

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Refaat Ahmed

Chief Justice

Mr. Justice Md. Ashfaqul Islam

Mr. Justice Zubayer Rahman Chowdhury

Mr. Justice S.M. Emdadul Hoque

Mr. Justice A.K.M. Asaduzzaman

CIVIL PETITION FOR LEAVE TO APPEAL NO.4676 OF 2025

WITH

CIVIL PETITION FOR LEAVE TO APPEAL NO.4739 OF 2025

CIVIL MISCELLANEOUS PETITION NO.930 OF 2025

AND

CIVIL MISCELLANEOUS PETITION NO.966 OF 2025

(From the judgment and order dated 10.11.2025 passed by
the High Court Division in Writ Petition No.15537 of 2025)

Bangladesh Election Commission, : Petitioner.
represented by the Chief (In C.P.No.4676 of 2025)
Election Commissioner,
Bangladesh Election Commission,
Agargaon, Dhaka.

Sarkar Javed Ahmed Sumon. : Petitioner
(In C.P.No.4739 of 2025)

Md. Salah Uddin Sarker. : Petitioner
(In C.M.P.No.930 of 2025)

Dr. Hafijur Rahman. : Petitioner
(In C.M.P.No.966 of 2025)

=Versus=

Bagerhat Press Club, : Respondents.
represented by its President (In all the cases)
namely, Md. Kamruzzaman and
others.

For the Petitioners. : Mr. Md. Asaduzzaman, Attorney-
(In all the cases) General with Mr. Mustafizur Rahman
Khan, Senior Advocate, Mr.
Mohammad Belayet Hossain, Senior
Advocate and Mr. Kamal Hossain
Miazi, Advocate instructed by Mrs.
Madhumalati Chowdhury Barua,
Advocate-on-Record, Mr. Zainul
Abedin, Advocate-on-Record and Mr.
A.B.M. Shamsul Alam, Advocate-on-
Record.

ATTESTED

NS

Superintendent
Appellate Division
Supreme Court of Bangladesh

For the Respondent : Mr. M. Qumrul Haque Siddique, Senior
Nos. 1 - 3. Advocate with Mr. Shaikh Mohammad
(In C.P.No.4676 of 2025) Zakir Hossain, Senior Advocate and
Mr. Shaikh Atiar Rahman, Advocate,
instructed by Mrs. Rokeya
Akhter, Advocate-on-Record.

For the Respondent : Mr. M. Qumrul Haque Siddique, Senior
Nos.2,3,5 & 7. Advocate with Mr. Shaikh Mohammad
(In C.M.P.No.930 of 2025) Zakir Hossain, Senior Advocate and
Mr. Shaikh Atiar Rahman, Advocate,
instructed by Mr.Md. Nurul Islam
Chowdhury, Advocate-on-Record.

For the Respondent No.2: Mr. M. Qumrul Haque Siddique, Senior
(In C.M.P.No.966 of 2025) Advocate with Mr. Shaikh Mohammad
Zakir Hossain, Senior Advocate and
Mr. Shaikh Atiar Rahman, Advocate,
instructed by Mr.Md. Nurul Islam
Chowdhury, Advocate-on-Record.

For the Respondent : Not represented
Nos.4-11.

(In C.P.No.4676 of 2025)
For the Respondents : Not represented
(In C.P.No.4739 of 2025)

For the Respondent : Not represented
Nos.1,4, 6 & 8-11.

(In C.M.P.No.930 of 2025)
For the Respondent : Not represented
Nos.1, & 3-13
(In C.M.P.No.966 of 2025)

Date of hearing : 09-12-2025

Date of Judgment : 10-12-2025

J U D G M E N T

Zubayer Rahman Chowdhury, J: The instant Civil
Petitions for Leave Appeal No.4676 of 2025, 4739
of 2025, Civil Miscellaneous Petition No.930 of
2025 and Civil Miscellaneous Petition No.966 of
2025 are directed against the judgment and order
dated 10.11.2025 passed by the High Court Division
in Writ Petition No.15537 of 2025.

ATTESTED

MS

Superintendent
Appellate Division
Supreme Court of Bangladesh

†

The Election Commission (briefly, EC), by a Notification dated 30.07.2025, proposed changes to the boundaries of certain constituencies, whereby the parliamentary seat of Bagerhat-4 (Constituency No.98) was purported to be curtailed/removed and the remaining 3(three) constituencies, namely Constituency Nos.95, 96 and 97 of Bagerhat were to be restructured/reshuffled. At the same time, the proposed draft also purported to increase the total number of Parliamentary seats in the district of Gazipur from 5(five) to 6(six) by creating Parliamentary Constituency No.198 (Gazipur-6).

Being aggrieved, several representations were filed by the concerned persons in Bagerhat before the EC for reconsideration of the aforesaid decision, highlighting their grievances and focusing on the adverse consequences of abolishing Constituency-98 (Bagerhat-4). However, the EC, without considering the grievances of the local people and without taking into account the legal

ATTESTED

MS

Superintendent
Appellate Division
Sec. Court of Bangladesh

+

and factual issues, adjudicated the objections by sustaining the elimination of the Constituency No.98 (Bagerhat-4) from Bagerhat district.

Being aggrieved thereby, the writ petitioners filed Writ Petition No.15537 of 2025. The High Court Division, upon hearing the parties, made the Rule absolute by the judgment and order dated 10.11.2025, declaring the impugned Gazette Notification dated 04.09.2025 to have been issued without lawful authority, so far as it relates to Parliamentary Constituencies No.95 (Bagerhat-1), Constituency No.96 (Bagerhat-2), Constituency No.97 (Bagerhat-3) and Constituency No.198 (Gazipur-6).

Being aggrieved, the EC filed Civil Petition for Leave to Appeal No.4676 of 2025 and the third party petitioners filed Civil Petition for Leave to Appeal No.4739 of 2025 and Civil Miscellaneous Petition Nos.930 and 966 of 2025.

Mr. Md. Asaduzzaman, the learned Attorney-General, appearing along with Mr. Mustafizur

ATTESTED

NS

Superintendent
Appellate Division
Supreme Court of Bangladesh

4

Rahman Khan, the learned Senior Counsel, Mr. Mohammad Belayet Hossain, the learned Senior Counsel and Mr. Kamal Hossain Miazi, the learned Counsel appearing on behalf of the EC and the other writ respondents submits that the High Court Division travelled beyond its jurisdiction in substituting its own opinion for that of the EC on a technical matter concerning delimitation of constituency, contrary to the established principle of judicial restraint in electoral matters.

Mr. Md. Asaduzzaman further submits that the High Court Division disregarded the statutory criteria of administrative convenience and also failed to consider that the validity of delimitation made by the Commission is often considered non-justiciable under Article 125(a) of the Constitution, except in cases of patent illegality or malafide exercise of power, neither of which has been proved in the instant case. He further submits that the terms "as far as

ATTESTED

NS

Superintendent
Appellate Division
Supreme Court of Bangladesh
↓

practicable" in relation to population distribution in the delimitation law grants the EC sufficient discretion to deviate from the notion of strict population equality for administrative/geographic reasons. He further submits that the impugned judgment and order, if allowed to stand, would create a dangerous precedent by allowing judicial interference in the operational and technical functions of the EC, thereby jeopardising the electoral process. He further submits that the impugned judgment and order of the High Court Division is bad in law as the same would result in increasing the total number of constituencies beyond the present limit of 300 (three hundred), which cannot be sustained, both legally and practically, as per Article 65(2) of the Constitution.

He further submits that the High Court Division, while passing the judgment and order dated 10.11.2025, failed to appreciate that the writ in question was not maintainable as the writ

ATTESTED

NS

Superintendent
Appellate Division
Supreme Court of Bangladesh

petitioners could not be regarded as 'person(s) aggrieved', within the meaning of Article 102 of the Constitution as they have neither lost their right to vote nor had their right to contest in the election been affected in any manner.

Mr. Mr. M. Qumrul Haque Siddique, the learned Senior Counsel with Mr. Shaikh Mohammad Zakir Hossain, the learned Senior Counsel and Mr. Shaikh Atiar Rahman, the learned Counsel appearing on behalf of the respondents, submits that the High Court Division, upon proper appreciation of the materials on record, made the Rule absolute. Mr. Siddique contends, after giving a brief account of its geographical location, that despite being the sixth largest district of the country, Bagerhat has remained neglected and consequently under-developed. He submits that being prone to natural disasters like hurricane, cyclone and tidal bores, it is all the more necessary for the district of Bagerhat to have a proper and effective

ATTESTED

NS

Superintendent
Appellate Division
Supreme Court of Bangladesh

♂

representation in Parliament to voice the grievances of the population of the said area.

We have perused the instant application and we have also considered the submissions of the learned Senior Counsels of the contending sides.

By invoking Article 102(2)(a)(i) of the Constitution, the writ petitioners-respondents filed Writ Petition No.15537 of 2025 before the High Court Division challenging the action of the EC, namely, the delimitation of one electoral constituency from Bagerhat and the creation of a new electoral constituency in Gazipur.

During the course of his submission, the learned Attorney-General has strenuously argued, with reference to Article 125 of the Constitution, that the EC has been vested with absolute authority with regard to delimitation of the electoral constituencies, which carries a constitutional sanctity in that no action of the EC, taken in exercise of its power under Article 125 of the Constitution, can be questioned in any Court of law.

ATTESTED

NS

Superintendent
Appellate Division
Supreme Court of Bangladesh

4

At this juncture, it may be pertinent to refer to Article 125 of the Constitution, which reads as under:

"125. Notwithstanding anything in this Constitution-

- (a) the validity of any law relating to the delimitation of constituencies, or the allotment of seats to such constituencies, made or purporting to be made under article 124, shall not be called in question in any court;
- (b) no election to the (offices of President) or to Parliament shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by Parliament.
- (c) A court shall not pass any order or direction, ad interim or otherwise, in relation to an election for which schedule has been announced, unless the Election Commission has been given reasonable notice and an opportunity of being heard."

A close reading of the Article 125 of the Constitution clearly denotes that the constitutional sanctity and legal protection that has been accorded to the Election Commission is with regard to the 'laws' relating to delimitation or the allotment of seats to such constituencies. The EC, therefore, has absolute authority to undertake the exercise of delimitation of an electoral constituency within the territory of Bangladesh. That said, framers of the Constitution

ATTESTED

MS

Superintendent
Appellate Division
Supreme Court of Bangladesh

+

have not, and in our view quite correctly, equally extended such protection to any 'act done or action taken or omission' made by the EC. Predicated on the above, this Court is of the view that what we are concerned here is not with the authority of the EC to do so, but about the manner in which such authority has been exercised by the EC.

In the instant case, the process of delimitation was initiated by the EC itself through the issuance of a Notification dated 30th July, 2025, stipulating as many as twelve conditions which were to be observed for the purpose of delimitation, of which Clause 2 (Gha) reads as under:



“ঘ. যেসকল আসনের সীমানা পুনঃনির্ধারণের জন্য কোন আবেদন দাখিল হয়নি সে আসনগুলো অপরিবর্তিত রাখা;”

ttedly, not a single application was filed by any individual or group either from Bagerhat or from Gazipur seeking delimitation of any electoral constituency in their respective District, a fact which has been acknowledged by the EC itself in the affidavit-in-opposition filed on its behalf

ATTESTED



Superintendent
Appellate Division
Supreme Court of Bangladesh

before the High Court Division. Despite the factual position as aforesaid, the EC initiated the process of delimitation in respect of Bagerhat in clear violation of clause 2(Gha), thereby rendering such action as being without lawful authority.

Furthermore, Sections 8(1)(Ka) and 8(1)(Kha), empower the EC to initiate and/or undertake the process of delimitation on two counts; firstly, after the conclusion of population census undertaken for the purpose of holding the subsequent parliamentary election and secondly, before the holding of the general election for any reason which appears to the EC to be proper, to be recorded in writing.

Once again, we find the EC to be in default on this score for failing to assign any proper or cogent reason for initiating the process of delimitation of the electoral constituency in Bagerhat, as evident from the পর্যালোচনা, contained in the minutes of the hearing conducted by the EC on 25th August, 2025. The EC appears to have discharged its duty in a mechanical manner while taking the decision on such a vital issue.

ATTESTED

NS

Superintendent
Appellate Division
Supreme Court of Bangladesh

৭

Although the learned Attorney General has tried to impress upon us that the duty cast upon the EC under Section 6(3) of the Act of 2021 (জাতীয় সংসদের নির্বাচনী এলাকার সীমানা নির্ধারণ আইন, ২০২১) is not 'mandatory, we are not inclined to accede to said submission. In our view, the duty vested on a constitutional or statutory body may appear to be optional by the use of the word "may". Nevertheless, when the outcome or consequence of the exercise of the power by an authority is likely to have a prejudicial effect affecting the constitutional right of a significant number of the population to voice their grievance in the Parliament, it becomes obligatory on the part of the concerned body to exercise such power with "due diligence", as enshrined in Article 31 of the Constitution.

However, by the impugned action of delimitation, the EC had curtailed one electoral constituency of the district of Bagerhat that had existed for well over half a century, from 1970 to be precise, by reducing the number of constituencies from four to three. Be that as it may, having given due consideration to the facts and circumstances of the case, we are of the

ATTESTED

MS

Superintendent
Appellate Division
Supreme Court of Bangladesh

২

//opinion that the High Court Division, upon proper appreciation of the facts and the relevant laws, has rightly made the Rule absolute, which does not warrant any interference.

Accordingly, the Civil Petitions for Leave to Appeal and Civil Miscellaneous Petitions are all, hereby, dismissed.

The order of status quo dated 12.11.2025, granted earlier by the learned Judge-in-Chamber, is, hereby, vacated. //

Sd/- Syed Rezaul Ahmed, C.J.
Sd/- Md. Ashraful Islam, J
Sd/- Z. R. Chowdhury - J
Sd/- S.M. Emranchul Hoque - J
Sd/- A.B.M. Asaduzzaman, J

CERTIFIED TO BE A TRUE COPY

Mulham

18.08.26

Superintendent

Appellate Division

Supreme Court of Bangladesh

dm

18-08-2026

The 10th December, 2025.
H.B.R. words-2094/

12/08/2026