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# Loan and bill default: Eligibility for parliamentary election

After election if any elected representative suffers any of the disqualifications under article 12 (1) of RPO, s/he should be disqualified immediately in line with the expectation of the people

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## PART-I

A candidate, without having any disqualification of loan and/or bill default, may contest and win a parliamentary election from a constituency and then during the tenure of the parliament, he may suffer such disqualification afresh. Since the candidate was not disqualified at the time of submission of nomination paper, the question arises as to whether the Member of Parliament suffering disqualification of loan and/or bill default afresh as above shall be disqualified for being a member of parliament. On the other hand, if a candidate has disqualification of loan and/or bill default at the time of submission of nomination paper but with an interim injunction or stay order of the impugned CIB Report declaring him a defaulter, he may participate and win in the parliamentary election and then subsequently the stay may be vacated and the Rule may be discharged either during the tenure of parliament or after its expiry. In the meantime, however, that candidate may well have represented the people of his constituency. In the circumstances stated above, it is pertinent to ask whether the disqualification may have the effect/meaning of disqualification for election and/or for being a member of parliament. Whatever may be the effect or meaning of disqualification; can the consequence of the stay or injunction be prevented? This requires analysis of constitutional

provisions and other laws of Bangladesh.

Apart from article 66 (2) of the Constitution of the People's Republic of Bangladesh (the Constitution), the disqualifications for election or for being a Member of Parliament are laid down in article 12 (1) of the Representation of People Order, 1972 (in short RPO). Sub-clauses (l) and (m) of article 12 (1) of RPO provide that a loan default, by a person before seven days from the day of submission of nomination paper and by a company whose director desires to contest election before the day of submission of nomination paper, is a ground of disqualification for election as or for being a member of parliament. Furthermore, under article 12 (1) (o) of RPO, a candidate who fails to pay utility bills seven days before the submission of nomination paper is also disqualified for election as or for being a member of parliament.

Like article 66 (2) of the Constitution, it is evident from article 12 (1) of RPO that the disqualifications shall come into play not only for election to Parliament but also for being a Member of Parliament. But the difficulty lies with the language used in sub-clause (g) of clause 2 of article 66 of the Constitution, which states that- a person shall be disqualified for election as or for being a Member of Parliament who- (g) is disqualified for such election by or under any law. It appears from the plain reading of the sub-clause (g) above that it is referring to disqualifications stated in article 12(1) of RPO. It further appears that the use of the words "for such election" the sub-clause (g) is likely to discard the effect of the words for being in case of disqualification of loan and bill default.

Consequently, sub-clause (g) of article 66(2) of the Constitution may be taken to mean that since a candidate was not a loan and/or bill defaulter at the time of submission of nomination paper, subsequent defaults may not make him disqualified for being a member of parliament. Even though article 12 (1) of RPO has clearly debarred a member of parliament for being as such member when he suffered disqualification of loan and/or bill default during the tenure of parliament, with the provisions of sub-clause (g) of article 66(2) being the supreme law under article 7 of the Constitution and taking precedence over that of RPO, a member of parliament may literally take the benefit of this supremacy and continue as such member.

However, if the words "for such election" laid out in sub-clause (g) of article 66(2) of the Constitution are given literal approach as above, a number of anomalies may arise.

Firstly, sub-clause (d) of article 67(1) of the Constitution provides that a Member of Parliament shall vacate his seat if he has incurred disqualification under clause (2) of article 66. If the words "for such election" under sub-clause (g) of article 66(2) are given the meaning of disqualification only for election as a member of parliament but not "for being" a member of parliament it may have the effect of negating the operation of article 67(1) (d) in part in that the question of vacating seat under sub-clause (d) of article 67(1) may not arise with the concerned candidate having no chance to become a member of parliament due to him already being disqualified for election.

Secondly, sub-clause (f) of article 66(2) of the Constitution lays down that a person shall be

disqualified for election as or for being a member of Parliament who “holds an office of profit in the service of the Republic other than an office which is declared by law not to be disqualified its holder. Similarly article 12 (1) (c) of RPO provides that a person shall be disqualified for election as or for being a member of parliament if he is holding an office of profit in the service of the Republic or of any statutory public authority. It seems that the provisions of the above two articles are similar in terms except the addition of the words ‘statutory public authority’. If provisions of sub-clause (c) of article 12 (1) of RPO are meant to indicate disqualification only for election to Parliament in compliance with article 66 (2) (g), the said article may essentially contradict the effect of article 66 (2) (f) of the Constitution in that both the articles of the Constitution and RPO being same, sub-clause (f) of article 66 (2) of the Constitution is making a person disqualified both for election as or for being a member of parliament whereas sub-clause (c) of article 12 (1) of RPO is making a person disqualified only for election as a member of parliament.

Thirdly, clause 2 of article 8 of the Constitution provides that “The principles set out in this Part (Part II) shall be fundamental to the governance of Bangladesh, and shall be applied by the State in making of the laws, shall be guide to the interpretation of the Constitution and other laws of Bangladesh and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable. One of such principles stated in Article 11 of the Constitution is that the Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.

According to the above articles, while interpreting the constitution or any other laws, the court has to apply democracy in which there is effective participation by the people through their elected representatives as a guide. So clearly after election if any elected representative suffers any of the disqualifications under article 12 (1) of RPO, he should be disqualified immediately in line with the expectation of the people because a person having questionable character may not be any longer their elected representative. If he remains as a member after he has suffered disqualification, it may breach the provisions of interpretation to be followed under article 8 above. Thus the words “for such election” in article 66 (2) (g) should bear the meaning of disqualification both for election and for being a member of parliament.

In the light of the foregoing discussion, the question remains as to how the aforesaid problem generated by the words “for such election” as stated in sub-clause (g) of clause 2 of article 66 can be resolved.

In the first place, the literal interpretation of the words “for such election” has to be avoided and the sub-clause (g) has to be read harmoniously in conjunction with article 67 and other provisions of the Constitution. Consequently, the outcome may well have had that a member of parliament without having disqualification of loan and/or bill default and suffering the same during the tenure of parliament may be disqualified for being as a member of parliament for the rest of the tenure.

In the second place, the solution to the problem may be found in the sub-clause itself. A careful reading of clause 2 of article 66 reveals that the clause starts with “a person shall be disqualified for election as or for being a Member of Parliament.” Thereafter, the word “who” has been used, which refers to the person in the beginning of the clause. After the word “who” the words “is disqualified for such election by or under any law” have been used. It seems that the words “for such election” have been used as referring to the election at the beginning of the clause by way of emphasis but not by way of omitting the consequence of the words “for being” in respect of the rest of the provisions.

Alternatively, if the words “for such election” had not been incorporated at all in the sub-clause (g), there might not have been any problem because in that case, the provision of clause (g) would have been that “A person shall be disqualified for election as or for being a Member of Parliament who is disqualified by or under any law. Thus the disqualification would have the effect of both “for election” and “for being” a Member of Parliament. However, this solution requires amendment of sub-clause (g) of clause 2 of article 66 which being arduous is not recommended by the authors of this article.

*( Part-II of this article*

*will be published tomorrow)*

*The writers are lawyers*

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