

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

WRIT PETITION No. 6645 of 2010

IN THE MATTER OF :

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

IN THE MATTER OF:

Bangladesh Environment Lawyers
Association (BELA).

.....

Petitioner.

-Versus-

Government of Bangladesh and others

.....

Respondents

Mr. Feda M. Kamal with
Mr. Md. Iqbal Kabir, Adv.

....For the petitioner.

Mr. M.K. Rahman, Additional Attorney
General with

Mr. Samendranath Biswas, A.A.G.

..... For the respondents.

Judgment on: 8th June , 2011.

Present:

Mr. Justice Farid Ahmed

And

Mr. Justice Md. Shawkat Hossain

Farid Ahmed, J:

This rule Nisi was issued calling upon the respondents to show
cause as to why the impugned Memo dated 16.5.2010 (Annexure-G1)

allowing the chopping down of thousand of trees of the old and protected mangrove forest area of Char Kukri Mukri Mouza, an Union under Charfashion Upazila of Bhola District for construction of the proposed road through it (from the river bank of Shahbazpur upto Char Kukri Mukri as proposed by respondent No. 15 and approved by the Upazila Unnayan Shomonnoy Committee in its meeting dated 29.10.2009 should not be declared illegal, against public interest and without lawful authority and why the respondents shall not be directed to protect the said Forest from any adverse and contrary activities including chopping down of tress for the construction of the said road.

The facts relevant for the disposal of the Rule are that the petitioner is Bangladesh Environmental Lawyers Association (hereinafter referred to as BELA), a society registered under the Societies Registration Act, 1860 registration being No. 1457 (17) dated 18.02.1992 represented by its Chief Executive. Since its inception BELA has developed a proven track record of sincere and bonafide activism in the field of environment and environmental justice and in promoting and protecting environmental and fundamental rights. The petitioner is genuinely concerned about the implementation and enforcement of the laws relating to the protection of environment and is also interested in performing the fundamental duty casts upon every citizen by Article 21 of the Constitution of Bangladesh to protect public property and conserve its riches. The various eco-systems of the country are being continuously endangered and threatened by various activities originating from both

private and public sources. The most vulnerable of our eco-systems remain the forest that are often cleared, degraded and fragmented in the name of so-called development although in most of the cases, decisions for clearing forests for such developmental projects come without proper Environmental Impact Assessment (EIA). Such degradation and clearing of forests has been contributed directly by the careless, selfish and narrow focused attitudes of various individuals/authorities performing in clear violation of applicable laws and/or failing to ensure enforcement of applicable laws against the violators and that forest plays an important role in keeping the ecological balance of any country. Accepting the crucial role of forests in maintaining ecological balance and in sustaining lives and livelihood of innumerable forest dwellers and local people living alongside forests, it is universally recommended that at least 25% of a country should contain forest cover. Although the Forest Development of Bangladesh claims to still have a forest over of 10 percent, different publications suggest that the actual forest coverage of Bangladesh has alarmingly shrunk from an estimated 17.06 to 6 percent in the last 20 years. As per a statement of Nishorgo (Bangladesh Protected Area Management Program of Forest Department), more than 50 percent of the Bangladesh forest has disappeared in the last 30 years. As per the Forestry Sector Master Plan, 1993-2012 annual deforestation rate in Bangladesh is 3 percent. The trees and forests of the coastal areas have special importance as they not only represent unique varieties of flora and fauna, but also play a crucial role in stabilizing the newly

emerging char lands and in protecting the coastal people from the onslaughts of natural disasters (Coastal Zone Policy, 2005). Realizing this, the Forest Policy, 1994 expressly calls for tree plantation, maintenance and preservation of the coastal forests to reduce the velocity and intensity of natural disasters like cyclones, tornadoes and tidal bores. To stabilize the newly emerged char lands of the country, the Government vide Notification No. 1/for-80-75/509 dated 24.03.1977 decided to declare the forest of char Kukri Mukri situated within P.S. Charfashion, District-Bhola as reserved forest. Accordingly the newly emerged char/khas lands of Bhola District was handed over to respondent No. 2 in 1975 for afforestation and the said lands included the Char Kukri Mukri Union of Charfashion Upazila. The afforestation programs of respondent Nos. 1 and 4 in the Union of Char Kukri Mukri has resulted in the creation of a 8565 hectares of forest area in the Union of which about 217 hectares have been declared as wildlife sanctuary. The forest in Char Kukri Mukri (hereafter referred to as the said forest) today stands highly enriched with various mangrove species including Kewra, Sundari, Bain, Gewa, Chhaila, Kakra, Hekal and Pasur while it also has wide range of medicinal plants, fruit trees, vegetables, herbs and creepers that are common in any rich mangrove. The precious wildlife of the forest includes deer, monkey, leopard, common otter, bison, buffalo, turtles, varieties of snakes, birds and many more. While the forest started growing mature, a gazette notification dated 23.8.2001 bearing ref: No. খাজব-১/৯২(বন) -৯৩৬ ভোলা was issued under section 6 of the Forest Act,

1927 to initiate the process of declaring the said Forest of Char Kukri Mukri as reserve forest. The said old forest and its riches are under threats of disappearing as respondent No. 1 has attempted to approve the clearing of part of the said forest for construction of a road through it on the plea of connecting the Char Kukri Mukri Union with the Upazila. The Offices of the respondent Nos. 3 and 5 planned to construct a 2.5 km long road through the old forest of Char Kukri Mukri in 2005 that was abandoned following a request of respondent No. 1 to respondent No. 3. After a long break, respondent No. 17, The Chairman of Char Kukri Mukri Union Parishad once again proposed for construction of the said Road through the said forest and got his proposal approved at the meeting dated 29.10.2009 of the Upazila Unnayan Shomonoy Committee. In pursuance to the decision of the Upazila Unnayan Shomonoy Committee, the local administration has placed the proposal for construction of the said proposed road under the 100 day employment program of the Government, the report of respondent No. 8 clearly note the following negative effects that the construction of road shall have on the mangrove eco-system-

- ১। সংরক্ষিত বনাঞ্চল হইতে গাছচুরির প্রবণতা বৃদ্ধি পাইবে, ফলে উক্ত বনাঞ্চল ধ্বংস হওয়ার উপক্রম হইবে।
- ২। বন্যপ্রাণীর আবাসস্থল মারাত্মকভাবে ক্ষতিগ্রস্ত হইবে।
- ৩। নতুন রাস্তার দুই পার্শ্বের সরকারী বনভূমি জবরদখল হওয়ার সম্ভাবনা সৃষ্টি হইবে।

৪। শত শত সতেজ, সবল প্রতিষ্ঠিত গাছ কর্তনের ফলে দীর্ঘ দিন যাবৎ স্থাপিত জীববৈচিত্র সম্পূর্ণ ধ্বংস হইবে।

৫। বন ও পরিবেশের মারাত্মক ক্ষতির মাধ্যমে জাতীয় বননীতি লংঘিত হইবে, বিশ্বব্যাপী জলবায়ু পরিবর্তনের বিরূপ প্রভাব মোকাবেলার জন্য দেশের অঙ্গীকার বিঘ্নিত হইবে।

Meanwhile in a letter dated 11.01.2010 the local Member of the Parliament (Bhola-4) requested the Hon'ble State Minister, Ministry of Environment and Forests to take necessary measures for the construction of the proposed road to speed up communication between Char Kukri Mukri and Char Kochchhopia, although the same shall require, as stated by the Parliament Member, chopping down of "few trees" of the forest. The Range Officer of Kukri Mukri forest on being instructed by respondent No. 9 visited the site and submitted his findings that were forwarded by respondent No. 8 to respondent No. 1. The letter of respondent No. 8 while stating the earlier stand of respondent No. 1 against construction of the said proposed road through the said forest, refers to the visit and findings of the Range Officer that clearly state the damage the said road shall do to the standing trees of the forest and also refers to alternative road from Kukri Mukri bazar to the Khal and the second alternative road that will be less damaging is from Kukri Mukri bazar to the Shahbazpur river. But unfortunately, deviating from its earlier objective stand to keep the said proposed road off the said forest, respondent No. 1 apparently succumbed to undue political pressure from the law makers and vide

impugned letter dated 16.05.2010 purported to permit the cutting down of trees from the old mangrove forest of Char Kukri Mukri without doing any environmental or other impact assessment of same. Being failed to prevent the respondents from constructing road through the Char Kukri Mukri forest through chopping down hundreds of trees, the petitioner on 6.7.2010 served a notice demanding justice upon the respondents requesting them to take immediate measures to prevent the construction of the said proposed Road through the said forest and also to protect the said old and precious mangrove forest. But till filing of the Writ Petition, the respondents have not replied to the said notice of the petitioner and as such the petitioner was constrained to file this writ petition.

The respondent No. 9, Divisional Forest Officer, Coastal Forest Department, Bhola filed affidavit-in-opposition alleging inter alia that the letter dated 29.12.2009 issued by the respondent No. 4 to respondent No. 1 with a recommendation to take necessary measures to stop attempts for construction of the proposed road and acting upon which respondent No. 1 vide its letter dated 19.01.2010 requested respondent No. 3 and 7 to take necessary measures to stop attempts for construction of the proposed road through the forest and that made temporarily. The petitioner with a malafide intention and in order to ruin the proposed project of the Government taken on consideration of the demand of the local people, the writ petition has been filed under the garb of public interest. The people have been living in the Kukri Mukri island, under P.S. Charfashion, District-Bhola have some rights to enjoy

as citizen of the country. At least 15 thousand people are living there. They are cultivating land and fishing surrounding the island for their livelihood. To communicate with the main land of Bhola, only water way is used by the people who suffer a lot during natural disasters like tornado flood and tidal wave, as a result they fall in a risk during that time. To mitigate that risk and solve their problems, the Member of Parliament of that constituency took initiative to construct road through the forest up to the river bank of Shahbajpur Channel from where the people can cross the river by boat within short time. Though green belt as well as shelter belt is important for that island but considering the rescue operation, distribution of relief's and providing medical facilities during natural disasters the proposed road through the established planted mangrove forest should be constructed and as part of the said consideration the impugned letter Anexure-G1 has been issued for the over all interest of people of Char Kukri Mukri Island with a direction upon the local authority to chopping down of minimum number of trees for the construction of proposed road and with a further direction to plant double number of varieties of trees in place of chopped ones and to create forest area on newly raised chars in the locality. This respondent also stated that if the proposed road is not constructed the people of the Char Kukri Mukri Union Parishad who live in the said Char will be ruined by the natural disasters and they will be thrown at the mercy of Almighty and that no seek people of the locality can be given treatment

from the main land of Bhola District, in such circumstances the Road should be constructed by implementing the proposal of the Government.

Mr. Feda M. Kamal and Md. Iqbal Kabir, learned Advocates appearing on behalf of the petitioner have submitted that the impugned Memo dated 16.5.2005 issued by the respondent No. 1 is a clear violation of legal provisions and the same was issued disregarding the observations and lawful decisions and authorities of respondent Nos. 4, 8 and 9. Mr. Feda M. Kamal further has submitted that the impugned Memo having purported to allow the construction of the said road through the said old mangrove forest prior to and without any environmental clearance and any Environment Impact Assessment (EIA) study as legally required, the same is malafide and illegal. He also has submitted that alarming rate of deforestation and the poor forest cover of the country, the respondents are liable to be directed to protect the rich old forest of Char Kukri Mukri and refrain from interfering with it in any adverse manner. He thereafter has submitted that considering the crucial importance of the said forest in protecting the people of Char Kukri Mukri as well as the main land people from river erosions, the onslaughts of repeated cyclones and tidal surges, kind and appropriate interventions from this Court are sought for to protect the old forest from disappearing due to the construction of the said proposed road through it.

Mr. M. K. Rahman, the learned Additional Attorney General appearing on behalf of respondent No. 9 has submitted that to save the people of the Char Kukri Mukri during any natural disasters there is no

alternatives but to construct the proposed road. Mr. Additional Attorney General further has submitted that the authority though at the first instance took into consideration about destruction of mangrove forest but ultimately considering the sufferings of the local people has given consent to implement the decision of the Government and issued Annexure-G-1 to construct a road through the Char Kukri Mukri forest as such the Rule should be discharged. He also has submitted that the proposed road to be constructed to use the same to serve multipurpose function of the local people and that since the forest has been developed for the benefit of the local people the proposed road should be constructed for the benefit of the locality to save them from natural disasters.

At the time of pronouncement of Judgment, the learned Advocate for the petitioner has submitted that if the Court allow to construct the proposed road through the mangrove forest of Char Kukri Mukri, in that case, the respondents should be directed to construct it by taking care of chopping down of less number of trees and that the same serve purposes in all respects.

The respondent-Government has submitted a Map of the Charfashion Upazila showing the position of the Char Kukri Mukri in the map. It appears from the Map that the proposal of the petitioner to construct alternative road to go to Char Fashion Upazila through the Shahbazpur river, will take long time to reach there to save the sufferings of the people of the locality during natural disasters. It is true, if the road

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is constructed through the Char Kukri Mukri forest the reserve forest will be divided into two parts and at the time of construction of the road many trees will be chopped down. According to petitioner, about 1500 trees will have to be chopped down for the construction of the road but to save 15000 people of the locality and to rescue them during natural disasters like tornado, cyclone and tidal wave etc., the proposed road is required to be constructed. The forest in question has been developed for the benefit of the local people and the road is also required to be constructed for the greater interest of the local people. So, we think that the road should be constructed through the mangrove forest of Char Kukri Mukri to implement the proposal of the Government. We have been informed, if the road is constructed the people of Char Kukri Mukri Union Parishad will be able to reach from Char Kukri Mukri to main land of Char Fashion Upazila by a engine boat crossing Shahbazpur river within 15 minutes.

Though the petitioner claims that the proposed project for construction of road has been taken without proper Environmental Impact Assessment (EIA) which is required under the environmental law. From the report of the Forest Department it appears that at the first instance they raised objection stating that if the road is constructed in that case about 1500 trees of the forest to be chopped down but already we have found that if the road is not constructed the people of the locality shall suffer tremendously during any natural disasters.

The learned Additional Attorney General has submitted that it is not correct that 15000 trees will have to be chopped down for the construction of the road and that maximum 1500 trees will have to be chopped down to construct the proposed road. Considering the submission of the learned Additional Attorney General we direct the respondents to take constant care so that the chopping of trees for the construction of the proposed road are less damaging.

It is universally recommended that at least 25% of a country should contain forest cover. It is very alarming that actual forest coverage of Bangladesh has alarmingly shrunk from an estimated 17.06 to 6 percent in the last 20 years. As per statement of Nishorgo (Bangladesh Protected Area Management Programme of Forest Department) more than 50 % of the Bangladesh forest has disappeared in the last 30 years . As per the Forestry Sector Master Plan 1990-2012 annual deforestation rate of Bangladesh is 3 percent.

Though we are very afraid of about the trees to be chopped down for the construction of the proposed road but to save the local people during natural disasters and to save their lives and cattle, the proposed road is required to be constructed. Due to want of communication and road of the main land it is not possible on the part of the Government officials and the NGO to distribute relief and start rescue operation during or after the natural disasters. The learned Additional Attorney General has drawn our attention to a Memo dated 5.5.2011 issued by the Government and has submitted that the Hon'ble Prime Minister gave a

promise to the people of the Char Kukri Mukri island that a Tourism Centre will be set-up at Char Kukri Mukri Island and to give affect of the promise of the Hon'ble Prime Minster this Memo dated 5.5.2011 has been issued requesting the Secretary of Civil Aviation and Tourism Ministry to implement the said promise. However, considering all aspects, we have given our anxious consideration to construct the proposed road as per proposal of the Government.

In the result, the rule is disposed of with above direction without any order as to cost. The order of stay granted at the time of issuance of the Rule and all subsequent orders extending the said order of stay are hereby re-called and vacated.

Md. Shawkat Hossain, J.

I agree.