

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 891 OF 1994

IN THE MATTER OF :

Dr. Mohiuddin Farooque
...Petitioner

-Versus-

Government of Bangladesh and others
... Respondents.

Syeda Rezwana Hasan with
Mr. M. Iqbal Kabir, Advocates
... For the Petitioner
Mr. Mustafa Zaman Islam, D.A.G.
... For the respondents.

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

Mr. Justice Md. Mamtaz Uddin Ahmed

The 23rd June, 2009

ORDER

In this matter earlier on the application of Bangladesh Environmental Lawyers Association (BELA), a Rule was issued on 6.6.1994 in respect of pollution in Bangladesh. The Rule was made absolute by the judgment and order dated 15.5.2001.

Although it was directed in the above quoted judgment that the Director General, Directorate of Environment, the respondent no. 4, would ensure that the industrial units and the factories which come within the classification 'red' as stated in rule 7 of the Environment Conservation Rules, 1997 ('Rules'), must adopt adequate measures to control pollution within one year and report compliance but the said respondent miserably failed to do so. Of late, we came to learn about the deplorable condition of pollution as reported in various newspapers and the pictures printed thereon. As such, by our order dated 28.4.2009, asked the respondent nos. 1,3 and 4, and also the petitioner to furnish reports in respect of the steps taken to implement the directions made in the judgment dated 15.7.2001, within a period of one month from the said date and fixed 1.6.2009 for further orders. Accordingly, reports are filed on behalf of the respondent no. 1 and the petitioner, sworn on 1.6.2009.

The much belated reports are far from satisfactory, rather, highlights the sorry and the appalling condition of environmental pollution in Bangladesh, specially in and around the City of Dhaka. The condition of two rivers, namely, Buriganga and Shitalakkhya since 2001, deteriorated much and beyond recognition. The river Buriganga is no longer a river, but has become a large drain.

Under such painful circumstances, we brought the matter again in our daily cause list and heard the respondent no. 4 and also the petitioner. In the meantime, two further affidavits, sworn on 3.6.2009 and 23.6.2009, are filed on behalf of the petitioner.

Syeda Rezwana Hasan, the learned Advocate for the petitioner, took us through the various news-papers and the pictures printed thereon. Referring to the news paper reports she submits that tons of purple dye are pouring into the river Shitalakkhya through drain pipes from the dying industries, that huge effluents from the nearby industries are being disgorged in the river, poisoning fishes and every living being to death in the process. Pitch black effluents from Tajgaon Industrial Area containing heavy metals are causing serious pollution in various nearby canals leading to pollution of Balu river. She further submits that only a trickle of black liquid represents the Turag river which is already filled with free-for-all encroachments. The river Buriganga is in its worst condition, she submits, millions of gallons of highly toxic wastes are being released from thousands of industrial units, 75 percent of the city's raw sewage and hundreds of tons of solid wastes are being dumped into the river Buriganga and the river resembles a huge gutter with pitch-black toxic chemicals in it, that stench in it has already become unbearable. She further submits that a ten-foot layer of discarded polythene bags, plastics, coconut shells and heavy sludge created by millions of tons of biodegradable wastes cover the bed of the river Buriganga.

Referring to the news-papers and from her own ghastly experience, the learned Advocate submits that Hazaribagh tanneries alone are the largest and the worst source of toxic pollution. This place, she submits, is the cancerous area in the Dhaka Metropolitan City and efforts are being taken since 1991 to shift and relocate the said tanneries, firstly to Kanchpur area then to Sonargaon Upazila and finally to Savar in 1993. For that

purpose an area of 17.30 acres were acquired there but without any visible response from the tannery owners although most of them obtained industrial plots there.

She submits that an inter ministerial meeting was held on 20th August, 1998, for relocation of tanneries from Hazaribagh area. It was also revealed as early as in 1998 that 15,000 cubic meter of untreated chemical wastes from the tanneries of Hazaribagh ultimately went into the river Buriganga and 70% of the pollution is caused by such wastes. Since then, the extent of pollution has increased many folds.

She further submits that since 1991, dozens of meetings were held in connection with relocation of the tanneries at Savar where all and full facilities are made by the Government but the tannery owners so far refused to move there inspite of their repeated promises. Lastly a 14 member committee headed by the Joint Secretary, Ministry of Industries, in its meeting held on 25.9.2008, resolved that all tanneries shall shift from Hazaribagh within February, 2010.

Besides, she submits, the whole of tannery area are of red category, but still they did not install ETP in direct violation of the relevant provisions of environmental laws. In this connection, she refers to the decision of Dr. Mohiuddin Farooque V. Bangladesh 55 DLR (2003) 69 in which one of us was the author Judge.

It appears that very little improvement has been made in minimizing pollution in Bangladesh but apparently the situation deteriorated to the extreme since 2001, specially in and around the city of Dhaka.

Nobody can deny that the rivers around the City have become moribund. Those are ravaged by the effluence disgorged by the tanneries, mills and factories. These are not rivers any more. We have seen the pictures of those pools of chemicals which were once picturesque rivers. We are simply at a loss, seeing the horrendous situation of such an incredible magnitude. Admittedly, the ground water level in and around the city is also going down by 9 feet per year, besides, the polluted water is percolating into the subsurface but although it has all the powers under the provisions of Act 1 of 1995 and the Rules of 1997, to protect the environment of Bangladesh but for some reasons or other it remains somewhat indulgent. Special courts were established in 2002 under the

provisions of the Environment Conservation Act, 2000 (2000 m. 11 of 2000) but action in accordance with law are not much visible although there are instances of hundreds and thousands of violations of the environmental laws without any redress. Besides, the Department failed to implement the directions given by this Court in the above noted decision given in 2001. It did not even feel it necessary to approach the Court for further direction, while the City has been continuously sinking in pollution. This conduct on the part of the officials of the Republic is highly deplorable and deprecated. However, the present Director General, Department of Environment, personally appeared before us and assured their full co-operation. Of late, they have also started taking steps in this regard.

We have given our utmost attention to the pollution created by the Tanneries, the Dying Industries, the Textile Industries, and other Industries. We are also not unmindful of the large number of workers engaged in those industries. But we have to weigh the crisis that may be created because of redundancy of the workers which may be caused by the possible closure of various industries due to their reckless failure to install the obligatory ETP. On the other hand, if we fail to act and act quickly to implement the provisions of Environmental laws meticulously in its letters and spirit, there shall be no river, no water left in and around Dhaka and it will be a dead-city very soon. In such an impending precarious life-threatening situation do we have a choice? We are of the opinion that unless we act quickly disaster will be inevitable.

As such, on balance we are left with no alternative but to implement the provisions of law strictly. We have to take the risk of redundancy of few thousand workers to save the city and its 12 million inhabitants. Otherwise, the future of this country, as a whole is bleak indeed and the health condition of millions of its citizens will be seriously jeopardized.

It is admitted and agreed that the tanneries at Hazaribagh is the single most serious source of pollution in the river Buriganga.

It may be noted that Article 32 of the Constitution guarantees right to life.

Article 32 reads as follows :

“ 32. No person shall be deprived of life or personal liberty save in accordance with law.” (underlining is mine)

This has been explained in Dr. Mohiuddin Farooque’s case in this manner:

“23. This declaration in the Constitution is not mere empty words. These guarantees are 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 naught. Naturally, if the lives to 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 citizens of his country.”

In the said case, it has been noticed that by a Gazette Notification published in 1986, 903 industries and factories were identified as polluters 23 years back and the tanneries, even at that time, topped the list of polluters. It was classified as dangerous ones and was placed at red category.

In the above decision, it was further observed :

“51. 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 conditions of the country by eradicating pollution from the environment, as such, protection of the citizens under such laws, is a guaranteed right under Article 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 there under and no excuse would be accepted in the performance of their such primary obligations.”

In the back-drop of the above legal position, the following directions were given in the said Judgment :

“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.

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.

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.” (Underlinings are mine).

The above directions were given nearly 8(eight) years back but during this period the pollution continued unabated, rather, increased manifolds, specially from the tanneries at Hazaribagh, threatening the civic life of the inhabitants of the city of Dhaka. No improvement has been indicated since passing of the above Judgment in 2001, rather, the pollution has increased to horrendous proportion. But under the provisions of the Environmental laws no industry of red category can at all operate in residential areas, but the tanneries continue at Hazaribagh inspite of extreme sufferings of the inhabitants of the neighbouring localities. It has also been reported that even the workers suffer from various diseases because of the extreme unhealthy conditions in their working places. In order to save the city and its inhabitants the Government in exercise of its Constitutional duties ought to have taken appropriate measures long ago to curb the pollution but apparently it did not, leading to the present disastrous situation.

Under such painful circumstances, we are constrained to issue the following directions :

- i) All the Industries of red category must install Effluent Treatment Plant (ETP) and other appropriate pollution fighting devices by 30.6.2010 positively, failing which they shall be subject to the legal sanctions as spelt out under section 4(3), 4A and 7 of *envs j v f` k cwi tek msi ¶ Y AvBb, 1995*, without any exception.
- ii) The tanneries at Hazaribagh are of red category. None of those tanneries installed ETP inspite of our such direction in the Judgment dated 15.7.2001, in Dr. Mohiuddin Farooque's case mentioned above. The chemicals and other deadly effluents disgorged by those tanneries at Hazaribagh caused the ghastly death of the river Buriganga. As such, we have no other alternative but to direct :
 - a) As resolved earlier by the Government, let the tanneries be relocated from Hazaribagh by 28th February, 2010, failing which those shall be shut down since the life and well being of the citizens take precedence above everything and cannot be sacrificed even for the industries.
 - b) Once relocated, those tannery industries shall function only on setting up and operating ETPs, sanitary land fill and other appropriate pollution mitigation devices.
- iii) Meticulous compliance of the provisions of Environmental Laws by all kinds of industries failing which the Department of Environment, the respondent no. 4, is obliged to take necessary actions in accordance with the provisions of laws.

The Director General, Directorate of Environment, the respondent no. 4, must ensure that these directions are complied with to the letter and spirit without any exception. The Ministry of Industries, the Ministry of Environment and Forest, are also directed to co-operate with the respondent no. 4, in this regard.

The Metropolitan Police Commissioner, Dhaka, is directed to co-operate with the Director General, Department of Environment, in implementing these directions so far

the Dhaka City is concerned. The Inspector General of Police, Bangladesh, is also so directed to afford necessary protection to the concerned officials so that the directions of this Court are meticulously and thoroughly implemented.

The Secretary, Ministry of Home Affairs, Government of the People's Republic of Bangladesh, shall also be accountable if any impediment is caused for the implementation of the orders of this Court.

The Director General, Department of Environment is directed to produce the reports of compliance in this respect by 30.7.2010, before the appropriate Bench of this Court.

Let copies of this order be forwarded to the Secretary, Ministry of Environment, the Secretary, Ministry of Industries, the Secretary, Ministry of Home Affairs, Inspector General of Police of Bangladesh, the Metropolitan Police Commissioner, Dhaka, for their information and necessary compliance.

This writ petition for this purpose shall be treated as continuing mandamus.

Let this matter be posted in the daily cause-list for further orders on 30.7.2010. In the meantime, if any of the respondents feel it necessary for further direction, they are at liberty to approach the Court.