

7 SCOB [2016] HCD 130

HIGH COURT DIVISION

(Special Original Jurisdiction)

Mr. Khondaker Md. Khurshid Alam,
Advocate

WRIT PETITION NO. 7978 OF 2015

....For the petitioners.

Md. Jahangir Alam and others
..... Petitioners.

No one appears
....For the respondents.

Versus

Heard on 08.11.2015.

Deputy Commissioner, Munshiganj and others
.....Respondents.

Judgment on 17.11.2015.

Present:

Mr. Justice Shamim Hasnain

And

Mr. Justice Mohammad Ullah

Protection and Conservation of Fish Act, 1950

Section 5(2)(b) read with section 5A:

And

Mobile Court Ain, 2009

Protection and Conservation of Fish Rules, 1985

It appears that the powers conferred under section 5(2)(b) read with section 5A on an Executive Magistrate extend to conviction and sentence and also to confiscation of the article(s) or thing(s) used in the commission of the offence. Besides, the Act or the Rules does not speak of putting the factories under sealed lock and key. Therefore in putting the factories under sealed lock and key the Executive Magistrate has clearly exceeded the authority conferred upon him which has not empowered him to do so under the Act, the Ain and the Rules. The orders of sealing the factories of the petitioners, by the Executive Magistrate is also violative of the fundamental rights of the petitioners guaranteed under Article 40 and 42 of the constitution with regard to their lawful business.

... (Para 6)

Judgment

Mohammad Ullah, J:

1. On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, at the instance of the 5(five) petitioners the following *Rule Nisi* was issued upon the respondent no. 1. the Deputy Commissioner, Munshiganj, 2. Bijon Kumar Singha, Executive Magistrate, Munshiganj, 3. District Fisheries Officer, Munshiganj, 4. Senior Upazila Fisheries Officer, Munshiganj Sadar, Munshiganj, 5. Secretary, Ministry of Public Administration, Government of the People's Republic of Bangladesh, Bangladesh Secretariat, Dhaka, 6. Secretary, Ministry of Fisheries and Livestock, Government of the People's Republic of Bangladesh, Bangladesh Secretariat, Dhaka, 7. Cabinet Secretary, Cabinet

Division, Government of the People's Republic of Bangladesh, Bangladesh Secretariat, Dhaka and 8. Director General, Directorate Fisheries, Matsha Bhaban, Segunbagicha, Dhaka, to show cause as to why-

“(1) the following order passed by the Executive Magistrate, Munshiganj (respondent no. 2) by way of putting the following factories under sealed lock and key in the cases mentioned below:

(A) G.A. Net Industries (Jewel Enterprise) Bagbari, Panchasar, District- Munshiganj by order dated 15.06.2015 passed in Mobile Court Case No. 119(6)2015 (Annexure-‘E’ series).

(B) Jewel Enterprise Bagbari, Mukterpur, Panchasar, Police Station and District Munshiganj by the order dated 15.06.2015 passed in Mobile Court Case No. 117(6)2015 (Annexure-‘F’ series).

(C) Mehedi Fishing Net Industries, Mirswari, Panchasar, Police Station and District Munshiganj by order dated 18.06.2015 passed in Mobile Court Case No. 111(6)2015 (Annexure-‘G’ series).

(D) Sifat Fishing Net Industry, Noyagaon, Police Station and District Munshiganj by order dated 18.06.2015 passed in Mobile Court Case No. 224(6)2015 (Annexure-‘I’ series).

(E) Sataota Monofilament Industries, Noyagaon, Pachimpara, Panchasar, Police Station and District Munshiganj by order dated 15.06.2015 passed in Mobile Court Case No. 123(6)2015 (Annexure-‘I’ series) should not be declared as being without lawful authority,

(2) And further as to why the respondent nos. 1-4 should not be directed to open the above noted factories for the lawful use thereof by the owners thereof.

Respondent no. 2, Bijon Kumar Singha, Executive Magistrate, Munshiganj is further directed to send a report within 30 (thirty) days through the office of the Attorney General with regard to the situation that led him to close the above mentioned factories under sealed lock and key and/or such other or further order or orders passed as to this Court may seem fit and proper.”

2. At the very outset, Mr. Khondaker Md. Khurshid Alam, learned Advocate appearing for the petitioners submits that he intends not to proceed with the Rule on behalf of the petitioner no. 5, Arafat Rahman, Proprietor of Shapla Fishing Net Industries, inasmuch as disputed question of facts are involved in the petition. In view of the submissions of the learned Advocate, the Rule is discharged for non-prosecution so far it relates to the petitioner no. 5 only.

3. The case of the petitioners no. 1-4, as stated in the petition, are that as the proprietor of the respective factories, they have been running the business of manufacturing fishing nets including monofilament fishing net used in the fishing trade. The respondent no. 4 being the Senior Upazila Fishery Officer, Munshiganj Sadar, District- Munshiganj filed 4(four) complaints before the respondent no. 2 being the Executive Magistrate, Munshiganj to the effect that the petitioners have violated the provisions of section 4A(1) of the Protection and

Conservation of Fish Act, 1950 (hereinafter referred to as “the Act”). The Executive Magistrate initiated 4(four) Mobile Court Cases as mentioned in the Rule issuing order, took cognizance of the alleged offences, and framed charge against the Manager of the petitioner no. 4 under section 4A(1) of the Act for storing and possessing certain quantities of fishing nets popularly known as ‘current jaal’. The accused factory Manager of the petitioner no. 4 pleaded guilty of the charge and the Executive Magistrate in exercise of powers under the Mobile Court Ain, 2009 (shortly “the Ain”) convicted him under section 4A(1) of the Act and imposed a penalty of Tk. 10,000/- under the provisions of section 5(2) of the Ain and confiscated the seized fishing nets under section 5A of the Act. By order of the Executive Magistrate the confiscated nets were destroyed by burning except for the nets of the petitioner no. 4. By the same order, the Executive Magistrate put the factory under sealed lock and key. Challenging the orders of sealing the factory of the petitioners, they moved this Court and obtained the Rule as stated above. In the Rule issuing order dated 09.08.2015, a direction was given upon the respondent no. 2 Bijon Kumar Singha, Executive Magistrate, Munshiganj to send a report within 30(thirty) days with regard to the situation that led him to close the factories under sealed lock and key through the Attorney General’s Office. But apparently the direction has not been complied with. None of the respondents has entered appearance in the proceeding to contest the Rule. We feel it prudent to dispose of the Rule with the assistance of the learned Advocate for the petitioners since a question of violation of the fundamental rights of the petitioners guaranteed under Article 40 and 42 of the Constitution has been raised before us.

4. Mr. Khondaker Md. Khurshid Alam, learned Advocate appearing for the petitioners upon placing the relevant provisions of the Act, the Protection and Conservation of Fish Rules, 1985 (“the Rules”) and the Ain, 2009 submits that nowhere in those enactments the Executive Magistrate has been empowered to put the factories under sealed lock and key. However, he did not raise any grievance with regard to the fine and the sentence as passed by the Executive Magistrate. The learned Advocate submits further that the impugned order of the Executive Magistrate was not only without jurisdiction but it was also violative of the fundamental rights of the petitioners to conduct their lawful business. He lastly submits that the orders of sealing the factories have caused serious financial loss and hardship to the petitioners and rendered their livelihood at risk and accordingly a direction to unseal and to open the factories is required from this Court upon declaring the act of sealing the factories is wholly illegal and without jurisdiction.

5. We have perused the writ petition, the supplementary affidavit, and the annexures thereto and heard the learned Advocate for the petitioner.

6. A dispute has been raised questioning the extent of powers of the Executive Magistrate in sealing the factories of the petitioners. In considering the legality of the impugned action taken by the Executive Magistrate we have perused and considered the scheme of the Ain and the Act. The relevant provisions of these laws are discussed briefly herein below: According to section 6(1) of the Ain an Executive Magistrate or District Magistrate empowers to take cognizance of an offence under 85 laws mentioned in the schedule to the Ain including the Act. The Ain also empowers a Mobile Court constituted by the Executive Magistrate or the District Magistrate to initiate a summary proceeding and section 12 thereof empowers them to take action with regard to search, seizure and disposal of the seized goods. The Act deals with offence relating to “current jaal”. Section 2(1) and 2(5) of the Act define “current jaal” and fishing net respectively. Section 4A(1) of the Act deals with the prohibition of “current jaal”. Section 5 describes the penalty and section 5A prescribes the procedure of

confiscation of “current jaal”. From a plain reading of the contents of the Act and the Rules it is evident that section 4A of the Act prohibits the manufacture, importation, possession and carrying of “current jaal” and these activities are punishable offences under section 5(2)(b). Section 5A gives power to a Magistrate to confiscate any articles or things used in the commission of the offence including the offence relating to the “current jaal”. It appears that the powers conferred under section 5(2)(b) read with section 5A on an Executive Magistrate extend to conviction and sentence and also to confiscation of the article(s) or thing(s) used in the commission of the offence. Besides, the Act or the Rules does not speak of putting the factories under sealed lock and key. Therefore in putting the factories under sealed lock and key the Executive Magistrate has clearly exceeded the authority conferred upon him which has not empowered him to do so under the Act, the Ain and the Rules. The orders of sealing the factories of the petitioners, by the Executive Magistrate is also violative of the fundamental rights of the petitioners guaranteed under Article 40 and 42 of the constitution with regard to their lawful business.

7. In view of what have been discussed above, we find merit in the *Rule* and the *Rule*, therefore, succeeds.

8. Accordingly, the *Rule* is made absolute however there will be no order as to costs.

9. The orders dated 15.06.2015 and 18.06.2015 passed by the respondent no. 2, Executive Magistrate, Munshiganj Sadar in Mobile Court Case No. (1) 119(6) 2015, (2) 117(6) 2015, (3) 111(6) 2015 and (4) 224(6) 2015 so far it relates to the petitioners factories, namely, (a) G. A. Net Industries Bagbari, Panchasar, Police Station and District Munshiganj, (b) Jewel Enterprise Bagbari, Muktarpur, Panchasar, Police Station and District Munshiganj, (c) Mehedi Fishing Net Industries, Mirswari, Panchasar Police Station and District Munshiganj, (d) Sifath Fishing Net Industry, Noyagaon, Police Station and District Munshiganj putting under sealed lock and key are declared to have been made without lawful authority and of no legal effect.

10. The respondents are directed to unseal the factories of the petitioners within 7(seven) days of receipt of the copy of this judgment positively.

11. It is necessary to mention here that we cannot but observe that the failure of the Executive Magistrate to comply with the order dated 09.08.2015 as mentioned above is tantamount to disobedience of the court’s order. However, we hope that in future the Executive Magistrate shall not venture to do the same thing.

12. Office is directed to send a copy of this judgment and order to the respondents no. 1-4 at once for compliance.