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

WRIT PETITION NO. 891 OF 1994.

IN THE MATTER OF:

Dr. Mohiuddin Farooque

..... Petitioner.

VERSUS

Government of Bangladesh and others

..... Respondents.

Mr. Fida M. Kamal, Senior Adv. with

Ms. Syeda Rizwana Hasan Adv. and

Mr. Minhazul Hoque Chowdhury, Adv.

.... For the Petitioner.

Mr. Rais Uddin Ahmed, Advocate

... For the Respondent No.1

Ms. Kazi Zinat Haque, DAG with

Mr. Zakir Hossain Ripon, AAG

... For the Respondents.

Present :

Mr. Justice Syed Refaat Ahmed


And

Mr. Justice Md. Salim

The 6th March, 2017.

ORDER

This matter is taken up further to the Petitioner's Application for necessary action. Nearly 16 years into this Court's adjudication of issues arising under Writ Petition No. 891 of 1994 seeking an implementation of the Government's decision of 5.6.1986 as published in the Bangladesh Gazette on 7.8.1986 and consequentially issuing directions concerning such of the tanneries



enforcement and regulatory régime in the interests of protection of the environment, revival of the river Buriganga, and, indeed, the protection of life and the well-being of those resident and working in that general area, this Court is now asked to evaluate the attainments in compliance thereof and notably all that still remain outstanding.

This matter has since 2001 taken on the complexion of a case in continuing Mandamus. This has led both divisions of the Supreme Court to revisit the case periodically as necessary and issue Orders in reinforcement of the initial Judgment of 15.5.2001. In distillation of the issues before the Court over the last 16 years, several core issues of this Court's expressed concern are enumerated hereinbelow:

(1) Industries identified as "*red category*" establishments being under an obligation to install Effluent Treatment Plants (ETPs) within the deadlines set by the Court including extensions of time given, if any;

(2) failure at such compliance attracting legal sanctions under Sections 4(3) and 4A, in particular, of the বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ ("Act of 1995");

(3) relocation of all such "*red category*" tanneries upon attaching prime consideration to the life and well-being of citizens;

(4) failure at relocation resulting in the shutdown of any non-compliant industries; and



(5) relocation geared towards revival of environmentally sustainable production activity chiefly upon installation of ETPs along with all necessary pollution mitigating installations and facilities.

These core issues got sufficiently explained and enumerated in a subsequent reinforcing Order of this Court of 23.6.2009. That Order is noteworthy still in the assignment of specific responsibilities to concerned Respondents and others to ensure full and effective compliance to the catenae of Orders issued over the years. Implicit in that Order is also the element of accountability to this Court of the Respondents who are placed under an obligation to ensure "*meticulous compliance*" with such Judgment and Orders issued over time. The reinforcing Order of June 2009 also placed the Respondents and other concerned agencies on notice of such compliance demanded "*without any exception*".

After a lapse of approximately 8 years this Court is again asked by the Petitioner to ensure and supervise compliance measures and the progress made in ensuring the shutting down of the tanneries and their effective relocation to an alternate designated area. The immediate context of the present Application is a perceived procrastination by the Government in implementing fully that process of relocation. This is evident, the Petitioner submits, in unilateral decisions of the Ministry of Industries to

... during the past several months



without prior Court sanction. The latest such extension reportedly has been given until 31.3.2017. The Ministry of Industries in response to the Application on the other hand assures this Court of a convergence of factors, albeit belatedly, showing promise finally for a full implementation of this Court's catena of Orders and directions.

The learned Advocate for the Respondent No.1 Secretary, Ministry of Industries, Mr. Rais Uddin Ahmed by reference to an Affidavit in-Opposition dated 1.3.2017 charts for this Court an arduous process of nearly 7 years of ensuring relocation of all tannery industries in Hazaribagh. Central to such scheme of relocation, it is submitted, has been the setting up of a Leather Industrial Estate in Savar, Dhaka identified as a BSCIC Project. The Project, as Mr. Ahmed assures this Court is nearing completion in June 2017, has the distinct feature of the installation already of a Central Effluent Treatment Plant (CETP), the first of its kind in Bangladesh, with foreign and local expertise. The imminent full commissioning of the CETP effluent collection and conveyance system, common chrome recovery unit, solid waste dumping yard, setting up a central laboratory etc. are all geared towards an environmentally friendly and sustainable production activity at the Industrial Estate. Mr. Ahmed submits that the CETP has been the sheet anchor of the Project in that regard in keeping with this Court's Orders and directives issued since 2001. It is submitted



further that though a full commissioning of the CETP is yet to take place, a phased-in operation of the CETP has ensured that 2 of its 4 modules are presently functional. It is noted that 43 of the 155 tanneries in Hazaribagh have already relocated to the Industrial Estate in Savar and that the 2 functioning CETP modules are in fact functioning below capacity. Evidently the remaining 112 industries are presently under pressure both from the Ministry of Industries as well as penalizing Orders issued by the Supreme Court to stop production and relocate to the Industrial Estate at the earliest. The Petitioner's immediate concern, as noted earlier, is with the protracted exercise at ensuing production stoppage and relocation of the 112 defaulting industries in Hazaribagh.

This Court notes that the protracted and arduous exercise at ensuring a full and effective relocation and sustainable industrial activity at the Industrial Estate is evident in the complexities faced by the Ministry of Industries in the Project's implementation. This in turn has resulted in the Ministry's multiple applications to this Court seeking extensions of time for full compliance with this Court's Order beyond the last recorded extension given until 30.4.2011. It is noted that these applications of 30.3.2011 and 9.6.2011 have actually never been ordered upon by this Court. Mr. Ahmed submits that such period in fact coincided with setting up the Leather Industrial Estate in Savar as well as the procurement,



Upon the assurance of the Respondent No.1, Ministry of Industries regarding requisite facilities now in place and the Project itself nearing completion in June, 2017, this Court deems it propitious now to issue Orders of full compliance with its directives of 2001 as reinforced particularly in 2009. The Court's satisfaction in this regard is drawn chiefly from communications generated in January, 2017 by the Ministry of Industries (Annexures-8 and 9 of the Affidavit-in-Operation) as are declaratory of that Ministry's unequivocal and firm decision at stoppage of all production activity in Hazaribagh as of 1.2.2017. Evidently, the Ministry of Industries aims at achieving that by preventing the supply of rawhide to all 112 industries still operating there. This, Mr. Ahmed submits, leaves no option to these industries, already facing penal sanctions imposed by the Supreme Court, but to relocate to the Industrial Estate in Savar. It is here, this Court finds, that the interest of the Petitioner and the Ministry of Industries converge in that both aim at a complete relocation process gaining momentum without delay and concluding before June, 2017. This Court's intervention is now jointly sought to direct all other key players and stakeholders, especially within the Government establishment, to aid such relocation with utmost urgency.

Indeed, the learned Advocates for the Petitioner, Mr. Fida M. Kamal and Ms. Syeda Rizwana Hasan have impressed upon this Court the obligations mandated in this regard under Sections 4(3)



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and 4A of the Act of 1995 to be fulfilled, in particular, by the Respondent No. 4, Director General, Directorate of Environment.

The authority arising and sanctions imposed under the said provisions read thus:

“৪। মহাপরিচালকের ক্ষমতা ও কার্যাবলী (১) এই আইনের বিধান সাপেক্ষে, পরিবেশ সংরক্ষণ, পরিবেশগত মান উন্নয়ন এবং পরিবেশ দূষণ নিয়ন্ত্রণ ও প্রশমনের উদ্দেশ্যে মহাপরিচালক কর্তৃক সমীচীন ও প্রয়োজনীয় নগিয়া বিবেচিত সকল কার্যক্রম গ্রহণ করিতে পারিবেন এবং এই আইনের অধীন তাহার দায়িত্ব সম্পাদনের উদ্দেশ্যে যে কোন ব্যক্তিকে প্রয়োজনীয় লিখিত নির্দেশ দিতে পারিবেন

...
(৩) এই ধারায় অধীন প্রদত্ত নির্দেশে কোন শিল্প কারখানা, উদ্যোগ বা প্রক্রিয়া বন্ধ, নিষিদ্ধ বা নিয়ন্ত্রণ সম্পর্কিত বিষয়ও থাকিতে পারিবে এবং নির্দেশ পালন করিতে বাধ্য থাকিবেন

...
৪ক। (১) এই আইনের অধীন কোন ক্ষমতা প্রয়োগ বা কার্য সম্পাদনের উদ্দেশ্যে মহাপরিচালক বা তাহার নিকট হইতে ক্ষমতাপ্রাপ্ত ব্যক্তি আইন প্রয়োগকারী সংস্থা বা অন্য কোন সরকারী বা সংবিধিবদ্ধ কর্তৃপক্ষকে প্রয়োজনীয় সহায়তা করার জন্য অনুরোধ করিতে পারিবেন এবং এইরূপ অনুরোধ করা হইলে উক্ত সংস্থা বা কর্তৃপক্ষ উক্ত সহায়তা প্রদান করিবে।

(২) ধারা ৪(৩) এর অধীনে মহাপরিচালক কর্তৃক কোন শিল্প কারখানা, উদ্যোগ বা প্রক্রিয়া বন্ধ, নিষিদ্ধ বা নিয়ন্ত্রণের নির্দেশ প্রদান সত্ত্বেও উহার মালিক বা দখলদার উক্ত নির্দেশ পালন না করিলে, মহাপরিচালক উক্ত শিল্প কারখানা, উদ্যোগ বা প্রক্রিয়ার জন্য সরবরাহকৃত বিদ্যুত, গ্যাস, টেলিফোন বা পানির সংযোগ বা এইরূপ সকল সংযোগ বিচ্ছিন্ন বা অন্য কোন সেবা বন্ধ করিবার জন্য সংশ্লিষ্ট সংযোগদাতা বা সেবা সরবরাহকারী ব্যক্তি বা প্রতিষ্ঠানকে নির্দেশ প্রদান করিতে পারিবেন।

(৩) উপ-ধারা (২) এর অধীন কোন নির্দেশ প্রদত্ত হইলে, উক্ত সংযোগ বা সেবা প্রদান সংক্রান্ত চুক্তিকে বা অন্য কোন দলিলে ভিন্নরূপ যাহা কিছুই থাকুক না কেন, উক্ত নির্দেশ অনুসারে উহাতে উল্লিখিত ব্যক্তি বা প্রতিষ্ঠান প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবে।”

This Court notes in this context its Order of 2009 assigning to the

Respondent No. 4, Director General the primary responsibility to

ensure that this Court's directions “are complied with to the letter



and sprit without any exception". Predicated on that Order this Court at this juncture directs the Director General, therefore, to invoke with immediate effect all statutory powers under Sections 4 and 4A of the Act of 1995 to ensure complete stoppage of all production activity in all the remaining defaulting tanneries in Hazaribagh. The Respondent No. 4, Director General, Directorate of Environment shall in that regard have reference to the Communication of 31.1.2017 generated by the Ministry of Industries (Annexure-9) and in invocation of his statutory powers seek further co-operation under his statutory mandate in the Act of 1995 of the Ministry of Industries and the Ministry of Environment and Forest. It shall further be incumbent upon the Director General to submit a Report of full compliance to this Court by 6.4.2017.

It is noted further that stoppage of industrial activity, a shutdown of the concerned industrial units and their relocation to the Leather Industrial Estate shall necessarily require active co-operation and monitoring by several other agencies and Ministries strictly not parties to the Writ Petition. These agencies and Ministries are indeed found by this Court to be key players in the implementation of stoppage, shutdown and relocation as already directed by the Ministry of Industries on 30.1.2017. This Court is not, however, aware of any steps underway as of 1.2.2017 at their initiative to comply fully with this Court's Order(s) since 2001 and



The pivotal role of such stakeholders was notably anticipated in this Court's Order of 23.6.2009 identifying such key players and their roles thus:

"The Metropolitan Police Commissioner, Dhaka, is directed to co-operate with the Director General, Department of Environment, in implementing these directions so far the Dhaka City is concerned. The Inspector of Police, Bangladesh, is also so directed to afford necessary protection to the concerned officials so that the directions of this Court are meticulously and thoroughly implemented.

The Secretary, Ministry of Home Affairs, Government of the People's Republic of Bangladesh, shall also be accountable if any impediment is caused for the implementation of the orders of this Court."

It is evident, therefore, that at all material times the Ministry of Home Affairs, of its own and acting through its various agencies has remained accountable to this Court for compliance measures fully and unqualifiedly adopted. It is this Court's view that such obligations, as also envisaged in Sections 4A of the Act of 1995, encapsulate full co-operation to be extended to the Ministry of Environment and Justice operating through the Director General, Directorate of Environment. Given the tenor and purport of Ministry of Industries' Memo of 31.1.2017 as duly copied to the Ministry of Home and others, the Ministry of Home is now directed to revert to this Court by 6.4.2017 regarding the co-operation and support services called into operation by itself and concerned law-enforcement agencies to ensure full stoppage, shutdown and



Let this matter, accordingly, be placed in the list at the top on 10.4.2017 for further and necessary Order(s).

Let copies this Order be communicated to all Respondents and, particularly, to the Secretary, Ministry of Environment, the Secretary, Ministry of Home Affairs, Inspector General of Police of Bangladesh and Metropolitan Police Commissioner, Dhaka for information and urgent compliant action.

This Order is the latest in a series issued under a continuing Mandamus process. Accordingly, the parties shall remain at liberty to revert to this Court on issues touching on this matter as necessary.

The Petitioner's Application for necessary action is disposed of in the terms above.

Syed Refaat Ahmed
Md. Salim

প্রত্যায়িত অবিকল প্রতিলিপি

৯.৩.১৭

সহকারী রেজিস্ট্রার
বাংলাদেশ সূর্যম কোর্ট, হাইকোর্ট বিভাগ
(১৮৭২ ইং সেক্স ১নং আইনের)
৩৬ ধানমন্ডে ফর্মতা গ্রাউ

Typed by: Rafeza. 09.03.17.

Read by: ৯.৩.১৭

Exam. by: ০৯.০৩.১৭

Readied by:

৯.৩.১৭
মোঃ আব্দুর রাশিদ
প্রশাসনিক কর্মকর্তা

৯.৩.১৭
মোঃ এনামুল হক মজুমদার
সুপারিনটেনডেন্ট

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