

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

Writ Petition No. 10637 of 2023

with

Writ Petition No. 9099 of 2023

IN THE MATTER OF :

An application under Article 102 read with Article 44 of the
Constitution of the People's Republic of Bangladesh

-And-

IN THE MATTER OF :

Nazmul CNG Refueling Station (in writ petition no. 10634
of 2023)

..... Petitioner

Techno Drugs Limited (writ petition no. 9099 of 2023)

..... Petitioner

-Versus-

Government of Bangladesh, represented by its Secretary,
Ministry of Power, Energy, Mineral Resources, Bangladesh
Secretariat, Secretariat Building Shahbagh, Dhaka and others

..... Respondents

Mr. Ashikur Rahman, Advocate (in writ petition no. 10634 of
2023)

.....For the petitioner

Md. Jahid Hossain Dolon (writ petition no. 9099 of 2023)

.....For the petitioner

Mr. Mohammad Sazzad Hossain, Advocate

.....for the respondent No.3

**Heard on : 29.11.2023, 03.01.2024
and Judgment On : 23.01.2024.**

Present:

Mr. Justice Mustafa Zaman Islam

&

Mr. Justice Md. Atabullah

Mustafa Zaman Islam, J;

These writ petitions involve the similar question of facts and law.
Accordingly, all the writ petitions are taken up together for disposal by a
single judgment.

In Writ Petition No. 10637 of 2023, the Rule was issued in the following terms:-

Let a Rule Nisi was issued calling upon the respondents to show cause as to why the inaction/failure of the respondents in increasing the Gas Load of 19,500 cft. / hour in general gas run (total gas load of 39,030 cft. / hour upon increase) and to increase the Gas Load of generator run 1,200 cft. / hour in addition to the existing Gas Load of 2,400 cft. / hour in generator run (total gas load of 6,431 cft. / hour upon increase) of the petitioner's CNG station namely, Nazmul CNG Refueling Station, Ghorashal, Polash, Narsingdi bearing Customer Code, No. 7350023 and 835023, despite issuance of Approval Letter on 09.05.2018 and Demand Note on 10.05.2018 and payment of regular fees and charges should not be declared as illegal without any lawful authority and is of no legal effect and as to why Direction upon the respondent Nos. 3/7 shall not be given to increase the Gas Load of 19,500 cft./hour in addition to the existing Gas Load of 19,530 cft./hour in general gas run (total gas load of 39,030 cft./hour upon increase) and to increase the Gas Load of generator run 1,200 cft./hour in addition to the existing Gas Load of 2,400 cft./hour in generator run (total gas load of 6,431 cft./hour upon increase) of the petitioner's CNG station namely, Nazmul CNG Refueling Station, Ghorashal, Polash, Narsingdi bearing Customer Code No. 7350023 and 835023 according to Approval Letter dated 09.05.2018 (Annexure-E) and/or pass such other or further order or orders as to this Court may seem fit and proper.

In Writ Petition No. 9099 of 2023, the Rule was issued in the following terms:-

Let a Rule Nisi was issued calling upon the respondents to show cause as to why the inaction and failure of the Respondents to provide gas connection in the factory of the petitioner in the captive power run for 21,640 cft/hour and 3,05,896 cm/month as approved vide Sanction Letter being no. 28.13.0000.236.56.040.21.689 dated 06.12.2021 by the Respondent No. 3 from 12"Ø X 140 PSIG distribution line (from Dhanua TBS to west side of Dhaka-Mymensingh Road heading to Rajendrapur) through the 12"Ø X 140 PSIG X 336 Meter and 6"Ø X 140 PSIG X 1160 meter and 4"Ø X 140 PSIG X 15 meter distribution line constructed at the expense of the petitioner shall not be declared illegal, without lawful authority and is of no legal effect, and why the Respondent Nos. 3-7 shall not directed to provide gas connection in the factory of the petitioner in the captive power run ensuring the gas pressure of 21,640 cft/hour and 3,05,896 cm/month as approved by the Sanction Letter being no. 28.13.0000.236.56.040.21.689 dated 06.12.2021 by the Respondent No. 3 from 12"Ø X 140 PSIG distribution line (from Dhanua TBS to west side of Dhaka-Mymensingh Road heading to Rajendrapur) through the 12"Ø X 140 PSIG X 336 meter and 6"Ø X 140 PSIG X 1160 meter and 4"Ø X 140 PSIG X 15 meter distribution line constructed at the expense of the petitioner and/or pass such other or further order or orders as to this court may seem fit and proper.

For disposal of the Rules, the short facts of the writ petition no. 10637 of 2023, in brief are that:-

The petitioner is a proprietorship firm and was granted permission from the Respondent No. 2 for setting up a CNG filling station accordingly, the petitioner obtained relevant licenses and clearance certificates from all the concerned authorities and since then he has been running this business. It is stated that on 03.03.2008, the Respondent No. 05 issued an approval of Gas Load of 19,530 cft./hour in general gas run and a total of 2,12377 cft per month for the petitioner's CNG station. In pursuant to the approval dated 03.03.2008, the Respondent No. 5 on 10.07.2008 issued a Demand Note for connection of gas supply to the petitioner's gas station subject to payment of security deposit and the petitioner accordingly submitted payment to the Respondent No. 05. It is stated that as the business was developed and demand was increased and it was not possible for the petitioner to continue with the current load of 19,530 cubic feet in such situation, the petitioner applied to the Respondent No. 03 for increasing Gas connection in his CNG Station situated at Ghorashal, Polash, Narsingdi. In this regard, the petitioner on 15.04.2010 submitted an application, stating that he has the permission of gas connection with per hour load 19,530 cubic feet in CNG run and 2400 cubic feet/per hour in generator run to the Respondent No. 05 and requested him to take necessary steps to increase the gas and generator load of his CNG Station. Subsequently, on 11.06.2013 the petitioner submitted another application to the Respondent No. 4 by requesting to increase the gas and generator load in order to meet the supply demand. In meeting the demand of the petitioner the Respondent No. 05, on 09.05.2018 issued a letter, vide memo no. A.B.B-NOR/02/04/083/156 approving gas load from 19,530 cft. / hour

to 19,500 cft. / hour, total of 39,030 cft. / hour in gas run and from 1,200 cft. / hour to 2,400 cft. / hour total of 6,431 cft. / hour in generator run for the petitioner's CNG Station.

In pursuant to the approval dated 09.05.2018, the Respondent No. 6, on 10.05.2018 issued two demand notices in favour of the petitioner to increase the gas load of 19,500 cft/hour in addition to the existing gas load of 19,530cft/hour in general gas run and to increase the gas load of generator run 1,200 cft/hour in addition to the existing gas load of 2,400 cft/hour in generator run of the petitioners CNG station namely, Nazmul CNG Refueling station, Ghorashal South Polash, Narsingdi bearing code no. 73550023 and 8350023 and directed him to deposite amount of 1,35,91,400/- as Bank guarantee in favour of the gas run and amount of Tk. 9,29,600/- in cash and 18,59,200/- as bank guarantee in favour of generator run. Further stated that in pursuant to the demand note dated 10.05.2018, the petitioner submitted Bank guarantee of total Tk. 1,35,91,400/- for the gas run and a pay order valued at Tk, 9,29,600/- generator run. Though the petitioner completed at the formalities but the Respondents did not take any step in increasing gas load of the petitioner's CNG Station and such situation the petitioner visited the office of the Respondents for number of occasions requesting to implement the approval with no effect.

In the facts and circumstances, the meeting was held 04.03.2018 regarding increase of gas load accordingly the Respondent No. 3 prepared a list for it customers for increasing gas load and the name of the petitioner applications is serial 4 of the said list and though gas load of the other 6

CNG station were increased. However, the petitioner is awaiting for gas connection, thus the Respondents acted discriminately.

The Respondent No. 3 appeared by filing a affidavit-in-opposition in above writ petitions, controverting the statements made in the writ petition stating inter alias that this respondent does acknowledge the petitioner's applications, this respondents approval and demand notes and the petitioners submissions of the security deposits, but Titas Gas is regrettably unable to increase gas load at the petitioner's premises at present due to nationwide scarcity of gas. The petitioner's application could not be entertained because of lack of adequate gas pressure at the petitioner company's area. On 21.05.2019 the Ministry of Power, Energy and Mineral Resources issued an Office order under Memo No. 28.00.0000.028.06.001.19-102 declaring that-

(খ) “নিরবিচ্ছিন্ন বিদ্যুৎ সরবরাহের সক্ষমতা বৃদ্ধি পাওয়ায় এবং ক্যাপটিভ পাওয়ারে উৎপাদন দক্ষতা কম থাকায় ক্যাপটিভ শ্রেণিতে নতুন গ্যাস সংযোগ প্রদান নিরুৎসাহিত করতে হবে।

(ঙ) সকল বিতরণ কোম্পানির পরিচালনা পর্ষদ কোম্পানির গ্যাস প্রাপ্তির সাথে সামঞ্জস্য রেখে লোড বৃদ্ধি এবং নতুন সংযোগের আবেদন নিষ্পত্তি করবে;”

Therefore, since the government is genuinely unable to give increase gas and has regularly discouraged new gas connection and increasing gas load because of lack of adequate gas in the country, it is not being possible for this respondent to increase gas load to the petitioner.

Mr. Ashikur Rahman, the learned Advocate appearing on behalf of the petitioner submits that in 2008, the respondent No. 05 issued demand letters and accordingly the petitioner deposited the security money and furnished bank guarantee in favour of the respondent no. 05 and bought

machineries for establishing CNG filling station by availing loan from Bank but the respondent No. 5 did not provide gas connection arbitrarily, the petitioner's filling station machineries are on the verge of destruction and the petitioner had acted in its detriment relying upon the promise made by the respondent no. 5 and had suffered irreparable loss and injury and the petitioner has a legitimate expectation that he will get a new connection of gas line. He further submits that the respondent no. 6 issued two Demand Notes in favour of the petitioner to increase the Gas Load of 19,500cft./hour in addition to the existing Gas Load of 19,530 cft./hour in general gas run (total gas load of 39,030 cft./hour upon increase) and to increase the Gas Load of generator run 1,200cft./hour in addition to the existing Gas Load of 2,400 cft./hour in generator run (total gas load of 6,431 cft./hour upon increase) of the petitioner's CNG station and directed him to deposit amount of 1,35,91,400/- as bank guarantee in favour of the gas run and amount of Tk. 9,29,600/- in cash and 18,59,200/- as bank guarantee in favour of the generator run. It is stated that, in pursuant to the Demand note dated 10.05.2018 the petitioner submitted bank guarantee No- NRB/CHINISPUR/BG/18009 of total sum of 1,35,91,400/- for the gas run and a pay order valued taka 9,29,600/- generator run to the respondent no. 5 and forwarded an application for on 19.08.2018 for increasing gas load but the petitioner after waiting so long time to get connection suffered irreparable loss and injuries and in fact the petitioner lost his capital and as such the petitioner while tried its best to accumulate the money. He submits that, the petitioner completed all the formalities but the Respondents did not take any step in increasing gas load of the petitioner's CNG station.

Mr. Mohammad Sazzad Hossain, the learned Advocate on behalf of the respondent no. 3 Titas Gas Transmission and Distribution Company Limited by filing an affidavit-in-opposition, opposes the Rule and denying the material allegations made in the Writ Petition and contending inter alia that, due to shortage of gas, the government has imposed the embargo on giving new gas connection to any CNG station as evident from the memo dated 21.05.2019 published in the Gazette Notification and the memo dated 15.05.2019 issued by Ministry of Energy and Mineral Resources and, therefore, there is currently no scope in law to give new gas connection to the CNG station of the writ petitioner and, as such, the instant application for direction may be rejected.

We have heard the learned Advocates for both sides, perused meticulously the writ petition, the application for direction and respective annexures filed by the petitioner, the affidavit-in-opposition filed on behalf of the respondent no. 3 and the respective annexures thereto.

It appears from the record that the petitioner obtained various government permissions and licenses with the object to provide dust and pollution free CNG gas to the locality by way of setting up a CNG filling station, applied to the concerned authority in 2008 and the respondent no. 5, the Rupantorito Prakritik Gas Company Limited granted permission for setting up CNG filling station. On 10.07.2008, the Respondent No. 5 issued a demand letter to provide new gas connection in the load of 19,530 cubic ft./hour with a load of 2,12,377 cubic mt./month. The petitioner was instructed to deposit amount of 1,35,91,400/- as bank guarantee in favour of the gas run and amount of Tk 9,29,600 in cash and 18,59,200/- as bank

guarantee in favour of generator run. The petitioner deposited Tk. 9,29,600/- (nine lakh twenty thousand six hundred) through pay and Bank Guarantee of Tk. 18,59,200/- (eighteen lakh fifty nine thousand two hundred). The petitioner notified the same to the respondents vide its letter dated 29.05.2018. But the respondent no. 5 did not give any gas connection to the petitioner and consequently, the petitioner could not run the CNG filling station and suffered loss.

It transpires that, admittedly, the petitioner earlier deposited Tk. 9,29,600/- through pay order and also furnished Bank Guarantee of Tk. 18,59,200/- against the demand letter dated 10.05.2018 by the respondent no. 5 to have new gas line in the load of 19,500 cubic ft./hour and invested huge amount of money in the industry based on that promise. In spite of completing all the process no steps whatsoever had been taken by the respondent no. 5 for providing gas connection in the petitioner's filling station.

The contention of the respondent no. 5 is that due to shortage of gas, the government has imposed the embargo on giving new gas connection to any CNG station as evident from the memo no. 28.00.0000.028.06.001.19.102 dated 21.05.2019 issued by Ministry of Energy and Mineral Resources and, therefore, there is currently no scope in law to give new gas connection to the CNG station of the writ petitioner. This is not applicable to the petitioner's case inasmuch as the respondent no. 5 issued demand letter in 2008 long before the said memos came in force.

In the case of **Modhumoti Power Ltd. vs. Bangladesh** reported in 69 DLR (2017) 262, it was held:

“ Any decision taken subsequently by the Government or any other authority is effective prospectively only, but not retrospectively. Since the respondents time and again gave consent to supplying gas to the petitioner’s Power Plant and on being assured by such consent and other conducts of the respondents, the petitioner has already invested huge amount of money and set up the Power Plant as well as has done everything for operating the plant, now the Government or any other respondents cannot resile from their earlier position while, there is no fault with the petitioner. In addition thereto, in the facts and circumstances, the petitioner can legitimately expect that it would get the gas connection. It is needless to mention that if any gas is not available at all, nobody supply it. But if gas is available the respondents are bound by their consents and decision to supply it to the petitioner’s power plant.”

The aforesaid view was upheld by the Hon’ble Appellate Division of the Supreme Court of Bangladesh in Civil Petition for leave to appeal no. 3623 of 2016.

In the case of **Ratan Kumar Saha vs. Bangladesh**, reported in 69 DLR(2017) 418 it was held;

“.....In the instant case, pursuant to the application of the petitioner dated 02.01.2008 the

respondent no. 5 gave “সম্মতিপত্র” vide office order dated 30.01.2008 (Annexure-B series). Ultimately, fulfilling all conditions and on obtaining necessary approval all from the other government functionaries it was awaiting for gas connection. In this regard, the Energy Regulatory commission had also recommended to give gas connection to those CNG stations like that of the petitioner.

37. In view of the said context the inaction of the respondents concern in not giving gas connection to the petitioner is discriminatory; hence is violative of it’s fundamental rights as guaranteed under Article 27 and 31 of the Constitution of the People’s Republic of Bangladesh.”

Under the above premises, it seems to us that the respondents did not deal with the writ petitioner in accordance with the law. The respondents have denied the petitioner’s right to get a new connection for a long time arbitrarily.

It is evident that the respondent no. 2 permitted the petitioner to set up a CNG filling station. Subsequently, the respondent No. 5 approved gas load for the petitioner on 10.07.2008 and to that effect the respondent no. 6 collected security deposit from him in 2018. Since, the load of gas for petitioner was approved in 2008, so, the office circular no. 28.00.0000.028.06.001.19.102 dated 21.05.2019, the decision is not applicable to the case of the petitioner. The respondent no. 6 should give

some time the petitioner to deposit security money. In such view of the matter, we find merit in the Rules.

Accordingly, all the Rules are made absolute.

The inaction/failure of the Respondents in increasing the gas load of the petitioner's CNG station namely, Nazmul CNG Refueling station as per approval letter dated 09.05.2018 in writ petition no. 10637 of 2023 and inaction/failure of the Respondents in increasing the gas load of the petitioner's company namely, Techno Drugs Limited as per approval letter dated 06.12.2021 in writ petition no. 9099 of 2023 are hereby declared to have been passed without lawful authority and is of no legal effect.

The Respondents are directed to give gas connection to the both petitioner's CNG filling station namely (1) Nazmul CNG Refueling Station (2) Techno Drugs Limited of gas connection within 4(four) months from the date of receipt of the copy of the judgment. However, both the petitioners firm most satisfactory the concerned authority that they had already completed all the required formalities.

However, there would be no order as to cost.

Communicate at once.

Md. Atabullah, J:

I agree.