

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

Writ Petition No. of 2005

IN THE MATTER OF:

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

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 representation by its Director (Programs) Syeda Rizwana Hasan, Advocate, Supreme Court.

..... Petitioner

V E R S U S

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

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

3. Divisional Commissioner, Office of the Divisional Commissioner, Sylhet

4. Director General, Department of Environment, Paribesh Bhaban, E16 Agargaon, Sherabangla Nagor, Dhaka.

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

6. Deputy Commissioner, Office of the Deputy Commissioner, Sylhet

7. The Divisional Forest Officer, Sylhet Forest Division, District and P.S.: Sylhet

..... Respondents

AND

IN THE MATTER OF:

For a direction upon the respondents to remove the illegal stone crushing mills from the protected and ecologically sensitive forest of Jaflong situated in Jaintapur and Goainghat Upazillas (as of Annexures "D", "G" and "I") and also to regulate stone crushing in the ecologically significant area of Jaflong .

AND

IN THE MATTER OF:

The Forest Act, 1927, Environment Conservation Act, 1995 and rules made thereunder.

To

Mr. Justice Syed J R Mudassir Hossain, 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 -

S H E W E T H :

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 Director (Programs) Ms. Syeda Rizwana Hasan duly authorized by a resolution of the Executive Committee of BELA dated 30 June, 2001 to represent BELA in all proceedings, cases and so on. True copy of resolution dated 30 June, 2001 authorizing Syeda Rizwana Hasan to represent BELA is annexed herewith and marked as **Annexure "A"**

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 efforts, BELA has developed into an independent legal institution with widespread respect and recognition as a dedicated, bona fide, sincere and public-spirited organization. Since its 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 their material and spiritual well-being.

3. That the respondent No. 1 is the Secretary, Ministry of Environment and Forest responsible for the management and conservation of environment and its various resources in accordance with the Rules of Business, the Environment Conservation Act, 1995 (Act No. I of 1995) and the Forest Act, 1927. The said respondent is also the line ministry of respondent Nos. 4, 5 and 7. The respondent No. 2 is the Ministry of Land that is responsible for land management of the country and regulates unauthorized use of public land in the best interest of the people. The respondent No. 3 is the Divisional Commissioner of the Sylhet Division having over all responsibility for administration and management at the divisional level. The respondent Nos. 4 and 5 are respectively the Director General and Deputy Director of Department of Environment who are responsible for implementation of the Environment Conservation Act, 1995 at the local level. The respondent No. 6 is the Deputy Commissioner, Sylhet responsible for local administration of the districts including management and reformation of public land, forest and other resources. The respondent No. 7 is the Divisional Forest Officer having responsibility for the

conservation and management of forest areas in accordance with the provisions of the Forest Act, 1927 and the rules made thereunder.

4. That the addresses of the parties given in the cause title are correct addresses for service of notices 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 unplanned operations of industrial and commercial activities that often lead to destruction of our precious ecosystem. In the absence of proper monitoring and implementation of the regulatory regime, such unplanned operations start and continue in gross defiance of minimum environmental standards that the law prescribes.

5. That Sylhet division in the north-eastern part of the country being surrounded by the green hills, hilly streams and rivers is known for its unique beauty and has been offering tourists from home and abroad with divine pleasure of nature and natural beauty. Amongst the various places of tourist attraction in Sylhet, the glimpse of waterfall and stones rolling down the sides of hills or to the plains in the Tamabil-Jaflong site is a beholder's

delight, claims a publication of the Bangladesh Parjatan Corporation.

6. That the popular tourist spot of Jaflong situated within the Goainghat and Jaintapur Upazillas of Sylhet is famous for the hills, hilly streams of the rivers Piain and and Jaflong (hereinafter referred to as the said rivers) and the protected area of adjoining forests. While the transparent flow of the said rivers have always been a source of tourist pleasure in Jaflong, the area of Jaflong is also significant from an economical view point because of the volume of stones the rivers bring in with their flow and are stored in the adjoining hills. Over the years, these two rivers (both flowing through the Upazillas of Goainghat and Jaintapur) and the adjoining hill/forest areas of Jaflong have turned as important sources for collection of stones in addition to their recognition as tourist spots.

7. That it is respectfully stated that considering the ecological significance of the Jaflong area the Government in exercise of its power conferred by clause (a), subsection 1 of section 4 of the Forest Act, 1927 purported to declare 472.18 acres of land under the Mouza Chailakhal, Pargona Jaflong (corresponding to Upazillas Goainghat and Jaintapur), district Sylhet as reserve forest (hereinafter referred to as the Jaflong forest) vide Gazette Notification dated 13 July, 1957 published in the official Gazette on 1

August, 1957 (hereinafter referred to as the said Notification).

Photocopy of the said notification dated 1 August, 1957 is annexed herewith and marked as **Annexure "B"**.

8. That the Jaflong forest in the Upazillas of Goainghat and Jaintapur (hereinafter referred to as the said forest area) covered under the said notification is rich forest land. Its unique eco-system and biodiversity greatly complemented by the panoramic flow of the adjacent rivers of Piain and Jaflong together form the popularly referred to tourist spot of Jaflong. For ages, the water flows together with the adjacent hilly areas have been attracting people from both home and abroad to visit the area and reveal its beauty.

9. That while the said notification shows the significance of the Jaflong forest area from ecological view point, it is distressing to note that completely ignoring the gravity and sanctity of the notification given under section n 4 of the Forest Act, 1927 few unscrupulous people have engaged into unauthorised and illegal establishment and operation of stone crushing machines within the said forest area and the adjoining villages. These individuals have grabbed forest land and by their unregulated and indiscriminate establishment and operation of the stone crushing machines

are adversely affecting the tranquillity, calmness and unique features of the forest area covered by the said Notification. The loud noise created by the stone crushing machines disturbs the wildlife and ecology of the forest and cause harm and annoyance to the nearby residents and visitors.

10. That it is respectfully stated such unlawful operation of the stone crushing machines and the loud noise created by the same have given rise to genuine grievance to the visitors and residents of the adjacent area in particular the village of Shonatola where the villagers especially the children are affected by the shrill noise of stone crushing machines. The noise from the stone crushing machines has been affecting the hearing ability of the villagers and disturbing the academic environment. The dust from these machines are causing peculiar health hazard to the villagers like skin and eye irritation, headache and breathing difficulties.

11. That local and national newspapers also reported on such grievances of the local people with focus on ecological anarchies that the illegal establishment and operation of the stone crushing machines in the protected area of the Jaflong forest and adjoining villages have created.

True copies of few paper clippings reporting on the operation of the stone

crushing machines within and adjacent to the Jaflong forest area and the nuisance created thereby are annexed hereto and marked as **Annexure “C” series.**

12. That following the newspaper reports, the Petitioner undertook field visits in the said forest area and after scrutinising relevant papers and inquiring with the officials to the Divisional Forest Offices have found that 34 individuals have been identified and listed by the respondent No. 7 for illegally establishing and operating stone crushing mills in the Jaflong forest area in gross violation of the provisions of the Environment Conservation Act, 1995, the Forest Act, 1927 and the rules made thereunder.

13. That these identified individuals/entities collect stones from the rivers of Jaflong and Piain and also from the adjoining forest and hill areas covered under the said notification. These collected stones are then crushed with the aid of stone crushing machines illegally set up in the protected forest area of Jaflong.

14. That available records suggest that in accordance with the decision of the District Committee for monitoring activities regarding receiving complaints on and inquiring into forced occupation of public land dated 8

November, 2004, the respondent No. 7 prepared and vide its letter dated 20 December, 2004 sent to the respondent No. 6 a list of 23 stone crushing mills that are unlawfully operating in the said forest area of Jaflong grabbing forest land. In the said letter of respondent No. 7 dated 20 December, 2004 recommended for appropriate measures to evict the listed illegal stone crushing mills from the Jaflong forest area from the dagh nos. 122, 136,138,141,136,168 of mouza chailakhal.

True copy of the letter of the respondent No. 7 dated 20-12-04 is annexed hereto and marked as **Annexure "D"**.

15. That while the respondent No. 6 vide memo number ৩৫৮/৯-৭/০৪/৭২ dated 8 January, 2005 clearly admitted the fact that few unscrupulous people are engaged in grabbing forest land in the Jaflong area of the Goainghat Upazillas and cutting hills and depleting forest of the said area, it also accused the Chief Engineer, Power Development Board, Sylhet for giving power connection to these stone crushing machines without scrutinising documents relating ownership. The said letter dated 8 January, 2005 requested the respondent No. 7 to provide the Chief Engineer with list of stone crushers machines to the latter and also requested the latter to inform the office of the respondent No. 6 about the power connections given in the Goainghat Upazilla on scrutinising papers

relating ownership. Till date no response has been received from the office of the Chief Engineer, Power Development Board, Sylhet in this respect.

True copy of the said letter of the respondent No. 6 dated 08-01-2005 is annexed hereto and marked as **Annexure "E"**.

16. That, however, respondent No. 7, vide its letter dated 18 January, 2005 sent the list of the 23 stone crushing mills (as of Annexure "D") to the Chief Engineer, Power Development Board, Sylhet requesting to initiate necessary measures for disconnecting the power connection of those mills.

True copy of the said letter of respondent No. 7 dated 18-01-2005 is annexed hereto and marked as **Annexure "F"**.

17. That subsequently the respondent No. 7 vide its letter dated 12 February, 2005 sent an updated list of 34 mills allegedly encroaching upon the forest land of Jaflong in the Goainghat, Jaintapur and Sylhet Sadar Upazillas to the Chief Engineer, Power Development Board, Sylhet with a request to initiate measures to disconnect the power connection to the listed mills.

True copy of the said letter of the respondent No. 7 dated 12-02-2005 is annexed hereto and marked as **Annexure "G"**.

18. That subsequently the respondent No. 7 vide its letters dated 12 February, 2005 and 13 February, 2005 sent to the respondent Nos. 3 and 6 the updated list of the alleged land grabbers in the forest area of Jaflong under the Goainghat Upazilla urging them to initiate measures under The Government and Local Authority Lands and Building (Recovery and Possession) Ordinance, 1970 to evict the land grabbers.

True copy of the said letters of the respondent No. 7 dated 12-02-2005 and 13-02-2005 are annexed hereto and marked as **Annexures "H" and "H-1"**.

19. That records suggest that on 7, 9 and 19 April, 2003 an investigation was conducted from the office of the respondent No. 5 in the tourist spot of Jaflong to report on the stone quarrying activities in the Jaflong area and the adverse environmental impact of the same. The report of the investigation clearly states that unregulated quarrying of stones by around 15-20 thousand labourers and 47 stone crushers from the Moratila and Sonatila areas adjoining to the Jaflong river (otherwise known as the Bolla river) has caused serious damage to the ecology of naturally beautiful Jaflong area. The labourers erase the *tillas* of the area by digging 20-25 feet holes to collect stones and that such erasing of tillas/hills have resulted into filling up of the Jaflong and Patua river.

Truecopy of the report dated 29 April, 2003 is annexed hereto and marked as **Annexure "I"**.

20. That the said report of the office of the respondent No. 5 (as of Annexure "I") made the following recommendations:

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2| ej-v b`x/Rvdjs b`xi cv†k giv wXjv Ges cyiv†bv †mvbv (cÖvq 3 wK:wg:) GjvKv Ry†o wXjv.cvnvo MZ© K†i cv_i DVv†bvi d†j †h fqven cwiw`wZi m,,wó n†q†Q| Zv i¶v†_© cÖkvmb†K Av†ivl ,j"Zic~Y© f~wgKv cvjb Ki†Z n†e Ges G e`vcv†i Ri"ix wfwË†Z Kvh©Ki e`e`v MÖnY Ki†Z n†e|

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21. That while it was expected that the respondents being statutorily responsible for protection of environment, forest, public land and public safety shall act in accordance with their own findings (as of Annexures "D, "G" and "I") against the encroachers of forest land and operators of the

illegal stone crushing machines and to regulate stone collection activities in the ecologically sensitive area of Jaflong, the petitioner is aggrieved by the fact that no effective action has as yet been taken to evict the encroachers, restore the ecological sensitive hilly and forest area of the Jaflong and monitor/regulate stone collection activities in Jaflong. Being highly aggrieved by the wilful inactions on part of the respondents, the petitioner on 2 November, 2005 served a Notice of Demand for Justice upon the respondents urging them to prevent hill cutting in the Jaflong area for collection of stones and evict the illegally established stone crushing machines from the protected area of Jaflong forest.

True copy of the Notice of Demand for Justice dated 02 November, 2005 is annexed hereto and marked as **Annexure "J"**.

22. That it is submitted that once a notification is issued under section 4 of the Forest Act, 1927, no new right could be acquired by any one and the land, once notified, can not be used for any other purpose other than that which existed at the time of notification, and as such the unauthorised activities of establishing and operating the stone crushing machines (as of Annexures "D, "G" and "I") in the protected forest area of Goainghat and Jaintapur Upazillas are unlawful and have no legal effect.

23. That it is respectfully submitted that under the Forest Act, 1927 any unauthorized entry into an area covered by section 4 shall amount to trespass and that undertaking of stone quarrying activities in such areas without authorization shall be punishable. The individuals listed in the Annexures "D, "G" and "I" having established and operated their the stone crushing machines in the forest land owned and managed by the respondent Nos. 1 and 7 without any authorization of the latter have violated the above provisions of law and hence are liable to be treated in accordance with law.

24. That it is submitted that the individuals/stone crushers listed in the Annexures "D, "G" and "I" having established and operating their the stone crushing machines in the forest area without obtaining clearance from the respondent No. 4 have violated the provisions of the Environment Conservation Act, 1995 and the Rules made thereunder regarding environmental clearance. Also the said individuals by grabbing public forest land for establishing and operating illegal stone crushing machines have caused serious damage to the ecology of the protected forest area of Jaflong and as such these individuals are liable to be dealt with in accordance with section 7 of the Environment Conservation Act, 1995.

25. That it is submitted that despite its own finding the respondent Nos. 4 and 5 have failed to take any effective measures to restore the flow of the rivers and ecology of the Jaflong area to their original position by regulating stone collection from the ecologically sensitive Jaflong area and preventing the unauthorised operation of the 47 stone crushers (as of Annexure "I").

26. That it is respectfully submitted that admittedly huge damage has been caused to the protected forest area, hills and rivers of Jaflong by the unauthorised and illegal establishment and operation of the stone crashing machines by the listed individuals/stone crushers as of Annexures "D, "G" and "I". The respondent No. 4 having the power to assess the extent of such damage and realize compensation from the offenders have failed to do so.

27. That it is humbly submitted that the respondents being public servants are required to protect public property, resources and environment by administering the provisions of the Forest Act, 1927, the Environment Conservation Act, 1995 and the rules made thereunder and as such they may be directed to evict the individuals/stone crushers as per Annexures "D, "G" and "I" from their unlawful occupation of the forest area of Jaflong and prevent their unauthorised activities and operation.

28. That the fact that the listed individuals/stone crushers as of Annexures "D, "G" and "I" have established and operating stone crushing machines in the Jaflong area despite clear finding of the statutory authorities regarding violation of legal provisions demonstrate failure by the respondents to protect public property and public forest land, to manage the same in accordance with law and to take effective measures against the encroachers and violators of law. Such failures by the respondents have damaged the environment and ecology of Jaflong, caused loss and destruction to the valuable forest land and the national heritage required to be preserved under Articles 13 and 23 of the Constitution.

29. That it is also submitted that increased encroachments and destructions of natural forests have threatened the environmental and ecological integrity of the country which in turn is threatening the right to life and livelihood of the citizens as guaranteed under Articles 31 and 32 of the Constitution.

30. That continuous change of the character of the forest lands for non-forest activities have resulted in shrinkage and destruction of the natural habitat of the rich biological diversity of the country. Such destructive

activities are contrary to the commitments of the country under various international conventions and treaties duly ratified by Bangladesh like the Convention on Biological Diversity, 1992.

31. That it is submitted that the Petitioner is acting *pro bono publico* to protect the public property which is its constitutional obligation under Article 21 of the Constitution.

32. That it is submitted that the flagrant violation of the laws by the respondents undermines the rule of law which has already created a chaotic condition by undertaking environmentally hazardous construction in the area.

33. That it is submitted that the Petitioner being the leading environmental organization in the country takes great interest in ensuring sound environment through proper observance of law by all concerned. The violation of the various legal provisions by the respondents and their failure in implementing their legal duties and obligations have made the Petitioner feel aggrieved and the Petitioner has thus filed this Writ Petition before the Hon'ble Court to uphold public interest and protect public property.

34. That this application is filed *bona fide* in public interest to protect the public forest land and the ecologically sensitive area of Jaflong and the reliefs sought for herein, if granted, shall be effective, efficacious and complete.

35. That since this application is filed in public interest, the petitioner, not being in possession of all original documents, begs permission to file photocopies as Annexures.

36. That having no other adequate efficacious remedy the Petitioner begs to move your Lordships, on the following, amongst other:

G R O U N D S

I. For that the establishment and operation of the stone crushing machines (as of Annexures "D, "G" and "I") in the protected area of forest of Jaflong situated in Goainghat and Jaintapur Upazillas being unauthorised and in violation of the Forest Act, 1927, the Environment Act, 1995 and the rules made thereunder the same is liable to be declared illegal, unlawful and without any legal effect.

II. For that the individuals/stone crushers listed in Annexures "D, "G" and "I" having established and operated their stone crushing machines in the protected and ecologically sensitive forest land owned and managed by the respondent Nos. 1 and 7 without any authorization of the latter are grabbers of public land and hence appropriate directions are necessary to ensure that these individuals/stone crushers are evicted from the forest area, the forest area be recovered and protected and the offenders prevented from carrying on any further stone crushing activities in the said protected forest area.

III. For that the individuals/stone crushers as of Annexures "D, "G" and "I" having established and operating the stone crushing machines without obtaining clearance from the respondent No. 4 have violated the provisions of the Environment Conservation Act, 1995 and the Rules made thereunder and are operating unlawfully and hence appropriate directions/orders are necessary to prevent any further stone crushing activities in the protected and fragile forest area by these listed individuals/stone crushers.

IV. For that despite being empowered, the respondent No. 4 having failed to assess the ecological damage caused by the unregulated collection of stones from the Jaflong area and illegal establishment and operation of stone crushers by the listed in Annexures "D, "G" and "I", ensure adoption of corrective measures by the wrongdoers and realize compensation for them, appropriate directions from this Honb'le Court upon the said respondent to perform its statutory obligation is sought for.

V. For that unregulated collection of stones in the fragile ecosystem of Jaflong having caused enormous damage to the flows of rivers, the natural appeal of the area and the surrounding environment, appropriate directions/orders upon the respondents are necessary to regulate stone collection and crushing activities in the Jaflong area and to arrest any further damage to resources, ecology and environment resulting therefrom.

VI. For that the respondents having failed to perform their duties in protecting public property, resources and

environment by administering the provisions of the Forest Act, 1927, the Environment Conservation Act, 1995 and the rules made thereunder, appropriate directions upon the respondents are required to take effective measures against the encroachers for grabbing public land and causing damage to the environment and ecology.

VI. For that failures by the respondents to administer laws and act in accordance with the commitments under international conventions etc. have resulted in violation of Articles 13, 23, 31 and 32 of the Constitution and hence appropriate directions are prayed for to protect the valuable natural forest and heritage of the country and the fundamental rights of the citizens.

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

- (a) Issue a Rule Nisi calling upon the respondents to show cause as to why
 - i) the unauthorised establishment and operation of stone crushing

mills/machines (as of Annexures "D, "G" and "I") within the Jaflong forest area in Jaintapur and Goainghat Upazilas covered by the notification dated 1 August, 1957 (as of Annexure "B") shall not be declared to be in violation of the Forest Act, 1927, the Environment Conservation Act, 1995 and the rules made thereunder, against public interest and as such illegal, without lawful authority and of no legal effect;

ii) they should not be directed to evict the illegal stone crushers (as of Annexures "D, "G" and "I") from the protected and ecologically sensitive forest area of Jaflong as covered under the notification dated 1 August, 1957, prevent any further unlawful and unauthorised activities of stone crushing in the said area and realize compensation for the

said illegal and destructive activities;

b) Pass an interim order immediately restraining the operation of the stone crushing machines (as of Annexures "D, "G" and "I") in the protected and ecologically sensitive forest of Jaflong as covered by the notification dated 1 August, 1957 (as of Annexure "B") and also to prevent any further establishment and operation of stone crushing machines in the said area;

c) Pass an interim order directing the respondents to submit a report before this Hon'ble Court identifying and assessing the damage done to the rivers, hills and forest of Jaflong by the unregulated and unauthorised activities of stone collection and crushing and those responsible for the same and also

an action plan for protecting and restoring the sensitive ecology of Jaflong area.

(d) Direct the respondents to transmit the record to this Hon'ble Court to be dealt in accordance with law.

e) After perusing the cause shown, if any, and hearing the parties make the Rule absolute;

f) Award cost in favour of the petitioner;
and/or

g) 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.

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 37 years, by faith Muslim, by profession lawyer, by Nationality Bangladeshi, do hereby solemnly affirm and say as follows:

1. That I am the Director (Programs) and member of the Executive Committee of the Bangladesh Environmental Lawyers Association (BELA). By a resolution of the Executive Committee of BELA I have been duly authorised to represent BELA and swear affidavit on its behalf, and as such I am fully conversant with the facts and circumstances of the case.

2. That the statements made in 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.

(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 November, 2005
at A.M.

(Md. Iqbal Kabir)
Advocate.

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

NOTICE

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(Special Original Jurisdiction)

WRIT PETITION NO. _____ OF 2005

IN THE MATTER OF :

Bangladesh Environmental Lawyers
Association (BELA)

...PETITIONERS

-Versus-

Bangladesh and others

...RESPONDENTS

The Attorney General

Supreme Court of Bangladesh

Dhaka

Dear Sir,

Please take notice that on behalf of Bangladesh Environmental Lawyers Association (BELA), has been filed an application under Article 102 of the Constitution, a copy of which is enclosed herewith. The application will be moved before the appropriate Division Bench of the High Court Division of the Supreme Court of Bangladesh.

Given on this the day of November, 2005.

Yours faithfully,

Md. Iqbal Kabir

Advocate