



Star LAW report



The legal battle for a city without vehicular pollution

High Court Division
The Supreme Court of Bangladesh
Writ Petition No. 300 of 1995, with
Writ Petition No. 1694 of 2000
Dr. Mohiuddin Farooque being dead
his substitute Mrs. Syeda Rizwana Hasan, Bangladesh
Environmental Lawyers Association
..... 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.
Judgment: March 27, 2002.
Before Mr. Justice M.M. Ruhul Amin and Mr. Justice Khademul
Islam Chowdhury

Article 102 (1) (2) (c) of the Constitution of Bangladesh was invoked by Syeda Rizwana Hasan, a public interest litigant and Director (Programmes), Bangladesh Environmental Lawyers Association (BELA) seeking directions upon the respondents (1) to take all adequate and effective measures to check pollutions 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, (2) to ensure that the exemption of Motor Cycle from the requirement of certificate of fitness under the Motor Vehicles Ordinance, 1983 be withdrawn immediately (3) to adopt and install appropriate technology for providing correct certificate of fitness (4) to set Bangladesh standard for petroleum ensuring the reductions and removal of toxic and hazardous constituents from the same (5) to require all imported motor vehicles to be fitted with catalytic converters.

The Facts

The problem of air pollution from faulty motor vehicles has been universally identified as a major threat to human body and life by various scientific research, studies, investigations, reports, surveys conducted by various persons, agencies, institutions, both national and international and the agencies of the Government have highlighted the issue in their various reports and publications. The major cities of the country are exposed to innumerable environmental hazards many of which are typical to urban areas. The most threatening urban center is Dhaka which is the capital of the country. Some of the environmental hazards of the city are quite acute and incompatible with the conditions required for the growth of human life and ecology. The lives of the dwellers of the Dhaka City and its environment are subjected to many threats and injuries that originate from human actions and omissions. Amongst those the air pollution, especially from the faulty motor vehicles, have choked the air of the Dhaka City exceeding all tolerable and acceptable limits causing serious health hazards as irreparable damage to the physical environment and ecology. Such violations and the consequences are clearly visible in the Dhaka City which need no evidence to anyone who has been to the Dhaka City. The pollution from the motor vehicles have been the results of violations and non-compliance of the requirements of various laws and policies and the failures of the respondents to enforce the regulatory provisions and to perform their duties in accordance with the laws and policies. The incessant use of high noise making horns, like pneumatic horns by the trucks, buses, minibuses etc. and sounds from the faulty vehicular engines have filled the Air of Dhaka city totally disregarding laws and as an evidently flagrant violation of various regulatory prohibitions. Such excessive noise pollution is affecting the normal and safe life especially of the students, examinees, commercial establishments, offices, hospitals, clinics, educational institutions, the children and the sick etc. are the worst victims. The noise pollution is more acute in some particular areas of the city disturbing the public peace creating public annoyance. Being concerned about the severity of the vehicular pollution prevailing in the Dhaka city the petitioner along with BELA conducted an investigation into the reports, publications and the regulatory system on vehicular air pollution and possibilities of preventing the same. The investigation conducted by the petitioner and BELA showed that the total number of on road vehicles till 1994 were 3,37,012 out of which the percentage of the type of vehicles were approximately Bus: 4, Mini-Bus: 3, Truck: 9, Three wheelers: 10, Motor Car: 15, Jeep & Micro-Bus: 8, Motor Cycle: 48:6 and others 2: 40. Although the largest number of on road vehicle is Motor Cycles, they have been exempted by the respondent nos. 1 and 2 from the requirement of regular fitness certificate. Most of these motor cycles are driven by two stroke engines and are polluters of hazardous smoke and also of disturbing noise. The investigation of the petitioner and BELA also revealed that the numbers of Motor vehicles that have come for fitness certificate till 1994 were 96,192 which indicate that excluding the number of motor cycles, about 65,000 motor vehicles on road did not come to the BRTA for obtaining fitness certificate although they were required by law to do so or to surrender their certificate of registration or the Blue Book to the authority and no effective steps have been undertaken by the respondent nos. 1-6 to compel them to comply with the requirements of law. The issuance of certificate of fitness under the Motor Vehicle Ordinance 1983, which is issued for one year, does not entitle a motor vehicle to ply on the road even if the same become unfit before the expiry of the said period and in such cases the fitness of the said vehicle has to be cancelled by the authority.

The current procedure of granting fitness certificate by the respondent no. 2 to based on human judgment which is subject to error and corruption although the technology of ensuring fitness through automation is easily available and also cost effective and as such measures have been adopted almost in every country. The investigation of the petitioner and BELA further revealed that many of the vehicles used by the respondents and other Government agencies including those of the Transport Pool do not have fitness certificate as per records. Some of these vehicles are hazardous polluters. The current status of the scenario clearly manifest that a large number of vehicles emitting hazardous smokes and using pneumatic and other high noise making audible signals have been plying in the Dhaka city under the respondents nose defying the laws and policies and the respondents have failed to enforce the relevant laws, policies and standards in preventing the vehicular pollution of the country more particularly in the Dhaka city and hence failed to perform their statutory duties and responsibilities resulting in serious health and environmental hazards.

The degree and extent of vehicular pollution is further aggravated by the quality of petroleum products used by the vehicles containing various constituents which are too dangerous to health and may cause serious diseases like cancer etc. The quality of petroleum is further degraded through adulteration and adding of additives in it while carrying and refining. Besides other purposeful reasons, one factor of such contamination is caused by the oil tankers which carry all different types of petroleum products in the same container. The other qualitative issue is the lead-laced gas emitted because of the use of leaded petroleum severely affecting the lungs, liver, brain and the nervous system resulting in high blood pressure, IQ and memory-retentions damage among children and damage to fetuses leading to deformed babies.

The degree of vehicular pollution in Dhaka city areas has exceeded all limits and such concerns are being raised by public and private bodies and individuals repeatedly through the news papers and the state controlled electronic media of the country. All the matters pertaining to motor vehicles including smoke and noise control, road-worthiness, etc. are covered by various provisions of the Motor Vehicles Ordinance, 1983 (Ordinance No. LV of 1983), The Dhaka Metropolitan Police Ordinance, 1976 (Ordinance III of 1976), the Environment Pollution Control Ordinance, 1977 (Ordinance No. XIII of 1977), and the Dhaka City Corporation Ordinance, 1983 (Ordinance XL of 1983). After the issuance of the aforesaid Rule, the Bangladesh Environment Conservation Act, 1995 (Act. II of 1995) was enacted by the parliament and the said Act empowered the Director General of the Department of Environment (Respondent No. 6) to take all measures necessary to combat and arrest all kind of pollution.

The respondents in various documents admitted the ever deteriorating condition of air in the city on several occasions published from their respective offices. Considering the prevailing state of pollution, the Second Meeting of the National Environment Committee held on 04-05-97 being presided over by the Hon'ble Prime Ministers, included the pollution caused by the hazardous emission from motor vehicles as the first agenda for discussion. In the said meeting the Respondent No. 5, the Ministry of Environment and Forest, Expressed its seriousness that the pollution in the four metropolitan cities including Dhaka as caused by the motor vehicles is so acute and visible that the same may adversely affect foreign investment and tourism in Bangladesh. The Respondent No. 5 also admitted the harmful effect of hazardous vehicular emission on human health particularly on the mental and physical development of the children and stated that such emission was posing innumerable innocent children to a threat of continued deteriorating state. It was disclosed in the said meeting that 70%-80% of the motor vehicles plying on the streets is not road worthy. In the said meeting of the National Environment Committee, the Respondent No. 5 suggested a few measures to be undertaken to reduce hazardous air pollution caused by the motor vehicles to one third of the present state. The measures recommended by the said Respondent include, among others, the following
(3) take a greater attempt regarding fitness of vehicles.
(4) gradually phase out two-stroked engine vehicles and ban the plying of such vehicles that are older than three years.
(5) direct the Eastern Refinery to provide lead-free petrol
(6) effectively implement existing laws to prevent the use of high noise making horns.
Under the above circumstances, it is evident that the Respondents, although admitted the severity of the pollution from vehicles, have miserably failed to implement the respective laws, rules and regulations and also their own decisions taken in furtherance of the legal obligation and consequently vehicular pollution both in the form of emission and noise continues to persist at a much severe scale posing deadly threat to the life, health, safety and comfort of the City dwellers.

It is submitted that the supply, distribution and marketing of degraded quality and adulterated petroleum products are gross failure of respondent Nos. 11, 12 and 13 in the performance of their statutory and public duties which has put at stake the lives of the millions of the residents including the petitioner and his family and the visitors of the Dhaka City and its ecology. It is submitted that the aggravation of the miseries and ailments of the residents of the City and Subjecting the lives of the petitioner and his family to such threats that demonstrate the failure of respondent nos. 2, 5, 6, 9, 10, 11, 12 and 13 to provide environmentally sound petroleum and also require compulsory installation of catalytic converters with all the imported vehicles as necessary for implementing the National Environment Policy 1992 and for achieving the purposes and spirit of the Motor Vehicles Ordinance, 1983, the Environment Pollution Control Ordinance, 1977 and for safeguarding the fundamental rights guaranteed under the



Constitution.
It is also submitted that the respondent nos. 12 and 13 have failed in their public and statutory duties to provide an environmentally sound Bangladesh Standard on petroleum Specifying its constituents in line with national requirements and international standards.

The Process

The petitioner being seriously concerned and aggrieved by the failures of the respondents in the performance of their statutory obligations and the duties, issued a Notice of Demand for Justice on 17.7. 1994 upon the respondents but the respondent have failed to take any appropriate steps so far.

Being aggrieved the petitioner moved this Court and obtained the present Rule.

During pendency of the Rule the petitioner filed two applications, one seeking the following direction namely,

- (i). to ensure that the decision in the fiscal year (1999-2000) banning importation of leaded petrol into the country be upheld for the following years;
- (ii). ensure that all imported motor vehicles are fitted with catalytic converter from July, 2001.
- (iii). enforce restrictions against the use of such electric and other

loud and shrill horn as provided under section 139 of the Motor Vehicle Ordinance, 1983 and Rule 114 (d) of the Bengal Motor Vehicles Rules, 1940 within a period of three months from the date of issuance of the direction;

(iv) take immediate steps within eight weeks to activate the five centers with automatic computerized process that have already been constructed for providing correct certificate of fitness and thus ensure that no unfit vehicles ply on the roads and inform the Court of taking such steps.

(v) Set Bangladesh Standard for Petroleum in accordance with the international standards ensuring the reduction and removal of toxic and hazardous constituents from the same;

(vi) submit a report on compliance of the Order of this Court within the time frame as may be fixed by this Court.

Considering the urgency of the matter by subsequent application the petitioner sought for some direction upon the respondent in the following terms requiring them to;

(i) ensure that the decision to convert all government owned petrol/diesel driven vehicles into CNG operated vehicles be implemented within such period as may be fixed by the Court.

(ii) ensure that new and adequate number of CNG stations required to facility and promote the conversion of petrol/diesel driven vehicles into CNG are set up in the Capital City within such time frame as may be fixed by the Court.

(iii) prepare and submit report within four weeks in the form of an action plan setting out definite time frame and stating the measures to be undertaken to phase out/remove the two strokes three wheelers from the roads of the Capital City by the year 2003.

(iv) submit a report on compliance of the order of this court within time frame as may be fixed by this Court.

In writ petition No. 1694/2000 another application under Article 102 of the Constitution was filed by Bangladesh Legal Aid and Services Trust (BLAST), represented by Staff Lawyer Mr. Md. Abdul Mannan Khan on similar facts. The petitioner sought the following directions from this Court:

(a) Pass an order or orders issuing a Rule Nisi as to why the respondents should not be

directed to enforce and ensure air and atmosphere free from pollution in Dhaka by taking necessary measures including following:

- (1) Two strokes, particularly baby taxis should use lubricating oil designed for two strokes engines: Fuel and lubricating should meet appropriate standard at all stages from the production through distribution, to retail sale;
- (2) Octane level of standard be raised to 87 RON minimum required for baby taxis, Motorcycles and scooters and for passengers cars a minimum 91 to 92 RON is ensured.
- (3) Measures should be taken to reduce the level of sulfur initially to 0.5% in the long run.
- (4) The unlicensed sale of feel and low quality lubricants must be stopped.
- (5) The price gap between the kerosene oil and petrol be narrowed down to avoid adulteration.
- (6) To phase out the existing two stroked fleet within two years and to replace it with clear transport alternatives;
- (7) Ban on new licenses for two stroke three wheelers; in Dhaka and cancellation of 9 years old licenses of baby taxis.
- (8) Number of Compressed Natural Gas (CNG) is raised to meet the requirement and CNG stations be maintained properly round the clock.
- (9) Legal action be taken against the owners and drivers of the vehicles emitting polluted smoke into the air.

And as to why they should not be directed to report every six months of actions and result of the above directive to this Court. As the facts of both the Writ petitions are almost similar we do not like to restate the case of the petitioner of this Writ Petition separately.

The respondent nos. 6, 8, and 10 contested W.P. No. 1694/2000 by filing separate affidavits in opposition. In writ petition no. 300 of 1995 the respondent nos. 5, 6, 9 and 10 contested the Rule by filing affidavits in opposition. The respondent nos. 2 and 4 filed affidavit of compliance and denied the material allegations made in the writ petition. The respondents contended inter alia that they are trying to control air pollution from faulty and arrogant vehicles from emission of hazardous smokes and incessant use of high noise making horns such as pneumatic horns by the trucks, buses, minibuses etc. on two ways namely (1). Monitoring and (2) Regulatory. In the monitoring program, samples are collected from selected places in the city and analyzed in the DOE's Laboratory. The degree and gravity of pollution is detected on the basis of the results of the analysis reports. To augment prevention, control and mitigation measures, publicity and information dissemination is undertaken through mass media for general public awareness and also by informing the concerned people. Another important regulatory function being continuously effected, is the prevention of unlawful air pollution from vehicle by the summary trial and punishment on the spot of offenders through the activities of Mobile Courts. These Mobile Courts for dealing with unlawful air pollution by vehicles are a joint initiative of the Department of Environment with the Bangladesh Road Transport Authority (BRTA), the Metropolitan Police and the Dhaka Metropolitan Magistracy. On average, these Mobile Courts can apprehend and take action against 20 to 30 offending vehicles every day. It is submitted that the Department of Environment has already submitted proposal to make petrol lead-free and for minimizing sulfur in Petrol and diesel. It is further submitted that the respondents have already taken up a programme to convert vehicles for use of environmentally friendly CNG fuel instead of petrol or diesel. The department of Environment has recommended that all Government vehicles should be converted for CNG use as a first step. In the meantime, some of the organizations have started to convert their vehicles for use of CNG. It is also stated that the Government has taken proper step to convert 450 nos. of Government Pool Vehicles into CNG. All Government vehicles can be converted into CNG within next few months, if funding is available for the purchase of conversion kits and daily 8-10 Government vehicles can be converted after purchasing conversion kits. The Government have 6 filling stations at Dhaka and within next 2 months 2 more filling station will come up and it may be expected that another 6 filling stations could possibly be set up by December, 2002. It is also stated that for the sake of environment, appropriate measures are being taken to reduce the contents of sulfur in diesel up to 25% and the contents of it in petrol was reduced to 0.1% from 0.5%. It is submitted that the Government itself is very much concerned with the contents of sulfur in diesel and petrol and as such direction may not be necessary. The decision dated 28.8.2000 of Bangladesh Standards and Testing Institution shows that it is an unanimous decision to maintain the contents of sulfur up to 0.50% as the production of diesel with 0.25% sulfur contents is not at all possible with the present IRL and it is not available even by International Tender. The respondents also stated that they permitted importation of



petrol driven vehicles with built in catalytic converters by SRO No. 269 Ain/2001. The respondents contended that by SRO 208 Ain/2002 dated 6.7.2002 imports of 2 stroke engines of 3 wheelers (Tempo etc) have been banned. It is also stated that the Government have already taken various steps towards introduction of CNG system in the country and already 1575 vehicles have been converted to CNG system and this conversion process is going on. Experimentally 30 nos. of two-stroke baby taxi have been converted to CNG under a project of the Department of Environment.

The Deliberations

On perusal of the affidavit in opposition filed by the respondents and on consideration of the submissions of the learned Advocates it is clear that the respondents specially the department of environment does not deny that the air pollution in the city of Dhaka is mainly due to emission of hazardous smokes and incessant use of high noise making horns such as pneumatic horns by the trucks, buses, minibuses etc. and sound from the defective vehicular engines which have been plying in the Metropolitan city of Dhaka are threatening the lives of the city dwellers and others. It is the case of the respondents that the Government at the high level took some decisions to control the air pollution of Dhaka City from faulty and arrogant vehicles both from emission of hazardous smokes and incessant use of high noise making horns and from faulty vehicular engines plying in the City. We, however, feel some urgent preventive measures to halt sagging environmental pollution and degradation of Dhaka City one of the worst in the world, due to audible vehicular sounds and emission of hazardous black smoke from faulty and arrogant motor vehicles is indeed over due. Hence, in the prevailing situation, in our view ad-interim directions as sought for by the petitioners are necessary. Accordingly the following directions are given:-

- (1) To enforce Rule 114 (d) of the Bengal Motor Vehicles Rules 1940 and section 139 of the Motor Vehicles Ordinance, 1983 to enforce restrictions against the use such hydraulic and other loud and shrill horns including air horn and considering the problem to control such large scale violation and considering the fact that almost all the transport vehicles are fitted with such prohibited horns. We direct the respondents to issue notice and/or notification immediately notifying to all the transport vehicles operators about the restrictions provided in Rule 114 (d) and Section 139 of the Ordinance directing them to remove the electric, air and other loud and shrill horn and to use bulb horn in the Metropolitan City of Dhaka giving the operators 30 days time to change the hydraulic and air horn and to fit vehicles with bulb horn with the warning that failure to remove such prohibited horns from their vehicles, penal actions should be taken against them according to laws and it should be notified that no such transport vehicles should be given certificate of fitness if fitted with such horns which are prohibited under Rule 114 (d) of the Rules and Section 139 of the Ordinance. We also direct the respondents to proceed against the vehicle operators by taking penal action if they fail to remove such types of prohibited horns after the expiry of the period of 30 days which shall be provided for change of such horn by notification or by notice to be issued by the Government giving wide publicity through print and electronic media. The respondents should also take steps for notifying such restrictions regarding the use of such type of horn in respect of vehicles which enter into the Metropolitan City of Dhaka from other Districts and Metropolitan Cities so that they may be aware of such restrictions in the matter of use of such prohibited horn in the Metropolitan City of Dhaka.
- (2) To conduct tests of vehicles in the 5 Vehicles Inspection Centers already handed over to BRTA within 6 (six) months and to issue certificate of fitness of the vehicles including Motor Cycle (Two wheelers).
- (3) To implement the decision of the respondents for converting all government owned petrol/diesel driven vehicles plying in the Dhaka Metropolitan City into C.N.G operated vehicles within 6 (six) month.
- (4) To implement the decision of the respondents to set up six more C.N.G. filling stations in Dhaka City by December, 2002 and also to set up more CNG filling station from time to time to meet the requirements of vehicles and CNG stations be maintained properly round the clock.
- (5) to implement decision of the respondents that all Motor vehicles from July 2001 be fitted with catalytic converter and diesel particulate filter by December, 2002.
- (6) to set Bangladesh standard for petroleum in accordance with the international standards ensuring the reduction and removal of toxic and hazardous constituents from the same.
- (7) To phase out existing 2 stroke 3 wheelers by December, 2002 and to replace it with cleaner transport alternatives;
- (8) To impose ban on new licenses for two stroke 3 wheelers in Dhaka Metropolitan City and cancellation of 9 years old licenses of baby taxis with immediate effect.

The Status

This writ petition shall be deemed to be pending for the purpose of monitoring. The respondents are also directed to give publicity to the directions of this Court in print and electronic media on consecutive two days twice in a week for one month. The respondents are directed to submit reports every six months of actions and results of the above directions to this court. Let this order be communicated to all the respondents.

Khademul Islam Chowdhury, J. I agree.

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