



08-1-06, 09-1-06, 09-1-06, 09.01.06, 09.01.06

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

WRIT PETITION NO. 9157 OF 2005 with
Writ Petition No. 9180 of 2005.

IN THE MATTER OF:

An application under Article 102 of the Constitution of the
People's Republic of Bangladesh.

and

IN THE MATTER OF:

Al-haj Advocate Mohammad Rahmat Ali and another
petitioners in Writ Petition No. 9157 of 2005 and
Mr.M.A.Jali,M.P. petitioner in Writ Petition No. 9180 of 2005 –
VS- The Election Commission and others

Dr. Kamal Hossain with

Mr. Tanjib-ul Alam

.....For the petitioners in Writ Petition No. 9157 of 2005

Mr. M.Amir-Ul Islam with

Dr. Shirin S. Chaudhury

Mr. Shamsul Hasan

Mr. Md. Moniruzzaman Azad

.....For the petitioner in writ petition No. 9180 of 2005.

Mr.Khandoker Mahbubuddin Ahmed with

Mr. Md. Toufiq Inam

.....For the respondent No.1 in both the writ petitions.

Mr. A.J.Mohammad Ali with

Mr.Adilur Rahman Khan,D.A.G.,

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Mr. Abdus Samad Kamal, A.A.G.,

Mrs. Mubina Asaf, A.A.G.,

Mr. Md. Jafar Imam, A.A.G.,

.....For the respondent No. 5 in both the writ petitions.

Present:

Mr. Justice Md. Abdul Matin

and

Mr. Justice Md. Rezaul Haque

The 4th January, 2006.

We have heard both the writ petitions i.e. Writ Petition No. 9157 of 2005 and Writ Petition No. 9180 of 2005 and both the writ petitions are being disposed of under this judgment.

In writ Petition No. 9157 of 2005 the petitioners have called in question the decision to prepare a fresh Electoral Roll taken by the respondent No. 2, without consent of the two other commissioners and also appointment given by the respondent No. 3 to about 2,40,000 enumerators, 70,000 supervisors, 6235 assistant registration officers and 83 registration officers pursuant to the impugned decision. The decision referred to in the writ petition has been annexed as Annexure-A to the writ petition and on perusal of the same we found that Annexure-A is not a decision of fresh voter list. Since at the time of hearing the Chief Election Commissioner was being represented by his lawyer, learned senior counsel Mr. Khandoker Mahbubuddin Ahmed, the court put a question to him whether in fact there was a decision for fresh voter list and the answer being

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in the affirmative , the court directed him to produce the relevant decision which eventually was submitted by submitting Affidavit-Of -Compliance also annexing the connected records. From that affidavit-of -compliance it appears that The Commission took a decision as per Annexure-1 of that affidavit-of -compliance and other relevant papers are regarding the process leading to the ultimate meeting held on 6th of August, 2005 as evidenced by Annexure- I to IV to the Affidavit-of-Compliance .

The case of the petitioners, in both the writ petitions ,in short, is that the petitioners are aggrieved by the actions of the respondent No. 3 taken according to the unilateral decision of the Chief Election Commissioner ignoring the objections of two other members of the Commission deciding whether there should be a fresh voter list or an up-dated voter list and therefore the decision is not the decision of The Election Commission. It has been asserted that The Commission means a Commission within the meaning of Article 118 of the Constitution which provides that there shall be an Election Commission for Bangladesh consisting of a Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time direct, and the appointment of the Chief Election Commissioner and other Election Commissioners (If any) shall, subject to the provisions of any law made in that behalf, be made by the President and since at the moment the Election Commission is consisted of the Chief Election Commissioner and 2 other Commissioners , the Commission must mean