

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

SOU MOTU RULE NO. 02 OF 2007.

IN THE MATTER OF

Government of Bangladesh

.....Petitioner

-Versus-

Ministry of Home Affairs and others

..... Respondents.

Dr. Naima Haider with

Mr. Mustafa Zaman Islam, D.A.G

..... For the Petitioners.

Heard on: The 1st, 4th, 22nd and 25th June, 2009.

Order dated: The 25th, June, 2009.

Present :

Mr. Justice A.B.M. Khairul Haque

And

Mr. Justice Md. Mamtaz Uddin Ahmed

ORDER

An accidental death of a young student was reported as reported in "The Daily Jugantor" on 12.12.2007. Since numerous accidents are occurring every day in the city of Dhaka and all over the country, a suo-motu Rule was issued upon the Secretary, Ministry of Home Affairs and others to show-cause as to why speed governor seals should not be compulsorily installed in all public transports.

On consideration of the affidavits filed on behalf of the respondents and the submissions made on their behalf and the interveners, the Rule was made absolute on 10.03.2008. It is observed inter alia in the said Judgment:

“ প্রতিযমান হয় যে, Motor Vehicles Ordinance, এর ৮৫ ধারার আওতায় মোটর যানের সবেৰ্বাচ্চ নির্ধারিত গতিসীমা এর Ordinance এর অষ্টম তফসিলে পরিষ্কার ভাবে বর্ণনা করা হইয়াছে। উক্ত তফসিলে বর্ণিত নির্ধারিত সবেৰ্বাচ্চ গতিসীমা অনুসারে সংশ্লিষ্ট কর্তৃপক্ষ সকল প্রকার মোটর যানবাহনের গতিসীমা নিয়ন্ত্রন করিতে তাহাদের জন্য একটি আইনগত বাধ্যবাধকতা রহিয়াছে।”

None of the respondents dispute the above legal position in their affidavits, rather, all of them supported the Rule.

After hearing the following directions, inter alia, were given:

“ এমত অবস্থায় উপরোক্ত আইনের বিধান প্রয়োগার্থে অষ্টম তফসীলে বর্ণিত গতি সীমা অনুসারে সকল মোটর যানের গতি সীমিত রাখিবার জন্য প্রতিবাদীগণকে তড়িৎ প্রয়োজনীয় পদক্ষেপ গ্রহণ করিবার নির্দেশ প্রদান করা হইল। সংশ্লিষ্ট কর্তৃপক্ষকে যথাসম্ভব দ্রুত গতিতে সবেৰ্বাচ্চ আগামী ১(এক) বৎসরের মধ্যে সমগ্র বাংলাদেশে ব্যবহৃত সকল প্রকার মোটর যানে Motor Vehicles Ordinance, ১৯৮৩ এর ৮৫ ধারা এবং ইহার আওতায় প্রণীত অষ্টম তফসিল অনুসারে গতি নিয়ন্ত্রনের জন্য বাস্তব সম্মত পদক্ষেপ দ্রুত গ্রহণ করিবার নির্দেশ প্রদান করা হইল। উক্ত

আইন যথোপযুক্ত ও কার্যকরভাবে প্রয়োগার্থে প্রতিটি মোটর যানে গতি-নিয়ন্ত্রক বা Speed Governor সংযুক্তিকরণের মাধ্যমে উপরোক্ত আইনের মূল বাণী অনুসারে গতি নিয়ন্ত্রনের ব্যবস্থা তড়িৎ গ্রহণের জন্য প্রতিবাদীগণকে নির্দেশ প্রদান করা হইল।”

As directed in the Judgment dated 10.03.2008, an affidavit sworn on 31.05.2009 was filed on behalf of Bangladesh Road Transport Authority (BRTA), the respondent No. 3.

It appears from the aforesaid affidavit that governor seals had been installed in certain number of diesel run vehicles but not in any other vehicles. The concerned officials unfortunately missed the directions spelt out in section 85 of the Ordinance of 1983. The said provision stipulates that no person shall drive a motor vehicle at a speed exceeding the maximum speed limit fixed for the vehicles in the Eighth Schedule. It does not distinguish between diesel run vehicles and the vehicles run with petrol or CNG. The above provisions regarding the control of traffic are applicable equally to all kinds' vehicles.

Apparently nothing much has been done in order to control the speed of the vehicles within the limits spelt out in the 8th schedule. In the mean-time, hundreds and thousands of people died in the road-accidents. Recently, it has been reported in a news-paper that nearly 25 (twenty-five) thousand people died or maimed during the period of last one year. This is a staggering figure but surprisingly not a single case of punishment under Chapter X of the Ordinance has been furnished either on behalf of the BRTA or the Inspector General of Police, the respondent No. 4.

It is to be reiterated that earlier both the Secretary, Ministry of Home Affairs, the respondent No. 1 and the I.G Police supported the Rule by filing separate affidavits. In the affidavit sworn on 27.2.2008 on behalf of the respondent no. 4, it was submitted that if the provision for installation of speed governor seal is made compulsory in the vehicle and the speed measuring scale is provided by the Government to the police authority then the police will be able to discharge their duty as per provision of law.

Although the provision for installation of governor seal was made compulsory but it was implemented partially, besides, apparently no speed measuring scale has been provided by the Government as such, obviously the police as stated above could not discharge its duty in accordance with law.

The Motor Vehicles Ordinance, 1983, is a law of the land. It is incumbent upon the Government to implement the law in its letter and spirit. The Motor Vehicles Rules, 1940, made in pursuance of Motor Vehicles Ordinance, 1939, provided for fixing a governor seal in order to make the vehicle incapable of being driven at a speed in excess of maximum limit. Section 85 of the Ordinance read with the Eighth Schedule strengthened the earlier provision but it is not being implemented although law has to be obeyed equally by the Government as well as the users of the vehicles, the Government by implementing the law and the users by conforming to the provisions.

In this connection, it has also to be remembered that section 8 of the Ordinance, stipulates the control of speed of the vehicles to the maximum allowable limit as mentioned in the Eighth schedule. When admittedly speed governors could not be installed in the vehicles run with octane, petrol or CNG, then other methods have to be devised, to bring the vehicles within the ambit of law:

Of late, it has been reported that two gadgets namely, Vehicle tracking system and Speed Control system is available in the market.

Speed of a vehicle can be recorded by the Vehicle Tracking system while speed can also be controlled by the Speed Control system, of any vehicle in Bangladesh from Dhaka, If the Vehicle Tracking System is installed in the vehicles, the BRTA as well as the Traffic Department of the Police can monitor the speed of any vehicle, in its computer. The data coming from the computer with regard to the speed of the concerned vehicle can be used as evidence for imposing penalty for exceeding the speed limits. The penalty by way of fine can be realized by the police immediately or by the BRTA at the time of renewal of the registration and allowing the fitness certificate of the vehicles. But first of all the vehicles as mentioned in the Eighth schedule must be fitted with the above noted systems compulsorily.

We have heard the Chairman, BRTA and its Director (Technical) to-day. We have also heard Mr. Manzill Murshid, the intervener in this matter.

In this connection, it should be noted that the purpose of Section 85 is to limit the maximum speed of the vehicles as spelt out in the Ordinance, so that the incidents of accidents may be reduced but the Government has to implement the said provisions.

As such, the following directions are given:

i) All vehicles as mentioned in the eight schedules to the Ordinance, must be fitted with Vehicle Tracking system or any other comparable device to monitor its speed within 30th June, 2010. No new registration or renewal shall be allowed to any other vehicle after the aforesaid date without the Vehicle Tracking System or the like ones.

ii) Proper equipments such as a computer, for tracking and monitoring of the speed of all vehicle must be installed in the Head Office of the BRTA and also at the Traffic Head Quarter of the Police, so that both BRTA and the police can monitor the speed of all the vehicle and impose penalty upon those who violate the maximum speed limits as spelt out in the Eighth Schedule, on the basic of the data received from the computer(s).

(iii) The Secretary, Ministry of Home Affairs, Government of Bangladesh, is to ensure compliance of the provisions of Section 85 read with Eighth Schedule of the Motor Vehicles Ordinance, 1983, as explained in the Judgment dated 10.03.2008, passed in *Suo Motu* Rule No. 2 of 2007 (writ) and also as above.

(iv) The affidavits of compliance of the above directions have to be filed by the Secretary, Ministry of Home Affairs, the Chairman, BRTA and the Inspector General of Police, Bangladesh, within 1st August, 2010, before the appropriate Bench of this Court.

Let the copies of this order be forwarded to the Secretary, Ministry of Establishment and the Secretary, Ministry of Finance, for their information and necessary compliance.

The Learned Attorney General is to appraise the appropriate Bench of this Court, with regard to the implementation of the directions contained in Section 85 of the Ordinance, as explained above since its non-compliance costs human lives.

This *Suo-Motu* Rule for this purpose shall be treated as a continuing *Mandamus*.

Let this mater be posted in the daily cause-list for further orders on 02.08.2010. In the mean-time, any of the respondents or the interveners may approach the Court for further directions, if any.
