

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

Writ Petition No. 8282 of 2010.

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Human Rights and Peace for Bangladesh (HRPB)
represented by the Secretary of the Executive
Committee Asaduzzaman Siddiqui, Advocate,
Supreme Court of Bangladesh, Hall No.2,
Supreme Court Bar Association Bhaban, Dhaka
and others.

.....Petitioners

-Versus-

Bangladesh, represented by the Secretary,
Ministry of Planning, Sher-E-Bangla Nagar,
Dhaka, Dhaka and others

.....Respondents.

Mr. Manzill Murshid, Advocate

.....for the petitioners

Mr. Md. Mokleshur Rahman, DAG with

Dr. Md. Bashir Ullah, AAG and

Ms. Nusrat Jahan, AAG

.....for the respondent no.2

Mr. Mahbubuey Alam, Senior Advocate with

Mr. Mejbahur Rahman,

Mr. Imrul Kabir,

Mr. Khandaker Reza E Raquib, and

Ms. Meherunnesa, Advocates

.....for the respondent Nos. 5&7.

Heard on : 20.02.2012, 05.03.2012

Judgment on : 15.05.2012

Present:

Ms. Justice Naima Haider

And

Mr. Justice Farid Ahmed

Naima Haider, J:

This writ petition filed by way of Public Interest Litigation under Article 102 of the Constitution of the People's Republic of Bangladesh highlights issues of grave environmental and ecological degradation due to activities being undertaken for setting up a Thermal Power Plant.

Rule Nisi was issued calling upon the respondents to show cause as to why a direction should not be given upon them not to set up any Thermal Power Plant in Mouza Rangadia and Mazherchar of Anwara Upazila, District: Chittagong in order to protect environment , eco system of the locality as well as to protect second longest beach known as Parki Beach and in order to continue the normal function of Shah Amanat Airport, Chittagong Port, Air Force Training Base and protect health of the city dwellers of Chittagong City Corporation should not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this court may seem fit and proper.

The petitioner contends that if any Thermal Power Plant is set up in the proposed place namely in Mazherchar Mouza, Anwara, Chittagong, it will seriously affect the environment and as it is a matter great public importance, this petition be treated as a Public Interest Litigation.

The petitioner also contends that it is the duty and responsibility of the respondents to serve the people and initiate lawful steps as they are also duty bound to obey the provisions of law but the respondents have failed to perform their duties and responsibilities as vested in them and have also

failed to consider the risk to the environment of the area as well as eco system.

In support of this contention, the petitioners have also stated that:

On 02.08.2010 a report was published in the Bangladesh Protidin with the heading হুমকির মুখে পড়বে চট্টগ্রাম বিমানবন্দর. It was stated in the report that চট্টগ্রাম বিমানবন্দর নির্মাণের ক্ষেত্রে পরিবেশের ঝুঁকি রয়েছে। এছাড়া কয়লা থেকে নির্গত ধোয়ার কুণ্ডলি বিমান ওঠানামায় মারাত্মক ঝুঁকি সৃষ্টি করবে। On 08.09.2010, another report was published in Kaler Kantha under the heading “কয়লা নয়, চাই বায়ু ও সৌরভিত্তিক বিদ্যুৎ কেন্দ্র।” It was stated in the report that সমুদ্র সৈকতে কয়লা ভিত্তিক বিদ্যুৎ কেন্দ্র তৈরি করলে এতে ধংশ হয়ে যাবে পুরো এলাকার প্রাকৃতিক পরিবেশ। অন্যদিকে কয়লার বিষাক্ত ছাই কোন ভাবে সমুদ্রে পড়লে সামদ্রিক মাছ ও তার খাবার ধংশ হবে। এবং আনোয়ারার মতো পর্যটন সম্ভাবনাময় এলাকার পরিবেশ ধংশ হবে। On 26.09.2010, the daily Manabjamin carried a news report that বিদ্যুৎ কেন্দ্র স্থাপন হলে অনেক গুরুত্বপূর্ণ সামরিক ও বেসামরিক স্থাপনা চরম বিপর্যয়ের সম্মুখীন হবে, যার গুরুত্বপূর্ণ প্রভাব পড়বে দেশের অর্থনীতি, বানিজ্য এবং প্রতিরক্ষা ব্যবস্থায়। On 26.09.2010 a report was published in Inqilab which stated that এই প্রকল্পটি বাস্তবায়িত হলে অনেক গুরুত্বপূর্ণ সামরিক স্থাপনা চরম বিপর্যয়ের সম্মুখীন হবে যার প্রভাব পড়বে দেশের অর্থনীতি বানিজ্য ও প্রতিরক্ষা ব্যবস্থায় এমনকি নিরাপত্তা জনিত কারণে শাহ আমানত

আন্তর্জাতিক বিমান বন্দর তাদের কার্যক্রম বর্জন করলে হাজার হাজার কোটি টাকা ব্যয়ে নির্মিত এই আন্তর্জাতিক বিমানবন্দর পরিত্যক্ত হয়ে যেতে পারে। It was stated in the report that চট্টগ্রাম শাহ আমানত আন্তর্জাতিক বিমানবন্দরের ব্যবস্থাপক স্কোয়াড্রন লীডার আনিসুল ইসলাম বলেন, বিমানবন্দরের ১৫ কিলোমিটার এর মধ্যে ৫০০ মিটারের বেশি উচ্চতার কোন স্থাপনা সম্পূর্ণ নিষিদ্ধ যেখানে বিদ্যুৎ কেন্দ্র প্রকল্পটি বিমানবন্দর হতে মাত্র ৮ কিমি দূরে অবস্থিত। তিনি আশংকা প্রকাশ করেন যে, বিদ্যুৎ কেন্দ্র হতে নির্গত ধোয়া এবং পরিত্যক্ত উপাদানসমূহ সামরিক ও বেসামরিক বিমান চলাচলে বাধার সৃষ্টি করবে। এমনকি এতে ভয়াবহ দুর্ঘটনার আশংকাও রয়েছে।

A report was also published on 26.09.2010 in Ajkale Khabar stated that প্রকল্পটি বাস্তবায়িত হলে প্রকল্পের প্রয়োজনে কাচামাল বহনকারী প্রায় ৮০০ জাহাজ তীরে ভিড়বে যা না নানা সমস্যা জর্জরিত চট্টগ্রাম বন্দরের দৈনন্দিন কাজে বাধার সৃষ্টি করবে। এ ছাড়া বিদ্যুৎ কেন্দ্রের তিনশ মিটার উচু চিমনী এবং কয়লা পোড়া ঘন ধোয়া দেশি বিদেশী পন্যবাহী জাহাজের বন্দরে ভিড়তে এবং বন্দর ছেড়ে যেতে সমস্যার মুখে ফেলবে। চট্টগ্রাম বন্দর কর্তৃপক্ষ এবং চট্টগ্রাম বিমান কর্তৃপক্ষ আনোয়ারার মাঝিরচরে বিদ্যুৎ কেন্দ্র স্থাপনের ঘোর বিরোধিতা করেছে। তারা জানিয়েছে, এ প্রকল্প বাস্তবায়িত হলে বন্দরের কার্যক্রম এবং অভ্যন্তরীণ ও আন্তর্জাতিক বিমান চলাচল দারুণভাবে ব্যাহত হবে।

Another report was published on 26.09.2010 in Financial Express that the fumes suspended flying particles and smoke that would come from the power plant may grossly diminish visibility on the airport area and hamper civil and military air traffic as an air base of Bangladesh Air force other than the SAIA is also within the vicinity. News published on 26.09.2009 in the New Nation stated that a 300 meter tall chimney, an essential component of the power plant and thick white smoke from the burnt coal might create haze in and around the harbour shrinking sufficient visibility that may hamper safe movement of merchant vessels to and from Chittagong Maritime Port. Another report was published in Amar Desh in

which it was reported that সরকার পর্যাণ্ড জরিপ ও গবেষণা ছাড়াই মাঝিরচরে বিদ্যুৎ কেন্দ্র স্থাপনের উদ্যোগ নিয়েছে। এতে অর্ধের জোগান এবং পরিবেশ বিপর্যয়ের বিষয়টি যথাযথ গুরুত্বের সঙ্গে বিবেচনা করা হয়নি। A report was also telecast in ATN Bangla after physical visit to the area of the proposed Thermal Power Plant area. It was found that if the project is implemented there will be a serious environmental impact.

It is stated in the petition that the Deputy Secretary, Ministry of Power, Energy and Mineral Resources sent a letter on 05.04.2010 to the Chairman, Bangladesh Power Development Board, hereinafter, referred to as the BPDB, wherein, the administrative approval was given for acquiring 645 acres of land in Rangadia and Mazherchar Mouza, Anwara, Chittagong for loading and unloading of imported coal which will be used for Thermal Power Plant at Anwara, Chittagong to be set up by Bangladesh Power Development Board with some Indian Companies. Thereafter, on 30.05.2010 the Secretary of Ministry of Power Development Board sent a letter to the Additional Deputy Commissioner (L.A) Chittagong in which some information was supplied for taking necessary steps. It was also stated in the report that a project of Thermal Power Plant will be set up in Rangadia and Mazherchar mouza at Anwara, Chittagong on the land of about 645 acres and the tenure of the project would be from June 2010 to March, 2015.

Following the regulation no.10 of the meeting dated 13.07.2010 held in Ministry of Power, Energy and Mineral Resources, a meeting was held on 26.08.2010 under the chairmanship of the Deputy Commissioner,

Chittagong, wherein a representative of the Chittagong Port Authority informed that কয়লা ভিত্তিক বিদ্যুৎ কেন্দ্র নির্মাণ এর বিষয়ে কোন ধরনের আনুষ্ঠানিক প্রস্তাব এখন পর্যন্ত না পেলেও কয়লা ভিত্তিক বিদ্যুৎ কেন্দ্র নির্মিত হলে প্রয়োজনীয় কয়লা আমদানির জন্য বছরে ৮০০ জাহাজকে জেটিতে নোঙ্গর করতে হবে এবং ৩০০ মিটার উচ্চতা সম্পন্ন একটি চিমনী নির্মিত হবে বলে বন্দর কর্তৃপক্ষ জেনেছেন। চট্টগ্রাম বন্দরে বর্তমানে জোয়ারের সময় মোট ৪ ঘণ্টা জাহাজ জেটিতে নোঙ্গর করার মত নাব্যতা থাকে। তাই বছরে ৮০০ জাহাজ নোঙ্গর করার মত সুযোগ বর্তমানে কর্নফুলী চ্যানেলে নেই। এ ছাড়া চিমনী থেকে নির্গত কালো ধোয়া জাহাজ চলাচলে বিঘ্ন সৃষ্টি করবে।

The Power Development Board prepared a list with Dag numbers of the property required for the implementation of the project. In Mazherchar Mouza it proposed to acquire from 15 Dags about 444 acres land and in Rangadia Mouza it proposed to acquire about 151 acres land from 70 dags. The office of the Deputy Commissioner made a joint survey and a report was prepared which transpired that in the proposed project there are more than 100 thousands (One lac) trees.

It is also the case of the petitioner that the government usually prepares an Annual Development Program through the Ministry of Planning which has to be approved by the government. Thereafter, the financial budget of the approved project is placed before the parliament for approval. It is evident from the Annual Development Program of 2010-2011 that there is no such plan initiated by the Planning Commission to setup Thermal Power Plant in Anwara, Chittagong. In the budget for 2010-2011 relating to Power Department, there is no allocation or approval for the project of Thermal Power Plant, Anwara, Chittagong.

It is further stated that coal is an extremely dirty source of power and impose huge costs on people's health, the environment and the economy. Emissions from coal based power plants represent one of the two largest sources of carbon dioxide emissions which is the main cause of global warming. Coal mining and abandoned mines also emit methane, another cause of global warming. Since the carbon content of coal is higher than oil, burning coal is a serious threat to the stability of the global climate as this carbon forms CO₂ when burned. Many other pollutants are present in emissions from coal based power plant as solid coal is more difficult to clean than oil.

It is further stated in the petition that a study commissioned by environmental groups claims that coal power plant emissions are responsible for tens of thousands of premature deaths annually in the United States alone. Modern power plants utilize a variety of techniques to limit the harmfulness of their waste products and improve the efficiency of burning, though these techniques are not subject to standard testing or regulation in the U.S and are not widely implemented in some countries as they add to the capital cost of the power plant. To eliminate CO₂ emissions from coal plants, carbon capture and storage has been proposed but is yet to be commercially used.

The petitioner alleges that the initiative to set up Thermal Power Plant and acquisition process for the said purpose which has not reached its finality is malafide and against the public interest.

Respondent Nos. 2, 4 and 7 have entered appearance by filing affidavit in opposition.

The case of the respondent no.2 is that the Power Plant will be set up for the greater interest of the country and the same will be implemented without disturbing the environment and without cutting or destroying the trees and forests.

The further case of the respondent no.2 is that the procedure of land acquisition is a lengthy process. The mere process of obtaining approval for the said acquisition from the Ministry of Land took approximately 7 months. Obtaining the aforesaid approval is just the beginning of a complex chain of events that involves examination of the acquisition proposal by the Deputy Commissioner, obtaining approval from the District Land Acquisition Committee or Central Land Acquisition Committee, preparing report after physical examination of the proposed project area. Thereafter, the said report is to be submitted for final approval to the relevant authority and issuing notices in accordance with the provisions of Acquisition and Requisition of Immovable Property Ordinance 1982, determining adequate compensation for the current property owners, getting the compensation amount sanctioned from PDS and so on. If obtaining a mere approval from the Ministry takes as long as 7 months then the plausible estimated time to complete the whole proceedings of acquisition may take at least one year, if not more. Furthermore, in order to obtain the environmental clearance from the

Department of Environment it is mandatory to submit the documents of the acquired land of the proposed project.

Therefore, in order to obtain the environmental clearance and considering the amount of time that the acquisition procedure usually takes, the respondents have already started the acquisition proceedings.

The further case is that the proposed Thermal Power Plant project is predominantly funded through foreign financial aid. Bangladesh would invest only 15% of the total cost for the coal based project. Out of the remaining 85% of the cost, India would invest 15% and the rest of the 70% would be obtained through loans from external sources. Since external help is involved in the proposed Power Plant project, therefore staying proceedings of the said project at such a primary stage has the potential to divert the investors and thereby jeopardize and stagnate the whole project.

The case of the respondent nos. 5 & 7 is that in the revised Power System Master Plan (PSMP) in 2006, the Government of Bangladesh has adopted the vision of “ensuring electricity for all” by the year 2020. Incidentally, due to the fast diminishing natural gas reserve, the Government is now being forced to consider alternative ways of fuelling Power Plants and producing electricity at a cheaper rate. A large portion of a country’s economic and commercial progress is heavily dependent on the availability and generation of power. Therefore, allowing the instant application would also substantially impede the economic and commercial development of Bangladesh.

The further case of the respondent nos.5 & 7 is that the present power generation capability of Bangladesh is only approximately 4000 MW per day against a demand of 5000-6000 MW a day. The demand-supply gap of about 1000-2000 MW per day compels the Government to achieve demand side management by adopting crude methods such as, load shedding, mandatory closure order of shops and markets after dusk etc. If the proposed Thermal Power Plant project is implemented then this will noticeably reduce the prevailing power crisis that is holding back our nation from progress and development.

Mr. Manzill Murshid, learned Advocate for the petitioners submits that in utter disregard of laws and legal provisions relating to protection of environment, the respondents by setting up the Power Plant without the clearance from the Department of Environment are going to cause serious damage to the environment and the city dwellers, thus adversely affecting the right to life of the citizens.

He next submits that the duty and responsibility vested in the respondents to serve the people and initiate lawful steps have been grossly overlooked and the respondents have failed to perform their part of duties and responsibilities as vested in them by way of violating the provision of law.

Mr. Manzill Murshid further submits that as per the Environment Protection Act,1995 every body has to cooperate to protect the Environment but the acquisition process for setting up the thermal based power plant will not only destroy the environment but will cause a serious

threat to the normal life of the people in the locality. It will further destroy millions of trees, the lives of the animals and birds will be in danger which will cause serious environmental hazard.

The learned Advocate contends that in order to protect the environment and survival of human being, it is the statutory duty of the Respondents to protect environment and to save from being a victim to the coal based Power Plant.

Mr. Md. Mokleshur Rahman, learned Deputy Attorney General on behalf of the respondent no.2 on the other hand submits that the respondents have not violated any order of the Hon'ble High Court and did not do anything to frustrate the cause of the instant writ petition. Moreover, setting up a 1300 MW Thermal Power Plant is a lengthy and complex process that cannot be achieved within a mere few months. Therefore, the petitioner's allegation that "the respondents are going to finalize the process to setup Thermal Power Plant" is absolutely baseless and unfounded.

He next submits that as per the provisions of Bangladesh Environment Conservation Act, 1995 (amended in 2010) as well as Conservation Rules, 1997 (ECR97), no industrial unit shall be established without obtaining any Environmental Clearance Certificate (as prescribed by ECR97) from the Director General of the Department of Environment (DOE) and as per the provisions of Conservation Rules, 1997 (ECR97), the DOE initially issues Site Clearance Certificate and finally issues Environmental Clearance Certificate and accordingly in the light of the

Environmental Regulations, the project proponent of the Chittagong 1300 MW Coal Based Thermal Power Plant under Bangladesh Power Development Board (BPDB) on 11/10/2010 submitted an application to the Department of Environment, Chittagong Divisional Office with a view to obtain Clearance Certificate and in response to that, after preliminary review and scrutiny, the Department of Environment, Chittagong on 21.10.2010 issued a letter to the project proponent for submitting necessary papers and documents as per the provisions of Environment Act and Rules.

The learned Deputy Attorney General contends though the project proponent submitted some papers and documents on 10.11.2010, the Department of Environment, Chittagong issued another letter on 05.12.2010 to project proponent for submitting more relevant papers and documents but they are yet to fulfill the requirements. It is worthwhile to mention here that after fulfilling the requirements as has been enunciated in the Environment Act and Rules by the project proponent, the Department of Environment will issue initially Site Clearance Certificate and finally Environmental Clearance Certificate.

Mr. Mahbubey Alam, learned Senior Counsel appearing with Mr. Mejbahur Rahman, learned Advocate on behalf of the respondent nos.5&7 submits that the respondents have already applied for clearance from the Department of Environment as required by section 12 of the Environment Conservation Act, 1995 vide application dated 21.04.2010. Thereafter, the Director of the Department of Environment vide letter dated 21.10.2010 informed BPDB that certain important documents are missing from the

submitted application namely, the project profile, feasibility study report, Layout approved by Chittagong Development Authority (CDA), administrative approval for acquisition of land, clearance from the Energy Regulatory Commission (ERC), CAAB and CPA, and the location map. In reply to the said letter BPDB vide letter dated 08.11.2010 stated that approval from CDA and ERC is not required for the instant project and work for the feasibility study and approval of CPA is currently underway and will be submitted upon completion. Letter bearing administrative approval for acquisition of land and the location map was attached with the aforesaid letter and sent to the Department of Environment.

Mr. Alam next submits that on 12.10.2010, the respondents obtained clearance from the Civil Aviation Authority Bangladesh in the following terms:

“চট্টগ্রাম জেলার কর্ণফুলী উপজেলার মাঝোরচর, পশ্চিম তুলাতলী, গোবাদিয়া ও ফুলতলী মৌজা ও আনোয়ারা উপজেলাধীন দুদকোমরা মৌজা এর অবস্থানে ভূ-পৃষ্ঠ হইতে সর্বোচ্চ ৫০০ ফুট উচ্চতার চিমনী তৈরীর অনুমোদন দেয়া যায় তবে চাহিদাকৃত উচ্চতা প্রদান করিতে হইলে বর্তমান অবস্থানের পরিবর্তে বিমান বন্দর হইতে দক্ষিণ পূর্ব দিকে কমপক্ষে ২০ কিঃ মিঃ দূরে সরাইয়া চিমনী নির্মান করিতে হইবে।”

Mr. Alam contends that the required chimney height for 1300 MW Thermal Power Plant is 275 meter (902 feet) and CAAB is ready to give clearance for only 152 meter (500 feet). Hence, the respondent will accommodate the chimney height restriction by constructing several smaller units of Power Plants that has lower chimney height requirement which can be constructed within the height permitted by CAAB.

Mr. Alam submits that at the inter-ministerial meetings dated 07.10.2010 and 14.10.2010 held at the Ministry of Land, representative from the Bangladesh Air-Force has clearly informed that if CAAB issued permission for the construction of chimney at the proposed project area, Bangladesh Air-force has no further objection with regard to the proposed Thermal Power Plant Project.

He next submits that the Inception Report on Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA) dated July,2010 was the initial report based on which the project started. The objective of the study was to provide consulting service for conducting the IEE and the EIA study on the proposed power plant.

The learned senior counsel further submits that due to extensive agitation and anxiety amongst the locals of the area, the investigation team was unable to work in the site prior to acquisition. Hence, after an initial visit to the land, it has not been possible for the team to carry out any further physical verification taking into account such public uproar and turmoil. Furthermore, there was a stay order granted by the Hon'ble High Court on the said land.

Mr.Alam reiterates that due to these unavoidable reasons, the EIA report as well as the feasibility report could not be prepared and submitted as scheduled and are still pending. However, these are expected to be carried out shortly since the acquisition of the land is now completed.

He further submits that the BPDB from vide a letter dated 03.05.2012 applied to the Civil Aviation Authority with details of the

required chimney height for their permission regarding the height for the chimney for the proposed Thermal Power Plant. BPDB had already submitted the application for obtaining permission almost 3 months back and BPDB being well aware of the importance and gravity of the procedures required for setting up the said power plant had acted as per the laws and procedures.

Mr. Alam lastly submits that the Thermal Power Plant project will be designed in a manner that ensures minimal environment effluence and will satisfy all emission standards set by the Department of Environment and will be implemented in accordance with the relevant provisions of the Bangladesh Environment Conservation Act, 1995 (as amended in 2000, 2002 and 2007) and the Environment Conservation Rules, 1997. No action will be taken prior to completing required formal procedures and obtaining requisite clearance certificates from relevant authorities as required by law.

We have considered the submissions of the learned Advocates of the respective parties, perused the application, supplementary affidavits and the affidavits in opposition filed by the respective respondents and gone through each and every annexures.

Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect.

This Court in exercise of powers under Article 102 of the Constitution can entertain a petition filed by any interested person in the welfare of the people not in a position to knock the doors of this Court. Issues of public importance, enforcement of fundamental rights of a large

number of the public *vis-a-vis* the constitutional duties and functions of the State can be treated as a Public Interest Litigation.

In *Narmada Bachao Andolan V. Union of India*, (2000) 10 SCC 664 it was held: “It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people’s fundamental rights are not transgressed upon except to the extent permissible under the Constitution.”

In India, there are a number of cases where the court tried to protect forest cover, ecology and environment and orders have been passed in that respect. As a matter of fact, the Supreme Court of India has a regular Forest Bench, known as the Green Bench and regularly passes orders and directions regarding various forest cover, illegal mining, destruction of marine life and wild life etc. Special attention has been paid to the problem of air pollution, water pollution and environmental degradation and the Courts passed a number of directions and orders to ensure that environment ecology, wildlife should be saved, preserved and protected.

In *Rural Litigation and Entitlement Kendra, Dehradun and Others v. State of U.P. and Others* AIR 1985 SC 652, the Supreme Court ordered closure of all lime-stone quarries in the Doon Valley taking notice of the

fact that lime-stone quarries and excavation in the area had adversely affected water springs and environmental ecology. While commenting on the closure of the lime-stone quarries, the court stated that this would undoubtedly cause hardship to owners of the lime-stone quarries, but it is the price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affectation of air, water and environment.

Environmental PIL has emerged in our neighbouring country India because of the Court's interpretation of Article 21 of the Constitution of India. In *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. & Others* reported in AIR 1990 SC 2060, the Supreme Court of India observed that every citizen has fundamental right to have the enjoyment of quality of life and living.

Again, the case of *M.C. Mehta v. Union of India and Others (1988)* *1 SCC 471* relates to pollution caused by the trade effluents discharged by tanneries into Ganga river in Kanpur. The court called for the report of the Committee of experts and gave directions to save the environment and ecology.

In *Essar Oil Ltd. v. Halar Utkarsh Samiti and Others* reported in AIR 2004 SC 1834, while maintaining the balance between economic development and environmental protection, the Court observed "Certain principles were enunciated in the Stockholm Declaration giving broad

parameters and Guidelines for the purposes of sustaining humanity and its environment. Principle 2 provides that the natural resources of the earth including the air, water, land, flora and fauna especially representative samples of natural eco-systems must be safeguarded for the benefit of present and future generations through careful planning and management as appropriate. Principle 4 of the Declaration provides that man has special responsibility to safeguard and wisely manage the heritage of wild life and its habitat which are now gravely imperiled by a combination of adverse factors. Nature conservation including wild life must, therefore, receive importance in planning for economic development.”

On sustainable development, in *Karnataka Industrial Areas Development Board v. Sri C. Kenchappa and Others* reported in AIR 2006 SC 2038, the Supreme Court of India observed “that there has to be balance between sustainable development and environment.” It further observed that “before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment.”

This court has been quite conscious that the forum of this court should not be abused by any one for personal gain or for any oblique motive. On perusal of the record and considering the standing of the petitioner, we are of the view that the instant application filed as a PIL is maintainable.

During the submissions made on behalf of the contending parties, our attention was particularly drawn to Annexure-D to the writ petition. For felicity of reference, Annexure-D is quoted below:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
জেলা প্রশাসকের কার্যালয়
(ভূমি হুকুম দখল শাখা)
চট্টগ্রাম

তথ্য বাতায়ন : www.dcchittagong.gov.bd

বিদ্যুৎ বিভাগ বিদ্যুৎ জ্বালানী ও খনিজ সম্পদ মন্ত্রণালয় এর গত ১৩.০৭.২০১০ তারিখের সভার

১০ নং সিদ্ধান্তের আলোকে অনুষ্ঠিত সভার কার্য বিবরণী :

সভাপতি : জনাব ফয়েজ আহম্মদ, জেলা প্রশাসক, চট্টগ্রাম।

স্থান : জেলা প্রশাসকের সম্মেলন কক্ষ।

তারিখ : ২৬.০৮.২০১০

সময় : দুপুর ০১ঃ০০ টা।

উপস্থিত সদস্যবৃন্দ পরিশিষ্ট - “ক”

সভাপতি উপস্থিত সকলকে সুভেচ্ছা জানিয়ে সভার কাজ শুরু করেন। এরপর দেশে বিদ্যমান বিদ্যুৎ সংকট নিরসনের জন্য আনোয়ারা উপজেলার মাঝেরচর ও রাঙ্গাদিয়া মৌজায় কয়লা ভিত্তিক বিদ্যুৎ উৎপাদন কেন্দ্র নির্মাণের প্রয়োজনীয়তা তুলে ধরে সংশ্লিষ্ট প্রকল্পের প্রকল্প পরিচালক বক্তব্য প্রদান করেন এবং কয়লা ভিত্তিক বিদ্যুৎ কেন্দ্র নির্মাণ এর বিভিন্ন দিক তুলে ধরে একটি পাওয়ার পয়েন্ট প্রেজেন্টেশন উপস্থাপন করা হয়। এরপর সভায় নিম্নলিখিত আলোচনা ও সিদ্ধান্ত গৃহীত হয়।

| ক্রমিক নং | আলোচ্য সূচী | আলোচনা | সিদ্ধান্ত |
|--------------|--|--|---|
| ১ | কয়লা ভিত্তিক বিদ্যুৎ উৎপাদন কেন্দ্র নির্মাণ প্রকল্পের জন্য জেটি স্থাপন সংক্রান্ত। | ১। ডেপুটি ম্যানেজার এস্টেট, চট্টগ্রাম বন্দর কর্তৃপক্ষ সভাকে অবহিত করেন যে, বিদ্যুৎ উন্নয়ন কর্তৃপক্ষের পক্ষ থেকে কয়লা ভিত্তিক বিদ্যুৎ কেন্দ্র নির্মাণ এর বিষয়ে কোন ধরনের আনুষ্ঠানিক প্রস্তাব এখন পর্যন্ত না পেলেও কয়লা ভিত্তিক বিদ্যুৎ কেন্দ্র নির্মিত হলে প্রয়োজনীয় কয়লা আমদানির জন্য বছরে ৮০০ জাহাজকে জেটিতে নোঙ্গর করতে হবে এবং ৩০০ মিটার উচ্চতা সম্পন্ন একটি চিমনি নির্মিত হবে বলে বন্দর কর্তৃপক্ষ জেনেছেন। চট্টগ্রাম বন্দরে বর্তমানে জোয়ারের সময় মোট ৪ ঘন্টা জাহাজ জেটিতে নোঙ্গর করার মত নাব্যতা থাকে। তাই বছরে ৮০০ জাহাজ নোঙ্গর করার মত সুযোগ বর্তমানে কর্ণফুলী চ্যানেলে নেই। এ ছাড়া চিমনি থেকে নির্গত কালো ধোঁয়া জাহাজ চলাচলে বিঘ্ন | চট্টগ্রাম বন্দর কর্তৃপক্ষ এর নিকট হতে অনাপত্তি/অনুমতি গ্রহন করতে হবে। |

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| | | <p>সৃষ্টি করবে। তিনি এ প্রকল্পটি বাস্তবায়নের ক্ষেত্রে-</p> <p>(১) জেটি নির্মাণ সম্ভব কিনা সেই বিষয়ে প্রকল্পের কার্যক্রম শুরু করার আগেই চট্টগ্রাম বন্দর কর্তৃপক্ষের অনুমতি গ্রহণ এবং</p> <p>(২) কালো ধোঁয়ার কারণে যাতে জাহাজ চলাচলের ক্ষেত্রে কোন ধরনের বাধা সৃষ্টি না হয় সেই বিষয়টি নিশ্চিত করার অনুরোধ জানান।</p> | |
| ২। | বিদ্যুৎ কেন্দ্রে চিমনী নির্মাণ সংক্রান্ত | <p>বেসামরিক বিমান চলাচল কর্তৃপক্ষ এর পক্ষে এয়ার পোর্ট ম্যানেজার জানান প্রকল্প এলাকাটি চট্টগ্রাম শাহ আমানত আন্তর্জাতিক এয়ার পোর্ট থেকে ৮ কিঃমিঃ দূরত্বের মধ্যে অবস্থিত। এয়ার পোর্ট এলাকায় ১৫ কিঃমিঃ ব্যাসার্ধ পর্যন্ত ৫০০ ফুট এর উপরে কোন স্থাপনা নির্মাণ করা সম্ভব নয়। এ ছাড়া নির্গত ধোয়া, বাষ্প ও উড়ন্ত ছাইও বিমান চলাচলে বাধা সৃষ্টি করবে। এয়ার ফোর্সও এই এলাকার উপর দিয়ে তাদের প্রশিক্ষণ কর্মসূচী পরিচালনা করে বলে এয়ার ফোর্স এর মতামত ও গ্রহণ করা প্রয়োজন। তিনি প্রকল্পটি এয়ার পোর্ট এর খুব কাছে বাস্তবায়িত হলে আন্তর্জাতিক রুট এর প্লেন এ বিমান বন্দর ভবিষ্যতে আর ব্যবহার করবেনা বলে জানান।</p> | <p>বেসামরিক বিমান চলাচল কর্তৃপক্ষ এর নিকট হতে <u>অনাপত্তি/অনুমতি</u> গ্রহণ করতে হবে।</p> |
| ৩ | বিবিধ | <p>প্রস্তাবিত বিদ্যুৎ প্রকল্পটিতে জ্বালানী হিসাবে কয়লা ব্যবহৃত হওয়ায় উৎপন্ন কালো ধোঁয়া এবং ছাই এর মাধ্যমে পরিবেশ দূষণের সম্ভাবনা নিয়ে আলোচনা করা হয়।</p> | <p>প্রকল্প বাস্তবায়নের বিষয়ে বিদ্যুৎ উন্নয়ন বোর্ড পরিবেশ অধিদপ্তর হতে <u>ছাড়পত্র/অনুমতি</u> গ্রহণ করবেন।</p> |

সতায় আর কোন আলোচ্য সূচী না থাকায় উপস্থিত সবাইকে ধন্যবাদ জানিয়ে সতায় সমাপ্তি ঘোষণা করা হয়।

(ফয়েজ আহম্মদ)
জেলা প্রশাসক
চট্টগ্রাম।

(emphasis supplied)

Thus, Annexure-D reveals that a meeting was held on 13.07.2010 in the office of the Deputy Commissioner, Chittagong wherefrom it appears that the only issue for discussion was the setting up of a coal based power plant in which Chittagong Port Authority, the Civil Aviation Authority and the Environment Department represented. They all discussed the issue of the installation of the power plant. The relevant portion of the discussion is quoted below:

১। কয়লা ভিত্তিক বিদ্যুৎ উৎপাদন কেন্দ্র নির্মাণ প্রকল্পের জন্য জেটি স্থাপন সংক্রান্ত।
 ১। ডেপুটি ম্যানেজার এস্টেট, চট্টগ্রাম বন্দর কর্তৃপক্ষ সভাকে অবহিত করেন যে, বিদ্যুৎ উন্নয়ন কর্তৃপক্ষের পক্ষ থেকে কয়লা ভিত্তিক বিদ্যুৎ কেন্দ্র নির্মাণ এর বিষয়ে কোন ধরনের আনুষ্ঠানিক প্রস্তাব এখন পর্যন্ত না পেলেও কয়লা ভিত্তিক বিদ্যুৎ কেন্দ্র নির্মিত হলে প্রয়োজনীয় কয়লা আমদানির জন্য বছরে ৮০০ জাহাজকে জেটিতে নোঙ্গর করতে হবে এবং ৩০০ মিটার উচ্চতা সম্পন্ন একটি চিমনি নির্মিত হবে বলে বন্দর কর্তৃপক্ষ জেনেছেন। চট্টগ্রাম বন্দরে বর্তমানে জোয়ারের সময় মোট ৪ ঘন্টা জাহাজ জেটিতে নোঙ্গর করার মত নাব্যতা থাকে। তাই বছরে ৮০০ জাহাজ নোঙ্গর করার মত সুযোগ বর্তমানে কর্ণফুলী চ্যানেলে নেই। এ ছাড়া চিমনি থেকে নির্গত কালো ধোঁয়া জাহাজ চলাচলে বিঘ্ন সৃষ্টি করবে।

তিনি এ প্রকল্পটি বাস্তবায়নের ক্ষেত্রে-

- (১) জেটি নির্মাণ সম্ভব কিনা সেই বিষয়ে প্রকল্পের কার্যক্রম শুরু করার আগেই চট্টগ্রাম বন্দর কর্তৃপক্ষের অনুমতি গ্রহন এবং
- (২) কালো ধোঁয়ার কারণে যাতে জাহাজ চলাচলের ক্ষেত্রে কোন ধরনের বাধা সৃষ্টি না হয় সেই বিষয়টি নিশ্চিত করার অনুরোধ জানান।

It was decided that before installing the power plant it was required to take permission from the Chittagong Port Authority which clearly stated that চট্টগ্রাম বন্দর কর্তৃপক্ষ এর নিকট হতে অনাপত্তি/অনুমতি গ্রহণ করতে হবে।

underlining is ours

২। বিদ্যুৎ কেন্দ্রে চিমনি নির্মাণ সংক্রান্ত

বেসামরিক বিমান চলাচল কর্তৃপক্ষ এর পক্ষে এয়ার পোর্ট ম্যানেজার জানান প্রকল্প এলাকাটি চট্টগ্রাম শাহ আমানত আন্তর্জাতিক এয়ার পোর্ট থেকে ৮ কিঃমিঃ দূরত্বের মধ্যে অবস্থিত। এয়ার পোর্ট এলাকায় ১৫ কিঃমিঃ ব্যসার্ধ পর্যন্ত ৫০০ ফুট এর উপরে কোন স্থাপনা নির্মাণ করা সম্ভব নয়। এ ছাড়া নির্গত ধোয়া, বাষ্প ও উড়ন্ত ছাইও বিমান চলাচলে বাধা সৃষ্টি করবে। এয়ার ফোর্সও এই এলাকার উপর দিয়ে তাদের প্রশিক্ষণ কর্মসূচী পরিচালনা করে বলে এয়ার ফোর্স এর মতামত ও গ্রহণ করা প্রয়োজন। তিনি প্রকল্পটি এয়ার পোর্ট এর খুব কাছে বাস্তবায়িত হলে আর্নজাতিক রুট এর প্লেন এ বিমান বন্দর ভবিষ্যতে আর ব্যবহার করবেনা বলে জানান।

বেসামরিক বিমান চলাচল কর্তৃপক্ষ এর নিকট হতে অনাপত্তি/অনুমতি গ্রহণ করতে হবে।

(৩) বিবিধ

প্রস্তাবিত বিদ্যুৎ প্রকল্পটিতে জ্বালানী হিসাবে কয়লা ব্যবহৃত হওয়ায় উৎপন্ন কালো ধোঁয়া এবং ছাই এর মাধ্যমে পরিবেশ দূষণের সম্ভাবনা নিয়ে আলোচনা করা হয়।

প্রকল্প বাস্তবায়নের বিষয়ে বিদ্যুৎ উন্নয়ন বোর্ড পরিবেশ অধিদপ্তর হতে ছাড়পত্র/অনুমতি গ্রহণ করবেন।

On perusal of the affidavit in opposition filed on behalf of the respondent no.2, it appears that the project proponent of the Chittagong 1300 MW Coal Based Thermal Power Plant under Bangladesh Power Development Board on 11.10.2010 submitted an application to the Department of Environment Chittagong, Divisional Office with a view to obtain clearance certificate and in response to that after preliminary review and scrutiny, the Department of Environment, Chittagong on 21.10.2010 (Annexure-3) issued a letter to the project proponent for submitting necessary papers and documents as per the provisions of Environment Act and Rules. We also note that though the project proponent submitted some

papers and documents on 10.11.2010 but on 05.12.2010, the Department of Environment, Chittagong issued another letter to project proponent for submitting more relevant papers and documents to fulfill the requirements. It is not clear to this Court whether these papers and documents have been submitted to the Department of Environment or not.

In the affidavit of the Department of Environment as it appears from Annexure-X3 it states : ৭। সিভিল এভিয়েশন কর্তৃপক্ষের অনাপত্তি পত্র সিভিল এভিয়েশন কর্তৃপক্ষের অনাপত্তিপত্র পরবর্তীতে জমা দেয়া হবে। Thus, it is also not clear whether they have already given their clearance or not.

We further taken into account that whether there was at all a feasibility study. The supplementary affidavit filed on behalf of the respondent nos.5 & 7 was placed and it was brought to our notice that an investigating team in order to investigate was not able to work in the site prior to acquisition. It is stated in the affidavit:

"Due to extensive agitation and anxiety amongst the locals of the area the investigation team was unable to work in the site prior to acquisition. Hence, after an initial visit to the land, it has not been possible for the team to carry out any further physical verification taking into account such public uproar and turmoil."

We note the impact the coal based power plant at the site being acquired will have on the Chittagong Port, Air Base of the Bangladesh Air Force. The Civil Aviation Authority of Bangladesh was not willing to provide the required chimney height of 275 meters for the proposed 1300 MW Thermal Power Plan. CAAB was ready to give clearance for only 152

meters. It is not clear whether this clearance was taken from the CAAB although the respondent No.5 and 7 have categorically mentioned that the chimney height could not go beyond 152 meters. We further note from the affidavits-in-opposition that the Bangladesh Power Development Board was going to split the power plant by constructing several smaller units of power plants to accommodate CAAB's objections with a view to lower chimney heights as per requirement of CAAB.

The Respondent BPDB stated about the splitting up of the 1300 MW power plant into smaller plants to accommodate the objection of chimney height. This has been done without any consideration as to cost factor or feasibility of such splitting of the plant into several smaller plants. We wonder how the said Respondents have stated this on affidavit without being backed by any authentic technical data and feasibility.

Next, the question of the respondent no.8 that seems to be a vital factor on behalf of the Ministry of Land. It is also not clear to us whether the land acquisition proposal has been completed. The issue of several Writ petitions and Title Suits pending in different Courts is not the issue in this PIL. So, we refrain from making any observations on acquisition of land.

To our dismay, from the affidavits in oppositions as well as the submissions, we noticed that there is a great emphasis on acquisition of land without even a project profile or a project feasibility study. None has so far been prepared and no study undertaken. On the contrary, to our query, the Respondents have submitted that the same will be done after the acquisition of land is complete. If studies were conducted about the site

suitability, it could have been determined whether the area or site being acquired for setting up a coal based power plant is suitable or not. The said study would also have dealt with the environmental aspects of coal based power plant as is generally the case in the electric power industry. We do not approve of such practice of acquisition of land for setting up projects without any project profile or feasibility study. In this case it appears that the cart is being put before the horse.

It has been brought to our notice that the power plant will use 10,000 metric tons of coal every day with an annual estimate of 800 ships bringing coal for the project, which comes to a whopping figure of 3,650,000(three million six hundred and fifty thousand) metric tons of coal annually. Besides the congestion such huge number of vessels will cause to the port, this coal will be unloaded on the jetty to be set up on the banks of River Karnaphuli which will definitely pollute the river. We do not have any figures whatsoever to determine how much coal will be available in the coal yard at a time and how big mountain of coal will be created in the process. We do not know anything as there is neither a project profile nor a feasibility study which, in our opinion, are the basic documents for any project.

From various studies and researches it is found that coal based power plants within the electric power industry generate deadly fine particle soot and sulphur dioxide emissions, smog forming nitrogen oxide emissions, carbon dioxide, toxic mercury emissions etc. The unloading of coal on the jetty and the site for the coal based power plant being close to the river

leads us to believe that toxic mercury will definitely contaminate the river and this will simply create a disastrous effect not only on fish but also on humans who come in contact with the river. Mercury contamination is so dangerous that it will affect humans causing serious neurological damage. Needless to say, the contamination of the air which will affect humans and vegetation for miles together is going to have a disastrous effect on the life of citizens and the entire eco system.

We note that for greater public interest it is necessary to augment power generation on a priority basis to meet the energy crisis but the question is should this be done at the cost of our environment and the health of our citizens. Be that as it may, the respondents have found the area in question to be the most suitable because of its proximity to the Bay of Bengal. We, however, having done some research are of the opinion that the area selected will endanger marine life, contaminate the river, create congestion to the port besides causing hazards to flying civilian and necessary but in order to do so, the authorities must look for sites which cause lesser or minimal harm. The clearance from all the relevant authorities is not only necessary but the authorities in doing so must not act mechanically but consider all aspects of environmental hazards before deciding on issuance of clearance . In providing clearance, the authorities shall ensure that our foregoing observations are given due consideration. It is the paramount duty of all authorities of the state to ensure and protect the life of citizens and environment. Any hazard to life is not only unlawful but is criminal and penal. The project site chosen without any feasibility study

or study in respect of impact on marine life, river, people who come in contact with the river etc. is a matter of great concern to us. This Court sitting in Writ Jurisdiction and particularly under Article 102 can interfere if the development work or projects undertaken by the government prejudices the environment, causes ecological damage or threatens the health of citizens. However, we are also of the view that the country is starved of power and since the government has undertaken this coal based Thermal Power Plant, it should be left in the hands of the relevant authorities to first prepare a project profile, undertake a feasibility study conducted by internationally renowned experts, keeping in view our observations and then proceed in accordance with law.

With the aforesaid observations, the Rule is disposed of.

There is, however, no order as to costs.

