

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Writ Petition No. 7862 of 2011

**Human Rights and Peace for Bangladesh
(HRPB)**

..... Petitioner

-Versus-

Bangladesh, represented by the Secretary,
Ministry of Communication and others

..... Respondents

Mr. Manzill Murshid with

Mr. Sanjoy Mandal, Advocate

..... for the Petitioner

Mr. A.S.M. Nazmul Haque, D.A.G.

..... for the respondent Nos. 1-6

Present:

Mr. Justice Gobinda Chandra Tagore

and

Mr. Justice Abu Taher Md. Saifur Rahman

Heard on: 26.05.16, 31.05.16, and

Judgment on: 01.06.2016

Gobinda Chandra Tagore, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, the Rule Nisi was issued calling upon respondents to show cause as to why the failure of the respondents to ensure the residential character of the residential areas of Comilla by failing to stop functioning/business of Motor Vehicles Repairing and Air-Conditioning Workshops in the residential areas of Bangladesh should not be declared illegal and without lawful authority, and why the inaction of the respondents in closing down the business of the unregistered Motor Vehicles Repairing Workshops shall not be declared contrary to Rule 70A of the Motor Vehicles Rules, 1984 (as amended in 2011) and/or why such other or further order or orders, as to this court may seem fit and proper, should not be passed.

Pending hearing of the Rule, respondent Nos.5 and 6 were directed to immediately take step for closing down the motor vehicle workshops under the name and style, "Maisha Auto and Yeasra Car A/C Centre" owned by respondent No.7 situated at holding No.28/26, Court Road, Comilla within 24 hours from the date of issuance of the Rule and to

inform the compliance thereof within 3(three) days and thereafter, monthly compliance for a period of 6(six) months from the date of issuance of the Rule.

At the very outset of the hearing of the Writ Petition, Mr. Manzil Murshid, learned Advocate appearing for the petitioner and Mr. A.S.M. Nazmul Haque, learned Deputy Attorney General appearing for respondent Nos. 1-6 submit that the interim order has been complied with.

Shortly stated the relevant facts necessary for disposal of the Rule are as follows: -

The petitioner, Human Rights and Peace for Bangladesh (HRPB) is a non-profitable registered organization and the objects of the organization are to uphold the human rights of the citizens and 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 including the rights with regard to protection of the environment and health of the citizens and to establish the rule of law. The organization has been represented in the Writ Petition by its Secretary, Advocate Asaduzzaman Siddique, who is a practicing lawyer of this Court. In this Writ Petition filed as a public interest litigation, the petitioner has challenged the inaction of the respondents in ensuring the residential character of the residential areas of Comilla by failing to stop the business of Motor vehicles Repairing and Car Air-Conditioning Workshops in the residential areas of Comilla.

The Writ Petition has been filed on the basis of a report published in "The Daily Star" on 23.05.2011 under the heading, "Tougher Rules for Auto Workshops". In the report, it was stated that the automobile workshops would no longer be able to be operated in the residential areas and occupying roads and footpaths. Under the Motor Vehicle Ordinance, 1983, the said Rule namely, Motor Vehicle Rules, 1984 was made. The Rule was amended on 02.03.2011 vide S.R.O. No.47-Law/2011 and thereby Rules 70A, 70B, 70C and 70D were inserted therein. By the amended provision of the said Rules, it has been made mandatory that one must obtain registration of motor vehicles repairing workshops before establishing and/or operating a motor vehicles repairing workshop. But almost all of the motor vehicles workshops operating in Bangladesh specially, in Comilla District are maintaining their functioning and business without such registration, while, the respondents have a duty to ensure that such workshops in Bangladesh have obtained registration under the said Rules and to ensure further that no one can carry on such business in a residential area in a manner, which creates public nuisance and hazards to the public health and safety.

Upon holding an enquiry in this regard in the Comilla District Town, they to their amazement have found that most of the motor vehicle workshops have not obtained registration under the said Rules. Even, some were established in the residential areas of the town and thus, those workshops are creating public nuisance and hazards by making relentless sound, spraying colours and running welding machines, which are enormously hazardous to the public health and safety specially, to the children. In the said course of enquiry, the petitioner further found that the owner of holding No.28/26, Court Road, Comilla within the residential area of Comilla City Corporation without constructing any residential house thereon leased out the said land for establishing automobile workshop in the month of May, 2011 and the lessee Md. Rafiqul Islam established such a workshop thereon. Consequently, the residential character of the concerned area was at stake. The peace and tranquility of the said residential area was seriously hampered. Under the Motor Vehicles Rules, 1984, establishing and conducting such automobile business in residential area are prohibited. Moreover, some anti-social elements used the same workshop as their den and thereby the law and order situation of the area was in jeopardy. Nevertheless, on the western side of the workshop, there is a road and across the road, there is a girl's school namely, "Our Lady of Fatima Convent", but the anti-social elements having used the auto workshop used to tease the girls. There is also a big tank belonging to the PWD. The people of the concerned area use the water of the tank for their daily use and household-works. The owner of the workshop built two pucca structures by the side of the said tank for washing cars and other vehicles. As a result, the dirty water of the vehicles containing oil, diesel and other chemicals were polluting the water of the tank belonging to PWD and thus, the people of the locality, who were bound to use the water of the tank were exposed to serious health hazards. Moreover, the workshop also created some pollution in the concerned residential area. Thus, establishing such a workshop and conducting such business in the residential area without any registration and without obtaining any environmental clearance certificate violated the provisions of the Motor Vehicle Rules, 1984 as well as the Paribesh Songrakkhan Bidhimala. Since the concerned authority failed to perform their lawful duty as casted upon them under the Motor Vehicle Ordinance and the Rules made thereunder as well as under the Paribesh Songrakkhan Bidhimala, the petitioner filed the Writ Petition as a public interest litigation for ensuring the compliance of law, the fundamental rights of the people of the locality as guaranteed under Article 31 and 32 of the Constitution and the petitioner obtained the Rule and the interim direction.

It appears from the record that the notices of the Rule Nisi have been served on the respondents properly. But none of them appeared to contest the Rule and it has already been found that the interim order

was also complied with and thus, the respondents in compliance with the order of this Court have also performed their legal duty and thereby the purpose of the Rule has already been served.

But having placed the Writ Petition, Mr. Manzill Murshid, learned Advocate for the petitioner submits that the respondents should be vigilant in future so that such motor vehicle workshops cannot be established without proper registration and particularly, in residential areas by violating the Motor Vehicle Ordinance, 1983, Motor Vehicle Rules, 1984 and the Paribesh Songrakkhan Ain, 1995 and the Rules made thereunder.

It appears that in holding No.28/26, Court Road within the residential area of Comilla City Corporation, an automobile workshop namely, “Maisha Auto and Yeasra Car A/C Centre” was established by respondent No.7 without any license as required under Rule 70A of the Motor Vehicle Rules, 1984. Similarly, Rule 7(4) stipulates that Orange-Ka and Orange-Kha and Red marked industrial enterprises cannot be established without the environmental clearance certificate. Automobile repairing workshops appear at serial No.50 under the Orange-Kha category and it has been also mentioned at serial No.61 that any automobile repairing workshop having the capital of Taka-10 lakhs also requires the environmental clearance certificate. Nevertheless, it has also been provided under the footnote of the said Orange-Kha category industries that no such industrial enterprises can be established in residential area. Similarly, under the Red category industrial enterprises, no such industry can be established in such residential areas.

Since the respondents have not filed any Affidavit-in- Opposition, the contentions of the petitioner deem to be admitted. It has already been found that under Rule 70A of the Motor Vehicle Rules, 1984, no such automobile repairing workshop can be established without any registration and similarly, under the Paribesh Songrakkhan Bidhimala particularly, under Rule 7(4) no industry can be established in residential area.

Since respondent No.7 established his automobile repairing workshop not only without any registration but also within the residential area of the Comilla City Corporation, there is no doubt to say that the respondents failed to discharge their legal duties and consequently respondent No.7 was able to establish his automobile repairing workshop in the residential area without any registration as well as without any environmental clearance certificate.

In such view of the matter, we find merit in the Rule.

Accordingly, the Rule is made absolute.

The failure of the respondents to ensure the residential character of the residential areas of Comilla City Corporation by failing to stop functioning/business of Motor Vehicles Repairing and Air-Conditioning Workshops in the residential areas of Bangladesh. is hereby declared illegal and without lawful authority and the inaction of the respondents in closing down the business of the unregistered Motor Vehicles Repairing Workshops is also declared contrary to Rule 70A of the Motor Vehicles Rules, 1984 (as amended in 2011)

However, there would be no order as to costs.
