

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Obaidul Hassan, Chief Justice
Mr. Justice Borhanuddin
Mr. Justice M. Enayetur Rahim
Mr. Justice Md. Ashfaqu Islam
Mr. Justice Md. Abu Zafor Siddique
Mr. Justice Jahangir Hossain

CIVIL APPEAL NO. 456 OF 2017

(Arising out of C.P. No. 895 of 2017)

Bangladesh Tailbahi Jahaj Malik Appellant
Samity, represented by its President
-Versus-

Chairman, Bangladesh Inland Water Respondents
Transport Authority (BIWTA) and others

For the Appellant : Mr. Kamal-ul-Alam, Senior Advocate
with Ms. Shahanaj Akhter, Advocate
instructed by Mr. Zainul Abedin,
Advocate-on-Record

For Respondent No. 1 : Mr. A.M. Amin Uddin, Senior
Advocate with Mr. Md. Obaidur
Rahman Mostafa, Advocate, Ms.
Sabrina Zerine, Advocate and Mr.
Md. Abdul Quiyum, Advocate
instructed by Mr. Mohammad Abdul
Hai, Advocate-on-Record

Respondent Nos.2-5 Not represented

Date of Hearing : 18.10.2023 and 15.11.2023

Date of Judgment : 23.11.2023

J U D G M E N T

Md. Ashfaqu Islam, J: This civil appeal by leave is directed
against the judgment and order dated 22.08.2016, passed
by the High Court Division in Civil Revision No. 1575 of
2006 making the Rule absolute.

Facts, in short, are that the present appellant along with respondent No.2, as plaintiffs instituted Title Suit No. 199 of 2001 before the 1st Court of Assistant Judge, Dhaka, praying for declaration that the application of Conservancy and Pilotage Service Fees Rules, 1990 over the Coastal Ships and Tankers of the plaintiffs established under the Merchants Shipping Ordinance, 1983 is illegal and also for declaration that the letters dated 17.06.2001 and 25.6.2001 and circular vide letter No. M- 2/15/47(4) are illegal and unlawful.

The trial Court dismissed the suit. Against which appeal was preferred and the same was allowed by setting aside the judgment and decree of the trial Court. Challenging the said decision the defendants filed Civil Revision before the High Court Division and obtained Rule. A Single Bench of the High Court Division made the Rule absolute upon setting aside the judgment and decree of the appellate Court and affirming those of the trial Court. Hence, the plaintiff No. 1 preferred civil

petition for leave to appeal before this division and obtained leave giving rise to this appeal.

Mr. Kamal-ul-Alam, the learned Senior Advocate appearing for the appellant submits that the High Division committed an error of law in passing the impugned judgment and order holding that having not been vested with any right to declare any law void the court of appeal below erred in declaring the imposition of conservancy fees under Section 3 of the “নৌ- সংরক্ষন ও পরিচালন এবং পথ নির্দেশনা ফিস বিধিমালা, ১৯৯০ (hereinafter referred to as Bidhimala, 1990) as illegal.

Next he submits that the conservancy fees are leviable only on “অভ্যন্তরীণ জাহাজ” as defined in Bidhimala, 1990 and payable by the “মালিক” of “অভ্যন্তরীণ জাহাজ” registered under the provision of the said Bidhimala, 1990 and as such the demands made in the impugned notices for payment of conservancy fees from the members of the plaintiffs’ samity (Association) whose tankers and coasting ships ply in the river ways which are not “অভ্যন্তরীণ জাহাজ” but are

coasting Ships as defined and whose "ownerships" are registered under the provisions of Merchant Shipping Ordinance, 1983. Without considering the aforesaid provisions of law the High Court Division erred in law in abruptly passing the impugned Judgment and order.

He further submits that the members of the plaintiffs' samity (Association) are the owners of ships/tankers as defined in Section 2(47) and "coasting ship" as defined in section 2(4) of the Merchant Shipping Ordinance, 1983 which are not "অভ্যন্তরীণ জাহাজ" as defined in বিধি-২(ক) of Bidhimala, 1990 read with Section-2(e) and (f) of the Inland shipping Ordinance, 1976 and the members of plaintiffs' samity (Association) are the "মালিক"/owner of the said vessels as defined in Section-2(26) and the same are registered under Section 14 and 26 of the Merchant Shipping Ordinance, 1983, consequently the High Court Division was wrong in law in not holding that the said tankers and coasting ships of the members of plaintiffs' samity (Association) not being "অভ্যন্তরীণ জাহাজ" as defined in বিধি-

২(খ) of Bidhimala, 1990 the conservancy fee is not payable by the members of plaintiffs' samity (Association).

On the other hand Mr. A.M. Amin Uddin, the learned Senior Advocate appearing for the respondent No. 1 made his submissions supporting the impugned judgment and order of the High Court Division.

We have heard the learned Advocates of both sides and perused the impugned judgment and order of the High Court Division together with the decisions of the courts below.

It is admitted that the ships or the vessels owned by the members of the plaintiffs' Association are mainly ship and vessel in the coastal area but they have to transport petroleum fuel and other goods within the Inland River Way. And the Bangladesh Inland Water Transport Authority (BIWTA) is authorized for imposition fees upon the costal and Oil Tanker which are running or transporting within the Inland Water Ways under the provision of Bidhimala, 1990 which was enacted in pursuant to Bangladesh Inland Water Transport Authority

Ordinance, 1958. The relevant provisions of the said

Bidhimala are produced verbatim as under:-

“এস, আর, ও নং ৪২৮-আইন/৯০/জপ্র/বিধি-২/৯০- Bangladesh Inland Water Transport Authority Ordinance, 1958 (E.P. Ord. LXXV of 1958) এর section 19 এর sub-section (3) [উক্ত section (2) এর clause (VII) সহ পঠিত] তে প্রদত্ত ক্ষমতাবলে এবং এতদসংক্রান্ত পূর্বের প্রণয়কৃত সকল বিধিমালা রহিতকরণপূর্বক সরকার নিম্নরূপ বিধিমালা প্রণয়ন করিলেন, যথাঃ

১। সংক্ষিপ্ত শিরনামা ও প্রবর্তন। -(১) এই বিধিমালা নৌ-সংরক্ষণ ও পরিচালন এবং পথ নির্দেশনা ফিস বিধিমালা, ১৯৯০ নামে অভিহিত হইবে।

(২) এই বিধিমালা সাধারণ নিয়ম অনুযায়ী এবং কোন বিশেষ বিধির ক্ষেত্রে উল্লেখিত তারিখ/সময় হইতে বলবৎ হইয়াছে বলিয়া গণ্য হইবে।

২। সংজ্ঞা- বিষয় বা প্রসংগের পরিপন্থি কোন কিছু না থাকিলে, এই বিধিমালায়,-

(ক) “অভ্যন্তরীণ জাহাজ” বলিতে ইনল্যান্ড শিপিং অধ্যাদেশ, ১৯৭৬ (Ord. No. LXXII of 1976) এ বর্ণিত জাহাজকে বুঝাইবে; এবং

(খ) মালিক বলিতে অভ্যন্তরীণ জাহাজের নিবন্ধনকৃত সনদে উল্লেখিত মালিককে বুঝাইবে।

৩। নৌ-সংরক্ষণ ফি। - (১) প্রত্যেক অভ্যন্তরীণ জাহাজের উপর নিম্নোক্ত হারে ধার্যকৃত নৌ-সংরক্ষণ ফি জাহাজ মালিককে পরিশোধ করিতে হইবে, যথাঃ-

(ক) যাত্রাবাহী অভ্যন্তরীণ জাহাজ টাকা ৩৬ প্রতি যাত্রী প্রতি বৎসর।

(খ) অভ্যন্তরীণ মালবাহী জাহাজের জন্য :

(১) কোস্টার	টাকা ৩৯	প্রতি গ্রস টন প্রতি বৎসর
(২) অয়েল ট্যাংকার	টাকা ৮৮	ঐ
(৩) ফ্লোট	টাকা ৭	ঐ
(৪) বার্জ	টাকা ৭	ঐ
(৫) টাগ	টাকা ১২	ঐ
(৬) স্বয়ংক্রিয় যন্ত্রচালিত	টাকা ১৪	ঐ

নৌ-যান (self-propelled vessel) ”

Pertinently, let us see the definition of Inland Ship as envisaged in the Inland Shipping Ordinance (Ordinance No. LXXII of 1976). Section 2(e) defines Inland Ship. It enjoins the definition which is worded as under:

“2(e) “inland ship” means every description of vessel ordinarily plying on inland waters and propelled wholly

or in part by steam, liquid fuel, electricity or any other mechanical powers and includes a sailing boat, dumb barge and other craft which is not so propelled but is towed or pushed by a vessel so propelled."

Combined reading of both the impugned Bidhimala 1990 and the Ordinance 1976 justify the imposition of conservancy fees as aforesaid.

Now, let us further evaluate the entire case on the appraisal of the imposition of the conservancy fees under the Bidhimala 1990.

The learned Advocate for the appellant claims that imposition any conservancy fees by Bidhimala, 1990 shall be double jeopardy for the members of their association because they have to bear taxes for the Coastal Authorities as well as Inland Authorities. But it reveals that the coastal authorities and the Inland River Authorities are different jurisdictions with different types of services, therefore, as per Bidhimala, 1990 any imposition cannot be declared illegal or without lawful authority unless or until Bidhimala is declared illegal.

The appellate court below came to a conclusion that any civil court can entertain any matter where interpretation in respect of law to be declared illegal, even the constitutional provision, within the framework of Order XXVIIA Rules 1 and 2 of the Code of Civil Procedure which reads as follows:-

"R.1. In any suit in which it appears to the court that any substantial question as to the interpretation of constitutional law is involved, the court shall not proceed to determine that question until after notice has been given to the Attorney General for Bangladesh if the question of law concerns the Government***."

The findings of the appellate Court below banking on Order XXVIIA Rules 1 and 2 as mentioned above leads to absurdity, simply because the said law enjoins that where any substantial question as to the interpretation of constitutional law is involved, the Court shall not proceed to determine that question until after notice has been given to the Attorney General for Bangladesh. To our utter surprise it reveals that the Appellate Court below even did not act accordingly. The findings of the High Court Division on that score is well founded. When the

lower appellate Court took notice of Order XXVIIA of the Code of Civil Procedure, it could easily notify the Attorney General of Bangladesh in terms of the said provision of the Code of Civil Procedure.

To sum up, first of all, we endorse the view of the High Court Division that the imposition of fees in question is not a double jeopardy. Rather it is absolutely justified.

In the context of adjudicating such a case before this Division where the crucial question of balancing commercial interests and environmental stewardship between parties as well as that of the river is concerned, we grapple with the question of imposing conservancy fees on sea-going oil tankers that traverse inland waters and utilize rivers to access the open sea via estuaries. The ship-owners, in their defense, contend that they fall outside the category of vessels exclusively navigating inland rivers. They further argue that imposing such fees would amount to double jeopardy and inflict undue hardship upon them. However, a closer

examination reveals compelling reasons for rationalizing these fees.

In rationalizing the imposition of conservancy fees on sea-going oil tankers navigating inland waters and rivers, despite ship-owners' arguments of exemption and double jeopardy, several points can be asserted. Firstly, the definition of a river includes any watercourse naturally flowing towards a sea, estuary, or lake. Sea-going vessels utilizing these riverways for navigation inherently fall within the purview of vessels using inland waters. Thus, they are subject to relevant fees aimed at maintaining the navigability and health of these watercourses. Secondly, while ship-owners may contend that such fees constitute double jeopardy, it must be underscored that the purpose of conservancy fees is distinct from other maritime charges. These fees specifically contribute to the upkeep and preservation of inland waterways, which are crucial for maritime commerce and environmental sustainability. Therefore, the imposition of conservancy fees is not duplicative but rather serves a distinct regulatory purpose. Moreover,

the argument that sea-going vessels are not directly benefiting from inland waterways neglects the interconnectedness of maritime transportation networks. Even if primarily bound for the sea, these vessels rely on riverways for access to ports and estuaries, thereby benefiting from the infrastructure and maintenance funded by conservancy fees. Lastly, acknowledging the significant government expenditure required to maintain river health and navigability underscores the necessity of equitable contributions from all users, including sea-going vessels. In conclusion, the imposition of conservancy fees on sea-going oil tankers navigating inland waters is justifiable both legally and practically, ensuring the sustainable management of vital maritime resources for the benefit of all stakeholders.

It is to be understood by all stakeholders that the conservancy fees are not punitive measures but rather investments in sustainable river management. Ship-owners, as beneficiaries of efficient river navigation, play an essential role in safeguarding these vital waterways. By recognizing the interconnectedness of rivers, estuaries,

and the open sea, we can uphold both economic interests and environmental well-being.

The case in hand is indeed of such an impact which as we have discussed above manifestly maintained that the High Court Division was absolutely justified in holding that the Court of appeal below committed an error of law by allowing the appeal and thereby declaring the imposition of conservancy fees by section 3 of the Bidhimala, 1990 illegal and hence cannot be gainsaid that there is a denial of justice in any manner. The judgment and order passed by the High Court Division is elaborate, speaking and well composed. We are not inclined to interfere with the same.

Accordingly, the appeal is dismissed without any order as to costs.

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