Law

JS Boycott Case : Text of Judgement

Following is the full text of the judgement delivered a High Court Division bench comprising Justice Kazi Shafiuddin Ahmed and Justice A T Manowaruddin on Sunday upon a writ filed against the continued boycott of Parliament by the Opposition MPs:

Election for the members of the Parliament if held under the umbrella of the ruling party cannot be free and fair, on this premise, the opposition parties, namely, the Awami League, Jatiya Party and Jamaat-e-Islami want to cure this election malady by way of forming a "Caretaker Government" which the ruling party, namely, the Bangladesh Nationalist Party (BNP) are not conceding to, as such, the opposition members of the Parliament have taken to streets by boycotting the sessions of the Parliament.

Mr Md Anwar Hossain Khan, the petitioner, has filed this writ petition challenging the continuous and unabated abstension of respondent Nos. 3-5 and sought relief by way of declaration and mandamous no that the abstaining members may be sent back to the Parliament in order to enable them to discharge their constitutional function and obligation within the framework of the Constitution.

The Rule was issued on 78th June, 1994. Respondent No 4 and 5, namely, Mr Moudud Ahmed and Moulana Matiur Rahman Nizami, Members of the Parliament have appeared and shown causes by filing affidavits-in-opposition while respondent No 3 Mrs. Sheikh Hasina Wazed Member of the Parliament has although appeared but has not shown any cause by filing any affidavit-in-opposition. In the meantime the petitioner filed a supplementary affidavit bringing on record certain facts which occurred in the meantime and made some additional prayers. All the 3 respondents, namely, respondent Nos. 3-5 have promptly filed affidavit-in-opposition to such supplementary affidavits praying for recording that the Rule so issued earlier has become infructuous apart from raising some questions on maintainability

All these questions and the writ petition shall now be disposed of by this judgement.

It is stated in the writ petition that the respondent Nos. 3-5 have been elected from their respective constituencies as members of the parliament in the general election held in the year of 1991. The respondent Nos 3-5 took oath of office as member of the Parliament to abide by the provisions of the Constitution with a view to representing the people of Bangladesh and further bound them not to allow their personal interests to influence the discharge of their duties as member of the Parliament. It is stated that respondent Nos. 3-5 have been abstaining themselves from attending the Parliament since 1-3-94 although the sessions of the Parliament are continuing and the respondents failed to perform their constitutional duty and obligation in projecting the cause of the people. It is stated that the abstention of respondent Nos 3-5 to attend the parliament is a clear violation of the right, obligation and privileges but they have created a dead-lock by taking an obstinate attitude directing to make the Parliament ineffective. To realise their demand for a caretaker government they are abstaining from attending the Parliament. It is further stated that the respondent Nos. 3-5 did neither take any leave from the Speaker of their absence nor they filed any *Kaifiat*. It is further stated although they are not attending the Parliament session from 1-3-94 and are abstaining without leave or authority from the Parliament they are illegally drawing salary allowances, car facility telephone facility and other facilities – as allowed to them and thereby causing financial loss to the people and to the Republic of Bangladesh. Respondent Nos 3-5 made statements in different daily newspapers that they would attend the budget session till fulfillment of their duties. Demand of justice notice was issued to the respondents. But only respondent No 3 made a reply but refused to attend the Session and respondent Nos 4 and 5 gave no reply at all.

In the supplementary affidavit filed by the petitioner it is stated that the respondent Nos. 3-5 have been absenting themselves without leave of the Speaker since 1-3-94 and till to date which covered a period of 250 days and it is stated that in case of absence for 90 days the seat of a Member of the Parliament automatically stands vacant. As such they sought a declaration that respondent Nos. 3-5 and their party members of the Parliament have ceased to be members of the Parliament with effect from 30.5.94 and further that they may be directed to refund all emoluments, salary, allowances etc. received by them during the period of their unauthorised absence.

In the affidavits for recording that Rule has become infructuous, it is stated by respondent No. 3 that the direction so issued in terms of the Rule by this Court is not tenable as it would interfere with the functions, powers, privilege and jurisdiction of the Parliament. It is further stated that "if the prayer made in the petition is allowed, it would tantamount to destroy the principle of separation of the powers of Executive, Legislative and Judiciary and thereby destroy the very basis of written Constitution of Bangladesh." It is further stated that remedy being available before the Parliament the petition is not maintainable. It also challenged the *locus standi* of the petitioner to file the writ petition. It is further stated the respondents are not persons or authority against whom a writ could lie.

Respondent No. 4 Moudud Ahmed has stated in the affidavit-in-opposition to the supplementary affidavit filed by the petitioner that if the respondent No. 4 has ceased to be a member of the Parliament then the law will operate on its own motion and the Speaker and the Parliament Secretariat are the authorities to take necessary action in this regard as no declaration is required by this Court. Whether a member of the Parliament is absent without leave or not it is the Speaker and the Parliament Secretariat to decide competently. It is further stated that according to the supplementary affidavit respondent Nos 3-5 have already ceased to be members of the Parliament and if so the relief sought in the writ petition and the Rule, issued has now become infructuous.

Respondent No. 5 has also field an affidavit to the supplementary affidavit. It is stated that when the respondents Nos. 3-5 have ceased to be member of the Parliament on 30-5-94 the Rule so issued on 28-6-94 directing them to attend the Parliament has become infructuous.

Respondent No. 5 has filed an affidavit-in-opposition stating that the subjectmatter of the writ petition is outside the scope of judicial review of the High Court Division as such the petition is not maintainable. It is further stated that the Constitution envisages separation of power, the Court should refrain from adjudicating upon the issue. It is denied by the respondent that they are not discharging the duties according to the provision of the Constitution. It is stated that boycotts, walkouts and similar other measures are all Parliamentary and democratic activities of a member of Parliament. It is stated that in the 2nd Session of Parliament respondent No. 5 submitted a bill for Parliamentary form of Government incorporating the provisions of holding elections under care taker Government which is not supported by the major parties and as such could not become a part of the 12th Amendment of the Constitution. It is emphatically asserted that this provision must be incorporated into the Constitution so that this issue can be resolved once for all. It is stated that when respondent No 5 and his party realised that under no circumstances the BNP Government is going to table this bill for caretaker Government then they had no other alternative but for ask the Government to table a bill of their own to solve this political crisis and when all persuasions failed they decided to abstain from attending the Sessions of Parliament with a view to put political pressure upon the Government. It is stated that "they are abstaining from attending the Sessions of Parliament for the greater interest of the country". The respondent No 5 has also challenged the legal right of the petitioner to file such an application.

Respondent No. 4 has filed an affidavit in opposition challenging the *locus-standi* of the petitioner to file the petition. It is stated that the petitioner is in no way affected by the non-appearance of the respondent No. 4 in the Parliament. The petitioner is neither aggrieved nor has *locus standi* to file the application. It is stated that walk outs and boycotting the parliamentary sittings are all parliamentary and democratic activities of the members of the Parliament. It is stated that "attending Session of Parliament is one of the duties of a member of Parliament and in fact respondent No. 4 is not attending the sessions in discharging of his duty as member of the Parliament as per decision of the party and in support of a lawful demand given by the political parties in opposition. It is stated that the member of the Parliament will decide if and when they should attend the session of the Parliament. It is stated that opposition parties have been demanding amendment of the Constitution to establish a durable system of holding general election under a neutral, non-partisan caretaker Government. It is stated that amendment of the Constitution by 2/3 majority could not by achieved without support of the ruling party for establishing a caretaker Government. It is further stated that "the boycotting of the proceedings of the Parliament was continued to pressurise the Government with the expectation that it would respond and solve the issue peacefully and constitutionally inside the Parliament". It is stated that "the members of the Parliament belonging to the opposition were always eager to join the Parliament but since the ruling party took no initiative to resolve this impasse, it made the Parliament ineffective. It is stated that the issue involved in this petition is a highly political one and can be resolved politically and not by an order of this Court. It is stated that it has been the decision of the party to boycott and therefore, the Rule has become invalid and infructuous. Lastly the respondent No. 4 prayed for discharging the Rule.

From the aforesaid 4 affidavit-in-opposition to the supplementary affidavit and affidavit-in-opposition filed by respondent Nos. 4 and 5 it appears that the respondent Nos 3-5 have raised the following points:

a) that the petition is not maintainable;

b) that the petitioner has no *locus standi* to file the writ petition;

(c) that the petitioner is not aggrieved;

d) that this Court has no jurisdiction to issue Rule and to direct the respondent Nos. 3-5 to attend the Sessions;

e) that in view of the statements that the respondent Nos. 3-5 have ceased to be members of Parliament as such the Rule issued directing them to attend the Sessions of the Parliament has become infructuous;

f) that the respondent Nos. 3-5 are privileged members of the Parliament and as such their actions are immuned from the jurisdiction of the Court and

g) That direction to refund the emoluments, other allowances and other benefits they have received, taken or obtained cannot be issued as the same are within the transaction, business which are internal proceeding of the Parliament.

The petition is not maintainable could only be decided upon consideration of various grounds such as the *locus standi* of the petitioner to file this petitioner to file this petition, as to whether he is aggrieved or not, whether respondent Nos. 3-5 are persons within the meaning of Article 102 of the Constitution or not, as to whether the continuous absence for Parliament without leave of the Parliament can be called in question by the petitioner or not. Upon consideration of these issues it could be said whether petition is maintainable or not.

As to whether the petitioner has *locus standi* or not it is stated by the petitioner that he is a citizen, voter and cast vote while the general election held in 1991 and that upon successful completion of the said general elections, the 300 members have been elected as members of the Parliament but they do not represent any particular constituency but they are the members of the House of Nation and they represent the whole nation. Therefore, every citizen of Bangladesh has a *locus standi* or right to call in question even the constitutional breach or violation if committed by any member of the Parliament.

Article 7 of the Constitution speaks about the supremacy of the Constitution and sets out that all powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution. Therefore, the petitioner being a citizen of Bangladesh and a voter is a member of the whole people of Bangladesh and is a voter of power along with other citizens of the country and this power which possessed by the people of Bangladesh could only be affected under or by the authority of the Constitution and by virtue of the provision of the Constitution the general election for members of the Parliament was held and 300 members were elected as members of the Parliament. As Constitution is a solemn expression of the will of the people, the supreme law of the Republic, and violation by anybody including the Members of the Parliament shall be called in question by each and every citizen of Bangladesh. Therefore, it can safely be said that the petitioner has got a *locus standi* to file this application by calling in question the conduct and action of the respondent Nos. 3-5 for getting appropriate relief.

Apart from Article 7 of the Constitution the preamble of the Constitution has clearly indicated which may be helpful for interpretation of the constitution that we, the people of Bangladesh, having proclaimed our Independence on the 26th day of March, 1971..., pledging that it shall be a fundamental aim of the State to realise through the democratic process a socialist society, free from exploitation — a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens. Affirming that it is our sacred duty to safeguard, protect and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh so that we may prosper in freedom and may make our full contribution towards international peace and cooperation in keeping with the progressive aspirations of mankind.

This preamble of the Constitution also points to the fact that it is the people and people of Bangladesh who are to safeguard, protect and defend the Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh so that we may prosper in freedom and may make our full contribution towards international peace.

Therefore, the question of *locus standi* cannot be raised because the continuous and unabated abstention from the Parliament tends to erode and destroy the fundamental of the Parliament as Article 65 of the Constitution says clearly that:

(1) There shall be a Parliament for Bangladesh to be known as the House of the Nation in which subject to the provision of this Constitution, shall be vested the legislative powers of the Republic... (2) Parliament shall consist of three hundred members to be elected in accordance with law from single territorial constituencies by direct election and, ... there shall be reserved thirty and exclusively for women members, who shall be elected according to law by the members aforesaid, would clearly show that these 300 members together with 30 women members constitute the Parliament and they are designated as members of the Parliament and that these members of the Parliament as set out in Article 65 shall make legislation and perform other legislative function and this Parliament is constituted by these members, if twist or break the fundamentals of Parliament by taking away a considerable member of members outside the Parliament in order to make the Parliament ineffective which is not authorised by law and such acts amount to erode or destroy the very fundamental of the Parliament and at such every member of the country including the petitioner has a right to challenge such move in order to protect prescribe and safeguard the Constitution.

It is vehemently argued on behalf of the respondent No. 3 that the respondent Nos. 3-5 are not persons within the meaning of Article 102 of the Constitution as the respondent Nos. 3-5 do not perform any function in connection with the affairs of the Republic as such they cannot be directed to attend the Parliament Session. It is undisputed that the respondent Nos. 3-5 have been elected as members of the Parliament and that Article 65(2) clearly shows that Parliament shall consist of 30 members to be elected in accordance with law from single territorial constituencies by direct election and they are designated as members of Parliament. The word any person appearing in Article 102 of the Constitution also includes a member of the Parliament as legislature is one of the component and main organ of Republic and Executive, Legislature and Judiciary these 3 organs taken together constitute the Republic of Bangladesh as such respondent No. 3-5 are persons within the meaning of Article 102 of the Constitution and they are performing their functions in connection with the affairs of the Republic as such the petition is maintainable as against the respondent No. 3-5.

As to the contention of the respondent Nos. 3-5 that this Court has got no jurisdiction to entertain the petition under Article 102 of the Constitution against respondent NOs. 3-5 as Article 78 of the Constitution extends privilege to the members of the Parliament so far the validity of any proceeding of Parliament and regulation of procedure conduct of business or the maintenance of order in Parliament are concerned which shall not be called in question by any Court of law.

Abstention from Session of the Parliament without leave of the Parliament cannot be a privilege for the members of the Parliament, Article 78 reads as follows:

"78. (1) the validity of the proceedings in Parliament shall not be questioned in any Court (2) A member or officer of Parliament in whom powers are vested for the regulation of procedure, the conduct of business or the maintenance of order in Parliament, shall not in relation to the exercise by him of any such powers by subjects the jurisdiction of any Court.

On this point Justice Cornelius, J in Ahmed Seed Karmani case came to the conclusion that the only point on which there was unanimity in the English Courts was that judge which can "fairly be described as internal proceedings relating to the proper business of the House are wholly outside the corrective jurisdiction of the High Court." In the case of Brasiauch-Vs-Goasett (12 QBD 273) all that was conceded was that, "What was said or done within the walls of Parliament cannot be enquired into in a Court of law. Lord Cobridge, C. J. said "the jurisdiction of the Houses over their own members, their right to impose discipline within their walls is absolute and exclusive."

But in none of the English case any attempt been advanced to define as to what constitute "Internal proceedings" but this much is clear that the internal proceeding do not extend to each and every thing that has been done or committed within the four walls of the Parliament.

In the case of Fazlul Kader Chowdhury-Vs-Abdul Huq (PLD 1963 SC 486) right or title of a member to sit or not to sit in the House came up for consideration. In that case whether a member who became minister could remain a member and participate in its proceeding by virtue of Order No. 34 of 1962 came up for consideration. The Court declared the order ultravires the power of the President and upheld the writ of quo warrant issued by the High Court debarring the ministers from continuing as members of the House or participating in the proceeding.

While it can fairly be conceded that internal proceeding of the House relating to its proper business is immune from challenge in Courts, it cannot be conceded that indulging in strike, hartal and street propaganda for realization of the demand for a caretaker government shunning the Constitutional delegation in participating Parliamentary proceedings and destroying the fundamental of the Parliament in otherwise affecting the constitution of the House cannot by any stretch of imagination be called international proceeding to be barred under Article 78 of the Constitution. This abstention for realisation of the demand is not a matter which pertains neither to the regulation of the procedure of the House nor the conduct of its business or the maintenance of order in the National Assembly or affecting any of its privilege. This is not a question, therefore, which relates to internal proceedings of an Assembly and Article 78 (1) Bars the Courts for inquirings into the validity of the proceeding in the Assembly in the formal sense and nothing more.

It pertains to internal proceeding and the character of a proceeding in the House, namely the formal transaction of business with Speaker in the Chair or in a properly constituted committee but the abstention and action of respondent Nos. 3-5 outside the House of Parliament in the streets raising slogans and observing hartals for establishment of a caretaker government at the cost of participation in the internal proceeding does in any sense mean and include the internal proceeding of the House. Therefore, this is not barred by Article 78 (1) of the Constitution as such we think that this Court got jurisdiction to entertain the application. Apart from this the Judges of this Court under solemn oath bind themselves to give effect to the provision of the Constitution and unless there is a clear constitutional provision prohibiting interference by this Court all constitutional processes prescribed under the Constitution are capable of being enforced by our Courts of law and any result which has been reached in violation of or non-compliance with any of this provisions would be declared by them as invalid. If there be any disregard of any of the constitutional requirements the violation can always be attacked as being contrary to the constitution and, therefore, this Courts is bound to give effect to when such challenger is made before this Court.

It is worth to mention that the power to interpret the Constitution has been allotted to the superior Courts for safeguarding, preserving and upholding the Constitution. Really this power does not give to the Court any practical or real omnipotence but to see if the other functionaries of the Republic are well within their bounds or are transgressing their limits and by Article 102 of the constitution the power may be exercised to keep the functionaries well within their bounds. Apart from this Article 106 of the constitution made a provision to refer a matter to the Supreme Court when it appears to be President that a question of law has arisen or is likely to arise which is of such a nature and of special public importance that it is expedient to obtain the opinion of the Supreme Court, the President may make such reference to the Appellate Division of the Supreme Court. Apart from it we have already noticed that Article 7 sets out in clear terms that all powers in the Republic vest in the people and the same has to be exercised on behalf of the people by and under authority of the Constitution alone. Therefore, the power to act in a supervisory character by the superior courts has been vested in the Supreme Court.

Court can enforce all constitutional processes prescribed in the Constitution and may declare all acts done in violation for non-compliance with any provisions as invalid. In our Constitution in several parts, there are mentions of prohibition barring the powers of the Courts but over the remaining parts, Courts have jurisdiction for enforcement if there by any violation. Therefore in those areas where interference is not excluded, power to interfere by courts exists. And in our view our Courts are dutybound to give effect to a well directed challenges on this score.

"The whole of our Constitution," says A K Brohi, "this appears to be designed to create a kind of polity which is law dominated, and all the authorities and organs of the State Power and the specific modes in which they are to act and inter act in the discharge of the duties assigned to them, are all matters that are liable to be controlled in the manner provided for in the Constitution and the Courts of law, in the exercise of their professed power of interpreting the written word of Constitution in effect, become, subjects to certain well defined limitations relating to the constitutionality of governmental acts and omissions."

"Since the determination of questions relating to those limits is once again. In the last resort, a matter of interpretation of the Constitution, which function is assigned to the judiciary in our Constitution, the Judges in effect become Judges of the limits of their own jurisdiction, power or authority."

Colley in his Treatise on Constitutional Limitations says a constitution is the foundation of law a State containing the principles upon which the Government is founded, regulating the division of the sovereign powers and directing to what persons each of these powers is to be confined and the manner in which it is to be exercised. The fundamental principles underlying a written constitution is that it not only specifies the persons or authorities in whom the sovereign powers of the State are to be vested but also laid down fundamental rules for selection or appointment of such persons or authorities and above all fixes the limits of the exercise of those powers. The written constitution defines its scope and ambit so that each functionary may act within its sphere. No power can be claimed by any functionary which is not to be found within the four corners of the Constitution nor can anyone transgress the limits therein specified.

"It is no doubt true, says Hamoodur Rahman, J in Fazlul Quader Chowdhury's case reported in PLD 1963 539, that the Courts are not above the Constitution and the source of their jurisdiction as well as the Constitution itself. I do not seek to claim for the Courts any higher jurisdiction but I would venture to point out that it is cardinal principle that in every system of Government operating under a written Constitution, the function of finally determining its meaning must be located in somebody or authority and the organ of the Government which is normally considered most competent to exercise this function is the judiciary."

It is submitted by the learned Advocates for the respondents No. 3-5 that in view of the supplementary affidavit-filed by the petitioner stating that the respondent Nos. 3-5 have been absenting themselves without leave since 13th Sessions of the Parliament commencing from 1-3-94 till tomorrow amounting to 250 days and stated further in case of absence for 90 consecutive sitting days the members automatically vacate their seats; as such the petitioner asked for a declaration that respondent Nos 3-5 and their party members in the Parliament have ceased to be member of the Parliament with effect from 30.5.94 after the expiry of 90 days' absent without leave arid they may be directed to refund salary, allowances etc received, so obtained during their absence without leave.

Mr Rafique-ul Huq, the learned Advocate appearing for the respondent No 4 submitted that this admission by the petitioner that the respondent nos. 3-5 have ceased to be members of the Parliament and they vacated their seats renders the Rule infructuous. He submits that earlier the Rule was issued on the premises that respondent nos. 3-5 are still members and in the supplementary affidavit this assertion has been supplemented by the admission that respondent nos. 3-5 are no longer members of the Parliament and by operation of law they ceased to be members of the Parliament. Mr Rafique-ul Huq further submits that the pleadings of the civil procedure code should be followed here, as this cause is in a nature of civil proceeding and as such court should act upon the pleadings of the parties.

Writ petition under Article 102 of the Constitution is not necessarily to be treated under civil, criminal or any other jurisdiction. The 'writ jurisdiction' "in the language of Mr A K Brohi, Fundamental Law of Pakistan" for want of better expression should be characterised as "constitutional" jurisdiction so as to distinguish it from any other form of proceedings known to our Courts of law. In the first place, it should be distinguished from a suit which is the form that an action normally takes when instituted in the ordinary courts of civil jurisdiction; and in the second place, it should be distinguished from "civil" and "criminal" proceedings of which several of our statutory enactments speak." After considering various observations made by various judges of Indian and Pakistan High Courts the learned author came to the conclusion that writ jurisdiction is a constitutional jurisdiction and therefore we hold that the pleading of CPC can hardly be followed in matters of constitutional jurisdiction where petition on oath is commonly challenged by statements in the form of affidavit-in-opposition on oath. It is therefore oath-vs-oth. Furthermore the supplementary affidavit so filed by the petitioner would only lead to the conclusion that certain facts which has been developed occurred during the period, namely from the filing of the writ petition till date has only been brought on records by the petitioner with a view to appraising the Court as to the present state of affairs of the members so that in the altered position relevant and appropriate laws may be applied in such an altered situation. Article 67 of the Constitution speaks how a member of the Parliament shall vacate his seat.. Article 67 of the Constitution reads as follows:

"67 (1) A member of Parliament shall vacate his seat —

(a) if he fails, within the period of ninety days from the date of the first meeting of Parliament after his election, to make and subscribe the oath or affirmation prescribed for a member of Parliament in the Third Schedule;

Provided that the Speaker may, before the expiration of that period, for good cause extend it;

(b) if he is absent from Parliament, without the leave of parliament, for ninety consecutive sitting days;

(c) upon a dissolution of Parliament;

(d) if he has incurred a disqualification under clause (2) of Article 66; or

(d) in the circumstances specified in article 70.

(2) A member of Parliament may resign his seat by writing under his hand addressed to the Speaker, and the seat shall become vacant when the writing is received by the Speaker, if the office of Speaker is vacant or the Speaker if for any reason unable to perform his functions, by the Deputy Speaker."

The supplementary affidavit so filed by the petitioner contains some bare statements without any positive materials to show that the respondent Nos 3-5 have absented themselves from Parliament without leave of the Parliament for a 90 consecutive siting days. Therefore, it is difficult for us to hold that they ceased to be member of the Parliament by operation of article 67 (1) (b) of the Constitution.

Mr Asrarul Hossain, the learned Advocate for the petitioner has submitted that absence without leave of the Speaker for 90 consecutive sitting days in neither possible nor practicable as there is imminent danger of being a gap in every sessions. Even for example in a week where Parliament Sessions could not sit on Friday and Saturday (as holiday) and this persistent gap in a week would show that the word consecutive is not possible to observe. From one Session to another session there is always a invariable gap and if this word sitting is not deleted then the intention of the framer of the Constitution could not be given effect to as such the word sitting (সদস্য) as appearing in Article 67 (1) (b) should be deleted for the sake of giving effect to such provision of law. Otherwise there could never be any occasion where a recalcitrant member may be penalised to be unseated even though he remained absent for the whole term of the Parliament. We are unable to accept the contention of Mr Asrarul Hossain as to deletion of the word 'sitting' as appears in Article 67(1)(b) on two reasons, namely, that the framer of the Constitution have in their wisdom framed the Constitution and Court is to give effect to such provision of law without altering the same. Secondly in matters of a penal clause appearing in the Constitution the Court is required to give a strict interpretation of the same as this would result in vacating the seat of a member. Therefore we construe the Article 67 as it is without making any effort to delete the word 'siting'.

Let us now come to the question as to whether the respondent Nos 3-5 have at all absented themselves from attending the Session of the Parliament for 90 consecutive sitting days we accept the submission of respondents 305 that they have not done so which is fortified by the clear admission of Mr Asrarul Hossain that they did not absent themselves for 90 consecutive sittings if the word "sitting" is not deleted as such the prayer made in the supplementary affidavit that a declaration should be made declaring the seats of the respondent Nos 3-5 to be vacant is rejected. Furthermore the petitioner's contention that they have ceased to be members of the Parliament is also rejected. Therefore, the submissions of Mr Rafique-ul Haq, Mr KS Nabi and Dr Abdur Razzak, that the Rule should be discharged as infrustuous is found without any substance. As the respondent Nos 3-5 are still members of the parliament and they are not subjected to the provision of Article 67(1) (b), we do not find any reason why the Rule should become infructuous. Furthermore in their affidavit-in-opposition to the supplementary affidavit none of the respondents has anywhere admitted that they have, in fact, ceased to be member of the Parliament as such the question of discharging the Rule does not arise. There is no merit in the contention contained in the affidavit-in-opposition to the supplementary affidavits as such the same are rejected.

The petitioner Md Anwar Hossain Khan has obtained this Rule calling upon the respondent Nos 3-5 to show cause under what authority of law they are abstaining from the Sessions of Parliament and why they should not be directed to attend the Session of the Parliament of Bangladesh and perform their constitutional duties and obligations as and when the Sessions is held.

The existence of right is the foundation for exercise of writ jurisdiction.

The constitutional jurisdiction is paramount and every form of limitation which normally fetters the exercise of other remedies, does not in any manner control or delimit its scope. By Article 102 there vest in the High Court Division vast powers to give relief to the aggrieved persons by way of, declaration, directions or orders. Article 102 (2)(a) (i) and (ii) and (b) (ii) read as follows:

(i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or

(i) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority has been done or taken without lawful authority and is of no legal effect".

(b) (ii) requiring a person holding or purporting to hold a public office to show under what authority he claims to hold that office".

The petitioner has submitted that he has right to expect that the respondent Nos 3-5 are to perform their constitutional obligations so as to meet the public expectation, they are to project the public causes in the Parliament, initi-

See page 2