

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

Writ Petition No. 300 of 1995, with Writ Petition No. 1694 of 2000 In the matter of: An application under Article 102 (1) (2) (a) of the Constitution of Bangladesh.

And In the Matter of: Dr. Mohiuddin Farooque being dead his substitute Mrs. Syeda Rizwana Hasan ..... Petitioner.

(In W.P. No. 300 of 1995)

Bangladesh Legal Aid and Service Trust represented by its staff Lawyer, Mr. M. A. Mannan Khan..... Petitioner (In writ petition No. 1694/2000)

Versus Government of Bangladesh, represented by the Ministry of Communications and others.... Respondents.

Mrs. Syeda Rizwana Hasan with Mr. Md. Iqbal Kabir, and Mr. Shakil Ahmed Khan For petitioner, (In W.P. No. 300 of 1995)

Mr. M. I. Farooqui with Mr. Sadiqur Rahman and Mrs. Razia Sultana... For petitioner, (In W.P. No. 1694 of 2000).

Mr. Karunamoy chakma, A.A.G with Mrs. Syeda Afsar Jahan, A.A.G and Mr. Rajib - Al Jalil, A.A.G .. For respondents.

Mr. Humayun Kabir Sikder, .. For Respondent No. 8 Heard on 20-08-2001, 21-08-2001, 22-08-2001, 10-02-2002, 12-02-2002, 12-03-2002 and Judgment on 27-03-2002.

30.4.2002

Present: Mr. Justice M.M. Ruhul Amin And Mr. Justice Khademul Islam Chowdhury  
M.M. Ruhul Amin, J:

1. Writ Petition No. 300 of 1995 was filed by the Petitioner Syeda Rizwana Hassan, Director (Programmes) and Member, Executive committee of Bangladesh Environmental Lawyers Association (BELA), a Society registered under the societies Registration Act 1860 seeking direction upon the respondents to take all adequate and effective measures to check pollution caused due to the emissions of hazardous smokes from Motor Vehicles and the use of audible signaling devices giving unduly harsh, shrill, loud or alarming noise; and to take step within 8 weeks to activate the 5 centers with automatic computerized process that have already been constructed for giving fitness certificate so that unfit motor vehicles may not ply on the road.
2. The other writ petition No. 1694 of 2000 was brought by Bangladesh Legal Aid and Services Trust (Blast) represented by its staff Lawyer M. Md. Abdul Mannan Khan,

141/1 Segunbagicha, Police Station – Ramna, Dhaka – 1000 sought similar directions and also some more directions.

3. At the time of the hearing, the learned Assistant Attorney General Submits that in the affidavit – in – opposition filed by B.R.T.A. in Writ petition No. 1694 of 2000 it is stated that subsequent to a consensus between B.R.T.A. and the Auto rickshaw owner's Association and workers union, B.R.T.A. issued an order on 28.11.96 restricting new registration of 2 stroke engine run 2 wheel vehicles such as auto – rickshaws auto – tempos and Mishuk in the Metropolitan Cities as well as issuance of permit to these types of vehicles, which are more than 3 years old. The said order of B.R.T.A. was in force until its operation was stayed by this court on 18.8.97 in writ petition No. 3037 of 1997 filed by the Managing Director, Auto Cars limited an Assembler and Distributor of vespa 3 wheeler of Italian origin. He then submits that the writ petition No. 3037 of 1997 also should be heard along with the present two writ petitions and accordingly he prayed that these matters should be adjourned till one week after vacation. We find substance in the submission of the learned Assistant Attorney General.

4. The learned Advocate for the petitioner in Writ petition No. 300 of 1995 submits that if steps are taken to activate the automatic computerized process for providing correct certificate of fitness and if the centers start functioning, the problem would be solved to a great extent. In this connection the learned Assistant Attorney General submits that without instructions received from the authority he is not in a position to make any submission regarding the present position of those 5 automatic computerized centers. The learned Advocate for the petitioner then submits that a report from B.R.T.A. may be called for regarding the present position of those 5 centers. We also think that it will be proper to obtain a report from the B.R.T.A. regarding the present position of those 5 centers with automatic computerized process already constructed. Accordingly, let a report be called for from the Chairman, B.R.T.A. respondent No. 2, regarding the present position of those 5 centers with automatic computerized process already constructed for providing correct certificate of fitness to vehicles. The respondent No. 2 also will state in the report the expected date from which those five centers are likely to start functioning. The report is to be submitted positively by 14.10.2001.

5. The learned Advocate for the petitioner in Writ petition No. 300 of 1995 further submits that it is a mandatory provision of Rule 114(d) of Motor Vehicle Rules that each transport Vehicle namely stage Carriages, which include private buses, B.R.T.C. buses, mini buses etc. cannot be fitted with any other form of horns excepting a bulb horn. But no transport vehicle owner follows such Rules. She further submits that use of shrill horns including air horns are polluting air of the city of Dhaka. Accordingly, she prays for a direction that the provision of rule 114(d) of Bengal Motor Vehicles rules provides that every transport vehicle shall be fitted with a bulb horn. She then submits that an ad interim order may be passed directing the respondents to comply with the provision 114(d) of Bengal Motor Vehicle Rules, 1940. In this connection she further submits that similar directions were given in the case of Rabin Mukherjee and others versus State of West Bengal and others reported in AIR 1985 (Cal) 222. The learned Assistant Attorney General has also no objection if such an ad – interim direction is issued and further

submits that an ad – interim order may be given to the authority concerned for strict compliance of the provision of rule 114(d) of the Motor Vehicle Rules.

6. Considering the submission of the learned Advocate for the petitioner and the learned Assistant Attorney General and also considering the provisions of Rule 114(d) of Motor Vehicles Rules We direct the respondent No. 3,4 and 5 to strictly enforce and comply with the provisions of Rule 114(d) of Motor Vehicle Rules and to take adequate measures for enforcement of restrictions against the use of such electric and other loud, shrill, harsh horns by operators of the vehicles. We also direct the respondent No. 3,4, and 5 to issue notice, notifying all the transport vehicles operators about the restrictions provided in Rule 114(d) of the said Rules, the respondent No. 4 is directed to submit a report by 16.10.2001 regarding compliance of this court's order.

Let the matter be adjourned till one week after vacation.