

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(Special Original Jurisdiction)

Writ Petition No.891 of 1994

In the matter of:

An Application under Article 102 (1) and (2) of
the Constitution of the People's Republic of
Bangladesh,

And

In the matter of:

Dr.Mohiuddin Farooque , Secretary General,
Bangladesh Environmental Lawyers Association
(BELA) being dead Ms.Syeda Rizwana Hasan,
Director (Program), representing Bangladesh
Environmental Lawyers Association (BELA)
.....Petitioner.

-Versus-

Bangladesh and othersRespondents.

Ms. Syeda Rizwana Hasan with
Mr. M. Iqbal Kabir, Advocates
.....For the Petitioner

Mr.Md.Zahirul Islam Mukul, A.A.G.
....For the Respondents.

Heard on: The 17th & 25th June & 15th
July, 2001.

Judgment on: The 15th July, 2001.

Present:

Mr.Justice Md.Joynul Abedin

And

Mr.Justice A.B.M.Khairul Haque.

A.B.M.Khairul Haque, J:

1. This rule was issued at the instance of late Dr. Mohiuddin Farooque, the
then Secretary General of Bangladesh Environmental Lawyers Association
(‘BELA’ for short), an association registered under the Societies Registration Act,

1860, bearing registration No.1457(17) dated 18.2.1992. Dr. Farooque, by a resolution of the executive committee of BELA dated 30.5.1994, was authorized to represent the said association, to move the High Court Division of the Supreme Court of Bangladesh, under Article 102 of the Constitution of Bangladesh, praying for appropriate relief relating to the matter of control of pollution from industries/factories situated up and down the country.

2. BELA has been registered as an association under the Societies Registration Act, 1860, with the aims and objects, inter alia, to organize and undertake legal or administrative actions and measures to protect, preserve, conserve or reinstate environmental and ecological systems, to protect environmentally sensitive and fragile eco-systems including protection of vulnerable groups, to protect biological diversity, to take measures on environmental or ecological issues regarding development activities. BELA has been active in the field of environment, ecology and related horizon of public interests since 1991 even before its formal registration as an association. Since its formation in 1992, it undertook detailed studies on environment and ecology and its wide-spread contributions in these fields earned its reputation and recognition both at home and abroad.

3. This rule was issued calling upon the Government of Bangladesh represented by the Secretary, Ministry of Industries and others to show cause as to why a direction should not be given to implement the decision of the Government dated 5th June, 1986, published in the Bangladesh Gazette on 7th August, 1986(Annexure C to the petition).

4. This part of the world which is now known as Bangladesh, had always been predominantly an agricultural based country and in early days pollution was never even felt in this region. Since early sixties, of necessity, industries of various kinds started to spring up slowly. Although in those days the question of pollution did not cross anybody's mind but certain provisions were made in the Factories Act, 1965 (Act No. IV of 1965) rather as a precautionary measure against possible industrial accidents than as a deterrent to any threat of pollution. Chapter III provides for health and hygiene in a factory. Section 13 under the said chapter provides for disposal of wastes and effluents. Rule 13 of the Factories Rules, 1979 provides for similar provision. Subsequently, East Pakistan Water Pollution Control Ordinance, 1970 (Ordinance V of 1970), was promulgated to provide for the control, prevention and abatement of pollution of waters in the then East Pakistan. Section 2 of the said Ordinance defined the words "pollution" and "wastes", among others, in the following manner:

"2.

(a)

(e) "pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters, including change in temperature, taste, colour, turbidity, or odour of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life;

.....
.....

(h) “wastes” means sanitary sewage, industrial discharges and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters”.

After liberation of Bangladesh, this Ordinance was repealed and replaced by the Environment Pollution Control Ordinance, 1977

(Ordinance No. XIII of 1977) (‘Ordinance’ in short), to provide for the control, prevention and abatement of pollution of the environment of Bangladesh. Section 2 of the said Ordinance defines the word “environment”, among others, as follows:

“2.....
(a).....

(f) “environment” means the surroundings consisting of air, waters, soil, food, and shelter which can support or influence the growth of life of an individual or group of individuals, including all kinds of flora and fauna.”

5. The said ordinance envisages constitution of a board, namely, the Environment Pollution Control Board. Section 5 of the Ordinance provides for the function of the Board. Besides, there was an implementation cell, headed by a Director, for the purpose of implementation of the policies of the Board and the projects, approved by the Government.

6. It appears that in due course, a survey was conducted by the Department of Environment, Pollution Control. They found that ecological imbalance is being

caused continuously due to discharge of various industrial wastes into air and water bodies. They also found that the intensity of pollution caused by the factories and industrial units depend on their type, location, raw materials, chemical effects, production process and discharge of gaseous, liquid and solid pollutants to the natural environment. After the survey, the respondent no.2, by a notification bearing number EPC/8.1/4c-1/85/419 dated 5.6.1986, published in the Bangladesh Gazette on 7th August, 1986, specified the names and addresses of the 903 industries and factories as polluters which were classified as follows:

- “(a) Tanneries (176 Nos.)
- (b) Paper and Pulp industries (5 Nos.)
- (c) Sugar Mills (16 Nos.)
- (d) Distilleries (3 Nos.)
- (e) Iron and Steel Mills (57 Nos.)
- (f) Textile industries (298 Nos.)
- (g) Fertiliser industries (5 Nos.)
- (h) Insecticide and pesticide industries (25 Nos.)
- (i) Chemical industries (23 Nos.)
- (j) Jute industries (92 Nos.)
- (k) Cement factories (3 Nos.)
- (l) Rubber and Plastic industries (34 Nos.)
- (m) pharmaceutical industries (166 No.)”

The said notification also mentions that the Government, in order to combat the adverse effects of pollution caused by the industries/factories, took the following decisions:

“2.....”

(a) The Ministry of Industries will ensure that the industries having no environmental pollution control/protection system will adopt measures to control pollution over a period of next three years.

(b) While sanctioning a new industrial unit the Ministry of Industries will ensure that necessary environmental pollution control/protection measures are adopted by it.”

The decision of the Government also requires that the Department of Environment Pollution Control, which is represented by the respondent nos. 4 and 5, would render necessary co-operation to the Ministry of Industries in implementing the above decisions.

7. The grievance of the petitioner BELA, in this writ petition is that it made several investigations up and down the country to assess the improvement, if any, made in the ecology of the country by lessening the adverse effects of pollution caused by the huge number of industries/factories identified by the Government itself and specifically pointed out in the notification dated 7.8.1986 (Annexure-C to the petition), but in its utter dismay found no evidence as to any effective measure or legal action taken against any of the 903 industries/factories to curb their continuing discharge of the affluent and wastes into air and water bodies, rather, such pollution is being continued unabated, uncontrolled and indiscriminately, not only by those industries/factories identified by the Government as mentioned in the list published in the Gazette notification dated 7.8.1986 but in many a new industries/factories sprung up since then and are severely polluting the environment and ecology endangering life and its support

systems, thereby the respondents failed in performing their statutory duties and obligations cast upon them by the provisions of the Ordinance. As such, being aggrieved, Late Dr. Mohiuddin Farooque on behalf of BELA obtained the instant rule. But he died during the pendency of the rule and Ms. Syeda Rizwana Hasan, Director (Program), BELA, has been authorized, by a resolution of the executive committee of BELA, taken on 30.6.2001, to represent BELA in the instant writ petition.

8. Ms. Syeda Rizwana Hasan, Director (Program) of BELA and also an Advocate of this Court, appears with Mr. M. Iqbal Kabir, Advocate, in support of the rule, while Mr. Md. Zahurul Islam Mukul, Assistant Attorney General, appears on behalf of the respondents.

9. This writ petition is in the nature of public interest litigation, as such, the first question comes up for consideration is as to the locus standi of BELA in maintaining this application as an aggrieved person under Article 102 of the Constitution of the People's Republic of Bangladesh.

10. In this case, any individual member or members of BELA do not claim to have been directly or specially effected by the toxic pollutants caused by the discharge of affluent and wastes, rather, the petitioner claims that the beneficiaries of this writ petition are the people, the inhabitants of this country and not simply the members of BELA. BELA as a registered association of lawyers, propagates the rights of the people of Bangladesh and champions their cause to enjoy their own life, free from pollution as bestowed upon them by the Lord in His unbounded mercy. From the narration of the writ petition it appears that BELA is

directly involved since its inception for the preservation of the environment from the ill effects of ecological imbalance created by the senseless as well as reckless creation of environmental hazards in violation of different legal provisions enacted in this regard and since BELA is trying to uphold the right to life as a fundamental right to the millions of people of Bangladesh as enshrined in Article 32 of the Constitution, it comes within the expression ‘person aggrieved’ appearing in Article 102 of the Constitution and has locus standi to maintain the present petition. In this connection it would be illuminating to quote Mustafa Kamal, J (as his Lord-ship then was) in the case of Dr. Mohiuddin Farooque Vs. Bangladesh 49 DLR AD(1997)1 where the question of locus standi of BELA itself was considered in details. Mustafa Kamal, J held as follows:

“.....it is obvious that the association-appellant as an environmental association of lawyers is a person aggrieved, because the cause it espouses, both in respect of fundamental rights and constitutional remedies, is a cause of an indeterminate number of people in respect of a subject matter of public concern and it appears, on the face of the writ petition itself, that it has devoted its time, energy and resources to the alleged ill-effects of FAP-20, it is acting bona fide and that it does not seek to serve an oblique purpose. It has taken great pains to establish that it is not a busybody. Subject to what emerges after the respondents state their case at the hearing of the writ petition the appellant cannot be denied entry at the threshold stage on the averments made in the writ petition.”(Para-52).

11. The importance of public interest litigation had already been settled in various judgments of the superior Courts in our neighbouring country India.

While considering the observance of the provisions of various labour laws in relation to workmen employed in the construction works, Bhagwati, J. (as his Lordship then was) forcefully propounded the legal position almost 20(twenty) years back in this manner in the case of Peoples Union for Democratic Rights Vs. Union of India, 1982 SC 1473:

“...Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality.”(Para-2).

12. Under such circumstances, we have no hesitation to hold that BELA being registered as an association with the aims and objects, inter alia, to undertake legal action to protect, preserve and reinstate environmental and ecological systems and since it is profoundly active and vocal in this field of great public

interest, it comes within the expression 'person aggrieved' under Art.102 of the Constitution.

13. During the hearing of the rule, a supplementary affidavit was filed on behalf of the petitioner on 15.7.2001, highlighting the legal and other developments in this field since issuance of the rule in 1994.

14. Ms. Syeda Rizwana Hasan, the learned advocate, submits that their investigations show that although the Government by a survey, itself identified the factories and industrial units creating ecological imbalance due to discharge of various industrial wastes into air and water bodies and published a notification on 7.8.1986 (Annexure-C) showing the types of factories polluting the environment but in violation of their declared statutory obligations failed to implement their own decisions taken and narrated in clause 2 of the Gazette notification dated 7.8.1986. She refers in this connection to the reply dated 11.7.1994 (Annexure-H) issued by Bangladesh Chemical Industries Corporation ('BCIC' for short) which encloses a report bearing the heading 'Environmental Management in BCIC'. Besides, she refers to a number of news paper clippings (Annexure-D series) showing continuous deteriorating environmental pollution in Bangladesh. She also refers to the new list prepared by the Department of Environment (Annexure-I). This new list, she submits, identified a total number of 1176 industries/ factories up and down the country as polluters which only shows that the number of polluting industries/factories are on the increase highlighting total failure to curb the ill effects of pollution in the country by the respondents. As such, she prays that the respondents should be directed to implement the declared

policy of the Government made as far back as in 1986 in the Gazette Notification published on 7.4.1986 (Annexure-C) in the light of ‘হিwmj-cn fcl-hn pwlre A;Ce, 1995’ (Act.No.1 of 1995) (Bangladesh Paribesh Songrakhkhan Ain)(‘Act’ for short), a new enactment for the preservation of environment in Bangladesh.

15. On behalf of the respondents, Mr. Md. Zahurul Islam, Assistant Attorney General, files an affidavit in opposition.

16. After a historic war of liberation, the people of Bangladesh, established an independent and sovereign country of their own and through their Constituent Assembly gave themselves a Constitution. An easy way to understand and appreciate the provisions of the Constitution is to look at its preamble. Paragraph 3 of the preamble reads as follows:

“...pledging that it shall be a fundamental aim of the state to realise through the democratic process a socialist society, free from exploitation-a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens;”

17. This paragraph of the preamble glorified the pledge of the nation to establish a society in which the rule of law, fundamental human rights and freedom, among others, will be secured for all citizen.

18. Part III of the Constitution enshrines the basic right of the people under the heading ‘Fundamental Rights’. This chapter contains Article 26 to Article 47A. Article 26 declares that the laws inconsistent with the fundamental rights are to be void. Article 32 provides for protection of right to life and personal liberty. Article 32 reads as follows:

“32. No person shall be deprived of life or personal liberty save in accordance with law.”

This declaration in the Constitution is not mere empty words. These guarantees are of fundamental in nature, bestowed upon the people of Bangladesh by its Constitution. The expression ‘life’ enshrined in Article 32 includes everything which is necessary to make it meaningful and a ‘life’ worth living, such as, among others maintenance of health is of utmost importance and preservation of environment and hygienic condition are of paramount importance for such maintenance of health, lack of which may put the ‘life’ of the citizen at nought. Naturally, if the lives of the inhabitants living around the concerned factories are in jeopardy, the application of Article 32 becomes inevitable because not only a right to life but a meaningful life is an inalienable fundamental right of a citizen of this country.

19. In India, the first break-through of importance in this regard came in the case of Rural Litigation And Entitlement Kendra V. State of UP AIR 1985 SC 652, popularly known as Doon Valley Case. The Dehradun Valley in India is surrounded in one side by the Himalayan range and the Ganges and Yamuna rivers in the other, has been an exquisite region but because of uncontrolled quarrying of limestone, its landscape lost its former beauty. In this case a letter received from the Rural Litigation and Entitlement Kendra, Dehradun, was treated as a writ petition and the Supreme Court by its Judgment and Order dated 12th March, 1985, AIR SC 652, directed closing down the mines of ‘A’ category

located within the municipal limits of Mussoorie and in doing so held as follows in paragraph 6:

“This environmental disturbance has however to be weighed in the balance against the need of lime stone quarrying for industrial purposes in the country and we have taken this aspect into account while making this order.”

In the aforesaid Doon Valley Case, several committees were appointed and their reports and schemes were considered by the Supreme Court and further directions were given from time to time. However, in the subsequent Judgment reported in AIR 1987 SC 359, considering the questions as to whether the mine leases can be allowed to carry on mining operations without in any way adversely affecting environment or ecological balance or causing hazard to individuals, cattle and agricultural lands, the Supreme Court of India answered as follows:

“17.....It is for the Government and the Nation and not for the Court, to decide whether the deposits should be exploited at the cost of ecology and environmental considerations or the industrial requirement should be otherwise satisfied.

18. Government- both at the Centre and in the State- must realize and remain cognizant of the fact that the stake involved in the matter is large and far reaching. The evil consequences would last long. Once that unwanted situation sets in, amends or repairs would not be possible. The greenery of India, as some doubt, may perish and the Thar desert may expand its limits.

19.....We are not oblivious of the fact that natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and

environment may not be affected in any serious way there may not be any depletion of water resources and long-term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation.”

(Ranganath Misra, J.)

20. In the back-drop of this legal position, let us now consider the grievance of BELA raised on behalf of the inhabitants of Bangladesh. There is no doubt that the Government of the day was not in total oblivion of the problem of environmental pollution in Bangladesh and although slowly but they took the initiative to enact The Environment Pollution Control Ordinance, 1977. This Ordinance envisages an Environment Pollution Control Board and also appointment of a Director who shall be the executive head of the implementation cell created for the purpose of executing the policies of the Board.

21. In due course, a survey was under taken by the Department of Environment, Pollution Control. The said survey identified the types of factories polluting the environment and those factories and industrial units were also classified into 13(Thirteen) classes, numbering in total 903 factories and industrial units. The classification with the list of factories and industrial units identified by the Government as polluting the environment was published in Bangladesh Gazette on 7.8.1986(Annexure-C). On a further survey till the last one, the Department of Environment, identified a total number of 1176 factories and industrial units polluting the environment (Annexure-I to the Supplementary Affidavit).

22. Meanwhile, the Act of 1995 replaced the earlier Ordinance. The Act establishes the Directorate of Environment which is headed by a Director General (jqi fɔlQimL). Section 4 of the Act narrates the powers and functions of the Director General.

23. It appears that Sub-section 1 of Section 4 authorizes the Director General to take all such steps as may be deemed expedient and necessary for the conservation of environment, improvement of environmental standard and control and mitigation of pollution of environment and may give necessary directions in writing to any person for performing his duties under the Act. Sub-section 2(d) entitles the Director General to give advice or direction as the case may be to any person in respect of any dangerous materials and the use, preservation, transportation, export and import of any dangerous materials and or its ingredients. Sub-section 2(e) empowers him to examine any place, premises, plants, equipments, manufacturing or other processes, ingredients or substances for the purpose of improvement of environment and control and mitigation of pollution and may give orders or directions to appropriate authority or person for the prevention, control and mitigation of the environmental pollution. Under sub-section 3, directions may also be issued providing for the closure, prohibition or regulations of any industry, or process and the concerned person shall be bound to comply with such directions.

24. Section 7 of the Act contemplates the remedial measures if the eco-system is threatened. This provision stipulates that if it appears to the Director General that certain activity is causing damage to the eco-system whether directly or

indirectly, he may, after assessing the extent of damage, direct the person responsible for taking appropriate corrective measures and such person shall be bound to comply with such directions.

25. Section 9 prohibits the discharge of excessive environmental pollutants from all sources including the commercial and industrial enterprises.

26. Sub-section 1 of Section 9 envisages that where the discharge of any environmental pollution occurs in excess of the limit prescribed by any rule, or is likely to occur due to any accident or other unforeseen act or event, the person responsible for such acts or the person in charge of the place at which such discharge occurs, shall be bound to prevent or mitigate the environmental pollution caused as a result of such discharge. Sub-section 3 requires that on receipt of information under this section in respect of any incident or accident contemplated under this rule, the Director General shall, as soon as possible, initiate necessary remedial measures to prevent or mitigate the environmental pollution and such person shall be bound to render all assistance to the Director General as may be required by him. Sub-section 4 empowers the Director General to recover the expenses as public demand incurred in respect to such remedial measures to control and mitigate the environmental pollution contemplated under this provision.

27. Subsequently, the Government in exercise of its rule making power conferred by Section 20 of the Act, promulgated the Environment Conservation Rules, 1997 ('Rules' for short). The Rules lay down the procedure for achieving the objectives provided for in the Act. Rule 7 describes the procedure for

obtaining environmental clearance and also classifies the industrial units and projects into three broad categories depending on the possible degree of risk of pollution involved, such as, green, orange-Ka, orange-Kha and red.

28. The industrial units and projects which have very little pollution impact on the environment is classified as Green while those are environmentally hazardous are classified as Orange-ka, Orange-kha and the dangerous ones are classified as Red. These four categories of industrial units and projects are mentioned in Schedule-I to the Rules. Schedule-2, 3, 4 and 8 has set the standard limits for air, water, noise, odour respectively. Schedules 10, 11, 12 of the Rules have also prescribed the emission standard limits of various liquid, gaseous, solid-waste. The provisions of the Act and the Rules require that these standard limits have to be adhered to by the concerned industrial units and projects.

29. The grievance of BELA, it appears is that inspite of all these provisions made in the Act and also in the Rules there is hardly any improvement in curbing and reducing the hazardous industrial pollution rather, the reports (Annexure-I) prepared by the Directorate of Environment itself shows that the number of industrial units and projects causing environmental pollution is on the increase all over Bangladesh. The papers annexed with the petition and the subsequent Supplementary Affidavit is not denied by the respondents.

30. The learned Assistant Attorney General appearing on behalf of the respondent no.3 is vague in his submissions. He submits that the Government is taking all possible measures to reduce the environmental pollution but failed to elaborate as to what concrete measures are taken in this respect by the

Government and more specifically by the Directorate of Environment. An Affidavit-in-opposition is filed on behalf of the Ministry of Environment and Forest, the respondent no.3. The facts stated in the said Affidavit is equally vague and do not deny the allegations of unresponsiveness on the part of the officials in implementing the letters of the law and the decisions of the Government taken in this regard and published in the Bangladesh Gazette as far back as on 7.4.1986 (Annexure-C), not to speak of the legislative intents so solemnly glorified in the Act of 1995 and the Rules made thereunder in 1997.

31. In this connection, it is worthwhile to refer to the Constitutional provision ensuring public health and morality. Article 18(1) reads as follows :

“18 (1) The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health.”(under-linings are mine).

The Constitution also commands the duties of the citizens and of public servants in no uncertain terms. Article 21 reads as follows :

“21 (1) It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property.

(2) Every person in the service of the Republic has a duty to strive at all times to serve the people.”(under-linings are mine).

But inspite of the Constitutional commands and the provisions of the Act and the Rules, the hiatus remained as before between the letters of law and the

implementation thereof in the field of environmental pollution due to unresponsiveness of the apathetic concerned officials, indifferent to the Constitutional edicts so solemnly declared in Article 18 and Article 32.

32. The oath of office of the Judges of the Supreme Court requires that they will preserve, protect and defend the Constitution and the laws of Bangladesh. These are not mere ornamental empty words. These glorifying words of oath eulogizes the supremacy of judiciary. It is by now well settled that if the Government or its functionaries fails to act and perform its duties cast upon them by the laws of this Republic, the High Court Division of the Supreme Court, shall not remain a silent spectator to the inertness on the part of the Government or its officials, rather, in order to vindicate its oath of office can issue, in its discretion, necessary orders and directions, under Article 102 of the Constitution to carry out the intents and purposes of any law to its letter, in the interest of the people of Bangladesh because all powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of the Constitution.

33. In this connection, let us consider certain decisions of the superior Courts in India. In Doon Valley case discussed earlier, the Supreme Court of India for the first time, in exercise of its epistolary jurisdiction, ordered closing down of limestone quarries, in order to preserve the ecological balance in Mussorie Hill range and also on account of hazards to public health.

34. In the case of Mr. M. C. Mehta V Union of India AIR 1987 SC 1086, Oleum gas leaked in one of the units of Shriram Foods and Fertilizer Industries

with serious apprehension of disaster, the Supreme Court, on the petition of Mr. M.C. Mehta, an Advocate of the Supreme Court, initially closed down the plant but after much deliberation with considerable hesitation, allowed the plant to re-start but subject to many a safety measures. P.N. Bhagwati, C.J. in considering the delicate issue involving closure of the plant causing loss of jobs to the hundreds of employees, economic loss to the Company and other ancillary issues, held as follows :

“.....The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.

.....We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions.....”(Para-31).

35. In the case of L.K. Koolwal V State of Rajasthan AIR 1988 Raj 2, one Mr. L.K. Koolwal moved the Court in its writ jurisdiction in connection with the acute sanitation problem in Jaipur City which became hazardous to the life of the citizens of Jaipur for a direction on the Municipality. While directing the

Municipality to remove the dirt, filth etc. within a period of six months, D.L.

Mehta, J. of Rajasthan High Court held as follows :

“Maintenance of health, preservation of the sanitation and environment falls within the purview of Art. 21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked.”(Para-3).

The learned Judge while upholding the enforcement of the duty cast on the state held further as follows :

“If the Legislature or the State Govt. feels that the law enacted by them cannot be implemented then the Legislature has liberty to scrap it, but the law which remains on the statutory books will have to be implemented, particularly when it relates to primary duty.”(Para-10).

36. On the question of water pollution caused by the tanneries in discharging its effluents in the river Ganga near Kanpur the Supreme Court of India ordered setting up of primary treatment plants, failing which directed closure of the concerned tanneries. In said case (AIR 1988 SC 1037), K.N.Singh, J. held as follows :

“This Court issued notices to them but in spite of notices many industrialists have not bothered either to respond to the notice or to take elementary steps for the treatment of industrial effluent before discharging the same into the river. We are therefore issuing the directions for the closure of those tanneries which have failed to

take minimum steps required for the primary treatment of industrial effluent. We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people.”(Para-21).

37. In another case, while directing the Municipal Corporation of Kanpur to take certain immediate steps, the Supreme Court of India on the application of Mr.M.C.Mehta (AIR 1988 SC 1115) held as follows :

“The petitioner in the case before us is no doubt not a riparian owner. He is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga and his right to maintain the petition cannot be disputed. The nuisance caused by the pollution of the river Ganga is a public nuisance, which is wide spread in range and indiscriminate in its effect and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition has been entertained as a Public Interest Litigation. On the facts and in the circumstances of the case we are of the view that the petitioner is entitled to move this Court in order to enforce the statutory provisions which impose duties on the municipal authorities and the Boards constituted under the Water Act.”(Para-16).

38. In the case of V. Lakshmi pathy Vs. State of Karnataka AIR 1992 Karnataka 57, while issuing a mandamus with a direction to abate the pollution in the concerned area H.G. Balkrishna, J. held as follows:

“The right to life inherent in Art.21 of the Constitution of India does not fall short of the requirements of qualitative life which is

possible only in an environment of quality. Where, on account of human agencies, the quality of air and the quality of environment are threatened or affected, the Court would not hesitate to use its innovative power within its epistolary jurisdiction to enforce and safeguard the right to life to promote public interest. Specific guarantees in Art.21 unfold penumbras shaped by emanations from those constitutional assurances which help give them life and substance.”(Para-28).

Similarly, in the case of *Muniswamy Gowda Vs. State of Karnataka* AIR 1998 Karnataka 281, the rice mill situated near the residential house of the petitioners, causing health hazard by emitting husk and dust in the entire atmosphere in derogation of the fundamental right of the petitioners, was directed to be shut down.

39. In the instant case, it appears that the Government took the decision as far back as in 1986, that the Ministry of Industries would ensure that the industries having no environmental pollution control/protection system would adopt measures to control pollution over a period of next three years. The affidavit in opposition, submitted on behalf of the respondent no.3 or the learned Assistant Attorney General could not put before us evidence of any such measures implemented by any of those 903 industries/factories identified in the list published in the Bangladesh Gazette on 7.8.1986 (Annexure-C). Rather, over the years the situation got worse inspite of enacting various laws in this respect. But we do not see on papers before us, evidence of implementation of any of the many functions cast upon the concerned officials of the Directorate of Environment by the Act although it is their primary duty.

40. In this connection, it should be noted that Art.31 of the Constitution entitles every citizen of this country to the right to protection of law. Art. 31 reads as follows :

“31. To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.”(the under-linings are mine).

This Constitutional mandate guarantees protection of law on every citizen of this country. The Act of 1995 and the Rules of 1997 were enacted with specific purpose to preserve the hygienic condition of the country by eradicating pollution from the environment, as such, protection of the citizens under such laws, is a guaranteed right under Art. 31, to make their lives meaningful and worth-living. Under such circumstances, the concerned officials can however, be directed to perform their such primary, mandatory and obligatory duties as required under the provisions of the Act and the Rules made thereunder and no excuse would be accepted in the performance of their such primary obligations.

41. In this connection, it should be noted that the Government is under a constitutional obligation to ensure that there is no violation of the fundamental rights of any person, and the laws of the country are obeyed and implemented to the letter. The Act of 1995 are enacted with lofty ideas and solemn hope to eradicate the ill effects of pollution and to protect the lives of many millions of

people of this country by keeping a balance in its eco-system. The people of Bangladesh, under Art.31, is entitled to enjoy protection of such laws and under Art.21, every person in the service of the Republic has a duty to ensure observance of the Constitutional mandates and the laws of the land, to strive at all times to serve the people to whom all powers in the Republic belong. As such, it is also the constitutional obligation of the Government to ensure that the rights of the people, so very glorified under Art.18 and Art.32 of the Constitution, are vindicated and defended and the provisions of the said Act is implemented in its real spirit to protect the interest of the people. In case of any breach or latches in this respect, such constitutional obligations can be enforced against the Government under Article 102 of the Constitution. In such a process, the Supreme Court is only instrumental under the Constitution in achieving the constitutional objectives of a welfare state.

42. Art.32 guarantees a right to life. This expression 'life' does not mean merely an elementary life or sub-human life but connotes in this expression the life of the greatest creation of the Lord who has at least a right to a decent and healthy way of life in a hygienic condition. It also means a qualitative life among others, free from environmental hazards. This is also one of the basic rights of a human being to live in a healthy atmosphere and constitutional remedy under Art.102 will be available if this basic human right is threatened due to violation of any of the provisions of the relevant laws enacted for such purpose or due to recklessness or negligence on the part of any person or authority which tends to upset the guarantees under Art.31 and Art.32 of the Constitution. In this

connection, it will be worthwhile to quote H.G.Balakrishna, J. in the case of V. Lakshmipathy Vs State of Karnataka AIR 1992 Kant 57, as follows :

“By allowing the writ petition, if calamitous consequences visit the concerned respondents as a result of non-feasance or malfeasance or misfeasance on the part of public authorities or public officials, the doors of justice are open to them to sue the public authorities for pecuniary relief by enforcing the principle of accountability.”(Para-28).

43. Apart from the constitutional guarantee embodied in Art.32 for a pollution free environment to protect the life from its ill effects, although various provisions are embodied in the Act and the Rules made thereunder but apparently, the Government, specially the respondent no.4, who is charged with the duties to make the environment pollution free, failed to execute and perform their such duties to the letters of the law so far, meanwhile the 903 industrial units and the factories as identified by the Government and published in the Gazette on 7.8.1986 (Annexure-C) or the 1176 industrial units and factories subsequently identified in 1994-95 (Annexure-I) continued to pollute the waters, the rivers, the air and the environment as a whole, recklessly ignoring the constitutional mandates and the legislations on this vital aspect of national importance and interest. We found to our dismay that the precautionary principles embodied in the Act is not properly implemented as it ought to have been, meanwhile, pollution continued unabated which may bring serious consequences to the lives of the many millions of people of this country and mauls the very core of Art.32 of our Constitution.

44. The facts and circumstances, presented to this Court shows that the respondents failed to implement their own decisions dated 5.6.1986 as spelt out in the notification published in the Bangladesh Gazette on 7.8.1986(Annexure-C). In the meantime, the number of industrial units and factories identified as polluters of the environment continued to rise (Annexure-I). It is also found that although legislations were made from time but the Government apparently was never serious about implementing its own laws to the detriment of the eco-system of this country. The concerned officials and the Government as a whole appears to be unresponsive to the Constitutional mandates so solemnly enshrined in Art.31 and Art.32 read with Art.18 and Art.21. This sorry state of affairs cannot continue unabated. We are also constrained to hold that this unfortunate state of affairs is not due to any lack of legislation rather, due to unresponsiveness of the concerned Government officials to implement the letters of the law and executed into action to the intents and purposes of the said laws.

45. In this connection, we would refer to the case of Municipal Council, Ratlam V. Vardhichand, AIR 1980 SC 1622, where Krishna Iyer, J. quotes with approval “ All power is a trust- that we are accountable for its exercise – that, from the people, and for the people, all springs, and all must exist.” (Vivian Grey, BK. VI Ch. 7, Benjamin Disraeli). In that case, in upholding the order of a Magistrate, directing Ratlam Municipality for removing nuisance within six months, Krishna Iyer, J. held as follows :

“...the court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when

people in misery cry for justice. The dynamics of the judicial process has a new 'enforcement' dimension not merely through some of the provisions of the Criminal Procedure Code (as here), but also through activated tort consciousness. The officers in charge and even the elected representatives will have to face the penalty of the law if what the Constitution and follow-up legislation direct them to do are defied or denied wrongfully. The wages of violation is punishment, corporate and personal."(Para-24).

This is the correct exposition of law in a modern welfare Society.

46. In the result, we accept the writ.

47. The Director General, Directorate of Environment, the respondent no.4, is directed to ensure that the industrial units and the factories which come within the classification 'red' as stated in rule 7 of the Rules, must adopt adequate and sufficient measures to control pollution within one year from the date of receipt of this judgment and order and report compliance to this Court within six weeks thereafter. The industrial units and the factories which are classified as Orange-Ka and Orange-Kha, must also adopt similar measures to control pollution within a period of two years from date and the respondent no.4 shall ensure compliance within the said period and report to this Court soon thereafter.

48. The Secretary, Ministry of Industries, respondent no.1, is also directed to ensure that no new industrial units and factories are set-up in Bangladesh without first arranging adequate and sufficient measures to control pollution, as required under the provisions of the Act of 1995 and the Rules of 1997.

49. The petitioner BELA is at liberty to bring incidents of violation of any of the provisions of the Act and the Rules made thereunder to the notice of this

Court. The respondents are also at liberty to approach this Court for directions as and when necessary so that the objectives of the Act can be achieved effectively and satisfactorily.

50. Before parting with the case, we would like to place on record our deep appreciation for BELA and its members for their tireless, sincere and commendable service in their efforts for maintaining the ecological balance and also for the preservation of the environment in this part of the world.

51. Let copies of this judgment and order be forwarded to the Secretary, Ministry of Industries, the respondent no.1, the Secretary, Ministry of Environment, the respondent no.3 and the Director General, Directorate of Environment, Government of Bangladesh, respondent no.4, for enabling them to take necessary steps in this regard immediately. A copy also be forwarded to the Chairman, BELA.

Md. Joynul Abedin, J:

I agree.