

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

**Present:**  
**Mr. Justice Zubayer Rahman Chowdhury**  
**And**  
**Mr. Justice Md. Mozibur Rahman Miah**

**WRIT PETITION NO. 10127 OF 2015.**

**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. Faizul Islam and another

..... Petitioners

-Versus-

Bangladesh and others

..... Respondents

Mr. Shahdeen Malik, with

Mr. Monjur Alam, Advocates

..... For the petitioners.

Mr. S.M. Maniruzzaman, D.A.G, with

Mr. Pratikar Chakma, A.A.G and

Mosammat Khairun Nessa, A.A.G

..... For the Respondent no. 2

**Heard on 20.11.16, 24.11.16, 04.12.16,**

**06.12.16 Judgment on 12.12.2016.**

**Md. Mozibur Rahman Miah, J:**

1. On an application under Article 102 of the Constitution of the People's Republic in Bangladesh, a Rule Nisi was issued calling in

question the imposition of VAT on the Private English Medium Schools as contained in এস.আর.ও. নং-১০৮-আইন/২০১৪/৭০৩-মুসক dated 05.06. 2014 under Service Code No. S069 by the National Board of Revenue.

At the time of issuance of the said Rule, the operation of the impugned এস.আর.ও. contained in এস.আর.ও. নং-১০৮-আইন/২০১৪/৭০৩-মুসক, so far as it relates to imposing VAT on the private English Medium schools, was stayed for a period of 6(six) months.

2. **Background of issuance of the Rule:**

The salient facts so figured in the writ petition are as under :

The petitioners are the parents whose children have now been studying in two English Medium Schools in Dhaka. A daughter of petitioner no. 1 is a student of class VII at Sunbeams School, located at Ashulia, Dhaka and the petitioner no. 1 has to pay the tuition fee plus VAT at the rate of (shortly, @ ) 7.5% on that tuition fees. Similarly, the daughter and a son of the petitioner no. 2 have also been studying in class XII and II, respectively, at Sunnydale School, Dhanmondi, Dhaka, and he has also to pay tuition fees along with VAT @ 7.5% on the tuition fees. The copies with regard to payment of tuition fees along with above mentioned rate of VAT has been annexed in the writ petition as Annexure-A and A-1 respectively.

As per the provision of section 3 of the Value Added Tax Act-1991 (briefly “the VAT Act”) Schedule no. 1 and 2 have been appended

therein where it has prescribed the products and services upon which VAT is to be levied as well as exempted. The said provision (schedule) is also amended from time to time by which goods and services are included and excluded from the scheme of paying VAT and upto the year 2012, all Private Educational Institutions enjoyed exemption from paying VAT, which is evident from Annexure-C and C-1 to the writ petition respectively.

3. By virtue of power conferred upon the National Board of Revenue (shortly, “the Board”) under section 5 and section 72 of the VAT Act, it (the Board) promulgated a Statutory Regularity Order (shortly, S.R.O) being S.R.O. No. 108-Ain/2014/703-Mushak dated 05.06.2014 imposing VAT @ 7.5% on the monthly tuition fees payable by the Private English Medium Schools.

Being aggrieved by and dissatisfied with the said imposition of VAT, the petitioners as a parents of their school going children to their respective English Medium schools as aforementioned, came before this Court and filed this writ petition challenging the validity of such imposition of VAT vide the said SRO and obtained the instant Rule and order of stay, as has been stated herein above.

4. During the course of hearing of this writ petition, the petitioners on 24.11.2016 also filed a supplementary affidavit.

In the supplementary affidavit, the petitioners further stated that, the Board had also imposed VAT @ 10% through S.R.O. No.

123-Ain/2015/729-Mushak dated 04.06.2015 on Private Universities and Private Medical and Engineering Colleges under Service Code No. "S070 S070.10 and S070.20" respectively. But subsequently on 01.07.2015, the Board amended the said S.R.O. reducing the said rate of VAT and fixed it 7.5% by issuing another S.R.O. No. 221-Ain/2015/740-Mushak dated 01.07.2015 and the petitioners also annexed those two S.R.Os as Annexures-G and G-1 respectively.

5. It has further been stated in the said supplementary affidavit that, being infuriated by such imposition of VAT, the students of the Private Universities and Private Medical as well as Engineering Colleges of the country, started launching large scale protests demanding cancellation of such VAT on their tuition fees to be paid by the concerned Private Universities and Medical and Engineering Colleges and the said movement, at a certain point, paralyzed Dhaka city on 10.09.2015 and again on 13.09.2015 and 14.09.2015 respectively.

Bowing down to such protest, the Board was then compelled to withdraw such VAT on the tuition fees of the Private Universities as well as Private Medical and Engineering Colleges by issuing a **Special Order** being no. 12/Mushak/2015 dated 14.09.2015.

6. Thereafter, the Internal Resources Division of the Ministry of Finance, vide S.R.O. No. 176-Ain/2016/752-Mushak dated 02.06.2016 totally exempted such institutions from paying VAT in

compliance of section 14(1) of the VAT Act and thereby cancelled the earlier “special order” being no. 12/Mushak/2015 dated 14.09.2015, which is also evident from Annexure-H and H-1 respectively to the supplementary affidavit.

7. **Submission advanced by the learned counsel for the petitioners**

Mr. Shahdeen Malik along with Mr. Md. Monzur Alam, the learned counsels appearing for the petitioners upon taking us to the writ petition, supplementary affidavit as well as other materials on record at the very outset submits that, the fundamental principles of the State Policy, as enshrined in Articles 15 and 17 of our Constitution, ensures basic necessities and free and compulsory education to the citizen of the country and State is mandated by the Constitution to take all effective measures to attain and establish those basic necessities to ensure a literate and educated citizenry by giving effect of those fundamental principles, but the impugned imposition of VAT on a certain types of schools is totally contrary to such principles.

8. The learned counsel then submits that, the above principles so enumerated in Articles 15 and 17 of the Constitution, prohibits the state from taking any measures which is detrimental to the right to acquire education by the people and as such the imposition of VAT upon English medium school is without lawful authority and is of no legal effect.

9. The learned counsel goes on to submit that, under Article 19 of the Constitution, the State stands guarantee of ensuring “equal opportunity” to its citizens and this very principle proscribes the state from taking any action which leads to inequality to a particular group or class of citizen. Thus, levying of VAT only upon the Private English Medium Schools, which are being paid ultimately by the parents of the students of those schools, totally negates the principles of ‘equality of opportunity’ and as such, the said imposition of VAT on the Private English Medium School is without any lawful authority.

10. So far as it relates to the infringement of fundamental rights guaranteed to the citizen of the country, the learned counsel very stoutly asserts that, our sacred constitution, by Articles 27 and 28, guarantee that, all citizens are equal before law and are entitled to equal protection of law meaning, it forbids discrimination in acquiring education and as such imposition of alleged VAT only on the Private English Medium School keeping aside all other public and private educational institutions is violative of that fundamental rights guaranteed by our constitution and therefore, the imposition of VAT only upon a particular section of institutions is totally contrary to that fundamental rights to be enjoyed by a citizen and the same is without any lawful authority.

11. The learned counsel further submits that, the very withdrawal of VAT from Private Universities, Engineering and Medical Colleges in its entirety and keeping it in place only on the Private English Medium Schools is patently discriminatory, arbitrary and violative of the universal principle of equality which signify glaring discrimination among the educational institutions in the country and as such, the imposition of alleged VAT is without lawful authority and is of no legal effect.

12. The learned counsel next asserts that, merely medium of education *epso facto* should not be any criterion that can ever embolden the Government to impose VAT only on a particular category of schools.

13. The learned counsel also points out that, by imposing VAT upon a certain class of schools, the Government has clearly made a sharp classification in the education system which clearly contradicts the express provision enunciated in Article 17 of our Constitution which demands that State shall adopt effective measures to produce properly trained and motivated citizen.

14. The learned counsel for the petitioners wrapped up his submission contending that, with a malafide intention, the Government has just singled out a certain class of citizens by bringing them into the network of VAT by keeping aside a vast portion of educational Institutions from the clutches of VAT and as such on the

face of the very discriminatory action, the imposition of VAT is palpably illegal and without any lawful authority and it is liable to be struck down . On such submission, the learned counsel finally prays for making the Rule absolute and strike down the impugned S.R.O, so far as its relates to imposition of VAT on the private English Medium Schools.

15. However, in countenance of his submission, the learned counsel has also relied upon a slew of decisions. In the first place, the learned counsel has referred to the case of Manzil Morshed –Vs- Bangladesh and others, reported in 15 BLC-351. The learned counsel then placed his reliance in the case of Chairman, National Board of Revenue –Vs- Advocate Zulhas Uddin Ahmed and others, reported in 18 BLC(AD)-52 and lastly, Mr. Malik has referred a decision passed in the case of M/s A.A. Engineering Ltd. –Vs- University of Khulna and others reported in 3 ALR(AD)-139.

**The case of the Respondent no.2 and contention of the learned Deputy Attorney General :**

16. Now let us go through the case so have been made out by the Respondent no.2 . In order to contest said Rule, the National Board of Revenue, as Respondent No. 2, entered its appearance by filing an Affidavit-in-Opposition denying all the material statements made in the writ petition contending, *interalia*, that, the Government has imposed VAT upon the private English Medium Schools, on the total



received money by issuing S.R.O. No. 189-Ain/2008/491-Mushak, dated 29.08.2008 but has not imposed VAT on the student of the institutions because VAT shall be payable @ 15% by the suppliers in case of manufacturing of goods and that of the service providers as per section 3(1) of the VAT Act. Aside from that, the National Board of Revenue, in exercise of power conferred upon it under section 72 read with section 5(4) of the Act, assumes the authority to issue notification from time to time and accordingly, the Board, by issuing S.R.O. No. 108-Ain/2014/703-Mushak, dated 05.06.2014 imposed VAT upon the English Medium Schools under Service Code No. S069.00. And in doing so, this Respondent has not violated any provision of VAT Act by realizing the same @ 7.5% on the tuition fees which the school authority is liable to pay.

17. It has further been stated in the Affidavit-in-Opposition that, the Board imposed VAT upon the authority of English Medium Schools by issuing S.R.O. No. 189-Ain/2008/491-Mushak, dated 29.08.2008, but not under S.R.O. No. 108-Ain/2014/703-Mushak, dated 05.06.2014, so the impugned SRO is not any new imposition of VAT rather continuation of earlier imposition.

18. It further depicts from the Affidavit-in-Opposition that, upto the year 2000, private Educational Institutions, as service providers, were in the exemption list as referred in the 'Second Schedule' of the VAT Act and it was subsequently amended in the year 2015.

However, these private Educational Institutions have not been included in the exemption list as outlined in the Second Schedule for which the English Medium School cannot claim to be exempted in paying VAT to the Government.

19. It has also been stated in the Affidavit-in-Opposition that, under section 72 read with section 5(4) of the VAT Act, the Board exercises the power to issue notification and accordingly, it issued a notification duly notified in the official Gazette vide SRO no. 108-Ain/2014/703 Musak dated 5-6-2014 imposing VAT under Service Code no. S069.00 having no illegality in it.

20. To controvert the assertion so contended by the petitioners as regards to the discriminatory actions so taken by the Government against the English Medium Schools, it has been stated in the Affidavit-in-opposition that, the Non-Government Bengali Medium Schools and Colleges are not the institutions run for commercial purpose, and a Managing Committee/Governing body, duly elected by the guardians of the students of such schools or colleges, use to run their respective Institution under the syllabus and curriculum prescribed by the National Curriculum and Textbook Board of Bangladesh and for that, the respondents has not imposed any VAT or tax upon those Bengali Medium Schools and Colleges.

21. With regard to the Constitutional Provision alleged to have been infringed by imposing VAT so asserted by the learned counsel

for the petitioners, the learned Deputy Attorney General, (shortly – ‘DAG’) on the contrary, avers that, under Articles 15 and 17 of the Constitution, the State guarantees the basic necessities and compulsory education to the citizen of the Republic and on the strength of such mandate, the State has established many Government Primary and Secondary Schools and Colleges and has been providing various grants to those institutions whereas, the English medium schools have not been set-up through any statute and follows foreign syllabus and guidelines and hence, no contravention of Articles 15 and 17 of the constitution has ever been made.

22. It has asserted further that, admittedly the students of English Medium Schools got themselves enrolled with the schools and those schools takes permission form the Government for imparting education, but those schools are solely run commercially and follows International Curriculum & Syllabus and therefore, the Respondents has not violated the provision of Articles 15, 17 & 19 of the Constitution by imposing VAT.

23. Again, it has been stated in the affidavit-in-opposition that, the English Medium Schools are registered under the VAT Act-1991 and they are not exempted from paying VAT as per schedule-2 of the VAT Act and therefore, those schools are bound to pay VAT under section 3 of the Act.

24. The learned DAG further adds that, English Medium Schools have been providing teaching service in a commercially motivated manner and as such, they have been paying VAT since 2002. However in 2012, the rate of such VAT was fixed at 4.5% of the total received imposed under S.R.O. No. 182-Ain/2012/640-Mushak dated 07/06/2012, but from June, 2014, the said rate of VAT has been enhanced to 7.5% under the impugned S.R.O and there has been no inequality in so doing.

25. Lastly, the learned DAG asserts that, the writ petitioners have got no *locus standi* to file the writ petition because none of the English Medium Schools who were supposed to become aggrieved for imposing VAT have filed this writ petition because the VAT has been imposed upon the schools and not on the parents or the students of the English Medium Schools.

26. The learned DAG, in support of such submission, has also relied upon several decisions, namely the case of Bangladesh Indenting Agent Association and another –Vs- Bangladesh and others, reported in 64 DLR-389, and the case of Shat Dairy Products Ltd –vs- Commissioner of Customs and others, reported in 5 BLC(AD)-160.

27. Apart from those submission and citations, the learned DAG also asserts that, the point of discrimination as has been raised by the petitioners is not sustainable as the Universities and Colleges from which the VAT has been withdrawn are in fact, run by their own

statute. However, as the English Medium Schools have no such statutory backing in running their respective institutions, so they are not entitled to the same treatment that has been extended to the private Universities and Medical as well as Engineering Colleges and therefore, no discrimination has been made to the English Medium Schools merely on withdrawing VAT from those Universities and Colleges.

28. The learned DAG also submits that the Government assumes the authority to pick and choose in imposing or exempting VAT under the provision of section 3(3), section 5(4) as well as section 8(4) of the VAT Act, so no discrimination has occurred in case of the petitioners as well.

29. The learned DAG finally submits that, the decision cited by the learned counsel for the petitioners reported in 18 BLC (AD) is not applicable to the facts and circumstances of the instant case and thus prays for discharging the Rule.

30. **Deliberations :**

We have heard the learned counsel for the petitioners and that of the learned Deputy Attorney General at length, Perused the writ petition, supplementary affidavit, Affidavit -in- Oppositions and considered the submission so advanced by the learned counsels for the contending parties.

It is the core submission of Mr. Shahdeen Malik, the learned counsel for the petitioners, that a glaring discriminatory treatment is apparent in the action of the Respondents against the English Medium Schools which reflects from the very exemption given to the private Universities and Medical Colleges and Engineering Colleges by issuing a circular amid protest launched by the students of the those institutions. Furthermore, nowhere in the VAT Act has any school, either Government or non-Government, been included in paying VAT. However, since VAT has been imposed considering only the medium of education rendered by a section of Institutions, it palpably demonstrates that, the Government has singled out a certain class of people in the camouflage of mentioning the schools in the impugned SRO and compel the guardian of the students studying in English Medium School to pay VAT.

Substantiating his such submission, the learned counsel has referred to Articles-15, 17 and 19 of the Constitution, being the fundamental principles of our State policy, that ensures basic necessity, free and compulsory educations, and equality of opportunity in acquiring so by a citizen.

31. Now let us examine how far the action of the Respondents in imposing VAT on a certain class of educational institution is justified. So far as it relates to “education”, we never find anywhere in the Constitution that the students studying in English Medium School

have ever been differentiated from the students studying in Bengali medium schools. Therefore, on the face of the Constitutional mandate, a gross discrimination has been created by imposing VAT upon certain schools, herein English Medium schools, which is totally contrary to the provision as enunciated in Article 15 and Article 17 of the Constitution.

32. Aside from that, “Equality of opportunity” so enshrined in Article 19 of our Constitution, has also been infringed in imposing the impugned VAT upon the English medium school, because if the State fails to make equality towards its citizens, in that event, the aggrieved person or persons has got no other alternative but to take resort to the authority of this Court under Article 102 of the Constitution and the petitioners have rightly done so.

33. Further, it is not a fact that the petitioners have got no *lucus standi* to file this writ petition to ventilate their grievance as has been claimed by the learned DAG in as much as, by the impugned SRO though VAT is supposed to be paid by the schools but ground reality is that, none but the parents of the student are paying VAT on the tuition fees in separate head which is evident from Annexure A and B to the Writ Petition respectively, though the Government turned a blind eye over this matter since its very imposition.

But the point to be adjudicated by us in this writ is totally otherwise. In this writ petition, we are to address whether the imposition of VAT

on a certain class of schools is liable to be persisted or not where the mode of payment and person or persons liable to pay such VAT is totally immaterial here because by the instant Rule, the very S.R.O. imposing VAT on English medium schools has been called in question claiming it to be discriminatory one.

34. Then again, from annexure-**G and G-1**, as well as annexure **H and H-1** of the supplementary affidavit dated 24.11.2016, it appears that, the Government had also imposed VAT on private Medical Colleges, private Engineering Colleges as well as private Universities, but in the wake of protest, by the students of those institutions, the Government had to give in to the said demand and eventually, by special order the Board was compelled to withdraw the said VAT within a span of 1(one) month of its imposition by issuing another S.R.O acting under the provision of section 14(1) of the VAT Act, exempting all those institutions from paying VAT.

This very scenario clearly indicates that, a section of the populace has been singled out and are being victimised and also being compelled to pay the VAT since 2014. However, from the above legal analysis and discussion, it goes without saying that, the very SRO imposing VAT itself is discriminatory one. When a law is found to be discriminatory which provides upper hand to a certain section of populace and deprives a small section of citizenry in enjoying same privilege, then it cannot remain in place any more.



35. In that parlance, we may profitably rely on several decisions, both from the jurisdiction of United States of America and India which are as follows:

In the case of New Orleans–vs- Dukes (1976), 427 US 297, it has been observed that;

*“It is not the functions of the court to sit in Judgement over matters of economic policy and it must necessarily be left to the expert bodies and the court will not interfere unless discrimination clearly emerges from the facts of the cases. (emphasis supplied)*

Here in the instant case, glaring discrimination is evident from the very SRO .

It was further held in the case of AP-vs-P. lump Devi (2008) 4 SCC 720 that:

*A tax law is no exception to equal protection and it will be struck down as infringing Article 27 if there is no reasonable clarification.*

We can also rely on another decision, namely Khedive-vs-Agricultural ITO, reported in AIR 1963 SC 591 where it has been propounded :

*To find out discrimination what is decisive is not the language of the statute but the effect of the law. A law which on the face of it non discriminatory may be discriminatory if it, in effect, operates unevenly on the persons or property similarly situated”.(emphasis supplied)*

36. We can also place our reliance on another decision in the case of Kerala Hotel and Restaurant Association and others –Vs- State of

Kerala and others, reported in AIR-1990(SC)-913, where it has been held :

*“If the classification is made with the object of taxing only the economically stronger while leaving out the economically weaker section of society that would be good reason to uphold the classification if it does not offend any other accepted norm of valid classification. Every taxing legislation makes a genuine attempt to adjust the burden with a fair and reasonable degree of equality. It also aims to apportion the burden equitably on different categories of properties and persons with distinct economic characteristics.” (emphasis supplied)*

37. In this regard, we may also rely on the decision in the case of Ram Krishma Dalmia –vs- Justice Talukder, reported in AIR 1958 SC 538, where it has been held :

*“When a statute confers wide discretion on the executive authority without any policy guide lines it clothes the executive authority with naked arbitrary power to select persons of thinks in the exercise of discretion and the statute even though non discrimination on its face permits discrimination in the exercise of the discretion.*

38. Likewise, in the case of *Jyoti Pershad-vs- Administrator for the Union Territory of Delhi*, reported in AIR 1961 SC 1602 their Lordships have also taken a similar view on the point of discrimination.

Also, in a number of other cases, the Supreme Court of India struck down statutes for conferring wide discriminatory power to the

Government or to the administrative authority without providing any guide lines or policy for the exercise of discretion.

39. On a careful perusal of the core objectives of those decisions, we conclude that, the principle set at rest in those decisions are equally applicable to the facts and circumstances of the instant case, so far as it relates to the discriminatory action taken by the Respondents towards the English Medium schools.

40. However, when we took up the matter for passing the Judgement, we drew the attention of the learned DAG as to whether the impugned S.R.O. has found place in any Finance Act or the said S.R.O has got any parliamentary sanction, but the learned DAG failed to impress us with a plausible reply. Nevertheless, if we go through Article 83 of our Constitution, we find the following provision :

*“No tax shall be levied or collected except by or under the authority of any Act of parliament.”*

41. However, in that aspect, the learned DAG simply repeats that, under the provision of section 3 as well as section 5(4) and section 72 of the VAT Act, the Board has got ample authority to impose or exempt VAT. On such submission we feel it expedient to peruse section 8(4) of the VAT Act, which reads as follows :

**“বোর্ড জনস্বার্থের গুরুত্ব বিবেচনা করিয়া এবং যথোপযুক্ত অনুসন্ধান পূর্বক সরকারী গেজেটে জারিকৃত আদেশ দ্বারা কোন নির্দিষ্ট পণ্য, পণ্যশ্রেণী বা সেবা প্রদানকারীকে বার্ষিক টার্ন ওভারের পরিমাণ নির্বিশেষে ধারা ১৫-এর আওতায় নিবন্ধিত হওয়াসহ মূল্য সংযোজন কর প্রদানের আদেশ করিতে পারিবে।” (emphasis supplied)**

42. On a bare reading of those provision of the VAT Act, it is true, the Government can impose VAT on any service provider under the provision of section 3(3) and section 5(4) of the VAT Act, but there must be a reasonable satisfaction of the Government or legitimate objectives in doing so, which should be free from any discriminatory motive and should also be based on proper investigation which clearly lacks in the present case.

Further, in the preamble of the statute, or any sorts of legal instruments, herein the S.R.O, objectives for enacting the Statute ought to be stated. However, nothing of that sort has been mentioned about the objectives in imposing such kinds of VAT upon the English Medium Schools in the impugned SRO, keeping the aggrieved persons totally in the dark as to the circumstances for such imposition as no Government agencies can be allowed to act at their sweet will, merely on the strength of some provision of law, when the same is found to have created discrimination among the citizens and curtail the fundamental rights of the citizen guaranteed by the Constitution.

43. On the point of discrimination, the learned DAG also repeats that since there has been no discrimination amongst the English medium Schools as regards the rate of imposition of VAT, which is 7.5% for all the English Medium schools. He also goes on to submit on this point that, though the VAT has been withdrawn and ultimately exempted from the private Medical Colleges, private Engineering

Colleges and Universities, but those institutions are run by their own statute, while the English Medium Schools are not run or regulated by any statute rather, it runs at the whim of the respective authority of the schools. We cannot, but observe that this sort of submission really sounds absurd.

44. In that parlance, question naturally crops up, as to why those English Medium Schools have been given such authority to run and charge tuition fees at their sweet will and as to why the Government is not promulgating any Rules, regulation or guide lines to bring them within the statutory frame work like the Government Institutions, so as to prevent them from realising tuition fees and compelling the parents to pay VAT thereon and other charges at their whim. But the answers seems a far cry. In the given situation, the submission so advanced by the learned DAG has got no basis, rather it amounts to give latitude to those schools to do whatever they like in the interest of levying VAT. But, it is our firm and considered view that, there must be an end to such anarchy that is now prevailing in the private English medium schools with regard to charging excessive tuition fees, yearly re-admission charges and other charges, much to the prejudice and predicament of the VAT paying parents.

45. Be that as it may, we have very meticulously gone through the citations so referred by the learned counsel for the petitioners and that of the learned DAG and so far as it relates to the decision so cited by

the learned counsel for the petitioners it is our considered view that, though the facts of the cited decisions are different from those of the present case, but the *ratio* so settled in those decision is quite applicable to the facts and circumstances of the instant case as well. However, we regret to add that, the decision so cited by the learned DAG has got no manner of application to the facts and circumstances of the present case.

46. Over and above, there is no logical basis, let alone any legal authority, to assume that since the English Medium Schools has got no statutory backing, they can be allowed to do whatever they deem right and by allowing their commercial mileage the Govt. will be emboldened to impose VAT upon them.

The submission of the learned DAG has also got no leg to stand on the score that, since the Government colleges and institutions has got their own statute and regulated thereby, so the Government was compelled to withdraw the VAT so imposed earlier. The above argument defending the Government action on discriminatory treatment upon the English Medium Schools bears no legal basis.

47. Given the above discussions, and considering the submissions so advanced by the learned counsel for the petitioners and that of the learned DAG, we find ample substance in the Rule. So the inevitable consequence that follows, the Rule succeeds.

48. Resultantly, the Rule is made absolute however without any order as to costs.

The circular, as contained in S.R.O No. 108-Ain/2014/703-Mushak dated 05.06.2014, so far as it relates to imposition of VAT on the English medium schools at the rate of 7.5% under Service of Code No.S069, issued by the National Board of Revenue (Respondent no. 2) is hereby declared to have been issued without any lawful authority and is of no legal effect.

Consequently, the imposition of VAT vide said S.R.O. is hereby struck down. Henceforth, no amount of VAT can be levied from the English medium schools by the Respondents.

49. The Secretary, Internal Resources Division, Ministry, of Finance, Respondent no. 1 is hereby directed to issue a notification in pursuance of section 14 (1) of the VAT Act exempting the English Medium Schools from paying VAT within 15 days from the date of receipt of this judgement and order.

50. Office is directed to transmit the copy of the judgement and order to the Respondent nos. 1 and 2 at once.

**Zubayer Rahman Chowdhury, J:**

I agree