

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

Writ Petition No. 5959 of 2011

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Public Interest Litigation (PIL)

AND

IN THE MATTER OF:

**Human Rights and Peace for
Bangladesh.**

.....Petitioner

-Versus-

Bangladesh represented by the Secretary
Prime Minister's Secretariat, Tejgaon,
P.S. Tejgaon, District, Dhaka and others.

.....Respondents

Mr. Manzill Murshid, Advocate

.....For the Petitioner

Mr. Md. Mokleshur Rahman, D.A.G

Ms. Nusrat Jahan, A.A.G

.....For the Respondents

Heard on: 18.07.2012

Judgment on: 19.07.2012

Present:

**Ms. Justice Naima Haider
and**

**Mr. Justice Muhammad Khurshid
Alam Sarkar**

Naima Haider, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why inaction of the respondents to protect the hills of Cox's Bazar District should not be declared to have been made without lawful authority and is of no legal effect and why a direction should not be given upon the respondents to stop hill cutting at Ukhia, Tekhnaf and other Upazillas of Cox's Bazar and/or such other or further order or orders passed as to this Court may seem fit and proper.

The facts necessary for disposal of the Rule, in brief are:

The organization "Human Rights and Peace for Bangladesh (HRPB)" is a non profitable registered organization. The objects of the organization are to uphold the rights of the citizens and to work for the poor people, to give legal support to the helpless people and to build awareness amongst the people about their rights and activities against the environment etc. Moreover, the organization also works in the field of protection of environment.

The petitioner seeks a direction upon the respondents to stop the cutting of hills and constructing houses in Tekhnaf, Ukhia and other Upazillas of Cox's Bazar District violating the provisions of

law. The petitioner also prays for a direction to remove all houses present in those hill areas.

The petitioner seeks to bring this application by invoking Article 102 of the Constitution as public interest litigation in order to take necessary steps against the violation of provision of law as well as for a direction upon the respondents to take necessary steps to protect hills at Tekhnaf, Ukhia and others Upazila of Cox's Bazar District.

The facts as averred in this PIL is that by way of cutting hills and constructing houses in the different Upazillas of Cox's Bazar and by violating the provisions of law, the normal existence of the hills has been threatened and has seriously affected the environment. The petitioner prays that as this application involves great public importance, the same be treated as public interest litigation.

By disregarding to laws and legal provisions peoples are cutting hills of those areas and constructing houses and failure to ensure proper implementation of law has caused enough damage to the environment and has been adversely affecting the hills. Under these circumstances, the respondents are legally bound to protect the hills of Tekhnaf, Ukhia and others Upazila of Cox's Bazar District in accordance with law.

On 20.06.2011, a report was published in newspaper namely, Prothom Alo. It was reported in the said newspaper that the different hills are being pulled down by way of cutting trees in the Ukhia and Tekhnaf Upazila by a group people. It was stated in the report that though such kinds of activities are continuing but concern authorities are silent and are not performing their duties properly and have miserably failed to administer law and protect public interest. Under these circumstances, the respondents are legally bound to protect the hills and stop cutting the hills at Ukhia, Tekhnaf, in accordance with law.

Most of the respondents are the experienced public servants and are aware of the rules and law of the land. The respondents are aware about the duties vested upon them but failed to perform to protect the hills at Tekhnaf, Ukhia and others Upazillas of Cox's Bazar District.

Being aggrieved by and dissatisfied with inaction of respondents, the petitioner has moved this Court and obtained the instant Rule Nisi.

Mr. Manzill Murshid, learned Advocate appearing on behalf of the petitioner submits that the respondents are the public servants and they are duty bound at all time to serve the people and to perform the public duties but they have failed to do their duty because no steps have been taken in spite of illegal hill cutting in Cox's Bazar. He further submits that the fresh and pollution free environment is inevitable requirement for healthy life, which is to be secured as a "right to life" enshrined under Article 31. Mr. Murshid further points out that many hills are on the verge of destruction due to illegal hill cutting in Cox's Bazar and the nature is under threat which is seriously affecting the environment. He lastly submits that as per section 3 of the Building Construction Act, 1952, no-one is allowed to cut hill without the prior approval from the authority concern but some vested quarter is building their houses by way of cutting hills which is illegal.

We have perused the writ petition, its annexures, and others materials on record.

At the outset, Mr. Murshid has drawn the attention of this Court to a report published in the Daily Prothom Alo on 20.06.2011 which depicted that different hills are being cut in the Ukhia and Tekhnaf Upazila by a group people. It was stated in the report that though such kinds of activities are-continuing but the concern authorities are silent and are not performing their duties properly.

Public Interest Litigation (P.I.L.) was an innovation essentially to safeguard and protect the human rights of those people who were unable to protect themselves. With the passage of time, the scope of P.I.L. jurisdiction has been widened so as to bring within its scope and ambit subjects such as probity in public life, granting of largesse in the form of licenses, protecting environment and the like. It is only where there has been a failure on the part of any authority in acting according to law or in non-action or acting in violation of the law that the Court has stepped in.

With rapid industrialization taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard to the mandatory provisions of law, some public spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the Courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court.

No body can dispute the need for protecting the environment, as everyone is entitled to pure air and water. Greenery should be protected to ensure pure air. Trees and forest have to be protected for ensuring regular rainfall and preventing soil erosion. Wild life has to be protected for maintaining ecological balance. The ecological imbalances and the consequent environmental damage have become alarming due to recklessness. Preservation of forest, flora and fauna is necessary for human existence. There is great and urgent necessity to preserve such forests. Safeguards are necessary to protect nature and development.

The traditional concept that development and ecology are opposed to each other is no longer acceptable. Sustainable Development is the answer. In the international sphere, Sustainable Development as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known as "Brundtland Report".

In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, the Earth Summit was held in June 1992 at Rio de Janeiro which saw the largest gathering of world leaders ever in the history deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change.

In India, in the case of **Mehta v. India (1998) 9 SSC 589**, the Court observed that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. The Environment (Protection) Act, 1986 was enacted to provide for the protection and improvement of the environment and for matters connected therewith. The Statement of Objects and Reasons emphasises the world-wide concern over the decline in environmental quality and the urgency of steps required for the protection and improvement of the environment. It is clear that the possibility of any deterioration in the environmental quality was excluded and emphasis at the minimum was on protection with the endeavour to improve the then existing state of environmental quality. Any further decline in the environmental quality at least after the enactment of the Act is undoubtedly a failure to perform this obligation by the State, contrary to the constitutional scheme."

The need for protection of the environment again came up for consideration before the Supreme Court in the judgment in **Indian Council for Environmental Legal Action V. Union of India and others.** 1996) 5 SCC 281 Wherein the Supreme Court has held in paragraph 31 as follows:

“While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation, at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.”

During the course of argument, the learned Advocate on behalf of the petitioner had drawn our attention that a Gazette Notification was also published on 05.10.2010 by amending the Act of 1995 for protecting the hill. For proper adjudication, extract of said notification is quoted below:

বাংলাদেশ গেজেট

অতিরিক্ত সংখ্যা

কর্তৃপক্ষ কর্তৃক প্রকাশিত

মঙ্গলবার, অক্টোবর ৫, ২০১০

৪। ১৯৯৫ সনের ১ নং আইনের ধারা ৬ এর সংশোধন।- উক্ত আইনের ধারা ৬ক এর পর নিম্নরূপ ধারা ৬খ, ৬গ, ৬ঘ এবং ৬ঙ সংযোজিত হইবে, যথাঃ-

৬খ। পাহাড় কাটা সম্পর্কে বাধা-নিষেধ।-কোন ব্যক্তি বা প্রতিষ্ঠান কর্তৃক সরকারী বা আধা-সরকারী বা স্বায়ত্তশাসিত প্রতিষ্ঠানের মালিকানাধীন বা দখলাধীন বা ব্যক্তিমালিকানাধীন পাহাড় ও টিলা কর্তন ও/বা মোচন (*cutting and/or raising*) করা যাইবে নাঃ

A cursory perusal of the above reveals the emphasis on the need for protection of the hills. Hence, stopping the hill cutting activities can best protect the environment of Bangladesh.

Mr. Murshid while placing his application in the nature of PIL had argued that a direction is required upon authorities in order to protect the environment. We wish to place that directions have, in appropriate cases, been given where the law is silent and inaction would result in violation of the fundamental Rights or other legal provisions. While protecting the rights of the people from being violated in any manner, utmost care has to be taken that the Court does not transgress its jurisdiction. The Court cannot run the Government, nor the administration, indulge in abuse or non use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and rights of the citizens.

Environmental measures by the Government and the authorities must anticipate and prevent the causes of environmental degradation by taking steps. It is no doubt a matter of universal concern that the quality of the environment continues to deteriorate even now. Any further delay in the performance of its duty by the Government authorities cannot, therefore, be permitted. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake.

In view of the above discussion, made hereinbefore, we find merit in this Rule.

Accordingly, the Rule is made absolute.

The respondents are directed to take steps for the protection and improvement of the environment by stopping the unauthorized activities of hill cutting at Ukhia, Tekhnaf and other Upazillas of Cox's Bazar.

There is no order as to costs.
