HASSAN ARIF, J

1. Since the questions of law and facts involved in the aforesaid writ petitions are almost same, they have been taken up together for hearing and are now being disposed of by this common judgment.

2. Rule in Writ Petition Nos. 2611 of 2018, 2842 of 2018 and 1954 of 2018 were issued in similar terms, namely calling upon the respondents to show cause as to why the "শিক্ষা প্রতিষ্ঠানের শিক্ষকদের কোচিং বাণিজ্য বন্ধ নীতিমালা-২০১২", (in short, "the said Nitimala"), purporting to regulate commercial coaching, should not be declared to be discriminatory and violative of Articles 26(2), 27, 31 and 40 of Part-III of the Constitution and done without lawful authority and is of no legal effect and as to why different memos issued by the respondent authorities either initiating departmental proceedings against the petitioners or transferring them from one school to another for their alleged involvement in commercial coaching, should not be declared to be without lawful authority and are of no legal effect.

3. In Writ Petition No. 2611 of 2018, the petitioner is a non-MPO teacher of Viqarunnisa Noon School and College, which is a Non-Government Secondary and Higher Secondary educational institution, and has, apart from the said Nitimala, challenged the Memo No.

04.01.2600.612.01.014.17.36333 dated 03.12.2017 (Annexure-B) issued by the Durniti Damon Commission (Dudak) and Memo No.04.00.0000.521.18.087.17-1123 dated 05.12.2017 (Annexure-C) issued by the Cabinet Division of the Government, Memo dated 05.02.2018 (Annexure-A) issued by the Education Board, Dhaka and Memo No. 37.02.0000.107.99.35.2018-1167(10) dated 04.02.2018 (Annexure-G) issued by the Education Department of the Government.

4. In Writ Petition No. 2842 of 2018, the petitioners, who are teachers of Motijheel Government Boys High School, Dhaka and Motijheel Government Girls High School, Dhaka, have, apart from the said Nitimala, challenged the Memo No.04.01.2600.612.01.014.17.36333 dated 03.12.2017 (Annexure-E), Memo No. 0400.0000.521.18.087.17-1123 dated 05.12.2017 (Annexure-D), Memo No. 37.00.0000.000.27.001.17.6 dated 02.01.2018 (Annexure-C), Memo No. ৬সি/০৫-সম/২০১৩/১৭০ dated 29.01.2018 (Annexure-A) and subsequent charge-cum-show cause Notices dated 07.02.2018 issued upon them vide Memo Nos. ৬সি/০৫-সম/২০১৩/২৪৪, ৬সি/০৫-সম/২০১৩/২৪৫, ৬সি/০৫-সম/২০১৩/২৪৬, ৬সি/০৫-সম/২০১৩/২৪৭, ৬সি/০৫-সম/২০১৩/২৪৮, ৬সি/০৫-সম/২০১৩/২৪৯, ৬সি/০৫-সম/২০১৩/২৫০, ৬সি/০৫-সম/২০১৩/২৫১, ৬সি/০৫-সম/২০১৩/২৫২, ৬সি/০৫-সম/২০১৩/২৫৩, ৬সি/০৫-সম/২০১৩/২৫৪, ৬সি/০৫-সম/২০১৩/২৫৫, ৬সি/০৫-সম/২০১৩/২৫৬ (Annexure-B series).

5. In Writ Petition No. 1954 of 2018, the petitioners, who are teachers of Government Laboratory High School, Dhanmondi, New Market, Dhaka, have particularly challenged the Memo No. 04.01.2600.612.01.014.17.36333 dated 03.12.2017 (Annexure-B) issued by the Dudak, Memo No. 0400.0000.521.18.087.17-1123 dated 05.12.2017 (Annexure C) issued by the Cabinet Division of the Government, Memo No. 37.00.0000.000.27.001.17.6 dated 02.01.2018 (Annexure-D) issued by the Ministry of Education and subsequent transfer of the petitioners vide Memo No. 6C/05-Somo/2013/170 dated 29.01.2018 issued by the Director General, Directorate of Secondary and Higher Secondary Education, Dhaka (Annexure E).

6. Apart from the above three writ petitions, we have also heard two other earlier writ petitions analogously. They are Writ petition No. 7366 of 2011 and Writ Petition No. 11230 of 2012. In Writ Petition No. 7366 of 2011, this Court, at the instance of the petitioner, a public interest litigant, issued Rule calling upon the respondents to show cause as to why a direction should not be given upon the respondents to take appropriate steps to prohibit M.P.O. registered teachers and government teachers from providing coaching, teaching etc. commercially and also why the respondents should not be directed to declare such prohibition through publishing a gazette notification. After issuance of this Rule, the government circulated the impugned Nitimala, namely "শিক্ষা প্রতিষ্ঠানের শিক্ষকদের কোচিং বাণিজ্য বন্ধ নীতিমালা-২০১২" dated 20 June 2012. Some guardians then filed Writ Petition No.11230 of 2012 and obtained Rule from this Court calling upon the respondents to show cause as to why the said Nitimala should not be declared to be without lawful authority and is of no legal effect. At the time of issuance of the Rule, this Court also ordered for hearing of the Rule along with the above mentioned Writ Petition No.7366 of 2011.

BACKGROUND FACTS:

7. For the sake of clarity, let us start from the earlier writ petitions. Facts relevant for disposal of the Rule in **Writ Petition No.7366 of 2011** are that the petitioner is the Chairman of Guardian United Forum and also a member of Ideal School Guardian Forum, which is a registered Social Welfare Organization having Registration No. Y-08227. That petitioner's son and daughter are students in Ideal School and College, Motijheel, Dhaka and the petitioner is the founding Chairman of the said Ideal School Guardian Forum. That the

Ministry of Education on 10.08.2010 published a notification for providing extra classes to the weak students and the fees for such extra classes were also fixed by the said notification. However, it is contended, the said Motijheel Ideal School and College was taking extra money from the guardians for providing such extra classes without giving any receipts to them. Accordingly, the petitioner made complaint against such actions of the school and college authority, but did not get any positive response. It is further stated that the coaching centers in Dhaka and other areas of the country are destroying the education system in schools and colleges and have turned the education into a business product. Accordingly, the petitioner, on 31.05.2011, filed application before the Principal of the said school and college to stop such coaching businesses by the teachers. That the organization of the petitioner has also filed application before the Ministry of Education on 21.07.2011 for taking actions in order to stop coaching business in the country, which, according to the petitioner, was paralysing the education system of the country. That different daily newspapers have also published reports as regards mushrooming of coaching centers in Dhaka and other parts of the country, but the government, in particular the Ministry of Education, has not taken any effective steps to stop such coaching businesses which, according to him, discouraging the students from attending classes as well as the teachers from providing education to the students in the class rooms. Under such circumstances, the petitioner moved the said writ petition and obtained the aforesaid Rule seeking a direction on the government to take appropriate steps to prohibit coaching by the teachers in the said coaching centers.

8. Immediate after issuance of the above Rule in Writ Petition No. 7366 of 2011, the government circulated a Nitimala, being "শিক্ষা প্রতিষ্ঠানের শিক্ষকদের কোচিং বাণিজ্য বন্ধ নীতিমালা-২০১২", vide Memo dated 20.06.2012. Thereupon, some guardians have filed **Writ Petition No. 11230 of 2012** challenging the said Nitimala. It is stated by the said guardians that the petitioner No.1 is the President of Ovibhabak Alliance, which was created with primary object of increasing educational awareness including rights to education etc., and petitioner Nos. 2, 3 and 4 are guardians of some students. It is stated by the said petitioners that the said Nitimala of 2012 is contradictory and direct violation of fundamental rights to education, renouncing the grading and even defaming the educated, trained and experienced teachers who practice their novel profession in the government and non-government educational institutions all over Bangladesh. It is further stated that the primary object of the said Nitimala is to restrict the teachers of the educational institutions having appropriate qualifications and experiences from providing teaching in the coaching centers thereby allowing the unqualified, untrained and unprofessional self-declared teachers to run the said coaching centers and to provide education in the said coaching centers. It is further stated by those guardians that the said Nitimala being a directive and policy document cannot be implemented. According to the petitioners in this writ petition, the guardians strongly feel that their children need extra guidance and tutoring facilities to be provided by the regulated teachers rather than profit making coaching operators with the help of unregulated self-declared teachers. It is also contended that the definition of কোচিং বাণিজ্য as provided by the said Nitimala has concentrated only on profit motive thereby totally ignoring the importance of quality education by the trained teachers of schools and colleges and as such the same has been framed with mala-fide intention in order to facilitate the commercial coaching by self-declared teachers. It is also contended that since the coaching is widely provided to the students for medical admissions, engineering admissions and even entry in judiciary, such coaching cannot be stopped in respect of the students of schools and colleges only. It is contended that the definition of 'private tuition' as provided by Clause 1 (Ja) of the said Nitimala has given a narrow meaning in that it only means the tuition given by the teachers at their residence or the residence of the students. It is contended that by this Nitimala the

engagement or involvement of teachers in coaching centers has been stopped in one hand and coaching in the schools in the name of extra classes has been encouraged on the other hand, which itself is a contradictory policy. Accordingly, it is contended by these petitioners that, the said Nitimala should be knocked down by this Court.

9. Facts relevant for disposal of the Rules in **Writ Petition Nos. 2611 of 2018, 2842 of 2018** and **1954 of 2018** are almost similar, the only difference being that the petitioner in Writ Petition No. 2611 of 2018 is a teacher of non-government Secondary & Higher Secondary educational institution and the petitioners in Writ Petition Nos. 2842 of 2018 and 1954 of 2018 are teachers of government Secondary & Higher Secondary educational institutions. It is commonly stated by these petitioners that, with proper qualification and through due recruitment process, they have been appointed as teachers of different schools in Dhaka. That the petitioner in Writ Petition No. 2611 of 2018, being employed in a non-government educational institution, does not receive any MPO from the government. On the other hand, the petitioners in Writ Petition No. 2842 of 2018 and Writ Petition No.1954 of 2018 are teachers of different subjects in government educational institutions.

10. The case of the petitioner in **Writ Petition No. 2611 of 2018** is that while she was serving as teacher of the Viqarunnisa Noon School and College, the school suddenly received a memo dated 05.02.2018 issued by the College Invigilator, Board of Intermediate and Secondary Education, Dhaka (respondent No.10) in pursuance of the order of the Chairman of the Board wherein instructions were given to the school authority of the petitioner along with other schools to take appropriate steps against the teachers involved in coaching business in violation of the said Nitimala. By such communication, it is stated, the petitioner came to know that an enquiry was conducted by the Anti-corruption Commission, (Dudak), which is reflected in Memo dated 03.12.2017 of the Anti-corruption Commission containing a list of the names of the teachers of various educational institutions in Dhaka including the name of the petitioner alleging that they were involved in coaching business. By the said Memo, Dudak requested the Cabinet Division of the Government to take immediate disciplinary actions against the petitioner and others. According to the petitioner, she further learnt that, upon receipt of the said memo from Dudak, the Cabinet Division of the government issued a memo dated 05.12.2017 to the Secretary, Secondary School and Higher Secondary Education Department of the Ministry of Education for taking necessary steps as per law in this regard and, accordingly, the Department of Secondary and Higher Secondary Education, Dhaka issued Memo dated 04.02.2018 asking the concerned school authorities including the school of the petitioner to take appropriate steps against the petitioner and others listed therein for violation of the provisions under Rule 13 of the said Nitimala. Under such circumstances, the petitioner moved this Court and obtained the aforesaid Rule.

11. The factual scenario in other two writ petitions filed by the teachers are also similar in that while the petitioners in the said writ petitions were performing their duties as teachers in the said government schools and colleges, the Cabinet Division of the Government, by making reference to the aforesaid memo issued by Dudak, asked the concerned Ministry to take appropriate steps for stopping 'commercial coaching' and to take actions against the teachers involved therein. Thereupon, the concerned department of education issued memos asking the concerned schools of the petitioners to take appropriate legal actions against the petitioners and others for violation of Rule 13 of the said Nitimala on the allegation that they were involved in coaching business. Accordingly, impugned departmental proceedings were initiated against the petitioners in **Writ Petition No. 2842 of 2018** asking them to show cause as to why they should not be punished in accordance with the provisions under Rule 3(b) of

the Public Servant (Discipline and Appeal) Rules, 1985, which was followed by the impugned transfer orders transferring them from their present schools to other schools.

12. In **Writ Petition No.1954 of 2018** as well, the petitioners came before this Court when the Education Ministry issued Memo dated 02.01.2018 (Annexure-D) asking the Director General of Secondary and Higher Secondary Department, Education Vavan, Dhaka to immediately transfer 25 teachers mentioned in the enclosed list including the petitioners out of Dhaka and initiate departmental proceedings against them for alleged violation of the said Nitimala on the allegation that they were involved in coaching business. Consequently they were transferred vide impugned Memo dated 29.01.2018 (Annexure-E) to different schools outside Dhaka.

13. Under above circumstances, the teachers, who are petitioners in the aforesaid three writ petitions, came up before this Court and obtained Rules and ad-interim orders of stay against such actions initiated against them and such ad-interim orders were not interfered by the Appellate Division though, in Writ Petition No. 2611 of 2018, the Government preferred Civil Petition for Leave to Appeal No. 1552 of 2018 before the Appellate Division.

14. Common case of the petitioner-teachers in these three writ Petitions (Writ Petition Nos. 2611 of 2018, 2842 of 2018 and 1954 of 2018) are that the very Nitimala is a no-nest instrument as the same was not issued by the government as a delegated legislation in exercise of any power conferred on the government by any Act of parliament and as such any actions against the petitioners pursuant to the said non-est Nitimala are liable to be struck down by this Court. The further case as regards the said Nitimala is that since the said Nitimala has created an offence under the title 'কোচিং বাণিজ্য' (Coaching Business) and provided punishment for the same, it is without lawful authority in that only the Parliament can create any punishable offence by enactment under Article 65 of the Constitution. It is also contended by these petitioners that since the mischief of involvement in coaching business by the teachers of government and non-government schools and colleges do not fall under any office as mentioned in the schedule to the Durniti Domon Commission Act, 2004, Dudak did not have any authority to initiate the said enquiry as regards such alleged involvement of the petitioners and other teachers in coaching business. Accordingly, it is contended that, since the impugned proceedings and actions against the petitioners were initiated pursuant to a memo of Dudak dated 03.12.2017, the same are liable to be declared to be without lawful authority and are of no legal effect.

15. The Rules in these three writ petitions have been opposed by the D.G., Department of Secondary & Higher Secondary Education under the Education Ministry and Durniti Domon Commission (Dudak) by filing separate affidavits-in-opposition. It is contended by the education department that after issuance of the Rule in Writ Petition No. 7366 of 2011 by the High Court Division as regards framing of Rules to stop coaching business, the Ministry of Education held various meetings attended by the headmasters and principals of various schools and colleges presided over by the Hon'ble Minister himself and through such meetings, it was resolved that a Nitimala should be promulgated for stopping such coaching business which is destroying the normal education system in this country. Therefore, according to this respondent, since the education policy of the government has made provisions for preventing coaching business and for encouraging class-room education, the government has committed no illegality in framing the said Nitimala thereby making provisions for departmental punishments of the teachers if found involved in such coaching business. It is further contended by this respondent that it is the executive responsibility of the

government to protect the education system of the country and, in order to do that, the government can time to time issue notifications, orders, circulars etc. Therefore, it is also contended that, since the Dudak has found involvement of some teachers in such coaching business and has recommended actions against them, the government has committed no illegality in instructing the concerned authorities to take appropriate departmental actions as well as other actions against the concerned teachers. It is also contended by this respondent that the said Nitimala has in the meantime been published in government gazette vide Bangladesh Gazette dated 24.01.2019.

16. The case of respondent- Dudak is that it is the prime responsibility of Dudak to take steps for prevention of corruption and to detect corruption in any sector including the education sector and since the definition of the term 'corruption', as provided by the Durniti Domon Commission Act, 2004, includes the offences mentioned in the Schedule to the said Act, Dudak has committed no illegality in conducting enquiry in exercise of its power under Section 17 of the said Act as regards involvement of some teachers of non-government and government schools and colleges in the coaching business in violation of the said Nitimala of 2012. It is further contended by Dudak that since the mischief, as has been detected by such enquiry, falls under the offences mentioned in the said schedule to the Durniti Domon Commission Act, 2004, Dudak did have the jurisdiction to initiate enquiry about the same and also did have the option to refer the matter to the government for taking appropriate actions against the concerned teachers instead of initiating criminal proceedings against them.

SUBMISSIONS:

17. Since the Rule in the above mentioned three writ petitions (Writ Petition Nos. 2611 of 2018, 2842 of 2018 and 1954 of 2018) have in fact been contested by the parties seriously, we will give emphasis in our judgment on the submissions made by the parties in respect of the said Rules, as the same will cover the issues raised in other two writ petitions.

18. Though Mr. M Amir-Ul-Islam and Ms. Tania Amir, learned senior counsels, have appeared for the petitioner-teachers in the said three writ petitions, it is in fact Ms. Tania Amir, learned advocate, who has extensively argued the case for them. She has made the following submissions:

(1) That the said Nitimala, thereby making provisions for creating offence of coaching business as well as defining the 'coaching business' without any sanction of parliament or in exercise of any delegated power given by the parliament, is a no-nest instrument in the eye of law and as such the same should be declared to be without lawful authority;

(2) Since the said Nitimala was and is a no-nest instrument, any actions including the enquiry initiated by Dudak as well as the departmental proceedings as proposed/initiated against the petitioners pursuant to a report of Dudak also do not have any legal footing to stand and, accordingly, the same should also be declared to be without lawful authority.

(3) Drawing this Court's attention to various provisions of the Durniti Domon Commission Act, 2004, in particular the definition of the term 'Durniti' as provided by Clause (Uma) of Section 2 of the same and the functions of Dudak as provided by Section 17 of the same, she submits that under no circumstances involvement of any teacher of government and non-government Schools and colleges fall under the radar of enquiry of Dudak in particular when such involvement of teachers is not an offence under any provisions of the Penal Code which have been mentioned in the schedule to the said Dudak Act, 2004. This being so, Dudak in fact did not have any jurisdiction

to initiate enquiry into the alleged involvement of the petitioners in the coaching business and thereby send any recommendation to the cabinet division of the government for taking appropriate actions against them. Therefore, according to her, each and every actions taken pursuant to the said recommendation of Dudak, as sent by Memo dated 03.12.2017 (Annexure-B to the writ petition No. 2611 of 2018), do not have any legal footing to stand and as such the same should be declared to be without lawful authority.

(4) Further referring to the provisions under Article 152 of the Constitution, in particular the definition of term 'law' as provided therein, she submits that this Nitimala does not come under the purview of law under any circumstances and as such the same cannot be implemented by Dudak, government or by the concerned authority and, accordingly, any actions taken on the basis of the said Nitimala as well as recommendation of Dudak pursuant to the said Nitimala are actions without lawful authority and as such the same should be struck down by this Court.

(5) By drawing this Court's attention to the said Nitimala itself, as annexed to the Writ Petition no. 2611 of 2018 as Annexure-D, learned advocate submits that even the preamble of the said Nitimala has given a wrong information deliberately in that the said Nitimala was claimed to have been issued pursuant to a direction of the High Court Division in Writ Petition No. 7366 of 2011 inasmuch as that no such direction was ever given by the High Court Division in the said writ petition to frame any such Nitimala. Therefore, according to her, the government has committed fraud on this Court by making reference therein to a direction in the said writ petition.

(6) Learned advocate further points out that during pendency of the Rules, the government has published the said Nitimala in the gazette without even waiting for the result of the said writ petition which, according to her, is a contemptuous act by the government.

19. As against above submissions, Mr. Mokleshur Rahman, learned Deputy Attorney General, has made following submissions on behalf of the Director General, Secondary and Higher Secondary Education Department:

(1) Though there was no specific direction to frame any Nitimala in Writ Petition no. 7366 of 2011, government can, on its own, frame such Nitimala as an expression of its policy decision in line with the Education Policy, 2010 as declared by the government which, according to him, clearly prohibits any coaching business;

(2) By making reference to various reports as well as minutes of meetings as held in the Education Ministry under the leadership of the then Hon'ble Minister himself, learned DAG submits that after issuance of the said Rule in Writ Petition No.7366 of 2011, the government itself decided to hold inquiry as well as to hold meetings with the concerned stake holders, in particular the headmasters and principals of different schools and colleges, and in the said meetings, it was unanimously resolved that a Nitimala should be framed by the government for preventing such coaching business. In this regard, learned DAG has referred to the minutes of a meeting dated 22.02.2012, as annexed to the affidavit-in-opposition as Annexure-C;

(3) Further referring to the enquiry report dated 19.01.2012, learned DAG submits that a five member enquiry committee was constituted by the Education Ministry to find out the way- out from the burning problems as caused by the mushrooming of coaching centers in the country and it was recommended by the said committee, amongst others, to frame a Nitimala in this regard for prevention of such coaching business.

(4) Referring to a relevant portion of the National Education Policy, 2010, in particular Clause 22 under the Chapter fl£r¡ J j§mÉ¡ue, learned DAG submits that it is the

policy of the government to discourage coaching business so that the students can concentrate on the text books upon avoiding guide books, note books etc. in order to make the class room education more popular and the only education system in the country. Therefore, according to him, since the said Nitimala is nothing but a reflection of the said education policy of the government, the same cannot be interfered with by this Court.

(5) Learned DAG further submits that even the concerned service rules of the non-government and government teachers of the said schools and colleges prohibit their involvement in the coaching business without proper sanction of the concerned authorities or the government. This being so, according to him, the said Nitimala has just supplemented the said statutory provisions as contained in the said service Rules by which no rights of the petitioner have been curtailed.

20. Opposing the Rules, Mr. Khurshid Alam Khan, learned advocate appearing for the respondent Dudak, has made the following submissions:

(1) That Dudak is an independent body to enquire and investigate the offences mentioned in the schedule to the Dudak Act, 2004 and as such since the involvement of the petitioners, in particular the petitioners who are serving in government schools and colleges, in the coaching business have violated the provisions under Section 166 of the Penal Code, 1860 and some other provisions of the Penal Code which are included in the said schedule, Dudak did have the ample authority and jurisdiction to initiate enquiry into the said involvement of the petitioners and other teachers in the coaching business.

(2) Mr. Khan further submits that though Dudak is entitled to initiate such enquiry even on its own under the said law, without any complaint being lodged by any one, in the instant case Dudak has acted pursuant to a news report published in the Daily Jugantor on 04.04.2017 under the heading শিক্ষকদের কাছে জিম্মি অভিভাবক-শিক্ষার্থী. This being so, he submits, since Dudak has assigned its concerned officers to initiate enquiry into the matter and the said enquiry officers submitted a report finding such involvement of the teachers including the petitioners in such coaching business in violation of the said Nitimala, it opted to refer the matter to the government so that appropriate actions could be taken against the said teachers. Therefore, according to him, no act of without jurisdiction has been committed by Dudak in conducting such enquiry as well as in making recommendations to the government for taking actions against the said teachers.

(3) Further referring to the provisions under Section 17 of the Dudak Act, 2004, Mr. Khan submits that it is one of the main functions of Dudak to conduct enquiry and investigation as regards offences mentioned in the schedule to the said Act. Therefore, according to him, since Section 166 of the Penal Code is one of the sections mentioned in the said schedule and since the teachers of the government schools have in fact committed offences under the said provision of the Penal Code, Dudak lawfully conducted the said enquiry and, accordingly, issued the impugned memo dated 03.12.2017 (Annexure-B to the Writ Petition No.2611 of 2018) requesting the cabinet Secretary to take appropriate steps for containing such coaching business in this country.

21. Since the learned advocates appearing for the petitioner-guardians in Writ Petition No.11230 of 2012 have not argued the case in favour of the said petitioners separately, rather they have adopted the submissions of Ms. Tania Amir, we do not need to address their submissions separately.

22. In the course of hearing, learned advocates for the petitioners have repeatedly argued that government cannot issue such Nitimala or any Nitimala without sanction of parliament or without being delegated by any Act of parliament. Since this issue involves interpretation of provisions of the Constitution and laws, we have requested Mr. A.F. Hasan Ariff and Mr. Fida M Kamal, learned senior counsels, to assist this Court as Amici Curiae. Accordingly, they have made extensive submissions, though contrary to each other to certain extent.

23. According to Mr. A.F. Hasan Ariff, learned Amicus Curiae, when a Nitimala is framed by the government without making reference to any law or without being delegated by any Act of parliament, such Nitimala cannot be enforced or the same is not enforceable. In this regard, Mr. Ariff has referred to the fundamental principle of state policies as incorporated in our Constitution under Part II. According to him, though the said policies are the policies of the government and the State and will guide the Courts in respect of interpretation of the Constitution and laws, such policies of the State are not judicially enforceable. Therefore, according to him, same standard should be applicable in respect of the directions and Nitimalas as time to time framed by the government without any sanction of law in that the same may be the guidance as to how the government will act in respect of certain issues or on the basis of certain attending facts, but the same cannot be implemented or enforced. By referring to certain paragraphs of renowned text books on Administrative Law as authored by **D. Smith and Hilaiare Barnelt**, D. Smith, Judicial Review, 7th Addition-287 and Hilaiare Barnelt, Constitutional And Administrative Law, 5th Addition-798, he submits that by such Nitimala no rights of a citizen guaranteed by the Constitution or Act of Parliament can be curtailed. According to him, since the impugned Nitimala has defined an offence under the title 'coaching business' and provided punishment for the said offence, the same has curtailed the rights of the citizens of this country and as such the same, having not been issued under the authority of any act of parliament, cannot sustain as a valid Nitimala.

24. Surprisingly, a bit opposite submissions have been made by the other Amicus Curiae, Mr. Fida M Kamal. According to him, the decision of the government as regards it's policy are normally circulated by different instruments, and in Bangladesh, such instruments are called Nitimala, Nirdeshika, Paripotra, Biggopti, Rules, Regulations etc. Therefore, according to him, in a modern governance, a government cannot wait for a specific legislation every time to address each and every issue in the running of the affairs of the State. Therefore, he submits, government takes recourse to various Nitimala, Nirdeshika, Paripatra etc. which do not necessarily need to have the statutory backing or sanction of parliament always in particular when the governance by the executives has already been sanctioned by the Constitution itself. He further submits that since the National Education Policy, 2010 has clearly discouraged coaching business, the government has committed no illegality in framing the said Nitimala, even without any direction from the High Court Division, as a supplementary instrument to prevent such mischief of coaching business which has become a parallel educational system in this country. According to him, though the government has time and again taken preparations to enact Education Act, 2016 to regulate such affairs, it is yet to be enacted by the Parliament and as such until such enactment is made, the executives cannot sit idle whenever it faces problems like coaching business. Therefore, he submits, to prevent such mushrooming of coaching business in the country, government had no option but to frame a Rule in the form of instructions to the teachers and concerned authorities to deal with such problems. According to him, all the modern governments issue such circulars, Nitimala etc. for handling the situations they face time to time which are not directly covered by law or Act of parliament. In this regard, learned advocate has referred to some articles as

written *by some jurists, namely* ***"Circular Arguments****: The status and Legitimacy of Administrative Rules" by Robert Baldwin and John Houghton, published in (1986) Public Law at page 239-284,* ***"The Scope of Judicial Review****: Public Duty" not "Source of Power" by C.F. Forsyth, published in (1987) Public law at Pages 356-367*. According to him, since the MPO teachers in non-government schools and colleges receive government portions of salary and government benefits, they are also bound by any instructions and circulars issued by the government as regards their conduct and affairs. This being so, he submits, by such Nitimala, the government can also address the teachers of non-government schools and colleges as regards any illegalities committed by them. He further submits that the coaching business cannot be considered under any circumstances as a legal right of the petitioners under Article 40 of the Constitutions as such rights are restricted by laws like Rules, regulations and byelaws and legal instruments having force of law in Bangladesh. Therefore according to him, since the said Nitimala has prohibited the coaching business, not teaching or tuition, the same should not be interfered with by this Court as the same is the policy statement of the government in line with the National Education Policy, 2010.

25. **DELIBERATIONS OF THE COURT**:

Nitimala of 2012:

Since the source of every grievance of the petitioners, in particular the petitioner-teachers in the above three writ petitions, is the "শিক্ষা প্রতিষ্ঠানের শিক্ষকদের কোচিং বাণিজ্য বন্ধ নীতিমালা-২০১২" as circulated by the government vide Memo dated 20.06.2012 (Annexure-D to the writ petition No. 2611 of 2018), let us first decide whether this Nitimala is sustainable in law. In order to do that, let us first examine the very Nitimala itself.

26. It appears from the said Nitimala that at the beginning, it was said that the same was framed pursuant to a direction of the High Court Division in Writ Petition No. 7366 of 2011. However, upon examining the orders passed in the said writ petition, we have not found any such direction therein. On the other hand, it appears, this Court only issued Rule in the said writ petition upon the respondents to show cause as to why such Nitimala should not be framed. Therefore, apparently, a misleading information has been given at preamble of the said Nitimala, which should be corrected by the concerned authority immediately.

27. It further appears that the said Nitimala has defined the 'educational institutions' to which is applicable and the 'teachers' to whom it is applicable. Some relevant definitions under Article 1 of the said Nitimala are quoted below;

(ক) **শিক্ষা প্রতিষ্ঠানঃ** এ নীতিমালায় শিক্ষা প্রতিষ্ঠান বলতে সরকারি/বেসরকারী স্কুল (নিম্ন মাধ্যমিক ও মাধ্যমিক), কলেজ (উচ্চ মাধ্যমিক, স্নাতক ও স্নাতকোত্তর) মাদরাসা (দাখিল, আলিম, ফাজিল, কামিল) ও কারিগরি শিক্ষা প্রতিষ্ঠানসমূহকে বোঝাবে।

(গ) **শিক্ষকঃ** শিক্ষক বলতে উপানুচ্ছেদ (ক) এ বর্ণিত শিক্ষা প্রতিষ্ঠানসমূহে পাঠদানরত সকল শিক্ষককে বোঝাবে।

(চ) **কোচিংঃ** শিক্ষা প্রতিষ্ঠানে অধ্যয়নরত শিক্ষার্থীদের শিক্ষা কার্যক্রম চলাকালীন শিক্ষকের নির্ধারিত ক্লাসের বাইরে বা এর পূর্বে অথবা পরে শিক্ষক কর্তৃক শিক্ষা প্রতিষ্ঠানের অভ্যন্তরে/বাইরে কোন স্থানে পাঠদান করাকে কোচিং বোঝাবে।

(ছ)) **কোচিং বাণিজ্যঃ** উপানুচ্ছেদ (চ) অনুযায়ী বিভিন্ন জাতীয়/দৈনিক/স্থানীয় পত্রিকায় বিজ্ঞপ্তি, পোস্টার, লিফলেট, ফেস্টুন, ব্যানার, দেয়াল লিখন অথবা অন্য কোন প্রচারণার মাধ্যমে মুনাফা অর্জনের লক্ষ্যে শিক্ষার্থী ভর্তির মাধ্যমে কোচিং কার্যক্রম পরিচালনা করাকে বোঝাবে।

(Underlines supplied)

28. It appears from the above quoted definitions that the teachers to whom this Nitimala will be applicable are the teachers who are imparting education in the '**educational institutions**' mentioned under Article-1 (L). On the other hand, the institutions mentioned under Article-1 (L) are government/non-government Schools (lower secondary and

secondary), Colleges (higher Secondary, graduation and post graduation), Madrasah (Dakhil, Alim, Fazil, Kamil) and Technical Educational Institutions. At the same time, **'Coaching'** means imparting education by teachers of the said institutions to the students of the said institutions during class time or beyond class time in the institutions or outside institutions. The definition of **'Coaching Business'** as quoted above is very much important in that it only applies to sub-article (Cha), which means the involvement of the teachers of the above mentioned educational institutions has been defined as a mischief. Again, Article-2 has prohibited coaching by teachers except under certain circumstances mentioned therein. Article-3 has prohibited coaching of students of the said institutions by the teachers of the said institutions except that a teacher of an institution may indulge in coaching of ten students of some other institutions with the prior permission of the head of his/her institution. Article-4 clearly prohibits the involvement of teachers of the above mentioned institutions, either directly or indirectly, in any coaching centers which are developed for coaching business. Article-9 has also prohibited any 'coaching business' upon renting any house in the name of coaching center.

29. Therefore, since the very definition of the term 'Coaching Business' has only attracted the involvement teachers of the above mentioned institutions as a mischief, this Nitimala in fact has not prohibited the 'coaching business', or 'coaching centers', run by any individual in his or her private capacity who is not a teacher of the above mentioned institutions. This means involvement of an individual, who is not a teacher of the above mentioned institutions, in such coaching centers or business has not been prohibited by this Nitimala. Therefore, the prohibition, as provided by this Nitimala, only applies to the teachers of the above mentioned institutions and not to any individuals or private citizens or persons, who are not teachers of such educational institutions.

30. Now, let us see whether the said Nitimala is sustainable in law. In doing so, let us first examine the relevant service laws applicable to the concerned teachers. The teachers in non-government educational institutions are regulated by a delegated legislation issued by the concerned Board with prior approval of the government in exercise of the power of the Board under Section 39 of the Intermediate and Secondary Education Ordinance, 1961 ("the said Ordinance"). The said delegated legislation is titled 'the Recognized Non-government Secondary School Teachers (Board of Intermediate and Secondary Education) Terms and Conditions of Service Regulations, 1979 ("in short, Regulation of 1979"). According to this Regulations of 1979, though the appointing authority of a teacher in non-government educational institutions is the concerned managing committee, the conduct of teachers of such institutions (schools and colleges) are somehow regulated by the Board or by the government through the Board. For example, any disciplinary proceedings initiated against a teacher of such institutions and punishment imposed on them are to be approved by the concerned Board through its Appeal and Arbitration Committee as constituted under section 19 of the said Ordinance of 1961. Again, regulation 9 of the said Regulations of 1979 provides as follows:

৯. ব্যক্তিগত টিউশনি নিষিদ্ধ ইত্যাদিঃ কোন পূর্ণকালীন শিক্ষক স্কুলের স্বাভাবিক কাজের বাইরে নিয়োগকারী কর্তৃপক্ষের পূর্ব অনুমোদন ব্যতিরেকে কোন ব্যক্তিগত টিউশন বা অন্য কোন নিয়োগ লাভ বা অন্য কোথাও ভাতাসহ বা ভাতা ব্যতীত নিজেকে নিয়োজিত করতে পারবেন না।

(Underlines supplied)

31. Therefore, it appears from the above provisions under regulation 9 that a teacher in non-government educational institutions cannot engage himself/herself in any private tuition without prior approval of the governing body or managing committee. While the said

regulation has prohibited such private tuition by the teachers without prior approval of the governing body, it can be presumed that the legislatures even did not have in their mind that in near future the teachers of such schools or colleges would engage themselves in coaching business. Thus, when private tuition is prohibited by regulation 9 of the said Regulations of 1979, involvement of teachers in coaching business is out of question. Therefore, it appears that, so far as the teachers of non-government schools and colleges are concerned, their service regulations, which is a delegated legislation having sanction of Parliament, clearly prohibits any such private tuition not to speak of their involvement in any coaching business as defined by the said Nitimala of 2012.

32. Now, the teachers of government schools and colleges. Some of the petitioners are admittedly serving in government schools and colleges. Thus, in view of the definition of the term 'public servant' as provided by Section 21 of the Penal Code, they are public servants or government servants. Therefore, their conducts and affairs are regulated by the provisions under the Government Servants (discipline and appeal) Rules, 1985 and the provisions of the Government Servants (Conduct) Rules, 1979, in addition to other Rules and Regulations as applicable to such government employees. The Government Servants (Conduct) Rules, 1979 (in short, "Conduct Rules, 1979") was framed by the Hon'ble President of Bangladesh in exercise of power conferred on him under Article 133 of the Constitution. Therefore, it cannot be said or argued that this Conduct Rules of 1979 does not have any sanction of parliament. Rather, it has sanction of the supreme law of the land, namely the Constitution. Rule 17 of the said Conduct Rules of 1979 provides as follows:

> *"17.* ***Private trade or employment****–(1) Subject to the other provisions of this rule, no government servant shall, except with the previous sanction of Government, engage in any trade or undertake any employment or work, other than his official duties:*
> *Provided that a non-gazetteed Government servant may, without such sanction undertake a small enterprise which absorbs family labour and where he does so, he shall file details of the enterprise along with the declaration of assets.*
> *(2) A Government servant may undertake honorary work of a religious, social or charitable nature and occasional work of a literary or artistic character which includes publication of one or a few literary or artistic works, provided that his official duties do not suffer thereby; but the government may, at any time, forbid him to undertake or require him to abandon any employment which, in its opinion, is undesirable.*
> *(3) A Government servant shall not, without the previous sanction of the Government, permit any member of his family to engage in any trade in the area over which such Government servant has jurisdiction.*
> *(4) This rule shall not apply to sports activities and membership of recreation clubs."*

33. It appears from the above quoted provisions under Rule 17 of the Conduct Rules of, 1979 that no government servant may engage himself/herself in any trade or undertake any employment or work, other than his official duties, without previous sanction of the government. Though learned advocate Ms. Tania Amir has argued that the petitioner teachers, who are serving in government schools and colleges, have not employed themselves under any one, rather they are providing tuition on their own, we do not find any substance in such submissions inasmuch as that the said provisions under Rule 17 has even prohibited the government servant from undertaking any employment or work other than his/her official duties. Admittedly, the allegations against the petitioners are that they are engaged in coaching business. Now, if it is their case that they are not in fact engaged in coaching business and that they are providing private tuition with the prior approval of the head of the

institution, they may easily give such explanations in the departmental proceedings initiated or to be initiated against them. Under writ jurisdiction, we are not in a position to determine whether in fact they were involved in coaching business or not. Since the concerned authority has initiated proceedings against them on the said allegation that they are involved in coaching business, as has been found by Doduk in the enquiry, they can easily give such reply to the show cause notices that the allegations are not true.

34. From the above discussions, it appears that even in the absence of the said Nitimala, the petitioners and other teachers of non-government and government schools and colleges are not allowed to engage themselves in any sort of coaching business. This prohibition has not been provided by the said Nitimala of 2012, rather this has been given by their concerned service Rules which are delegated legislations and applicable to them. When the petitioners, or other teachers of government and non-government schools and colleges, joined their services, they joined as such fully knowing that the said Service Rules would be applicable to them. Therefore, by the said Nitimala, the government has in fact supplemented the provisions which are already in the statute books and in doing so, the government does not need to show any other sanction of statute or Act of parliament. It is the part of the constitutional power of the government as executive to run the governance and in running such governance, it is the duty and obligation of the government to take steps for implementation of the laws and regulations time to time enacted by the parliament or by the delegatees of the parliament. Under such obligations, the governments in modern countries issue various Circulars, Paripatra, Nitimala etc. and this has now become essential and normal administrative technic in modern countries. The only limitation in issuing such Nitimala or Nirdeshika is that by such Nitimala or Nirdeshika, the government cannot curtail the rights of any citizen which is already granted in his/her favour either by the Constitution or by law or by any other legal instruments.

35. The fundamental rights of citizens of this Country to do any lawful profession, occupation, trade or business is guaranteed by the Constitution only subject to restrictions imposed by law. Therefore, in the facts and circumstances of the present cases, the petitioners have failed to show that either the Constitution or any act of parliament or any delegated legislation of this Country has given them any right to get involved in coaching business. Rather, it has become evident from the above referred delegated legislations that in fact they have been prohibited by the law of the land from getting involved in coaching business. Thus, in so far as the said Nitimala is concerned, since the same has not curtailed any rights of the petitioners guaranteed either by the constitution or any law, it cannot be knocked down by this Court. Rather, it should be protected by this Court as it is the supplemental instrument to the already existing laws of the land. In this regard, the decisions of Indian Supreme Court **in Bennett Coleman Co. v. Union of India, AIR 1973 SC 106**, **Bishamber Daval Chandra Mohan v State of UP, AIR 1982 SC -33 and Distt. Collector, Chittoor v Chittor Disttt. Groundnut Traders Assn, AIR 1989 SC 989** may be looked into as references. Therefore, on this point of unconstitutionality and unimplementablity of the said Nitimala of 2012, as argued by the learned advocates for the petitioners, we find no substance.

36. Jurisdiction of Dudak:

Another point raised by the petitioners in the above writ petitions is that the Durniti Daman Commission (Dudak) did not have any authority to conduct any enquiry, as has been done in the present case, regarding the alleged involvement of the petitioners and other teachers in the coaching business. In this regard, we need to examine the relevant provisions of the Durniti Daman Commission Act, 2004. The preamble of the Dudak Act, 2004 clearly

declares the intention of the Legislature as to why an independent body named 'Durniti Daman Commission' has been established. The said intention is to prevent act of corruption and to enquire and investigate such act of corruption. Therefore, since the key word in the entire Dudak Act, 2004 is the "corruption" (দুর্নীতি), we need to see how the said term 'Corruption' has been defined by the Act itself.

37. According to Clause (Uma) of Section 2 of the said Act, দুর্নীতি (corruption) means the offences mentioned in the schedule to the said Act. Section 17 of the said Act has described the functions of the Commission which, amongst others, provides that it is the functions of the Commission to enquire and investigate the offences mentioned in the schedule. Therefore, it appears that, the jurisdiction or authority of Dudak to initiate inquiry or investigation or to lodge a case depends on some specific offences and only on such offences which are mentioned in the schedule to the said Act. Thus, the Schedule to the said Act is quoted below for ready reference:

তফসিল

[ধারা ১৭(ক) দ্রষ্টব্য]

(ক) এই আইনের অধীন অপরাধসমূহ;

(খ) The Prevention of Corruption Act, 1947 (Act II of 1947) এর অধীন শাস্তিযোগ্য অপরাধসমূহ;

[(খখ মানিলন্ডারিং প্রতিরোধ আইন, ২০০২ (২০০২ সালের ৭ নং আইন)]

(গ) the Penal Code, 1860 (Act XLV of 1860) এর Sections 161-169, 217, 218, 408, 409 and 477A এর অধীন শাস্তিযোগ্য অপরাধসমূহ।

(ঘ) অনুচ্ছেদ (ক) হইতে (গ) তে বর্ণিত অপরাধসমূহের সহিত সংশ্লিষ্ট বা সম্পৃক্ত ঢ়বন ঙনশতর ইষধন, ১৮৬০ (অদঢ় ডকট ষপ ১৮৬০) এর ড়নদঢ়ভষশ ১০৯ এ বর্ণিত সহায়তাসহ অন্যান্য সহায়তা, এ বর্ণিত ষড়যন্ত্র এবং ড়নদঢ়ভষশ ১২০আ এ বর্ণিত ষড়যন্ত্র এবং ড়নদঢ়ভষশ ৫১১ এ বর্ণিত প্রচেষ্টা অপরাধসমূহ।

38. It appears from the above quoted Schedule that apart from some other offences, the offences punishable under Sections 161 to 169, 217, 218, 408, 409 and 477A of the Penal Code have been mentioned therein. Therefore, it can be concluded that Dudak also has jurisdiction to inquire into the offences mentioned in the said sections of the Penal Code. Though all the sections of the Penal Code as mentioned in the said Schedule are not relevant for our purpose, the provisions under Section 166 of the Penal Code is relevant. Therefore, the said provision as well as the illustration provided therein are quoted below:

> *166. whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.*
>
> ***Illustration***
>
> *A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.*
>
> (Underlines supplied)

39. It appears from the above quoted provision under Section 166 of Penal Code that it is an offence by a public servant if he knowingly disobeys any direction of law as to the way in which he is to conduct himself as such public servant either intending to cause or knowing it

to be likely that he will by such disobedience cause injury to any person, he shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both.

40. Now the question has arisen whether the petitioners, by their alleged involvement in the coaching business, have disobeyed the direction of law. The answer is given above already in that since their service rules clearly prohibit such engagement, they have in fact violated or disobeyed the direction of law as to the way in which they are supposed to conduct themselves. However, this provision is only applicable to the public servants, namely the petitioners who are teachers of government schools and colleges, and this provision does not apply to the teachers who are not government servants, namely the petitioner in W.P. No. 2611 of 2018. The illustration given at the bottom of the said Section has also clarified one very important aspect in that the injury which is likely to cause to any person may be a civil injury as well.

41. Therefore, it cannot be denied that when the teachers get involved themselves in coaching business, which is prohibited by law, they are disobeying the direction of law and they know it fully that such disobedience might cause injury to the students or their guardians in that by such engagement they are utilizing their resources, potentials and capabilities in such coaching centers rather than using them in the class rooms. Therefore, this Court is of the view that, since this provision under Section 166 of the Penal Code has been incorporated in the Schedule to the Dudak Act, 2004, Dudak thinly had technical jurisdiction to enquire into the allegations as published in the news paper regarding the involvement of teachers in the coaching business. However, this thin and technical jurisdiction is only confined to the teachers of government colleges and schools and not to the teachers of non-government schools and colleges. Therefore, in so for as the petitioner in W.P. No. 2611 of 2018 is concerned, who is admittedly a teacher in non-government school and college, Dudak has in fact acted without jurisdiction in initiating enquiry in respect of her alleged involvement in the coaching business. However, it cannot be said that, she has not violated any law. But for such violation, it is the governing body of the institution which may initiate proceedings against her independently not being instructed by Dudak. Therefore, the proceedings or the actions proposed against the petitioner in the said W.P. No. 2611 of 2018, being proposed or taken pursuant to the said recommendation of the Dudak given on the basis of its unauthorized or unlawful enquiry, the same is liable to be declared to be without lawful authority. However, in so far as the petitioner-teachers in other writ petitions are concerned, since they are public servants or government servants, Dudak did have technical jurisdiction and authority to enquire into their alleged involvement in the coaching business as because by such involvement they have allegedly disobeyed the direction of law. Therefore, in so far as they are concerned, Dudak has technically committed no illegality in strict sense and, accordingly, the recommendations of Dudak as well as the actions proposed and taken against them pursuant to such recommendations do not suffer from any legal infirmity and, accordingly, the said actions should sustain in the eye of law.

42. Though we are saying that technically Dudak had jurisdiction to enquire into the said matters, we are of the view that Dudak should have priority list as to which offences should get priority in their such enquiry and investigation when it is repeatedly reported in newspapers that Dudak does not have enough resources and logistic supports. We are of the view that leaving behind serious allegations of corruptions in National Banks, Customs Houses, Ports, Court Premises, Government Offices, Land Offices, etc. Dudak should not have inquired into the mere involvement of some teachers in coaching business relying on a newspaper report. When there are some other serious reports of corruption in the country, it

does not also look well when Dudak shows such importance to some basically disciplinary matters when teachers of government schools are not attending classes on time. These apparently disciplinary issues should be kept at the bottom of Dudak's priority list in particular when almost each and every institution of this country is now suffering from huge corruption being committed by its employees and staffs. Though by engaging in coaching businesses the said teachers have disobeyed the direction of law, but it cannot be said that they have committed any 'corruption' as we understand the term in its general and common parlance. Therefore, we are of the view that, though thinly and technically Dudak had jurisdiction to enquire into the matters as published in the newspaper as regards involvement of the government teachers in coaching business, they should not have conducted such enquiry at all. Such enquires should have been done by the education directorate of the government or the concerned ministry itself. However, for the same technical reason, we cannot say that Dudak acted without jurisdiction.

43. Accordingly, the order of this Court in the instant writ petitions are as follows:-

Orders of the Court:

1) The Rule in Writ Petition No. 7366 of 2011 has become infructuous and as such the same is discharged as being infructuous.
2) Since we have found the said Nitimala of 2012 as a valid Nitimala being supplemental to the existing laws of the land, the Rule issued in Writ Petition No. 11230 of 2012 and three other writ petitions, being Writ Petition Nos. 2611 of 2018, 2842 of 2018 and 1954 of 2018, in so far as impugning the said Nitimala is concerned, are discharged.
3) Since the petitioner in Writ Petition No. 2611 of 2018 is admittedly a teacher of non-government school and college, the Rule in that writ petition, in so far as the Memo dated 03.12.2017 (Annexure-B) issued by Dudak and other memos issued by the concerned authorities, in particular the Memo dated 04.02.2018 (Annexure-G) issued by the Secondary and Higher Secondary Department is concerned, is hereby declared to be without lawful authority and is of no legal effect as the same have been initiated on the basis of the said enquiry report of Dudak. Accordingly, no departmental proceedings pursuant to such report of Dudak or the subsequent memos emanating therefrom can be initiated against the petitioner in the said writ petition. Thus, the Rule in the Writ Petition No. 2611 of 2018 is made absolute-in-part.
4) Since we have found the said Nitimala as valid Nitimala as well as the said enquiry report of Dudak being valid enquiry report in respect of the teachers of the Government colleges and schools, the Rules in Writ Petition Nos. 2842 of 2018 and 1954 of 2018 are discharged. The petitioners in these writ petitions are at liberty to make out their cases as regards their non-involvement in coaching business, as submitted by their learned advocate before this Court, by way of reply to the show cause notices already issued or to be issued against them.

44. At the end, we express our heart felt gratitudes to the learned Amici Curiae, Mr. A.F. Hassan Ariff and Mr. Fida M. Kamal, as their research and submissions have immensely helped us reach the conclusions above.

45. Communicate this.