

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)

WRIT PETITION NO. 1546 OF 2011

In the matter of:

An application under article 102 of the Constitution of
the People's Republic of Bangladesh

And

In the matter of:

Human Rights and Peace for Bangladesh (HRPB)
represented by its Secretary Advocate Asaduzzaman
Siddique, Hall No. 2, Supreme Court Bar, Association
Bhaban, Dhaka and another

... Petitioners.

Versus

Bangladesh, represented by the Secretary, Ministry of
Home Affairs, Bangladesh Secretariat, Police Station-
Shahbag, District-Dhaka and others

... Respondents.

Mr. Manzill Murshid with
Mr. Sanjoy Mondal

... For the petitioners.

Mr. S. Rashed Jahangir, DAG with
Ms. Salma Rahman, AAG
Mr. Titus Hillol Rema, AAG

... For respondent No. 3.

Heard on the 8th and 24th November

And

Judgment on the 7th December, 2015

Present:**Ms. Justice Zinat Ara****And****Mr. Justice A.K.M. Shahidul Huq****Zinat Ara, J:**

On an application under article 102 of the Constitution made by the petitioners, Human Rights and Peace for Bangladesh (HRPB) represented by its Secretary and another as ‘Public Interest Litigation’, a Rule Nisi was issued along with ad-interim directions in the following terms:-

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why directions should not be given upon the respondents to intimate and ensure effective road transport and traffic management in the Highways connecting Dhaka City with the different districts and to take necessary steps to remove all shops, markets and Hatbazars situated within the highways in order to reduce the accidents in the roads/highways and/or pass such other or further order or orders as to this Court may seem fit and proper.

The Rule is made returnable within 4 (four) weeks from date.

Pending hearing of the Rule, the respondent Nos. 1 and 3 are directed to form a committee consisting of 7 (seven) members having expertise in road transport and traffic management to prepare guidelines for reducing traffic jam and accident in road/highways and submit it before the Court through the learned Attorney General for Bangladesh.

The respondent No. 4 is directed to deploy Highways Police in the Highways from Dhaka to Manikgonj, Dhaka to Gazipur and Dhaka to Faridpur and monitor their duties by special team and to ensure effective performance of their duties in the Highways.

The respondents No. 6-9 and 11 are directed to take steps to remove/evict all kinds of shops and Hatbazars situated within the Highways peripheries and also to ensure that no animal graze within the Highways to the extent of 30 Kilometers from Dhaka City initially. In evicting the shops and Hatbazars from Highways the respondents are directed to serve prior notice to facilitate the process of uninterrupted and smooth eviction.

The respondents are further directed to implement all the directions within 3 (three) months from the date of receipt of a copy of the order.”

The petitioners' Case

The petitioners' organization, namely, Human Rights and Peace for Bangladesh (hereinafter stated as HRPB) is a non-profitable registered organization and the objects of the organization are to uphold the human rights of the citizens, to establish rule of law, to work for the poor people, to give legal support to the helpless people and to build up awareness amongst the people about their rights, etc. The petitioners and the members of HRPB are engaged in promoting and defending human rights, working to establish rule of law and supporting the victims of human rights violations. A report was published on 05.02.2011 in the Daily Janakantha to the effect that eleven persons had died in a road accident caused by an Oil Tanker when it tried to save a cattle grazing on the highways. It was also reported in many news-papers that everyday many people die in road accidents on the highways due to negligence and ineffective road transport and traffic management. The road accidents are seriously hampering the public safety. It is the moral responsibility of the State to ensure the safety of all citizens. From the past experience, it is found that, due to ineffective road transport and traffic management system, many people had died each year in road accidents. The cause behind this is hazardous roads, defective vehicles, ignorance of the drivers about driving rules, etc. Road accident is a big problem in our country and in order to solve this problem, policies should be made for improving the situation so, that the roads and highways users are saved from this hazardous condition. In order to control the road accidents, some provisions have been incorporated in the Motor Vehicle Ordinance, 1983 (briefly stated as the Ordinance). But the provisions relating to penalties incorporated in the Ordinance are not enough for controlling the accidents due to meagre penalties. In the present context, it is necessary to increase the penalties of the offences under the Ordinance. Both the pedestrians and the drivers ignore the traffic signal/traffic rules which results in accident taking lives of many innocent people. In absence of road sign in every corner/turn of the street, the vehicles are being driven with high speed resulting in accidents. In such situations, there should be modern equipment to identify the vehicles driven speedily exceeding the limit permitted in the road signs. Most of the accidents occur at blind corners of the roads and the highways without divider. So, it is necessary to make all the blind corners of the highways straight and divider should also be set up in the highways. There are many private training centers for learning

motor vehicle driving. But, due to shortage of experienced trainer and other facilities, it is not running well. Therefore, some system of monitoring over the training centers is required. Most of the roads in district level were constructed during British Regime under the Municipal Authority. Thereafter, the roads were extended and constructed from time to time, but steps have not been taken to make the same straight. Moreover, the width of some highways such as Dhaka to Khulna, Dhaka to Rangpur, Dhaka to Chittagong, Dhaka to Barisal and Dhaka to Mymensingh are not sufficient. The numbers of motor vehicles are increasing in roads and highways every day. Therefore, in order to set up effective roads/highways management system, constructions of straight roads/highways with dividers are necessary. Bangladesh Road Transport Authority (hereinafter mentioned as the Authority) and the law enforcing agencies (the agencies, in brief) are working in road management system. Sometimes, the Authority and the agencies make some recommendations for reducing accidents based in their experience. But the Ministry of Communications and Local Government Engineering Department (briefly, LGED) construct roads ignoring the recommendations. Moreover, the Ministry spends the fund on a project created and approved by the Planning Commission. Therefore, a suitable approved plan by the Ministry of Planning is a must. Considering the fact that day to day accidents are being increased and the people are losing their lives or becoming disabled, it is necessary to solve this problem for the security of lives of the citizens on urgent basis.

Section 53 of the Ordinance authorizes the Government to issue orders and instructions upon the Authority, as it may consider necessary, in respect of any matter relating to road transport or any matter provided in this Ordinance and the Authority has to give effect to such orders and instructions. But the Government did not issue any effective direction in order to solve this problem.

In the above backdrop, the petitioners have filed this writ petition and obtained the Rule with some ad-interim directions as stated hereinbefore.

The petitioners, for the purposes as discussed, suggested the following steps:-

- i. to setup traffic sign of speed limits (road furniture) beside the roads/highways specially at the corner/turn of the streets;
- ii. to constitute a technical committee to recommend the name of the places where subway/underpass should be constructed and then to take steps to construct the same;
- iii. to include the important traffic rules in the school curriculum;

- iv. to broadcast traffic rules in electronic media and also to publish it in the print media to build up awareness amongst the citizen;
- v. to setup divider in the highways of Dhaka-Khulna, Dhaka-Rangpur, Dhaka-Chittagong, Dhaka- Barisal and Dhaka-Mymensingh;
- vi. to construct four by-lane street in all highways of the country;
- vii. to construct /reconstruct straight roads /highways by demolishing blind corner thereof;
- viii. to monitor the private driving training centers;
- ix. to establish professional driving training institutes under the supervision of the Authority;
- x. to increase the penalties for the offences relating to violation of traffic laws under chapter 10 of the Motor Vehicles Ordinance, 1983;
- xi. to increase the penalties against the offences under schedule 12 of the Motor Vehicle Ordinance, 1983.

Respondent No. 3's Case

Respondent No. 3, the Inspector General of Police, Police Head Quarter, Dhaka, submitted an affidavit-in-compliance stating that pursuant to the directions of the Court, the DIG, Highways Range and the Superintendents of Police of Dhaka, Narayangonj, Gazipur, Manikgonj and Comilla were instructed to deploy sufficient police personnel forming supervising teams and to cause eviction through Police Head Quarter's Memo Nos. Ain/Writ/64-2011 (Writ-1546)/637 dated 14.03.2011 and Ain/Writ/64-2011 (Writ-1546)/638(5) dated 14.03.2011 respectively; that the Secretary, Ministry of Home Affairs, was requested to form a committee for the purpose of preparing guidelines as directed by the High Court Division through Police Head Quarter's Memo No. Ain/Writ/64-2011 (Writ-1546)/636 dated 14.03.2011; that the Ministry of Home Affairs then formed a 7 (seven)-members committee headed by the Joint Secretary (Police) (hereinafter mentioned as the Committee) by an office order bearing Memo No. সঃ মঃ/পূ-২/বিবিধ-৩/৯৯(অংশ)/৪৩৭ dated 10.05.2011; that the Committee by official Memo No. সঃ মঃ/পূ-২/বিবিধ-৩/৯৯(অংশ)/৮৪২ dated 19.09.2011 submitted a guideline containing 28 points to the Secretary, Ministry

of Home Affairs in order to reduce traffic jam and the road accidents in the highways all over the country; that the copy of the said guideline has also been sent to Police Head Quarter through office Memo No. 44.00.0000.099.01.003.14-67 dated 25.11.2015.

It be mentioned that as many as ten persons were made respondents of the case including Bangladesh, represented by the Secretaries, Ministry of Home Affairs, Ministry of Finance and Ministry of Communication, but they have not appeared to contest the Rule.

Arguments:

Mr. Manzill Murshid, the learned Advocate appearing for the petitioners, takes us through the writ petition, the annexures thereto, the recommendations annexed to the affidavit-in-compliance filed by respondent No. 3, the provisions of the relevant laws and put forward the following arguments before us:-

1. thousands of passengers are suffering everyday due to unbreakable traffic jam as a regular phenomenon and the citizens of Bangladesh loose thousands of working hours. In terms of money, the speculation is that about taka three to five crores are being lost everyday due to severe traffic jam;
2. due to totally ineffective traffic management system, hundreds of the people had died and thousands have become disabled permanently;
3. though there are some provisions in the Ordinance to control road accidents, but the penalties as prescribed in the Ordinance is so meagre that it does not work effectively;
4. the roads/highways are not straight and mostly without any sign in every corner/turn of the street. This is another reason for serious road accidents;
5. to reduce accidents and traffic jam, management system has to be recognized and the laws have to be amended suitably;
6. Bangladesh Road Transport Authority has been created for the purpose of proper and effective application of the provisions of the Ordinance. But the Authority failed to establish effective traffic management system and it has no master plan to deal with this serious and hazardous situation;
7. under rule 8 of the মহাসড়ক (নিরাপত্তা, সংরক্ষণ ও চলাচল) নিয়ন্ত্রণ বিধিমালা, ২০০১ (hereinafter referred to as the Rules) no person, without written permission from the Department, shall- (a) take possession or use any part of the slope, berm, borrow-pit of any highways, (b) construct or change any structure, dig or fill earth or cultivate or plant or undertake

any work on or under any part of highways or within ten meters of highways and (c) deposit or place goods or materials on a highways. But it is a common scenario that peoples are not complying with the said provisions of law and action is not being taken by the Department (সড়ক ও জনপথ অধিদপ্তর) concerned for violation of rule 8 of the Rules;

8. the Government should be directed to amend suitably rule 8 of the Rules so that permission cannot be given by the Department's authority/any authority to do any act on which restrictions have been imposed under rule 8 of the Rules;

9. direction should also be given to the respondents to demolish all structures, etc. on any part of the highways and within ten meters thereof, which has been constructed without permission of the concerned authority;

10. direction should also be given to the department not to accord permission to anyone to construct any structure, set Hat-bazar or market, etc. on any part of highways and within ten meters thereof;

11. to reduce road accidents causing death of hundreds of people or disabling thousands of people, the Rule should be made absolute in the form of a continuous mandamus in accordance with the recommendations made by the petitioners in paragraph 14 of the writ petition and the guidelines dated 19.09.2011 as recommended by the Committee constituted for reducing traffic jam and road accidents as per order of the Court.

Mr. S.Rashed Jahangir, the learned Deputy Attorney General appearing for the respondent No. 3 submits that respondent No. 3 has submitted an affidavit-in-compliance informing the Court about compliance with the ad-interim directions of the Court. He next submits that respondents have no objection if necessary order is passed by the Court as per the guideline of the committee.

Deliberation of the Court:

We have examined the writ petition, the affidavit-in-compliance and the connected material on record. We have also studied the relevant provisions of law.

At the outset, it may be mentioned that in this writ petition, (1) Bangladesh, represented by the Secretary, Ministry of Home Affairs, (2) the Secretary, Ministry of Finance, (3) the Inspector General of Police (IGP), (4) the Deputy Inspector General of Police (DIG), Highways Police, (5) the Joint Commissioner (Traffic), Dhaka Metropolitan Police, (6) the Superintendent of

Police, Dhaka, (7) the Superintendent of Police, Narayangonj, (8) the Superintendent of Police, Gazipur, (9) the Superintendent of Police, Manikgonj, (10) the Secretary, Ministry of Communication and (11) the Superintendent of Police, Comilla have been made respondents. Yet, except respondent No. 3, the said respondents have not contested the rule by filing any affidavit-in-opposition controverting/denying the statements made in the writ petition. Respondent No.3 though filed an affidavit-in-compliance, but has not also filed any affidavit-in-opposition controverting denying the statements made in the writ petition. Therefore, we have no option but to accept the petitioners' case as stated in the writ petition.

The above view of ours is supported by the decision of the Appellate Division in the case of Government of Bangladesh and others vs Md. Gazi Shafiqul and others reported in 19 BLC (AD) (2014) 163, wherein it has been decided as under:-

“
Admittedly, when no affidavit-in-opposition was filed before the High Court Division denying or controverting the case of the writ-petitioners, the High Court Division had no option but to accept the case of the writ-petitioners”

(Bold, to supply emphasis)

In view of the above, we have to accept that due to,- (i) ineffective traffic management system in the roads and highways; (ii) non-taking of steps by the concerned authority to remove shops, market, Hatbazars, etc. situated within the periphery of highways; (iii) for non-application of the provisions as provided in the Ordinance and the Rules made under section 4 of the Highways Act, 1925; (iv) meagre punishment for violation of the provisions of the Ordinance; (v) non-monitoring over training centers of the drivers of the motor vehicles; (vi) allowing parking of vehicles in roads within non-parking area, etc., day by day, road accidents are increasing resulting in loss of lives of hundreds of the people and disablement of thousands more; and (vii) due to heavy traffic jam, hundreds of working hours of the citizen are going ashtray, resulting in loss of crores of taka every day.

We would further like to add ourselves that heavy and unbearable traffic jam all over the country is also causing serious environmental hazards due to carbon emission for hours together.

As an example, the petitioners have annexed a news item published in the Daily Janakantho dated 5th February, 2011 reporting about a serious road accident

causing death of eleven and injuring many people due to an attempt of saving a cow by the driver of an Oil Tanker on the highway.

Relevant Provisions of Laws:

Now, let us examine the relevant provisions of sections 53 and 55 of the Ordinance and rule 8 of the Rules.

For better understanding, the said provisions of law are quoted below:-

“53. The Government may issue **such orders and directions**, as it may consider **necessary** in respect of any matter relating to road transport or on **any matter not provided in this Ordinance, to the Authority and the Authority shall give effect to all such orders and directions.**”

“55. (1) In order to facilitate a forum of discussions of the problems in the road transport sector and also for the ventilation of grievances of the owners as well as road transport workers, the Government may, by notification in the official Gazette, constitute a **Road Transport Advisory Council for the whole of Bangladesh and Road Transport Advisory Committee one for each regions** consisting of such number of members as it thinks necessary from the officials, transport owners, transport workers and other experienced persons as shall be specified in the notification.

(2) **The Council or the Committee so constituted under sub-section (1), shall meet at least once in three months unless otherwise directed and submit its recommendations, by the former to the Authority and by the latter to the Transport Committee, as the case may be.**”

“৮। মহাসড়কের ক্ষতিকর ব্যবহার ইত্যাদির ক্ষেত্রে বাধা নিষেধ।-

(১) কোন ব্যক্তি, অধিদপ্তরের লিখিত অনুমতি ব্যতিত-

(ক) মহাসড়কের অন্তর্ভুক্ত ঢাল (slop), Berm, Borro-pit এর কোন অংশ দখল বা ব্যবহার করিতে পারিবেন না।

(খ) মহাসড়কের কোন অংশের উপরের বা নিচে বা পর্বতী দশ মিটারের মধ্যে কোন নির্মাণ কাম বা কোন বৃক্ষরোপন বা চাষাবাদ করিতে পারিবেন না।

(গ) মহাসড়কের উপর কোন পণ্য সামগ্রী বা মালামাল জমা রাখিতে পারিবেন না।”

(Bold and underlined by us)

Therefore, under section 53 of the Ordinance, the Government may issue such orders and directions, as it may consider necessary, in respect of any matter relating to road transport or on any matter not provided in this Ordinance, to the Authority and the Authority shall give effect to all such orders and directions. Under section 55 of the Ordinance, the Government may, by notification in the

official Gazette, constitute a Road Transport Advisory Council for the whole of Bangladesh and Road Transport Advisory Committee one for each regions consisting of such number of members, as it thinks necessary, from the officials, transport owners, transport workers and other experienced persons as shall be specified in the notification and the Committee so constituted shall meet at least once in three months unless otherwise directed and submit its recommendations, by the former, to the Authority, and, by the latter, to the Transport Committee, as the case may be. Admittedly, Road Transport Advisory Council and Road Transport Advisory Committee have also been constituted for the aforesaid reasons. But it is alleged by the petitioners that the Council as well as the Committee so constituted are not performing their functions in accordance with law and have become ineffective council and committee. Though the Council and the Committee are not complying with the provisions of the Ordinance and the directions given by the Government, from time to time, yet, for that reason, no action has been taken against the members of the Council or the Committee. So, virtually, they are not accountable for their action/inaction.

Similarly, rule 8 of the Rules provides that,- “কোন ব্যক্তি, অধিদপ্তরের লিখিত অনুমতি ব্যতিত মহাসড়কের অন্তর্ভুক্ত ঢাল (slop), Berm, Borro-pit এর কোন অংশ দখল বা ব্যবহার করিতে পারিবেন না। মহাসড়কের কোন অংশের উপরের বা নিচে বা পরবর্তী দশ মিটারের মধ্যে কোন নির্মাণ কায বা কোন বৃক্ষরোপন বা চাষাবাদ করিতে পারিবেন না। মহাসড়কের উপর কোন পণ্য সামগ্রী বা মালামাল জমা রাখিতে পারিবেন না।”

The ‘মহাসড়ক’ are the roads/Highways as declared by the Department by Gazette Notification under rule 2Ka of the Rules. There is no dispute that structures are being constructed within ten meters of the highways and existing structures are also being changed extensively beside the highways without any action by the concerned authority. Moreover, we find no reason to disagree with the arguments of Mr. Manzill Murshid that the words appearing in sub-rule (1) of rule 8 of the Rules “অধিদপ্তরের লিখিত অনুমতি ব্যতিত ” should be omitted by way of amendment of the Rules so, that the concerned authority does not have any power to permit in writing to any person to violate the provisions of clauses (ka), (kha) and (ga) of sub-rule (1) of rule 8 of the Rules. Because, if permission is given to any person, it would create obstacles to the highways, enhance road accidents and create traffic jam which cannot be the intention of the Government. Therefore, it is necessary to pass order for amendment rule 8 of the Rules by omitting the words “অধিদপ্তরের লিখিত অনুমতি ব্যতিত .” However, provision may only be made for keeping materials, machineries, etc. for repair,

reconstruction of highways or part thereof including culverts, bridges, overpass, underpass, etc.

Directions/Instructions:

In view of the discussions made hereinbefore, we find merit and force in the submissions of Mr. Manzill Murshed.

Considering the facts and circumstances of this case, vis-à-vis the law, and also considering the recommendations given by মহাসড়কে যানজট ও দুর্ঘটনা হ্রাসের গাইডলাইন প্রস্তুত কমিটি dated 19.09.2011, the suggestions made in paragraph 14 of the writ petition, and also the view expressed earlier by us, the following directions/instructions are given upon the respondents:-

- (1) to take steps to amend sub-rule (1) of rule 8 of the Rules by omitting the words “অধিদপ্তরের লিখিত অনুমতি ব্যতিত”;
- (2) not to allow/permit any person to keep “কোন পণ্য সামগ্রী বা মালামাল ” on the highways except for the purpose of keeping materials, machineries, etc. for repair and reconstruction of the highways or part thereof including culverts, bridges, overpass, underpass, etc;
- (3) to remove the Hatbazars, business establishments and any other constructions, permanent or temporary, already established without obtaining written permission from the concerned authority, from the highways and any part of the slop, Berm and Borro-pit;
- (4) to take necessary action for stopping Hatbazars and/or commercial establishment on or beside the highways within ten meters and not to give any permission for the aforesaid purpose in accordance with law (acquisition by payment of compensation or providing alternative space in case of private properties removing Hatbazars beyond the periphery of the highways, etc.);
- (5) not to allow highways for use of any other purpose, including public meetings, except the motor vehicles;
- (6) to establish bus stoppage and bus bay with proper plan beside the roads;
- (7) to take steps for stopping defective vehicles to run on the roads/highways;
- (8) to prohibit open yard truck lorries, stage by stage, in roads and highways except the truck lorries for transportation of cattle/animals;
- (9) to reduce the speed breakers on the highways at minimum level and to paint the speed breaker, if any, regularly with road-marking reflect colour;

- (10) to identify and construct necessary level crossing, flyover, railway overpass/underpass at the busy intersections of the highways and rail-line crossing to reduce traffic jam;
- (11) to equip the highway police with the modern equipments for speedy removal of vehicles in case of accident or mechanically disordered/defective vehicles;
- (12) to ascertain and fix definite place for crossing the highways by the pedestrians including construction of overpass/underpass and to place high iron fence in the populated areas beside the highways to stop crossing of the pedestrians through the highways heather and thither;
- (13) to construct divider on the highways and to identify and affix road furniture in dangerous points of the highways, where accidents mostly occur and to place traffic sign boards regarding speed limits of the vehicles by the side of the highways;
- (14) to take steps for increasing safe railway transport facilities and water transport facilities to reduce pressure on the highways;
- (15) not to allow body building of the vehicles without the approval of the Authority and not to permit/allow any change of the standard specification of the original manufacturers of the vehicles;
- (16) to set up weight scales on the different significant points of the highways;
- (17) to construct necessary slops and drains for proper drainage of water beside the roads/highways following the engineering technology;
- (18) to take necessary steps for proper training of the drivers of highway bound vehicles to improve their skill and awareness;
- (19) to introduce electronic and point based driving license to the drivers and to preserve the data base of the license issued;
- (20) to maintain a 'Data Base' regarding road accidents with detailed descriptions of every particular road accident;
- (21) to introduce a monitoring system for motor vehicle owners' associations and the motor vehicles workers' unions.
- (22) to include important traffic rules in the school curriculum;
- (23) to take appropriate steps to broadcast traffic rules in electronic media and also to publish it in print media to create awareness amongst citizens;
- (24) to bring it to the notice of the Parliament that recommendation has been given by the "মানজট ও দুর্ঘটনা ত্রাসের গাইডলাইন প্রস্তুত কমিটি" for making laws providing deterrent punishment to reduce road accidents;

(25) to start taking necessary actions as per the above directions/instructions immediately after receiving a copy of the judgment;

In view of the above, the Rule is made absolute without any order as to costs. This writ petition shall continue as a continuous mandamus.

If there is any confusion about the directions/instructions given by us in the judgment, the petitioner or the respondents may seek clarification from the appropriate Bench of this Court on such confusion.

The respondents are directed to submit compliance regarding their action taken as per our directions/instructions on every six months.

The first report has to be submitted in the Court on or before 1st April, 2016.

Communicate the judgment to the respondents at once.
