

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

Writ Petition No. 16207 of 2025

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Arun Kumar Gosh and another
...Petitioners

-Versus-

The Secretary, Ministry of Power, Energy
and Mineral Resources and others
... Respondents

Mr. Md. Masud Hossain Dolon, Advocate with
Mr. Mohammad Mojahidul Awal Nory, Advocate
...For the petitioners

Mr. Md. Shahidul Islam, Advocate
... For the respondent No. 2

Heard on 26.02.2026, 12.03.2026, 09.07.2026,
03.08.2026 and 04.08.2026
Judgment on 15.09.2026

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application
under Article 102 of the Constitution of the People's Republic of
Bangladesh in the following terms:

*“Let a Rule Nisi be issued calling upon the
respondents to show cause as to why the impugned
notice under memo Nos. 28.00.0000.026.42.001.22.30
dated 12.01.2025 and 28.00.0000.000.026.42.0001.*

22.89 dated 04.06.2025 to keep pending the application of the petitioners for establishing new filling station till publishing New Filling Station/Service Station Shtapon Dealer Niyog Sankranto Nitimala (Annexures-J and J(1) should not be declared illegal and without lawful authority and as to why a Direction should not be given upon the respondents to give permission to set up (1) M/S. Arun and Salam Filling Station, Dhaka Tangail High Way Road, Elenga, Pouli, Kalihati, Police Station-Kalihati, District-Tangail and (2) M/S. Pithvey Filling Station and LPG, of Lambabil, Whykong, Police Station-Teknaf, District-Cox's Bazar and/or pass such other or further order or orders as to this Court may seem fit and proper."

Necessary facts for disposal of the instant Rule, as narrated in the writ petition, in short, are that, the petitioner No. 1 is the proprietor of M/S. Arun and Salam Filling Station and the petitioner No. 2 is the proprietor of M/S. Pithvey Filling Station and LPG. The petitioner No. 1 filed an application on 24.02.2014 to Deputy Commissioner, Tangail for getting No Objection Certificate (NOC) for using the land along with relevant documents for establishing M/S. Arun and Salam Filling Station and the Deputy Commissioner forwarded the application along with relevant documents to the Executive Engineer (Roads and Highways),

Tangail. Accordingly the petitioner received no objection certificates from the concerned authorities of Roads and Highways, Fire Service and Civil Defence and Directorate of Explosive 17.04.2014, 23.04.2014, 22.05.2014, 22.07.2014, and also received approval letter from Deputy Commissioner, Tangail for operating M/S. Arun and Salam Filling Station. Thereafter the petitioner filed an application before the Assistant General Manager (Sales) Jamuna Oil Company Limited, 02, Kawran Bazar, Dhaka on 05.07.2015 praying for establishing M/S. Arun and Salam Filling Station and the same was forwarded to the Deputy General Manager (Sales), Jamuna Oil Company Limited.

On 17.01.2016 the Deputy General Manager (Sales), Jamuna Oil Company Limited issued a letter to the Director General, Bangladesh Petroleum Corporation stating that the proposal for M/S. Arun and Salam Filling Station was approved in the 412th Board meeting of Jamuna Oil Company Limited dated 08.11.2015 and requested to grant permission as per the provision of clause 7 (uma) of the amended Guidelines of 2014. Despite such communication the application of the petitioner No. 2 was not placed in the Board Meeting of the Bangladesh Petroleum Corporation. Thereafter petitioners obtained environment clearance certificate from Ellenga Pouroshova on 24.12.2020. On 27.01.2021 the petitioner no. 1 filed an application to the respondent No.1 for prior approval to set up M/S. Arun and Salam Filling Station but no step has yet been taken.

Similarly, the petitioner no.2 filed an application to Deputy Commissioner, Cox's Bazar for getting No Objection Certificate (NOC) for using the land along with relevant documents for establishing M/S. Pithvey Filling Station and LPG and on the basis of the application the Deputy Commissioner forwarded the application along with relevant documents to the District Police Super and accordingly the petitioner received no objection certificate from concerned authorities of District Police Super, Assistant Commissioner (Land), Additional District Magistrate, Cox's Bazar, Fire Service and Civil Defence and Directorate of Explosive on 07.07.2024 and also received approval letter from Deputy Commissioner, Cox's Bazar and Bangladesh Petroleum Corporation for operating M/S Pithvey filling station and LPG. The petitioner no. 2 filed an application for establishing M/S. Pithvey Filling Station and LPG and it was forwarded to the Chairman of BPC and Senior Secretary, Ministry of Power, Energy and Mineral Resources but till date no step has yet been taken.

The Senior Assistant Secretary of Ministry of Power, Energy and Mineral Resources issued notices vide memo nos. 28.00.0000.026.42.001.22.30 dated 12.01.2025 and 28.00.0000.000.026.42.0001.22.289 dated 04.06.2025 stating that petitioners' application has been kept with the record till publishing new *Nitimala* (Guidelines) for establishing the filling station/service station.

Earlier a notice was issued under Memo No. 28.00.0000.026.40.013.18-136 dated 24.06.2019 by the Deputy Secretary, Ministry of Power, Energy and Mineral Resources stopping approval for set up new Filling Station/Service Station by violating Rule 37 of the Notun Filling Station Sthapon/Service Station Sthapon Songkranto Nitimala-2014 (Amended-2018). By challenging the legality of the said notice Writ Petition No. 8098 of 2019 was filed before the Hon'ble High Court Division and a Rule was issued. Subsequently after hearing both the parties this Division was pleased to dispose of the Rule on 20.09.2021 declaring the notice dated 24.06.2019 as illegal and issued without lawful authority. In complete defiance of the said judgment the impugned notices dated 12.01.2025 and 04.06.2025 were issued.

Finding no other alternative and equally efficacious remedy available, the petitioners have filed the instant Writ Petition and obtained the present Rule.

Learned Advocate Mr. Masud Hossain Dolon appeared for learned Advocate Mr. Mohammad Mojahidul Awal Nory on behalf of the Petitioners. At the very outset learned Advocate submitted that, although the respondent no. 2 is the proper authority to give final approval for setting up new filling station as per the Guidelines of 2014 (amended in 2018), the respondent no. 3 most illegally without lawful authority issued the impugned memo keeping the petitioners' application with the record, as such the

impugned order is liable to be declared to have been made without lawful authority and is of no legal effect.

He next submitted that, the impugned memo is ex-facie illegal, mala fide in view of the fact that an application cannot be kept unresolved for an indefinite period, therefore it is liable to be set aside.

By referring to another Writ Petition No. 9696 of 2019 learned Advocate for the petitioner submitted that, in a similar situation this Division was pleased to issue Rule and after hearing the Rule was made absolute by the judgment and order dated 22.01.2020 and the respondents were directed to consider the application of that petitioner in the light of the observation made in the judgment. This decision was affirmed by the Appellate Division. Hence, he prayed that, similar order of direction may be given in the present case as well.

He further submitted that, earlier a notice was issued under memo dated 24.06.2019 by the Deputy Secretary, Ministry of Power, Energy and Mineral Resources stopping approval for setting up new filling station/service station but kept a provision for granting approval by the Ministry in case it is found to be absolutely necessary. This notice was challenged in Writ Petition No. 8098 of 2019 and after hearing this Division was pleased to issued Rule and subsequently was please to dispose of the Rule by the judgment dated 20.09.2021 declaring the notice dated 24.06.2019 as illegal and without any lawful authority inasmuch as

the impugned memo left the opportunity to apply the policy arbitrarily and on the basis of pick and choose policy by the executive. The respondents were directed to take necessary steps for setting up new filling station as per approved regulation if the petitioners fulfill all the terms and conditions of the Guidelines of 2014 (as amended in 2018). Hence, the present petitioners' applications ought to have considered as per the said Guidelines of 2014.

Learned Advocate finally submitted that, the petitioners are entitled to be treated in accordance with law but they have not been treated in accordance with law by the impugned memo and as such the same is liable to be declared without any lawful effect.

Conversely, learned Advocate Md. Shahidul Islam appeared on behalf of respondent no. 2 i.e. the Chairman, Bangladesh Petroleum Corporation and contested the Rule by filing an affidavit in opposition.

His main contention is that, the petitioner no. 1 was given provisional approval in terms of provision of Clause 7 (uma) of Guidelines, 2014 (দফা ৭ (ঙ), জ্বালানী তেল বিক্রয়ের লক্ষ্য নতুন ফিলিং স্টেশন/সার্ভিস স্টেশন স্থাপনে ডিলার নিয়োগ সংক্রান্ত নীতিমালা (সংশোধিত) ২০১৪), which has subsequently been repealed on 01.07.2018. As such he cannot claim for a direction on the basis of that application. The application of the petitioner no. 2 has not been even approved by the Board, which is a pre requisite to get the final approval. In the given circumstances, none of their applications deserve any

consideration in the eye of law. Hence the instant Rule is liable to be discharged.

He finally submitted that, enactment of new guidelines regarding recruitment of dealers is a policy matter of the government, which cannot be interfered with in writ jurisdiction and therefore the writ petition is not maintainable.

We have heard the learned Advocates for the respective parties and perused the writ petition, supplementary affidavits thereto, affidavit in reply, affidavit in opposition and all the documents annexed therewith.

Let us discuss the cases of the petitioner nos. 1 and 2 separately for the sake of convenience.

Petitioner No. 1 M/S Arun and Salam Filling Station, Tangail:

It appears from the record that, petitioner no. 1 applied for establishing filling station in the name 'Messeres Arun and Salam Filling Station' in the year 2014. On 24.12.2014 he applied to the Deputy Commissioner, Tangail in order to obtain no objection certificate. Thereafter he obtained no objection certificates from the concerned authorities. He then applied before the distributor Jamuna Oil Company Limited on 05.07.2015 to get the approval upon submitting all the required documents. On receipt of the application the concerned authority conducted an investigation and in the report dated 06.08.2015 the Deputy Manager (sales) of Jamuna Oil Company made statement to the effect that, the location

of the proposed filling station does not qualify the requirements provided in clause 7 (ka), (kha), (ga) and (gha) of the Guidelines and as such it may be approved under the provision of clause 7 (uma), which provides that, if establishment of any filling station is considered to be urgent for any other reason except those mentioned in clause ka-gha, Bangladesh Petroleum Corporation (BPC) shall give such approval subject to obtaining prior approval from the Department of Power and Mineral Resources. This provision has been inserted in the Guideline by way of an amendment, which was published in the Gazette notification dated 08.01.2015. The provision of clause 7(uma) is quoted below:

“৭ (ঙ) উপ-অনুচ্ছেদ (ক), (খ), (গ) এবং (ঘ)-এ উল্লিখিত কারণ বাতীত অন্য কোন প্রয়োজনে ফিলিং স্টেশন/সার্ভিস স্টেশন স্থাপন জরুরী বিবেচিত হলে জ্বালানী ও খনিজ সম্পদ বিভাগের পূর্বানুমোদন গ্রহণপূর্বক বিপিসি ফিলিং স্টেশন/সার্ভিস স্টেশন স্থাপনের অনুমতি প্রদান করবে।”

Accordingly the Assistant General Manager and Deputy General Manager of Jamuna Oil Company forwarded the proposal to give approval under clause 7(uma) of the Guidelines. Ultimately in the 412th Board Meeting of the Company held on 08.11.2015, the approval was given to the petitioner no. 1 under clause 7 (uma) of the Guidelines of 2014 and decided to send the same to the BPC for granting permission after obtaining prior approval from the of Power and Mineral Resources Division of the concerned Ministry (Annexure C-1).

Since no response was made, the petitioner himself filed an application before the concerned Secretary on 27.01.2021 praying for prior approval from the Ministry (Annexure-E) but with no result. It is important to note that in the meantime the provision under which the petitioner no. 1 was given provisional approval by the Board of the Jamuna Oil Company i.e. clause 7 (uma), was repealed by an amendment to the Guidelines in 2018 by publishing gazette notification dated 01.07.2018. Therefore, there remains no scope to consider the application of petitioner no. 1 as per the Guidelines of 2014 (amended in 2018).

The impugned memo dated 12.01.2025 (Annexure-J) signed by the Senior Assistant Secretary of Power and Mineral Resources Division was issued long after ten years from the date of Board's approval and giving reference to the application dated 27.08.2020 filed by the petitioner no. 1 stating that until the new Guideline regarding establishment of new filling station/service station and recruitment of dealers comes into force, the application is directed to be kept with the record. This is not an outright rejection of the application, neither it specifies any time frame within which the new guideline is coming into force. Since the provision under which the petitioner no. 1 was given approval by the Board has been repealed in 2018, the Power and Mineral Resources Division ought to have rejected the application but instead they directed the BPC to keep the application with the record until the enforcement of the new guideline for whatever reason best known to them.

Petitioner no. 2 M/S Pithvy filling Station, Teknaf, Cox's

Bazar:

In order to establish a filling station/service station Petitioner no. 2 applied before the Deputy Commissioner, Cox's Bazar for no objection certificate on 02.07.2019 and obtained the no objection certificates and required licenses from the concerned authorities. On 08.09.2019 he made an application before the respondent no. 2 i.e. the Chairman, BPC praying for approval to establish the filling station stating inter alia that, though the proposed filling station does not qualify the conditions of the Guidelines, considering the current situation permission may be given to him by exercising special power. The exact wording of the application is, “... বাংলাদেশ সরকারের প্রজ্ঞাপনে উত্তর-দক্ষিণে উল্লেখিত দূরত্ব পরিলক্ষিত না হলেও বর্তমান পরিস্থিতি বিবেচনায় বিশেষ ক্ষমতাবলে প্রস্তাবিত স্থানে 'মেসার্স পিডভী ফিলিং স্টেশন করার সদয় অনুমতি আন্তরিকভাবে কামনা করছি।...” He also filed an application before the concerned Ministry on 27.10.2019 (Annexure-H-8).

As per the Guidelines of 2014 after obtaining prior approval from the marketing company's Board, permission from the Bangladesh Petroleum Corporation shall have to be obtained. The relevant part of the Guidelines-2014 is quoted hereinunder:

“পরিকল্পিত উপায়ে জ্বালানী তেলের একটি সুবিন্যস্ত বিপণন ব্যবস্থা গড়ে তোলার লক্ষ্যে নতুন ফিলিং/সার্ভিস স্টেশন স্থাপনে ডিলার নিয়োগ সংক্রান্ত নীতিমালা যুগোপযোগী করে প্রণয়ন করা প্রয়োজন। ফিলিং স্টেশন স্থাপনের ব্যবস্থা এই নীতিমালার আওতায় উন্মুক্ত থাকবে তবে সকল ক্ষেত্রেই সংশ্লিষ্ট বিপণন কোম্পানীর বোর্ড কর্তৃক প্রস্তাব অনুমোদিত হওয়ার পর বাংলাদেশ পেট্রোলিয়াম করপোরেশন (বিপিসি) এর অনুমোদন গ্রহণ করতে হবে।

*বিপিসি কর্তৃক চূড়ান্তভাবে নতুন ফিলিং স্টেশন-এর অনুমোদন প্রদানের
লক্ষ্যে নিম্নে বর্ণিত প্রাসংগিক তথ্যাদি প্রদান করতে হবেঃ’’*

It transpires from the record that no provisional approval of the Board as required by the Guidelines of 2014 was granted in favour of the petitioner no. 2. Without Board’s approval, BPC is not under a lawful obligation to grant permission to establish a filling station.

By the memo dated 24.03.2020 (Annexure I-1) the Bangladesh Petroleum Corporation requested the Managing Director of Meghna Petroleum Limited to take necessary action in accordance with law but no action was taken.

By the memo dated 22.11.2022 (Annexure-I-4) the Respondent no. 2, the Chairman of BPC sent a list of pending applications for establishment of filling station to the Ministry and in that list name of the ‘Pithvy filling station appears in serial no. 7. Thereafter by the memo dated 11.09.2023 (annexure-Q to the supplementary affidavit dated 19.02.2026) the Deputy Secretary requested the Chairman, BPC to take necessary action in accordance with law regarding the proposed Pithvy Filling Station as per the Guidelines in this regard. Thereafter by the impugned memo dated 04.06.2025 (Annexure-J-1) the Senior Assistant Secretary of Power and Mineral Resources Division giving reference to the application dated 21.01.2025 filed by the petitioner no. 2 directed that until the new Guidelines regarding establishment of new filling station/service station and recruitment of dealers

comes into force, the application is to be kept with the record by the BPC.

On 24.06.2019 the Ministry of Power and Mineral Resources issued a notification directing the BPC not to give approval for establishment of new filling station for the time being, however, if it is considered to be extremely urgent in that case only approval may be given with prior approval from the Ministry. This memo was challenged in Writ Petition No. 8096 of 2019 and a Rule Nisi was issued. On hearing the Rule this Division by the judgment dated 20.0.2021 held the memo dated 24.06.2019 illegal and without lawful authority and directed the respondents to take necessary steps for setting up a new filling station in favour of the petitioners as per approved regulation of the 456th Board meeting of Jamuna Oil Company Limited if they fulfill all terms and conditions of the Guidelines of 2014 (as amended in 2018) (Annexure M-1).

The facts of that writ petition is different from the facts and circumstances of the present petitioners inasmuch as that, the petitioner no. 1 though obtained the Board approval, the ground on which it was given approval was subsequently repealed, thereby leaving no scope for it to be considered in accordance with law and in case of the petitioner no. 2 no Board approval was given which is a condition precedent for obtaining permission. As such the present petitioners cannot expect similar orders in the light of the abovementioned judgment.

Petitioners annexed a bunch of documents from which it appears that during the period of 2017 to 2021 concerned Ministry gave approval for establishment of a number of filling stations, therefore it cannot be said that, no approval was given during that period. However, granting approvals in other cases does not automatically entitle the petitioners for a direction in their favour until they are entitled to get the same in accordance with law. We have already found hereinabove that the petitioners have not yet fulfilled the criterion for obtaining permission as per the Guidelines of 2014.

Now, the question that falls for determination is whether the impugned memos have been issued in accordance with law.

Admittedly, the petitioners submitted their respective applications for obtaining permission to establish filling stations when the 2014 Guidelines (as amended in 2018) were in force. The said Guidelines prescribed the requirements and procedure for consideration of such an application. The mere fact that the authority intended to frame new guideline could not, in the absence of any lawful suspension or repeal of the existing guideline, furnish a valid ground for keeping the petitioners' applications pending indefinitely. The authority was under an obligation to consider and dispose of their applications in accordance with law in force. The authority cannot keep the applications in abeyance indefinitely on the ground that new guidelines are likely to come into force at some future uncertain date. Unless the existing Guidelines have been

repealed, suspended or otherwise rendered inapplicable, the competent authority is required to discharge its statutory obligation under the prevailing guidelines.

The petitioners are certainly entitled to have their applications considered and disposed of in accordance with the Guidelines which are in force when the applications were made and which continued to remain operative currently. However, the petitioners cannot claim, as a matter of course, an absolute and infeasible right to obtain permission merely because their applications were submitted under the existing Guidelines. Whether the petitioners satisfy all the requirements prescribed by the applicable rules is a matter to be determined by the competent authority.

In view of the facts and circumstance of the instant case and with the discussions made hereinabove we find merit only in the first part of the Rule and accordingly the impugned memo dated 12.01.2025 (Annexure-J) and 04.06.2025 (Annexure-J1) are hereby declared to have been issued without lawful authority and is of no legal effect.

The respondents concerned are directed to dispose of the petitioners' application for permission to establish the filling station in accordance with the existing Guidelines of 2014 (জ্বালানী তেল বিক্রয়ের লক্ষ্যে নতুন ফিলিং স্টেশন/সার্ভিস স্টেশন স্থাপন ডিলার নিয়োগ সংক্রান্ত নীতিমালা (সংশোধিত), ২০১৪) within 60 days from the date of receipt of a certified copy of this judgment.

In the result, the Rule is made absolute in part with direction.

However, there is no order as to costs.

Communicate the judgment and order at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.

Helal/ABO