

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

Present:

Mr. Justice A.H.M. Shamsuddin Choudhury

And

Mr. Justice Sheikh Md. Zakir Hossain.

Writ Petition No. 4027/2010

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Human Rights and Peace for Bangladesh (HRPB) Represented by the Secretary of the Executive Committee Advocate Asaduzzaman Siddiki, Advocate, Supreme Court of Bangladesh. Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka, Bangladesh and others.

.....Petitioner.

Versus

Bangladesh represented by the Secretary, Ministry of Shipping, Bangladesh Secretariat, P. S. Shahbag, Dhaka and others.

.....Respondents.

Mr. Manzill Murshid, Advocate

.....For the petitioner.

Mr. Md. Nozrul Islam Talukder, D.A. G

.....for the respondents.

A.H.M. Shamsuddin Choudhury, J:

The Rule under adjudication, issued on 16th May, 2010, was in following terms.

Let a Rule Nisi be issued, calling upon the respondents to show cause as to why the implementation of a project in the name of BIWTA recreation centre, on the river Buriganga, at Kamarngirchar, Dhaka,

should not be declared illegally without lawful authority, as it is violative of the provisions of law and judgment, passed on 25.06.2009 by this Court in Writ Petition No. 3503. of 2009.”

The petitioners’ averments are as follows:

The petitioner no. 1 is the Secretary of the executive committee of Human Rights and Peace for Bangladesh and a practicing lawyer of this Hon’ble Court and conscious citizen of the country. The petitioner no. 2 is the Publicity Secretary of the organization and a regular practitioner.

The petitioners are seeking a direction upon the respondents to stop the establishment and the operation of a so-called recreation centre, Bangladesh Water Transport Authority, the respondent no. 2, in the process of accomplishing in the very womb of River Buriganga, at Kamrangichar area, P.S. Kamrangichar, Dhaka. violating the provisions of the Bangladesh Environment Conservation Act 1995 (amended in 2000 and 2002) *গন্ববMix, weFvMiq kni I tRjv knʒii tcʒi GjvKvnn tʒki mKj tcʒi GjvKvi tLjvi gvW D=ʒʒ ʒvb, D`vb Ges c0KuzK Rjvavi msi ʒY AvBb, 2000* as well as the dictates this court channelled while disposing of W.P. 3503/09.

The petitioners are also asking for a direction to the effect that the directives contained in the said judgment be implemented. The petitioners sought to invoke Article 102 of the Constitution to move this petition as a public interest litigation.

The BIWTA is going ahead to materialise its said illegal project by illegally dumping earth in the said river in violation of the provisions of the law. It is in the process of implementing its said recreation centre project and thereby to obstruct the normal movement of the river traffic as well as to seriously affect the environmental balance. As the issue involves great public importance, this petition may be treated as public interest litigation.

Millions of people, residing in Dhaka city, are depending on the water that stem from Buriganga. This river constitutes the prime source of water for Dhaka dwellers. Not only that, this river also provides transports facilities for a good number of commuters. Due to continuous earth filling and structure building in the aforementioned river, day in, day out, it is losing width and its. This river is also playing an effective role in protecting the environmental balance. Yet due to illegal acts of the violator, it is failing to rise to the people’s expectation in protecting the environment.

Due to transgression and earth filing, a negative environmental impact is looming over Dhaka city. In the wake the above signs of catastrophe, the petitioners filed a writ petition before this Hon’ble

Court, which was registered as W.P.3503 of 2009. After hearing the parties, in that petition, this Court was pleased to pass its judgment on 25.06.2009, whereby, a Rule, initially issued, was made absolute. Some directions upon the respondents were also channelled through the said judgment.

Though filling earth in the Rivers are thoroughly proscribed by the law, as much as by the directions this Court passed in the aforementioned Judgment, the respondent no 2, the BIWTA is continuing to proceed with their devastating project in the name of "Recreation Centre" at Kamrangichar area, P.S. Kamrangichar, Dhaka, by earth filling and encroaching upon the river. It is totally violative of law as well as of the Judgment this Hon'ble Court passed. If BIWTA's subject project is not stopped, many others would feel encouraged to resort to encroachment unabated.

A news item was published on 07.05.10 in Daily Prothom Alo to the effect that BIWTA is transgressing upon the river Buriganga at Kamrangichar and is continuing to implement a project within the river. It is evident from the photographs published in the media that the location is inside the river Buriganga and that, in doing so, the respondents are violating the aforementioned judgment of this Court.

Duty and responsibility vested upon the respondents is to serve the people and initiate lawful steps against breaches. They are also duty bound to obey the provisions of law. But the respondents have not only failed to perform their duties and responsibility as vested upon them, they have themselves become perpetrators.

Such disregard to laws and legal provisions and failure to ensure proper implementation of laws have caused enough damage to the environment in the area adversely affecting the life of the city dwellers. The respondents are hence, required to be directed to protect the river in accordance with law and to dismantle and abandon their proposed structure.

None has filed any affidavit in rebuttal.

As the Rule came up for adjudication, Mr. Manzill Murshid exclaimed how a publicly funded statutory body can flout the law and grab a river like this. According to him, the protector is acting as a predator. He asked for strong action against BIWTA.

Mr. Md. Nozrul Islam Talukder, the learned D.A.G found no reason to oppose the Rule as, in his submission, the law is very clear. The only question that deserves our adjudication is whether the BIWTA's (respondent no 2) action was in concord with the prevailing law.

Respondent No 2 is a statutory emanation which thrives on tax payers' money. Its primary responsibility is to regulate water based communication system in an orderly manner. Its statutory duty

implies some role over the rivers. Indeed one of it's primordial duties is also to protect the rivers from encroachers.

Yet, quite incredibly, the authority has itself emerged as a grabber by itself. The media photographs leave little room to entertain any qualm as to this allegation. Indeed, in the absence of the said respondent's denial, the allegations as contained in the petition, are to be taken as true.

We are flabbergasted, to say the least, at the bizarre action of the respondents, reckoning that the supposed protector has turned predator.

There is no way that the BIWTA's action can be appeased. Truly, we have no language to rebuke those in the helm of the BIWTA's affairs, except saying that they must be severely reprimanded for their audacity.

For the reasons stated above and with the castigating observations recorded above, against the respondents, the Rule is made absolute without any order as to cost.

The respondent nos. 2 and 4 are directed to demolish, dismantle and remove the structure erected on the river Buriganga, as evident from Annexure-A at page 23. within 30 days from the date of receipt of this judgment. They must remain constrained from erecting any such structure on the river at any future point of time.

They must intimate us, through affidavit, by 20th February 2011, confirming compliance with this order.

There is no order on cost.

