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বাংলাদেশ
কোর্ট ফি

18.11.19, 18.11.19, 18.11.19, 19.11.19, 19.11.19

Present:
MS. JUSTICE SALMA MASUD CHOWDHURY
AND
MR. JUSTICE KAZI MD. EJARUL HAQUE AKONDO

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

WRIT PETITION NO 7552 OF 2015.

IN THE MATTER OF:

An application under Article 102(2)(a)(i) and (ii) of the
Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF:

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

-Versus-

Bangladesh, represented by the Secretary, Ministry of
Environment and Forest, Bangladesh Secretariat, Ramna,
Dhaka and others.....Respondents.

Mr. Minhazul Haque Chowdhury.....For the petitioner

Mr. Arobinda Kumar Roy (Ananda), A.A.G. with
Ms. Jesmin Sultana (Shamsad), A.A.G. For the respondents.

Mr. A.S.M. Abdul Mubin with
Mr. Sudipta Arjun and

Mr. Fazla Elahi.....For respondent No.22.

Heard on 18th January, 2017 and
judgment on 24th January, 2017.

SALMA MASUD CHOWDHURY, J.

This Rule Nisi was issued calling upon the respondents to show cause as to why the illegal, unregulated and unauthorized setting up and operation of stone crushing units in Sylhet Sadar, Companygonj, Jaintapur, Goainghat and Kanaighat Upazillas under Sylhet district causing serious threats to environment and public health shall not be declared to have been set up and operated without lawful authority and of no legal effect in line with the Constitution of the People's Republic of Bangladesh; the Bangladesh Environment Conservation Act, 1995 and the Environment Conservation Rules, 1997 made thereunder; the Highways Act, 1925; the Forest Act, 1927; the Bangladesh Water Act, 2003; the Land Management Manual, 1990; শাদ্দূযন (নিয়ন্ত্রন) বিধিমালা, ২০০৬; স্টোন এন্ড শিঙ মেসিন

"দেশাধিকারের শপথ নিল, ননীতিক বিদায় দিন"



স্থাপন নীতিমালা, ২০০৬ (০৬/০৩০২০০৬) (সংশোধিত ২০১৩) and other applicable laws and policies; and why the respondents shall not be directed to declare Stone Crushing Zone as per স্টোন এনশিং মেশিন স্থাপন নীতিমালা, ২০০৬ (০৬/০৩০২০০৬) (সংশোধিত ২০১৩) to arrange for relocation of all the authorized stone crushing units (Annexure-B) to the stone crushing Zone with appropriate pollution fighting devices, prohibit any authorization of stone crushing units in any area other than the specified zone and/or pass such other or further order or orders as to this Court may seem fit and proper.

It appears from the Writ Petition that the petitioner Bangladesh Environmental Lawyers Association (BELA), an organization with expertise in the regulatory field of environment and ecology, on getting information that in the Upazillas of Sylhet Sadar, Companygonj, Jaintapur, Goainghat and Kanaighat under Sylhet District, around 574 stone crushing units have been set up on public roads, forests, near playgrounds, residential area, schools, hospitals and other institutions without needed authorizations and license which is prohibited under স্টোন এনশিং মেশিন স্থাপন নীতিমালা, ২০০৬ (০৬/০৩০২০০৬) (সংশোধিত ২০১৩) filed the present Writ Petition. The petitioner filed the present writ petition challenging the illegal, unregulated and unauthorized setting up and operation of stone crushing units in certain Upazillas under Sylhet District causing serious threats to environment, public health, safety, comfort and seeking directions upon the respondents to immediately declare Stone Crushing Zone as per স্টোন এনশিং মেশিন স্থাপন নীতিমালা, ২০০৬ (০৬/০৩০২০০৬) (সংশোধিত ২০১৩) and to arrange for relocation of all authorized stone crushing units. The petitioner organization has prepared a list of the stone crushing units having environmental clearance certificates and another list of stone crushing units without such



certificates. It was asserted in the writ petition that ashes containing fumes are causing serious eye irritation, breathing difficulties and skin problems to the local people for which most of them have become sick against which grievances and sufferings the local people of the said upazillas complained to respondents No.2,5,8,9 and District Primary Education Officer of Sylhet vide letters dated 3 June, 2014, 25 June, 2014, 17 November, 2014, 12 November, 2014 and 9 November 2014 but with no result and having failed to get any relief from the respondent agencies, the local inhabitants sought legal assistance from BELA against the unauthorized establishments set up for operation of stone crushing and for protecting their lives and environment from the havoc of such operation and filed the present writ petition through BELA and obtained the present Rule.

Mr. Minhazul Haque Chowdhury, the learned Advocate appearing on behalf of the petitioner submits that 512 stone crushing units out of 574 units have no authorization from respondents No.8 and 9 as contemplated under Rule 7 and schedule 1 of the Environment Conservation Rules, 1997 and cause 1 of স্টোন ক্রাশিং মেশিন স্থাপন নীতিমালা, ২০০৬ (০৬/০৩০২০০৬) (সংশোধিত ২০১৩). He also submits that considering the grievances and sufferings of the local people caused by the stone crushing units, the location of the rest of the 62 stone crushing units (Annexure-B) and the environmental clearances given in favour of them need to be scrutinized in line with the prohibitions stated in স্টোন ক্রাশিং মেশিন স্থাপন নীতিমালা, ২০০৬ (০৬/০৩০২০০৬) (সংশোধিত ২০১৩). He next submits that such indiscriminate and unauthorized setting up and operation of the stone crushing units are causing severe sound pollution to the surrounding areas which is in violative of the provisions of Rule 11 of শব্দদূষণ (নিয়ন্ত্রণ) বিধিমালা, ২০০৬ against which appropriate directions are being sought from this Court to regulate the



operation of stone crushing units. The learned Advocate submits that appropriate directions are also being sought in the present Writ Petition against the deliberate failure of the respondents to set up appropriate stone crushing zone, arrange for relocation of the stone crushing machines to the said zone with appropriate pollution fighting devices and to prevent the unlawful setting up and operation of the hazardous and polluting stone crushing units. Lastly the learned Advocate submits that respondent No.1 amended স্টোন এগশিং মেশিন স্থাপন নীতিমালা, ২০০৬ (০৬/০৩০২০০৬) (সংশোধিত ২০১৩) which was published by gazette notification on 26.2.2013 and the learned Advocate asserted that the said gazette as annexed as Annexure-I needs to be implemented as soon as possible for saving the environment of the locality.

Mr. Arobinda Kumar Roy (Ananda), the learned Assistant Attorney General appearing on behalf of the respondents opposes the Rule and submits that the informations as given in the writ petition are basically correct and the installation of stone crusher machines which are regulated by the স্টোন এগশিং মেশিন স্থাপন নীতিমালা, ২০০৬ (০৬/০৩০২০০৬) (সংশোধিত ২০১৩) will be maintained and the respondents will set up stone crusher Zone very soon as per the স্টোন এগশিং মেশিন স্থাপন নীতিমালা, ২০০৬ (০৬/০৩০২০০৬) (সংশোধিত ২০১৩) which will prohibit pollution through some devices. He also brings into the notice of this Court that some of the illegal stone crusher machine units have already been evicted.

Mr. A.S.M. Abdul Mubin, the learned Advocate appearing on behalf of respondent No.22 opposes the Rule and submits that this respondent is

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willing to shift the stone crushing unit to a proper Zone if sufficient time for the said shifting is granted.

We have heard the learned Advocates for the petitioner and the respondent No.22 and the learned Assistant Attorney General representing other respondents and perused the Writ Petition, affidavit-in-opposition along with other materials on record. It appears that on an application filed by the local people against the illegal and unregulated setting up of stone crushing units in the upazillas of Sylhet Sadar, Companygonj, Jaintapur, Goainghat and Kanaighat under Sylhet District, the petitioner filed the present writ petition. It has been alleged that due to the operation of stone crushing units serious threats to environment and public health have been caused. It is the contention of the petitioner that the direction may be given upon the respondents to set up a separate stone crushing Zone for the location of all stone crushing units and also to implement the amended স্টোন এগ্রেশিং মেশিন স্থাপন নীতিমালা, ২০০৬ being amended in the year 2013 and published by gazette notification on 27.2.2013. It appears from the perusal of the writ petition along with other materials on record that around 606 stone crushing units have been set up in the upazillas of Sylhet Sadar, Companygonj, Jaintapur, Goainghat and Kanaighat under Sylhet District. The stone crushing units have been set up besides roads, forests, near playgrounds, residential areas, schools, hospitals and other institutions. Out of 606 numbers of stone crushing units 512 stone crushing units have no environment clearance certificates. Admittedly these unauthorized and unregulated operation of the stone crushing units without complying with the mandatory provisions of law are creating unbearable noise pollution and emitting flames with volumes of ashes that are spreading around the locality



which are causing eye irritation, breathing difficulties and other diseases to the local people which is evident from newspaper clippings and photographs as annexed by way of Annexure-C Series with the present Writ Petition. The local people and the petitioner by way of representations and the notices approached the concerned respondents to take action against such illegal stone crushing units on several occasions but with no result. A stone crushing unit cannot be set up without following the provision as stipulated in Bangladesh Environment Conservation Act, 1995 and the Environment Conservation Rules, 1997 and such kind of set up cannot be established in any residential area. Under the Stone Crushing Machine Sthapon Nitimala (06/0302006) (amended 2013) no stone crushing unit can be set up and be operated without obtaining necessary approval/license from the appropriate authority that is the Deputy Commissioner of concerned district and the Deputy Commissioner of the concerned district can issue license only after issuance of environment clearance certificate by the Department of Environment and as such no stone crushing machine can be set up in any site without complying with the above mentioned requirements. We find that due to the unauthorized setting up of stone crushing units near residential areas without having proper clearance certificates and licenses from the concerned authorities major health problems are being created to the local people causing serious threat to environment of the locality. The stone crushing machines/business is an industry which comes under the category "Orange-Kha (Serial No.20)" of the Environment Conservation Rules, 1997 and any industry of "Orange-Kha" category should not be established in any residential area and as per Rule 7 of the said Rule any proposed industry under "Orange-Kha" category should obtain at first a site clearance and then environmental clearance



certificate before it's establishment and the procedure and requirement for obtaining environment clearance certificate of the "Orange-Kha" category industry is stipulated in said Rule and since 512 numbers of stone crushing units out of 606 stone crushing units have no site clearance and environment clearance certificate, they are not authorized by law to operate. After promulgation of স্টোন এগশিং মেশিন স্থাপন নীতিমালা, ২০০৬ (সংশোধিত ২০১৩) (Annexure-II) no stone crushing machines/units can be set up and be operated without obtaining necessary approval/license from the appropriate authority that is the Deputy Commissioner of concerned District and the Deputy Commissioner of the concerned District can only issue license after issuance of environment clearance certificate by the Department of Environment and in considering the aforesaid provision of law all stone crushing machines who have no site clearance, environment clearance certificate and license from Deputy Commissioner shall have no right to run their business and should be stopped immediately. We find merit in the Rule, challenging the illegal, unregulated and unauthorized setting up and operation of stone crushing units in Sylhet Sadar, Companygonj, Jaintapur, Goainghat and Kanaighat Upazilla of Sylhet District causing serious threat to environment, public health, safety and comfort and the seeking of a direction upon the respondents to declare stone crushing zone for relocation of all authorized stone crushing units.

In the result, the Rule is made absolute. The concerned respondents are directed to take immediate steps to evict the unauthorized, unregulated and illegal stone crushing units from the five upazillas of Sylhet Sadar, Companygonj, Jaintapur, Goainghat and Kanaighat Upazillas under Sylhet district and implement the amended provision of the স্টোন এগশিং মেশিন স্থাপন



নীতিমালা, ২০০৬ (০৬/০৩০২০০৬) (সংশোধিত ২০১৩) published in the gazette notification on 27.2.2013. The respondents are further directed to declare stone crushing zone for re-location of all authorized stone crushing units with appropriate pollution fighting devices and prohibit setting up of stone crushing units in any area other than the specified zone. The concerned respondents are directed to inform the Court on the steps taken by them within a period of 3(three) months from the date of receipt of this judgment and order.

This writ petition will be treated as a continuous mandamus and respondents No.8,9,12,13,14,15 and 16 are directed to submit compliance report in every three months before the Court through affidavit.

S. Masud.

KAZI MD. EJARUL HAQUE AKONDO, J

I agree

Kazi Md. Ejarul Haque Akondo.

প্রত্যয়িত অবিকল প্রতিলিপি

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Exm. by: 19.11.19

Readied by:

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19-11-19
মুহাম্মদ মোজ্জফা শিকদার
প্রশাসনিক কর্মকর্তা

19-11-19
Md. Feroz Hossain Khan
Superintendent

19.11.19
সিইসিও
শালাদেশ সুপ্রীম কোর্ট, ২২ই কোর্ট বিজাপ
(১৮৭২ ইং সড়ক ১ম অফিসের)
৭৬ ধারামতে সনদ স্বাক্ষর