12 SCOB [2019] HCD

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 5556 of 2014.

Shakwat Hossain Bhuiyan
….Petitioner.
Versus.
Bangladesh and others.
……Respondents.

Mr. Qumrul Haque Siddique with
Mr. Sattya Ronjan Modal Advocates.
……. For the petitioner.

Mr. Shafiq Ahmed, Senior Advocate.
With Mr. Md. Nurul Islam Sujan,
Advocate.
…… For the Respondent No.7

Mr. Aminur Rahman Chowdhury, AAG.
..For the Respondent No. 8 and 9.

Mr. Aftab Uddin Siddique, Advocate.
…..For the Respondent No.10.

Heard on: 3.11.2016, 14.11.2016,
22.11.2016, 01.12.2016
Judgment on: 06.12.2016

Present:
Mr. Justice Md. Emdadul Huq
And
Mr. Justice F.R.M. Nazmul Ahasan

Present:
Mr. Justice Md. Abu Zafor Siddique (Hon'ble Third Judge)
Minority view:

Article 102 of the Constitution of the People's Republic of Bangladesh, Article 66 of the Constitution of the People's Republic of Bangladesh Public Interest Litigation, Election Commission;

It follows that the petitioner can very well seek a remedy under article 102 (2) (b) (ii), of course subject to the condition that no other efficacious remedy is available to him. In seeking a remedy under clause 102(2)(b)(ii), he does not have to be an aggrieved person for filing this case. ... (Para 69)

The underlying principle of a writ of *quo warranto,* as interpreted by the Supreme Court of India and as quoted above, is clearly the same as enshrined in clause 102(2) (b) (ii) of our Constitution. Under this clause, "*any person*" can file an application and this court can, upon such an application, exercise the jurisdiction a writ of quo warranto. The applicant is not required to be "*an aggrieved person*" as opposed to the requirement of clause (1) and (2) (a) of article 102 under which a public interest ligation may be filed. In such a case the duty of this court is to hold an inquiry on the allegation and to arrive at a decision keeping in view of the legal and factual issues. ... (Para 75)

The reply to this principal issue depends upon decisions on the issues on (1) the deduction of prejudgement custody period of 143 days as claimed by him, (2) the period of sentence served out by him, (3) the remission permissible to him on various counts clamied by him and (4) the remaining sentence, if any. The discussion, findings and decision on those matters i.e. on issues Nos 1-6 show that no disputed questions of facts are involved on those 4(four) matters and the related issues. ... (Para 196)

In view of the findings and decision on the issue of the remaining period of sentence (Isssue No. 6) it is evident that, on the date of his release from jail on 01.06.2006, the incumbent MP (respondent No. 7) had not served out the entire sentence and that he was required to serve out the remaining sentence for another 468 days. There is nothing on record to show that, after his release on 01.06.2006, he was ever taken to jail in connection with the sentence imposed on him in Special Tribunal Case No. 757 of 1999.

It follows that as per article 66(2)(d) of the Constitution he was disqualified to be nominated and elected as an MP in the election held on 05.01.2014. It is noted that article 66(2)(d) speaks of conviction for a criminal offence involving moral turpitude. The offence under section 19A and 19 (f) of the Arms Act, 1878 is such an offence. Because in the context our society the nature of the prescribed penalty namely a minimum rigorous imprison of 10 years and 7 years for illegal possession of fire arms and ammunition without licence issued by appropriate authority is an offence against the security of the society at large and also against the state and moral value in general.

... (Para 197 & 198)

(Per Mr. Md. Emdadul Huq, J)

<u>Majority view:</u>

Article 66(2) of the Constitution of the People's Republic of Bangladesh and the Article 12(1)(d) of the RPO relates to the election disputes triable before the election Tribunal. These factual aspect of the writ petition which discussed above are not admitted rather, it is disputed in different aspect and without taking evidence about the disputed fact of date of release of the respondent No.7 from Jail custody, the calculation of blood donation to the Sandhani and the special remission provided in the Jail Code which is recorded in the history ticket, it cannot be decided in a summary proceeding in the writ petition. ... (Para 276)

In this respect Article 125 of the Constitution of Bangladesh is very much applicable in the facts and circumstances of the case. Particularly, the facts and circumstances arises in the writ petition is a clear bar as this type of dispute cannot be decided without any evidence both oral and documentary. ... (Para 278)

An election dispute can only be raised by way of an election in the manner provided therein. Where a right or liability is created by a statute providing special remedy for its enforcement such remedy as a matter of course must be availed of first. The High Court Division will not interfere with the electoral process as delineated earlier in this judgment, more so if it is an election pertaining to Parliament because it is desirable that such election should be completed within the time specified under the Constitution. In the instant case, a serious dispute as to the correct age of the appellant was raised before the High Court Division which was not at all a subject matter of decision on mere affidavits and certificates produced by the parties. .. (Para 281)

As regards the first ground, it may be stated that if the purpose of the writ petition was only to challenge the election of the appellant on the alleged ground of his being a defaulter then we would have felt no hesitation to declare at once that the writ petition was not maintainable. Indeed, we have already held while rejecting CPSLA No.21 of 1988 (quoted in the affidavit-in-opposition) that "such questions as to disqualification, etc. which are questions of fact are better settled upon evidence which can be done more appropriately before a Tribunal. In the summary proceeding under Article 102 it is not desirable and, more often than not, not possible to record a finding as to a disputed question of fact." As regards the first ground, it may be stated that if the purpose of the writ petition was only to challenge the election of the appellant on the alleged ground of

his being a defaulter then we would have felt no hesitation to declare at once that the writ petition was not maintainable. Indeed, we have already held while rejecting CPSLA No.21 of 1988 (quoted in the affidavit-in-opposition) that "such questions as to disqualification, etc. which are questions of fact are better settled upon evidence which can be done more appropriately before a Tribunal. In the summary proceeding under Article 102 it is not desirable and, more often than not, not possible to record a finding as to a disputed question of fact." ... (Para 301)

(Per Mr. F.R.M. Nazmul Ahasan, J)

It is now a well settled proposition of law that if there is efficacious and alternative remedy is available, a writ petition under Article 102 of the Constitution is not maintainable. Admittedly it has been raised whether Article 125 of the Constitution puts a bar in the instant case in hand. Admittedly as per the aforesaid provision of law there is a legal bar questioning the result of the election declared by the commission except following the provisions of RPO. In the present case in hand it appears that the petitioner in the disguise of Article 102 of the Constitution trying to enforce the provisions of RPO. In the present case in hand it further appears that the question as raised by the petitioner regarding certain declarations made by the respondent No.7 before the Election Commission which is completely a dispute to be resolved by the competent authority as provided in the Represented People Order (RPO). ... (Para 339)

(Per Mr. Md. Abu Zafor Siddique, J)

JUGEMENT

Md. Emdadul Huq, J. (Minority view):

1. 1.00: Subject matter of this Case: This case is about the lawful authority of respondent No.7 Mr. Nizam Uddin Hajari (**shortly the incumbent MP**) to hold the office of Member of Parliament for the Constituency of Feni-2. This issue has been raised upon an allegation that he was convicted and sentenced under sections 19A and 19(f) of the Arms Act, 1878 to rigorous imprisonment for 10(years), but he was released from the jail on serving a lesser period.

2. The facts relevant for disposal of this case are presented in the following paragraphs under appropriate headings.

3. **2.00: Order of the Honorable Chief Justice**: This case was earlier fixed for hearing and disposal by two other Division Benches. Lastly the Honorable Chief Justice has, by order dated 02.12.2015, sent this case with the following direction: "*Let this matter be heard and disposed of by the Division Bench presided over by Md. Emdadul Huq, J."*

4. Accordingly the matter was previously heard on various dates by the Division Bench presided over by myself (Md. Emdadul Huq, J) with several other 2nd judges. Lastly the matter has been heard by the current Division Bench and judgment is being delivered today.

5. **3.00: Terms of the Rule nisi and interim orders**: Upon an application (Writ Petition) under Article 102(2)(b)(ii) of the Constitution, a Rule Nisi was issued by this Court by order dated 08.06.2014 as follows):

> *"Let a Rule Nisi be issued calling upon the respondents to show cause as to under what authority the respondent No. 7 is holding the post of Member of Parliament*

(MP) for the constituency of Feni-2 and why the said seat of the Member of Parliament(MP) for the said Constituency of Feni-2 shall not be declared vacant and/or pass such other or further order or orders as to this court may seem fit and proper."

6. **3.01:** By the Rule issuing order the following **interim directions** were given:

(a) The jail authorities being the Inspector General of Prison **(IG Prison)** and the Senior Jail Super, Chittagong Central Jail, Chittagong, **(respondent Nos. 8 and 9)** were directed "*to submit a report on the service of the period of sentence in Jail by respondent No.7 along with relevant record / file"; and*

(b) Editor of the Daily Prothom Alo **(respondent No. 10)** was "*directed to explain his position and also the sources and authenticity of the news item "সাজা কম খেটে, বেরিয়ে যান সাংসদ" published in the Daily Prothom Alo dated 10.05.2014".*

7. **3.02:** During pendency of the case, **several other interim orders** were also passed by this Court on different dates with specific directions to the Jail authorities, the District Magistrate, **(DM)** Chittagong, the Registrar of this Court, the learned Metropolitan Sessions Judge, Chittagong and the concerned Section of the office of this Court.

8. 3.03: Moreover, by order dated 10.09.2014, Mr. M.A. Bashar, being an advocate of this court and Mr. AKM Mohiuddin Chowdhury, being an Assistant Attorney General (AAG), were also directed to explain their respective position with regard to the bail application allegedly filed in Criminal Appeal No. 1409 of 2006 in which bail was allegedly granted to the incumbent MP by a Division Bench of this Court and he was allegedly released from the Jail on the basis of that bail.

9. 4.00: Responses to the Rule and interim orders: Pursuant to the above noted Rule nisi and interim directions (1) the incumbent MP **(respondent No. 7)** and (2) the jail authorities **(respondent Nos. 8 and 9),** and (3) Ediditor Prothom Alo (respondent No. 10) have filed their respective Affidavit-in-opposition. They have also filed several Supplementary Affidqavits and Affidavits in Reply.

10. 4.01: However Advocate Mr. MA Bashar has filed a vakalatnama, but has not filed any written explanation nor did he personally appear due to sickness (vide order dated 14.10.2014). Mr. AKM Shafiullah, the learned AAG, has neither filed any written explanation nor did he personally appear.

11. 4.02: Other authorities being the DM, Chittagong, the learned Metropolitan Sessions Judge, Chittagong, Registrar of this Court the concerned section of this court have complied with the relevant direction.

12. 4.03: Summery of the Writ Petition and the materials presented to this court by various respondents and the aforesaid authorities are briefly presented in the following paragraphs under appropriate headings.

13. 5.00: Writ Petitioner's case: The Writ Petitioner has presented his case in the Writ Petition and 2 (two) other Affidavits, as follows:

5.01: Petitioner has stated that earlier he had been the Joint Convener of Feni District Jubo League and also a Councilor of the Feni Pouroshava. He and many others of the

locality feel concern about the fact that the incumbent MP (respondent No. 7) was disqualified to be elected as an MP and yet he is holding that public office. So the petitioner has filed this case as a "*public interest litigation*".

14. **5.02:** Petitioner has further stated that, in the national election held on 05.01.2014, respondent No.7, as a candidate for election as MP for the Constitution of Feni-2, submitted to the Election Commission his Affidavit being No. 941 dated 02.12.2013 (**Annexure-B**). In that Affidavit, he made false statement to the effect that in Special Tribunal Case No. 757 of 1999 he had been acquitted. Eventualley the Election Commission published Gazette Notification dated 08.01.2014 (**Annexure-A**) declaring him as the elected MP.

15. **5.03:** Petitioner claims that the incumbent MP has suppressed the fact that the Special Tribunal, Chittagong by judgment dated 16.08.2000 passed in the said case, convicted and sentenced him under sections 19A and 19(f) of the Arms Act, 1878 to suffer rigorous imprisonment for 10(ten) years and 7(seven) years respectively with a direction that both the sentences would run concurrently.

16. 5.04: Petitioner further claims that the above noted judgment was affirmed by the High Court Division in Criminal Appeal No. 2369 of 2001 by judgment dated 02.05.2001 **(Annexure-C),** which was further affirmed by the Appellate Division, firstly by judgment dated 27.04.2002 **(Annexure-C-1)** in Criminal Petition for Leave to Appeal No. 107 of 2001 and lastly by order dated 26-6-2004 **(Annexure-C-2)** rejecting Review Petition No. 18 of 2002 filed by the incumbent MP.

17. **5.05:** Petitioner has stated that, **a news report** was published in the issue of 10.05.2014 of the Daily Prothom Alo under heading "সাজা কম খেটে, বেরিয়ে যান সাংসদ" **(Annexure-D).**The news report stated that, pursuant to the judgment passed by the Special Tribunal, the incumbent MP had surrendered on 14.09.2000, that he was sent to the Jail on the same date, that he was released from Jail on 01.12.2005 before serving out the entire sentence and that he still required to serve a sentence for 2 years 10 months and 01 days.

18. **5.06:** The petitioner has further stated that the **Information Slip No. 654 dated 08.05.2014 (Annexure-E)** issued by the office of this Court shows that the incumbent MP had filed a fresh Criminal Appeal being Criminal Appeal No. 1409 of 2006 against the same judgment of conviction and sentence dated 16.08.2000 which was passed by the Special Tribunal and affirmed up to the Appellate Division as stated above, and that, in this fresh Appeal, he managed to obtain an order of bail and accordingly he was released from jail on 01-06-2006.

19. **5.07:** Petitioner claims that the calculation of the period of sentence served out by the incumbent MP and the maximum period of remission permissible to him and the remaining period of sentence to be served out by him are as follows:

Sentence- (10 years× 360)	**-3600 days.**
Period served out (14.09.200 01.06.2006).	**-2084 days**
Permissible remission (as per rule 768 of Jail Code)	**-600 days**
Total-	2684 days
Remaining Period	- 3600-2084= 916 days.

20. 5.08: Petitioner claims that, in consideration of the above noted remaining period of imprisonment, the incumbent MP, as per article 66(2)(d) of the Constitution, was disqualified to be a candidate for and to be elected as, an MP in the national election held on 05.01.2014. But he suppressed the said remaining period of sentence and managed to get a declaration by the Election Commission that he is an elected MP and thus he has been unlawfully holding that public office.

21. **6.00: Case of respondent No. 7 (Incumbent MP):** Respondent No. 7 being the incumbent MP has, in his Affidavit-in-Opposition and 8(eight) other Affidavits (Supplementary Affidavit and Affidavits in Reply), presented his case as follows:

6.01: He contends that this case involves disputed questions of fact and therefore this case is not maintainable.

22. **6.02:** He has stated that, during the period of his Mayorship of Feni Pourashava, the petitioner, as a Councilor of that Pourashava, acted as the tadbirkar on behalf of respondent No. 7 in Special Tribunal Case No757 of 1999 and also in the Appeals preferred against the judgment of conviction and sentence up to the Appellate Division. But subsequently the petitioner filed this case out of local rivalry and malafide intention. Thus the petitioner has no standing to file this case as a public interest litigation and on that count this case is not maintainable.

23. **6.03:** He has further stated that Mr. Manjil Morshed, the learned Advocate engaged by the Petitioner in this case, is debarred from conducting this case, because Mr. Morshed had conducted the said Appeals on behalf of respondent No. 7.

24. 6.04: He admits that he was convicted and sentenced in Special Tribunal Case No. 757 of 1999 by judgement dated 16.08.2000 passed by the Special Tribunal and that this judgment was affirmed by the High Court Division in Criminal Appeal No. 26369 of 2000 and further affirmed upto the Appellate Division as stated by the petitioner.

25. 6.05: He also admits that, pursuant to the said judgment passed by the Special Tribunal, **he surrendered on 14.09.2000 and served out the sentence in Chittagong Central Jail up to 01.12.2005.** While in Jail he preferred the above noted Appeals.

26. 6.06: He claims that he **was lawfully released on 01.12.2005 on the basis of the said period of serving out the sentence and the remission earned by him** in accordance with the various provisions of the Jail Code.

27. 6.07: He claims that, after his release, he was lawfully elected as MP for the Constitution of Feni-2 in the national election held on 05.01.2014. However he admits that in the affidavit submitted by him as a candidate for election of MP, he made an erroneous statement with regard to his criminal record. But it was "*due to his misunderstanding and misconception of law*"

28. 6.08: He claims that, after publication of the report in the Daily Prothom Alo on 10.05.2014, the Senior Jail Super of Chittagong Central Jail (respondent No.9) sent a letter of protest (প্রতিবাদ লিপি) under Memo No. 44.07.15.00.111.03.13.14/2511/13 dated 10-5-2014 (**Annexure 7)** stating that respondent No. 7 was released from the prison on the basis of the

sentence served out and the remission earned by him (রেয়াত প্রথায় সাজা ভোগ শেষে তিনি বিগত ০১.১২.২০১৫ তারিখ অত্র কারাগার থেকে মুক্তি লাভ করেন।)

29. 6.09: He denies that he had filed any fresh appeal being Criminal Appeal No. 1409 of 2006 and that he had obtained bail in that Appeal. He claims that the Information Slip (**Annexure-E**) filed by the petitioner and the reports of the jail authorities (respondent Nos.8 and 9) about obtaining the bail order passed in the said fresh Appeal are also false.

30. 6.10: He contends that, during his stay in jail as a convict prisoner, he was allowed "*both general remission and special remission as per the jail code.*" He claims that the correct calculation of the periods of his pre-judgment custody, post-judgment period of serving out the sentence and the remission of the sentence as per Jail Code are as follows:

"**০১। মূল সাজা ১০ বছর** -	**৩৬০০ দিন**
০২। হাজত বাস (২২.০৩.১৯৯২ ইং হইতে ২৮.০৭.১৯৯২ পর্যন্ত)	১৪৩ দিন
০৩। **কয়েদ বাস** ১৪.০৯.২০০০ হইতে ০১.১২.২০০৫ পর্যন্ত	১৯০৬ দিন
০৪। **সাধারন রেয়াত** বিধি- ৭৫৬,৭৫৭,৭৫৮,৭৫৯, এবং ৭৬০ মোতাবেক	৫৫৭ দিন
০৫। **বিশেষ রেয়াত** বিধি ৭৬৫ উপধারা ৩ মোতবেক	৩৪৩ দিন
০৬। **ধর্মীয় আচার, সাপ্তাহিক ও গেজেট ছুটি** বিধি ৬৮৯ মোতবেক	৬৫১ দিন
(সাজা) বাকী নাই	

উল্লেখ্য যে, বিশেষ রেয়াত ও সাধারন রেয়াত মিলিয়ে মূল সাজার ১/৪ অংশের বেশি না হওয়ায় কারা বিধির ৭৬৮ লংঘন হয়নি।"

31. **6.11:** He further contends that, while serving out the imprisonment, **he donated blood on 13 different dates and earned remission as per Circular No. 353 – H.J. dated 21.05.59** (**Annexure-12)** issued by the then Government of East Pakistan, which was subsequently endorsed by a Circular being Memo No. 581/(56)/M-10/78 dated 27 April 1978 issued by the Home Ministry of the Bangladesh Government (**Annexure-13**). As per these two circulars the quantum of remission earned by him is as follows:

For 1st time ---------- 30 days
2nd time ---------- 32 days
3rd time ---------- 34 days
4th time ---------- 36 days
5th time ---------- 38 days
6th time ---------- 40 days
7th time ---------- 42 days
8th time ---------- 44 days
9th time ---------- 46 days
10th time ---------- 48 days
11th time ---------- 50 days

12th time ---------- 52 days
13th time ---------- 54 days
Total 13th times ----------486 days

32. **6.12:** In support of his claim on blood donation, he has filed a প্রশংসাপত্র dated 06.10.2005 (**Annexure-9**) issued by the President and General Secetary of সন্ধানী, চট্টগ্রাম মেডিকেল কলেজ ইউনিট to the effect that he (respondent No.7) donated 13(thirteen) units of blood during the period from 14.12.2000 to 15.05.2005 while he was in Chittagong Central Jail.

৩৩. **6.13:** He has stated that the practice of awarding remission of sentence on the basis of blood donation was being followed in various jails including Barishal Central Jail as evidenced by the photocopy of the entries in the relevant register dated 24.04.2006 (**Annexure-15**)

34. **6.14:** He contends that a History Ticket was maintained by the jail authorities and that all the relevant information with regard to his stay in jail including the fact of remission as required by the Jail Code were recorded therein. But, according to the reports-cum-affidavits made by the Jail Authorities (respondent Nos. 8 and 9), the History Ticket is not available and therefore their statement with regard to the quantum of remission and the maximum limit of $\frac{1}{4}$th (one fourth) of the sentence and their calculation about the sentence served out and the remaining period and other related statements are not acceptable.

35. Case of the Jail Authorities (Respondent Nos. 8 and 9):

7.00: Pursuant to the Rule issuing order dated 08.06.2014 and the subsequent 5(five) interim orders dated 16.07.2014, 10.09.2014, 03.03.2016, 26.05.2016 and 31.08.2016, the Jail Authorities being the IG Prison and the Senior Jail Super, Central Jail, Chittagong (Respondent Nos. 8 and 9) have presented their case in an Affidavit-in-opposition and 4 Affidavits-in-Compliance.

36. 7.01: The IG prison has also sent a report dated 27.03.2016 not in the form of Annexure to any of those Affidavits. However in his Affidavit of compliance dated 19.07.2016, he has stated that the contents of the said report dated 27.03.2016 are correct.

37. 7.02: The Senior Jail Super, Chittagong, Md. Sagir Mia (respondent No.9) has, under his signature, sent two reports dated 30.06.2014 (Annexure-X) and 03.09.2014 Part of (Annexure-X-I series) to the IG Prison. These reports from part of the Affidavit submitted by the IG Prison. Substance of these two reports is as follows:

(A) The news Report published in the daily Prothom Alo on 10.05.2014 about release of Nizam Uddin Hajari (respondent No. 7) on 01.12.2015 was not consistent with the relevant Dairies and Registers of the Jail (Part of Annexure X-I-series).

(B) However he admits that, he on seeing the news report in the daily Prothom Alo, sent a mistaken rejoinder (প্রতিবাদলিপি) (Annexure-7) to the Prothom Alo. He had stated in the Rejoinder that "সংশ্লিষ্ট কয়েদী নিজাম হাজারী রেয়াত প্রথায় সাজাভোগ শেষে গত ০১/১২/২৫০০৫ খ্রিস্টাব্দ অত্র কেন্দ্রীয় কারাগার হতে মুক্তি লাভ করেন"

(C) He claims that he hurriedly collected inadeqate information from a single Register, the entries of which were manipulated by unknown persons. Thus he failed to consult

other Registers and documents and sent the erroneous Rejoinder. (যাচাই না করে শুধুমাত্র একটি রেজিষ্ট্রার দেখে তাড়াহুড়ো করে প্রতিবাদ লিপিতে ভুল তথ্য উপস্থাপনের জন্য নিম্নস্বাক্ষরকরী আন্তরিকভাবে দুঃখিত এবং ক্ষমাপ্রার্থী।)

(D) Nizam Uddin Hajari was actually released from Jail on 01.06.2006 pursuant to the bail order passed by this court in Cr. Appeal No. 1409 of 2006 and communicated by the office of this Court by a memo dated 24.05.2006. This bail order and the bail bond were sent to the Jail by the Additional District Magistrate, Chittagong under Memo dated 31.05.2006 as processed in Criminal Misc. Case No. 280 of 2006 (**Part of Annexure-X-series**).

(E) The Release Diary of the jail does not contain any entry about release of Nizam Uddin Hazari on 01.12.2005. The entries in the other relevant 4(four) documents maintained by the Jail namely-(1) Misc Case Register relating to Bail, (2) Diary of the Convict Prisoners, (3) the Ward and Cell Register, and (4) the Gate Register show that Nizam Uddin Hazari served out the sentence as কয়েদি নং ৪১১৪/এ in Cell No.1 upto 01.06.2006 on which date he was released pursuant to the above noted bail (**photocopy of those Diary and Registers annexed as part of Annexure-X-series**).

(F) The fact of stay of Nizam Uddin Hazari in the Jail upto 01.06.2006 is supported not only by the said jail documents but also by order dated 04.04.2006 (**part of Annexure-X-series**) passed by the Special Tribunal consisting of the learned 4th Additional Metropolitan Sessions Judge, Chittagong in another case being Special Tribunal Case No. 759 of 1999 in which the incumbent MP was one of the under trial accused persons. By that order the Tribunal rejected the prayer of the Jail Authority for transfer of Nizam Hajari from Chittagong Cental Jail to any other Jail due to disciplinary matter

38. 7.03: The IG Prison (**Respondent No. 8) has stated in his report dated 30.06.2016 (Annexure –X-3 series)** that, pursuant to this Court's order dated 26.05.2016, he formed an Inquiry Committee consisting of three officers, all being senior to the said Jail Super Sagir Mia (respondent No. 9), and that this Committee conducted the inquiry on the following matters :-

(1) remission allowed to respondent No. 7, if any,
(2) quantum of the period of the sentence served out by respondent No.7 and the remaining period, if any;

(3) the basis of Annexure-5 filed by the Daily Prothom Alo showing the following entries in the register-

শার্ট-১	০১/১২/২০০৫
পেন্ট-২	"মূল সাজা রেয়াত প্রথায় ভোগ শেষে মুক্তি দেওয়া হলো
---------	রেয়াত ০১-০৬-১৭"
হাজারী	(স্বাক্ষর)
	০১.১২.২০০৫
	সিনিয়র জেল সুপার,
	চট্টগ্রাম কেন্দ্রীয় কারাগার"

39. 7.04: The IG Prison has submitted another report dated 27.03.2006 on those matters on the basis of the findings of the 3(three) members Inquiry Committee. The summery of the two reports dated 27.03.2016 and 30.06.2016 is as follows:

(A) Nizam Hazari was taken to jail as a convict on 14.09.2000 pursuant to the judgement of conviction and sentence for 10 years in Special Tribunal Case No. 757 of 1999. There after he stayed in the jail up to 01.06.2006 on which he was released on the basis of bail granted to him by the High Court Division in Cr. Appeal No. 1409 of 2006.

(B) while serving the said sentence, convict Nizam Hazari was allowed remission (রেয়াত). However his History Ticket and Remission Card are not available as these were preserved for 1(one) year as per Jail Code. The Admission Register (ভর্তি রেজিষ্টার) contains the quantum of remission with the figure "৫৫৭ দিন" but with "ঘষা মাজা"।

(C) So the committee formed by the IG Prision calculated the quauntum of remission as 482 days up to 31.12.2004 and another 143 days thereafter up to 01.06.2006.

(D) The date of his release on 01.12.2005 as recorded in the concerned register (Annexure-5) was signed by the then Senior Jail Super Bazlur Rashid, but it was the product of undue and illegal exercise of recording a wrong entry, which is not consistent with the other registers and documents of the Jail.

(E) According to the calculation of the said committee on the basis of available record, namely গেইট আর্টিকেল অব পারসন, বিলিজ ডাইরি, কয়েদ পরোয়ানা, জামিন নামা (photocopy annexed as Part of Annexure-X-series) his periods are as follows:-

	বছর	**মাস**	**দিন**
ক) জামিন গমন	২০০৬	৬	০১
কারাগারে আগমন	২০০০	৯	১৪
ভোগকৃত সাজা=	**৫**	**৮**	**১৯**
অর্জিত রেয়াত=	১	৮	২৫
রেয়াতসহ ভোগকৃত সাজা=	**৭**	**৫**	**১৪**

	বছর	**মাস**	**দিন**
খ) মোট সাজা	১০	০০	০০
রেয়াতসহ ভোগকৃত সাজা	৭	৫	১৪
অবশিষ্ট সাজা=	**২**	**৬**	**১৬**

40. 7.05: With regard to Blood Donation the IG Prison has submitted another detailed Report dated 09.10.2016 (**part of Annexure-X-6**). The summery of this report is as follows:

(A) As per the then East Pakistan Goverment Circular dated 21.05.1959 and the Bangladesh Government Circular dated 27.04.1978, Blood Donation and collection thereof were conducted by various Medical College Hospitals, District Hospitals and also by সন্ধানী ব্লাড ব্যাংক.

(B) But record of convict Nizam Uddin Hazari with regard to donation of blood and remission on that count was not available, as his History Ticket and রেয়াত কার্ড were not available.

(C) However, in response to the letter issued by the jail authority, the সন্ধানী কর্তৃপক্ষ, by its letter dated 01.10.2016 **(Part of Annexure-x-4-series)** informed that they did not preserve the record of such an event of long past, being the period from 14.12.2000 to 15.09.2005. But the Sandhani has not denied the fact of issuance of the certificate by it (তবে সন্ধানী কর্তৃপক্ষ প্রদত্ত সনদ অস্বীকার করেনি).

41. 8.00: Case of Editor, Prothom Alo (Respondent No.10): Pursuant to the Rule issuing order dated 08.06.2014, this respondent has filed an affidavit-in-compliance and two other Affidavits, the substance of which is as follows:

(A) He contends that the news report published in the issue of 10.05.2014 of the Daily Prothom Alo as stated by the petitioner was an investigative report and that all journalistic ethics and standards have been followed in publishing the same.

(B) The news report is based on four elements namely (1) the judgments of the respective courts with regard to conviction and sentence of respondent No. 7 (**Annexure C-series**), (2) the affidavit filed by respondent No.7 with the Election Commission in the national election of 2014 (**Annexure-3**), (3) the information delivered by the Deputy Jail Super about the pre-judgment custody period of respondent No. 7 amounting to 4 (four) months and 23 (twenty three) days (**Annexure-4**) and (4) the snapshots of the কয়েদি register (**Annexure-5**) containing the entries as follows:

> "মূল সাজা রেয়াত প্রথায় ভোগ শেষে মুক্তি দেওয়া হলো রেয়াত ০১-০৬-১৭".
> (স্বাক্ষর).
> ০১/১২/২০০৫,
> সিনিয়র জেল সুপার,
> চট্টগ্রাম কেন্দ্রীয় কারাগার"

(C). The protest letter dated 10.05.2014 (annexure-2) allegedly issued by the Senior Jail Super, Chittagong in protest of the said news report and referred to in the Affidavit-in-opposition filed by respondent No. 7 as **Annexure-7 was never received** by the Prothom Alo and hence not published.

42. 9.00: Report of Metropolitan Sessions Judge, Chittagong

Pursuant to the order dated 03.03.2016 passed by this Court, the learned Metropolitan Sessions Judge has sent a report dated 27.03.2016 to the effect that no notice of the alleged fresh appeal being Criminal Appeal No. 1409 of 2006 or no order of bail passed therein was received by his office. However a copy of the order of extension of bail being order dated 16-11-2006 passed in Criminal Appeal No. 1409 of 2006 was received by his office containing a direction about extension of the bail for six months.

43. 10.00: File of Crl. Misc. PetitionNo. 280 of 2006 sent by DM, Chittagong: Pursuant to order dated 10.09.2014 passed by this Court, the District Magistrate, Chittagong has sent the original file of Criminal Miscellaneous Case No. 280 of 2006 in which the bail order allegedly passed in Criminal Appeal No. 1409 of 2006 was processed for the purpose of acceptance of the bail bond.

44. 10.01: This file shows that an application was filed along with copy of a bail order and that bail a bond was filed and accepted on 30.05.2006 and a warrant of release was issued to the Jail.

45. 10.02: The contents of this file are presented in details in the later part of the Judgment in the discussion on issue No. 4 relating to Date of Release.

46. 11.00: Report of the Registrar of this Court:

Pursuant to order dated 10-9-2014 passed in this Case, the Registrar of this Court caused an Inquiry with regard to the filing of the alleged fresh appeal being Criminal Appeal No. 1409 of 2006. The report (note sheet) and other materials of the concerned file show that- (a) during the inquiry, the record of the said appeal could not be traced; (b) according to the Movement Register, the record was last assigned to an employee named Ganesh Kuri but he had died on 11.12.2013; and (c) the liability for the missing record of Appeal could not be fixed.

47. 12.00: Record of Special Tribunal Case No. 759 of 1999, Chittagong

As mentioned earlier, the Senior Jail Super, Chittagong (respondent No. 9), in his report, stated that the incumbent MP was in jail up to 01.06.2006, not only as a convict prisoner in Special Tribunal Case No. 757 of 1999 but also as an under-trial-prisoner in another case being Special Tribunal Case No. 759 of 1999 of the Metropolitan Sessions Judgeship, Chittagong.

48. 12.01: So, for verifying the correctness of this statement, the office of this court was directed, by order dated 25.11.2016, to report on the disposal situation of said Special Tribunal Case No. 759 of 1999 and to present the record thereof, if available, in connection with any case instituted in this Court.

49. 12.02: Accordingly the Office has presented the record of Special Tribunal Case No. 759 of 1999 which was earlier called for by another Division Bench of this court in connection with another case being Miscellaneous Case No. 15077 of 2014 pending in this Court.

50. 12.03: The original record of Special Tribunal Case No. 759 of 1999 shows that it arose form an allegation of an offence under the Arms Act, 1878 and respondent No.7 was one of the accused persons. This record reveals the details of the position of his custody, his appearance in court and bail during the period of 10.10.2001 to 06.06.2006 in that case. This record shows that he was in custody upto 31.05.2006.

51. 12.04: It is noted that this period is relevant for deciding the date of his release form jail. Because admittedly he surrendered on 14.09.2000 as a convict. But the incumbent MP claims the date of his release on 01.12.2005 and the jail authority claims that he was released on 01.06.2006. So the facts relating to these matters as available in the said judicial record have been presented in the latter part of the judgment in the discussion on issue No. 4 relating to the date release.

52. DISCUSSION, FINDINGS AND DECISION:

13.00: Admitted facts: Materials on record show that the following facts are admitted:

(a) The incumbent MP was convicted and sentenced by a Special Tribunal (Metropolitan Additional Sessions Judge, 4th Court) of Chittagong under sections 19A and 19(f) of the Arms Act, 1878 to suffer rigorous imprument for 10 years and 7 years respectively for the offences of illegal possession of fire arms and ammunition. The

decision of the trial court was upheld upto the Appellate Division. These facts are **further evidenced by Annexure-C, C-1, and C-2 to** the Writ Petition.

(b) The incumbent MP, as a convict, surrendered and he was taken to jail on 14.09.2000 He started serving out the sentence since that date and **served out the sentence at least upto 01.12.2005**, as admitted by the incumbent MP.

(c) He was released from the Jail before the expiry of the said 10 years, i.e. **either on 01.12.2005 as claimed by him or on 01.06.2006 as claimed by the Jail authorities.**

(d) He was allowed some remission during the period of his stay in Jail as a convict.

(e) A report was published in the daily Prothom Alo of 10.05.2014 raising questions about the propriety and legality of the release of the incumbent MP.

53. 14.00: A primary Issue: Competence of Advocate Mr. Manjil Morshid to conduct this case. The incumbent MP has raised this issue on the ground that he had engaged Mr. Murshid and accordingly Mr. Murshid conducted the Appeals preferred against the judgment of conviction and sentence. This issue was initially agaitated by the learned Advocates for the incumbent MP to the effect that MR. Morshid is debarred from conducting this case.

54. 14.01: Mr. Morshid has not filed any affidavit admitting or opposing his role in the said Appeals.

55. 14.02: The record of this case shows that this Writ Petition was drafted by Mr. Morshid, as the Advocate engaged by the Writ Petitioner, and it was signed by the Writ Petitioner as the deponent. Mr. Morshid appeared at the time of issuance of the Rule nisi on 08-06-2014 and on various subsequent dates upto 27.02.2016. Then he stopped appearing for the petitioner. Lastly on 18.05.2016, he personally appeared and informed this Court that, in view of the objection raised by the incumbent MP, he has withdrawn himself from this case, and that he has issued a no objection certificate.

56. 14.03: Thereafter other advocates conducted the hearing and the issue of Mr. Morshid was not further agitated by the learned Advocates for incumbent MP.

57. 14.04: So, the involvement of Mr. Morshed at the primary stage of this case, as the engaged advocate of the Writ Petitoner, has not affected the cause of justice and the issue of legality and propriety of his professional conduct as an advocate in this case need not be addressed.

58. 15.00: The principal issue and related issues to be adjudicated:
The terms of the Rule nisi and the materials on record show that **the principal issue** raised in this case is whether respondent No. 7, being the incumbent MP, was disqualified to be elected as an MP and, on that count, whether he has the lawful authority to hold that office after such election.

59. In deciding this principal issue, the determinant factor is whether the period of sentence served out by the incumbent MP and the remission permissible to him cover the entire sentence of 10 years imprisonment.

60. 15.01: In the course of the lengthy hearing in the case, a number of related legal and factual issues came up. For deciding the said principal issue the following issues are to addressed :-

(1) maintain ability of the case on account of standing of the petitioner to file this case,
(2) maintainability of the case on account of the bar if any imposed by article 125 of the Constitution,
(3) the date of release of the incumbent MP and calculation of the sentence served out by him
(4) the deduction of the pre-judgement custody from the sentence,
(5) remission permissible to the incumbent MP
(6) the remaining period of sentence, if any to be served out by him,
(7) disputed questions of fact involved, if any,
(8) whether the incumbent MP was qualified to be nominated and elected as an MP;
(9) result of disqualification, if any,
(10) Conclusion and result.

61. 15.02: All these issues and the related aspectly are discussed in the later part of the judgement under proper headings.

62. Issue No.1: Petitioner's standing and maintainability of the case.

63. 16.00: Deliberations: On this issue, **Mr. Qamrul Haque Siddque,** the learned Advocate for the Writ Petitioner, submits as follows:-

(a) that although in the Cause Title and at some places of the text of the Writ Petition, the expression "*public interest litigation*" has been used, the dispute raised in this case and the Rule nisi issued by this court are in the nature which, in English law, is called ***a writ of quo warranto***,

(b) that the principle of writ of quo-warranto has been clearly enshrined in article 102(2)(b)(ii) of our Constitution, according to which "*any person*" can raise a question about the lawful authority of a person holding a public office, and accordingly the petitioner has simply set the law in motion and now it is the duty of the court to inquire into and decide the matter,

(c) that the petitioner has no personal right to, or interest, in the said public office and therefore the issue raised in this case cannot be equated to a right to property or to any form of character of the petitioner and consequently he cannot file a civil suit e.g. a suit for a declaration under 42 of the Specific Relief Act, 1877 or any other suit under that Act or even a representative suit under the Code of Civil Procedure, 1908 or any other statutory law.

(d) that the petitioner was not a candidate in the election and therefore he had no standing to approach the High Court Division by filing an election case under the Representation of the People's Order, 1972 (**shortly the RPO**) and thus the only forum available to him is this Court by invoking article 102(2)(b)(iii) of the Constitution.

64. 16.01: In support of his submission, Mr. Siddique refers to the cases of (1) The University of Myshore and another vs. CD Govinda Rao and another (1965 AIR (SC) page-

491, and (2) the case of Jamal Uddin (Md) vs Major General Abdus Salam (Relived) and others (66DLR2014) page 362).

65. 16.02: In reply Mr. Shafique Ahmed, the learned Advocate for the incumbent MP, submits as follows:-

(a) that in the Cause Title and in the body of the Writ Petition (para-3), the petitioner has himself described this case as a "*public interest litigation"* ***(shortly PIL)*** and that it involves a question of great public importance, namely the validity of the election of respondent No. 7 as declared by the appropriate constitutional body, being the Election Commission and therefore this Writ Petition has to be judged by the principles applicable to a PIL, and

(b) that it is a settled principle of law that a PIL may be filed in the form of an application under clause 102(1) or 102(2) of the Constitution and it must be filed by a "*person aggrieved*", but the petitioner has not taken any ground so as to treat him as a "*person aggrieved"* as required by those clauses.

(c) this case involves a number of disputed questions of fact on the date of release and the quantum of remission.

66. 16.03: In support of the above submission Mr. Ahmed refers to the cases of *(1) National Board of Revenue vs. Abu Sayeed Khan and others, (18BLC (AD) (2013) page-116) and the case of (2) Kurapati Das vs. M/S Dr. Ambedkar Seba Samjan and others (Indian Kanoon. Org/doc/1530123).*

67. **Discussion and Findings on Issue No.1:**

17.00: For addressing this issue, we need to firstly look into clauses (1) and (2) of article 102 of the Constitution which are quoted below *(relevant portions are written in bold characts to emphasize):*

"102. ***(1) The High Court Division, on the application of any person aggrieved, may give such directions or orders*** *to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate* ***for the enforcement of any of the fundamental rights*** *conferred by part III of this Constitution.*

(2) The High Court Division may, if satisfied that no other equally officious remedy is provided by law-

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

(i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or

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

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

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

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

(3)-(5) **(not relevant)"**

68. **17.01:** A plain reading of the clauses (1) and (2) of article 102 of the Constitution show the following features:

(a) Clause (1) of article 102 provides that for enforcement of a fundamental right only a "***person aggrieved***" can apply to the High Court Division.

(b) Clause 2(a) provides that for obtaining a remedy in relation to an action or ommission of a public authority only a "**person aggrieved**" can apply to the High Court Division.

(c) As opposed to the above noted two clauses, clause (2) (b) (ii) provides that "***any person****"* can apply to High Court Division challenging the **lawful authority of a person in holding a public office, if no other efficacious remedy is available to the petitioner provided by other laws.**

69. 17.02: So the principal issue raised in this case namely the lawful authority of respondent No. 7 to hold the public office of MP, (Feni-2) clearly falls within the purview of article 102 (2)(b)(ii), under which "**any person**", whether aggrieved or not, can make an application to this Court. It follows that the petitioner can very well seek a remedy under article 102 (2) (b) (ii), of course subject to the condition that no other efficacious remedy is available to him. In seeking a remedy under clause 102(2)(b)(ii). He does not have to be an aggrieved person for filing this case.

70. **17.03: With regard to the principles applicable to** a*"**public interest litigation***, I generally agree with Mr. Shafique Ahmed, the learned Advocate for the petitioner, that a ***public interest litigation*** is to be instituted under article 102(1) or 102(2) (a) and that the principles or parameter to be followed in indentifying such a case have been outlined by the Appellate Division in the case of *National Board of Revenue vs Abu Sayeed Khan and others, reported in 18BLC (AD)(2013) page 116*.

71. 17.04: But I fail to accept the submission of Mr. Ahmed that the expression "*public interest litigation*" as used in the Cause Title or in a paragraph of the Writ Petition has rendered this case to be a public interest litigation. Such sporadic references to that expressin are not the determinant factors for deciding the nature of the case. The determinant factors are the issues raised in the Writ Petition in relation to the particular fact (s) and the standing of the petitioner.

72. **17.05:** Apart from the facts claimed by the writ petitioners as presented earlier, the terms of the Rule nisi issued by this court is a pointer to the nature of the case. The terms of the Rule nisi, as quoted earlier, has two components, namely –(a) a direction to the respondents including the incubent MP (respondent No. 7) to explain his lawful authority in holding the public office MP for the Constituency of Feni-2, and (b) a declaration with regard to vacancy in that office, as a probable result.

73. 17.06: The issue raised in the Writ Petition in the background of the admitted conviction and sentence imposed on the incumbent MP and the Rule nisi issued by this court are clearly in the nature of a *writ of quo warranto* of the English Law and not of a PIL.

74. 17.07: For illustrating the concept of a *writ of quo-warranto*, the interpretation of the Indian Supreme Court in the case of University of Mysore and another vs. CD Govinda Rao and another (AIR 1965 SC 491) is relevant and quoted below (*underlines added*):

> "*Broadly stated, the quo warrant proceeding affords a judicial remedy by which any person, who holds an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; so that his title to it may be duly determined and in case finding is that the holder of the office has no title to it, he would be ousted from that office by judicial order----------."*

75. **17.08:** The underlying principle of a writ *quo warranto,* as interpreted by the Supreme Court of India and as quoted above, is clearly the same as enshrined in clause 102(2) (b) (ii) of our Constitution. Under this clause, "*any person*" can file an application and this court can, upon such an application, exercise the jurisdiction a writ of quo warranto. The applicant is not required to be "*an aggrieved person*" as opposed to the requirement of clause (1) and (2) (a) of article 102 under which a public interest ligation may be filed. In such a case the duty of this is court to hold an inquiry on the allegation and to arrive at a decision keeping in view of the legal and factual issues.

76. **17.09:** Similar view was taken by another Division Bench in the case of Jamal Uddin vs. Major General Abdus Salam (Retired) and others (66DLR(2014) page-364)- para-55,56, and 59).

77. 17.10: The above view finds further support in the observation made by our apex court in the case of Bangladesh vs Aftab Uddin (2010 BLD (AD), page 10 para -20) as follows: (underlines added):

> *"20. Besides, this writ petition before the High Court Division being one under Article 102(2)(b)(ii) does not require that the applicant for a writ of quo-warranto must be an aggrieved party. Any person can maintain such an application without showing any violation of his legal right. ---------"*

78. **17.11: On the question of availability of other remedies or an efficacious remedy to the petitioner**, I agree with the submission of Mr. Qamrul Haq Siddique, that the petitioner cannot approach a civil court for a declaration under section 42 or for any other relief under the other provision of the Specific Relief Act, 1882. Because, his personal right to any property or character is not involved in the issue raised. He cannot approach any other court under any other statutory law for availing any remedy not to speak of an "efficacious remedy" The only remedy open to him is to invoke artice 102(2)(b)(ii) of the Constitution.

79. 17.12: It is noted that the RPO provides for challenging the election of a returned candidate by way of filing an election petition to the High Court Division. But Article 49(1) of the RPO limits the said opportunity only to a person who is a candidate for the election. Article 49(1) of the RPO runs as follows:

> ***"49-*** *(1) No election shall be called in question except by an election petition presented by a candidate for that election in accordance with the provisions of this Chapter.*
> *(2) ---------- (4) ----------." (not relevant)*

80. 17.13: It is evident that since the petitioner was not a candidate in the election, he has no right to avail the remedy under the RPO.

81. 17.14: It is noted that the issue of involvement of disputed questions of fact, as pointed out by Mr. Shafique Ahmed, with reference to the Indian case reported in Indian kanoon org/doc/430123 has been separately discussed and decided as issue No. 7 in the later part of this judgment.

82. 18.00: Decision on issue No. 1: In consideration of the above findings, it is held that the petitioner as an **"any person**," has a right to file this case under article 102(2)(b)(ii) of the Constitution and that no other efficacious remedy provided by law is available to him and therefore this case is maintainable and an inquiry is to be held under that article. Accordingly issue No. 1 is decided in favour of the petitioner.

83. Issue No. 2: Legal bar, if any, imposed by article 125 of the constitution to entertain the case.

84. 19.00: Deliberation: On this issue, **Mr. Sahafique Ahmed,** the learned Advocate for the incumbent MP, submits that article 125 of the Constitution is an overriding provision and it puts a legal bar on filing a court case questioning the result of the election declared by the Election Commission, except by filing an election case under the relevant law, namely the RPO and that since the petitioner has failed to do so, this case is not maintainable.

85. 19.01: In reply **Mr Qamrul Haque Siddique** the learned Advocate for the petitioner, submits that petitioner claims that respondent No. 7 was disqualified to be a candidate for election as an MP due to the fact that he had not served out the entire sentence imposed on him, but he suppressed that fact in his Affidavit, and that the Election authorities had no scope to examine the disqualification matter and therefore article 125 is not a legal bar to entertain this case.

86. Discussion and Findings on Issue No. 2:

20.00: For considering this issue we need firstly to look into article 125 of the Constitution, which is quoted below (*underlines added*):

> ***"125. Validity of election law and election. -***
> *Notwithstanding anything in this Constitution* **-**
> *(a) the validity of any law relating to the delimitation of constituencies, or the allotment of seats to such constituencies, made or purporting to be made under article 124, shall not be called in question in any court;*
> *(b) no election to the offices of President or to parliament shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by Parliament."*

87. **20.01:** The expression "*Notwistauding anything contained in the constitution*" clearly shows that article 125 is a overriding provision and clause (b) thereof puts a restriction on questioning the validity of, among others, an election of an MP. However this article allows the filing of an election case "*only in such manner as may be provided for by or under a law made by the Parliament"*. RPO is the law as contemplated in article 125 of the constitution.

88. 20.02: The RPO contains detailed provisions with regard to, among others, the procedure for nomination of a candidate for election as MP, the qualification and disqualification of a candidate, scrutiny of nomination papers by the election functionaries, fixing the election schedule, conducting the election, declaration of election results, filing of

an election case by a candidate challenging the election held, power of the High Court Division in relation to the election case and the relieves that may be granted in such a case.

89. 20.03: Article 12(1) of the RPO deals with the matter of nomination and the qualification and disqualification of a candidate. Relevant portion of Article 12(1) is quoted below *(underlines added):*

> *"12. (1) Any elector of a constituency may propose or second for election to that constituency, the name of any person qualified to be a member under clause (1) of Article 66 of the Constitution:*
> *Provided that a person shall be disqualified for election as or for being, a member, if he-*

(a) – (o) **(Not relevant)**
Explanation I---------- VI ---------- **(not relevant)**
(C)--------- (7) ----------" **(not relevant)**

90. 20.04: Article 12(1) of the RPO, with reference to article 66(1) of the Constitution, clearly provides as to who is qualified to be nominated as a candidate. The proviso to clause 12(1) contains the list 15 categories of persons who are disqualified to be nominated and elected e.g. a non-voter of the constituency, a person convicted and sentenced for election related offences as specified in Chapter VI of RPO, certain class of persons who were in the service of the Republic, bank loan defaulters, certain bill defaulters a person convicted of war crime etc.

91. 20.05: But, Article 12(1) of the RPO or the proviso there of does not directly refer to the disqualification resulting from a conviction and sentence imposed on a candidate for a criminal offence before the submission of nomination paper. This disqualification is specified by article 66 (2)(d) of the Constitution. Relevant portion of this article is quoted below: *(underlines added):*

> *"66. **Qualification and disqualification for election to parliament.** (1) A person shall, subject to the provision of clause (2), be qualified to be elected as, and to be, a member of pariliament if he is a citizen of Bangladesh and has attained the age to twenty-five years.*
>
> *(2) A person shall be disqualified for election as, or for being a member of Parliament who-*
>
> *(a) ---------- (c) ---------- **(not relevant)***
>
> *(d) has been, on conviction for a criminal offence involving moral turpitude, sentenced for a criminal offence involving moral turpitude, sentenced to imprisonment for a term of not less that two years, unless a period of five years has elapsed since his release;"*
>
> *[(dd) ---------- **(not relevant)***
> *(2A) –(5) ---------- **(not relevant)***

92. 20.06: A careful reading of article 66(2), particularly the expression "*A person shall be disqualified for election as, or for being a member of Parliament*" read with clauses (d) shows that the Constitution contemplates 3 (three) situations about the disqualification of a person, namely- (1) the dis-qualification acquired before election, (2) the disqualification

acquired after election, and (3) disqualification that was acquired before but continues after the election.

93. **20.07:** In the instant case, the petitioner claims that incumbent MP acquired the disqualification before election and it still continues as per clause (d), because he was released from jail before serving out the sentence of 10 years.

94.**20.08:** On perusal of the materials on record, particularly the photocopy of the Affidavit-cum-Nomination Paper of the incumbent MP **(Annexure-B),** it is revealed that he, as a candidate for election, has recorded in the 2nd page at serial Nos. 3 and 4 the following entry at sub-serial 07:

৩.খ. অতীতে আমার বিরুদ্ধে দায়েরকৃত ফৌজদারী মামলা বা মামলাসমূহ এবং উহার ফলাফল বিবরণীঃ

৪.

ক্রমিক নম্বর	যে আইন ও আইনের ধারায় মামলা দায়ের করা হইয়াছে	যে আদালতে মামলাটি আমলে নিয়াছে	মামলা নম্বর	মামলার ফলাফল
০১----- ০৬---------- (not relevant)				
০৭	বিশেষ ক্ষমতা আইনের ১৯(ক) (চ) ধারা	মাননীয় ৪র্থ ট্রাইবুনাল আদালত, চট্টগ্রাম	বি. ট্রা মামলা নং-৭৫৭/৯৯	নিষ্পত্তি/খালাস

95. **20.09:** Respondent No. 7 in his Affidavit in opposition dated 18.01.2016 (para-9), claims that he has not made any false declaration in his affidavit cum nomination paper that was submitted by him as a candidate, and that it is a disputed question of fact.

96. 20.10: But in all his subsequent affidavits he has admitted the fact of his conviction and sentence of 10(ten) years imprisonment in the case as mentined in the said Affidavit Cum Nomination paper i.e. Special Tribunal Case No. 757/1999. This is further evidenced by the certified copies of the judgment of the Special Tribunal affirmed up to the Appellate Division (Annexure-C-series). However he has tried to make out a case that he has served out the entire sentence.

97. **20.11:** The Writ Petitioner claims that the incumbent MP has suppressed the fact of serving a lesser period and that such suppression ended in the result that the Election Commission declared him as the returned candidate in the Parliament election of 2014.

98. 20.12: The question is, whether the Election Commission has the lawful authority under article 125 to reopen the issue of legality of the candidature of the incumbent MP whom the Commission itself has declared as the returned candidate by Gazette Notification.

99. 20.13: Article 125 of the Constitution requires the Election Commission to exercise its authority through the legal regime of the RPO. The scheme of RPO as pointed out earlier show that, after accepting the nomination paper of a candidate as a valid one and after declaring the result of the election within the framework of the RPO, the Election Commission becomes a *functus officio* for re-examining the issue of disqualification of a candidate acquired prior to the election.

100. 20.14: Article 125 as an overriding clause, provides that an election dispute can be raised only as per law made by the Parliament, i.e. by filing an election petition to the High

Court Division by a candidate within a specified time on the grounds as provided by the RPO.

101. **20.15:** But the petitioner was admittedly not a candidate in the election. So article 125 of the constitution and the RPO article 12(1) has debarred him from availing the remedy by filing an election case under the RPO and yet the Commission itself cannot re-open the issue of disqualification.

102. **20.16:** So the next question is whether the overriding provision of article 125(1)(b) stands as a legal bar to invoke the jurisdiction of this Court under article 102(2)(b)(ii).

103. **20.17:** On this question, the materials on record show that incumbent MP admits his conviction and sentence, but he has stated in his Affidavit/Nomination Paper (Annexure-B) his position as নিস্পত্তি/খালাস. There is nothing on record to show that any objection was ever raised from any quarter with regard to his disqualification before the election functionaries or before the High Court Division in the from of an election case under the RPO. The ultimate result was that he was declared by the Election Commission as the elected MP.

104. **20.18:** Article 125 of the Constitution when read with articles 12(1) and 49(1) of the RPO and article 66(2) of the Constitution, show that the bar or restriction imposed by the non-obstante/overriding clause 125(1)(b), of the Constitution are applicable at best to two situations:- (a) the issues which have been considered by the Election Commission in the election process up to the elction result, and (b) the issues that may be considered by the High Court Division after the elction results, i.e. in the form of an elction cases under the RPO being the law made by parliament pursuant to article 125.

105. **20.19:** Article 125 of the Constitution does not cover a situation when a candidate for, or the holder of the public office of an MP, has allegedly suppressed certain vital facts about his disqualification and due to such suppression to, or non discovery by, the election functioneries, the election result has been declared and there was none to challenge the result within the frame work of article 125 and the RPO.

106. **20.20:** The intention of article 125 is never to encourage or allow suppession of the vital facts on disqualification of a candidate nor to obstruct the door of justice to seek a legal remedy or to unearth the truth about the alleged disqualification.

107. **20.21:** In such a situation, the scope of opening the issue of disqualification of an MP is very much subject to scrutiny by this Court under the writ jurdiction by invoking article 102(2) (b) (ii). Simply because, the incumbent MP was allegedly disqualified to submit his nomination paper so as to initiate the election process and the whole election process/result allegedly stood on a legal void.

108. **Decision on Issue No. 2**

20.22: In view of the above discussion and findings, the decision on this issue goes in favour of the petitioner. It is held that article 125 does not stand as a legal bar to entertain this case and it is maintainable under article 102(2)(b)(ii) for the purpose of examining the other issues.

109. **Issue No. 3. The date of release of the incumbent MP from jail and the period of sentence served out by him.**

110. **21.00:** On this issue, the incumbent MP claims that he was released on 01.12.2005. On the contrary the contrary the Jail authorities claim that he was realeased on 01.06.2006. The incumbent MP relies on two documents, namely **Annexure-1** being the photocopy of a Register, which has also been filed by Prothom Alo as **Annexure-5**, and the Rejoinder issued by the Senior Jail Super named Md. Sagir. The photocopy and original thereof are on record as **Annexure-2 and 7.**

111. 21.01: The jail authority relies on various jail registers and the file of the District Magistrate relating to bail bond and also on the reocrd of the Special Tribunal Case No. 759 of 1999.

112. 21.02: Deliberations: On this issue, **Mr Qamrul Haq Siddique**, the learned Advocate for the writ petitioner submits as follows:-

(a) the date of release of the incumbent MP, whether on 01.12.2005 or on 01.06.2006, is not very material, because the total remission permissible to him as per rule 768 of the Jail Code cannot exceed one-fourth of the sentence, and

(b) the period of sentence served out by him from 14.09.2000 whether upto 01.12.2005 or up to 01.06.2006, together with the maximum remission allowable to him, do not cover the entire period of sentence.

113. **21.03: In reply, Mr. Shafique Ahmed** the learned Advocate for the incumbent MP, submits as follows:-

(a) as per the reports of the jail authorities, the mandatory History Ticket of the incumbent MP is not available, and

(b) the jail authorities in their reports admit the fact of recording an entry in the register about the release of the incumbent MP on 01.12.2005 **(Annexure 1 or 5)** and the Rejoinder issued by the Senior Jail Super **(Annexure-2/7)** supports the said date of release.

114. 21.04: Discussion and Findings on issue No. 3: Annexure-1 and Annexure-5 are the photocopies of the same document, namely an entry in the কয়েদী Register. It contains the following information:

"শার্ট-১	০১/১২/২০০৫
পেন্ট-২	মূল সাজা রেয়াত প্রথায় ভোগ শেষে মুক্তি দেওয়া হলো
---------	রেয়াত ০১-০৬-১৭
হাজারী	(স্বাক্ষর)
	০১.১২.২০০৫
	সিনিয়র জেল সুপার,
	চট্টগ্রাম কেন্দ্রীয় কারাগার"

115. 21.05: Evidently the above entries state the follwing three facts :-

(1) release of the incumbent MP on 01.12.2005,

(2) the quantum of remission up to that date was "রেয়াত ০১-০৬-১৭" which means that it was 1 year 6 months 17 days = 365+180+17= 552 days or 557 days as claimed by the incumbent MP and partly admitted by the jail authorities in their report with a remark ঘষা মাজা and

(3) the fact of serving out the entire sentence without any reference to any other remission as claimed by the incumbent MP in this case namely Special Remission of 343 days and remission of 486 days on account of blood donation.

116. 21.06: The other document relied on by the incumbent MP is the Rejoinder (প্রতিবাদ লিপি) issued by the Senior Jail Super, Central Jail, Chittagong named Sagir Mia. This প্রতিবাদ লিপি (Annexure-2 or 7) was issued under স্মারক নং ৪৪.০৭.১০০.১১১.০৩.১৩.১৪-২৫১১/৫ তারিখ-১০/০৫/২০০৪ and addressed to the Editor, Prothom Alo. The protion of this letter under heading প্রতিবাদলিপি is quoted below *(underlines added):*

"প্রতিবাদ লিপি

অদ্য ১০.০৫.২০১৪ খ্রিঃ তারিখ দৈনিক প্রথম আলো পত্রিকায় প্রকাশিত শিরোনাম "সাজা কম খেটেই বেরিয়ে যান" প্রতিবেদনটিতে নিম্নস্বাক্ষরকারী কর্তৃক মনে হচ্ছে এটা জালিয়াতি। নিজাম হাজারী দুই বছর ১০ মাস একদিন কম কারাভোগ করে বেরিয়ে গেছেন মর্মে যে বিবৃতি প্রকাশিত হয়েছে তাহা সত্য নয় উক্ত প্রতিবেদকের নিকট তিনি এ ধরনের কোন মতামত ব্যক্ত করেননি। কারাগার হতে সাজা কম খেটে বের হওয়ার কোন সুযোগ নাই। অত্র কেন্দ্রীয় কারাগারের রক্ষিত রেজিষ্টার দৃষ্টে দেখা যায় যে, উক্ত নিজাম হাজারী, পিতাঃ জয়নাল আবেদীন হাজারী গত ১৪.০৯.২০০০ খ্রিঃ তারিখ বিজ্ঞ অতিরিক্ত মহানগর দায়রা জজ, ৪র্থ আদালত, চট্টগ্রাম কর্তৃক এস,টি ৭৫৯/৯৯, ডবলমুরিং থানার মামলা নং ২৯(৩)৯২, ধারা অস্ত্র আইনের ১৯(ক) ও (চ) মামলায় ১০(দশ) বছরের সশ্রম কারাদন্ডে দন্ডিত হয়ে অত্র কারাগরে প্রেরিত হয়। রেয়াত প্রথায় সাজাভোগ শেষে তিন গত ০১.১২.২০০৫ খ্রিঃ তারিখ অত্র কারাগার হতে মুক্তি লাভ করেন।

মোঃ ছগির মিয়া
সিনিয়র জেল সুপার
চট্টগ্রাম কেন্দ্রীয় কারগার।"

117. 21.07: The above Rejoinder clearly supports the claim of the incumbent MP that he was permanently released on 01.12.2005 on the basis of the period of sentence served out and the system of remission "রেয়াত প্রথায় সাজা ভোগ শেষে তিনি গত ০১/১২/২০০৫ খ্রিঃ তারিখ অত্র কারাগার হতে মুক্তি লাভ করেন"।

118. 21.08: But pursuant to this court's direction as contained in the Rule issuing order dated 08.06.2014 and the subsequent order dated 16.07.2014, **the same Senior Jail Super Sagir Mia submitted two reports denying the correctness of his own Rejoinder and also of the entries in the said কয়েদী Ragister about release of the incumbent MP on 01.12.2005**. He has asserted that the correct date of release is 01.06.2006 and that the release was not after serving out the entire sentence but on the basis of a bail order of this court.

119. 21.09: The 1st report dated 03.06.2014 **(Annexure-X)** submitted by the Senior Jail Super is a brief one. However, in the 2nd report dated 30.09.2014 (Annexure-XI), he has reiterated the statements made in the 1st report and stated other detailed information collected by him.

120. 21.10: In his 2nd Report, he has stated that he hurriedly prepared and issued the Rejoinder without consulting the relevant registers and thus issued a mistaken Rejoinder. The relevant portions of this 2nd report are quoted below *(underlines added):*

"গত ১০/০৫/২০১৪ খ্রিস্টাব্দ তারিখ দৈনিক প্রথম আলো পত্রিকায় "সাজা কম খেটেই বেরিয়ে যান সাংসদ" শিরোনামে প্রকাশিত সংবাদটি পড়ার পর নিম্নস্বাক্ষরকারী অত্র কেন্দ্রীয় কারাগারের তৎকলীন সময়ের অথাৎ ০১/১২/২০০৫ খ্রিস্টাব্দ তারিখের রিলিজ ডাইরী পর্যবেক্ষণ করে দেখেন যে, ০১/১২/২০০৫ খ্রিস্টাব্দ তারিখের রিলিজ ডাইরীতে সংশ্লিষ্ট কয়েদী নিজাম হাজারীর কারাগার হতে মুক্তি যাওয়ার বিষয়ে কোন তথ্য উল্লেখ নেই (কপি সংযুক্ত)। কারাভ্যন্তরে বন্দীরা বিভিন্ন ওয়ার্ডে / সেলে অবস্থান করেন। কারাভ্যন্তরে রক্ষিত তৎকালীন সময়ের অথাৎ ০১/১২/২০০৫ খ্রিস্টাব্দ তারিখের ওয়ার্ড / সেল রেজিস্ট্রার পর্যালোচনা করে দেখা যায় যে, সংশ্লিষ্ট কয়েদী নিজাম হাজারী কারাভ্যন্তরে ০১(এক) নম্বর সেলে ০১/০৬/২০০৬ খ্রিস্টাব্দ তারিখ পর্যন্ত আটক ছিলেন (কপি সংযুক্ত)। পরবর্তীতে, অত্র কারাগারের তৎকালীন সময়ের পুরাতন রিলিজ ডাইরী এবং গেইট পার্সন্স আরো নিবিরভাবে খোঁজাখুঁজির পর গত ০১/০৬/২০০৬ খ্রিস্টাব্দ তারিখের রিলিজ ডাইরী এবং গেইট পার্সন্সে সংশ্লিষ্ট কয়েদী নিজাম হাজারীর জামিনে মুক্তি যাওয়া সংক্রান্ত তথ্য উল্লেখ পাওয়া যায়।

এখানে উল্লেখ্য যে, গত ১০/০৫/২০১৪ খ্রিষ্টাব্দ তারিখ দৈনিক প্রথম আলো পত্রিকায় "সাজা কম খেটেই বেরিয়ে যান সাংসদ" মর্মে সংবাদটি প্রকাশিত হওয়ার পর অত্র কেন্দ্রীয় কারাগারের পক্ষ থেকে প্রদত্ত প্রতিবাদ লিপিতে নিম্নস্বাক্ষরকারী কর্তৃক "সংশ্লিষ্ট কয়েদী নিজাম হাজারী রেয়াত প্রথায় সাজাভোগ শেষে গত ০১/১২/২৫০০৫ খ্রিস্টাব্দ অত্র কেন্দ্রীয় কারাগার হতে মুক্তি লাভ করেন" মর্মে লিখিত বক্তব্যটিও সঠিক নয়। কে বা কারা অসৎ উদ্দেশ্য সাধনের জন্য একটি রেজিষ্ট্রটারের কিছু অংশ কেটে পত্রিকায় প্রকাশিত অংশটি জোড়া লাগিয়ে রেখেছেন তা নিম্নস্বাক্ষরকরী প্রথমে দৃষ্টিগোচরে আসেনি। সম্প্রসারণ এবং আধুনিকীকরন প্রকল্পের মাধ্যমে ২০১১ সালের ২০ ডিসেম্বর বর্তমান চট্ট গ্রাম কেন্দ্রীয় কারাগার উদ্বোধন করা হয়। যার ফলে ২০০৫ সালের পুরাতন নথিপত্র খুঁজে পেতে দেরী হয়। যাচাই না করে শুধুমাত্র একটি রেজিষ্ট্রার দেখে তাড়াহুড়ো করে প্রতিবাদ লিপিতে ভুল তথ্য উপস্থাপনের জন্য নিম্নস্বাক্ষরকরী আন্তরিকভাবে দুঃখিত এবং ক্ষমাপ্রার্থী।

121. 21.11: In view of the contradiction in the two documents made by the same officer, namely the Rejoinder (প্রতিবাদ লিপি) and the report as quoted above, this court by order dated 26.05.2006 and also by a previous order dated 03.03.2016 directed the IG Prison (Respondent No. 9) to cause an inquiry by a committee consisting of officers superior to the said Sagir Mia and to report on the date of release, the matter of the sentence served out by him, the quantum of remission if any allowed to him and the related matters.

122. 21.12: Accordingly the IG Prison caused inquiry by a committee and submitted two Reports dated 27.03.2016 and 30.06.2016 (Annexure-X-3-series).

123. 21.13: It is noted that the Report dated 27.03.2016 submitted by the IG Prison was not submitted in the form of an Affidavit. However in the subsequent Affidavit of compliance, the IG Prison asserted that the report dated 27.03.2016 was correct. These two reports submitted by the IG Prison support the 2nd report of Sagir Mia as quoted above. In both the Reports, the IG Prison has stated inter alia that-

(1) the History Ticket and Remission Card of the Incumbent MP were not available, as the two documents were required to be preserved only for one year as per rule 558 and 780(8) respectively of the Jail Code,

(2) the other registers namely- গেইট আর্টিকেল অব পবেশন, রিলিজ ডাইরী, কয়েদ পরোয়ানা, জামিননামা ইত্যাদি show that he was released on 01.06.2006 on the basis of bail granted by this court in Criminal Appeal No. 1409 of 2006, and

(3) the entries in Annexure-5, being snapshot of the কয়েদী register as produced in this court by the Editor Prothom Alo and also by the incumbent MP, showing the date of release on 01.12.2005 after serving out the sentence were incorrect and that the entries therein were the product of illegal and collusive activities.

(4) out of the sentence 10 years, he served out 5 years 8 months 19 days, and earned remission of 1 year 8 months 25 days and the remaining sentence is 2 years 6 months and 16 day.

124. **21.14:** Relevant portions of the report dated 30.06.2016 (Annexure-X-3-series) submitted by the IG Prison is quoted below *(underlines added)*:

(ক) Respondent No. 7 নিজামউদ্দীন হাজারী স্পেশাল ট্রাইবুনাল মামলা নং ৭৫৭/৯৯ ডবলমুরিং থানার মামলা নং ২৯(৩)৯২ এ গত ১৪.০৯.২০০০ খ্রিঃ তারিখে অস্ত্র আইনের ১৯(ক) ধারায় দশ (১০) বছর সশ্রম কারাদন্ড এবং অস্ত্র আইনের ১৯(চ) ধারায় সাত (৭) বছর সশ্রম কারাদন্ডে (উভয় দন্ড একত্রে চলবে) দন্ডিত হয়ে কারাগারে আসেন। অথাৎ উভয় ধারায় তিনি সর্বমোট দশ (১০) বছরের সশ্রম কারাদন্ড ভোগ করবেন। সশ্রম কারাদন্ডে দন্ডিত বন্দি হিসেবে তিনি কারাবিধি ১ম খন্ড অনুযায়ী রেয়াত সুবিধা প্রাপ্ত হন। তদন্ত কমিটির প্রাপ্ত ভর্তি রেজিস্টারে ঘষামাজা ব্যতীত নির্ভরযোগ্য তথ্য মতে ৩১.১২.২০০৪ খ্রিঃ পর্যন্ত তাঁর অর্জিত রেয়াত ছিল ৪৮২ দিন যা স্পষ্টভাবে তাঁর কয়েদ পরোয়ানায় উল্লেখ পাওয়া যায় (NICVD, ঢাকায় উন্নত চিকিৎসা শেষে ঢাকা কেন্দ্রীয় কারাগার থেকে চট্টগ্রাম কেন্দ্রীয় কারাগারে গত ২৩.০৩.২০০৫ খ্রিঃ তারিখে ফেরত প্রেরণের সময় কয়েদ পরোয়ানায় প্রদত্ত নোটের ছায়ালিপি সংযুক্ত-খ)।

কারা বিধি ১ম খন্ডের ৭৮০(৮) ও ৫৫৮ ধারা অনুযায়ী রেয়াত কার্ড ও হিস্ট্রি টিকেট সংরক্ষণের মেয়াদ ০১ বৎসর হওয়ায় উক্ত রেয়াত কার্ড ও হিস্ট্রি টিকেট অবলোকন করার কোন সুযোগ ছিল না এবং ভর্তি রেজিস্টারের রেয়াত সংক্রান্ত প্রাপ্ত তথ্য ৩য় কোয়ার্টার ২০০৫ পর্যন্ত প্রাপ্ত রেয়াত ৫৫৭ দিন ঘষামাজ থাকায় তার নির্ভরযোগ্যতা প্রশ্নের সম্মুখীন। তাই ভর্তি রেজিস্টারের তথ্য আমলে না নিয়ে সর্বশেষ নির্ভরযোগ্য তথ্য ৩১.১২.২০০৪ পর্যন্ত অর্জিত রেয়াত ৪৮২ দিন ধরে তাঁর ০১.০৬.২০০৬ খ্রিঃ তারিখে জামিনে মুক্তি গমনের পূর্বদিন পর্যন্ত কারা বিধি মোতাবেক সর্বোচ্চ আরো ১৪৩ দিন রেয়াত প্রাপ্ত হতেন (তদন্ত কমিটি কর্তৃক প্রস্তুতকৃত ক্যালকুলেশন সীট সংযুক্ত-গ)। তদন্ত কমিটির হিসাবমতে মুক্তির পূর্বদিন পর্যন্ত রেয়াত নিয়মের আওতায় তাঁর প্রাপ্ত সর্বোচ্চ রেয়াত ৬২৫ দিন বা ১ বছর ৮ মাস ২৫ দিন। উল্লেখ্য যে, কারা বিধি ৭৬৮ ধারা মোতবেক রেয়াত কখনও মূল সাজার ১/৪ অংশ অতিক্রম করবেনা।

(খ) Respondent No. 7 নিজাম উদ্দীন হাজারী রেয়াত প্রথার আওতায় পুরো সাজা খেটে মুক্তি লাভ করেননি। মহামান্য সুপ্রিম কোর্টের হাইকোর্ট বিভাগের আপীল নং ১৪০৯/২০০৬ এর রেফারেন্সে বিজ্ঞ অতিরিক্ত জেলা ম্যাজিস্ট্রেট, চট্টগ্রামের ফৌঃ মিস পিটিশন নং ২৮০/২০০৬ তারিখ ৩১.০৫.২০০৬ খ্রিঃ মোতবেক তিনি গত ০১.০৬.২০০৬ খ্রিঃ তারিখে চট্টগ্রাম কেন্দ্রীয় কারাগার হতে জামিনে মুক্তি লাভ করেন। ভোগকৃত এবং অবশিষ্ট সাজার হিসাব নিম্নে প্রদত্ত হলোঃ

	বছর	**মাস**	**দিন**
ক) জামিন গমন	২০০৬	৬	০১
কারাগারে আগমন	২০০০	৯	১৪
ভোগকৃত সাজা=	**৫**	**৮**	**১৯**
অর্জিত রেয়াত=	১	৮	২৫
রেয়াতসহ ভোগকৃত সাজা=	**৭**	**৫**	**১৪**

	বছর	**মাস**	**দিন**
খ) মোট সাজা	১০	০০	০০
রেয়াতসহ ভোগকৃত সাজা	৭	৫	১৪
অবশিষ্ট সাজা=	**২**	**৬**	**১৬**

তার সাজা সর্বমোট ১০ বছরের মধ্যে রেয়াত নিয়মের আওতায় খাটা বাকি ২ বছর ৬ মাস ১৬ দিন।

(গ) গেইট আর্টিকেল অব পারসন, রিলিজ ডায়রী, কয়েদ পরোয়ারা, জামিননামা ইত্যাদি পর্যালোচনা করে দেখা যায় নিজাম উদ্দীন হাজারী জামিনে ০১.৬.২০০৬ তারিখে মুক্তি লাভ করেন (ছায়ালিপি সংযুক্ত-ঘ-১,২,৩ ও৪)। তিনি রেয়াত

প্রথায় মূল সাজা শেষে মুক্তি লাভ করেননি এবং তার আরো ২ বছর ৬ মাস ১৬ দিন সাজা অবশিষ্ট রয়েছে। বিজ্ঞ আদালত কর্তৃক প্রেরিত উদ্ধৃতাংশ পরীক্ষা করে দেখা যায় উদ্ধৃতাংশটুকু ০১.১২.২০০৫ তারিখে তৎকালীন সিনিয়র জেল সুপার জনাব বজলুর রশীদ কর্তৃক স্বাক্ষর করা অথচ প্রকৃতপক্ষে নিজাম উদ্দীন হাজারী মুক্তি লাভ করেন ০১.৬.২০০৬ খ্রিঃ তারিখে। সুতরাং জনাব নীজাম উদ্দীন হাজারীকে অবৈধ কোন সুবিধা দেয়ার উদ্দেশ্যে কোন দুষ্ট চক্রের জাল স্বাক্ষর হতে পারে, কেননা উল্লেখিত উদ্ধৃতাংশের সাথে নিজাম উদ্দীন হাজারীর কারা মুক্তির কোন সংশ্লিষ্টতা তদন্তে প্রতীয়মান হয়নি। উক্ত উদ্ধৃতাংশের মুক্তিপ্রাপ্ত ব্যক্তির নাম উল্লেখ নেই বা রেয়াত হিসেবে যা উল্লেখিত তা নিজাম উদ্দীন হাজারীর রেয়াতের সাথে সংশ্লিষ্ট বলেও প্রতীয়মান হচ্ছে না। কয়েদি নং ৪০৪১/এ জনাব নিজাম উদ্দীন হাজারী সম্পর্কিত চট্টগ্রাম কেন্দ্রীয় কারাগারের ভর্তি রেজিস্টার নিরীক্ষা করে দেখা যায়, উক্ত পৃষ্ঠায় নীচের কোনায় একটি বড় অংশ ছেঁড়া, অথাৎ কয়েদি ভর্তি রেজিষ্টারের ২৫ নং কলামে যেখানে বন্দি মুক্তি সংক্রান্ত তথ্য লিপিবদ্ধ করা হয় সেই অংশটুকুই ছেঁড়া (ছায়ালিপি সংযুক্ত-ঙ)।

(ঘ) ---------- **(not relevant)**

125. **21.15**: In support of his Reports, the IG Prison has Annexed *inter alia* the attested photo copies the following documents:

(1) Case Diary of Convict Prisoners, showing admission of the incumbent MP into jail on 14.09.2000 and stay up to 31.05.2006 with the remark about his release pursuant to the bail granted in Criminal Appeal No. 1409 of 2006.
(2) Photocopy of the entries recorded on 08.02.2005 in another Register (not named) showing transfer of the incumbent MP to NICVD for treatment, along with the statement "৩১/১২/২০০৪ পর্যন্ত অর্জিত রেয়াত ৪৮২ দিন"
(3) Photocopy of the Gate Register dated 01.06.2006 with the remark "কয়েদী খালাস (১) নিজাম হাজারী, (২) ---------"
(4) Photocopy of the bail bond dated 01.06.2006 furnished pursuant to the bail order passed in Cr. Appeal No. 1409 of 2006.
(5) Photocopy of the Warrant of Discharge issued by the office of District Magistrate in Cr. Misc Petition No. 280/06

126. 21.16: The above report of the IG Prison about the date of release of the incumbent MP on 01.06.2006 is consistent with the original file of Cr. Misc. Petition No. 280 of 2006 of the office of the District Magistrate (DM), Chittagong which was called for by this court. This file reveals the following scenario:

(a) A bail order dated 17.05.2006 was purportedly passed by a Division of this court in Criminal Appeal No. 1409 of 2006 and it was purportedly sent by the office of this Court under Memo No. 19185 dated 24.05.2006 under the signature of an Assistant Registrar of this Court. But the name or seal of that Assistant Register is not recorded. It was received by the office of DM, Chittagong on 28.05.2006.
(b) An application was filed by an Advocate (signature illegible) on behalf of নিজাম হাজারী, along with a vokalat nama containing a reference to কয়েদী নং ৪১১৪/এ, with a prayer for release on bail.

(c) The Additional District Magistrate, Chittagong recorded an order to the effect that the said convict would be released on bail subject to furnishing bail bond by two Advocates and a local representative

(d) Accordingly three sureties, being two Advocates named শামশুল হক চৌধুরী and আনিসুল হক সেলিম and প্যানেল চেয়ারম্যান, ফেনী পৌরসভা, filed bail bond which was accepted on 30.05.2006 with the remark on the margin "confirmed" and "issued nail bond"

127. 21.17: The reports made by the Senior Jail Super and the IG, Prison that incumbent MP was in jail after 01.12.2005 and up to 01.06.2006 is further supported by the original judicial record of Special Tribunal Case No. 759 of 1999 (*GR No. 129 of 1991 corresponding to Double Mooring P.S. Case No. 24(1) 1991*) of the Special Tribunal (Additional Metropolitan Sessions Judge, Court No. 4, Chittagong. Pursuant to the order of this court, that record was produced by the office of this Court as available in the office in connection Misc Case No. 15077 of 2014 arising from the said case No. 759 of 1999 in which the incumbent MP is one of the accused persons.

128. 21.18: The original record of Special Tribunal Case No. 759 of 1999 reveals the following scenario:

Date	**Position of accused Nizam Uddin Hajari in Special Tribunal Case No. 759/1999**
10.10.2001	He was recorded as absconding in this case.
02.01.2002	Application filed on his behalf for issuing Production Warrant **(P.W.)** for securing his attendance in court form Hajat. It was allowed.
13.03.2002	Bail was granted to him by the Tribunal in this case, but he was not released from hajat.
29.11.2005 04.01.2006, 08.03.2006	**On these 3(three) dates, he was produced in court from hajat pursuant to the said P.W.**
04.04.2006	**Jail authorities prayed for his transfer from Chittagong Central Jail to any other jail, but the prayer was rejected by the Tribunal.**
02.05.2006	**He was again produced in court from hajat pursuant to the said P.W.**
31.05.2006	**Application filed on his behalf for calling the P.W back.** Reasons stated are that, although he was granted bail in this case, he was required to stay in Hajat in connection with another case being Special Tribunal Case No. **257/1999,** in which also he had been granted bail.
01.06.2006	**The above application was allowed by the Tribunal and P.W. was recalled.**
06.06.2006	Accused Nijam Hajari (on bail) present in court.

129. 21.19: With regard to the correctness of the continuous stay of the incumbent MP in the jail during the period of 02.01.2002 up to 31.05.2006 as found in the above noted case, he has neither denied the above noted custody period nor furnished any information or document to controvert the said custody period.

130. 21.20: History Ticket: This document appears to be relevant for considering the date of release. Chapter XI, rules 549 to 558, of the Jail Code contains detailed provisions with regard to the History Ticket of a prisoner. These provisions require that the Jail authorities shall, for each prisoner, prepare and maintain a History Ticket in which the specified officer shall record the gist of the relevant particulars of the prisoner including the following:

(i) The date of admission of a convict prisoner to jail (rule- 556(a);
(ii) The award of Special Remission (rule 552 to be read with rule 767)

(iii)The total remission in days up to the end of each quarter (rule 556 (k);
(iv)dispatch to a court or transfer, discharge or death (rule 556(o);

131. 22.21: Rule 557 deals with the custody of the History Ticket to the effect that the ticket is to be preserved by the specified officer. However the prisoner is allowed access to it. Because he is required to show the Ticket to the Superintendent at the time of inspection of the regular parade. The Rule is quoted below *(underlines added):*

> ***"557*** *The history ticket of each prisoner shall be kept in a proper receptacle by the convict officer in whose charge he is with the prisoner whenever he is changed to another hang or work or sent to hospital. At the weekly parades each prisoner shall hold his ticket in his left hand for the Superintendent's inspection; and it shall invariably be produced with the prisoner when he is reported for an offence or brought before the Superintendent or Medical Officer for any reason, or when remission is awarded."*

132. 21.22: Rule 558 deals with the period for which a History Ticket is to be preserved. It is quoted below *(underlines added)*:

> ***"558*** *The history tickets of prisoners who died in jail shall be kept for two years after death; those of prisoners released, for one or two years at the discretion of the Superintendent. When a prisoner is transferred to another jail, his history ticket shall be sent with him"*

133. 21.23: With regard to the position of the History Ticket, the jail authorities were not specifically directed by this court to furnish detailed information. However the IG Prison has briefly stated in his report that there was a History Ticket but it was not available. The exact wording of the relevant portion of his report runs as follows:

> "কারা বিধি ১ম খন্ডের ৭৮০(৮) ও ৫৫৮ ধারা অনুযায়ী রেয়াত কার্ড ও হিস্ট্রি টিকেট সংরক্ষণের মেয়াদ ০১ বৎসর হওয়ায় উক্ত রেয়াত কার্ড ও হিস্ট্রি টিকেট অবলোকন করার কোন সুযোগ ছিল না ----------"

134. 21.24: Other Jail documents: Be that as it may, the scheme of the Jail Code considered as a whole, show that History Ticket is just one of many documents and Registers required to be prepared and maintained by the jail authority. **Rule 1385** of Jail Code gives a list of the Jail Registers being 37 in all, including the Register of Convicts Admitted (rule 542(1), Release Diary (rule 542(3), Remission Card (Rule-780), Diary of Termination of Jail Punishment (rule 734), Gate Register of Persons (rule 328) etc.

135. 21.25: Although the jail authorities (respondent Nos. 8 and 9) could not produce the History Ticket they have furnished photocopies of the other relevant documents with regard to the admission of the incumbent MP in to Jail, and the date of release on the date claimed by them i.e. on 01.06.2006, as discussed earlier.

136. Decision On Issue No. 3:

22.00: The documents relied on by the jail authorities, namely (1) the report of the Senior Jail Super Sagir Mia (Respondent No. 9) denying the correctness of the Rejoinder dated 10.05.2014 (Annexure 1) issued by himself ,and the documents in support of his denial and (2) the reports of the IG Prison along with other Jail documents including the Release Diary, (3) the contents of the original file of Misc Petition No. 280 of 2006 of the DM, Chittagong, no doubt establish the fact of release of the incumbent MP on 01.06.2006.

137. 22.01: However, even if the above documents produced by the jail authorities are ignored, two other facts namely (1) judicial record of Special Tribunal Case No. 759 of 1999 of Special Tribunal cum Additional Metropolitan Sessions Judge Court No. 4, Chittagong showing continuous stay of the incumbent MP during period from 02.01.2002 to 31.05.06, and (2) non-denial of the said continuous stay by the incumbent MP, undisputedly establish the date of his release on 01.06.2006. **Thus it is held that-**

(a) he was released from the jail on 01.06.2006, and not on 01.12.2005, and

(b) he served out the sentence from 14.09.2000 to 01.06.2006= 2088 days (both days included)

138. 22.03: Mysterious bail order: It is further held that the incumbent MP was so released on 01.06.2006 on the basis of a mysterious bail order dated 17.05.2006 passed in a fresh Appeal being Criminal Appeal No. 1409 of 2006. This bail order is mysterious because according to the incumbent MP he did not file any such Appeal and according to the report of the Register of this court the record of that Appeal is not available yet the bail order was received by the office of the DM Chittagong and it was acted upon. So the Anti Correcption Commission is to be directed to inquire into the mystry.

139. Issue No. 4. Deduction of pre-judgment custody from sentence:

23.00: With regard to the quantum of the pre-judgment custody period of the incumbent MP, the claims and statement of the parties are as follows:

Writ Petitioner -	-144 days	-No document filed
Incumbent MP -	-143 days *(23.03.1992 to 28.07.1992)*	-No document filed
Editor Prothom Alo-	-143 days	-Informationslip delivered by Jail Super. (Annexure-4)
Jail authorities -		-Silent. *(They were not directed to report on the matter.)*

140. 23.01: Deliberation: On this Issue, **Mr. Shafique Ahmed**, the learned Advocate for the incumbent MP, submits that, according to section 35A of the Code of Criminal Procedure, 1898 **(Cr.P.C)** deduction of the period of the pre-judgment custody of an accused from the sentence of imprisonment imposed on him is mandatory and therefore the incumbent MP is entitled to that benefit.

141. 23.02: In reply, Mr. Qamrul Haque Siddique the learned Advocate for the petitioner submits that section 35A containing the deduction provision was inserted in Cr.P.C. in 2003 and therefore that section was not applicable to the judgments pronounced by the trial court on 16.08.2000 and affirmed by the Appellate Division on 27.04.2002.

142. 23.03: Discussion and Findings on Issue No. 4: Section 35A was at first inserted in the Cr.P.C. by the Code of Criminal Procedure (Amendment) Act, 1991 (No. 16 of 1991). This provision was valid up to 08.07.2003, on which date another Amending Act namely the Code of Criminal Procedure (Amendment) Act, 2003 (No. 19 of 2003) was published in the Gazette.

143. 23.04: The Amending Act No. 19 of 2003 omitted the old section 35A and substituted the new section 35A containing some changes. So for proper appreciation of the legal position, the old and new version of section 35A are quoted below *(underlines added):*

> ***OLD**: "**35A. Term of imprisonment in cases where convicts are in custody.-** Where a person is in custody at the time of his conviction and the offence for which he is convicted is not punishable with death or imprisonment for life, the Court may, in passing the sentence of imprisonment, take into consideration the continuous period of his custody immediately preceding his conviction."*
>
> ***NEW "35A: Deduction of imprisonment in cases where convicts may have been in custody.-**(1) Except in the case of an offence punishable only with death, when any Court finds an accused guilty of an offence and upon conviction, sentences such accused to any term of imprisonment, simple or rigorous, it shall deduct from the sentence of imprisonment, the total period the accused may have been in custody in the meantime, in connection with that offence.*
> *(2) ----------" **(not relevant)***

144. 23.05: The expression "*the Court may, in passing the sententence of imprisonment, take into consideration"* occurring in the old section 35A clearly shows that it conferred a discretion on the Court to deduct the pre-judgment custody period from the sentence of imprisonment. On the other contrary, the expression "*it shall deduct*" occurring in the new section 35A shows that it has made the deduction mandatory.

145. 23.06: In the instant scenario, the judgment of the trial court (Special Tribunal) was admittedly passed on 16.08.2000 and it was affirmed by the High Court Division by judgment dated 20.05.2001 in Criminal Appeal No. 2369 of 2000 **(Annexure-C)** and also affirmed by Appellate Division in Criminal Petition Leave to Appeal No. 107 of 2001 by judgment dated 27.04.2002 **(Annexure-C-1)** and further affirmed by the Appellate Division by rejecting Review Petition No. 18 of 2002 by judgment dated 26.04.2004 **(Annexure-C-2).**

146. **23.07:** Thus the dates of the above noted judgments passed by of the trial court and the appellate courts show that those were passed between 16.08.2000 to 27.04.2002. This means that the **old section 35A was in force at that time**. But the trial court and the appellate courts did not exercise their discretion by way of directing deduction of the pre-judgment custody.

147. **23.08:** It is noted that neither the text of the new section 35A Cr.P.C nor any other provision of the Amending Act No. 19 of 2003 contains any provision authorizing or requiring the court to deduct the period of the pre-judgment custody with retrospective effect i.e. in relation to a period before commencement of the Amending Act of 2003 which came into operation on 08.07.2003.

148. 23.09: It follows that this Court, in exercising writ Jurisdiction, has no lawful authority to deduct the period of the pre-judgment custody of the incumbent MP under the new section 35A Cr.P.C, and more so when the judgment of the trial court has been affirmed by Appellate Division.

149. Decision on Issue No. 4:

24.00: In view of the above, **it is held that** the incumbent MP is not entitled to the deduction of the pre-judgment custody period of 143 days as claimed by him. Accordingly Issue No. 4 is decided in the negative i.e. against the incumbent MP.

150. **Issue No. 5: Remission permissible to Incumbent MP**

25.00: The real controversy on this aspect has arisen from the difference in the claims raised by the incumbent MP and the report of Jail authorities. Their respective claims are presented in the following Table:

Subject	**Claim of incumbent MP**	**Report/Affidavit of Jail authority**
Remission	(a) **General**- 557 days (b) **Special** - 343 ” (c) **Festival**, ” **holiday** etc.- 651 ” **(d) Blood** donation - 486 **Total- 2037 days** **Based on** Jail Code provisions and two Govt. circular	As per Jail Admission register : 557 days up to 3rd quarter, 2005 i.e. 30.09.2005, but the entry contains ঘষামাজা and hence ignored. As calculated by Inquiry Committee – 482 days *(up to 31.12.2004)* 143 days *(up to 01.06.2006)* **Total - 625 days** **Based On** Jail record and Jail Code provisions.
Remaining	Served+Remission=2049+ 2037 = 4086 days No remaining period	2 years 6 months 16 days = 926 days

151. 25.01: Deliberation: On this issue, **Mr. Qamrul Haq Siddique,** the learned advocate for the Writ Petitioner, submits as follows:

(a) according to rule 766 of the Jail Code, Special Remission can be awarded on yearly basis, by the Superintendent up to a maximum of 30 days and by the Government up to 60 days, but no document has been produced by the incumbent MP or by the Jail authorities about such Remission and therefore he is not entitled to Special Remission,

(b) the remission of 486 days claimed by the incumbent MP on account of blood donation is based on an Executive Order of the Government which cannot supersede the statutory Rules of Chapter XXI of the Jail Code made under the Prisons Act, 1894,

(c) according to rule 768 of the said Rules, the claim of the incumbent MP on all kinds of remission cannot exceed the maximum of $\frac{1}{4}$ (one forth) of the sentence,

(d) even if the Ordinary Remission of 557 days and the remission of 486 days on account of blood donation, as claimed by the incumbent MP, are added to the period of the sentence served out during the period from 14.09.2000 to 01.06.2006, the sum total of these periods do not cover the entire sentence of 10 days.

152. 25.02: In reply Mr. Shafique Ahmed, the learned Advocate for the incumbent MP, submits as follows:-

(a) Chapter XXI of the Jail Code, particularly **rules 756 to 760**, provide for allowing Ordinary Remission and Special Remission. **Moreover rule 689 further provides** for Remission on account of Festival days, and Public holidays, and Gazetted holidays and thus, under the said rules, the incumbent MP is entitled to three types of remission and the total quantum thereof stand as follows: **General Remission - 557 days+Special Remission - 343 days+ Festival, holiday etc – 651 days = Total = 1551 days.**

(b) The 4th type of remission on account of blood donation was added to the Remission system by two Government Circulars dated 21.10.1959 and 27.04.1978 **(Annexure-12 and 13)** and these Circulars contain an overriding expression namely "*in supersession of all previous orders*" and accordingly these were followed, as admitted in the reports of the Jail authorities, and further evidenced by the entries in the Register of Barishal Central Jail dated 24.04.2006 **(Annexure- 15)**.

(c) The Certificate of সন্ধানী **(Annexure X-4)** about blood donation by the incumbent MP on 13 dates is to be taken as correct and thus he, according to those Circulars, is entitled to a remission of 486 days and the total remission earned by him stands at 1551+486=2037 days.

(d) the summation of the sentence served out by the incumbent MP and the total remission earned by him exceeds the sentence of 10 years.

153. 25.03: Mr. Aminur Rahman Chowdhury, the learned Assistant Attorney General, submits that respondent Nos. 8 and 9 being the Jail authorities have complied with the directions of this Court by submitting their Affidavits in compliance and necessary documents.

154. 26.00: Laws on Remission: It appears that the status of the Jail Code as a law should be examined first and then the provisions of the Jail Code and also of the Prisons Act, 1894 are to be considered for deciding the quantum of remission.

155. It is noted that the issue of remission on account of blood donation as claimed by the incumbent MP on the basis certain circulars has been discussed in the later part of the judgment under appropriate heading.

156. 26.01: The Bengal Jail Code, Volume –I (7th Edition) published by the Government Press, Dhaka in 1989 "*under the authority of the Government*" contains detailed provisions with regard to management of Jails. This 7th Edition also contains the reprint of the Preface to the 5th Edition, 1910. In this Preface to 5th Edition, the then IG Prisons, Bengal has stated about the fact of first publication of the Jail Code as an "*admirable Code of Rules*" in 1864 and also about the subsequent Editions that were published to make the Jail Code consistent with various statutory laws.

157. 26.02: The Jail Code of today (7th Edition, 1989) contains provisions that are shown and numbered as rules. But the marginal notes of the rules contain reference to various Government Orders and Circular of long past, e.g. the years of 1892 (rule 10), 1912 (rule 14), 1922 (rule 98) etc. This means that these provisions were not made at a time and the text of various rules are based mainly on circulars, order etc issued by the Executive authorities at different times beginning from 1864.

158. **26.03:** This becomes further clear from the fact that none of the Chapters of the 7th Edition of the Jail Code (1989), except Chapter XXI, contains any expression about the power enabling the Government to make the rules as included in the Jail Code. Only Chapter XXI- on Remission contains the following introductory expression:

> *"In exercise of the powers conferred by section 59, sub-section (5) of the Prisons Act, 1894 (IX of 1894), the Governor-General in shortening of sentences by the grant of remissions."*

159. 26.04: Thus it is clear that, after the first publication of the Jail Code in 1864, the Prisons Act 1894 was enacted. Section 3(5) of this Act contains the definition of the expression *"remission system"* as follows:

> "3. **Definitions** – *In this Act –*
> *(1) -------- (4) ------- (not relevant)*
> *(5) "**remission system**" means the rules for the time being in force regulating the award of marks to, and the **consequent shortening of sentences of**, prisoners in jails"*
> *(6) ----- (9) ---------- (not relevant)*

160. 26.05: Section 59 of the Prisons Act, 1894 provides for the rule making power of the Government on various matters including "**shortening of sentence**" or the "**remission system"**. The relevant clauses of section 59 are quoted below:

> ***"59. Power to make rules**: The Government may make rules consistent with this Act –*
> *(1) ------ (4) ---------- (not relevant)*
> ***(5)** for the award of marks and **the shortening of sentences***
> *(6) ---- (18) ---------- (not relevant)*
> ***(19)** for the preparation and maintenance of history ticket;*
> *(20) ---------- (not relevant)*
> ***(21)** for rewards of good conduct;*
> *(22) ------ (26) -------- (not relevant)*
> ***(27)** in regard to the admission, custody, employment, dieting treatment and release of prisoners; and*
> ***(28)** generally for carrying into effect the purposes of this Act."*

161. 26.06: It is evident, that the Rules of Chapter-XXI on Remission were made and included in the Jail Code in exerise of the Rule making power of the Government under section 59. But section 59 does not specify any particular manner of publication of the rules e.g. publication in the gazette, as is generally specified in other laws. Accordingly the Government of the time previously had, and the Government still has, the lawful authority to make rule in any form including by issuance of Circular letters.

162. **26.07:** In consideration of the above noted legal position of the Jail Code as a law, and the provisions of the Prisons Act, 1894, the issue of remission in this case is discused below with reference to the relevant provisions.

> **(1) Rule 756** generally specifies the scale of **Ordinary remission** of "*two days per month for good conduct"* and "*two days per month for industry and the due performance of the daily work imposed*."
> (2) **Rule 757** allows **Ordinary Remission** at a higher scale in lieu of the remission under rule 756. This alternative remission can be allowed up to 8 days, 7 days, and 5 days on monthly basis only to convicts acting as warders, guards and night watch man respectively.

(3) Rule 759 allows an additional **Ordinary Remission** of 3 days in each Quarter (i.e. 3 months) only to convicts who work as cooks, sweepers or who work on Sundays and other holiday.

(4) 760 allows further additional **Ordinary Remission** of 15 days to a convict in a year who has not committed any offence.

(5) Special Remission:- **Rule 765** provides for allowing Special Remission on the basis of satisfaction of the 6(six) specified criteria. **Rule 766** provides that Special remission may be awarded in one year either by the Superintendent up to 30 days, or by the Inspector-General or the Local Government up to sixty days. **Rule 767** provides that Special Remission awarded to a prisoner is to be recorded in the History Ticket by the Superintendent.

(6) Maximum Limit of Remission: Rule 768 specifies the maximum limit of remission allowable under Chapter XXI is $\frac{1}{4}$ (one fourth) of the sentence.

(7) Remission Card: Rule 774-780 deals with Remission Card and the summery of these provisions is as follows:

(a) Remission Card is to be opened at the time of admission of a convictl rule 780 (1),

(b) all remission allowed, whether Ordinary or Special, are to be recorded in the Remission Card (rule 780 (1) proviso);

(c) Remission Card must be kept ***in a special locked box, (rule 780 (5);***

(d) ***No prisoner shall*** *be allowed* ***access to any Remission Card. (rule 780 (7)***

(e) Remission Cards of released prisoners shall be preserved for one year after the release of such prisoners. **rule 774 and 780 (8);**

(h) an abstract of the Remission card is to be posted up in every barrack **(rule 775)**

(8)Festival, holiday, etc and Remission, if any: Rule 689 of Chapter XVIII declares that, in addition to Sundays, certain other days e.g. Eid days, Muharram, Christmas etc, shall be observed as gazetted holidays. But this Rule or other rules of that chapter or any other provision of the Jial Code do not allow remission due to the fact that convicts are allowed holidays on those days. This means that the convict prisoners who are otherwise required to work are simply exempted from work on holidays but without the benefit of remission of sentence.

(09) **Rule 782** generally prohibits engaging a convict sentenced to rigorous imprisonment to work on "*Sundays*" and "*the gazetted holidays"* as specified by rule 689. However as stated earlier **Rule 759** allows engaging certain convicts to work as cooks, sweeper etc on Sundays and holidays, and they are entitled to remission of three days of ordinary remission in a Quarter (i.e. 3 months), in addition to other remission.

163. **Findings on Remission under the Jail Code:-**

27.00: The provisions of the Jail Code (rule 767 and 780) require that all remissions awarded to a prisoner are to be recorded in two documents namely History Ticket of the Prisoner and Remission Card. However according to the report dated 30.06.2016 (Annexure-X-3-Series) submitted by the jail authority, these documents are not available. The relevant portion of that report runs as follows:

কারা বিধি ১ম খন্ডের ৭৮০(৮) ও ৫৫৮ ধারা অনুযায়ী রেয়াত কার্ড ও হিস্ট্রি টিকেট সংরক্ষণের মেয়াদ ০১ বৎসর হওয়ায় উক্ত রেয়াত কার্ড ও হিস্ট্রি টিকেট অবলোকন করার কোন সুযোগ ছিল না এবং ভর্তি রেজিস্টারের রেয়াত সংক্রান্ত প্রাপ্ত তথ্য ৩য় কোয়ার্টার ২০০৫ পর্যন্ত প্রাপ্ত রেয়াত ৫৫৭ দিন ঘষামাজ থাকায় তার নির্ভরযোগ্যতা প্রশ্নের সম্মুখীন। তাই ভর্তি রেজিস্টারের তথ্য আমলে না নিয়ে সর্বশেষ নির্ভরযোগ্য তথ্য ৩১.১২.২০০৪ পর্যন্ত অর্জিত রেয়াত ৪৮২ দিন ধরে তাঁর ০১.০৬.২০০৬ খ্রিঃ তারিখে জামিনে মুক্তি গমনের পূর্বদিন পর্যন্ত কারা বিধি মোতাবেক সর্বোচ্চ আরো ১৪৩ দিন রেয়াত প্রাপ্ত হতেন (তদন্ত কমিটি কর্তৃক প্রস্তুতকৃত ক্যালকুলেশন সীট সংযুক্ত-গ)। তদন্ত কমিটির হিসাবমতে মুক্তির পূর্বদিন পর্যন্ত রেয়াত নিয়মের আওতায় তাঁর প্রাপ্ত সর্বোচ্চ রেয়াত ৬২৫ দিন বা ১ বছর ৮ মাস ২৫ দিন। উল্লেখ্য যে, কারা বিধি ৭৬৮ ধারা মোতবেক রেয়াত কখনও মূল সাজার ১/৪ অংশ অতিক্রম করবেনা।

164. 27.01: But irrespective of non-availability of the History Ticket and the Remission Card, the quantum of the remission claimed by and admissble to the incumbent MP can be a ascertained keeping in view of the provisious of the Jail Code and the materials on record. Accordingly Findings on the three counts of Remission under the Jail Code claimed by him are recorded in the following paragraphs:

28.00: Ordinary/General Remission:- On this aspect, claim of the incumbent MP about the remission of 557 days is partly admitted by the jail authority to the effect that the "ভর্তি রেজিষ্টার রেয়াত সংক্রান্ত প্রদত্ত তথ্য ৩য় কোয়াটার পর্যন্ত প্রাপ্ত রেয়াত ৫৫৭ দিন ঘষা মাজা থাকায় তার নির্ভরযোগ্যতা প্রশ্নের সম্মুখীন।……"

165. 28.01: The Jail authorities made their own calculation on the basis of সর্বশেষ নির্ভরযোগ্য তথ্য and fixed the same to 482 days up to 31.12.2004 and added another 143 days up to the date of release i.e. 01.06.2006. They calculated a total of 625 days of remission.

166. 28.02: In view of the suspicion expressed by the jail authorities in the documents available to them, it appears that their calculation may be safely ignored, except the fact of the common element namely their reference to 557 days which is also claimed by the incumbent MP. It is noted that, according to various provisions of the Jail Code the incumbent MP had access to the History Ticket (rule 557) and he also had access to the information recorded in the Remission Card (rule 774). So his claim has a basis and further evidenced by the report of the jail authorities as quoted above.

167. 28.03: Accordingly his claim about 557 days of ordinary/general remission is taken as correct up to the period of 3rd Quarter of 2005 i.e. 30.09.2005 as reported by the jail authorities. More over, as per calculation of the jail authority, some additinal ordinary remission is admissible to the incumbent MP up to the date of his release on 01.06.2006. The jail authorities calculated this period to be 143 days by taking account the $\frac{1}{4}$th rule about maximum limit as provided in rule 768.

168. 28.04: However as will be seen in the later part of this judgement, the maximum limit of remission was raised to 30% of the sentence by the circular dated 21.0.1959.

169. 28.05: So the ordinary remission permissible to the incumbent MP is fixed at 557 days up to the 3rd quarter of 2005. The ordinary/remission permissible to him after that period is recorded by taking in to consideration the said circular.

170. 29.00: Special remission: On this aspect, the incumbent MP claims 343 days of remission under rule 765. But he has not made any reference to the basis of his claim nor has he produced any document.

171. 29.01: On the contrary, the jail authorities are silent on the point of Special Remission on the ground that both the History Ticket and Remission Card are not available. In consideration of the silence of the jail authorities and the incumbent MP's access to the information about remission recorded in those two documts as per rule 557 and 775 of the Jail Code, **it is held that the claim of the incumbent MP on this count is taken as correct and that he was allowed Special Remission of 343 days.**

172. Remission on account of Festival, holiday etc:

30.00: The incumbent MP was admittedly sentenced to 10 years rigorous imprisonment. This means that he was required to do some work in jail assigned by the jail authorities. Scheme of the Jail Code shows that various classes of prisoners may be assigned with various types of work (rule 552). There are detailed provision in chapter XVI (rule 633-662) for regulating their discipline and daily works/routine.

173. 30.01: Rule 689 of the Jail Code provides that certain days being festival days and public holidays have been declared as gazetted holidays. **Rule 782** generally prohibits the work of a convict prisoner on Sundays and gazetted holidays, except in case of emergency works or self request of prisoner.

174. 30.02: Rule 757 and 759 provide that a prisoner may be engaged in works involving prison services such as cooks, sweeper, night watchman etc on Sundays and holidays and for such works additional ordinary remission is allowable. This means that the remission allowable under rule 757 or 759 on festival days and holidays are not a separate type of remission but an ordinary remission, as pointed out earlier.

175. 30.03: So from the scheme of the of Jail Code considered as a whole, particularly rule 689 specifiing the holidays, and rule 782 generally prohibiting work on holidays, rule 757 and 759 allowing additional ordinary remission for work on holidays, read with the other provisions of Chapter XXI- on Remission, it is evident that, on the holidays and festival days, a convict prisoner is generally exempted from work. But he is not entitled to the benefit of remission for such exemption from work. However if he is required to work on holidays he is entitled to a few days of additional ordinary remission only, which is again subject to the maxiumum limit.

176. So the claim of the incumbent MP about the remission of 651 days on account Festival days and holidays is not consistent with the Jail Code and hence not acceptable. **Accordingly it is held that remission on this count is not admissible to him.**

177. 31.00: Remission on account of Blood donation: As found earlier, section 59 of the Prisons Act, 1894 empowers the Government to make rule in any form e.g. by gazzette notification and also by issuing Circular letters. In exercise of that power, the Government of East Pakistan issued the Circular dated 21.05.1959 containing specific direction about allowing Remission on account of blood donation **(Annexure-12).** The said Circular is quoted below *(underlines added) :*

> ***No. 353H.J. dated 21.5.59*** *from the Assistant Secretary to the Government East Pakistan, Home (Jails), Department to the Inspector General of Prisons.*

178. **"East Pakistan, Dacca.**
***Sub**: Donation of blood to the Blood Bank by convicts in Jails in East Pakistan,*
***Ref**: His Memorandum No. 2806/G.L. dated the 29th August, 1958.*

The undersigned is directed to say that the Government, in supersession of all previous orders on the above subject, are pleased to allow the convicts in jail East Pakistan to donate blood to the Blood Bank in the Medical College Hospital, Dacca and have decided that 30 (thirty) days remission should be allowed to prisoners who donate their blood for the first time and that for each subsequent donation the remission should be 2 days in addition to the remission awarded for the immediately proceeding donation i.e. the remission for the second donation will be 32 days, for the third 34 days, for the fourth 36 days and so one subject to the following conditions.

a) *That no prisoner with a sentence not exceeding two months shall be ontitled to any such remission;*
b) *That no prisoner with a sentence exceeding two months but not exceeding three months shall be permitted to reduce his sentence to less then two months by such remission; and*
c) *That no prisoner with a sentence exceeding three months shall be permitted to reduce his sentence by more then 30 per centum by remission.*

2. Government have also decided that in addition to the remission specified in foregoing paragraphs a prisoner donating blood shall get cash allowance Rs. 1 for each donation out of the Blood Transfusion Fund.
The superintendents of all Oentral, District and Subj. may be Informed accordingly.

179. 31.01: It is evident that the Circular dated 21.05.1959 was issued containing the following features:

(a) it was issued in supersession of all previous orders,

(b) it allowed remission on account of blood donation at a specified scale, namely 30 days for the 1st time, 32 days for the 2nd time, 34 days for the 3rd times and so on with an increase of 2 days on each subsequent donation.

(c) it sets a limit of remission of the sentence, namely 30 percentum of the sentence as a whole in place of $\frac{1}{4}$ (one fourth) or 25 percentum as allowed by the existing rule 768.

180. 31.02: The above noted Circular was endorsed by the Bangladesh Government by a Circular dated 27.08.1978 **(Annexure-13)** and the scheme of blood donation was expanded to the Hospitals of all Medical Colleges and District level Hospitals. However the system of Remission on account of blood donation by prisoners was stopped by the Government as evidenced by the letter dated 23.07.2007 **(Annexure-14)**

181. **31.03:** The report the IG Prison dated 09.10.2006 **(Annexure-X-4 series)** and **Annexure-15** being the photocopy the Entries in a Register of the Barishal Central Jail dated 26.04.2006 show that the above noted Circulars had been followed in allowing remission on account of blood donation namely 30 days for the 1st time donation of a unit of blood.

182. **31.04:** In view of the above discussion, it is found that the Circular dated 21.05.1959 was in operation as a rule up to 23.03.2007. The fact of non-inclusion thereof in the Jail Code does not negate its status as an instrument having the force of law/rule made under the Prisons Act, 1894.

183. 31.05: Moreover according to the definitions of the expression "*law*" and "*existing law*" as provided in article 152 of the Constitution, though the Jail Code is a compilation of various legal instruments, including executive orders and circulars, the Jail Code is an existing law and so was the said Circular upto 23.03.2007 as part of the Jail Code.

184. 31.06: Keeping in view above legal position of the circular dated 21.05.1959, we need to look into the materials or record. The incumbent MP has produced the following certificate issued by the President and General Secretary of সন্ধানী:-

প্রশংসাপত্র

এই মর্মে প্রত্যয়ন করা যাইতেছে যে, নিজাম উদ্দিন হাজারী, পিতা- জয়নাল আবেদীন হাজারী, আইডি নং ৪১১৪/এ কারাঅন্তরীন থাকাকালীন চট্টগ্রাম কেন্দ্রীয় কারাগারে গত ১৪/১২/২০০০ ইং হইতে ১৫/০৯/২০০৫ ইং সময়ের মধ্যে আত্মমানবতার সেবায় নিয়োজিত হইয়া চট্টগ্রাম কেন্দ্রীয় কারাগার কর্তৃপক্ষের মাধ্যমে ১৩ (তের) ইউনিট রক্তদান কারায় আপনাকে অত্র সংস্থার পক্ষ থেকে দেশ ও জাতির কল্যানে ভূমিকা রাখায় আন্তরিকভাবে ধন্যবাদ জ্ঞাপনসহ আপনার মঙ্গল ও উজ্জ্বল ভবিষ্যত কামনা করছি।

সভাপতি	সাধারন সম্পাদক
সন্ধানী চট্টগ্রাম মেডিকেল কলেজ ইউনিট	সন্ধানী চট্টগ্রাম মেডিকেল কলেজ উইনিট

185. **31.07:** In respect of the correctness of the সন্ধানী certificate, the Jail authorities reported as follows:

"বিস্তারিত পর্যালোচনা ও নথি পত্র যাচাই করে দেখা যায় যে, সার্কুলার নং 353-H.J. Dated. 21-5-1959 মূলে পূর্ব পাকিস্তান সরকার কর্তৃক ইস্যুকৃত স্মারকের আলোকে ও পরবর্তীতে গণপ্রজাতন্ত্রী বাংলাদেশ সরকারের মেমো নং 581/(56)M-10/78 Dated. 27-4-1978 মূলে রক্ত দানের বিনিময় বিশেষ রেয়াত সুবিধা প্রদানের নিয়ম বহাল ছিল। এ কার্যক্রম মেডিকেল কলেজ হাসপাতাল, জেলা আধুনিক হাসপাতাল, সন্ধানী ব্লাড ব্যাংক ও রেড ক্রিসেন্ট সোসাইটির মাধ্যমে পরিচালিত হয়ে থাকতো। এ সুবিধার আওতায় বন্দীরা রক্ত দান করে বিশেষ রেয়াত প্রাপ্ত হতো; যা পরবর্তীতে স্মারক নং পিডি/পরি(সার্কুলার)/১০/২০০৭/৭৭৬(৭০) তারিখঃ ২৭-২-২০০৭ খ্রিঃ মোতাবেক রহিত করা হয। উল্লেখ্য যে, রেয়াত কার্ড ও হিস্ট্রি টিকেট সংরক্ষনের মেয়াদ কারা বিধির ৭৮০(৮) ও ৫৫৮ এর বিধান মোতাবেক ০১ (এক) বৎসর। কয়েদী নং ৪১১৪/এ নিজাম উদ্দিন হাজারী এর হিস্ট্রি টিকেট, রেয়াত কার্ড এবং রক্তদান সংক্রান্ত কোন নথি পত্র চট্টগ্রাম কেন্দ্রীয় কারগারে খুজে না পাওয়ায় উক্ত বিষয়ে বিস্তারিত তথ্য উদঘাটন করা সম্ভব হয়নি।

কারা কর্তৃপক্ষের পত্রের প্রেক্ষিতে সন্ধানী কর্তৃপক্ষ ৩ অক্টোবর ২০১৬ খ্রিঃ তারিখ সন্ধানী চট্টগ্রাম মেকিল কলেজ শাখায় সভাপতি এবং সাধারণ সম্পাদক স্বাক্ষরিত পত্রের মাধ্যমে জানান যে, পর্যাপ্ত আর্থিক স্বচ্ছলতা, জনবল, অবকাঠামোগত সুবিধা না থাকায় এতদসংক্রান্ত রেকর্ডপত্রাদি দীর্ঘ সময় পর্যন্ত সংরক্ষণ করা দুষ্কর হওয়ায় ১৪-১২-২০০০ খ্রিঃ হতে ১৫-৯-২০০৫ খ্রিঃ পর্যন্ত সময়ের চাহিত রেকর্ড পত্রাদি ১০-১২ বছরের পুরনো বিধায় এবং তাদের কার্যালয় স্থানান্তরের সময় বিনষ্ট হয়েছে বিধায় চাহিত তথ্য প্রদানে অপারগতা প্রকাশ করে দুঃখ প্রকাশ করেছেন (কপি সংযুক্ত)। তবে সন্ধানী কর্তৃপক্ষ প্রদত্ত সনদ অস্বীকার করেননি"।

186. 31.08: Thus in consideration of the legal status of the Circular dated 21.05.1959 as an existing law allowing remission on account of blood donation and the certificate of সন্ধানী about the donation of blood by the incumbent MP on 13 dates and the report of the jail authority as quoted above, it is held that the incumbent MP is entitled to remission of 486 days as calculated by him, of course, subject to the maximum limit allowable to him. His calculation is correct as per the Circular dated 21.05.1959.

187. 32.00: Maximum Limit of Remission: A legal issue comes up about the maximum limit of remission permissible under the Jail Code and the Circular dated 21.05.1959. In this respect we have two different maximum limits, one unde rule 768 of the Jail Code and the other under para (c) of Circular dated 21.05.1959. For ready reference both the provisions are quoted below:

188. Jail Code rule 768

768*. The total remission awarded to a prisoner under all these rules shall not without the special sanction of the local Government, exceed one-fourth part of his sentence*.

Circular para (c):

c) "That no prisoner with a sentence exceeding three months shall be permitted to reduce his sentence by more then 30 per centum by remission".

189. 32.01: The question is which one should be followed in this case. The Circular dated 21.05.1959 was issued by the Government under its rule making authority under section 59 of the Prisons Act and it was given overriding effect which is apparent from the expression "*in supersession of all previous orders"*. It follows that the Circular dated 21.05.1959 added a new dimension to the Remission system by firstly allowing blood donation as a ground for remission and secondly by setting a new maximum of "*30 percentum of the sentence*"

190. 32.02: It is to be noted that this new limit does not specify the remission only on account of blood donation, rather it refers to the sentence as a whole.

191. 32.03: Considering that the Circular had the same status as that of a rule, we have no other option than holding that the maximum limit of remission was raised from 25% specified by rule 768 to 30% of the sentence.

192. 32.04: Thus it is held that the remission of 486 days is permissible to the incumbent MP on account of blood donation as allowed by the Circular. However the total amount of Remission permissible to him on all the counts is subject to the limit of 30 percentum of sentence as fixed by the same Circular.

193. 32.08: Total permissible remission:- Thus the total quantum of remission allowable to the incumbent MP stands as follow:

(1) Ordinaiary Remission *(From 14.09.2000 up to 30.09.2005)*	-557 days
(2) Further Ordinary Remission *From 01.10.2005 to 01.06.2006 = 244 days* *30% of 244= 74 days.*	-74 days
(3) Special Remission	-343 days
(4) Remission on account of blood donation	-486 days
Grand Total of all remissions	-1460 days

Total sentence= 10 years = 365×10=3650
Leap year days (2004 and 2008) = +2
Total sentence days = 3652 days.
Maximum permissible remission 30% of sentence = $\frac{3652\times30}{100}$ = 1095.60 = 1096 days.

194. Issue No. 6: Remaining period of sentence, if any:

33.00: In view of the findings and decision on the issues of remission permissible to the incumbent MP and the period of sentence served out by him, the remaining period of the sentence to be served out by him stand as follows:

(1) 10 years Imprisonment= 10×365= 3650 days
+ Leap year days (2004 and 2008) +2
Total imprisonment days 3652 days (as per calenedar)

(2) Sentence served = 2088 days
+
Permissible remission = 1096 days
Total ------ = 3184 days

(3) Remaining sentence- 3652-3184= 468 days

195. **Issue No. 7: Disputed questions of fact involved, if any**

34.00: The principal issue raised in this case is the lawful authority of the incumbent MP in holding the office of MP for the constituency of Feni- 2 resulting from the alleged disqualification arising from serving a lesser period of sentence.

196. 34.01: The reply to this principal issue depends upon decisions on the issues on (1) the deduction of prejudgement custody period of 143 days as claimed by him, (2) the period of sentence served out by him, (3) the remission permissible to him on various counts clamied by him and (4) the remaining sentence, if any. The discussion, findings and decision on those matters i.e. on issues Nos 1-6 show that no disputed questions of facts are involved on those 4(four) matters and the related issues. The reasons are briefly stated below:

(a) The issue of maintainability on account of standing of the petitioner to file this case under article 102(2)(b)(ii) **(Issue No. 1)** is a purely legal issue, and it has been held that the case is maintainable on that count. **(vide para 17-18).**

(b) The issue of maintainability on account of the bar or restriction imposed by article 125 of the Constitution **(Issue No. 2)** is purely a legal issue, and it has been held that article 125 article is not a legal bar to entertain this case and that the case is maintainable. **(vide para 19-20.22)**

(c)**The issue of date of release of the incumbent MP (Issue No. 3),** on 01.12.2005 as claimed by him or on 01.06.2006 as claimed by the Jail authority, has the flavour of a disputed question of fact. But the decision on the principal issue, namely the issue of disqualification due to the alleged remaining sentence, does not depend on the issue of any of the said two dates of release, but on the quantum of the remaining sentence **(Issue No. 6)** as determined earlier in the discussion and findings on issue Nos. 4-6.This aspect of the case is not a disputed question of fact. Because the incumbent MP admits that he was released before serving the entire 10 years. The real controversy is about the quantum of remission permissible to him.

(d) **However the issue of date of his release (Issue No. 3)** has been earlier discussed and decided for calculating the exact quantum of remaining sentence. This has been done not on the information furnished by jail authorities but on the information available in the orginal judicial record of Special Tribunal Case No. 757 of 1999 of the Special Tribunal, 4th Court of Metropolitan Addition and Session Judge. This can be lawfully

done in an inquiry process in writ juridicision under article 102(2)(b)(ii) of the constitution. That record clearly shows that he was in jail from 02.01.2002 upto 31.05.2006, and was released on 01.06.2006. This finding is further supported by the fact that, the incumbent MP has not denied or controverted his continuous stay in jail from 02.01.2002 up to 31.05.2006 as found from the record of that case. So this date has been accordingly determined to be 01.06.2006. **(vide para 21.18-21.19 and 22.00-22.03)**

(e) More over admittedly he was relased before expiry of 10 years. In such a back ground, it is the well settled principle of law that the fact of merely raising a claim different to the claim of jail authority or the finding of this court does not render it as a disputed question of fact. In fact, the date of his release as decided by this court as being on 01.06.2006 goes to his benefit in calculating the period of sentence served out by him and the quantam of remission permissible to him. If the date of his release claimed by him being 01.12.2005 is taken as correct he would be required to serve a longer period. So the issue of date release is not a disputed question of fact. **(vide para 22-22.03)**

(f) The claim of the incumbent MP about remission on three accounts namely Ordinary Remission (557 days), Special Remission (343 days) and Blood Donation (486 days) are taken as correct and lawful as discussed earlier in deciding the issue on permissible Remission **(Issue No. 5).** So there is no disputed questions of fact involved in these matters. **(vide para 25-29 and 31.00-31.05)**

(g) The claim of the incumbent MP about remission of 651 days on account Festival days and holidays under rule 649 of the Jail Code is not a disputed question fact, rather it **is purely a legal issue** and it has been discussed earlier in deciding **Issue No. 5** on permissible Remission. His claim on this count is not legally acceptable. **(vide para 30-30.03)**

(h) The claim of the incumbent MP about deduction of the prejudgment custody period of 143 days is not a disputed question of fact. It is purely a legal issue. It is has been discussed and decided against him earlier in deciding **Issue No. 4.** This matter is not a disputed question of fact and his claim is not acceptable. **(vide para 23-24)**

(i) The maximum limit of remission permissible to him is 30 percemtum of the sentence of 10 years as per the Circular dated 21.05.1959, which had the status of rule upto 23.07.2007 when operation of the said Circular dated 21.05.1959 was stopped. This is purely a legal issue as discussed earlier in deciding **Issue No. 5.** So this is not a disputed question of fact. **(vide para 32.00- 33.00)**

(j) In view of the above findings, the decision of the Indian Supreme Court in the Case of *Kurapati Maria Das vs. Dr. Ambed Seva Samajan and others (Indian kanoon .org.doc/1530123)* as referred to by Mr. Shafique Ahmed, the learned Advocate for the incumbent MP about lack of jurisdiction of a writ court in deciding disputed questions of fact is not applicable to the present case.

197. Issue No. 8 Whether the incumbent MP was disqualified to be elected:

35.00: In view of the findings and decision on the issue of the remaining period of sentence **(Isssue No. 6)** it is evident that, on the date of his release from jail on 01.06.2006, the incumbent MP (respondent No. 7) had not served out the entire sentence and that he was required to serve out the remaining sentence for another 468 days. There is nothing on record to show that, after his release on 01.06.2006, he was ever taken to jail in connection with the sentence imposed on him in Special Tribunal Case No. 757 of 1999.

198. 35.01: It follows that as per article 66(2)(d) of the Constitution he was disqualified to be nominated and elected as an MP in the election held on 05.01.2014. It is noted that article 66(2)(d) speaks of conviction for a criminal offence involving moral turpitude. The offence under section 19A and 19 (f) of the Arms Act, 1878 is such an offence. Because in the context our society the nature of the prescribed penalty namely a minimum rigorous imprison of 10 years and 7 years for illegal possession of fire arms and ammunition without licence issued by appropriate authority is an offence against the security of the society at large and also against the state and moral value in general.

199. Issue No. 9 Result of disqualification:

36.00: The result of disqualification of the incumbent MP at the time of his filing the nomination paper is that the declaration made by the Election Commission about his election held on 05.01.2014 was illegal and that he has no lawful authority to hold the office of the MP for the Constituency of Feni-2 and hence it is to be declared as vacant.

200. Conclusion:

37.00: In view of the decisions on the issue Nos. 1-9, the Rule is to be made absolute with consequential directions.

201. 37.01: In the Result the Rule nisi issued in this case is made absolute in the following terms:

(1) Respondent No.7 Nizam Uddin Hazari is hereby declared to have no lawful authority to hold the office of MP for the Constituency of Feni-2 and accordingly the said office is hereby declared to be vacant.

(2) It is further declared that the respondent No. 7 shall serve out the remaining period of sentence of 468 days from the date of his surrender or arrest in connection with Special Tribunal Case no. 757 of 1999 of the Special Tribunal (Metropolitan Additional Sessions Judge, 4th Court), Chittagong.

(3) The Anti Corruption Commission is directed to inquire into the matter of the mysterious bail alleged granted by this Court in Criminal Appeal No. 1409 of 2006 and also into the alleged use of that bail order in connection with release of Respondent No. 7 Nizam Uddin Hazari as a convict in connection with Special Tribunal Case No. 757 of 1999 and to take other actions in accordance with law.

(4) Send at once a copy of this judgment to the the Speaker of the Parliament (respondent No.1), Chief Election Commissioner (respondent No. 2), the said Tribunal and the jail authorites (respondent No. 8 and 9) and also to the Chairman, Anti Corruption Commission.

202. No order as cost.