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

Writ Petition No. 5343 of 2009

IN THE MATTER OF :

An application under Article 102(a)(i) of the Constitution of the People's Republic of Bangladesh.

-And-

IN THE MATTER OF:

Bangladesh Legal Aid and Services Trust (BLAST) and others

..... Petitioners

-Versus-

Bangladesh, represented by the Secretary, Ministry of Education, Bangladesh Secretariat, Police Station-Ramna, Dhaka and others.

.....Respondents

Ms. Sara Hossain, Senior Advocate
Mrs. Aynunahar Siddqua
Mr. S.M. Rezaul Karim
Ms. Sharmin Akter
Mr. A.M Jamiul Hoque
Mr. Md. Shahinuzzam and
Ms. Ayesha Akter, Advocates

.....for the petitioners

Mr. Amit Das Gupta, DAG with
Mr. Md. Nasim Islam, AAG
Mr.Md. Rashadul Islam, AAG and
Dr. Sharifuzzaman Majumder Sangram, AAG

.....for the respondent no. 2

Heard on: 09.01.2023 and 16.01.2023

Judgment on : 24.01.2023

Present:

Ms. Justice Naima Haider
&
Mr. Justice Md. Khairul Alam

Naima Haider, J;

In this application under Article 44 and 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why the impugned action and practice of requiring a candidate for SSC and HSC examinations to be identified on the basis of both his or her father's name and mother's name, and the inclusion of mandatory fields for father's name' and 'mother's name' in the

Student Information Forms to be completed by candidates for SSC and HSC examinations, and the refusal to issue registration cards to candidates who do not complete both fields in the said forms should not be declared arbitrary, discriminatory and/or unconstitutional being in violation of the fundamental rights to equality and to be treated in accordance with law and the right to access to education and further why they should not be directed to amend the said student Information Form to enable candidates for SSC and HSC examinations to include by way of identification information regarding either their father's name or their mother's name or the name of their lawful guardian and/ or such other or further order orders passed as to this Court may seem fit and proper.

At the time of the issuance of the rule respondent no.1 was directed to provide a report to this court as to which of the various Boards of Education currently require candidates to provide mandatory information regarding both the father's name and mother's name prior to receiving registration cards for admission to the SSC examinations.

The petitioner's case, as set out in the Writ Petition, in brief, is as follows: The petitioners came to learn from a newspaper reported published in the Daily Prothom Alo on 28th March 2007 that Sagorika Begum, daughter of mansura Begum, then aged 14 years, of Bandigor village, Thakurgaon, was prevented from sitting for the S.S.C. examinations in April 2007 after she had failed to write her father's name in the SSC registration from.

The petitioners understands that the Board routinely rejects any application which is "incomplete" including those which do not include the names of both mother and father.

The action of refusing to allow candidates to be admitted for the SSC examinations on the basis of their failure to provide the father's name in a registration from constitutes a denial of the right to access to education and to equality and freedom from discrimination, as guaranteed under Articles 15, 27 and 28 of the Constitution respectively and the said actions also derogate from the provisions of the National Women Development Policy 2008 which seek to eradicate discrimination against women and promote fairness by identifying a child on the basis of both their parents and hence the instant writ petition.

No affidavit-in-opposition has been filed by the respondents. However, respondent no.8 earlier filed a vokalatnama but did not appear before this Court when the matter was taken up for hearing.

Ms. Sara Hossain, learned Senior Advocate at the outset submits that the continued mandatory requirement in electronic forms for including both the father and mother's names to register for JSC, SSC and HSC examinations is in total violation of the fundamental rights to equality before law guaranteed under Article 27, in that it means that children who are not acknowledged by their fathers, or who do not know who their fathers are and cannot provide their information on any public records are deprived of the opportunity to be admitted for public examinations, unlike other children who can do so. This continued mandatory requirement in the electronic forms of including both the father and the mother's names to register for any examination that is the JSC, SSC and HSC is arbitrary inasmuch as there is no rational basis for requiring such information. She further brought to the notice of the Court that the National Policy on Women's Development 1997 for the first time provided that the mother's

name was to be included on all government forms and documents in addition to the father's name. This policy measure was adopted in order to ensure furtherance of the Government's commitment to ensure gender equality. The policy, as one of the objectives to be achieved, included the adoption of "measures to identify a child on the basis of the identity of the parents; i.e. to use the name of both father and mother in birth registration, in all certificates, in voters list, in forms and in applications for employment, passport etc." Whilst this sought to further equality, in particular gender equality, by according equal recognition to both the father and the mother of a child, it has in practice led to a denial of equality and to discrimination against the individuals who cannot provide the identity of their fathers.

Ms. Hossain further submits that amending the said Forms to allow the use of the father's or the mother's name or the name of lawful guardian in the alternative would ensure substantive equality between the parents/ guardians of a child and would also eliminate the scope for discrimination against the class of persons who are not able to provide identifying information regarding their father's name. She next submits that the impugned action and practice for the constitute not only a violation of fundamental rights to equality but also it is the fundamental responsibility of the State to ensure access to education for its citizens and this denial of such access to any person for reasons of circumstances beyond her or any bodies control would only result in the refusal for anybody who is not able to provide a father's name from getting higher education and thereby means that this Constitution a violation of the fundamental rights of persons to equality of opportunity even in public employment as

guaranteed by Article 29 of the Constitution. Ms. Hossain lastly submits that Bangladesh which is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as well as the Convention on the Rights of the Child . So, it is the State's responsibility to ensure the right of every person to equality.

We have perused the writ petition, supplementary affidavit filed by the petitioners and the relevant documents appended thereto.

This application under article 102 has been filed in the nature of Public Interest Litigation. The petitioners are aggrieved by impugned arbitrary and discriminatory actions of the respondent no.8, i.e., the Board of Secondary and Higher Secondary Education, Rajshahi requiring all candidates for registration for the SSC Examinations to complete mandatory fields for father's name and mother's name provided in the Student Information Form. In March 2007, a daily newspaper reported that a female SSC candidate Sagarika was prevented from appearing for her SSC examination scheduled for April 2007 due to the Respondent No. 8's (Board of Secondary and Higher Secondary Education, Rajshahi) refusal to issue her an admit card on the ground of her not stating her father's name in the registration form.

The Prothom Alo on 28.03.2007 had a caption "বাবার পরিচয় নেই, বন্ধ হলো মেয়ের লেখাপড়া" a girl student studying in a school in Thakurgaon was prevented from sitting for the S.S.C examination in April 2007. After the Board refused to issue her with the admit card on the basis that she had not made an entry in the field titled "father's name" in the registration form issued by the Board to all the candidates. The refusal to issue Sagarika's admit card on the ground of her not stating her father's name in the

registration form had ultimately resulted in despair and Sagarika was never able to pursue further education. Again on 27th of May 2019, another daily newspaper reported that children of sex workers, street children, children of surrogate mothers and rape survivors, children abandoned by their father, and children born through IVF (in vitro fertilization) technology are also subjected to numerous difficulties due to their inability to disclose their father's identity.

The Daily Observer e-paper under the title "Declaration of Parents' Identity Woe for Many-pointing out on a dated 27.05.2019 that children of sex workers, street children, children of surrogate mothers and rape survivors, children abandoned by their father, and children born through IVF technology suffer many difficulties due to their inability to disclose their father's identity. In the online Daily Observer, it appears that one Abida Sultana (not her real name) daughter of a sex worker was brought up in a safe home near the Daulatdia Brothel in Rajbari District and she does not know her father's name. Diagonosed as hepatitis- B positive patient, condition of Abida deteriorated in 2007 and she was badly in need of a passport to travel to India for better treatment. The authorities did not allow her to obtain a passport, as she could not disclose the name of her father in the petition. Abida, an honours graduate is now working with a foreign NGO to serve the distressed Rohingya refugees in Cox's Bazar. Another Shahajadi Begum, a development worker, who researched on lives in the brothels in Bangladesh, said, "Woes of sex workers' children are unspeakable. They do not inherit wealths from any father.The fact they face troubles in getting admission to schools and also in securing a job in the government of private offices. Not only for the children of sex workers,

disclosures of father's identity in official papers is an embarrassing question for many, including the street children, children of surrogate mother, rape survivors, children abandoned by father and also children born through IVF technology. The Daily Observer has further examined the existing laws and talked to some legal experts to delve deep into the issue and found only plightful details of many victims, without finding any single solution in the existing legal system.

In the case in hand we find that till date, mandatory requirement remains to include both parents' names in seeking admission for SSC and HSC examinations and such documents include the student information forms for the 2019 HSC and 2022 SSC examinations and students information form for 2023 SSC examination of Shaheed Bir Uttam Lt. Anwar Girls' College Dhaka Cantonment, as well as the Registration Circular for JSC 2018 of Dinajpur Education Board's, Age Record and Correction thereof procedure of Ministry of Education.

In 2019, the petitioner had filed applications under the Right to Act to Boards of Education, including the respondent nos. 3-9 seeking information regarding.

1. Any specific rule or regulation regarding the use of the father or mother's names at the time of filling up the registration form for SSC examination, and
2. Any specific rule of orphan candidates at the time of filling up the registration form for SSC examination.

Only five of the eleven bodies responded (Respondent Nos. 3-5, and two others i.e., the Boards of Secondary and Higher Education, Barishal, Cumilla, Chattogram, the Bangladesh Technical Education Board and the

madrasa Board. All five stated that there is no such specific rule or regulation. The Respondent No. 5, Board of Secondary and Higher Education, Chattogram) also stated that Rule 2(ka) of the মাধ্যমিক ও উচ্চমাধ্যমিক শিক্ষাবোর্ড, ঢাকা (মাধ্যমিক ও উচ্চ মাধ্যমিক স্তরের বেসরকারি শিক্ষা প্রতিষ্ঠানের গভর্নিং বডি ও ম্যানেজিং কমিটি, প্রবিধানমালা ২০০৯ (Managing Committee Regulation 2009) (SRO No. 99/law/2009) provides that the "guardian" of a student is their "father or mother" and that in case of an orphan student their legal guardian would be deemed to be their guardian. The Intermediate and Secondary Education Ordinance 1961 ('the Ordinance'), and the Intermediate and Secondary Education Regulations 1961 govern the organizing, regulation, supervision, and control of the Intermediate and Secondary Education. Section 10 of the Ordinance provides among others that the Board shall have powers:

"to prescribe conditions governing admission of students to and transfer of students from and to Intermediate Colleges and Secondary Schools",

"to hold, conduct, and regulate examinations at the end of the Intermediate and Secondary stage or any other stage", and

"to regulate and decide all administrative matters".

Section 39 of the Ordinance further provides that the Board may make regulations providing for among others "the conditions under which candidates shall be admitted to the Examinations of the Board and shall be eligible for certificates".

Regulation 3 of the Regulations provides that, "the Controller of Examinations shall, subject to the control of Chairman, be in charge of the examination sector of the Board", and that the Controller shall exercise and perform certain powers and duties and shall "receive and deal with

applications for admission to the examination of the Board and issue necessary documents as admissible under the regulations".

Admittedly, a child is not a chattel or a ball to be shuttled or shunted from one parent to the other. Certainly this Court does exercise jurisdiction of paren patrae in custody or guardianship wrangles; he does help to secure welfare of the helpless children of two adults whose personal differences and animosity has taken precedence over the future of their child. Unless an unmarried father establishes his paternity over the child, it is generally difficult for him to defeat or overwhelm the preferential claims of the mother especially in cases of custody matters. This will only refer to the guardianship and the custodian rights with regard to the children when the father is not conferred with an equal position merely by virtue of his having fathered the child. If we go through the different jurisdictions and especially with regard to the Convention on the Rights of the Child which Bangladesh has acceded to, the convention points out and mentions inter-alia, the Universal Declaration of Human Rights.

Article 1 of the Convention provides:

> For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 3 provides:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 7 provides:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared by his or her parents.

Article 9 provides:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Article 12 provides:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the view of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 18 provides:

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

Article 21 provides:

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of tall pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;

Article 27 provides:

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

4.States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

As we go through the writ petition as well as the Annexures appended to the writ petition as annexure-A "বাবার পরিচয় নেই, বন্ধ হলো মেয়ের লেখাপড়া" annexure-B "ছেলে জানতে চায় তার বাবা কে?" annexure-B1 "শুধু মায়ের পরিচয় পরীক্ষা দেওয়া যাবে না কেন?" reveal that the impugned actions by respondent no.8 was actually carried out without application of mind inasmuch as the impugned practice by the respondent nos.3 to 9 is not only irrational as it does not take into account the very purpose of the National Policy for Women's advancement 1997, or that subsequently adopted in 2008, which both aimed to further gender equality and in particular, to ensure the advancement of women's rights to education among others and by way of the impugned actions it ultimately has resulted in defeating the very purpose of the policy itself.

These children who have been deprived and those who are not able to identify their father from taking part in their SSC and HSC examination is indeed a violation of the right to equality and non-discrimination in particular of the State's obligation under article 28(4) of the Constitution. Although there is no such requirement under the law, the Boards of Education have been continuing to require both the parents` name for completion of their applications to sit for SSC and HSC examinations. The same is in violation of their right to be treated in accordance with law of the students who cannot identify both the parents under article 31 of the Constitution. Despite there being no specific rules or regulations regarding the use of either of the parents' names in the application forms as confirmed by five Boards of Education, we note that the continued mandatory requirement of providing names of both the parents father and the mother for successful completion of the SSC and the HSC registration

forms and issuance of admit cards is in violation of rights to non-discrimination and thereby access to education which are the basic necessities of life of candidates without identified parents as guaranteed under Articles 28,31 read with 32 and 15(a).

Against the aforesaid facts and circumstances, we are inclined to make the Rule absolute.

Accordingly, the Rule is made absolute.

The respondents are directed to amend the student Information Form and enable the candidates appearing for the SSC/ HSC examinations to include by way of identification information regarding either the father's /mother's name or the name of their lawful guardians.

There is no order as to costs.

Communicate the Judgment and Order at once.

Md. Khairul Alam, J.

I agree.