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টাকা

বাংলাদেশ
কোর্ট ফি

দুই টাকা

০৫.০৭.১৮, ৯.১০.১৮, ০৯.১০.১৮, ১৫.১০.১৮, ১৫.১০.১৮

Present:

MS. JUSTICE SALMA MASUD CHOWDHURY
AND
MR. JUSTICE A.K.M. ZAHIRUL HOQUE

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

WRIT PETITION NO.2948 OF 2016.

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

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

-Versus-

Bangladesh, represented by the Secretary, Ministry of Land,
Bangladesh Secretariat, Dhaka and others.....Respondents.

Ms. Syeda Rizwana Hasan with

Mr. Minhazul Hoque Chowdhury.....For the petitioner.

Mr. Arobinda Kumar Roy (Ananda), D.A.G. with

Ms. Jesmin Sultana(Shamsad), D.A.G. and

Mr. Mohammad Mahafujur Rahman,A.A.G...For the respondents.

Heard on 27th 28th May, 2018 and
judgment on 03rd July, 2018.

SALMA MASUD CHOWDHURY, J.

This Rule Nisi was issued calling upon the respondents to show cause as to why the indiscriminate extraction of silica sand from the Hilly Streams Quarries of Moulvibazar Sadar, Rajnagar, Komolgonj, Srimangal, Kulaura and Borelekha Upazillas under Moulvibazar District and leasing out of 19 Hilly Streams Quarries or parts thereof to respondents Nos.15-28 by respondent No.5 extracting silica sands, as evident from Annexure-B without obtaining Environmental Clearance Certificates (ECC) shall not be declared to be without lawful authority and of no legal effect being violative of the provisions of Articles 18A, 31,32 and 42 of the Constitution of the People's Republic of Bangladesh, the Bangladesh Environment Conservation Rules, 1997 made thereunder the Mines and Mineral Resources (Control and Development) Act,

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1992, the Mines and Mineral Resources Rules, 2012 and/or pass such other or further order or orders as to this Court may seem fit and proper.

It appears from the Writ Petition that the petitioner Bangladesh Environmental Lawyers Association (BELA) being represented by its chief Executive claims that Moulvibazar district of Sylhet Division is known for its unique beauty and natural appeal and the upazillas of Moulvibazar Sadar, Srimangal, Komolgonj, Rajnagar, Kulaura and Borlekha are popular tourist areas for their natural sceneries, crystal clear rivers, lush greens, reserve forests, haors, tea estates, hills and hillocks, waterfalls, chhoras or hilly streams and other natural resources and the hilly streams of the said Upazillas of Moulvibazar district flow through the tea gardens and also other hilly areas and most of these hilly streams eventually fall into the rivers and have a rich collection of valuable silica sand and under the prevailing legal regime, extraction of silica sand has been subjected to the control of respondents No.3 and 5 and a Gazette Notification dated 27 June, 2013 issued by respondent No.3 under the Mines and Mineral Resources (Control and Development) Act, 1992 has declared 192.5 acres of 51 chhoras or the said Hilly Streams of the said Upazillas under Moulvibazar district as Silica Sand Quarry and of these 51 hilly streams, 29 are in Srimangal, 7 in Komolgonj, 6 in Rajnagar, 3 in Borlekha, 4 in Kulaura and 2 in the Sadar upazilla under Moulvibazar district and out of these 51 Hilly Streams, 19 Hilly Streams or parts thereof have been leased out to respondents No.15-28 for 2 (two) years vide work orders issued by respondent No.5 of these 19, 13 Hilly Streams namely Shumaichhora, Fulchhora, Murachhora, jaitachhora, Isanotichhora, Bilashchhora, Aliachhora, Naranyanchhora, Udnachhora, Langliachhora, Jagchhora (west part), Jagchhora

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(east part), Dingdingachhora are in Srimangal upazilla, 4 namely Dhamaliachhora, Laghatachhora, Languchhora, Shunchhora in Komolgonj upazilla and 2 namely Bobachhora and Boroachhora are in Kulaura upazilla and no Environmental Impact Assessment (EIA) was done before leasing out the said silica sand quarries.

Being aggrieved by the indiscriminate extraction of silica sand from the hilly Streams Quarries of Moulvibazar Sadar, Rajnagar, Komolgonj, Srimangal, Kulaura and Borelekha Upazillas under Moulvibazar District and leasing out of 19 Hilly Streams Quarries or parts thereof by the Director, Bureau of Mineral Development (respondent No.5) for extraction of silica sand as evident from Annexure-B to respondents Nos.15-28 without holding an objective Environmental Impact Assessment (EIA) and without Environmental Clearance Certificate (ECC), the petitioner filed this Writ Petition and obtained the present Rule.

Ms. Syeda Rizwana Hasan, the learned Advocate, representing Bangladesh Environmental Lawyers Association submits that unregulated, indiscriminate and hazardous extraction of sands from leased out silica sand quarries and from areas beyond the leased out areas and other 32 non-leased out Hilly Streams of Sadar, Srimangal, Rajnagar, Komolgonj, Kulaura and Borlekha upazillas under Moulvibazar district are violative of the provisions of Articles 18A, 31, 32 and 42 of the Constitution of the People's Republic of Bangladesh, the Bangladesh Environment Conservation Act, 1995, the Environment Conservation Rules, 1997 made thereunder, the Mines and Mineral Resources (Control and Development) Act, 1992, the Mines and Mineral Resources Rules, 2012 and other applicable laws and policies. She also submits that the



unregulated and indiscriminate extraction of sand from the said Hilly Streams using drill, dredging or mechanized machines is violative of the lease agreements and is also damaging the environment as well as the private and public properties including roads, bridges, agricultural land, homestead land and negating Articles 18A, 31, 32 and 42 of the Constitution of the People's Republic of Bangladesh. She next submits that in the absence of Environmental Impact Assessment (EIA), it cannot be concluded that without removal of the Silica sand, the water flow of the hilly streams will be seriously impeded and the claim of the concerned respondents that to conserve nature and ecology of the area, the old leases for 19 quarries should be continued and new lease should be given for the rest 32 quarries of Maulvibazar district is totally whimsical, unsubstantiated with scientific studies and assessment, and evidently biased, against the express provisions of law and is without lawful authority. The learned Advocate emphasises that silica sand is essentially a mineral resource and is collected from mines and comes within the meaning of mineral resource under section 2(b) of the Mines and Mineral Resources (Control and Development) Act, 1992.

Mr. Arobinda Kumar Roy (Ananda), the learned Deputy Attorney General appearing on behalf of the respondents opposes the Rule and submits that Environment Impact Assessment (EIA) is needed only for the Industries of Red Category but as per the said Rule exploration/withdrawal and distribution of silica sand is not in Red category and thus Environmental Impact Assessment (EIA) is not necessary for the extraction of silica sand quarries.

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We have heard the learned Advocate for the petitioner and the learned Deputy Attorney General representing the respondents and perused the Writ Petition, affidavit-in-opposition, affidavit-in-reply along with other materials on record. Challenging the indiscriminate extraction of silica sand from the hilly streams quarries of Moulvibazar Sadar, Rajnagar, Komolgonj, Srimangal, Kulaura and Borelekha Upazillas under Moulvibazar District and leasing out of 19 hilly streams quarries or parts thereof without obtaining Environmental clearance certificate (ECC), the present Writ Petition was filed. It appears that the petitioner is not concerned with the authority of Bureau of Mineral Development (BMD) to lease out mines/quarries but the failure of BMD to consider the environmental consequences of such extraction without conducting objective environmental assessment as the law requires environmental clearance of all mining projects as the same fall under the category of industries (schedule 1 category D, item 7 of the Environment Conservation Rules, 1997. Silica sand appears to be a mineral resource under section 2(b) of the Mines and Mineral Resources (Control and Development) Act, 1992 and the field from where it is collected also appears to be a mine as per the definition of mine given in section 2(c) of the said Act. As per Environment Conservation Rules, 1997 all mineral projects are subjected to mandatory environmental clearance and have been listed as red category of project meaning extremely dangerous requiring submission of EIA for environmental clearance and although schedule 1, category D, item 7 of the Environment Conservation Rules, 1997 does not expressly mention Silica Sand Mining in requiring environmental clearance but all mining projects like coal, limestone, hard rocks, natural gas, mineral oil. etc. require environmental clearance and thus mining of Silica Sands, which is

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definitely a mineral resource and its extraction is mining, may come within "etc". The law requires environment clearance of all mining projects as the same fall under red category of industries (schedule 1, category D item 7) of the Environment Conservation Rules, 1997. For protecting the natural resources it is necessary that without Environmental Clearances Certificates on Environment Impact Assessment no lease of hilly streams quarries should be given.

Considering the facts and circumstances of the case, we find merit in the Rule.

In the result, the Rule is made absolute. The indiscriminate extraction of silica sand from the Hilly Streams Quarries of Moulvibazar Sadar, Rajnagar, Komolgonj, Srimangal, Kulaura and Borelekha Upazillas under Moulvibazar District and leasing out of 19 Hilly Streams Quarries or parts thereof to respondents Nos.15-28 respondent No.5 for extracting silica sands, as evident from Annexure-B without obtaining Environmental Clearance Certificates (ECC) is hereby declared to be unlawful and lease of the quarries can only be granted after obtaining Environmental Clearance Certificate on Environmental Impact Assessment by the concerned committee of the Department of Environment, in accordance with law. The petitioner, the concerned respondent and the Assessment Committee shall follow up the matter and inform this Court after every 6(six) months.

S. Masud

A.K.M. ZAHIRUL HOQUE, J:

I agree.

Z. Hoque.

Typed by: Ar Razi: 14.10.2018.

Read by: 14-10-18

Exam by: 14-10-18

Readied by: 14-10-18

প্রত্যায়িত অবিকল প্রতিলিপি

15.10.18

সহকারী রেজিস্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
(১৮৭২ ইং সনের ১নং আইনের)
৭৬ ধারামতে ক্ষমতা প্রাপ্ত

15.10.18

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