

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

WRIT PETITION NO.10937 of 2013

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF

Advocate Asaduzzaman Siddiqui and others

.....Petitioner

-VERSUS-

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

..... Respondents

Mr. Manzill Murshid Advocate

.....for the petitioner.

Mr. Mothahar Hossain, D.A.G. with
Mr. Samarendra Nath Biswas, AAG
and

Mrs. Purabi Rani Sharma, AAG.

..... For the respondents.

The 6th October, 2013

Present:

Mr. Justice M. Moazzam Husain

And

Mr. Justice Md. Badruzzaman

1. In this application the petitioners sought a direction upon the respondents to constitute a committee with renowned local and international environment bio-diversity and eco-system experts to make impact assessment of the proposed Rampal coal-fired power plant on the environment and ecology, more importantly, the sundarbans, the largest mangrove forest of the world as well as world heritage site.

2. This is an action brought in the form of public interest litigation. The petitioner, four practicing lawyers of this court, have come up with this pro bono action with the anxiety that the aforesaid coal-based power plant is going to be set up as close to Sundarbans as would be likely to cause damage to environmental and ecological balance of the area to the detriment of the Sundarbans at large. They do not, however, mean to stop the project. Their case is that let there be the project but let it be implemented after an impact assessment to be made by internationally recognized environmental and ecological experts.

3. The petitioners Nos. 1-3 identify themselves as office bearers of Human Rights & Peace for Bangladesh and the petitioner No. 4 identifies himself as the Secretary of the Society of Justice. No identity of any of the organizations is disclosed. To our knowledge, Human Rights & Peace for Bangladesh works on human rights and environment. Identity of the other is unclear. The petitioners do not however, propose to bring this action on behalf of their respective organizations. They approach the court as individuals claiming themselves as public spirited lawyers.

4. We do not notice anything on records suggesting that they have ever worked on environmental or ecological issues or possessed of expertise in impact assessment of power plants of any kind. It is also not on records that they have ever visited the project site, acquired personal knowledge of the distance of the project site from Sundarbans or had sittings with the experts or concerned governmental agencies for their own satisfaction that the project is a potential threat to Sundarbans.

5. It is now a common knowledge that coal-based power plant is harm full for environment and ecology. Economic development itself is and antithesis of natural balance. No development is possible without causing some amount of damage to environment. Unfortunately, no nation can deny economic development either.

6. Therefore, all the developed nations are found to strike balance between economic development and its cost upon environment. Keeping the damage at the minimal Level has always been the policy everywhere. Government of Bangladesh in its policy to achieve development goals has fixed power generation as a priority and has by now taken up various power projects in different places of the country. Rampal power project is one of them. Question naturally arises about the quantum of damage to be caused by the proposed project to the environment and especially whether the Sunderbans would be affected as doubted by the environmentalist.

7. The petitioners have no specific case of their own to show the extent and magnitude of harmful impact of the power plant on environment and ecology so as to justify interference. They have come up with documents of four categories namely, paper clippings (Annexures A, A-1, A-2, & A-3) containing reports about impact of the plant on environment and Sundarbans; a transcript from website(Annexure-B) containing reports on environment cost of coal-fired power plant Vis-a vis global economy and impact of coalmining on environment and two judgments (Annexure-D) of our Supreme Court, one of the High Court Division Passed on the Chittagong Thermal Power Plant that was proposed to be set up at the cost of the Chittagong port, local airport, Air Force Training Base, the Parki Beach and health and safety of the city dwellers, another of the Appellate Division affirming judgment of the High Court Division passed against illegal encroachments, earth -filling and raising permanent structures on rivers Buriganga, Turag and Sitalalakkah. None of the papers and documents annexed to the petition except the four paper -clippings have direct bearing upon the matter in issue of the present case.

8. The four paper -clippings bear testimony that the government has made an impact assessment of the project through Centre for the Environment & Geographic Information Service (Cegis). The Cegis experts expressed their opinion in favour of manifold economic prospect of the project including expansion of Sundarnans by prevention of encroachments. Cegis experst responded to the concern of various environmental groups saying the risk of radioactive ash could be avoided by importing coal having lower radioactive minerals and by constant monitoring process. They argue that the presence of mercury in coal is so small that no international coal trade agency declares mercury content of their coal in quantity still the mercury omission would be monitored. The Cegis insists that

impact on ecosystem will also be minimal due to adoption of different pollution abatement measures. No thermal plume shall be discharged to the river which is the major problem in case of any thermal power plant. Ash collection and management system comprises of Electrostatic precipitator (ESP) that have 99.9% efficiency to arrest fly ash. Hence ash deposit on the surrounding ecosystem habitat and components may be minor. It appears from the reports that the environmentalist could not be satisfied about the Correctness of the opinion of the Cegis and alerted the government about, as they say, the adverse impact of the plant on the Sundarbans. Nothing more than the argument of the government experts showing minimal impact of the project on environment and zero impact on the Sundarbans Vis-a-vis Skepticism of the environmentalists about the soundness of the government opinion is available in the reports.

9. On the legal front the petitioners allegations are that the respondents are going to set up the power plant in violation of law and acting against their duty protect environment but neither any law is pointed out as being violated nor is there any thing suggesting that the respondents are acting in breach of their duties.

10. The case of the Appellate Division sought to be relied upon relates to illegal encroachment and occupation of river banks which was a long lingering issue common both to the government and the people in general. The judgment of the High Court Division was about setting up coal-based power-plant but the action was brought by an organization working amongst others, on environment and upon speaking facts and materials justifying judicial interference The cited cases are far distinguishable from the instant case.

11. The controversy still remains fluid and confined to rhetoric and scientific jargons not shaped up enough to admit of clear conclusion to be drawn by lay minds as to the necessity of forming a committee of experts as prayed for. Unless things shapeup as much as to enable judicial mind to come to a clear conclusion different from one canvassed by the government and justifies a direction to be given for formation of a committee of experts for that matter to suspend a huge development project any order to that effect would be a gratuitous interference by court which is not permissible under law.

12. Public interest litigation is an important component of worldwide legal aid program essentially intended to reach justice to the poor,

disadvantaged and the underprivileged section of the people now extended to many other areas of public wrong affecting life, liberty and fundamental freedom. The mission for selflessly fighting legal battles for the cause of the people has an air of sanctity and thus inherently opposed to bad faith, ulterior motive and abuse. Superior courts, in fit circumstances, unhesitatingly extend standing to appropriate persons or organizations for bringing action on behalf of determinate or indeterminate class or group of the people suffering public wrong but always insisted on bonafide in approach. No indulgence is given to persons coming to court in a cavalier fashion with ulterior motive for achieving any dubious goal.

13. The instant petition appears to have been brought in a rush without any groundwork on facts and law. Such a cavalier attempt on the part of a number of lawyer seeking our interference with the progress of a huge development project seems to us to be an over-activism actuated by publicity motive. The petitioners do not seem to have come to court bona fide and their concern does not seem to be any graver or deeper than that of a busybody. They cannot be allowed standing for vindicating a public cause of the instant kind.

14. Before we conclude we must reaffirm our belief that no democratic government can afford to take up a project that poses thereat to the Sundarbans which is not only linked with our emotion and pride but also to our existence. We also reaffirm in the same strain that the Supreme Court did never shrink an inch from its duty to see that the government agencies and other public bodies are kept within the limits of their powers particularly in matters affecting environment let alone the Sundarbans. But machinery of court must be used sparingly as the last resort.

15. For what is stated above we find the petition totally incompetent and meritless having no prospect of success at all. The petition, therefore, is summarily rejected however, without any order as to cost.
