

*Present:*

*Mr. Justice A.K.M. Asaduzzaman*

*And*

*Mr. Justice Syed Enayet Hossain*

*Writ Petition No. 9695 of 2019*

*Md. Shahidul Hossain Ahmed and others*

*.....Petitioners.*

*-Versus-*

*Bangladesh and others*

*.....Opposite parties.*

*Mr. Jobayer Mohammad Aourangzeb, Adv*

*.... For the petitioner.*

*Mr. Muhammad Rafiul Islam, Adv.*

*---For the Res. No. 2.*

*Mr. Kh. Bahar Rummy, D.A.G. with*

*Mr. Nur Muhammad Azami, D.A.G. with*

*Mr. Md. Abdul Jabbar Joel, A.A.G. with*

*Mrs. Sumaiya Binta Aziz, A.A.G. and*

*Mr. Md. Tanvir Prodhan, A.A.G.*

*.... For the respondents.*

*Heard and judgment on 13<sup>th</sup> March, 2025.*

*A.K.M.Asaduzzaman,J.*

This Rule Nisi was issued calling upon the respondent Nos. 1-6 to show cause as to why the decision taken in the meeting of the Regional Transport Committee (RTC), Sylhet held on 16.05.2019 in

pursuance of Direction of the Director (Engineer), Bangladesh Road Transport Authority (BRTA) not to give registration to 147 New Four Stroke CNG Auto Rickshaws of the petitioners (Annexure-N) should not be declared to have been taken without lawful authority and is of no legal effect and why a direction should not be given upon the respondents to issue Certificates of new registration, transfer of ownership with new Registration, Tax token and Fitness for a number of 147 New Four Stroke CNG Auto Rickshaws (03 wheeler) of the petitioners made by Bajaj Auto Limited, India.

Petitioners are businessman by profession having tax payee M/S Uttara Motors Ltd. is a company, who imported CNG Auto Rickshaw from Bajaj Auto Limited, India through letter of Credit issued by Islami Bank Bangladesh Ltd. Foreign Exchange Branch. The said consignment was received by the clearing and forwarding (C & F) Agent namely, Z.R. Corporation. Thereafter receiving the goods from the company, Uttara Motors Ltd. sold out the said Auto Rickshaws to different persons. The petitioner purchased 147 CNG Auto Rickshaws from the company at a price of Tk. 4,07,500/- each including value added tax charge on the same. Petitioners being the owner and valid purchaser of the said CNG Auto Rickshaws applied for registration of the same on different dates from June, 2014 to September, 2014 to the office of Assistant Director, Bangladesh Road Transport Authority

(BRTA), Sylhet and Registering authority, Sylhet (Respondent No.4) depositing Tk. 4,762/- against issue of new Registration, Tk. 2,697/- against issue of Tax Token, Tk. 1,087/- against issue of fitness certificate and Tk. 3,000/- against advanced income tax against each transport and also submitted form T, TTO, sale receipts, affidavits and promissory letters. Respondent No. 4 without issuing certificates of new registration, tax token and fitness sat over the matter for a long time. Thereafter although petitioners repeatedly approached respondent no. 4 to do the needful in the above matter but no effect. In the above circumstances, there is likelihood of damaging the machineries incurring heavy financial loss and injury to them. Respondent No. 4 issued Registration Certificate for a CNG Auto Rickshaws (Babi Taxi) bearing Chassis No. MD2A27AZ9EWC 13485 and Engine No. AZZWEC 22663 in favour of its owner Md. Saiful Alam vide Registration No. Sylhet TAW 13-1225 dated 08.09.2014 which registration was given after petitioner CNG Auto Rickshaws in point of time. Earlier the petitioners submitted several writ petition Nos. 10283 of 2014 to 10343 of 2014 before the Hon'ble High Court Division praying for a direction to issue certificate of new registration, tax token and fitness for 147 number of new four stroke CNG Auto Rickshaws and the Hon'ble High Court Division was pleased to issue Rule and a direction on 18.11.2014 upon the respondents to issue certificates of new registration, tax token and fitness for new four stroke CNG Auto

Rickshaws (03 wheeler) by Bajaj Auto Limited, India in accordance with law. In view of the said order of the Hon'ble High Court Division BRTA went to the Appellate Division in Civil Petition for Leave to Appeal and finally disposed of the matter with a direction to the Hon'ble High Court Division to dispose of the matter as early as possible. Thereafter the Auto Rickshaws Malik Shramik Samannay Parishad, Sylhet on 10.05.2016 approached the Deputy Commissioner, Sylhet and President Regional Transport Committee, Sylhet hereinafter referred to as RTC for registration of the Auto Rickshaws. Accordingly Deputy Commissioner, Sylhet formed a five member committee headed by Additional Deputy Commissioner, Sylhet. The said committee in its meeting held on 22.06.2016 took decision taken obtain legal opinion from the Law Officer of BRTA as to whether registration to 147 Auto Rickshaws of the petitioners could be given during pendency of the case. The Law Officer submitted report on 30.08.2016 giving his opinion that –as such, if RTC think and decide that new registration of CNG is needed for Sylhet District area, then the BRTA, Sylhet may issue new registration of CNG, as there is no restrained order from any competent court of jurisdiction regarding the same. Thereafter petitioners made representation to the Deputy Commissioner, Sylhet and Assistant Director, BRTA to give registration of their Auto Rickshaws and both of them verbally assured the petitioners that registration to their Auto Rickshaws would be given, if the writ

petitions were withdrawn accordingly writ petitioner withdrawn the writ petition. The petitioner thereafter filed an application on 18.05.2017 before the Chairman, BRTA for registration of the CNG Auto Rickshaws, who referred the matter to the Deputy Commissioner, Sylhet to resolve the matter in consultation with the RTC on 09.10.2017. Accordingly a meeting of the RTC, Sylhet was held on 08.02.2018 with the Deputy Commissioner, Sylhet being President of the Committee in the Chair. Deputy Commissioner, Sylhet asked the members of the committee to submit their opinion in writing. Though six member of the RTC, Sylhet submitted written opinion on 10.02.2018 and Sylhet City Corporation on 25.02.2018, it has been mentioned in the minutes of the meeting of RTC, Sylhet held on 08.02.2018 that কমিটির সদস্যদের লিখিত মতামত লিপিবদ্ধ করা হয় । However, in the said meeting, decision was taken for not giving registration to the CNG Auto Rickshaws of the petitioners. Thereafter petitioners filed a Review Petition against the RTC on 03.02.2019 but in the meeting of the RTC, Sylhet held on 16.05.2019, the matter of the Review Petition was discussed but in the said meeting took decision not to give registration of the same.

Challenging the said order, Petitioners being aggrieved moved this writ petition and obtained the instant rule.

Mr. Jobayer Mohammad Aourangzeb, the learned advocate appearing for the petitioners submits that petitioner purchased the said CNG Auto Rickshaws by huge amount of money by taking loan through C.C. Loan of Tk. 1,50,00,000/- (One Crore and fifty lac) obtained from Pubali Bank, Chwokidekhi Branch, Sylhet against which an interest of Tk. 1 crore 15 Lac was charged out of which of Tk. 90 lac was paid but for default in payment of the loan amount interest charged thereon, the bank authority issued several notices and lastly on 18.07.2019 issued final notice for selling the mortgaged properties in auction as such huge amount of money is going to suffered in loss as well as violating their fundamental rights. He thus finally prays for making the rule absolute and petitioner may be directed to obtain the registration of CNG Auto Rickshaws.

On the other hand, Respondent No. 2 BRTA by filing an affidavit in opposition submits that Pursuant to the direction of our Apex Court since the petitioner could not obtained get any opportunity to have permission from the BRTA, the rule contains no merits, it may be discharged.

Heard the learned advocate of both the sides and perused the document annexed to the writ petition and the affidavit in opposition.

Petitioner purchased 147 CNG Auto Rickshaws (4 stroke 3 wheeler) from Uttara Motors Ltd. which was made by the Bajaj Auto

Limited, India. For purchasing the said CNG Auto Rickshaws, petitioner obtained loan from bank and had to pay huge amount of interest to the bank to the different bank. In the writ petition which has been disposed earlier, although a direction was given by the Apex Court in Civil Appeal No. 110 of 2013 with the effect that no CNG Auto Rickshaw without having route permit will be given registration. This is a policy decision of the authority concerned to solve/reduce the problem of traffic jam in Sylhet district and this decision was taken in presence of Finance Minister and also the officials of Bangladesh Road Transport Authority, Sylhet circle. The Appellate Division find no illegality in the decision on the order of the Chairman of BRTA to give registration of 1000 C.N.G. Auto Rickshaw of the writ petitioner. Accordingly there is any such order (petitioner was taken judgment and order given on 22.04.2015) but thereafter on an queries of the BRTA a legal opinion was given by the legal Adviser of the BRTA, which was for a concern authority on 30.08.2016 with having an opinion that

“That the facts of the aforesaid writ petitions, it is apparent that the petitioners filed the aforesaid writ petitioners for getting new registration of 147 CNG, which the petitioners have purchased and submitted requires fees to the BRTA. The aforesaid writ petitions are pending subject to the registration of 147 CNG not for others new registration of CNG and also not

for stopping the new registration of CNG and as such, if RTC think and decide that new registration of CNG is needed for Sylhet District area, then the BRTA Sylhet may issue new registration of CNG, as there is no restrained order from any competent court of Jurisdiction regarding the same.

under the above circumstances, Bangladesh Road Transport Authority (BRTA) may take appropriate steps regarding the same, considering the overriding objective of the court as well as the facts mentioned above, as there is no restrained order from the Hon'ble High Court Division of the Supreme Court of Bangladesh, if the authority concerned deems fit and proper.

Even after the said opinion is given by the BRTA but without having considered of the said opinion by the impugned order dated 16.05.2019 RTC declaring not to registration of the petitioner's vehicle arbitrarily. RTC is only authorized to give the road permit of the vehicle and they did not give any authority to decline their registration. In the impugned order it is apparent that by the following observation, petitioner's registration was refused wherein it is stated that যানজট বৃদ্ধি রোধে নতুন করে সিএনজি চালিত অটোরিক্সার রেজিস্ট্রেশন না দেয়ার সিদ্ধান্ত গৃহীত হয়।



In the said impugned order neither the directive of the Appellate Division was reflected nor the opinion of the legal adviser of the BRTA in considered.

Considering all these aspects of this case, we find that the order of their refusing the issue of registration certificate of the petitioner is arbitrarily and malafidy. Moreover the annexure K to the writ petition also reflected that a lot of CNG Auto rickshaw is now flying in the road having no registration certificate but the BRTA is not in a position to take any step to stop the un authorized vehicle having no registration. If the petitioner's application is rejected, petitioner is refused to give the registration on their purchased vehicles there would be no stopping of the road jam in any manner. Moreover, the Government also will be looser from getting tax from the legal purchaser of the vehicle as well as legal applicant of the vehicles.

Considering all these aspects of this case, the impugned order contains illegality, which is not sustainable in law.

We thus find merits in this rule.

Accordingly the rule is disposed of. The decision taken of RTC held on 16.05.2019 in pursuance of direction there not to give registration to 147 New Four Stroke CNG Auto Rickshaws of the petitioners are hereby declared to have been taken without lawful

authority and is of no legal effect. Respondents are hereby directed to issue certificates of new registration, transfer of ownership, with new Registration, Tax Token and Fitness for a number of 147 New Four Stroke CNG Auto Rickshaws (3 wheeler) immediately. However, the illegal CNG, who are flying in the road without registration certificate, must be accommodated under the legal frame work of the rules and regulation of BRTA.

Communicate the judgment at once.

Syed Enayet Hossain, J:

I agree.