

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

**Writ Petition No. 10437 of 2022**

**In the matter of:**

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

- AND-

**In the matter of:**

A.N.M.Helal Uddin, President, Cox's Bazar Citizen Forum, Cox's Bazar.

.....**Petitioner.**

-Versus-

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

..... **Respondents.**

Mr. Md. Amir Hossain, Advocate with  
Ms. Aziha Akter, Advocate

....**For the petitioner.**

Mr. Bepul Bagmar, DAG with  
Mr. Md. Sirajul Alam Bhuiyan, AAG

....**For respondent No.2.**

**Judgment on: 14.03.2024**

**Present:**

**Mr. Justice Md. Khasruzzaman  
and  
Mr. Justice K M Zahid Sarwar**

**Md. Khasruzzaman, J.**

In the application under article 102 of the Constitution, on 01.09.2022 the Rule *Nisi* under adjudication was issued in the following terms:

*“ Let a Rule nisi be issued calling upon the respondents to show cause as to why the action of the respondents constructing a Jetty at Royel Tulip Hotel’s Point, Inani, Cox’s Bazar Sadar, Cox’s Bazar Sea Beach (as evidenced from the news reported in the Daily Inquilab on 08.1.2021) (Annexure-A-1) should not be declared to have been done without any lawful authority and is of no legal effect and as to why a direction should not be given upon the respondents to demolish the Jetty immediately and/or pass such other or further order or orders as to this Court may seem fit and proper.”*

Facts relevant for disposal of the Rule Nisi, in short, are that Cox’s Bazar Sea Beach is the longest Sea Beach of the World which is one of the significant tourist destinations in Bangladesh. It stretched about 120 Kilometers Sandy Sea Beach with a gentle slope. The Government-respondent No.1 exercising power under section 5 of the Environment Conservation Act, 1995 has declared certain areas including Cox’s Bazar to Teknaf Sea Beach as Ecologically Critical Area (ECA) vide Gazette Notification dated 19.04.1999.As per the said gazette notification any change in the soil and water of the natural characteristics has been prohibited. Without considering the above facts and circumstances, the respondent No.2 undertook the project for construction of

gigantic jetty with a depth of 100 feet and concrete casting surface from the Hotel Royal Tulip, Inani, Cox's Bazar Sea Beach. Due to such construction of jetty, Cox's Bazar Sea Beach has been divided and lost its fundamental character. The petitioner came to know about the construction of jetty from a report widely published in the Daily Inquilab on 24.10.2021 and 08.11.2021 vide Annexures- A, A-1 and A-2. Thereafter, without making any delay, the petitioner made representation dated 16.11.2021 to the respondent Nos. 4 to 6 stating *inter-alia* that the construction is an illegal construction and it has bad impact on the human life and environment including destruction of bio diversity, socio economic condition and division of biggest sea beach of the world (Annexures- B, B-1 and B-2). But the respondents did not care about the same. Thereafter, the petitioner issued notice demanding justice through his learned Advocate to the respondents on 25.11.2021 requesting to take immediate steps against such illegal jetty (Annexure-C). But they did not pay any heed to the same.

Under the above facts and circumstances, the petitioner earlier filed Writ Petition No. 11698 of 2021 but it was not in form and as such, it was rejected for not being pressed. Thereafter, the petitioner filed the instant writ petition and obtained the above *Rule Nisi*.

After obtaining the *Rule Nisi*, the petitioner filed an application for direction upon the respondent No.4 to stop operation of the Jetty in question. After hearing, the application was kept with the record vide order dated 10.01.2024.

The respondent No.2, Secretary, Ministry of Defense, Gano Bhaban Complex, Dhaka, filed an *affidavit-in-opposition* denying all material allegations made in the writ petition and contending *inter-alia* that the petitioner has no *locus standi* to file the writ petition and nowhere in the writ petition he made any statement as to how he is an aggrieved person. Although the petitioner made objection against the construction of jetty which is situated near the Hotel Royal Tulip, they have no objection against such Hotel. It is stated that the jetty is situated on the land belonged to Bangladesh NAVY which was constructed with prior approval of the concerned authorities to conduct International Fleet Review of 2022 (in short, IFR-2022) and also to conduct subsequent naval operations to protect sovereignty of the People's Republic of Bangladesh. IFR is an international issue of pride, dignity, honour and sign of national prosperity which extended our international friendship beyond the horizon. The petitioner failed to understand the implied application of IFR-2022 and the state policy object and interest of the sovereignty. Sea is the source

of enormous resources of providing us valuable energy, minerals, protein, aquaculture, shipping port and marine, logistics, tourism and others. The Bay of Bengal being largest bay of the world is strategically important for all the littoral countries. The Territorial Waters and Maritime Zones Act, 1974 has established the sovereign rights of Bangladesh over the sea and its resources. The maritime boundary delimitation with the neighbouring countries has generated new opportunities for unhindered exploration and exploitation of the marine resources leading to ensure the food security of the growing population and contribute to the sustainable development of Bangladesh in a changing environment considering our rights on the vast sea area in the Bay of Bengal under national jurisdiction and there is a tremendous demand to extend the naval friendship and cooperation. The causeway and the jetty can be used for facilitating offshore search and rescue operations. During natural calamity, emergency relief operation can be expedited using the jetty. Bangladesh Oceanographic Research Institute (BOIR) has been established at Cox's Bazar which requires naval assistance. It is stated that Anchor holding ground and depth of water are suitable for naval vessels. As a result, besides Saint Martin's Inland, this area is an alternative anchorage for the NAVY. This area was also used for foreign ships during

IFR-2022. The said causeway and jetty can be used to provide operational assistance and maintenance to naval vessel while at anchor and during patrolling off at Cox's Bazar. Ships of Bangladesh NAVY and Coast Guard are deployed in different operations. In such operations, emergency medical assistance is provided to critical patients through evacuation and transfer to different hospitals. Inani is a forwarded location from where wartime logistics will be feasible. The causeway and jetty can be used in wartime and peacetime to carry out ammunitions re-supply, loading/unloading of provision and spares to ships at sea in order to ensure the regular presence of the navy in different naval operation like operation TREASURE SHEILD, PROTIRODH, PROTIHOTO, BLUE GUARD, NIRMUL, SURAKKHA, SOMUDRA PROHORA etc. It is stated that on 06.12.2022 in the occasion of IFR 2022, the Prime Minister for the People's Republic of Bangladesh has inaugurated the jetty for operational purpose. But the petitioner with a view to defraud shedding crocodile tears in the name of so called 'national interest' has published misleading information without focusing on the national interest which is subversive of the state and as such, the *Rule Nisi* is liable to be discharged with costs.

Mr. Md. Amir Hossain along with Ms. Aziha Akter, the learned Advocates appearing on behalf of the petitioner

submits that Cox's Bazar Sea Beach is the longest Sea Beach in the world. The Government vide Gazette Notification dated 19.04.1999 declared the sea beach as ecologically critical area by which any kind of change in the basic environment of the sea beach was prohibited. But the respondent No.2 without considering anything has constructed the jetty which is illegal, arbitrary and without lawful authority. Referring to the judgment and order dated 22.07.2010 passed in Writ Petition No. 639 of 2010 which was disposed of along with other 34 writ petitions and subsequently affirmed by the Appellate Division in CPLA No. 4057 of 2018 along with similar other civil petitions, the learned Advocate further submits that any kind of change in the said ecologically critical area has not been approved by the Court with observation to maintain the basic environment of the said ECA area and as such, the *Rule Nisi* may be made absolute with a direction to demolish the said jetty constructed in the ECA area of Cox's Bazar.

Mr. Bepul Bagmar, the learned Deputy Attorney General along with Mr. Md. Sirajul Alam Bhuiyan, the learned Assistant Attorney General appearing on behalf of the respondent No.2 submits that the petitioner has no locus standi to file the writ petition. Referring to paragraph No.5 of the writ petition, the learned Deputy Attorney General submits that the petitioner challenged the construction of NAVAL Jetty

without making any sort of objection with regard to Hotel Royal Tulip, Inani, Cox's Bazar sea beach which means that the writ petition is filed to represent the opulent members who is affected by the construction of NAVAL Jetty. Moreover, the petitioner did not make any statement as to how he is an aggrieved person or whether the writ petition has been filed as public interest litigation (PIL) and as such, the writ petition is not maintainable. Referring to the decision in the case of **National Board of Revenue Vs. Abu Saeed Khan and others, 18 BLC(AD)116** the learned Deputy Attorney General further submits that challenging the policy matters of the Government and Development works of the Government as well as representing the opulent member herein the Royal Tulip Hotel who is affected by such construction no writ petition is maintainable and the Court has no power to entertain a petition which trespasses into the areas which are reserved to the executive and legislative by the Constitution. Moreover, there is no question of environmental pollution from the Environment Directorate by such construction of defense installation i.e. the NAVAL Jetty which was constructed with prior approval of the concerned authority with environment friendly modern architectural design by ensuring ecological stability and keeping natural flow of sea waves. The said NAVAL Jetty was constructed with a view to facilitate



International Fleet Review, 2022(IFR-2022) and also for subsequent naval operational activities including offshore search and rescue operations. So, without understanding the implied application of the said Jetty, the petitioner very purposely and for the benefit of opulent members filed the writ petition which is not maintainable under the judicial review of this Court. Referring to Annexure-D to the writ petition i.e. the judgment and order of this Court, the learned Deputy Attorney General also submits that the said referred judgment and order is with regard to cancellation of long term lease of Hotel/Motel Zones of Cox's Bazar. Whereas, the instant Rule Nisi is with regard to defense installation used by Bangladesh Armed Forces, Boarder Guard Bangladesh and Coast Guard and as such, the said judgment has no manner of application in the facts and circumstances of the present case. Accordingly, the learned Deputy Attorney General has prayed that the Rule Nisi may kindly be discharged with costs.

We have considered the submissions made by the learned Advocate and the learned Deputy Attorney General for the respective party and perused the writ petition and other papers annexed thereto as well as the law and decision as referred to by the parties.

On perusal of the materials on record, it appears that the respondent No.2 namely Ministry of Defense, Gano Bhaban

Complex, Dhaka has constructed a Jetty with prior approval of the concerned authority in front of the land belonged to Bangladesh Navy. The purpose of construction of such jetty is for conducting International Fleet Review, 2022 (IFR-2022) and for conducting naval operations including offshore search and rescue operations and to protect sovereignty of the People's Republic of Bangladesh. In such operations, emergency medical assistance is provided to critical patients through evacuation and transfer to different hospitals. The same can be done using the jetty in question. In the affidavit-in-opposition the respondent stated that Inani is a forwarded location wherefrom wartime logistics will be feasible and the causeway and jetty will play an important role in this respect. The jetty can be used both in wartime and peacetime to carry out ammunition re-supply, loading/unloading of provision and spares to ships at sea in order to ensure the regular presence of the Navy in different Naval operations such as TREASURE SHEILD, PROTIRODH, PROTIHOTO, BLUE GUARD, NIRMUL, SURAKKHA, SOMUDRA PROHORA etc. From the affidavit-in-opposition we have also found that the Jetty was also used for anchorage of foreign ships during IFR of 2022. It is claimed by the respondent that the jetty in question will lead our nation to reach at optimum level of the international naval cooperation. The jetty is a state policy object and interest of

the sovereignty of this country. It also appears that the jetty has been in operation till now.

At this stage, challenging the construction of jetty of Bangladesh Navy, the petitioner has filed the instant writ petition. Nowhere in the writ petition the petitioner mentioned as to whether he has filed the same as a public interest litigant since he is not personally aggrieved party. In the writ petition, the petitioner stated that the construction of jetty was undertaken with a depth of 100 feet deep and a concrete casting surface in and from Hotel Royal Tulip, Inani, Cox's Bazar sea beach. Such type of statement has directly and indirectly indicated that Hotel Royal Tulip is aggrieved by construction of such jetty but the said Hotel has not come forward to file the writ petition. However, relying on the judgment and order vide Annexure-D to the writ petition, the petitioner filed the writ petition by challenging the construction of jetty which is the state policy object and interest of the sovereignty of this Country.

In such circumstances, the issues raised before us for adjudication are that:

- (I) Whether the writ petition is maintainable challenging the NAVAL Jetty which was constructed as a state policy object and interest of the sovereignty of the country.

- (II) Whether the judgment and order passed by this Division and subsequently affirmed by the Appellate Division vide Annexure-D to the writ petition is applicable in view of the facts and circumstances of the present case.
- (III) Whether the *Rule Nisi* has got any merit in the eye of law.

Let us take up the first issue as to whether the writ petition is maintainable. It appears that the Jetty was constructed as a state policy object and interest of the Sovereignty of this country. We have already found that the purpose of construction of such jetty is for conducting International Fleet Review, 2022 (IFR-2022) and for conducting naval operations including offshore search and rescue operations and to protect sovereignty of the People's Republic of Bangladesh. In such operations, emergency medical assistance is provided to critical patients through evacuation and transfer to different hospitals. The Jetty was also used for anchorage of foreign ships during IFR of 2022. So, no doubt the jetty in question will lead our nation to reach at optimum level of the international naval cooperation. And as such, it is completely a state policy object and interest of the sovereignty of this country.

Now the question is whether it can be entertained in the writ petition. In the case of **National Board of Revenue Vs. Abu Saeed Khan and others, 18 BLC (AD) 116**, the Appellate Division has elaborately discussed and considered the first case of Dr. Mohiuddin Farooque on the Public Interest Litigation (PIL), and thereby fixed up the parameters within which the High Court Division can extend its discretionary jurisdiction in entertaining PIL matter which reads as follows:

- “1. Before entertaining a petition the Court will have to decide the extent of sufficiency of interest and the fitness of the person invoking the discretionary jurisdiction.*
- 2. The Court which considering the question of bonafide in a particular case will have to decide as to why the affected party has not come before it and if it finds no satisfactory reason for non-appearance of such affected party it may refuse to entertain the petition.*
- 3. If a petition is filed to represent opulent members who were directly affected by the decision of the Government or Public Authority, such petition would not be entertained.*
- 4. The expression ‘person aggrieved’ used in article 102(1) means not any person who is personally aggrieved but one whose heart bleeds for the less*

*fortunate fellow beings for a wrong done by any person or authority in connection with the affairs of the Republic or a Statutory Public Authority.*

5. *If the person making the application on enquiry is found to be an interloper who interferes with the action of any person or authority as above which does not concern him is not entitled to make such petition.*
6. *The Court is under an obligation to guard that the filing of a PIL does not convert into a publicity interest litigation or private interest litigation.*
7. *Only a public spirited person or organization can invoke the discretionary jurisdiction of the Court on behalf of such disadvantaged and, helpless persons.*
8. *The Court should also guard that its processes are not abused by any person.*
9. *The Court should also guard that the petition is initiated for the benefit of the poor or for any number of people who have been suffering from common injury but their grievances cannot be redressed as they are not able to reach the Court.*
10. *It must also be guarded that every wrong or curiosity is not and cannot be the subject matter of PIL.*

11. *No petitions will be entertained challenging the policy matters of the Government, development works being implemented by the Government, Orders of promotion or transfer of public servants, imposition of taxes by the competent authority.*
12. *The Court has no power to entertain a petition which trespasses into the areas which are reserved to the executive and legislative by the Constitution.*
13. *A petition will be entertained if it is moved to protect basic human rights of the disadvantaged citizens who are unable to reach the Court due to illiteracy or monetary helplessness.*
14. *Apart from the above, the following some categories of cases which will be entertained:*
  - (a) *for protection of the neglected children.*
  - (b) *non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of labour laws (except in individual case).*
  - (c) *petitions complaining death in jail or police custody, or caused by law enforcing agencies.*
  - (d) *petitions against law enforcing agencies for refusing to register a case despite there are*

*existing allegations of commission of cognizable offences.*

- (e) petitions against atrocities on women such as, bride burning, rape, murder for dowry, kidnapping.*
- (f) petitions complaining harassment or torture of citizens by police or other law enforcing agencies.*
- (g) petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life.*
- (h) petitions from riot victims.”*

On perusal of the aforesaid parameters mentioned in serial Nos. 11 and 12, we find that no writ petition can be filed by challenging the policy matters and development works of the Government. Besides the Court has no power to entertain a petition which trespasses into the areas reserved for the executive and the legislative by the Constitution.

The present construction of NAVAL Jetty is the result of policy matters of the Government as well as object and interest of the sovereignty of the state. Furthermore, such a construction of NAVAL Jetty is a matter of the executive. Moreover, the respondent-Environment Directorate did not file



any affidavit raising any allegation of environmental pollution by such construction and disturbance of ecological balance and as such, the same cannot be challenged in the writ petition.

Now let us come to the second issue whether the judgment and order dated 22.07.2010 passed by this Division in Writ Petition No. 639 of 2010 along with others, relying upon which the writ petition has been filed vide Annexure-D to the writ petition, can be applicable in view of the facts and circumstances of the present case.

On perusal of the said judgment, it appears that the judgment is with regard to cancellation of long term lease of the petitioners of that writ petition. But the present writ petition is with regard to defense installation i.e. causeway and Jetty of Bangladesh NAVY which was constructed with prior approval of the concerned authority for conducting International Fleet Review of 2022 (IFR-2022) and also for naval operations as a state policy object and interest of sovereignty of the country. So, the judgment and order referred to by the petitioner in Annexure-D to the writ petition has no manner of application in the facts and circumstances of the present case.

Now comes to the last issue as to whether the Rule Nisi has got any merit.

In this respect, section 5 of the Bangladesh Environment Conservation Act, 1995 is with regard to declaration of ecologically critical area. Under sub section (1) if the Government is satisfied that due to environmental degradation eco-system of any area is in critical condition or there is apprehension to be in critical condition then the Government by Gazette Notification can declare such area as ecologically critical area (ECA) and side by side the Government will take measure to get rid from such critical condition. Under sub section (4) the Government will fix up by such Gazette Notification as required under sub section (1) with regard to prohibition of any harmful/hazardous activities in the ECA. It appears from a photocopies of the management of ECA wherein some categories of restriction/prohibitions have been incorporated which reads follows:

ইসিএ-তে নিম্নবর্ণিত কার্যক্রম নিষিদ্ধ করা হয়েছে:-

- “(১) প্রাকৃতিক বন ও গাছপালা কর্তন বা আহরণ;
- (২) সকল প্রকার শিকার ও বন্যপ্রাণী হত্যা;
- (৩) ঝিনুক, কোরাল, কচ্ছপ ও অন্যান্য বন্যপ্রাণী ধরা বা সংগ্রহ;
- (৪) প্রাণী ও উদ্ভিদের আবাসস্থল ধ্বংসকারী সকল প্রকার কার্যকলাপ;
- (৫) ভূমি এবং পানির প্রাকৃতিক বৈশিষ্ট্য নষ্ট/ পরিবর্তন করতে পারে এমন সকল কাজ;
- (৬) মাটি, পানি, বায়ু এবং শব্দ দূষনকারী শিল্প বা প্রতিষ্ঠান স্থাপন;
- (৭) মাছ এবং অন্যান্য জলজ প্রাণীর ক্ষতিকারক যে কোন প্রকার কার্যাবলী;

- (৮) নদী-জলাশয়-লেক-জলাভূমিতে বসতবাড়ী, শিল্প প্রতিষ্ঠান এবং অন্যান্য প্রতিষ্ঠানের পয়ঃপ্রণালীসৃষ্ট বর্জ্য ও তরল বর্জ্য নির্গমন এবং কঠিন বর্জ্য অপসারণ;
- (৯) যান্ত্রিক বা ম্যানুয়াল বা অন্য কোনো পদ্ধতিতে পাথরসহ অন্য যে কোনো খনিজ সম্পদ আহরণ।”

On perusal of above nine categories of restrictions, we do not find any restriction on the Government from construction of any such jetty or any development work as a policy matters of the Government. By using the causeway and the jetty the Bangladesh Armed Forces, Bangladesh Boarder Guard and Coast Guard will make their offshore search and rescue operations and providing emergency medical evacuation and transfer of the critical patients to different hospitals. This jetty will play an important role to carry out ammunition resupply, loading/unloading of provision and spares to ships at sea for ensuring the regular presence of the navy in different naval operations as stated above.

In the facts and circumstances stated hereinabove, the writ petition is not maintainable. Moreover, there is no merit in the *Rule Nisi* which is liable to be discharged.

In the result, the *Rule Nisi* is discharged without any order as to costs.

Communicate the order.

**K M Zahid Sarwar, J.**

I agree.