

পাঁচ
টাকা



বাংলাদেশ
কোর্ট ফি

11-10-17

11-10-17

11-10-17

11-10-17

11-10-17

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

WRIT PETITION NO. 11373 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.

A N D

IN THE MATTER OF :

Bangladesh Environmental Lawyers Association (BELA)

.....Petitioner.

Versus

The Government of Bangladesh and others
.....Respondents.

Mrs. Syeda Rizwana Hasan with
Mr. Minhazul Hoque Chowdhury, Advocates,
..... for the petitioner

Mr. Mr. Hadiul Islam Mollick with
Mr. Zakir Hossain Masud, Advocates
..... for the Respondent No. 14

Heard in part on 13.07.2017 and Judgment on
19.07.2017

Present :

Mr. Justice Syed Muhammad Dastagir Husain
and

Mr. Justice Md. Ataur Rahman Khan

Syed Muhammad Dastagir Husain, J:

Rule Nisi was issued calling upon the Respondents to show cause as to why the illegal and unplanned cutting of hills and hillocks and indiscriminate and unauthorized extraction of white clay in Arapara, Panchkahaniya and Maizpara Mouzas of Durgapur Upazilla under Netrokona district by identified persons/ companies (as of Annexure "L") without Environment clearance Certificate (ECC) and Environmental Management Plan (EMP) causing thereby ecological imbalance and degradation of the environment of the areas, being violative



of the provisions of the Bangladesh Environment Conservation Act, 1985 , and the Environment Conservation Rules, 1997 , the Mines and Minerals (Control and Development) Act, 1992 and the Mines and Minerals Rules . 2012 , the Bangladesh Water Act, 2013 , the Land Management Manual, 1990 and other applicable laws and policies, shall not be declared unlawful and against public interest and why the respondents shall not be directed to prevent indiscriminate and illegal extraction of white clay from the said Area.

The short facts is that the petitioner is Bangladesh Environment Lawyers Association, hereinafter referred to as BELA, a society registered under the Societies Registration Act, 1860 , registration No. 1457 (17) dated 18th February, 1992 being represented by its Chief Executive, Syeda Rizwana Hasan, who is duly authorized to represent BELA in all legal proceedings. cases etc. The petitioner BELA has been active since 1992 as one of the organizations with expertise in the regulatory field of environment and ecology. It has protected public interest against environmental anarchies and significantly contributed to promote environmental justice. There are many evidences of BELAs efforts to promote a healthy environment using legal mechanism as an effective, legitimate tool. Respondent No. 6 is the Department of Environment, represented by its Director General, entrusted with all responsibilities regarding protection and conservation of the environment of the country in line with the Bangladesh

২/৯



Environment Conservation Act, 1995 (Act No. 1 of 1995) and the rules of 1997 made there under. Respondent No. 7 is the Director General of Geological Survey of Bangladesh (GSB) , responsible for under taking geological investigation and mapping for fuels, natural or mineral resources, Respondent No. 8 is the Director , Bureau of Mineral Development and is responsible for leasing out the companies for white clay mining, and also responsible for supervision of the development and control of extraction of mineral resources throughout the country . Respondent No. 9 is the Deputy Commissioner of Netrokona district and is responsible for inter alia , regulating and administering extraction of white clay at the local level. Respondent No. 10 is the Deputy Director of Department of Environment of Mymensingh district and is responsible for effective protection of environment and natural resources at the local level. Respondent No. 11 is the superintendent of police, Netrokona District who is responsible for protecting the local people and natural resources through proper execution of law at the local level. Respondent No. 12 is the upazilla Nirbahi Officer of Durgapur upazilla under Netrokona district , responsible for ensuring public comfort and wellbeing and protecting public and private property and natural resource at the local level. The environment and ecology of Bangladesh are being continuously endangered and threatened by various activities originating from both private and public sources. Amongst the primary causes and sources of environmental

3/2



degradation, pollution and degradation of ecosystems, surrounding atmosphere and natural resources have perhaps exceeded all norms and standards of human cognition. In a large number of cases such grave contamination has been contributed by the careless, selfish and profit seeking attitudes of few unscrupulous people at the cost of greater public interest. Unfortunately, such degrading activities of arbitrary and unregulated use of natural resources and contamination of the environment remain unaddressed due to failure by the statutory agencies to ensure compliance with regulatory provisions and to protect life, public health, comfort and property of the people. The hilly Durgapur upazilla of Netrokona district has very rich collection of silicon sands and white clay. The Durgapur Upazilla has been an attractive tourist place due to its diversified natural beauty, greenery, hills and hillocks, forests, rivers, water bodies and also the enriched natural resources. The hill and hillocks of the said Area looks like an exclusive scenic combination of white and pink colours as the hills have a huge storage of white clay or china clay. The Shumeshwory river flows through the Durgapaur Upazilla within the hills and hillocks which has enhanced the epic beauty of the hills and hillside forests. Due to unique natural resources of the said area, the surrounding environment and ecology of Durgapur Upazilla is highly enriched. The hills and hillocks are surrounded by the forests where different wildlife, such as wild elephants, amphibians, reptiles and mammals etc, lives together by

V/c



maintaining ecological balance in the said Area . Besides that the hills and hillocks of the said Area has been a liveable place for the aboriginal Hajong, Garo and other tribes and their lives and livelihood are intimately related to the hills and hillocks . Therefore, the hilly areas of Durgapur upazilla are significantly important in terms of natural environment and ecology. The newspaper report dated 1st November, 2014 , white clay spreading over 15.5 kilometer areas of Durgapur Upazilla under Netrokona district is capable of satisfying the need of the ceramic industry of the country for about three hundred years. The Mines and Mineral Resource (Control and Development) Act, 1992 was enacted on 1st November , 1992 as Act No. 39 of 1992 with the objective of controlling and developing the mines and mineral resources of the country, Subsequently , in pursuance of section 4 of the Mines and Mineral Resources (Control and Development) Act, 1992 , the Ministry of Power , Energy and Mineral Resources has proclaimed the Mines and Mineral Resources Rules, 2012 which has been published by a Gazette Notification On 3rd June, 2012 . On 7th April , 2014 , the Ministry of Power , Energy and Mineral Resources has published the White Clay Mining and Marketing Guidelines, 2014 by a Gazette Notification with the purposes of maintaining effective mining and use of the white clay across the country. According to the White Clay Mining and Marketing Guidelines , 2014 , as notified by the Gazette Notification dated 24 March , 2014 (hereinafter referred to as the said Guidelines) , there is

5/6



deposit of white clay in the sedimentary rock of hills and hill foot in the east, north-east and south-east hilly areas of the country. The said Guidelines expressly prohibited approval of application for collection / extraction of white clay from the hillocks (clause 6 (6)). Similarly, the said Guidelines have also prohibited collection / extraction of white clay by destroying ecology and hilly lands, scenic beauty, fertile agricultural lands, forest land and biodiversity (clause 6 (6)). As per the said Guidelines, sanction of lease is subject to submission of the Environment Clearance Certificates (ECC) to respondent No. 6 without which No. lease sanction shall be approved for extraction of white clay by any persons or company. In view of illegal razing/ hillocks throughout the country posing dangerous imbalance to ecology and ecological balance, it was in 2007 that the Government, vide notification dated 10 July, 2007 prohibited cutting and razing of hills and hillocks without prior authorization of the Department of Environment in unavoidable circumstances and this provision was further incorporated in section 6 (Kha) of the Environment Conservation Act, 1995 by amendment in 2010. Despite such bars on cutting / razing of hills / hillocks under the statutory laws and the said Guidelines, taking lease from respondent No. 8 for a limited period, around 10 (ten) ceramic companies are extracting white clay from the hills and hillocks of the Durgapur upazilla under Netrokona district. According to the various lease agreements, the ceramic companies shall confine

6/2



স্বই
টাকার

their operation to the areas covered by the agreements , appoint professional staff, keep correct records of quantity and particulars of the minerals extracted and shall complete and submit plan of the quarry, all of which are to be strictly monitored . The lease period of the following lessee companies has been expired long before. The names of the 10 companies are mentioned hereunder:

- i) M/S Tajma Ceramic Industries Ltd
- ii) Bangladesh Insulator Ceramic Ware Factory Ltd.
- iii) M/S. People's Ceramic Industries Ltd
- iv) M/S. Zaker Refractory and Tiles Enterprise
- v) M/S. Momenshahi Ceramic and Glass Industries
- vi) M/S China Bangla Ceramic Industries
- vii) M/S. Fu-Wang Ceramic Industries Ltd.
- viii) M/S. Jardin International
- ix) M/S. Bengal Fine Ceramic Limited
- x) M/S. S.R. International

According to the Mines and Mineral Resources Rules , 2012 framed under the Mines and Minerals (Control & Development) Act, 1992 , every lessee shall get the leased area demarcated by a surveyor appointed by respondent No. 9 in presence of officers authorized by respondents No. 8 and 9 (rule - 9) . A mining lease is to confirm to the condition given in the sixth and seventh schedules of the Mines and Mineral Resources Rules, 2012 that requires the lessee to strictly confine its operation to the leased out area not to undertake mining outside



the granted area and to control pollution of environment and purify water, if polluted. Similarly, the Government is authorized to exclude land from the leased area if such lands are required for public purposes. The Mines and Mineral Resources Rules, 2012 also incorporated a specific provision against public hill cutting without written approval from the Director of the Bureau of Mineral Development (rule -20). The said Rules have also incorporated provisions for compensation by the lessees to the third persons in case of damages done by him in exercise of his powers as a lessee (rule - 18). For causing environmental damages, the lessee is legally bound to pay reasonable compensation to the government under the Environmental Conservation Act, 1995 (rule 18), Rule 39 and Schedule 7 to the said Rules have provisioned for water purification and regulation of environmental pollution by the lessees (items 19 and 22) while the government has been authorized to exclude lands from areas approved for operation of quarries . (item 32). It is widely reported that the companies who have got leases for mining while clay in the said Area are not complying with the lease conditions stated in the lease agreement or the rules and are extending lease operation much beyond the leased out areas. The responsible Government agencies have not monitoring on sites and taking advantage of their licenses for limited period, the lessees are indiscriminately extracting valuable mineral resources by damaging the unique hills of the said Area. Such destructive and unregulated mining operation is damaging the

8/2



adjacent natural forests, denuding forested hills, causing siltation to agricultural lands and polluting and filling up nearby wetlands, all at the cost of the living and livelihood of the aboriginal Hajong community members. None of the 10(ten) lessees have any authorization for hill cutting from respondents No. 2 and 6 while it is alleged (as of Annexure –“D”) that thus far at least eight labours and three children have died due to landslide or by falling into ditches caused by the reckless extraction of white clay by the lessees. A survey conducted by a reputed Non- Government Organization (NGO) CARITAS has listed a total of 26 Hajong families who have been directly affected by such hazardous mining activities of the lessees while a separate list of 50 exposed to the risk of landslide has also been prepared. Another list shows that a total of 21 Hajong families heads have thus far been evicted due to mining activities by the lessees that is marked as Annexure –“E” of the writ petition. The companies engaged in operating quarries for white clay extraction are mismanaging and that there is need to bring them down to discipline. The meeting headed by the Deputy Commissioner of Netrokona clearly noted that the lessees are indiscriminately cutting hills and decided as follows:

২ ইজারাধাৰগন বৰ্তমানে তাদেৰ ইচ্ছা মতে টিলা শ্ৰেণী জমি বনন কৰে সাদামাটি উৎপাদন কৰাৰে, ফলে এ ভূমি ভবিষ্যতে পুনৰায় গাছ/ ফসলাদি উৎপাদনেৰ উপযোগী হ'ব নোৱাৰে। কি ভাবে এ ভূমি ব্যবহৃত হ'বে সে সম্পর্কে আন্তঃ মন্ত্রণালয় বৈঠকে সিদ্ধান্ত গ্ৰহণ কৰোৱাৰ বিষয়ে এ বিসয়ে দিক নিৰ্দেশনা দেয়াৰ সুপারিশ কৰাৰ সিদ্ধান্ত গৃহীত হয়।

৪। পরিবেশ অধিদপ্তরের ছাড়পত্র বাতিরেকে কোন প্রতিষ্ঠান যত্রতত্র ভাবে পাহাড় কোটে পরিবেশের ভারসাম্য নষ্ট না করে সে বিষয় কোয়ারী প্রকল্প এলাকায় নিয়মিত মনিটরিং করার জন্য বন ও পরিবেশ মন্ত্রণালয়কে সুপারিশ করার সিদ্ধান্ত গৃহীত হয়।”

The meeting minutes dated 09.05.2007 is annexed and marked as Annexure – “G”

The Committee also attempted to provide few guideline regarding collection of white clay as because collection and supply of white clay is proceeding largely by an unregulated way at the field level which is also admitted in the report of the committee. The extraction / mining of white clay from the said Area of Durgapur Upazilla under Netrokona district falls under Red category of the Schedule 1 of the Environment Conservation Rules, 1997 which requires mandatory Environment Clearance Certificates (ECC) from respondent No. 6 and before obtaining the Environment Clearance Certificates and Site Clearances, the mining Companies have to comply with the initial Environmental Examination (IEE), Environmental Impact Assessment (EIA), Environmental Management Plan (EMP) and others, in contrary of which is violative of the provisions of the Bangladesh Environment Conservation Act, 1995 and the Rules of 1997 thereunder. The lessees companies started filing series of writ petitions before this Court praying for interim orders to allow them to continue with their extraction practices and also for rule upon the Government to show cause



clearances in favour of the lessees. The records available to the petitioner and also records provided by respondent No. 8, a total 11 writ petitions have been traced where the lessees have pressed for judicial intervention in allowing them to continue with their extraction of white clay pending obtainment of environmental clearances. The ceramic industries were served with notices by respondent No. 6 to submit Environment Management Plan (EMP) reports. In reply of the said notice, the said companies pleading technical difficulties and unavailability of experts kept on delaying the process of preparing the EMP reports all of the writ petitions, in five with petitions filed by the companies named as - Fu-Wang Ceramic Industries Ltd (W.P. No. 8141/2009), China -Bangla Ceramic Industries Ltd. (W.P. No. 1734/2009), Momenshahi Ceramic and Glass Industries (W.P. No. 8526/2008), Zaker Refractor and tiles (W.P. No. 9085/2008) and Jardin International (W.P. No. 9089/2008), the High Court issued Rules upon the respondents in these cases as to why they shall not be directed to issue ECC in favour of the petitioner companies and to allow them to extract white clay after obtaining environment clearance certificates within six months from date and in default the Rule shall stand discharged. In many of the writ petitions this Court has passed an order to obtaining to Environment Clearance Certificate. The some of writ petition Rule is made absolute and directed the respondents to issue environment clearances certificates in favour of the petitioner but the Hon'ble Appellate Division vide order No. 3 November

, 2014 stayed the judgment of the High Court Division and the Hon'ble Appellate Division vide an order dated 4th May, 2015 was pleased to expunge the direction given by the High Court Division "to issue Environment Clearance Certificate in favour of the writ petitioner for leased quarry" which is Annexure –"I" series. Thus being aggrieved by the failure of the respondent agencies to take effective measures against the unregulated, hazardous and extremely risky mode of white clay mining in the said Area, the local inhabitants approached to the petitioner organization on 10 March, 2014 urging to take appropriate legal measures to protect their surrounding environment, lives and livelihood. The petitioner thereafter moved this application under section 102 of the Constitution and obtained the present Rule.

Mrs. Syeda Rizwan Hasan, the learned Advocate appeared in person for Bangladesh Environmental Lawyers Association (BELA) and submits that illegal and unplanned cutting of Hills/hillocks and unauthorized and indiscriminate extractin of white clay in the hilly areas of Arapara, panchkahaniya and Maizpara mouzas of Kullapara union of Durgapur upazilla under Netrokona district is violative of Article 18A, 31, 32 and 42 of the Constitution of the people's Republic of Bangladesh; the Bangladesh Environment Conservation Act, 1995 and the Environment Conservation Rules, 1997, the Mines and Mineral Resources (Control and Development) Act, 1992 and the Mines and Mineral Rules 2012 the Bangladesh Water Act, 2013 the



বই
টাকা

Land Management manual 1990 the White Clay Mining and Marketing Guidelines, 2014 and other applicable laws and policies , the same is unlawful and against public interest. Further she submits that the existing lease agreements being not in conformity with section 6 (B) of the Bangladesh Environment Conservation Act, 1995 and the Gazette Notification dated 10 July as Annexure – “C”) and the White Clay Mining and Marketing Guidelines, 2014 as notified by the Gazette Notification dated 24 March the same is liable to be declared unlawful , without lawful authority and against public interest and further she submits that White clay mining is not regulated by Environment Clearance Certificates and not also on the basis of detailed enforceable guidelines, objective transparency and monitoring mechanism, the same shall allow the devastating business –as-usual to continue inflicting “ irreversible damage” to nature as noted in the minutes of the meeting dated 9 May. 2007. The continuation of the white clay mining without Environment Clearance Certificates and Environment Management Plan (EMP) being violative of the provisions of the Bangladesh Environment Conservation Act, 1995 and the Environment Conservation Rules, 1997 and other applicable laws and Rule it is liable to be declared unlawful and it is against public interest and lastly she submits that in failure of the respondents to regulate mining of white clay and prevent further razing of hills/hillocks in the said Area in line with the



1997 and article 18 A of the Constitution of the people's Republic of Bangladesh is derogatory to the public interest and is violative of the constitutional rights of the aboriginal people as guaranteed in Article 18A of the Constitution.

On the other hand Mr. Md. Hadiul Islam Mollick, the learned Advocate appearing on behalf of the added - respondent No. 14 by filing an application submits that there were lease agreement and license with the Boure of Minarel Development, Government peoples Republic of Bangladesh for a period of I(one) year and subsequently it is extended up to 2006 , license in favour of the Respondent No. 6 was extended and they have taken royalty regularly . They were asking for renewed of lease by filing several applications before the Burea of Minarel Development but the Burea of Minareal Development did not take effective steps and after issuing of the Rule in the instant writ petition, the supply of the Raw materials are stoped and due to insufficiency of the raw materials the production of the BISF factory is about to be closed and pending contract agreement of the BISF between the various party are impeding , reason that the supply of product goods to the parties are not going on as per contract and on the other hand about seven hundred of their worker will be jobless and the Government will face serious economical loss and injury. The applicant is continuing the communication with the concerned authorities for permission of shifting of lifted white clay from

correspondence as well as by the director . The Respondent further submits that the Factory never violate any terms and conditions of the agreement as well as the rule of the Bangladesh Environment Conservation Act, 1995 and the Environment Conservation Rules, 1997. They have extracted above 3000 Metric tons of white clay by complying the rules and regulation and the said white clay is in the open air of the said of the lease land and they could not transfer the same to the factory for production of goods due to a letter issued and as such they were also filing applications before this Court. Therefore for ends of justice they may be permitted to shift the lifted clay to the factory.

On this context it appears that the application was rejected on 6.12.2016 as they have lifted the white clay after issuance of the Rule. The Respondent did not prefer any appeal against such order. However the respondents did not file any affidavit in opposition. The petitioner by filing affidavit in reply submits that respondent No. 14 has not annexed any document to show that it has obtained environmental clearance, nor is there any document that have kept within the extraction limit set by the authority and in the absence of any document showing the permissible limit of extraction and monthly statements showing the period and amount of extraction as required under clause 5 of the 2014 Guidelines , the legality of extraction of 3000 metric tons cannot be accepted. Considering Rule 93 of the Mine and Mineral Resource Rules , 2012 that deal with unauthorized

দুই
টাকা

১/১



extraction and the process laid down in the Guidelines about extraction and removal. Thus the application for allowing shifting of the lifted amount is liable to be rejected. She submits that the respondent No. 14 has deliberately approached a wrong forum since clause 4 of the 2014 relates Guidelines, extraction and shifting/ removal of while clay and it is to be monitored by a monitoring committee headed by ADC (Revenue) and respondent No. 6 has no authority in this regard . Under clause 5, of the Guidelines, it is the monitoring committee that on the application of the lessee, it gives a permission authorizing removal/ shifting of white clay which the Applicant has failed to produce with the Application. Therefore , she submits that the application is rightly rejected.

Heard the learned Advocates. As it appears that the Area in line relating to extraction of white clay are permissible but the relevant laws particularly the Bangladesh Environment Conservation Act, 1995 and the Environment Conservatin Rules , 1997 made there under the Mines and Mineral Resources (Control and Development) Act, 1992 and the Mines and Mineral Rules, 2012 the Bangladesh Water Act, 2013 , the Land Management Manual, 1990 , the White Clay Mining and Marketing Guidelines, 2014 and other applicable laws and polices are to be followed stricktly. There is no bars on cutting of hills/ hillocks for white clay and it , include hills/ hillocks in the topographical design of the quarry but it should be in



দুই
টাকা

Conservation Act, 1995. The companies have taken lease but after 2006 the lease was not extended. The companies are to obtain Environment clearance from the Respondent No. 6 . It appears there is no clearance certificate neither from the department of Environment nor from the Bureau of Mines and Mineral Control Development. The lease agreement was not extended. The Respondent No. 14 extracted the clay and now he sought permission for shifting but unfortunately the application was rejected much earlier. Further it appears that after issuance of the Rule and order of direction they have extracted the white clay . Under such facts we can not at the moment pass any order moreover the lease was not extended nor he obtained any permission from the regulatory authorities. There were guide lines and no where it has been stated that they have followed the guide lines as per gazette notification dated 24.03 . 2014. The guide line as has been notified is to be followed and it is to be enforced. There should be objective transparency and monitoring mechanism . Therefore unless and until there is agreement and also clearance certificate and the guide line are being followed there would be no cutting of hills/hillocks and extraction of white clay in the hilly areas in a discriminate way and it would be unauthorized extraction and it is violative of the Bangladesh Environment Conservation Act, 1995 and its Rules, Mines and Mineral Resources Act . Therefore, the Respondents are directed to prevent extraction of white clay from the area of Arapara, Panchkahaniya and

17/



Maizpara mouzas of Durgapur Upazilla under Netrkona district by any persons /company. White clay can only be extracted provided the provision of the Bangladesh Environment Conservation Act, 1995 and the Environment Conservation Rules, 1997, the Mines and Minerals Act are being complied strictly.

Accordingly the Rule is made Absolute.

S.M.D. Husain

Md. Ataur Rahman Khan

I agree.

Md. Ataur Rahman Khan

Typed by: Helal. 11.10.2017

Read by: MW 11-10-17

Exam by: Husain 11-10-17

Readied by:

18/c

Md. Ataur Rahman Khan
11.10.17
মোঃ আব্দুর রশিদ
প্রশাসনিক কর্মকর্তা

11-10-17
Jamal Haque
Superintendent
Bangladesh Supreme Court
Circuit Division

অত্যন্ত অধিকার প্রতিষ্ঠাপ

11.10.17

সহকারী সিনিয়র
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
(১৮-৭২ ইং সেক্টর ১নং জজ বিচারিক)
১৯ বাবামতে কর্মকর্তা