

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

Writ Petition No. 3731 of 2023

In the matter of:

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

AND

In the matter of:

Md. Masudul Haque (Kochi)

..... Petitioner.

-Versus-

Bangladesh, represented by the Secretary, Energy and Mineral Resources Division, Ministry of Energy and Mineral Resources, Bangladesh Secretariat, Ramna and others,

... Respondents.

Mr. Mohammad Faridul Islam,
Advocate with

Ms. Rasida Chowdhury, Advocate

...For the petitioner.

Mr. Bepul Bagmar, D.A.G.

...For respondent-Government

Mr. Md. Zakir Hossain Advocate

..For Respondent No.6.

Judgment on: 20.03.2024

Present:

Mr. Justice Md. Khasruzzaman

and

Mr. Justice K M Zahid Sarwar

Md. Khasruzzaman, J.

In the application under article 102 of the Constitution, on 21.03.2023 the *Rule Nisi* under adjudication was issued calling upon the respondents to show cause as to why the impugned

seizure of 05 (five) gas cylinders from the petitioner's hotel namely- "Noakhali Hotel and Restaurant" in violation of rule 69(2) of the তরলীকৃত পেট্রোলিয়াম গ্যাস (এলপিজি) বিধিমালা, ২০০৮ should not be declared to have been done without lawful authority and is of no legal effect and further to show cause as to why a direction should not be given upon the respondent Nos. 4 and 5 to return the seized 05(five) gas cylinders to the petitioner and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts as summarized from the writ petition are that the petitioner is a proprietor of Noakhali Hotel and Restaurant situated at 6, Purana Paltan, Dhaka. Before starting hotel business, the petitioner obtained trade licence from Dhaka South City Corporation. But on 07.02.2023 the petitioner received a notice vide Memo No. 2(171)/1/986 dated 02.02.2023 from respondent No. 2 under the signature of respondent No.3 whereby he was directed to remove gas cylinders from the restaurant stating that the petitioner has no licence to store or keep any cylinder in the restaurant. Before expiry of the time for removing gas cylinders mentioned in the notice, some police personnel of Paltan Police Station, Dhaka went to the restaurant and took away 05(five) cylinders without giving any seizure list or inventory to the petitioner. Thereafter, on 14.03.2023 the petitioner sent a legal notice to respondent Nos. 2, 4 and 5 to get

return of the seized gas cylinders. But the respondents did not pay heed to the same till date.

In such circumstances, the petitioner finding no other equally efficacious remedy moved this Court under article 102 of the Constitution challenging the seizure of his 05(five) gas cylinders and obtained the *Rule Nisi* in the manner as stated above.

Respondent No.6, Ms. Shahanara Khanum, being a owner of the house got herself added in the writ petition as respondent No.6 and filed an *affidavit-in-opposition* contending *inter-alia* that the writ petitioner has been occupying the premises unlawfully and without approval of the authority concerned. The petitioner is storing gas cylinder in the premises for which the notice for removing gas cylinders from the premises was rightly served upon the petitioner and consequently, there was no illegality in seizing the aforesaid quantum of gas cylinders from the hotel. The petitioner has no right to accumulate gas cylinder in a residential house to run the restaurant business and hence no illegality was done in making the impugned seizure of the gas cylinder from the hotel and thus the *Rule Nisi* is liable to be discharged.

Mr. Mohammad Faridul Islam with Ms. Rasida Chowdhury, the learned Advocates appearing on behalf of the petitioner submits that the petitioner by obtaining trade licence from the

Dhaka South City Corporation entered into a tenancy agreement with respondent No.6 for starting hotel business at the premises of respondent No. 6 and as such he had exhausted compliance of relevant law before starting the hotel business. He further submits that rule 69(2) of the Liquid Petroleum Gas(LGG) Rules, 2004 has given the right to retain gas cylinder upto 125 kilograms and 10 cylinders with full of LPG and the petitioner did not retain any excess amount of gas cylinders in his hotel premises. As such, there was no violation of the Rules. He also submits that right to business is a fundamental right of the petitioner and by the impugned seizure of gas cylinder his fundamental right to business has been violated and therefore, the instant writ petition has been filed for redress. Accordingly, he has prayed for making the *Rule Nisi* absolute.

Mr. Md. Zakir Hossain, the learned Advocate appearing on behalf of respondent No.6 submits that respondent No. 6 is the owner of the building and the petitioner by misleading her entered into a tenancy agreement, and as per clause Nos. 14 and 16 of the said agreement, on 22.12.2022 she has served notice requesting the petitioner to handover the hotel premises within 3 months. But the petitioner did not pay any heed to the same. He also submits that without having any licence from the office of the Chief Inspector of Explosives, the hotel business was started at the premises and as such, the respondents did not commit any illegality in issuing the notices and consequently, the

impugned seizure of 05 cylinders of gas was rightly done in accordance with law. Hence, the *Rule Nisi* may kindly be discharged.

We have considered the submissions of the learned Advocates of the respective parties and perused the writ petition along with all materials documents and the relevant Rules.

It is stated that before going to start the hotel business, the petitioner obtained trade licence from the Dhaka South City Corporation (Annexure-A). On perusal of the same, it appears that the licence was issued by the DCC (South) on 19.07.2022 which was expired on 30.06.2023. It further appears from Annexure-C that by notice dated 02.02.2023 respondent No.3 directed the petitioner to remove the stored LPG cylinders from his hotel premises within 07 days. It is stated in the notice that the petitioner stored 04 LPG cylinders in big size and 02 LPG cylinders in small size and in total the petitioner stored 145 kilograms of LPG in his hotel premises without having any licence from the office of respondent Nos. 2 and 3. It has also been mentioned in the notice that by such unlawful use of LPG gas any dangerous incident may cause and as such, the notice was served upon the petitioner. It also appears from Annexure-Y-5 that on 19.10.2022 the office of the Assistant Director of the Fire Service and Civil Defence, Dhaka vide memo No. এফএসওসিডি/ওয়্যার/ঢাকা-৪০/২৫৪ dated 19.10.2022 requested the petitioner being proprietor of the hotel to remove the hotel from the ground

floor of the residential building of respondent No. 6. RAJUK also vide its Memo dated 06.04.2024 directed the petitioner to remove the illegal commercial activities and at the same time to take necessary steps for setting fire extinguisher in the building. So, all relevant authorities have directed the petitioner to remove the commercial structure and LPG cylinders from the hotel.

In this *Rule Nisi* the only question raised for adjudication whether the writ petitioner required to obtain licence for storing LPG in the hotel premises. The petitioner took a ground that the respondents have violated sub-rule (2) of rule 69 of the LPG Rules, 2004. Let us see what the rule says in this regard. Rule 69 reads as follows:

“৬৯। এলপিগি মজুদে বাধা-নিষেধঃ

(১) লাইসেন্স ব্যতীত কোন ব্যক্তি এলপিগি মজুদ করিতে পারিবে না।

(২) উপ-বিধি (১) এ যাহা কিছুই থাকুক না কেন, লাইসেন্স ব্যতীত নিম্নবর্ণিত ক্ষেত্রে এলপিগি মজুদ করা যাইবে, যথা:-

(ক) সিলিভারে অনধিক ১২৫ (একশত পঁচিশ) কিলোগ্রাম এলপিগি মজুদকরণ;

It appears that in sub rule (1) it has been provided that without licence no one can store LPG. In sub rule (2) it is stated that requirement of having licence has been waived. But there has been limitation in storing LPG i.e. any person may store LPG not more than 125 kilograms by cylinder. In the instant case, the petitioner stored LPG in total 145 Kilograms in 06 cylinders

which is beyond the allowable limit. As such, the petitioner has violated the Rules in storing LPG in his hotel. Moreover, the hotel located in the building is a residential building of respondent No. 6. RAJUK in its letter dated 06.04.2024 found that the building is a residential building as per approved plan taken from the RAJUK. It is also stated that Noakhali Hotel and Restaurant has been in operation by violating the approved plan which is contrary to the Building Construction Act, 1952 and Dhaka Metropolitan Building (Construction, Maintenance and Removal) Rules, 2008. For such commercial hotel business in the residential building using LPG, the life of the people of the residential building has become endangered.

On the other hand, the writ petitioner in paragraph No.10 of the writ petition stated that he did not store any excess amount of gas in cylinders and as such he did not violate the Rules. But respondent No.3 i.e. the Assistant Director of Explosive Directorate vide his Memo dated 02.02.2023 (Annexure-C) has stated that on physical inspection they have found that total 145 kilograms of LPG gas has been stored by the petitioner by way of cylinders in his hotel premises. Accordingly, the fact of storing gas in the hotel premises has become a question of fact which cannot be adjudicated under the writ jurisdiction as the same requires settlement by evidence. In this score also, the writ petition is not maintainable.

In view of the facts and circumstances as stated above, we do not find any merit in the *Rule Nisi* and on the ground of maintainability of the writ petition and as such the *Rule Nisi* is liable to be discharged.

In the result, the *Rule Nisi* is discharged.

There will be no order as to costs.

Communicate the order.

K M Zahid Sarwar, J.

I agree.