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THE DHAKA LAW REPORTS

(A MONTHLY LAW JOURNAL)

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Seventh Issue

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that these circumstances furnish sufficient corroboration to the confessional statement made by the condemned-prisoner. The High Court Division, therefore, accepted that the prosecution was able to prove the commission of murder by the condemned-prisoner and upheld the con-viction under section 302 of the Penal Code.

15. On the other hand, the High Court Division noted that there was on record an application dated 21-5-1995 filed before the trial Judge wherein the condemned-prisoner pleaded guilty to the two murders. The order of the trial Court dated 21-5-1995 confirms this to be so. But the trial Court instead of applying the provision of section 265(E) of the Code of Criminal Procedure proceeded to hold the trial as the offence carried the sentence of death. The admission of guilt by the accused was kept with the record.

16. Having elaborately discussed the evidence and materials on record and having considered all the facts and circumstances of the case, the High Court Division held that "ends of justice will be better served if the sentence of death upon the condemned-prisoner is reduced to that of imprisonment for life".

17. The sentence of death of the condemned-prisoner was commuted by the judgment and order of the High Court Division dated 10-4-2000. The condemned prisoner spent about 4 years in the condemned cell, and 13 years have elapsed since the judgment of the High Court Division, which commuted her sentence of death to imprisonment for life.

18. In view of the facts and circumstances discussed above, we are of the view that the judgment of the High Court Division does not call for any interference by this Division.

Accordingly, the criminal appeal is dismissed.

Ed.

APPELLATE DIVISION
(Criminal)

Md Muzammel Hossain CJ
Surendra Kumar Sinha J
Md Abdul Wahhab Miah J
Hasan Foez Siddique J
AHM Shamsuddin Chowdhury J

Judgment
January 27th, 2014.

Anti-Corruption Commission.....Petitioner

vs

Iqbal Hasan Mahmood alias Iqbal Hasan Mahmood Tuku and another.....Respondents*

Anti-Corruption Commission Act (V of 2004)
Section 27

Section 27 is an independent provision and for initiation of a proceeding against any person under the provision, no notice is required to be served. If the prosecution can establish that any person has acquired or amassed wealth which is beyond his known source of income, he may be prosecuted and convicted under section 27(1). .....(5)

The accused-respondent was also convicted under section 27(1) of the Ain on the reasonings that he had acquired properties which were beyond his known source of income, and said properties were also confiscated by the learned Special Judge. True, during the relevant time, the Commission was not properly constituted. So, the notice issued upon him under section 26(1) by the Secretary of the Commission was without jurisdiction. But, for this reason the High Court Division cannot set-aside the conviction of the accused-respondent in respect of an offence under section 27(1) of the Ain read with section 5(2) of Act 11 of 1947. And in doing so, it has not at all discussed the evidence on record. .....(6)

*Criminal Petition for Leave to Appeal No. 537 of 2011.

(From the judgment and order dated 16-6-2011 passed by the High Court Division in Criminal Appeal No. 6743 of 2007.)

Remand

The judgment of the High Court Division so far as it relates to setting aside the conviction and sentence of the accused-respondent under section 27(1) of the Durnity Daman Commission Ain read with section 5(2) of Act 11 of 1947 is set-aside. The matter is remanded to the High Court Division to dispose of the appeal on merit afresh. .....(7)

Anti-Corruption Commission vs Dr Mohiuddin Khan Alamgir, 62 DLR (AD) 290 ref.

Md Khurshid Alam Khan, Advocate, instructed by Mahmuda Begum, Advocate-on-Record—For the Petitioners.

Md Wahidullah, Advocate-on-Record—For Respondent No.1

None Represented—For Respondent No. 2.

Judgment

Surendra Kumar Sinha J: Delay condoned.This petition at the instance of Anti-Corruption Commission is against a judgment of the High Court Division in Criminal Appeal No.6743 of 2007.

2. We have perused the impugned judgment and the judgment of the Special Judge, Court No. 5, Dhaka and heard the learned counsel for the petitioner. It appears that the Special Judge convicted the accused-respondent under section 26(2) read with Rule 15(Gha)(5) of the Durnity Daman Commission Bidhimala, 2007 and sentenced him to two years simple imprisonment and also under section 27(1) of the Durnity Daman Commission Ain, 2004 read with section 5(2) of the Prevention of Corruption Act, 1947 and sentenced to rigorous imprisonment for 7(seven) years with a fine of Taka 50 lakh in default to suffer rigorous imprisonment for l(one) year more. The Special Judge also confiscated some moveable and immoveable property of the accused-respondent which were found disproportionate to his known source of income.

3. Against the said conviction and sentence, the convict-respondent preferred the above appeal. The High Court Division set-aside the conviction and sentence and also set-aside the order of confiscation of the property mainly on the reasonings that the Commission was not properly constituted in accordance with law from 2nd February 2007 to 24th February, 2007 and in view of non-constitution of the Commission, the notice issued by it upon the respondent under memo dated 18th February, 2007 under the signature of the secretary of the Commission to submit his wealth statement was without jurisdiction. In the judgment the High Court Division considered section 26 of the Ain and a decision of this Division in the case of *Anti-Corruption Commission vs Dr Mohiuddin Khan Alamgir, 62 DLR (AD) 290.*

4. Learned counsel appearing for the petitioner submits that besides section 26, the accused-respondent was also convicted under section 27(1) of the Ain which is an independent penal provision having no nexus with section 26 and therefore, the High Court Division erred in law in setting aside the conviction of the accused-respondent under section 27(1) of the Ain read with section 5(2) of Act 11 of 1947.

5. On perusal of the impugned judgment we noticed that the High Court Division did not at all enter into the merit of the matter and set-aside the conviction mainly on the ground that no Commission was properly constituted when the accused-respondent was served with the notice to submit his wealth statement. Section 26(1) empowers the Commission to issue notice upon any person who appears to have acquired property which are beyond his known source of income and if the statement submitted by him is found to be false, he will be liable to conviction. Section 27 is an independent provision and for initiation of a proceeding against any person under the said pro-

vision, no notice is required to be served. If the prosecution can establish that any person has acquired or amassed wealth which is beyond his known source of income, he may be prosecuted and convicted under section 27(1).

6. In this case, the accused-respondent was also convicted under section 27(1) of the Ain on the reasonings that he had acquired properties which were beyond his known source of income, and said properties were also confiscated by the learned Special Judge. True, during the relevant time, the Commission was not properly constituted. So, the notice issued upon him under section 26(1) by the Secretary of the Commission was without jurisdiction. But, for this reason the High Court Division cannot set-aside the conviction of the accused-respondent in respect of an offence under section 27(1) of the Ain read with section 5(2) of Act 11 of 1947. And in doing so, it has not at all discussed the evidence on record. The learned Special Judge on a thorough assessment of the evidence on record found the accused guilty under section 27(1) of the Ain read with section 5(2) of Act 11 of 1947 for possession of wealth which were said to have been beyond his known source of income. In view of the above, the High Court Division acted illegally in setting aside the conviction of the accused-respondent in respect of offence under section 27(1) of the Durnity Daman Commission Ain read with section 5(2) of Act 11 of 1947. The impugned judgment is not legally sustainable in law and the same is liable to be interfered with.

The judgment of the High Court Division so far as it relates to setting aside the conviction and sentence of the accused-respondent under section 27(1) of the Durnity Daman Commission Ain read with section 5(2) of Act 11 of 1947 is set-aside. The matter is remanded to the High Court Division to dispose of the appeal on merit afresh. This petition is disposed of.

Ed.

APPELLATE DIVISION
(Civil)

Md Muzammel Hossain CJ
Surendra Kumar Sinha J
Md Abdul Wahhab Miah J
Hasan Foez Siddique J

Judgment
September 26th, 2013.

Bakhrabad Gas System Limited...
.....Petitioner

vs

Al Masud-ar-Noor and others.....
.....Respondents*

Service Rules

Appointing authority enjoys the power and the authority to frame new rules to regulate the service of its employees , but that in no way, can take away the accrued/vested rights of its employees. (9)

Dr. Kazi Akter Hamid, Advocate instructed by Sufia Khatun, Advocate-on-Record—For the Petitioner. (in both cases)

AM Mahbubuddin, Advocate instructed by Md Tafique Hossain, Advocate-on-Record—For the Respondents. (in both cases)

Judgment

Md Abdul Wahhab Miah J: These two leave petitions, facts are similar and common of question law being involved, have been heard together and are disposed of by this common judgment.

2. Both the leave petitions have been filed by writ-respondent No.4, Bakhhrabad Gas System Limited, represented by its Managing Director, against the judgment and order dated 21-11-2011 passed by a Division Bench of the High Court

*Civil Petition for Leave to Appeal No. 1923 of 2012 with CP No. 2051 of 2012.

(From the judgment and order dated the 21st day of November, 2011 passed by the High Court Division in Writ Petition Nos. 8079 and 9063 of 2010).

Division in Writ Petition Nos.8079 of 2010 and 9063 of 2010 respectively making the Rules absolute.

3. From the impugned judgment and order in Civil Petition for Leave Appeal No. 1923 of 2012, it appears that on an application under article 102 of the Constitution filed by the writ-petitioner-respondents, herein (hereinafter referred to as the writ-petitioners), a Rule Nisi was issued in Writ Petition No.8079 of 2010 calling upon the writ-respondents including the petitioner, herein (the leave petitioner was writ-respondent No.4) to show cause "as to why the impugned circular contained in memo No.21.27.93 (ভলি-3/375 dated 2-7-2009 issued by respondent No.7 (Annexure-E) for the purpose of promotion to the next higher posts should not be declared to have been made without lawful authority and is of no legal effect and why the respondents should not be directed to promote the petitioners with effect from 4-4-2010 and/or such other or further order or orders passed as to this Court may seem fit and proper."

4. From the impugned judgment and order in Civil Petition for Leave of Appeal No.2051 of 2012, it appears that on an application under article 102 of the Constitution filed by writ-petitioner-respondents, herein (hereinafter referred to as the writ-petitioners), a Rule Nisi was issued in Writ Petition No.9063 of 2010 calling upon the writ-respondents including the petitioner, herein (the leave petitioner was respondent No.4) to show cause "as to why the impugned provision of minimum educational qualification of Bachelor Degree for the promotion of the petitioners passed in resolution dated 6-6-2005 in the 352nd Board Meeting of the Board of Directors of Bangladesh Oil, Gas and Mineral Corporation (Petrobangla) and its adoption in the resolution dated 24-8-2005 by the Board of Directors of Bakhrabad Gas Systems Limited, in its 352nd meeting which was notified by an office order dated 18-9-2005 (Annexures M and Ml to the supplementary affidavit) and the impugned circular contained in Memo No. 21-27-93 (ভলি-৩)/৩৭৫ dated 2-7-2009 passed by the respondent No.5 (Annexure-J to the writ petition) keeping the same marking criteria of circular No. বিজ্বাখস (জ্বাঃ বিঃ) প্র-২/বিবিধ-২/২০০৩/৩৯৯ dated 19-10-2003 (Annexure-E to the writ petition) changing the marking criteria of circular No.বিজ্বাখস (জ্বঃ বিঃ) প্র-২/বিবিধ-২/২০০২/৩৭৯ dated 19-5-2002 for the purpose of promotion to the next higher posts should not be declared to have been made without any lawful authority and is of no legal effect and/or such other or further order or orders be passed as to this Court may seem fit and proper."

5. The only question involved in the two writ petitions was whether the writ-respondents could take any decision or issue any circular or in other words, could frame any service rules to put the respective writ-petitioners to a disadvantageous position than that existed when they entered into their service in Bakhrabad Gas System Limited and thus to deprive them of their right of promotion to the next higher posts. It is necessary to state that by the impugned circular and the resolution taken in the Board meeting of the Board of Directors, Oil, Gas and Mineral Corporation (Petrobangla) and its adoption by the Bakharabad Gas System Limited, in its 352nd Board meeting of its Directors, which was notified by an office order dated 18-9-2005, a minimum educational qualification of Bachelor Degree was prescribed for promotion of the petitioners to the next higher posts in the Company. The High Court Division considering the facts and circumstances of the case, particularly, the fact that the writ-petitioners were appointed as the employees of Bakhrabad Gas System Limited, a company of Petrobangla before the impugned circular and the impugned resolution by its Board of Directors prescribing Bachelor Decree as minimum educational qualification for promotion to the next higher posts were issued and taken, made both the Rules absolute and directed the writ-respondents not to apply

"the impugned Service Rules to the writ-petitioners, (in both the writ petitions) though the same shall remain valid for those appointed subsequent to 21st September, 2005."

6. In giving the said decision and the direction, the High Court Division held that

> "It is obviously open to the company to change its service rules, within the bounds of reasonableness and the *vires,* though:
>
> However, it is a theme that has been credited through universal acclamation that by changed service rules, the rights that had already been vested upon those employees who were appointed under a more advantageous service rules that existed at the time of their appointment, cannot be evaporated.
>
> In the instant case, clearly the petitioners' right to be considered for promotion would be adversely affected under the new rules, because the rules that subsisted at the time of their recruitment were more relaxed."

7. Dr Kazi Akter Hamid, learned Advocate, appearing for the leave petitioner tried to impress upon us by submitting that because of the impugned judgment and order, the petitioner company shall not be in a position to frame new rules for its employees and implement the same and that in the long run, would hamper its functioning. Therefore, the impugned judgment and order needs to be interfered with by this Division by giving leave.

8. Mr AM Mahbubuddin, learned Advocate, entering caveat on behalf of the writ-petitioner-respondents, on the other hand, supported the impugned judgment and order.

9. We do not find any substance in the submission of Dr. Akter Hamid for the simple reason that the High Court Division has not put any embargo upon the Bakharabad Gas System Limited to frame new service rules for its employees and implement the same. The High Court Division has said in clear term that the service rules shall remain valid for those appointed subsequent to 21st September, 2005 (Bakhrabad Gas System Limited gave effect to the new circular and the resolution with effect from 21st September, 2005). The lone fact pertinent to be considered to see the propriety of the decision of the High Court Division is that admittedly when the writ-petitioners were appointed in the company, Bachelor Degree was not prescribed as the minimum educational qualification for promotion to the next higher posts. But by the impugned circular and the resolution of the Board of Directors, Bachelor Degree has been prescribed as minimum educational qualification for promotion to the next higher posts and thus, in fact, the writ-petitioners' right for consideration for promotion to the next higher posts has been made totally nugatory and this is definitely great disadvantage to them. And in fact, by prescribing such minimum educational qualification, the right of the writ-petitioners for consideration for promotion to the next higher posts that accrued to them when they entered into their service has been taken away. The appointing authority has every right to amend/alter the service rules to suit the need of the time but not to the detriment or disadvantage to the rights or privileges that existed at the relevant time when an employee of such appointing authority entered into its service. To be more explicit, the appointing authority enjoys the power and the authority to frame new rules to regulate the service of its employees , but that in no way, can take away the accrued/vested rights of its employees, here the writ-petitioners. We also make it very clear that an employee shall definitely be entitled to the new service benefits if given or created by the new rules, but no rules can be framed to his disadvantage or detriment or to the denial of his accrued/vested right as in the instant case sought to be taken away. The new rules adding new terms and conditions including

the one as to the promotion to the next higher posts shall be effective and applicable to the employees, who will be appointed after the coming into effect or force of the same.

With the above observations, the petitions are dismissed.

Ed.

APPELLATE DIVISION
(Civil)

Nazmun Ara Sultana J
Syed Mahmud Hossain J
Md Imman Ali J
Md Anwarul Haque J

Judgment
March 9th, 2014.

Bibi Joynab Begum Chowdhury and others .....Petitioners

vs

Osi Mia alias Osi Mia Sawdagar.....Respondents*

Specific Relief Act (I of 1877)
Section 3

Plaintiff did not have any possession in schedule land to the plaint. Unless the plaintiff could prove his possession in the schedule land he could not avail of the benefit of the illustration-'h' to section 3 of the Act. .....(14)

Mahmudul Islam, Senior Advocate, instructed by Syed Mahbubur Rahman, Advocate-on-Record—For the Petitioners.

Abdul Wadud Bhuian, Senior Advocate, instructed by Giasuddin Ahmed, Advocate-on-Record—For Respondent Nos.1-7.

None represented—Respondent Nos.8-9.

*Civil Petition for Leave to Appeal No. 521 of 2010.

(From the judgment and order dated 16-11-2009 passed by the High Court Division in Civil Revision No.3514 of 1998).

Judgment

Syed Mahmud Hossain J: This civil petition for leave to appeal is directed against the judgment and order dated 16-11-2009 passed by the High Court Division in Civil Revision No.3514 of 1998 disposing of the Rule and modifying the judgment and decree dated 30-6-1998 passed by the then learned Subordinate Judge, Third Court, Chittagong and discharging the Rule issued in Civil Revision No.1789 of 1999 filed by the plaintiffs.

2. The facts, leading to the filing of this petition for leave to appeal, in a nutshell, are:

Abdus Sobhan, the predecessor of petitioner Nos.1-7 as the plaintiff instituted Other Suit No.31 of 1984 in the Court of the Senior Assistant Judge, Sadar, Chittagong against the defendant-respondent and others for declaration of title and recovery of possession. On transfer, the suit was renumbered as Other Suit No.85 of 1999. The plaintiff's case, in short, is that the suit land described in schedule-1 to the plaint originally belonged to two brothers, namely, Aparna Charan Chakraborty and Shyama Charan Chakrabory. While they were in possession of the land of schedule-1 holding in equal share, Shyama Charan Chakrborty died leaving behind two sons, namely, Kalipada Chakraborty and Manindra Chandra Chakrabory. After that, Manindra Chandra Chakraborty died issueless and, as such, his share in schedule-1 of the suit land devolved upon his brother, Kalipada Chakraborty. Aparna Chandra died leaving behind only son, Badal Chakraborty, defendant No.2. Thereafter, Badal Chakraborty executed a contract for sale (bainanama) of his eight annas share of land in schedule-1 to the plaint on 31-12-1963 in favour of Abdus Sobhan (plaintiff). According to the terms and conditions of the bainanama dated 31-12-1963, Badal Chakraborty executed a registered deed of sale dated 15-7-1976 in favour of the plaintiff. Kalipada Chakraborty sold his eight annas shares in schedule-1 of the suit land to Hazi

Sobhan Chowdhury by a registered deed of sale dated 24-5-1973. Defendant No.1 was a monthly temporary tenant in a shop under defendant No.2 and, as such, he was aware about the execution of the said bainapatra and the plaintiff filled up the tank by earth. The plaintiff asked defendant No.1 for paying monthly rent and even defendant No.2 issued a notice to defendant No.1 asking him for paying monthly rent to the plaintiff, who did not pay heed to the same. Defendant No.1 disclosed that he purchased 2 gondas, 2 karas and 2 dantas of land from defendant No.2, Badal Chakraborty, by two registered deeds of sale dated 2-3-1970 and 21-5-1976 and thereafter, the plaintiff made an enquiry in the office of the Sub-Registrar and confirmed about those sales. The plaintiff asked defendant No.1 to deliver the vacant possession of schedule-1(ka) of the suit land in his favour and defendant No.1 refused to do so. Hence, the plaintiff was compelled to file the suit praying for declaration of title and recovery of possession and in the alternative for partition and also for declaration that the deeds of sale dated 2-3-1970 and 21-5-1976 are void, collusive and not binding upon the plaintiff.

3. Defendant No.1 contested the suit by filing written statement denying all the material statements made in the plaint. His case, in short, is that the suit is not maintainable in its present form and manner, which is not properly valued and adequately stamped and is barred by law of limitation. Defendant No.1 was a monthly temporary tenant under defendant No.2 in a shop house and in the year 1969 and when defendant No.2 wanted to sell his RS Plot No.165, defendant No.1 agreed to purchase the same and accordingly, defendant No.2 executed a bainapatra dated 16-12-1969 in favour of defendant No.1 receiving Taka 5,000 out of Taka 6,000 from defendant No.1. After taking income tax clearance certificate, defendant No.2 executed a registered deed of sale dated 2-3-1970 in favour of defendant No.1 according to the terms and conditions of the bainapatra dated 16-12-1969. While defendant No.2 again wanted to sell some quantum of land, defendant No.1 agreed to purchase the same and accordingly two bainapatras dated 5-7-1970 and 4-6-1974 were executed by defendant No.2 in favour of defendant No.1. Subsequently, defendant No.2 executed a registered deed of sale dated 19-5-1976 according to the terms and conditions of the bainapatra in favour of defendant No.1. It is necessary to mention that there were some *bona fide* mistakes in the description of boundaries of the land of the schedule of the said registered deed dated 19-5-1976 and, as such, the mistake was corrected by executing a deed of correction by defendant No.2 in favour of defendant No.1. After that, Municipal holding and BS khatians regarding the suit property were correctly prepared in the name of defendant No.1, who has been running his business in the shop house situated in the disputed land for more than statutory period of limitation and, as such, the suit is liable to be dismissed.

4. The trial Court upon hearing the parties by its judgment and order dated 28-1-1996 dismissed the suit. Against which, the plaintiff being dead his heirs as appellants preferred Other Appeal No.95 of 1996 before the learned District Judge, Chittagong. On transfer, the appeal was heard and disposed of by the then learned Subordinate Judge, Third Court, Chittagong, who by his judgment and order dated 30-6-1998 allowed the appeal in part and decreed the suit in part.

5. Being aggrieved by and dissatisfied with the judgment and decree of the appellate Court, the defendant-petitioners moved the High Court Division by filing revisional application and obtained Rule in Civil Revision 3514 of 1998 and the plaintiffs also filed revisional application and obtained Rule in Civil Revision No.1789 of 1999.

6. The learned Single Judge of the High Court Division upon hearing the parties by the judgment and order dated 16-11-2009 modified the judgment and decree of the appellate Court and disposed of the Rule issued in Civil Revision

No.3514 of 1998 and the Rule issued in Civil Revision No.1789 of 1999 obtained by the plaintiffs was discharged without any order as to costs.

7. Feeling aggrieved by and dissatisfied with the judgment and order passed by the High Court Division, the plaintiffs-leave-petitioners have filed this civil petition for leave to appeal before this Division.

8. Mr Mahmudul Islam, learned Senior Advocate, appearing on behalf of the leave-petitioners, submits that the High Court Division came to a finding that defendant No.1 acquired title in 1(ka) schedule land by exhibits-'Tha' and 'Dha' and also by adverse possession against the plaintiff and, as such, the impugned judgment should be set-aside. He further submits that according to illustration-h to section 3 of the Specific Relief Act, defendant No.1 should have inquired as to how the plaintiff has been in possession of the land claimed by the plaintiff and that the High Court Division without considering this aspect of the case found that defendant No.1 acquired title in 1(ka) schedule land to the plaint.

9. We have considered the submissions of the learned Advocate, perused the impugned judgment and the materials on record.

10. The High Court Division came to a finding that defendant No.1 purchased the land of 1(ka) schedule to the plaint from defendant No.1 by a registered deeds dated 2-3-1970 (exhibit-থ) and dated 21-5-1976 (exhibit-দ) without the knowledge of the agreement of the plaintiff. The High Court Division further found that defendant No.2 having admitted the sales by exhibits-Tha and Dha and having not contested the suit, it could be said defendant No.2 admitted the claim of defendant No.1 and, as such, the plaintiff could not get any benefit of any mistake in the deed dated 21-8-1976 (exhibit-দ) of defendant No.1.

11. The High Court Division concurred with the finding of the trial Court that the plaintiff's deed would be effected from 15-7-1996 and not from the date of the bainapatra in 1973 and that under section 47 of the Registration Act, the deed of defendant No.1 would prevail over the deed of the plaintiff and that defendant No.1 got title in schedule 1(ka) land and that the plaintiff did not acquire any title in schedule 1(ka) land by exhibit-8 as the two deeds of defendant No.1 were of earlier date. The High Court Division, however, concluded that the plaintiff was entitled to get a preliminary decree for his share in the 1st schedule land except the land of schedule 1(ka) which is covered by exhibits-Tha and Dha.

12. Mr Mahmudul Islam had drawn our attention to illustration-h of section 3 of the Specific Relief Act, which runs as under:

> "(h) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest."

13. Elaborating his submissions, Mr Mahmudul Islam, submits that since the plaintiff is in occupation of the disputed land prior to purchase of defendant No.1 who failed to make any enquiry as to the nature of the plaintiff's interest therein, it shall be deemed that defendant No.1 is the trustee of the plaintiff to the extent of that interest.

14. Having gone through materials on record, we find that the plaintiff did not have any possession in schedule-1(ka) land to the plaint. Unless the plaintiff could prove his possession in the schedule-1(ka) land he could not avail of the benefit of the illustration-'h' to section 3 of the Specific Relief Act.

The findings arrived at and the decision made by the High Court Division having been made on proper appreciation of law and fact do not call for interference. Accordingly, this civil petition for leave to appeal is dismissed.

Ed.

APPELLATE DIVISION
(Civil)

Nazmun Ara Sultana J
Syed Mahmud Hossain J
Md Imman Ali J
Md Anwarul Haque J

Judgment
February 16th, 2014.

SN Kabir....Petitioner

vs

Fatema Begum and others...Respondents*

Benami Transaction

Because of benami transactions, multifarious litigations crop up across the country. Moreover, the persons having the possession of black money take advantage of benami transactions by purchasing property in the names of their nearest relatives and such transactions increase corruption in the society. So, the legislative authority had the intention to say goodbye to benami transactions once and for all.

.....(28)

Land Reforms Ordinance (X of 1984)
Sections 5

There is no scope for reading the words 'rural area' in section 5 of the Ordinance. The preamble cannot be used to control the enactments themselves where they are expressed in clear and unambiguous terms. The aid of preamble can only be taken when the meanings of the words to be interpreted are not clear and unambiguous. The words 'immoveable property' occurring in section 5 of the Ordinance include both agricultural and non-agricultural properties. There is no scope for encroaching upon the domain of legislature by importing the words 'rural area' in section 5 and addition of such words will amount to legislation by the judiciary which is not at all permissible......(23)

Preamble

The preamble cannot control the meaning and expression when the meaning of the expression is clear and ambiguous. The aid of the preamble can be taken if the meanings of the words to be interpreted are not clear and ambiguous. .....(20)

Attorney-General vs HR H. Prince Earnest Gugustus of Hanover (1957) All ER 49; Amin Jute Mills vs Bangladesh 29 DLR (SC) 85; Anwar Hossain Chowdhury vs Government of Bangladesh, 41 DLR (AD) 165; Sreemoti Indira Gandhi vs Rajnarain, AIR 1975 (SC) 2299; Md Ismail vs State, 21 DLR (SC)161; Commissioner of Income Tax and Kerala vs Tara Agencies 2007) 6 Supreme Court Cases 429 ref.

Mahmudul Islam, Senior Advocate, instructed by Syed Mahbubur Rahman, Advocate-on-Record.—For the Petitioner. (In both the cases).

Abdul Wadud Bhuiya, Senior Advocate, instructed by Md. Zainul Abedin, Advocate-on-Record.—For Respondent No.1. (In CP No.2080 of 10).

Mahbubey Alam, Senior Advocate, instructed by Md Zahihur Islam, Advocate-on-Record—For Respondent No.1. (In CP No.2081/10).

None represented—Respondent No.2. (In both the cases)

Judgment

Syed Mahmud Hossain J: Both the civil petitions for leave to appeal are directed against the judgment and order dated 26-4-2010 passed by the High Court Division in First Appeal

*Civil Petition for Leave to Appeal Nos. 2080-2081 of 2010.

(From the judgment and order dated 26-4-2010 passed by the High Court Division in First Appeal No.322 of 2003 and First Appeal No.343 of 2003)

No.322 of 2003 heard analogously with FA No.343 of 2003 dismissing the appeals and affirming the judgment and decree dated 5-8-2003 passed by the learned Joint District Judge, Second Court, Dhaka in Title Suit No.270 of 2002 and judgment and decree dated 17-9-2003 passed by the learned Joint District Judge, Third Court, Dhaka in Title Suit No.149 of 2002 rejecting the plaints of both the suits.

2. Both the civil petitions for leave to appeal arising out of the common judgment and order between the same parties and involving common question of law and fact having been heard together are disposed of by this single judgment.

3. The facts leading to the filing of both the civil petitions for leave to appeal, in brief, are :

The plaintiff instituted Title Suit No.149 of 2002 and Title Suit No.270 of 2002 for declaration that he is the owner of the suit property and that the defendant-wife is his benamdar and is not the owner thereof. The plaintiff's case, in short, is that he married defendant No.1, Mrs Fatema Begum who is a simple house wife had no source of income and dependent on the plaintiff-husband. The plaintiff being an industrialist and with motive to get income tax relief purchased the suit property being urban property in the "benami" of defendant No.1 and that the plaintiff purchased the suit property with his own money and he has been residing in the suit property with his family treating the same as his own property. Defendant No.1 knew that the plaintiff purchased the suit property in the "benami" of defendant No.1 who was claiming ownership of the suit property at the behest of her father and brother. Hence, the suit has been filed by the plaintiff for declaration of title in the suit property.

4. Defendant No.1 contested the suit by filing an application under Order VII, Rule 11(d) of the Code of Civil Procedure for rejection of the plaint, contending, *inter alia,* that under the provision of section 5 of the Land Reforms Ordinance, 1984 (hereinafter referred as "the Ordinance"), the suit of the plaintiff is barred as benami transaction is prohibited.

5. The plaintiff filed written objection against defendant's application for rejection of the plaint. His case is that the suit property is urban property and that the Land Reforms Ordinance, 1984 has been promulgated with the object to reform the land relating to land tenures, land holding and transfer with a view to maximizing production and ensuring a better relationship between land owners and bargaders and the provisions of the entire Ordinance are relating to agricultural and cultivable land holding and transfers and not relating to urban land, and the provisions of section 5 of the said Ordinance do not apply to non-agricultural urban land transfer, and the application of defendant No.1 for rejection of the plaint is liable to be rejected.

6. The trial Court by the judgments and orders dated 17-9-2003 and 5-8-2003 rejected the plaints of both the suits.

7. Being aggrieved by and dissatisfied with the judgments and orders dated 17-9-2003 and 5-8-2003 passed by the trial Court, the plaintiff preferred First Appeal Nos.322 and 343 of 2003 before the High Court Division. The learned Judges of the High Court Division, upon hearing the parties in both the appeals, by its judgment and order dated 26-4-2010 dismissed both the appeals.

8. Feeling aggrieved by and dissatisfied with the judgment and order passed by the High Court Division, the plaintiff has filed these civil petitions for leave to appeal before this Division.

9. Mr Mahmudul Islam, learned Senior Advocate, appearing on behalf of the leave-petitioner in both the petitions, submits that if the Land Reforms Ordinance,1984 is considered as a whole, it will appear that prohibition of benami transaction of "immoveable property" applies only in respect of agricultural land and that the

High Court Division having considered the provision of section 5 of the Ordinance in particular, came to the finding that section 5 of the Ordinance applies to both agricultural and non-agricultural land. He further submits that section 5 of the Ordinance undoubtedly relates to agricultural land and the purpose of the Ordinance is to maximize production and to that end, provision has been made for stable and satisfactory relationship between agricultural land owners and bargaders and the expression "immoveable property" cannot be said to be unambiguous and there is a doubt as to whether in dealing with agricultural land, the legislative authority at all intended to bring non-agricultural land within the mischief of section 5 of the Ordinance and as such, the impugned judgment should be set-aside.

10. Mr Abdul Wadud Bhuiyan, learned Senior Advocate, appearing on behalf of respondent No.1 in Civil Petition for Leave to Appeal No.2080 of 2010 and Mr Mahbubey Alam, learned Senior Advocate, appearing on behalf of respondent No.1 in Civil Petition for Leave to Appeal No.2081 of 2010, on the other hand, support the impugned judgment delivered by the High Court Division.

11. We have considered the submissions of the learned Senior Advocate, perused the impugned judgment and the materials on record.

12. Benami transactions which have been in vogue in the Indian Sub-Continent for centuries denote a transaction which is done by a person without using his own name, but in the name of another. Acquiring and holding property and even carrying on business in names other than those of real owners or in fictitious names did not contravene any provision of law and therefore, Courts had given effect to such transactions. In benami transaction, the Benamdar has no beneficial interest in the property or business that stands in his name. He only represents the real owner as his trustee. In benami transactions, the presumption is that a person who pays money is the real owner and not the person in whose name the property is purchased. Earlier men purchased properties in benami to cajole or shield themselves against the creditors. There was also the need for defrauding by making secret transactions. Fear of confiscation also led to benami holdings. Besides, these arrangements were aimed at evading the law.

13. This old age practice was given a go-by by section 5 of the Land Reforms Ordinance, 1984. Before addressing the submissions of the learned Advocate for the petitioner, it is necessary to go through the provision of section 5 as incorporated in Chapter-3 of the Ordinance under the caption "Prohibition of Benami Transaction of Immoveable Property" as under:

> "5.(1) No person shall purchase any immovable property for his own benefit in the name of another person.
>
> (2) Where the owner of any immovable property transfers or bequeaths it by a registered deed, it shall be presumed that he has disposed of his beneficial interest therein as specified in the deed and the transferee or legatee shall be deemed to hold the property for his own benefit, and no evidence, oral or documentary, to show that the owner did not intend to dispose of his beneficial interest therein or that the transferee or legatee hold the property for the benefit of the owner, shall be admissible in any proceeding before any Court or authority.
>
> (3) Where any immoveable property is transferred to a person by a registered deed, it shall be presumed that such person has acquired the property for his own benefit, and where consideration for such transfer is paid or provided by another person it shall be presumed that such other person intended to pay or provide such consideration for the benefit of the transferee, and no evidence, oral or documentary, to show that the transferee hold the property for the benefit of any other person or for the benefit of the person paying or

providing the consideration shall be admissible in any proceeding before any Court or authority."

14. The expression "immoveable property" is to be construed in its proper context to ascertain whether the expression is clear and unambiguous. In order to construe "immoveable property" as mentioned in section 5 of the Ordinance, all the sections of the Ordinance are to be considered. The expression immoveable property cannot be considered in isolation in the context of section 5 of the Ordinance. For proper construction, the preamble and the short title of the Ordinance are also to be considered. The preamble of the Ordinance runs as under:

"Whereas it is expedient to reform the law relating to land tenure, land holding and land transfer with a view to maximising production and ensuring a better relationship between land owners and bargadars."

15. If the preamble is considered in isolation, then the submission made by Mr Mahmudul Islam carries much force. Now let us see what role is played by the preamble in construing a statue.

16. According to Maxwell "when possible, a construction should be adopted which will facilitate the smooth working of the scheme of the legislation"-Interpretation of Statutes 12th edition at page 201.

17. In the case of *Attorney-General vs HR H Prince Earnest Gugustus of Hanover (1957) All ER Pg.49, Law Lord Viscount Simonds* observed that as under:

"For words, and particularly general words, cannot be read in isolation; their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use context in its widest sense which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy."

On the one hand, the proposition can be accepted that ".....it is a settled rule that the preamble cannot be made use of to control the enactments themselves where they are expressed in clear and unambiguous terms."

"I quote the words of CHITTY LJ which were cordially approved by *Lord Davey in Powell vs Kempton Park Racecourse Co., Ltd (1) ([1899] AC 143 at p. 185).* On the other hand, it must often be difficult to say that any terms are clear and unambiguous until they have been studied in their context. That is not to say that the warning is to be disregarded against creating or imagining an ambiguity in order to bring in the aid of the preamble. It means only that the elementary rule must be observed that no one should profess to understand any part of a statue or of any other document before he has read the whole of it. Until he has done so, he is not entitled to say that it, or any part of it, is clear and unambiguous."

18. In the case of *Amin Jute Mills vs Bangladesh 29 DLR (SC) 85,* it has been observed paragraphs 9 and 11 as under:

"It is now well-recognized, in this regard that although there was previously some difference of opinion among the distinguished jurists in England, the long title of an Act which is set out at its head giving the general purpose of the Act as well as the preamble of an Act which also recites the main object of the Act are part of the Act. One of the basic rules of interpretation of a statute is that to understand the meaning of a particular provision of an Act one is to read the Act as a whole each part shedding light on the other and the following observation of *Lord Wright in the case of Jennings vs Kelly decided by the*

House of Lords and reported in *1940 AC 206* same case *(1939) All. ER 464* may be referred in this connection."

"The proper course is to apply the broad general rule of construction, which is that section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest."

".....If the words of a substantive provision of an Act are precise and unambiguous then the meaning thereof should not be restricted and controlled by taking recourse to the title or preamble of the Act. Lord Halsbury, LC in his speech in the case of *Powell vs Kempton Park Race Course Company Limited (1899) AC 143 at page 157* clearly stated the law in this regard in the following words;

> "Two propositions are quite clear-one that a preamble may afford useful light as to what a statute intends to reach, and another that, if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment."

Lord Davey dwelt on this question further in his separate speech in the same case and made the following observation at page 185 of the Report:

> "undoubtedly'....I quote from Chitty LJ's Judgment words with which I cordially agree...it is a settled Rule that the preamble cannot be made use of to control the enactments themselves where they are expressed in clear and unambiguous terms.....There is however another Rule or warning which cannot be too often repeated, that you must not create or imagine an ambiguity in order to bring in the aid of the preamble or recital. To do so would in many cases frustrate the enactment and defeat the general intention of the Legislature."

19. In the case of *Anwar Hossain Chowdhury vs Government of Bangladesh, 41 DLR (AD)165,* this Division in paragraph 489 of the report quoted with approval the observation of the Indian Supreme Court in the case of *Sreemoti Indira Gandhi vs Rajnarain* reported in *AIR 1975 (SC) 2299* as follows:

> "The preamble, though a part of the Constitution is neither a source of power nor a limitation upon that of the ideological aspirations of the peoples....."

20. From the cases cited above, it appears that the preamble cannot control the meaning and expression when the meaning of the expression is clear and ambiguous. The aid of the preamble can be taken if the meanings of the words to be interpreted are not clear and ambiguous.

21. Having gone through the preamble, we find that the preliminary object of the legislative authority is to bring about reformation of the lands in rural area. The preamble must be read with sub-section (1) of section 1 which provides that this Ordinance may be called the Land Reforms Ordinance,1984. The legislative authority was conscious in not using the word "agriculture" before Land Reform Ordinance. What is important to note here is that the word "land" has not been defined in section 2 of the Ordinance. But in clause-(c) of section 2 'barga land' has been defined. Had the legislative authority the intention to deal with agricultural land only, it would not have defined "barga land".

22. Sub-section (1) of section 5 of the Ordinance provides that no person shall purchase any immoveable property for his own benefit in the name of another person. Sub-section (2) of section 5 of the Ordinance provides that where the owner of any immoveable property transfers or bequeaths it by a registered deed, the presumption would be that he has disposed of his beneficial interest therein and the transferee or legatee shall be deemed to hold the property for his own benefit and that no evidence either oral or documen-

tary to show that the seller did not intend to dispose of his beneficial interest therein or the transferee or legatee holds the property for the benefit of the owner and that such evidence shall not be admissible in any proceeding before any Court or authority. Sub-section (3) of section 5 provides that where any immovable property is transferred to a person by a registered deed, it shall be presumed that such person has acquired the property for his own benefit and no oral and documentary evidence to show that the transferee holds the property for the benefit of another person paying or providing the consideration shall be admissible in any proceeding before any Court or authority.

23. The language of section 5 of the Ordinance is plain and unambiguous and it is remarkable by itself. This section must be read in conjunction with sub-section (1) of section 1 of the Ordinance, which provides that this Ordinance may be called the "Land Reforms Ordinance." While describing the (naming) Ordinance, the legislative authority was conscious in not using the word "agriculture" before the word, 'land'. This Ordinance has been divided into six chapters. Chapter-1 containing sections 1 to 3 relates to preliminary; chapter-II containing section 4 relates to limitation on acquisition of agricultural land; chapter-III comprising section 5 relates to prohibition of benami transaction of immoveable property; chapter-IV comprising sections 6 and 7 relates to homesteads in 'rural area', chapter-V consisting of sections 8-18 relates to agricultural land and resolution of dispute between the land owners and bargadars and chapter-VI containing sections 20, 21 and 22 relates to miscellaneous. Having gone through all the sections of the Ordinance, in general, and section 5, in particular, we are of the view that there is no scope for reading the words 'rural area' in section 5 of the Ordinance. From the cases cited before, it appears that the preamble cannot be used to control the enactments themselves where they are expressed in clear and unambiguous terms. The aid of preamble can only be taken when the meanings of the words to be interpreted are not clear and unambiguous. Therefore, the words 'immoveable property' occurring in section 5 of the Ordinance include both agricultural and non-agricultural properties. There is no scope for encroaching upon the domain of legislature by importing the words 'rural area' in section 5 and addition of such words will amount to legislation by the judiciary which is not at all permissible.

24. The Supreme Court of Pakistan in the case of *Md Ismail vs State, 21 DLR (SC)161* observed in paragraph 15 that the function of the Court is interpretation, not legislation in the following terms:

> "15. The purpose of the construction or interpretation of a statutory provision is no doubt to ascertain the true intention of the Legislature, yet that intention has, of necessity, to be gathered from the words used by the Legislature itself. If those words are so clear and unmistakable that they cannot be given any meaning other than that which they carry in their ordinary grammatical sense, then the Courts are not concerned with the consequences of the interpretation however drastic inconvenient the result, for, the function of the Courts is interpretation, not legislation."

25. The Indian Supreme Court in the case of *Commissioner of Income Tax, Kerala vs Tara Agencies* reported in *(2007) 6 Supreme Court Cases 429* held in paragraph 58 of the report (P 447) as follows:

> "58. In *Union of India vs Deoki Nandan Aggarwal,* a three Judge Bench of this Court held that it is not the duty of the Court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain. The Court cannot rewrite the legislation for the reason that it had no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there."

26. From the cases cited above, it appears that the function of the Courts is interpretation, not legislation and that Courts cannot add words to a statute or read words into it which are not there.

27. Before promulgation of this Ordinance, the benami transactions were prevalent both in rural, urban or municipal areas. It was the intention of the legislative authority that the system, if prohibited, would be prohibited both in rural and urban or municipal areas. Though most of the provisions of the Ordinance relate to rural areas, that will not alter the meaning of the provisions of section 5 which cannot be restricted to rural areas only.

28. Because of benami transactions, multifarious litigations crop up across the country. Moreover, the persons having the possession of black money take advantage of benami transactions by purchasing property in the names of their nearest relatives and such transactions increase corruption in the society. So, the legislative authority had the intention to say good-bye to benami transactions once and for all.

29. Benami transactions have been prohibited in India by the Benami Transactions (Prohibition and the Right of Recovery Property) Ordinance, 1988 followed by the Benami Transactions (Prohibition) Act, 1988 and therefore, in India benami transactions are not permissible both in rural and urban areas. We, however, got rid of benami transactions by the Land Reforms Ordinance,1984.

30. The findings arrived at and the decision made by the High Court Division are based on proper appreciation of law and fact.

In the light of the findings made before, we do not find any substance in these civil petitions for leave to appeal. Accordingly, both the petitions are dismissed.

Ed.

APPELLATE DIVISION
(Criminal)

Md Muzammel Hossain CJ Md Abdul Wahhab Miah J Nazmun Ara Sultana J Syed Mahmud Hossain J Md Imman Ali J	Nazrul Islam (Md) .....Petitioner vs
Judgment December 6th, 2012.	State..... .....Respondent*

Code of Criminal Procedure (V of 1898)
Section 376

The convict has now been in the condemned cell for more than $9^1/_2$ years due to no fault of his own. The length of period by now can be taken as a circumstance, when there are other extenuating circumstances, to commute the sentence of death of imprisonment for life".

.....(26)

State vs Kalu Bepari, 43 DLR 249; Abdul Motaleb Howlader vs State, 5 MLR (AD) 362 = 6 BLC (AD) 1; Ilias Hussain vs State, 54 DLR (AD 78; Shamsuddin vs State, 45 DLR 587; Abed Ali vs State 42 DLR (AD) 171; Nowsher Ali vs State, 39 DLR 57; Abdul Bashir vs State, 56 DLR (AD) 207; Giasuddin vs State, 54 DLR (AD) 146; Ananta Kumar Karan vs State AIR 1962 Calcutta 428 and State vs Tasiruddin 13 DLR 203 ref.

Helaluddin Mollah, Advocate—For the Petitioner.

Md Shahrowardi, Deputy Attorney-General—For the Respondent.

Judgment

Muhammad Imman Ali J: This petition for leave to appeal at the instance of the condemned-petitioner Md Nazrul Islam is directed against the judgment and order dated 3-12-2007 passed by

*Jail Petition No. 17 of 2010.

(From the judgment and order dated 3rd December, 2007 passed by the High Court Division in Death Reference No. 27 of 2003 with Criminal Appeal No, 786 of 2003 and Jail Appeal No. 191 of 2003).

the High Court Division in Death Reference No - 27 of 2003, which was heard along with Criminal Appeal No. 786 of 2003 and Jail Appeal No. 191 of 2003 accepting the reference, dismissing the criminal appeal and jail appeal .

2. The prosecution case, in brief, is that Milon Akhter (deceased), younger sister of the informant was given in marriage to condemned-prisoner Md Nazrul Islam (henceforth referred to as "the accused"), 6 years back. After 6 months of the solemnization of marriage, the accused went to Saudi Arabia to work and stayed there for 2 years. Thereafter, he returned home and the couple was blessed with a son, named Nazmul Islam aged about 4 years at the time of the occurrence. The accused used to beat his wife now and then on the ground that his wife used to lead an immoral life and she was a woman of questionable character. Milon Akhter (deceased) used to live in the same mess with her husband, father-in-law, mother-in-law, brother-in-law, elder brother-in-law and son. The informant used to live on the same plot adjacent to the dwelling house of her sister Milon Akhter (deceased). On 12-4-2002 at 00-15 AM the accused started beating his wife in the northern room of their east faced half-brick-built house. At that time, his wife raised alarm and Tajul Islam, brother-in-law (ভাসুর) of the deceased, Afia Khatun, mother-in-law and other people went there, but the accused bolted the door from inside and tied up the hands and legs of his wife and inflicted boti dao blows on her face, chest, wrist, left thigh, abdomen and on her arms causing severe bleeding injuries and killed her by cutting her throat. Nazma Rahman (the informant) (PW I), Md Tajul Islam (PW 2), Abdul Jalil (PW 7), Md Babul Mia (PW 5) and others saw the occurrence through the glass window. They informed the matter to Uttara Police Station and accordingly police came to the place of occurrence. The accused opened the door and police arrested him from the room. He made an extra-judicial confession before the public that he killed his wife. Police also recovered the blood stained boti dao from the place of occurrence. The informant lodged the First Information Report (FIR) on 12-4-2002 before the Officer-in-Charge of Uttara Police Station, DMP, Dhaka against the accused under section 302 of the Penal Code. Accordingly, Uttara PS Case No. 25 dated 12-4-2002 corresponding to GR No.725/2002 was started.

3. The Investigating Officer took up the case for investigation. He visited the place of occurrence, prepared the sketch map with separate index, prepared inquest report, examined the witnesses and recorded their statements under section 161 of the Code of Criminal Procedure. After completion of investigation he submitted Charge-sheet No.145 dated 16-6-2002 under section 302 of the Penal Code against the accused.

4. The case was ultimately transferred to the Court of Bicharok, Druto Bichar Tribunal No.4, Dhaka where it was numbered as Druto Bichar Tribunal Case No. 2 of 2003.

5. Charge was framed under section 302 of the Penal Code against the accused and read over and explained to him, to which he pleaded not guilty and claimed to be tried. During trial the prosecution examined as many as 9 (nine) PWs who were cross-examined by the defence, but the defence did not examine any witness.

6. The defence case, as it transpires from the trend of cross-examination was that the accused was innocent. The informant, who was the step-sister of the deceased, had illicit connection with the accused, who used to send money to her from Saudi Arabia, and with the help of hired people she had the victim killed with an *ulterior motive* to grab the money.

7. After close of recording of evidence, the accused was examined under section 342 of the Code of Criminal Procedure. He repeated his innocence.

8. The Bicharok of the Druto Bichar Tribunal, Dhaka after hearing the parties and upon consideration of the evidence and materials on record convicted the accused under section 302 of the

36. PW 12 Parimol Singh, Magistrate, first Class he deposed that on 6-1-2005 he recorded confessions under section 164 of the Code of accused Sujon Deb, Sohel Khan, Borhanuddin, Afsaruddin alias Afsu, Sani Ahamed Sentu after complying of legel formalities. He proved the same as Exhibits. 4, 4(ক), 4(খ), 4(গ) and 4(ঘ). The accused did not complain anything to him.

37. In cross-examination he denied the suggestion that confessions were not true and voluntary and did not note the marks of injuries.

38. PW 13 SI Abdur Rahman Biswas. He deposed that on 5-1-2005 on the requisition of SI Khandaker Halim and direction by the O/C he recovered the micro-bus from the house of Mofizuddin shown by accused Sentu and Alam. Later, he inquired about the address of the accused.

39. In cross-examination he denied the suggestion that he had no knowledge about the recovery of micro-bus was recovered.

40. PW 14 SI Siddiqur Rahman, PW 15 ASI Delwar Hossain, PW 16 ASI Alamgir Hossain, PW 20 SI Hekmot Ali, PW 21 ASI Md Hanif, they deposed about collection of PC & PR of accused Sujon, Salam, Kalam, Ashrafuddin, Sohel, Borhanuddin and Sentu and submitted respective report.

41. PW 17 Munsor Ahamed, a local witness. He deposed that on 3-1-2005 at 9-00 AM he heard that two unknown dead-bodies were lying at the high-way in between Daulatpur-Jashpal village. He rushed there. The Police held inquest and he stood as one of the witness.

42. In cross-examination he stated that he came to know about the name of the deceased later in the news-paper.

43. PW 18 Bachu Miah, a local witness. He deposed that on 3-1-2005 at 8-00 AM he found two dead-bodies on the high-way and heard that those were driver Babul and helper Ashraf Ali of micro-bus which belonged to Advocate Bashir Ahmed Dulal.

44. In cross-examination he stated that he has a shop at Mirpur Bazar.

45. PW 19 Jitu Miah, a local witness. He deposed that on 5-1-2005 at 10-30 PM Police seized two rope and prepared seizure list Exhibit. 3(খ) and signed in the seizure list Exhibit. 3 (খ)/২.

46. Accused Sujon stated to him that he along with Salam and Kalam strangulated driver and helper to death.

47. He was declared hostile by the prosecution.

48. In cross-examination by the prosecution he denied the suggestion that micro-bus was seized shown by accused Sujon and deposing falsely.

49. PW 22, Inspector, Subas Chandra Saha. He deposed that on 29-4-2005 he took over investigation and after scrutiny of the case docked he submitted charge-sheet under sections 302, 379, 34 and 411 of the Penal Code accusing accused Sujon deb, Sohel Khan, Afsaruddin alias Afsu, Borhanuddin, Sani Ahmed Sentu, Alam Ahamed, Salam and Kalam alias Sylheti Kalam.

50. In cross-examination he denied the suggestion that by perfunctory investigation he submitted the charge-sheet.

51. These are all of the evidence on record adduced by the prosecution to prove the charge.

52. It is indisputable that slain Babul and Ashab Ali were lynched.

53. On going to the materials on record it transpires that prosecution in all examined twenty witnesses out of twenty nine charge-sheet witnesses. Of whom, PW 1 is the informant and partly investigated the case, PW 2 is a local micro-bus

Samity President and heard the occurrence of murder. PW 3 owner of the micro-bus. PWs 4 and 6 were the seizure list witnesses. PWs 5, 17 are the witnesses of inquest. PWs 7 and 10 were tendered by the prosecution. PWs 8 and 19 are the local witnesses who stated that accused Sujon along with Kalam, Salam murdered the deceaseds. PW 9 carried the dead-bodies to morgue. PW 11 held inquest upon the cadavers. PW 12 recorded the confessions of accused (Exhibits.4, 4(ক),4(খ),4(গ), 4(ঘ). PWs 14,15,16,20 and 21 are the Police personnel who inquired the PC & PR of accused. PW 22 lastly investigated the case and submitted charge-sheet.

54. We should bear in mind, credibility of testimony oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. When dealing with the serious question of guilt or innocence of persons charged with crime, the following principles should be taken into consideration:—

a) The onus of proving everything essential to the establishment of the charge against the accused lies on the prosecutor.

b) The evidence must be such asto exclude to a moral certainty every reasonable doubt of the guilt of the accused.

c) In matters of doubt it is safer to acquit than to condemn, for it is better that several guilty persons should escape than that one innocent person suffer.

d) There must be clear and unequivocal proof of the corpus delicit.

e) The hypothesis of delinquency should be consistent with all the facts proved.

55. Inspite of the presumption of truth attached to oral evidence under oath if the Court is not satisfied, the evidence inspite of oath is of no avail.

56. It is true that there is no eye witness to the occurrence but the case will absolutely rest upon the confessions of accused Sujon, Borhan, Afsar uddin, Sohel Khan and Sani Ahamed Sentu [Exhibits.4, 4(ক), 4(খ), 4(গ), 4(ঘ)].

57. The material excerpt of confession of Sujon deb (Exhibit. 4) reads as hereunder:

"সুজন দেবঃ আমি শায়স্তাগঞ্জ এর আহাদ ভাই এর গাড়ী চালাই। নং ঢাকা মেট্রো-গ-১২-৯৯৪৯। গত ৭ ডিসেম্বর হতে চালাচ্ছি। শাহাপুর গ্রামের সালাম গত রবিবার ১২ টার সময় হবিগঞ্জ থেকে একটি মাইক্রোবাস ভাড়া কর আনার জন্য বল। গাড়ী এন শ্বশুর বাড়ীত যেত বল। আমার শ্বশুর বাড়ী রশিদপুর শীতলা বাগান। হবিগঞ্জ এস ভিকটিম আশরাফক ভাই। সে আমার পূর্ব পরিচিত। সে গাড়ীর সহকারী। অপর ভিকটিম বাবুলকে চিনতাম। জানায় মীরপুর। সেগুন কাঠ আনা নেওয়া হবে। সে মত মৃত বাবুল ও আশরাফ মীরপুর চল যায়। বিকাল ৩টা/ সোয়া তিনটার সময় মীরপুর তাদেরকে পাই। মীরপুর Petrol Pump হত তেল নেয়া হয়। আমার শ্বশুর বাড়ী শীতলা বাগান যাই। বাবুল, আশরাফ স্ত্রী সহ বাগান বেড়াই। রাত ৮টা সোয়া ৮-০০ টার সময় শ্বশুর বাড়ীতে খাওয়া করি। আমি মৃত আশরাফ ও ড্রাইভার বাবুল সহ খাওয়ার পর ষোলগুটি খেলি। অনুমান ১১-০০ টায় (রাত) সালাম আমার শ্বশুর বাড়ীত আস এর মধ্যে কথাবার্তা হয়। ১১-৩০ টা পৌনে ১২-০০ টায় সিলেটের কালাম আমার গাড়ীর মালিক আহাদ ভাইয়র গাড়ী নিয় আমার শ্বশুর বাড়ীত আস। মালিক আহাদ ভাইয়র গাড়ী রেখ সালাম বল "সুজন তুমি ষ্টিয়ারিং ধরা, গাড়ী চালঅওঃ। মৃত ড্রাইভার বাবুল ও আশরাফ গাড়ীত উঠ। কালাম, সালাম গাড়ীর পেছনর সীট এর সামনরটিভ ভিকটিম ড্রাইভার বাবুল ও আশরাফ বস। আমি গাড়ী চালিয়ে নেই। রাত অনুমান ১২-০০টার দিক আমার শ্বশুর বাড়ী হতে আধ কিঃমিঃ দুর বাগানের ভেতর (শীতলা থেকে রশিদপুর ফ্যাক্টরী আসার মধ্যখান) সালাম বাবুলর গলায় রশি দিয় টান মের ধর রাখ এবং কালাম মৃত ব্যক্তি victim আশরাফক গলায় রশিদ দিয় টান মের ধর রাখ। আমি প্রতিবাদ করায় সালাম আমাকে ভয় দেখায় এবং আমাকে ও ফাঁসার বল শাসায়। রশিদপুর বাজার হয় বাহুবল থানাধীন ঢাকা-সিলেট নতুন মহাসড়ক উঠি। বিশ্বরোড হতে অনুমান ০১ কিঃমিঃ দূর ব্রেক করার পর সম্ভবত জায়গাটি দৌলতপুর, সালাম ও কালাম ড্রাইভার বাবুল ও আশরাফ এর লাশ টেন ফেল দেয়। এর পর সালাম ড্রাইভিং সীটের পাশ আমার পাশ বস। কালাম পিছন বসভ মাধবপুর

গিয়া ২০ লিটার তৈল নেয়া হয়। ভৈরব পার হল পর কালাম গাড়ী চালায়। ঢাকার কাঁচপুর ব্রীজ পাড় হয় মাতৃশিশু সদন হাসপাতাপলর নিকট গাড়ী খাড়া করাই। আরমান নামীয় এক ব্যক্তি আস। আরমানর সাথ আরকজন ছিল। তাক আমার পাশ বসিয়ে সালাম, কালাম, আরমান চা খেত যায়। এ পর দেলপাড়ার সোহলর বাড়ী যাই গাড়ী নিয়। অনুমান তখন ৬/৬-৩০ টা হবে। তারা ৩(তিন) জন সোহল এর বাড়ীর ভেতর প্রবেশ কর। ডাকার পর আমি যাই। তারিখ ৩-১-২০০৫। অবস্থানকালীন সোহল, আফসার ও বোরহান নামীয় দুজনক ডেক আন। এরা দুজন সেন্টু, আলম নাম আরা দুজনক খবর দিয় নিয় আস। এরা এস গাড়ী দেখ। এর মধ্য বোরহান, আফসার এর সাথে আলম ও সেন্টু গাড়ী ক্রয়ের দাম ৪০,০০০ টাকা সিদ্ধান্ত নেয় এবং বিকাল ৬-০০ টার সময় সাইনবোর্ডর নিকট লেনদেনের কথা হয়। সোহেল এরই মধ্য পার্টিকে ফোন করে ও দাম দর কর যা বেয়াই আফসার জান না। কথানুযায়ী সাইনবোর্ড যাই। ঐখানে পেট্রোল পাম্প আছে। অনুমান ৬-০০টার সময় তখন ১টি লোক চাবি চায়। পাশ থাকা কালাম ও তাক চাবি দিতে বল। গাড়ী নিয়ে যায়। বল পৌঁছ ফোন করব এবং পৌঁছার পর টাকা দিতে বল। সেন্টু সোহলর নিকট টাকা দেয়। পর তা সালামের নিকট দেয়। সোহল-ক ৩,০০০ টাকা দেয়। এর পর আমরা ৩(তিন) জন সালাম, কালাম ও আমি চলে আসি। কালাম ঢাকায় থেকে যায়। আমি ও ছালাম সিলেটের গাড়ীতে কর আসি। আমি কামাইছড়া নেমে পড়ি। সালাম মীরপুর নেমে পড়ে। সালাম আমাকে ১২ হাজার টাকা দেয়। এর পর আমি শ্বশুর বাড়ী চলে আসি। মঙ্গলবার দুপুর পুলিশ আমাকে ধরে। পুলিশকে সকল ঘটনা বলি। আমার কথা মত পুলিশর গোয়ন্দা লোক এর সাথ জড়িত সোহল, আফসার, সেন্টু, বোরহান, আলমকে ধৃত করে। শ্বশুর বাড়ীত আসার পর গত ৪-১-২০০৫ তারিখ সকাল ৭-৩০ টার সময় মীরপুর নতুন বাজার হতে আমার গাড়ীর মালিক আহাদ ভাইকে ফোন করি। বেলা অনুমান ৮-০০ টার সময় আমার বড় ভাই সুমনক দিয় মালিক আহাদ ভাইয়র নিকট ৫০০০ টাকা ও তার গাড়ী পাঠিয় দেই। পুলিশ ঢাকা হতে মাইক্রাবাস উদ্ধার করে নিয় আসে।

সুজন দেব।

58. We find that the occurrence took place on the night following 2-1-2005. The dead-bodies of deceaseds were found at the PO on 3-1-2005 in the morning. On the same day at 10-35 AM FIR was lodged by PW 1. He (PW 1) categorically stated that on 4-1-2005 he arrested accused Sujon from his in-law's house. According to his confession he arrested accused Sohel on 5-1-2005 and seized one Audio Cassette player Exhibit. 3(ক) which was affixed to the micro-bus. He also stated that the deceaseds were identified by Advocate Bashir Ahamed Dulal (PW 3) as his driver Babul and helper Ashab Ali of his micro-bus bearing No. Dhaka-metro গ-১২-১৫৯০ which was ultimately given to the jimma of PW 3. Later, accused Sohel was interrogated who informed to him that on 3-1-2005 at 5-30 PM accused Sujon and his accomplice Salam and Sylheti Kalam came to him to sell the stolen micro-bus. Later, with the help of accused Borhan and Afsar he managed to sale it to Sani Ahamed Sentu at the price of Taka 44,000. The stolen micro-bus was handed over to Sani in signboard area. Subsequently he arrested accused Sentu and at his showing the micro-bus was recovered from the house of Mofizuddin. Thereafter on 6-1-2005 the accused Sujon made confession (Exhibit.4), the contents of it is absolutely corroborative with the evidence of PW 1 and such confession was recorded by PW 12 after complying all legal formalities laid down in section 364 of the Code. The accused Sujon Deb did not complain regarding torture or coercion or allurement. But at the later stage of trial accused Sujon Deb raised a plea that by alluring him such confession was extracted. The plea raised by him has no leg to stand and, as such, the defence having not deliberately led any evidence, in support of his pseudo plea, so it recoils against him. Moreover PWs 2, 4-6, 8, 11, 17, 18, 19 were examined to corroborate the evidence of above witnesses. They categorically corroborated their evidence. However all the PWs were extensively cross-examined by the defence but nothing could be elucidated to shake their credibility in any manner whatsoever. Therefore, such pseudo plea should be left out of consideration.

59. On critical analysis of the evidence on record along with the confession of accused Sujon deb we find that at the instance of Salam he

(Sujon Deb) took over the seat of the driver of micro-bus and drived the car and at night he reached to his in-laws house wherein they took meal allowing time to reach Kalam to there. Thereafter they started to their destination. In view of such facts we hold that the confession of Sujon Deb is true, voluntary and inculpatory voluntary in nature.

60. It further appears to us that above confessing accused implicated himself in commission of murdering. The materials on record shows that his confession was shown as voluntary and inculpatory in nature. So it is well established that confessional statement if found inculpatory in nature and also true and voluntary it can be used against its maker and conviction can solely be based on it without any further corroborative evidence.

61. In the instant case the confession made by accused Sujon Deb (Exhibit.4) was not only inculpatory in nature, but also true and voluntary and, as such, the Tribunal very rightly based solely on the confession and correctly convicted and sentenced the above accused by the impugned judgment and order, having duly found him guilty for the offence committed under sections 302, 34 of the Penal Code.

62. In the case of *Islam Uddin (Md) alias Din Islam vs State 13 BLC (AD) 81* held:

> "It is now settled principle of law that Judicial confession if it is found to be true and voluntary can form the sole basis of conviction as against the maker of the same. The High Court Division has rightly found the judicial confession of the condemned-prisoner true and voluntary and considering the same, the extra judicial confession and, circumstances of the case, found the condemned-prisoner guilty and accordingly imposed the sentence of death upon him. "

63. Similar views were taken in the cases of *Abdur Rashid vs State 3 BLD 206, Amir Hossain vs State 6 BLD (AD) 193, Gouranga Chandra Paul vs State 59 DLR 17, 29 DLR (SC) 27, Shajahan Ali (Md) alias Md Shahjahan vs State 59 DLR 396, Hazrat Ali and others vs The State 44 DLR (AD) 51, The State vs Abul Kalam Azad and others 8 BLC 464.* Therefore we hold that the Court below rightly convicted the condemned prisoner Sujon Deb after considering the evidence on record.

64. The complicity of the accused Sujon deb was also corroborated by PWs 8 and 19 who categorically stated that accused Sujon deb stated in their presence that he along with accused Salam and Kalam strangulated the deceaseds to death.

65. It is true that confessions of co-accused is not a substantive peace of evidence against other co-accused who did not confess but in this case it appears to us that soon after the occurrence the accused Salam and Kalam remained absconding. After occurrence accused Sujon made confession on 6-1-2005 disclosing the complicity of accused Salam and Kalam. So those accused had responsibilities to discharge their duties and explain their position towards the occurrence but they did not do so.

66. Abscondence of an accused is an incriminating circumstances connecting him in the offence and conduct of a person in abscondence after commission of crime is an evidence to show that he is concerned in the offence *(Vide PLD 1965 Lah. 656)*. Therefore, anything, which tends to explain his conduct and furnishes a motive other than a guilty conscience, will be relevant under the Evidence Act. Failure to explain reason for absconding after occurrence favours prosecution *(39 DLR 437)*. Abscondence of accused is a relevant fact. Unless accused explains his conduct, abscondence may indicate guilt of accused *(33 DLR 274)*. Where accused absconded immediately after occurrence and remained out of reach of hand of law for more than years without showing any convincing reason for his absence, it

would be an important factor going against absconder accused *(AIR 1998 SC 107).* Abscondence immediately after incident and trial *in absentia* and abscondence till today is a strong incriminating circumstances while can be considered sufficient corroboration of his participation in commission of crime *(11 BLT 155).*

67. Therefore, we hold that accused Salam and Kalam are squarely responsible for committing the murder of deceaseds with Sujon Deb.

68. The credit to be given to the statement of a witness is a matter not regulated by rule of procedure, but depends upon his knowledge of fact to which he testifies his disinterestedness, his integrity and his veracity. Apportion of oral evidence depends on such variable in consistence which as a human nature cannot be reduced as a set formula *(40 DLR 58).*

69. The weight to be attached to the testimony of witness depends in a large measure upon various consideration some of which are in the face of it his evidence should be in consonance with probabilities and consistent with other evidence, and should generally so fit in with material details of the case for the prosecution as to carry conviction of truth to a prudent mind. In a word evidence of a witness is to be looked at from point of view of its credibility, it is quite unsafe to discard evidence of witness which otherwise appears reasonable and probable because of some suggestion against truthfulness of the witness.

70. Evidence of close relations of the victim cannot be discarded more particularly when close relations does not impair the same. Straight forward evidence given by witness who is related to deceased cannot be rejected on sole ground that they are interested in prosecution. Ordinarily close relation will be the last person to screen real culprit and falsely implicate a person. So relationship far from being ground of criticism is often a sure guarantee of its truth *(40 DLR 58).*

71. On appraisal of the evidence on record we find that PW 1 arrested accused Sohel and seized record player of the stolen micro-bus from his house. The micro-bus was sold at the instance of Afsar Uddin and Borhanuddin to accused Sentu. Later, it was recovered from the house of Mafizuddin shown by Sentu. The accused Sohel, Borhanuddin, Afsar and Sentu were found responsible for keeping the stolen micro-bus in their possession and its selling. Their confessions also indicate their complicity also keeping and selling the micro-bus. Therefore, the offence against them under section 411 was well proved.

72. In view of such facts, the evidence regarding taking away, micro-bus, murdering the deceaseds and recovery of the micro-bus from the accused are consistent, uniform and corroborative with each other with all materials particulars. There is absolutely no reason to disbelieve the consistent and corroborative evidence of those competent witnesses having no reason whatsoever to dispose falsely against them. The defence extensively cross-examined them but nothing could be elucidated to shake their credibility in any manner whatsoever. So the same are invulnerable to the credibility. Therefore, we hold that the complicity of the accused in murdering the deceaseds and recovery of stolen micro-bus from their possession are well proved by convincing and unimpeachable evidence.

73. Moreover, the impugned judgment and order of conviction and sentence in its entirety is well founded in the facts and circumstances of the case. So the submissions advanced by the learned Deputy Attorney-General prevails and appears to have a good deal of force. On the contrary we failed to discover any merit in the submissions advanced by the learned Counsel for the defence.

74. In the light of discussions made above and the preponderant judicial views emerging out of the authorities referred to above, we are of the view that the impugned judgment and order of

conviction and sentence suffers from no legal infirmities. However as to the sentence the learned Advocates for the condemned prisoners submits that there was no pre-mediation for murder so the sentence of death should be committed. Regards being had to the facts and circumstances of the case we are of the view that the sentence of imprisonment for life will meet the ends of justice instead of death.

75. In the result—

(a) Death reference No.63 of 2006 is rejected.

(b) The impugned Judgment and order of conviction and sentence dated 13-7-2006 passed by learned Judge of Tribunal, in Druto Bichar (Sessions) Case No. 15 of 2006 is hereby maintained with a modification of sentence of condemned-prisoners to imprisonment for life instead of death under sections 302, 34 of the Penal Code and the same in respect of appellants Sohel Khan, and Borhanuddin is maintained.

(c) Accordingly Criminal appeal No. 3341 of 2006 and Jail appeal No. 663 of 2006 are dismissed with a modification of sentence in the above terms.

(d) Criminal Appeal No. 3462 of 2006 and 3630 of 2006 are dismissed. The convicts Sohel and Borhanuddin are directed to surrender to their respective bail bond within fifteen days from the date of receipt of this order to serve out the remaining part of sentence.

(e) The learned Judge of the Court below will take appropriate step to secure the arrest of absconding condemned-prisoners Salam and Kalam and appellants Sohel Khan and Borhanuddin and commit them to jail to serve out their sentence.

The Office is directed to send down the records at once.

Ed.

HIGH COURT DIVISION
(Criminal Miscellaneous Jurisdiction

Moyeenul Islam Chowdhury J Md Nazrul Islam Talukder J	Abdur Razzak Liton (Md) .....Petitioner vs
Judgment June 20th, 2012	State and another..... .....Opposite-Parties*

Code of Criminal Procedure (V of 1898)
Section 561A

Allegations brought against the accused-petitioner are factual matters which require to be resolved on taking evidence. Since the excavator was in possession of the accused-petitioner prior to filing of the case and since it was recovered from the possession of the accused-petitioner, justice will be met if it remains with the accused-petitioner until the allegations brought against him are proved on evidence.

.....(36)

Code of Criminal Procedure (V of 1898)
Section 173

It is a settled principle of law that the ownership or title to a certain property cannot be decided by any Criminal Court. Besides, the investigation officer has no authority to decide the ownership of the excavator merely by submitting an enquiry report. The Chief Metropolitan Magistrate and the Additional Metropolitan Sessions Judge acted beyond their jurisdiction in handing over the possession of

*Criminal Miscellaneous Case No. 12414 of 2011.

the excavator in favour of the informant basing on the report of the investigating officer......(35)

Md Omar Ali vs Abdul Malek and State, 6 MLR 372 and State of J and K vs Bilal Shamus (2006) Criminal Law Journal 746 ref.

Khan Saifur Rahman, Mohammad Ali Khan and Alauddin Khalid, Advocates—For the Petitioner.

Zahurul Islam Mukul with Sarkar Md Tarikul Islam, Advocates—For the Opposite-Parties.

Judgment

Md Nazrul Islam Talukder J: On an application under section 561A of the Code of Criminal Procedure filed by the accused-petitioner, a Rule was issued calling upon the opposite-parties to show cause as to why the impugned judgment and order dated 20-3-2011 passed by the learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka in Metropolitan Criminal Revision No. 179 of 2010 affirming the order dated 25-1-2010 passed by the learned Chief Metropolitan Magistrate, Dhaka in Jatrabari Police Station Case No. 7 dated 3-1-2010 under sections 406/420/467/471 of the Penal Code directing the investigating officer to hand over possession of the alleged 'Sumitomo Hydraulic Excavator' in favour of the informant should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. Facts relevant to disposal of the Rule may be, briefly, stated as follows: On 3-1-2010, opposite-party No.2, Md Sheikh Shahjahan, proprietor of Classic Construction Company as informant lodged an ejahar with Jatrabari Police Station against the accused-petitioner alleging, *inter- alia,* that the informant is a businessman who had close business relationship with the accused-petitioner. Due to business relationship, the accused-petitioner used to use the address of the office of the informant. On 5-1-2009, the informant entered into an agreement for selling a 'dump truck' to the accused-petitioner and after sale, the informant handed over possession of the same to him. On 6-11-2009, there was another contract for leasing out one 'Sumitomo Hydraulic Excavator' (hereinafter mentioned as the excavator) to the accused-petitioner and after executing and signing the agreement, the informant handed over the possession of the excavator to the petitioner. On 27-11-2009, the informant for his business purpose wanted to get back the said excavator; but the accused-petitioner gained time for handing over the possession of the same to the informant. On 11-12-2009, the accused-petitioner threatened the driver and helper of the informant with dire consequences and refused to return the same to the informant disclosing that he had purchased the excavator from the accused-petitioner on the basis of sale agreement dated 5-1-2009 and had been enjoying possession of the same. It is alleged in the ejahar that the informant handed over possession of the excavator to the accused-petitioner on the basis of lease agreement; but the accused-petitioner forged the sale agreement and inserted the name and descriptions of the excavator below the name of the 'dump truck' in order to show that the 'dump truck' along with the excavator was sold out under the same sale agreement. Hence, this ejahar against the accused-petitioner under sections 420/406/467/471 of the Penal Code.

3. During investigation of the case, the police went to the place of occurrence, recorded the statements of the witnesses under section 161 of the Code of Criminal Procedure. Having found a *prima-facie* case, the police submitted charge sheet No. 394 dated 23-4-2010 against the accused-petitioner under sections 420/406/467/471 of the Penal Code.

4. It is on record that the alleged excavator was seized from the possession of the accused-

petitioner on 9-1-2010.

5. During pendency of the case, on 13-1-2010, the informant filed an application before the learned Chief Metropolitan Magistrate for restoration of the possession of the alleged seized excavator. On the other hand, on 17-1-2010, the accused-petitioner also filed an application for restoration of possession of the seized excavator. On receipt of the said applications, the learned Magistrate directed the investigating officer to submit a report determining ownership of the said excavator. After receiving the order, the investigating officer on inquiry submitted his report on 25-1-2010 stating therein that opposite party No. 2, that is the informant, is the real owner of the alleged excavator.

6. The learned Magistrate after considering the report submitted by the investigating officer rejected the application filed by the accused-petitioner and allowed the application filed by the informant on the basis of the report submitted by the investigating officer and directed the investigating officer to hand over possession of the seized excavator to the informant.

7. As against the said order dated 25-1-2010 passed by the learned Chief Metropolitan Magistrate, the accused-petitioner preferred Criminal Revision No. 179 of 2010 before the learned Metropolitan Sessions Judge, Dhaka who subsequently transferred the aforesaid criminal revision to the learned Additional Metropolitan Sessions Judge, First Court, Dhaka who by his judgment and order dated 20-3-2011 dismissed the Criminal revision on merit.

8. Being aggrieved by and dissatisfied with the impugned judgment and order passed by the learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka, the accused-petitioner approached this Court with an application under section 561A of the Code of Criminal Procedure with a view to quashing the impugned judgment and order dated 20-3-2011 passed in Metropolitan Criminal Revision No. 179 of 2010 affirming the order dated 25-1-2010 passed by the learned Chief Metropolitan Magistrate and obtained this Rule.

9. At the very outset, Mr Khan Saifur Rahman, learned Advocate along with Mr Mohammad Ali Khan and Mr Alauddin Khalid, learned Advocates appearing on behalf of the accused-petitioner, submits that the accused-petitioner purchased the excavator on the basis of a sale agreement dated 5-1-2009 and that he took over possession of the same prior to filing of the ejahar and, as such, the impugned judgment and order passed by the Court below should be quashed.

10. He next submits that the informant clearly admitted in the ejahar that the accused-petitioner took over possession of the excavator on the basis of the lease agreement and in that view of the matter, the petitioner is entitled to get custody of the alleged excavator; but the learned judges of the Courts below have failed to consider their aspect of the case in its proper perspective and, as such, the impugned judgment and order should be quashed.

11. He further submits that the possession of the accused-petitioner over the alleged excavator is not an offending possession because he did not take over possession of the excavator unlawfully by committing offences like theft or dacoity or otherwise and in that view of the matter, the possession of the accused-petitioner over the excavator cannot be considered as an offending possession and the informant is not entitled to get jimma of the excavator and such being the state of the affairs, the impugned judgment and order affirming the order passed by the learned Magistrate should be quashed.

12. He then submits that whether the petitioner got possession of the excavator by way of

lease or purchase is a question of fact which can only be resolved on taking evidence of the witnesses of the respective parties and that since the excavator admittedly was in possession of the accused-petitioner, that should not be handed over to the informant before disposal of the case.

13. He next submits that in view of the mandate of section 516A of the Code of Criminal Procedure, the Magistrate as well as the investigating officer cannot determine the ownership of the excavator and the same can only be ascertained by a competent Civil Court on taking evidence of the witnesses of the respective parties; but in the instant case, the excavator was handed over to the informant ascertaining him as the real owner of the excavator and, as such, the impugned judgment and order should be quashed.

14. He categorically submits that this Court sitting in its extra ordinary jurisdiction under section 561A of the Code of Criminal Procedure cannot decide any disputed question of fact or otherwise the factual matters invoking jurisdiction under section 561A of the Code of Criminal Procedure and considering this aspect of the case, the possession of the excavator should remain with the accused-petitioner as he was in possession of the same as per averment made in the ejahar by the informant.

15. He lastly submits that the judgment and order passed by the learned Additional Metropolitan Sessions Judge, Dhaka as well as the learned Magistrate are neither proper nor legal since they passed the order without recording the evidence relating to possession allegedly claimed by both the parties and given this context, the impugned judgment and order cannot be sustained in the eye of law.

16. On the other hand, Mr Zahurul Islam Mukul, learned Advocate along with Mr Sarkar Md Tarikul Islam, learned Advocate appearing on behalf of opposite-party No.2, submits that the informant never sold out the excavator to the accused-petitioner; rather he handed over possession of the same on the basis of a lease agreement executed between the parties and in that view of the matter, the informant being the real owner of the excavator is entitled to get the possession of the same.

17. He then submits that by the agreement dated 5-1-2009, he did not sell out the excavator to the accused-petitioner; but the accused-petitioner, by forging the deed of sale agreement, inserted the particulars of the excavator in the sale agreement and, as such, the informant is entitled to retain the possession of the excavator till disposal of the case.

18. He lastly submits that though the informant handed over possession of the excavator to the accused-petitioner on the basis of lease; the period of lease expired long back; but the accused-petitioner kept the same under his possession by putting pressure and threat upon the driver and helper of the informant and, as such, the possession of the accused-petitioner over the excavator is totally unlawful and, as such, the possession of the same was rightly handed over to the informant and under the circumstances, the impugned judgment and order passed by the Court below should not be quashed.

19. We have gone through the application under section 561A of the Code of Criminal Procedure, the impugned judgment and order and other materials on record annexed thereto. We have also considered the submissions and counter submissions advanced by the learned Advocates for both the parties.

20. On going through the ejahar and other prosecution materials on record, we find that the informant, by an agreement dated 5-1-2009, sold out a dump truck to the accused-petitioner. It stands out further from the ejahar that the informant never sold out the Sumitomo hydraulic exca-

vator to the accused-petitioner; but he categorically stated in the ejahar that he handed over possession of the excavator to the accused-petitioner on the basis of the lease agreement dated 6-11-2009. The accused-petitioner submitted a counter-affidavit annexing relevant papers and documents. The claim of the accused-petitioner is that he purchased the alleged excavator by dint of the sale agreement dated 5-1-2009 and after purchase, he took over possession of the same and since that time, he had been enjoying peaceful possession of the same.

21. In order to dispose of the Rule, we have gone through the relevant provision of law as contemplated by section 516A of the Code of Criminal Procedure, which runs as follows:

> "When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy or natural decay (or it is otherwise expedient so to do) the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of".

22. From the aforesaid provision of law, it is manifestly clear that section 516A of the Code of Criminal Procedure deals with the powers of the Courts in the matter of disposal of the property. It enables a Magistrate to provide interim custody of goods. Under section 516A of the Code of Criminal Procedure, the Magistrate has no power or authority to decide the ownership of the property allegedly claimed by the rival parties. The main consideration while disposing of the property is the question of possession of the property by a party at the time of commission of alleged offence. Here, in the instant case, we notice that the alleged occurrence took place from 5-1-2009 to 11-12-2009 and the ejahar was lodged with Jatrabari Police Station on 3-1-2010. Subsequently, the excavator was seized from the possession of the accused-petitioner on 9-1-2010. It is contended on behalf of the informant-opposite party that the informant handed over possession of the excavator to the accused-petitioner on the basis of the lease agreement dated 6-11-2009. In view of the above facts and circumstances of the case, it is crystal clear that the accused-petitioner was in possession of the excavator prior to filing of the ejahar of the case.

23. It appears that the Court of first instance delivered possession of the excavator in favour of the informant; but it did not record any evidence while disposing of the excavator in favour of the informant. The learned Chief Metropolitan Judicial Magistrate passed the order basing on the report of the investigating officer who submitted his report stating that the informant is the real owner of the excavator.

24. Considering the mandate of section 516A of the Code of Criminal Procedure, it may be mentioned here that a property regarding which an offence appears to have been committed may be handed over to a person who was in possession of the same provided the same would not be tantamount to unlawful possession.

25. We have stated earlier that in dealing with this provision of law, the possession of the alleged property should be considered first before disposing of the property to anybody and the prime consideration is to decide possession of the property at the time of commission of the alleged offence.

26. We find that the learned Chief Metropolitan Magistrate passed the order without giving any justifiable reason in support thereof. The learned Additional Metropolitan Sessions Judge, by his impugned judgment and order, simply supported the order passed by the learned

Chief Metropolitan Magistrate without assigning any plausible reason. As already observed, the learned Chief Metropolitan Magistrate handed over possession of the excavator to the informant depending on the report submitted by the investigating officer giving out that the informant is its real owner. In contrast, the learned Advocate for the accused-petitioner referred to a decision in the case of *Md Omar Ali vs Abdul Malek and the State* reported in *6 MLR 372* wherein it has been held:

> "This power of the Magistrate is to make temporary custody for protection of the property produced before him regarding which an offence appears to have been committed or which appears to have been used for the commission of the offence. Under this section the Magistrate has no power to investigate or to decide the ownership of rival claimants of the property. The only consideration is of possession of the property at the time of commission of the alleged offence, has to be gone into and decided before passing an order for the custody of the said property. Where the question of the custody of property is like vessel in the present case, we are of the opinion that Magistrate instead of entering into investigating the title of the rival claimants, it is his duty to decide expeditiously who is the person *prima-facie* entitled to possession thereof and hand over its possession to him for avoiding great loss that has sustained when it was kept unused for ensuring the vessel in the same condition as it was at the time of its seizure and to produce before the court as and when required. We are further of the opinion that no property should be given to a person who is not entitled to its possession at the time of its recovery and who has not committed any offence in respect thereof to make its possession unlawful".

27. Keeping in view the aforesaid decision referred to by the learned Advocate for the petitioner, we find from the materials on record that the excavator was allegedly recovered from the possession of the accused-petitioner and admittedly, as per averment narrated in the ejahar, he was in possession of the same prior to filing of the ejahar on the basis of lease agreement and in that view of the matter, it cannot be said that the accused-petitioner had an offending possession of the excavator.

28. It is not the case of the informant that the accused-petitioner allegedly took away the said excavator from the possession of the informant by committing theft or dacoity or otherwise by illegal means; rather it was in possession of the accused-petitioner prior to filing of the ejahar on the basis of alleged lease agreement as averred in the ejahar by the informant. On the admitted fact disclosed by the informant, the accused-petitioner was in possession of the excavator and the same was recovered from his possession.

29. Considering the facts and circumstances of the case, the possession of accused-petitioner over excavator is not offending in nature and in that case, the informant is not entitled to have the custody of the excavator till disposal of the case.

30. Furthermore, the story of lease as well as the story of expiry of lease or the story of purchase are all factual matters which can only be determined on taking evidence.

31. *Per contra,* learned Advocate for the informant-opposite-party No.2 in support of his submission relied on the decision in the case of *State of J & K vs Bilal Shamus* reported in *(2006) Criminal Law Journal 746* wherein it has been spelt out:

> "If the fact of seizure is brought to the notice of the Magistrate by any party interested or even, by a party who applies for delivery of the property, it would be sufficient to give jurisdiction to the Magistrate to entertain and deal with the application under section

457 of the Code."

32. It is further held in that decision as under:

"While going through said documents and notice, the learned Magistrate has come to the conclusion that applicant has carved out a case and accordingly the learned Magistrate has passed the order and released the Vehicle on superdhama. The said custody is *'Custodia legis'* and it does not confer any right upon the respondent. He has been entrusted with, the vehicle on behalf of the Court and has to produce the same whenever required to do so. If during trial or enquiry prosecution proves that respondent is not entitled to the possession, the Court can pass orders either in terms of section 516A or 517 of CrPC."

33. On going through the aforesaid decision referred to by the learned Advocate for the informant opposite-party, it transpires that in the aforesaid decision, the scope and object of the jurisdiction of the learned Magistrate relating to disposal of the property have been discussed. In the reported case, the seized articles were handed over to the respondent, that is, the accused and held that if the prosecution during trial or enquiry proves that the respondent is not entitled to the possession, the Court can pass either in terms of section 516A or 517 of CrPC. It was further held in that decision that the custody of the articles may be termed as *'custodia legis'*, that is to say, it does not confer any right upon the respondent.

34. In view of the reported case, articles were given to the respondent as *'custodia legis;* that is to say, it does not confer any right upon the respondent; but in the instant case, the custody of the excavator was given to the informant holding him as real owner. Under the given scenario, the facts and circumstances of the present case are quite distinguishable from those of the reported case as referred to by the learned advocate for the informant-opposite-party. Under the circumstances, the ratio adverted to by the learned advocate for the opposite-party does not appear to be applicable to the instant case; rather it may come in aid of the contention of the accused-petitioner.

35. Admittedly, as per ejahar, the accused-petitioner was in possession of the excavator on the basis of lease. On the other hand, the petitioner claims that he purchased the excavator from the informant on the basis of a sale agreement dated 5-1-2009. It is a settled principle of law that the ownership or title to a certain property cannot be decided by any Criminal Court. Besides, the investigation officer has no authority to decide the ownership of the excavator merely by submitting an enquiry report. The learned Chief Metropolitan Magistrate, and the learned Additional Metropolitan Sessions Judge acted beyond their jurisdiction in handing over the possession of the excavator in favour of the informant basing on the report of the investigating officer.

36. It may be noted here that the allegations brought against the accused-petitioner are factual matters which require to be resolved on taking evidence. Since the excavator was in possession of the accused-petitioner prior to filing of the case and since it was recovered from the possession of the accused-petitioner, justice will be met if it remains with the accused-petitioner until the allegations brought against him are proved on evidence. If the informant proves that the accused-petitioner is not entitled to the possession of the excavator, the court can pass necessary order in terms of section 516A of the Code of Criminal Pricedure.

37. Since the excavator was allegedly recovered from the possession of the accused-petitioner, *prima-facie* he is entitled to retain the possession of the same till the contrary is proved during trial of the case.

38. From the foregoing discussions and

regard being had to the facts and circumstances of the case, we are led to hold that the learned Chief Metropolitan Magistrate has committed illegality in handing over possession of the excavator in favour of the informant on the basis of the report submitted by the investigation officer. Surprisingly enough, the learned judge of the revisional Court has also committed a glaring illegality in affirming the order dated 25-1-2010 passed by the learned Chief Metropolitan Magistrate in the matter of handing over possession of the excavator to the informant.

39. Considering all the aspects of the case, we find merit in this Rule. Accordingly, the Rule succeeds.

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

41. The impugned judgment and order passed by the learned Additional Metropolitan Sessions Judge, 1st Court, Dhaka in Metropolitan Criminal Revision No. 179 of 2010 affirming the order dated 25-1-2010 passed by the Chief Metropolitan Magistrate, Dhaka are, hereby, quashed.

42. The learned Chief Metropolitan Magistrate, Dhaka is, however, directed to take over possession of the excavator from the custody of the informant-opposite-party No. 2 and hand over the same to the accused-petitioner within l(one) month from date positively on furnishing adequate security requiring to produce the same before the court as and when required for the interest of justice.

43. The learned Magistrate is directed to conclude the trial of the case as early as possible preferably within 6(six) months from the date of receipt of this judgment.

Let the lower court's record along with a copy of this judgment be communicated to the concerned Court below at once.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Md Anwarul Haque J
Md Badruzzaman J

Judgment
February 11th, 2013

Doel Apparels Limited.....
.....Petitioner

vs

Judge Artha Rin Adalat No. 2, Dhaka and others...
.....Respondents*

Constitution of Bangladesh, 1972
Article 102(2)

Artha Rin Adalat Ain (VIII of 2003)
Section 57

Code of Civil Procedure (V of 1908)
Section 152

The order of rectifying the decretal amount under section 57 of the Adalat read with section 152 of the Code cannot be declared illegal and without lawful authority since a writ jurisdiction where there is a scope of appeal where appellate court having sufficient authority will decide the matter with the help of evidence. .....(15)

Mlakarjun Bin Shidramappa vs Narhari Bin Shivappa, Indian Appeals Volume XXVII Page 216 ref.

Md Mozaharul Islam, Advocate—For the Petitioner.

Md Ahasanul Karim, AQM Salimullah and Ruhul Ameen, Advocates—For the Respondent No. 2.

Judgment

Md Anwarul Haque J: On an application under Article 102(2)(a)(ii) of the Constitution of the People's Republic of Bangladesh this Rule Nisi was issued calling upon the respondents to show cause as to why the impugned order No. 21 dated 19-10-2010 passed by the learned Judge of the Artha Rin Adalat No.2 Dhaka in Artha Rin

*Writ Petition No. 3042 of 2012.

Suit No. 233 of 2009 allowing the amendment of the judgment and decree dated 13-7-2010 (Annexure-G) to the petition and order No. 9 dated 28-2-2012 passed by the .same Judge in Artha Jari Case No. 61 of 2011 rejecting an application of the petitioner filed under section 28 read with section 57 of the Artha Kin Adalat Ain 2003 (Annexure-M) to the petition shall not be declared illegal and without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. In short, the case of the petitioner for the purpose of disposal of this Rule is as follows:

3. Plaintiff-respondent No. 2 GSP Finance Company (Bangladesh Limited) filed Artha Rin Suit for realization of Taka 8,30,51,041 as on 10-10-2009 from the petitioner and others who took loan for conducting their respective business by an agreement Nos. 1042/L/S/2002 and 1043/L/S/2002 respectively but subsequently in terms of such agreement the petitioner failed to pay the installment and made themselves defaulter. Then the respondent No.2 filed Artha Rin Suit for recovery of the outstanding loan with interest which was decreed in part to the loan of Taka 1,94,00,043 only without taking into consideration of the claim arising out of the loan agreement No. 1043 to the lone of Taka 3,36,50,998. Subsequently on the prayer of the plaintiff under section 57 of the Artha Rin Adalat Ain, 2003 read with section 152 of the Code of Civil Procedure such an inadvertent error has been duly rectified by the concerned Judge of the Artha Rin Adalat who made the decretal amount of Taka 8,30,51,041 in place of Taka 1,94,00,043 appearing in the operating portion of the judgment and other place wherever it appears. Thereafter, plaintiff decree-holder filed this Execution Case for the decretal amount of Taka 8,30,51,041 in place of Taka 1,94,00,043 only.

4. Being aggrieved by and dissatisfied with the impugned material change of the operating portion on the judgment and decree the judgment-debtor has invoked this writ jurisdiction alleging that the learned Judge of the Artha Rin Adalat preserves no right to change the decretal amount of Taka 1,94,00,043 to 8,30,51,041 with the help of the provision laid down in section 57 of the Artha Rin Adalat Ain-2003 read with section 152 of the Code of Civil Procedure because it is neither any clerical mistake nor inadvertent omission on the part of the court. Moreover, the observation of the court so far it relates to the decree passed at the first instance still in existence which will not go to support the subsequent increased amount directing the judgment-debtor to pay the same within the period fixed by the court.

5. Mr Md Mozaharul Islam, the learned advocate appearing on behalf of the petitioner submits that since the learned Judge of the Artha Rin Adalat has considered both the agreement Nos. 1042 and 1043 at the time of passing the judgment and decree; as such that can be rectified on the ground of arithmetical error or typical mistake.

6. Mr Islam further submits that the identical prayer was also rejected by the court on 20-9-2010 so there can be no occasion to reconsider the identical prayer incorporating the enhanced amount to the loan of Taka 8,30,51,041 in place of Taka 1,94,00,043.

7. On the other hand Mr Ahasanul Karim, the learned Advocate appearing on behalf of the respondent No. 2, Financial Institution, has strongly opposed the sale alleging that where court has rectified it's own judgment and decree on the ground of inadvertent error; aggrieved party have no other alternative but to prefer an appeal under section 41 of the Artha Rin Adalat Ain, 2003. In order to circumvent the jurisdiction of the appellate authority there can be no scope to

invoke writ jurisdiction because to decide the matter, admitted evidence must be taken into the consideration. With reference to the document exhibit-15 now Annexure-2(A) Mr Karim has pointed out that during the course judgment the learned Judge of the Adalat has absolutely overlooked the two accounts arising out of admitted agreement Nos. 1042 and 1043, sanctioned in favour of the judgment-debtor for which the learned Judge came to an erroneous decision and subsequently he realised it and rectified the *bonafide* error committed by him under section 57 of the Artha Rin Adalat read with section 152 of the Code Civil Procedure.

8. Mr Karim has emphatically argued that in no way this impugned order can be addressed as without any lawful authority because it is absolutely within his jurisdiction. He may get wrong and the subsequent action in rectifying such wrong may also be wrong but the same is to be agitated in the appellate court not in the writ jurisdiction.

9. In support in his contention the learned advocate appearing on behalf of the respondent has referred a decision of a case *Mlakarjun Bin Shidramappa vs Narhari Bin Shivappa and others* reported in *Indian Appeals Volume XXVII Page 216* where there lordships have made the following positive observation:—

> "In so doing the Court was exercising its jurisdiction. It made a sad mistake it is true; but a Court has jurisdiction to decide wrong as well as right. If it decides wrong the wronged party can only take the course prescribed by law for setting matters right; and if that course is not taken the decision, however wrong, cannot be disturbed."

10. Referring the above decision the learned advocate appearing on behalf of the respondent No.2 submits that judgment-debtor has no other alternative but to prefer an appeal against the impugned judgment and decree for which execution case No. 61 of 2011 has been filed but cannot be challenged in writ jurisdiction.

11. On the face of these submissions we have gone through the impugned order meticulously along with previous order and the judgment passed by the learned Judge of the Artha Rin Adalat. Apparently the claim of the plaintiff was Taka 8,30,51,041 as on 10-10-2009 which arose out of two agreement No. 1042 and 1043 and such agreement had not been denied by the judgment-debtor-petitioner rather has admitted in the written statement. At the time of passing the judgment it is also found to overlook the outstanding amount arising out of an agreement No. 1043 though has been observed that arising out of two account plaintiff has proved his case so far it relates to the amount of Taka 1,90,00,041 but subsequently by an application it was brought to the notice of the court.

12. Be the case as it may the order which has been passed by the court below in rectifying his own judgment and order may be considered as procedural mistake but that cannot be challenged in the writ jurisdiction since there is a statutory forum of appeal where judgment-debtor may prefer an appeal against such impugned judgment and decree.

13. In such circumstances we do not find any ground to interfere by invoking the writ jurisdiction.

14. Aggrieved party, specially the judgment-debtor may seek his relief in the appellate forum where the entire evidence can be re-assessed to secure the ends of justice.

15. In the light of the above finding we are of opinion that the impugned order of rectifying the decretal amount under section 57 of the Artha Rin Adalat read with section 152 of the Code of Civil Procedure cannot be declared illegal and without

lawful authority since a writ jurisdiction where there is a scope of appeal where appellate court having sufficient authority will decide the matter with the help of evidence specially exhibit-15.

16. With that view of the matter for we find no merit in the rule and accordingly it is discharged.

17. The order of stay passed at the time of issuing the rule is hereby vacated.

Let to judgment and order be sent the all concerned for information and necessary action.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Md Ashfaqul Islam J
Md Ashraful Kamal J

Judgment
April 9th, 2014.

Shafi A Choudhury.....
.....Petitioner

vs

Government of Bangladesh and others
.....Respondents*

Bank Companies Act (XIV of 1991)
Section 2

When the provisions of the Act will be in derogation to other provisions of other laws, then the provisions specifically provided in the Act shall have to be followed only. .....(15)

Bank Companies Act (XIV of 1991)
Sections 5 KaKa and 27 KaKa

If all these provisions are read together one and only inference that could be made is that if any person or a company is indebted to in any manner with any financial institution and the debt remains unpaid, it is the duty of the Bangladesh Bank in its turn to enlist the name of the incumbent in the CIB list nothing more nothing less. With the amendment of section 5 GaGa the definition as it could be found now contains a wider version of the category of persons to be included as defaulter borrower. .....(18)

Bangladesh Bank Order (PO 127 of 1972)
Section 42

By bringing the elementary principle of company law as it has been stated the settled provision of Banking Companines Act cannot be given a go by. .....(19)

Company Law and Banking Law—There is no denying that the elementary principle of company law is that the company is a legal entity distinct from of its members. We distinctly observe that though the Company Law governs its field with all the trappings of its own but at the same time the Banking Companies Act is also an independent Special law that rules with authority altogether the different aspect related with the banking matter and stands absolutely on a different footing. .....(14)

Belal Hossain vs Kazi Jane Alam and others, 13 MLR (AD) 74 ref.

Rafique-ul-Hoque, Senior Advocate with Muhammad Saifullah Mamun, Advocate—For the Petitioner.

Md Mamunur Rashid, Advocate—For the Respondent No.4.

Syed Hasan Zobair, Advocate—For Respondent No.2.

*Writ Petition No. 9147 of 2008.

Judgment

Md Ashfaqul Islam J: At the instance of the petitioner, Shafi A. Choudhury, this Rule Nisi was issued in the following terms:

> "Let a Rule Nisi be issued calling upon the respondents to show cause as to why report of Credit Information Bureau (CIB) Bangladesh Bank classifying the petitioner as a defaulter borrower under borrower Code No.913 and serial No. 323 in respect of a Loan granted by the Respondent Pubali Bank Ltd. in favour of the Pro-forma Respondent No.5 [M/s Albert Davit (Bangladesh Ltd] should not be declared to have been made without lawful authority and is a nullity. At the time of issuing Rule an order of injunction was passed restraining the Respondent No.3 from reporting through the Credit Information Bureau showing a defaulter borrower under borrower Code No.913 and serial No. 323 in respect of a Loan granted by the Respondent Rupali Bank Ltd. in favour of the Pro-forma Respondent No.5 [M/s Albert Davit (Bangladesh Ltd] should be the declared to have been made without lawful authority and is a nullity."

2. The fact leading to the Rule, in short, is that Respondent No.5 [M/S Albert Davit (Bangladesh Ltd] is a private limited company established on 21-10-1950. By President Order No.27 the said company was declared as an abandoned property by the government and vested upon Bangladesh Chemical Industries Corporation (BCIC). On 5-11-1971 the Eastern Mercantile Bank (presently Respondent Pubali Bank Ltd.) granted a credit facility under CC (Pledge) and CC (Hypo) for the amount of Taka 65 lakh and 5 lakh respectively in favour of the said company. In the year 1984 Government under its "Disinvestment Policy" decided to hand over the said Company to the private sector. Accordingly, the Government published tender notice to sell the said Company. The petitioner as a businessman, along with six other family members participated in a tender floated by the Ministry of Industries for the purchase of shares of the said Company. The said tender was awarded to the petitioner and his family members at Taka 13.77 crores. An agreement for sale was executed on 7-4-1984 between the Ministry of Industries for transfer of shares in the said Company subject to joint audit and verification of all assets including liability to the Respondent Nos.3 and 4 (hereinafter referred to as the Pubali Bank). The shares of the said Company were never transferred to the petitioner and his family members. As such the petitioner and his family members do not hold any shares in the said Company.

3. On 31-10-1992 the petitioner sent a letter to the Pubali Bank for holding necessary audit to determine the actual liability of the said Company. The respondent Pubali Bank, on the other hand, by several letters asked the petitioner to clear up the outstanding dues and requested the respondent - Bangladesh Bank to write off amount of Taka 53,79,627 from the interest account and Taka 39,92,742 from the interest suspended account.

4. The Pubali Bank vide its letter No.7893 dated 5-9-1995 informed the company that the liability of said company stood at Taka 1,15,03,916.25 and the same amount is payable in two year installments. This liability was determined by the management of the Pubali Bank and approved by its Board of Directors. The respondent Pubali Bank stated in its letter dated 5-9-1995 that for waiver of interest the permission of Bangladesh Bank would be required since the petitioner was a director of Pubali Bank Limited. The Pubali Bank failed to realize that the petitioner merely acted as an authorized representative/ agent of the said company. He had no shares in the said company nor was a director of the same. The

respondent wrongly associated the petitioner with the debts and liabilities of the said company. So the petitioner is not a defaulter.

5. Thereafter several years have gone passed but no solution could be reached between the petitioner and writ respondents for different reasons. In paragraphs 35 to 37 regard have been taken on several decisions of the Appellate Division and this Division to highlight that the petitioner company is a artificial person and the loan was taken by an artificial person and in the event of default by such artificial person in repayment of the loan, such default of the company would not *ipso facto* render any member or director of such artificial person a defaulter. Under the said circumstances the petitioner being aggrieved by the enlistment of his name in the CIB list moved this Division and obtained the present Rule and order of injunction as aforesaid.

6. Mr Rafique-ul-Hoque, the learned Senior Advocate appearing with Mr Muhammad Saifullah Mamun, the learned Advocate for the petitioner after taking us with the petition and the relevant Annexures thereto mainly contends that although the petitioner has been acting as ex-officio Chairman and Managing Director of the Albert Davit (BD) Ltd. but without holding any share of the said company he cannot be held personally liable to pay dues of the Company since he did not give any personal guarantee or undertaking to pay the said liability. The shares of the said company have not yet been transferred in the name of the petitioner. The petitioner has just been acting as the designated Chairman and Managing Director of the said Company for mere management purpose and he is not the proprietor or owner of the same as mentioned above. The shares of the said Company are still lying with the Ministry of Industries. In such situation, the debts and liability of the said Company cannot legally be attributed to the petitioner and hence he is not a defaulter borrower. He further argued that the Company paid Taka 115,03,916.25 to the Pubali Bank as full and final settlement of liability of the company according to the decision taken in the 252nd and 683rd Board of Directors Meeting of Pubali Bank.

7. Mr Hoque further submits that enlistment of the name of the petitioner in CIB report showing him as defaulter borrower cannot be sustained in that the elementary principle of Company law is that the company is a legal person and the director is not liable for any debt of the company. Therefore, the learned Senior Counsel concludes that for the aforesaid reasons the petitioner's name appearing in the list of CIB showing him as a defaulter borrower should be declared to have been done illegally having no legal effect.

8. Mr Md Mamunur Rashid, the learned Advocate, on the other hand, by filing affidavit-in-opposition on behalf of respondent No.4 Pubali Bank Ltd. opposes the Rule. Mr Syed Hasan Zobair, the learned counsel by filing affidavit-in-opposition also opposes the Rule appearing on behalf of respondent No.2-Bangladesh Bank. In supplementary affidavit filed by the respondent Pubali Bank the other version of the case has been depicted in that admittedly the petitioner took loan over the company Albert David (Bangladesh) Ltd. from the Government along with its assets and liabilities vide agreement dated 7-4-1984. Since inception of taking over the company, it had loan liability with the respondent bank. After execution of agreement the petitioner took over the company vide Ref: No.ADL/GM/83-84 dated 7-4-1984. The petitioner after taking over the company applied to the respondent bank on 21-1-1985 for renewal and enhancement of L/C limit of the company pursuant to which loan was renewed and enhanced vide sanction letter dated 9-4-1985. Subsequently the loan was renewed and enhanced/reduced on several times. As security against the loan the petitioner executed various charge documents such as DP Note, Letter of con-

tinuity, Stock delivery letter, Stock ownership declaration etc. The petitioner also executed personal guarantee as security against the loan.

9. The Ref: No.ADL/GM/83-84 dated 7-4-1984, application dated 20-1-1985 for renewal and enhancement of loan, renewal of loan vide sanction letter dated 9-4-1985, charge documents and personal guarantee have been annexed to the petition and marked as Annexure- 3, 3(a), 3(b), 3(c), 3(d), 3(e), 3(f) and 3(g).

10. It has been submitted that on application of the petitioner the liabilities of the company was rescheduled vide HO/CD/5614/2001 dated 28-8-2001 which was communicated to the petitioner vide respondent bank's letter No.PBL/HO/CD/6034/2001 dated 12-9-2001. The petitioner having accepted the reschedulement submitted a cheque for Taka 1,03,53,524.62. Regarding the cheque respondent bank wrote a letter to the petitioner on 27-8-2001 informing him that his cheque would have been accepted by the bank had he given an undertaking in writing that the cheque amount was for down payment against its total liabilities of Taka 4,69,54,072.62 as on 31-3-2001. Thereafter, the petitioner confirmed that cheque for Taka 1,03,53,524.62 was made as down payment of liabilities of Albert David (Bangladesh) Ltd.

11. The learned counsel further submits that existence of the company could not be imagined of without the petitioner. The petitioner was all in all of the Albert Davit (Bangladesh) Ltd. He took over the company being a successful bidder along with its assets and liabilities. After taking over the company its loan was renewed, enhanced and rescheduled on his application. He deposited the down payment after reschedulement. All the loan amount used to be drawn by cheque under his own signature. So he is wholly & solely responsible for the defaulted loan liabilities of the company. In law a company is an artificial juristic person. If it is so, then Albert Davit (Bangladesh) Ltd. may be considered as a body of which the petitioner Mr. Shafi A. Choudhury is its heart/soul. The respondent bank filed Artha Rin Suit No.45/2003 in the Artha Rin Court, No.3, Dhaka against the company Albert Davit (Bangladesh) Ltd. impleading the petitioner as its sole responsible person. The suit has been decreed on 25-4-2012 against the petitioner. As such it has been established by the Court's verdict that the petitioner is the only person wholly and solely responsible for repayment of liabilities of the company.

12. Therefore, on the basis of above submissions the learned counsel for the respondent-Pubali Bank as well as Bangladesh Bank by summing up their arguments unequivocally submit that according to Article 43 and 44 of Chapter IV of the Bangladesh Bank Order 1972, Bangladesh Bank is empowered to collect credit information from banks and financial institutions. On the basis of the credit information provided by the concerned Bank or financial Institution, Bangladesh Bank prepares the CIB report of the concerned persons and organizations in good faith in order to discharge its statutory obligations. However, exact information supplied by the Banks/Financial Institutions is contained in the CIB data base without any amendment or alternation in terms of the statute. In the instant petition, the issue whether the writ petitioner was a defaulter or not, whether he was guarantor or not, whether he was a director or not can be determined only through evaluation of the facts and circumstances of the case which is best known to the lender Bank who is the relevant party in tne petition. As per the statute Bangladesh Bank is empowered to discharge its duty which they did in the present case and there is no illegality in that respect on the part of Bangladesh Bank and, as such, the instant Rule is liable to be discharged so far as it relates to the Bangladesh Bank.

13. We have heard the learned counsel of

both sides and considered their submissions carefully. We have gone through the entire Annexures of the petition and affidavit-in-oppositions filed by the respondents with precision. At the outset we want to refer to the agreement for sale entered into between the Government of Bangladesh the 1st party and M/S. Albert Davit (Bangladesh) Ltd. as the 2nd party. In the said agreement the petitioner Shafi A. Choudhury put his signature on behalf of the 2nd party i.e. the Company. Let us refer to a pertinent portion of the said agreement dated 7-4-1984, which is as under:

> "NOW, THEREFORE, this indenture witnesseth as follows:—1. THE FIRST PARTY agrees to sell and the shareholders and the highest bidder of the SECOND PARTY agree to purchase of the demised enterprise on "AS IS Where Is Basis" on the 7th April, 1984 on the terms and conditions set out in the following paragraph."

14. Admittedly the petitioner himself on behalf of the company has taken loan from respondent Pubali Bank by executing all the charge documents of the bank. The petitioner does not also dispute the fact of taking loan and other issues which are long standing unsettled matters mainly related to the payment of loan taken by him of course on behalf of the company. There is no denying that the elementary principle of company law is that the company is a legal entity distinct from of its members. We distinctly observe that though the Company Law governs its field with all the trappings of its own but at the same time the Banking Companies Act is also an independent Special law that rules with authority altogether the different aspect related with the banking matter and stands absolutely on a different footing. By inducting the above elementary principle of company law the cause of action which has arisen under the Banking law cannot be given a go by. This sort of exercise should not be approved in any manner being beyond the scope of jurisprudence. Therefore, we hold that the inference since the petitioner is the Chairman and Managing Director of the Company which is an artificial person and for that reason he is absolved from the clutches of taking loan from the respondent bank has no backup of law and no legs to stand.

15. Banking Companies Act has an epitome of its own. When the provisions of the banking Companies Act will be in derogation to other provisions of other laws, then the provisions specifically provided in the Act shall have to be followed only. In the case of *Belal Hossain vs Kazi Jane Alam and others, 13 MLR (AD) 74* our Appellate Division have held that section 2 of the Act, 1991 provides that provision of said Act shall not affect the provisions of any other law for the time being in force and also not in addition to the provision of any other existing law. *(All underlings are mine)*

16. Under the backdrop of the discussion as made above let us now go through the laws in the amended Bank Companies Act 1991 since it is the next approach to appreciate the cardinal issue before us. Firstly let us glean the law that governs the method of enlistment of the names of the defaulter persons and also স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠান in the CIB list. Law is very much clear and unambiguous. An elaboration and expansion of the law has been perfected by the amendment in the year 2013 (By Act No.27). The life line of the law in the context of the case in hand is section 5 GaGa which has categorized a defaulter borrower or so to say has given the definition of defaulter borrower. Amended section 5 GaGa runs as follows:—

> ৫(গগ) খেলাপী ঋণ গ্রহীতা অর্থ কোন দেনাদার ব্যক্তি বা প্রতিষ্ঠান যাহার নিজের বা স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠানের অনুকূলে প্রদত্ত অগ্রীম ঋণ, বা উহার অংশ বা উহার উপর অর্জিত সুদ বাংলাদেশ ব্যাংক কর্তৃক জারীকৃত সংজ্ঞা অনুযায়ী মেয়াদোত্তীর্ণ হওয়ার ৬(ছয়) মাস অতিবাহিত হইয়াছে:
>
> তবে শর্ত থাকে যে, খেলাপী গ্রহীতা কোন পাবলিক লিমিটেড কোম্পানীর পরিচালক না হইলে অথবা উক্ত কোম্পানীতে তাহার বা উহার শেয়ারের অংশ ২৫% এর অধিক

না হইলে, উক্ত পাবলিক লিমিটেড কোম্পানী স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠান বলিয়া গণ্য হইবে না।

17. The legislature in the said amended law inserted the word "দেনাদার" and cleared the ambiguity whatsoever or at all in respect of definition and scope of defaulter borrower. Further in section 5 (Chha) of the Banking Companies Act definition of "দেনাদার" has been given in the following manner :—

"৫(ছ) দেনাদার অর্থ লাভ ক্ষতির ভাগাভাগি, খরিদ বা ইজারার ভিত্তিতে বা অন্য কোন ভাবে আর্থিক সুযোগ সুবিধা গ্রহণকারী ব্যক্তি কোম্পানী বা প্রতিষ্ঠান এবং কোন জামিনদারও ইহার অন্তর্ভূক্ত হইবে।"

Section 27 KaKa stands as it is:

"২৭কক। খেলাপী ঋণ গ্রহীতার তালিকা-ইত্যাদি। (১) প্রত্যেক ব্যাংক কোম্পানী বা আর্থিক প্রতিষ্ঠান, সময় সময়, উহার খেলাপী ঋণ গ্রহীতার তালিকা বাংলাদেশ ব্যাংকে প্রেরণ করিবে।

(২) উপ-ধারা (১) এর অধীন প্রাপ্ত তালিকা বাংলাদেশ ব্যাংক দেশের সকল ব্যাংক কোম্পানী ও আর্থিক প্রতিষ্ঠানে প্রেরণ করিবে।

(৩) কোন খেলাপী ঋণ গ্রহীতার অনুকুলে কোন ব্যাংক কোম্পানী বা আর্থিক প্রতিষ্ঠান কোনরুপ ঋণ সুবিধা প্রদান করিবে না।

(৪) আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন খেলাপী ঋণ গ্রহীতার বিরুদ্ধে ঋণ প্রদানকারী ব্যাংক কোম্পানী বা ক্ষেত্রমত আর্থিক প্রতিষ্ঠান প্রচলিত আইন অনুসারে মামলা দায়ের করিবে।

18. If we evaluate all these the laws having bearing on the issue together with the factual aspect of the case it becomes clear that the agreement that was executed in the year 1984 clearly speaks that the petitioner bought the incumbent company ("AS IS Where Is Basis") assuming all the liabilities of the same. Further we have already stated that there is no dispute that the petitioner in his individual capacity obtained the loan from the respondent-Pubali Bank after furnishing charge documents and complying with the other boundened formalities. And Banking Companies Act has pinpointed the situation that leads to enlistment of the name of any defaulter borrower (দেনাদার) in the CIB list. In many a decision the Appellate Division and this Division finally set at rest that the process of enlistment of any defaulter name in the CIB list is a continuing process within the meaning of section 5 GaGa read with section 27 KaKa of Banking Companies Act 1991 and also read with Article 42 of Bangladesh Bank Order 1972. If all these provisions are read together one and only inference that could be made is that if any person or a company is indebted to in any manner with any Financial institution and the debt remains unpaid, it is the duty of the respondent Bangladesh Bank in its turn to enlist the name of the incumbent in the CIB list nothing more nothing less. With the amendment of section 5 GaGa the definition as it could be found now contains a wider version of the category of persons to be included as defaulter borrower.

19. That being the situation we hold that the main argument of Mr Rafique-ul-Hoque is a fallacious one under the facts and circumstances of the present case. By bringing the elementary principle of company law as it has been stated the settled provision of Banking Companines Act cannot be given a go by. The petitioner herein is indeed a defaulter borrower within section 5 GaGa read with section 27 KaKa of the Bank Company Act and Article 42 of Bangladesh Bank Order 1972.

20. On the conspectus, the irresistible result that follows that this Rule should be discharged with cost.

21. In the result, the Rule is discharged with cost. The order of stay granted earlier by this Court is hereby recalled and vacated.

Communicate this order at once.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Zinat Ara J
SH Md Nurul Huda
Jaigirdar J

Judgment
November 14th, 2013.

Golam Sarwar...Applicant
vs
Commissioner of Taxes...
.....Respondent*

Income Tax Ordinance (XXXVI of 1984)
Section 92(1)(2)(b)

Under section 92(l)(2)(b) of the Ordinance any proceeding which could have been taken against the deceased, if he had not died, may be taken against the legal representative and all the provisions of Ordinance shall, so far as may be, apply accordingly. Assessee will be liable to pay taxes on the income of the deceased proportionate to his shares for all assessment years. .....(16 & 23)

Mustafa Kamal Mansoor, Advocate—For the Applicant.

Md Abu Amzad, DAG with Mahfuza Begum, AAG—For the Respondent.

Judgment

Zinat Ara J: The above three Income Tax Reference Applications under section 160(1) of the Income Tax Ordinance, 1984 (hereinafter referred to as the Ordinance) have arisen out of a common order dated 9-9-2003 passed by the Taxes Appellate Tribunal, Chittagong Bench, Chittagong in Income Tax Appeals No. 289 of 2003-04 (assessment year 1996-97), 299 of 2003-04 (assessment year 1997-98) and 300 of 2003-04 (assessment year 1998-99).

*Income Tax Reference Application No. 674, 675 and 676 of 2003

2. The assessee-applicant, Golam Sarwar (hereinafter stated as the assessee) is the elder son of Late Alhaj Golam Mowla. Alhaj Golam Mowla had died on 19-5-1999. Late Alhaj Golam Mowla, father of the assessee-applicant, was not an income tax assessee during his life time. The Assistant Commissioner of Taxes, Survey Circle-2, Chittagong (the ACT, in brief), *suo-muto* initiated income-tax proceeding on 12-2-2002 for the purposes of assessment of property income of Late Golam Mowla under sections 84/93/92(1) of the Ordinance long after the death of Alhaj Golam Mowla. The assessee-applicant was made the legal representative of Late Alhaj Golam Mowla although all of his legal heirs became the owners of the properties left by him by way of inheritance from 19-5-1999.

3. The assessee was not served with statutory notices properly as required under the Ordinance before completion of the assessment on 30-6-2002 for assessment of five years. Therefore, the assessee could neither file income tax returns nor contest the proceedings. Only one notice was issued under section 92 of the Ordinance against the assessee. The assessee came to know about the assessment from the Inspector of Survey, Circle-2, Chittagong (shortly, the Inspector) and on taking information came to know about the ex-parte assessment. Thereafter, he obtained certified copies of the assessment orders. The ACT estimated the total income of the assessee at Taka. 5,41,440; 5,41,440 and 9,58,905 for the assessment years 1996-97, 1997-98 and 1998-99 respectively on 30-6-2002, on the basis of baseless inspector's report dated 12-2-2002. The assessee was not afforded with any opportunity for rebuttal of the report of the Inspector.

4. Being aggrieved, the assessee preferred appeals আয়কর আপীল পত্র ৩, ৪, ৫/জরীপ-২/২০০২-২০০৩ before the Appellate Joint Commissioner of Taxes, Appellate Range-3, Chittagong (hereinafter mentioned as the AJCT) on the grounds

that the ACT assessed 100% property income for the assessment years 1996-97 to 1998-99 and 2/5th property income for the assessment years 1999-2000 to 2000-2001 on the assessee and he side by side has also assessed separately shares of the properly income on the individual other three legal heirs namely,- (i) Shamsun Nahar (widow wife), TIN 285-103-8807, (ii) Nahima Akter (daughter), TIN 285-103-8794 and (iii) Shahin Akter (daughter), TIN 285-103-8786. The ACT did not serve any statutory notice under sections 93, 83(1) and 79 of the Ordinance before assessment. The AJCT without considering the above legal and factual aspects disallowed the appeals on examination of the assessment orders by a common order dated 24-12-2002, as no one was present at the time of hearing of the appeal. Thereby, the AJCT affirmed the assessment orders of the ACT.

5. Against the said common appeal order, the assessee preferred Income Tax Appeals No. 298 of 2003-04, 299 of 2003-04 and 300 of 2003-04 for the assessment years 1996-97, 1997-98 and 1998-99 respectively before the Taxes Appellate Tribunal, Chittagong Bench, Chittagong (hereinafter mentioned as the Tribunal). The Tribunal upon hearing disallowed the appeals and affirmed the order of the AJCT by a consolidated order dated 9-9-2003.

6. In the above backdrop, these three income tax reference applications have been filed posing the following identical questions for answers by the court:

(a) Whether on the facts and circumstances of the case, the learned Appellate Tribunal, Chittagong Division Bench, Chittagong was correct in law in confirming the appeal order in regard to assessments in case of deceased under section 84/93/92(1) of the Income Tax Ordinance, 1984 when Assistant Commissioner of Taxes, Survey Circle-2, Chittagong did not start the proceedings before the death of deceased Alhaj Golam Mowla as per provisions of section 92 of the Income Tax Ordinance, 1984?

(b) Whether Appellate Tribunal, Chittagong Bench, Chittagong was correct in law in confirming appeal order regard to assessment under section 84/93/92(1) when services of notices were not served to the applicant before assessments?

(c) Whether the Inspector's report dated 12-2-2002, can be the basis of the assessment without affording any opportunity to the applicant for rebuttal and controverting the said report?

(Slightly corrected by us)

7. The respondent contested those income tax reference applications by filing separate affidavits-in-reply controverting the assertions made in the reference applications and supporting the common order of the Tribunal.

8. It has been stated that separate income of legal heirs came into operation for the purpose of assessment from 20-5-1999 after the death of Alhaj Golam Mowla. Therefore, assessments were lawfully made against the assessee-applicant as legal representative of the deceased as per provision under section 92(1)(2) of the Ordinance, Notices were duly issued upon the elder son of the deceased Alhaj Golam Mowla who is the legal representative to the estate of the deceased. The original owner admittedly did not submit his income tax returns although he had definite source of income being taxable income and he also owned a building. So, the income escaped assessment for the assessment years from 1996-97 to 2000-2001. Although statutory notices were sent through registered post which were also recorded in the order sheet and the margin of the

order sheet of respective assessment years and the registration slips were preserved in the income tax records as per provision of section 178 of the Ordinance, but the assessee did not appear. The Inspector of the Taxes is an authority under section 3(9) of the Ordinance and so, assessments on the basis of the Inspector's report were lawful. Therefore, the Tribunal was legally justified in confirming the assessment orders as well as the common order of the AJCT. The questions raised in these reference applications are irrelevant, untenable, without basis and related to determination of questions of facts and, as such, the reference applications are liable to be rejected without answering the questions raised thereto.

9. Mr. Mostafa Kamal Mansoor, the learned Advocate for the assessee-applicant, takes us through the income tax reference applications, the assessment orders passed by the ACT, the order passed by the AJCT and the Tribunal and the provisions of section 92 of the Ordinance and forwarded before us the following arguments:—

(i) admittedly, Alhaj Golam Mowla had died on 19-5-1999 and he was not an income tax assessee during his lifetime;

(ii) since Alhaj Golam Mowla was not an assessee at any time before his death, there is no scope to issue any notice upon his legal representative and to make assessment of his income prior to his death;

(iii) Alhaj Golam Mowla had died leaving the assessee-applicant as son, a wife and two daughters and, as such, treating the assessee-applicant as the sole legal representative of the deceased; assessing income tax upon him only and directing him to pay the taxes for his deceased father alone are without lawful authority. It is true that this question was not raised before the Tribunal, but from the assessment orders, it is evident that Alhaj Golam Mowla had died leaving other heirs also and so, this ground may be considered in an income tax reference application, as it is an admitted fact and not a disputed question of fact;

(iv) notices were not served upon the assessee in accordance with law and so, the assessment orders are unlawful;

(v) the assessee was not given any opportunity for rebuttal of the report of the Inspector of Taxes and, as such, there has been violation of natural justice in considering the Inspector's report at the time of making assessments;

(vi) in view of the above, the Tribunal was not justified in upholding the order of the AJCT affirming the assessment orders. So, the questions posed in these reference applications are liable to be answered in favour of the assessee-applicant.

10. However, Mr Mansoor has admitted that the questions of non-service of notices as well as not affording with any opportunity to the assessee for rebuttal of the Inspector's report was neither taken before the Tribunal nor decided by the Tribunal.

11. Appearing with the leave of the Court, in reply, Mr Md Abu Amzad, the learned Deputy Attorney-General on behalf of the respondent-department being assisted by Ms. Mahfuza Begum, the learned Assistant Attorney General, submits as under:—

(i) under section 92(2)(b) of the Ordinance any proceeding which could have been taken against the deceased, if he had not died, may be taken against his legal representative, so far as it may be applied in such case;

(ii) admittedly, the assessee-applicant is the elder son of the deceased and so, he is the legal representative of the deceased;

(iii) the notice under section 92 of the Ordinance was, therefore, legally served upon the assessee and assessment was also made legally against him;

(iv) in the above view of the matter, question (a) is liable to be decided in favour of the respondent-department.

(v) all the statutory notices were duly served upon the assessee and the questions about non-service of notice and affording with any opportunity to the assessee for rebuttal of the Inspector's report were not taken before the Tribunal by the assessee. So, those cannot be raised in an income tax reference applications;

(vi) as the questions (b) and (c) do not arise out of the consolidated order of the Tribunal and determination of disputed facts are necessary to decide questions (b) and (c), these questions cannot be decided in an income tax reference application. So, answers are not required to questions (b) and (c).

12. Mr. Abu Amzad, however, frankly concedes that the assessee- applicant is not the sole legal heir of the deceased and that he is unable to show that only the eldest son can be treated as legal representative of the deceased excluding the other heirs.

13. We have examined the reference application and the connected the materials record Viz. the assessment orders (Annexure-A to the reference applications), the order passed by the AJCT in the First Appeal (Annexure-B to the reference applications), and the order of the Tribunal (Annexure-C to the reference applications). We have also studied the relevant provision of section 92 of the Ordinance carefully.

14. Let us first examine of question (a). It transpires that it is not proper question in the facts and circumstances of these cases. Therefore, question (a) is reformulated by us in the following manner:—

(a) Whether on the facts and circumstances of the case the Taxes Appellate Tribunal was legally justified in affirming the appeal order with regard to the assessment years 1996-97, 1997-98 and 1998-1999?

15. To decide question (a), it is necessary to scrutiny the provision of section 92 of the Ordinance, as prevalent, in the assessment year in question. For better understanding, the said provision is quoted below:—

"92. Assessment in case of income of a deceased person,—

(1) Where a person dies, his legal representative shall be liable to pay any tax or other sum payable under this Ordinance which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased; and the legal representative of the deceased shall, for the purposes of this Ordinance, be deemed to be an assessee:

Provided that before deeming the legal representative of the deceased to be an assessee, a notice to that effect shall be issued to him by the Deputy Commissioner of Taxes.

(2) For the purposes of making an assessment of the income of the deceased and recovery of tax,—

(a) any proceeding taken against the deceased before his death shall be

deemed to have been taken against the legal representative and may be continued from the stage at which it stood on the date of the death of the deceased; and

(b) **any proceeding which could have been taken against the deceased, if he had not died, may be taken against the legal representative;**

and all the provisions of this Ordinance shall, so far as may be, apply accordingly.

(3) The liability of legal representative under this Ordinance shall be limited to the extent to which the estate of the deceased is capable of meeting the liability.

(4) For the purposes of this section and other provisions of this Ordinance in which the rights, interest and liabilities of the deceased arc involved, "legal representative" includes an executor, an administrator and any person administering the estate of the deceased. *(Bold, supplies emphasis)*

16. Thus, it is evident that under section 92(l)(2)(b) of the Ordinance any proceeding which could have been taken against the deceased, if he had not died, may be taken against the legal representative and all the provisions of this Ordinance shall, so far as may be, apply accordingly. Therefore, we are unable to accept the submission of the learned Advocate for the applicant that if the deceased was not an assessee prior to his death, assessment cannot be made by the DCT/the ACT against his legal representative.

17. We have already seen that the DCT/the ACT had jurisdiction to initiate proceeding for the purpose of assessment, even where the deceased was not an assessee, against the legal representative of the deceased.

18. In the instant cases, it is not disputed that the assessee-applicant is the eldest son of the deceased and the deceased also left his wife Shamsun Nahar, two daughters Nahima Akter and Shahin Akter as his legal heirs. Their TIN numbers were also mentioned in paragraph 12 of the reference application.

19. Admittedly, the ACT treated only the elder son Golam Sarwar as legal representative of deceased Alhaj Golam Mowla. As Alhaj Golam Mowla had died leaving three other legal heirs, the assessee-applicant ought not to have been made the sole legal representative of the deceased in absence of any proof that the assessee was administrating the estate of the deceased. Thus, the assessee was legal representative only to certain shares of the property left by the deceased and, as such, he cannot be treated as sole legal representative of the deceased. It is true that this question was neither raised nor decided by the Tribunal but the fact that Alhaj Golam Mowla had died leaving the assessee and other legal heirs is an admitted fact and so, this legal question may be looked into in a reference application.

20. Therefore, our considered view is that the ACT was not justified in treating the assessee as sole legal representative of the deceased and in imposing full taxes upon him for the assessment years 1996-1997 and 1997-1998.

21. However, from the assessment order of the year 1998-1999, it transpires that entire tax was not, in fact, imposed upon the assessee, rather tax was imposed on of the assessee on part of the income of the deceased. But from the assessment orders and the order of the Tribunal it is not clear about the calculation of income on the share of the assessee for the deceased and the taxes to be paid by him as one of the legal representative (heir) of the deceased.

22. So, we find merit in part of the submissions of the learned Advocate for the assessee-applicant.

23. In view of the above, we are of the view that the Tribunal was not legally justified in

affirming the order of the AJCT who affirmed the order of the ACT about treating the assessee as the sole legal representative of the deceased. However, the assessee will be liable to pay taxes on the income of the deceased proportionate to his shares for all the aforesaid assessment years.

24. Thus, considering the facts and circumstances of the case, vis-a-vis the law, we are of the view that the matter should be revert back to the Tribunal for deciding the proportionate amount of income of the deceased which falls in the share of the assessee for the purpose of payment of taxes by the assessee for the aforesaid assessment years for the income of the deceased.

25. Questions (b) and (c) are related to non-service of notices upon the assessee-applicant and affording an opportunity to the assessee for rebuttal/controverting the Inspector's report dated 12-2-2002.

26. On examination of the Tribunal's order, it transpires that these two questions were neither raised before the Tribunal nor decided by the Tribunal. Therefore, questions (b) and (c) having not arisen out of the order of the Tribunal and the questions being co-related with determination of facts, these two questions cannot be decided in an income tax reference application under section 160 of the Ordinance like a court of appeal. So, answers are not required to questions (b) and (c) to these income tax reference applications.

27. In the result, no answers to questions (b) and (c) and the appeals are remanded to the Tribunal to decide part of question (a) in the light of observations made in the body of the judgment.

28. No cost.

The Registrar, Supreme Court of Bangladesh, is to take necessary steps under section 161(2) of the Income Tax Ordinance, 1984.

Ed.

HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Sharif Uddin Chaklader J Abu Taher Md Saifur Rahman J	Sunny Fish Agency and Trading..... ...Decree-Holder-Petitioner vs
Judgment March 5th, 2014.	Bangladesh Catfish Ltd and others.....Judgment-Debtor-Opposite Parties*

Code of Civil Procedure (V of 1908)
Section 2(2)

Decree is divine sacred and holy which cannot be altered, varied, modified and amended by the same court at the wish of any one. .....(13)

Maksud Ali vs Eskandar Ali 28 DLR (AD) 99; Bharat Heavy Electricals Ltd. vs RS Avtar Singh & Co and Motilal, Banker vs Maharaj Kumar Mahmood Hasan Khan, AIR 1968 SC 1087 ref.

Abdul Quayum, Advocate with Md Harun-ur-Rashid, Advocate—For the Decree-Holder-Petitioner.

Ramzan Ali Sikder, Advocate—For the Judgment-Debtor-Opposite Parties.

Judgment

Sharif Uddin Chaklader J: This rule, at the instance of decree-holder, directed against judgment and order dated 18-10-2012 passed by the learned Joint District Judge, 1st Court, Khulna deducting the amount of vat and income tax from decree finally passed in Money Suit No. 16 of 2004.

2. Petitioner as plaintiff filed Money Suit No. 16 of 2004 for realization of Taka 6,18,57,952 with 16% interest till realization of the said amount. Upon contested hearing the suit was decreed on 16-5-2005 in the following manner i.e.

*Civil Revision No. 3837 of 2012.

the suit be decreed for Taka 2,47,50,109.60 against defendant No. 2, Taka 4,62,74,473 against defendant No. 3 and Taka 16,27,884.96 against defendant No.4, totaling, Taka 8,60,52,496.56, against the aforesaid defendants individually. First Appeal No. 53 of 2006 and First Appeal No. 95 of 2006 were filed before the High Court Division by judgment and decree dated 9-6-2008 heard both the appeals analogously and modified the decree and set-aside the judgment and decree of the learned Joint District Judge so far as it relates to passing decree against defendant No. 2 at Taka 1,87,50,105 from Taka 2,47,50,138.60, against defendant No. 3, Taka 3,50,56,419 in place of 4,62,74,473 against defendant No. 4, Taka 80,51,428 in place of 16,27,884.96 totaling Taka 6,18,57,952 in place of 8,16,52,496.56. Judgment-debtors Nos. 2-4 as petitioner filed Civil Petition for Leave to Appeal No. 2495 of 2009 against the said judgment and order dated 9-6-2008 passed by the High Court Division in First Appeal No. 59 of 2006 on 30-5-2010. The Appellate Division by judgment and order, after hearing the parties, dismissed the Civil Petition, affirming the judgment of the High Court Division. Decree-holder-petitioner filed Money Execution Case No. 2 of 2006 for realization of decreetal amount on 29-1-2006. At the time of final decision of the matter, the judgment-debtor filed application praying for deduction of vat and income tax amount from decreetal amount. Learned Judge by judgment and order allowed the application of defendant and decree was modified from Taka 12,27,46,164 to 11,18,62,352 deducting Taka 1,08,83,812 from the aforesaid amount as vat and income tax.

3. Mr Abdul Quayum with Mr Md Harun-ur-Rashid, learned Advocates, appearing for the decree-holder-petitioner, submits that, executing court has no jurisdiction to modify the decree finally drawn up as law did not permit to pass order frustrating the decree. Learned Advocate further submits that executing court committed an error of law in failing to appreciate that there was no such obligation upon the decree holder to pay the income tax and Vat upon the decreetal amount nor it is the requirement of any law that the judgment debtor will pay the income tax and VAT upon the decreetal amount on behalf of the decree-holder.

4. Mr Ramzan Ali Sikder, learned Advocate, appearing for the judgment debtor-opposite parties, on reference to Income Tax Manual, Part-1 section 52 submits that, law permit defendant judgment-debtor to deduct the amount of income tax and VAT and can pay the amount, and after deducting the amount the judgment-debtor or defendant can pay to the decree holder the balance money to satisfy the decree. Learned Advocate relied on the case of *Maksud Ali vs Eskandar Ali 28 DLR (AD) 99* and also a decision from Indian jurisdiction, made in the case of *Bharat Heavy Electricals Ltd. vs RS Avtar Singh & Co* by the Supreme Court of India in Civil Appeal No. 7239 of 2012. In Bangladeshi decision leave was granted to consider 'in absence of any direction in the decree itself requiring the Court to take steps for obtaining income tax clearance on behalf of the judgment debtors for the purpose of registration of the document, the Executing Court is not competent to take such steps.'

5. In the Indian decision it has decided as:—

> "An amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions adjustments be made firstly towards payment of interest and cost and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.

6. Thereafter, when the Execution Petition No. 208 of 2000 was moved, the appellant took notice and filed application under section 47 of the CPC in EA 522 of 2000 and another application under Order XXI, Rule 26 in application EA

523 of 2000. The learned Single Judge of the Execution Court while granting time for final reply, in the EA 522 of 2000 and 523 of 2000 and rejoinder, if any, before the next date of hearing by order dated 30-1-2001 directed the appellant to deposit in Court a cheque for Rs 1,94,91,077 being the admitted amount in favour of the respondent subject to deduction of tax at source along with TDS certificate. The execution of the warrant of payment issued on 18-10-2000 was directed to be kept in abeyance. The sum of Taka 1,74,93,835 after deduction of tax at source in a sum of Rs 19,97,192 in all a sum of Rs 1,94,91,077 was realized by the respondent with an undertaking of the respondent that in case the Execution Petition found to be not maintainable, he would refund the amount of Rs 1,74,93,835 within a period of four weeks from the date of the order passed under the Execution Petition. The said order was passed on 30-1-2001 by the learned Single Judge by filing an undertaking dated 5-2-2001, the respondent also withdrew the sum of Rs 1,74,93,885. Ultimately the execution was ordered by the learned Single Judge by an order dated 12-7-2002 by calculating subsequent interest only in the remaining principal amount and dismissed the objection petition.

7. When the appellant preferred this appeal against the said order dated 12-7-2002, in EFA (OS) No. 9/2002, an interim order came to be passed on 23-8-2002 directing the appellant to deposit whatever balance amount due after deduction of TDS as per the final order passed by the learned Judge with a further order to realize the said sum subject to restitution and on furnishing security to the satisfaction of the Register."

8. Let us now go through the relevant laws to find whether the executing court can deduct the amount from decree.

9. Before making any comment on law the fact is that defendant against the decree went up to the Appellate Division and it appears nowhere defendant claimed for such deduction. This claim has been raised after decree was finally drawn up, sealed and signed.

10. Now, we refer to the law. Rule 16 of Income Tax Manual part-I and-II and section 52 of Income Tax Manual runs as follows:—

Deduction of tax from payment to contractors, etc:—For the purpose of making a deduction of tax under section 52, persons responsible for making any payment (including a payment by way of an advance) to any other person (including a company, firm, association or Hindu undivided family) on account of supply of goods or execution of a contract to or with the Government or any authority, corporation or body, including its units, the activities or the principal activities of which are authorized by any Act, Ordinance, order of instrument having the force of law in Bangladesh, or any company as defined in clause (20) of section 2 of the Ordinance or any banking company, or any insurance company or any cooperative bank established by or under any law for the time being in force or any Non-government Organization registered with NGO Affairs Bureau or any university or medical college or dental college or engineering college, shall deduct an amount calculated on the payment made at the rates laid down in the Schedule below:

Provided that the tax to be deducted or collected at the time of making payment shall be according to the rates applicable appropriate to the slab of total payments in case the payments are made in part in any financial year:

Provided further that where the Board gives a certificate in writing on the application of any assesse or class of assesses that total income of such assesse or class of assesses who is a recipient of any of any payment will be less than the minimum liable to tax or will be liable to a rate of tax less than the rate specified in the rule, the person responsible for paying any amount on account

of the supply of goods or execution of contract shall, unless such certificate is cancelled by the Board pay the amount without deduction or deduct the tax at a rate less than the rate specified in this rule:

Provided further that where the Board gives a permission in writing on the application of any person responsible for paying any amount on account of the supply of goods or execution of contract under any foreign aided project in Bangladesh, full payment of the bill may be made on production of the copy of challan as proof of payment of tax deductible from such bill."

11. Rule 16 of Income Tax Rule, 1984 is as follows:—

Deduction from payment to contractors, etc:—(1) Where any payment is to be made, whether in full or part, or by way of any advance, on account of indenting commission or shipping agency commission or supply of goods or execution of contract or sub-contract or local letter of credit (L/C) to any such person or class of persons as may be prescribed, the person responsible for making the payment shall at the time of making such payment deduct tax on the amount so payable at such rate as may be prescribed.

(2) Any amount deducted under sub-section (1) shall be deemed to be an advance payment of tax by the payee and shall be given credit for in the assessment of his tax.

12. On a reading of these two laws upon which learned Advocate Mr Ramzan Ali Sikder give much emphasis, we are of the view that these laws relating to the assessee who pay the assessed amount himself, these two laws have no implication or nexus with the payment of money decreed which is between two individuals. Such deduction of amount can be made before filing of the suit or during continuation of the suit, even after judgment but before decree being finally drawn up, not after signed and sealed. Even the defendant could pray for set off instead on paying the defendant amount himself. Learned Judge of the 1st appellate court failed to consider that such deduction amount from the decree finally passed is in gross violation of Order XX, Rule 3 of the Code of Civil Procedure. In the case of *Motilal, Banker vs Maharaj Kumar Mahmood Hasan Khan, AIR 1968 SC 1087* it is held "Order XX, Rule 3 of the Code of Civil Procedure does not affect the executing court to record and enforce the compromise. Order XX, Rule 3 provides that a judgment once signed cannot afterwards be amended or altered save as provided by section 152 or on review. The parties cannot by an agreement confer upon the court the power to amend the decree in contravention of Order XX, Rule 3, or the power to enforce the amended shows that after the passing of the decree the court may order that payment of such terms as to payment of interest as it thinks fit. The two provisions read together show that a direction for postponement of payment of the decretal amount upon the term that the judgment-debtor should pay a reasonable rate of interest is not an alteration of, or addition to the decree."

13. Decree is divine sacred and holy which cannot be altered, varied, modified and amended by the same court at the wish of any one.

14. From the aforesaid discussion it can safely said that these two laws are applicable when the matter has not been gone to the court and decree has not been drawn up. In the case before our hand the decree as drawn up was maintain up to the Appellate Division.

15. Considering all these aspects of the case, we find substance in the rule.

16. In the result, the rule is made absolute without any order as to costs.

17. The judgment complained is set-aside.

Communicate this judgment at once.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Md Ashfaqul Islam J
Md Ashraful Kamal J

Judgment
March 6th, 2014.

Mr Baker Cake and Pastry Shop and others.....
.....Petitioners

vs

Commissioner, Customs, Excise and VAT, and others.....Respondents*

Value Added Tax Act (XXII of 1991)
Sections 37 and 55

After the amendment of the Act in the year 2010 section 55 of the Act has taken a new look. Now the offences under section 37 can be dealt with by giving notice but under section 55 of the Act. By no means it can be said that the amendment has changed the settled proposition of law.

Under the amended law it has become easier on the part of the respondent VAT authority to issue notice directly under section 55 of the Act in which offences under section 37(2) can also be included in a given situation. But there cannot be a direct notice under section 37 of the Act without making a final demand under section 55 (3) of the Act. Time and again the VAT authority has appeared before this Division and we have cautioned them to issue a proper notice in the manner as discussed above which they failed. This time we want to make ourselves clear that after receiving of this judgment and order if for any reason whatsoever the National Board of Revenue, the writ respondents in future fails to issue any notice without mentioning clearly that the said notice has been issued under section 55 of the Act, the consequence will be dire.

.....(13, 14 & 15)

United Mineral Water and PET Industries Ltd. vs Commissioner, Customs Excise, and VAT, 61 DLR 734 and Hotel Zakaria International vs The National Board of Revenue, 30 BLD 388 ref.

AZM Fariduzzaman, Advocate—For the petitioners. (In all the Writ Petitions)

SM Moniruzzaman, Deputy Attorney-General with Khairun Nessa, Purabi Saha, AAGs—For the Respondents. (In all the Writ Petitions)

Judgment

Md Ashfaqul Islam J: All these Writ petitions are taken up together for hearing and disposed of by a single judgment as there involved a common question of law and fact.

2. Almost in a common term in all the petitions the Rule was issued calling upon the respondents to show cause as to why the notice issued by the respondent, Commissioner of Customs, Excise and VAT, Dhaka claiming VAT shall not be declared to have been passed without lawful authority and is of no legal effect.

3. The core issue involved in all the petitions is whether the issuance of notice by the respondent VAT Authority claiming outstanding VAT under section 37 of VAT Act, 1991 (herein after referred to as Act) without fixing the liability of the petitioners under section 55 of the same Act even after the amendment of the VAT Act is legally sustainable. The petitioners being aggrieved as such by the respective orders mentioned in the Rules moved this Division and obtained the present Rule and the order of stay.

4. All the petitions are represented by the learned counsel Mr AZM Fariduzzaman, on behalf of the petitioners. He submits that the orders impugned against are the notices issued directly making a claim under section 37 of the Act without giving a notice under section 55 of the Act and by now it is well settled that nothing short of prior compliance of section 55 of the Act,

*Writ Petition Nos. 1030, 1031, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233 and 1234 of 2013.

the VAT authority by any means cannot go for an action under section 37 of the Act. He also placed reliance on the decision of *United Mineral Water and PET Industries Ltd. vs Commissioner, Customs Excise and VAT* reported in *61 DLR734.*

5. The Rules are not opposed by filing any affidavit-in-opposition on behalf of the respondent. However, on our query regarding the submission pressed into service by the petitioner, the learned Deputy Attorney-General found it difficult to advance any plausible counter argument against the same.

6. Heard the learned Advocate of both sides and gone through the petitions and the impugned orders carefully.

7. In many decisions this Division has decided this issue holding that without fixing the liability under section 55 of the VAT Act, a direct notice under section 37 of the Act cannot be issued.

8. The question now needs to be considered in these Rules is whether the aforesaid *ratio decidendi* shall operate in the same manner after the amendment of the VAT Act, 1991 made under Artha Ain No.25 of 2013.

9. The provision of section 37 of the VAT Act is a penal provision, which can be exercised only after determination of the VAT evaded by any person under a given situation. Section 55 of the VAT Act provides for realization of unpaid or less paid VAT and other taxes. Section 55(1) clearly empowers among others to the concern authority to issue notice of show cause or make demand as the case may be for unpaid VAT, or less paid VAT would not be deposited and adjusted.

10. Section 55(3) provides for hearing on the basis of reply, if any, submitted to such notice and after such hearing to make the demand final. This is exactly what has been observed in the decision of *United Mineral Water and PET Industries Ltd. vs Commissioner, Customs Excise and VAT* reported in *61 DLR 734.*

11. In that decision, Justice Md. Abdur Rashid on this issue observed:

> "If the entire provision of section 55 is considered then it would be clear that section 55 empowers the concerned VAT authority to take steps for realization of unpaid or less paid VAT or tax, upon first issue of a notice asking to show cause and then, upon hearing, within 90 days to make a final demand in respect of any VAT or tax unpaid, evaded or less paid."

He further observed:

> "On the other hand, section 37 of the said Act defines various offences and punishments for such offence. Before any final demand could be made under section 55(3), none of the provisions of section 37 could be resorted to. It is needless to say as the fiscal law demands strict interpretation so equally demands for strict application by an authority authorized to apply. The VAT Act is a comprehensive tax law. It has defined the tax to be paid as VAT on the specified sales and/or services. Similarly, it has laid down elaborate procedure for realization of the tax and punishment for any violation or omission. The concerned authority is therefore, duty bound to follow the procedure as laid down in the Act for each and every action. The Act does not empower any of the authorities created to become zealot to overpower and/or overawe any tax payer. Invoking and/or resorting to section 37 while issuing a notice under section 55(1) of the VAT Act therefore, could not be said to have been issued bonafide for the simple reason that at the time of issue of the notice, the authority concerned had not yet arrived at as to any evasion of VAT by the petitioner."

12. We are in respectful agreement with the observations made in the decision cited above. This principle was also applied in the case of *Hotel Zakaria International vs The National Board of Revenue 30 BLD 388* where one of us was a party. On the conspectus, we hold that nothing short of prior compliance of section 55 of the VAT Act, the VAT authority by any stretch of imagination cannot go for an action under section 37 of the VAT Act, which is a penal provision. Liability has to be fixed first under section 55 of the Act nothing more nothing less.

13. Now comes the focal point that needs to be addressed. We hold that the aforesaid *ratio decidendi* operates in the same manner even after the amendment of section 55 of the VAT Act, 1991 by Artha Ain No. 25 of 2013. We want to mention in this context that after the amendment of the Act in the year 2010 section 55 of the Act has taken a new look. Now the offences under section 37 can be dealt with by giving notice but under section 55 of the Act. By no means it can be said that the aforesaid amendment has changed the settled proposition of law as discussed above.

The amended law runs thus:—

"৫৫। [১][অনাদায়ী ও কম পরিশোধিত মূল্য সংযোজন করসহ অন্যান্য [২][শুল্ক ও কর] আদায়]।–[৩](১) যেক্ষেত্রে কোনো নিবন্ধিত বা নিবন্ধনযোগ্য ব্যক্তি বা টার্নওভার কর এর আওতায় তালিকাভুক্ত বা তালিকাভুক্তির যোগ্য ব্যক্তি, তদকর্তৃক ধারা ৩৭ এর উপ-ধারা (২) এ বর্ণিত এক বা একাধিক [৪][অপরাধ সংঘটনের] কারণে অথবা: ভুল ব্যাখ্যার কারণে, সরবরাহকৃত পণ্য বা প্রদত্ত সেবার উপর প্রদেয়–

(ক) মূল্য সংযোজন কর বা, ক্ষেত্রমত, মূল্য সংযোজন কর ও সম্পূরক শুল্ক ধার্য বা পরিশোধ করা হয় নাই,

(খ).....

(গ).....

(ঘ).....

সেক্ষেত্রে উক্ত ব্যক্তিকে তাহার উপর যে তারিখে উক্ত মূল্য সংযোজন কর বা, ক্ষেত্রমত, মূল্য সংযোজন কর ও সম্পূরক শুল্ক প্রদেয় হইয়াছিল বা প্রত্যর্পণ বা ফেরত প্রদান বা সমন্বয় করা হইয়াছিল সেই তারিখ হইতে পাঁচ (৫) বৎসরের মধ্যে সংশ্লিষ্ট মূল্য সংযোজন কর কর্মকর্তা নোটিশ দ্বারা, নোটিশে উল্লিখিত শুল্ক বা মূল্য সংযোজন কর দাবি করিয়া, উহাতে উল্লিখিত সময়সীমার মধ্যে উক্ত শুল্ক বা মূল্য সংযোজন কর পরিশোধের জন্য কারণ দর্শানো নোটিশ জারি করিবেন।"

(Underlings are mine)

14. Under the amended law it has become easier on the part of the respondent VAT Authority to issue notice directly under section 55 of the Act in which offences under section 37(2) can also be included in a given situation. But there cannot be a direct notice under section 37 of the Act without making a final demand under section 55(3) of the Act.

15. Time and again the VAT Authority has appeared before this Division and we have cautioned them to issue a proper notice in the manner as discussed above which they failed. This time we want to make ourselves clear that after receiving of this judgment and order if for any reason whatsoever the National Board of Revenue, the writ respondents in future fails to issue any notice without mentioning clearly that the said notice has been issued under section 55 of the Act, the consequence will be dire. Let this aspect be set at rest once for all.

16. Resultantly, the impugned notices issued in all the petitions should be declared *ex-facie* illegal and without lawful authority. Accordingly, all the Rules are made Absolute. The orders impugned against are declared to have been passed without lawful authority and of no legal effect and, as such, set-aside. However, the respondents will be at liberty to issue fresh notices in the manner as decided above.

Let this order be communicated at once to the concerned authorities for future reference.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Mirza Hussain Haider J
Md Khurshid Alam Sarkar J

Judgment
November, 21st 2013.

Jamal Uddin (Md).....
.....Petitioner
vs
Major General Abdus Salam (Retired) and others.....Respondents*

Constitution of Bangladesh, 1972
Article 102(2)

Writ of *Quo warranto* and *Certiorari*—We do not find any scope to convert the present *quo warranto* proceeding into the *certiorari* for the reason that the petitioner is not an 'aggrieved person' but 'any person'.

However, the ratio decidendi of the cited Indian case is not applicable in the present case given that it was a certiorari petition where his *locus standi* was already approved by the Court as a "person aggrieved" and a "person aggrieved" may also convert his position into 'any person' as required for becoming a petitioner in a writ of quo warranto proceeding. However, a petitioner of a quo warranto proceeding being "any person" requires to convert himself into an 'aggrieved person' for which his standing is to be established as was done in the aforecited case of Justice Shahabuddin Ahmed. In the light of the fact that the petitioner has not portrayed himself as a 'person aggrieved' and this Court also finds it difficult to carry out an exercise as was done by the Court in the case of Chief Justice Shahbuddin. .....(55)

Constitution of Bangladesh, 1972
Article 66(4)

After declaration made by this Court that respondent No.1 is a disqualified person to perform function as a Member of Parliament, provisions laid down in Article 66(4) shall come in to operation and, accordingly, the office of the Hon'ble Speaker may be notified about the outcome of this case. .....(56 & 59)

Constitution of Bangladesh, 1972
Article 102

Common concern—The subject matter of the writ petition comes within the purview of 'common concern' of the commoners in that the post of Member of Parliament, whose primary duty is to legislate the law, should not be portrayed to the general people that a law maker is holding the portfolio by violating the law. .....(56)

Constitution of Bangladesh, 1972
Article 66(4)

The very purpose of the enactment of this piece of legislation was to put the 'loan defaulter' class away from election but if the said 'loan defaulter' people get chance to contest in the election by abusing the process of the Court, the legislation is rendered nugatory. .....(61)

AFM Shah Alam vs Mujibul Huq, 41 DLR (AD) 68; Mahmudul Haque (Md) vs Md Hedayetullah, 48 DLR (AD) 128; AKM Mayeedul Islam vs Bangladesh Election Commission, 48 DLR (AD) 208; Dr Mohiuddin Khan Alamgir vs Government of the People's Republic of Bangladesh, 62 DLR (AD) 425; University of Mysore vs Govind Rao AIR 1965 SC 491; Lt. Col. Farzand Ali vs Province of West Pakistan 22 DLR (SC) 203; Abu Bakar Siddique vs Justice Shahbuddin Ahmed, 49 DLR 1; Panjab Land Development & Reclamation Corporation Ltd vs Presiding Officer, Labour Court (1990) 3 SCC 682, Mamleswar vs Kanhaiya AIR 1975 (SC) 907; Nilkantha vs Manmohan (1975) CLJ 404; Daud vs Bangladesh, 17 BLC 506; Abdur Rob Miah vs District Registrar, 4 BLC (AD) 8; Dr. Kamal Hossain vs Mohammad Sirajul Islam,

*Writ Petition No. 2555 of 2013.

21 DLR (SC) 23; Shaikh (Md) Obaidullah Raihan vs Sayed Shahidul Haque Jamal, 54 DLR 280; Dildar Ahmed vs Farroque Ahmed, 27 DLR (AD) 138; BN Khan Degree College vs Abdur Rahim, 7 BLT (AD) 153; Satish Chandra vs Dharanidhar, AIR 1940; Sinha Ramanigh vs Ranga Rananaja, AIR 1961 SC 1720; Lutfar Rahman vs Waliur Rahman, AIR 1943 Cal. 59; LIC of India vs India Automobiles, AIR 1991 SC 884; Secretary of State vs Mark, AIR 1940 PC 105; Illuri vs AP, AIR 1964 SC 322; Gurbux Singh vs Financial Commr, AIR 1991 SC 435; Solaiman Bibi vs Administrator 45 DLR 727; Md Shahidullah vs Abdus Sohan, 1996 BLD 423 = 49 DLR 248; Kamrul Ahsan vs Ziauddin, 11 BLT 63; Dwaraka Prasad vs Ramesh Chandra, AIR 2003 SC 2696; Shamsuddin vs Shamsuzzaman 22 DLR 655; Deputy Secretary vs Nizamuddin Haider, 1985 BLD 57 = 37 DLR 102; University of Mysore vs Govinda Rao, AIR (SC) 491 and Haryana vs Harayana Co-operative Transport Ltd, AIR 1977 (SC) 237, ref.

M. Quamrul Haque Siddique with AKM Alamgir Parvez, Advocates—For the Petitioner.

Rokanuddin Mahmud with Syed Mamun Mahbub, Advocates—For Respondent No.1.

M. Khaled Ahmed with Md Ashiqur Rahman, Advocates—For Respondent No. 7.

Judgment

Md Khurshid Alam Sarkar J: This Rule has been issued calling upon the respondents to show cause as to why the holding of the Office of the Member of Parliament (MP) from the constituency No. 154 Mymensingh-9 (Nandail) by respondent No. 1, as declared by the Election Commission, shall not be declared to have been held without lawful authority and of no legal effect and, further, to show cause as to why respondents No. 2 and 4 shall not be directed to declare the seat of the Member of Parliament from the constituency No. 154 Mymensingh-9 (Nandail) held by respondent No. 1 vacant and thereby hold fresh election for the said seat within 90 days from the date of decision, and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. Succinctly, the facts of the case, as stated in the writ petition and supplementary affidavit, are that the petitioner, by virtue of being an inhabitant of Village-Tashra, Upazilla-Nandail, District-Mymensingh, is a constituent of constituency No. 154, Mymensigh-9 (Nandail) wherefrom Major General (retired) Abdus Salam (hereinafter referred to as respondent No. 1) has been elected in the 9th parliamentary election and since then holding the post of Member of Parliament (MP). In the estimation and consideration of the petitioner, respondent No. 1 is a disqualified person to be elected and, thereby, to hold the public office of MP, as per provisions of our Constitution and Representation of the People's Order, 1972, and, as such, the petitioner has brought this application under Article 102(b)(ii).

3. It is stated that on 23-11-2008 respondent No. 1 submitted his nomination paper as a candidate of 9th parliamentary election for the constituency No. 154, Mymensingh-9 (Nandail) and on 4-12-2008 the same was cancelled by the Returning Officer (hereinafter referred to as respondent No. 9) on the ground of being a 'loan defaulter' and when an appeal was preferred by respondent No. 1, the Election Commission (hereinafter referred to as respondent No. 3) dismissed it on 10-12-2008.

4. Side by side, on 4-12-2008 respondent No. 1 filed the writ petition No. 9819 of 2008 (hereinafter referred to as 'other writ petition') challenging the legality and propriety of the action of Bangladesh Bank and others in inclusion of his name in the CIB report as a 'loan defaulter' and the same was though moved before this Court but was adjourned for 11-12-2008. Then, by filing a supplementary-affidavit as to the cancellation of

his nomination paper, respondent No. 1 prayed for giving a direction upon respondent No. 9 and respondent No. 3 to accept his nomination paper and an interim order of direction was passed upon the said respondents to allow respondent No. 1 to contest in the aforesaid election albeit no Rule was issued on the orders cancelling the nomination of respondent No. 1 passed by the Election Commission and Returning Officer. Thereafter, when the 'other writ petition' was placed before a Division Bench of the High Court Division on 17-12-2008, the said interim order of direction dated 11-12-2008 was extended till disposal of the Rule. It is stated that respondent No. 1, after obtaining the aforesaid favourable order from this Court, did never bother to take any step to get the 'other writ petition' heard. Having been won in the 9th parliamentary election, respondent No. 1 took oath as a Member of Parliament and since then he has been holding the post of MP. It is stated that since respondent No. 1 did never challenge the legality of the orders of cancellation of his nomination paper either in this Court nor in Election Tribunal and, as such, orders passed by the Returning Officer on 4-12-2008 cancelling his nomination paper and the order passed by the Election Commission on 10-12-2008 affirming the Returning Officer's said order dated 4-12-2008 are still in operation and their findings of fact, on the CIB report published by the Bangladesh Bank that respondent No. 1 is a 'loan defaulter', do stand correct. It is stated that since the petitioner was a 'loan defaulter', he was not and, even, at present is not legally eligible and competent to be a Member of Parliament and to hold the said post. Therefore, having been aggrieved by the holding of the position of MP by respondent No. 1, the petitioner seeks to challenge the authority of respondent No. 1 to the post of MP. Hence, this Rule.

5. While respondent No. 1 contested the case by filing affidavit-in-opposition, supplementary affidavit and placing relevant laws, references and arguments and respondent No. 7 (Janata Bank Ltd) opted to appear in the instant case by filing Vokalatnama only, the remaining respondents namely, Bangladesh Jatio Shangshad (hereinafter referred to as respondent No. 2), Bangladesh Election Commission (hereinafter referred to as respondent No. 3), Ministry of Law, Justice and Parliamentary Affairs (hereinafter referred to as respondent No.4), Credit Information Bureau of Bangladesh Bank (hereinafter referred to as respondent No. 5), Dynamic Textile Industries Limited (hereinafter referred to as respondent No. 8) and the Deputy Commissioner, and the Returning Officer, Mymensingh (hereinafter referred to as respondent No. 9) did not avail of the opportunity of appearing before this Court.

6. Respondent No. 1 by filing affidavit-in-opposition contends, *inter alia*, that he participated in the 9th national parliamentary election as a valid candidate in pursuant to the order dated 11-12-2008 passed by a vacation Bench of this Hon'ble Court in 'other writ petition' and was elected for the constituency No. 154, Mymensigh-9 legally. It is stated that one Mr Advocate Abdul Hai was a nomination aspirant from Bangladesh Awami League and was willing to be a MP candidate from the same constituency but Awami League had nominated respondent No. 1 and having been unsuccessful in getting nomination from the party, he started to perturb respondent No. 1, first time, by issuing a legal notice through his Advocate-on- Record on 14-12-2008 threatening that a Civil Miscellaneous Petition for Leave to Appeal is being awaited to be moved against the interim order dated 11-12-2008 passed by the vacation Bench of the High Court Division allowing respondent No. 1 to contest in the 9th parliamentary election and, now, it is the same person who, in disguise, have employed the present petitioner to file the instant writ petition after nearly 4 and half years.

7. Mr Quamrul Haque Siddique, the learned Advocate appearing for the petitioner, at the very outset places Article 66(2)(g) of our Constitution, section 27ক of the Bank Company Act, 1991 and various articles of the Representation of the People Order (RPO), 1972 (hereinafter referred to as RPO) and submits that articles 12(1)(l) and 12(1)(m) of the RPO mandates that if an individual or a director of a company defaults in repaying any loan, then he shall be disqualified to be a candidate for parliamentary election. He then submits that the aforesaid disqualification continues to operate even after being elected as a Member of Parliament in view of the words used therein and, as such, holding of the post of the Member of Parliament by a 'loan defaulter' is completely illegal. He submits that respondent No. 1 was found to be a 'loan defaulter' by the Returning Officer as well as by the Election Commission and these findings of facts have never been overturned by any Court of law or by any authority, nor respondent No. 1 himself has been able to prove that he was not a 'loan defaulter'. He submits that respondent No. 1 has already withdrawn the 'other writ petition' and, as such, the orders passed by the Returning Officer on 4-12-2008 remains in operation.

8. He submits that the claim of respondent No. 1 as to having resigned from the post of directorship of respondent No. 8-company has not been approved by the concerned bank as required by section 27 ক of the Bank Company Act, 1991 and, as such, the claimed resignation of respondent No. 1 is not a resignation in the eye of law and, therefore, he was, at the time of submission of his nomination paper as a candidate for 9th parliamentary election, a 'loan defaulter' and continues to be the same till date.

9. He submits that the manner of presentation of 'other writ petition' by respondent No. 1 before this Court is capricious, misleading and designed to secure an order from this Court by practising fraud in that the said writ petition was filed challenging the CIB report only, but an interim order in the form of a direction was obtained from this Court enabling the petitioner of the said 'other writ petition' to contest in the election and, subsequently, the period of aforesaid interim order was obtained till disposal of the said Rule though no challenge was made against the propriety of the order of cancellation of his nomination paper by the Returning Officer and by the Election Commission. He submits that with the adjudication upon of the said Rule, the disqualification or incompetency of the present respondent No. 1 to become an MP shall never be removed.

10. Mr Siddique continues to submit that respondent No. 1 challenged the legality of the rejection order of his nomination only recently during the hearing of the matter but, according to him, issuance of the said Rule cannot also shield him to remain as an MP inasmuch as it has been settled by a series of decisions of our Apex Court that no writ lies against an order passed by the Returning Officer or the Election Commission regarding any election matter. He submits that when this Hon'ble Court ordered to analogously hear and dispose of the 'other writ petition' and the instant writ petition, respondent No. 1 withdrew the aforesaid 'other writ petition' amid hearing of the Rules having found the position of law against him. He submits that after withdrawing the aforesaid case, the order passed by the Returning Officer, Mymensingh on 4-12-2008 stands valid and, thereby, it has now been an admitted position that respondent No. 1 was a 'loan defaulter' at the time of filing his nomination paper and the same position still continues in the light of the fact that respondent No. 1 has not been able to prove his position that he repaid the said loan or he has duly and lawfully resigned from the post of director of respondent No. 8-Dynamic Textile Industry Limited.

11. In a bid to deal with the allegation of

lacking bonafides in approaching this Court, as raised by respondent No. 1 in his affidavit-in-opposition against the petitioner, Mr Siddique submits that the petitioner is a local leader of Awami league in addition to being a voter of the constituency wherefrom respondent No. 1 has been elected as a Member of Parliament and, thus, he has every right to see that the MP of his constituency must not be a person disqualified in the eye of law. He submits that if the other person's grievance, including Mr Advocate Abdul Hai's who is stated to be the rival candidate of respondent No. 1, appears to echo the petitioner's, it does not necessarily mean that the petitioner's standing will be questionable, rather it helps in strengthening and substantiating the claim that the grievance is of public nature.

12. He prays to this Court that there should be a direction upon respondent No. 1 to refund the salaries, privileges and incentives taken by him. He submits that this sort of direction now has been the demand of time to set up an instance for the usurpers of public offices that illegal holding of public office ends up with serious consequences.

13. In reply to a query, as to the extent of jurisdiction of this Court in dealing with the quowarranto matters, he submits that this Court should not confine itself within the fourcorners of the words employed in Article 102(2)(b)(ii) as it simply empowers this Court to issue a show cause notice upon the usurper of a public office. He cites the maxim "Ibi jus ubiremedium" and submits that there must be a remedy against a wrong and in view of the fact that the framers of the Constitution have imposed the duty of issuing a show cause notice to the usurper, thus, by implication it means that this Court has also been endowed with the power of making any order; including any consequential relief, otherwise, incorporation of Article 102(2)(b)(ii) in the Constitution is rendered meaningless. He places the form, style and manner of the prayers made in the instant writ petition and submits that in order to overcome any question which may likely arise that since it is a writ of quowarranto, declaration as to unseating respondent No. 1 is beyond the jurisdiction of this Court, prayer in the form of certiorari in tandem with seeking a *mandamus* has also been made.

14. In support of the above submissions Mr Siddique refers to the cases of (1) *AFM Shah Alam vs Mujibul Huq* reported in *41 DLR (AD) 68, (2) Mahmudul Haque (Md) vs Md Hedayetullah* reported in *48 DLR (AD) 128, (3) AKM Mayeedul Islam vs Bangladesh Election Commission* reported in *48 DLR (AD) 208, (4) Dr Mohiuddin Khan Alamgir vs Government of the People's Republic of Bangladesh* reported in *62 DLR (AD) 425, (5) University of Mysore vs Govind Rao AIR 1965 SC 491 (6) Lt. Col. Farzand Ali vs Province of West Pakistan 22 DLR (SC) 203* and *(7) Abu Bakar Siddique vs Justice Shahbuddin Ahmed* reported in *49 DLR 1.* By making the aforesaid submissions, the learned advocate for the petitioner prays for making the Rule absolute.

15. Mr Khaled Ahmed, the learned Advocate appearing for respondent No. 7 (Janata Bank Ltd), adopts the submissions of Mr Siddique and begs apology for not filing a separate affidavit for the instant writ petition as he was under an impression that since both the writ petitions were ordered to be heard analogously and the subject matter of both the cases being the same, filing one affidavit in any of these cases would suffice to establish the fact that respondent No. 1 was and still is a 'loan defaulter'. Thereafter, with the permission of this Court he refers to annexures-D, E & F to the 'other writ petition' and annexure-X1 to the affidavit-in-opposition of the said writ petition and submits that respondent No. 1 is a share holder of respondent No. 8, a public limited company, and when the said company took a loan of

Taka nine crore from respondent No. 7, he furnished a personal guarantee to secure the said loan. He submits that respondent No. 8-company till date has not repaid the loans for which a suit in Artharin Adalat is pending. He submits that until the loan of the bank is repaid, respondent No. 1 remains a 'loan defaulter' irrespective of the fact whether he has resigned from the post of directorship of the said company.

16. Per contra, Mr Rokanuddin Mahmud, the learned Advocate appearing for respondent No. 1, at the very outset of his submission places Article 66(4) of our Constitution and submits that since respondent No. 1, having been a 'Returned Candidate' in the 9th parliamentary election, is now performing his functions as a Member of Parliament and as per the provisions of our Constitution, the dispute should be raised in Parliament and the Hon'ble Speaker will refer the matter to the Election Commission and, then, the latter will give the final decision as to whether respondent No. 1 should hold the position and continue to function as a Member of Parliament.

17. He then submits that in whatever manner respondent No. 1 has been elected in the 9th parliamentary election, at present, the defacto position is that he is an elected MP and, therefore, after being elected as a Member of Parliament there are two forums to challenge his election or holding of his position as a Member of Parliament. If, Mr Mahmud continues to submit, there is an allegation as to the election dispute, then a contesting party could have taken the matter before the Election Tribunal but in the case of respondent No. 1 there was no such allegation by any contesting person in the election of respondent No. 1 and the other forum, available for the petitioner or any other aggrieved person to raise a complain as to the disqualification of respondent No. 1, is Parliament. He submits that as per section 3 of the Members of Parliament (Determination of Disputes) Act, 1980 the disputes of present nature can easily be sent to Parliament by sending a letter to the Speaker who then will be in a position to refer the matter to the Election Commission for its decision and by not doing so the petitioner has chosen the wrong forum and, therefore, he submits that the present writ petition is a misconceived one and not maintainable.

18. He submits that the 'other writ petition' was rightly filed to challenge the action of the Bangladesh Bank in inclusion of the name of respondent No. 1 in the CIB list as well as the orders of the Election Commission and the Returning Officer who had cancelled the nomination paper of respondent No. 1 on the ground of being a 'loan defaulter' in the light of the fact that respondent No. 1 had never held more than 25% of allotted shares as required to be a 'loan defaulter' under the Proviso of section 5(গগ) of the Bank Company Act 1991 and, furthermore, he resigned from the post of director well before of the 9th parliamentary election and pursuant to filing the said writ petition this Court rightly directed the Election Commission and the Returning Officer to accept the nomination paper of respondent No. 1 and, as such, Mr Mahmud submits that there was no illegality by the High Court Division in entertaining the said writ petition and, thereby, in contesting the 9th parliamentary election by respondent No. 1 inasmuch as there was no other alternative forum for seeking redress given that the Election Tribunal was not in existence at that relevant point in time and, further, in Election Tribunal only the 'contesting candidate' is entitled to agitate any election dispute meaning that under the said law, an individual candidate who contested the election can file case against another contesting candidate for adjudication upon the matters relating to cancellation of election result, vote counting, rigging and other election related disputes but a person, like the present respondent No. 1, whose nomination paper has been cancelled by the Returning Officer, being not a 'contesting can-

didate', cannot go to Tribunal for vindication of his legal right.

19. Mr Mahmud submits that there was nothing to get from 'other writ petition' after respondent No. 1 was allowed to contest the 9th parliamentary election and, further, since the CIB report also does not show his name therein any longer, it would have been a futile exercise to continue with the said 'other writ petition'. Mr Mahmud further submits that the said writ petition was filed challenging the decision of the Returning Officer and the Election Commission basing on the CIB report but in view of the fact that the Election Commission and the Returning Officer themselves declared respondent No. 1 a valid 'Returned Candidate' in the 9th parliamentary election, their previous orders dated 10-12-2008 and 4-12-2008 stood revoked and, accordingly, they refrained from appearing in both these writ petition, otherwise, their actions will amount to 'approbation and reapprobation' if they now again claim their initial orders as to cancellation of nomination paper to be correct.

20. Mr Mahmud submits that without, at first, challenging the actions of the Election Commission in publishing the Gazette Notification by declaring respondent No. 1 as an elected MP, the instant writ petition in the form of quowarranto is not maintainable and, he adds that, in order to impugne the said Gazette Notification an application under Article 102(2)(a)(ii) is to be brought where the petitioner will be required to satisfy the Court that he is a 'person aggrieved'.

21. He also submits that in order to be competent as a writ petitioner in a writ of quowarranto, the petitioner is required to establish the fact that he has approached this Court *bona fide* but since it transpires from the chronology of events of this case that Advocate Abdul Hai earlier had tried to file a Civil Miscellaneous Petition for Leave to Appeal in the Appellate Division against the High Court Division's direction dated 11-12-2008 to resist respondent No. 1 from contesting the 9th parliamentary election and having been unsuccessful in his earlier attempt, now, he is conspiring to oust respondent No. 1 from the position of MP by filing this writ petition with an ulterior motive to keep him away from the upcoming 10th parliamentary election, the present writ petition fails on this account alone.

22. He finally submits that issuance of a writ in the quowarranto proceedings is completely a discretionary power of this Hon'ble Court and the said power has been used in UK, USA and in this sub-continent very sparingly. A writ is generally issued in our jurisdiction only when the Court has been satisfied that law of the land has not created any forum for vindication of the wrong claimed of; that it finds the alleged wrong to be a public grievance, not a private grievance; that the petitioner is challenging the holding of a Constitutional office/public office; that the Court is satisfied about the *bona fides* of the petitioner in approaching this Court and also satisfied that there has been a 'clear violation' of any Constitutional or statutory provisions in appointing or holding the said public office but, in the case at hand, there being no such 'clear violation' of any law and the remedy sought for by the petitioner being beyond the jurisdiction of Article 102 (2)(b)(ii), the writ should be recalled and, thereby, the Rule is liable to be discharged.

23. Mr Rokonuddin Mahmud, to substantiate his submission, relies on the following case laws of our jurisdiction and the same of abroad; *(1) Panjab Land Development & Reclamation Corporation Ltd vs Presiding Officer, Labour Court (1990) 3 SCC 682, (2) Mamleswar vs Kanhaiya AIR 1975 (SC) 907, (3) Nilkantha vs Manmohan (1975) CLJ 404, (4) Daud vs Bangladesh* reported in *17 BLC (HCD) 506, (5) Abdur Rob Miah vs District Registrar and others* reported in *4 BLC (AD) 8, (6) Dr Kamal Hossain vs Mohammad Sirajul Islam* reported in *21 DLR*

(SC) 23 and *(7) Shaikh (Md) Obaidullah Raihan vs Sayed Shahidul Haque Jamal,* reported in *54 DLR 280.*

24. We have heard the learned advocates for both the sides, perused the writ petition, affidavit-in-opposition, supplementary affidavit with their annexures and the relevant laws and decisions placed before us and have considered them very carefully.

25. It appears that, subject to the satisfaction about the technical issues raised herein including the maintainability of this writ petition, the core issue for adjudication upon by this Court is whether respondent No. 1 was a 'loan defaulter' within the purview of the provisions of article 12(1)(l) and 12(1)(m) of the RPO and, further, whether Article 66(4) of the Constitution debars the petitioner to challenge the alleged disqualification of respondent No. 1 to approach this Court.

26. Since the question of maintainability of this writ petition has been raised on the ground of non-invocation of other equally efficacious forum on top of levelling the allegation of lacking *bona fides* against the petitioner, this Court is required to deal with the said technical issues at first. However, we prefer at first to embark upon the task of examination of the substantial issue with an aim to provide with a better understanding on the factual and legal analysis of the case as a whole.

27. Accordingly, let us first see whether respondent No. 1 is a 'loan defaulter' or not. In order to adjudicate upon the said issue we are to know about the financial relationship of respondent No. 1 with respondent No. 7-Janata Bank Limited and respondent No. 8-company and for that purpose we have to take recourse to the affidavits and statements made in the 'other writ petition' and the annexures appended therewith. It is worthy to note here that the said writ petition and the instant writ petition were listed for analogous hearing by this Court but in course of hearing the said Rules, 'other writ petition' was discharged on 3-10-2013 on the prayer of the learned Advocate for the petitioner thereto (herein respondent No.1) on the ground of being infructuous as it was submitted by the learned Advocate for the petitioner of the said writ petition that after giving a direction upon the Election Commission to allow the petitioner of the said writ petition to contest in the 9th parliamentary election, he virtually obtained his aspired remedy. Since both these writ petitions were taken up for analogous hearing and though the Rule issued in 'other writ petition' has been adjudicated upon a bit earlier in point of time by discharging the same, we can validly take judicial notice of and profitably rely on the statements, affidavits made in the said writ petition and affidavits-in-opposition and examine the annexures appended thereto.

28. It is the admitted position of respondent No. 1 of this writ petition, as appears from annexures-D, E and F to 'other writ petition' that he was a share holder and a director of respondent No.8-Dynamic Textiles Industry Limited and when the said company availed of a loan facility of Taka 9 (nine) crore, respondent No. 1 furnished a personal bank guarantee, as appears from annexure-X1 to the 'other writ petition'. But the case of respondent No. 1 is that since he has never held more than 25% of the allotted shares and already resigned from the post of directorship before the election and, accordingly, as per the Proviso of section 5(গগ), he is not a 'loan defaulter'. Now, let us vet the position of respondent No. 1 within the purview of section 5(গগ) which reads as follows:

> "খেলাপী ঋণ গ্রহীতা" অর্থ কোন ব্যক্তি বা প্রতিষ্ঠান যাহার নিজের বা স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠানের অনুকূলে প্রদত্ত অগ্রীম, ঋণ বা উহার অংশ বা উহার উপর অর্জিত সুদ বাংলাদেশ ব্যাংক কর্তৃক জারীকৃত সংজ্ঞা অনুযায়ী মেয়াদোত্তীর্ণ হওয়ার ৬(ছয়) মাস অতিবাহিত হইয়াছেঃ
>
> তবে শর্ত থাকে যে, খেলাপী ঋণ গ্রহীতা কোন পাবলিক লিমিটেড কোম্পানীর পরিচালক না হইলে অথবা

উক্ত কোম্পানীতে তাহার বা উহার শেয়ারের অংশ ২৫% এর অধিক না হইলে, উক্ত পাবলিক লিমিটেড কোম্পানী স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠান বলিয়া গণ্য হইবে নাঃ

আরো শর্ত থাকে যে, পাবলিক লিমিটেড কোম্পানী ব্যতীত অন্য কোন প্রতিষ্ঠানে ঋণ গ্রহীতার শেয়ারের অংশ অনধিক ২০% হইলে উক্ত প্রতিষ্ঠান এই দফার অধীন স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠান বলিয়া গণ্য হইবে না।

29. It is an admitted position that respondent No.8-company is a public limited company and respondent No. 1 is a director of the said company and, therefore, the first part of the Proviso ".....খেলাপী ঋণ গ্রহীতা কোন পাবলিক লিমিটেড কোম্পানীর পরিচালক না হইলে....." clearly attracts the position of respondent No. 1. His plea that he has resigned from the post of the director appears to be untrue from the statements made by respondent No. 7 Janata bank in 'other writ petition' which may be quoted herein below.

Writ petitioner's resignation as a Director of respondent No. 6 has never been accepted by the Board of Directors of the concerned Bank. Therefore, his resignation is not effective within the meaning of 27(ka) of the Banking Companies Act, 1991 and, as such, writ petitioner is a defaulter and his name was included in the list of CIB in accordance with law.

30. Section 27ক of the Bank Company Act, 1991 reads as follows:

দেনাদার কোম্পানীর পরিচালকের উপর বিধি-নিষেধ।—আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, ঋণদাতা ব্যাংক বা আর্থিক প্রতিষ্ঠানের [ঋণ বা বিনিয়োগ অনুমোদনকারী কর্তৃপক্ষের একস্তর উর্দ্ধতন কর্তৃপক্ষের] অনুমোদন ব্যতীত কোন দেনাদার কোম্পানীর কোন পরিচালকের পদত্যাগ কার্যকর হইবে না এবং কোন পরিচালক তাঁহার শেয়ার হস্তান্তর বা বিক্রয় করিতে পারিবেন না।

31. It is vividly apparent from the above provisions of law that the resignation of any director of a loanee-company shall not be effective until the loan provider-bank approves it. Since the Bank confirms that it has not accepted the resignation of respondent No. 1, we find that respondent No. 1 remains to be a director of the loanee company-respondent No. 8 against whom Artharin case is pending for recovery of defaulted payment of the bank and that is how respondent No. 1 is a 'খেলাপী ঋণ গ্রহীতা' within the ambit of section 5(গগ) of the Bank Company Act, 1991. What is more that had the initial Rule of 'other writ petition' even been made absolute by declaring the inclusion of his name in the CIB report illegal, it could not save respondent No. 1 from being disqualified as a MP given that a loanee may still remain a 'loan defaulter' even without being included his name in the CIB list until the loan provider-bank does not raise any claim against him. However, the Rule in the said writ petition has been discharged on 3-10-2013 and, thus, it appears that with the discharging of the said Rule issued in 'other writ petition', the disqualification or incompetency of respondent No. 1 has not been removed or does not get cured, rather, the orders passed by the Election Commission and the Returning Officer get their lives back inasmuch as those were stayed for a period till disposal of the said Rule issued in 'other writ petition'. There was no challenge against the legality of the orders passed by the Election Commission and the Returning Officer by respondent No. 1 until the issue was raised by this Court in the midst of hearing of the said 'other writ petition'. The above scenario has been depicted in our judgment and order dated 3-10-2013 passed in discharging the 'other writ petition', which is reproduced herein below:

> This writ petition has a very interesting chequered history because the writ petition was filed by the petitioner challenging the inclusion of the name of the petitioner in the CIB report prepared and published by Bangladesh Bank and sent to respondent No. 5 (the Returning Officer) treating the petitioner as a defaulter in payment of bank loan. But the petitioner did not challenge the cancella-

tion of the nomination paper by respondent No. 5 nor did he challenge the dismissal order of appeal by the Election Commission filed by the petitioner against the cancellation of nomination paper. Interestingly, after filing of the writ petition on 4-12-2008 the same was made stand over till 11-12-2008 when the petitioner filed supplementary affidavit narrating the facts of cancellation of the nomination paper by the Returning Officer and dismissal of the appeal by the Election Commission. In the supplementary affidavit the petitioner did not pray for amendment of the prayer as to challenging the cancellation of nomination paper. However, on the self same prayer as made in the writ petition, a vacation Bench sitting singly passed an order in the following terms:

"Pending hearing of the substantive application, respondent Nos. 5 and 7 are directed to accept the nomination paper of the petitioner in respect of constituency No. 154, Mymensigh-9 for the parliamentary polls scheduled to be held on 29th December, 2008".

Furthermore, it appears from the record that another supplementary affidavit has been filed by the petitioner annexing the copy of the dismissal order of appeal by the Election Commission and thereafter when the matter was placed before a regular bench the Rule was issued in the following terms:

"Let a Rule Nisi be issued calling upon the respondents No.1-5 to show cause as to why the insertion or inclusion of the name of the petitioner in the CIB report prepared and published by respondent No. 1 and sent to respondent No. 5 treating the petitioner as defaulter in payment of bank loan shall not be declared to have been made without lawful authority and of no legal effect and or such or further order or orders passed as to this Court may seem fit and proper.

Let the interim order dated 11-12-2008 passed by the vacation bench shall remain in force till disposal of the Rule."

So, it appears that without challenging and praying for any remedy as to the cancellation of the nomination paper and dismissal of appeal by the Election Commission the petitioner got a relief by an order of this Court through the vacation Bench and thereafter he was elected and has been holding the post of Member of Parliament (MP) till date. Subsequently, on 19-6-2013 the petitioner filed an application for issuance of supplementary Rule and upon hearing, supplementary Rule was issued in the following terms:

"Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the impugned order dated 10-12-2008 dismissing the appeal and thereby affirming the order dated 4-12-2008 passed by respondent No. 5 cancelling the nomination paper of the petitioner submitted for contesting the 9th parliamentary election from constituency No. 154, Mymensingh-9 shall not be declared to have been passed without lawful authority and of no legal effect".

Today, when the item is taken up for hearing, Mr Rokanduddin Mahmud, the learned Counsel, submits that since the petitioner has already been elected in the election held on 29-12-2008 and he has already completed his term and, as such, with the passage of term, the Rule has become infructuous leaving nothing for adjudication by this Court.

Under such circumstances, the Rule is discharged for being infructuous.

However, there will be no order as to cost.

32. This Court though had intended to adjudicate upon the Rule in the said 'other writ petition' on merit upon dealing with all the issues

raised therein, including the question as to whether the petitioner in the said Rule is a 'loan defaulter', whether inclusion of his name in the CIB list was legal and whether this Court has jurisdiction to entertain a matter relating to or arising out of election, however, on the prayer of the learned Advocate for the petitioner of the said writ petition, the Rule was discharged only on the ground of being infractuous with a summary judgment and order. Our particular interest was to hover on and carry out a scrutiny as to whether a person whose nomination has been cancelled by the Returning Officer and Election Commission being not a contesting candidate as per the provision of RPO can approach this Court as this Court was inquisitive to examine the words 'no election ... to Parliament shall be called in question except by an election petition' employed in Article 125(b) of our Constitution. No definition or meaning of 'election petition' has been provided in our Constitution. However, section 2(ix) of the RPO provides that an 'election petition' means a petition under article 49 of the RPO and the article 49 allows only a 'candidate' as defined in article 2(ii) of the RPO to present an election petition and, thereby, to see whether the judgments passed by our Apex Court in the cases of *AFM Shah Alam vs Mujibul Huq, 41 DLR (AD) 68, Mahmudul Haque vs Md Hedayellah, 48 DLR (AD) 128, AKM Mayeedul Islam vs Bangladesh Election Commission, 48 DLR (AD) 208, Dr Mohiuddin Khan Alamgir vs Government of the People's Republic of Bangladesh 62 DLR (AD) 425* rendered per incuriam in adjudication upon the cases at hand. Among all the aforecited cases, *AFM Shah Alam vs Mujibul Huq* is the pioneer and all the above cases have followed the ratio decidendi of the AFM Shah Alam's Case. The fundamental difference between the fact of the said case is that in AFM Shah Alam's Case nearly two thousand 'contested candidates', who were unsuccessful in the union parishad election, challenged the role and function of the Election Commission but in the instant cases, where an aspirant candidate's nomination is cancelled by the Returning Officer and upon an appeal the cancellation order is affirmed by the appellate authority, the question arises whether this Court should decline its power under Article 102(2)(a)(ii) for such like persons.

33. In our scrutiny and judgment, we did not find any reason not to interfere with the decision passed by the appellate authority, the same being a final decision, under Article 14(5) of the RPO, Rule 15(1) of স্থানীয় সরকার (সিটি কর্পোরেশন) নির্বাচন বিধিমালা, ২০১০, Rule 15(1) of স্থানীয় সরকার (পৌরসভা) নির্বাচন বিধিমালা, ২০১০, Section 18(1) of স্থানীয় সরকার (উপজেলা পরিষদ) নির্বাচন বিধিমালা, ২০১৩ and section 15(1) of স্থানীয় সরকার (ইউনিয়ন পরিষদ) নির্বাচন বিধিমালা, ২০১০ if it clearly suffers from malice-in-law or corum-non-judice and the relief sought by the petitioner may be granted without disturbing the election schedule because completion of election process being a Constitutional obligation of a Constitutional body must not be protracted on the basis of a grievance of an individual candidate. In entertaining the aforesaid grievance, this Court must be satisfied at first before issuing any Rule as to whether there is any apparent illegality in the impugned order passed by the Returning Officer and the appellate authority. The Court must comply with the provisions of Article 125(c) of our Constitution which provides that no Court shall pass any interim order without hearing the Election Commission.

34. In order to mitigate this kind of situation, the office of the Election Commission may correspond with the office of the Hon'ble Chief Justice of Bangladesh requesting the latter to assign one or two Division Bench entrusted with the power of dealing with election matters only just before the election commences so that the lawyers and officers of the Election Commission may constantly be present in the Court rooms and assist this Court to handle those petitions expeditiously. Upon hearing both the parties if the Court is satis-

fied to issue Rule with a direction upon the concerned authority to accept the nomination paper of a candidate, in that event, the Election Commission must take necessary initiatives to get the Rule heard within shortest possible time, preferably within a span of 2-3 months, by the said Rule issuing Bench. The Election Commission should not allow an alleged disqualified candidate to hold the post of MP by virtue of an interim order of the Court for a long period. When the Election Commission will demonstrate a serious attitude that a 'loan defaulter' or otherwise incompetent candidate might succeed to contest in the Election and be a 'Returned Candidate' capitalising the interim order of the Court, however, his tenure may soon come to end by disposing of the Rule, the confidence of the 'loan defaulters' class will be demoralised and thereby may abstain from abusing the process of the Court. Having been deprived of getting the opportunity to examine the said issues on this occasion, we may await to have a judgment from our Apex Court in a fit case covering the above points in the time to come.

35. Be that as it may, for the purpose of adjudication upon the case at hand, we have already found that respondent No. 1 is a loan defaulter' under section 5(গগ) of the Bank Company Act, 1991. In addition to that, he is also a 'loan defaulter' under articles 12 (1)(L) and 12 (1)(m) of the RPO, which read as follows:

> 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).....
>
> (b).....
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> (c).....
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> (d).....
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> (e).....
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> (f).....
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> (g).....
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> (h).....
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> (i).....
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> (j).....
>
> (k).....
>
> (l). being a loanee, other than who has taken small loan for agricultural purposes, has defaulted in repaying before 1[fifteen days] from the day of submission of nomination paper any loan or an installment thereof taken by him from a bank or financial institution;
>
> (m). is a director of a company or a partner of a firm who has defaulted in repaying before 2[fifteen days] from the day of submission of nomination paper any loan or an installment thereof taken by him from a bank or financial institution;

36. In view of the fact that respondent No. 1 has not been released from his personal guarantee furnished by him in favour of the bank for securing the loan of respondent No. 8-company, we find him to be disqualified for election, and to remain, as an MP under article 12(1)(l) of RPO, 1972. We also find him to be disqualified for election, and to perform function, as an MP under article 12(1)(m) of RPO, 1972 as we have already found that he remains a director of respondent No. 8-company.

37. After adjudication upon the aforediscussed moot question by dealing with the same comprehensively, we may now turn to take up all the technical issues pertaining to the question of maintainability of the instant writ petition on the count of non-availing of other forum and lacking *bona fides* in bringing the instant petition as well as the power of this Court as to the extent of granting relief under Article 102(2)(b)(ii).

38. The apparent forums for adjudication upon this kind of case are; (i) an application under Article 102 (2)(a)(ii) and 102(2)(b)(ii) which have been chosen by the petitioner for the instant writ petition (ii) notifying the Speaker with a request to refer the dispute to the Election Commission as suggested by Mr Mahmud (iii) filing a case before the Election Tribunal and (iv) approaching the civil Court in discourse of the case. Among all the technical issues, we may first take up the question of availability of alternative legal forum and thereafter the question of *bona fides* would be examined.

39. In order to properly adjudicate upon the said issue, at first this Court requires to have a good grasp on Articles 102(2)(b)(ii) and 102(2)(a)(ii) of the Constitution, under which the instant application has been filed. The said Articles read as follows:

> (2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law……
>
> (a) on the application of any person aggrieved, make an order-(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-(ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office.
>
> *(underlined by us)*

40. A careful reading of the said Articles provide a two stage scrutiny, namely (i) this Court, at first, is to undertake a task of examination as to whether the law of the land has created any forum for dealing with the matter and, only then, (ii) a duty on this Court is cast as to detecting and considering the violation of any law by any person in holding a public office.

41. It appears that the petitioner has invoked the 'Special Original Jurisdiction' of this Court, apparently, under Article 102(2)(b)(ii) and also under Article 102(2)(a)(ii) of our Constitution. Jurisdiction under Article 102(2), as a whole, is known as extraordinary jurisdiction and the same is to be availed of only when there is 'no other equally efficacious remedy' available. The framers of the Constitution have intended that the people at first must search for and approach an appropriate legal forum other than the Constitutional Court. It is only then the Constitutional Court should be availed of when the citizen will find that the state has not created any legal forum for them for the aspired remedy. Thereafter, subject to the 'satisfaction' of this Court, a writ petition may be entertained. Article 102(2) of our Constitution may be quoted in this context. 'The High Court Division may, if satisfied that no other equally efficacious remedy is provided in law.....'. It appears from the words employed in the said Article that 'if satisfied' strongly suggests that this 'Special original jurisdiction' of the High Court Division may be invoked only upon the satisfaction of the High Court Division as to the non-availability of the 'other equally efficacious remedy' *(underlined for emphasize)*. In our view, the scrutiny as to the competency of invoking this 'Special original jurisdiction' is required to be made by this Court before issuance of any Rule, not by issuing of any Rule in view of the clear and unambiguous words of our Constitution 'if satisfied'. Now, the question as to whether 'other equally efficacious remedy' is available for obtaining a declaration concerning an illegal holding of a public office, such as the present case at hand, requires a minute examination.

42. Mr Mahmud submits that forum under Article 66(4) of our Constitution is the appropri-

ate forum for adjudication upon the issue raised in this case and attacks this writ petition to be not maintainable as the subject matter of this case is beyond the jurisdiction of this Court in view of the provisions of the said Article 66(4) of the Constitution. For ease of reference and understanding let us cite the said Article which reads as follows:

66(4) If any dispute arises as to whether a member of Parliament has, after his election, become subject to any of the disqualifications mentioned in clause (2) or as to whether a member of Parliament should vacate his seat pursuant to article 70, the dispute shall be referred to the Election Commission to hear and determine it and the decision of the Commission on such reference shall be final. *(underlined by us).*

43. It is the cardinal principle of Constitutional interpretation that Constitution should be read and understood by attributing ordinary meaning. From a lucid reading of the said Article it is understable without any difficulties that the disqualification referred to therein is one which occurs 'after his election', not a pre-existing one. There cannot be a second meaning of the said Article inasmuch as we do not find any ambiguities in discerning the words engraved in our Constitution both in English and Bengali version.

44. In the case at hand the disqualification mentioned in Clause (2) of Article 66 was levelled against respondent No. 1 before the election in that the loan was taken by him as a director of respondent No. 8-company before the election and the bank itself (respondent No. 7) claimed that respondent No. 1 was a 'loan defaulter' and, as of now, his position remains unchanged as the company has failed to repay the loan or he could not release his personal guarantee furnished at the time of securing the loan facilities in favour of respondent No. 8-company. If the claim of the bank would have been raised only after respondent No. 1 became elected as an MP, Article 66(4) would have been attracted. So, our unhesitant conclusion is that the disqualification of respondent No. 1 is a pre-election one, which surfaced at the time of election and, thus, forum under Article 66(4) of our Constitution is not the forum for adjudication upon the issue agitated in this case.

45. The second type of forum is Election Tribunal. Let us look at the relevant laws of the land governing the election case.

Article 125(b) of our Constitution: no election to the [office 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.

Relevant provisions of RPO read as follows:

2(vi). "contesting candidate" means a candidate who has been validly nominated for election as a member and has not withdrawn his candidate;

2(ix). "election petition" means an election petition made under Article 49;

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) An election petition shall be presented to the High Court Division within such time as may be prescribed.

Rule 33 of জাতীয় সংসদ নির্বাচন পরিচালনা বিধিমালা, ২০০৮: নির্বাচনী দরখাস্তঃ অনুচ্ছেদ ১৯ বা অনুচ্ছেদ ৩৯ এর অধীন নির্বাচিত প্রার্থীর নাম সরকারী গেজেটে প্রকাশিত হইবার পঁয়তাল্লিশ দিনের মধ্যে সংক্ষুব্ধ পক্ষ সুপ্রীম কোর্টের হাইকোর্ট বিভাগে নির্বাচনী দরখাস্ত পেশ করিতে পারিবে।

46. From the concurrent reading of the said provisions of the Constitution, statute and Rule, it is crystal clear that in order to qualify to be a petitioner in the Election Tribunal, the petitioner must be a person who had contested in the election and

the subject matters of the "election petition" have also been enunciated therein.

47. Question, thus, comes up for consideration very pertinently as to whether the said dispute, being raised at the time of election by the Returning Officer, does fall within the definition of 'election dispute' as provided in RPO, 1972 and, therefore, the matter should be adjudicated upon by the Election Tribunal. Apparently, though the sum and substances of the case of the petitioner, regardless of his prayer under Article 102(2)(a)(ii) or 102(2)(b)(ii), is to declare the election of respondent No. 1 illegal, the petitioner being not a 'contesting candidate' could not have taken the matter to the election Tribunal as per the said provisions of Article 125(b) of our Constitution, articles 2(vi), 2(ix), 49 of the RPO, 1972 and Rule 33 of নির্বাচনী আচরন বিধিমালা। Thus, we hold that the present petitioner was not a contesting candidate and, as such, he is not allowed by law to go to Election Tribunal. Our view is supported by the ratio decidendi of the case of *Lt. Col Farzand Ali vs Province of Pakistan 22 DLR (SC) 203* wherein it was held that-

I can see no reason why relief by way of quowarranto should not be available in a case where the remedy by way of an election petition is no longer possible or it is not the appropriate remedy or the disqualification is a continuing one which debars a person not only from being elected to an office but also from holding that office.

48. Now, the third type of forum is civil Court. Let us see whether jurisdiction of our civil Courts may be appropriate for dealing with the matter inasmuch as section 9 of the Code of Civil Procedure confers jurisdiction upon the civil Courts to try all suits of civil nature by using the word 'shall' therein. Section 9 reads as follows;

Section 9. Courts to try all civil suits unless barred.—The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

49. From the ratio decidendi of innumerable Stare Decisis of this sub-continent such as *(i) Dildar Ahmed vs Farroque Ahmed, 27 DLR (AD) 138, (ii) BN Khan Degree College vs Abdur Rahim, 7 BLT (AD) 153, (iii) Satish Chandra vs Dharanidhar, AIR 1940 (iv) Sinha Ramanigh vs Ranga Rananaja, AIR 1961 SC 1720 (v) Lutfar Rahman vs Waliur Rahman, AIR 1943 Cal. 59 (vi) LIC of India vs India Automobiles, AIR 1991 SC 884 (vii) Secretary of State vs Mark, AIR 1940 PC 105 (viii) Illuri vs AP, AIR 1964 SC 322 (ix) Gurbux Singh vs Financial Commr, AIR 1991 SC 435 (x) Solaiman Bibi vs Administrator 45 DLR 727 (xi) Md Shahidullah vs Abdus Sohan, 1996 BLD 423 = 49 DLR 248 (xii) Kamrul Ahsan vs Ziauddin, 11 BLT 63 (xiii) Dwaraka Prasad vs Ramesh Chandra AIR 2003 SC 2696 (xiv) Shamsuddin vs Shamsuzzaman 22 DLR 655 (xv) Deputy Secretary vs Nizamuddin Haider, 1985 BLD 57 = 37 DLR 102,* it is apparent that when any person is aggrieved by an act done or proceedings/decision taken by a private individual or by a statutory body or by a person performing functions in connection with the affairs of the Republic or of a local authority, he may seek a declaration from the civil Courts. Since resorting to the civil Courts is relatively easier and convenient for any person, in terms of pecuniary expenses, communication and time, for its location being available in each of the District of our country, it is to be considered as a 'better forum' provided in law and, thus, calling it an 'equal forum' is a striking understatement. From our experience of sitting in Writ Bench, we have noticed that the learned members of the Bar place the argument that approaching the lower Courts is not effica-

cious as it cannot pass any interim order against the Government or statutory bodies without first hearing them. In reply to the said argument our observation is that until a petitioner in his petition makes out his case that he, on an urgent basis, desperately needs an interim order immediately, only then there may be a scope to concede to the aforesaid argument subject to the verification that he has rushed to this Constitutional Court immediately and he did not squander any time negligently in approaching this Court. Thus, we find that our civil Courts are better forum than the High Court Division for adjudication upon any matter related to declaration of a legal right or for establishment of a claim as to violation of any law excepting enforcement of any fundamental right.

50. Although our view is that our civil Courts are empowered to issue a show cause notice upon a holder of a public office asking him to show cause as to how he is holding the office, however, in view of the fact that the petitioner might encounter difficulties to overcome the issue of his standing as a plaintiff and, particularly, when in most of the common law countries, including ours one, Constitutional Court has been resorted to for dealing with the cases of alleged illegal usurpation of any public office, such as the present one, without ever being questioned by our Apex court, we are of the view that choosing the High Court Division by the petitioner as the forum for dealing with and adjudication upon this kind of matter appears to be justified, for, the same being in consonance with the provisions of our Constitution as well as the practice and convention of the common law countries. Thus, we hold that forum under Article 66(4) of our Constitution or the Election Tribunal or the civil Court are not capable of providing 'equally efficacious remedy' to the petitioner and, therefore, the forum under Article 102(2) of the Constitution is the appropriate one.

51. Now the technical issue whether in a quowarranto proceedings this Court is empowered to make any order to declare that the holder of the public office is holding the alleged office illegally and is liable to be ousted from the said office and respondent No. 1 should be directed to refund to the exchequer the remunerations and other pecuniary privileges taken as an MP and, further, whether the Election commission be directed to arrange for re-election for the said constituency, in other words, whether the relief can be granted up to the extent as made in the prayer or this Court should refrain from making any order other than mere recording the information received from the respondents as to the authority under which respondent No. 1 is holding the post.

52. On the whole our simple and plain understanding on the Constitutional wordings of Article 102(2)(b)(ii) cited hereinbefore, in tandem with the submissions of both the sides, is that our Constitution has vested this Court with the power of asking a person who is holding or purporting to hold a public office to explain his position as to whether he is holding the said post legally or not and, accordingly, this Court's power appears to be limited up to the extent of issuing show cause notice upon the alleged usurper of the public office and after receiving the information from the said usurper of public office, the task of this Court is to examine as to whether he has been placed or appointed by a lawful authority, whether he has requisite qualification for holding the said post and whether the procedure for the said placement/appointment was followed, in other words, whether the relevant provisions of the law of the land have been complied with in placing/appointing the alleged public office holder. Our Constitution, however, does not endow this Court with the power of passing any consequential order as prayed for by the petitioner to oust respondent No. 1 from his office or to direct the Election Commission to arrange for re-election given that we do not find any ambiguity in the wordings of the Constitution in this regard. However, on the

strength of the words used therein 'The High Court Division may.....make an order', we are of the view that this Court's power is not confined only within issuing show cause notice but also to 'make an order' in the form of declaration as to whether respondent No. 1 is holding the post of MP lawfully or not. We opined that granting any consequential relief is beyond the scope of Article 102(2)(b)(ii) which may amount to addition or importation of some words therein causing amendment of the Constitution tanamounting to transgression of an exclusive jurisdiction of Parliament. Mr Qumrul Islam Siddique has endeavoured to link the case of *University of Mysore vs Govinda Rao AIR (SC) 491* (relevant Para 7) on this particular point to substantiate his submission that this Court is empowered to grant consequential relief. However, in our way of scrutiny of the relevant Para 7 of the cited case we find that it is a quotation of Halsbury and from its minute reading it transpires that 'the usurper can be ousted' by the order of this Court and by conceding to his argument up to that extent in line with the wordings of our Constitution 'to make an order' this Court is inclined, in adjudication upon this case, to declare that respondent No. 1 is an usurper to the office of Member of Parliament.

53. This Court generally provides ancillary relief in the application made under Article 102(2)(a)(ii) of our Constitution but it is apparent from the 'cause title' as well as prayer of the instant writ petition that no decision or action of the Government or Election Commission or any other local authority has been challenged in this writ petition. The petitioner has the option to challenge the election notification of respondent No. 1 in the form of certiorari under Article 102(2)(a)(ii) upon satisfying this Court that he is a 'person aggrieved' as a constituent of the constituency in question and this Court usually grants ancillary and consequential reliefs in addition to making a declaration as to the legality or propriety of the said notification. Since the present writ petition is not in the form of certiorari, then, it becomes pertinent to see whether this Court is competent enough to take up the task of examinations which require for adjudication upon the issues raised, here, in this quo warranto proceeding.

54. In the case of State of *Haryana vs Harayana Co-operative Transport Ltd, AIR 1977 (SC) 237*, wherein challenging alongside the validity of an award given in favour of two labours by the Judge of a Labour Court, the eligibility of the Judge to hold the office of a Judge also was challenged and the Indian Supreme Court held that a petitioner of certiorari application, in the same application, also has the standing to make prayer for the relief usually sought in a Quo warranto proceeding. Accordingly, if we consider the intent of the writ petition, which is to challenge the 'election of respondent No. 1 as an MP and thereby holding of the said post', then there will be no difficulty to remedy the petitioner. In the case of *Abu Baker Siddique vs Justice Shahabuddin Ahmed 49 DLR 1* where an Advocate of this Court Mr Abu Baker Siddique challenged the appointment of the former Chief Justice Mr Shahabuddin Ahmed in the post of the President of the Republic of Bangladesh on the ground of 'disabilities of the judges after their retirement' as prescribed in Article 99 of our Constitution. The cause title was drafted in the form of a quo warranto application though the challenge was actually against the appointment notification for the said post and when an objection was raised that since Mr Shahabuddin Ahmed was yet to take oath for the said office and, as such, he not being the holder of the post, quo warranto proceeding does not lie, the Court on its own volition transformed the quo warranto petition into a certiorari application after substantiating the *locus standi* of Advocate Abu Baker Siddique on the following reasonings:

> "There may be some wrong mentioning of the Article in the cause title of the application and there may be some misconceived

prayer in the prayer portion of the writ petition, yet the spirit, substance and necessary intent of the writ petition is to be gathered from reading the writ petition as a whole"

55. However, the ratio decidendi of the cited Indian case is not applicable in the present case given that it was a certiorari petition where his *locus standi* was already approved by the Court as a "person aggrieved" and a "person aggrieved" may also convert his position into 'any person' as required for becoming a petitioner in a writ of quo warranto proceeding. However, a petitioner of a quo warranto proceeding being "any person" requires to convert himself into an 'aggrieved person' for which his standing is to be established as was done in the aforecited case of Justice Shahabuddin Ahmed. In the light of the fact that the petitioner has not portrayed himself as a 'person aggrieved' and this Court also finds it difficult to carry out an exercise as was done by the Court in the case of Chief Justice Shahbuddin, thus, in this case we do not find any scope to convert the present quo warranto proceeding into the certiorari for the reason that the petitioner is not an 'aggrieved person' but 'any person'.

56. As to the issue whether the impugned post is a public portfolio, no dispute has been raised from the side of the respondents. Admittedly, the post under challenge is a public office in the light of the fact that the office of an MP and his title is substantive in nature and he is independent in discharging his duty and the procedure for removal of the Members of Parliament from their respective offices is not same to that of a government servant. As to the issue of the nature of the grievance i.e. whether it is to be taken as a public grievance, we find that the subject matter of the writ petition comes within the purview of 'common concern' of the commoners in that the post of Member of Parliament, whose primary duty is to legislate the law, should not be portrayed to the general people that a law maker is holding the said portfolio by violating the law.

57. So far as the objection taken by the respondents on the petitioner's intention in filing the instant writ petition, we do not find any element of *mala fide* that can be levelled against the petitioner inasmuch as the petitioner being a voter of the constituency of respondent No. 1 has every legitimate right to see that the MP of his constituency is not holding the said post illegally. The allegation raised against the petitioner that he has been engaged by the rival local Awami league leader, Advocate Abdul Hai, can hardly stand in the way of filing the instant writ petition inasmuch as filing of this type of writ petition by Mr Advocate Abdul Hai himself would not have been *mala fide* given that the post in question being of a public nature, petitioner's intention appears to be of secondary importance and, thus, the ratio decidendi of the cases of *Dr Kamal Hossain vs Mohammad Sirajul Islam 21 DLR (SC) 23* and *Abdur Rob Miah vs District Registrar 4 BLC (AD) 8* is not applicable here in this case.

58. Accordingly, upon being satisfied that there is no other equally efficacious forum and having been found the petitioner's present move to be *bona fide,* we hold that the instant writ petition is maintainable and declare that respondent No. 1 was a disqualified person and remains to be the same to be a Member of Parliament.

59. After such declaration made by this Court that respondent No.1 is a disqualified person to perform function as a Member of Parliament, the provisions laid down in Article 66(4) shall come in to operation and, accordingly, the office of the Hon'ble Speaker may be notified about the outcome of this case.

60. We though do not fancy to grant any consequential relief in the form of directing respondent No. 1 to refund the remuneration and other privileges taken by him from the State as an MP, such as enjoyment of duty free car, government

accommodation and other facilities, for the reasons discussed hereinbefore, however, we opine that this is a fit case where exemplary costs should be extracted from respondent No. 1. The rationale behind our aforesaid view is that our threadbare examination as to the intention and purpose of filing the 'other writ petition', coupled with the style and manner of dealing with the same by respondent No. 1, leads us to believe that though it was known to him that he was a 'loan defaulter' and was disqualified to contest in the election and thereafter to remain as an MP, somehow in an unusual manner he managed to contest the election on the strength of a weird interim order of this Court. Furthermore, he was not willing to have the matter heard after getting the interim order extended on 14-12-2008 till disposal of the Rule as evident from the record that no step was taken for fixing the Rule in any Court until this Court ordered to bring the matter in the list and, even thereafter, the hearing was made delayed initially on the ground of filing supplementary affidavit and, later, on different occasions on the plea of the personal difficulties of the Senior Counsel.

61. It is, thus, apparent that respondent No.1 had the intention to abuse the process of this Court in getting an interim order and, thereby, to enable him to contest in the election and, thereafter, to continue in the post of MP without disposing of the Rule. What is more striking that in none of the writ petitions (the other writ petition and the present one) respondent No. 1 has come up with any assertion that the defaulted loan has been paid. The very purpose of the enactment of this piece of legislation was to put the 'loan defaulter' class away from election but if the said 'loan defaulter' people get chance to contest in the election by abusing the process of the Court, the legislation is rendered nugatory. The above conducts of respondent No. 1 deserves to be answered by slapping a cost of high volume and, thereby, disseminating the message to the citizens of the country that consequence of filing a frivolous litigation with an aim to achieve any favourable order by abusing the process of this Court is fatal.

62. Accordingly, respondent No. 1 is directed to pay a cost of Taka ten lakh in favour of the exchequer by way of treasury challan.

63. In the result, the Rule is made absolute in part.

The office is directed to send a copy of this judgment to the Office of the Hon'ble Speaker and another copy to the Office of Election Commission for their information and necessary actions.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

M Moazzam Hussain J
Md Badruzzaman J

Judgment
June 18th, 2014

Jafar Ullah (Md).....
.....Petitioner

vs

Secretary, Ministry of Home Affairs and others.
.....Respondents*

Public Amusement Act, 1933
Section 2

If the program is for public amusement it needs be held in the "place of public amusement" as defined under section 2 of the of the Act and the place needs be notified as such by the Government and no person can open or keep open places of public amusement without, or otherwise than in conformity within the condition of, a license to be granted by the Deputy Commissioner.

The Nupun Khela including 1-10, 1-8, Dice and Howji are varied forms gambling. The words 'gambling' and 'gaming' appearing in the Public Gambling Act, 1867,

*Writ Petition No. 5726 of 2013.

are synonymous by connotation. Whoever found present in the 'common gaming-house' for the purpose of gaming, no matter playing for money, wager, stake or otherwise, is punishable under the Act. .....(18 & 22)

Penal Code (XLV of 1860)
Section 294A

Lotter—Lottery' is a form of gambling punishable under section 294A of the Code with exceptions provided therein. .....(22)

Public Gambling Act (III of 1867)
Section 3

Owning, keeping or having charge of common gaming-house as contemplated under section 3 of the Act, is an offence and punishable under the law. .....(22)

Contract—contract being made for an unlawful purpose is *void ab initio* and is unenforceable. .....(17)

Momtazuddin Ahmed Mehedi with Shahabuddin Ahammad, Advocates—For the Petitioner.

Md Motahar Hossain, DAG with Samarendra Nath Biswas, AAG Purabi Rani Sharma, AAG—For the Respondents.

Judgment

M Moazzam Hussain J: This Rule Nisi was issued asking the respondents to show cause as to why a direction shall not be given to them not to interfere with the indoor games, namely, *Nipun Khela 1-10, 1-8, Charchari, Dice, Howji* and cultural programs conducted by the petitioner at Bangladesh Muktijodhya Welfare Club, Noagaon Branch premises, Noagaon, without due process of law.

2. The case of the petitioner, in brief, is that he is the Area Chief of Noagaon Muktijodhya Welfare Club, a local branch of the Bangladesh Muktijodhya Welfare Club. On 1-6-2013 he entered into a lease- agreement with Bangladesh Muktijodhya Welfare Club under which the Welfare Club has given him permission to conduct indoor games including Nipun Khela ie, 1-10, 1-8, Charchari, Dice, Howji and cultural programs in the premises of the Noagaon Muktijodhya Welfare Club, at Noagaon. As per terms of the agreement the petitioner is permitted, amongst others, to organize and conduct indoor games which includes 1-10, 1-8, Charchari, Dice, Howji Khela and cultural programs.

3. Further case of the petitioner is that the agreement gives him lawful authority to conduct his business of those games in the specified premises of the Club initially for five years renewable from time to time. His business is absolutely lawful and the law enforcing agencies have no right to disturb or interfere with his business. But he could not conduct the lawful business as the local police were frequently interfering with his business. Interference into a lawful business of any person is illegal. Therefore, the respondents need be directed not to interfere with the petitioner's lawful business.

4. Respondent No.l, through the Ministry of Home, contested the Rule by filing affidavit-in-opposition. The contesting Respondent has raised a number of contentions which by a close reading boil down to two propositions relevant for disposal of this Rule. First, Nipun Khela which includes 1-10, 1-8, Charchari, Dice, Howji and the like are gambling punishable under the Public Gambling Act, 1867 as well as under the Penal Code. Secondly, Bangladesh Muktijodhya Welfare Club or any other body or organization has no authority to permit by contract or otherwise any person or body to offer such games to be played by members of general public or to keep any common gaming-house for such games. The lease agreement seeking to authorize illegal acts is itself ille-

gal and the Welfare Club has exceeded its jurisdiction in executing the agreement. The agreement being illegal on the face of it the petitioner cannot claim immunity from action against him if he is found to be engaged in activities punishable under law.

5. Mr Momtaz Uddin Mehdi, learned Advocate appearing for the petitioner submits that the games indicated in the petition are mere games of innocent recreation and amusement which have nothing to do with gambling as contemplated in the Public Gambling Act. His further contention is, if such games are stopped or prohibited rural youth will be diverted to anti-social activities creating law and order problem. Mr Mehdi, however, did not say anything about the competence of the Muktijodhya Welfare Club or for that matter any other club or organization in permitting any person to be involved in indoor games coming within the meaning of gambling.

6. Mr Motahar Hossain, learned DAG, on the other hand submits that the games organized and offered by the petitioner to be played in his club premises are pure and simple gambling punishable under sections 3 and 4 of the Public Gambling Act, 1867. Since there is element of lottery in the games they are also punishable under section 294A of the Penal Code. He referred to a circular dated 13-10-1998 issued by the Government asking the local administration to take steps against lottery offered by various trading houses for promotion of their business in the form of lucky-coupon, lucky draw, prizes etc. He contended that since the Nipun Khela, 1-10, 1-8, Dice, Howji sought to be conducted by the petitioner and keeping common gaming-house for the purpose are punishable under law the Muktijodhya Welfare Club or any other person or organization has no authority to enter upon contract for indulging in such games. Despite the restrictions imposed by law, he insisted, a class of persons is engaged in making money holding regular sessions of the games in different places of the country and thereby destroying our youth. He finally submits that the petition is not maintainable as is brought on an agreement which is void *ab initio* and the games sought to be played are offences punishable under law.

7. Here in this case one Zafar Ullah of Arambag, Dhaka, posing himself to be Area Chief of Noagaon District Branch of Bangladesh Muktijodhya Welfare Club, came up with this writ petition seeking direction against the respondents not to interfere with his business comprising of Nipun Khela which, according to him, includes 1-10, 1-8, Charchari, Dice, Howji and also cultural programs at Noagaon Branch premises of the Club. He claims the games to be lawful and not anyway prohibited by law. His specific case is that the respondents, more specifically, the police do not have any authority to enter upon his premises and interfere with his lawful business which they often are doing. He obtained the Rule on the established principles of law that-'All that is not prohibited by law is legal'.

8. Over the years series of similar writ petitions were filed by different persons praying for similar directions. Rules were issued almost in all cases. Notices were routinely served upon all the Respondents. They did not appear to be very particular about disposal of the Rule. At long last the Respondents have appeared with a robust defense assailing the legal status of the games especially by reference to specific pieces of legislations, namely, The Public Gambling Act, 1867; The Penal Code; The Places of Public Amusement Act, 1933 and the National Sports Council Act, 1974.

9. We examined the legislations now in place regulating sports, amusements and games. The Public Gambling Act, 1867 as amended up to January, 2007 appear to be most relevant in the

present context. The Public Gambling Act was enacted for punishment of public gambling and the keeping of 'common gaming houses'. The Act does not, however, define gambling. In section 1A the Act 'gaming' is defined as follows:

> 1A. "gaming" includes wagering or betting except, wagering or betting upon a horse-race, when such wagering or betting takes place-
>
> (a) on the day of which such race is to be run,
>
> (b) in an enclosure which the Stewards controlling such race have, with the sanction of the Government, set apart for the purpose, and
>
> (c) (i) with a licensed bookmaker, or
>
> (ii) by means of a totalisator as defined in section 14 of the Amusement Tax Act, 192. but does not include a lottery.

10. The same section defines 'common gaming-house' as follows:

> "common gaming-house" means any house, room, tent, or walled enclosure, or space or vehicle, or any place whatsoever, in which any instrument of gaming are kept or used for the profit or gain of the person owning occupying, using or keeping such house, room, tent, enclosure, space, vehicle of place, whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, place, or instruments or otherwise howsoever."

11. Sections 3 and 4 of the Act make several acts punishable. Under section 3 the following acts are made punishable:

a) opening, keeping or using common gaming-house;

b) being owner or occupier of common gaming-house willfully permitting the same to be opened, occupied, used or kept by any other person;

c) having been in care or management of or being engaged to assist the conducting of the business of any house, tent, room, space or walled enclosure, opened, occupied, used or kept for the purpose as aforesaid, and

d) advancing or furnishing money for the purpose of gaming with persons frequenting such house, tent, room, space or walled enclosure.

12. Section 4 of the Act makes the following acts punishable:

a) playing or gaming with cards, dice, counters, money or other instruments of gaming in the common gaming-house, and

b) being found present in the common gaming-house for the purpose of gaming, no matter playing for money, wager, stake or otherwise.

13. A plain reading of the long title of the Act suggests that the Act itself was intended to make provisions for punishment for 'public gambling' and the keeping of 'common gaming-houses'. As of common knowledge, gambling or betting is the wagering of money, stakes, or something of material value on an event with an uncertain outcome with the primary intention of winning additional money. According to Black's Law Dictionary (Eighth Edition) 'gambling' means- "The act of risking something of value, esp. money for a chance to win a prize". As mentioned earlier, definition of gambling does not appear in the Public Gambling Act. But the definition of 'gaming' appearing in section 2 of the Act is said to 'include wagering or betting'. Back on Black's Law Dictionary, "wager" means- 'money or other

consideration risked on uncertain event and "bet" means 'something (esp. money) staked or pledged as a wager. It follows, therefore, that 'gaming' as defined in the Act is absolutely synonymous with gambling.

14. 'Lottery' also is a kind of gambling which involves the drawing of lots for a prize. Save as otherwise authorized by the Government or the State lottery, keeping any office or place for the purpose of drawing any lottery is punishable under the Penal Code.

15. Section 294A of the Penal Code makes lottery punishable in the following terms:

> 294A. Whoever keeps any office or place for the purpose of drawing any lottery [not being a State lottery or a lottery authorized by the Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both.

16. Reverting to the case, it appears that the petitioner keeps a 'common gaming-house' at his club premises for offering games called Nipun Khela i.e., 1-10, 1-8, Charchari, dice and Howji to be played by the members of general public. He makes no secret that it is his business and the games are a means of generating money. In view of the legal position we have no doubt that Dice and Howji are gambling in that those games are commonly known as games played risking money with intention to win more money. The games played as 1-10, 1-8 and Charchari are a bit obscure. There is no description of them given by the petitioner either. Learned DAG submitted with emphasis that all of them are gambling directly related to wagering and betting with intention to win additional money. Mr Mehdi found it difficult to oppose the contention and say otherwise. The case of alleged lawful business canvassed by the petitioner itself lends colour to the claim that all those games are played for money, wager or stake generating profit for the petitioner as keeper of the house which means by necessary implication that those are nothing but varied forms of gambling sought to be prevented by the Public Gambling Act, 1876.

17. The second limb of the petitioner's case is that he derived authority from the Muktijodhya Welfare Club to conduct those games in the premises of the Naogaon branch of the Club. The contract executed by the Bangladesh Muktijodhya Welfare Club suggests, amongst others, that the petitioner is given lease of the premises of the Naogaon branch of the Club for a initial period of five years to build up necessary infrastructures and organize and conduct the purported lawful games, namely, Nipun Khela, 1-10, 1-8, Dice, Howji and cultural programs for gain on different conditions. The petitioner, although professedly the Naogaon Area Chief of the Club, figures as lessee in the contract and is allowed to conduct the games on commercial basis. Terms of .contract requires him, amongst others, to pay Taka 1,00,000 as deposit at the first instance. Monthly rental was to be fixed after the games boomed. More importantly, the contract authorizes the petitioner to build up a permanent structures for housing the games at the premises of Naogaon branch of Muktijodhya Welfare Club which necessarily means that permission is given to keep 'common gaming-house' which is an offence and punishable under the Public Gambling Act. Needless to say that the contract being made for an unlawful purpose is void *ab initio* and is unenforceable.

18. So far as the places of cultural programs are concerned, they are controlled and regulated by the Places of Public Amusement Act, 1933. If the program is for public amusement it needs be held in the "place of public amusement" as defined under section 2 of the of the Act and the place needs be notified as such by the Government and no person can open or keep open

places of public amusement without, or otherwise than in conformity within the condition of, a license to be granted by the Deputy Commissioner. Under the Places of Public Amusement Act 'keeping open a notified place of public amusement unlawfully' and 'contravention of the order closing any notified place of public amusement' are punishable. Cultural programs for public amusement therefore, fall within a different statutory regime not to be organized at will in disregard to law.

19. The National Sports Council Act, 1974, referred to by the learned DAG is all about constitution of a council for the development and regulation of sports and co-ordination of sports activities. The Act defines sports as meaning game for recreation involving bodily exercises including games declared by the Government to be sports within the meaning of the Act. This Act was enacted repealing the earlier Sports (Development and Control) Ordinance 1962, to regulate and coordinate the games involving bodily exercises having nothing to do with gambling within the meaning of the Public Gambling Act, or cultural programs for public amusement within the meaning of the Places of Public Amusement Act. 1933.

20. We have already held that the indoor games sought to be conducted as 'Nipun Khela' including 1-10, 1-8, Dice and Howji are 'gambling' and whoever playing or found present in the common gaming-house for the purpose of playing the same as well as owning or keeping 'common gaming-house' are punishable under law. The appropriate authorities as indicated in the Public Gambling Act are duty bound to take action against the persons and/or organizations found committing offences under the Act.

21. The petitioner does have no valid basis to seek direction against the Respondents not to interfere with the acts punishable under penal statutes.

22. Before we conclude we feel it expedient to sum up our findings as follows:

a) any game that is played for money, wager or stake or in other words played risking money or something of value for a chance to win a prize is gambling.

(b) the Nupun Khela including 1-10, 1-8, Dice and Howji are varied forms gambling. The words 'gambling' and 'gaming' appearing in the Public Gambling Act, 1867, are synonymous by connotation. Whoever found present in the 'common gaming-house' for the purpose of gaming, no matter playing for money, wager, stake or otherwise, is punishable under the said Act.

c) owning, keeping or having charge of common gaming-house as contemplated under section 3 of the Public Gambling Act, 1867, is an offence and punishable under the said section of law.

d) Lottery' is a form of gambling punishable under section 294A of the Penal Code with exceptions provided therein.

e) the Magistrate of a district or other officer invested with full power of a Magistrate or the District Superintendent of Police may either himself enter, or by his warrant authorize any competent police officer to enter into any such gaming house and take into custody all persons present therein and seize all instruments of gaming including moneys, securities for money and articles of value used or intended to be used for the purpose of gaming as contemplated in section 6 of the Public Gambling Act,1867.

f) There is no scope for holding cultural

programs for public amusement as sought to be done by the petitioner save as provided by the Places of Public Amusement Act 1933. There must be 'notified places of public amusement' as per requirement of the Act for the purpose of such programs.

g) in the peculiar factual and legal background the writ petition is misconceived and not maintainable.

h) action or drive by police and other agencies competent so to take, against acts prohibited and punishable under law are taken as a matter of course and of duty under law. Law does not permit interference into agency- actions against crimes and anti-social activities unless it is shown that the activity sought to be prevented, inquired into or investigated by agencies are not prohibited by law or that the agency action is tainted with bad faith and apparent malice.

23. In the background, it seems to us to be the only conclusion deducible that the instant writ petition is misconceived and not maintainable. By the same token the Rule is totally devoid of merit.

24. Accordingly, this Rule is discharged. Since nothing on records suggests conscious abuse of the process of court by the petitioner we refrain from awarding cost.

Direction against the Respondent earlier given is hereby vacated.

Communicate copies of this judgment to the respondents at once.

Ed.

HIGH COURT DIVISION
(Criminal Appellate Jurisdiction)

Quamrul Islam Siddique J
AKM Zahirul Hoque J

Judgment
February 5th, 2014

State.....Appellants
vs
Md Tohurul Islam @ Azizul Haque and others.....Respondents*

Legal Remembrancer's Manual, 1960
Chapter XII

State Defence Lawyers—It is high time to revise the GO fixing the fees of the state defence lawyer without further delay. The state defence lawyers are doing the sacred job of saving the neck of a human being. There is no scope to take the matter lightly, rather it should be taken into consideration with utmost seriousness. .....(232)

Code of Criminal Procedure (V of 1898)
Section 374

Condemned Prisoner—Condemned prisoners are supposed to walk to the gallows but unfortunately they are not getting opportunity to defend themselves properly. Walking to the gallows without an opportunity of being defeded by a competent lawyer is the worst form of *violation of human rights.* .....(231)

Evidence Act (I of 1872)
Section 30

Confession of a co-accused is not evidence, it can only lend assurance to other evidence. .....(186)

Code of Criminal Procedure (V of 1898)
Section 164(3)

Once a confessional statement is taken to

*Death Reference No. 7 of 2008 with Criminal Appeal Nos. 900 913, 944, 973, 983, 989, 1020 and Jail Appeal Nos. 147 & 148 of 2008.

be voluntary and true, belated retraction has no value. .....(163)

Evidence Act (I of 1872)
Section 30

Confession of a co-accused is not substantive evidence and such confession cannot be the sole basis of conviction of a co-accused in the absence of independent and corroborative evidence. .....(191)

Evidence Act (I of 1872)
Section 8

Abscondence—Abscondence itself is not the conclusive proof of guilt of the accused in absence of legal evidence. Only because of abscondence accused could not held responsible for committing the offence. .....(192)

Quantum Sentences

Most difficult task of a Judge is to decide what would be the quantum of sentene to be awarded upon an accused for committing an offence. It is not possible to lay down any cut and dry formula for imposition of sentence upon the accused. .....(209)

State vs Mir Hossain @ Mira and other reported in 56 DLR (HCD) 124; Moqbul Hossain vs State 12 DLR (SC) 217; State vs Nalini (1999) 5 SCC, 253; Amir Hossain Howlader vs State, 37 DLR (AD) 139; State vs Lalu Mia, 39 DLR (AD) 117; Lutfon Nahar Begum vs State, 27 DLR (AD) 29; Babar Ali Mollah vs State, 44 DLR (AD) 10; State vs Safikul Islam, 1991 BLD (AD) 121 = 43 DLR (AD) 92; Ashraf Ali Munshi vs State, 48 DLR 590, Shahjahan vs State 46 DLR 575, State vs Balai Chandra Sarker, 47 DLR 467, State vs Sree Ranjit Kumar Pramanik, 45 DLR 660, Abdul Khaleque vs State, 45 DLR 75, State vs Badsha Mollah, 41 DLR 11; Joygun Bibi vs State, 12 DLR (SC) 156; State vs Fazu Kazi @ Fazlur Rahman, 29 DLR (SC) (1977) 271; State vs Nurul Hoque, 45 DLR (1993) 306; Hafizuddin vs State, 42 DLR 397; Bakul Chandra Sarker vs State, 45 DLR 260; Lal Singh vs Emperor, 40 CrLJ Allahabad 132; State vs Rokeya Begum @ Rokeya Begum (condemned-prisoner) 13 BLT 377 = 10 BLC 687 and Madan Gopal Kakkad vs Naval Dubey, 3 SCC (1992) 204 ref.

Md Khabir Uddin Bhuiyan, Advocate—For the Accused-Appellant (In Jail Appeal No. 148 of 2008)

Dr Md Bashir Ullah, DAG with Mian Md Shamim Ahsan, AAG with Yeadia Zaman, AAG—For the State.

Judgment

Quamrul Islam Siddique J: The learned Judge of Druto Bicher Tribunal, Rajshahi referred this matter of death sentence for confirmation under section 374 of the Code of Criminal Procedure (shortly, CrPC) to this Court. The reference has been numbered as Death Reference No. 7 of 2008.

The learned Judge of Druto Bichar Tribunal, Rajshahi found the condemned prisoners, namely,

1. Md Tohurul Islam @ Md Azizul Haque (absconded in the midst of trial)
2. Md Nurul Islam @ Shine @ Taposh @ Tonmoy (absconded in the midst of trial)
3. Md Shafiqul Islam, son of Mobarok (faced trial);
4. Abu Bakkar Siddique (absconded in the midst of trial);
5. Nurun Nabi @ Hasan @ Khokon (absconded in the midst of trial)
6. Md Shafiqul Islam, son of Habibur Rahman (faced trial);
7. Sanjoy Kumar Shaha (absconding since begining);
8. Pintu (absconding since begining);
9. Dilip @ Mamu @ Shibu @ Manik

(absconding since begining);

10. Tomal @ Ferdous (absconding since begining) guilty of the charge under sections 120B/396 of the Penal Code and convicted and sentenced them thereunder to death.

The learned Judge also found the accused, namely,

11. Roghunath Barmon (faced trial);
12. Md Abdul Karim (faced trial);
13. Ahmed Shah Nurul (faced trial);
14. Md Sanaul Islam (faced trial);
15. Haji Azim Uddin (faced trial);
16. Khairul Islam (absconding since begining) guilty of the charge under sections 120B/396 of the Penal Code and convicted and sentenced them thereunder to suffer rigorous imprisonment for life with a fine of Taka 3000 each, in default, to suffer rigorous imprisonment for 6(six) months more.

The learned Judge also found accused, namely,

17. Md Abdul Mannan (absconding but surrendered after judgment);
18. Abdul Awal (absconding since begining, and trial proceeded against him in absentia);
19. Rabiul Islam (absconding but surrendered after judgment);
20. Joynal Abedin (absconding but surrendered after judgment);
21. Md Majed Ali (absconding since begining)

guilty of the charge under sections 120B/396 of the Penal Code and convicted and sentenced them thereunder to suffer rigorous imprisonment for 10 years with a fine of Taka 2000 (two thousand) each, in default, to suffer rigorous imprisonment for 3 (three) months more.

Condemned prisoners, namely,

1. Md Tohurul Islam;
2. Md Nurul Islam @ Shine;
3. Abu Bakkar Siddique;
4. Nurun Nabi Hasan @ Khokan;
5. Sanjoy Kumar Shaha;
6. Pintu;
7. Dilip @ Mamu @ Shibu @ Manik; and
8. Tomal @ Ferdous

have been provided with the learned State-Defence Lawyer under the provisions of the Legal Remembrancer's, Manual.

Condemned prisoner, namely, Shafiqul Islam, son of Mobarok has preferred Criminal Appeal No. 983 of 2008 and Jail Appeal No. 148 of 2008.

2. Condemned prisoner Shafiqul Islam, son of late Habibur Rahman has also filed Criminal Appeal No. 1020 of 2008, and Jail Appeal No. 147 of 2008.

3. Accused-appellant Md Abdul Mannan (arrested on 10-2-2008 after judgment) filed Criminal Appeal No. 900 of 2008 3(three) accused appellants, namely, Md Abdul Karim, Sanaul and Ahmed Shah Nurul filed Criminal Appeal No. 913 of 2008.

4. Accused-appellant Rabiul Islam (surrendered on 5-2-2008 after judgment) and Joynal Abedin (surrendered on 5-2-2008 after judgment) both filed Criminal Appeal No. 944 of 2008.

Accused appellant Haji Azim Uddin filed Criminal Appeal No. 973 of 2008.

5. Accused-appellant Roghunath Barmon @ Hiro filed Criminal Appeal No. 989 of 2008.

6. The Death Reference No. 7 of 2008, Criminal Appeal Nos. 900 of 2008, 913 of 2008,

944 of 2008, 973 of 2008, 983 of 2008, 989 of 2008, 1020 of 2008 and Jail Appeal Nos. 147 of 2008 and 148 of 2008 have been heard together and are being disposed of by this common judgment.

7. The prosecution case, in short, is that S. I. Md Tofazzal Hossain Khan of Manda Police Station as informant lodged an FIR with Manda Police Station, alleging, inter-alia, that on 25-8-2006 at 18-35 hours, the Officer-in-Charge of Manda Police Station informed him that the miscreants attacked Chowbariahat and they were looting away valuable things and also killing people indiscriminately. The Officer-in-Charge gave order to the informant to go to Chowbariahat with sufficient police force and arrest the miscreants. On getting the order from the OC of Manda Police Station, the informant entered a GD Entry No. 1139 dated 25-8-2006 and went to the place of occurrence with Md Anisur Rahman, SI (PW 33), Md Anowar Hossain, PSI (PW 32) and other forces. The distance between the Police Station and the Chowbariahat is 18 Kilometer. They reached Chowbariahat and found the dead bodies of ASI. AT Firoz, Constables, namely, Askan Ali, Farid, Babul Miah and they also found that their throats were cut. On query from the surrounding people, the informant came to know that on 25-8-2006 at 18.30 hours, 20/25 unknown miscreants wearing lungi, half shirt, full shirt, fastening gamcha on their head being armed with rifle, pipe gun, iron rod attacked the police personnel and slaughtered them by cutting their throat. The miscreants created panic in the area by exploding 8/10 bombs. The miscreants also looted away one 7.62 china pistol, handle No. 72, body No. 50007737 and 8 round of ammunitions from ASI. AT Firoz, 303 rifle and 10 round of ammunitions from Constable No. 486 Askan Ali, one china rifle and 20 round of ammunitions from Constable No. 285 Faridul, one short-gun and 10 round of ammunitions from Constable No. 548 Babul Miah. The miscreants also stabbed Nojer Ali with sharpen knife and Nojer Ali was seriously injured. Injured Nojer Ali was taken to Rajshahi Medical College Hospital for treatment but on the way at Mohonpur he succumbed to his injuries. The miscreants also looted away about Taka 1,00,000 (one lakh) and fled away towards west. The miscreants did massacre for about 10 minutes and they were aged in between 25-40 years. The informant informed the matter to the Officer-in-Charge over mobile phone and the Officer-in-Charge also came to the place of occurrence.

8. On the basis of the aforesaid First Information Report (shortly, FIR) police recorded Manda Police Station Case No. 23 dated 28-5-2006 under sections 353/396 of the Penal Code. Police investigated the case and during investigation visited the place of occurrence, prepared sketch map with separate index thereof, examined the witnesses and recorded their statements under section 161 of the Code of Criminal Procedure, arrested the accused and arranged recording of the statements of 5 accused under section 164 of the Code of Criminal Procedure and finally submitted charge-sheet No. 71 dated 16-4-2007 under sections 120B/400/402/353/396 of the Penal Code against the condenmened prisoners and the accused appellants as a *prima-facie* case was made out against them.

9. The case record was transmitted to the Durto Bichar Tribunal, Rajshaji for trial. The case was numbered as Durto Bichar Tribunal Case No. 21 of 2007.

10. The learned Judge of Druto Bichar Tribunal, Rajshahi framed charge against the accused (1) Md Tohurul Islam @ Azizul Haque, (2) Md Nurul Islam @ Shine @ Taposh @ Tonmoy, (3) Md Shafiqul Islam son of Mobarok, (4) Rogunath Barmon @ Hiro, (5) Abdul Karim, (6) Nurun Nabi Hasan @ Khokon, (7) Abu Baker Siddique, (8) Shafilqul Islam son of Habibur Rahman, (9) Ahmed Shah Nurul (10) Sanaul Islam (11) Haji Azim Uddin (12) Sanjoy Kumar

Saha, (13) Pintu, (14) Md Abdul Manna @ Abdul Mannan, (15) Abdul Awal, (16) Rabiul Islam, (17) Joynal Abedin, (18) Khairul Islam, (19) Dilip @ Mamu @ Sibu @ Manik, (20) Tomal @ Ferdous, (21) Majed Ali under sections 120B/400/402/353/396 of the Penal Code. The charge was read over and explained to the accused present to which they pleaded not guilty and claimed to be tried. However, charge was framed against the absconding accused in their absence.

11. In order to substantiate the charge against the accused, the prosecution has examined as many as 39 witnesses in this case.

12. After close of evidence of the prosecution witnesses, the accused on dock were examined under section 342 of the Code of Criminal Procedure. This time also they repeated their innocence and adduced one witness as DW 1.

13. The defence case, as it transpires from the trend of cross-examination of the prosecution witnesses and also from the only defence witness is that the accused are innocent and they have been falsely implicated in this case. Their further case is that they have been serving in the office of CARB and they are not in any way involved in this case.

14. Considering the facts, circumstances and the evidence on record the learned Judge of the Druto Bichar Tribunal, Rajshahi convicted and sentenced the condemned prisoners and the accused appellants as aforesaid.

15. Being aggrieved by, and dissatisfied with, the impugned judgment and order of conviction and sentence dated 24-1-2008 passed by the learned Judge of Druto Bichar Tribunal, Rajshahi, condemned prisoners, namely,

1. Shafiqul Islam son of late Mobarak filed Criminal Appeal No. 983 of 2008 and Jail Appeal 148 of 2008;
2. Shafiqul Islam son of Habibur Rahman preferred Criminal Appeal No. 1020 of 2008 and Jail Appeal No. 147 of 2008.

Moreover, accused appellants, namely,

3. Md Abdul Mannan filed Criminal Appeal No. 900 of 2008;
4. Md Abdul Karim, Md Sanaul Islam and Ahmed Shah Nurul filed Criminal Appeal No. 913 of 2008;
5. Robiul Islam and Joynal Abedin filed Criminal Appeal No. 944 of 2008;
6. Haji Azimuddin filed Criminal Appeal No. 973 of 2008 and
7. Rogunath Barmon @ Hiro filed Criminal Appeal No. 989 of 2008.

16. Condemned prisoners, namely, 1) Tohurul Islam @ Azizul Hoq, 2) Nurul Islam @ Shine, 3) Abu Bakkar Siddiq, 4) Nurun Nabi Hossain, 5) Sonjoy Kumar Saha, 6) Pintu, 7) Dilip @ Mamun, @ Shibu @ Manik and 8) Tomal @ Ferdous have been provided with State Defence Lawyer. Mrs. Mahmuda Khatun, the learned advocate has been appointed as the State Defence Lawyer for the above condemned prisoners.

17. Mr Fazlul Haque Khan Farid, the learned Advocate appeared for the accused appellant, namely, Md Abdul Karim, Md Sanaul Islam @ Sanaul Islam and Ahmed Shah Nurul.

18. Mr Md SM Shajahan, the learned Advocate appeared for the accused appellant Haji Azim Uddin and condemned prisoner Shafiqul Islam son of Habibur Rahman.

19. Mr Md Aminul Huq with Mr Md Ataur Rahman, the learned Advocates appeared for the accused appellants, namely, Md Abdul Manan, Rabiul Islam and Joynal Abedin.

20. Mr Jahidul Hoque, the learned Advocate appeared on behalf of condemned prisoner, namely, Shafiqul Islam, son of Mobarok and accused-appellant Rogunath Barmon @ Hiro.

21. Mr Md Hatem Ali, the learned Advocate appeared on behalf of condemned prisoner, namely, Shafiqul Islam son of Habibur Rahmnan.

22. Dr Md Bashir Ullah, the learned Deputy Attorney-General, Mr Mian Md Shamim Ahsan, Assistant Attorney-General and Ms. Yeadia Zaman, Assistant Attorney-General appeared on behalf of the State and supported the Death Reference and opposed the Criminal Appeals and the Jail Appeals. They first took us through the FIR, charge-sheet, the lengthly evidence of the prosecution witnesses, the impugned judgment and order dated 24-1-2008, confessional statements made by five accused, namely, Tohurul Islam, Nurul Islam, Md Shafiqul Islam, son of Mobarak, Roghunath Barmon and Abdul Karim, inquest reports, post-mortem reports and other relevant papers available in the paper book. The learned Deputy Attorney-General then submits as under:

1. the prosecution has been able to prove the case against the condemned prisoners and the accused-appellants beyond all reasonable doubt and that as such there is no ground to interfere with the impugned judgment and order dated 24-1-2008 passed by the learned Judge of the Druto Bichar Tribunal, Rahshahi by this court;
2. there are sufficient evidence against the condemned prisoners and the accused appellants to show that they were the actual assailants of the victims;
3. confessional statements of accused Tohurul Islam, Nurul Islam, Md Shafiqul Islam son of Mobarok, Roghunath Barmon and Abdul Karim are inculpatory in nature and that their confessional statements are voluntary and true and that there is no reason to disbelieve their statements;
4. the learned Magistrate complied with all the provisions of sections 164 and 364 of the Code of Criminal Procedure before recording the statements of the 5(five) accused under section 164 of the Code of Criminal Procedure;
5. the prosecution witnesses have proved the time, place and manner of occurrence beyond doubt and that there is no discrepancy in the evidence of the prosecution witnesses in respect of time, place and manner of occurrence;
6. the confessing accused in no uncertain terms stated that the accused were present at the conspiracy held on 21-8-2006 and that they were also present at the time of occurrence held on 25-8-2006 and took active part in killing the victims;
7. the occurrence took place in pursuance of the conspiracy held on 21-8-2006 and that as such the learned Judge of the Druto Bichar Tribunal correctely found the accused guilty under sections 120B/396 of the Penal Code and that the Tribunal convicted and sentenced them rightly;
8. the condemned prisoners and the accused-appellants have jointly committed the heinous offence and that they do not deserve any sympathy from the court.

With these few words, the learned Deputy Attorney-General recommends for acceptance of the reference and dismissal of the appeals.

23. Ms. Mahmuda Khatun, the learned State Defence Lawyer appearing on behalf of the condemned prisoners, on the other hand, submits as under:

1. the informant has not mentioned any name in the FIR.
2. the confessional statements of the condemned prisoners are not voluntary and true and, as such, the order of conviction and sentence passed against the con-

demned prisoners cannot sustain in law.

3. there is no occular evidence in this case and that the confession of the condemned prisoners are the product of police torture and intimidation.

4. the prosecution has utterly failed to prove the case against the condemned presoners and that as such they are entitled to be acquitted.

24. With these few words the learned State Defence Lawyer prays for rejection of the reference and set-aside of the impugned judgment and order dated 24-1-2008 so far as it relates to the condemned prisoners and also prays for acquittal of the condemned prisoners.

Mr Fazlul Haque Khan Farid, the learned Advocate appeared on behalf of the accused appellants, namely, Abdul Karim, Sanaul Islam and Ahmed Shah Nurul. These accused-appellants have preferred Criminal Appeal No. 913 of 2008. The learned Advocate, however, submits as under-

1. the prosecution has not been able to prove the case against the accused appellants beyond doubt;

2. no name has been mentioned in the FIR The brother of deceased Nojer Ali also lodged an FIR and in that FIR he mentioned the name of 5 accused, but police did not investigate the case against them and did not include their names in the charge-sheet;

3. Abdul Zalil, the brother of deceased Najer Ali has not been examined by the police and that he has not been cited as witness in this case;

4. there is no eye-witness in this case and that the accused-appellants have been convicted and sentenced purely on surmise and conjecture;

5. The confessional statement of Abdul Karim is exculpatory in nature and that he has not involved himself in this case;

6. accused Sanaul Islam and Ahmed Shah Nurul have not given any confessional statement and that there is no evidence against them in respect of conspiracy and killing of the deceased;

7. during framing of charge, the accused were not confronted with their alleged involvement in the conspiracy and that as such charge under section 120B of the Penal Code has been framed against the accused illegally;

8. Police submitted charge-sheet without proper investigation.

25. With these few words the learned Advocate for the accused appellants prays for set-aside of the impugned judgment and order dated 24-1-2008 so far as it relates to accused-appellants, namely, Abdul Karim, Ahmed Shah Nurul and Sanaul Islam and also prays for allowing of the Criminal Appeal No. 913 of 2008.

Mr SM Shahjahan, the learned advocate appearing on behalf of accused-appellant Haji Azimuddin (Criminal Appeal No. 973/2008) and the condemned prisoner, namely, Shafiqul Islam, son of Habibur Rahman (Criminal Appeal No. 1020/2008 and Jail Appeal No. 147/2008) He, however, submits as under:

1. the prosecution has utterly failed to prove the case against condemned prisoner Shafiqul Islam, son of Habibur Rahman and accused-appellant Haji Azimuddin;

2. though five accused made confessional statements but accused Shafiqul Islam, son of Habibur Rahman did not make any confession;

3. out of 5 confessing accused only accused Nurul Islam @ Shine mentioned the name of accused Shafiqul Islam son of Habibur Rahman and no other confessing

accused implicated him in this case;

4. condemned prisoners, namely, Nurul Islam, Tohurul Islam implicated Haji Azimuddin in their statements under section 164 CrPC but did not mention any specific overt act against accused Haji Azimuddin. This accused did not take part in killing of the victims;
5. condemned prisoner Nurul Islam only mentioned that Haji Azimuddin was present at the meeting held on 21-8-2006 but did not mention anything about his participation in the killing;
6. none of the confessing accused stated anything about the participation of accused Haji Azimuddin and Shafiqul Islam son of Habibur Rahman. The confession of co-accused cannot be used as evidence against other accused and that conviction cannot be based on the basis of confession of co-accused without other corraborative evidence;
7. in fact, there is no evidence against these accused to show that they were involved in the conspiracy or in the killing of the deceased except confession of co-accused and, as such, the conviction and sentence passed against condemned prisoner Shafiqul Islam son of Habibur Rahman and accused-appellant Haji Azimuddin cannot sustain in law.

26. With these few words, the learned Advocate prays for rejection of the reference so far as it relates to condemned prisoner, namely, Shafiqul Islam son of Habibur Rahman and also prays for allowing of the Criminal Appeal No. 1020/2008 and Jail Appeal No. 147/2008. The learned Advocate again prays for set-aside of the impugned judgmetn and order dated 24-1-2008 so far as it relates to accused-appellant Haji Azimuddin and also prays for allowing of the Criminal Appeal No. 973/2008.

27. Mr Md Zahidul Haque, the learned Advocate appearing on behalf of condemned prisoner Md Shafiqul Islam, son of Mobarok Khan, (Criminal Appeal No. 983/2008 and Jail Appeal No. 148/2008) and accused-appellant Shree Roghunath Barmon @ Hiro (Criminal Appeal No. 989/2008) submits as under:

1. the prosecution has miserably failed to prove the case against condemned prisoner Md Shafiqul Islam son of Mobarok and that the accused appellant Roghunath Barmon by producing cogent evidence against them;
2. condemned prisoner Shafiqul Islam, son of Mobarok is a Branch Manager of the CARB office and that there is no reason for his involvement in this case;
3. police arrested him on 29-9-2006 and that police took him on remand for 4 (four) days and that inhumanly tortured him and extracted confession from him;
4. condemned prisoner Shafiqul Islam, son of Mobarok made confession under section 164 of the Code of Criminal Procedure, but the confession is a product of inhuman torture by the police;
5. prosecution has examined as many as 39 witnesses in this case but none saw the occurrence;
6. condemned prisoner Shafiqul Islam, son of Mobarak was brought before the Magistrate for recording confessional statement direct from the police custody and that his confessional statement was not voluntary and true and, as such, conviction and sentence passed against him cannot sustain in law.

28. With these few words, the learned Advocate prays for rejection of the reference so far as it relates to condemned prisoner Shafiqul Islam son of Mobarok Khan and also prays for

allowing of the Criminal Appeal Nos. 983 of 2008 and Jail Appeal No. 147 of 2008. The learned Advocate again prays for set-aside of the impugned judgment and order dated 24-1-2008 so far as it relates to accused-appellant Roghunath Barmon and also prays for allowing of the Criminal Appeal No. 989 of 2008.

29. Mr Md Aminul Haque with Mr Ataur Rahman, the learned advocates appeared on behalf of accused-appellants, namely, Md Abdul Mannan (Criminal Appeal No. 900/2008), Rabiul Islam and Joynal Abedin (Criminal Appeal No. 944/2008). Mr Md Aminul Haque, the learned Advocate, however, submits as under:

1. there is no evidence against these accused to show that they participated at the conspiracy or in the actual killing of the deceased;
2. these accused-appellant did not make any confession and that their conviction on the basis of statement under section 164 of the Code of Criminal Procedure of co-accused cannot sustain in law;
3. there is no ocular witness in this case and that no name has been mentioned in the FIR;
4. these accused have been implicated in this case purely on the basis of confession of co-accused and that legal position is that conviction cannot be based on the basis of confession of co-accused.

30. With these few words the learned Advocate prays for set-aside of the impugned judgment and order dated 24-1-2008 so far it relates to accused-appellants, namely, Abdul Mannan, Rabiul Islam and Joynal Abedin and also prays for allowing of Appeal Nos. 900/2008 and 944/2008.

31. We have already stated that in order to bring home the culpability of the accused, the prosecution has placed on record confession of 5(five) accused and also plethora of evidence. The prosecution has examined as many as 39 witnesses in this case. Now let us discuss the evidence of the witnesses adduced by the prosecution.

32. PW 1 Md Tofazzal Hossain. He is the informant of this case. He stated that on 25-8-2006 at about 18.35 hours, the Officer-in-Charge of Manda PS informed him that the miscreants created havoc at Chowbariahat and looted away the valuable things from the people and also killed 4 police personnel. The Officer-in-Charge passed order to him (PW1) to go to the place of occurrence with sufficient police force. Thereafter, he went to the place of occurrence with ASI Anisur Rahman (PW 33), PSI Anowar Hossain (PW 32) and saw that ASI. AT Firoj, Constables, namely, Askan Ali, Farid and Babul Miah were lying on the ground having dressed with police uniform and they were slaughtered by the miscreants and their throats were cut. He then came to know from the surrounding people that on 25-8-2006 at 18.30 hours, 20/25 unknown miscreants wearing lungi, half shirt, full-shirt and fastening gamcha on their head having rifle, pipe gun, iron rod and sharpen knife came to the bazar and looted away valuable things and killed 4(four) police personnel and one civil person. The miscreants inflicted iron rod blow upon the head of the police personnel and they fell down on the ground and thereafter the miscreants slaughtered them. The miscreants also inflicted stab injury to Izaradar Nojer Ali. Injured Nojer Ali was taken to Rajshahi Medical College Hospital and in the meantime when he reached at Mohanpur, succumbed to his injuries. The miscreants also blasted 8/10 bombs and they also looted away Taka 1,00,000 from the toll house of the Izaradars. They also took away one china pistol and 8 round of ammunitions from the deceased ASI. AT Firoj and 10 round of ammunitions from Constable Askan Ali and one china rifle, 20 round of ammunitions from Constable Faridul and 10 round of ammunitions from Constable Babul Miah. They held the inquest of the deceased and

thereafter came to the police station and lodged the FIR. He proved the FIR as Ext.1 and his signature therein as Ext.1/1. He also prepared the inquest report of ASI. AT Firoj and Constable Babul and proved the inquest report as Ext. 2 and 3 respectively.

33. In his cross-examination by accused Haji Azimuddin, Nurul Islam @ Shine, Shafiqul Islam, son of Habibur Rahman, Abdul Karim, Tohurul and Roghunath Barmon he stated that he could not say the actual number of miscreants. He also stated that he could not say how many accused were arrested by police. He was on duty on that day. He recorded the instruction of the Officer-in-Charge in the diary. He cannot remember when the Officer-in-Charge gave him the order. The Investigating Officer examined him. He cannot remember when he started from Thana but he reached the place of occurrence at 19.5 hours on 25-8-2006. He cannot remember how long he stayed at Naogaon. When he came at Chow-bariahat, he saw some eye-witnesses to the occurrence. He saw the toll house of Izaradars. He did not find any person sitting in the toll house. The Officer-in-Charge of Police Station maintains the list of the members of local miscreants and members of Purba Bangla Sarbahara Party, Lalpataka etc. He heard that police arrested one accused, namely, Sagor. He denied the suggestion that Sagor died out of police torture. He cannot say how many days after arrest Sagor died. The dead body of Sagor was handed over to his relation after post-mortem examination. He stated that he knew the name of one Investigating Officer and did not know the name of other Investigating Officers. He along with SI Abdus Salam of Manda Police Station prepared the inquest report. He does not know who were present at the time of preparation of inquest report. He did not obtain signature from whom he heard about the occurrence. But he took the signature of the witnesses. The age of the miscreants was 25-40 years. He came to know from the local people about the age of the miscreants. He does not know if there is any tower at Chowbariahat. He prepared the inquest report of ASI AT Firoj in front of toll house and under a bokul tree. He examined some witnesses. There were 10/12 forces with him and they all carried arms, pipe gun, LMG china riffle, short gun etc. He did not find Nojer Ali when he went to Chowbariahat. He did not mention in the inquest report that the brain matter of ASI AT Firoj came out. He identified the place where the victim police personnel were found dead. He made a primary investigation of the place of occurrence before the FIR was lodged. He arrested Tohurul Islam on 1-1-96 and Nurul Islam on 1-1-96. He forwarded the accused to the Magistrate and prayed for remand. There was scuffling at the time of arrest of accused Shine and accused Shine was injured. He also arrested Shafiqul, son of Mobarok. He denied the suggestion that he made a perfunctory investigation.

34. The State Defence Lawyer adopted the above cross-examination. PW 2, Rahela Bibi stated that the occurrence took place before one year ago after asar prayer. She does not know anything about the occurrence. Daroga seized TV from her house and prepared seizure list and she put her signature in the seizure list. She identified her signature in the seizure list. She also proved the seizure list as Exhibit 6 and her signature therin as Ext. 6/1.

35. At this stage this witness was declared hostile. In cross-examination by the prosecution she stated that accused Shafiqul son of Mobarak is her son. She identified accused Tohurul Islam on the dock. She used to cook for her tenants and the tenants would give her Taka 200 per months. Her tenants do not see TV from her house. She denied the suggestion that she knew that her tenants slaughtered the police personnel. She denied a suggestion that her tenants along with her son Shafiqul had a meeting in her house. She denied

the suggestion that she deposed falsely.

36. In cross-examination by the accused she stated that her TV was out of order long before the occurrence took place. She did not see any dead body. None of the persons of her area knew who slaughtered the police personnel. She stated that her tenants never held any meeting in her house. She also stated that she did not know any person, named, Siddique and Khokon. She stated that police arrested Sagor and he died while he was under police custody. She stated that police threatened her and asked her to depose according to the desire of police. Police took her before the Magistrate forcibly. Magistrate recorded her statement under section 164 of the Code of Criminal Procedure as a witness and she put her signature therein. She identified her signature as ext. 7. In cross-examination she stated that police took her to Thana, tortured her and gave her electric shock.

37. The State Defence Lawyer adopted the above corss-examination.

PW 3 is Suresh Chandra Das. He stated that the occurrence took place one year ago. He also stated that he made a statement under section 164 of the Code of Criminal Procedure as a witness before the Magistrate. He put his signature in the statement and he proved the statement as ext. 8 and his signature therein as Ext. 8/1. He stated that he did not see anything.

38. The State Defence Lawyer adopted the above corss-examination.

PW 4 is Md Asaduzzaman. He stated that the occurrence took place on 25-8-2006. He took rent of one room at Chowbariahat. He is the partner of Izaradar. When he was in the room, some bombs were blasted. He along with Mahbub Alam Chowdhury (PW 5), Md Abul Kalam (PW6) and Md A. Halim (PW 7) were present in the room. Seeing the smoke he fled away and at the time of his fleeing away, he saw the dead body of ASI AT Firoj. At this stage he was declared hostile.

39. In cross-examination by the prosecution he stated that when he was fleeing away, he saw three dead bodies of police personnel lying on the ground. He denied the suggestion that he saw that Nojer Ali was injured. From bazar he heard that the miscreants raised slogan chanting, "Purba Bangla Sorbohara Party, Lal Potaka Zindabad." He stated that there was a quarrel among the Izaradars in respect of realising toll in Chowbariahat. On 2-6-2006, there was also a quarrel and the brother of Haji Azimuddin was confined. He heard that Haji Azimuddin got his brother released. He also heard that Haji Azimuddin threatened other Izaradars by saying that he would see how other Izaradars would collect toll.

40. In cross-examination, he stated that there were 11/12 partners of Izaradar of Chowbariahat but there was no written contract. Mahbub got the lease of the hat for 1413 BS and Bachchu got the lease of the hat for 14/12 BS. He did not know if Azimuddin was Izaradar of Chowbariahat. 10/12 thousand people normally assemble in the hat on the hat day. The occurrence took place on the date of weekly hat day. There are tea stalls in front of toll house. In the adjacent of toll house, there is one room of the Principal of the college. The occurrence took place on Friday. He denied the suggestion that he is not a partner of Izaradar. He also denied the suggestion that he did not see the dead body of the police personnel. Police examined him under section 161 of the Code of Criminal Procedure in the Thana. He heard that the brother of Nojer Ali also lodged the FIR. He went to the Thana as per request of Mahbub Alam Chowdhury (PW 5). He was inside the room when the occurrence took place. He heard the sound when the bombs were blasted. He saw only one dead body. He denied the suggestion that he deposed falsely.

41. The State Defence Lawyer adopted the above cross-examination.

PW 5 is Mahbub Alam Chowdhury. He stated that the occurrence took place on 25-8-2006 at 6-00 PM and that he was sitting inside the toll house. At that time miscreants blasted some bombs in front of toll house and after few minutes he came out from the room and saw one police was lying in front of the varandah. At this stage he was declared hostile.

42. In cross-examination by the prosecution, he denied the suggestion that he knew the miscreants who inflicted iron rod blow and slaughtered the police personnel. He also denied the suggestion that he knew that Nojer Ali died at Mohanpur when (Nojer Ali) he was taken to Rajshahi Medical College Hospital.

43. In cross-examination by the accused, he stated that he used to go to Chowbariahat but not so often as he was a sick person.

44. The State Defence Lawyer adopted the above cross-examination.

PW 6 is Md Abul Kalam. He stated that the occurrence took place on 25-8-2006 at 6-00 PM. He was one of the partners of Izaradars. He went to the place of occurrence hat at 10-00 AM. He heard that total 8/10 bombs were blasted. He went out of his room and saw the dead body and later on heard that 3 police personnel died and his partner Nojer Ali also died. At this stage he was declared hostile.

45. In cross-examination by the prosecution, he denied the suggestion that he knew the miscreants who inflicted rod blow upon police personnel. He also denied the suggestion that Azimuddin threatened other Izaradars and stated that he would see how the Izaradars run the hat. The defence declined to cross-examine him. PW 7 is Abdul Halim. He stated that the occurrence took place on 25-8-2006 at 5-00 PM. He is an Izaradar. At the time of occurrence he was sitting inside the room and suddenly heard the sound of bomb blast and the room was filled up with smoke. People tried to flee away and he himself also fled away. Thereafter, he heard that one ASI and 3 police personnel died. The defence did not cross-examine him.

46. PW8 is Shahidul Islam. He stated that the occurrence took place on 25-8-2006 at 6-30 PM. He was staying in a room of the college adjacent to the hat and he heard the sound of bomb blast. The room filled up with smoke and they all came out of the room and saw the dead body of police personnel beneath the bakul tree. He heard that one ASI of police, 3 police personnel and one Izaradar died.

47. The State Defence Lawyer adopted the above cross-examination.

PW 9 is Chairman Belal Hossain Khan. He stated that the occurrence took place on 25-8-2006. He was in Proshadpur and from there he came to know that one Izaradar received injury and 4(four) police personnel died. Thereafter, he went to Chowbariahat and found that Mahbub Alam Chowdhury (PW 5) also received injury. He went to the place of occurrence and saw injured Nojer Ali who was taken to Rajshahi Medical College Hospital, but on the way he died when they reached at Mohanpur. He saw that ASI Firoj was lying under the bokul tree and he received iron rod blow on his head and his brain matter came out and he was slaughtered. The dead body of police Constable namely, Askan was lying in front of a tea stall. The dead body of Constable Babul also was lying in front of the tea stall. He saw 4 (four) dead bodies of police personnel. Dead police personnel received serious injury on their head and their brain matter also came out. Thereafter, police held the inquest of the dead body in his presence. He proved the inquest report as Exhibit-3 and his signature therin as Exhibit-3/2. He also proved the inquest report of Constable Faridul as Exhibit-2 and his signature therein as Exhibit-2/2. He also proved the inquest

report of Constable Askan as Exhibit-9 and his signature therein as Exhibit-9/1. He also proved the inquest report of Nojer Ali which was marked as Ext-10 and his signature therein as Ext-10/1.

48. In cross-examination he stated that the distance between Manda Police Station and Prashadpur is 14/15 kilometer and the distance between Manda Police Station and Chowbariahat is 17/18 km. He came to know about the occurrence at 7-00 PM. He came to know about the occurrence from one Siful Islam (not cited) over telephone. He arrived at Chowbariahat and saw 4 dead bodies of police personnel. The inquest report of Nojer Ali was prepared at 11 PM and the inquest report of Constables, namely, Askan, Faridul and Babul were also prepared at 8-00 PM. The inquest report of ASI AT Firoj was prepared at 8-45 PM. SI Tofazzol Hossain (PW1) prepared the inquest report of Firoj. Police examined him (this PW 9) 2 days after the occurrence. He denied the suggestion that the inquest report was prepared sitting in the Police Station.

49. PW10, Ashraful Islam. He stated that the occurrence took place on 25-8-2006 at 6-00 PM. He has a medicine shop at Chowbariahat and he was in his shop at 6-15 PM. He heard the sound of bomb blast. All persons who came to the hat started fleeing away. He came to know that the miscreants blasted bombs and 4 police personnel were slaughtered. He closed his shop and left for his home at 7-15 PM. He also came to know from the people of Chowbariahat that miscreants blasted bomb and slaughtered 4 police personnel. Police seized one TV from the house of Rahela Begum (PW2) and he put his signature in the seizure list. He proved the seizure list as Ext-6 and his signature therein as Ext-6/2.

50. In cross-examination he denied the suggestion that police tortured him. He also stated that IO examined him. He does not know on which date police recorded his statement under section 161 of the Code of Criminal Procedure. He also cannot say whether police examined him on 18-2-2007. He did not know the house of Rahela Begum (PW2) before the occurrence took place. He denied the suggestion that he did not go to the house of Rahela Begum.

51. The State Defence Lawyer adopted the above cross-examination.

PW 11 is Md Nazmul Huq. He stated that the occurrence took place on 25-8-2006 just before Magrib prayer. He has a VCD repairing shop at Chowbariahat. All on a sudden he heard the sound of bombs blast and people started running away. People were trying to find out their cattle. The people also stated that 15/16 miscreants slaughtered 4 police personnel and took away the arms chanting slogan "Lalpataka Zindabad" and left the place. On 30-9-2006, police went to the CARB office with one accused. The house of Rahela Begum (PW 2) was adjacent to CARB office. Police seized one 14" TV and asked him to put his signature in the seizure list. He proved the seizure list as Ext. 6 and his signature therein as ext.6/1. There was quarrel at Chowbariahat before the occurrence. He also heard that Azimuddin had altercation with Izaradar of cattle market. In cross-examination he also stated that he did not know the Bengali month when the TV was seized. He also stated that on 2-10-2006, police examined him and recorded his statement under section 161 of the Code of Criminal Procedure. There were 8/10 persons when TV was seized. There was some altercation at Chowbariahat 2/3 months before the occurrence. He heard that Azimuddin had altercation with other Izaradars 2/3 months before the occurrence. He cannot remember from whom he heard this. He denied the suggestion that he deposed falsely.

52. The State Defence Lawyer adopted the above cross-examination.

PW 12 is Md Farhad Hossain. He stated that

the occurrence took place on 25-8-2006 before Magrib prayer. He heard from his own business centre that there was quarrel is Chowbariahat. He tried to ascertain by cell phone what actually happened, but could not get the actual information. Thereafter he went to Chowbariahat by motor cycle and came to know that 4/5 police personnel were killed and 2/3 persons were injured. People gathered at Chowbariahat and saw the dead body of ASI Firoj lying under the bokul tree. He also saw the dead body of 3 police personnel, namely, Babul, Firoj and Askan. He also saw the injuries on their head. Police held the inquest. He put his signature in the inquest report of ASI Firoj. He proved the inquest report as Ext-3 and his signature therein as Ext-3/3. He also proved the inquest report of Constable No. 545 Babul Hossain as Ext-11 and his signature therein as Ext-11/1. He also proved the inquest report of Nojer Ali which was marked as Ext-10 and his signature therein as Ext-10/2. He stated that police seized blood stained earth, 54 net kathi (জালের কাঠি), 16 steel balls. He also proved the seizure list as Ext-12 and his signature therein as Ext-12/1. He proved the blood stained earth, net kathi and steel balls which were marked as material Ext-II, III, IV.

53. In cross-examination he stated that the distance between his home and Manda Police Station is 20/22 kilometre. The dead body of ASI Firoj was lying in front of the toll house and the dead body of Constables, namely, Askan, Faridul and Babul were also lying in the west of toll house. He went his home when preparation of the inquest report was over. When he came to Deldua Bari he heard that Nojer Ali died. Police called him 2 days after the occurrence and recorded his statement. He denied the suggestion that he deposed falsely.

54. The State Defence Lawyer adopted the above cross-examination.

PW 13 is Md Monwarul Iqbal. He stated that on 25-8-2006, he went to Chowbariahat. He put his signature in the inquest report of Constable Faridul. He proved the inquest report as Ext-2 and his signature therein as Ext-2/3. He also proved the inquest report of Constable No. 545 Babul Hossain which was marked as Ext-11. He also saw the dead body of 4 police personnel lying at Chowbariahat.

55. The State Defence Lawyer adopted the above cross-examination.

56. PW 14 is Principal Md Rafiqul Alam. He stated that the occurrence took place on 25-8-2006 at 5.45 PM and on that day he went to cattle market of Chowbariahat. He is the Principal of Chowbaria College. The vacant land of Chowbaria College was given lease to the Izaradars of cattle market by the TNO. He stated that half an hour before the occurrence, he went to the cattle market and from there he went his home and saw that people were running hither and thither and on query he came to know that bombs were blasted at Chowbaria cattle market and many people died there. On hearing this, he went to Chowbariahat and saw that 4 police personnel died and their throat were cut and thereafter, he came back home. On 18-2-2007, Police examined him under section 161 of the Code of Criminal Procedure. He himself did not see blasting of bombs. He then stated that one room of the college was used as toll house. Previously, there were other Izradars who took lease of the land of the college. He saw the dead body from a distance. When he came to the hat, he saw 5/7 Izradars there. He heard that bombs were blasted and people died at the Chowbariahat. He was also present in the hat from 5-00 to 5-30 PM and thereafter he left the place. He heard the sound of explosion of bombs and people ran away out of fear. He never visited CARB office. He denied the suggestion that he deposed falsely.

57. The State Defence Lawyer adopted the above cross-examination.

PW 15 is Ataur Rahman. He stated that he could not remember the date of the occurrence. He is a businessman. He heard that the tower of the palli viddut was collapsed and as a result some people died.

58. In cross-examination he stated that he did not know which tower of the palli viddut was collapsed.

59. The State Defence Lawyer adopted the above cross-examination.

PW 16 is Md Kazemuddin. He stated that the occurrence took place on 25-8-2006 at the evening. He was on duty at Chowbariahat with Dhiren Chowkidar (Dhiren Chowkidar not examined). When bombs were blasted people were running hither and thither. After 5/7 minutes he came to hat again and saw Rahim, Dhiren, Yeasin, Amulla Chowkidar there. He saw the dead body of Firoj Daroga with throat cut and there were no arms with him. He also saw Constable Farid and he found that his throat was also cut and there were injuries on his head. He also saw the dead body of other two policemen having cut of their throat. Thereafter, police came there and the Officer-in-Charge also came there. He denied the suggestion that he did not state to IO that Chowkidar Dhiren and Rahim were with him. When he came home from Chowbariahat it was 12-30 AM Daroga took his statement 3 times but 3(three) months after the occurrence. He did not see who killed the deceased. Police came there almost one hour after the occurrence. He stated that there was some altercation on realization of toll. He denied the suggestion that he deposed falsely.

60. The State Defence Lawyer adopted the above cross-examination.

PW 17 is Mirza Abdus Salam. He is Police Inspector. He stated that on 25-8-2006 he was serving in Manda P.S and he heard that the miscreants exploded bombs in cattle market at Chowbariahat and some police personnel were slaughtered. The miscreants also took away money from the Izaradars. Thereafter, he entered the GD Entry No.1139 dated 25-8-2006 and went to the place of occurrence with Officer-in-Charge of Manda P.S and other forces and arrived there at 19.5 hours and saw the dead body of police personnel lying in front of the office of Izaradar. On the direction of the TNO and the Officer-in-Charge, he prepared the inquest report of Constables, namely, Askan Ali and Babul Hossain. SI Tofazzal Hossain prepared the inquest report of other police personnel. Thereafter, he came to Prosadpur with the dead body and he also prepared the inquest report of Nojer Ali at Prasadpur. He brought the dead body of the deceased to the morgue of Naogaon Sadar Hospital for post mortem examination. He proved the inquest report of Constable No. 545 Babul Hossian as Ext. 11. He also proved the inquest report of deceased Nojer Ali as Ext. 10. He also proved chalan as Exts. 13, 14, 15 and his signature therein as Ext. 13/1, 14/1, 15/1.

61. In cross-examination he stated that he prepared the inquest report of Constable Askan and Constable Babul Hossain on 25-8-2006 at 19.05 hours. In the inquest report it has been mentioned that the shirt, trouser and vest (genji) of the deceased were smeared with blood. He went to the place of occurrence at 19.05 hours and saw the dead body of police personnel. He was examined by the Daroga.

62. The State Defence Lawyer adopted the above cross-examination.

63. PW 18 is Md Rafiqul Islam. He stated that the occurrence took place on 25-8-2006 and he went to the place of occurrence at 7-00 PM and saw that Constable No. 285 Faridul received injury on his head and he was lying on the floor having throat cut. ASI Tofazzal Hossain prepared

৩। **আইনের প্রাধান্য**।—আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের বিধানাবলী কার্যকর থাকিবে।

৪। **কতিপয় অধ্যাদেশের কার্যকারিতা প্রদান**।—১৯৭৫ সালের ১৫ আগস্ট হইতে ১৯৭৯ সালের ৯ এপ্রিল তারিখ পর্যন্ত (উভয় দিনসহ) সময়ের মধ্যে জারীকৃত—

(ক) তফসিলভুক্ত অধ্যাদেশসমূহ, এবং

(খ) অন্যান্য অধ্যাদেশসমূহ দ্বারা প্রচলিত কোন আইন, আদেশ বা অধ্যাদেশ সংশোধন করা হইয়া থাকিলে উক্ত সংশোধনী অধ্যাদেশসমূহ (amending Ordininces)

এমনভাবে কার্যকর থাকিবে যেন উহা এই আইনের উদ্দেশ্যে পূরণকল্পে, জাতীয় সংসদ কর্তৃক প্রণীত কোন আইনঃ

তবে শর্ত থাকে যে, এই ধারার অধীন ১৯৭৫ সালের ১৫ আগস্ট হইতে ১৯৭৯ সালের ৯ এপ্রিল তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকরণ করা হইলেও যতটুকু উহাদের বিষয়বস্তুর **(contents)**সহিত সংশ্লিষ্ট শুধুমাত্র ততটুকু গ্রহণ করা হইয়াছে মর্মে গণ্য হইবে এবং উক্ত সময়কালে অবৈধ ও অসাংবিধানিকভাবে রাষ্ট্রক্ষমতায় আসীন সামরিক শাসন আমলের কৃত কর্মের অনুমোদন ও সমর্থন (confirmation and ratification) করা হইয়াছে বলিয়া কোনক্রমেই বিবেচিত হইবে না।

৫। **হেফাজতকরণ**।—(১) অধ্যাদেশসমূহ ও উহাদের অধীন প্রণীত বিধি, প্রবিধান বা আদেশবলে কৃত কাজ-কর্ম, গৃহীত ব্যবস্থা বা কার্যধারাসমূহ, অথবা প্রণীত, কৃত, গৃহীত বা সূচীত বলিয়া বিবেচিত কাজ-কর্ম, ব্যবস্থা বা কার্যধারাসমূহ এমনভাবে নিষ্পন্ন হইয়াছে বলিয়া গণ্য হইবে যেন এই আইনের বিধানাবলী বলবৎ ছিল।

(২) অধ্যাদেশসমূহের অধীন দায়েরকৃত কোন মামলা বা সূচীত কোন কার্যধারা বা গৃহীত কোন কাজ-কর্ম বা ব্যবস্থা নিষ্পন্নাধীন থাকিলে উহা এমনভাবে নিষ্পন্ন করা যাইবে যেন উহা সংশ্লিষ্ট অধ্যাদেশ এর অধীন দায়েরকৃত বা সূচীত বা গৃহীত হইয়াছে।

(৩) অধ্যাদেশসমূহের অধীন কৃত কাজ-কর্ম, গৃহীত ব্যবস্থা বা কার্যধারাসমূহের ফলস্বরূপ কোন প্রতিকার বা করণীয় বাস্তবায়নের স্বার্থে উক্ত প্রতিকার বা করণীয় পদক্ষেপ সংশ্লিষ্ট অধ্যাদেশের অধীন বাস্তবায়িত হইবে।

৬। **তফসিল সংশোধনের ক্ষমতা**।—এই আইনের উদ্দেশ্য পূরণকল্পে, সরকার, প্রয়োজনে, সরকারি গেজেট প্রজ্ঞাপন দ্বারা, তফসিল সংশোধন করিতে পারিবে।

৭। **বিধি প্রণয়ণের ক্ষমতা**।—এই আইনের উদ্দেশ্য পূরণকল্পে, সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, বিধি প্রণয়ন করিতে পারিবে।

৮। **রহিতকরণ**।—১৯৭৫ সালের আগস্ট ২০ হইতে ১৯৭৯ সালের এপ্রিল ৯ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকরকরণ (বিশেষ বিধান) অধ্যাদেশ, ২০১৩ (২০১৩ সনের ১ নং অধ্যাদেশ), এতদ্দ্বারা রহিত করা হইল।

তফসিল

[ধারা-২(খ) দ্রষ্টব্য]

(১) The Government of Bangladesh (services) (Repeal) Ordinance,1975 (Ordinance No. XLIV of 1975).

(২) The District Administration (Repeal) Ordinance, 1975 (Ordinance No,XLV of 1975).

(৩) The Government Servants (Review of Penalties) Ordinance,1975 (Ordinance No. XLVIII of 1975).

(৪) The Gandhi Ashram (Board of Trustees) Ordinance, 1975 (Ordinance No. LI of 1975).

(৫) The Jatiya Rakkhi Bahini (Absorption in the Army) Ordinance,1975 (Ordinance No. LII of 1975).

(৬) The Bidi Manufacture (Prohibition) Ordinance, 1975 (Ordinance No. LVII of 1975).

(৭) The Bangladesh Government Hats and Bazars (Management) (Repeal) Ordinance, 1975 (Ordinance No. LIX of 1975).

(৮) The Registration (Extension of Limitation) Ordinance, 1975 (Ordinance No. LX of 1975).

(৯) The Universities Laws Amendment Ordinance, 1975 (Ordinance No. LXII of 1975).

(১০) The Dhaka Metropolitan Police Ordinance,

1976 (Ordinance No. III of 1976).

(১১) The International Finance Corporation Ordinance, 1976 (Ordinance No. XII of 1976).

(১২) The Pharmacy Ordinance, 1976 (Ordinance No. XIII of 1976).

(১৩) The Delimitation of Constituencies Ordinance, 1976 (Ordinance No. XV of 1976).

(১৪) The Statutory Corporations (Delegation of Powers) (Repeal) Ordinance, 1976 (Ordinance No. XVI of 1976).

(১৫) The Alienation of Land (Distressed Circumstances) (Restoration) Ordinance, 1976 (Ordinance No. XXVIII of 1976).

(১৬) The Supreme Court Judges (Travelling Allowances) Ordinance, 1976 (Ordinance No. XXX of 1976).

(১৭) The Investment Corporation of Bangladesh Ordinance, 1976 (Ordinance No. XL of 1976).

(১৮) The Land Development Tex Ordinance, 1976 (Ordinance No. XLII of 1976).

(১৯) The Appropriation Ordinance, 1976 (Ordinance No. XLIII of 1976).

(২০) The Appropriation (Railways) Ordinance, 1976 (Ordinance No. XLIV of 1976).

(২১) The Finance Ordinance, 1976 (Ordinance No. XLV of 1976).

(২২) The Appropriation (Supplemenary) Ordinance, 1976 (Ordinance No. XLVI of 1976).

(২৩) The Railway Nirapatta Bahini Ordinance, 1976 (Ordinance No. XLVII of 1976).

(২৪) The Bangladesh Jute Corporation (Repeal) Ordinance, 1976 (Ordinance No. XLIX of 1976).

(২৫) The Newspapers (Annulment of Declaration) (Repeal) Ordinance, 1976 (Ordinance No. L of 1976).

(২৬) The Chittagong Port Authority Ordinance, 1976 (Ordinance No. LII of 1976).

(২৭) The Mongla Port Authority Ordinance, 1976 (Ordinance No. LIII of 1976).

(২৮) The Public Servants (Marriage with Foreign Nationals) Ordinance, 1976 (Ordinance No. LVII of 1976).

(২৯) The Bangladesh Agricultural Research Institute Ordinance, 1976 (Ordinance No. LXII of 1976).

(৩০) The Inland Shipping Ordinance, 1976 (Ordinance No. LXXII of 1976).

(৩১) The Bangladesh Shishu Academy Ordinance, 1976 (Ordinance No. LXXIV of 1976).

(৩২) The Chittagong Hill Tracts Development Board Ordinance, 1976 (Ordinance No. LXXVII of 1976).

(৩৩) The Rajshahi Town Development Authority Ordinance, 1976 (Ordinance No. LXXVIII of 1976).

(৩৪) The Police Officers (Special Provisions) Ordinance, 1976 (Ordinance No. LXXXIV of 1976).

(৩৫) The National Agriculture Award Fund Ordinance, 1976 (Ordinance No. LXXXVII of 1976).

(৩৬) The Bangladesh Petroleum Corporation Ordinance, 1976 (Ordinance No. LXXXVIII of 1976).

(৩৭) The Chittagong Division Development Board Ordinance, 1976 (Ordinance No. LXXXIX of 1976).

(৩৮) The Vested and Non-Resident Property (administration) (Repeal) Ordinance, 1976 (Ordinance No. XCII of 1976).

(৩৯) The Bangladesh Malaria Eradication Board (Repeal) Ordinance, 1977 (Ordinance No. X of 1977).

(৪০) The Government of Bangladesh (services Screening) (Repeal) Ordinance, 1977 (Ordinance No. XV of 1977).

(৪১) The Bangladesh Biman Corporation Ordinance, 1977 (Ordinance No. XIX of 1977).

(৪২) The Appropriation Ordinance, 1977 (Ordinance No. XXI of 1977).

(৪৩) The Appropriation (Supplementary) Ordinance, 1977 (Ordinance No. XXII of 1977).

(৪৪) The Finance Ordinance, 1977 (Ordinance No. XXIII of 1977).

(৪৫) The Appropriation (Railways) Ordinance, 1977 (Ordinance No. XXIV of 1977).

(৪৬) The Appropriation (Railways Supplementary) Ordinance, 1977 (Ordinance No. XXV of 1977).

(৪৭) The Minimum Wages (Fixation) (Repeal) Ordinance, 1977 (Ordinance No. XXIX of 1977).

(৪৮) The Seeds Ordinance, 1977 (Ordinance No. XXXIII of 1977).

(৪৯) The Tea Ordinance, 1977 (Ordinance No. XXXVIII of 1977).

(৫০) The Regulation of Salary of Employees Laws (Repeal) Ordinance, 1977 (Ordinance No. XLII of 1977).

(৫১) The Export Promotion Bureau Ordinance, 1977 (Ordinance No. XLVII of 1977).

(৫২) The Bangladesh Travel Agencies (Registration and Control) Ordinance, 1977 (Ordinance No. XLVIII of 1977).

(৫৩) The Housing and Building Research Institute Ordinance, 1977 (Ordinance No. XLIX of 1977).

(৫৪) The Rural Electrification Board Ordinance, 1977 (Ordinance No. LI of 1977).

(৫৫) The Cost and Management Accountants Ordinance, 1977 (Ordinance No. LIII of 1977).

(৫৬) The Bangladesh Public Service Commission Ordinance, 1977 (Ordinance No. LVII of 1977).

(৫৭) The Financial Institutions Laws Amendment Ordinance, 1977 (Ordinance No. LXI of 1977).

(৫৮) The Bangladesh Sericulture Board Ordinance, 1977 (Ordinance No. LXII of 1977).

(৫৯) The Bangladesh Handloom Board Ordinance, 1977 (Ordinance No. LXIII of 1977).

(৬০) The Government Servants (Review of Penalties) (Dissolution of Review Board) Ordinance, 1978 (Ordinance No. II of 1978).

(৬১) The Prevention of Malaria (Special Provisions) Ordinance, 1978 (Ordinance No. IV of 1978).

(৬২) The Bangladesh Council of Scientific and Industrial Reserarch Ordinance, 1978(Ordinance No.V of 1978).

(৬৩) The Madrasah Education Ordinance, 1978 (Ordinance No. IX of 1978).

(৬৪) The Supreme Court Judges (Remuneration and Privileges) Ordinance, 1978 (Ordinance No. XI of 1978).

(৬৫) The Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

(৬৬) The Bangla Academy Ordinance, 1978 (Ordinance No. XIX of 1978).

(৬৭) The Finance Ordinance, 1978 (Ordinance No. XXI of 1978).

(৬৮) The Appropriation (Railways Supplementary) Ordinance, 1978 (Ordinance No. XXII of 1978).

(৬৯) The Appropriation (Railways) Ordinance, 1978 (Ordinance No. XXIII of 1978).

(৭০) The Appropriation (Supplementary) Ordinance, 1978 (Ordinance No. XXIV of 1978).

(৭১) The Appropriation Ordinance, 1978 (Ordinance No. XXV of 1978).

(৭২) The Asian Reinsurance Corporation Ordinance, 1978 (Ordinance No. XXVII of 1978).

(৭৩) The Political Parties Ordinance, 1978 (Ordinance No. XLV of 1978).

(৭৪) The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance No. XLVI of 1978).

(৭৫) The Chittagong Metropolitian Police Ordinance, 1978 (Ordinance No. XLVIII of 1978).

(৭৬) The Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(৭৭) The International Centre for Diarrhoeal Disease Research, Bangladesh Ordinance, 1978 (Ordinance No. LI of 1978).

(৭৮) The Government Servants (Special Provisions) Ordinance, 1979 (Ordinance No. XI of 1979).

(৭৯) The Bangladesh Telegraph and Telephone Board Ordinance, 1979 (Ordinance No. XII of 1979).

(৮০) The Railway Property (Unlawful Possession) Ordinance, 1979 (Ordinance No. XVII of 1979).

(৮১) The President's Pension Ordinance, 1979 (Ordinance No. XVIII of 1979).

(৮২) The Bangladesh Sangbad Sangstha Ordinance, 1979 (Ordinance No. XX of 1979).

(৮৩) The Leader and Deputy Leader of the Opposition (Remuneration and Privileges) Ordinance, 1979 (Ordinance No. XXI of 1979).

(৮৪) The Defence Services (Supreme Command) Ordinance, 1979 (Ordinance No. XXIII of 1979).

(৮৫) The Armed Police Battalions Ordinance, 1979 (Ordinance No. XXV of 1979).

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১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকর করিবার লক্ষ্যে প্রণীত আইন

যেহেতু সংবিধান (পঞ্চদশ সংশোধন) আইন, ২০১১ (২০১১ সনের ১৪ নং আইন) দ্বারা ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত অধ্যাদেশসমূহ অনুমোদন ও সমর্থন (ratification and confirmation) সংক্রান্ত গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের চতুর্থ তফসিলের ১৯ অনুচ্ছেদ বিলুপ্ত হওয়ায় উক্ত অধ্যাদেশসমূহ কার্যকারিতা হারাইয়াছে; এবং

যেহেতু সিভিল আপীল নং ৪৮/২০১১ এ সুপ্রীমকোর্টের আপীল বিভাগ কর্তৃক প্রদত্ত রায়ে সংবিধান (সপ্তম সংশোধন) আইন, ১৯৮৬ (১৯৮৬ সনের ১ নং আইন) এর ধারা ৩ এবং বাংলাদেশের সংবিধানের চতুর্থ তফসিলে ১৯ অনুচ্ছেদ বাতিল ঘোষিত হওয়ায় উক্ত সময়ের মধ্যে জারীকৃত উক্ত অধ্যাদেশসমূহ কার্যকারিতা হারাইয়াছে; এবং

যেহেতু উক্ত অধ্যাদেশসমূহ ও উহাদের অধীনে প্রণীত বিধি, প্রবিধান বা আদেশবলে কৃত কাজ-কর্ম, গৃহীত ব্যবস্থা বা কার্যধারাসমূহ, অথবা প্রণীত, কৃত, গৃহীত বা সূচীত বলিয়া বিবেচিত কাজ-কর্ম, ব্যবস্থা বা কার্যধারাসমূহ আইনের শাসন, জনগণের অর্জিত অধিকার সংরক্ষণ এবং প্রজাতন্ত্রের কর্মের ধারাবাহিকতা বহাল ও অক্ষুণ্ন রাখিবার নিমিত্ত, জনস্বার্থে, উহাদের কার্যকারিতা প্রদান আবশ্যক; এবং

যেহেতু উক্ত সময়ে জারীকৃত কতিপয় সংশোধনী অধ্যাদেশ (amending Ordinances) দ্বারা প্রচলিত আইন সংশোধন করা হইয়াছে বিধায় আইনের শাসন, জনগণের অর্জিত অধিকার সংরক্ষণ এবং প্রজাতন্ত্রের কর্মের ধারাবাহিকতা বহাল ও অক্ষুণ্ন রাখিবার নিমিত্ত, জনস্বার্থে, উহাদের কার্যকর রাখা আবশ্যক; এবং

যেহেতু উক্ত অধ্যাদেশসমূহের অধীন সূচীত কার্যধারাসমূহ বা গৃহীত ব্যবস্থা বা কাজ-কর্ম বর্তমানে অনিষ্পন্ন বা চলমান থাকিলে, জনস্বার্থে, উক্ত কার্যধারাসমূহ বা গৃহীত ব্যবস্থা বা কাজ-কর্ম চলমান রাখা আবশ্যক; এবং

যেহেতু উক্ত অধ্যাদেশ কার্যকারিতা হারাইবার ফলে সৃষ্ট আইনী শূন্যতা পূরণ করিবার লক্ষ্যে আশু ব্যবস্থা গ্রহণের প্রয়োজনীয় পরিস্থিতি বিদ্যমান রহিয়াছে মর্মে রাষ্ট্রপতির নিকট সন্তোষজনকভাবে প্রতীয়মান হওয়ায় এবং সংসদ অধিবেশনে না থাকিবার কারণে বিগত ২১ জানুয়ারি ২০১৩ তারিখে রাষ্ট্রপতি গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের ৯৩(১) অনুচ্ছেদে প্রদত্ত ক্ষমতাবলে উক্ত অধ্যাদেশসমূহকে তফসিলভুক্ত করিয়া ২০১৩ সালের ২ নম্বর অধ্যাদেশ জারী করেন; এবং

যেহেতু সংবিধানের ৯৩(২) অনুচ্ছেদের নির্দেশনা পূরণকল্পে, নবম জাতীয় সংসদের ১৬ তম অধিবেশনের ২৭ জানুয়ারি ২০১৩ তারিখে অনুষ্ঠিত প্রথম বৈঠকে ২০১৩ সালের ২ নং অধ্যাদেশ উপস্থাপিত হইয়াছে এবং উহার পরবর্তী ৩০ দিন অতিবাহিত হইলে অধ্যাদেশটির কার্যকারিতা লোপ পাইবে; এবং

যেহেতু দীর্ঘসময় পূর্বে জারীকৃত অধ্যাদেশসমূহ যাচাই-বাছাইপূর্বক বাংলায় নূতনভাবে আইন প্রণয়ন করা সময় সাপেক্ষ; এবং

যেহেতু উপরি-বর্ণিত প্রেক্ষাপট বিবেচনায় ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত অধ্যাদেশসমূহের মধ্যে কতিপয় অধ্যাদেশ কার্যকর করা সমীচীন ও প্রয়োজন;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইলঃ

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন**।—(১) এই আইন ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকরকরণ (বিশেষ বিধান) আইন, ২০১৩ নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। **সংজ্ঞা**।—বিষয় বা প্রসঙ্গের পরিপন্থী কোন কিছু না থাকিলে, এই আইনে—

(ক) "অধ্যাদেশ" অর্থ ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত ধারা ৪ এ উল্লিখিত অধ্যাদেশসমূহ; এবং

(খ) "তফসিল" অর্থ এই আইনের তফসিল।

৩। **আইনের প্রাধান্য**।—আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের বিধানাবলী কার্যকর থাকিবে।

৪। **কতিপয় অধ্যাদেশের কার্যকারিতা প্রদান**।—১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত(উভয় দিনসহ) সময়ের মধ্যে জারীকৃত—

(ক) তফসিলভুক্ত অধ্যাদেশসমূহ,এবং

(খ) অন্যান্য অধ্যাদেশসমূহ দ্বারা প্রচলিত কোন আইন, আদেশ বা অধ্যাদেশ সংশোধন করা হইয়া থাকিলে উক্ত সংশোধনী অধ্যাদেশসমূহ (amending Ordinances),

এমনভাবে কার্যকর থাকিবে যেন উহা এই আইনের উদ্দেশ্য পূরণকল্পে, জাতীয় সংসদ কর্তৃক প্রণীত কোন আইনঃ

তবে শর্ত থাকে যে, এই ধারার অধীন ১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১১ নভেম্বর তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকরকরণ করা হইলেও যতটুকু উহাদের বিষয়বস্তুর (contents) সহিত সংশ্লিষ্ট শুধুমাত্র ততটুকু গ্রহণ করা হইয়াছে মর্মে গণ্য হইবে এবং উক্ত সময়কালে অবৈধ ও অসাংবিধানিকভাবে রাষ্ট্রক্ষমতয়ি আসীন সামরিক শাসন আমলের কৃতকর্মের অনুমোদন ও সমর্থন (confirmation and ratification) করা হইয়াছে বলিয়া কোনক্রমেই বিবেচিত হইবে না।

৫। **হেফাজতকরণ**।—(১) অধ্যাদেশসমূহ ও উহাদের অধীন প্রণীত বিধি, প্রবিধান বা আদেশবলে কৃত কাজ-কর্ম, গৃহীত ব্যবস্থা বা কার্যধারাসমূহ, অথবা প্রণীত, কৃত, গৃহীত বা সূচীত বলিয়া বিবেচিত কাজ-কর্ম, ব্যবস্থা বা কার্যধারাসমূহ এমনভাবে নিষ্পন্ন হইয়াছে বলিয়া গণ্য হইবে যেন এই আইনের বিধানাবলী বলবৎ ছিল।

(২) অধ্যাদেশসমূহের অধীন দায়েরকৃত কোন মামলা বা সূচীত কোন কার্যধারা বা গৃহীত কোন কাজ-কর্ম বা ব্যবস্থা নিষ্পন্নাধীন থাকিলে উহা এমনভাবে নিষ্পন্ন করা যাইবে যেন উহা সংশ্লিষ্ট অধ্যাদেশের অধীন দায়েরকৃত বা সূচীত বা গৃহীত হইয়াছে।

(৩) অধ্যাদেশসমূহের অধীন কৃত কাজ-কর্ম, গৃহীত ব্যবস্থা বা কার্যধারাসমূহের ফলস্বরূপ কোন প্রতিকার বা করণীয় বাস্তবায়নের স্বার্থে উক্ত প্রতিকার বা করণীয় পদক্ষেপ সংশ্লিষ্ট অধ্যাদেশের অধীন বাস্তবায়িত হইবে।

৬। **তফসিল সংশোধনের ক্ষমতা**।—এই আইনের উদ্দেশ্য পূরণকল্পে, সরকার, প্রয়োজনে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, তফসিল সংশোধন করিতে পারিবে।

৭। **বিধি প্রণয়নের ক্ষমতা**।—এই আইনের উদ্দেশ্য পূরণকল্পে, সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, বিধি প্রণয়ন করিতে পারিবে।

৮। **রহিতকরণ**।—১৯৮২ সালের ২৪ মার্চ হইতে ১৯৮৬ সালের ১০ নভেম্বর পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকরকরণ (বিশেষ বিধান) অধ্যাদেশ,২০১৩ (২০১৩ সনের ২ নং অধ্যাদেশ), এতদ্দ্বারা রহিত করা হইল।

তফসিল

[ধারা ২(খ) দ্রষ্টব্য]

(১) The Acquisition and Requisition of Immovable Property Ordinance, 1982 (Ordinance No. II of 1982).

(২) The Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982 (Ordinance No. IV of 1982).

(৩) The Bangladesh Abandoned Children (Special Provisions) (Repeal) Ordinance, 1982 (Ordinance No. V of 1982).

(৪) The Zakat Found Ordinance, 1982 (Ordinance No. VI of 1982).

(৫) The Drugs (Control) Ordinance, 1982 (Ordinance No. VIII of 1982).

(৬) The Standards of Weights and Measures Ordinance, 1982 (Ordinance No. XII of 1982).

(৭) The Bangladesh Flag Vessels (Protection) Ordinance, 1982 (Ordinance No. XIV of 1982).

(৮) The Finance Ordinance, 1982 (Ordinance No. XVI of 1982).

(৯) The Supreme Court Judges (Leave, Pension and Privileges) Ordinance, 1982 (Ordinance No. XX of 1982).

(১০) The Emigration Ordinance, 1982 (Ordinance No. XXIX of 1982).

(১১) The Bangladesh Veterinary Practitioners Ordinance, 1982 (Ordinance No. XXX of 1982).

(১২) The Foreign Contributions (Regulation) Ordinance, 1982 (Ordinance No. XXXI of 1982).

(১৩) The Attia Forest (Protection) Ordinance, 1982 (Ordinance No. XXXIII of 1982).

(১৪) The Public Employees Discipline (Punctual Attendance) Ordinance, 1982 (Ordinance No. XXXIV of 1982).

(১৫) The Haor Development Board (Dissolution) Ordinance, 1982 (Ordinance No. XXXVII of 1982).

(১৬) The Off-shore Islands Development Board (Dissolution) Ordinance, 1982 (Ordinance No. XXXVIII of 1982).

(১৭) The Institute of Islamic Education and Research (Repeal) Ordinance, 1982 (Ordinance No. XLIII of 1982).

(১৮) The Bangladesh Hotels and Restaurants Ordinance, 1982 (Ordinance No. LII of 1982).

(১৯) The Bangladesh Rural Development Board Ordinance, 1982 (Ordinance No. LIII of 1982).

(২০) The Fish and Fish Products (Inspection and Quality Control) Ordinance, 1983 (Ordinance No. XX of 1983).

(২১) The Bangladesh Railway Board (Repeal)

Ordinance, 1983 (Ordinance No. XXIV of 1983).

(২২) The Bangladesh Merchant Shipping Ordinance, 1983 (Ordinance No. XXIV of 1983).

(২৩) The Finance Ordinance, 1983 (Ordinance No. XXVII of 1983).

(২৪) The Bangladesh Irrigation Water Rate Ordinance, 1983 (Ordinance No. XXXI of 1983).

(২৫) The Bangladesh Unani and Ayurvedic Practitioners Ordinance, 1983 (Ordinance No. XXXII of 1983).

(২৬) The Marine Fisheries Ordinance, 1983 (Ordinance No. XXXV of 1983).

(২৭) The National Archives Ordinance, 1983 (Ordinance No. XXXIX of 1983).

(২৮) The Bangladesh Homoeopathic Practitioners Ordinance, 1983 (Ordinance No. XLI of 1983).

(২৯) The Primary Education (Repeal) Ordinance, 1983 (Ordinance No. XLV of 1983).

(৩০) The Grameen Bank Ordinance, 1983 (Ordinance No. XLVI of 1983).

(৩১) The Bangladesh Jatiya Jadughar Ordinance, 1983 (Ordinance No. LIII of 1983).

(৩২) The Motor Vehicles Ordinance, 1983 (Ordinance No. LV of 1983).

(৩৩) The Chief Election Commissioner and Election Commissioners (Remuneration and Privileges) Ordinance, 1983 (Ordinance No. LVI of 1983).

(৩৪) The National Curriculum and Tex-Book Board Ordinance, 1983 (Ordinance No. LVII of 1983).

(৩৫) The Bangladesh Krira Shikkha Protishtan Ordinance, 1983 (Ordinance No. LVIII of 1983).

(৩৬) The Bangladesh Nursing Council Ordinance, 1983 (Ordinance No. LXI of 1983).

(৩৭) The Santosh Islamic University (Board of Trustees) Ordinance, 1983 (Ordinance No. LXV of 1983).

(৩৮) The Hindu Religious Welfare Trust Ordinance, 1983 (Ordinance No. LXVIII of 1983).

(৩৯) The Buddhist Religious Welfare Trust Ordinance, 1983 (Ordinance No. LXIX of 1983).

(৪০) The Christian Religious Welfare Trust Ordinance, 1983 (Ordinance No. LXX of 1983).

(৪১) The Foreign Voluntary Organisations (Acquisition of Immovable Property) Regulation Ordinance, 1983 (Ordinance No. LXXIII of 1983).

(৪২) The Bangladesh Institute of Nuclear Agriculture Ordinance, 1984 (Ordinance No. II of 1984).

(৪৩) The Land Reforms Ordinance, 1984 (Ordinance No. X of 1984).

(৪৪) The Agricultural Labour (Minimum Wages) Ordinance, 1984 (Ordinance No. XVII of 1984).

(৪৫) The Bangladesh Public Administration Training Centre Ordinance, 1984 (Ordinance No. XXVI of 1984).

(৪৬) The Bangladesh Institute of International and Strategic Studies Ordinance, 1984 (Ordinance No. XXVII of 1984).

(৪৭) The Livestock Research Institute Ordinance, 1984 (Ordinance No. XXVIII

of 1984).

(৪৮) The Industrial Relations (Regulation) (Repeal) Ordinance, 1984 (Ordinance No. XXXII of 1984).

(৪৯) The Breast-Milk Substitutes (Regulation of Marketing) Ordinance, 1984 (Ordinance No. XXXIII of 1984).

(৫০) The Income-tax Ordinance, 1984 (Ordinance No. XXXVI of 1984).

(৫১) The Bangladesh Women's Rehabilitation and Welfare Foundation (Repeal) Ordinance, 1984 (Ordinance No. XXXVII of 1984).

(৫২) The Nazrul Institute Ordinance, 1984 (Ordinance No. XXXIX of 1984).

(৫৩) The Finance Ordinance, 1984 (Ordinance No. XLII of 1984).

(৫৪) The Fisheries Research Institute Ordinance, 1984 (Ordinance No. XLV of 1984).

(৫৫) The Districts (Extension to the Chittagong Hill-tracts Ordinance, 1984 (Ordinance No. LXXI of 1984).

(৫৬) ভূমি-খতিয়ান (পার্বত্য চট্টগ্রাম) অধ্যাদেশ, ১৯৮৫ (১৯৮৫ সনের ২ নং অধ্যাদেশ)

(৫৭) The Public Servants (Dismissal on Conviction) Ordinance, 1985 (Ordinance No. V of 1985).

(৫৮) The Ghousul Azam Abdul Qader Jilani Mosque Trust (Repeal) Ordinance, 1985 (Ordinance No. XVII of 1985).

(৫৯) The Family Courts Ordinance, 1985 (Ordinance No. XVIII of 1985).

(৬০) The Bangladesh Oil, Gas and Mineral Corporation Ordinance, 1985 (Ordinance No. XXI of 1985).

(৬১) The Surplus Public Servents Absorption Ordinance, 1985 (Ordinance No. XXIV of 1985).

(৬২) The Government Primary School Trachers Welfare Trust Ordinance, 1985 (Ordinance No. XXVI of 1985).

(৬৩) The Ground Water Management Ordinance, 1985 (Ordinance No. XXVII of 1985).

(৬৪) The Finance Ordinance, 1985 (Ordinance No. XXXII of 1985).

(৬৫) The Jamuna Multipurpose Bridge Authority Ordinance, 1985 (Ordinance No. XXXIV of 1985).

(৬৬) The Bangladesh Standards and Testing Institution Ordinance, 1985 (Ordinance No. XXXVII of 1985).

(৬৭) The Civil Aviation Authority Ordinance, 1985 (Ordinance No. XXXVIII of 1985).

(৬৮) The Youth Welfare Fund Ordinance, 1985 (Ordinance No. XL of 1985).

(৬৯) The Khulna Metropolitan Police Ordinance, 1985 (Ordinance No. LII of 1985).

(৭০) The Abandoned Buildings (Supplementary Provisions) Ordinance, 1985 (Ordinance No. LIV of 1985).

(৭১) The Chittagong Shahi Jame Masjid Ordinance, 1986 (Ordinance No. II of 1986).

(৭২) The Official Vehicles (Regulation of Use) Ordinance, 1986 (Ordinance No. VI of 1986).

(৭৩) The Drugs (Supplementary Provisions) Ordinance, 1986 (Ordinance No. XIII of 1986).

(৭৪) The Police (Non-Gazetted Employees) Welfare Fund Ordinance, 1986 (Ordinance No. XXXIII of 1986).

(৭৫) The Special Security Force Ordinance, 1986 (Ordinance No. XLIII of 1986).

(৭৬) The finance Ordinance, 1986 (Ordinance No. XLV of 1986).

(৭৭) The Development Board Laws (Repeal) Ordinance, 1986 (Ordinance No. XLVI of 1986).

(৭৮) The Public Corporations (Management Co-ordination) Ordinance, 1986 (Ordinance No. XLVIII of 1986).

(৭৯) The Rajshahi Krishi Unnayan Bank Ordinance, 1986 (Ordinance No. LVIII of 1986).

(৮০) The Bangladesh Cha Sramik Kallyan Fund Ordinance, 1986 (Ordinance No. LXII of 1986).

(৮১) The Bangladesh Academy for Rural Development Ordinance, 1986 (Ordinance No. LXIV of 1986).

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Act No. 8 of 2013

President's (Remuneration and Privileges) Act, 1975 এর অধিকতর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্য পূরণকল্পে President's (Remuneration and Privileges) Act, 1975 (Act No. VII of 1975) এর অধিকতর সংশোধন সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইলঃ—

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন**।—(১) এই আইন— President's (Remuneration and Privileges) (Amendment) Act, 2013 নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। **Act No. VII of 1975 এর section 7 এর সংশোধন**।—President's (Remuneration and Privileges) Act, 1975 (Act No. VII of 1975) এর section 7 এর sub-section (1) এর "1,00,00,000" সংখ্যাগুলি ও কমাগুলির পরিবর্তে "2,00,00,000" সংখ্যাগুলি ও কমাগুলি প্রতিস্থাপিত হইবে।

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Act No. 9 of 2013

Public Servants (Retirement) Act, এর অধিকতর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্যসমূহ পূরণকল্পে Public Servants (Retirement) Act, 1974 (Act No. XII of 1974) এর অধিকতর সংশোধন সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইলঃ—

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন**।—(১) এই আইন Public Servants (Retirement) (Amendment) Act, 2013 নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। **Act No. XII of 1974 এর section 4A এর সংশোধন**।—Public Servants (Retirement) Act,1974 (Act No. XII of 1974) এর section 4A এর—

(ক) sub-section (1) এ উল্লিখিত "fifty-ninth year" শব্দগুলির পরিবর্তে "sixtieth year" শব্দগুলি প্রতিস্থাপিত হইবে; এবং

(খ) sub-section (2) বিলুপ্ত হইবে।

(৩) **বিশেষ বিধান**।—**এই আইনের ধারা ২ এর দফা (খ) দ্বারা**—Public Servents (Retirement) Act,1974 (Act No. XII of 1974) এর section 4A এর sub-section (2) বিলুপ্তকরণ সত্ত্বেও, বিলুপ্তকৃত sub-section (2) এর অধীন কৃত বা চলমান সকল কাজ-কর্ম এমনভাবে কৃত বা চলমান থাকিবে যেন বিলুপ্ত হয় নাই।

৪। **রহিতকরণ ও হেফাজত**।—(১) Public Servents (Retirement) (Second Amendment) Ordinance, 2012 (২০১২ সনের ১০ নং অধ্যাদেশ), এতদ্দ্বারা রহিত করা হইল।

(২) উপ-ধারা (১) এর অধীন রহিতকরণ সত্ত্বেও, রহিতকৃত

অধ্যাদেশের অধীন কৃত সকল কাজ-কর্ম বা গৃহীত ব্যবস্থা এই আইনের অধীন কৃত বা গৃহীত হইয়াছে বলিয়া গণ্য হইবে।

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Act No. 10 of 2013

Islamic Foundation Act, 1975 এর অধিকতর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্যসমূহ পূরণকল্পে Islamic Foundation Act, 1975 (Act No. XVII of 1975) এর অধিকতর সংশোধন সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইলঃ—

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।**—এই আইন Islamic Foundation (Amendment) Act, 2013 নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। **Act No XVII of 1975 এর section 2 এর সংশোধন।**—Islamic Foundation Act, 1975 (Act No XVII of 1975), অতঃপর উক্ত Act বলিয়া উল্লিখিত, এর section 2 এর clause (e) বিলুপ্ত হইবে।

৩। **Act No XVII of 1975 এর section 6 এর সংশোধন**— উক্ত Act এর section 6 এর sub-section (1) এর

(ক) clause (aa) বিলুপ্ত হইবে।

(খ) clause (c) এর পরিবর্তে নিম্নরূপ clause (c) এর প্রতিস্থাপিত হইবে, যথাঃ—

"(c) the secretary, Ministry of Religious Affairs, ex-officio;"।

৪। **Act No XVII of 1975 এর section 7 এর সংশোধন।**—উক্তAct এর section 7 এর বিদ্যমান sub-section (4) এর পরিবর্তে নিম্নরূপ নতুন sub-section (4) প্রতিস্থাপিত হইবে, যথাঃ—

"(4) All meetings of the Board shall be presided over by the Chairman and in his absence, by a Governor nominated for the purpose by the Chairman."।

৫। **Act No XVII of 1975 এর section 9A এর সংশোধন।**—উক্ত Act এর section 9A এর বিদ্যমান sub-section (3) এর পরিবর্তে নিম্নরূপ নতুন sub-section (3) প্রতিস্থাপিত হইবে, যথাঃ—

"(3) A general meeting of the members of the Foundation shall be presided over by the Chairman and, in his absence, by a Governor nominated for the purpose by the Chairman."।

৬। **Act No XVII of 1975 এর section 11 এর সংশোধন।**—উক্ত Act এর section 11 এর clause (j) এর শেষে উল্লিখিত "and" শব্দটি বিলুপ্ত হইবে এবং অতঃপর নতুন clause (jj) সন্নিবেশিত হইবে, যথাঃ—

"(jj) to manage and develop the Jamiatul Falah Mosque and Complex, Chittagong; and"।

৭। **Act No XVII of 1975 এর section 12 এর সংশোধন।**—উক্ত Act এর section 12 এর sub-section (1) এর clause (a) এর পর নিম্নরূপ নতুন clause (aa) সন্নিবেশিত হইবে, যথাঃ—

"(aa) funds of the Jamiatul Falah Mosque and Complex, Chittagong, transferred under section 20A;"।

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৮। **Act No XVII of 1975 এর section 20A এর সন্নিবেশ।**—উক্ত Act এর section 20 এর পর নিম্নরূপ নতুন section 20A সন্নিবেশিত হইবে, যথাঃ—

"20A. Vesting of Jamiatul Falah Mosque and Complex, Chittagong, in Foundation and its management.—(1) Notwithstanding anything contained to the contrary in any other law, rule, regulation or bye-law, or in any trust, waqf, agreement, deed or other instrument, for the time being in force, upon coming into force of this section,—

(a) the society known as Jamiatul Falah, in respect of the Jamiatul Falah Mosque and Complex, Chittagong, registered under the Societies Registration Act, 1860 (XXI of 1860), shall stand dissolved;

(b) the management of the Jamitul Falah Mosque and Complex, Chittagong, hereinafter called the "the said Mosque and Complex," shall

vest in the Foundation; and all assets, rights, powers, authorites and privileges, and all property, movable and immovable, cash and bank balance, reserve funds, investments and all other interests and rights in, or arising out of, such property and all debts, liabilities and obligations of whatever kind in respect of the said Mosque and Complex, subsisting immediately before the coming into force of this section, shall, stand transferred to, and, vest in the Foundation;

(c) any commottee or committees, ad-hoc or permanent, or any other committee or body of management in connection with the said Mosque and Complex, by whatever name called, subsisting immediately before the coming into force of this section, shall stand dissolved and members of such committee or committees shall cease to be such members;

(d) all debs and obligations incurred, contracts entered into or rights acquired and all matters and things engaged to be done by, with or for the said Mosque and Complex, before the coming into force of this section, shall be deemed to have been incurred, entered into, acquired or engaged to be done by, with or for the Foundation;

(e) all officers and other employees of the Mosque and Complex, appointed or employed before the date of approval by the Cabinet of the Draft Bill in respect of this section, shall stand transferred to the Foundation and shall be deemed to have been appointed by the Foundation in accordance with the terms and conditions of services as had been applicable to them immediately before the coming into force of this section until such terms and conditions are varied by rules or regulations made by the Government or Foundation, as the case may be, and no such officer or employee shall be entitaled to any compensation because of such transfer;

(f) all assets and properties vested in the Foundation and any book of account, documents or other papers relating thereto shall be delivered to the Foundation or to an officer by it in this behalf;

(g) the Foundation shall maintain separate account in respect of the income and expenditure of the Jamiatul Falah Mosque and Complex;

(h) the Foundation shall generally utilise the income of the Jamiatul Falah Mosque and Complex for the purpose of management, maintenance and development of the said Mosque and Complex, but the Foundation may also utilise the assets, properties and income of the said Mosque and Complex for the performance of its functions under section 11, if, in its opinon, such utilisation will not be prejudicial to the interest of the said Mosque and Complex; and

(i) all suits other legal proceedings instituted on behalf of or against the said Mosque and Complex shall be deemed to be suits and proceedings by or against the Foundation and shall be proceeded or otherwise dealt with accordingly.

(2) The Government may, for the purpose of removing any difficulty in relation to matters specified in sub-section (1), make such orders as it considers expedient and any such order shall be deemed to be, and given effect to, as part of provisions of that sub-section,".

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Act No. 11 of 2013

Speaker and Deputy Speaker (Remuneration and Privileges) Act, 1974 এর অধিকতর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্য পূরণকল্পে Speaker and Deputy Speaker (Remuneration and Privileges) Act, 1974 (Act No. XLVIII of 1974) এর অধিকতর সংশোধন সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্দ্বারা নিম্নবর্ণিত আইন করা হইলঃ—

১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।—(১) এই আইন Speaker and Deputy Speaker (Remuneration and Privileges) (Amendment) Act, 2013 নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। **Act No. XLVIII of 1974 এর section 7 এর সংশোধন**।—Speaker and Deputy Speaker (Remuneration and Privileges) Act, 1974 (Act No. XLVIII of 1974) এর section 7 এর—

(ক) clause (a) এ উল্লিখিত "4,50,000" সংখ্যাগুলি ও কমাগুলির পরিবর্তে "10,00,000" সংখ্যাগুলি ও কমাগুলি প্রতিস্থাপিত হইবে;

(খ) clause (b) এ উল্লিখিত "4,00,000" সংখ্যাগুলি ও কমাগুলির পরিবর্তে "8,00,000" সংখ্যাগুলি ও কমাগুলি প্রতিস্থাপিত হইবে।

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পরিসংখ্যান সম্পর্কিত কার্যক্রম গতিশীল,সমন্বিত, লক্ষ্যভিত্তিক এবং সংরক্ষণ করার লক্ষ্যে বিধান প্রণয়নের উদ্দেশ্য প্রণীত আইন

যেহেতু বাংলাদেশের জনসংখ্যা, কৃষি, শিল্প, জনমিতি, অর্থনীতি,আর্থ-সামাজিক বিষয়াদি, প্রাকৃতিক সম্পদ, পরিবেশ, ইত্যাদি সংক্রান্ত সঠিক ও নির্ভুল পরিসংখ্যান সম্পর্কিত কার্যক্রমকে গতিশীল, সমন্বিত, লক্ষ্যভিত্তিক এবং সংরক্ষণ করার লক্ষ্যে বিধান করা সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইল;—

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন**।—(১) এই আইন পরিসংখ্যান আইন,২০১৩ নামে অভিহিত হইবে।

(২) এই আইন অবিলম্বে কার্যকর হইবে।

২। **সংজ্ঞা**।—বিষয় বা প্রসঙ্গের পরিপন্থি কোন কিছু না থাকিলে, এই আইনে—

(১) **"উপ-মহাপরিচালক"** অর্থ ব্যুরোর উপ-মহাপরিচালক;

(২) **"জরিপ"** অর্থ পরিসংখ্যান বিজ্ঞানসম্মত পদ্ধতিতে সমগ্রক হইতে নমুনা চয়নের মাধ্যমে তথা সংগ্রহ;

(৩) **"পরিসংখ্যান"** অর্থ পরিসংখ্যান বিজ্ঞান বা আন্তর্জাতিকভাবে স্বীকৃত পদ্ধতি অনুসরণক্রমে শুমারি বা সেন্সাস ও জরিপের মাধ্যমে সংগৃহীত ও প্রকাশিত তথ্য;

(৪) **"বিধি"** অর্থ এই আইনের অধীন প্রণীত বিধি;

(৫) **"ব্যক্তি"** অর্থ কোন ব্যক্তি বা ব্যক্তিবর্গ এবং কোম্পানি, সমিতি, অংশীদারী কারবার, সংবিধিবদ্ধ বা অন্যবিধ সংস্থা বা উহাদের প্রতিনিধিও উহার অন্তর্ভুক্ত হইবে;

(৬) **"ব্যুরো"** অর্থ বাংলাদেশ পরিসংখ্যান ব্যুরো;

(৭) **"মহাপরিচালক"** অর্থ ব্যুরোর মহাপরিচালক;

(৮) **"শুমারি"** অথবা "সেন্সাস অর্থ একটি ভূখন্ডের সকল মানুষ ও বিভিন্ন সেক্টর বা ইউনিটকে গণনা করা; এবং

(৯) **"সরকারি পরিসংখ্যান"** অর্থ ব্যুরো কর্তৃক প্রণীত, সংরক্ষিত, প্রকাশিত ও প্রযোজ্য ক্ষেত্রে, ধারা ১১ এর অধীন অনুমোদিত পরিসংখ্যান।

৩। **আইনের প্রাধান্য**।—আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের বিধানাবলী প্রাধান্য পাইবে।

৪। **ব্যুরো প্রতিষ্ঠা**।—এই আইন বলবৎ হইবার পর, যতশীঘ্র সম্ভব, সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের উদ্দেশ্য পূরণকল্পে বাংলাদেশ পরিসংখ্যান ব্যুরো নামে একটি ব্যুরো প্রতিস্থা করিবে।

৫। **ব্যুরোর প্রধান কার্যালয়, ইত্যাদি**।—(১) ব্যুরোর প্রধান কার্যালয় ঢাকায় অবস্থিত হইবে।

(২) সরকার, প্রয়োজনে, ঢাকার বাহিরে যে কোন স্থানে উহার শাখা কার্যালয় স্থাপন ও কর্মপরিধি নির্ধারণ করিতে পারিবে।

৬। **ব্যুরোর কার্যাবলী**।—এই আইনের উদ্দেশ্য পূরণকল্পে ব্যুরোর কার্যাবলী হইবে নিম্নরূপ, যথা:—

(ক) সঠিক, নির্ভুল ও সময়োপযোগী পরিসংখ্যান প্রণয়ন ও সংরক্ষণ;

(খ) সঠিক, নির্ভুল ও সময়োপযোগী পরিসংখ্যান প্রণয়নের জন্য দেশের আর্থ-সামাজিক বিভিন্ন ক্ষেত্রে জরিপ পরিচালনা;

(গ) জনশুমারি, কৃষিশুমারি, মৎস্য ও প্রাণিসম্পদ শুমারি, অর্থনৈতিক শুমারিসহ অন্যান্য শুমারি ও জরিপের লক্ষ্যে যাবতীয় কার্যক্রম গ্রহণ;

(ঘ) সরকারি পর্যায়ে উন্নয়ন পরিকল্পনাবিদ, নীতি-নির্ধারক, গবেষণা ও শিক্ষা প্রতিষ্ঠান, জাতীয় ও আন্তর্জাতিক সংস্থা এবং অন্যান্য ব্যবহারকারীগণের চাহিদা

অনুসারে দ্রুততার সহিত নির্ভরযোগ্য এবং ব্যবহারবান্ধব পরিসংখ্যান সরবরাহকরণ;

(ঙ) পরিসংখ্যান বিষয়ক নীতিমালা ও পদ্ধতি প্রণয়ন;

(চ) শাখা কার্যালয়ের কার্যাদি সরেজমিনে তদারক এবং, প্রযোজ্য ক্ষেত্রে, উহার প্রতিবেদন পর্যালোচনা ও প্রকাশের ব্যবস্থা গ্রহণ;

(ছ) জাতীয় পরিসংখ্যান উন্নয়ন কৌশলপত্র (National Strategy for Development of Statistics) প্রবর্তন এবং, সময় সময়, হালনাগাদকরণ;

(জ) পরিসংখ্যান বিষয়ে দক্ষ জনশক্তি তৈরির লক্ষ্যে প্রয়োজনীয় প্রশিক্ষণ কর্মসূচি গ্রহণ;

(ঝ) পরিসংখ্যানের ভূমিকা ও কার্যক্রমের গুরুত্ব সম্পর্কে জনসচেতনতা বৃদ্ধিকরণ;

(ঞ) পরিসংখ্যান কার্যক্রম সম্পাদনে তথ্য-প্রযুক্তির ব্যবহার নিশ্চিতকরণ;

(ট) যে কোন কর্তৃপক্ষ, পরামর্শ প্রদানকারী প্রতিষ্ঠান, বেসরকারি সংস্থা এবং আন্তর্জাতিক সংস্থার সাথে পরিসংখ্যান বিষয়ে প্রয়োজনীয় সমন্বয় ও সহযোগিতা প্রদান;

(ঠ) ভোক্তার মূল্য-সূচকসহ অন্যান্য মূল্য-সূচক এবং জাতীয় হিসাব প্রস্তুতকরণ;

(ড) অর্থনৈতিক, পরিবেশগত, সামাজিক ও জনমিতি সংক্রান্ত নির্দেশক প্রণয়ন ও প্রকাশকরণ;

(ঢ) ভূমি ব্যবহারসহ বিভিন্ন ফসলের উৎপাদন, উৎপাদন-ব্যয় এবং ফসলাধীন জমির পরিমাণ প্রাক্কলন;

(ণ) জিও-কোড সিস্টেম প্রণয়ন এবং একমাত্র সরকারি জিও-কোড সিস্টেম হিসাবে উহা হালনাগাদকরণ ও সংরক্ষণ এবং অন্যান্য সকল সরকারি সংস্থা বা প্রতিষ্ঠানকে ব্যবহারের জন্য উদ্বুদ্ধকরণ;

(ত) জাতীয় জনসংখ্যা রেজিস্টার (National Population Register) প্রণয়ন ও সময় সময়, হালনাগাদকরণ;

(থ) সমন্বিত সেন্ট্রাল জিওগ্রাফিক্যাল ইনফরমেশন সিস্টেম (Geographical Information System) প্রণয়ন;

(দ) পরিসংখ্যনের প্রধান প্রধান কার্যক্রমসমূহ আন্তর্জাতিক মানে প্রমিতকরণ (Standardization);

(ধ) সংরক্ষণের বিকল্প ব্যবস্থাসহ জাতীয় তথ্য ভান্ডার প্রণয়ন ও আধুনিক পদ্ধতিতে আর্কাইভে সংরক্ষণ;

(ন) জাতীয় ও আন্তর্জাতিক সংস্থার জন্য প্রণীত সরকারি পরিসংখ্যানের মান সত্যকরণ (Authentication);

(প) পরিসংখ্যান সংক্রান্ত পরামর্শ সেবা প্রদান;

(ফ) সরকার কর্তৃক নির্দেশিত অন্যান্য দায়িত্ব পালন; এবং

(ব) উপরি-উক্ত দায়িত্ব পালন ও কার্যাবলী সম্পাদনের জন্য প্রয়োজনীয় ব্যবস্থা গ্রহণ।

৭। **মহাপরিচালক ও উপ-মহাপরিচালক**।—(১) ব্যুরোর একজন মহাপরিচালক ও একজন উপ-মহাপরিচালক থাকিবে।

(২) মহাপরিচালক ও উপ-মহাপরিচালক সরকার কর্তৃক নিযুক্ত হইবেন ও তাহাদের যোগ্যতা অভিজ্ঞতা ও চাকুরীর শর্তাদি সরকার কর্তৃক নির্ধারিত হইবে।

(৩) মহাপরিচালক ব্যুরোর প্রধান নির্বাহী হইবেন।

৮। **মহাপরিচালকের ক্ষমতা ও কার্যাবলী**।—(১) মহাপরিচালক—

(ক) ব্যুরোর সকল প্রশাসনিক ও অর্থ বিষয়ক কার্যাদি পরিচালনা করিবেন;

(খ) ব্যুরোর কর্মকর্তা ও কর্মচারীদের কার্যাবলী তদারক করিবেন এবং পেশাগত দিক-নির্দেশনা প্রদান করিবেন;

(গ) এই আইনের বিধানাবলী সাপেক্ষে এবং সময় সময়, সরকার কর্তৃক নির্দেশিত কার্যাবলী সম্পাদন, ক্ষমতা প্রয়োগ ও দায়িত্ব পালন করিবেন; এবং

(ঘ) তৎকর্তৃক সমীচীন ও প্রয়োজনীয় বলিয়া বিবেচিত কার্যক্রম গ্রহণ করিতে পারিবেন।

(২) মহাপরিচালকের পদ শূন্য হইলে, বা অনুপস্থিত, অসুস্থতা বা অন্য কোন কারণে মহাপরিচালক তাহার দায়িত্ব পালনে অসমর্থ হইলে, শূন্য পদে নবনিযুক্ত মহাপরিচালক কার্যভার গ্রহণ না করা পর্যন্ত বা মহাপরিচালক পুনরায় স্বীয় দায়িত্ব পালনে সমর্থ না হওয়া পর্যন্ত, উপ-মহাপরিচালক বা সরকার কর্তৃক নিযুক্ত কোন ব্যক্তি অস্থায়ীভাবে মহাপরিচালকের দায়িত্ব পালন করিবেন।

(৯) **কমিটি**।—সরকার এই আইনের উদ্দেশ্য পুরণকল্পে, এক বা একাধিক কমিটি গঠন ও উহার কর্মপদ্ধতি নিধারণ করিতে পারিবে।

১০। **সরকারি পরিসংখ্যানের বাধ্যতামূলক ব্যবহার**।—যে কোন মন্ত্রণালয়, বিভাগ বা উহাদের অধীনস্থ দপ্তর, অধিদপ্তর বা সংস্থার পরিসংখ্যান সংক্রান্ত কর্মকাণ্ডে সরকারি পরিসংখ্যান বাধ্যতামূলকভাবে ব্যবহৃত হইবে।

১১। ব্যুরো ব্যতীতত অন্যান্য সংস্থা কর্তৃক পরিসংখ্যান প্রস্তুত।—ব্যুরো যে সকল বিষয়ে পরিসংখ্যান প্রণয়ন করে না সে সকল বিষয়ে, যে কোন মন্ত্রণালয়, বিভাগ বা উহাদের অধীনস্থ দপ্তর, অধিদপ্তর বা সংস্থা, ব্যুরো কর্তৃক প্রণীত নীতিমালা অনুসরণক্রমে এবং বিধি দ্বারা নির্ধারিত পদ্ধতিতে ও সময়ে ব্যুরোর অনাপত্তি গ্রহণপূর্বক পরিসংখ্যান প্রস্তুত ও প্রকাশ করিতে পারিবে।

১২। ব্যক্তি, সংস্থা, প্রতিষ্ঠান বা কর্তৃপক্ষের তথ্য প্রদানের দায়বদ্ধতা, ইত্যাদি।—(১) এই আইনের উদ্দেশ্য পূরণকল্পে, ব্যুরোর চাহিদা অনুযায়ী যে কোন ব্যক্তি, সংস্থা, প্রতিষ্ঠান বা কর্তৃপক্ষ উহাদের নিকট সংরক্ষিত তথ্য, ইত্যাদি ব্যুরোকে প্রদান করিতে বাধ্য থাকিবে।

(২) ব্যুরোর কর্মকর্তা ও কর্মচারী উপ-ধারা (১) এর অধিন প্রাপ্ত তথ্যের গোপনীয়তা নিশ্চিত করিবে;

তবে শর্ত থাকে যে, সংগৃহীত তথ্য সংশ্লিষ্ট ব্যক্তি, সংস্থা, প্রতিষ্ঠান বা কর্তৃপক্ষের সম্মতি সাপেক্ষে প্রকাশ করা যাইবে।

১৩। প্রবেশ, ইত্যাদির ক্ষমতা।—এই আইনের অন্য কোন বিধানে যাহা কিছুই থাকুক না কেন, অন্যান্য আইনের বিধানাবলী ও যথাযথভাবে অবহিতকরণ সাপেক্ষে, মহাপরিচালক বা তৎকর্তৃক সাধারণ বা বিশেষভাবে ক্ষমতাপ্রাপ্ত ব্যুরোর কোন কর্মকর্তা বা কর্মচারী এই আইন বা বিধির অধীন তাহার উপর অর্পিত দায়িত্ব সম্পাদন করিবার উদ্দেশ্যে কোন রেকর্ড, রেজিস্টার, দলিল বা এতদসংশ্লিষ্ট কোন গুরুত্বপূর্ণ তথ্য পরীক্ষা, যাচাই-বাছাই বা সংগ্রহ করিবার জন্য কোন ভবন বা স্থানে প্রবেশ করিবার অধিকারী হইবেন এবং সংশ্লিষ্ট ভবন বা স্থানের মালিক বা কর্তৃপক্ষ চাহিত তথ্য প্রদানে বাধ্য থাকিবে।

১৪। প্রশিক্ষণ একাডেমী।—(১) এই আইনের উদ্দেশ্য পূরণকল্পে, সরকার পরিসংখ্যান বিষয়ক এবং উহার সহিত সংশ্লিষ্ট বিষয়ে গবেষণা ও অন্যান্য কার্যক্রম গ্রহণের লক্ষ্যে, প্রয়োজনে, প্রশিক্ষণ একাডেমী প্রতিষ্ঠা করিতে পারিবে।

(২) প্রশিক্ষণ একাডেমীর দায়িত্ব ও কার্যাবলী বিধি দ্বারা নির্ধারিত হইবে।

১৫। কর্মকর্তা ও কর্মচারী নিয়োগ।—ব্যুরো উহার কার্যাবলী সুষ্ঠুভাবে সম্পাদনের উদ্দেশ্যে সরকার কর্তৃক অনুমোদিত সাংগঠনিক কাঠামো অনুযায়ী প্রয়োজনীয় সংখ্যক কর্মকর্তা ও কর্মচারী নিয়োগ করিতে পারিবে এবং তাহাদের চাকুরীর শর্তাবলী বিধি দ্বারা নির্ধারিত হইবে।

১৬। প্রকাশনা।—(১) ব্যুরো তৎকর্তৃক সংগৃহীত ও প্রস্তুতকৃত পরিসংখ্যান প্রকাশ করিবে।

(২) উপ-ধারা (১) এর অধীন প্রকাশিত প্রকাশনাসমূহ, সময় সময়, হালনাগাদক্রমে আধুনিক প্রযুক্তি ব্যবহার করিয়া লাইব্রেরীতে সংরক্ষণ করিতে হইবে।

১৭। অবগতিমূলক কর্মসূচি।—ব্যুরো উহার কার্যাবলী, কার্যপদ্ধতি ও প্রতিবেদন সম্পর্কে জনসাধারণকে সম্যক অবহিত করিবার লক্ষ্যে যথাযথ কর্মসূচি গ্রহণ করিবে।

১৮। অপরাধ ও শাস্তি।—কোন ব্যক্তি এই আইনের ধারা ১৩ এর বিধান লংঘন করিলে, তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনধিক ১(এক) মাস কারাদণ্ড বা অনধিক ১০,০০০(দশ হাজার) টাকা অর্থদণ্ড বা উভয়দণ্ডে দণ্ডিত হইবেন।

১৯। অপরাধের আমলযোগ্যতা ও জামিনযোগ্যতা।—এই আইনের অধীন অপরাধসমূহ অ-আমলাযোগ্য (Non-cognizable) ও জামিনযোগ্য (Bailable) হইবে।

২০। Act V of 1898 এর প্রয়োগ।—এই আইনে ভিন্নরূপ কিছু না থাকিলে, কোন অপরাধের অভিযোগ দায়ের, তদন্ত, বিচার ও নিষ্পত্তির ক্ষেত্রে Code of Criminal Procedure, 1898 (Act V of 1898) এর বিধানাবলী প্রযোজ্য হইবে।

২১। বাজেট।—ব্যুরো প্রতি বৎসর সরকার কর্তৃক নির্ধারিত সময়ের মধ্যে পরবর্তী অর্থ-বৎসরের বার্ষিক বাজেট বিবরণী সরকার কর্তৃক নির্ধারিত ফরমে অনুমোদনের জন্য সরকারের নিকট পেশ করিবে এবং উহাতে উক্ত অর্থ-বৎসরে ব্যুরোর কি পরিমাণ অর্থের প্রয়োজন হইবে উহার উল্লেখ থাকিবে।

২২। ক্ষমতা অর্পণ।—মহাপরিচালক, প্রয়োজনবোধে, এই আইনের অধীন তাহার উপর অর্পিত যে কোন ক্ষমতা বা দায়িত্ব, লিখিত আদেশ দ্বারা, ব্যুরোর যে কোন কর্মকর্তা বা কর্মচারীকে অর্পণ করিতে পারিবেন এবং সরকারকে উহা যথাশীঘ্র সম্ভব অবহিত করিবেন।

২৩। জনসেবক।—মহাপরিচালক, ব্যুরোর কর্মকর্তা ও কর্মচারী এবং ব্যুরোর পক্ষে কাজ করিবার জন্য যথাযথ ক্ষমতাপ্রাপ্ত কোন ব্যক্তি, এই আইনের অধীন দায়িত্ব পালনকালে Penal Code, 1860 (Act XLV of 1860) এর section 21 এ বর্ণিত অর্থে Public Servant বা জনসেবক বলিয়া গণ্য হইবেন।

২৪। বার্ষিক প্রতিবেদন।—(১)মহাপরিচালক প্রতি বৎসর ৩১ মার্চের মধ্যে পূর্ববর্তী ৩১ ডিসেম্বরে সমাপ্ত এক বৎসরের স্বীয় কার্যাবলীর বিবরণ সম্বলিত একটি বার্ষিক প্রতিবেদন সরকারের নিকট পেশ করিবেন।

(২) সরকার ব্যুরোকে যে কোন সময় উহার যে কোন কাজের প্রতিবেদন বা বিবরণী বা পরিসংখ্যান উহার নিকট প্রেরণের নির্দেশ দিতে পারিবেন এবং উক্তরূপ নির্দেশ প্রাপ্তির পর ব্যুরো উহা সরকারের নিকট প্রেরণে বাধ্য থাকিবে।

২৫। ইংরেজীতে অনূদিত পাঠ প্রকাশ, ইত্যাদি।—(১) এই আইন কার্যকর হইবার পর সরকার, প্রয়োজনে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা,এই আইনের ইংরেজিতে অনূদিত একটি নির্ভরযোগ্য পাঠ (Authentic English Text) প্রকাশ করিতে পারিবে।

(২) এই আইনের বাংলা ও ইংরেজি পাঠের মধ্যে বিরোধের ক্ষেত্রে বাংলা পাঠ প্রাধান্য পাইবে।

২৬। বিধি প্রণয়নের ক্ষমতা।—এই আইনের উদ্দেশ্য পূরণকল্পে, সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, বিধি প্রণয়ন করিতে পারিবে।

২৭। নীতিমালা প্রণয়নের ক্ষমতা।—এই আইনের ধারা ৬ এর দফা (ঙ) এর উদ্দেশ্য পূরণকল্পে, ব্যুরো সরকারের পূর্বানুমোদনক্রমে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, নীতিমালা প্রণয়ন করিতে পারিবে।

২৮। রহিতকরণ ও হেফাজত।—(১) এই আইনের অধীন ব্যুরো প্রতিষ্ঠার সঙ্গে সঙ্গে মন্ত্রিপরিষদ বিভাগের ২৬ আগস্ট, ১৯৭৪ তারিখে জারিকৃত প্রজ্ঞাপন নং ৪/২৫/৭২-বিধি, অতঃপর উক্ত প্রজ্ঞাপন বলিয়া উল্লিখিত, বাতিল হইয়া যাইবে।

(২) উক্ত প্রজ্ঞাপন বাতিল হইবার সঙ্গে সঙ্গে—

(ক) উক্ত প্রজ্ঞাপনের অধীন গঠিত বাংলাদেশ পরিসংখ্যান ব্যুরো, অতঃপর বিলুপ্ত ব্যুরো বলিয়া উল্লিখিত, বিলুপ্ত হইবে;

(খ) বিলুপ্ত ব্যুরোর—

(অ) সকল সম্পদ, অধিকার, ক্ষমতা, কর্তৃত্ব, সুবিধাদি এবং স্থাবর ও অস্থাবর সকল সম্পত্তি, নগদ ও ব্যাংকে গচ্ছিত অর্থ সকল দাবী ও অধিকার ব্যুরোর উপর হস্তান্তরিত হইবে এবং ব্যুরো উহার অধিকারী হইবে;

(আ) বিরুদ্ধে বা উহা কর্তৃক দায়েরকৃত সকল মামলা-মোকদ্দমা ব্যুরোর বিরুদ্ধে বা ব্যুরো কর্তৃক দায়েরকৃত মামলা-মোকদ্দমা বলিয়া গণ্য হইবে;

(ই) সকল ঋণ, দায় ও দায়িত্ব ব্যুরোর ঋণ ও দায়-দায়িত্ব হইবে;

(ঈ) সকল কর্মকর্তা ও কর্মচারী ব্যুরোতে বদলী হইবেন এবং তাহারা ব্যুরো কর্তৃক নিযুক্ত কর্মকর্তা ও কর্মচারী বলিয়া গণ্য হইবেন এবং উক্তরূপ বদলীর পূর্বে তাহারা যেশর্তে চাকুরীতে নিয়োজিত ছিলেন, ব্যুরো কর্তৃক পরিবর্তিত বা প্রেষণ প্রদানকারী কর্তৃপক্ষ কর্তৃক প্রত্যাহার না হওয়া পর্যন্ত, সেই একই শর্তে তাহারা ব্যুরোর চাকুরীতে নিয়োজিত থাকিবেন;

(উ) সকল কমিটি বিলুপ্ত হইবে ও বিলুপ্ত কমিটি কর্তৃক গৃহীত কার্যক্রম, প্রদত্ত সিদ্ধান্ত, ইত্যাদি এই আইনের অধীন গঠিত কমিটি কর্তৃক গৃহীত কার্যক্রম ও প্রদত্ত সিদ্ধান্ত বলিয়া গণ্য হইবে এবং কোন সিদ্ধান্ত অবাস্তবায়িত থাকিলে বা উহার কোন কার্যক্রম অনিষ্পন্ন থাকিলে উক্তরূপ সিদ্ধান্ত বাস্তবায়ন ও নিষ্পন্নের লক্ষ্যে উহা এমনভাবে চলমান ও অব্যাহত থাকিবে যেন কমিটিসমূহ বিলুপ্ত হয় নাই;

(ঊ) সকল রেকর্ড, নথিপত্র, দলিল-দস্তাবেজ, তথ্য-উপাত্ত ও পরিসংখ্যান ব্যুরোতে স্থানান্তরিত হইবে এবং উক্তরূপ স্থানান্তরিত রেকর্ড, নথিপত্র, দলিল-দস্তাবেজ, তথ্য-উপাত্ত ও পরিসংখ্যান এমনভাবে সংরক্ষণ করিতে হইবে যেন ব্যুরো বিলুপ্ত হয় নাই;

(ঋ) অধীন প্রতিষ্ঠিত আঞ্চলিক, উপজেলা এবং থানা পরিসংখ্যান অফিসের কার্যক্রম এই আইনের অধীন শাখা কার্যালয় প্রতিষ্ঠিত না হওয়া পর্যন্ত এমনভাবে কার্যকর ও অব্যাহত থাকিবে যেন উহারা এই আইনের অধীন প্রতিষ্ঠিত হইয়াছে;

(এ) জারিকৃত সকল আদেশ, নীতিমালা, দিক-নির্দেশনা, জাতীয় পরিসংখ্যান পদ্ধতি, ইত্যাদি, এই আইনের সহিত সংগতিপূর্ণ হওয়া সাপেক্ষে, পরবর্তী আদেশ, নীতিমালা, দিক-নির্দেশনা, জাতীয় পরিসংখ্যান পদ্ধতি জারি না হওয়া পর্যন্ত, একইরূপে চলমান, অব্যাহত ও কার্যকর থাকিবে যেন ব্যুরো বিলুপ্ত হয় নাই।

(৩) এই আইন প্রবর্তনের সংঙ্গে সংঙ্গে ১৩ আগস্ট, ১৯৭৭ তারিখের সরকারি আদেশ নং ১/এন এস সি/৭৭(২০০) মূলে গঠিত জাতীয় পরিসংখ্যান কাউন্সিল বিলুপ্ত হইবে এবং বিলুপ্ত কাউন্সিল কর্তৃক গৃহীত কার্যক্রম ও সিদ্ধান্ত, এই আইনের সহিত সংগতিপূর্ণ হওয়া সাপেক্ষে, এমনভাবে কার্যকর ও বাস্তবায়িত হইবে উক্ত কাউন্সিল বিলুপ্ত হয় নাই।

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বাংলাদেশ রেশম বোর্ড, বাংলাদেশ রেশম গবেষণা ও প্রশিক্ষণ ইনস্টিটিউট এবং বাংলাদেশ সিল্ক ফাউন্ডেশনকে একীভূত করিয়া বাংলাদেশ রেশম উন্নয়ন বোর্ড প্রতিষ্ঠাকল্পে প্রণীত আইন

যেহেতু বিদ্যমান বাংলাদেশ রেশম বোর্ড, বাংলাদেশ রেশম গবেষণা ও প্রশিক্ষণ ইনস্টিটিউট এবং বাংলাদেশ সিল্ক ফাউন্ডেশনকে একীভূত করিয়া বাংলাদেশ রেশম উন্নয়ন বোর্ড প্রতিষ্ঠাকল্পে বিধান করা সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্বারা নিম্নরূপ আইন করা হইলঃ—

১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।—(১) এই আইন বাংলাদেশ রেশম উন্নয়ন বোর্ড আইন, ২০১৩ নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। সংজ্ঞা।—বিষয় বা প্রসঙ্গের পরিপন্থি কোন কিছু না থাকিলে, এই আইনে—

(১) "পরিচালনা পর্ষদ" অর্থ ধারা ৬ এর অধীন গঠিত বোর্ডের পরিচালনা পর্ষদ;

(২) "পরিচালক" অর্থ বোর্ডের পরিচালক;

(৩) "প্রবিধান" অর্থ এই আইনের অধীন প্রণীত প্রবিধান;

(৪) "ফিলেচার কাঁচা রেশম" অর্থ যন্ত্রচালিত বা বিদ্যুৎ চালিত যন্ত্রের সাহায্যে রেশমগুটি হইতে প্রস্তুত কাঁচা রেশম তন্তু;

(৫) "বিধি" অর্থ এই আইনের অধীন প্রণীত বিধি;

(৬) "বোড" অর্থ ধারা ৩ এর অধীন প্রতিষ্ঠিত বাংলাদেশ রেশম উন্নয়ন বোর্ড;

(৭) "ভাইস চেয়ারম্যান" অর্থ ধারা ৬ এর অধীন নিযুক্ত পরিচালনা পর্ষদের ভাইস-চেয়ারম্যান;

(৮) "মহাপরিচালক" অর্থ ধারা ১০ এর অধীন নিযুক্ত বোর্ডের মহাপরিচালক;

(৯) "চেয়ারম্যান" অর্থ ধারা ৬ এর অধীন নিযুক্ত পরিচালনা পর্ষদের চেয়ারম্যান;

(১০) "নির্ধারিত" অর্থ এই আইনের অধীন প্রণীত বিধি বা প্রবিধান দ্বারা নির্ধারিত;

(১১) "সদস্য" অর্থ ধারা ৬ এর অধীন নিযুক্ত পরিচালনা পর্ষদের সদস্য;

(১২) "সেস" অর্থ ধারা ১২ এর অধীন আরোপিত কর বা উপ-কর;

(১৩) "স্পান সিল্ক" অর্থ রিলিং এর অনুপযোগী রেশমগুটি, এভিগুটি, রেশমের টুকরা অথবা উচ্ছিষ্ট রেশম হইতে চরকায় প্রস্তুতকৃত সুতা।

৩। বোর্ড গঠন।—(১) এই আইন প্রবর্তনের পর, যথাশীঘ্র সম্ভব, সরকার এই আইনের উদ্দেশ্য পূরণকল্পে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, বাংলাদেশ রেশম উন্নয়ন বোর্ড নামে একটি বোর্ড গঠন করিবে।

(২) বোর্ড একটি সংবিধিবদ্ধ সংস্থা হইবে এবং ইহার স্থায়ী ধারাবাহিকতা ও একটি সাধারণ সীলমোহর থাকিবে এবং ইহার স্থাবর ও অস্থাবর উভয় প্রকার সম্পত্তি অর্জন করিবার, অধিকারে রাখিবার ও হস্তান্তর করিবার ক্ষমতা থাকিবে এবং বোর্ড ইহার নামে মামলা দায়ের করিতে পারিবে এবং ইহার বিরুদ্ধেও মামলা দায়ের করা যাইবে।

৪। প্রধান কার্যালয়, ইত্যাদি।—(১) বোর্ডের প্রধান কার্যালয় রাজশাহীতে থাকিবে।

(২) বোর্ড, প্রয়োজনবোধে সরকারের পূর্বানুমোদনক্রমে, দেশের যে কোন স্থানে উহার শাখা কার্যালয় স্থাপন করিতে পারিবে।

৫। সাধারণ পরিচালনা ও প্রশাসন।—বোর্ডের সাধারণ পরিচালনা ও প্রশাসন পরিচালনা পর্ষদের উপর ন্যস্ত থাকিবে এবং বোর্ড যে সকল ক্ষমতা প্রয়োগ ও কার্যসম্পাদন করিতে পারিবে পরিচালনা পর্ষদ সেই সকল ক্ষমতা প্রয়োগ ও কার্যসম্পাদন করিতে পারিবে।

৬। পরিচালনা পর্ষদ।—(১) নিম্নবর্ণিত সদস্য সমন্বয়ে বোর্ডের একটি পরিচালনা পর্ষদ থাকিবে, যথা:

(ক) বস্ত্র ও পাট মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী বা প্রতিমন্ত্রী, যিনি উহার চেয়ারম্যানও হইবেন;

(খ) জাতীয় সংসদের স্পীকার কর্তৃক মনোনীত একজন সংসদ সদস্য, যিনি উহার জ্যেষ্ঠ ভাইস-চেয়ারম্যানও হইবেন;

(গ) বস্ত্র ও পাট মন্ত্রণালয়ের সচিব, যিনি উহার ভাইস-চেয়ারম্যানও হইবেন;

(ঘ) রাজশাহী বিভাগের বিভাগীয় কমিশনার;

(ঙ) বস্ত্র ও পাট মন্ত্রণালয় কর্তৃক মনোনীত অন্যূন যুগ্ন-সচিব পদমর্যাদার একজন কর্মকর্তা;

(চ) অর্থ মন্ত্রণালয় কর্তৃক মনোনীত অন্যূন যুগ্ন-সচিব পদমর্যাদার একজন কর্মকর্তা;

(ছ) কৃষি মন্ত্রণালয় কর্তৃক মনোনীত অন্যূন যুগ্ন-সচিব