



26.02.2020 26.02.2020 26.02.2020, 27-02-2020, 27-02-2020

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

WRIT PETITION NO. 440 OF 2015

IN THE MATTER OF

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

AND

IN THE MATTER OF:

Bangladesh Environmental Lawyers Association (BELA)
..... Petitioner

Versus

Government of Bangladesh and others
..... Respondents

Ms. Syeda Rizwana Hasan with
Mr. Minhazul Hoque Chowdhury with
Mr. Ali Mostafa Khan with
Mr. Syeed Ahmed Kabir, Advocates
..... For the petitioner

Ms. Amatul Karim, D.A.G. with
Mr. Abu Saleh Md. Fazle Rabbi Khan, A.A.G.
..... For the respondent Nos. 1 to 9 and 11 to 18

Mr. Khondaker Shariar Shakir, Advocate
..... For respondent No. 10

Mr. Md. Jainul Abedin (Sajib), Advocate
..... for the respondent Nos. 19 to 22

Mr. Ahsanul Karim, with
Ms. Farzana Khan, Advocate
..... For respondent No. 25

Mr. Mijbahur Rahman, with
Mr. Md. Aminul Ehsan with
Mr. Md. Hasan Mohammad Reyad, Advocate
..... For the respondent

Nos. 23, 24 and 26

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“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”



Heard on 03.04.2019, 17.04.2019, 18.04.2019, 24.04.2019,
08.05.2019, 09.05.2019, 23.06.2019 and 24.06.2019.

Judgment delivered on 26.11.2019.

Present:

Mr. Justice Tariq ul Hakim
And
Mr. Justice Md. Shohrwardi

Md. Shohrwardi, J:

This Rule Nisi has been issued calling upon the respondents to show cause as to why the (i) impugned hazardous and polluting establishments and operations of the industries by the respondent Nos. 19 to 26 in Charkanai, Hulaine, Pantchuria and Habilashdweep villages of No. 5 Habilashdweep Union of Potia Upazilla under Chattagram District (ii) impugned establishments and operations of the industries by the respondent Nos. 19, 20 and 23 without establishing Effluent Treatment Plants (ETP), (iii) impugned establishments and operations of the industries by the respondent Nos. 22, 23 and 25 without obtaining Environment Clearance Certificate (ECC) and (iv) impugned lifting of groundwater through deep tube wells by the respondent Nos. 19 to 26 for their industrial and commercial purpose shall not be declared to be of without lawful authority and of no legal effect as the same is violative of all applicable laws of the land and further to show cause as to why the respondents shall not be directed to declare the said area namely Charkanai, Hulaine, Pantchuria and Habilashdweep villages of No. 5 Habilashdweep Union of Potia Upazilla under Chattagram district as "Water Stress Area" requiring special management as per বাংলাদেশ পানি আইন, ২০১৩ and also to show cause as to why they shall not be directed to arrange regular supply of potable drinking and household water for the villagers of the said villages of No. 5 Habilashdweep Union of Potia Upazilla under Chattagram district and/or pass such other or further order or orders as to this Court may seem fit and proper.

Relevant facts leading to the Rule are that the Bangladesh Environmental Lawyers Association(BELA) in the form of Public Interest Litigation(PIL) seeking redress against the alleged severe scarcity of drinking water in four villages namely Charkanai, Pantchuria, Hulaine and Habilashdweep of No. 5 Habilashdweep Union situated in 10 Kilometer north-west side of Potia Upazilla of Chattagram District which has a total population of about 30,000(thirty thousand) who are being served with about 350 tube wells set up by respondent No. 11 ensuring supply of potable water. Due to unregulated establishment and

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operation of industries by respondent Nos. 19 to 26 without Environmental Clearance Certificate and Effluent Treatment Plant and withdrawing groundwater by setting up deep tube wells in their respective premises adversely affected the groundwater table/aquifer and consequently about 350 hand pumps/shallow tube wells set up by respondent No. 11 have become non-functional leading to serious water crisis in the said villages for the 30,000 (thirty thousand) villagers. The respondent Nos. 19 to 26 without obtaining permission and clearance certificate from the concerned authority set up deep tube wells for withdrawal of groundwater for commercial purpose and due to withdrawal of groundwater by respondent Nos. 19 to 26 groundwater table/aquifer of those villages declined beyond its normal level and about 350 hand pumps and shallow tube wells become non-functional. Effluent Treatment Plant of the said industries are not operating as required and due to discharge of hazardous and chemical wastes in the surrounding areas contaminated the agricultural land and canals and without assessment of the impact of groundwater withdrawal, the respondent Nos. 9 and 13 issued environment clearance certificate in favour of the polluting industries and none of the industries has functional Effluent Treatment Plant. The respondent Nos. 19 to 26 are polluting the nearby agricultural land and canals namely Alam Khal, Boalkhali Khal, Gorulota Khal and the Karnafuli river which connected to the said khals flowing through the Upazilla of Potia under Chattagram District and thereby adversely affected the surrounding greenery, trees, livestock, fishery and birds. The odorous and gaseous discharge from the said industries is affecting the sensory ability of villagers causing severe irritation and sickness. The local people reported about the said pollution of the environment to the respondents on 30.03.2014 and 25.03.2014 for taking effective measures against the polluting industries, but no step has yet been taken by the respondents against the pollution of the environment of the respondent Nos. 19 to 26. Thereafter the petitioner also served notice demanding justice on 13.10.2014 upon the respondents to arrange supply of water for the villagers of the said Union and to take effective measures against the polluting industries.

Respondent Nos. 2, 9 and 13 filed affidavit-in-opposition stating that the respondent No. 13 directed respondent Nos. 19 to 26 by office memo dated 15.03.2015 not to withdraw groundwater for commercial purpose and dump their industrial waste in the nearby agricultural land and canals and not to operate factories without setting up Effluent Treatment Plant (ETP). The respondent Nos. 19 and 20 do not require the Effluent Treatment Plant (ETP) and respondent No. 23 is constructing Effluent Treatment Plant (ETP). An official team of respondent No. 13 visited the factory of the respondent Nos. 19 to 26 and submitted a report

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on 29.11.2017 stating that the Environmental Clearance Certificate (ECC) issued in favour of respondent No. 19 has been renewed on 25.04.2017 until 17.04.2018 and the production of the respondent No. 20 has been closed. The liquid waste found in the industry of Ambia Dying and Knitting, respondent No. 21, is beyond the ideal standard of Environmental Preservation Rules, 1997 for which Environmental Clearance Certificate (ECC) issued in favour of respondent No. 21 has not been renewed, but the factory is operating its production. The Ambia Paper Mills Ltd, respondent No. 22, is operating its production violating the order of this Court. The Hakkani Paper and Pulps Ltd, respondent No. 24, obtained the renewal of Environmental Clearance Certificate (ECC) on 25.09.2017 until 08.10.2018. Mostafa Paper Product Ltd, respondent No. 23, is closed and Environmental Clearance Certificate (ECC) could not be renewed due to the order of this Court which has constructed Effluent Treatment Plant (ETP). The same shareholders of Mostafa Paper Product Ltd are operating Mostafa Paper Complex Ltd in the same boundary and the Environmental Clearance Certificate (ECC) has been renewed on 13.11.2017 until 24.07.2018. Anwara Paper Mills Ltd, respondent No. 25, is totally closed for a long time. Environmental Clearance Certificate (ECC) issued in favour of the Shah Amanat Dying and Knitting Industries Ltd, respondent No. 26, has been renewed on 24.10.2017 until 26.08.2018.

Respondent No. 9, the Director-General, Department of Environment has filed an affidavit on 08.05.2019 stating that the deep tube wells of respondent No. 19 was found sealed. It collects surface water from the nearby canals and after treatment used the surface water for commercial purpose. Respondent No. 19 also has a satisfactory functional Effluent Treatment Plant and the Environmental Clearance Certificate was lastly renewed on 28.05.2018 and the validity period of Environmental Clearance Certificate has expired on 17.04.2019. Production of respondent No. 20 is found closed. The deep tube well of respondent No. 21 was found sealed and it used surface water from nearby canals. Although respondent No. 21 set up an Effluent Treatment Plant but the said Effluent Treatment Plant was not functioning and respondent No. 21 is discharging their industrial waste into Boalkhali Khal without treatment for which the industry has been closed down on 18.04.2018 and subsequently at the time of inspection on 03.06.2018 the industry of respondent No. 21 was found in operation and again found that the respondent No. 21 is discharging industrial waste in the canals without treatment for which impose a penalty of Tk. 150,000/- as compensation and the said amount has been deposited by the respondent No. 21. Again on 25.04.2019 the respondent No. 9 inspected the industry of respondent No. 21 and found that respondent No.

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21 is discharging industrial waste in the nearby canals without treatment. The Environmental Clearance Certificate issued in favour of respondent No. 21 has expired on 06.07.2017. The deep tube well of the respondent No. 22 has been sealed on 23.11.2015 and it has no Effluent Treatment Plant. It is reported that by opening the back gate of the industry the respondent No. 22 operates its production. Lastly on 25.04.2019, at the time of inspection, the production of respondent No. 22 was found closed. The Environmental Clearance Certificate of respondent No. 22 has not been renewed and enforcement case has been filed against respondent No. 22. The Environmental Clearance Certificate issued in favour of respondent No. 23 has expired on 05.11.2011, and at the time of inspection on 23.11.2016 the gate of the industry was found sealed. The deep tube well of respondent No. 24 was found sealed and it collects surface water from nearby canals and after treatment used the surface water for commercial purpose. The Effluent Treatment Plant set up by respondent No. 24 was found fully functional but the Environmental Clearance Certificate lastly renewed on 25.09.2017 until 08.10.2018. All the machinery of respondent No. 25 has been sold out and removed. At the time of inspection on 07.01.2019, it is found that all the structure of respondent No. 25 has been removed. Effluent Treatment Plant of respondent No. 26 was found functional and the Environmental Clearance Certificate has been renewed on 31.1.2019 until 26.08.2019.

Respondent No. 10, the Director-General, Bangladesh Water Development Board, filed affidavit in opposition on 01.09.2016 stating that after conducting an inspection it is found that respondent Nos. 23 to 25 were not extracting groundwater but respondent No. 23 had been discharging their industrial waste into the nearby river and canals without treatment. The respondent No. 23 assured that they would establish Effluent Treatment Plant within the next 06 (six) months. Respondent Nos. 21, 22 and 24 had been discharging industrial waste into the nearby river and canals after treatment. The industry of respondent No. 25 was found closed. Respondent No. 26 was extracting groundwater by deep tube wells and discharged industrial waste into the nearby river and canals after treatment. Many factories and industries located at No. 5 Habilashdweep Union of Potia Upazilla under Chattagram district extracting groundwater by using deep tube wells. Consequently, in the dry season water could not be withdrawn by shallow tube wells and the locals were suffering from scarcity of water. Due to the extraction of surface water from Alam Khal, Boalkhali Khal, Gorulota Khal in the dry season the locals could not collect water for agricultural uses. The industries are polluting rivers and canals by discharging their waste for which the fisheries and agricultural land were adversely affected. The respondent instructed

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the polluting industries not to further pollute the environment. The respondent also issued a letter to the concerned authority to monitor the lifting of groundwater by respondent Nos. 19 to 26.

The respondent No. 10 filed a supplementary affidavit on 11.05.2019 stating that the Executive Engineer of the respondent No. 11 after inspection of the factory of respondent Nos. 19 to 26 submitted a report on 13.05.2019 stating that the deep tube well of respondent No. 19 was found sealed. Respondent No. 19 set up Effluent Treatment Plant and treats the waste water before discharging in the canals and wastewater was tested by the department of the environment on 04.04.2019 and the result is found satisfactory. Respondent No. 19 collects surface water from Gorulota Khal for commercial use. In the physical test of surface water effect of salinity was not found. The respondent No. 20 has stopped its operation since 2015. After issuance of the Rule Nisi the respondent Nos. 21 to 25 are not extracting groundwater for commercial purpose. The respondent No. 21 set up Effluent Treatment Plant and uses surface water after treatment. The respondent No. 20 has stopped its production. Respondent No. 23 set up Effluent Treatment Plant and discharged wastewater after treatment and also collects surface water from Boalkhali Khal and uses the surface water after treatment in the water treatment plant. No effect of salinity was found in the surface water of Boalkhali Khal. Respondent No. 24 set up Effluent Treatment Plant and discharged waste water after treatment and collect surface water from Alam Khal and no effect of salinity was found in the surface water of that canal. The operation of respondent No. 25 had been kept stop for the last 2 (two) years. Respondent No. 26 withdraw groundwater for commercial purpose and set up Effluent Treatment Plant and discharged industrial waste in the canals after treatment.

Respondent No. 11, the Chief Engineer, Department of Public Health and Engineering, filed an affidavit in opposition stating that after issuance of the Rule Nisi the respondent Nos. 19 to 26 were prevented from withdrawn groundwater in the concerned area and the locals are now getting potable and household water from the deep tube wells set up by the respondent No. 11.

Respondent Nos. 19 and 20 filed affidavit in opposition stating that respondent No. 13 issued Environmental Clearance Certificate in favour of the respondent Nos. 19 and 20 and they also obtained permission on 02.02.1998 from No. 5 Habilashdweep Union Parishad of Patia Upazila, Chattagram to install deep tube well and they are not polluting the environment by discharging waste in the nearby canals and agricultural land. Banaful Mineral Water and Banaful Sweets

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Ltd are the same company and obtained Environmental Clearance Certificate on 02.06.2013 and the same was lastly renewed on 05.04.2019 until 17.04.2020. The Civil Surgeon, Chattagram has issued a license in favour of respondent No. 19 for setting up a factory for production of drinking water and also obtained a license from the BSTI.

Respondent No. 21 and 22 filed affidavit in opposition stating that the respondent No. 21 managed waste of the factory through Effluent Treatment Plant and did not discharge waste in the nearby canals and the installation of Effluent Treatment Plant in the factory of respondent No. 22 is under process and respondent No. 21 obtained Environmental Clearance Certificate from the authority and is not lifting groundwater and they are not polluting the environment. Respondent No. 21 collects water from the nearby river and the factory of the respondent No. 22 has been sealed as per direction of the Hon'ble Court.

Respondent No. 23, Mostafa Paper Products Ltd, having filed affidavit-in-opposition stated that the respondent did not install any deep tube well in its premises for withdrawal of groundwater for commercial or any other purpose and set up Effluent Treatment Plant(ETP) and Water Treatment Plant and obtained Environmental Clearance Certificate on 06.02.2003 and the same was lastly extended till 05.02.2011 and filed applications on 06.02.2011, 27.11.2012, 11.02.2013, 12.11.2014, 13.04.2015 and 29.04.2015 for renewal of the said certificate. The respondent No. 14 vide memo dated 31.08.2015 directed respondent No. 23 to submit up to date development regarding the construction of the Effluent Treatment Plant (ETP). The respondents use surface water for drinking and commercial purpose through modern water treatment plants and never discharged/dump industrial waste in the nearby agricultural land and canals. It is further stated that the respondent will complete the construction of a more efficient and bigger Effluent Treatment Plant (ETP). The respondent No. 23 filing supplementary affidavits stated that the respondent No. 13 renewed the Environmental Clearance Certificate (ECC) on 13.11.2017 until 24.07.2018 and in compliance of the order of this Court, the factory had been sealed on 23.11.2015. Mostafa Paper Complex Ltd is another company located in the same complex and obtained Environmental Clearance Certificate (ECC) on 20.12.2004 which has been lastly renewed on 12.03.2019 until 24.07.2019. Mostafa Paper Complex Ltd has a functional Effluent Treatment Plant (ETP) to control any harmful effect of the waste materials generated by its operation and collect surface water from nearby BowalKhali canals to its water treatment plant and after treatment uses the water for commercial purpose.

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Respondent No. 24, Hakkani Pulp and Paper Mills Ltd, having filed affidavit in opposition stated that respondent No. 24 setup Effluent Treatment Plant to control the pollution and obtained Environmental Clearance Certificate on 09.10.2003 which has been renewed till 08.10.2016 and it never discharged industrial waste in the agricultural land and wetland and asserted that no objection has been raised from any department of the government against installation of deep tube well. The factory is located near a narrow canal and use surface water from that canal and during the dry season only the respondent No. 24 withdraws groundwater for drinking and commercial purpose and has taken step to install water reserver and set up Environment Treatment Plant which required time and huge cost and also appointed a surveyor for the purpose. After installation of the Effluent Treatment Plant, it has been using it with due diligence and had never discharged any waste without proper treatment and has already filed an application to the concerned authority of the government for lifting groundwater by using deep tube well for drinking and commercial purpose.

Respondent No. 24 filed a supplementary affidavit on 08.05.2019 stating that as per instruction made in the Environmental Clearance Certificate the respondent No. 24 submitted Environmental Performance Report and Environmental Management Plan to the concern authority and also submitted Zero Discharge Plane to the respondent No. 13 for approval which has been duly approved on 24.02.2017 by the Department of Environment and made alternative water resources digging two ponds within the compound and the deep tube well installed earlier has been sealed. Respondent No. 24 collects surface water from nearby canals and after processing use water for commercial purpose and the factory has zero discharge functionality. The Environmental Clearance Certificate has been renewed up to 08.10.2018 and before the expiry of the same respondent No. 24 filed an application on 22.09.2018 to respondent No. 13 for further renewal which is under process. After submitting all relevant documents regarding the zero discharge plan, respondent No. 13 issued an analysis sheet of waste water sample of respondent No. 24 on 23.01.2018.

Respondent No. 25 has filed affidavit in opposition stating that on 27.03.2012 the respondent No. 3 had inspected the respondent No. 25 company and imposed fine for an amount of Tk. 7, 50,000.00/- (Seven lac fifty thousand) which has been deposited by the respondent No. 25 on 27.09.2007 and 06.12.2016. The respondent No. 25 closed down its operation on 12.11.2012. On 24.05.2016 respondent No. 25 applied to the respondent No. 13 for renewal of its licence informing that the respondent No. 25 set up Effluent Treatment Plant (ETP) as per

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requirement of the law and thereafter vide letter dated 23.11.2016 the respondent No. 13 instructed the respondent No. 25 to deposit full amount of the fine imposed vide letter dated 27.03.2012 to get Environment Clearance Certificate (ECC) and subsequently, the respondent No. 25 deposited taka 27,500.00/- as renewal fee of the license and other charges and also Tk. 4,50,000.00/- as the pending amount of the fine imposed upon it vide Chalan dated 06.12.2016. It has been stated that the respondent No. 25 does not require groundwater for operation of its industry.

Respondent No. 26, Shah Amanat Dyeing and Knitting Industries Ltd, having filed affidavit-in-opposition stated that the respondent No. 26 is operating its industry after obtaining Environmental Clearance Certificate and also obtained permission from the concerned authority to use groundwater for commercial purpose and did not discharge its industrial waste in agricultural land and wetland and has a functional Effluent Treatment Plant at its premises. After complying all procedure obtained Environmental Clearance Certificate on 18.12.2007 which was renewed till 26.06.2018. The respondent No. 17, the Chairman of No. 5 Habilashdweep Union Parishad, Potia, Chittagong issued no-objection certificate on 20.10.2016 for setting up the industry. But at present no water is available even after digging 1200 feet down from the surface. It also obtained permission on 22.02.2015 for withdrawing groundwater from the Upazilla Sadar, Patia and subsequently without issuing any show cause notice canceled the permission on 26.11.2015 and violated the provision of section 8 of the Ground Water Management Ordinance, 1985. The respondent No. 26 has set up Effluent Treatment Plant to control the pollution.

The respondent No. 3, the Secretary, Ministry of Water Resources, having filed a supplementary affidavit on 08.5.2019 annexed a report dated 6.5.2019 submitted by the Water Resources Planning Organization of the respondent No. 3 as Annexure 4 wherein it has been stated that;

(খ) বাংলাদেশ পানি আইন, ২০১৩ এর ধারা ১৯ অনুযায়ী ভূ-গর্ভস্থ পানিধারক স্তরের সর্বনিম্ন নিরাপদ সীমা নির্ধারণ ও ভূ-গর্ভস্থ পানি আহরণে বিধি-নিষেধ বিষয়ে নির্দেশনা রয়েছে এবং ধারা ১৯ (৪) অনুযায়ী 'ভূ-গর্ভস্থ পানিধারক স্তর হইতে পানির নিরাপদ আহরণ নিশ্চিত করিবার লক্ষ্যে নিবাহী কমিটি, এই আইনের বিধানাবলী সাপেক্ষে, সুরক্ষা আদেশ দ্বারা যেকোন বিধি-নিষেধ আরোপ করিতে পারিবে'। উক্ত ধারার অধিকতর কার্যকর প্রয়োগের জন্য বাংলাদেশ পানি বিধিমালা, ২০১৮ এর দশম অধ্যায়ের বিধি ২৮-৩৩ (বাংলাদেশ পানি বিধিমালা, ২০১৮) এ 'পানি ধারক স্তরের সর্বনিম্ন নিরাপদ আহরণ সীমা নির্ধারণ' সম্পর্কিত নির্দেশনা রয়েছে। উক্ত নির্দেশনায় জাতীয় পানি সম্পদ পরিষদের নিবাহী কমিটির পক্ষে পানি সম্পদ পরিকল্পনা সংস্থা যথাযথ অনুসন্ধান, পরীক্ষা নিরীক্ষা বা জরিপের ফলাফলের ভিত্তিতে বিভিন্ন এলাকার সময়ের আবর্তে ভূ-গর্ভস্থ পানির ধারক স্তরের সর্বনিম্ন নিরাপদ আহরণ সীমা নির্ধারণ করিবে এবং উহা নিবাহী কমিটির অনুমোদনক্রমে সরকারী গেজেট

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প্রজ্ঞাপন দ্বারা প্রকাশ করিবে। উল্লিখিত নির্দেশনার আলোকে সারাদেশে ভূ-গর্ভস্থ পানির বিস্তারিত তথ্যাদি ও নিরাপদ আহরণ সীমা সংক্রান্ত দুই (২) টি প্রকল্প যথাঃ (১) “বাংলাদেশ পানি আইন, ২০১৩ এর কার্যকর প্রয়োগে সমগ্র বাংলাদেশে পানি সম্পদের প্রাপ্যতা এবং ভূ-গর্ভস্থ পানি ধারক স্তরের নিরাপদ আহরণ সীমা নিরূপণ” এবং (২) “সম্বন্ধিত পানি সম্পদ ব্যবস্থাপনা বাস্তবায়নে বাংলাদেশ পানি বিধিমালা, ২০১৮” কার্যকর গ্রহণ করা হয়েছে যাহা পানি সম্পদ মন্ত্রণালয়ের অধীন পানি সম্পদ পরিকল্পনা সংস্থা কর্তৃক বাস্তবায়িত হবে। উল্লিখিত দুটি প্রকল্প আগামী ৩০ জুন, ২০২৩ এর মধ্যে বাস্তবায়নের জন্য সময় নির্ধারণ করা হয়েছে। প্রকল্প বাস্তবায়নের পর রিট মোকাদ্দমা ভুক্ত এলাকার মৌজারভিত্তিক ভূ-গর্ভস্থ পানি স্তরের বিস্তারিত ও পূর্ণতা তথ্যাদি পাওয়া যাবে।

(গ) পানি সম্পদ পরিপকল্পনা সংস্থা (ওয়ারপো) ২০০১ সাল থেকে জাতীয় পানি সম্পদ উপাত্তভান্ডার (এনডব্লিউআরডি) সংরক্ষণ করে আসছে। বিভিন্ন সরকারী প্রতিষ্ঠানের নিকট হতে ওয়ারপো উক্ত ডাটা সংগ্রহ করে থাকে, এর মধ্যে বাংলাদেশ পানি উন্নয়ন বোর্ড অন্যতম। বর্তমানে বাংলাদেশ পানি উন্নয়ন বোর্ডের পর্যবেক্ষণ কূপের (Observation well) মাধ্যমে ভূ-গর্ভস্থ পানির তথ্যাদি এনডব্লিউআরডি তে সংগ্রহ করা হচ্ছে। আদালতের মোকাদ্দমাত্মক এলাকার (পটিয়া উপজেলার ৫ নং হাবিলাসদ্বীপ ইউনিয়নের ৪ টি গ্রাম) সর্ব নিকটবর্তী Groundwater Well Id: GT1561018 চট্টগ্রাম জেলার পটিয়া উপজেলার গাছবাড়িয়া (চিত্র-১) অঞ্চলে অবস্থিত যা মোকাদ্দমাত্মক এলাকা হতে আনুমানিক ১৩.০৩ কিঃমিঃ দূরে অবস্থিত।

The respondent No 11, the Chief Engineer, Department of Public Health and Engineering also filed an affidavit in compliance on 29.11.2017 and in the said affidavit quoted a report dated 07.03.2017(Annexure-3) regarding groundwater level of concerned villages of Patia Upozila wherein it has been stated that:

পটিয়া উপজেলা, চট্টগ্রাম এর ভূ-গর্ভস্থ পানি ব্যবহার সম্পর্কিত প্রতিবেদন:

চট্টগ্রাম জেলাধীন পটিয়া উপজেলার ৫ নং হাবিলাসদ্বীপ ইউনিয়নের নাইখাইন, গৈড়াল, হুলাইন, পাচুরিয়া ও হাবিলাসদ্বীপ গ্রামসমূহে স্থাপিত শিল্প কারখানায় ভূ-গর্ভস্থ পানির বানিজ্যিক ব্যবহারের কারণে উক্ত এলাকায় পানীয় জলের জন্য স্থাপিত নলকূপ সমূহে পানির সংকট ও পরিবেশ দূষণ সম্পর্কিত সমস্যার প্রেক্ষিতে বর্ণিত এলাকায় সরঞ্জামিন তদন্ত পূর্বক এলাকায় পানীয় জলের চিত্র নিয়ে তুলে ধরা হলো:

সহকারী প্রকৌশলী, জনস্বাস্থ্য প্রকৌশল অধিদপ্তর, পটিয়া উপজেলা কর্তৃক প্রেরিত তথ্য মতে (কপি সংযুক্ত) উল্লিখিত এলাকায় বর্তমানে ভূ-গর্ভস্থ পানির স্থিতিতল ২৫ ফুট থেকে ৩৩ ফুটের মধ্যে। ফলে হস্তচালিত ৬ নং সাকশান পাম্পের মাধ্যমে বেশীরভাগ এলাকাতেই পানি উত্তোলন করা যায় না এবং শুষ্ক মৌসুমে নলকূপে পানি না পাওয়ার সম্ভাবনা আরও বেড়ে যায়। উক্ত এলাকায় হস্তচালিত পাম্পের মাধ্যমে পানি উত্তোলন করতে হলে অধিক ক্ষমতা সম্পন্ন তারা পাম্প (Force mode) সংযোজন করা প্রয়োজন।

জনস্বাস্থ্য প্রকৌশল অধিদপ্তরের বিভিন্ন প্রকল্পের আওতায় স্থাপিতব্য নলকূপ সমূহের ক্ষেত্রে উল্লিখিত এলাকায় তারা (Modified) পাম্প স্থাপনের কার্যক্রম শুরু করা হয়েছে। বিগত ২০১৫-১৬ অর্থ বৎসরে পটিয়া উপজেলায় মোট ৫৫ টি তারা (Modified) পাম্প স্থাপন করা হয়েছে এবং চলতি ২০১৬-১৭ অর্থবৎসরে আরও প্রায় ১২৮ টি নলকূপ স্থাপনের প্রক্রিয়া চলমান আছে। বার্ষিক উন্নয়ন পরিকল্পনা অনুযায়ী এ সকল নলকূপ স্থাপন করা সম্ভব হলে অদূর ভবিষ্যতে সংশ্লিষ্ট এলাকায় পানীয় জলের সংকট লাঘব হবে বলে আশা করা যায়।

স্বাক্ষর অস্পষ্ট

“দেশবাসীর শপথ নিন, দুর্নীতিকে বিদায় দিন”



বাংলাদেশ
কোর্ট ফি



দুই
টাকা

(মো: সাইফুর রহমান)

নিবাহী প্রকৌশলী

গবেষণা ও উন্নয়ন বিভাগ, ঢাকা।

The respondent No. 11 having filed another affidavit in compliance on 8.5.2019 annexed a report dated 5.5.2019(Annexure-2) submitted by the Public Health Department stating that groundwater level of the said villages up to April 2019 is 40 (forty) feet which is lower than the groundwater level as measured in 2017 and it is not possible to withdraw groundwater from hand pumps with suction method for which the Public Health and Engineering Department has decided to install deep tube wells with submersible pump. In the said report dated 5.5.2019 it has been stated that;

বিষয়ে বর্ণিত মামলা ও সূত্রের প্রেক্ষিতে চট্টগ্রাম জেলাধীন পটিয়া উপজেলার ৫ নং হাবিলাসদ্বীপ ইউনিয়নের চরকানাই, হলান, পাঁচুরিয়া ও হাবিলাসদ্বীপ গ্রাম সমূহে স্থাপিত শিফ্প কারখানায় ভূ-গর্ভস্থ পানির বানিজ্যিক ব্যবহারের ফলে উক্ত এলাকায় স্থাপিত নলকূপ সমূহে পানির স্থিতিলত ক্রমাগত নিন্দামূখি হওয়ায় এলাকার জনসাধারণের বিস্কন্ধ খাবার পানি ও গৃহস্থালি কাজে ব্যবহারের জন্য অত্র এলাকায় স্থাপিত নলকূপ সমূহের খাবার পানি সংকট ও বিস্কন্ধ পানির অভাবে বর্ণিত এলাকায় পরিবেশ দূষণের ফলে সৃষ্ট সমস্যার দ্রুত সমাধানের লক্ষ্যে বর্ণিত মামলায় আদালত কর্তৃক প্রতিকার ও প্রতিরোধ মূলক কার্যকর পদক্ষেপ গ্রহণ করে পূর্নঙ্গ প্রতিবেদন আদালতে দাখিলের জন্য প্রধান প্রকৌশলী, জনস্বাস্থ্য প্রকৌশল অধিদপ্তরকে নির্দেশ দেন। তাহারই ধারাবাহিকতায় জনস্বাস্থ্য প্রকৌশল অধিদপ্তর উক্ত এলাকায় স্থাপিত নলকূপ সমূহ সচল রাখার স্বার্থে এবং নলকূপ সমূহ হতে যাহাতে পর্যাপ্ত পানি উঠে এবং উক্ত এলাকায় নতুন নলকূপ স্থাপনসহ বিভিন্ন পদক্ষেপ গ্রহণ করা হয় তাহা নিম্নরূপঃ-

১। নিবাহী প্রকৌশলী, চট্টগ্রাম বিভাগ এর সূত্রে বর্ণিত ২নং সারকের মাধ্যমে প্রাপ্ত চট্টগ্রাম জেলার উপ-সহকারী প্রকৌশলী, জনস্বাস্থ্য প্রকৌশল অধিদপ্তর, পটিয়া উপজেলা কর্তৃক প্রেরিত তথ্য মতে (অনুলিপি সংযুক্ত), পটিয়া উপজেলায় ৫নং হাবিলাসদ্বীপ ইউনিয়নের চরকানাই, হলান, পাঁচুরিয়া ও হাবিলাসদ্বীপ গ্রাম সমূহের স্থাপিত নলকূপসমূহের বর্তমানে (এপ্রিল ২০১৯ পর্যন্ত) পানির স্থিতিলত গড়ে ৪০ (চল্লিশ ফুট), যা ২০১৭ সালের প্রাপ্ত স্থিতিলত ৩৩ (তেত্রিশ ফুট) এর চেয়ে নিম্ন। এক্ষেত্রে ৬নং সাকশান পদ্ধতির হ্যান্ডপাম্প এর মাধ্যমে পানি উত্তোলন সম্ভব নয় এবং শুষ্ক মৌসুমে পানির স্থিতিলত আরও নেমে যাওয়ার সম্ভাবনা আছে। তাই অবস্থা বিবেচনায় অত্র অধিদপ্তর ইতোমধ্যেই উক্ত অঞ্চলে সাবমারসিবল পাম্পযুক্ত গভীর নলকূপ স্থাপনের সিদ্ধান্ত নিয়েছে, যার কাজ চলমান রয়েছে। এছাড়া ২০১৬-২০১৭ এবং ২০১৭-২০১৮ অর্থবছরে স্থাপিত তারা (Modified) পাম্পযুক্ত নলকূপসমূহ এলাকাবাসীর পানীয় জলের চাহিদা মেটাতে সক্ষম হচ্ছে।

২। পটিয়া উপজেলায় অধিদপ্তরীয় নলকূপ স্থাপনের বরাদ্দসমূহঃ

অর্থবছর	পল্লী অঞ্চলে পানি সরবরাহ প্রকল্প			অগ্রাধিকারমূলক গ্রামীণ পানি সরবরাহ প্রকল্প			
	গভীর	তারা	সাবমারসিয়াল	গভীর নলকূপ	তারা	গভীর	সাবমারসিয়াল
		গভীর	পাম্পযুক্ত	গভীর			পাম্পযুক্ত

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বাংলাদেশ
কোর্ট ফি



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টাকা

	নলকূপ	নলকূপ	নলকূপ		নলকূপ	নলকূপ
২০১৬-১৭	২৮	১৬৩				
২০১৭-১৮	১৪	৫৫		৩৭	১৭৯*	
২০১৮-১৯			৫৭			৮৪

৩। পটিয়া উপজেলায় উল্লেখিত গ্রামসমূহে স্থাপিত নলকূপের পানির স্থিতিতলের বিবরণঃ

গ্রাম	পানির স্থিতিতল (ফুট)	বর্তমান অবস্থা					
		২০১৬-২০১৭		২০১৭-২০১৮		২০১৮-২০১৯	
		স্থাপিত	চালু	স্থাপিত	চালু	স্থাপিত	চালু
চরকানাই	৪০'-৮"	৩	চালু	২	চালু	১	চালু
হুলাইন	৩৯'-১০"	৭	চালু	৯	চালু	১	চালু
পাঁচুরিয়া	৩৬'-৪"	১	চালু	১	চালু		
হাবিলাসদ্বীপ	৩৯'-৯"	৬	চালু			১	চালু

অত্র অধিদপ্তরীয় বার্ষিক উন্নয়ন পরিকল্পনা অনুযায়ী সকল নলকূপ স্থাপন সম্ভব হলে অদূর ভবিষ্যতে সংশ্লিষ্ট এলাকায় পানীয় জলের সংকট লাঘব হবে বলে আশা করা যায়।

৪। চট্টগ্রাম জেলার পটিয়া উপজেলার ৫নং হাবিলাসদ্বীপ ইউনিয়নের চরকানাই, হুলাইন, পাঁচুরিয়া ও হাবিলাসদ্বীপ গ্রাম এর বিভিন্ন নলকূপের পানির স্থিতিতল মাপা হয় এবং নিম্নোক্ত ফলাফল পাওয়া যায়ঃ-

ক্রঃনংঃ	তত্ত্বাবধায়কের নাম	গ্রাম	স্থিতিতল	স্থাপনের মাধ্যমে
১	নূরুল হক	চরকানাই	৪০'-৮"	জনস্বাস্থ্য প্রকৌশল অধিদপ্তর (অগ্রাধিকার প্রকল্প)
২	মোঃ দিদারুল আলম	হুলাইন	৩৯'-১০"	জনস্বাস্থ্য প্রকৌশল অধিদপ্তর (অগ্রাধিকার প্রকল্প)
৩	পাঁচুরিয়া সরকারী প্রাথমিক বিদ্যালয়	পাঁচুরিয়া	৩৬'-৪"	জনস্বাস্থ্য প্রকৌশল অধিদপ্তর (অগ্রাধিকার প্রকল্প)
৪	বুলবুল আচার্য	হাবিলাসদ্বীপ	৩৯'-৯"	জনস্বাস্থ্য প্রকৌশল অধিদপ্তর (অগ্রাধিকার প্রকল্প)

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দুই
টাকা

৫	বিমলেন্দু চক্রবর্তী	হাবিলাসদ্বীপ	৩৭'-৬"	জনস্বাস্থ্য প্রকৌশল অধিদপ্তর (অগ্রাধিকার প্রকল্প)
৬	নাসির উদ্দিন	চরকানাই	৪০'-৮"	জনস্বাস্থ্য প্রকৌশল অধিদপ্তর (অগ্রাধিকার প্রকল্প)
৭	আবু তাহের	হুলাইন	৩৮'-৮"	জনস্বাস্থ্য প্রকৌশল অধিদপ্তর (অগ্রাধিকার প্রকল্প)
৮	মোহাম্মদ ইসলাইল	পাঁচুরিয়া	৩৭'-২"	জনস্বাস্থ্য প্রকৌশল অধিদপ্তর (অগ্রাধিকার প্রকল্প)

বিভিন্ন মাধ্যমে স্থাপিত অধিকাংশ নলকূপই চালু অবস্থায় পাওয়া যায়। ৬নং হ্যান্ড পাম্প এর দ্বারা অধিকাংশ নলকূপে পানি উত্তোলিত হচ্ছে না। তবে, ব্যক্তি উদ্যোগে কম্প্রেসার ব্যবহার করে পানি উত্তোলন করা হচ্ছে।

উল্লেখ্য যে, বিগত কয়েক বছরে বরাদ্দ পাওয়া সাপেক্ষে জনস্বাস্থ্য প্রকৌশল, জনপ্রতিনিধি ও বিভিন্ন এনজিও সংস্থা কর্তৃক স্থাপিত নলকূপের অধিকাংশই সচল রয়েছে এবং যে সমস্ত নলকূপ সমূহে পানি উত্তোলিত হচ্ছে না, ঐ সকল নলকূপে ৬নং পাম্পের পরিবর্তে ss pump সম্বলিত তারা গভীর (extractable) ধরনের পাম্প স্থাপন দ্বারা পানি উত্তোলন করা হচ্ছে।

চলতি অর্ধবছরে যে সমস্ত নলকূপ বরাদ্দ দেওয়া হয়েছে, সেগুলোতে তারা গভীর (extractable) ধরনের পাম্প এবং সাব-মাসিবল পাম্প স্থাপন করলে দীর্ঘদিন নিরবিচ্ছিন্ন পানি উত্তোলন সম্ভব হবে। তাছাড়া জনগণের সুপেয় বিশুদ্ধ পানি প্রাপ্তি নিশ্চিত করার লক্ষ্যে ভবিষ্যতে অধিকতর গবেষণাপূর্বক উন্নততর প্রযুক্তি গ্রহণ করা হবে এবং উন্নত প্রযুক্তি সম্পন্ন নলকূপ স্থাপনের মাধ্যমে জনগণের পানীয় জলের মৌলিক চাহিদা পূরণ করা সম্ভব হবে।

The petitioner filed affidavit in reply stating that respondent Nos. 19 to 26 are withdrawing groundwater by using deep tube wells. The respondent Nos. 19, 21 to 24 and 26 are still discharging industrial waste in the agricultural land and nearby canals. During inspection by the petitioner organization, it is found that accept respondent No. 25 all other industries are running in full swing. The locals also made representation to the local authority against the pollution of the respondent Nos. 19, 21 to 24 and 26. The respondent No. 24 is polluting the canals and nearby agricultural land by discharging the industrial waste without treatment. Respondent No. 13 renewed the Environmental Clearance Certificate of respondent No. 26 without considering the consequence of the withdrawal of groundwater on the environment and without monitoring the compliance of the condition imposed in the clearance certificate. Annexure-XI dated 30.05.2017 as annexed by respondent No. 2 clearly shows that the industry has discharged its untreated waste in violation of the condition of Environmental Clearance Certificate. The statement of respondent No. 3 as recorded in the report dated 06.05.2019 (Annexure- 4) to the effect that detailed and full report about the

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groundwater table of No. 5 Habilashdweep Union Parishad, Potia, Chittagong shall only be available within 2023 when two projects designed by it are implemented amounts to non compliance with and gross disregard of the order dated 16.11.2016. The groundwater level of No. 5 Habilashdweep Union Parishad, Potia, Chittagong is below 15 meters and consequently, the government initiated a scheme to replace all Tara deep tube wells of the said area with submersible pumps for more aggressive extraction of the scarce and declining groundwater. In 2018 to 2019 fiscal year, the government installed only deep tube wells with submersible pumps in No. 5 Habilashdweep Union to meet the potable water demand of locals and there is no plan of the government to recharge the declining groundwater table and regulate indiscriminate extraction of groundwater for commercial purpose. The Environmental Clearance Certificate dated 27.07.2007 issued in favour of the Mustafa Paper Complex Ltd was renewed on 03.11.2017 after a lapse of 10 years and after Mustafa Paper Products Ltd lastly sealed on 23.11.2016 by the respondent No. 13 which clearly indicate that operation of respondent No. 23 is now being carried out in the name of Mustafa Paper Complex Ltd. A single Effluent Treatment Plant has been shown for respondent No. 23 and the Mustafa Paper Complex Ltd.

Learned Advocate Ms. Syeda Rizwana Hasan appearing along with learned Advocates Mr. Minhazul Hoque Chowdhury and Mr. Ali Mostafa Khan on behalf of the petitioner submits that due to illegal, indiscriminate/unregulated withdrawal of groundwater by the respondent Nos. 19 to 26, about 350 (three hundred and fifty) tube wells of Charkanai, Hulaine, Pantchuria and Habilashdweep villages of No. 5 Habilashdweep Union of Potia Upazilla under Chattagram District have become non functional and after 2018, the respondent Nos. 1 to 18 did not install any tube well or submersible pump in the said villages and lastly in 2019 installed only deep tube well to withdraw groundwater. The groundwater level of said villages has declined beyond its normal level and consequently said villages turned into a water-stressed area. The respondent Nos. 9 and 13 issued Environmental Clearance Certificate in favour of the respondent Nos. 21 to 26 before installation of Effluent Treatment Plant violating Rule 7(12) of the পরিবেশ সংরক্ষণ বিধিমালা, ১৯৯৭ and they are polluting the environment of No. 5 Habilashdweep Union of Patia Upazila, Chattagram discharging industrial waste in the canals and agricultural land. She further submits that since the concerned area has turned into a water stress area the respondent Nos. 19 to 26 have no right to withdraw groundwater for commercial purpose inasmuch as the right to water is a fundamental right and any act or omission of the respondents contrary to

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availability of water for drinking, household and agricultural use is violative of the fundamental right of a citizen guaranteed in the Constitution. She also submits that after enactment of বাংলাদেশ পানি আইন, ২০১৩ the government did not take any step under section 17 of the said Act to declare the said villages as water stress area. Due to hazardous and polluting establishment and operation of the factory of respondent Nos. 19 to 26 public at large of the locality are affected and petitioner organization has sufficient interest and contribution to protect the interest of public at large. Therefore, she prayed for making the Rule absolute declaring the said villages as water stress area. In support of her submission, she also referred several decisions reported in 3 SCC(1996) 238, 55 DLR(HCD)69, 48DLR(HCD) 438 and 11 SCC 312.

Learned Advocate Mr. Md. Jainul Abedin (Sajib) appearing on behalf of the respondent Nos. 19, 20, 21 and 22 submits that the respondent No. 19 is not polluting the environment and the deep tube well set up by the respondent No. 19 for withdrawing groundwater has been shut down in compliance with the order dated 29.01.2015 passed by this Court and the production of respondent No. 20 has been closed. He further submits that the respondent Nos. 21 and 22 set up Effluent Treatment Plant and they are not discharging any industrial waste in the canals and agricultural land and not polluting the environment in any manner. They are also not withdrawing groundwater for commercial purpose. Therefore, he prayed for discharging the Rule.

Learned Advocate Mr. Mijbahur Rahman appearing along with learned Advocate Mr. Md. Hasan Mohammad Reyad on behalf of the respondent Nos. 23, 24 and 26 submits that alternative remedy is available to the petitioner under Section 7 of the পরিবেশ আদালত আইন, ২০১০ before the Environmental Court for which the instant writ petition is not maintainable in law. He further submits that the respondents obtained the Environmental Clearance Certificate and set up Effluent Treatment Plant and they are not discharging any waste in the nearby canals and agricultural land. Mostafa Paper Complex Ltd is a separate company and has set up Effluent Treatment Plant and the Environmental Clearance Certificate issued in favour of the said company has been renewed on 12.03.2019 until 24.07.2019. Respondents use surface water from Bowalkhali Khal and use surface water after treatment for commercial purpose. He also submits that Mostafa Paper Complex is not made party in the writ petition. Therefore, he prayed for discharging the Rule.

The learned Advocate Mr. Ahsanul Karim appearing along with Ms. Farzana Khan on behalf of the respondent No. 25 submits that the instant writ petition is

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not maintainable inasmuch as the alternative remedy is available to the petitioner under Section 7 of the পরিবেশ আদালত আইন, ২০১০. He further submits that First Class Magistrate or Metropolitan Magistrate has the jurisdiction under Section 32 of বাংলাদেশ পানি আইন, ২০১৩ for trial of any offence under the said Act. He also submits that under Section 17 of the বাংলাদেশ পানি আইন, ২০১৩ the government is the competent authority to declare an area as water stress area and no application has been filed to the government for declaring the concerned area as water stress area. Therefore, the instant writ petition is premeasured and not maintainable in law. He also cited decisions reported in 66 DLR(AD)90, 58DLR(AD)2006 and 5MLR(AD)461.

Learned Deputy Attorney General Ms. Amatul Karim appearing on behalf of the respondent Nos. 1 to 9 and 11 to 18 submits that the government is the competent authority under Section 17 of the বাংলাদেশ পানি আইন, ২০১৩ to declare an area as water stress area complying the procedure as provided in Rule 26 of বাংলাদেশ পানি বিধিমালা, ২০১৮ and the government initiated 2(two) projects to determine the safe yield level of Bangladesh and the report will be available within 2023. She also submits that no application has been filed to the government for declaring the concerned area as water stress area and the instant writ petition is premeasured. Therefore she prayed for discharging the Rule.

We have considered the submissions of the learned Advocates of both the parties and perused the writ petition and the affidavit-in-oppositions and affidavit-in-compliances filed by the respondents.

At the very outset it is noted that legality of withdrawal of groundwater for commercial purpose and issuance of Environmental Clearance Certificate before setting up Effluent Treatment Plant in favour of 'Red category' industry has been raised in the writ petition. Adjudication of dispute as regards declaration of water stress area by this Court is also involves in the Rule. Therefore, we have meticulously examined the issues and relevant provisions of law to arrive at a correct decision.

Since the issue of maintainability of the writ petition has been raised, therefore, it is necessary to adjudicate the issue of maintainability first. It appears that this writ petition has been filed in the form of Public Interest Litigation (PIL) to protect

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and promote the environment of the Charkanai, Hulaine, Pantchuria and Habilashdweep villages of No. 5 Habilashdweep Union of Potia Upazilla under District Chattagram and to examine the legality of withdrawal of groundwater by the respondent Nos. 19 to 26 for commercial purpose and the alleged operation of the respondent Nos. 19 to 26 without Effluent Treatment Plant and Environmental Clearance Certificate and also for a declaration of those villages as water stress area due to alleged illegal, unregulated and indiscriminate withdrawal of the groundwater by the respondent Nos. 19 to 26.

In the application filed under Article 102 (1)(2)(a)(i) and (ii) of the Constitution it has been stated that the petitioner organization protects public interest against environmental anarchy and significantly contributed to promote environmental justice since 1992 and in this Rule the petitioner seeks enforcement of fundamental rights under Articles 18A, 31, 32 and 47 of the Constitution. The respondents do not deny such right of the petitioner. Therefore, we find that the petitioner has sufficient interest in the subject matter of the Rule and bonafide filed the writ petition.

Furthermore, in the case of Dr. Mohiuddin Farooque vs. Bangladesh and others reported in 49 DLR (AD)(1997) 1 our Apex Court examined the issue of maintainability of writ petition filed by the petitioner organization and held that:-

“Insofar as it concerns public wrong or public injury or invasion of fundamental rights of an indeterminate number of people, any member of the public, being a citizen, suffering the common injury or common invasion in common with others or any citizen or an indigenous association, as distinguished from a local component of a foreign organization, espousing that particular cause is a person aggrieved and has the right to invoke the jurisdiction under Article 102”.

In the above facts and circumstances of the case, we are of the view that the petitioner is an aggrieved person and the writ petition is maintainable in law.

On perusal of the records, it appears that at the time of issuance of the Rule Nisi on 29.01.2015 the respondent Nos. 19 to 26 were restrained by an order of

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injunction from lifting groundwater by using deep tube wells without obtaining necessary permission from the appropriate authority for using the same for commercial purpose and the respondents were also restrained by an order of injunction from discharging/dumping their industrial wastes in the nearby agricultural land and canals namely Alam Khal, Boalkhali Khai and Gorulota Khal flowing through the said villages of No. 5 Habilashdweep Union of Potia Upazilla under Chattagram District. The respondents were also restrained by an order of injunction from operating their industries without obtaining necessary permission(s) from the different concerned authorities/departments of the government. At the time of issuance of the Rule Nisi, this court further directed the respondent Nos. 8 to 18 to monitor full compliance of the order by respondent Nos. 19 to 26 regarding stoppage of lifting groundwater by deep tube wells and also stoppage of discharging their industrial waste in the agricultural land and nearby canals and shut down the industries which do not have environment clearance certificate upon getting the same renewed and up to date from the appropriate authority and thereby take appropriate steps for such illegal activities at once. Subsequently, by order dated 16.11.2016 this court directed the respondent Nos. 3, 9 and 11 to submit a full report to this Court within 3(three) weeks from date as to the present position of groundwater level in the Charkanai, Hulaine, Pantchuria and Habilashdweep villages of No. 5 Habilashdweep Union of Potia Upazilla under Chattagram District. The respondents were further directed to state whether the Effluent Treatment Plant's of the respondent Nos. 19 to 26 are functioning satisfactory and regularly after making spot survey and inquiry.

In the affidavit in compliance dated 26.11.2015 filed by the respondent Nos. 12, 14 and 18 it has been stated that the respondent No. 20, Banoful Mineral Water, was found shut down and sealed. The respondent No. 21, the Ambia Dyeing and Knitting Mills Ltd, and respondent No. 22, the Ambia Papers Mills Ltd, were withdrawing groundwater for commercial purpose for which the respondent Nos. 12, 14 to 18 sealed deep tube wells of those industries. They also sealed the factory of respondent No. 23, Mostofa Paper Product Ltd, due to non-renewal of Environmental Clearance Certificates and pollution of the environment by discharging industrial waste in the nearby canals. The respondent Nos. 12, 14 to 18 also sealed deep tube wells of the respondent No. 24, Hakkani Paper and Pulps Ltd, due to withdrawal of groundwater for commercial purpose. They also sealed and shut down deep tube well of the respondent No. 25, Anwara Paper Mills Ltd and the respondent No. 26, Shah Amanat Dyeing and Knitting industries Ltd, for

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withdrawal of groundwater for commercial purpose. In the affidavit in compliance filed by the respondent No. 11, it has been stated that during combined operation, deep tube wells of 3 (three) paper mills and 4 other industries have been sealed and shut down, and after that the respondent Nos. 19 to 26 are not withdrawing groundwater. The respondent No. 11 undertakes to file a full report regarding the present position of groundwater level of concerned villages and ensured the availability of potable drinking and household water for those villagers.

Water, air, forests, sunlight, minerals, land, flora and fauna are the gift of nature. These components of nature maintain biodiversity and ecological balance. The state is the trustee of all-natural resources. In our legal system, we have adopted the 'public trust doctrine' which means that natural and cultural resources are preserved for public uses and the state shall protect and maintain these resources for public use. An industrial concerned or a private individual has no right to pollute those resources and these shall be made freely available to all human beings, the future generation, and all creatures.

The Legislature made provision in Article 18 of the Constitution for improvement of public health. Article 18 of the Constitution states that the state shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health.

Subsequently, by way of amendment of the Constitution, the parliament inserted Article 18A in the Constitution by the Constitution (Fifteenth Amendment) Act, 2011. Article 18A of the Constitution of Bangladesh states that the state shall endeavor to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests, and wildlife for the present and future citizens.

In India, Legislature inserted Article 48A in the Constitution of India on 25th November 1976 by the Constitution (42nd Amendment) Act, 1976 for protection and improvement of environment and safeguard of forest and wildlife. Article 48A of the Indian Constitution states that the state shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country.

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A Constitutional provision is conceived for all times to come although the parliament in its wisdom may amend any provision of Constitution subject to the restriction imposed in Article 7B of the Constitution. The interpretation of Constitutional expressions has necessarily to receive a progressive construction in the light of the scheme and the objectives expressed in the Constitution. The provision of Article 18A of the Constitution of Bangladesh and Section 17 of the বাংলাদেশ পানি আইন, ২০১৩ is beneficial for the protection and preservation of the natural environment of Bangladesh. Therefore, the interpretation of those provisions is required to be made following the objectives of the constitution.

Sir Julian Sorell Huxley FRS, a British evolutionary biologist, internationalist, and eugenicist in his essay on "Economic Man and Social Man" stated that

"Many of our old ideas must be retranslated so to speak, into a new language. The democratic idea of freedom, for instance, must lose its nineteenth-century meaning of individual liberty in the economic sphere and become adjusted to new conceptions of social duties and responsibilities. When a big employer talks about his democratic right to individual freedom, meaning thereby a claim to socially irresponsible control over a huge industrial concern, and over the lives of tens of thousands of human-beings whom it happens to employ, he is talking in a dying language."

Lord Denning echoed the same idea in the following words:

"Law does not standstill. It moves continually. Once this is recognized, then the task of the Judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time, must not be a mere mechanic, a mere working mason, laying brick on brick, without thought to the overall design. He must be an architect-thinking of the structure as a whole building for society, a system of law which is strong, durable and just."

Water is life. There is no life on earth without water. Every human being on earth is entitled to use water to satisfy his or her needs. Without water all organisms in the world die. Water is necessary not only for drinking but also for our day to day life purpose like bathing, cooking, cleaning, washing and so on. Water is also essential for the existence of plant and animal life.

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In the case of Dr. Mohiuddin Farooque vs Bangladesh, reported in 48 DLR (HC) 436 judgment dated 07.01.1996 his Lordship Kazi Ebaçul Hoque J accepting the PIL theory interpreted the term 'right to life' in the following language.

"Right to life is not only limited to the protection of life and limbs but extends to the protection of health and strength of workers, their means of livelihood, enjoyment of pollution-free water and air, bare necessities of life, facilities for education, development of children, maternity benefit, free movement, maintenance and improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent with human dignity."

In the case of Dr. Mohiuddin Farooque vs. Bangladesh reported in 49 DLR (AD) 1 para 102 judgment dated 25.07.1996 our Apex Court considered the issue of 'environment and life' keeping those in juxtaposition and B.B.Roy Chowdhury J observed that.

"Although we do not have any provision "like Article 48-A of the Indian Constitution for protection and improvement of the environment. Articles 31 and 32 of our Constitution protect the right to life as a fundamental right. It encompasses within its ambit, the protection, and preservation of the environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life"

In the case of Dr. Mohiuddin Farooque vs Bangladesh reported in 55 DLR (HC) 69 para 53 his Lordship A B M Khairul Haque J, as his Lordship was then, echoes with the extended meaning of 'right to life' and observed that:

"Article 32 guarantees the right to life. This expression 'life' does not mean merely an elementary life or sub-human life but connotes in this expression the life of the greatest creation of the Lord who has at least a right to a decent and healthy way of life in a hygienic condition. It also means a qualitative life among others, free from environmental hazards. This is also one of the basic rights of a human being to live in a healthy atmosphere and constitutional remedy under Article 102 will be available if this basic human right is threatened due to violation of any of the provisions of the relevant laws enacted for such purpose or due to recklessness or negligence on the part of any person or authority which tends to

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upset the guarantees under Article 31 and Article 32 of the Constitution.”

In the referred case his Lordship A B M Khairul Haque J. as his Lordship was then, expressed his dissatisfaction and dismay for the failure of the respondent Nos 2 and 9 in discharging their duty to the letter of law and opined that:

“Apart from the constitutional guarantee embodied in Article 32 for a pollution-free environment to protect the life from its ill effects although various provisions are embodied in the Act and the Rules made thereunder but apparently, the Government, especially the respondent No. 4, who is charged with the duties to make the environment pollution free, failed to execute and perform their such duties to the letter of the law so far. We found to our dismay that the precautionary principles embodied in the Act were not properly implemented as they ought have to been, meanwhile, pollution continued unabated which may bring serious consequences to the lives of the many millions of people of this country and mauls the very core of Article 32 of our Constitution.”
.....Finally, their Lordship directed “the Secretary, Ministry of Industries, respondent No.1 to ensure that no new industrial units and factories are set up in Bangladesh without first arranging adequate and sufficient measures to control pollution, as required under the provisions of the Act of 1995 and the Rules of 1997.”

Subsequently, in the case of Government of Bangladesh and others vs Professor Nurul Islam reported in 2018 (2) LNJ (AD) 108 para 45 and 52 our Apex Court has dealt with ‘right to life’ in the context of environment and his Lordship Syed Mahmud Hossain J, as his Lordship was then, interpreted the term ‘right to life’ in the following term;

“The inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. According to Article 32, no person shall be deprived of life or personal liberty save in accordance with law. Therefore, ‘right to life’ is a fundamental right subject to law of the land. In the absence of any interpretation of right to life in our jurisdiction we have to see what meaning was given by the superior Courts of

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other countries to 'right to life'. 'Right to life' is not only limited to protection of life and limbs but also extends to the protection of health, enjoyment of pollution-free water and air, bare necessities of life, facilities for education, maternity benefit, maintenance and improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent to dignity."

In the case of Francis Coralie vs. Union Territory of Delhi reported in AIR 1981 (SC) 746, 'right to life' under Article 21 of the Indian Constitution has been interpreted in the following term:

"But the question which arises is whether the right to life is limited only to the protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to life with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings."

In the case of Vincent vs. Union of India reported in AIR 1987 (SC) 990 Indian Supreme Court interpreted the term 'right to life' in the following manner:

"A healthy body is the very foundation for all human activities...In a welfare state, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health.....Maintenance and improvement of public health have a rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends on the building of the society of which the Constitution makers envisaged."

In the case of Vikram Deo Singh vs. the State of Bihar reported in AIR 1988 SC 1782 it has been observed that:

"We live in an age when this court has demonstrated while interpreting Article 21 of the Constitution, that every person is entitled quality of life consistent with his human personality. The right to life with human dignity is the fundamental right of every Indian citizen."

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In the case of LK Keolwae vs the State of Rajasthan reported in AIR 1988 Rj. 2, para 3 acknowledged the "maintenance of health, preservation of the sanitation and environment as a component of life" and observed that:

"Maintenance of health, preservation of the sanitation and environment fall within the purview of Article 21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked."

In the case of Subash Kumar vs. the State of Bihar reported in 1991 SC 420 Supreme Court of India accepted the extended view of 'right to life' and held that:

"Right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life."

In the case of V Lakshmi pathy vs the State of Karnataka reported in AIR 1992 Karnataka 57, para 28 issuing a mandamus, High Court of Karnataka directed the respondents to abate the pollution in the concerned area and HG Balkrishna J interpreted the term 'right to life' in the following term:

"The right to life inherent in Article. 21 of the Constitution of India does not fall short of the requirements of qualitative life which is possible only in an environment of quality. Where, on account of human agencies, the quality of air and the quality of environment are threatened or affected, the Court would not hesitate to use its innovative power within its epistolary jurisdiction to enforce and safeguard the right to life to promote public interest. Specific guarantees in Article 21 unfold penumbras shaped by emanations from those constitutional assurances which help give them life and substance."

Environment means the surrounding circumstances i.e. air, water and land in or on which the human being, animals and plants live. In popular sence, the term 'environment' means, simply, nature: "Environment: All of the biotic and abiotic factors that act on an organism, population, or ecological community and influence its survival and development. Biotic factors include the organisms

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themselves, their food, and their interactions.”] <https://www.dictionary.com>] “Abiotic factors are the non-living parts of an environment. These include things such as sunlight, temperature, wind, water, soil and naturally occurring events such as storms, fires and volcanic eruptions. Biotic factors are the living parts of an environment, such as plants, animals and micro-organisms.” [<https://sciencing.com> definition-abiotic]

In the case of *Virender Gaur vs. the State of Haryana*, reported in (1995) 2 SCC 577 (580) the Supreme Court of India dealt with the issue of environment and defined the environment as under:

“The word 'environment' is of broad spectrum which brings within its ambit “hygienic atmosphere and ecological balance”. It is therefore not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular, has a duty in that behalf and to shed its extravagant-unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment.”

In the case of *Shehla Zia vs. WAPDA* reported in PLD 1994 (SC) 693 the Pakistan Supreme Court interpreted the word 'life' following its wide meaning and observed that:

“A wide meaning should be given to enable a man not only to sustain life but to enjoy it. Under our Constitution, Article 14 provides that the dignity of man and subject to law the privacy of home shall be inviolable. The fundamental right to preserve and protect the dignity of man under Article 14 is unparalleled and could be found only in few Constitutions of the world. The Constitution guarantees dignity of man and also right to 'life' under Article 9 and if both are read together, question will arise whether a person can be said to have dignity of man if his right to life is below bare necessity like without proper food, clothing, shelter, education, health care, clean atmosphere, and unpolluted environment... Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law.”

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Stockholm Declaration of the United Nations Conference on the Human Environment, 1972 enunciated principles to protect natural resources. Principle 2 of the said declaration states that;

“The natural resources of the earth, including the air, water, land, flora, and fauna especially representative samples of natural eco-systems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.”

Supreme Court of India in the case of State of Tamil Nadu v. Hind Stone reported in (1981) 2 SCC 205 para 6 observed as follows:-

“Rivers, Forests, Minerals, and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation.”

On a careful reading of the authorities of this sub-continent, it appears that the Apex Courts adopted the extended view of ‘right to life’ although no exhaustive and definite meaning could have yet been given to the said expression. Law does not remain static and it loses its inflexibility with the change of social life and economic development of the country. A human being is born in a pollution-free environment and the right to live in a natural environment congenial to human existence and dignity is a fundamental right guaranteed in Article 32 of the Constitution of Bangladesh.

Life and well being of the citizen analogous to the environment shall get precedence above all which cannot be negotiated for the industry. Before 2013, there was no regulatory authority to manage the withdrawal of groundwater by industries. Consequently, the groundwater level declined beyond its normal level due to the indiscriminate extraction of groundwater by the industries. In 2013, the Legislature made বাংলাদেশ পানি আইন, ২০১৩ for management, development, abstraction, distribution, use, protection and conservation of water resources. Under section 3(1) of the বাংলাদেশ পানি আইন, ২০১৩ notwithstanding anything contained in any other law for the time being in force all right over the surface water, groundwater, seawater, rainwater and the water in the atmosphere of Bangladesh shall, on behalf of the people, vest upon the state. Under sub-Section 2 of Section 3 of বাংলাদেশ পানি আইন, ২০১৩ right to potable water and water for hygiene and sanitation shall get priority.

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The provision of Articles 18A of the Constitution of Bangladesh is more comprehensive and environment-friendly than the provision of Articles 48A of the Constitution of India. The legislatures also made provision in Section 17 of the said Ain to protect and preserve water resources of Bangladesh and to declare an affected area as 'water stress area'. Subsequently, the government made বাংলাদেশ পানি বিধিমালা, ২০১৮ for proper management of the water resources of Bangladesh and in Rule 26 of the said Rules provision has been made as regards procedure to be followed in declaring an area as water stress area.

At this stage, it is relevant here to quote Section 17 of the বাংলাদেশ পানি আইন, ২০১৩ which runs as follow:

- ১৭। (১) সরকার নিবাহী কমিটির সুপারিশের ভিত্তিতে জলাধার বা পানিধারক স্তরের সুরক্ষার জন্য, যথাযথ অনুসন্ধান, পরীক্ষা নিরীক্ষা বা জরিপের ফলাফলের ভিত্তিতে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, যেকোন এলাকা বা উহার অংশবিশেষ বা পানি সম্পদ সংশ্লিষ্ট যেকোন ভূমিকে নির্দিষ্ট সময়ের জন্য পানি সংকটাপন্ন এলাকা হিসাবে ঘোষণা করিতে পারিবে।
- (২) উপ-ধারা (১) এর অধীন জারিকৃত প্রজ্ঞাপনে মৌজা ম্যাপ ও দাগ নম্বর উল্লেখ করিয়া পানি সংকটাপন্ন এলাকার সীমানা নির্দিষ্ট করিতে হইবে।
- (৩) নিবাহী কমিটি পানি সংকটাপন্ন এলাকার সৃষ্টি ব্যবস্থাপনা নিশ্চিত করিবার লক্ষ্যে, এই আইনের বিধানাবলি সাপেক্ষে, সুরক্ষা আদেশ দ্বারা যেকোন বিধি-নিষেধ আরোপ করিতে পারিবে।

On perusal of the records, it appears that before issuance of Rule, the respondent Nos. 19 to 26 used to withdraw groundwater for commercial purpose without obtaining any license from the concerned authority. In-compliance with the order dated 29.01.2015 passed by this Court, the respondent Nos. 2 to 18 sealed and shutdown the deep tube wells of respondent Nos. 19 to 25 which had withdrawn groundwater for commercial purpose. This Court by judgment and order dated 27.06.2019 also discharged the Rule issued in Writ Petition No. 12516 of 2015 to examine the legality of the cancellation of license dated 16.11.2015 for installing and operating a deep tube well holding that the respondent No.26, Shah Amanat Knitting and Dyeing Industries Ltd, is not entitled to extract groundwater or use surface water for his industry without obtaining permission from the concerned authority under বাংলাদেশ পানি বিধিমালা, ২০১৮ made under the বাংলাদেশ পানি আইন, ২০১৩. Thus it is found that due to order of injunction passed by this Court, respondent Nos. 19 to 26 are not withdrawing groundwater through deep tube wells for commercial purpose. The respondent Nos. 19 to 26 could not produce any clearance certificate issued under Rule 23 (4) (g) of বাংলাদেশ পানি বিধিমালা, ২০১৮ by the competent authority as defined in Rule 13 of the said বিধিমালা to use

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surface water for commercial purpose. Respondents failed to prove that in dry season, surface water was available in the canals flowing through respondent Nos. 19 to 26. Therefore, there was no scope for the respondent Nos. 19 to 26 to use surface water in the dry seasons. Although respondent Nos. 24 and 26 claimed that they discharged waste in the canals after treatment, but discharge industrial waste in the canals even after treatment is illegal. Thus we are of the view that the respondent Nos. 19 to 26 illegally used surface water for commercial purpose without obtaining licence under Rule 23(4)(g) of বাংলাদেশ পানি বিধিমালা, ২০১৮ and polluted the environment discharging industrial waste in the agricultural land and canals.

On a careful scrutiny of report dated 07.03.2017(Annexure-3) as annexed in the affidavit in compliance dated 29.11.2017 filed by the respondent No. 11 it reveals that due to withdrawal of groundwater by the respondent Nos. 19 to 26 for commercial purpose the groundwater level of No.5 Habilashdweep Union, Potia, Chattagram declined to 25 to 33 feet for which groundwater cannot be withdrawn through No. 6 Hand Suction Pump and government installed 55 (fifty five) Tara Pump(Modified) in the 2015-2016 fiscal year. In the report dated 05.05.2019(Annexure- 2) filed by the respondent No. 11 it has been mentioned that in 2017 groundwater level of the concerned villages was below 33 feet and in 2019, the groundwater level of said villages declined to average 40 feet and the groundwater level may further declined in the dry season for which it is not possible to withdraw groundwater through No. 6 Suction Hand Pump. Consequently, decision has been taken to install deep tube wells with submersible pump in the said villages. On perusal of report dated 06.05.2019(Annexure-4) filed by the respondent No. 3, Secretary, Ministry of Water Recourses, it reveals that the government has initiated 2(two) projects to determine the safe yield level of Bangladesh and the detailed and full report regarding groundwater level and safe yield level of No. 5 Habilashdweep Union, Potia, Chattagram will be available within June, 2023. In writ petition, nothing has been stated as regards the safe yield level or safe yield of extraction of ground water of those villages.

In the above facts and circumstances of the case, we are of the opinion that due to indiscriminate and unregulated withdrawal of groundwater by the respondent Nos. 19 to 26 for commercial purpose the groundwater level of Charkanai, Hulaine, Pantchuria and Habilashdweep villages of No. 5 Habilashdweep Union declined beyond its normal level and consequently about 350(three hundred fifty) Hand Tube wells and Tara Pumps installed in those villages have become non-functional and the locals are suffering from severe scarcity of groundwater.

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Although this Court by order dated 16.11.2016 directed the respondent Nos. 3, 9 and 11 to submit a full report as to the present position of groundwater level of those villages, but no detailed and complete report has been submitted yet to this Court which will be available within June, 2023.

Groundwater level and safe yield level are two different concepts. 'Groundwater level is a term that is used in a relatively loose way, normally referring to the level, either below ground or above ordnance datum, at which soil or rock is saturated. This is also referred to as the water table and represents the top of the saturated zone. Above the water table lies the unsaturated zone'. [https://www.bgs.ac.uk/levels/ter] 'When determination how much water can safely be withdrawn from an aquifer system, the concept of 'safe yield' has been used. This term has come to mean if annual withdrawals do not exceed the annual rate of recharge, then the withdrawals are within a safe level of extraction.' [http://www.witpress.com/WRM11].

In বাংলাদেশ পানি আইন, ২০১৩ the Legislature made provision for declaring an area or any part thereof or any land connected thereto with such water as 'Water Stress Area'. Under section 17 of the বাংলাদেশ পানি আইন, ২০১৩ on the recommendation of the Executive Committee constituted under Section 9 of the বাংলাদেশ পানি আইন, ২০১৩ made upon the results of necessary inquiry, scrutiny or survey to protect any water resource or an aquifer, the government may declare an area or any part thereof or any land connected thereto with such water resources as 'Water Stress Area' by notification in the official gazette for specified period.

It is noted that the groundwater level of Bangladesh is declining beyond its normal level due to the unregulated withdrawal of groundwater by the industries. The underground water belongs to the state and the respondent Nos. 19 to 26 or any other industry have no right to claim a huge share of it. If the respondent Nos. 19 to 26 is permitted to withdraw a huge quantity of groundwater, then similar claims of other industries will also have to be allowed. The same will result in drying up of the underground aqua-reservoirs. Due to inaction and reckless failure of the respondents acute environment near industries and cities of Bangladesh reached beyond the control of the respondents and the wetlands, canals and rivers of whole Bangladesh now turned into a dumping station of the industrial waste.

In the instant case, the respondent did not submit full report regarding groundwater level and safe yield level of those villages. In the absence of any scientific report regarding groundwater level and safe yield level of those villages it will not be just and proper to arrive at a conclusion as to the declaration of those

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villages as 'water stress area'. Therefore, we are not inclined to take any decision at this stage regarding declaration of those villages as 'water stress area'.

বাংলাদেশ পানি আইন, ২০১৩ is enacted for mitigation, management, extraction, distribution, usage, protection, and conservation of water resources of Bangladesh and procedure has been laid down in Rule 26 of বাংলাদেশ পানি বিধিমালা, ২০১৮ for declaring an area as 'water stress area' but no step has been taken as yet by the respondents to that effect. Therefore it is hoped that the respondent shall take immediate step to fix the safe yield of groundwater basin or aquifer of whole Bangladesh under Section 17 of বাংলাদেশ পানি আইন, ২০১৩ and Rule 26 of বাংলাদেশ পানি বিধিমালা, ২০১৮ to identify the water stress areas of Bangladesh and declare those areas as "Water Stress Areas" in accordance with law.

On a bare reading of Rule 31 of বাংলাদেশ পানি বিধিমালা, ২০১৮ it reveals that no one can instal a deep tube well to withdraw groundwater by force mode from safe yield level of aquifer without obtaining no objection certificate from the competent authority as defined in Rule 30(3) of বাংলাদেশ পানি বিধিমালা, ২০১৮. For using surface water by any industry for commercial purpose an application has to be filed to the competent authority as defined in Rule 13 of বাংলাদেশ পানি বিধিমালা, ২০১৮ in a prescribed form (Form No. 5.7) made under Rule 23(4)g of the said বিধিমালা and without getting no-objection certificate from the said authority an industry cannot use surface water for commercial purpose. The respondent Nos 19 to 26 could not produce any certificate issued by the competent authority to withdraw groundwater for commercial purpose.

The Hon'ble High Court of Kerala in the case of Perumatty Grama Panchayat vs. State of Kerala and others reported in (2004(1) KLT 731) known as the landmark "Coca Cola Case" decided the issue of the excessive exploitation of ground water and held that:

"Ground water is a national wealth and it belongs to the entire society. It is nectar, sustaining life on earth. Without water the earth would be a desert... Our legal system - based on English common law- includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea, shore, running waters, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership (emphasis supplied). In view of the above authoritative statement of the Hon'ble Supreme Court, it can be safely concluded that the

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underground water belongs to the public. The State and its instrumentalities should act as trustees of this great wealth. The State has got a duty to protect ground water against excessive exploitation and the inaction of the State in this regard will tantamount to infringement of the right to life of the people guaranteed under Art. 21 of the Constitution of India. The Apex Court has repeatedly held that the right to clean air and unpolluted water forms part of the right to life under Art. 21 of the Constitution... the Panchayat and the State are bound to protect ground water from excessive exploitation".

In Parumatty Grama Panchayat Vs. State of Kerala. Kerala High Court considered the question as to whether a Grama Panchayat can cancel the license of a factory manufacturing non-alcoholic beverages on the ground of excessive exploitation of groundwater and held that;

"In view of the above authoritative statement of the Hon'ble Supreme Court, it can be safely concluded that the underground water belongs to the public. The State and its instrumentalities should act as trustees of this great wealth. The State has got a duty to protect groundwater against excessive exploitation and the inaction of the State in this regard will tantamount to infringement of the right to life of the people guaranteed under Article 21 of the Constitution of India. The Apex Court has repeatedly held that the right to clean air and unpolluted water forms part of the right to life under Article 21 of the Constitution. So, even in the absence of any law governing groundwater, I am of the view that the Panchayat and the State are bound to protect groundwater from excessive exploitation. In other words, the groundwater, under the land of the 2nd respondent, does not belong to it, if there is artificial interference with the groundwater collection by excessive extraction, to create ecological imbalance. No great knowledge of Science of Ecology is necessary to infer this inevitable result. If the 2nd respondent is permitted to drain away this much of water, every landowner in the area can also do that and if all of them start extracting huge quantities of groundwater in no time, the entire Panchayat will turn a desert".

On perusal of the affidavit-in-opposition and affidavit in compliance filed by the respondent Nos. 2, 3, 9, 11, 13 and 19 to 26 it appears that Environmental Clearance Certificate of respondent No. 19 has renewed on 05.04.2019 until 17.04.2020. Respondent No. 19 has installed a deep tube well with a submersible pump for withdrawal of groundwater from 850 feet below the surface. The

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Banaful Mineral Water Ltd, respondent No. 20, has no legal entity and operated its business illegally and its production has been closed. Environmental Clearance Certificate issued in favour of respondent No. 21 has expired on 06.07.2017 but the respondent No. 21 operating its factory without renewal of Environmental Clearance Certificate and polluting the environment discharging waste in the agricultural land and canals. Respondent No. 22 obtained Environmental Clearance Certificate on 08.07.2009 and after 7 years the Environmental Clearance Certificate has been renewed on 09.10.2016 until 06.07.2017. Respondent No. 13 issued Environmental Clearance Certificate in favour of the respondent Nos. 21 and 22 before setting up the Effluent Treatment Plant (ETP) in defiance of Rule 7(12) of the পরিবেশ সংরক্ষণ বিধিমালা, ১৯৯৭. Respondent No. 22 has no renewal of Environmental Clearance Certificate and operating the factory violating the order of this Court and discharged waste in the canal for which a penalty of Tk. 150,000 as compensation has been imposed. The Environmental Clearance Certificate issued in favour of respondent No. 23 has expired on 05.11.2011 and its production was found closed. Environmental Clearance Certificate of the respondent No. 24 has expired on 08.10.2018. All the machinery of respondent No. 25 has been sold. Respondent Nos. 24 and 26 have Effluent Treatment Plant but they did not submit any document regarding functional Effluent Treatment Plant. Environmental Clearance Certificate of respondent No. 26 has renewed on 31.1.2019 until 26.08.2019. It is found that the respondent Nos. 19 and 26 only obtained the renewal of environmental clearance certificate in time and the respondent Nos. 21 to 24 have no renewal of environmental clearance certificate. Respondent Nos. 21 to 23 have no Effluent Treatment Plant and they have polluted the environment discharging industrial waste in the agricultural land and canals for which the respondent Nos. 2, 9 and 13 shut down the factory of respondent Nos. 21 to 23. Admittedly respondent Nos. 20 and 25 have shut down their factory. Therefore no further order is necessary to shut down the factory of respondent Nos. 21 to 23.

The respondent Nos. 19 and 20 are 'Orange B Category' industries and respondent Nos. 21 to 26 are 'Red Category' industries. A 'Red Category' industry cannot operate without setting up the Effluent Treatment Plant (ETP). 'Red' and 'Orange-B' category industries mainly pollute the environment for which legislature made provision in footnote of Schedule 1 of পরিবেশ সংরক্ষণ বিধিমালা, ১৯৯৭ prohibiting setting up 'Red and Orange B' category industries in the 'residential area' which has been defined in Rule 2 of শব্দ দূষণ (নিয়ন্ত্রণ) বিধিমালা, ২০০৬ made under বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৬. A residential area is such an area

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where people reside along with their family members. As per Rule 7(4) of পরিবেশ সংরক্ষণ বিধিমালা, ১৯৯৭ before issuance of Environmental Clearance Certificate the Director-General of the Directorate of Environment shall issue Location Certificate in respect of 'Orange A, Orange B and Red' category industries although under proviso to Rule 7(4) of the said Rules the Director-General of the Directorate of Environment if considered necessary may issue Environmental Clearance Certificate in favour of any proposed industry without issuing Location Certificate assigning reason subject to fulfillment of conditions laid down in Rule 7(6)(b)(c)(d)(12) of পরিবেশ সংরক্ষণ বিধিমালা, ১৯৯৭. Under Rule 7 (12) of পরিবেশ সংরক্ষণ বিধিমালা, ১৯৯৭ after setting up Effluent Treatment Plant a 'Red category' industry shall file an application for Environmental Clearance Certificate and cannot operate without Environmental Clearance Certificate. Issuance of Environmental Clearance Certificate in favour of the Red category industry before setting up Effluent Treatment Plant is illegal, and a nullity.

Issuance of Environmental Clearance Certificate is not a mere routine work of respondent No. 9. The পরিবেশ সংরক্ষণ আইন, ১৯৯৫ and the পরিবেশ সংরক্ষণ বিধিমালা, ১৯৯৭ made under the said Act entrusted responsibility upon the respondent No. 9 to prevent the pollution of the environment caused by the industries. On perusal of the records, it appears that the respondent No. 9 issued Environmental Clearance Certificate in favour of the respondent Nos. 21 to 26 before setting up Effluent Treatment Plant. Therefore we are of the view that the respondent No. 9 issued Environmental Clearance Certificate in favour of those respondents in defiance of Rule 7 (12) of the পরিবেশ সংরক্ষণ বিধিমালা, ১৯৯৭.

The Supreme Court of India in the case of Indian Council for Environmental Legal Action vs. UOI and others reported in (1996)3 SCC 212 has observed that:

“The Polluter Pays Principle as interpreted by this Court means that absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is a part of the process of sustainable development and as such polluter is liable to pay the cost to the individual sufferer as well as the cost of reversing the damaged of the ecology.”

In the case of Suresh Kumar Pukhrajji Dhoka vs. M/s. T.N. Pandya and others the issue of the legality of extraction of groundwater for commercial purpose has been raised before the National Green Tribunal, (Western

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Zone) Bench, Pune in the Application No. 80 of 2016 (WZ) and the Tribunal by judgment dated 03.02.2017 decided the issue holding that:-

'It was therefore, incumbent upon the Respondent Nos.1 to 4 to reveal before us that their activity of abstraction of ground water for commercial use was/is benign to the environment. On their failure to show such effect on the environment, we have to necessarily to hold that the activities of Respondent Nos.1 to 4 as aforesaid degraded the environment and caused damage to it in the given facts and circumstances revealed before us'.

It is alleged that respondent No. 23, Mostafa Paper Product Ltd, has been sealed on 23.11.2016 by the respondent No. 13 and the production of respondent No. 23 is now being carried out in the name of Mostafa Paper Complex Ltd and after 10(ten) years, Environmental Clearance Certificate(ECC) of Mostafa Paper Complex Ltd has been renewed on 03.11.2017. On perusal of the records it reveals that respondent No. 23 and Mostafa Paper Complex Ltd are twin baby and only the Mostafa Paper Complex Ltd has setup Effluent Treatment Plant (ETP). After shut down of the factory of respondent No. 23, the Mostafa Paper Complex Ltd which has been set up within the boundary of respondent No. 23 started its production but Mostafa Paper Complex Ltd has not been made party in the writ petition. Therefore, we are not inclined to pass any order regarding Mostafa Paper Complex Ltd.

In view of the above facts and circumstances of the case, we are of the view that due to hazardous and polluting establishment and operation of the factory of respondent No. 21 to 26 without setting up Effluent Treatment Plant(ETP), they discharged industrial waste in the nearby agriculture land and canals and consequently the environment of the locality is polluted. The respondent Nos. 19 to 26 had withdrawn groundwater without obtaining any license from the competent authority and consequently the groundwater level of the locality has declined beyond its normal level which adversely affected the eco-system of the locality. Since the deep tube wells of respondent Nos. 19 to 25 has already been sealed by order of this Court, no further order is necessary to seal the deep tube wells of respondent Nos. 19 to 25.

'The potential social and economic consequences of continued weak or non-existent ground water management are serious, as aquifer depletion is concentrated in many of the most populated and economically productive

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areas. The implications are disturbing for attainment of the Millennium Development Goals, for sustaining economic growth and local livelihoods, and for environmental and fiscal sustainability. The consequences will be most severe for the poor. Furthermore, climate change will put additional stress on ground water resources: while at the same time will have an unpredictable impact on groundwater recharge and availability' (World Bank Report - Deep Wells and Prudence, 2010).

Purpose of issuance of Environmental Clearance Certificate (ECC) and setting up Effluent Treatment Plant (ETP) is to control the pollution of environment. Under Section 12 of the বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ an industry cannot be set up without Environmental Clearance Certificate. Under Rule 7(12) of the পরিবেশ সংরক্ষণ বিধিমালা, ১৯৯৭ setting up Effluent Treatment Plant (ETP) is a condition precedent for a 'Red category' industry and without setting up Effluent Treatment Plant (ETP) a 'Red Category' industry cannot obtain any Environmental Clearance Certificate (ECC). Therefore, Environmental Clearance Certificate (ECC) issued in favour of 'Red Category' industries i.e. respondent Nos. 21 to 26 before setting up Effluent Treatment Plant (ETP) is illegal. In view of the above, we are of the opinion that no industry can operate without obtaining any Environmental Clearance Certificate, and after expiry of the validity period of Environmental Clearance Certificate and renewal of Environmental Clearance Certificate (ECC) an industry cannot continue its operation. A Red category industry cannot operate without functional Effluent Treatment Plant (ETP).

In the Environmental Clearance Certificate or renewal of the Environmental Clearance Certificate of respondent Nos. 19, 21 to 26, the respondent No. 9 imposed some conditions for their compliance but no report has been submitted regarding compliance of those conditions by them. Renewal of Environmental Clearance Certificate is also not a mechanical or routing work of the respondent No. 9. Therefore before renewal of Environmental Clearance Certificate the respondent No. 9 shall satisfy on the basis of material placed before him that the concerned industry did not violate any terms and condition of the Environmental Clearance Certificate.

In the above conspectus we hold that the respondent Nos. 2 and 9 are only silent spectator of the acute pollution of environment and their inaction materially contributed in polluting the environment of Bangladesh. They totally failed to discharge their duty to the letter of law and now the acute environment reached beyond their control.

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In the above facts and circumstances of the case, we are inclined to give the following directions.

1. The respondent Nos. 3, 4, 5, 7, 10, 11, 12, 14, 17 and 18 are directed to ensure regular supply of water to the villagers of the Charkanai, Hulaine, Pantchuria and Habilashdweep villages of No. 5 Habilashdweep Union of Patia Upazila, Chattagram for drinking and household use.
2. The respondents are directed to fix the safe yield level (safe level of extraction) of groundwater basin or aquifer of the Charkanai, Hulaine, Pantchuria and Habilashdweep villages of No. 5 Habilashdweep Union of Patia Upazila, Chattagram forthwith.
3. The respondent No. 1 is directed to take a decision under Section 17 of the বাংলাদেশ পানি আইন, ২০১৩ regarding the declaration of Charkanai, Hulaine, Pantchuria and Habilashdweep villages of No 5 Habilashdweep Union of Patia Upozila under Chattagram district as regards 'water stress area'.
4. The respondent Nos. 19 to 26 are hereby restrained from withdrawing groundwater till decision is taken under Section 17 of the বাংলাদেশ পানি আইন, ২০১৩.
5. The respondent Nos. 9 and 13 are directed not to issue any Environmental Clearance Certificate for setting up any new industry in the said villages till the decision is taken by the government under Section 17 of the বাংলাদেশ পানি আইন, ২০১৩ unless the respondents are satisfied about the said industry's alternative source of water supply.
6. Before issuance of the Environmental Clearance Certificate in favour of any 'Orange B and Red Category' industry the respondent No. 9 shall strictly follow the provision made in Rule 7(6)(c) and 7(6)(d) respectively of the পরিবেশ সংরক্ষণ বিধিমালা, ১৯৯৭. In addition to that before issuance of Environmental Clearance Certificate and renewal of Environmental Clearance Certificate in favour of 'Red and Orange B' category industry, the respondent No. 9 or any responsible officer of the respondent No. 9 not below the rank of Assistant Director shall inspect the proposed industry and submit a report in writing. After considering the inspection report, the respondent No. 9 shall form his opinion in writing whether the proposed industry will pollute the environment, or in the case of existing industry be satisfied that it did not pollute the environment earlier and then only may issue the Environmental Clearance Certificate or renew Environmental Clearance Certificate.

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7. The respondent No. 9 is hereby directed not to issue any Environmental Clearance Certificate in favour of any proposed Red category industry before setting up Effluent Treatment Plant and not renew the Environmental Clearance Certificate of any Red category industry without functional Effluent Treatment Plant.
8. The respondent No. 9 is directed to regularly monitor the use and operation of the Effluent Treatment Plant during production and operation of the concerned industries of whole of Bangladesh and maintain an inspection report of each industry regularly.
9. Respondent No. 9 is directed to dispose of the application for renewal of Environmental Clearance Certificate (ECC) of industries, if any, before expiry of the validity period of Environmental Clearance Certificate.
10. The respondent Nos. 2, 9 and 13 are hereby directed to shut down the industries which have no Environmental Clearance Certificate or if the Environmental Clearance Certificate of the industries have not been renewed within the validity period of Environmental Clearance Certificate.
11. Respondent Nos. 2, 9 and 13 are hereby directed to shut down the 'Red category' industries which have no Effluent Treatment Plant (ETP).
12. The respondent Nos. 2, 9, 12 and 13 are directed to assess the damages for pollution of the environment caused by the respondent Nos. 19 to 26 and realize compensation for such damages in accordance with the law.
13. The respondent No. 9 is directed to issue an office memo within 3(three) months from the date of receipt of the copy of this judgment for compliance of the above directions, guidelines and observations.

This writ petition shall be treated as continuing mandamus.

With the above findings, observation and directions, the Rule is made absolute-in-part.

Office is directed to communicate a copy of the judgment and order to the respondent Nos. 1 to 18 at the cost of the petitioner.

Md. Shohrowardi.

Tariq ul Hakim, J :

I agree

Tariq ul Hakim.

Type by: *[Signature]* 26.02.2020

Read by: *[Signature]* 26.02.2020

Exm. by: *[Signature]* 26.02.2020

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29/02/2020

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