

17 SCOB [2023] HCD 1**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)****WRIT PETITION NO. 9541 of 2021****Mohammed Faruk ul Azam****Vs.****The Election Commission of
Bangladesh, represented by the Chief
Election Commissioner, Election
Commission Secretariat, Sher-E-Bangla
Nagar, Dhaka.**

Mr. Hassan M.S. Azim, with
Mr. Mohammad Zahed-ul-Anwar, and
Mr. Mohibullah Tanvir, Advocates
.... For the Petitioner.
Mr. Fayez Ahmed, with

Mr. Md. Abdur Rahman, Advocates
..... For the respondent No.7

Mr. Samarendra Nath Biswas, D.A.G. with
Mr. Md. Abul Kalam Khan (Daud),
A.A.G. with
Mr. Md. Modersher Ali Khan (Dipu),
A.A.G. with
Mr. Md. Taufiq Sajawar (Partho), A.A.G.
....For the Respondents-government.

Heard on: 02.11.2022 and 03.11.2022
Judgment on: 17.11.2022

Present:**Ms. Justice Farah Mahbub****And****Mr. Justice Ahmed Sohel****Editors' Note:**

The petitioner, who planned on running for office in the Union Parishad, submitted his nomination for the chairmanship before the pertaining Upazilla Returning Officer with all the required documents, including a declaration asserting that his candidacy was valid in accordance with the provisions enshrined in sections 26(1) and 26 (2) of the স্থানীয় সরকার (ইউনিয়ন পরিষদ) আইন, ২০০৯. After scrutinizing the petitioner's nomination paper, the concerned Upazilla Returning Officer annulled his candidacy solely on the premise that his name was enlisted in the list of the Bangladesh Bank's CIB (Credit Information Bureau) as a guarantor of a loan amount that had been defaulted upon. The petitioner being aggrieved by such a decision brought an appeal before the appropriate appellate authority in conformity with Rule 15 of the “স্থানীয় সরকার (ইউনিয়ন পরিষদ) বিধিমালা, ২০১০”. The aforesaid authority dismissed the appeal upon hearing it on the same grounds, upholding the findings of the Upazilla Returning Officer. The petitioner then preferred this application to challenge that appellate decision. After hearing from both sides, the court held that “a guarantor to a defaulted loan amount is not disqualified to contest the respective election”. The court further observed that unlike Paurashava election, Upazilla Parishad, City Corporation, and Parliamentary elections, an aspiring candidate is not required to disclose the necessary information by providing ‘হলফনামা’ in a prescribed form along with a declaration (ঘোষণা) when submitting a nomination paper (as per section 26(3) of the Ain, 2009 read with Rule 12 of the Rules, 2010). Hence, the only condition the candidate must meet to contest in the election of the Union Parishad is to make a declaration (ঘোষণা) that he is competent to serve as Chairman under the applicable laws. Giving ‘হলফনামা’ in a prescribed manner is not thus mandated by law for this election.

Key Words:

Union Parishad Election; Affidavit and Declaration in Election Application; Loan Defaulter; Guarantor to a Defaulted Loan.

Guarantor to a defaulted loan is not a disqualification:

It is now a settled principle of law that a guarantor to a defaulted loan amount is not disqualified to contest respective election. (Para 13)

Affidavit and declaration in the local government elections:

It is, however, the mandate of law that while submitting nomination paper for contesting Paurashava election, Upazilla Parishad election, City Corporation election and Parliamentary election the candidate is required to submit affidavit ‘হলফনামা’ in a prescribed form along with the nomination paper containing detail information on his/her educational qualification, his/her implication in any criminal case, if there be any, occupation, source of income, description of property owned by him/her, including family members and loan liability, if there be any, with declaration that all information of the respective documents so provided are correct and true to the best of his knowledge. Conversely, in Union Parishad election the candidate is relieved from making such disclosure. The only requirement is that vide Rule 12 of the “স্থানীয় সরকার (ইউনিয়ন পরিষদ) নির্বাচন বিধিমালা, ২০১০” (as amended in 2016) the candidate is to give certificate “প্রত্যয়নপত্র” although vide Section 26(3) of the Ain, 2009 the candidate is required to submit an affidavit ‘হলফনামা’ along with the nomination paper declaring that he is not disqualified vide Section 26(2) to contest the respective election. (Para-15, 16)

In Union Parishad election the respective candidate is not required to disclose those 7(seven) vital information, which are essential for the respective voters to know in order to assess, evaluate and ultimately to select their candidates who is going to represent them as the head of the respective rural administrative and local government unit for a prescribed period. Although, in Paurashava election, Upazilla Parishad election, City Corporation election and Parliamentary election those informations are required to be provided by the respective candidate while submitting nomination paper by giving ‘হলফনামা’ in a prescribed form along with declaration (ঘোষণা). (Para-19)

JUDGMENT**Farah Mahbub, J:**

1. This Rule Nisi was issued under Article 102 of the Constitution of the People’s Republic of Bangladesh, calling upon the respondents to show cause as to why the impugned order dated 25.10.2021 (Annexure-F) passed by the respondent No.4 in Election Appeal No.02 of 2021 dismissing the appeal and thereby affirming the order dated 21.10.2021(Annexure-C) passed by the respondent No.5, the Returning Officer concerned cancelling the nomination paper of the petitioner for the post of Chairman of 16 No. Bakhtapur Union Parishad General Election-2021, Upazilla-Fatickchari, District-Chattogram should not be declared to have been passed without lawful authority and hence, of no legal effect and also, as to why the respondents should not be directed to allow the petitioner to participate in Bakhtapur Union Parishad General Election-2021 for the post of Chairman of 16 No. Bakhtapur Union Parishad under Upazilla-Fatickchari, District-Chattogram and to allocate necessary election symbol to that effect.

2. Along with the Rule Nisi an ad-interim direction was accordingly given upon the respondent No.3 to allow the petitioner to contest the election for the post of Chairman of 16No. Bakhtapur Union Parishad General Election, 2021, Upazilla-Fatickchari, District-Chattoqram by allocating respective symbol.

3. Being aggrieved with the ad-interim order, added respondent No.7 moved the Hon'ble Appellate Division by filing Civil Petition for Leave to Appeal No.2801 of 2021. The learned Judge-in Chamber of the Appellate Division after hearing the respective parties by passing necessary order directed the concerned authorities not to publish gazette notification declaring the added respondent No.7 as Chairman of the concern union Parishad. Later, by disposing of said CPLA No.2801 of 2021 the Appellate Division vide order dated 06.03.2022 passed necessary order to have the order of stay and direction given by the learned Judge-in-Chamber continued till disposal of the Rule, with direction upon this Bench to hear and dispose of the Rule on merit.

4. Facts, are brief, as that the petitioner, in the year 2016 being aspirant to contest 16 No. Bakhtapur Union Parishad General Election, 2021 for the post of Chairman filed his nomination paper before the respondent No.5, Upazilla Returning Officer concerned on 15.10.2021 (Annexure-B) along with all required documents with declaration that -

“(১) এতদ্বারা ঘোষণা করিতেছি যে, আমি-

(ক) উপরোক্ত মনোনয়নে সম্মতি প্রদান করিয়াছি এবং স্থানীয় সরকার (ইউনিয়ন পরিষদ) আইন, ২০০৯ এর ধারা ২৬(১) অনুযায়ী চেয়ারম্যান হিসাবে নির্বাচিত হইবার যোগ্য।

(খ) স্থানীয় সরকার (ইউনিয়ন পরিষদ) আইন, ২০০৯ এর ধারা ২৬(২) অনুযায়ী চেয়ারম্যানরূপে নির্বাচিত হইবার বা থাকিবার জন্য অযোগ্য নহি।

(গ) একাধিক পদে নির্বাচনের জন্য মনোনয়নপত্র দাখিল করি নাই।”

5. However, after due scrutiny the respective nomination paper of the petitioner was cancelled by the respondent No. 5. Being aggrieved the petitioner filed an appeal before the concerned Appellate authority bearing No.02 of 2021 on 22.10.2021 under Rule 15 of the “স্থানীয় সরকার (ইউনিয়ন পরিষদ) বিধিমালা, ২০১০” (in short, Rules, 2010) (Annexure-E). After hearing the respective contending parties said authority vide order dated 25.10.2021 dismissed the appeal and thereby affirmed the findings of the respondent No.5 dated 21.10.2021 (Annexure-F). Challenging the same the petitioner has filed the instant application and obtained the present Rule Nisi along with interim direction.

6. Mr. Hasan M.S. Azim, the learned Advocate with Mr. Mohammad Zahed-Ul-Anwar, the learned Advocate appearing for the petitioner submits that on a plain reading of Section 26(2)(Ja) of the “স্থানীয় সরকার (ইউনিয়ন পরিষদ) আইন, ২০০৯” (in short, the Ain, 2009) it is apparent that said context is applicable only for the principal defaulter, not guarantor. In this regard, he also submits that the loan in connection with which the petitioner stood as a guarantor, has already been reimbursed by the successors of the principal borrower prior to filing appeal before the Appellate authority. Accordingly, he submits that in any view of the mater, the nomination of the petitioner cannot be cancelled for being the guarantor of the defaulted loan amount on the date of filing nomination paper. In support he has referred the decision of the case of *Mrs. Farin Hossain –Vs- Bangladesh Election Commission and others in writ petition No.2042 of 2021*.

7. Conversely, Mr. Fayeze Ahmed, the learned Advocate with Mr. Md. Abdur Rahman, the learned Advocate appearing for the added respondent No.7 at the very outset conceding to the legal position that a guarantor of a defaulted loan amount cannot be termed as a disqualified

candidate for contesting the Union Parishad General Election, 2021, goes to submit by filing affidavit in opposition that admittedly, the candidature of the petitioner was cancelled by the respondent No.5 only on the count that his name was enlisted in the list of CIB (Credit Information Bureau) of Bangladesh Bank as being the guarantor of a defaulted loan amount, but fact remains that the petitioner personally took loan from the respective bank in connection with M/S Faruque Ul Azam and having defaulted to pay off the loan amount within time the bank concerned instituted Artha Rin Suit No.12 of 2005 before the Adalat concerned. However, for realization of the decretal amount the decree holder bank filed Artha Execution Case No. 20 of 2006 before the executing Adalat against the petitioner, the judgment debtor, which he did not disclose while filing his nomination paper before the authority concerned.

8. In this regard drawing attention to Annexure-B to the writ petition, he submits that while annexing the copy of the nomination paper, the petitioner did not enclose the ‘হলফনামা’, which is a part and parcel of the said nomination paper in view of Section 26(3) of the Ain, 2009. In the given context, he goes to submit that for not making such disclosure while filing nomination paper renders him disqualified under Section 26 of the Ain, 2009. Consequently, the petitioner has no legal right to contest the election for the post of Chairman of 16 No. Bakhtapur Union Parishad. Accordingly, he submits that this Rule is liable to be discharged.

9. Controverting the said assertions the learned Advocate for the petitioner by filing a supplementary affidavit submits that said loan has already been re-scheduled by the bank concerned and accordingly, Artha Execution Case No. 20 of 2006 has been disposed of by the executing Adalat vide order dated 09.05.2011 (Annexure- H to the supplementary affidavit of the writ petition). As such, he submits that it cannot be said that the petitioner is a loan defaulter. He also submits that it is fact that ‘হলফনামা’ is a part and parcel of nomination paper in connection with Paurashava election, Upazilla Parishad election, City Corporation election and Parliamentary election, but for the election of Union Parishad it is not a requirement of law, the only requirement the candidate is required to fulfill is to give a declaration (ঘোষণা) that he is qualified to be elected as Chairman under Section 26(1) and is not disqualified under Section 26(2), which the petitioner has duly given in the prescribed form as been supplied by the authority concerned.

10. He further submits that the nomination paper of the petitioner was cancelled on the plea that he was a guarantor of the defaulted loan amount, not on the context of Artha Rin Suit No.12 of 2005. Hence, he submits that since said suit is not the subject matter of the impugned order as such, considering the same the petitioner cannot be declared as disqualified and hence, the instant Rule cannot fail on the score.

11. Being aspirant to contest the Union Parishad General Election, 2021 for the post of Chairman as independent candidate the petitioner filed his nomination paper before the Returning Officer concerned, respondent No.5 on 15.10.2021 (Annexure-B). However, after due scrutiny his nomination paper was ultimately cancelled on 21.10.2021 (Annexure-C) on the ground, *inter-alia*-

“বাংলাদেশ ব্যাংক (ক্রেডিট ইনফরমেশন ব্যুরো) (গোপনীয়) এর স্মারক নং-সিআইবি- ৫(১)/২০২১- ৩৮৭৯ তাং-১৯/১০/২০২১ ইং মোতাবেক ঋন খেলাপীয় জামীনদাতা। ”

12. Said findings was also affirmed by the Appellate authority vide order dated 25.10.2021 (Annexure-F) by dismissing the appeal preferred by the petitioner. Relevant portion of the said order is quoted below:

“যেহেতু জনাব মোঃ ফারুক উল আযম বাংলাদেশ ব্যাংক, প্রধান কার্যালয়, মতিঝিল, ঢাকা-১০০০ এর সূত্র নম্বর সিআইবি-৫(১)/২০২১/৩৮৭৯, তারিখঃ ১৯/১০/২০২১ খ্রিঃ মোতাবেক চেয়ারম্যান পদে মনোনয়ন দাখিলকারী জনাব মোঃ ফারুক উল আযম, ইসলামি ব্যাংক লিঃ, জুবিলি রোড শাখা, চট্টগ্রাম জামিনদার হিসেবে ঋণ খেলাপী। যা স্থানীয় সরকার (ইউনিয়ন পরিষদ) নির্বাচন বিধিমালা ২০১০ এর বিধি ১৪ এর ৩ উপবিধি অনুসারে বাতিলযোগ্য।

সেহেতু দাখিলকৃত দলিলাদি পরীক্ষা নিরীক্ষায় এবং শুনানীকালে আপিলকারীর বক্তব্যের প্রেক্ষিতে ও নথি পর্যালোচনায় জনাব মোঃ ফারুক উল আযম এর আপিল আবেদনটি নামঞ্জুর করা হলো।”

13. It is now a settled principle of law that a guarantor to a defaulted loan amount is not disqualified to contest respective election, as has been observed by one of Benches of this Division in *Mrs. Farin Hossain –Vs- Bangladesh Election Commission and others* in connection with *writ petition No.2042 of 2021*(in which one of us was a party), which is quoted herein below:-

“From a plain reading of the aforesaid provisions of law it appears that in none of those provisions the guarantor(s) has/have been included in the criteria of “খেলাপী ঋণ গ্রহিতা” in Section 19(2) (ঝ) and (ঞ) of the “স্থানীয় সরকার (পৌরসভা) আইন, ২০০৯”, in Section 26(2) (জ) of the “স্থানীয় সরকার (ইউনিয়ন পরিষদ) আইন, ২০০৯”, in Section 8(2)(ঞ)(ট) of the “স্থানীয় সরকার (উপজেলা পরিষদ) আইন, ১৯৯৮” and in Section 6(2)(ঝ) of the “জেলা পরিষদ আইন- ২০০০”. The only exception has been made in Section 19(2) (ঝ) and (ঞ) of the “স্থানীয় সরকার (সিটি কর্পোরেশন) আইন, ২০০৯”, wherein the mortgagor or guarantor (বন্ধকদাতা বা জামিনদার) shall be treated as “খেলাপী ঋণ গ্রহিতা” if, his interested company or firm has become loan defaulter.

Thus, it is abundantly clear that the Legislature with intention has not included the guarantor as “খেলাপী ঋণ গ্রহিতা” in Section 19(2) (ঝ)(ঞ) of the “স্থানীয় সরকার (পৌরসভা) আইন, ২০০৯”.

Be that as it may, since the guarantor has not been included in the definition of “খেলাপী ঋণ গ্রহিতা” in “স্থানীয় সরকার (পৌরসভা) আইন, ২০০৯” hence, relying on the definition of “খেলাপী ঋণ গ্রহিতা” as provided in Section 5(GaGa) of the Bank Companies Act, 1991 the petitioner cannot be found as a disqualified candidate for the post of Mayor of Dewangonj Pourashava, P.S- Dewangonj, District- Jamalpur as per Section 19(2) (ঝ)(ঞ) of the “স্থানীয় সরকার (পৌরসভা) আইন, ২০০৯”.

14. At this juncture, the added respondent No.7, the other contesting candidate raised objection to the candidature of the petitioner on the claim that the petitioner himself took loan from the bank concerned in the name of M/S Faruque Ul Azam; however, having defaulted to pay off the loan amount within time the bank instituted Artha Rin Suit No.12 of 2005 before the Adalat concerned, which was ultimately decreed and in order to realize the decretal amount Artha Execution Case No.20 of 2006 had been filed by the decree holder bank (Annexures- Ka and Kha respectively to the affidavit-in-opposition). However, from order No.57 dated 09.05.2011 (Annexure-H to the supplementary affidavit of the writ petition) it appears that said execution case has been disposed of on account of amicable settlement between the respective contending parties. Considering the above, the assertion so made by the added respondent No.7 to that effect falls through.

15. As to the other assertion of the added respondent No.7 with regard to filing nomination paper without ‘হলফনামা’, we have minutely examined the photo copy of the nomination paper of the petitioner submitted before the respondent No.5 on 15.10.2021

(Annexure-B). It is, however, the mandate of law that while submitting nomination paper for contesting Paurashava election, Upazilla Parishad election, City Corporation election and Parliamentary election the candidate is required to submit affidavit ‘হলফনামা’ in a prescribed form along with the nomination paper containing detail information on his/her educational qualification, his/her implication in any criminal case, if there be any, occupation, source of income, description of property owned by him/her, including family members and loan liability, if there be any, with declaration that all information of the respective documents so provided are correct and true to the best of his knowledge.

16. Conversely, in Union Parishad election the candidate is relieved from making such disclosure. The only requirement is that vide Rule 12 of the “স্থানীয় সরকার (ইউনিয়ন পরিষদ) নির্বাচন বিধিমালা, ২০১০” (as amended in 2016) the candidate is to give certificate “প্রত্যয়নপত্র” although vide Section 26(3) of the Ain, 2009 the candidate is required to submit an affidavit ‘হলফনামা’ along with the nomination paper declaring that he is not disqualified vide Section 26(2) to contest the respective election.

17. In this regard, Mr. Tawhidul Islam, the learned Advocate by filing affidavit-in-opposition on behalf of the respondent No.1 goes to contend that subject to Section 26 of the Ain, the respective candidate is required to submit, amongst others, the respective documents in compliance of Rule 12(3) namely:

“১৪। মনোনয়নপত্র ও তার সাথে দাখিলকৃত কাগজাদিঃ আইনের ধারা ২৬ এর বিধান সাপেক্ষে, বিধিমালায় বিধি ১২ এর উপবিধি (৩) অনুসারে-

(ক).....

(খ).....

(গ).....

(অ) বিধি ১৩ অনুসারে জামানতের টাকা জমাদানের প্রমাণ হিসেবে রিটানিং অফিসারের অনুকূলে প্রদেয় ব্যাংক ড্রাফট অথবা ট্রেজারি চালান বা পে-অর্ডার;

(আ) উক্ত মনোনয়নে সংশ্লিষ্ট প্রার্থী সম্মত আছেন এবং নির্বাচনে অংশগ্রহণের ক্ষেত্রে আইনের ধারা ২৬(২) বা আপাতত বলবৎ অন্য কোন আইনে তিনি অযোগ্য নন মর্মে তার স্বাক্ষরিত প্রত্যয়নপত্র এবং

(ই) প্রস্তাবকারী ও সমর্থনকারীদের কেহ প্রস্তাবকারী বা সমর্থনকারী হিসেবে একই পদে অন্য কোন মনোনয়নপত্রে স্বাক্ষর দান করেন নাই;

(ঈ) চেমারম্যান পদের ক্ষেত্রে নিবন্ধিত রাজনৈতিক দলের প্রার্থী হলে সংশ্লিষ্ট রাজনৈতিক দলের সভাপতি বা সাধারণ সম্পাদক বা সমপর্যায়ের পদাধিকারী বা তাদের নিকট হতে ক্ষমতাপ্রাপ্ত ব্যক্তির নাম, স্বাক্ষর ও সিলমোহরযুক্ত দলীয় মনোনয়ন।”

18. In other words, he submits, in Union Parishad election the candidate is not required to disclose those informations, which are required to be submitted by the respective candidate who aspires to contest the Paurashava election, Upazilla Parishad election, City Corporation election and Parliamentary election.

19. In view of the said contention of the respondent No.1 and also, considering the position of law as provided in Section 26(3) of the Ain, 2009 read with Rule 12 of the Rules, 2010 (as amended in 2016), it is apparent that in Union Parishad election the respective

candidate is not required to disclose those 7(seven) vital information, which are essential for the respective voters to know in order to assess, evaluate and ultimately to select their candidates who is going to represent them as the head of the respective rural administrative and local government unit for a prescribed period. Although, in Paurashava election, Upazilla Parishad election, City Corporation election and Parliamentary election those informations are required to be provided by the respective candidate while submitting nomination paper by giving ‘হলফনামা’ in a prescribed form along with declaration (ঘোষণা). Said view of ours finds support in the case of *Md. Abu Safa Vs. Abdul Momen Chowdhury, Civil Appeal No. 57 of 2007*, as well as the case of *People’s Union for Civil Liberties Vs. India, (2009) 3SCC 200*.

20. In the instant case, the petitioner, however, appears to have given due ‘ঘোষণা’ in compliance of the Rule 12(3) (আ) of the Rules, 2010(Annexure-B). Considering the above, it can clearly be discerned that since the petitioner is not a disqualified candidate; hence, cancelling his nomination paper by the Returning Officer and being affirmed by the Appellate authority is liable to be declared to have been passed without lawful authority and hence, of no legal effect.

21. In the result, the Rule is made absolute.

22. The impugned order dated 25.10.2021 passed by the respondent No.4 in Election Appeal No. 02 of 2021 dismissing the appeal (Annexure-F) and thereby affirming the order dated 21.10.2021 passed by the respondent No. 5 cancelling the nomination paper of the petitioner for the post of Chairman of 16 No. Bakhtapur Union Parishad General Election-2021, Upazilla-Fatickchari, District-Chattogram (Annexure-C) is hereby declared to have been passed without lawful authority and hence, of no legal effect.

23. The respondent No.1 is accordingly directed to proceed with the process of election of the respective union Parishad in accordance with law.

24. However, considering the greater public interest the respondent No. 1 is hereby directed to look into the loopholes as are apparent in the “স্থানীয় সরকার (ইউনিয়ন পরিষদ) আইন, ২০০৯” as well as in the “স্থানীয় সরকার (ইউনিয়ন পরিষদ) নির্বাচন বিধিমালা, ২০১০” with regard to giving ‘হলফনামা’ by the respective candidate containing the respective information and to take necessary steps to that effect in due compliance of law.

25. There will be no order as to costs.

26. Communicate the judgment and order to the respondent No.1 along with other respondents concerned at once.