

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

WRIT PETITION NO. 4692 OF 2000

IN THE MATTER OF:

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

-A N D-

IN THE MATTER OF:

The Chittagong Port Authority Ordinance, 1976.

-A N D-

IN THE MATTER OF:

1. Engineer Mahmud-ul Islam son of late Professor Emdadul Islam, House No.21, Road No.2, Chittagong Co-operative Housing Society Limited, Nasirabad, Chittagong.
2. A.S.M. Nazrul Islam son of late A.S.M. Rafiqul Islam, President, Chattagram Bandar Sramik Union (Regd. No.B-1002) Bandar East Residential Area, Police Station Bandar, District Chittagong.
3. Sunil Kanti Aich son of late Aswini Kumar Aich, Head Assistant, Department of Hydrography, Bandar Bhaban, Chittagong Port Authority, Police Station Bandar, Chittagong.
4. Md. Shah Alam, son of late Meah Nazir Ahmed, 3 Ramkrishna Mission Lane, Askardighi West Par, Police Station Kotwali, District Chittagong.

... PETITIONERS

-versus-

1. People's Republic of Bangladesh represented by its Secretary, Ministry of Shipping, Bangladesh Secretariat, Ramna, Dhaka-1000.
2. Joint Secretary, Ministry of Shipping Bangladesh Secretariat, Dhaka.

3. Secretary, Ministry of Land, Bangladesh Secretariat, Ramna, Dhaka.
4. Joint Chief Ministry of Shipping, Bangladesh Secretariat, Ramna, Dhaka.
5. Deputy Secretary (Port), Ministry of Shipping, Bangladesh Secretariat, Ramna, Dhaka.
6. Senior Assistant Secretary, Ministry of Shipping, Bangladesh Secretariat, Ramna, Dhaka.
7. Chairman Chittagong Port Authority, Bandar Bhaban, Chittagong.

-A N D-

IN THE MATTER OF:

Memo No.Mos/Planning-1/Chittagong-1/98-96 dated 28.4.1998 issued by the respondent No.4 allowing to establish two private container port terminals one at Patenga, Chittagong and another at Pangaon, Dhaka under BOO (Build, Own and Operate) basis and integrated operations of barge services (Annexure-D) in pursuance of Government approval dated 25.3.1998.

-A N D-

IN THE MATTER OF:

Minutes of the first meeting of the Co-ordination Committee of the Ministry of Shipping dated 16.6.1998 signed by the respondent No.2 for construction of two Terminals one at Patenga, Chittagong and another at Pangaon, Dhaka by SSA (B) Ltd. (Annexure-K).

-A N D-

IN THE MATTER OF:

Memo No. Mabasha/Nirman-01/98-168/1 dated 18.6.1998 issued by the respondent No.6 directing to take necessary action for leasing out demanded land to S.S.A. Bangladesh Ltd. and also to complete draft lease agreement (Annexure-L).

To
Mr. Justice Latifur Rahman the Chief Justice of Bangladesh and his companion justices of the said Hon'ble Court.

The humble petition of the petitioners abovenamed most respectfully -

S H E W E T H:

1. That the petitioner No.1, is the former Chairman of Chittagong Port Authority and Chittagong Development Authority. He served in responsible positions in the Chittagong Port Authority for many years. He has been involved with the development of Chittagong Port over the years and has been committed to the improvement of the Port in the national interest as the premier port of this country vital to the national economy. He is mindful of the need to be vigilant to protect the port in the public interest from suffering from serious adverse effects through the activities of unscrupulous parties who are seeking to procure projects for their unconscionable personal gain by dubious means, by avoiding all rules and procedures and statutory requirements. The petitioner No.2 was a Superintendent under Mechanical Department of Chittagong Port Authority. He retired from his service on 31.3.1996. He is also the President of Chattagram Bandar Sramik Union. The petitioner No.3 is the Head Assistant of the Department of Hydrography of Chittagong Port Authority. The respondent No.4 is a citizen of Bangladesh residing at Chittagong. All of the petitioners share a sense of concern at the grave damage that is threatened to the public interest by the proposed project and granting an "approval" by the respondents in the circumstances described in the petition.

2. That the petitioner No.1, 2 and 4 executed a letter of authority in favour of the respondent No.3 to file petition, applications swear affidavits and to take steps in the instant Writ Petition. Photocopy of the said letter of authority is annexed hereto and marked as Annexure - "A".

3. That the respondent No.1 is the People's Republic of Bangladesh represented by the Secretary, Ministry of Shipping. The respondent No.2 is the Joint Secretary, Ministry of Shipping. The respondent No.3 is the Secretary, Ministry of Land. The respondent No.4 is the Joint Chief, Planning, Ministry of Shipping. The respondent No.5 is the Deputy Secretary and the respondent No.6 is the Senior Assistant Secretary, Ministry of Shipping. The respondent No.7 is the Chairman, Chittagong Port Authority and their addresses are as given in the cause title.

4. That the address of the petitioner for the purpose of service of notices, affidavits petitions and other documents relating to this petition is C/o. Mr. H.S. Deb Brahman, Advocate Room No.74, Supreme Court Bar Association Building, Dhaka.

5. That the Chittagong Port ("the Port") was established in 1988 for seaborne commercial trading activities and providing port facilities. During the British period, port operations came under the control of the Commissioner under the Port Commissioner's Act, 1887. In 1960 reorganization of the management of Chittagong Port resulted in the formation of the Chittagong Port Trust. In 1976 the Chittagong Port Authority was established to facilitate the growth and progress of the port. There are 17 jetties in the Chittagong Port Area. Jetties No.1-13 are situated side by side. Jetties No.14, 15, 16 and 17 are scattered and situated in New Mooring Area. Jetty No.17 is being used for handling of explosives and Military Equipment handling. The Jetty Nos. 14, 15, 16 and 17 were damaged by the tragic cyclone in 1991. The Chittagong Port Authority constructed a multipurpose berth inside the berth area for handling containers which is known as the Chittagong Container Terminal (CCT).

6. That Government defined the Port Limit of Chittagong Port vide notification bearing No.S.R.O.(11) dated 30th June, 1960. As per section 3(1) of the Chittagong Port Ordinance 1976 the Government amended the limits of Chittagong Port for the purposes of this Ordinance by notification in the Official Gazette bearing No.S.R.O. 197-L/83/PE/2E-1/82 dated 22.6.1983 in reference to CPA's Memo No.DC-XI(233)/6466 dated 23.5.83 and informed the same to the Chairman Chittagong Port

Authority vide memo No.PE/2F-4/83-537 dated 29.6.1983. Paragraph 1 of the said Notification dated 22.6.1983 reads as follows:

"1. The seaward limits of the Chittagong Port shall be as follows:

With Patenga Beacon as Centre if an arc is drawn seaward with a radius of 5 1/2 miles till it intercepts the coast line at position lat: 22 - 18' - 45" North, Long 91 46-30" east, in the North and Lat: 22 - 8'-13" North, long 91 0 50-00" East in the South, the area enclosed within the extreme miles of the arc".

Photocopy of the said memo dated 29.6.1983 is annexed hereto and marked as Annexure - "B".

7. That Chittagong Port Authority in its Board Meeting vide resolution No.52 dated 16.9.1969, resolution No.1789 dated 15.11.1986 and resolution No.8331 dated 10.6.1999 decided that no port land shall be leased out except through invitation of tender and without application in response to paper advertisement. Photocopy of the said resolution dated 16.9.1969 and 15.11.1986 are annexed hereto and marked as Annexure - "C" and "C - 1" and "C - 2" respectively.

8. That during the liberation war, the Chittagong Port suffered serious requiring extensive part clearance and repair of damage is installations. Subsequently, part development has been progressing in as developed below.

9. That after the liberation war of Bangladesh, the world was fasting moving towards containerization. In 1992 government allowed Chittagong Port Authority to build two new container berths at New Mooring, in place of prayer for four berths. In 1992 Chittagong Port Authority constructed container jetty measuring 450 metres length having capacity of handling 1,90,000 TEUS container initially and then constructed some container years in Jetty area and handled 3,66,000 TUES Container in the year 1998-1999. The chart shown below would give at clear picture of the container handling situation of the Chittagong Port along with projection until the year 2004-2005:

Year	Actual number of container landed (TEUS)	Total volume of containers cargo (MT)	Projected container Traffic TUES	Number of container ship called at the point
1985-1986	39056	339920	40000	423
1986-1987	50019	455454	-	446
1987-1988	55392	548689	-	360
1988-1989	77522	712846	-	403
1989-1990	110644	974201	80000	423
1990-1991	101280	889073	-	395
1991-1992	121326	1082424	-	315
1992-1993	150487	1378706	-	359
1993-1994	174958	1626524	-	372
1994-1995	227172	2112015	190000	341
1995-1996	250867	2335515	-	423

1996-1997	290303	2669515	-	455
1997-1998	329163	3017758	-	385
1998-1999			402000	
1999-2000			459000	
2000-2001			514000	
2001-2002			577000	
2002-2003			640000	
2003-2004			700000	
2004-2005			765000	

10. That in order to overcome the problem of lack of space for containers the Chittagong Port Authority submitted a project to the government in 1995 to construct New Mooring container terminal by spending Tk.720 crores and also submitted project in 1996 to procure 142 equipments by spending Tk.305 crores. The Ministry of Finance issued liquidity certificate in favour of the Project. The said two projects were also approved later on by the National Economic Council on 19.5.1999 and 12.5.1999. A photocopy of the relevant parts of the Projects are annexed hereto and marked as Annexure - "D" and "D - 1".

11. That the Planning Chief of the Chittagong Port Authority vide Memo No.Chabaka/Planning/20-523/74 dated 9.6.1997 requested the respondent No.1 to present a feasibility study of a container terminal in Patenga to International Development Authority. A photocopy of the said Memo dated 9.6.1997 is annexed hereto and marked as Annexure - "E".

12. That under the Chittagong Port Authority Ordinance, 1976 ("the Ordinance") Authority can permit erection of private dock, Section 17 and Section 18 of the Ordinance 1976 read as follows:

"17. Private docks, etc. prohibited: (1) Save as provided in Section 18 no person except the Authority shall make, erect or fix below high-water mark within the Port any dock, Pier, erection or mooring.

(2) Any matter or thing made, erected or fixed in contravention of sub-section (1) may be removed by the Authority and the person who has so made erected or fixed any such matter or thing shall be punishable with fine which may extend to ten thousand taka for every day during which such matter or thing has been permitted to remain so made erected or fixed after notice to remove the same has been given to him and shall be liable to pay all expenses which may have been incurred by the Authority in removing such matter or thing.

18. Power to permit erection of private docks, etc. The Authority may by order in writing and subject to such conditions as may be specified therein permit any person to make, erect or fix below high-water mark within the Port any dock, pier, erection or mooring."

13. That the People's Republic of Bangladesh is a member of the United Nations Organization (U.N.O.) and is signatory to the U.N. Charter. The United Nations Economic and Social Commission for Asia and the Pacific has formulated "Guidelines for Private Sector Participation in Ports" in 1997. Another component of the United Nations namely, the United Nations Conference on Trade and Development (UNCTAD) published a report namely "Guidelines for Port Authorities and Governments on the Privatization of Port Facilities. The principles underlying the Guidelines are set out in Chapter 5

and 6 of the said report. A photocopy of Chapter 5 and 6 of the said report dated 23.9.1998 is annexed hereto and marked as Annexure - "F".

14. That the Overseas Trade Service, trade division of the Government of United Kingdom, submitted a proposal to the Hon'ble Minister, Ministry of Shipping dated 3.3.1997 to construct a container terminal at Patenga, Photocopy of the said proposal dated 3.3.1997 is annexed hereto and marked as Annexure - "G".

15. That a Joint Venture agreement was executed between a Bangladeshi company, Orient Maritime Limited and S.S.A. Netherlands BV on 1.12.1997 pursuant to which a Joint Venture Private Company namely S.S.A. Bangladesh Limited was formed in which Orient maritime Limited and S.S.A. Netherlands BV had equal shares. The partners of the said company subscribed an Article of Association on 4.12.1997. A photocopy of the said agreement dated 1.12.1997 and Articles of Association dated 4.12.1997 are annexed hereto and marked as Annexures – "H" and "H - 1".

16. That the Company namely S.S.A. Bangladesh Ltd., presenting itself as an affiliate of Stevedoring Services of America, submitted an application on 29.12.1997 before the Hon'ble Minister, Ministry of Shipping for establishment of container terminal in private sector in Dhaka and Chittagong under Build, Own and Operate (BOO) Scheme, No feasibility study was submitted under the application, and it was submitted without any competitive bids having been invited. The said application was "approved" with extraordinary space by the Government on 25.3.1998. A photocopy of the said application dated 29.12.1997 is annexed hereto and marked as Annexure – "I".

17. That the respondent No.3 vide memo No. MOS Planning-1/Chittagong-1/98-96 dated 28.4.1998 intimated the Managing Director of the said Company namely S.S.A. Bangladesh Ltd. that its proposal for establishment of two (2) private sector container Port Terminals one at Patenga, Chittagong and another at Pangaon, Dhaka under BOO (Build, Own and Operate) basis and integrated operation of barge services has been considered and approved by the Government and also requested it to take necessary steps for immediate implementation. Photo of the said Memo dated 28.4.1998 is annexed herein and marked as Annexure – "J".

18. That a co-ordination committee of the Ministry of Shipping in its first meeting dated 16.6.1998 took the following decision-

“3. Decisions:

- 3.1 SSA (Bangladesh) Ltd. will send formal proposal to the Ministry of Shipping to send recommendation letter to the Ministry of Land/DC, Chittagong, Ministry of Water Resources BWDB and Ministry of Energy, Bakhrabad Gas System Ltd. for acquisition leasing out of land. After getting the request, Ministry of Shipping will take steps to send the recommendation letters to the concerned for the purpose.
- 3.2 CPA will process the leasing of 20.77 acres of land to SSA (Bangladesh) Ltd. on a long term basis.
- 3.3 BIWTA will necessary arrangement to lease out 88 acres of land at Pangaon to SSA (Bangladesh) Ltd. urgently.
- 3.4 Ministry of Shipping will arrange a co-ordination meeting on last week of June 1998 to monitor the progress of execution of lease agreements and acquisition of land.”

Minutes of the said meeting was signed by the respondent No.2 on 16.6.1998 and was communicated to the concerned persons by the respondent No.6 vide Memo No.MOS/MPA-nirman-1/98-166(13) dated 16.6.1998. A photocopy of the said Minutes dated 16.6.1998 is annexed hereto and marked as Annexure – “K”.

19. That the respondent No.6 vide Memo No.Mabasa/nirman-1/98-168/1 dated 18.6.1998 requested the Chairman of Chittagong Port Authority for leasing demanded land of S.S.A. (Bangladesh Ltd. and complete the process for lease agreement. Copy of the said Memo dated 18.6.1998 is annexed hereto and marked as Annexure – “L”.

20. That Port Ventures Limited, a British company placed a proposal dated 4.1.1999 to the Chairman, Chittagong Port Authority proposing a private sector BOO/BOOT container Terminal at Patenga. A photocopy of the said Proposal dated 4.1.1999 is annexed hereto and marked as Annexure – “M”.

21. That PSA Corporation Limited (Port of Singapore) a Singaporean Company proposed to the Chairman, Chittagong Port Authority by an application dated 18.1.1999 proposing Technical Cooperation, Joint Venture at Chittagong Container Terminal and also for developing a new Container Terminal at Patenga. A photocopy of the said application dated 18.1.1999 is annexed hereto and marked as Annexure – “N”.

22. That different Trade Union Organizations of Chittagong Port Authority filed applications before the Hon’ble Prime Minister of the People’s Republic of Bangladesh on 24.6.1998 to postpone the Government approval for constructing container Terminal by SSA Bangladesh Ltd. A photocopy of the said application dated 24.6.1998 is annexed hereto and marked as Annexure – “O”.

23. That a Civic Organization namely “Chattagram Bandar Unnayan Forum” headed by the petitioner No.1 – former Chairman Engineer Mahmudul Islam of Chittagong Port Authority and Chittagong Development Authority published a booklet disclosing adverse effect of private container Terminal in the Mouth of Karnaphully river at Patenga. A copy of the said booklet is annexed hereto and marked as Annexure – “P”.

24. That a Civil Organization namely “Gana Adhikar Sangrakhon Parishad, Bangladesh also published a brochure disclosing conspiracy for destroying the Chittagong Port Authority. A copy of the said brochure is annexed hereto and marked as Annexure – “Q”.

25. That on 10.7.1998 the Daily Bangla Bazar Patrika disclosed that a serious forgery was committed during approval of private container terminal. The same paper published an editorial column on 11.7.1998. A photocopy of the said news dated 10.7.1998 and editorial dated 11.7.1998 is annexed hereto and marked as Annexure – “R” and “R-1”.

26. That a local paper of Chittagong namely Dainik “Purbokon” on 3.9.1998 reported that without any international bidding permission was given for container terminal undermining the national interest. The said Daily also reported on 5.9.1998 that file of a British Consortium about Private Container Terminal was missing from the Ministry. A photocopy of the said report dated 3.9.1998 and 5.9.1998 is annexed hereto and marked as Annexures – “S” and “S-1”.

27. That the Bandar Sramik Karmachari Parishad through a letter set out the disadvantages of a private terminal at the mouth of Karnaphully river. A photocopy of the said letter is annexed hereto and marked as Annexure – “T”.
28. That the Mayor of the Chittagong City Corporation in a public meeting dated 29.2.2000 opposed the Government’s decision for establishing private container terminal at Patenga and disclosed his commitment for resisting it as being against the national interest. The news of the said meeting was published in the daily Purbokon on 1.3.2000. A photocopy of the said news dated 1.3.2000 is annexed hereto and marked as Annexure – “U”.
29. That 11 parties (an Alliance of Gano Forum, Communist Party of Bangladesh, Worker’s Party, Bangladesher Samajtantrik Dal (BSD), Ganotantri Party, Krishak Sramik Samajbadi Dal, Bangladesher Samyabadi Dal, Bangladesher Samajtantrik Dal (BSD), Gano Azadi League, Ganotantrik Majdoor Party etc.) Chittagong Branch also opposed the Government’s “decision’ for establishing a private container terminal at Patenga. The said alliance in a public meeting dated 23.2.2000 expressed its opposition and the said news was published in the Daily Azadi on 24.2.2000. That Bangladesh Jatiyatabadi Dal, Chittagong City Unit also opposed the Government’s decision for establishing private container terminal at Patenga, through a statement dated 4.3.2000 and the same was published in the daily Azadi on 5.3.2000. A Photocopy of the said news dated 24.2.2000 and 5.3.2000 are annexed hereto and marked as Annexure – “V” and “V-1”.
30. That 5 port users organizations namely Bangladesh Steamer Agents Association, Chittagong, C&F Agents Association, Bangladesh Masters Stevedores Association, Bangladesh Lighterage Contractor Association and Chattagram Bandar Truck Malik and Contractors Association in a joint declaration dated 7.3.2000 requested the Government to refrain from taking this “suicidal” steps. A photocopy of the said joint declaration dated 2.3.2000 is annexed hereto and marked as Annexure – “W”.
31. That Chittagong Port Authority vide resolution No.8729 dated 19.6.2000 of its Board Meeting intended to build Port through open International Tender on the Principle of BOT (Build, Own and Transfer). The Board Meeting also decided to acquire land for building port. The respondent No.7 vide Nothi No.Chabaka/Planning/20-523/12 dated 22.6.2000 communicated the said decision to the respondent No.1. A photocopy of the said Nothi dated 22.6.2000 is annexed hereto and marked as Annexure – “X”.
32. That the respondents are holding meeting with the S.S.A. Bangladesh Limited to conclude the agreements for building private container terminal at Patenga which was published in the Daily Jugantor on 5.9.2000. A copy of the said news dated 5.9.2000 is annexed hereto and marked as Annexure – “Y”.
33. That it is stated that the private container terminal is not in the national interest will not impair but destroy existing activities and functioning Chittagong Port Authority to a great extent.
34. That it is stated that alleged container terminal at Patenga will ultimately deprive 7000 employees of employment, 10,000 dock workers will become idle and there will be serious instability among the shore handling contractors (Stevedores), C&F Agents, transport owners and workers, different third parties related thereto affecting some 50,000 persons.
35. That it is stated that no evaluation of the track record of the company, that is previous experience of S.S.A. Bangladesh Ltd. or its components regarding port operations, financial capability, or feasibility study had been given serious consideration before “approval” of their proposal.

36. That it is stated that the proposal of S.S.A. Bangladesh Ltd. did not contain clear provisions relating to royalty, lump sum payment or license fee and revenues which are to be passed by the alleged private container terminal over to the government.
37. That it is stated that no technical and financial evaluation was done about S.S.A. Bangladesh Ltd. and there is palpable lack of application of mind with regard to evaluation of the company and the feasibility of the proposal, or to ascertain if this was the best of the proposals through evaluating other bids received, or inviting further competitive bids.
38. That it is stated that no transparency is evident in the decision making process, involving the entire activities of S.S.A. Bangladesh Ltd. were done behind the screen defeating the principles of equities and national interest.
39. That it is stated that ESCAP recommended action plan for port privatization and UNCTAD recommended guidelines for port authorities and governments on the privatization of port facilities which were not at all followed by the respondents.
40. That it is stated that S.S.A. (Bangladesh) Ltd. was formed by Orient Maritime Limited and S.S.A. Netherlands BV but the application for private container terminal was submitted on 29.12.1997 by S.S.A. (Bangladesh) Ltd. as an affiliate of Stevedoring Services of America.
41. That it is stated that at present the Chittagong Port Authority is handling 80% containers of importing cargoes and the rest 20% is handled by the Mongla Port Authority.
42. That it is stated that Chittagong Port is handling near about 4,00,000 (four lacs) TEUS container in the year 1999-2000 and keeping the same in the Chittagong Container Terminal and the container yards by two high stacking. If the high stacking are upgraded to six/seven as like as Singapore and Hongkong the volume of container handling will be near about 8 lacs. If the period of container delivery/release is reduced to 7 days from 15 days the quantity of container handling will be 16 lacs TEUS. If container yard and container jetties are constructed in Port Park, JC yard, behind the 13 Nos. Jetty, vacant places of TCB Go-down and Shell Oil Company and on the other bank of Karnaphully river there will be no necessity for constructing any port or container terminal upto 2100.
43. That it is stated that there was no feasibility study of private containers terminal at Patenga as per letter dated 9.6.1997 (Annexure – “E”) issued by the Planning Chief of Chittagong Port Authority in favour in favour of the Secretary Ministry of Shipping.
44. That it is stated that other parties, namely Overseas Trade Services (Annexure – “G”) S.S.A. Bangladesh Ltd. (Annexure – “I”), Port Venture (Annexure – “M”) and PSA (Annexure – “N”) applied to the Hon’ble Minister, Ministry of Shipping and Chairman, Chittagong Port Authority for establishing container terminal at Patenga, Chittagong, and thereafter an international competitive tender/bidding procedure ought to have published and adopted.
45. That the proposed site for private container terminal at Patenga, Chittagong is a sensitive location from a national security point of view having regard to the Naval Academy, Airforce Installation and M.A. Hannan International Airport, Chittagong.
46. That only one port is normally constructed at the mouth of a river. There are no two ports at a river mouths anywhere in the world, as such the alleged approval for private container terminal at Patenga is irrational, against the national interest and without lawful authority.

47. That powers and functions of Chittagong Port Authority had been vested by the Chittagong Port Authority Ordinance 1976, for the management, maintenance and Development of Chittagong Port and for matters connected there with or incidental thereto with specification of port limit, and any “approval” of a project by-passing the Authority and disregarding the provisions of the Ordinance, is manifestly without lawful authority.

48. That the minutes of the meeting of the co-ordination committee of the Ministry of Shipping shows that S.S.A. (Bangladesh) Ltd. had prepared an exhaustive map of 211.66 acres of land of which Chittagong Port Authority owns 20.97 acres, Bangladesh Water Development Board owns to 25.52 acres, Khas land of the Government amounts to 4.61 acres, Bakhrabad Gas Company owns to 1.67 acres, and 158.89 acres are owned by private owners.

49. That the lands of the proposed private container terminal at Patenga belong to different public authorities and are managed by distinct laws, the action purporting to grant such lease in an arbitrary manner, without due application of mind, and a competitive bidding procedure, through a public auction, are manifestly without lawful authority.

50. That the government has approved construction of New Mooring container terminal in 1999 and also approved for procuring 142 equipments for Chittagong Port in 1996, if the said projects are implemented this will totally undermine the operations and viability of the New Mooring Container Terminal and thus be against national and public interest.

51. That it is submitted that no feasibility study for private container terminal having been held by the experts and consultants as per request letter dated 9.6.1997 issued by the planning chief of Chittagong Port Authority (Annexure – “E”), the Government’s “approval” dated 28.4.1998 for establishing private container terminal at the mouth of the Karnaphully river S.S.A. (Bangladesh) Ltd is arbitrary and not in accordance with law, and this is without lawful authority.

52. That it is submitted that there is no national policy, laws or rules for establishing private container terminal in Bangladesh, and the Government’s decision dated 28.4.1998 without any policy or guidelines for establishing private container terminal is arbitrary and without lawful authority.

53. That it is submitted that Bangladesh being a member of Economic and Social Commission for Asia and the Pacific (ESCAP) having grossly disregarded the guidelines for private sector participation in ports and transparency with regard to the decision making process; consequently the purported approval and subsequent action of the Government are arbitrary and without lawful authority.

54. That it is submitted that there is no proper application of mind by the respondents nor considerations required by the Rules of Business framed under Article 55 of the Constitution for proper exercise of executive authority, inasmuch as the following actions have not been taken (a) identification of priority project (b) conduct pre-feasibility and assessment of commercial viability (c) identification of related infrastructure investments essential to viability of proposed project (d) preparation and publication of project outline (e) no preparation of summary of privatization parameters for distribution with project outline (f) preparation of pre-qualification advertisement (g) publication of advertisement (h) distribution of project outline (I) preparation of prequalification short list (j) preparation of bid documents (k) distribution of bid documents (l) evaluation of tenders and (m) negotiation with the top ranked bidder from the government. As such without following any action plan respondents’ actions are arbitrary, and without lawful authority, as well as violative of the provisions of Articles 27 and 31 of the Constitution.

55. That it is submitted that no evaluation and tract record of the company that is previous experience of S.S.A. Bangladesh Ltd or its subscribers regarding port operation financial capabilities having been done before “approval” nor any technical or financial evaluation S.S.A. Bangladesh Limited, the purported “approval” and the action taken pursuant thereto are without lawful authority.

56. That it is submitted that four different companies expressed their intention for establishing private container terminal at Patenga through applications (Annexures _ G, I, M and N), and no competitive bidding procedure having been followed, the purported “approval” and the action taken pursuant thereto are without lawful authority.

57. That it is submitted that powers and functions of Chittagong port having been vested by the Chittagong Port Authority Ordinance 1976 in the Authority for the management, maintenance and development of Chittagong Port and for matters connected there with or incidental thereto within port limit, the purported “approval” and action taken pursuant thereto, disregarding, by-passing and circumventing the Authority and the provisions of the Ordinance are without lawful authority.

58. That it is submitted that Authority has its own conservancy and is controlled by a conservator and if a private container terminal is established within its port limit at Patenga, there will be dual administration contrary to the Ordinance.

59. That it is submitted that the lands of the alleged container at Patenga belong to different public authorities and are managed by distinct Laws and the respondent No.1 (the Ministry of Shipping) has no jurisdiction to take decisions regarding leasing of land of other Ministries and of all public, which could openly be done in accordance with law, by following the competitive bidding procedure through public auction.

60. It is submitted that the parliamentary standing committee of Ministry of Shipping in its recently concluded meeting has decided that without due compliance of tender formality there should not be establishment of private container at Chittagong Patenga point and the Government has been given necessary direction in this behalf but despite such direction of the parliamentary standing committee the respondents are proceeding to finalize the implementation agreement with SSA (Bangladesh) Ltd. If the respondent No.1 is allowed to proceed to sign implementation agreement in order to operate the impugned orders there will be no transparency in the executive acts of the Republic.

61. That being aggrieved by the impugned orders (Annexures – J, K, L) the petitioners served a demand of justice notice upon the respondents on 11.9.2000 to withdraw, cancel or rescind the impugned orders but to date received no reply. Photocopy of the said notice dated 11.9.2000 along with telegraphic receipt is annexed hereto and marked as Annexure – “Z”.

62. That the petitioner craves leave of this Hon’ble Court to file photocopies of annexures as the original are lying in the office of the respondents.

63. That under the circumstances as stated above the petitioners having no other equally efficacious remedy provided by law is constrained to move this application under Article 102 of the Constitution of the People’s Republic of Bangladesh on the following amongst other –

GROUND S

I. For that no feasibility study for private container terminal having been held by the experts and consultants as per request letter dated 9.6.1997 issued by the planning chief of Chittagong Port Authority (Annexure – “E”), the Government’s “approval” dated 28.4.1998 for establishing private container terminal at the mouth of the Karnaphully river S.S.A. (Bangladesh) Ltd is arbitrary and not in accordance with law, and this is without lawful authority.

II. For that there is no national policy, laws or rules for establishing private container terminal in Bangladesh, and the Government’s decision dated 28.4.1998 without any policy or guidelines for establishing private container terminal is arbitrary and without lawful authority.

III. For that Bangladesh being a member of Economic and Social Commission for Asia and the Pacific (ESCAP) having grossly disregarded the guidelines for private sector participation in ports and transparency with regard to the decision making process; consequently the purported approval and subsequent action of the Government are arbitrary and without lawful authority.

IV. For that there is no proper application of mind by the respondents nor considerations required by the Rules of Business framed under Article 55 of the Constitution for proper exercise of executive authority, inasmuch as the following actions have not been taken (a) identification of priority project (b) conduct pre-feasibility and assessment of commercial viability (c) identification of related infrastructure investments essential to viability of proposed project (d) preparation and publication of project outline (e) no preparation of summary of privatization parameters for distribution with project outline (f) preparation of pre-qualification advertisement (g) publication of advertisement (h) distribution of project outline (I) preparation of prequalification short list (j) preparation of bid documents (k) distribution of bid documents (l) evaluation of tenders and (m) negotiation with the top ranked bidder from the government. As such without following any action plan respondents’ actions are arbitrary, and without lawful authority, as well as violative of the provisions of Articles 27 and 31 of the Constitution.

V. For that no evaluation and tract record of the company that is previous experience of S.S.A. Bangladesh Ltd or its subscribers regarding port operation financial capabilities having been done before “approval” nor any technical or financial evaluation S.S.A. Bangladesh Limited, the purported “approval” and the action taken pursuant thereto are without lawful authority.

VI. For that four different companies expressed their intention for establishing private container terminal at Patenga through applications (Annexures _ G, I, M and N), and no competitive bidding procedure having been followed, the purported “approval” and the action taken pursuant thereto are without lawful authority.

VII. For that powers and functions of Chittagong port having been vested by the Chittagong Port Authority Ordinance 1976 in the Authority for the management, maintenance and development of Chittagong Port and for matters connected there with or incidental thereto within port limit, the purported “approval” and action taken pursuant thereto, disregarding, by-passing and circumventing the Authority and the provisions of the Ordinance are without lawful authority.

VIII For that Authority has its own conservancy and is controlled by a conservator and if a private container terminal is established within its port limit at Patenga, there will be dual administration contrary to the Ordinance.

IX. For that the lands of the alleged container at Patenga belong to different public authorities and are managed by distinct Laws and the respondent No.1 (the Ministry of Shipping) has no jurisdiction to

take decisions regarding leasing of land of other Ministries and of all public, which could openly be done in accordance with law, by following the competitive bidding procedure through public auction.

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

- A) Issue a Rule Nisi calling upon the respondents to show cause as to why the impugned order dated 28.4.1998 issued by the respondent No.4 (Annexure – J) in pursuant to Government approval dated 25.3.1998, Minutes of meeting of the coordination committee dated 16.6.1998 of the Ministry of Shipping (Annexure – K) and Memo dated 18.6.1998 issued by the respondent No.4 (Annexure-L) and the actions taken pursuant thereto should not be declared to have been made arbitrarily unconstitutional, without lawful authority and is of no legal effect;
- B) To stay operation of order dated 28.4.1998 issued by the respondent No.4 vide memo No.NOS/Planning-1/Chittagong-1/98-96 (Annexure-J) Minutes of the meeting dated 16.6.1998 of the co-ordination committee of the Ministry of Shipping (Annexure-K) and memo No.Mu-Ba Sha/Nirman-01/98-968/1 dated 18.6.1998 issued by the respondent No.4 (Annexure-L) and any action pursuant thereto;
- C) Upon hearing the cause shown if any, by the respondents to make the rule absolute;
- D) To award cost against the respondents;
- E) To pass any other or further order or orders as Your Lordships may deem fit and proper.

And for this act of kindness your humble petitioners as in duty bound shall ever pray.

A F F I D A V I T

I, Sunil Kanti Aich son of late Aswini Kumar Aich Head Assistant Department of Hydrography Bandar Bhaban, Chittagong Port Authority, Police Station Bandar, District Chittagong aged about 47 years by faith Hindu by Profession Service by nationality Bangladeshi by birth do hereby solemnly affirm and say as follows:

1. That I am the petitioner No.3 in the instant writ petition and letter of authority holder of the petitioner Nos 1, 2 and 4 as such am acquainted with the facts and circumstances of the case and am competent to swear this affidavit.

2. That the statements made in the foregoing paragraphs are true to the best of my knowledge and belief and the rests are submissions before this Hon'ble Court.

Prepared in my office.

Advocate.

DEPONENT

The deponent is known to me and identified by me.

Advocate.

Solemnly affirmed by the
Deponent before me at the
High Court premises on this
the day of September,
2000 at a.m./p.m.

Commissioner of Affidavits
Supreme Court of Bangladesh
High Court Division, Dhaka.

Tan/engg