

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Writ Petition No.10703 of 2011

With

Writ Petition No.10947 of 2011

IN THE MATTER OF

Bangladesh Environmental Lawyers

Association (BELA)

.....Petitioner

in Writ Petition No.10703 of 2011

And

Abdul Hafiz

.....Petitioner

in Writ Petition No.10947 of 2011

-Vs-

Bangladesh and others

.....Respondents

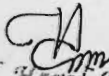
in both the writ petitions

Mr.M. Iqbal Kabir with

Mr.Md. Khairul Alam, Advocates

...For the petitioner

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Bench Officer*

*Supreme court of Bangladesh
High Court Division, Dhaka.*

in Writ Petition No.10703 of 2011 and the
added respondent No.6 in Writ Petition
No.10947 of 2011

Mr. A.J. Mohammad Ali, Senior Advocate

With

Mr. Ruhul Quddus Kazol, Advocate

.....For the petitioner

in Writ Petition No.10947 of 2011

Mr. Md. Al-Amin Sarker, D.A.G with

Mr. Md. Zakir Hossain Ripon, A.A.G

.....For the respondents

in both the Writ Petitions

Present:

Mr. Justice Mirza Hussain Haider

And

Mr. Justice Kazi Md. Ejarul Haque Akondo

Heard on: 08.11.2012, 12.11.2012,

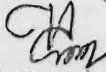
15.11.2012 and 28.11.2012 and

Judgment on: The 5th December, 2012

Kazi Md. Ejarul Haque Akondo, J:

Since the subject matters of both the Rules, issued
under Article 102 of the Constitution of the People's

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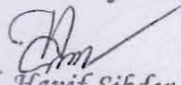
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*Supreme court of Bangladesh
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Republic of Bangladesh, are same and more or less between the same parties, both the Rules are heard together and disposed of by this single judgment.

In Writ Petition No.10703 of 2011, Bangladesh Environmental Lawyers Association (BELA), as petitioner obtained the Rule Nisi calling upon the respondents to show cause as to why they should not be directed to remove the bailey bridge being illegally constructed over the “Dawki river” at Jaflong, Sylhet, flowing through Goainghat Upazila, under Sylhet district, in violation of the Bangladesh Environment Conservation Act, 1995 and the Rules framed thereunder in 1997, the Mines and Mineral Resources (Control and Development) Act, 1992 and the Rules of 1968, the Bangladesh Water Development Board Act, 2000 and the Land Management Manual 1990 and other applicable Laws, Rules and Policies, and being used for the purpose of carrying excavated stones, and why direction should not be given upon them to declare the Jaflong-Dawki river as a ecologically critical area; and/or pass such other or further order or orders as to this Court may seem fit and proper.

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Along with the Rule, the petitioner also obtained a direction upon the respondents No.7, 9 and 10 to investigate into the matter at once and to take appropriate steps accordingly, for such illegal constructions as alleged herein, within seven days and refrain all concerned from continuing with such construction for a period of three months from date, and the respondent No.7 was directed to file compliance of the order positively. Thereafter, the direction has been extended from time to time.

In Writ Petition No.10947 of 2011, on the prayer of one Abdul Hafiz the Rule Nisi was issued calling upon the respondents to show cause as to why Memo No.পঅ/সিসি/জাঃপাঃকোঃ/৩০/২০০২ (৩য় খন্ড)/নোটিশ/২১৯৬ dated 14.12.2011 issued by the respondent No.2 purporting to remove the bailey bridge from Dawki river (Annexure-A) shall not be declared to have been issued without any lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

Pending disposal of the Rule, the operation of the impugned Memo dated 14.12.2011 (Annexure-A) was also

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stayed for a period of 3 months from date. Thereafter, the order of stay was extended from time to time.

The case of the petitioner, as set out in the Writ Petition No.10703 of 2011, in short, is as follows:

The petitioner, the Bangladesh Environmental Lawyers Association (hereinafter referred to as BELA), is working since 1992 with expertise in the regulatory field of environment and ecology, and protecting public interests against environmental anarchies through public interest litigations, and the locus standi of BELA in filing this sort of writ petition has been considered in favour of BELA in the case of Dr. Mohiuddin Farooq vs. Bangladesh and others, reported in 49 DLR (AD)-1.

The petitioner states that the environment and ecology of the country are being continuously endangered and threatened by various activities originating from both public and private affairs. One of the primary causes of the environmental degradation is unregulated operation of commercial activities by a few unscrupulous persons/entities at the cost of our precious and irreplaceable ecosystem and natural resources.

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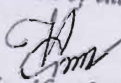


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It is stated that Sylhet Division, situated at the north-eastern part of the country, is enriched with the greenery of hillocks, tea gardens, the flow of numerous rivers and water falls of which Jaflong-Dawki river (10.75 k.m) is a famous one, flows through the Goainghat Upazila of Sylhet district (Annexure-A). The crystal, transparent and rhythmic flow of the said river has always attracted the nature loving tourists and as a result, Jaflong area has turned into a popular tourist sport. Another significant economic contribution of this hilly river is the supply of huge volume of stones that have turned the stone quarries of Jaflong as one of the major source of stone collection for the country.

Earlier stones were always collected manually from the stone quarries of the river Jaflong-Dawki but since 1998 the Director, Mineral Resources Development Bureau, the respondent No.8 under the Ministry of Power, Energy and Mineral Resources, the respondent No.4, permitted the use of hydraulic excavators in the stone quarry of Jaflong without any assessment of environment impact of the same. Thus Jaflong area is now within the risk of earthquake due to the presence of the Dawki fault. However, since 1998 hydraulic

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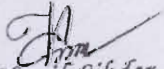


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excavators are continuously being used unabatedly in the stone quarries of Jaflong-Dawki river causing various acute problems to the environment and ecology. The river is also affected by arbitrary and whimsical intervention of the unscrupulous traders, who has recently constructed a bridge thereon in third part of Choil Khoil Mouza (Dag No.7 of Khatian No.1) without having any assessment of environmental impact and public consultation for the purpose of carrying excavated stones. The bridge is adversely affecting the free flow of the river and helping to increase unauthorized and illegal operation of excavators by the unscrupulous traders. The news of such illegal construction of bridge was published in the national and local Medias, and the petitioner has collected photographs of the said construction. (Annexure-B, B-1, B-2, B-3 and B-4)

The present petitioner earlier filed Writ Petition No. 4958 of 2009 against the Ministry of Environment and Forests and others for their failure to stop mechanized extraction of stones and also to remove the mechanized excavators from the Jaflong and Bholagonj stone quarries of the Piyain, Dawki and Dhala rivers flowing through

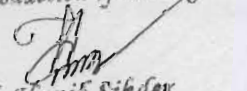
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Goainghat and Companygonj upazilas of Sylhet district, and to protect the natural ecosystem of the rivers and the lives, property and livelihoods of the people living in the said areas and obtained a Rule thereon, which was made absolute on 14.01.2010 except the portion relating to the payment of compensation subject to the condition that the Ministry of Environment may frame any guidelines for mechanized extraction of stones strictly keeping the ecological system of the concerned area intact and that no other ministry shall have any say in this regard. But, no such guideline has yet been framed by the Ministry of Environment for mechanized extraction of stones.

It is further alleged that soon after the said judgment, the mechanized extraction of stones was stopped for the time being, but the same has started again which the respondents have failed to prevent. The respondents have also failed to stop the illegal construction of bridge over Jaflong-Dawki river constructed for the purpose of carrying excavated stones, and in the circumstances, the petitioner served a notice upon the respondents demanding justice, on 08.12.2011, asking them to remove the bridge from over the

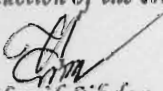
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river Jaflong-Dawki (Annexure-C), but the respondents did not respond to the notice till the date of filing this Writ Petition No.10703 of 2011. Hence this Rule has been obtained.

The Rule was issued upon the respondents and as per direction of this Court, the respondent No.7, the Deputy Commissioner, Sylhet, filed an affidavit of compliance contending that as per direction of this Court a six-member committee was formed (Annexure-1) on 20.12.2011 to investigate into the matter and to take action in order to stop illegal construction work of the bridge and other structures on the Jaflong-Dawki river. Thereafter, the committee visited the area on 21.12.2011, and saw a temporarily built bailey bridge of about 50 feet long with 320 feet approach road on both sides, which is being used for carrying excavated stones over the river by mini-trucks. After investigation, the committee came to know that the bridge was constructed there only 10 days ago. The committee on the basis of information, collected through visit, discussion and upon collecting opinions of the local people, stone labours, tourists along with other professionals, prepared a report on

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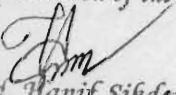

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21.12.2011, (Annexure-1(a) and submitted the same to the respondent No.7, who thereafter held a meeting on the matter in presence of the related district level officials including the law enforcing agency on 22.12.2011, and got the said investigation report approved (Annexure-1(b) and 1(c).

The respondent No.7 also circulated a public notice on 22.12.2011, banning any construction or any structural intervention on or about the Jaflong-Dawki river as per direction of this court, which was published in the local daily newspaper "the Daily Uttor Purbo" and "the Daily Shabus Sylhet" on 23.12.2011 (Annexure-1 (d), 1(e) and 1(f). The respondent No.7 vide public notice dated 22.12.2011, instructed the local police and the other law enforcers to ensure execution of the order of this Court, and the Upazila Nirbahi Officer, Goainghat was also asked to monitor the situation of Jaflong area and to submit a report. Accordingly a report was submitted to the respondent No.7 (Annexure-1 (g), 1(h) and 1(i)) containing that no further extension or construction has done over the Jaflong-Dawki river.

The case of the petitioner in Writ Petition No.10947 of 2011 briefly runs as follows:

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The petitioner is the General Secretary of Jaflong-Ballaghat Pathor Baboshahi Samobaya Somity Ltd. Goainghat, Sylhet being registration No. 46/99-2000 dated 09.03.2000, (hereinafter referred to as samity) which is related with the stone carrying business at Jaflong-Ballaghat, and obtained permission from the Upazila Nirbahi Officer, Goainghat, Sylhet to construct a temporary bailey bridge over the river Dawki at its own cost vide Memo no. উনিঅকা/গোঘাট-২০০১/বেঃ ব্রী/২০৯(২) dated 19.02.2001 (Annexure-B).

* As per the above permission, the petitioner's samity has been carrying stones in every dry season by constructing a temporary bailey bridge over river Dawki at its own cost without resisting the natural water flow of the river and removing the same before rainy season. But on 10.12.2011, some officials of the respondent No.2 along with officials of the respondent No.5 directed the petitioner's samity not to carry stones over the bailey bridge, and as such the petitioner made a representation to the respondent No.3, the Deputy Commissioner, Sylhet, stating the relevant facts but got no response, and thereafter the respondent No.2, the Director of

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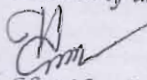
the Directorate of Environment, Sylhet Division, by issuing the impugned Memo dated 14.12.2011 (Annexure-A) directed the petitioner to remove the bailey bridge stating that the bridge along with the approach road which has been constructed over river Dawki without the permission of the government is harmful for the natural flow of the river, and the activities of the petitioner is contrary to the provision of section 6 uma of the Bangladesh Environment Conservation Act, 1995 (Amended in 2010).

The local Chairman of No.3 Purba Jaflong Union Parishad, Goainghat, Sylhet issued a certificate on 10.12.2011 stating that the local stone dealers construct temporary bailey bridge over river Dawki every year in dry season to carry stones by truck, and it does not resist the water flow of Dawki river (Annexure-C).

On receiving the impugned memo dated 14.12.2011, (Annexure-A) the petitioner served a notice upon the respondents on 19.12.2011, demanding justice but got no response. Hence this Rule was issued.

The Rule was issued upon the respondents, and the respondent No.2, the Director, Directorate of Environment,

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Sylhet Division, filed an affidavit-in-opposition denying the material allegations made in the writ petition and contending, inter-alia, that the petitioner did not follow the process before construction of the temporary bailey bridge over the river Dawki, which caused obstruction to the natural flow of the river. The petitioner ought to have filed an application to the proper authority, that is to say, the Department of Environment, Sylhet Divisional Office, but he did not take permission from the proper authority before constructing the bridge. Construction of dam /approach road over the river means filling of earth/stand on the bed of the river. The respondent No.4, the Superintendent of Police, Sylhet, has got no lawful authority to permit anybody to construct any dam or bridge over the river. The petitioner has constructed the bailey bridge along with dam/approach road over the river without obtaining any environmental clearance from the respondent No.2, and the construction is creating obstruction not only to natural flow of the river but also to the environment of the area, and as such the Rule should be discharged.

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The respondent No.3, the Deputy Commissioner, Sylhet, also filed an affidavit-in-opposition denying the material allegations made in the writ petition and contending, inter-alia, that "Jaflong-Ballaghat Pathor Baboshaye Multipurpose Samabaya Samity Ltd." Sylhet, filed an application (Annexure-1) to the respondent No.3 on 03.12.2000, for permission to construct a temporary bailey bridge over the river Piyain at its own cost, and remove the same after 3-4 months and accordingly, the samity was permitted to construct the bridge, as prayed for, by the respondent No.5, the Upazila Nirbahi Officer, Goainghat, Sylhet, vide memo dated 19.02.2001, Annexure-1 (a) on conditions as contemplated in the said memo. Subsequently the said samity again filed an application on 23.12.2001 (Annexure-1 (b) to the respondent No.5 praying for constructing a temporary bailey bridge over the river Piyain for 3-4 months in the dry season, and accordingly, permission was given vide memo dated 09.02.2002, Annexure-1(c). Thereafter, no such permission was obtained by anybody from the respondents to construct the bridge in question but the said samity constructed the same illegally,

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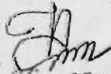
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and hence the said illegally constructed bailey bridge is required to be removed by the said samity at its own cost and risks, and in the circumstances, the respondent No.3 prayed for discharging the Rule in Writ Petition No.10947 of 2011 with costs.

On an application, the Bangladesh Environmental Lawyers Association (BELA) added itself as respondent No.6 in the Writ Petition No.10947 of 2011.

The added respondent No.6, BELA, by filing an affidavit-in-opposition denied the averments made in the writ petition contending, inter-alia, that the Writ Petition No.10947 of 2011 is not maintainable as the submissions and grounds taken by the petitioner are vague, unspecified and based on conjecture and surmise. The petitioner constructed the said bailey bridge without obtaining any permission from the authority and without having any environment clearance certificate and environmental impact assessment as required under the Environment Conservation Act, 1995 and the Rules made thereunder. Law does not allow anyone to do any activities without complying with the provisions of the Bangladesh Environment Conservation Act, 1995, and as

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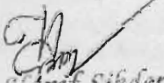
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such the respondent No.2 has rightly passed the impugned order asking the petitioner to remove the bailey bridge as well as the dam/approach road constructed over the river Dawki connecting the bailey bridge and the banks of the river (Annexure-A). Hence the said respondent prayed for discharging the Rule.

It is to be mentioned here that the petitioner of Writ Petition No. 10947 of 2011 did not enter appearance in the Writ Petition No. 10703 of 2011.

At the outset, Mr. M. Iqbal Kabir, the learned Advocate appearing on behalf of the BELA, the petitioner in Writ Petition No.10703 of 2011 and the respondent No.6 in Writ Petition No.10947 of 2011, contends that "Jaflong-Ballaghat Pathor Baboshahi Samobaya Samity Ltd." Goainghat, Sylhet, constructed the bailey bridge in question along with the dam/approach road over the river Jaflong-Dawki without obtaining any permission or environmental clearance from the authority concerned, which is adversely affecting the crystal, transparent and rhythmic flow of water and damaging the environment and ecology of the river and surroundings and as such the Director, Directorate of

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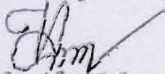

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Environment, Sylhet Division, rightly passed the impugned order asking the said samity to remove the bailey bridge along with the approach road/dam at once.

He further contends that the Samity constructed 300 feet long dam/ approach road on the bed of the river by filing earth/sand to connect both the banks of the said river with the 50 feet long bailey bridge and thereby the samity narrowed down the said 400 feet wide river into only 50-60 feet water flow and changed the nature and character of the river causing obstruction to the natural flow of water and thereby damaging the environment and ecology of the area violating the provisions of sections 6 Uma and 12 of the Bangladesh Environment Conservation Act, 1995. The samity is not supposed to get environmental clearance under Rule-7 and schedule-1 of the Environment Conservation Rules, 1997 as the bridge and the dam/approach road, as constructed, fall under the "red" category of establishment.

He next submits that the Director General of Department of Environment, (Respondent No.6 to the writ petition No.10703 of 2011), as per section 7 of the said Act of 1995, is responsible to take measures against the activities

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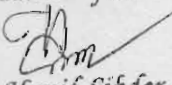


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that may cause damage to ecosystem, while the Director General of Bangladesh Water Development Board, (Respondent No.5 to the said writ petition), according to the provision of sections 5 and 6 of the Bangladesh Water Development Board Act, 2000 is responsible for regulating the free flows of all rivers and protecting the river banks and towns, markets and other important public places from river erosion, but in this case both the aforesaid respondents have failed to discharge their respective duties and responsibilities in regulating the free flows of the river as well as protecting the banks of the river Dawki and thereby maintaining the ecosystem of the area.

He further submits that the Deputy Commissioner, Sylhet, who is the custodian of all rivers flowing through the Sylhet district under the provisions of Land Management Manual, 1990, also failed to prevent the encroachment over the said river and to remove the unauthorized bailey bridge and the approach road from the river Dawki and thus the said respondent as a whole deliberately failed in preventing such illegal and destructive actions of the said samity causing irreparable damage to the precious ecology of the Dawki

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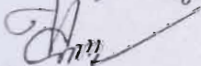

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river and thereby denying the basic right to life of the villagers of the area guaranteed under Articles 31 and 32 of the Constitution.

Mr. M. Iqbal Kabir referring Article 18A of the constitution finally contends that it is the duty of the state to protect and improve the environment and to preserve and safe guard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens and accordingly prayed for declaring the Jaflong-Dawki river as “ecologically critical” area under section 5 of the Bangladesh Environment Conservation Act, 1995 (Amended in 2010) upon making the Rule absolute in Writ Petition No.10703 of 2011 and discharging the Rule issued in Writ Petition No.10947 of 2011.

In support of his submissions Mr. M. Iqbal Kabir took us through the sections 2, 5, 6Uma, 7 and 12 of the Bangladesh Environment Conservation Act, 1995 and the Rules made thereunder in 1997; sections 5 and 6 of the Bangladesh Water Development Board Act, 2000; the Land Management Manual, 1990; Articles 31, 32 and 18A of the Constitution, and relied on the decisions in the case of

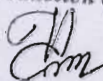
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Bangladesh Environmental Lawyers Association (BELA) vs. Government of Bangladesh and others reported in 30 BLD (HCD) 185, paragraph Nos. 27 and 30; BELA vs. Bangladesh reported in 7 Law Guardian (HCD)118, paragraph Nos.56, 57, 58 & 59 and Bangladesh Environmental Lawyers Association (BELA) vs. Bangladesh & others reported in 62 DLR (HCD)463, paragraph Nos. 29, 30, 31, 32 & 33 and the judgment passed by this Court in Writ Petition No. 3503 of 2009 (Human Rights and Peace for Bangladesh & others vs. Bangladesh & others).

Conversely, in Writ Petition No.10947 of 2011 Mr. A.J. Mohammad Ali, the learned Senior Advocate appearing on behalf of the petitioner, (Who did not enter appearance in Writ Petition No. 10703 of 2011), submits that the petitioner did not fill earth and make any dam /approach road in constructing the bailey bridge over the river Dawki by obstructing the free flow of the water and changing the nature and character of the river, and thereby damaging the environment and ecology of the area, and as such the activities of the petitioner does not fall within the mischief of section 6Uma of the Bangladesh Environment Conservation

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Act, 1995 (Amended in 2010), but the respondent No.2, the Director, Directorate of Environment, Sylhet Division, most illegally issued the impugned order (Annexure-A) without appreciating that the bailey bridge was constructed temporarily, over the river for the dry season only, with the permission of the respondent No.4, the Superintendent of Police, Sylhet.

He further submits that petitioner's samity is carrying excavated stones over the bailey bridge for quite a long period, and more than 50 thousands workers are working there, and as such they acquired a legal right and legitimate expectations to continue their livelihood. The respondents issued the impugned memo with a malafide intention to deprive the petitioner's samity from continuing with their business, and also to deprive the local workers from their livelihood.

He lastly, submits that the government is earning more than 2 core taka every year from stone business of Jaflong, but the respondents issued the impugned memo directing the petitioner to remove the dam/approach road and the bailey bridge from the river Dawki without giving any opportunity

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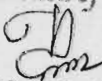


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to the petitioner of being heard, which is contrary to the principle of natural justice, and as such the Rule should be made absolute.

Mr. Md. Al-Amin Sarker, the learned Deputy Attorney General appearing for the other respondents in both the writ petitions, submits that the petitioner's samity most illegally constructed the 50 feet long bailey bridge along with 300 feet approach road connecting the bridge and the banks of the river on both the sides of the said bridge over the river Dawki without obtaining any permission from the authority concerned and also without obtaining any environmental clearance certificate, which as such is causing obstructions to the natural flows of the river, as such the respondents rightly issued the impugned order asking to remove the bridge along with the dam/approach road. But, the learned Deputy Attorney General find it difficult to make any submission opposing the Rule in Writ Petition No. 10703 of 2011; Rather relying upon the contentions of the affidavit-of-compliance filed by the respondent No.7, the Deputy Commissioner, Sylhet in Writ Petition No.10703 of 2011 he clarified the position of the respondents and thus submits that

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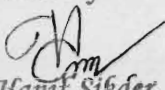
no right, vested or otherwise has been accrued upon anybody on the basis of the illegal construction of the bailey bridge in question without obtaining the environment clearance certificate as well as permission from the appropriate authority.

He next submits that the permission, if any, obtained from the Superintendent of Police, Sylhet is not a valid permission as the said Police Super is not the appropriate authority to give such permission. Thus he submits that the Rule in Writ Petition No.10947 of 2011 should be discharged with cost and the Rule issued in Writ Petition No.10703 of 2011 should be made absolute.

We have perused the writ petitions, affidavits-in-opposition, affidavit of compliance along with all the annexure appended hereto and the laws and the decisions as referred to by the parties.

It is apparent from Annexure-B to the Writ Petition No. 10947 of 2011 that the petitioner's samity obtained a permission, as per its prayer, from the respondent No.5, the Upazila Nirbahi Officer, Goainghat, Sylhet on 19.02.2001, to construct a bailey bridge for carrying excavated stones from

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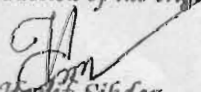


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Jaflong quarries and collecting tolls from the persons who uses the said bailey bridge. And this year, the bailey bridge in question was constructed with the permission of the respondent No.4, the Superintendent of Police, Sylhet as appears from paragraph-13 to the above writ petition, (Who of course does not have any authority to give such permission) and on the other hand, it appears from Annexure-C to the above writ petition that the local Union Parishad Chairman by issuing a certificate, certified that petitioner's samity constructs temporary bailey bridge over the river Dawki every year in dry season, like this year, to carry stones through truck, and as to his knowledge, natural flow of the river does not affect for construction of such bridge.

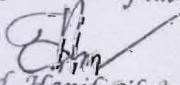
On the other hand, it appears from the Annexures-1, 1(a), 1(b) and 1(c) to the affidavit-in-opposition, submitted by the Deputy Commissioner, Sylhet, the respondent No.3, in the Writ Petition No.10947 of 2011, which has not been controverted by the writ petitioner, that the petitioner's samity for the 1st time filed an application to the Deputy Commissioner, Sylhet on 03.12.2000, praying for

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constructing a temporary bailey bridge over the river Piyain at their own cost to carry the excavated stones from the quarries through truck and removing the same after 3-4 months, and accordingly the samity was permitted to construct the said bridge by the Upazila Nirbahi Officer, Goainghat, Sylhet vide memo dated 19.02.2001(Annexure-B), and then the petitioner's samity was further permitted by the Upazila Nirbahi Officer, Goainghat, Sylhet vide memo dated 09.02.2002, to construct the temporary bailey bridge over river Piyain for 3-4 months and thereafter, the respondents never gave such permission to the petitioner till filing of the writ petition, but the petitioner's samity constructed 50 feet long bailey bridge along with 300 feet approach road connecting the bridge and the banks of the river on both the sides of the said bridge this year over the river Dawki in 3rd part of Choil Khoil Mouza, Dag No.7 of Khatian No.1, with the permission of the Superintendent of Police, Sylhet, narrowing the 400 feet wide river into only 50-60 feet water flow, which is illegal as the Superintendent of Police, Sylhet is not the authority to permit anybody to construct such bridge at the place mentioned above, and the

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local Union Parishad Chairman is also nobody to issue such certificate (Annexure-C).

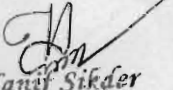
The petitioner's samity constructed the bailey bridge over the river Dawki by making more than 300 feet dam/approach road on the bed of the river by filing earth/sand and thereby narrowed down the free flow water of the 400 feet width river into 50-60 feet, which has not been denied by the writ petitioner samity and thereby the petitioner has changed the nature and character of the river, causing obstruction to the natural flow of water, and damaging the environment and ecology of the area violating the provision of section 6Uma of the Bangladesh Environment Conservation Act, 1995 (Amended in 2010) which reads as:

"৬ ঙ। জলাধার সম্পর্কিত বাধা-নিষেধ। আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, জলাধার হিসাবে চিহ্নিত জায়গা ভরাট বা অন্য কোন ভাবে শ্রেণী পরিবর্তন করা যাইবে না।

তবে শর্ত থাকে যে, অপরিহার্য জাতীয় স্বার্থে অধিদপ্তরের ছাড়পত্র গ্রহণক্রমে জলাধার সম্পর্কিত বাধা-নিষেধ শিথিল করা যাইতে পারে।"

Now, we are to see whether the river falls within the meaning of 'Jaladher'(জলাধার). As per section 2(ka ka) of the

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Bangladesh Environment Conservation Act, 1995 'Jaladher'

(জলাধার) includes river, which runs as under-

"2। সংজ্ঞা। বিষয় অথবা প্রসংগের পরিপন্থী কোন কিছু না থাকিলে এই আইনে,

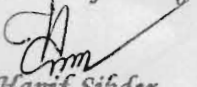
.....

(কক) "জলাধার" অর্থ নদী, খাল, বিল, হাওড়, বাওড়, দীঘি, পুকুর, ঝর্না বা জলাশয় হিসাবে সরকারী ভূমি রেকর্ডে চিহ্নিত ভূমি, বা সরকার, স্থানীয় সরকার বা সরকারী কোন সংস্থা কর্তৃক সরকারী গেজেটে প্রজ্ঞাপন দ্বারা ঘোষিত কোন জলাভূমি, বন্যা প্রবাহ এলাকা, সলল পানি ও বৃষ্টির পানি ধারণ করে এমন কোন ভূমি;

.....

The petitioner constructed the bailey bridge without permission of the authority concerned and without obtaining environmental clearance certificate from the Directorate of Bangladesh Environment as required under the provision of section 12 of the said Act, 1995, which is quoted below-

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"১২। পরিবেশগত ছাড়পত্র। (১) মহা পরিচালকের নিকট হইতে, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, পরিবেশগত ছাড়পত্র ব্যতিরেকে কোন এলাকায় কোন শিল্প প্রতিষ্ঠান স্থাপন বা প্রকল্প গ্রহন করা যাইবে না।"

Again, as per Rule 7(1) (2) read with Schedule -1(Gha) of the Environment Conservation Rules, 1997, the construction of bridge or bailey bridge along with the dam/approach road falls within read category which requires to obtain clearance certificate from the Director General of the Department of Environment upon assessing environment impact which has not been done in respect of constructing the bailey bridge over the river Dawki by the petitioner of Writ Petition No.10947 of 2011, rather the said construction has created obstruction on natural flow of water of the river.

For violation of section 12 as to obtaining prior permission from the Department of Environment, it has been provided in serial No.8 of the table of section 15(1) of the said Act of 1995 that sentence up to 3 years with fine can be awarded to the offender. This issue has been elaborately discussed in the case of Bangladesh Environmental Lawyers Association (BELA) vs. Bangladesh reported in 7 law Guardian (HCD) 118, paragraph Nos. 56, 57, 58 & 59, as referred to.

In view of the above, we do not find any illegality in passing the impugned order (Annexure-A) dated 14.12.2011

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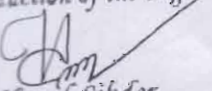
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in Writ Petition No.10947 of 2011, issued by the Director, Directorate of Environment, Sylhet Division, the respondent No.2, who is the legal authority to give such environmental clearance, and to relax 'জলাধার সম্পর্কিত বাধা-নিষেধ' as per the mandate of section 6 Uma of the Bangladesh Environment Conservation Act, 1995 (Amended in 2010) for indispensable national interest.

The petitioner of Writ Petition No. 10947 of 2011 did not controvert the contents of the affidavits-in-opposition filed by the respondents No.2, 3 and 6 by filing any affidavit-in-reply.

For the reasons and discussions made hereinabove, we do not find any force in the submissions of the learned Advocate for the petitioner, and as such there is no reason to interfere with the impugned order challenged in Writ Petition No. 10947 of 2011.

On the other hand, complying with the order of this Court, the respondent No.7, the Deputy Commissioner, Sylhet filed an affidavit-of-compliance in Writ Petition No. 10703 of 2011 annexing the investigation report, Annexure-1 (a) and the approval of the investigation report, Annexure-

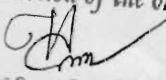
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1(c), but the contents of the said two investigation reports are totally contradictory and conflicting with the contents of his affidavit-in-opposition, subsequently filed in Writ Petition No. 10947 of 2011, which is not at all desirable from the responsible officer like the respondent. However, we take notice of the annexure 1 (a) and 1 (c), which was originally filed in compliance of this Court's order upon holding proper enquiry through a high-powered committee.

In the light of the above, now, let us see whether the bailey bridge and the approach road/dam as constructed over the river Jaflong-Dawki is affecting the environment and natural ecosystem of the river, and the lives, property and livelihoods of the people living in and around the areas adjacent to the river, and whether the said river deserves to be declared as an "ecologically critical area" under section 5 of the Bangladesh Environment Conservation Act, 1995 which reads as under-

"৫। প্রতিবেশগত সংকটাপন্ন এলাকা ঘোষণা।-(১) সরকার যদি এই মর্মে সন্তুষ্ট হয় যে, পরিবেশের অবক্ষয়ের কারণে কোন এলাকার প্রতিবেশ ব্যবস্থা (Eco-system) সংকটাপন্ন অবস্থায় উপনীত হইয়াছে বা হইবার আশংকা রহিয়াছে তাহা হইলে সরকার, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, উক্ত এলাকাকে

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প্রতিবেশগত সংকটাপন্ন এলাকা (ecologically critical area) ঘোষণা করিতে পারিবে এবং অবিলম্বে উক্ত সংকটাপন্ন অবস্থা হইতে উত্তোরণের জন্য প্রয়োজনীয় পদক্ষেপ গ্রহণ করিবে।

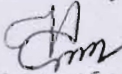
(২) উপ-ধারা (১) এর অধীন প্রদত্ত সকল প্রজ্ঞাপনে সংশ্লিষ্ট এলাকার সীমানা ও মানচিত্রসহ আইনগত বর্ণনার উল্লেখ থাকিবে এবং এই সকল মানচিত্র ও আইনগত বর্ণনা সংশ্লিষ্ট এলাকাতে প্রদর্শিত হইবে এবং তাহা উক্ত এলাকার দালিলিক বর্ণনা হিসাবে বিবেচিত হইবে।

(৩) কোন এলাকাকে প্রতিবেশগত সংকটাপন্ন এলাকা ঘোষণার পর সরকার সংশ্লিষ্ট এলাকার জন্য ব্যবস্থাপনা পরিকল্পনা গ্রহণ করিবে।

(৪) প্রতিবেশগত সংকটাপন্ন বলিয়া ঘোষিত এলাকায় কোন কোন ক্ষতিকর কর্ম বা প্রক্রিয়া চালু রাখা বা শুরু করা যাইবে না তাহা সরকার উপ-ধারা (১) এ উল্লিখিত প্রজ্ঞাপনে নির্দিষ্ট করিয়া দিবে।"

Mr. M. Iqbal Kabir in support of his submission cited a judgment of this Court passed in Writ Petition No.3503 of 2009 (Human Rights and Peace for Bangladesh & others vs. Bangladesh & others), wherein the illegal encroachment and grabbing of the rivers Buriganga, Turag, Balu and Shitalakkha by the unscrupulous persons was challenged, and the Court directed the Secretary, Ministry of Environment to declare the rivers Buriganga, Turag, Balu and Shitalakkha and its adjacent areas as "ecologically critical area" holding:

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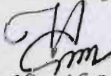
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“অতএব, নির্ধারিত সময়ের মধ্যে বুড়িগঙ্গা, তুরাগ, বালু এবং শীতলক্ষ্যা নদীগুলির সীমানা নির্ধারণ পূর্বক এই সম্বন্ধে প্রতিবেদন ১৫-১২-২০০৯ এর মধ্যে অত্র আদালতে দাখিল করিতে হইবে। ৩০-১১-২০১০ তারিখের মধ্যে সীমানা পিলার স্থাপন, নদীগুলি হইতে সকল প্রকার দখল ও স্থাপনা অপসারণ এবং Walk-way বা বৃক্ষরোপণ সম্পন্ন করতঃ প্রতিবাদীগণকে ১৫-১২-২০১০ তারিখের মধ্যে অত্র আদালতে প্রতিবেদন দাখিল করিতে হইবে।

এখানে উল্লেখ্য যে, বর্তমানে ৪টি জেলায় সংশ্লিষ্ট নদীগুলির অভ্যন্তরে অবৈধ দখলদার কর্তৃক নির্মিত ও নির্মানাধীন সকল স্থাপনা অপসারণের যে কার্যক্রম চলিতেছে তাহা অব্যাহতভাবে চলিতে থাকিবে। আরও উল্লেখ্য যে, নদী অভ্যন্তরে অবৈধ স্থাপনা অপসারণের ব্যাপারে কোনরূপ ব্যতিক্রম চলিবে না। অবৈধ স্থাপনা তাহা যাহারই হউক না কেন এবং তিনি যত বড় শক্তিশালীই হউক না কেন বা তিনি যে

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গোষ্ঠীরই হউন না কেন, বৈষম্যহীন এবং
ব্যতিক্রম ছাড়া তাহা অপসারণ করিতে হইবে।

এইখানে আরও উল্লেখ্য যে, এই রীট
মোকাদ্দমায় বর্ণিত ৪টি নদীর প্রতিটিরই প্রতিবেশ
ব্যবস্থা মনুষ্য সৃষ্টি স্থাপনা নির্মাণ, দখল এবং
বিভিন্ন শিল্প কল-কারখানা হইতে নিষ্ক্ষেপিত
বর্জ্য দ্বারা এই চরম জঘন্যতম অবস্থায় পতিত
হইয়াছে।

বিজ্ঞ এ্যাডভোকেটগণের বক্তব্য, আদালতে
উপস্থাপিত সংবাদপত্রসমূহে প্রকাশিত সচিত্র
প্রতিবেদন দৃষ্টে প্রতীয়মান হইতেছে যে, সংশ্লিষ্ট
নদী সমূহের পানি, প্রাণীকূল, উদ্ভিদসহ
তীরভূমিতে বসবাসকারী নাগরিক গোষ্ঠী ভয়াবহ
পরিবেশ দূষণগ্রস্থ অবস্থায় দুঃসহ জীবন-যাপন
করিতেছে। তাহাদের স্বাস্থ্য ও জীবন মারাত্মক
সংকটাপন্ন অবস্থায় রহিয়াছে। এই প্রেক্ষাপটে
বাংলাদেশ পরিবেশ সংরক্ষণ আইন ১৯৯৫ এর ৫
ধারা অনুসারে উপরে বর্ণিত ৪(চার)টি নদী ও
সংলগ্ন এলাকাকে 'প্রতিবেশগত সংকটাপন্ন
এলাকা' ঘোষণা করিবার সকল উপাদান বিদ্যমান
রহিয়াছে।

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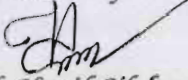
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তাছাড়া নদীর পরিশেষ দূষণ নিয়ন্ত্রন ও
প্রশমন এবং সংরক্ষণ ও উন্নয়ন সম্পর্কে
উপরোক্ত আইনের ১৩ ধারা অনুসারে নির্দেশিকা
প্রণয়ন ও বাংলাদেশ গেজেটে সরকারী প্রজ্ঞাপন
হিসেবে জারী করাও অবশ্য কর্তব্য।

এমতাবস্থায়, সংশ্লিষ্ট নদীগুলির এলাকায়
প্রতিবেশ ব্যবস্থা চরম সংকটাপন্ন অবস্থায়
উপনীত হইয়াছে বিধায় উক্ত ৪টি নদী এলাকাকে
অবিলম্বে প্রতিবেশ সংকটাপন্ন এলাকা বা
ecologically critical area ঘোষণা
করিবার জন্য পরিবেশ মন্ত্রণালয়ের সচিবকে
নির্দেশ প্রদান করা হইল। একই সাথে নদীর
সংরক্ষণ বিষয়ে পরিবেশ সংরক্ষণ আইনের ১৩
ধারা অনুসারে নির্দেশিকা প্রণয়নের নির্দেশ প্রদান
করা হইল।”

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.....

As per the above direction, the Ministry of
Environment and Forest declared the rivers Buriganga,
Turag, Balu and Shitalakkha as ecologically critical area, and
prepared an environment guideline on 20.01.2011, and the

same was published in the Bangladesh Gazette in its additional issue on 03.02.2011.

In the said cited judgment of Writ Petition No.3503 of 2009, this Court also defined the river as under-

.....
“এ প্রসঙ্গে নদী বা নদী এলাকা বলিতে কি বুঝায় তাহা সর্ব প্রথম আইনগতভাবে ধারণা লওয়া প্রয়োজন।

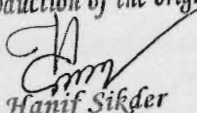
তদানিন্তন Inland Water Transport Authority Rules, ১৯৫৯, এ Inland Water এর সংজ্ঞা নিম্নরূপ-

“Inland Water” means any canal, river, lake or any other navigable water in Bangladesh.”

এ প্রসঙ্গে The Port Rules, ১৯৬৬ এ ব্যক্ত নিম্নলিখিত বিধিগুলি প্রনিধানযোগ্যঃ

“bed of navigable water way” is that portion of the soil and sub-soil which is habitually covered by the waters of a navigable waterway and extends to the high water-mark on

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both banks of a navigable waterway. It includes any area defined hereinafter as foreshore.

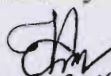
“foreshore” means that sub-soil which lies between the high-water-mark and low-water-mark.

“high-water-mark” means a line drawn through the highest points reached by ordinary spring tides at any season of the year.

“low-water-mark” means a line drawn through the lowest points reached by ordinary spring tides at any season of the year.

“bank” means land which confines the water of a water-way in its channel or bed in its whole width and extends above high-water-mark.

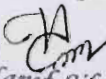
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প্রাথমিকভাবে নদী বলিতে উপরের সংজ্ঞানুসারে
নদীগর্ভ ও নদীর তীর (bank) পর্যন্ত স্থানকে
বুঝাইবে।”

Thus since Jaflong-Dawki river is flowing through the area nearing the India-Bangladesh border, and as per the said definition of river and the discussions made above, it is seen that the bailey bridge and its connecting dam/approach road have been constructed covering the entire river from one bank up to the other and thereby narrowing down the 400 feet natural water flow of the river into 50-60 feet resulting the river almost dead in the dry season affecting its crystal, transparent and rhythmic flow of water, and thereby damaging the environment and ecology of the river as well as its adjacent areas, and due to illegal extraction of stones from the river bed, the river is losing its ecological balance and out of which, sandy land is rising on the river bed every year damaging its navigability and eroding its bank mostly in Bangladesh side during flood, and in the situation Bangladesh is losing land every year, which is not desirable and the same must be stopped. The Jaflong-Dawki river area is one of the most attractive sight seeing places of our

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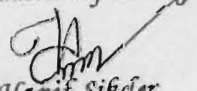
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and Dawki river every year, but now-a-days the tourists are facing much trouble there as they cannot travel by boat to see the natural beauty of the river and the Jafalong zero point due to illegal construction of the bailey bridge with approach road over the river, and mechanized extraction of stones by creating horrific noise, black smoke and dust.

Mr.M. Iqbal Kabir referred to the case of Bangladesh Environmental Lawyers Association (BELA) vs. Government of Bangladesh and others reported in 30 BLD (HCD) 185, paragraphs-27and 30 wherein on a similar question it was held:

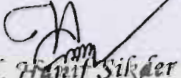
“Ecology is the study of relationship among living organisms and between living organisms and their environment. Ecology is also the study of ecosystems. Ecosystems describe the web or network of relations among organisms at different scales of organization. Since ecology

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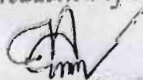
refers to any form of biodiversity, ecologists research everything from tiny bacteria's role in nutrient recycling to the effects of tropical rain forest in the Earth's atmosphere. A recent research under the aegis of World Bank reveals that five sectors have been identified as most relevant to Bangladesh in relation to climate change impact; coastal resources, fresh water resources, agriculture, eco-system and biodiversity and human health. From these sectors, coastal resources are most impacted by climate change, whereas ecosystem may be most endangered. The area of Jaflong remains exposed to earthquake because of the presence of Dawki fault. No environmental clearance

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was ever accorded to 50 excavator machines operating in Jaflong stone quarry creating horrific noise and air pollution with loud noise, black smoke and dust. Indiscriminate extraction of stones from below the riverbeds by mechanized method not only destroys organisms living there but also destroys the environment. Protection of environment is linked to our survival. In an international conference held in December 2009 in Copenhagen, capital of Denmark, attended by almost all the heads of the states across the world underscored the need for protection of environment. In that International Conference Bangladesh was designated as the most venerable country on account

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of environmental pollution. In such a situation protection of ecology and environment is of paramount importance. (Para-27)

It is important to note that development and protection of the environment are not enemies. If without degrading the environment by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development. A balance has to be struck. In such matters, many a times, the option to be adopted is not very easy or in a straight jacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt,

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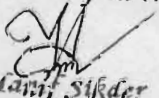
however, protection of environment would have precedence over the economic interest. (Para-30)”

Mr.M. Iqbal Kabir also referred to us the case of Bangladesh Environment Lawyers Association (BELA) vs. Bangladesh and others reported in 62 DLR (HCD) 463, paragraph Nos. 29,30,31,32 &33 wherein it was held:

“(29) Now we turn to see the relevant provisions of law relating to responsibilities and duties of the respondents regarding maintenance of the River and environment and ecology of the area.

(30) Section 2 of the Bangladesh Paribesh Sangraksman Ain, 1995 (hereafter referred to as the Ain) has defined the terms of ‘দূষণ’ (pollution), পরিবেশ (environment) and ‘পরিবেশ সংরক্ষন’ (conservation of environment) which read as under:

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২। সংজ্ঞা-বিষয় বা প্রসঙ্গের পরিপন্থী কোন কিছু
না থাকিলে এই আইনে,

.....

খ) “দূষণ” অর্থ বায়ু, পানি বা মাটির তাপ, স্বাদ, গন্ধ, ঘনত্ব বা উহাদের অন্যান্য বৈশিষ্ট্যের পরিবর্তনসহ বায়ু, পানি বা মাটিরদূষিতকরণ বা উহাদের ভৌতিক, রাসায়নিক বা জৈবিক গুণাবলীসমূহের পরিবর্তন, অথবা বায়ু, পানি, মাটি বা পরিবেশের অন্য কোন উপাদানের মধ্যে তরল, গ্যাসীয়, কঠিন, তেজস্ক্রিয় বা অন্য কোন পদার্থের নির্গমনের মাধ্যমে বায়ু, পানি, মাটি, গবাদি পশু, বন্যপ্রাণী, পাখী, মৎস্য, গাছপালা বা অন্য সব ধরনের জীবনসহ জনস্বাস্থ্যের প্রতি ও গৃহকর্ম, বাণিজ্য, শিল্প, কৃষি, বিনোদন বা অন্যান্য ব্যবহারিক ক্ষেত্রে ক্ষতিকারক, অহিতকর বা ধ্বংসাত্মক কার্য;

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(ঘ) “পরিবেশ” অর্থ পানি, বায়ু, মাটি ও ভৌত সম্পদ ও উহাদের মধ্যে বিদ্যমান পারস্পরিক সম্পর্কসহ উহাদের সহিত মানুষ, অন্যান্য প্রাণী,

সম্পর্ক;

.....

(চ) “পরিবেশ সংরক্ষন” অর্থ পরিবেশের বিভিন্ন উপাদানের গুণগত ও পরিমাণগত মান উন্নয়ন এবং গুণগত ও পরিমাণগত মানের অবনতি রোধ;

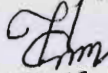
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Sections 2ka, 4 and 7 of the Ain run as under:

“২ক। আইনের প্রাধান্য। আপাততঃ বলবৎ অন্য আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইন, বিধি ও এই আইনের অধীন প্রদত্ত নির্দেশ কার্যকর থাকিবে।

৪। মহাপরিচালকের ক্ষমতা ও কার্যাবলী।-(১)
এই আইনের বিধান সাপেক্ষে, পরিবেশ সংরক্ষণ, পরিবেশগত মান উন্নয়ন এবং পরিবেশ দূষণ নিয়ন্ত্রণ ও প্রশমনের উদ্দেশ্যে মহাপরিচালক তৎকর্তৃক সমীচীন ও প্রয়োজনীয় বলিয়া বিবেচিত সকল কার্যক্রম গ্রহণ করিতে পারিবেন এবং এই আইনের অধীন তাহার দায়িত্ব সম্পাদনের

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উদ্দেশ্যে যে কোন ব্যক্তিকে প্রয়োজনীয় লিখিত

নির্দেশ দিতে পারিবেন।

৭। প্রতিবেশ ব্যবস্থার ক্ষতির ব্যাপারে ব্যবস্থা গ্রহণ।-(১) মহাপরিচালকের নিকট যদি প্রতীয়মান হয় যে, কোন ব্যক্তির কাজ করা বা না করা প্রত্যক্ষ বা পরোক্ষভাবে প্রতিবেশ ব্যবস্থা বা কোন ব্যক্তি বা গোষ্ঠীর ক্ষতিসাধন করিতেছে বা করিয়াছে, তাহা হইলে তিনি উক্ত ক্ষতির পরিমাণ নির্ধারণপূর্বক উহা পরিশোধ এবং যথাযথ ক্ষেত্রে সংশোধনমূলক ব্যবস্থা গ্রহণ বা উভয় প্রকার ব্যবস্থা গ্রহণের জন্য নির্দেশ দিতে পারিবেন এবং উক্ত ব্যক্তি এইরূপ নির্দেশ পালনে বাধ্য থাকিবেন।

(২) উপ-ধারা (১) এর অধীন প্রদত্ত নির্দেশ অনুসারে নির্দেশ প্রাপ্ত ব্যক্তি ক্ষতিপূরণ প্রদান না করিলে মহাপরিচালক যথাযথ এখতিয়ার সম্পন্ন আদালতে ক্ষতিপূরণের মামলা বা উক্ত নির্দেশ পালনে ব্যর্থতার জন্য ফৌজদারী মামলা বা উভয় প্রকার মামলা দায়ের করিতে পারিবেন।

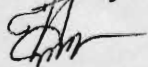
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”

(31) From the above quoted provisions of 2ka, 4 and 7 of the Ain, 1995 it is clear that respondent No.5, Director General, Department of Environment is the appropriate and competent authority under the law on the matters relating to environment of surrounding areas of the River. Section 4 of the Ain has conferred wide power upon the respondent No.5 to take all actions, as he deems fit and necessary for conservation of environment, improvement of environment and controlling of environment pollution, and to issue necessary direction in writing upon any person for discharging his duties under the Ain. Section 7 of the Ain, empowers respondent No.5 to take

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both punitive as well as preventive measures and actions including filling of civil suits and criminal cases of damages and compensation against acts that has caused or is causing or may cause damages to ecosystems.

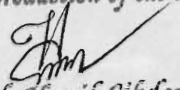
(32) Sections 5 and 6 of the Bangladesh Pani Unnayan Board Ain, 2000 run as under:

“৫। বোর্ডের ক্ষমতা ও দায়িত্ব ১-(১) এই আইনের বিধানাবলী সাপেক্ষে, পানি সম্পদের উন্নয়ন ও দক্ষ ব্যবস্থাপনা এবং ধারা ৬-এ বর্ণিত কার্যাবলী সম্পাদনের লক্ষ্যে বোর্ড সমগ্র বাংলাদেশ অথবা উহার যে কোন অংশে কার্যক্রম গ্রহণ করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন ক্ষমতা ও দায়িত্বের সামগ্রিকতাকে ক্ষুণ্ণ না করিয়া, বোর্ডের নিম্নবর্ণিত ক্ষমতা ও দায়িত্ব থাকিবে, যথাঃ

(ক) কোন ব্যক্তির আইনসংগত অধিকার ক্ষুণ্ণ না করিয়া, সরকারের পূর্বানুমোদনক্রমে, সকল নদী,

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জনপথ ও ভূ-গর্ভস্থ পানিস্তরের পানি প্রবাহ
নিয়ন্ত্রণ.


৬। বোর্ডের কার্যাবলী।-(১) সরকার কর্তৃক গৃহীত
জাতীয় পানি নীতি ও জাতীয় পানি
মহাপরিকল্পনার আলোকে এবং এই ধারার
অন্যান্য বিধানাবলী সাপেক্ষে, বোর্ড নিম্নবর্ণিত
কার্যাবলী সম্পাদন এবং তদুদ্দেশ্যে প্রয়োজনীয়
প্রকল্প প্রণয়ন, বাস্তবায়ন পরিচালনা,
রক্ষণাবেক্ষণ ও মূল্যায়ন সংক্রান্ত যাবতীয়
কার্যক্রম গ্রহণ করিতে পারিবে, যথাঃ

কাঠামোগত কার্যাবলী-

(ক) নদী ও নদী অববাহিকা নিয়ন্ত্রণ ও উন্নয়ন
এবং বন্য নিয়ন্ত্রণ, পানি নিষ্কাশন, সেচ ও খরা
প্রতিরোধের লক্ষ্যে জলাধারা, ব্যারেজ, বাঁধ,
রেগুলেটর বা অন্য যে কোন অবকাঠামো নির্মাণ;

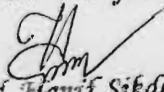
(ঘ) নদীর তীর সংরক্ষণ এবং নদী ভাঙ্গন হইতে
সম্ভাব্য ক্ষেত্রে শহর, বাজার, হাট এবং
ঐতিহাসিক ও জাতীয় জনগুরুত্বপূর্ণ স্থানসমূহ
সংরক্ষণ;

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Supreme Court of Bangladesh
High Court Division, Dhaka.

(33) It appears from the provisions of Section 5 and 6 of the Bangladesh Pani Unnayan Board Ain, 2000 that respondent No.4 Director General of the Bangladesh Water Development Board is responsible for regulating the flows of all rivers and also for protecting riverbanks and towns, markets and other important historic and public sites from river erosion. As per the notification Annexure-G, the inter ministerial committee headed by respondent No.1 shall finalize the leasing of the Balu Mohals while respondent No.6, Deputy Commissioner, Sunamgonj shall execute the lease Agreement. Admittedly, in the instant case no such leasing of the Fazilpur Sand

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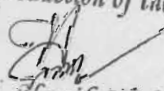
Quarry has been made since 2007.

As per the Land Management Manual, 1990, respondent No.6 is the custodian of the River and as such, he is liable to prevent encroachment over the River and unauthorized extractive activities therein."

The above decisions as well as the other judgments referred by Mr. M. Iqbal Kabir are very much relevant in the instant writ petition.

In view of the above, it appears that the respondents like the Director General, Department of Environment; the Director General, Bangladesh Water Development and the Deputy Commissioner, Sylhet have totally failed to discharge their respective duties and responsibilities entrusted upon them under the laws in accordance with law in regulating free flow of the said river and protecting its banks from river erosion, and preventing encroachment over the river and unregulated extraction of stones thereof, and for conservation and improvement of environment of the river and its adjacent

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areas and also in controlling the environment pollution thereof in order to maintain ecosystem of the said area.

As per the mandate of Articles 31,32 and 42 of the Constitution, the respondents are duty bound to ensure the right to protection of law, to life and to property of the people living in and around the area of Jaflong- Dawki river, and reading Article 18A of the Constitution, a newly inserted provision, it appears that it is the duty of the state to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetland, forest and wildlife for the present and future citizens.

In the light of the above decisions and foregoing discussions and findings, we find force in the submissions of the learned Advocate appearing for the BELA, and as such we are inclined to direct the respondents to declare Jaflong- Dawki river and its adjacent areas as 'Ecologically Critical Area' and thereby direct the respondents to do all the needful in accordance with law including to remove the bailey bridge along with its approach road/dam as constructed over the river Jaflong-Dawki flowing through Goainghat Upazila of Sylhet district.

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High Court Division, Dhaka.

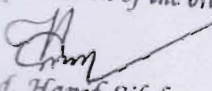
hereby directed to frame guidelines, if not framed as yet, for restricting mechanized extraction of stones keeping the ecology of the area intact in the light of the Judgment of this Court passed in Writ Petition No.4958 of 2009 earlier on January 14, 2010 as mentioned above.

In the result, the Rule issued in Writ Petition No.10947 of 2011 is discharged, and the other Rule issued in Writ Petition No. 10703 of 2011 is hereby made absolute.

The Writ Petition No.10703 of 2011 shall be treated as continuous mandamus upon the respondents.

The respondents are directed to (I) remove the unauthorized bailey bridge and its approach road/dam as constructed over the river Jaflong-Dawki within 15 days of receipt of the Judgment of this Court, and not to allow any such construction or encroachment in future over the said river, (ii) to declare the Jaflong-Dawki river (I.D No.111) as "Ecologically Critical Area" under section 5 of the Bangladesh Environment Conservation Act, 1997.

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Floor), Mirzapur, C/A, Dhaka.

6. The Director-General, Department of Environment, Paribesh Bhaban, E-16 Agargaon, Sherbagha Nagar, Dhaka.
7. The Deputy Commissioner, Office of the Deputy Commissioner, Sylhet.
8. The Director, Mineral Resources Development Bureau, 153 Pioneer Road, Segunbagicha, Dhaka.
9. The Deputy Director (Sylhet Division) Department of Environment, House No. 31(1st Floor), Block-A, Main Road, Shahjalal Upashor, Sylhet.
10. Upazila Nirbahi Officer, Goainghat Upazila, Sylhet.
11. Director, Directorate of Environment of Sylhet Division, House No. 18 Road No. 37, Block-C, Sahjalal Upashar, Sylhet.
12. Police Super, Sylhet.
13. Thana Nirbahi Officer, Gowainghat, Sylhet.
14. Bangladesh Environment Lawyers Association, BELA a society registered under the Societies Registration Act, 1860, having its office at House No. 15A, Road No. 3, Dhanmondi, Dhaka being represented by its Executive Committee Member, Md. Iqbal Kabir, Advocate Supreme Court.

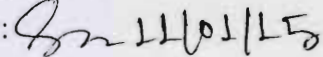
For information and necessary action.

By order.


Superintendent


Assistant Registrar.

Typed by: Mahfuz:11.01.2015.

Read by: 

Exam. by:

Readied by: 