

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)
Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 613 of 2016

In the matter of:

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

-And-

In the matter of:

Alhaj M.A. Bari Khan

..... Petitioner.

Vs.

Bangladesh, represented by the
Secretary, Ministry of Shipping
others.

..... Respondents.

Mr. Md. Golam Rabbani, Advocate

.....for the petitioner

Mr. Noor Us Sadik Chowdhury, D.A.G

with Ms. Sayeda Sabina Ahmed Moli A.A.G

with Ms. Farida Parvin Flora, A.A.G

... for the respondent No. 1

Mr. Lutfur Rahman, Advocate

... for the respondent No. 3 and 4

Mr. Oziullah, Senior Advocate with

Mr. Md. Motiur Rahman, Advocate with

Mr. Mohammad Azim Uddin Patwary, Advocate

... for the respondent No. 7.

Heard on: 21.11.2022, 24.11.2022, 27.11.2022 and

judgment on: 01.12.2022.

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show
cause as to why the impugned স্বারক নং- ১৮.১১.০০০.১২৩.৩১.০০৮১৫/২৯

dated 10.01.2016 (Annexure-F) issued under the signature of the respondent No. 6 cancelling the Time Table of Vessel M.V. New Al Borak owned by the petitioner under proprietorship of M/S Rakib Water Ways in Dhaka-Chandpur Water Route should not be declared to have been made without lawful authority and is of no legal effect and as to why the respondents should not be directed to maintain the time table of Vessel M.V. New Al Borak as being departure time from Dhaka at 1845 hours and from Chandpur at 0600 hours in Dhaka-Chandpur Water Route and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner Alhaj M.A. Bari Khan, Son of late Ahmmed Ali Khan, Proprietor of M/S. Rakib Water Ways, 4 No. Goakhola Road, Chandpur is a citizen of Bangladesh.

The respondent No. 1 is the Secretary, Ministry of Shipping, Bangladesh Secretariat Bhaban, Dhaka-1000, the respondent No. 2 is the Secretary, Ministry of Shipping, Bangladesh Secretariat Bhaban, Dhaka-1000, the respondent No. 3 is the Bangladesh Inland Water Transport Authority (BIWTA), BIWTA Bhaban, 141-143, Motijheel Commercial Area, Motijheel, Dhaka, the respondent No. 4 is the Chairman, Bangladesh Inland Water Transport Authority (BIWTA), BIWTA Bhaban, 141-143, Motijheel Commercial Area, Motijheel, Dhaka, the respondent No. 5 is the Director, Marine Security and Management Department, Bangladesh Inland Water Transport Authority (BIWTA), BIWTA Bhaban, 141-143, Motijheel Commercial Area, Motijheel, Dhaka, the respondent No. 6 is the Deputy Director, Marine Security and Management Department,

Bangladesh Inland Water Transport Authority (BIWTA), BIWTA Bhaban, 141-143, Motijheel Commercial Area, Motijheel, Dhaka and the added respondent No. 7 is Mahbub Uddin Ahmed, Proprietor of M.V. Deshantor (M. No. 01-1327) Son of Altaf Uddin Ahmed of Village- Amanatgonj, Chowdhury Bari Road, Police Station- Barishal Sadar, District-Barishal.

The petitioner's case inter alia is that the petitioner is the proprietor of M/S/Rakib Water Ways of 4 No. Goakhola Road, Chandpur and the owner of Vessel M.V. New Al Borak. That the petitioner had been operating his above vessel in Dhaka – Icholi via Chandpur Water Ways for couple of years with valid registration certificate and survey certificate. That the petitioner has been operating his vessel M.V. New Al- Borak in Dhaka- Icholi via Chandpur Water Route with departure time from Dhaka at 1530 hours and from Icholi at 0820 hours for couple of years with full satisfaction of the authority as well as the passengers of the said route. That the petitioner filed an application to the respondent No. 5 on 08.07.2015 to approve time table of M.V. New Al Borak in Dhaka - Chandpur Water Route as being departure time from Dhaka at 1845 hours and from Chandpur at 0600 hours as a direct service. That considering the said application the authority approved the Time Table of M.V. New Al Borak on 13.07.2015 vide স্বাক্ষরক নং- ১৮.৭৩৫.১২৩.০০.০০.০০৩.২০১২/১২৫৬ in Dhaka – Chandpur Water Route as a direct service as being departure time from Dhaka at 1845 hours and from Chandpur at 0600 hours as Eid Special for Eid-ul-Fetre for a period upto 12.08.2015. That thereafter the authority having satisfaction upon the service of

the petitioner extended the said time table dated 13.07.2015 vide স্বারক নং- ১৮.৭৩৫.১২৩.০০.০০.০০৩.২০১২ on 14.09.2015 for a period upto 15.10.2015 under Rule 7(11)(a) and 15(c) of the Bangladesh Inland Water Transport (Time and Fare Table Approval) Rules, 1970 for public interest giving better service and facilities. That the authority upon full satisfaction of the petitioner continued to grant approval regarding the said time table in favour of vessel M.V. New Al Borak vide স্বারক নং- ১৮.৭৩৫.১২৩.০০.০০.০০৩.২০১২/১৮৪১ on 15.10.2015 upto 31.10.2015, vide স্বারক নং- ১৮.৭৩৫.১২৩.০০.০০.০০৩.২০১২/২০২০ dated 29.10.2015 upto 08.12.2015 and vide স্বারক নং- ১৮.৭৩৫.১২৩.০০.০০.০০৩.২০১২/২২৫৯৬ dated 21.12.2015 upto 01.02.2016. That while the petitioner had been plying his vessel M.V. New Al Borak in Dhaka-Chandpur Water Route having the aforementioned time table with full satisfaction of the authority as well as passengers of that water route, the authorities all on a sudden without giving any notice or giving any opportunity of being heard as provided in Rule 10 of the Bangladesh Inland Water Transport (Time and Fare Table Approval) Rules, 1970 canceled the aforesaid legal and valid time table of Vessel M.V. New Al Borak on 10.01.2016 vide স্বারক নং- ১৮.৭৩৫.০০০০.১২৩.৩১.০০৮.১৫/২৯ illegally and arbitrarily and the said letter is the impugned letter in the instant Writ Petition. Hence the petitioner being aggrieved filed the instant writ petition.

Learned Advocate Mr. Md. Golam Rabbani appeared for the petitioner while learned D.A.G Mr. Noor Us Sadik Chowdhury along with Ms. Syeda Sabina Ahmed Moli, A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondent No. 1, Learned

Advocate Mr. Lutfur Rahman appeared for the respondent Nos. 3 and 4 and the learned Advocate Mr. Md. Ozi Ullah along with Mr. Md. Motiur Rahman, Advocate with Mr. Azimuddin Patwary, learned Advocate appeared for the added respondent No. 7.

Learned Advocate for the petitioner submits that the conduct of the respondents in cancelling the time schedule granted to the petitioner earlier without any serving any prior notice is without lawful authority and is violative of the provisions of Rule 10 of the Bangladesh Inland Water Transport (Time and Fare Table Approval) Rules, 1970. He takes us to Annexure C and D wherefrom he shows that the petitioner was earlier granted a particular time table to ply in the inland river. He submits that however the sudden cancellation by way of annexure- F dated 10.01.2016 without issuing any show cause notice is without lawful authority and not sustainable. He concludes his submission upon assertion that annexure-F dated 10.01.2016 issued under the signature of the respondent No. 6 cancelling the time table of Vessel M.V. New Al Borak owned by the petitioner under proprietorship of M/S Rakib Water Ways in Dhaka – Chandpur Water Route is unlawful and the Rule bears merit ought to be made absolute for ends of justice.

On the other hand learned Advocate for the respondent Nos. 3 and 4, BIWTA opposes the Rule. He elaborates his submission upon assertion that it is manifest from Annexure- C and D that the time schedule which was granted to the petitioner was for a particular period and which is clearly mentioned in the said annexures. He takes us to annexure- C and D and points out that it is clear the petitioner's

vessel was allowed the time table which was granted during a certain period till a particular time that is till 04.08.2015. He also points out that সাময়িক (temporary) is clearly stated in Annexure- C and D. He submits that Annexure- D also reflects that the petitioner was granted permission to ply during the scheduled time in the river during till 15.10.2015. He submits that the petitioner having full knowledge by way of Annexure- C and D agreed to the same and therefore no fundamental rights of the petitioner has been violated. He further submits that since the petitioner had full knowledge about the time schedule for purpose of ঈদুল আযহা therefore there is no necessity to issue prior notice to the petitioner prior to cancellation. He concludes his submissions upon assertion that the Rule bears no merit ought be discharged for ends of justice.

Learned Advocate for the respondent No. 7 also opposes the rule and substantively supports the submission of the learned Advocate for the respondent Nos. 3 and 4. He concludes his submissions upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

We have heard the learned Counsels, perused the application and materials before us. We have firstly examined annexure- C and D of the writ petition which is the order by which the petitioner was granted the particular time table to ply in the river during celebrations of Eid-ul-Adha. We have also noticed annexure- C and D that in the order the term সাময়িক (temporary) is clearly written. The learned Advocate for the respondents contended that since the petitioner agreed to conditions having full knowledge of the temporary schedule,

therefore there is no necessity to serve show cause notice upon him. He submits that in the absence of no necessity of any show cause notice consequently no fundamental rights of the petitioner is violated.

We have particularly drawn our attention to Rule 10 of the Bangladesh Inland Water Transport (Time and Fare Table Approval) Rules, 1970 which was brought to our notice. The learned Advocate for the petitioner attempted to contend that no notice was served to him under Rule 10 and such cancellation is unlawful. Upon perusal of Rule 10 of the Bangladesh Inland Water Transport (Time and Fare Table Approval) Rules, 1970 it appears that the circumstances under which notice has to be served upon any concerned person does not exist in this case. In the instant case by way of annexure- C and D it is clear that the petitioner having full knowledge of the circumstances accepted the time schedule to be temporary for purpose of Eid-ul-Adha. Therefore Rule-10 of the Bangladesh Inland Water Transport (Time and Fare Table Approval) Rules, 1970 is not applicable in the instant case. Furthermore we have drawn upon Rule 17 of the Bangladesh Inland Water Transport (Time and Fare Table Approval) Rules, 1970. Rule 17 is reproduced below:

“17. Amendment in the time table- The Authority may, at any time, amend the time and fare tables approved earlier, provided such amendment in the opinion of the Authority is warranted in the public interest.”

It also shows from the Rules and also drawing upon Annexure- C and D that the Authority has the power to amend the time schedule.

Moreover as mentioned above by annexure-C and D it is clear that the petitioner had full knowledge of the circumstances and the time frame till which he was granted the time schedule. We have found that no fundamental and statutory rights of the petitioner has been violated. We do not find any merits in the Rule.

In the result, the Rule is discharged without any order as to cost.

The order of stay granted earlier by this court is hereby vacated.

Communicate this judgment at once.

I agree.

Kazi Zinat Hoque, J: