

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

WRIT PETITION NO. 5687 OF 2014

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 (HRPB), represented by its Secretary Advocate Asaduzzaman Siddique, Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka, Bangladesh and another.

..... Petitioners.

-VERSUS-

Bangladesh represented by the Secretary, Ministry of Environment and Forests, Bangladesh Secretariat, P.S. Ramna, District, Dhaka and others.

..... Respondents.

Mr. Manzill Murshid, Advocate

.....for the petitioners.

Mr. Biswojit Roy, D.A.G.

.....for the Respondent No. 2

Mr. Md. Robiul Alam Budu, Advocate

.....for the Respondent Nos. 9 and 10

Heard on: 02.03.2015, 10.03.2015, 12.03.2015,
16.03.2015

Judgment on: 05.04.2015

Present:

Mr. Justice Md. Habibul Gani

And

Mr. Justice Md. Akram Hossain Chowdhury

Md. Habibul Gani, J:

On an application under Article 102 of the Constitution this Rule was issued calling upon the respondents to show cause as to why inaction of the respondents failure to protect the hill/tilas and earth filling of ponds situated at Sylhet Agricultural University, Sylhet, should not be declared illegal and without lawful authority and why a direction should not be given upon the respondents to stop cutting of hill/tilas and earth filling of ponds situated at Sylhet Agricultural University, Sylhet and/or to pass such other or further order or orders as to this Court seems fit and proper.

At the time of issuance of the Rule the respondents were directed to maintain status-quo in respect of cutting of hill/tilas and earth filling of ponds situated at Sylhet Agricultural University, Sylhet for a period of 3 (three) months from date which time to time was extended by the court.

The short facts for disposal of the Rule are that the petitioner Human Rights and Peace for Bangladesh represented by its Secretary Mr. Asaduzzaman Siddiqui, Advocate, filed the instant writ petition for protection of environment hampered by the development work of the Sylhet Agricultural University (shortly University) stating inter alia that a news item was published in the “Daily Prothom Alo” on 02.06.2014 in the heading that “ঢিলা কেটে পুকুর ভরাট” purportedly reporting that the University authority had been cutting 35-50 feet height hill/tilas located at Tila Ghar area within the University premises for the purpose of constructing a hostel for 500 students under a project of Tk.

14,41,000,00/- to be finished within the year 2015. It is further reported in the news that the University earlier declared the said tilas as “The reserved Tilas for rare species trees”. Thereafter, the University established an “Agro-Forest Germ Plasm Center” on 07.07.2009 on the said tilas wherein the University along with the Hamdard Laboratory planted 300 rare species of trees. The University in implementing the development project constructing hostel for the students by cutting earth from the said Tilas and filling pond inside the University violating the provision of environmental law causing damage to the local environment. The respondents being statutory supervisory authority are responsible to protect environment but utterly failed to take action against the University authority. The matter involved with the greatest public importance and interest, as such, the petitioner with a view to protect the environment in the form of Public Interest Litigation (PIL) filed instant writ petition challenging inaction of the respondents failure to protect the environment and sought direction upon the respondents to take effective steps to protect the environment being damaged by the development work of the University.

The respondent No. 2, Director General, Department of Environment, Ministry of Environment and Forests appeared and by filling affidavit in opposition opposes the rule denying the material allegations made in the writ petition and asserted that the University without permission by cutting hills and tilas constructing hostel are true but the respondents immediate after perusing the news published in the “Daily Prothom Alo” on 02.04.2014 physically visited the premises and inquired into the matter by sending inspection team and found the truth of the news that university authority cutting tilas and filling ponds with the earth in the territory of the University violating Section 6(Kha) of the বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ (hereinafter referred to as Act, 1995) and without any delay took proper steps serving notice upon the respondent No. 10, Director, Planning, Development and Works Department, Sylhet Agricultural University, Sylhet to stop cutting of tilas and earth filling of pond. It is further asserted that the respondents environmental authority further considering the reply of the University authority imposed fine amounting Tk. 10,87,500/- which the University paid vide pay order issued in favour of the respondent No. 2.

The respondent No. 2 by filing supplementary affidavit further asserted that inadvertently a few lines were written in para 8 of its affidavit in opposition stating that “The petitioner filed this writ petition by an ulterior motive, so, it prayed that your lordships will be pleased to discharge the Rule” and those lines are required to be deleted from the said para of the affidavit-in opposition.

The respondent Nos. 9 and 10 the Registrar of the University and the Director Planning, Development Division of the Sylhet Agricultural University, Sylhet appeared and by filling affidavit-in-opposition oppose the rule and controverted the material allegations made in the writ petition and asserted that the University authority always are aware of the law and duty bound to protect the environment of the country. They further asserted that the project relates to building construction of hostel i.e. extension of Bangabandhu Sheikh Mujibur Rahman Hall for accommodation of 500 students was approved in the Executive Committee of National Economic Council (ECNEC) on 30.10.2011 and thereafter Ministry of Education allocated budget for construction of the said hostel for the students of the agricultural university and the project is within the master plan of the University and the hostel being constructed at the instruction of the Government is an essential and important project for accommodation of the students of the University. The University authority is willing to complete the project protecting the environment of the locality.

The Said respondents University authority by filling supplementary affidavit-in-opposition affirmed on 15.3.2015 further asserted that that the university authority will not do anything harmful to the environment and will seek proper permission from the department of environment for construction of the hostel which is very much essential for the purpose of accommodation of the university students and the project is of a public importance.

Mr. Manzill Murshid, the learned Advocate appearing for the petitioner submits that the University being the highest educational institutional should abide by the environmental laws and should not do anything harmful to environment but the University authority violating the provision of environmental law constructing the hostel by cutting the hill/tilas and filling the pond by earth. Mr. Murshid further submits that after going through the report of the “Prothom Alo” published on

02.06.2014 they physically visited the premises of the University and inquired into the matter and found that the hill/tilas which are about 35-50 feet in height are being cut by the University authority for constructing their students hostel and the Department of Environment are not properly taking steps against the University to stop the earth cutting of the tilas and protect the environment. Mr. Murshid further submits that the University authority itself by declaration maintained the said hill/tilas as reserved area naming it as “ বিরল প্রজাতির গাছের সংরক্ষণ টিলা ” in the year 2009. Further on 07.07.2009 the University also established “Agro-Forest Germ Plasam Centre” on the said tilas wherein the Hamdard Laboratory and Departmental of Agro Forestry Environment Science of the said university jointly planted 300 trees. The university authority damaging its own project and violating the provision of law illegally cutting the hill/tilas, as such, a direction is required to take proper steps against the university authority.

Mr. Biswojit Roy, learned Deputy Attorney General appearing for the respondent No. 2, submits that the respective officer of the respondent No. 2 immediate after publishing the report in the daily Prothom Alo physically visited the premises and inquired into the matter and took effective steps against the university authority for damaging environment violating environmental law by serving notice upon the University authority. Learned D.A.G further submits that considering the reply of the University authority the concern office of the respondent No. 2 imposed fine upon the university at Tk. 10,87,500/- which was paid vide pay order in favour of the respondent No. 2. Learned DAG further submits that the contention of the petitioner that the respondents are not performing their duties are not true. The respondents are always dutiful and aware of their responsibilities in protecting environment within the purview of environmental law.

Mr. Rabiul Alam Budu learned Advocate appearing for the university authority (respondent Nos. 9 and 10) taking us to the affidavit in opposition and supplementary affidavit thereto filed by them submits that the University authority is very much aware of environmental law and they will not do further anything which may cause damage of environment. Learned Advocate further submits that due to insufficiency of accommodation of the university students government in the ECNEC meeting approved the project of extension building of the hostel in the

name of Bangabandhu Sheikh Mujibur Rahman and the project is under the master plan of the University. Learned Advocate finally submits that University authority is ready to complete the project by taking proper approval from the environment department.

We have perused the writ petition, affidavit-in-opposition and supplementary affidavit thereto and considered the submissions of the learned Advocates.

It appears that the Daily Prothom Alo on 02.06.2014 reported that Sylhet Agricultural University by cutting hill/tilas are constructing their hostel for 500 students. From the report it further revealed that the university authority declared the tilas as the reserved tilas for rare species of trees in the year 2009 and the university also established “Agro-Forest Germ Plasam Centre” on 07.07.2009 on the said tilas wherein the students of the Department of Agro Forestry and Environmental Science as joint venture project with the Hamdard Laboratory planted 300 rare species trees. It further appears from the annexure 2 to the affidavit-in-opposition filed by the respondent No. 2 that immediate after the report Director of the Sylhet Divisional Environment Office physically visited the premises and inquired into the matter and finding the truth that the university authority by cutting hillocks and tilas filling the pond in violation of Section 6(Kha) of the বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ and then without any delay took effective steps stopping cutting of tilas and serving notice upon the university authority. It further appears that Department of Environment considering the reply of the university imposed fine upon the University authority amounting Tk. 10,87,500/- which the university authority paid vide pay order in favour of the Department of Environment. So, it is very clear that respondent No. 2 after perusing the report of the Daily Prothom Alo took effective steps and action against the university authority. It further appears from the annexure-4 to the affidavit-in-opposition filed by the respondent Nos. 9 and 10 i.e. the reply of the university vide memo No. সিকৃবি/পউও/বিবিধ-০২/১৪/৯২১ dated 9.6.2014 that the university authority also undertook to take clearance certificate from the Department of Environment and further in the affidavit in opposition the university authority asserted that they are aware of protection of environment and will not do anything causing damage to the environment. The context of the letter of reply of the university are as follows:

“মহোদয়,

উপরোক্ত বিষয় ও সূত্রের প্রেক্ষিতে আদিষ্ট হয়ে আপনার সদয় অবগতির জন্য জানানো যাচ্ছে যে, সিলেট কৃষি বিশ্ববিদ্যালয় ২০০৬ খ্রিষ্টাব্দে ৫০ একর ভূমির উপর প্রতিষ্ঠিত হয়। বর্তমানে ছাত্র-ছাত্রী সংখ্যা প্রায় ২৫০০ জন। ইতোমধ্যে সিলেট কৃষি বিশ্ববিদ্যালয় স্থাপন প্রকল্পের কাজ সম্পন্ন হয়েছে এবং প্রায় ১০০ কোটি টাকা ব্যয়ে অন্যান্য দুটি প্রকল্পের কাজ চলমান আছে। প্রকল্প দুটি অনুমোদনের পূর্বে প্রকল্প মূল্যায়ন কমিটির (বিভিন্ন মন্ত্রণালয়ের উর্ধ্বতন কর্মকর্তা নিয়ে গঠিত) সুপারিশের প্রেক্ষিতে বিশ্ববিদ্যালয়ের একটি মাষ্টার প্লান পরামর্শক প্রতিষ্ঠানের মাধ্যমে তৈরী করা হয়। মাষ্টার প্লান অনুযায়ী স্থাপন প্রকল্পের অধীনে নির্মিত জাতির জনক বঙ্গবন্ধু শেখ মুজিবুর রহমানের নামে প্রতিষ্ঠিত বঙ্গবন্ধু হলের সম্প্রসারণ হিসেবে ৫০০ সীট বিশিষ্ট ৫ম ছাত্র হলের নির্মাণ কাজ প্রায় ৮ মাস পূর্বে শেষ হয়। ইতোমধ্যে ১ম তলার একাংশের ছাদ ঢালাই শেষ হয়েছে। বাকি অর্ধেক অংশে কিছুটা অসমতল ভূমিসহ উঁচু থাকায় আধুনিক ব্যবস্থাপনার মাধ্যমে ড্রেসিং করে হলের অবশিষ্ট অংশ নির্মাণ করার জন্য কিছু মাটি সংশ্লিষ্ট ঠিকাদারী প্রতিষ্ঠান কৃষি অর্থনীতি ও ব্যবসায় শিক্ষা ভবন নির্মাণের প্রস্তাবিত স্থানে সরানোর কার্যক্রম হাতে নেন। উল্লেখ্য যে, অত্র বিশ্ববিদ্যালয়ের অধিকাংশ ভূমিই অসমতল এবং বেশ কিছু টিলা রয়েছে। ফলে যে কোন নির্মাণ কাজে অসমতল ভূমি কিছুটা সমতল করার প্রয়োজন হয়।

আপনার সদয় অবগতির জন্য আরো জানাচ্ছি যে, সিলেট কৃষি বিশ্ববিদ্যালয় একটি আবাসিক বিশ্ববিদ্যালয় যেখানে শিক্ষার্থীরা আবাসিকভাবে অবস্থান করে প্রায়োগিক ও কারিগরি জ্ঞান সম্পন্ন কৃষি গ্রাজুয়েট হিসেবে তৈরী হয়ে দেশের কৃষি উন্নয়ন, খাদ্য নিরাপত্তা, জীব বৈচিত্র রক্ষা সহ জলবায়ু পরিবর্তনের বিরূপ প্রভাব মোকাবেলায় জাতীয় ও আর্ন্তজাতিক পর্যায়ে যুগোপযোগী ভূমিকা রাখবে। উল্লেখ্য যে, উক্ত বিশেষায়িত উচ্চ শিক্ষা প্রতিষ্ঠানটি জাতীয় স্বার্থে ও প্রয়োজনেই স্থাপিত হয় এবং এর অবকাঠামো বৃদ্ধির পরিকল্পনা মন্ত্রণালয়ের প্রতিনিধি, স্বনামধন্য স্থপতি, বিভিন্ন বিভাগের জ্যেষ্ঠ অধ্যাপক ও কর্মকর্তা সমন্বয়ে গঠিত কমিটির সুপারিশক্রমে গৃহীত হয়। এছাড়া মাষ্টার প্লান অনুযায়ী নির্মাণ কাজ করার পরিকল্পনা থাকলেও যে কোন নির্মাণ কাজের পূর্বে বিশ্ববিদ্যালয়ের অভিজ্ঞ প্রফেসর, পরামর্শক প্রতিষ্ঠান এবং প্রকৌশল শাখার কর্মকর্তাদের মতামতের প্রেক্ষিতে প্রস্তাবিত জায়গায় বঙ্গবন্ধু হলের সম্প্রসারণ হিসাবে ৫০০ আসন বিশিষ্ট ৫ম হল নির্মাণ কাজ শুরু করা হয়। উল্লেখ্য যে, পরিবেশগত ছাড়পত্র গ্রহণের জন্য ঢাকাস্থ ইঞ্জিনিয়ারিং কনসোর্টিয়াম লিঃ ৮৭০, শেওড়াপাড়া, বেগম রোকেয়া স্মরণী, ঢাকা - ১২১৬ নামক পরামর্শক প্রতিষ্ঠানকে দায়িত্ব প্রদান করা আছে। ইতোমধ্যে তাদেরকে উক্ত ছাড়পত্র বিশ্ববিদ্যালয় কর্তৃপক্ষের নিকট জমাদানের জন্য পত্র দেয়া হয়েছে (কপি সংযুক্ত)। এতদসঙ্গেও আপনার সদয় অবগতির জন্য জানাচ্ছি যে, এ ধরনের জীব বৈচিত্র, পরিবেশ ও প্রতিবেশ ব্যবস্থাপনার ক্ষতির বিষয়ে বিশ্ববিদ্যালয় কর্তৃপক্ষ সদাসর্বদা সজাগ রয়েছে।

শ্রদ্ধা ও ধন্যবাদসহ,

(প্রকৌ. মোঃ সারফুদ্দিন)

পরিচালক (পউও)

সিলেট কৃষি বিশ্ববিদ্যালয়, সিলেট।”

So, it is clear from the reply that the university is willing to construct the extension work of the Bangabandhu Sheikh Mujibur Rahman Hall by taking proper permission from the Department of Environment and to that effect they have already filed application before the proper authority for permission. The respondent No. 9 and 10 university authority by filling supplementary affidavit also contended that they will not do anything harmful to the environment and they are also willing to construct the hostel by taking proper permission from the environment department.

The relevant section 6(kha) of the বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ is as follows:-

“কোন ব্যক্তি বা প্রতিষ্ঠান কর্তৃক সরকারী বা আদা সরকারী বা স্বায়ত্তশাসিত প্রতিষ্ঠানের মালিকানাধীন বা দখলাধীন বা ব্যক্তি মালিকানাধীন পাহাড় ও টিলা ও/বা মোচন (Cutting and/or razing) করা যাইবে না। তবে শর্ত থাকে যে, অপরিহার্য জাতীয় স্বার্থের প্রয়োজনে অধিদপ্তরের ছাড়পত্র গ্রহণক্রমে কোন পাহাড় বা টিলা কর্তন বা মোচন করা যাইতে পারে।”

So, it is very clear from the law that for the purpose of greater national interest the environmental authority can issue clearance certificate for cutting the hill/tilas.

Considering all the aforesaid facts and circumstances we think that it will be fit and proper if we direct the Department of Environment to dispose of the application of the university, if any, for according permission for cutting hill/tilas for construction of the hostel in the name of Bangabandhu Sheikh Mujibur Rahman which is within the master plan of the university and approved by ECNEC within a short period and the university authority as per permission of the environmental authority will construct their building.

Accordingly, the Director General of the Environment is hereby directed to dispose of the application of the university authority if any, within 15 (fifteen) days from the date of receipt of this Judgment and the university authority will construct their building after according permission of the department of environment.

Accordingly, the Rule is disposed of.
