

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

**WRIT PETITION No. 7238 OF 2017 with**  
**WRIT PETITION No. 8313 OF 2017**

In the matter of:

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

AND

In the matter of:

Al-Haj Md. Shamim Akter and others

.....Petitioners (In W.P. No. 7238 of 2017)

Redwan Auto Flour Mills Ltd.

.....Petitioners (In W.P. No. 8313 of 2017)

-Versus-

Bangladesh, represented by the Secretary,  
Ministry of Textiles and Jute and others

..... Respondents (In both Writ Petitions).

Mr. A.S.M.M. Kabir Khan, Advocate

... For the Petitioners (In W.P. No. 7238 of 2017)

Mr. Md. Abdul Malek Howlader, Advocate

.....Petitioners (In W.P. No. 8313 of 2017)

Mr. Mansur Habib, Advocate with

Mr. Md. Bulbul Abu Saiyed, Advocate

..For the respondent No.1(In both Writ Petitions).

**Judgment on: 16.08.2022**

**Present:**

**Mr. Justice Md. Khasruzzaman**

**and**

**Mr. Justice Md. Iqbal Kabir**

**Md. Khasruzzaman, J:**

These two writ petitions being cropped up from the self same impugned memo and common question of law and facts involved in both the petitions being same and identical have been heard analogously and are being disposed of by this single consolidated judgment.

In Writ Petition No. 7238 of 2017 on 23.05.2017 the *Rule Nisi* was issued calling upon the respondents to show cause as to why the S.R.O. No. ১৩-আইন/২০১৭ dated 18.01.2017 issued under the signature of the respondent No. 2, published in the Bangladesh Gazette on 21.01.2017 including wheat and flour in serial Nos. 15 and 16 in the schedule of the “পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার বিধিমালা-২০১৩” (Annexure-C) should not be declared to have been issued without lawful authority and is of no legal effect and/or to pass such other or further order or orders as to this Court may seem fit and proper.

In Writ Petition No. 8312 of 2017 on 08.06.2017 the *Rule Nisi* was issued calling upon the respondents to show cause as to why the impugned provisions as contained in sections 3, 4 and 7(3)

of the পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার আইন, 2010 (Annexure-B) should not be declared *ultra virus* to the Constitution being inconsistent with the fundamental rights guaranteed under articles 26,31,32,40 and 42 of the Constitution and impugned amendment made pursuant to S.R.O. No. 13-Ain/2017 dated 18.01.2017 (Annexure-D) making it mandatory to use jute bags for packaging flour under serial No. 16 of the schedule of the পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার বিধিমালা, 2013 promulgated vide S.R.O. No. 133-Ain/2013 dated 28.05.2013 should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts as stated in writ petition No. 7238 of 2017 are as follows:

The petitioners having four mills of wheat and flour are entrepreneurs and they have been continuing their business. In 2010 in order to promote the use of jute bags, “The Mandatory Jute Packaging Act, 2010 was enacted. Accordingly, Rules were framed under the said Act namely “পণ্যে পাটজাত মোড়কের বাধ্যতামূলক

ব্যবহার বিধিমালা-২০১০” and subsequently by repealing the Rules, 2010 framed new Rules namely- The Mandatory Jute Packaging Rules, 2013. The petitioners have been marketing their products namely wheat and flour in polythene packets to maintain the quality and quantity of their products. On 18.01.2017 the respondent No. 1 issued a S.R.O published in the Bangladesh Gazette on 21.01.2017 including another 11 products with the 6 products mentioned in the schedule of the Rules, “পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার বিধিমালা-২০১৩”, out of the said 11 products, 9 are grains and 2 are powders namely- wheat and flour, mentioned in Serial Nos. 15 and 16 in the SRO No. ১৩-আইন/২০১৭. After publishing the said SRO the petitioners find difficulty to implement the Rules because the jute bags are not appropriate and suitable for packaging, storing, transporting and marketing for the same, as wheat and flour can easily absorb water and dust. Therefore, the petitioner No. 1 in Writ Petition No. 7238 of 2017 filed an application to the respondent No. 7, Deputy Commissioner, Khulna requesting him to rescind the same, Annexure- C, and also requested the authority to allow them using polythene bags till disposal of his application.

Thus the petitioners filed Writ Petition No. 7238 of 2017 and obtained the above *Rule Nisi*.

Facts as stated in writ petition No. 8313 of 2017 are as follows:

Being a company the petitioner has been incorporated with the Registrar of Joint Stock Companies (in short, RJSC) for manufacturing and exporting flour at home and abroad in Woven Poly Profilene (in short, W.P.P.) bags. For being powder wheat and flour usually packed in airtight bags, otherwise these products become wet and damp, and thereby loss of its saleable and marketable characteristics. The entire machineries of flour plant including the packaging system has been imported, and nowhere in the world jute bag is used for packing flour. So, the technology set up for packaging flour, does not allow jute bags to pack the same. A new enactment was made on 12.10.2010 namely the “পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার আইন, ২০১০” (hereinafter referred to the Act, 2010) which was published in the official gazette. The Ministry of textile and Jute in pursuant to section 22 of the “পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার আইন, ২০১০” promulgated the “পণ্যে পাটজাত মোড়কের

বাধ্যতামূলক ব্যবহার বিধিমালা, ২০১৩” vide S.R.O No. 133 Ain/2013 dated 28.05.2013, packing of 6 products with jute bag was made mandatory. However, in the said schedule wheat and flour were not mentioned. Subsequently, an amendment has been made vide S.R.O No. 13-Ain/2017 dated 18.01.2017, and made it mandatory to use jute bags for packing flour by adding serial 16 in the schedule of the “পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার বিধিমালা, ২০১৩” vide S.R.O No. 133 Ain/2013 dated 28.05.2013 and the same is also hereby impugned in this writ petition.

The respondent No. 1 contested the *Rule Nisi* by filing two separate affidavits-in-opposition denying the material facts as stated in the writ petition contending *inter alia* that as per section 5 of the Mandatory Jute Packaging Act, 2010, an Advisory Committee was formed for suggesting regarding distribution, production and supplying of goods in jute bags and as per suggestions of the said Advisory Committee, the government formed the Rules “পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার বিধিমালা-২০১৩”. Moreover, the Directorate of Environment Department was asked regarding using of poly packing, and thereafter he gave an

opinion by the letter dated 11.10.2017 mentioning that the poly packing is very harmful for the environment as well as health. It is stated in their application that in the meantime the Bangladesh Standards and Testing Institution (in short, the BSTI) fixed the standard of jute packet for packaging pulse, wheat and flour. The BSTI specified inner liner into jute bags to protect the quality of wheat and flour, and by using inner liner the quality of goods remains intact and is of no risk to be damaged. Accordingly, there is no illegality in forming the Rules পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার বিধিমালা-২০১৩ and thus the instant *Rule Nisi* is liable to be discharged.

Mr. A.S.M.M. Kabir Khan, the learned Advocate for the petitioners in Writ Petition No. 7238 of 2017 submits that it is not possible to use the jute bag for packaging the products, namely wheat and flour. Accordingly, they filed an application before the authority for packaging, storing, transporting and marketing flour. He further submits that wheat and flour are powder type products and the jute bag has ventilation capacity. If jute bags are used to store wheat and flour, it must come in contact with air and must be damp. Therefore, the quality and quantity of the wheat and flour

will be damaged. Rather, the polythene is necessary for ensuring its quality and quantity. Accordingly, he has prayed for making the *Rule Nisi* absolute.

Mr. Md. Abdul Malek Howlader, the learned Advocate for the petitioner in Writ Petition No. 8313 of 2017 adopts the submissions made by the learned Advocate for the petitioners in Writ Petition No. 7238 of 2017.

Mr. Munsur Habib, the learned Advocate appearing with Mr. Md. Bulbul Abu Saiyed, the learned Advocate for the respondent No. 1, submits that it is a government policy which has been enacted by law. By referring Annexure-2 Mr. Munsur Habib also submits that the Bangladesh Standards and Testing Institution fixed the standard to use jute bags for packaging pulse, wheat and flour, and inner liner can be used into the jute bags, and as such the petitioners have no grievance to be accustomed to the new order given by the BSTI.

Heard the learned Advocates for both the sides and perused the application, affidavit-in-opposition, other material documents and the annexures annexed thereto.



It appears that as per provision of section 5 of the Mandatory Jute Packaging Act, 2010 an Advisory Committee has been formed for suggesting regarding distribution, production and supplying of goods in jute packaging and as per suggestion of the said Advisory Committee the government formed the “পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার বিধিমালা-২০১৩” to protect the environment and public health. The government took a decision for compulsorily using jute bags in packaging the products of wheat and flour and accordingly published the SRO, which has a force of law. The preamble of the পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার আইন, ২০১০ is that- যেহেতু কতিপয় পণ্যের সরবরাহ ও বিতরণে কৃত্রিম মোড়কের ব্যবহারজনিত কারণে সৃষ্ট পরিবেশ দূষণরোধকল্পে বাধ্যতামূলকভাবে পাট জাত মোড়ক ব্যবহার নিশ্চিতকরণ এবং এতদসংক্রান্ত বিষয়ে বিধান করা সমীচীন ও প্রয়োজনীয়, and as such as per section 22 of the Act, 2010, the government through S.R.O. No. ১৩-আইন/২০১৭ dated 18.01.2017 published in the Bangladesh Gazette on 21.01.2017 as serial Nos. 15 and 16 amended the পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার বিধিমালা-২০১৩ including the wheat and flour in the schedule of the Rules, 2013, which are the subject matters of the petitioners. The main submission of the petitioners was whether a jute bag is

appropriate and standard to maintain quality and quantity for packaging wheat and flour in the factory.

It is stated in the affidavit-in-opposition that on 09.10.2017 the Bangladesh Standards and Testing Institution fixed the standard of jute bag for packaging the wheat and flour. Accordingly, the BSTI specified jute bags with inner liner for which the character of wheat and flour will not be changed. The petitioners did not make any adverse submission or affidavit-in-reply regarding the use of inner liner into jute bags specified by the BSTI.

It also appears that on 09.10.2017 the Bangladesh Standards and Testing Institution published a memo fixing the standard of jute bags for packaging pulse, wheat and flour etc. and specified jute bag which does not affect the quality and quantity of the flour. Thus as per statements made in the affidavit-in-opposition, it can easily be said that the quality and quantity of wheat and flour will not be changed if the petitioners use inner liner in the jute bags.

At this juncture, it is pertinent to state that in respect of violation of fundamental rights, there must be sufficient pleadings in support of the claim that the applicant's cherished rights

enshrined in the Constitution have been denied by the administrative action for which he seeks protection of his rights and that he will not get the remedy. It will not suffice if he simply makes a superficial statement of discrimination and/or violation of fundamental rights. When petitioner will come with specific case with sufficient pleadings, there will be scope for contravention of those facts by the authority and then this Court can decide whether those rights claimed by the aggrieved person have been violated. The petitioner in Writ Petition No. 8313 of 2017 did not make such statement or ground to declare sections 4, 7(3) and 22 of the পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার আইন, ২০১০ are *ultra vires* to the constitution which are the violation of the fundamental rights of the petitioner as guaranteed under articles 29, 40 and 42 of the constitution, and as such framing of the পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার বিধিমালা-২০১৩ under the said Act, 2010 for mandatory use of jute bags for packaging flour under serial No. 16 of the schedule of the পণ্যে পাটজাত মোড়কের বাধ্যতামূলক ব্যবহার বিধিমালা-২০১৩ promulgated vide S.R.O No. 133-Ain/2013 dated 28.05.2013 was lawful.

Accordingly, we do not find any substance in the submissions of the learned Advocates for the petitioners as well as merit of the *Rules Nisi*.

In the result, both the *Rules Nisi* are discharged without any order as to costs.

The orders of stay granted at the time of issuance of the Rule and its subsequent orders are hereby re-called and vacated.

Communicate the order.

**Md. Iqbal Kabir, J:**

I agree.