

LEX/BDHC/0215/2015

Equivalent Citation: 22BLC(2017)379

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION)

Writ Petition Nos. 5295, 4567, 3715 of 2013 and 11546 of 2014

Decided On: 31.05.2015

Appellants: **Mohi Uddin (Md.) and Ors.**
Vs.

Respondent: **Government of the People's Republic of Bangladesh and Ors.**

Hon'ble Judges:

Md. Habibul Gani and Md. Akram Hossain Chowdhury, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Shah Monjurul Haque, Advocate

JUDGMENT

Md. Habibul Gani, J.

1. More or less same facts and issue are involved with the four writ petitions and, as such, all those were taken up together for hearing and disposed of by this single judgment. In Writ Petition No. 5295 of 2013 rule was issued upon the respondents to show cause as to why the Memo No. 35.020.022.00.00.006.2007-143 dated 22-4-2013 issued under the signature of the respondent No. 6 (Annexure-D) containing decision of the respondents not to enhance economic life period of the CNG driven four stroke three wheeler auto rickshaws and their decision for introducing more 4,000 (four thousand) CNG driven three wheeler auto rickshaws in Chittagong Metropolitan Area as contained in Memo No. BRTA/DDE-2/5T-2(16) (Angsha-2)687/11-756 dated 9-4-2013 issued under signature of the respondent No. 4 (Annexure-E) shall not be declared illegal, without lawful authority and is of no legal effect, and as to why they shall not be directed to enhance economic life of the CNG driven three wheeler auto rickshaws upto 30(thirty) years from present 11 (eleven) years and not to introduce any more new CNG driven three wheeler auto rickshaw for at least 10(ten) years in Chittagong Metropolitan Area and/or to pass such other or further order or orders as to this Court seems fit and proper.

2. In Writ Petition No. 4567 of 2013 rule was issued upon the respondents to show cause as to why the sections 52 and 53 of the Motor Vehicle Ordinance 1983 (LV of 1983) read with Article Kha:3 of the সিএনজি/পেট্রোল চালিত ৪ স্ট্রোক থ্রি হুইলার সার্ভিস নীতিমালা, ২০০৭ dated 22-5-2007 and subsequent amendment vide Notification dated 19-9-2011 (Annexure-B and C) respectively should not be declared to have been made without lawful authority and is of no legal effect and why the respondents should not be directed to extend the economic life period of CNG/Auto Rickshaw powered by CNG/Petrol from 11 years to 30 years and why the Memo No. ৩৫.০২০.০২২.০০.০০.০০৬.২০০৭-১৪৩ তারিখ- ২২-৪-২০১৩

(Annexure-G) issued under the signature of the Respondent No. 3 not to extend the economic life of CNG/Auto Rickshaw from 11 years to further period and why the allocation of additional 4,000 new CNG/Auto Rickshaws to ply in Chittagong Metropolitan City pursuant to decision dated 13-3-2013 to be implemented according to Memo No. ৩৫.০০.০০০০.০২০.০৩১.২৫.০১২-১১৮ তারিখ-৩-৪-২০১৩ খ্রিষ্টাব্দ

(Annexure-F) should not be declared to

have been passed without lawful authority and is of no legal effect and/or to pass such other or further order or orders as to this Court seems fit and proper.

3. In Writ Petition No. 11546 of 2014 rule was issued calling upon the respondents to show cause as to why the impugned Memo No. ৩৫.০২০.০২২.০০.০০.০০৬.২০০৭ (অংশ-২)-১৯৯ তারিখ ২৬ মে ২০১৪ issued under the signature of the respondent No. 4 (Annexure-B to the Writ Petition) containing decision of the respondents to extend the economic life of the CNG Driven Auto Rickshaw from 11 years to 15 years imposing condition in clause 1(Gha) of the said impugned memo No. ০২২.০০.০০.০০৬.২০০৭ (অংশ- ২)-১৯৯ তারিখ: ২৬ মে ২০১৪ to test the C.N.G. Cylinder Hydrolic Pressure in their selected company authorized by the respondents and condition imposed in Clause 11 of the Registration Rules (Draft) for CNG Driven Auto Rickshaws (Annexure-D to the Writ Petition) not to sell, hand over or gift to other the registered Auto Rickshaws within 3(three) years and the condition imposed in the resolution dated 13-3-2013 (Annexure-C to the Writ Petition) should not be declared to be illegal without lawful authority and is of no legal effect and/or to pass such other or further order or orders as to this Court seems fit and proper.

4. In Writ Petition No. 3715 of 2013 rule was issued upon the respondents to show cause as to why Article Kha 3 of the "CNG/PETROL CHALITO 4 STROKE, THREE WHEELERS SERVICE NITIMALA, 2007" published on 22-5-2007 and subsequent amendment by notification dated 19-9-2011, both issued by Respondent No. 3 (Annexures B and C respectively) shall not be declared to have been made without lawful authority and is of no legal effect and/or to pass such other or further order or orders as to this Court seems fit and proper.

5. The petitioners are representing different associations of Chittagong Four Stroke Three Wheeler Auto Rickshaws and grievance of the petitioners of the aforesaid writ petitions are more or less same and, as such, to avoid unnecessary repetition the facts of the said four writ petitions have been summarized as under:-

6 . The petitioners are the owners of CNG Auto Rickshaws and as well as representatives of the CNG Auto Rickshaw Owners Association. For smooth running of the CNG Auto Rickshaws a Nitimala was published by the Government in the Gazette Notification on 22-5-2007 namely সিএনজি/পেট্রোল চালিত ৪ স্ট্রোক থ্রি হুইলার সার্ভিস নীতিমালা, ২০০৭ (hereinafter referred as Nitimala 2007). In Article Kha:3 of the Nitimala the economic life period of the CNG/Petrol driven four stroke three wheeler Auto Rickshaws (hereinafter referred to as Auto Rickshaw) were nine years from the year of manufacture. Subsequently, Government by it's policy making decision several times amended Article Kha:3 of Nitimala 2007 enhancing the economic life period of the Auto Rickshaws upto 10 years and 11 years.

7. Subsequently, during pendency of rule Government by way of amendment of the Article Kha:3 again enhanced the economic life period of the auto rickshaws upto 15 (fifteen) years vide notification dated 26-5-2014 subject to some conditions. In the present writ petitions some of the petitioners have challenged the original Nitimala 2007, some of the petitioners have challenged the subsequent amendment Kha:3 of Nitimala 2007 by which time to time economic life period of the Auto Rickshaws were enhanced and some of the petitioners have challenged the inter corresponding circulars of the Ministries and Bangladesh Road Transport Authority (shortly BRTA) informing decision of inter ministerial meeting recommending not to enhance further the economic life period of CNG Auto rickshaws as well as time to time amendment of the Nitimala, 2007. Some of the petitioners challenged the decision of the Government allowing more 4000 CNG Auto rickshaws to ply in Chittagong

Metropolitan area seeking direction upon the Government not to permit more 4000 CNG Auto rickshaws and further to enhance the economic life period of the CNG Auto rickshaws upto 30 years.

8. The Chairman, BRTA, as well as Secretary, Ministry of Communication being respondents in all the writ petitions by filling affidavit-in-opposition opposed all the Rules stating that the Government has got absolute authority to frame Rules or Nitimala for smooth running of the Auto Rickshaws and empowered to take decision and accordingly after proper consultation with the respective representatives of the interested groups i.e. representative of the association of auto rickshaws and as well as automobile experts, specially having report from Bangladesh University of Engineering and Technology (shortly BUET) Government framed it's Nitimala and amended the same time to time by its policy making decision. Further assertion is that the petitioners cannot challenge policy making decision of the Government or inter ministerial correspondences in writ forum and, as such, all the rules are liable to be discharged.

9. Mr. Shah Monjurul Haque, the learned Advocate appeared in Writ Petition No. 5295 of 2013, Mr. Motiur Rahman, the learned Advocate appeared in Writ Petition No. 4567 of 2013, Mr. Sirajuddin Ahmed, the learned Advocate appeared in writ petition No. 11546 of 2014 and Mr. Saifuddin Khaled, the learned Advocate appeared in Writ Petition No. 3715 of 2013.

10. Mr. Shah Monjurul Haque, the learned Advocate appearing for the petitioners contended that the economic life period of the four stroke CNG/Petrol driven auto rickshaws cannot be restricted by the Government as because all auto rickshaws are fit to run or ply for about 30 years and the Government by framing new Nitimala, 2007 and subsequently amending the Article Kha:3 of the Nitimala restricted the right of the petitioners. Learned Advocate submits that the petitioners invested huge amount of money in plying the CNG or Petrol Driven Auto Rickshaws. Learned Advocate again submits that if the Bangladesh Road Transport Authority (BRTA) at the time of fitness examination of auto rickshaws finds that it is in good condition and fit to ply on the road, the government authority cannot restrict its economic life by imposing restriction under Article Kha:3 of Nitimala, 2007. Learned Advocate again submits that there are adequate CNG auto rickshaws now plying in Chittagong metropolitan area but the authority without any survey and demand from the people at large most illegally took decision to give permit more 4000 auto rickshaws to ply in Chittagong Metropolitan Area.

11. Mr. Motiur Rahman and Mr. Sirajuddin Ahmed, learned Advocates appeared in Writ Petition Nos. 4567 of 2013 and 11546 of 2014 adopted the submission of Mr. Shah Monjurul Haque.

12. Mr. Saifuddin Khaled, the learned Advocate appearing in Writ Petition No. 3715 of 2013 added a new ground that as per section 53 of the Motor Vehicle Ordinance Government ought to discuss the matter with the representatives of the interested groups i.e. the representatives of the respective Associations of Auto Rickshaws while taking or changing any decision and Government changed the rules without hearing the grievance of the effected groups. He further submits that monopoly and arbitrary decisions of the Government cannot be imposed by amending Nitimala time to time and, as such, all the arbitrary decisions of the Government are without lawful authority and of no legal effect.

13. Learned Advocate further contended that if the auto rickshaws are found in good condition by BRTA while testing it's fitness, those ought to be allowed to ply and the

economic life of the auto rickshaws should not be restricted by framing Nitimala. Learned Advocate further submits that the Article Kha:3 of the Nitimala, 2007 and subsequent amendments were framed and done arbitrarily, as such, it should be declared illegal and without lawful authority.

14. Mr. Hasan MS Azim, learned Advocate for added respondent Nos. 10 to 14 appearing with Mr. Rafiul Islam, the learned Advocate for respondent No. 4 in Writ Petition No. 5295 of 2013, the Chairman, BRTA, contended that some of the writ petitioners have challenged the inter official correspondence/official letters in between the Ministries and the BRTA and all those are the absolutely inter official correspondences and those cannot be challenged in writ jurisdiction. However, some of the writ petitioners though have challenged Article Kha:3 of the Nitimala, 2007 and some of the writ petitioners have challenged subsequent amendments of the said Article Kha:3 of the Nitimala by which the economic life of the auto rickshaws were restricted and all those are the policy decision of the Government and the policy decision of the Government cannot be challenged in writ forum under Article 102 of the Constitution.

15. Learned Advocate further contended that it is the duty of the BRTA as well as the Ministry of Communication to see and control whether the CNG/Petrol Driven auto rickshaws are plying in the road in good condition or not. Mr. Azim further contended that though the Government by Article Kha:3 of the Nitimala, 2007 restricted the economic life period of the auto rickshaws, later, considering the representation of the effected representatives of the Auto Rickshaw Owner Associations and time to time by taking technical opinion from the experts of Bangladesh University of Engineering and Technology (BUET) as well as Chittagong University of Engineering and Technology (CUET) amended Article Kha:3 of the Nitimala and enhanced the economic life initially from 9 (nine) years to 10 (ten) years, then 10 years to 11 years and then to 15 years. Learned Advocate contended that Government again can enhance the economic life of the auto rickshaws by it's own policy making decision. Now Government has imposed some conditions specially to examine the auto rickshaws' Gas Cylinder from specific technical organizations and also imposed condition to take certificate from BUET or CUET are also a policy decision of the Government for smooth running of the Auto Rickshaws. So, all the impugned Memos relate to Government policy decisions and as well as inter official correspondences cannot be challenged before a writ Court while acting under Article 102 of the Constitution.

16. We have perused the writ petitions, affidavit-in-opposition, reply thereto and as well as the impugned Memos relating to economic life of the auto rickshaw and subsequent amendments thereto.

17. It appears that the writ petitioners initially challenged Article Kha:3 of the Nitimala, 2007 which restricted the economic life of CNG Auto Rickshaws at 9 (nine) years. Subsequently, vide Gazette notification dated 4-1-2011 Government amended Article K:3 of the Nitimala 2007 enhancing the economic life of CNG/Petrol Auto Rickshaws to 10 years but none challenged this amendment of the Nitimala. Subsequently, while Government again amended Article Kha:3 of the Nitimala vide notification dated 19-9-2011 enhancing the economic life of auto rickshaws to 11 years and while vide impugned letter dated 22-4-2013 (Annexure D to the writ petition No. 5295 of 2013) the ministry opined that it will not proper to enhance further the economic life of the auto rickshaws, the petitioners by Writ Petition No. 5295 of 2013 challenged the said letter dated 22-4-2013 by which the Ministry of Communication mere gave an opinion stating that it will not proper to enhance the economic life of auto rickshaws. It appears that the said impugned memo dated 22-

4-2013 is mere an inter official correspondence giving its opinion and no final decision was taken by the said memo. It further appears that during pendency of the rules by notification dated 26-5-2014 the economic life period of auto rickshaws was extended upto 15 years subject to some conditions. The petitioners initially did not challenge Article Kha:3 of the Nitimala, 2007 which limited the economic life of auto rickshaws and it's subsequent amendments on 4-1-2011 and 19-9-2011 enhancing auto rickshaws economic life but filed the present writ petition in the year 2013 and 2014 taking the grounds that while auto rickshaws are found fit to ply at the time of it's fitness testing by proper authority of BRTA it ought to be allowed to ply on the road and it's economic life should not be restricted. The respondents being regulatory authority legally empowered by the Government has every right to make or frame its policy and amendment thereto. With the question whether a particular policy is wise or foolish the Court is not concerned; it can only be interfered if any decision is made beyond the powers of the authority. In these writ petitions none has challenged the authority of the respondents in respect of their policy decision vide impugned memos. In regard to courts and policy we like to reproduce below the following words of a learned author as quoted in AIR 1991 SUPREME COURT 1153 referred to us by Mr. Hasan MS Azim, learned Advocate for the added respondents:

"The Courts are kept out of the lush field of administrative policy, except when policy is inconsistent with the express or implied provisions of a statute which creates the power to which the policy relates or when a decision made in purported exercise of a power is such that a repository of the power, acting reasonably and in good faith, could not have made it. In the latter case, 'something overwhelming' must appear before the Court will intervene. That is, and ought to be, a difficult onus for an applicant to discharge. The Courts are not very good at formulating or evaluating policy. Sometimes when the Courts have intervened on policy grounds, the Court's view of the range of policies open under the statute or of what is unreasonably policy has not won public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism. In the world of politics, the Court's opinions on policy are naturally less likely to reflect the popular view than the policies of a democratically elected Government or of expert administrators....."

"The considerations by reference to which the reasonableness of a policy may be determined are rarely judicially manageable....."

(Emphasis Supplied)

[See: "The Purpose and Scope of Judicial Review" by Sir Gerard Brennan in "Judicial Review of Administrative action in the 1980s" Oxford University Press.]

18. Moreover, it is the settled principle determined by our Apex Court also that the policy decision of the Government and inter official correspondence of the respective authorities cannot be challenged in writ jurisdiction if the respective authorities are legally empowered. This is not the case of the petitioners that the writ respondents were not legally empowered to frame rules and amendment thereto.

19. The Government/respondents being legally empowered with the consultation of the representatives and after having expert report from BUET and CUET within the territory of its policy making decision time to time enhanced the economic life period of the CNG/Petrol auto rickshaw and considering necessity and demand of people at large took decision to give permit more 4,000 auto rickshaws are all police decisions of the Government-respondents within their legal frame work and the impugned

memos being inter official correspondences cannot be challenged in writ forum. Under these circumstances there is no justifiable reason warranting interference with the impugned notifications. The writ petitions accordingly fails and the rules issued in the above mentioned writ petitions are discharged however without any order as to costs.

The ad-interim orders passed earlier by this Court are hereby vacated.

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