



LAW alter views

LAW week



Revisiting Labour Act 2006

MD SEKENDER ALI MINA

SAFE and healthy workplace is a fundamental prerequisite for increased production. Safe workplace is a legal prerogative of the workers. To ensure health and safety at workplaces, proper and updated laws are needed. The Bangladesh Labour Act, 2006 (BLA 2006) has some health and safety regulations but it does not cover all the matters relating to health and safety at workplaces. Before enacting the BLA 2006, about 40 laws dealt with labour related matters. The BLA has repealed 25 different laws incorporating some of them like The Factories Act, 1965 (FA 1965) and The Dock Labourers Act, 1932 (DLA 1932) but very few updated obligations has been included in it. In recent times, trade and business has increased significantly in terms of nature and variety in Bangladesh. Workplace health and safety, work atmosphere, worker-employer relations etc are always changing in the diversified business arena of Bangladesh. The government has taken an initiative to amend BLA, 2006 to ensure the rights of the workers and matters connected therewith. In this backdrop, the following aspects of the law may seriously be taken into consideration:

Scope of application

Unlike previous legislation (which was limited to factories and docks) the BLA engulfs wider amplitude and scope, applying to all 'establishments'. But its list of exemptions [section 1(4)] is very complicated. BLA should be applicable to all establishments, other than a specified list of exemptions. And the list should be as limited as possible excluding "offices of or under the Government", "small factories employing less than five workers", "agricultural farms employing less than ten workers", "educational and research organisations" and "domestic workers". And "establishments" should be defined in a way so that the Act can be applied to the activities undertaken by establishments both inside and outside of their premises.

Duty holder

The safety, health and welfare duties contained in Chapters five to eight of the BLA, 2006 is not explicit about who is the 'duty holder'. It is assumed that the duty holder is in fact the 'employer' in control of the establishment. But many cases, 'employer' cannot be identified clearly for imposing obligations for ensuring



health and safety.

This confusion can be easily resolved by reverting back to the concept of 'occupier' of Factories Act, 1965. The BLA should have a provision attributing the duties upon the 'occupier' who is in the control of the establishment. It should recognize the definition of the term 'occupier' as given in the Factories Act 1965, and also make clear that in relation to a construction site, the occupier is the developer or overall contractor of the site.

Health, safety and welfare duties

The health, safety and welfare duties required for 'establishments' are set out in chapters 5, 6, 7 and 8 of BLA 2006. In addition, section 205 of the BLA 2006 requires establishments employing more than 50 workers to set up a 'participation committee'. One of its functions is to 'improve and maintain safety, occupational health and working conditions'. The amendment should focus on general duty on occupiers along with new provisions for providing information, training, safe systems of work etc to the workers as well as supervision, risk assessment; personal protective equipment (PPE), noise, avoidance of fire and medical surveillance.

Enforcement

As per section 61(1) of the BLA, an inspector can serve an order on an employer in writing to make specified changes within a specified

period of time if any part of a building or its machinery is 'dangerous to human life or safety.'

In addition, enforcement can take place through prosecution. There are five offences under the BLA 2006 specifically relating to health, safety and welfare the selling of unguarded machinery, failure to give notice of an accident, a breach causing death, a breach causing grievous bodily harm and a breach causing any harm. Punishment can also be enforced under section 307 for breaching any obligation under the BLA. All criminal prosecutions must take place in the Labour Courts. Proceedings for any criminal offence can be instituted not only by Factory Inspectors but also by an "aggrieved person or trade union" within six months of an offence (Section 314). To ensure proper enforcement of BLA 2006 the inspectorate should be given some new powers and functions such as power to prohibit or restrict certain chemicals, work processes etc, power to fix exposure limits, power to take action following a reportable death etc. In addition, the initiation of the prosecution period should be increased upto one year.

Apart from specified government officers, section 313 only allows aggrieved workers and aggrieved trade unions to initiate criminal cases. That results very few criminal cases even except one in Chittagong Labour Court involv-

ing breaches of health, safety and welfare duties have been brought before the labour court. There should be a provision by which registered NGOs can initiate criminal cases for health, safety and welfare offences after taking consent of the Factory Inspectorate.

Compensation

Chapter 12 of the BLA 2006 sets out that an 'employer' is liable to pay compensation to an injured worker or, following a death, to the dependents. Here the duty to pay compensation should be placed on 'occupier' instead of 'employer'. Under section 150(8) (b) only those workers "appointed to a post under the Fourth schedule" can obtain compensation. This contains a number of exemptions including for example those employed in: loading-unloading or transport of materials; the setting up of tube wells, and any other kind of water pump; and in earth cutting or the breaking up of bricks or stone. In addition some of the subsections are not clear. Moreover, it is not consistent with those establishments which are under an obligation to abide by health and safety duties in the BLA 2006.

The preferred approach is to remove this schedule entirely, so that an employed worker is entitled to compensation whatever the job or position that he or she holds.

The BLA also sets out that the employer must deposit Tk 1 lakh to the labour court for a deceased worker as compensation while Tk 1.25 lakh for 'permanent total disability' of a worker. The Tk 1 lakh is too small for the dependent family. So, it should be Tk 2.5 lakh. In relation to the serious permanent injury the sum should be Tk 3 lakh.

It seems that the above points hold much substance to be incorporated in the proposed amendment of the Labour Act. It is true that the law had introduced some significant aspects like retirement benefit, death benefit, appointment letter, enhancement of compensation amounts both for death and permanent disability, introduction of provident fund for workers, punishment for sexual harassment at workplace etc. But due to lack of enforcement and other shortcomings, as mentioned above, the law loses its efficacy. Hence revitalization of the labour law is necessary.

The writer is Programme Director, Safety and Rights Society, Dhaka.

BOOK review



Customs valuation: Law and practice

Title: WTO Agreement on Customs Valuation Law and Practice
Author: M. Azadul Islam, Advocate
Publisher: CCB Foundation
First Published: February 2010
Pages: 290
Price: Taka 1000.00

THE World Trade Organization came into being on 1 January 1995 with as many fifteen Agreements and seven Understandings on the Various Articles on GATT including an update on Implementation of Article VII of the GATT terming "The Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994" i.e. WTO Agreement on Customs Valuation and shortly Agreement on Customs Valuation (ACV). Customs valuation practices are subject to the WTO Agreement on Customs Valuation which mandates that the customs value of imported goods, to the greatest extent possible, should be the transaction value, that is, the price paid or payable for goods. However, the valuation fraud is frequently reported as a major problem in developing countries and many of them still find that implementing the ACV presents one of the most challenging aspects of customs work. Valuation work is particularly difficult in some countries in which the reliability of commercial invoices tends to be poor. Substantial efforts have so far been made to adopt ACV principles in Bangladesh; yet, most observers realize the valuation practice lacks proper implementation especially due to lack of mass awareness about the intrinsic valuation principles. In recognition of this, Mr. M. Azadul Islam prepared a book titled "WTO Agreement on Customs Valuation Law and Practice" as a handbook to provide guidance to the many organizations and individuals involved in implementation agreement on customs valuation. This book draws attention on the customs valuation history and range of specific issues important to know for those who are somehow linked with import and legal practitioners on customs valuation of imported goods. It also draws on the experience of the author with extensive practical experience in the field and is complemented by a number of case laws on customs valuation. The issues as raised are of most important for valuation purposes in day-to-day work of the customs officials as

well as the core issues for settlement of disputes on customs valuation.

This book is comprised of eight chapters, two annexure, glossary, alphabetical index and references. Chapter 1 addresses the historical developments of Customs Valuation especially in 19th century. An attempt has also been made to address the meaning of customs valuation briefly. Chapter 2 contains Customs Valuation Agreement with comments. These comments are incorporated following specific provisions of the agreement highlighting every important factor as contained in those provisions. WTO Agreements on Customs Valuation is comprised of a General Introductory Commentary, four parts having twenty-four Articles, three Annexure including Explanatory Notes for Article 1 to 15 of the Agreement. Two Ministerial Decisions have also become a part of the Agreement and, therefore, these two decisions have also been accommodated with the texts, comments as well.

Chapter 3 refers to some judicial cases on the valuation practice in both jurisdictions of Bangladesh and India. These decisions have been quoted briefly and the reader interested for further study may search in line with the references as mentioned in this chapter. For easy searching and understanding a subject wise case index has also been prepared. This will certainly help readers' searching on particular issues on customs valuation.

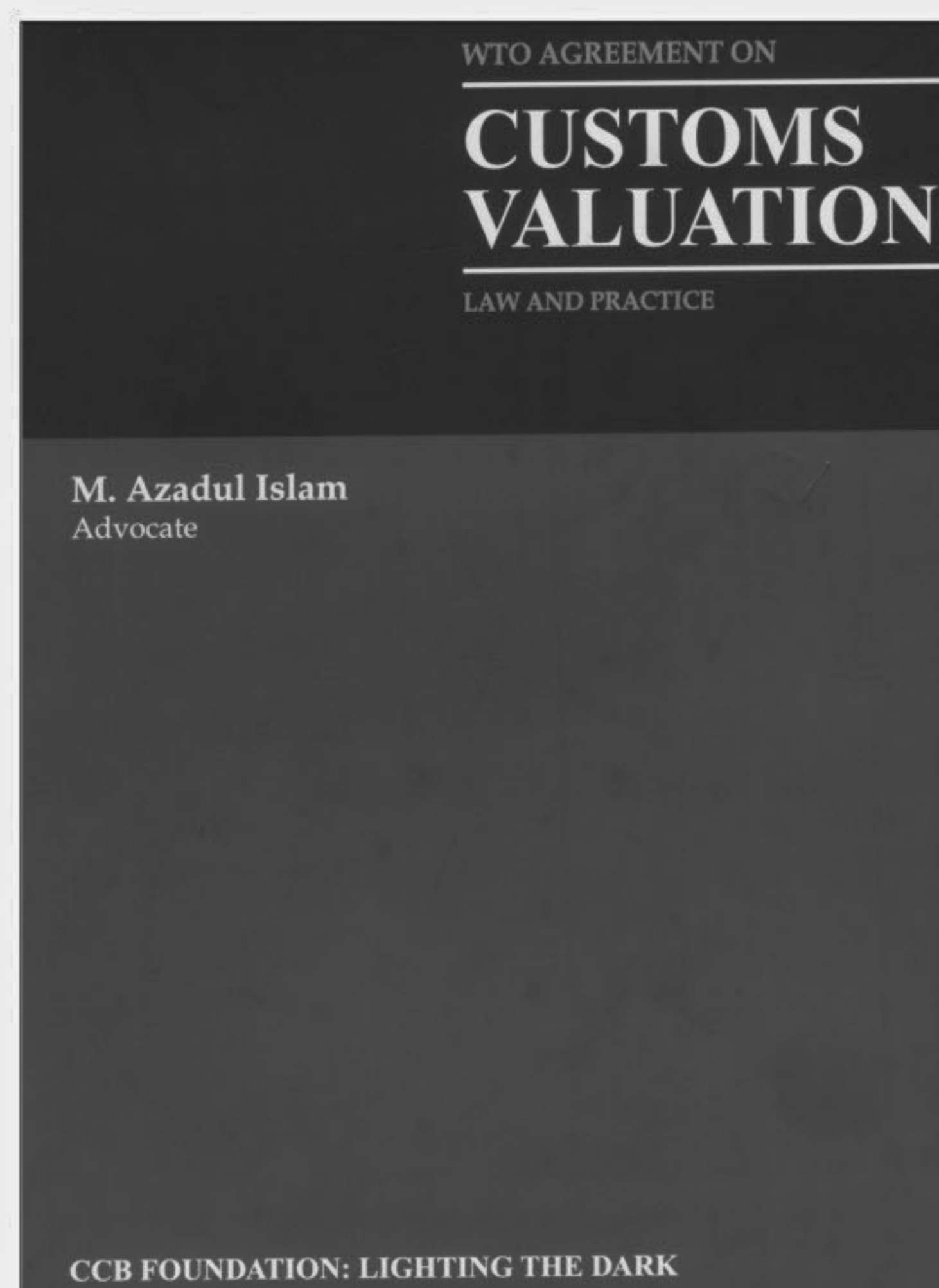
Chapters 4 and 5 have especially been prepared for the Customs officials. These chapters have been formulated in line with the revised and updated version of the WCO Customs Valuation Control Handbook, which serves as a practical guide for customs officers in all countries applying WTO Valuation Agreement. Chapter 4 deals with the required documents, which are important for valuation purposes, and also specifies some areas where customs authority should pay more attention. Chapter 5 elaborates how the documents are to be verified and what measures are to be taken in certain circumstances.

Chapter 6 highlights the activities of the pre-shipment inspection agencies with regard to the valuation for customs purposes. PSI Companies are primarily engaged in developing countries to help customs authorities by providing valuation opinion amongst other services for which they are mandated. Chapter 7 is devoted to

make an analysis as to the application of WTO Valuation Agreement in Bangladesh. The findings as reflected in this chapter are specifically based on the number of cases challenging customs valuation in the High Court Division of the Supreme Court of Bangladesh and numerous review cases as are dealt by the lawyer author on behalf of Intertek Bangladesh Limited - a world renowned reputed PSI Company. Author believes that most issues have been covered regarding practice of ACV Rules by the concerned customs officials, importers as well as PSI Companies. And that all interested readers including professionals will find it useful in ascertaining the core issue for correct application of the ACV.

Chapter 8 signifies the WTO Valuation Agreement and implementation problems and requirements for correct application with a synchronized idea as to the customs valuation practice around the world. Few suggestions have been incorporated for the proper implementation of the Agreement especially in the developing countries, which lack proper mechanism to fulfill its obligation under the agreement. The Agreement on the Implementation of Article VII of the GATT 1994 was adopted by Bangladesh under the Customs Valuation (Determination of Price of Imported Goods) Rules, 2000. The original Bengali text along with translation in English has been annexed. A glossary of the commercial terms and subjective index has been prepared for easy references.

This contents of this book are aimed at several audiences firstly the importers and their legal counsels; secondly, the customs officials; thirdly, the policy makers and trade bodies and last but not the least the Bench and the Bar - all who did lack single book on the modern customs valuation when dealing with a case on this issue. As this is first of its kind here in Bangladesh, this will definitely will bring positive results in shaping customs valuation practice with a picture when there will be little less possibility to misinterpret and misapply the valuation principles what the State is obliged to implement in revenue collection. The book is of greater interest in the customs revenue issues. The object is clear to help reach valuation agreement to all interested audiences, which is of special importance. The main agreement and the local laws have been illustrated thoroughly and it will be



useful to the intended audiences.

Author's opinions are made on the experiences while working the at all level of dealing with the valuation principles and it explores issues to rethink on the current practice on this matter. Case laws are mentioned with specific issues which are very pragmatic approach and useful but this could be made more understandable if Author could mention the reference of the Supreme Court of India and few more valuation cases in Bangladesh. This book could be more convincing if there were certain discussion on the provisions of section 25 of Customs Act to a certain extent.

The book is not of that kind to be encyclopedic rather deliberately selective so that it can be fruitfully used while any issue on customs valuation is in dispute. It avoids many general issues and effort has been given to technical issues that are well covered and successfully provides guidelines as easy refer-

ences manual which will help designing and implementing customs valuation and its reform needed for overall modernization to enable customs to fulfill its role and help valuation practitioners in establishing their arguments in accordance with the international law of customs valuation. This book contains a wealth of practical information on the context and operational modalities for all stakeholders in revenue sector and provides, on the basis of experiences and facts, a clear map to the effective implementation of modern valuation principles. It is both very comprehensive and easy to consult and certainly has what it takes to become a reference manual for everyone striving implementation ACV rules. The combination of knowledge, experiences and thoughts on this specialized matter timely justifies the author to present a book of this kind.

-Law Desk.

3 Rid officials face trial in absentia

A Dhaka court said the three Rid Pharmaceuticals officials, charged with manufacturing adulterated paracetamol syrup, would be tried in absentia. Judge Mohammad Abdul Majid of the Drug Court passed the order as the accused -- Director Abdul Gani and Pharmacists Mahbulul Islam and Enamul Haque -- failed to appear before the court within the deadline. Upon receipt of a report from Brahmanbaria police on execution of arrest warrants against the three, the same court on April 25 asked the authorities concerned to publish advertisements in two Bangla dailies asking the officials to appear before it by May 26. - *The Daily Star*, May 27, 2010.

SC lawyer faces music for forgery

The High Court for the first time has directed the Bangladesh Bar Council to cancel enrolment of Supreme Court lawyer MA Hamid for committing forgery in filing a writ petition with the court. The court asked the Bar Council and the Supreme Court Bar Association to prevent Hamid from doing legal practice in any court. The HC bench of justices AHM Shamsuddin Chowdhury Manik and Md Delwar Hossain gave the orders after reviewing previous records of MA Hamid, who allegedly submitted forged documents to another HC bench. The court said MA Hamid submitted a fake certificate to another HC bench of Justice AFM Abdur Rahman for having a court order in his favour. But the bench then did not take any action against him considering his old age. - *The Daily Star*, May 27, 2010.

HC asks cops to explain purposes

The High Court (HC) issued a suo moto rule asking the police authorities to submit to it within seven days a report on why they requisitioned vehicles in the capital. The court also asked them to state in the report whether the requisitioned vehicles are used for public purposes, and whether the owners or drivers of those are given compensation and payment at market rate. The inspector general of police, commissioner of Dhaka Metropolitan Police (DMP) and deputy commissioners (traffic) of the DMP have been made respondents to the rule. An HC bench comprised of Justice AHM Shamsuddin Chowdhury Manik and Justice Md Delwar Hossain issued the rule following press reports on requisition of vehicles. - *The Daily Star*, May 26, 2010.

Warrant against Thaksin over anti-govt protests

A Thai court has approved an arrest warrant for ousted leader Thaksin Shinawatra on terrorism charges related to recent anti-government protests. The nine-week protest paralysed parts of Bangkok and left more than 80 people dead. Many of the protesters were supporters of Thaksin, and the Thai government accuses him of fomenting the unrest. In a separate development, authorities have extended an overnight curfew in Bangkok and 23 provinces. A curfew has been in force since the government operation to disperse protesters on 19 May and the subsequent fires and unrest across the city. - *The Daily Star*, May 26, 2010.

Mosharref, Saydee sued for zakat scam

The Islamic Foundation filed a case against former BNP state minister for religious affairs Mosharref Hossain Shahjahan, former Jamaat lawmaker Delwar Hossain Saydee, and two others, on charges of misappropriating Tk 1.28 crore from the government Zakat Fund. The Daily Star called all four accused last night, but could only reach Saydee and Mosharref, both of whom termed the case as baseless. The foundation's Finance and Accounting Director Aiyub Ali Chowdhury filed the case with Sher-e-Bangla Nagar police station. This is the first time the organisation filed such a case since its establishment in 1975. - *The Daily Star*, May 25, 2010.

Govt wants judiciary to be more independent

The government is planning some major initiatives to promote democratic political culture, make parliament effective, streamline the judiciary to make it more independent and combat corruption. This was contained in the draft perspective plan for 2010-2021 which was placed at the cabinet meeting by the Planning Commission. However, the recent appointments of judges in higher court and the government move to amend the anti-corruption act sparked controversy. The perspective plan said, "There are complaints about the attempts at politicisation of higher level of the judiciary, especially through judicial appointments." It said the process of appointments in higher level of the judiciary could be revamped through open parliamentary hearing where members of the parliamentary committee concerned could question aspirants for such posts about their qualifications, and fitness. - *The Daily Star*, May 25, 2010.

Stop harassment of owners, drivers

The High Court directed the government to stop harassment of owners and drivers during requisition of vehicles in the capital. The bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Md Delwar Hossain came up with the order in response to a writ petition. It also issued a rule upon the government to explain within two weeks why section 103(Ka) of Dhaka Metropolitan Police Ordinance-1976 should not be declared illegal. Under the section, the police requisition vehicles in the capital. Earlier in the day, Human Rights and Peace for Bangladesh (HRPB), a rights organisation, filed the petition challenging legality of the section. - *The Daily Star*, May 24, 2010.

DB official, 5 other cops sued for 'extortion'

A businessman filed a case against an assistant commissioner of the Detective Branch of police and five other policemen with a Dhaka court on charge of demanding Tk 20 lakh as "extortion" from him. The accused are DB Assistant Commissioner Motiur Rahman, Inspector Mohammad Kibria of DMP and four unknown DB personnel. Zahirul Haque Babul, proprietor of Ms Zahir Dairy Farm located at Dakkhin Manda in the city's Sabujbag area, filed the case with the chief metropolitan magistrate's (CMM) court. After the hearing, Metropolitan Magistrate M Shahadat Hossain recorded the statement of the complainant and fixed today for the court order. - *The Daily Star*, May 24, 2010.

No confusion over war trial

Law Minister Barrister Shafiq Ahmed reiterated the war criminals would be tried and there should no confusion about it. "The government has already taken all necessary steps with special allocation of funds for the trial of war criminals," he said adding that none will be able to stop it by dishing out misleading statements against the trial. He made the remarks while talking to journalists after a workshop on Sensitisation of Adolescent Issues held at BRAC Inn Centre. Concerned Women for Family Development organised the workshop. Professor of Dhaka University Women and Gender Studies department Mahmuda Islam presided over the workshop. - *The Daily Star*, May 23, 2010.

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You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; e mail: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net