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

WRIT PETITION NO. 9329 of 2018

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

SKS LPG, a sister-concern of SENA KALYAN
SANGSTHA

.....Petitioner

-VERSUS-

Government of Bangladesh and others

..... Respondents

Mr. Md. Imam Hossain, with

Mr. Shaikh Mohammad Zakir Hossain, advocates

.....For the Petitioner

Mr. Amit Talukder, D.A.G

.....For the Respondent Nos.1-4

Heard on: 23.08.2021 & 29.08.2021

Judgment on: 07.09.2021

Present:

Ms. Justice Naima Haider

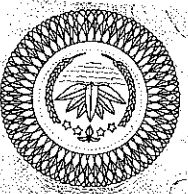
And

Mr. Justice Md. Khairul Alam

Naima Haider, J.

In this application under Article 102 of the Constitution of the
People's Republic of Bangladesh, a Rule Nisi was issued calling upon the
respondents to show cause as to why the respondents in failing to accord
No Objection Certificate for Environment (পরিবেশগত ছাড়পত্র) for launching
the operation of SKS LPG, set up at Plot No. 3 and 4, Mongla Industrial
Area, Buridanga, Mongla, Bagerhat in favour of the petitioner as evident
in Annexure-G and G-1 shall not be declared to have been done without
lawful authority and is of no legal effect and as to why the respondent
shall not be directed to issue No. Objection Certificate for Environment

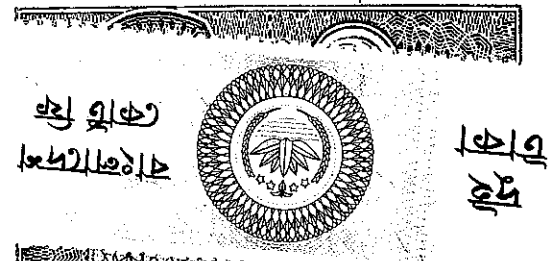
“মেজিসের শপথ নিন, দুর্নীতিকে বিদায় দিন”



(পরিবেশগত ছাড়পত্র) for launching the operation of SKS LPG Plant set up at Plot No. 3 and 4, Buridanga, Mongla, Bagerhat within Mongla Port Industrial Area in favour of the petitioner and/or pass such other orders or further order or orders passed as to this Court may seem fit and proper.

The facts necessary for the disposal of the Rule in short are that, the petitioner is the SKS LPG, a sister-concern of SENA KALYAN SANGSTHA, represented by its Chairman. In order to carry out the business of LPG, the petitioner obtained Certificate of Incorporation (bearing No. C-109367/13) issued on 27.05.2013 by the Registrar of Joint Stock Companies & Firms (Annexure-I). Thereafter petitioner obtained Trade License (bearing No. 01874, License ID. 04-000-01874) issued on 06.03.2013 by the Mongla Port Pouroshova (Annexure-A series) which has subsequently been extended for the present financial year of 2020-2021 on 07.07.2020 (Annexure - J). After that petitioner obtained Fire License (bearing No. 7413/15-16) issued on 02.07.2015 by the Bangladesh Fire Service & Civil Defense which has subsequently been extended till 30.06.2022 (Annexure-K). Petitioner also obtained Factory License issued on 09.10.2017 (Annexure-A series). In order to import required machineries petitioner obtained license issued by the Imports and Exports Control Office (Annexure - C) and the same has been extended for the current financial year, by paying the requisite fee (i.e. Tk. 30,500.00) as well as applicable V.A.T (Tk. 4,575.00) vide challan receipts both dated 13.07.2021 (Annexure-L & L-1). Thereafter petitioner obtained license for Storing and Re-Filling Cylinders of LPG (bearing No. 152-2(Uma)-0028) was issued in favour of the petitioner on 28.11.2016


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শেখের শপথ মিন, পূর্ণাভিকৈ বিদায় মিন



under the Explosive Act, 1884 by the Department of Explosives which has subsequently been extended till 31.12.2022 (Annexure-M). Petitioner holds a License (BERC License No. BERC/LPG(SKS)/P/017/2196 dated 18.02.2018) for Storage, Bottling, Distribution and Marketing of 30,000 (Thirty Thousand) M.T.L.P. Gas with the Bangladesh Energy Regulatory Commission (Annexure-A series) and the tenure of the said license had been extended (Annexure-O). Petitioner also holds Membership to the Bagerhat Chamber of Commerce & Industry (Annexure-A series) and the tenure of the said Membership had been extended (Annexure-N). Petitioner also obtained No Objection Certificate for site clearance (অবস্থানগত ছাড়পত্র) from the Office of the Paribesh Adhdaptar, Bagerhat District Office (Annexure - B) and the said No Objection Certificate for site clearance (অবস্থানগত ছাড়পত্র) has been renewed time to time and lastly it had been renewed for a period of 10 (ten) months (Annexure - B-I).

Petitioner since 2014 made a series of application to the respondents to get the No Objection Certificate for production of LPG Cylinder, but no response has yet been received from the office of the respondents. The petitioner further on 17.05.2018 made two separate applications to the respondent Nos. 2 and 4 respectively (Annexure- G & G-1) and the said applicants were duly received from the office of the respondent Nos. 2 and 4, but still no response to the said applications has yet been received by the petitioner.

It is to be mentioned that the National Environmental Committee presided over by the Hon'ble Prime Minister of the Government of Bangladesh in the meeting held on 06.08.2017 decided that NOC for

 দেশপ্রেমের শগুথ মিন, দুর্নীতিকে বিদায় মিন



setting up LPG Plant in ECA area of Sundarbar can be issued (Annexure - D). Furthermore, Ministry of Forest and Environment classified LPG Bottling Plant as 'Green' category (Serial 28 of Schedule-1 of 'Environmental Conservation Rule, 1997' vide SRO No. 349 dated 21.12.2017, which has been published in Bangladesh Gazette on 24.12.2017 (Annexure-F).

Since the respondents did not act accordingly as prayed by the writ petitioner company in its application dated 17.05.2018 (Annexure-G & G-1) to allow petitioner's application dated 17.05.2018 for issuing No Objection Certificate for site clearance pursuant to the decision of National Environment Committee presided over by the Hon'ble Prime Minister, the writ petitioner filed the instant writ petition before this Court seeking relief as appears in the Rule. Further case of the Writ petitioner is that respondents have issued and renewed No Objection Certificate for site clearance in favour of various companies for LPG Plants within the said area (e.g. Bashundhara LPG Gas Limited, Omera Petroleum Limited, Index Power and Energy Limited, LAFS Gas Limited, Jamuna LPG Limited etc.), where they are running their business. It is the case of the writ petitioner that the writ petitioner is on the equal footing with the said companies in favour of which the Department of Environment issued No Objection Certificate for setting up LPG Plant in Mongla Port Industrial Area. Hence, the respondents' action in not issuing No Objection Certificate in favour of the petitioner company is discriminatory in violation of the Article 27 of the Constitution.

The Respondents did not file any Affidavit-in-Opposition.

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গোপালচন্দ্র শর্মা মিন, দুর্নীতিকে বিমূর্ছিত



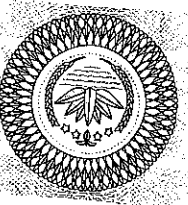
Mr. Md. Imam Hossain with Mr. Shaikh Mohammad Zakir Hossain, learned Advocates appearing on behalf the writ petitioner, made detailed submissions in favour of the case of the writ petitioner. Mr. Imam drew our attention to the judgment dated 28.11.2017 pronounced in the Writ Petition No. 14378 of 2017 (Annexure-E) and judgment dated 05.04.2018 in Writ Petition No. 2612 of 2018 (Annexure-P) in which the notification dated 30.08.1999 was elaborately discussed. In the said notification dated 30.08.1999 issued by Ministry of Environment and Forest declaring the area within 10 Kilometers radius from Sundarban as Ecologically Critical Area. The said notification dated 30.08.1999 having declared the Ecologically Critical Area has set out which type of activities are prohibited and what type of industries/factories cannot be set up in that Ecologically Critical Area. He submits that the said Notification dated 30.08.1999 does not put complete prohibition on setting up any type of or all types of industry/factories in the Ecologically Critical Area. If any intended industry/factory does not cause the activities restricted in the said notification dated 30.08.1999, as he submits, then such industry or factory can be set up in the said Ecologically Critical Area. Thereafter, Mr. Hossain took us to the decision of high power National Environmental Committee, which the Hon'ble Prime Minister of the Government of Bangladesh presides over and wherein Hon'ble Minister, Deputy Minister and Secretary of Ministry of Environment are members of the said National Environmental Committee. Mr. Hossain submits that the said National Environmental Committee presided over by the Hon'ble Prime Minister in the meeting dated 06.08.2017 approved setting up new

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“শেখহাসিনার শপথ বিন, দুর্নীতিকে বিনাশ দিন”



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জম্বালাপি



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LPG Bottling Plants in Ecologically Critical Area of Sundarban.
Moreover, as he submits, the Directorate of Environment having allowed many other companies to set up LPG Bottling Plant in the said Ecologically Critical Area thereby cannot discriminate the writ petitioner company and as such the respondents are under obligation to issue No Objection Certificate of Environment in favour of the writ petitioner company for setting up LPG Bottling Plant in Mongla Port Industrial Area.

None appears for the respondents.

We have considered the submissions advanced by the learned Advocates of the respective parties, perused the writ Petition, its annexure.

The core question to be decided in this Writ Petition for disposal of the Rule is whether issuing No Objection Certificate of Environment in favour of writ petitioner company for LPG Bottling Plant in Mongla Port Industrial Area shall violate the notification dated 30.08.1999 published by the Government on the strength of section 5 of the Bangladesh Environment Conservation Act, 1995 (the said Act of 1995).

For effective understanding of the perspective of the whole case, we shall, at the outset, peruse section 5 of the said Act of 1995, on the strength of which, the said notification dated 30.08.1999 was issued. Section 5 of the said Act of 1995 read as follows:

প্রতিবেশন সংকটাপন্ন এলাকা ঘোষনা:- (১) সরকার যদি এই সর্নে সন্তুষ্ট হয় যে পরিবেশের অবক্ষয়ের কারণে কোন এলাকায় প্রতিবেশ ব্যবস্থা (Eco-system) সংকটাপন্ন অবস্থায় উপনীত হইয়াছে বা হইবার আশংকা রহিয়াছে তাহা হইলে সরকার

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“দেশপ্রেমের সপথ নিল, দুর্নীতিবেহে বিদায় দিল”



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সংসদ



সংসদ

সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, উক্ত এলাকাকে প্রতিবেশগত সংকটাপন্ন এলাকা (Ecologically Critical Area) ঘোষনা করিতে পারিবে।

(২) প্রতিবেশগত সংকটাপন্ন এলাকায় কোন কোন কর্ম বা প্রক্রিয়া চালু রাখা বা শুরু করা যাইবে না তাহা উপ-খারা এক এর তফসিল জারীতবা প্রজ্ঞাপন বা আলাদা প্রজ্ঞাপন দ্বারা সরকার নিদিষ্ট করিয়া দিবে।

[Emphasis given by us]

Sub-section 1 of section 5 of the said Act 1995 empowers the Government to declare any area as Ecologically Critical Area provided the Government is satisfied to the effect that the Eco-system of the said area is on the verge of being adversely affected or destroyed. But simply declaring an area as Ecologically Critical Area does not entail any consequence of bearing upon the human interferences into the Ecological System of the said area. Hence, sub-section 2 of the said section 5 of the said Act of 1995 specifically particularize that the Government must set out either in the notification published under sub-section 1 or in a separate notification, the acts and/ or processes which cannot be continued or commenced in the said Ecologically Critical Area. Therefore, apart from the acts which are prohibited or the industrial processed which are restricted in the said notification dated 30.08.1999, rest of the acts and industries are allowed to conduct and set up in the said Ecologically Critical Area.

Sundarban is the largest mangrove forest in the world. This is not only a unique and valuable asset for Bangladesh, but it is also one of the world natural heritage. Excessive human intervention in the nature is the biggest cause for climate change which is the sole existential threat to human kind. Therefore, saving forest, wildlife, biodiversity, flora and

[Signature]

“দেশপ্রেমের অগাধ নিম্ন, দুর্নীতিকে বিদায় দিন”



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fauna and natural characteristics of Sundarbans is paramount for many reasons. With this view to fend off the adverse consequences of growing human intervention in the area around Sundarbans, the Government on the strength of section 5(1) of the said Act of 1995 issued the said notification dated 30.08.1999 declaring the area of 10 km radius around reserve forest of Sundarbans as Ecological Critical Area setting out certain restrictions on particular type of human and industrial activities.

We, here in below, reproduce the said notification.

পরিবেশ আইন সংকলন
গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
পরিবেশ ও বন মন্ত্রণালয়
শাখা-৪

নং- পবম-৪/৭/৮-৭/৯৯/২৬৩

তারিখ: ১৫-০৬-১৪০৬ বাং ৩০-০৮-১৯৯৯ইং

প্রজ্ঞাপন

সরকার এই মর্মে সন্তুষ্ট (Convinced) হইয়াছে যে, অপরিমিত কার্যকলাপের কারণে নিম্নলিখিত এলাকা সমূহের প্রতিবেশ ব্যবস্থা (Ecosystem) সংকটাপন্ন অবস্থায় উপনীত হইয়াছে বা ভবিষ্যতে আরো অবনীত হইবার আশংকা রহিয়াছে।

এমতাবস্থায়, প্রাকৃতিক পরিবেশ সংরক্ষণ ও পরিবেশগত মান উন্নয়ন এবং পরিবেশ দূষণ নিয়ন্ত্রণ ও প্রশমন এবং টেকসই পরিবেশ ব্যবস্থাপনার লক্ষ্যে বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ (১৯৯৫ সনের ১ নং আইন) ৫ নং ধারার উপ-ধারা (১) এবং ৪ নং ধারায় প্রদত্ত ক্ষমতা বলে

নিম্নোক্ত এলাকাসমূহকে প্রতিবেশগত সংকটাপন্ন এলাকা (Ecologically Critical Area) হিসাবে ঘোষনা করা হইলঃ-

প্রস্তাবিত এলাকার নাম	মৌজা	ইউনিয়ন/পৌর সভা	উপজেলা	জেলা	মোট এলাকা
সুন্দরবন	সরকার কর্তৃক চিহ্নিত সুন্দরবন রিজার্ভ ফরেস্ট এর চতুর্দিকে ১০ কি:মি: বিস্তৃত এলাকা	সরকার কর্তৃক চিহ্নিত সুন্দরবন রিজার্ভ ফরেস্ট এর চতুর্দিকে ১০ কি:মি: বিস্তৃত এলাকা	সরকার কর্তৃক চিহ্নিত সুন্দরবন রিজার্ভ ফরেস্ট এর চতুর্দিকে ১০ কি:মি: বিস্তৃত এলাকা	সরকার কর্তৃক চিহ্নিত সুন্দরবন রিজার্ভ ফরেস্ট এর চতুর্দিকে ১০ কি:মি: বিস্তৃত এলাকা	সরকার কর্তৃক চিহ্নিত সুন্দরবন রিজার্ভ ফরেস্ট এর চতুর্দিকে ১০ কি:মি: বিস্তৃত এলাকা

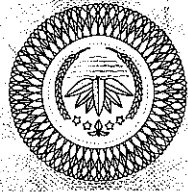
উপরোক্ত এলাকায় নিম্নলিখিত কার্যাবলী নিষিদ্ধ করা হইল যথা বাংলাদেশ সরকারের গেজেটে

প্রকাশনা দিন হইতে কার্যকর হইবেঃ

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বেশভেদের শপথ লিখ, দুর্নীতিকে বিদায় দিন



style "Our Common Future", popularly known as Brundtland Report, gave most widely recognized definitions of Sustainable Development, which fostered the idea of Sustainable Development as the way of life of humankind for meeting human economic development goals while at the same time sustaining the ability of eco-system to provide natural resources for such development without undermining/destroying the integrity, ability and stability of the natural system/eco-system. Based on this principle of Sustainable Development, Sustainable Forest Management has to keep the balance amongst the sustaining ecological system forest of Sundarbans for present and future generations, human economic development and socio-culture of the indigenous people of the forest. We find true reflection of the concepts of Sustainable Development & Sustainable Forest Management in the said Notification dated 30.08.1999 in the light of the said section 5 of the said Act of 1995. The concept of Sustainable Development is profoundly embedded in our Constitution as well. Under Article 18A of our Constitution, the fundamental principle of State Policy requires the State to take step to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests and wildlife for the present and future citizens. This fundamental policy of State for protection and improvement of environment and biodiversity does not contemplate a wholesale exclusion of economic development. Under Article 15 of our Constitution, it is a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural



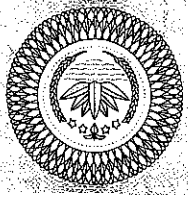
standard of living of the people. The fundamental policies of the State under Articles 16 and 14 also encourage development of cottage and other industries as well for the economic emancipation of toiling masses-the peasants and workers and backward section of the people. Having read the fundamental policies of the State under Articles 14, 15 & 16 of the Constitution vis-a-vis Article 18A of the Constitution. We find that the State has responsibility to strike a balance between the economic growth through industrialization for getting rid the nation of the castigation of poverty and ensuring the continuity of the natural resources, forest, wildlife and biodiversity for present and future generations to live on. This is a reconciliatory approach of fundamental policy of State of our Constitution between the need of our economic development and the need of preserving nature and forest to live on. In view of Article 8 of our Constitution. We have obligation to interpret section 5 of the said Act of 1995 along with other provisions thereof as well as the said notification dated 30.08.1999 in the line of this reconciliatory frame work of the fundamental policy of our Constitution.

In the instant case in our hand, the writ petitioner is seeking permission of Environmental Authority to set up an import-based LPG Bottling & Distribution plant in Mongla port Industrial Area. Mongla Port Industrial Area was created by a statutory namely Mongla Port Authority. Mongla port Authority allotted a plot to the writ petitioner in the said Mongla port Area. This Mongla port Industrial Area comes within the area of 10 km radius around Sundarbans. Hence, this Mongla port Industrial Area is situated within the Ecologically critical Area of

সেখতারের শপথ লিখ, দুর্নীতিকে বিদায় দিন



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sundarbans as declared in the said notification dated 30.08.1999. The said notification dated 30.08.1999 completely prohibits cutting down natural forest and trees, killing and hunting all types of wild animals, catches of animals and plants. The LPG Bottling Plant in question is situated within already established Mongla port Industrial Area. And therefore, it is apparent that setting up of this LPG Bottling Plant in question is unlikely to offend the prohibitions against cutting down natural forest and trees, killing and hunting all types of wild animals, all types of wild animals and destroying dwelling and growing places and plants. There are other restrictions in the said notification dated 30.08.1999 as well the said notification dated 30.08.1999 restricts the activities, which can destroy or change the natural characteristics of land and water also restricts setting up industries or enterprise, which may pollute soil, water, air and sound and further restricts the activities which may harm fish and aquatic species. whether the industrial process of the said LPG Bottling plant shall destroy or change the natural characteristics of land and water or pollute soil, water, air and sound; or harm fish and aquatic species, is a technical and to certain extent scientific facts. This Court, at the first instance stage, does not have expertise to ascertain as to whether a particular industrial process shall destroy or change the natural characteristics of land and water; or pollute soil, water, air and sound; or harm fish and aquatic species. Rather the Government and Directorate of Environment, at the fish instance stage, are sole judges for ascertaining whether the industrial process of the said LPG Bottling plant shall destroy or change the natural characteristics of land and water; or pollute soil, water, air and sound; or

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“দেশপ্রেমের অর্পণ নিন, দুর্নীতিকে বিস্ময় দিন”



harm fish and aquatic species or whether the said industrial process shall violate other restriction or prohibition of the said notification dated 30.08.1999. Section 7(1) of the said Act of 1995 empowers the Director General of the Directorate of Environment to take step to protect and preserve the ecological system. Section 7(1) of the said Act of 1995 reads follows;

“৭। প্রতিবেশ ব্যবহার ক্ষতি ব্যাপারে ব্যবস্থা গ্রহণ ১-(১) মহা-পরিচালকের নিকট যদি প্রতীয়মান হয় যে, ব্যক্তির কাজ করা বা না করা প্রত্যক্ষ অথবা পরোক্ষভাবে প্রতিবেশ ব্যবস্থা বা কোন ব্যক্তি বা গোষ্ঠীর ক্ষতিসাধন করিতেছে বা করিয়াছে, তাহা হইলে তিনি উক্ত ক্ষতির পরিমাণ নির্ধারণপূর্বক উহা পরিশোধ এবং যথাযথ ক্ষেত্রে সংশোধনমূলক ব্যবস্থা গ্রহণ বা উভয় প্রকার ব্যবস্থা গ্রহণের জন্য নির্দেশ দিতে পারিবেন এবং উক্ত ব্যক্তি এইরূপ নির্দেশ পালনে বাধ্য থাকিবেন ”।

Section 7 (3) of the said Act of 1995 also empowers the Director General of the Directorate of Environment to appoint expertise or any other person to take corrective measures. Section 7(3) of the said Act of 1995 reads as follows;

(৩) উপ-ধারা (১) এর অধীন ক্ষতিপূরণ নির্ধারণের বা সংশোধনমূলক ব্যবস্থা গ্রহণের উদ্দেশ্যে যথাযথ ক্ষেত্রে যে কোন বিশেষজ্ঞ এবং অন্যান্য ব্যক্তিকে মহা-পরিচালক দায়িত্ব প্রদান করিতে পারিবেন।

Further, under Section 7(4) of the said Act of 1995 the Government may direct Director General of the Directorate of Environment to submit report and/or to take any steps required under the said Section 7 of the said Act of 1995. Section 7(4) of the said Act of 1995 provides as follows;

(৪) সরকার এই ধারার অধীনে যে কোন ব্যবস্থা গ্রহণ এবং তৎসম্পর্ক প্রতিবেদন দাখিলের জন্য মহা-পরিচালককে নির্দেশ দিতে পারিবেন।

Furthermore, section 12 of the said Act of 1995 provides that no project or industry can be established in any area without No Objection

Certificate of Environment from Director General of Directorate of

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দেশপ্রেমের শপথ নিলি, দুর্নীতিকে বিদায় দিন”



Environment. Hence, while considering issuance of No Objection Certificate of Environment, the Directorate of Environment must consider whether the proposed industry shall harm the Ecological system in violation of any of the provision of the said Act of 1995. Therefore, as a cumulative consequence of section 5 and section 7 of the said Act of 1995 read with section 12 of the said Act of 1995, we find that Directorate of Environment as the Government are proper authority, unless otherwise proved fanciful, only who can decide whether any activities of a person is harming the ecological system. Hence, we also find that only directorate of Environment and the Government are the proper authority to decide whether the industrial process of LPG Bottling plant within Ecologically Critical Area of sundarbans shall destroy or change the natural characteristics of land and water; or pollute soil, water, air and sound; or harm fish and aquatic of species Sundarbans or whether the said industrial process shall violate other restriction or prohibition of the said notification dated 30.08.1999. Only if Directorate General or the Government as the case may be, finds the said industrial process not to harm ecological system in violation of the said notification dated 30.08.1999, then No Objection certificate of Environment for that industrial process shall be issued.

In the instant case, from the referred judgment in Writ Petition No. 14378 of 2017 (Annexure-E) and in Writ Petition No. 2612 of 2018 (Annexure-P) it is noted from the resolution of 233rd meeting dated 09.11.2015 of Office of Khulna Division of Directorate of Environment, where it was mentioned that there are some other industries of LPG plant

“সেগুনগোড়া শমশু মিন, দুর্নীতিকে বিদায় দিন”



in Mongla port Industrial Area. It is to be noted from the referred judgment that office of Khulna Division of Directorate of Environment also pointed out that the existing industries in Mongla Port Industrial Area does not pollute soil, water and LPG Bottling plant shall not pollute environment. Thereafter, from the Annexure- D, in the instant writ petition it is apparent that the National Environment Committee in presided over by the Hon'ble Prime Minister of the Government in its 4th meeting held on 06.08.2017 decided to allow new LPG plant the Ecologically Critical Area of Sundarbans. In the said meeting dated 06.08.2017, it was noted that LPG Plant is not treated as class red in many countries of the world. the decision of the National Environmental Committee in this respect is reproduced herein below:

৩.৪.৪. পরিবেশ সংরক্ষণ বিধিমালা, ১৯৯৭ এর জালোকে বর্ণিত ব্যবস্থা অনুসরণের

শর্তে সুশ্রবণের ইসিএ-ভুক্ত এলাকায় নতুন এলপিগ্যাস গ্যাস্ট্রাফাইলিং জায়গার জন্য পরিবেশ

সংক্রান্ত হাউপত্র প্রদানের প্রস্তাব নীতিগত অনুমোদন করা হইল।

[Emphasis supplied]

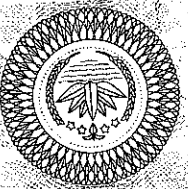
In the instant writ petition, petitioner since 2014 made a series of application to the respondents to get the No Objection Certificate for production of LPG Cylinder, but no response has yet been received from the office of the respondents. The petitioner further on 17.05.2018 made two separate applications to the respondent Nos. 2 and 4 respectively (Annexure – G & G-1) and the said applicants were duly received from the office of the respondent Nos. 2 and 4, but still no response to the said applications has yet been received by the petitioner. We have noted from the submission of the Advocate for the petitioner that respondents have issued and renewed No Objection Certificate for site clearance in favour

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সেগারের শগুথ মিন, দুর্নীতিকে বিদায় দিন



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of various companies for LPG Plants within the said area (e.g. Bashundhara LPG Gas Limited, Omera Petroleum Limited, Index Power and Energy Limited, LAFS Gas Limited, Jamuna LPG Limited etc.), where they are running their business. Learned Advocate for the petitioner also drew our attention that in all No Objection Certificates, the Environmental Authority stated that since there is no allegation of pollution of Environment of this kind of industry, the said No Objection Certificates have been issued. Therefore, from the Directorate of Environment up to the high power authority namely National Environment Committee presided by the Head of Executive, i.e. the Hon'ble Prime Minister of Government along with respective Minister and Secretary of Ministry of Environment decided that industrial process of LPG Bottling Plant shall not harm Ecological system in Ecologically Critical Area of Sundarbans. This appear to be well thought and pragmatic approach towards economic development without harming Ecologically Critical Area of Sundarbans.

In view of the above, since the Government itself has decided to allow setting up new LPG Plant in Ecologically Critical Area (ECA) of Sundarbans having given consideration that LPG Bottling Plant shall not harm eco-system in violation of restrictions set out in the said notification dated 30.08.1999, we are of the view that Directorate of Environment has no reason not to issue No Objection Certificate of Environment in favour of the writ petitioner for setting up import based LPG Bottling & Distribution Plant in Mongla Port Industrial Area. Further, when Directorate of Environment has issued No Objection

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দেশপ্রেমের শগুণ নিব, দুর্নীতিকে বিদায় দিন



Certificates in favour of other companies for setting up LPG Plant in ECA of Sundarbans even in the recent years, the action of Directorate of Environment in delaying to issue No Objection certificate in favour of writ petitioners for setting up the said LPG Plant in the same ECA of Sundarbans is discriminatory against the writ petitioners in violation of Article 27 of the constitution.

It was also brought to the notice of this Court that the application of the writ Petitioner company is pending since 17.05.2018 and the environmental authority has issued NOCs of Environment in favour of many other companies of equal footing for setting up LPG Plant in ECA of Sundarbans. We find this action as discriminatory. Moreover, the highest authority, namely, National Environmental Committee presided over by the Hon'ble Prime Minister has already approved the policy decision to accord NOCs of Environment in favour of LPG Plants in ECA of Sundarbans.

Against the facts and circumstances as stated hereinabove, we find merit in the Rule.

As no affidavit in opposition has been filed controverting the statements made in the writ petition, the assertions so made are deemed to be correct.

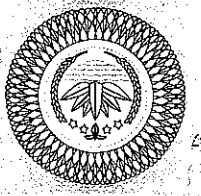
Accordingly, the Rule is made absolute.

The Directorate of Environment is hereby directed to issue required permissions and No Objection Certificates in favour of writ petitioner for setting up an importbased LPG Plant in Mongla Industrial Area within 15 (fifteen) days from the date of receipt of this judgment.

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“দেশেবমের শপথ দিন, দুর্নীতিকে বিদায় দিন”



বাংলাদেশ
আইন



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There shall be no order as to cost.

Communicate the judgment and order at once. /

Naima Haider

Md. Khairul Alam, J:

I agree.

Md. Khairul Alam.

প্রত্যয়িত অবিকল প্রতিজ্ঞিপি

[Signature]

Typed by: Monir:03.11.2021.

Read by:

Exam. by: 03-11-21

Readied by:

[Signature]

[Signature]

03.11.21.

সহকারী রেজিস্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
(১৮৭২ ইং সনের ১নং আইনের)
৭৬ ধারামতে ক্ষমতা প্রাপ্ত

[Signature]
3-11-21

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3-11-21
মৌলভী মাহবুবুল হক জুজা
প্রশাসনিক কর্মকর্তা

Md. M. Najibur Rajibur Anwar
Subordinate

“দেশভোমের শপথ বিন, দুর্নীতিকে বিদায় দিন”