

বিচারপতি সুলতান হোসেন খান এবং বিচারপতি এ.এম মাহমুদুর রহমানের সমন্বয়ে গঠিত হাইকোর্টের পূর্ণাঙ্গ বেঞ্চ ১৯৮৫ সালের ৮ই আগস্ট সর্বসম্মত রায়ে কাদিয়ানীদের প্রকাশিত 'ইসলামে নবুয়ত' নামক বইটি বাজেয়াপ্ত করে। (৪৫ ডিএলআর, ১৯৯৩)। সংবিধানের ১৯৭২ আর্টিকেলের ১০২ অনুচ্ছেদের অধীনে ও ফৌজদারি কার্যবিধির ধারা ৯৯(ক) অনুসারে ০৮ই-আগস্ট-১৯৮৫ সালে বাংলাদেশ হাইকোর্ট ডিভিশন থেকে উক্ত রায়ের মাধ্যমে যে বইটি বাজেয়াপ্ত করা হয় সেটি কাদিয়ানী মতাবলম্বী জনাব মুহম্মদ আমীর কর্তৃক বাংলাদেশ আনজুমান-ই-আহমদীয়া'র পক্ষে রচিত ছিল। উক্ত রায়ে বিস্তৃত আদালত ৪১ নং আর্টিকলে বলেন,

- "আহমদীয়া সম্প্রদায়ের ধর্মীয় বিশ্বাস প্রচারের অধিকার দেশের আইন, জনশৃঙ্খলা এবং নীতি নৈতিকতার অধীন (অর্থাৎ এতে কোনো প্রকারের ধোকা, প্রতারণা ও মিথ্যার আশ্রয় নেয়া যাবেনা)। বইটিতে (ইসলামে নবুয়ত) এমন বিষয় রয়েছে যা ইচ্ছাকৃতভাবে এবং বিদ্বেষপূর্ণভাবে মুসলমানদের বেশিরভাগ ধর্মীয় বিশ্বাসকে ক্ষুণ্ণ করার উদ্দেশ্যেই ছিল। তাই সরকারের জন্য বইটি বাজেয়াপ্ত করার নির্দেশ ন্যায়সঙ্গত ছিল।" (অনলাইন থেকে হাইকোর্টের নিজেস্ব ওয়েবসাইট থেকে আর্টিকেল নং ৪১ দ্রষ্টব্য)।

২৭.

Article 41—Right to profess religion—The right of the Ahmadiyya community to preach their religious beliefs is subject to law, public order and morality. The book having contained matters which are deliberately and maliciously intended to outrage the religious beliefs of the bulk of the Muslims, the Government was justified in forfeiting the book. Bangladesh Anjuman-e-Ahmadiyya vs Bangladesh 45 DLR 185.

হাইকোর্টের নিজেস্ব ওয়েবসাইট থেকে

- উল্লেখ্য, [সুলতান হোসেন খান](#) ছিলেন একজন বাংলাদেশী বিচারক। তিনি ১৯৯০ সালে প্রধান নির্বাচন কমিশনারের দায়িত্ব পালন করেন। দুর্নীতি দমন ব্যুরো ২০০৪ সালে দুর্নীতি দমন কমিশনে রূপান্তর হলে কমিশনের চেয়ারম্যান হন তিনি। বাংলাদেশ প্রেস কাউন্সিলের চেয়ারম্যানও ছিলেন তিনি। তিনি ৫ই জুলাই ২০১৫ সালে ঢাকায় স্কয়ার হসপিটালে ইলেকাল করেন।

Constitution of Bangladesh, 1972 Article 102

Forfeiture of book—Defect in the order is no ground for exercise of writ jurisdiction—For enforcement of fundamental right and for cancellation of order, the Court should look to the equity and good conscience in passing the impugned order (forfeiting the book in question). When the book contains materials justifying the government's action, the impugned order cannot be

struck down on the ground that it does not mention the facts in support of the action. (5 & 7).

Code of Criminal procedure (V of 1898) Section 99A

Forfeiture of book—Government is not required to issue notice—The provision may be invoked when the writing and publishing of a book constituted a penal offence. The order of forfeiture is a preventive action requiring no notice to the author or the publisher to give them opportunity of being heard. (8)

Constitution of Bangladesh, 1972 Article 102

The right to hear is a personal right—the writ petitioner being not the author or publisher of the forfeited book is not entitled to prior notice asking him to show cause against the impugned order..... (8)

Article 41

Right to profess religious—The right of the Ahmadiyya community to preach their religious beliefs is subject to law, public order and morality. The book having contained matters which are deliberately and maliciously intended to outrage the religious beliefs of the bulk of the Muslims, the Government was justified in forfeiting the book..... (11, 12, & 15)

ASM Wahidul Momin Chowdhury, Advocate —For the Petitioner.

MM Hoque, Deputy Attorney General—For the Respondent.

Judgment : Sultan Hossain Khan J : This application under article 102 of the constitution as revived is directed an order dated 8.8.85 forfeiting the book in Bengali, styled "Islam-i-Nabuat" written by Moulvi Muhammed Ameer, Bangladesh Anjuman-e-Ahmadiyya, Dhaka, under section 99A of the Code of Criminal Procedure. The petitioner has alleged that the book was first written and published circulated in this country and that the forfeited book is its 10th edition. It have been stated that the views expressed in the book have not outraged the religious feeling of the Muslims of Bangladesh and has not created any ill-feeling or hatred between communities. In the petition it has been stated. "The book itself is a researchical one on religious thoughts and beliefs,

i.e. a systematic investigation towards the development of Quaranic knowledge” It has been Stated that the petitioner has faith and belief in the spiritual writings as contained in the book and there is nothing in it which would create hatred or ill feeling between classes of citizens of Bangladesh and it has not outraged the religious faith or belief of any class of citizens by insulting their religious beliefs and faith. The petitioner has submitted that every citizen has a right to follow, practice and preach his own thoughts on religious beliefs and faith within the bounds of law, public order and morality and as such the order of forfeiture of the book must be held to have been made and passed illegally and without lawful authority, and should be set aside and cancelled. It has been stated, the theme in the book is purely a religious one and is based on the petitioner’s religious faiths and beliefs and that the writings in the book are expression of religious beliefs of Ahmadiyya sect of the Muslim Community ; the book cannot be said to have been written and published to promote a feeling of hatred and ill feeling between different classes of citizens of Bangladesh, or has not deliberately and maliciously intended to outrage the religious feelings of the Muslims of Bangladesh by insulting their religious beliefs. The petitioner has asserted that tolerance towards other religious faiths and belief is a fundamental basis of Islam and hence the writings and expression in the book in support of the religious beliefs of the Ahmadiyya sect of the Muslim cannot be said to be offensive as contemplated under section 99A CrPC and that the impugned order is illegal and was made and issued without any lawful authority and is of no legal effect. ((**DLR** [Dhaka law Reports], 45:185-86 by Justice Sultan Hossain Khan and AM Mahmudur Rahman Vs Bangladesh Anjuman-e-Ahmadiyya, represented by its Secretary, Umor-e Ama.....petitioner [Write Petition No. 407 of 1985])).

Screenshot, ([Pdf](#))

HIGH COURT DIVISION
(Special Original Jurisdiction)

Sultan Hossain Khan J
and AM Mahmudur
Rahman J.

Judgment
September 18th, 1986.

Bangladesh Anjuman-e-
Ahmadiyya, represented
by its Secretary, Umor-e-
Ama..... Petitioner
Vs.
Secretary, Ministry of
Home Affairs.....
.....Respondent*

religious beliefs of the bulk of the Muslims, the
Government was justified in forfeiting the book.
.....(11, 12 & 15)

ASM Wahidul Momin Chowdhury, Advocate
—For the Petitioner.

MM Hoque, Deputy Attorney-General — For
the Respondent.

Judgment

Constitution of Bangladesh, 1972
Article 102

Forfeiture of book—Defect in the order is no
ground for exercise of writ jurisdiction—For enforce-
ment of fundamental right and for cancellation of
order, the Court should look to the equity and good
conscience in passing the impugned order (forfeiting
the book in question). When the book contains
materials justifying the government's action, the
impugned order cannot be struck down on the ground
that it does not mention the facts in support of the
action.
.....(5 & 7)

Code of Criminal Procedure (V of 1898)
Section 99A

Forfeiture of book—Government is not required
to issue notice—The provision may be invoked
when the writing and publishing of a book
constituted a penal offence. The order of forfeiture is
a preventive action requiring no notice to the author
or the publisher to give them opportunity of being
heard.
.....(8)

Constitution of Bangladesh, 1972
Article 102

The right to hear is a personal right—the writ
petitioner being not the author or publisher of the
forfeited book is not entitled to prior notice asking
him to show cause against the impugned order.
.....(8)

Article 41

Right to profess religion—The right of the
Ahmadiyya community to preach their religious
beliefs is subject to law, public order and morality.
The book having contained matters which are
deliberately and maliciously intended to outrage the

*Writ Petition No. 407 of 1985.

HC—24

Sultan Hossain Khan J : This application
under Article 102 of the Constitution as revived is
directed against an order dated 8.8.85 forfeiting the
book in Bengali, styled "Islam-i-Nabuat" written by
Moulvi Muhammad Ameer, Bangladesh Anjuman-e-
Ahmadiyya, Dhaka, under section 99A of the Code
of Criminal Procedure. The petitioner has alleged
that the book was first written and published in 1948
and since then several editions have been published
and circulated in this country and that the forfeited
book is its 10th edition. It has been stated that the
views expressed in the book have not outraged the
religious feeling of the Muslims of Bangladesh and
has not created any ill-feeling or hatred between
communities. In the petition it has been stated, "The
book itself is a researchal one on religious
thoughts and beliefs, i.e. a systematic investigation
towards the development of Quranic knowledge" It
has been stated that the petitioner has faith and belief
in the spiritual writings as contained in the book and
there is nothing in it which would create hatred or ill
feeling between classes of citizens of Bangladesh and
it has not outraged the religious faith or belief of any
class of citizens by insulting their religious beliefs
and faith. The petitioner has submitted that every
citizen has a right to follow, practice and preach his
own thoughts on religious beliefs and faith within
the bounds of law, public order and morality and as
such the order of forfeiture of the book must be held
to have been made and passed illegally and without
lawful authority, and should be set aside and
cancelled. It has been stated, the theme in the book
is purely a religious one and is based on the
petitioner's religious faiths and beliefs and that the
writings in the book are expression of religious
beliefs of Ahmadiyya sect of the Muslim
Community; the book cannot be said to have been
written and published to promote a feeling of hatred
and ill feeling between different classes of citizens of

Vol- 45, Page 185-86 Date 08-08-1985

Bangladesh, or has not deliberately and maliciously
intended to outrage the religious feelings of the
Muslims of Bangladesh by insulting their religious
beliefs. The petitioner has asserted that tolerance
towards other religious faiths and belief is a
fundamental basis of Islam and hence the writings
and expressions in the book in support of the
religious beliefs of the Ahmadiyya sect of the
Muslims cannot be said to be offensive as
contemplated under section 99A CrPC and that the
impugned order is illegal and was made and issued
without any lawful authority and is of no legal
effect.

2. The respondent has filed an affidavit-in
opposition and opposed the Rule. The respondent
has contended that there being a specific remedy
available under section 99B of the Code of Criminal
Procedure for setting aside the order of forfeiture
under section 99A of the Code of Criminal

3. As regards the first question about the
maintainability of the application under Article 102
of the Constitution the learned Advocate for the
petitioner has submitted that the application is
maintainable under Article 102 of the Constitution
on the ground that the order of forfeiture has been
made in violating the rights of the petitioner under
Article 41 of the Constitution of Bangladesh, i.e. his
right to profess, practice and propagate his religious
views of the Ahmadiyya sect of the Muslim
Community, and hence he has a right to challenge
the impugned order as being violative of his
aforesaid right. In our view the application under
Article 102 of the Constitution filed by the
petitioner, as substituted, is *prima facie* maintainable
issue. The petitioner has challenged the impugned
order of forfeiture on the ground of violation of
fundamental right incorporated under Article 41 of
the Constitution. He may not pursue his remedy
under section 99B of the CrPC by filing an

Page No. 186

তথ্যসংগ্রহকারী ও লিখক, প্রিন্সিপাল নূরুল্লাহী এম.এ