

নির্বাচন কমিশন সচিবালয়  
শেরে বাংলা নগর, ঢাকা

১৮ জুন ২০০৫

তারিখ : -----/  
০৪ আষাঢ় ১৪১২

নং-নিকস/নিঃ-১/জাঃসঃ-২৯/২০০৫/৪৪৩

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ফোন : ৮১১ ৫৪৮০ (অফিস)  
৭১০ ১৬৯৩ (বাসা)  
প্রেরক : মোহাম্মদ জকরিয়া  
যুগ্ম-সচিব (নির্বাচন ও পরিকল্পনা)  
প্রাপক : জেলা প্রশাসক, সুনামগঞ্জ  
ও  
রিটার্নিং অফিসার

বিশেষ পরিপত্র

বিষয় : মাননীয় সুপ্রীম কোর্টের হাইকোর্ট বিভাগের ২৫৬১/২০০৫ নং রিট পিটিশন এর মাননীয় আদালতের প্রদত্ত আদেশ অনুসারে ২২৫ সুনামগঞ্জ-৩ নির্বাচনী এলাকার শূন্য আসনের নির্বাচনে কার্যক্রম গ্রহণ প্রসংগে

জাতীয় সংসদ নির্বাচনে প্রার্থীদের বিভিন্ন তথ্যাবলী প্রদান সম্পর্কে মহামান্য সুপ্রীম কোর্টের হাইকোর্ট বিভাগে দাখিলকৃত রিট পিটিশন নং-২৫৬১/২০০৫-এর প্রেক্ষিতে মাননীয় আদালত ২৪ মে ২০০৫ তারিখে কতিপয় নির্দেশনা প্রদান করেছেন। মাননীয় আদালতের রায়ে কপি পরিশিষ্ট-ক-তে সংযুক্ত করা হল। মাননীয় আদালতের আদেশ অনুসারে প্রতিদ্বন্দ্বী প্রার্থীগণ যে হলফনামায় বিভিন্ন তথ্যাদি রিটার্নিং অফিসারকে প্রদান করবেন তা পরিশিষ্ট-'খ'-তে সংযুক্ত করা হল। মনোনয়নপত্র দাখিলের সময় প্রার্থীগণ নির্ধারিত হলফনামায় রিটার্নিং অফিসারের নিকট বিভিন্ন তথ্যাদি দাখিল করবেন। এ সকল তথ্যাদি ভোটারদের জ্ঞাতার্থে বিভিন্ন গণমাধ্যমে রিটার্নিং অফিসারকে প্রচারের ব্যবস্থা গ্রহণ করতে হবে।

২। বর্ণিত অবস্থায় মাননীয় আদালতের আদেশ কার্যকর করার প্রয়োজনীয় কার্যক্রম গ্রহণের জন্য অনুরোধ করা হল।

সংলগ্নী : উপরে বর্ণিত।

(মোহাম্মদ জকরিয়া)  
যুগ্ম-সচিব (নির্বাচন ও পরিকল্পনা)

নং-নিকস/নিঃ-১/জাঃসঃ-২৯/২০০৫/৪৪৩

১৮ জুন ২০০৫  
তারিখ : -----/  
০৪ আষাঢ় ১৪১২

অনুলিপি অবগতি ও প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য প্রেরণ করা হইল :-

- ১। মন্ত্রিপরিষদ সচিব, মন্ত্রিপরিষদ বিভাগ/ মুখ্য সচিব, প্রধানমন্ত্রীর কার্যালয়, ঢাকা
- ২। সচিব (জন বিভাগ/আপন বিভাগ), রাষ্ট্রপতির কার্যালয়, বঙ্গভবন, ঢাকা
- ৩। সচিব, -----সকল মন্ত্রণালয়/বিভাগ

- ৪। খ্রিস্টিয়াল স্টাফ অফিসার, সশস্ত্র বাহিনী বিভাগ, প্রধানমন্ত্রীর কার্যালয়, ঢাকা
- ৫। মহাপুলিশ পরিদর্শক, বাংলাদেশ, ঢাকা
- ৬। মহা-পরিচালক, বিডিআর, পিলখানা, ঢাকা
- ৭। মহা-পরিচালক, আনসার ও ভিডিপি, খিলগাঁও, ঢাকা
- ৮। বিভাগীয় কমিশনার, সিলেট বিভাগ, সিলেট
- ৯। উপ-মহা পুলিশ পরিদর্শক, সিলেট রেঞ্জ, সিলেট
- ১০। পরিচালক, নির্বাচনী প্রশিক্ষণ ইনস্টিটিউট, ঢাকা
- ১১। উপ-নির্বাচন কমিশনার, সিলেট
- ১২। পুলিশ সুপার, সুনামগঞ্জ
- ১৩। উপ পরিচালক, আনসার ও ভিডিপি, সিলেট রেঞ্জ, সিলেট
- ১৪। উপজেলা নির্বাহী অফিসার, সুনামগঞ্জ সদর/জগন্নাথপুর উপজেলা ও সহকারী রিটার্নিং অফিসার
- ১৫। জেলা নির্বাচন অফিসার, সুনামগঞ্জ
- ১৬। জেলা আনসার এ্যাডজুটেন্ট, সুনামগঞ্জ
- ১৭। সহকারী পুলিশ সুপার, সদর সার্কেল, সুনামগঞ্জ
- ১৮। উপজেলা নির্বাচন অফিসার, সুনামগঞ্জ সদর/জগন্নাথপুর উপজেলা, জেলা-সুনামগঞ্জ
- ১৯। ভারপ্রাপ্ত কর্মকর্তা, সদর/জগন্নাথপুর থানা, জেলা-সুনামগঞ্জ
- ২০। নির্বাচন কমিশন সচিবালয়ের সকল কর্মকর্তা, ঢাকা
- ২১। নির্বাচন কমিশন সচিবালয়ের বিজিডি/৯৬/০১৮ প্রকল্প ও নির্বাচনী প্রশিক্ষণ ইনস্টিটিউটের সকল কর্মকর্তা।

  
১৮/৩/২০০৮

(ফরহাদ আহাম্মদ খান)  
সিনিয়র সহকারী সচিব  
ফোনঃ ৮১২৩৬৬০ (অফিস)  
৮৯১৭৯৬৫ (বাসা)



বাংলাদেশ  
নির্বাচন কমিশন



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০২-৬-০৫, ০৫-৬-০৫, ০৫-৬-০৫, ১৩-৬-০৫, ১৫-৬-০৫

In the Supreme Court of Bangladesh

High Court Division.

(Special Original Jurisdiction)

Writ Petition No. 2561 of 2005.

In the matter of:

An application under Article 102 of the  
Constitution of the Peoples Republic of  
Bangladesh.

A n d

In the matter of:

Abdul Momen Chowdhury and others.

-Vs.-

Bangladesh and others .

Dr. Kamal Hossain with

Mr. Abdul Momen Chowdhury (in Person)

.. for the Petitioner.

Mr. Razik -Al-Jalil, D.A.G.

...for the Respondent No. 1.

Present:

Mr. Justice Md. Abdul Matin.

A n d

Mr. Justice A.F.M. Abdur Rahman.

The 24th May, 2005.

Md. Abdul Matin, J:

This rule was issued calling upon the respondent Nos. 1,  
Bangladesh, and (2) Bangladesh Election Commission to show cause as  
to why they should not be directed to secure to the voters particular  
from the candidates, for the election to the parliament (House of the

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of the nation) in the form of informations disclosing the past of the candidates including certain facts necessary for making correct choice for candidates.

This writ petition has been filed by Mr. Abdul Women Chowdhury and two other learned advocates of this court in the form of public interest litigation and, this rule is not being opposed by any respondent. Dr. Kamal Hossain, learned Counsel appeared in the matter and supported the case of the petitioner. The learned Deputy Attorney General appearing for the state however submits that since no notice was served upon the government they have no instruction in the matter. However he prays for time but this Court does not feel it necessary to adjourn the matter.

The case of the petitioners, in short, is that they are committed social workers and political activists for bringing social, economical and political justice to the people. It appears that the petitioners filed this application out of their sense of duty as mandated by Article 21(1) of the Constitution of the ~~Raxkxian~~ Peoples Republic of Bangladesh. It has further been asserted that the voters are of utmost importance and they have right to elect or reject a candidate on the basis of antecedents and past performance of the candidate and whether they are competent to discharge the function as a law maker and represent the people in the House of the Nation. The further case of the petitioner is that the Election Commission should see and it is imperative upon them that the musclemen, black marketer uneducated

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uneducated person should not have any chance of being elected as representative of the people and if unscrupulous persons are elected they will make provision for their self aggrandizement and will not represent the people by whom they are made representatives. The further case of the petitioners is that the voters are entitled to know the following particulars of a candidate.

- a. Academic qualification.
- b. Whether he is accused in any criminal case at present
- c. Whether there was any past record of criminal case and the Result.
- d. Profession / Occupation.
- f. Whether he was parliament member earlier and therole he played individually and collectively in fulfilling the commitment to the people.
- g. Description of assets and liability of the candidate and dependant of the candidates.
- h. Particulars and amount of loan taken from bank and Financial institutions dealing with public money personally, Jointly or by dependent or/loan taken by the Company from Bank where the candidate is chairman, or Managing Director or Director etc.

We have heard Mr. Abdul Momen Chowdhury, the petitioner No. 1 of this case who is also a practicing advocate of this Court. He submits that ours is a Republic and our constitution provides for government with consent of the people and such government is only

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possible when they can elect their representatives by free fair and transparent election. But unless they have knowledge about the particulars stated in paragraph -35 of the Writ Petition as quoted above it will not be possible on the part of the voters to make use of the right to vote and election will be meaningless. Therefore it is necessary to secure to the voters information about the candidates as sought for in the Writ Petition. He further submits that Article 118 of the Constitution provides for the Creation of the Election Commission for Bangladesh and Article 119 of the Constitution Speaks of the function of the Election Commission and the Election Commission has the plenary power of superintendence , direction and control for holding free faire and transparent election. He further submits that when a power is giving by the statute or Constitution it includes all necessary powers to secure the object of the law . In support of his contention he has referred to the case of Mujibur Rahman Vs. Bangladesh reported in 44 DLR(AD) 111. While interpreting Article 172(2) of the Constitution our Appellate Division held as under:-

"84 . The grant of legislative power in the proviso to Article 117(2) is plenary in nature . Anyone denying a particular power , or alleging a limitation on a power , must show that the power does not exist on the Constitution expressly or by necessary implications limits the power . There can be no presumption by a Court of a limited grant of legislative power because to limit the grant of legislative power

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power is a constituent and not a judicial function."

He also referred to the case of Rashid Ahmed Vs. The State reported in 21 (SC) DLR, 297. In that case also Pakistan Supreme Court held ' Keeping this principle in view, as also the principle that in constitutional provision conferring a right the Courts ought not to adopt a construction which would unduly restrict that right , for , a constitutional provision is not to be construed "In any narrow and pedantic sense". The Courts Must, therefore, lean in favour of a construction which would render the right conferred by the Constitution effective and operative in its fullest amplitude ~~max~~ rather than the one which would make it nugatory. It is also important to remember, as pointed out by Munir C.J in presidents Special Reference No. 1 of 1957 (6) , that it would be wrong to start with any apriori idea of the intention of the Constitution and then 'to try by construction to wedge it into the words" of the Constitution" and he submits that when there is no prohibition in the Constitution in Article 119 this Court can direct the respondent No. 2 to furnish those particulars on affidavits.

Dr Kamal Hossain, the learned Senior counsel appearing in support of the petitioner has referred to the case of Union of India Vs. Association for Democratic Reforms and another reported in (2002) 5 SCC regarding interpretation of Article 324 of the Indian Constitution which is similar to our Article 119 of the Constitution and submits that it is essential that the past of a candidate should

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should be disclosed to the voters and the direction prayed for should be issued by this Court. He further argued that the power under Article 119 of the Constitution is plenary in character and therefore in order to hold free fair and transparent election particulars sought for are essential for enabling the voters to make their right choice. He has also referred to the case of People's Union for Civil Liberties (PUCI) and another - Vs. Union of India and another reported in (2003), 4 SCC, 399. In order to circumvent the above judgment another provision namely, Section 33-B was inserted by Representation of the People (Third Amendment) Act, 2002 and when it was challenged before the Indian Supreme Court the same was declared ultra Virus the Constitution.

Our Article 119 of the Constitution runs as follows:-

"119. The superintendence, Direction and control of the Preparation of the election rolls of elections to the office of President and to parliament and the conduct of such elections shall vest in the Election Commission which shall, in accordance with this Constitution and any other Law.

- (a) hold elections to the office of President,
  - (b) hold elections of members of Parliament.
  - (c) delimit the constituencies for the purpose of elections to parliament, and.
  - (d) Prepare election rolls for the purpose of elections to the office of President and to Parliament)
- (2) The Election commission shall perform such

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functions, in addition to those specified in the foregoing clauses, as may be prescribed by this Constitution or by any other law."

From a close reading of Article 119 of the Constitution it appears that the election Commission has been given a plenary power of superintendence, direction and control of the preparation of the electoral rolls for elections and therefore whatever power is necessary for the purpose must be presumed to be there unless there is an ouster by express provisions. In fact there can not be a law inconsistent with the purpose. In the case referred to by Dr. Kamal Hossain while appreciating and interpreting the role of the voters celebrated observation of Sir Winston Churchill vivified in matchless words has been quoted and it will be profitable to quote the same here again:-

"At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point." In the same judgment also quoted another decision of the same court in the case reported in (1978) 1 SCC 405 which runs as under-

"23 Democracy is government by the people. It is a continual participative operation, not a cataclysmic, periodic exercise. The little man, in his multitude, marking his vote at the

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poll does a social audit of his Parliament Plus political choice of this proxy. Although the full flower of participative government rarely blossoms, the minimum credential of popular government is appeal to the people after every term for a renewal of confidence . So we have adult franchise and general elections as constitutional compulsions. The right of election is the Very essence of the Constitution (Junius) .It needs little argument to hold that the heart of the parliamentary system is free and fair elections periodically held, based on adult franchise, although social and economic democracy may demand much more .

So far the question of locus standi of the petitioners is concerned there is no scope of argument against the petitioners after the celebrated judgment in the case of Dr. Mohiuddin faruque - VS.- Bangladesh reported in 49 DLR (AD) 1.

Now the second question is whether this court can grant the mandamus as prayed for. It appears both from Article 66 of the Constitution and also from Peoples Representation Order 1972 that there is no provision covering the matters sought for in this case since law is silent on this matter there is no difficulty on the part of this court to provide for proper guide-line. This question was also discussed in the case referred to by Dr. Kamal Hossain as stated above It has been asserted that the Constitution contemplate -s of superintendence, direction and control of the conduct of elections in the Election Commission . This responsibility may

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may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

"Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament of any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of not divorced from, pushing forward a free and fair election with expedition."

It may be mentioned here that Article 32 A of the Indian Constitution is similar to our Article 119 of the Constitution. We hold that it is permissible for this Court to set down guidelines as prayed for. The question of right to know was also examined in the said judgment and it was held that the peoples right to know is inclusive of their right to vote. We are also of the view that people have a right to know and such right is included in the right to franchise.

In such view of the matter we find that the prayer made in this writ petition is legitimate one and this Court can allow it and direction sought for may be allowed. Accordingly this rule is made absolute without any order as to costs and the Respondent No. 2 is hereby directed to seek information from the candidates on affidavit sworn in by the candidates furnishing the following information along with the nomination papers for the election to the House of the

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of the Nation.

- a. Academic qualification with certificate from the Board <sup>or</sup> ~~of~~ University if possess any qualification.
- b. Whether he is accused in any criminal case at present.
- c. Whether there was any past record of criminal case and the result.
- d. Profession/ Occupation.
- e. Source or sources of Income.
- f. Whether he was parliament member earlier and the role he played individually and collectively in ~~xxxxxx~~ fulfilling the Commitment to the people.
- g. Description of assets and liabilities of the Candidate and dependent of the candidate.
- h. Particulars and amount of loan taken from Bank and Financial Institutions dealing with public money personally, jointly or by dependent or loan taken by the Company from Bank where the candidate is ~~xxxxxxx~~ Chairman, or Managing Director or Director etc.

The respondent No. 2 is further directed to disseminate the information amongst the voters about the candidates through mass media and respondent No.1 is directed to provide necessary logistic

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necessary logistic support for the Purpose of the Respondent  
No. 2.

M.A.Matin.

A. F. M. Abdur Rahman, J:

I agree.

A. F. M. A. Rahman.  
✖✖

Ibrahim- 13.6.05.

Read by - [Signature] 13/6/05

Exed by - [Signature] 13/6/05

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প্রত্যক্ষিত স্বাধীনতা প্রতিষ্ঠা  
 [Signature] 13.6.05  
 স্বাধীনতা প্রতিষ্ঠা  
 বাংলাদেশ জাতীয় দপ্তর, স্বাধীনতা বিদ্যালয়  
 (১৮৭২ ইং সালের ১৯ই জানুয়ারি)  
 \* \* \* \* \*  
 13.6.05  
 13.6.05