

A N D

I N T H E M A T T E R O F:

Bangladesh Environmental Lawyers Association (BELA), a society registered under the Societies Registration Act, 1860, having its office at House No. 15/A, Road No. 3 Dhanmondi Residential Area, P.S., Dhanmondi, Dhaka being represented by its Chief Executive Syeda Rizwana Hasan, Advocate, Supreme Court.

..... **Petitioner**

V E R S U S

1. Bangladesh represented by the Secretary, Ministry of Environment and Forest, Bangladesh Secretariat, P.S. Ramna, Dhaka

2. The Secretary, Ministry of Land, Bangladesh Secretariat, Ramna, Dhaka

3. The Secretary, Ministry of Water Resources, Bangladesh Secretariat, Ramna, Dhaka

4. The Secretary, Ministry of Power, Energy and Mineral Resources, Bangladesh Secretariat, Ramna, Dhaka

5. The Director-General, Bangladesh Water Development Board, WAPDA Building (2nd Floor), Motijheel, C/A, Dhaka

6. The Director-General, Department of Environment, Paribesh Bhaban, E-16 Agargaon, Sherabangla Nagor, Dhaka

7. The Deputy Commissioner, Office of the Deputy Commissioner, Sylhet

8. The Director, Mineral Resources Development Bureau, 153 Pioneer Road, Segunbagicha, Dhaka

9. The Deputy Director (Sylhet Division) Department of Environment, House No. 31(1st Floor), Block-A, Main Road, Shahjalal Upashor, Sylhet

10. The Upazila Nirbahi Officer, Goainghat Upazila, Sylhet

11. The Upazila Nirbahi Officer,
Companygonj Upazila, Sylhet

..... Respondents

AND

IN THE MATTER OF:

For a direction upon the respondents to stop the operation of the excavators (as of **Annexure "F"**) and also remove the same from the Jaflong and Bholaganj stone quarries of the *Piain*, *Dawki* and *Dhala* rivers flowing through Goainghat and Companygonj Upazilas of Sylhet district and thus protect the natural eco-systems of the said rivers and the lives, property and livelihoods of the people living in the said areas.

To

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

The humble petition of the above named

Petitioner most respectfully -

SHEWETH:

1. That the Petitioner is Bangladesh Environment Lawyers Association, hereinafter referred to as BELA, a society registered

under the Societies Registration Act, 1860, registration No. 1457 (17) dated 18th February, 1992 being represented by its Chief Executive Syeda Rizwana Hasan duly authorized by the Executive Committee of BELA to represent BELA in all legal proceedings, cases and so on.

2. That the petitioner BELA has been active since 1992 as one of the organization with expertise in the regulatory field of environment and ecology. Through its various sincere and devoted endeavors it has protected public interest against environmental anarchies and significantly contributed in promoting environmental justice through a serious of persistent and well-designed activities. Since inception, BELA has undertaken a large number of public interest litigation wherein the beneficiaries have not only been the common people but also their surrounding environment, precious eco-system and natural resources that affect peoples' material and spiritual well-being. There are many evidences of BELAs 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 regulating management of environment, water and mineral

resources in accordance with applicable laws, rules and regulations. Respondent No. 1 is the Secretary, Ministry of Environment and Forest having over all responsibility for the management and conservation of environment and its various resources. The said respondent is also the line ministry of respondent Nos. 6 and 9 who are officials of the Department of Environment, i.e., the implementing agency of the Environment Conservation Act, 1995 (Act No. I of 1995) and the rules made thereunder. Respondent No. 2 is the Government represented by the Secretary, Ministry of Land entrusted with the responsibilities of managing public land and implement laws relating to land administration. Respondent No. 3 is the Ministry of Water Resources, responsible for the over all management of the rivers and water resources of the country. The said respondent is the line ministry of respondent No. 5 that is responsible for the protection, regulation and development of the rivers, river banks and river basins. Respondent No. 4 is the Ministry of Power, Energy and Mineral Resources, which is responsible for, *inter alia*, administration of all laws, policies and matters relating to mineral resources and the line ministry of respondent No. 8. Respondent Nos. 7, 10 and 11 are respectively the Deputy Commissioner of Sylhet and the Upazila Nirbahi Officers of

Goainghat Upazila and Companygonj Upazila, having specific responsibility, *inter alia*, for protection of public lands and rivers at the local level as specified under the Land Management Manual, 1990 and other relevant gazette notifications of the government.

4. 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.

5. That the environment and ecology of the country are being continuously endangered and threatened by various activities originating from both public and private affairs. Amongst the primary causes and sources of environmental degradation remain the unregulated operations of commercial activities by few unscrupulous persons/entities at the cost of our precious and irreplaceable ecosystems and natural resources. In the absence of proper monitoring and implementation of relevant laws by the concerned regulatory agencies, such unregulated operations start and continue in gross defiance of even the minimum environmental standards that the laws and regulations prescribe.

6. That blessed with natural resources and unique natural appeal, the division of Sylhet in the north-eastern part of the country is enriched by the greenery of hillocks and tea gardens and the flow of numerous rivers and water falls. Of the notable rivers that flow through Sylhet remain the rivers *Piain* (55 km) and *Dawki* (10.75 km) that flow through the Goainghat Upazila and the river *Dhala* (90 km) that flow through the Companyganj Upazila (hereinafter referred to as the said Rivers).

True copies of description of the said Rivers as given by respondent No. 5 are annexed hereto and marked as **Annexures - “A”, “A-1” and “A-2”**.

7. That while the crystal, transparent and rhythmic flow of the said Rivers have always attracted the nature loving tourists and have turned the Jaflong area under the Goainghat Upazila into a popular tourist spot, another significant economic contribution of these hilly rivers remain the supply of huge volume of stones that have turned the stone quarries of Jaflong and Bholagonj respectively under the Goainghat and Companyganj Upazilas as two major sources of stones for the country.

8. That under the Mines and Minerals Resources (Control and Development) Act, 1992 and the Rules of 1968, the regulation of all stone and sand quarries were entrusted with respondent No. 4. Although the notification of respondent No. 2 dated 24 February, 2005 brought the leasing of all sand quarries under the authority of respondent No. 2, the leasing of stone quarries remained with respondent No. 4. As such, the said respondent is responsible for regulating the leasing and operation of the sand and stone quarries of Bholaganj, and Jaflong with the said river areas of *Piain*, *Dawki* and *Dhala* flowing through the Upazilas of Goainghat and Companygonj Upazilas of Sylhet district.

True copy of the Gazette Notification of respondent No. 2 dated 24 February, 2005 is annexed hereto and marked as **Annexure "B"**.

9. That although traditionally stones were always collected manually from the stone quarries of both Jaflong (within the rivers *Piain* and *Dawki*) and Bholaganj (within the river *Dhala*) respectively under the Goainghat and Compnayganj Upazilas of the Sylhet district, it was in 1998 that respondent No. 8 under respondent No. 4 permitted the use of hydrolic excavators in the stone quarry of Jaflong. The

authorization from respondent No. 8 came without any assessment of the environmental impact of the same although the area of Jaflong remains exposed to the risks of earth quake due to the presence of the Dawki fault. Such authorization given by respondent No. 8 to use excavators without any environmental impact assessment in the stone quarry of Jaflong given the fact that the area is within the Dawki fault is beyond the mandate and scope of the said respondent as per the Mines and Minerals Resources (Control and Development) Act, 1992 and the Rules of 1968. A recent report of respondent No. 9 reveals that the no environmental clearance was ever accorded in favour of the 50 excavator machines that are presently operating in the Jaflong stone quarry creating horrific noise and air pollution with loud noise, black smoke and dusts.

10. That the said report of respondent No. 9 further reveals that the operation of similar heavy machines is also continuing unabated and totally unauthorized in the Bholaganj stone quarry of the river Dhala in the Companyganj Upazila of Sylhet. The excavator machine that is used in this area for the extraction of stones from 70-80 feet depth of the river is locally known as *Boma* machine (due to the extreme noise that it creates) which is basically locally manufactured engine

driven heavy excavator. None of the 250 *Boma* machines presently engaged in extraction of stones from the Bholaganj stone quarry has any clearance from any concerned agencies and hence the same is totally unauthorized and illegal.

True copy of the said report of respondent No. 9 on the devastating operation of excavators in the stone quarries of Jaflong and Bholaganj is annexed hereto and marked as **Annexure "C"**.

11. That as per the above stated report of respondent No. 9 (as of **Annexure "C"**), the use of excavator machines are visibly causing extreme damage to the ecology of the said Rivers. In addition to the vibration, noise and the dust pollution that the machines cause, such destructive and extremely exploitative mode of collection of stones is damaging the layers of the soil, changing the flows of the rivers and affecting adversely their navigability, increasing the risks of floods and eroding river banks and adjacent agricultural lands. Such havoc of pollution as created by the use of the mechanised excavators is not only causing irreparable damage to the beautiful hilly rivers that are fast loosing their natural appeal to the tourists, but also affecting the local people who bear the direct curses of such unregulated and

unconscionable activities.

12. That the local people have, time and again, protested against the mechanized extraction of stones that severely affect their lives, properties and livelihoods. While such mechanized mode of extraction have proved efficient only for the commercial stone collectors, the same has proved devastating for the people of the adjoining villages who have lost jobs, properties, crops and livestock and constantly remain exposed to the risks of flood and erosion of the rivers that such destructive extraction method is causing. Reportedly the tensions around the villagers and the stone collectors took a serious turn in 2006 when an agreement was signed on 6 October, 2006 at the behest of the local Union Chairman imposing a ban on use of excavators. While the said ban could not be implemented due to the influence and power games played by the mighty stone collectors, the local people kept on approaching the concerned agencies for intervention to protect them against the onslaughts of the unlawful and unauthorized operation of mechanized excavators.

True copies of the letters of the local people written to the concerned

agencies are annexed hereto and marked as **Annexures “D”** series.

13. That both the local and the national media also brought to public attention the destructions that the unauthorized and unlawful operation of the mechanized excavators was causing to the once pristine area of Jaflong.

True copies of the some of the newspaper clippings are annexed hereto and marked as **Annexures “E”** series.

14. That on the face of such public protests and media coverage, respondent No. 5, in a meeting held on 1 February, 2009 prohibited, till further direction, the use of excavator machines in areas adjacent to the said Rivers flowing through the Bholaganj and Jaflong areas of Companyganj and Goinghat Upazilas of Sylhet. At the same time the said meeting reiterated the legal requirement under the Environment Conservation Act, 1995 for obtaining environmental clearance prior to any mining operation.

True copy of the meeting minutes dated 1 February, 2009 is annexed hereto and marked as **Annexure “F”**.

15. That subsequently a meeting held on 8 March, 2009 at the office of respondent No. 4 also duly emphasized on the environmental hazards associated with the use of excavators in extracting stones from the stone quarries of the said areas. In furtherance of the decision of this meeting, a 9-member technical committee comprising representatives of the offices of the respondents was formed by respondent No. 4 vide an office circular ref. RjvLmwe/Acv-2/5(15)/2009/177 dated 17 March, 2009 to assess the crisis created by mechanized excavation and make recommendations to address the same.

True copies of the meeting minutes of respondent No. 4 dated 8 March, 2009 and the office circular ref. RjvLmwe/Acv-2/5(15)/2009/177 dated 17 March, 2009 are annexed hereto and marked as **Annexures "G" and "G-1"**.

16. That unfortunately on the faulty plea of implementing the Annual Development Plan (ADP) for the year 2009 and completely ignoring the clear statements of respondent Nos. 1 and 9 to the contrary, an inter-ministerial meeting held on 24 March, 2009 at the Ministry of Communication decided to request respondent Nos. 1 and 6 to

revoke the earlier ban of 1 February, 2009 (as of **Annexure “F”**) on the use of excavator machines.

True copy of the meeting minutes dated 24 March, 2009 is annexed hereto and marked as **Annexure “H”**.

17. That following the above-stated meeting held at the Ministry of Communication on 24 March, 2009, the Bangladesh Business Association of Stone started creating undue pressure on all concerned to act in consonance with the said meeting decision. On the other hand, in the absence of support from the other concerned agencies respondent No. 1 has made futile attempts to enforce its earlier decision dated 1 February, 2009 (as of **Annexure “F”**). Meanwhile, vide a letter dated 2 May, 2009, the Member of Parliament of the said area requested the State Minister in charge of Ministry of Environment and Forest to permanently ban the use of excavators as the same is ecologically devastating and economically unfeasible.

True copies of the subsequent meeting decisions, summaries and notes of respondent Nos. 1, 6 and 9 on the issue of use of

excavators in the said Rivers are annexed hereto and marked as **Annexures "I" series.**

18. That having failed to get any effective intervention from the respondents in halting the operation of the excavators in the stone quarries of Jaflong and Bholaganj, the local people subsequently approached the petitioner organization for legal assistance. Upon such request from the local people, the petitioner organization undertook necessary field investigation, collected and analyzed relevant documents and being satisfied as to the illegality and environmental risks of such indiscriminate stone mining by excavators, served upon the respondents a Notice Demanding Justice dated 1 April, 2009. In the said Notice the petitioner organization demanded removal of the excavator machines from the areas of the said Rivers.

True copy of the request letter of the villagers and the Demand Notice dated 1 April, 2009 are annexed hereto and marked as **Annexures "J" and "J-1".**

19. That it is stated that the operation of excavators in the stone

quarries of Jaflong and Bholaganj of the rivers *Piain*, *Dawki* and *Dhala* flowing through Goainghat and Companygonj Upazilas of Sylhet district are unlawful, destructive and against public interest as the same is violative of the Bangladesh Environment Conservation Act, 1995 and the Environment Conservation Rules, 1997 made thereunder; the Mines and Minerals Resources (Control and Development) Act, 1992 and the Rules of 1968; Bangladesh Water Development Board Act, 2000 and the Land Management Manual, 1990.

20. That it is submitted that since the mechanized extraction of stones through the excavators from the said Rivers excavators have no environmental clearance as required under the Environment Conservation Act of 1995 and the rules of 1997 made thereunder and given the fact that respondent No. 6 has imposed a ban on the use of the excavators on its meeting dated 1 February, 2009, the operation of the same in the said Rivers and its adjacent areas is without lawful authority and illegal.

21. That it is submitted that the authorization given by respondent No. 8 to use excavators without any environmental impact

assessment in the stone quarry of Jaflong given the fact that the area is within the Dawki fault is beyond the mandate and scope of the said respondent as per the Mines and Minerals Resources (Control and Development) Act, 1992 and the Rules of 1968 and also redundant the ban imposed by respondent No. 5 in a meeting held on 1 February, 2009 on the use of excavator machines in areas adjacent to the said Rivers flowing through the Bholaganj and Jaflong areas of Companyganj and Goainghat Upazilas of Sylhet.

22. That it is respectfully submitted that under section 7 of the Environment Conservation Act, 1995 respondent No. 6 is responsible to take measures against activities that may cause damage to eco-systems. While the use of excavators in the Bholaganj stone quarry is totally unauthorized, the use of the same in the Jaflong stone quarry has also become illegal as the same has been prohibited by the ban imposed by respondent No. 6 on 1 February, 2009.

23. That it is humbly submitted that although under sections 5 and 6 of the Bangladesh Water Development Board Act, 2000, respondent No. 5 is responsible for regulating the flows of all rivers and also for

protecting river banks and towns, markets and other important public sites from river erosion, in the instant case the said and other respondents have categorically failed to protect the flow and the banks of the rivers *Piain*, *Dawki* and *Dhala* from the unlawful and unauthorized operation of the environmentally devastating excavators.

24. That it is also submitted that despite being mandated under the Land Management Manual, 1990 respondent No. 7 as custodian of all rivers have also failed to prevent encroachment of the stone collectors over the said rivers and their unauthorized extractive activities in them.

25. That the petitioner is aggrieved by the monumental failure of the respondents in preventing the illegal, unauthorized and destructive use of the excavators by few unscrupulous traders in the stone quarries of Jaflong and Bholaganj within the areas of the *Piain*, *Dawki* and *Dhala* rivers flowing through Goainghat and Companygonj Upazilas of Sylhet district. The petitioner is also aggrieved by the failure of the respondents to redress the grievances of the local people and protect them from loss of lives, property, safety, comfort and dignity that such unauthorized use of excavators are causing.

26. That it is respectfully submitted that the deliberate failure of the respondents in preventing such illegal and destructive actions is going to the advantage of few unscrupulous traders while causing irreparable damage to the precious ecology of the river and denying the basic right to life to the villagers as guaranteed under Article 31 and 32 of the Constitution.

27. That it is humbly submitted that in the greater interest of the public, the environment and for the sake of protecting the vulnerable local communities from the illegal and destructive activities of unscrupulous traders, appropriate directions be issued upon the respondent Nos. 1-11 requiring them to discharge their statutory duties to protect the said rivers, its riches and the surrounding populace from the illegal use of excavators.

28. That it is submitted that the petitioner is greatly interested in ensuring sustainable management of public properties through proper observance of law and legal requirements by all concerned and as such the violation of the various legal provisions by the respondents and their failure in protecting the public property have made the petitioner feel aggrieved. The petitioner has thus filed this

Writ Petition before the Hon'ble Court to uphold public interest and protect public and private property from the illegal activities of few unscrupulous traders.

29. That the petition being in public interest and the petitioner not being in possession of all original documents begs permission to file photocopies as Annexures.

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

G R O U N D S

I. For that the operation of excavators in the stone quarries of Jaflong and Bholaganj of the rivers *Piain*, *Dawki* and *Dhala* flowing through Goainghat and Companygonj Upazilas of Sylhet district being violative of the Bangladesh Environment Conservation Act, 1995 and the Environment Conservation

Rules, 1997 made thereunder; the Mines and Minerals Resources (Control and Development) Act, 1992 and the Rules of 1968; Bangladesh Water Development Board Act, 2000 and the Land Management Manual, 1990, the same is liable to be declared illegal, destructive and against public interest.

II. For that the use of excavators and the mechanized mining having no environmental clearance as required under the Environment Conservation Act of 1995 and the rules of 1997 made thereunder and having been prohibited by the decision dated 1 February, 2009 (as of **Annexure "F"**), the respondents be directed to prevent such illegal use of excavators in the stone quarries of the said Rivers.

III. For that the respondents are also liable to be directed to take all appropriate measures as required under the Bangladesh Water Development Board Act, 2000 and the Land Management Manual to protect the flow of the said Rivers and their banks from the illegal and destructive operation of the excavators.

IV. For that the deliberate failure of the respondents in preventing the destructive operation of the excavators by few unscrupulous stone traders is causing irreparable damage to the said Rivers and denying to the local people, their basic right to life as guaranteed under Article 31 and 32 of the Constitution.

V. For that the use and operation of excavators in the river areas of *Piain*, *Dawki* and *Dhala* being illegal, unauthorized, destructive and against public interest, appropriate directions need to be issued upon the respondents to effectively prevent such illegal activities, protect the said rivers and legitimate rights of the surrounding people as required under the Constitution and the applicable laws and also to obtain compensation from the wrongdoers as mandated under the provisions of the Environment Conservation Act, 1995.

VI. For that the continuity in the illegal stone mining stones from the rivers *Piain*, *Dawki* and *Dhala* demonstrate utter failure of the respondents in enforcing law, protecting public interest and protecting and managing public property in the

best interest of the people as envisaged under Article 13 of the Constitution and as such the appropriate directions upon the respondents are sought for.

Wherefore the petitioners pray for the following reliefs:

(a) Issue a Rule Nisi calling upon the respondents to show cause as to why they should not be directed, in line with the applicable laws and rules as mentioned in the cause title, to protect the rivers of *Piain*, *Dawki* and *Dhala* flowing through Goainghat and Companygonj upazilas of Sylhet district from the use of mechanised excavators **(as of Annexure “F”)** and why further directions shall not be given upon them to initiate legal measures against such unauthorized and illegal operation of excavators by the unscrupulous traders and also to realize compensation from them for causing

damages to the said Rivers and the people living in the surrounding areas;

(b) Pending hearing of the rule, pass interim order of injunction directing the respondents to prevent any further use of excavators in the stone quarries of Jafling and Bholaganj in the river areas of *Piain*, *Dawki* and *Dhala* flowing through the Goainghat and Companygonj upazilas of Sylhet district;

(c) Direct the respondents to transmit the records to this Hon'ble Court to be dealt in accordance with law;

(d) Make the Rule absolute, after showing the cause, if any;

(e) Award costs in favour of the petitioner;

and

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

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

A F F I D A V I T

I, Syeda Rizwana Hasan wife of Abu Baker Siddique of House No.15A, 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 of the Bangladesh Environmental Lawyers Association (BELA) and by a resolution of the Executive Committee of BELA is duly authorized to represent BELA and swear affidavit on its behalf, and I am fully conversant with the facts and circumstances of the instant case.

2. That the statements made in the above paragraphs of the petition are correct and true to the best of my knowledge which I verily believe to be true, and rest are submissions made before this Hon'ble Court.

Prepared in my office.

(M. 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 July, 2009
at a.m.

(M. Iqbal Kabir)

Advocate

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