

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. OF 2009

IN THE MATTER OF:

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

A N D

IN THE MATTER OF:

Bangladesh Environmental Lawyers Association
(BELA) being represented by its Chief Executive
and Member, Executive Committee, Syeda
Rizwana Hasan, having office at House No.
15A, Road No. 3, Dhanmondi Residential Area,
P.S. Dhanmondi, Dhaka-1205

.....Petitioner

-Versus-

1. The Khulna City Corporation, represented by
its Mayor, KD Ghosh Road, Khulna.

2. Bangladesh, represented by the Secretary, Ministry of Local Government, Rural Development and Cooperatives, Government of the People's Republic of Bangladesh, Bangladesh Secretariat, P.S. Ramna, Dhaka.

3. The Secretary, Ministry of Water Resources, Government of the People's Republic of Bangladesh, Bangladesh Secretariat, P.S. Ramna, Dhaka.

4. The Secretary, Ministry of Environment and Forest, Government of the People's Republic of Bangladesh, Bangladesh Secretariat, P.S. Ramna, Dhaka.

5. The Director General, Department of Environment, Poribesh Bhaban, 16/E Agargaon, Sher-e-Bangla Nagar, Dhaka.

6. The Deputy Commissioner, Office of the Deputy Commissioner, Khulna.

7. The Chief Engineer, Khulna City Corporation, Khulna.

8. The Executive Engineer (Water), Khulna City Corporation, Khulna.

9. The Chairman, Khulna WASA, Khulna City Corporation Water Supply Centre, Khulna

10. The Director (Khulna Division), Department of Environment, Poribesh Bhaban, Boira, Khulna.

11. Upazila Nirbahi Officer, Phultala, Khulna.

...Respondents

A N D

IN THE MATTER OF:

The Bangladesh Environment Conservation Act, 1995 (Act No. 1 of 1995), the Environment Conservation Rules, 1997, Khulna City Corporation Ordinance, 1984 and the Ground Water Management Ordinance, 1985 (Ordinance No. XXVII of 1985)

A N D

IN THE MATTER OF:

The project titled “Khulna City Interim Water Supply Project under Crash Programme” (the impugned Project) first approved by the Executive Committee of the National Economic Council (ECNEC) meeting dated 07.07.2004 and subsequently approved in 2008 by the Departmental Project Evaluation Committee of the Local Government Division, now being implemented by respondent Nos. 1, 7, 8 and 9 located on both sides of Jessore-Khulna highway.

To

Mr. Justice M. M. Ruhul Amin, the Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court

The humble petition of the above named
Petitioner most respectfully.

SHEWETH:

1. That the Petitioner is Bangladesh Environmental Lawyers Association (hereinafter referred to as BELA) a society registered under the Societies Registration Act, 1860, registration number 1457 (17) dated 18th February, 1992 being represented by its Chief Executive Syeda Rizwana Hasan who has been duly authorized by the Executive Committee of BELA to represent BELA in all proceedings, cases and so on and as such is competent to swear this affidavit.

2. That BELA has been active since 1992 as one of the leading organizations with proven, documented and well-recognized expertise and achievements in the field of environment, ecology and relevant matters of public interest. Through its various sincere and devoted endeavours it has protected public interest against environmental anarchies and significantly contributed in promoting environmental justice through a serious of persistent and well-

designed activities. There are many evidences of BELA's efforts to promote a healthy environment using legal mechanism as an effective legitimate tool.

3. That the respondents are, in their official capacities, responsible for management of environment and water resources in accordance with applicable laws, rules and regulations. Respondent Nos. 1, 7 and 8 respectively are, the Mayor, the Chief Engineer and the Executive Engineer (Water) of the Khulna City Corporation created under the Khulna City Corporation Ordinance, 1984. These respondents have specific legal obligation to protect the health, safety, comfort and well-being of the City dwellers in accordance with applicable laws. Respondent No. 2 is the Ministry of Local Government, Rural Development and Cooperatives responsible amongst others for rural water supply and development of related infrastructure. Respondent No. 3 is the Ministry of Water Resources having overall responsibility for the management and maintenance of water resources and related projects and structures. Respondent Nos. 4, 5 and 10 are respectively the Secretary, Ministry of Environment and Forest; Director General and Director of Department of Environment responsible for matters relating to the protection and conservation of

environment and ecology and the implementation of the Bangladesh Environment Conservation Act, 1995 and related rules and policies.

4. That respondent Nos. 6 and 11 are respectively the Deputy Commissioner of Khulna and the Upazilla Nirbahi Officer of the Phultala Upazilla having responsibility with regard to land administration, water management, public safety and comfort at the local level.

5. That the addresses of the parties as given in the cause title are correct for the purpose of communication and service of notices, summons and other documents upon them.

6. That the City of Khulna situated in the southwestern part of country has a total population of 9.4 lakh with a demand of 1,02,545 cubic meters of water or 2.25 crore gallons of water per day including non domestic use.

7. That although Khulna Water and Sewerage Authority (WASA) has been established in March, 2008, the water supply in Khulna city is still being managed and conducted by the Water Supply Department

of the Khulna City Corporation. Under its authority, 65 lakh gallon of piped water is produced per day and a total of 1.41 crore gallon of water, including water drawn up by hand tube wells, is supplied by existing water supply system. Net supply of water, without wastage, is about 1.27 crore gallons, which covers 56% of the total demand. For supplying this amount of water, there are 56 production tube-wells, 2500 deep tube-wells and 4500 shallow tube-wells. Some rich people, private organizations, volunteer groups and many other organizations are collecting water by setting up pumps of their own. 20% people of the city get water by this way.

8. That on the plea of mitigating the crisis of water supply in Khulna City a project titled “Khulna City Interim Water Supply Project under Crash Programme” (hereinafter referred to as the impugned Project) has been initiated by the Ministry of Local Government, Rural Development and Cooperatives. The project has been approved by the ECNEC twice, once in 2005 and again in 2008. The estimated cost of the project cost is Tk. 4672.71 Lakh/- (Taka four thousand six hundred seventy two lakh only).

9. That the said impugned Project aims to withdraw 90 lakh gallon of water setting up 40 deep tube-wells, each at every 500 feet, from the *Pother Bazar* to *Bezerdanga bus stand* located in the Phultala Upazilla (hereinafter referred to as the said Area) on both sides of the Khulna-Jessore Highway. The Project Proforma (PP) claims that on completion the project, water supply in the Khulna City shall be increased by a 30% coverage and thus result into improvement in the overall supply coverage by 80%.

10. That as per the PP a feasibility study was done by the consultant firms with financial assistance from the World Bank and that the said Study identified the ground water resources (both deep and shallow) of Khalishpur-Phultala area as the most economic option for meeting the demand of the needs of the Khulna City up to the year 2010. The PP however did not state anything as to the environmental consequence of such withdrawal of ground water, nor did it mention the impact of the same on the lives of the people of Khalishpur-Phultala who depend on the ground water of their area for meeting their daily demands as well as for all their economic activities.

True Copy of the PP for Khulna City Interim Water Supply Project under Crash Programme is annexed herewith and marked as **Annexure 'A'**.

11. That as per a news report published in the daily Amar Desh dated 21.5.2006, three specialists of the Khulna University were appointed to determine the authenticity and acceptability of the existing reports. As has been reported, the specialists of Khulna University opined against the proposed withdrawal of ground water as sufficient water level is not available in the project area.

True copy of the paper clipping reporting on the opinion of the experts is annexed hereto and marked as **Annexure 'B'**.

12. That it is respectfully stated that during the dry season the scarcity of water in the south-west coastal region of the country including the area where the respondents are planning to implement the said impugned Project is very acute. Most of the wetlands of the Phultala remain waterless during the dry season. The farmers cannot cultivate crops during the summer even by setting up shallow tube wells due to water scarcity. Under such circumstances continuous pumping out of

90 lac gallon water per day from the project-area of Phultala for the purpose of meeting up the water supply needs of Khulna City will not only worsen the problem of water scarcity of the Phultala area, but will also put the people of Phultala to a disproportionate burdening.

13. That the environmentalists and the local people of the Phultala area fear that the implementation of the said impugned Project will result into the closure of all shallow tube wells of the said Area and will deprive the people from water for their daily uses. All the ponds, *khal*, *beel*, etc. shall be without water. The cultivation of paddy, vegetables, flowers, fruits and fishery shall be disrupted for want of water while the biodiversity of the area shall be threatened and the lives of the people depending on these for livelihoods shall be greatly affected.

14. That the main sources of income for the people of Phultala are agriculture, nursery, poultry, pisciculture and for all of these they require regular supply of water. If for the impugned Project, water is withdrawn from the ground water level of Phultala, that shall result in water scarcity in the said area and shall severely affect the lives and livelihoods of more than 2 lakh people of Phultala.

15. That in protest of the said impugned Project that has been designed in total isolation from the people of Phultala, a committee in the name of dzjZjv cvwb l cwi#ek i¶lv KwgwU (hereinafter referred to as the said committee) comprising of academicians, journalists, businessmen and local people is pursuing a movement through lawful and civic programs by arranging human chains, press releases, submitting concern letters, raising concerns through discussions and so on. The said committee alongwith the local people have time and again expressed their concerns and objections against the arbitrary adoption of the said impugned project before the concerned authorities including respondent Nos. 6 and 7 requesting them to abandon the proposal to withdraw water from Phultala, but of no avail. When in early 2007, the respondents, for the first time, proceeded with the implementation of the said impugned Project by laying some pipelines, setting few tube wells and constructing some pump houses, the local people also submitted a written appeal on 05 April, 2007 before the then Hon'ble Chief Advisor of the Caretaker Government of the People's Republic of Bangladesh urging him to direct adoption of effective measures against the implementation of the impugned project that will adversely affect their lives, health,

food, agriculture and will have deleterious impact on environment. Subsequently they also approached the petitioner organization for legal assistance vide letter dated 10.4.2008.

True copy of the written appeal of the local people dated 05 April, 2007 and application to the petitioner organization for legal assistance dated 10.04.2008 are annexed herewith and marked as **Annexures – ‘C’ and ‘C-1’**.

16. That the Environment Conservation Rules of 1997 identified water distribution line laying/extension as a project falling into the red category for which as per section 12 of the Environment Conservation Act, 1995 obtaining environmental clearance from respondent No. 5 is mandatory. A violation of the said requirement of section 12 is liable to be declared illegal and against public interest.

17. That the Ground Water Management Ordinance, 1985 was promulgated to manage the ground water resources for agricultural production. The said Ordinance regulates establishment of tube well without obtaining license from Upazila Parisad. While in granting license the Upazila Parisad shall consider the likely effect of newly

proposed tube wells on the existing tube wells, it shall only give a license if satisfy that the same shall not have any adverse effect upon the surrounding area. Any offence under the said Ordinance and rules made thereunder is punishable with fine. In the instant case respondent Nos. 1, 7, 8 and 9 are setting up 40 tube wells without having any impact analysis of the impact of the same on local agriculture and also the surrounding areas that clearly frustrates the spirit and violates the provisions of the Ground Water Management Ordinance 1985 and the rules made thereunder.

18. That it is stated that the petitioner organization served a letter upon the respondents on 24.6.2008 and inquired as to legal status of the impugned Project in terms of environmental clearance. Having received no response to the first letter, a second letter dated 31.8.2008 was served upon respondent No. 7 inquiring about the legal status of the Project in terms of environmental clearance and EIA, but no response has been received to that also as yet. The petitioner organization has, however, been verbally informed by respondent No. 5 that the impugned Project has not obtained the legally mandated environmental clearance and that no

Environmental Impact Assessment (EIA) was done prior to its attempted implementation.

Copies of the letters dated 24.6.2008 and 31.8.2008 are annexed hereto and marked as **Annexures 'D' and 'D-1'**.

19. That the petitioner organization finally served a Demand for Justice Notice on 01.12.2008 to the respondents requesting them not to initiate any further implementation of the impugned Project at Phultala and to refrain from withdrawing waters from the said Area, but no response to that has been received as yet.

Truecopy of the Notice for Demand dated 01.12.2008 is annexed hereto and marked as **Annexure – 'E'**.

20. That after all these protests, the implementation of the impugned project apparently remained halted until recently when the officials of respondent No. 7 again started it in April, 2009.

21. That it is submitted that the impugned project is a mindless and arbitrary thinking of respondent Nos. 1, 7, 8 and 9 that has not been

subjected to social or environmental impact assessment nor has the same obtained the legally mandatory environmental clearance. If this impugned project is implemented and 90 lac gallons of groundwater is withdrawn per day, that will undoubtedly put the lives, property and public health of the local people at jeopardy. The impugned project will make the place not inhabitable and will put a disproportionate burden on the people of Phultala. The impugned project will lead to dewatering of Phultola with devastating effect on the ecological integrity of the area. Such an attempt shall be violative of the objective and section 5 of the Ground Water Management Ordinance, 1985 in as much as it is being arbitrarily implemented by respondent Nos. 1, 7, 8 and 9 without considering the impact of the same on local agriculture and the surrounding area.

22. That it is respectfully submitted that non-compliance with the provisions of the Environment Conservation Act, 1995 and the Rules of 1997 made thereunder renders the impugned project illegal and a nullity in the eye of law. Similarly the impugned project can only be implemented in utter frustration of the objectives of the Ground Water Management Ordinance, 1985 that regulates management of the ground water resources for agricultural production.

23. That it is humbly submitted that despite repeated objections and resistance from the local people, the attempted implementation of the impugned and illegal project by respondent Nos. 1, 7, 8 and 9 and the failure of the other respondents to prevent the same has made the petitioner feel aggrieved for the same is arbitrary, without lawful authority and mala fide and shall cause irreparable damage to the people and environment of Phultala.

24. That it is submitted that if respondent Nos. 1, 7, 8 and 9 are allowed to proceed with the implementation of the impugned Project, the same shall severely affect the livelihood and comfort of the local people and violate their right to life, profession and property as guaranteed under Articles 32, 40 and 42 of the Constitution.

25. That the petitioner, committed to the protect environment and associated rights, promote environmental justice and rule of law file this application *bona fide*, in performance of its public duty and in public interest and the reliefs sought for herein, if granted, shall be effective, efficacious and complete.

26. That the petitioner, is filing this petition in public interest and not being in possession of all original documents, begs permission from this Hon'ble Court to allow the filling of photocopies as Annexures.

27. That the petitioner, in the above circumstances, being seriously aggrieved and having no other equally efficacious remedy provided by any other law, begs to move your Lordships under Article 102 of the Constitution of the People's Republic of Bangladesh, on amongst others, the followings:

G R O U N D S

I. For that the impugned project is illegal in as much as it has not been subjected to social or environmental impact assessment nor has it obtained the legally mandatory environmental clearance as required under the Environment Conservation Act, 1995 and the Rules made thereunder and as such appropriate directions are sought for from this Hon'ble Court.

II. For that if the impugned project is implemented and 90 lac gallon of groundwater is withdrawn per day from the Phultala area, the same shall lead to dewatering of the said Area and thus put the lives,

property, livelihood and health of the local people at jeopardy which is clearly against the spirit, objectives and provisions of the Ground Water Management Ordinance, 1985 and as such the same is against public interest.

III. For that implementation of the said arbitrary and illegal project without proper environmental impact assessment and social impact assessment shall adversely affect the livelihoods and comfort of the local people and violate their right to life, profession and property as guaranteed under Articles 31, 32, 40 and 42 of the Constitution against which appropriate directions from this Hon'ble Court are sought for.

Wherefore it is most humbly prayed that your Lordships would be pleased to,

(a) Issue a Rule Nisi calling upon the respondents to show cause as to why the impugned project titled "Khulna City Interim Water Supply Project under Crash Programme" first approved by the Executive Committee of the National Economic Council (ECNEC) meeting dated 07.07.2004 and subsequently approved in 2008 by the Departmental Project Evaluation

Committee of the Local Government Division and its implementation without having the legally mandatory environmental clearance should not be declared to have been running without lawful authority and against public interest and is of no legal effect;

(b) Pending hearing of the Rule, stay implementation of the impugned project, by respondent Nos. 1, 7, 8 and 9;

(c) Direct the respondents to transmit the records;

(d) After hearing the parties and perusing the cause shown, if any, make the rule absolute;

(e) Award costs in favour of the petitioner;

(f) Pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness your the Petitioner, as in duty bound, shall ever pray.

AFFIDAVIT

I, Syeda Rizwana Hasan, wife of Abu Bakar Siddique of House No.15/A, Road No. 3, Dhanmondi Residential Area, P.S. Dhanmondi, District-Dhaka, aged about 41 years, by faith Muslim, by profession

lawyer, by Nationality Bangladeshi, do hereby solemnly affirm and say as follows:

1. That I am the Chief Executive and member of the Executive Committee of Bangladesh Environmental Lawyers Association (BELA) and by a resolution of the Executive Committee of BELA is duly authorised to represent BELA and swear affidavit on its behalf.

2. That the statements made in the petition are correct and true to the best of my knowledge, and rest are submission made before this Hon'ble Court.

Prepared in my office.

Md. Iqbal Kabir
Advocate

Syeda Rizwana Hasan
Deponent

The deponent is known to me and identified by me.

Solemnly affirmed before me
by the said deponent on this
the day of May, 2009
at am.

Md. Iqbal Kabir
Advocate

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**