

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)**

**Writ Petition No. 2348 of 2000**

IN THE MATTER OF:

An application under Article 102 of the  
Constitution of the People's Republic of  
Bangladesh

-And-

IN THE MATTER OF:

Sheikh Abdul Ali and another

.....Petitioners.

-VS-

Divisional Forest Officer, Sylhet, Forest Division,  
Sylhet and others.

.....Respondents.

Mr. M Khaled Ahmed, Advocate

.....for the petitioners

Mr. Tushar Kanti Roy, DAG with

Mr. Md. Salim Azad, A.G.G with

Ms. Anis ul Mawa, A.A.G with

Ms. Nazma Afreen, A.A.G

.....For the respondents.

**Heard on: 20.11.2023.**

**Judgment on : 23.11.2023**

**Present:**

**Mr. Justice Mustafa Zaman Islam**

**And**

**Mr. Justice Md. Atabullah**

**Mustafa Zaman Islam, J;**

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why saw mill licence Rule 1998 published in Bangladesh Gazette dated 03.12.1998 Annexure-D to the petition and Memo no. 1455/17-5

dated 10.02.2000 Annexure-G to the petition issued by the respondent no.1 should not be declared to have been made without lawful authority and is of no legal effect and why direction should not be issued upon the respondents to renew the petitioners license for saw mill and/or such other or further order or orders passed as to this court may seem fit and proper.

The facts necessary for disposal of the Rule in short are that the petitioners are Businessmen of repute, trading in timber by means of sawing stocking and selling. The petitioners with a view to establish a saw mill in his locality filed an application before the Divisional Forest Officer, Sylhet, by the name of M/s. Modern Furniture and saw mills with permission given by respondent no.1 in plot no. "B" 38 and B39 BSCIC Industrial Estate Gumra Moulvi Bazar P.S. and district-Moulvi Bazar who after due consideration as regards site of saw mill bonafide of the application in the light of the requirement of law granted him permission/licence vide memo no. 704/17-5 dated 30.01.1996.

The Petitioners, thereafter, under permission as per annexure-A established the saw mill at the place mentioned above and put the saw mill on commission at huge expenses the sawmill has been apparating since 1996 catering to the need of the peoples to the locality and surrounding areas. The petitioners have also been paying all required taxes a copy of the rent receipts for 1996, and that for 1998 are annexed. The other rent receipt with kind leave of the court shall be produced at the time of hearing.

The M/S. Modern furniture and saw mill hereinafter referred to as the sawmill has been apparating at the mill site in accordance with terms and condition laid down in the permission letter and also by law at no point of time any allegation as to the performance of the petitioners in running the sawmill in

violation of any law, any condition laid down for the purpose. The respondent no.1, Divisional Officer, Sylhet forest Division last renewed the licence upto 30.06.1999 vide memo. No. 4385/17-5 dated 30.06.1998 under the condition laid down therein, the petitioners abide by the condition and there is not even any allegation of violation by them. Meanwhile, Respondent no.2 Secretary Ministry of the Environment and Forest issued Gazettee notification dated 03.12.1998, section 8 whereof reads as follows:-

“করাত কল স্থাপন ও পরিচালনায় কতিপয় বিধি নিষেধ: (১) সংরক্ষিত, অর্পিত ও যে কোন ধরনের সরকারী বন ভূমির সীমানা হইতে অথবা বাংলাদেশের আন্তর্জাতিক সীমানা হইতে ১০.০০ কিমি মধ্যে পৌর এলাকা ব্যতিত কোন স্থানে কোন করাত কল স্থাপন বা পড়িচালনা করা যাইবে না। শর্ত থাকে যে, এই বিধি মালা বলবৎ হইবার তারিখে অনুরূপ কোন স্থানে কোন করাত কল বিদ্যমান থাকিলে উহা উক্ত তারিখ হইতে ১৮০ দিনের মধ্যে বন্ধ করিয়া দিতে হইবে।” Noted that the petitioners impugns the aforesaid Gazette Notification.

The petitioners while running their sawmill served with notice under memo no.1133 (400) 17-5 dated 22/2/99 issued by the respondent no.1 Divisional forest officer, Sylhet forest division the Government decided that no sawmill would be establishment within 10 kilometer distance from the government forest area or from the international boundry area of Bangladesh except the area within municipality. The said memo further directed the petitioners to apply for fresh issue for licence in from (Ka) under section 3(2) of the sawmills rules if the petitioners sawmill falls beyond the aforesaid prohibited area. Pursuant to the aforesaid notice dated 22.02.1999, the petitioners duly filed the application in from (Ka) under Rule 3(2) and 6(1) of the Sawmil Rules on 09.06.99 before the respondent no.1 with giving in all particulars with deposite of taka 2000/- by way of Challan on 09.06.1999 for issuance of licence.

The respondent no.1 Divisional forest officer, Sylhet vide memo. No. 1455/17-5 dated 10.02.2000 cancelled the sawmill licence under Rule 8(1) of the Sawmill licence Rule 1998 for reason of the sawmill having fallen within prohibited area and further directed to stop operation of the sawmill by 20.02.2000 failing which the sawmill would be stopped by the concerned authority.

It is stated in the writ petition that he petitioners applied to Bangladesh small and cottage Industries, thereafter referred to BSCIC for getting plot to the purpose of setting up sawmill in the placed mentioned above. Accordingly, BSCIC vide Shina/BSCIC Mou1/P-12/95-96/83(3) dated 07.02.1996 and given possession by memo no. I/E/BSCIC/Mou1/P-12/95-96/122 (4) dated 13.04.1996. Mentioned here that the petitioners obtained loan for the purpose of sawmill business from the Pubali Bank by sanction letter dated 09.12.1997.

The modern furniture and Sawmill is a partnership concern, petitioner No. 1 is the managing partner and petitioner No. 2 is the partner of the said concern. The petitioners obtained the licence in 1996 as per existing law and till to-date there is not even any allegation of violation of any law or Rules or condition laid down in the licence and therefore the impugned action is not in accordance with law. The law prevalent at the time of establishment of the Saw Mill has all through been abided by and the petitioners thus have the right to continue running the saw as per the said law. The subsequent Saw Mill Licence Rule 1998 by Gazette Notification dated 3.12.1998 has no manner of application to the saw will established in 1996.

In supplementary affidavit filed on 21.05.2000 by the petitioners stating that an application by the petitioners before Divisional Forest Officer in the name of M/S Purbasha B-386 and B-39, thereafter, the name has been changed

to M/S Mordern furniture and saw mills with permission given by the respondent no.1 in plot no. B-38 & BSCIC Industrial Estate, Samra, Moulvi Bazar who after due consideration as regards site of the saw mills bonafide of the application in the light of the requirement of law granted them permission licence vide memo dated 30.01.1996.

At the time of hearing, another supplementary affidavit filed on 19.11.2004, BSCIC issued a memo dated under the signature of General Manager in the meeting its 528<sup>th</sup> of BSCIC taken decision as follows:-

“বিসিকের যে সমস্ত শিল্প নগরীতে পর্যাপ্ত প্লট খালি আছে সে সমস্ত শিল্প নগরীতে স’ মিল স্থাপনের ব্যাপারে ইতোপূর্বে ৪১২ তম সভায় গৃহীত নিষেধাজ্ঞা প্রত্যাহার করা হলো যা মন্ত্রণালয়কে অবহিত করা যেতে পারে।”

Since, Sawmill is situated in a BSCIC plot and BSCIC has already withdrawn the restriction in it earlier 412<sup>th</sup> meeting and this saw mill specially allowed by BSCIC for the purpose of Modern Furniture and Sawmill which is a specially Cottage only to develop also invested huge money by taking loan of tk. 7 lakh till today.

Finding no other remedy the petitioner have come and moved before this court and obtained the present rule.

Mr. M Khaled Ahmed, the learned Advocate appearing for the petitioners submits that the petitioners invested huge sums of money in their business in respect of setting up and keeping the saw mill in operation they has also obtained Bank Loan for development of their saw mill. By doing the said business they earns their livelihood and that of their family members. The impugned order for cancellation of licence and stoppage of his saw mill is clearly in violation of fundamental right laid down in Article 31 and 40 of the Constitution of the People's Republic of Bangladesh inasmuch as the

petitioners have been prohibited by the impugned orders and business of running their saw mill inasmuch as the timber business by running a saw is a lawful trade and business within the territory of Bangladesh and the said business the petitioners have been doing lawfully since 1996. He submits that the petitioner has taken lease of the case land for the special purpose of the furniture shop along with sawmill for 99 years which is evident from annexure-H to the writ petition wherein the lease deed caption is that "কার্ঠের আসবাবপত্র ও ক্রান্ত কল" in area of 6000 (six thousand) without cancelling the lease and without proper inquiry and show cause notice and before cancelling the licence of sawmill which adversely touching a persons pecuniary interest more than that, the affects a fundamental rights of a citizen to conduct any lawful trade on business subject to certain restriction imposed by law, the court would always insist that an authority exercising such a drastic power of cancellation acts strictly according to law and always with fairness as such impugned order/memo is liable to be declared without lawful authority and is of no legal effect. He also submits that impugned order indirectly taken right of property because it furniture and sawmill is stop by the impugned order petitioner allowed for 99 years by BSCIC (Govt.) if restriction is acted upon plot will be invalid because purpose of purchasing in furniture and sawmill unused their by petitioner right of property impliedly taken way that is petitioner fundamental rights have infringed by impugned order therefore same is without lawful authority and is of no legal effect.

At this juncture, Mr. Tushar Kanti Roy, the learned Deputy Attorney General appearing for the respondents opposes the Rule.

We have considered the submissions of the learned Advocate for the petitioner and the learned Deputy Attorney General and gone through the Writ Petition.

It is pertinent to mention here that BSCIC has taken a decision that it has already withdrawn the restriction in its of earlier 412<sup>th</sup> meeting and this sawmill specially allowed by BSCIC for the purpose of Modern furniture and sawmill. Admittedly, it was amended / changed in the name of sawmill (license) Rules-2012 and BSCIC Industrial Zone, Moulvibazar is nearest to the Pourashava as like as town or pourashava area in Sawmill (lincense) Rule -1998, There was restriction 10 mills from government forest area and 10 mills from International land demarcation (border area). As could be seen that this Saw mill 20 kilometers from border area and 14 kilometers from government area of Sreemangal and without any inquiry any chance or show cause restriction imposed by the impugned order is against the settled principle of natural justice. In support of that contention, Mr. Ahmed, cited a decision reported in 49 DLR (AD) 177 wherein held that-

“Natural Justice- cancellation of licence-the cancellation of a licence is a serious matter adversely touching a person’s pecuniary interest. More than that, it affects a fundamental right of a citizen to conduct any lawful trade or business subject to certain restrictions imposed by law. The court would always insist that an authority exercising such a drastic power of cancellation acts strictly according to law and always with fairness.”

At the feg end stage, Mr. Ahmed, referring to sub section 11 of section 2 of the “ বনজ দ্রব্য পরিবহন (নিয়ন্ত্রণ) বিধিমালা-২০১১” (SRO no. 107- আইন/২০১১) submits that in this case furniture mart exists along with setting up of Saw mill,

therefore, the বনজ দ্রব্য পরিবহন (নিয়ন্ত্রণ) বিধিমালা-২০১১ also have to follow the provision of section 2(II) of the said Bidimala. The relevant section 2(II) runs thus:-

(১১)“ ফার্নিচার মার্ট বা টিম্বার প্রসেসিং ইউনিট” অর্থ যে কোন ধরনের ক্ষুদ্র শিল্প যেখানে বানিজ্যিক উদ্দেশ্য বনজদ্রব্য চেরাই, কর্তন বা অন্য কোন উপায়ে ইহার আকারের প্রয়োজনীয় পরিবর্তন, সংযোজন প্রক্রিয়াজাতকরণ বা সংরক্ষনের মাধ্যমে ব্যবহার উপযোগী করিয়া তোলা হয়।-

Having considered the facts and the law involved in the case, the ends of justice would be best served if directing the concerned authority to take steps regarding furniture mart into with setting up of saw mill in accordance with law.

In view of above, the Rule is accordingly, disposed of.

The respondents are directed to take necessary measures in the light of বনজ দ্রব্য পরিবহন (নিয়ন্ত্রণ) বিধিমালা-২০১১ (SRO no. 107- আইন/২০১১).

Communicate the judgment and order at once.

**Md. Atabullah, J:**

*I agree.*