

N O T I C E

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO.2867 OF 2010

IN THE MATTER OF :

Advocate Shapan Chowkider
and others.

.....Petitioner

= VERSUS =

Government of the People's
Republic of Bangladesh and
others.


.....Respondents

To
Mr. Khondoker Shahrier Shaki'r
Advocate
For the petitioner

Dear Sir,

Please take notice that an Affidavit of
Compliance (Copy of which is enclosed
herewith) will be moved in this Hon'ble
Court.

Yours faithfully

Mustafa Zaman Islam
(.MUSTAFA ZAMAN ISLAM)
DEPUTY ATTORNEY GENERAL

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
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Murshida Zaman Islam,
(~~Dr.~~ MUSTAFA ZAMAN ISLAM)
DEPUTY ATTORNEY GENERAL

দশ
টাকা



সংলগ্ন
কোর্ট ফি

IN THE SUPREME COURT OF BANGLADESH
(HIGH COURT DIVISION)

24-5-10

Assistant Registrar
Supreme Court of Bangladesh
High Court Division, Dhaka

Writ Petition no. 2867 of 2010

In the matter of

Advocate Shapan Chowkider and others

-PETITINERS

-Versus-

The Secretary, Ministry of Establishment and others

-RESPONDENTS

I/We do hereby appoint the following counsels to appear, submit report or information and oppose on the above matter and authorize him/them to do all acts and things as may be deemed legal, fit and necessary for the case.

In witness where of I/We do here into set my/our hands on this day of 12th May 2010.

(Farid Ahmed Shibli)

Secretary

Bangladesh Judicial Service Commission

(ফরিদ আহমদ শিবলী)

সচিব

জুডিশিয়াল সার্ভিস কমিশন
সুহানব হাইকোর্ট ভবন, ঢাকা।

accepted
Mustafa Zaman Islam
Deputy Attorney General.

ORIGINAL



RECEIVED
COURT

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

24-5-10

Date..... 24.5.10
 Time of Filing..... 4-18 PM
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 Stamp.....

Signature of Filing Assistant

WRIT PETITION NO. 2867 OF 2010

IN THE MATTER OF:
Advocate Shapan Chowkider and others.

Assistant Registrar
Supreme Court of Bangladesh
High Court Division, Dhaka

.....Petitioners

VERSUS

The Secretary, Ministry of Establishment and others.

.....Respondents

Certified that the Petition / Affidavit
is Sufficiently Stamped; in form and
accompanied by the Prescribed documents.

alau

Dy. Assst. Registrar
Supreme Court of Bangladesh
High Court Division, Dhaka.

AFFIDAVIT OF COMPLIANCE ON BEHALF OF THE RESPONDENT NO.6

I, Md. Farid Ahmed Shibli son of Late Md. Modoris Khan, aged about 53 years, by Occupation Government Service, by faith Muslim and by Nationality Bangladeshi by birth do hereby solemnly affirm and say as follows:-

1. That I am the Secretary of the Bangladesh Judicial Service Commission dealing with the file and record on behalf of respondent no.6 in the above mentioned Writ Petition and acquainted with the facts and circumstances of the case and as such competent to swear the affidavit.
2. That in view of the direction given by the Court in Writ Petition no-2867 of 2010 in its order dated 25th day of April 2010 the Respondent no.6 in the instant Writ Petition endeavours to place the relevant facts and circumstances before this Hon. Court.

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3. That it is stated that being the Presiding Officers of the Trial Courts Judges/Judicial Magistrates have the responsibility of recording both oral and documentary evidence and in that case they have no other alternative but to examine and compare the documents filed by the parties seeing those with their own eyes and in doing that they have no scope to take the help of any support staff. According to section 363 of the Code of Criminal Procedure a Judge or Magistrate has to record such remarks as he thinks material respecting the demeanor of a witness whilst under examination. In this context, section 73 of the Evidence Act and other Procedural Laws are very much clear. The Presiding Judge of a Trial Court has to ascertain whether a signature, writing or seal is given by the person by whom it purports to have been signed, written or sealed and the matter has to be proved to the satisfaction of the presiding judge himself. According to the law, in case of necessity the Judges of Trial Courts, in some cases, have to compare words, figures, etc. so written and signatures so given in a document to satisfy himself that those have been done correctly. In essence, it can be said that a Judge/Judicial Magistrate have to use their eyes to compare, examine or admit any writing, hand-writing, seal, signature, entries, etc. in a document or a record.

4. That it is stated that the Judicial Magistrates, who are members of the Judicial Service, have to conduct Test Identification Parade (T.I. Parade) of suspects or any

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other materials used in commission of offence or booties recovered by the Investigating Officer pursuant to relevant provision of the Evidence Act and other laws. In the above circumstances, it would be clear like anything that use of eyes by a Judge or a Magistrate is very much important and it is practically impossible for a visually impaired disabled person to perform the above functions in accordance with laws.

5. That under the facts and attending special circumstances stated above, the Bangladesh Judicial Service Commission in its 55th meeting expressed sympathy for Advocate Shapan Chowkider but constrained to refuse the application filed by him in the interest of Justice to the litigants, otherwise, the whole purpose of establishment of judiciary will be frustrated (Annexure- 1).

6. That it is stated that according to section 4 of the Disability Welfare Act, 2001 the Government of Bangladesh has constituted a committee named "The National Co-Ordination Committee" headed by the Hon. Minister, Ministry of the Social Welfare Affairs assigning the responsibility for taking steps on the subjects laid down in Schedule "Cha" of the Disability Welfare Act, 2001. It may be noted that section 6(2) of the Disability Welfare Act, 2001 provides that the said Co-Ordination Committee amongst many others things has to prepare necessary guidelines and make recommendations to the Government i.e. the concerned Ministries to do the needful

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for protecting interests of the disabled persons and to explore various scopes for their welfare (Annexure- 2). Under the existing Law and Rules, the Bangladesh Judicial Service Commission has virtually no power or authority to make any such recommendation or suggestion to the Government for the interests or welfare of the visually impaired disabled persons.

7. That it is sated that the Bangladesh Judicial Service Commission has not yet received any such information on the above matter from the National Co-Ordination Committee or from any Ministry of the Government or from any other agencies. So on matters relating to section 6(2) and schedule 'Cha' of the Disability Welfare Act, 2001 the Bangladesh Judicial Service Commission has nothing to do, rather, the entire responsibility as stated above, falls upon the National Co-ordination Committee or the Government .

8. That it is stated that in spite of all sympathy for the disabled or visually impaired persons, the Bangladesh Judicial Service Commission cannot take any special measure for them under the existing Rules and Orders which are applicable for appointment at the entry level of the Bangladesh Judicial Service. In this regard, rule 5(4) of বাংলাদেশ জুডিসিয়াল সার্ভিস (সার্ভিস গঠন, সার্ভিস পদে নিয়োগ এবং সাময়িক বরখাস্ত

করণ, বরখাস্তকরণ ও অপসারণ) বিধিমালা, ২০০৭, provides the following pre-condition:-

"৫(৪) সার্ভিসের প্রবেশ পদে সরাসরি নিয়োগ করা হইবে না যদি-

(ক) নিয়োগের জন্য বাছাইকৃত ব্যক্তির স্বাস্থ্য পরীক্ষার উদ্দেশ্যে স্বাস্থ্য অধিদপ্তরের মহাপরিচালক কর্তৃক গঠিত মেডিক্যাল বোর্ড অথবা ক্ষেত্র বিশেষে, তৎকর্তৃক মনোনীত কোন মেডিক্যাল অফিসার এই মর্মে প্রত্যয়ন না করেন যে, উক্ত ব্যক্তি স্বাস্থ্যগতভাবে অনুরূপ পদে নিয়োগযোগ্য এবং তিনি এইরূপ কোন দৈহিক বৈকল্যে ভুগিতেছেন না যাহা সংশ্লিষ্ট পদের দায়িত্ব পালনে কোন ব্যাঘাত সৃষ্টি করিতে পারে:"(Annexure- 3)

That the exact version of article 10(2) of 'বাংলাদেশ জুডিসিয়াল সার্ভিসের প্রবেশ পদে নিয়োগ বিষয়ক আদেশ, ২০০৭,' is as follows-

"১০(২) উপ-অনুচ্ছেদ (১) এ উল্লিখিত মেডিকেল বোর্ড বা মেডিকেল অফিসার ৩য় তফসিলে বর্ণিত পদ্ধতি অনুসারে প্রত্যেক প্রার্থীর স্বাস্থ্য পরীক্ষা করিবেন এবং উক্ত তফসিলে বর্ণিত ফরমে প্রত্যেক প্রার্থী সম্পর্কে এই মর্মে প্রত্যয়ন করিবেন যে, উক্ত প্রার্থী প্রবেশ পদে নিয়োগ লাভের জন্য স্বাস্থ্যগতভাবে উপযুক্ত কিনা এবং উক্ত পদের দায়িত্ব পালনে ব্যাঘাত সৃষ্টি করিতে পারে এমন কোন দৈহিক বৈকল্যে ভুগিতেছেন কিনা।"(Annexure- 4)

9. That it is stated that before promulgation of 'বাংলাদেশ জুডিসিয়াল সার্ভিস (সার্ভিস গঠন, সার্ভিস পদে নিয়োগ এবং সাময়িক বরখাস্তকরণ, বরখাস্তকরণ ও অপসারণ) বিধিমালা, ২০০৭' the draft of the said Rule relating to appointment of the Judges of Sub-ordinate Courts was examined by the Hon. Appellate Division of the Supreme Court, in view of its Judgment and Order passed in case of Secretary, Ministry of Finance, Government of Bangladesh Vs. Md. Masder Hossain and others (Civil Appeal no. 79/1999) and the said draft Rule was made part of the judicial order of the highest court of the Country.

That following directions given by the Appellate Division, the said draft Rule was

finalized and promulgated by the Hon. President of Bangladesh without making any change thereto. In such a situation, so far the Commission understands, there is no such scope for this Commission or the Government to exercise authority for changing or amending any provision of the above Rule before obtaining prior approval of the Appellate Division of the Supreme Court.

10. That the statements made herein above are true to the best of my knowledge and belief.

Prepare in my office

Murshida Rahman Khan
Deputy Attorney General

Deponent
(ফরিদ আহমেদ শিবগী)
সভির
জুডিসিয়াল সার্ভিস কমিশন সচিবালয়
পুরাতন বাইকেট ভবন, ঢাকা।

The Deponent is known to me and identified by me.

Solemnly affirmed before me this
24th day of May, 2010 at 4-40 P.M.

Murshida Rahman Khan
Deputy Attorney General

Alam

24-5-10

COMMISSIONER OF AFFIDAVIT
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

Assistant Registrar
Supreme Court of Bangladesh
High Court Division, Dhaka