

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

WRIT PETITION NO. 70001 OF 2005.

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Human Right and Peace for Bangladesh (HRPB), represented by it's President Advocate Manzil Murshid of 36, Mirpur Road, Dhanmondi, Dhaka- 1205 and another.

.....Petitioners.

- V E R S U S -

Bangladesh, Represented by the Secretary, Ministry of Home Affairs Bangladesh Secretariat, Ramna, Dhaka , Bangladesh and Others.

.....Respondents.

Md. Manzill Murshid, Advocate.

----- For the Petitioners.

Mr. Kazi Akter Hamid, Advocate.

----- For the Respondent Nos.2, 5 and 6.

Mr. Bibuti Bhushon Biswas, A.A.G.

----- For the Respondents.

Heard on 8.4.2009, 19.4.2009, 25.5.2009,28.5.2009 and 2.6.2009 Judgment on : 29.6.2009.

Present:

Mr. Justice Syed Refaat Ahmed

And

Mr. Justice Moyeenul Islam Chowdhury

SYED REFAAT AHMED, J:

This Application comes before us with regard to a public interest litigation filed, among others, by non-profit making organization by the name of Human Rights and Peach for Bangladesh ("HRPB") established to uphold the cause of human rights and to protect the fundamental rights of citizens. HRPB is represented herein by its

President Mr. Manzill Murshid who, in the course of these proceedings, has himself made submission for and on behalf of the Petitioner No. 1 HRPB.

This Application is born out of concern of the apparent unregulated manner in which cattle 'hat' or open-air cattle markets are set up, especially during Eid-UI-Azha, at various public places in the Dhaka Metropolitan area and which for want of specific regulation, or the inadequacy of the existing ones, coupled with lack of oversight by the concerned authority and the law-enforcement agencies, as well as the absence of much needed so-ordination of the activities of any such authority and agencies, has over the years shown signs of breaching the fundamental rights of citizens by virtue of operating beyond the legal and physical boundaries within which these must necessarily operate and function. Predicated on this state of affairs that HRPB and the other six Petitioners, all Members of the Bar, have filed this Application alarmed by the fact that cattle 'hat' or markets as now set up increasingly operate to impede and restrict a citizen's movement in public thoroughfares, roads, streets and by-roads as well as a citizen's use and enjoyment of open public spaces and the attendant civic amenities. The concern is also of the ritualistic slaughter of animals during Eid-UI-Azha on roads and streets that, by the end of the festivities, invariably result in carcasses and other animal waste exposed to the elements for an unreasonable period of time. This is due to lack of effective steps taken by the concerned authority to remove and dispose of the same at the earliest possible opportunity with a view to maintaining the best possible hygienic conditions for the conduct of a normal civic life by the residents of this metropolitan area.

It is in that regard, and against this backdrop, that this Rule was issued calling upon the Respondents to show cause as to why a direction should not be given upon the Respondents not to allow any cattle 'hat' on the streets and to take appropriate steps to remove all animal waste within twenty-four hours in a hygienic manner. This Application has come to be considered by this Court in the context of the extant legal regime comprising primarily of two pieces of legislation, the Dhaka City Corporation Ordinance, 1983 ('DCC Ordinance'), and the Dhaka Metropolitan Police Ordinance, 1976 ('DMP Ordinance').

A perusal of the DCC Ordinance brings to light certain provisions of significance which are either self-contained or shall necessarily need further elaboration by the concerned authority being the Dhaka City Corporation ('DCC') itself to meet the needs of the time. In this Court's view, the first provision of note in the DCC Ordinance is Section 114 as is entitled "General Provisions about streets." Sub-section 4 of the said Section reads thus:

"The Corporation may by by-laws define nuisance and offences with regard to streets, and Provide for their prevention and abatement."

It is evident to this Court that this provision in Section 114(4) sufficiently equips the DCC to define nuisances which may collectively be grouped as, for example, 'statutory nuisances', thereby bringing within the purview of such by-laws the control of matters which are nuisances or prejudicial to health and, therefore, appropriately come to be regulated by an authority as the DCC under Section 114(4). Upon a query made to that effect, Mr. Manzill Murshid submits that to the best of his knowledge the DCC has thus far not progressed on to formulating such bylaws under Section 114(4). In addressing the issues at hand this Court is of the view that there are further provisions already to be found in the DCC Ordinance that can be adopted or elaborated on by the

DCC effectively to regulate both the granting of sanctions for the setting up of cattle 'hat' during Eid-UL-Azha as well as the necessary management of the same. Such provisions in particular are to be found in Section 97 of the DCC Ordinance as deals with the sanitation and proper management of public markets, Section 99 as deals with the providing and maintaining of slaughter-houses at sites within or outside of the limits of Dhaka City, and Section 107 as deals with the disposal of carcasses. It is interesting to note that Section 107 makes it mandatory for the disposal of the dead body of any animal as dies in private custody within twenty-four hours to a place either fixed by the DCC itself for the disposal of such carcasses, or to a place beyond the Dhaka City limits not being a place within one mile of the City limits. Section 107, however, does not in its present form have any application to the removal of carcasses of animals that are slaughtered for the purpose of sale or consumption or for any religious purpose. In fact, it is expressly excluded from operating in those circumstances. By extension, therefore, Section 107 in its present state does not necessarily apply to ritualistic slaughter and removal of carcasses during Eid-UL-Azha, in particular.

The other legislation of note, being the DMP Ordinance, governs the issues at hand primarily by the operation of three provisions being Sections 69, 71 and 73 of the Ordinance. It is deemed pertinent to reproduce below the provisions of the three Sections in their entirety:

69. Penalty for exposing anything for sale contrary to regulating, whoever, contrary to any regulation made by the Police Commissioner, expose or sets out anything for sale in or any stall, both (sic) board, basket or in any other manner in any street or public place shall be punishable with fine which may extend to five hundred taka.

71. Penalty for exposing animal or vehicle for hire or sale, etc.- Whoever in any street or public place exposes for hire or sale any animal or vehicle or cleans any animal or vehicle, except at such times and places as the Police Commissioner may permit, shall be punishable with fine which may extend to one hundred taka.

73. Penalty for slaughtering animal or cleaning a carcass. - Whoever slaughters any animal or cleans a carcass or hide in or near to or within sight of a street or public place except at a place set apart for the purpose by order of the Police Commissioner shall be punishable with fine which may extend to five hundred taka.

It is evident that Section 69 penalizes any act of exposing anything in any manner in any street or public place as may be deemed contrary to any regulation made by the Police Commissioner. Section 71 penalizes any act of exposing, inter alia, any animal for sale in any street or public place other than at such time and places as the Police Commissioner may permit. Section 73 in particular penalizes the act of slaughter of animals as well as the cleaning of carcasses or hide in or near to or within sight of a street or public place except at a place set apart for the purpose by order of the Police Commissioner. A reading of these provisions in conjunction with the concerns as raised in this Application satisfies this Court that the objective of these provisions is to substantially regulate and in fact impede the unregulated operation of cattle 'hat' and the use of streets and public spaces both for the purpose of sale and the slaughter of animals at all times and definitely, albeit by necessary implication, under

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Dr. Kazi Aktar Hamid, the learned Advocate for the Respondent Nos. 2, 5 and 6, has submitted on the sufficiency of these lease conditions, among others, read with the provisions of Clause '5 (L) of the b m Z g j v in responding to the concern raised in this Application. Such submission notwithstanding, two issues in this regard attract this Court's attention. First, there is nothing in the lease conditions read in their entirety that is in evidence of the DCC expressly assuming any responsibility as the relevant authority concerned under any provision of the DCC Ordinance (or for that matter any bylaws as may have been formulated under Section 114(4) but of the existence of which this Court is presently unaware) to regular the sanction and operation of cattle 'hat' during the period of Eid-UI-Azha. Indeed, the lease conditions as formulated bear no specific reference to the DCC Ordinance in general or to any of its provisions in particular. Consequently, what is noted is the absence of any assumption of any responsibility by the DCC to secure the abatement of any situation regulate by such lease conditions by serving an abatement notice on the person's responsible for giving rise to the same. Second, and upon reading condition No. 16 as above quoted in particular, the DCC additionally appears to leave it to discretion and devices of the individual lessee concerned to secure or not the presence and assistance of the DMP at his sweet will to ensure the security of a 'hat' at the lease conditions pursuant to the self-explanatory provisions of Sections 69, 71 and 73 of the DMP Ordinance thereby subjecting the lessee to imminent penal action should any violations occur under those provisions. The Respondent No. 4 Police Commissioner has by filling an Affidavit-in-Opposition submitted records of prosecution under the said provisions of the DMP Ordinance but, as Mr. Manzill Murshid submits, it is not readily discernible from these records and data produced to what extent, if at all, such prosecution has arisen with regard to offences committed and prosecuted under Sections 69, 71 and 73 during the period of Eid-UI-Azha. It is further evident from the documents produced and submissions made that there is a disconnection between the regulatory activities of the DCC and the DMP in this regard and this is amply reflected in the manner in which the conditions of lease have been formulated by the DCC.

It is in light of the above, that this Court is now to dispose of this Application, bearing in mind as well the concern of the Petitioners that prompt and due action will necessarily have to be taken by the concerned authority prior to the Eid-UI-Azha festivities as fall this year during the last week in November. In this regard, this Court shall be addressing concerns both with regard to the setting up and operation of cattle 'hat' in public places as well as the death of effective oversight of private acts of ritualistic slaughter of animals to the extent that these are carried out in public view in public areas and spaces. In that regard, it is deemed necessary for the DCC without delay to catalogue a list of nuisances, as may be termed statutory nuisance, with a view to controlling matters which are a nuisances, with a view to controlling matters which area nuisance or prejudicial to health. The DCC may accomplish this either by acting under Section 114(4) of the DCC Ordinance or in any other manner deemed fit and expedient. The DCC shall in this regard, in particular, identify as a nuisance

fumes, gasses, steam, dust, smell or other effluvia arising from any place or premises and being prejudicial to health or a nuisance. In this regard, it shall further be prudent for the DCC to adopt that definition of 'effluvium' as has to do with disagreeable vapour, unpleasant or noxious odour or exhaled substance coming out of decaying matter and affecting the lungs or the sense of smell. The Bangla equivalent of such definition shall have to have its root in that meaning of the said word as reflects the following notion:

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It shall also be for the DCC to identify as a statutory nuisance the act of keeping any animal in such a place or manner as to be deemed prejudicial to health or to be considered a nuisance.

The DCC shall also make provision for standards as shall inform its satisfaction as to the existence or not of such a statutory nuisance and the steps it must take to abate such nuisance. To this end provision will have to be made for service by the DCC of an abatement notice on the person's responsible for creating the nuisance. In the long run, and in this regard we draw the attention of the Respondents No. 1 in particular, legislation will have to be put in place declaring as an offence the failure itself to respond to or comply with such abatement notice and empowering the DCC to take action upon failure to respond or comply with an abatement notice, failing such action provision shall also have to be made for the concerned ministry to take action, with the avenue remaining open to any aggrieved person to also take legal action. It is in this context that the DCC shall have to reformulate the conditions attached to the granting of a lease of a cattle 'hat' to any successful bidder during the period of Eid-UI-Azha. It is this Court's view that all these measures ought preferably to be in place to the fullest extent possible, at the latest, by the first week in October 2009 in order that these may be duly reflected in the conditions of lease of cattle 'hat' to be set up during the forthcoming Eid-UI-Azha festivities. It shall also be incumbent upon the DCC to liaise both with the Deputy Commissioner as well as the Police Commissioner exercising his authority under the DMP Ordinance in order that, in particular, any prospective lessee is put on notice of, and duly brought under the purview of, Sections 69, 71 and 73 of the DMP Ordinance with regard to his or her conduct as a lessee of cattle 'hat' during Eid-UI-Azha.

Mr. Manzill Murshid has further brought to the attention of this Court that in granting leases of public spaces for setting up cattle 'hat' or markets during Eid-UI-Azha, the DCC more often than not selects public places such as playgrounds, parks and open spaces in residential areas that inevitably severely hinders and restricts the use of the same by citizens and during Eid-UI-Azha, poses a serious threat to security and the environment, and impedes the freedom of movement. It is here that this Court opines that the DCC probes further into the existing mechanisms of Sections 97 and 99 of the DCC Ordinance under which efforts should be made at the earliest possible opportunity to increase the number of public markets as well as slaughter houses and equip these accordingly, both within and outside of the limits of the City, to ease the pressure on the use of public spaces for use as of cattle 'hat'. Accordingly, urgent consideration shall have to be given to the lifting of or neutralizing the impediment in Section 107 of the DCC Ordinance that in its present formulation operates only to a twenty-four hour deadline for removal of carcasses of animals that were in private custody but to the exclusion of animals as may be slaughtered for any ritualistic or

religious purpose. In this regard, this Court is of the view that given the paucity of time between now and the end of November 2009, this particular matter of requiring carcasses to be removed and disposed of within a twenty-four hour limit must urgently be addressed by all Respondents concerned and especially by the DCC so that standards established in that regard are made operational for lease of 'hat' or markets during the upcoming Eid-UL-Azha period. As a corollary to that, provision will also have to be made to oversee private acts of slaughter of sacrificial animals during Eid-UL-Azha and to that extent restriction shall have to be imposed prohibiting the tethering and slaughter of such animals in any public place or space notwithstanding that these may be adjacent or contiguous to any property or premises under private ownership and that resulting waste and carcasses shall so be subject to twenty-four hour time limit as to removal and disposal of the same.

In light of the above, this Court hereby directs the Respondents in general and the Respondents No. 2 Mayor, DCC in particular, to file an Affidavit-in-Compliance by 11.10.2009 to apprise this Court of the steps taken date in keeping with the above observations and directions of this Court.

In addition, the Respondents Nos. 3 and 4 shall file n Affidavit-in-Compliance by 13.12.2009 providing records and data to this Court as to any action taken penalty imposed further to Section 69, 71 and 73 of the DMP Ordinance with regard to violations that may occur out of the operation of any cattle 'hat' in any area leased by the DCC during the entire period of Eid-UL-Azha falling in November 2009. It will also be incumbent upon the Respondents No. 2 Mayor, DCC to file an additional Affidavit-In-Compliance by 13.12.2009 bringing on record all evidence of payments of revenue made by it and deposited in the government treasury in terms of Clause '5 (L) of the *bwWZgij v 07-fng i vR-0*.

In light of the above, this Court finds merit in the Application and finds substance in the Rule. The Respondents are, hereby, directed to collectively ensure against the setting up of cattle 'hat' in streets or any public thoroughfare for that matter and to take appropriate steps to remove and dispose of all carcasses and other animal waste within twenty-four hours under hygienic conditions during the period of Eid-UL-Azha and to also necessarily ensure effective compliance with the specific directions made above.

In the result, the Rule is made absolute with the observations and directions above.

There is no order as to costs.
