

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

WRIT PETITION NO. 4304 OF 2010

with

SUO-MOTU RULE NO.05 OF 2010
(arising out of W.P. No.4304 of 2010)

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)
and another

..... Petitioners

- V E R S U S -

Bangladesh represented by the Secretary, Ministry
of Home Affairs, Bangladesh Secretariat, Dhaka
and others.

.....Respondents

Mr. Manzill Murshid, Advocate

.....For the Petitioner

Mr. Amit Talukder, DAG.

.....For Respondent No.1-3 and 5-8

Mr. Shah Muhammad Ezaz Rahman, with
Mr. Mustaque Ahmed Chowdhury, Advocates

.....For Respondent No.4

Mr. M. Amir-ul-Islam, Senior Advocate with
Mr. Fida M. Kamal, Senior Advocate

.....As Amicus Curiae

Heard on: 20.05.2019, 21.07.2019&22.07.2019

Judgment on: 31.7.2019

Present:
Ms. Justice Naima Haider
&
Mr. Justice Khizir Ahmed Chowdhury

Naima Haider, J.

In this Application under Article 102 of the Constitution of the People's Republic of Bangladesh, Rule Nisi was issued calling upon the Respondents to show cause as to why Section 103A of the Dhaka Metropolitan Police Ordinance 1976 should not be declared illegal, void and ultra vires the Constitution as being violative of fundamental rights enshrined therein.

Subsequently, a Suo Moto Rule (Suo Moto Rule No. 05 of 2010) was issued calling upon the Respondent Nos.3-8 to intimate this Court as to whether the story published in the said daily newspaper as above, represents the truth and also to explain as to what sort of public interest required to requisition of 300 (three hundred) vehicles, if any were.

Facts necessary for disposal of the Rule Nisi, in brief, are that the Petitioner No.1, Human Rights and Peace for Bangladesh (HRPB), is an organization which has been working for a long time on issues related to human rights while the Petitioner No.2 is the owner of an eight seater micro bus having registration number Dhaka Metro- Cha-13-3514 and duly registered with Bangladesh Road Transport Authority (BRTA), Mirpur, Dhaka. The Petitioner No.2 uses the micro bus for professional purpose and on 24.03.2010, when the said vehicle was traveling from Shahjahanpur to Gulshan at about 2 p.m. the Assistant Police Commissioner (Admin Traffic North), Dhaka Metropolitan Police requisitioned the vehicle under Section

103A of the Dhaka Metropolitan Police Ordinance, 1973(hereinafter also referred to as ‘the DMP Ordinance, 1976’ or ‘the DMP Ordinance’). The vehicle was returned after 5 (five) days in a bad condition and the owner had to spend a few thousandsTaka for repair works. Report was published in ‘DainikManobjamin’ on 22.05.2010 that the police are using the provision of law relating to requisition of vehicles for their personal interest and earning illegal money. It was also reported in many other newspapers that due to the misuse of power by the police in the garb of Section 103A of the DMP Ordinance, 1976 the drivers of vehicles are facing problem every day. The Petitioners, therefore, came up with this writ petition as a Public Interest Litigation (PIL) challenging the vires of Section 103A of the Dhaka Metropolitan Ordinance, 1976 and obtained the initial Rule Nisi as stated above.

The Respondent Nos.4-8 contested the Rule by filing separate Affidavit-in-Opposition stating *inter alia* that the provision of Section 103A of the DMP Ordinance, 1976 is not violative of Article 42 of the Constitution of the People’s Republic of Bangladesh, rather the said provision is reasonable, proper, adequate and acceptable in the eye of law and hence the Rule Nisi, show cause and directions are liable to be discharged for the ends of justice.

Mr. Manzill Murshid, learned Advocate appearing for the Petitioner took us through the writ petition and the documents annexures thereto and submits that the police are frequently abusing the power conferred under Section 103A of the Ordinance, 1976 to make illegal gain and this has become their everyday practice to use the said provision of law as a means of doing business to earn illegal money thereby depriving the innocent

drivers of their daily earning. In some cases, Mr. Murshid submits, the police compel the drivers of requisitioned vehicles to drive day and night without making any payment. In the prevailing situation, no one should be allowed to requisition any vehicle except during war or any natural disaster and for this purpose, a new law should be passed. Mr. Manzill Murshid finally submits that Section 103A of the DMP Ordinance, 1976 is arbitrary in nature, discriminatory in character amounting to denial of right to property and right to be treated in accordance with law and hence it is violative of the fundamental rights guaranteed under Articles 31 and 42 of the Constitution and is, therefore, liable to be declared illegal, void and ultra vires the Constitution.

Mr. Shah Muhammad Ezaz Rahman, learned Advocate appearing with Mr. Mustaque Ahmed Chowdhury for Respondent No.4, submits that according to Section 103A of the DMP Ordinance, 1976 the Police Commissioner, Dhaka Metropolitan Police (DMP) has the right and lawful authority to requisition vehicles for the purposes of public interest and after requisition, the drivers of the concerned vehicles usually receive Tk.50 (fifty) only per day for each and every vehicle and in addition to that, fuel is also supplied to the requisitioned vehicles. Mr. Rahman, however, informs this Court that due to non-allocation of fund by the Police Headquarters even after repeated requests since promulgation of the law, the DMP often can not pay compensation to the owners of the requisitioned vehicles as per the provisions of the DMP Ordinance, 1976 and the Dhaka Metropolitan Police (Vehicle Requisition and Compensation) Rules, 2006 (hereinafter also referred to as 'the Rules, 2006). Mr. Rahman submits that the police do not

requisition any vehicle unless it is required in the public interest and no vehicle is requisitioned for personal use of any officer of the department as alleged by the Petitioners. Mr. Rahman further submits that Section 103A of the DMP Ordinance, 1976 confers power upon the Police Commissioner to requisition any vehicle if such vehicle is required only in public interest and it does not give any unfettered or unrestricted power to the Police Commissioner to indiscriminately requisition vehicles for any other purpose, rather the law has put a restriction by limiting the scope of exercise of the said power only in public interest and as such, the said provision of law is not in any manner violative of the fundamental rights guaranteed under Articles 31 and 42 of the Constitution and thus, not ultra vires the Constitution.

Mr. M. Amir-ul-Islam, learned Senior Advocate having been appointed an *amicus curiae* in this Writ Petition submits that Section 103A of the Ordinance, 1976 confers power upon the Dhaka Metropolitan Police to requisition vehicles only in the `Public interest` and not for any other purpose. Thus, requisition of any vehicles in exercise of this power for any personal use or gain amounts to an abuse of power not sanctioned by law. Mr. Fida M. Kamal, learned Senior Advocate being another *amicus curiae* appointed by this Court, submits that Section 103A of the DMP Ordinance, 1976 has equipped the police with the power to requisition a vehicle only when use of such vehicle becomes necessary for a public purpose and not in the personal interest of any officer or officers of the police department. Therefore, no officer of the department is expected to use the law for his own personal benefit to the harassment and humiliation of the innocent

drivers and vehicle owners. Mr. Kamal further submits that since there are frequent allegations of misuse/abuse of power conferred under Section 103A of the Ordinance, 1976 the department should strictly and regularly monitor such irresponsible action of the police officers and take punitive action against the concerned officer(s) to discourage recurrence of such misuse/abuse.

We have heard the learned Advocates for the Petitioners and the Respondents as well as the submissions made by the learned Amicus Curiae appointed to assist this Court, perused the writ petition, affidavits-of-compliance, supplementary affidavit, affidavits-in-opposition, rule issuing orders and the documents submitted by both sides in support of their respective case. We have also perused the relevant provisions of law and the decisions placed before us and have considered them very carefully.

It appears that the Petitioners have filed the writ petition in the nature of Public Interest Litigation (PIL) challenging the vires of Section 103A of the Dhaka Metropolitan Police Ordinance, 1976 mainly on the ground that the police are abusing the power conferred under Section 103A in requisitioning vehicles and in support of their case, referred to some requisition documents(Annexure – A series) alleging that by the said requisition orders, DMP requisitioned private vehicles without there being any public interest involved and that the requisitioning authority having returned the said vehicle in a ‘bad condition’ the owner of the vehicle had to spend a considerable amount of money for repair works. The Petitioners also referred to various newspaper reports to show that misuse of the requisitioning power conferred under Section 103A has become rampant

now a days. It is alleged in the said reports that the Dhaka Metropolitan Police requisition hundreds of vehicles every single day for various purposes not authorised by law and sometimes, they extort money from the drivers by posing threat to use the power of requisition. Against this backdrop, the Petitioners assail the constitutionality of Section 103A of the DMP Ordinance, 1976 and seek declaration to the effect that the said provision of law is void and unconstitutional being violative of the fundamental rights guaranteed under Articles 31 and 42 of the Constitution.

Before we embark upon the examination to decide the question of constitutionality of Section 103A of the DMP Ordinance, 1976 it would not be out of context to deal with the question as to whether any 'public interest' is involved in this writ petition or, in other words, whether this writ petition can be treated as a Public Interest Litigation (PIL) as averred by the Petitioners and also the question as to whether the Petitioners are 'aggrieved person' to invoke the jurisdiction of this Court under Article 102 of the Constitution.

On a careful reading of the averments made in the writ petition and the papers annexed to the petition, it appears that the Petitioners have come up with the writ petition for protection of the interest of innumerable number of people who are regularly suffering due to misuse of the power of requisition conferred by DMP Ordinance, 1976. This is no doubt a cause of public nature and from the facts and circumstances the case, it does not appear to us that the Petitioners are espousing this cause with any personal agenda or for any collateral purpose. We, therefore, find no reason for refusing to treat this case as a Public Interest Litigation (PIL) and in so

doing, find support in the observation made by the Appellate Division in the case of *Ekushey Television vs Dr. Chowdhury Mahmood Hasan* reported in 55 DLR (AD) 26-

“....The nature of public interest litigation (called PIL hereinafter) is completely different from a traditional case which is adversarial in nature whereas PIL is intended to vindicate rights of the people. In such a case benefit will be derived by a large number of people in contrast to a few.”

While dealing with the question of *locus standi* of the Petitioners, we can not resist referring to the decision of the Appellate Division in the case of *Dr. Mohiuddin Farooque vs Bangladesh* reported in (1997) 49 DLR (AD) 1 wherein the Appellate Division held

“.....when a public injury or public wrong or infraction of a fundamental right affecting an indeterminate number of people is involved it is not necessary, in the scheme of our constitution, that the multitude of individuals who has bene collectively wronged or injured or whose collective fundamental rights have been invaded are to invoke the jurisdiction under Article 102 in a multitude of individual writ petitions, each representing his own portion of concern. Insofar as it concerns public wrong or public injury or invasion of fundamental rights of an indeterminate number of people, any member of the public, being a citizen, suffering the common injury or common invasion in common with others or any citizen or an indigenous association, as distinguished from a local component of a foreign organization, espousing that particular cause is a person aggrieved and has the right to invoke the jurisdiction under Article 102.”

In this writ petition the Petitioner No.1, Human Rights and Peace for Bangladesh (HRPB), is an organization which has been working for a long

time on issues involving public importance/interest and has earlier, filed a series of litigations before this Court for enforcement of fundamental rights of the people or class of the people. On the other hand, the Petitioner No.1 is the owner of a vehicle that was requisitioned by the Dhaka Metropolitan Police in exercise of power conferred under Section 103A of the DMP Ordinance, 1976 for no public purpose and afterwards, returned in a bad condition to repair which the Petitioner No.2 had to spend a few thousand Taka.

The case of the Petitioners is that since the power of requisition of vehicles under Section 103A of the DMP Ordinance, 1976 is being misused and/or abused by the police frequently to the harassment/suffering of the drivers and owners of private vehicles and since such misuse/abuse of the power is exceedingly infringing the fundamental rights of the drivers and owners of vehicles guaranteed under Articles 31 and 42 of the Constitution, the said provision of law empowering the police to requisition vehicles should be declared void and unconstitutional. On perusal of the writ petition and the documents annexed thereto we are convinced that the Petitioners moved this Court to vindicate a specific cause of the people in general who have been suffering frequently due to misuse of an executive power by the police but are not in a position understandably for socio-economic and various other reasons to approach this Court for enforcement of their fundamental rights. Accordingly, considering the intention of the Petitioners behind approaching the Court and the circumstances leading to the filing of this writ petition we have no hesitation to take the view that the Petitioners have sufficient interest and acted *bona fide* in ventilating the common

grievance of an indeterminate number of people and as such, they are qualified to be 'persons aggrieved' for maintaining this writ petition for judicial redress of the public injury involved.

Now let us deal with the most important question involved in this writ petition viz. whether Section 103A of the DMP Ordinance, 1976 is violative of Articles 31 and 42 of the Constitution and liable to be declared void and unconstitutional. Section 103A of the DMP Ordinance, 1976 runs as follow:

“103A. Requisition of vehicles- (1) Notwithstanding anything contained in any other law for the time being in force the Police Commissioner may, by order in writing, requisition any vehicle, for a period not exceeding seven days if such vehicle is required in public interest.

(2) Whenever any vehicle is requisitioned under sub-section (1) the owner thereof shall be paid such compensation as may be prescribed.”

Reading the language of sub-section (1) literally, one would be confined to ascertaining that this provision empowering the police commissioner to requisition vehicles shall supersede all other provisions of law, for the time being in force, relating to requisition of vehicles by reason of the use of the expression 'Notwithstanding anything contained in any other law'. So, the first issue that requires examination is what would be the effect of a *non-obstante* clause when this Court is examining the vires of the law. Given that the constitutionality of Section 103A has been challenged, the precise proposition that requires consideration is whether a *non-obstante* clause can override the provisions of the Constitution itself. Needless to mention that this issue has already been dealt with by this Court in a good number of cases and it is, by now, a well settled principle that a *non-*

obstante clause can not be deemed to override the provisions of the Constitution. Accordingly, mere use of a *non-obstante* clause in any law does not *ipso facto* give it supremacy over the Constitution being the supreme law of the land and there is no scope for the concerned authority or department to use the said law as a weapon to violate the fundamental rights of the people guaranteed under the Constitution. Moreover, sub-section (1) of Section 103A makes it very clear that the police commissioner can exercise power under this section only if such exercise is required 'in public interest' and for no other purpose. So, as the section is phrased, it is not open to the police commissioner to pick up any vehicle from the street at whim in the name of requisition because such action must be necessitated by "public interest". Thus, on careful scrutiny of the law in question, it does not appear to us the legislature intended to authorise any abuse or misuse of the law, rather the law expressly lays down a safeguard against abuse by expressly limiting exercise of requisitioning power of the police only in public interest.

There is no denying that individual rights, under the Constitution, must succumb to large public interest and the power of the legislature to frame appropriate legislations to the above effect must be recognized by the courts. The remedy of the citizens in such situations lie in the courts maintaining strict vigilance on the matter of exercise of the power and striking down specific acts that do not conform to the laid down parameters and/or the mode and manner, as may be prescribed, when such complaints come before the courts.

True it is that the law under challenge has not defined the concept "Public Interest" but the concept itself is self-explanatory and there is no

dearth of judicial authorities to locate the connotation and the meaning of this phrase.

It is always open to the courts to decide whether a particular action can be brought under the "Public Interest" umbrella and in so deciding, it is not necessary to determine the constitutional validity of a statute. In the case of *BADC vs Shamsul Haque Mazumder and others* reported in 60 DLR(AD) 152 the Appellate Division held that when a case can be decided without striking down the law, that course has to be adopted. Similar view was expressed by the Appellate Division in several other cases reported in 44 DLR (AD) 319, 60 DLR(AD) 90 and 2009 BLD (AD) 79, to name a few.

Regard being had to the aforesaid decisions of this Court and the facts and circumstances of the case in hand, we are not inclined to pass on the constitutional question raised before us and declare Section 103A of the Dhaka Metropolitan Ordinance, 1976 void, unconstitutional or ultra vires the Constitution.

We may now proceed to examine whether the power conferred under Section 103A of the DMP Ordinance is being misused/abused by the police to the harassment / prejudice of the people as alleged by the Petitioners. The Respondent No.4 by filing affidavit-in-opposition denied this allegation and informed this Court that police never requisition any vehicle unless it is required in the public interest and no vehicle is requisitioned for personal use as alleged by the Petitioners. In support of this contention, Mr. Shah Muhammad Ezaz Rahman, the learned Advocate for Respondent No.4 draws our attention to the requisition forms(Annexure-A series) to show that the police requisitioned the vehicles in the public interest and not for any

personal use. The question as to whether the police misused/abused their power in requisitioning the said vehicles or exercised the power in accordance with law is, therefore, a disputed one and this dispute, in our view, cannot be resolved on the facts pleaded and documents produced before this Court as this requires adjudication on the basis of evidence of detailed nature which is beyond the scope of writ jurisdiction. However, we can also not lose sight of the large-scale allegations of misuse and/or abuse of the power conferred under Section 103A as reported in various national dailies (Annexure B series) and overlook them as scattered incidents. This involves a serious question of public injury/suffering and in such situation, this Court being a sentinel of constitutional statutory rights of the citizens can not sit back and refuse to play its special role mandated by the Constitution.

Attention was further drawn to the fact that the requisition of vehicles is an executive power conferred upon the police commissioner by Section 103A of the DMP Ordinance, 1976 and this being discretionary in nature it is presumed that the authority entrusted with the discretion will act *bona fide* and lawfully. Discretion conferred by a law must be exercised honestly and fairly having regard to the purpose for which the discretion has been conferred and not according to personal whims or humour of the person clothed with the discretion nor can it be used arbitrarily, capriciously or for any collateral purpose. In the present case, the Dhaka Metropolitan Police though claim to have requisitioned the vehicles in the public interest and not for any personal use none of the requisition orders discloses for what 'public purpose' the vehicles were requisitioned by the police.

We have carefully examined the requisition forms annexed to the writ petition (Annexure A series) wherefrom it transpires that the said forms were issued by the Assistant Commissioner of Police (Administration Traffic North), DMP on behalf of the Police Commissioner stating that the requisitioning officer is of the opinion that the said vehicles are necessary in the public interest and for government job (জনসাধারণের স্বার্থে এবং সরকারি কাজের জন্য) and that the vehicle would be returned after completion of the job. It is a matter of great concern that in every case, the vehicle was requisitioned showing the same reason viz. 'in the public interest' and 'for government job', but without specifying in detail the purpose of requisition.

It is not understood why, in case of an emergency assignment or government job, police force can not ask for vehicles from the government pool and /or hire them on payment from a rent-a-car office and why should they stop the vehicles plying on the roads randomly and requisition them in the name of 'public interest' and/or 'government job/official use' without any prior notice. Moreover, the 'opinion' formed by the requisitioning officer also appears to be purely subjective and the Respondents could not produce any materials as indicated in Rule 4 of the DMP (Vehicle Requisition and Compensation) Rules, 2006 to enable this Court to scrutinize the legality of the requisition orders. Opinion without any supporting material is no opinion in the eye of law and any order based on such opinion is bad in law.

In reply to a query, the learned Advocate for the Petitioners referring to the newspaper reports (Annexure B series) informed this Court that the whole thing is done in a most high-handed manner. The modus operandi is

simple. The vehicles are stopped randomly on the way and asked to pull over by the police personnel. The relevant documents of the vehicles are taken away from the driver, requisition form is filled up and handed over to him. This completes both requisition as well as taking over of possession. Passengers, if any, are often asked to get down and sometimes, the drivers are treated badly. The owner, unaware of the purported requisition, often spends anxious hours waiting for the scheduled return of his vehicle. The police bother least to inform the owner of the purported requisition even after the vehicle is taken away and, in many cases, the vehicle is returned in bad condition.

Another grievance of the Petitioners is that although sub-section (2) of Section 103A makes it obligatory for the requisitioning authority to pay compensation to the owners of the requisitioned vehicles scant regard is shown to this solemn obligation. As a result, in most of the cases, compensation is either not paid at all or paid after a long time. In reply to a query, the learned Advocate for the Respondents informs this Court that currently, the owner of a requisitioned vehicle is paid Tk.500 per day as compensation while the driver and helper get Tk.50 each as daily meal allowance. However, the reports published in the newspapers show that the owners of the requisitioned vehicles do not get the due rental compensation as per rules and often they do not come to receive their compensation considering it as harassment since they have to wait for months. The drivers also get the meagre daily food allowance after an inordinate delay. The Respondent No.4 also admitted this fact in the affidavit of opposition and

expressed inability to pay compensation to the owners as per the law due to non-allocation of fund by the higher authority.

When the laws clearly direct the authorities to provide compensation to the owners of the requisitioned vehicles and daily allowance to the drivers it is not understood why necessary fund is not allocated by the Government to the DMP for payment of compensation, allowance and other expenses against requisition of vehicles. The Petitioners, therefore, seek suitable directions from this Court both in the matter of requisition as well as compensation.

Against the backdrop as stated above, if the Police Commissioner, DMP is left with the discretion to exercise the power sweepingly with no obligation to give prior notice to the owners of the vehicles disclosing specifically the purpose of requisition and pay compensation to the owner in accordance with law then there will always remain the possibility and/or scope of misuse or abuse of the power in the name of 'public interest' or 'official use'. In a civilized country, police force is expected not only to uphold and enforce the law impartially but also to protect life, liberty, property, human rights and dignity of the members of the public and in order to build up good police-people relations, it is imperative that the police must have a better understanding of the public's concerns. Police must treat the citizens with respect to gain trust and exercise their power to alleviate the suffering of the citizens but not to make the people suffer by misusing or abusing their power.

This Court having a sworn duty coupled with the constitutional mandate to redress public grievances and ensure that laws are not applied to

the prejudice of the people we find this case an appropriate one which requires formulation of certain guidelines to prevent the misuse and/or abuse of, or at least to put a check and balance on, the power of requisition conferred under Section 103A of the DMP Ordinance, 1976.

Mr. Manzill Murshid, learned Advocate for the Petitioners, by filing a Supplementary Affidavit at the fag end of the hearing, submits that this Court may issue certain directions to save the people from harassment in case of requisition of vehicles. Considering these suggestions and other related issues we would like to formulate the following guidelines to protect the people, in particular the drivers and owners of vehicles, from being unnecessarily and arbitrarily harassed/prejudiced by the police in the garb of requisition and direct the Respondents, in particular the Police Commissioner, DMP, to follow these guidelines in requisitioning vehicles under Section 103A of the DMP Ordinance, 1976 read with the DMP (Vehicle Requisition and Compensation) Rules, 2006 :

- (a) The Police Commissioner, DMP shall have power to requisition vehicles under the Dhaka Metropolitan Ordinance, 1976 only for public purpose and in the public interest and not for personal use or any other purpose.*
- (b) No vehicle owned by a private individual, company or organization shall be requisitioned without giving prior notice in writing to the owner thereof stating specifically the reason/purpose for such requisition.*
- (c) Requisitioned vehicles must be used for the purpose for which it has been requisitioned and no requisitioned vehicle shall be used by any police officer or their family members for his/their personal need. Any such use of a requisitioned vehicle shall be considered as a misconduct.*

- (d) *No vehicle shall be requisitioned for more than 7(seven) days at a time as laid down in Section 103(A) of the DMP Ordinance, 1976 and the notice of requisition as stated in clause (b) above as well as the requisition order shall specifically mention the number of days for which the vehicle is being requisitioned.*
- (e) *During the period for which the vehicle is requisitioned the fuel costs and other related expenses shall be borne by the requisitioning authority.*
- (f) *The requisitioning authority shall pay such amount of compensation to the owner of the requisitioned vehicle and such amount of daily allowance to the drivers and helpers as may be determined by the Committee to be formed under Rule 5 of the Dhaka Metropolitan Police (Vehicle Requisition and Compensation) Rules, 2006. However, the amount of compensation and allowance currently being paid to the owners and drivers of the vehicles appear to be shockingly inadequate and the authority concerned should, therefore, consider revising the rate of compensation and daily allowance keeping in mind the suffering and financial loss of the owners and drivers as well as other socio-economic aspects.*
- (g) *The Police Commissioner shall pay compensation to the owner of the requisitioned vehicle within 15(fifteen) days from release of the said vehicle from requisition and failure to make such payment shall be considered as an irregularity.*
- (h) *If any vehicle gets damaged during the requisition period the requisitioning authority shall pay necessary compensation in the manner as laid down and within the time limit as stipulated in Rule 10 of the DMP Rules, 2006.*
- (i) *The authority concerned shall allocate, if not already allocated, and continue to allocate such fund as may be required by the DMP from time to time for payment of compensation against requisition of vehicles, and hand over the said fund to the DMP so that the Police Commissioner, DMP can pay necessary compensation and*

allowance to the owners and drivers of the requisitioned vehicles as per the provisions of law and in compliance of the guidelines formulated by this Court.

- (j) Whenever any allegation of illegality or irregularity is made by the owner of any requisitioned vehicle the Police Commissioner, DMP shall inquire into the matter and take necessary action against any irregularity over the requisition of vehicles.*
- (k) Under no circumstances, the police shall requisition any vehicle carrying any patient, disable person or airport bound passenger(s) who are travelling outside Bangladesh, provided the said passengers(s) can show the required travel documents in support of his/her journey.*
- (l) A list of requisitioned vehicles must be preserved and maintained at every police station of the DMP and the said list shall contain, among others, the name of the owner and driver of the requisitioned vehicle, registration number of the vehicle, date of requisition, purpose of requisition, date of release and the amount of compensation paid to the owner as well as the amount, if any, paid for repair works.*

The Respondent No.4, the Police Commissioner, DMP, is directed to issue a Circular, preferably within a period of 90(ninety) days from receipt of this judgment, for strict observance of the guidelines formulated by this Court in requisitioning vehicles under Section 103A of the DMP Ordinance, 1976 and circulate the same to the concerned police officers of all the police stations of DMP with instructions to comply with this Court's order. The Police Commissioner shall also monitor the strict compliance of the above guidelines to ensure that no citizen is unnecessarily harassed and/or prejudiced due to unlawful requisition of any vehicle.

It appears from the record that pending hearing of the Rule, this Court by an order dated 07.06.2010, directed the Respondent Nos.3 and 4 to (i) withdraw three police constables, namely Abdul Malek, Md. Ashrafuddin and Md. Kabir Hossain from the public duty, (ii) initiate departmental proceeding against them allegedly for denuding a cab driver, namely Ripon Khan, during the course of requisition of taxicabs on 13.5.2010 as reported in the Daily Manabjamin and Daily Jugantor dated 14.5.2010, (iii) initiate prosecution against them under sections 323/355 of the Penal Code or any other applicable provisions of the Penal Code and take action against them as per the Government Servant Disciplinary Rules, and (iv) to send a dossier to this Court, which has reportedly been made by a Senior Police Officer of the DMP after investigating into the matter.

Record shows that the direction No. (iii) was stayed by the Appellate Division in Civil Petition for Leave to Appeal No. 1628 of 2010 till disposal of the writ petition while the other three directions have been duly complied with by the Respondents. It transpires from the affidavit of compliance filed by the Respondent No.4 that as per this Court's order, a Senior Police Officer of Dhaka Metropolitan Police carried out a thorough investigation into the matter and submitted report stating that the allegation against the three police constables of denuding the abovenamed taxi driver on 13.5.2010 was not found to be true. We, therefore, do not find any justifiable reason for initiating prosecution against the said three police constables as per the provisions of Penal Code or taking disciplinary action against them.

Suo Moto Rule No.05 of 2009

The Suo Moto Rule was issued by this Court on the basis of a newspaper report published in a national daily on 25.5.2010 alleging that the police requisitioned 300 (three hundred) vehicles after issuance of the Rule Nisi by this Court on 23.5.2010. This Court issued the Suo Moto Rule on 25.5.2010 calling upon the Respondents to intimate the Court as to whether the story published in the newspaper on 25.5.2010 represents the truth and to explain as to what sort of public interest required requisition of 300 vehicles, if any were.

The Respondent No.4 by filing affidavit in opposition denied the authenticity of the report published in the newspaper regarding requisition of 300 vehicles and stated that before receiving this Court's order dated 23.5.2010 officially, the Respondents requisitioned 61 (sixty one) vehicles on 24.5.2010 exclusively for the public interest for regular policing while the rest 277 (two hundred seventy seven) vehicles had been requisitioned before the order was passed on 23.5.2010. Thus, the question whether the police actually requisitioned the said 300 vehicles in the public interest or for any other unauthorised purpose becomes a disputed one and we are not inclined to decide this question in this writ petition, especially when there is nothing on record to show that the said vehicles were used for any other unlawful purpose.

As far as the question of payment of compensation and daily allowance is concerned, the Respondent No.4 admitted that although the drivers of the said vehicles received the daily allowance prescribed by law no compensation was paid to the owners of the vehicles due to lack of fund. Accordingly, we direct the Respondent No.4 to pay compensation to the

owners of the said 300 vehicles, if not already paid, as per the Dhaka Metropolitan Police (Vehicle Requisition and Compensation) Rules, 2006 as immediately as possible, preferably within a period of 90(ninety) days from receipt of this judgement.

With the above observations and directions, the Rule in Writ Petition No.4304 of 2010 is disposed of and the Suo-Moto Rule No.05 of 2010 (arising out of W.P. No.4304 of 2010) is discharged.

There is, however, no order as to costs.

Communicate the Judgment and Order at once.
