

The Environment Court Act, 2010

(Act No. 56 of 2010)

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The Environment Court Act, 2010

(Act No. 56 of 2010)

[12 October 2010]

An Act to provide for the establishment of Environment Courts for speedy trial of offences relating to environment and for amending and consolidating the existing laws relating to the matters incidental thereto

Whereas it is expedient and necessary to provide for the establishment of Environment Courts for speedy trial of offences relating to environment and for amending and consolidating the existing laws relating to the matters incidental thereto;

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the Environment Court Act, 2010.

(2) It shall come into force at once.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

- (a) “Code of Civil Procedure” means the Code of Civil Procedure, 1908 (Act V of 1908);
- (b) “Inspector” means an Inspector of the Department of Environment or any other person authorized, by general or special order, by the Director-General, or any other person authorized to inspect or investigate under any other environmental law;
- (c) “environmental law” means this Act, the Bangladesh Environment Conservation Act, 1995 (Act No. 1 of 1995), any other law as the Government may, by notification in the official Gazette, specify for carrying out the purposes of this Act, and the rules made under these laws;
- (d) “Environment Court” means the Environment Court established under this Act;
- (e) “Environment Appellate Court” means the Environment Appellate Court established under this Act;
- (f) “Code of Criminal Procedure” means the Code of Criminal Procedure, 1898 (Act V of 1898);
- (c) “Director-General” means the Director-General of the Department of Environment;
- (h) “Special Magistrate” means the Special Magistrate appointed under section 5(2);

- (i) “Special Magistrate Court” means any Special Magistrate Court constituted under this Act.

3. Act to override any other law.- Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall have effect.

4. Establishment of Environment Courts.- (1) For carrying out the purposes of this Act, the Government may, by notification in the official Gazette, establish one or more Environment Courts in each district.

(2) An Environment Court shall consist of one judge, and the Government shall, in consultation with the Supreme Court, appoint an officer of the Judicial Service of the rank of a Joint District Judge and the said judge shall, in addition to the cases falling within his ordinary jurisdiction, dispose of the cases falling within the jurisdiction of an Environment Court.

(3) Each Environment Court shall have its seat at the district headquarter:

Provided that the Government may, if it considers necessary, by general or special order published in the official Gazette, specify the places where the Court may hold its sittings anywhere within the administrative district.

(4) If more than one Environment Courts are established in any district, the Government shall, by notification in the official Gazette, specify the territorial jurisdiction of each Court.

5. Establishment of Special Magistrate Courts.- (1) For carrying out the purposes of this Act, the Government may, by notification in the official Gazette, establish one or more Special Magistrate Courts in each district.

(2) The Government may, in consultation with the Supreme Court, appoint any Metropolitan Magistrate or Judicial Magistrate of the first class as a Special Magistrate for any specified area to dispose of all the offences mentioned in the environmental laws, exclusively or in addition to his ordinary function.

6. Jurisdiction of Special Magistrate Courts.- (1) Notwithstanding anything contained in any other law, the Director-General or any other person authorized by him may institute cases directly in a Special Magistrate Court or lodge complaint in a police station according to Code of Criminal Procedure for trial of all offences under environmental law.

(2) The Special Magistrate Court may pass any sentence prescribed for offences under environmental law including for offences under section 9 of this Act, issue an order to confiscate or dispose of any equipment or part thereof, any transport used in the commission of such offence or any article or other thing involved with the offence, and in appropriate cases, may pass an order or decree for compensation; and in addition, the said court may, in the same judgment, make all or any of the following orders keeping in view of the circumstances of the offence or relevant facts, namely:-

- (a) issuing a direction to the offender or any other person concerned not to repeat or continue the act for doing or omitting the offence which has been committed;

- (b) issuing a direction to the offender or any other person concerned to take such preventive or remedial measures in relation to the damage already happened or likely to happen to environment as the court may consider appropriate keeping in view of the circumstances of the offence or the relevant facts;
- (c) in case of direction to take any measure under clause (b), specifying a time-limit and issuing direction to submit a report on the implementation of such direction to the Director-General or other appropriate authority:

Provided that where a direction under clause (b) or (c) is issued, the person so directed may, within 15 (fifteen) days from the date of giving the decision, apply for a review of such direction and the court shall, after giving the Director-General a reasonable opportunity of being heard, dispose of the application within next 30 (thirty) days.

(3) No Special Magistrate Court shall take cognizance of an offence except on the written report of an Inspector:

Provided that if the Special Magistrate Court is satisfied on the basis of an application that the concerned Inspector has been requested to accept the complaint of an offence but he did not take necessary action within next 60 (sixty) days or there are reasonable grounds for accepting such complaint, it may, after giving the Inspector or Director General a reasonable opportunity of being heard, take the cognizance of such complaint and concerned offence without such written report or direct the Inspector to investigate the offence, if he deems fit.

7. Jurisdiction of Environment Court.- (1) Notwithstanding anything contained in any other law, the cases received from the Special Magistrate for trial of offences under the environmental law shall be tried and disposed of by the Environment Court in accordance with the provisions of this Act.

(2) A suit for compensation under the environmental law shall have to be filed directly with the Environment Court in accordance with the provisions of this Act and such court shall take cognizance and hold proceedings for trial and disposal of it.

(3) The Environment Court may pass any sentence prescribed for offences under the environmental law including under section 8(2) of this Act, issue an order to confiscate or dispose of any equipment or part thereof, any transport used in the commission of such offence or any article or other thing involved with the offence, and in appropriate cases, may pass an order or decree for compensation; and in addition, such court may, in the same judgment, make all or any of the following orders keeping in view of the circumstances of the offence or relevant facts, namely:-

- (a) issuing a direction to the offender or any other person concerned not to repeat or continue or, the act for doing or omitting the offence which has been committed;
- (b) issuing a direction to the offender or any other person concerned to take such preventive or remedial measures in relation to the damage already happened or likely to happen to environment as the court may consider appropriate keeping in view of the circumstances of the offence or the relevant facts;

- (c) in case of a direction to take any measure under clause (b), specifying a time-limit and issuing direction to submit the report on the implementation of such direction to the Director-General or other appropriate authority:

Provided that where a direction under clause (b) or (c) is issued, the person so directed may, within 15 (fifteen) days from the date of giving the decision, apply for review of such direction and the court shall, after giving the Director-General a reasonable opportunity of being heard, dispose of the application within next 30 (thirty) days.

(4) No Environment Court shall take cognizance of any claim for compensation under environmental law except on the written report of the Inspector:

Provided that if the Environment Court is satisfied on the basis of an application that the concerned Inspector has been requested to accept a claim for compensation, but he did not take necessary action within next 60 (sixty) days and there are reasonable grounds for accepting such complaint or claim, it may, after giving the Inspector or Director General a reasonable opportunity of being heard, take the cognizance of claim for compensation without such written report or direct the Inspector to investigate the claim if he deems fit.

8. Penalty for violating direction of the court.- (1) if any person-

- (a) violates an order issued under section 6(2) by a Special Magistrate by repeating or continuing which offence he shall be liable to be punished with the penalty prescribed for such offence, but such penalty shall not be less than the one imposed on him at the time of issuance of the direction;
- (b) violates a direction issued under section 6(2) by a Special Magistrate, the violation shall be a separate offence for which he shall be liable to be punished with imprisonment for a term not exceeding 5 (five) years, or with fine not exceeding Taka 5 (five) lakh.

(2) If any person-

- (a) violates an order issued by a court under clause (a) of section 7(3) by repeating or continuing which offence, he shall be liable to be punished with the penalty prescribed for such offence, but such penalty shall not be the less than the one imposed on him at the time of issuance of the direction;
- (b) violates an order issued under clause (b) or (c) of section 7(3), the violation shall be a separate offence for which he shall be liable to be punished with imprisonment for a term not exceeding 5 (five) years, or with fine not exceeding Taka 5 (five) lac.

9. Trial of offences by the Special Magistrate.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, the Special Magistrate appointed under sub-section (2) of section 5 may pass a sentence with imprisonment for a term not exceeding 5 (five) years, or with fine not exceeding Taka 5 (five) lac, or with both, or issue an order to confiscate, destroy or dispose of anything.

(2) If any offence is so combined with the offence under the environment law that for the end of justice both offences require together in the same proceeding, then the offence under other law shall be triable in the court of Special Magistrate together in the same proceeding if that very offence is triable by a Magistrate, and if the offence is triable by any other court or tribunal, then the Special Magistrate shall transfer the case to the concerned court or tribunal.

10. Procedure of trial in the Special Magistrate Court.- (1) No witness present before the court of Special Magistrate who is called for by the court shall be returned or released without taking his evidence:

Provided that where the hearing of any case or the taking evidence starts in the last hour of the daily working hour of the court, such hearing or taking evidence may continue even after the working hour.

(2) The Special Magistrate Court shall conclude the trial within 180 (one hundred eighty) days from the date of framing charge.

(3) Where the trial is not concluded within the time-limit prescribed in sub-section (2), the Special Magistrate Court shall record the reason for not concluding the trial and within 15 (fifteen) days after expiry of such 180 (one hundred eighty) days, inform the Environment Appellate Court of the matter and shall complete the trial of the case within 90 (ninety) days after the expiry of such 180 (one hundred eighty) days, but if a case is not completed within the said extended period, the Director-General or any officer or lawyer authorised by him in this behalf may apply to the Environment Appellate Court, within 15 (fifteen) days after the expiry of the extended period, to transfer the case to another Special Magistrate Court and the Environment Appellate Court, on the basis of such application, may pass an order to transfer the case.

(4) The Special Magistrate Court to which any case is transferred under sub-section (3) shall not commence the trial afresh, rather the court shall complete the remaining proceeding which remained unfinished by the preceding Special Magistrate Court and shall complete the trial within 90 (ninety) days from the date of receiving record of the case.

(5) If the trial of a case is not concluded within the time-limit prescribed in sub-sections (2), (3) and (4), the Environment Appellate Court shall, after 60 (sixty) days of expiry of the said time-limit, determine who are responsible for such delay after holding or causing to hold an inquiry and on the basis of such inquiry, shall recommend the concerned authority for taking legal action against the person liable and the said authority shall submit a report to the Environment Appellate Court the action and outcome taken on the basis of such recommendations in the form of a report within 60 (sixty) days from the date of receiving such recommendations.

11. Power of entry, search, etc.- (1) For the purpose of conducting an inspection of any matter or investigation of an offence under the environmental law, or when directed by the Director-General or the Environment Court for assessing compensation payable under this Act, the Inspector may, at any reasonable time, enter any place, search into, or seize anything or collect samples of anything, or inspect any place.

(2) For the purposes of sub-section (1), an Inspector may, wherever he considers necessary, apply to the Environment Court or to any Special Magistrate for issuing a search warrant in accordance with the Code of Criminal Procedure.

(3) The Inspector shall, follow the provisions of the Code of Criminal Procedure and the relevant provisions of the environmental law and rules in conducting any search, seizure or inspection under this section.

12. Procedure for inquiry, filing of case and investigation.- (1) An offence under the environmental law shall ordinarily be investigated by an Inspector, but the Director-General may, by a general or special order, authorize any other officer subordinate to him to investigate any particular kind of offence or any specified offence.

(2) The Inspector or other officer, hereinafter referred to as the investigating officer shall, on the basis of a written complaint or any other information, initiate proceeding under this section after obtaining approval of the officer authorized in this behalf by the Director-General.

(3) The investigating officer shall, before initiating a formal investigation of an offence, inquire into, and collect necessary information about the offence, prepare a preliminary report thereon and present it to a higher officer authorized in this behalf by the Director-General and the second mentioned officer shall, upon consideration of the relevant facts and circumstances, give his decision within 7 (seven) days as to whether a formal investigation or any other action under the environmental law concerned or this Act or rules relevant thereto may be initiated or whether no action at all is necessary and accordingly subsequent action shall be taken.

(4) If any decision on the basis of preliminary report is taken to initiate a formal investigation under sub-section (3), the investigating officer shall submit a complaint to the concerned police station, and it shall be recorded in the police station as a First Information Report (FIR) and thereafter such investigating officer or any other officer authorized by the Director-General, as the case may be, shall conduct the investigation and he shall be deemed to be the investigating officer of the relevant case.

(5) While investigating an offence, the investigating officer may, where applicable, exercise the same power as an Officer-in-Charge of a police station can exercise under the Code of Criminal Procedure, and he shall, subject to this Act and the rules relevant thereto, follow the provisions of the Code of Criminal Procedure.

(6) Any statement recorded, article seized, sample or other information collected at the inquiry stage conducted before formal investigation may be considered and used for the purpose of formal investigation.

(7) The investigating officer shall, after completion of the investigation, obtain the approval of an officer authorized by the Director-General in this behalf and submit the original copy of the report of investigation and the original or attested copies of the supporting documents directly to the Environment Court or, as the case may be, to a Special Magistrate Court, and shall also keep one copy at his office and submit another copy to the concerned police station, and such report shall be deemed to be a police report submitted under section 173 of the Code of Criminal Procedure:

Provided that, if the original copy of any document cannot be submitted before the court, the explanation thereof in details shall be submitted to the court along with the report.

(8) Notwithstanding the provisions of sub-section (3) where the investigating officer has reason to believe that any document, article or equipment connected with an offence is likely to be removed or destroyed, he may, even before a decision of formal investigation

under such sub-section, or at the time of conducting an investigation or inquiry, seize the document, article or equipment as the case may be.

(9) If any offence is so combined with the offence under the environmental law that for the end of complete justice, both the offences require investigation and trial together or in the same proceeding, the offence not under environmental law combined with the environmental law may be investigated by the investigating officer mentioned in sub-section (4).

(10) The Government may confer upon any officer or a class of officers other than the officers of the Department of Environment with the duty to conduct inquiry of the offences under environmental law, institute case and submit report after holding investigation.

(11) While a Mobile Court is conducted by the Special Magistrate, the Inspector or any officer authorized in this behalf by the Director-General or the officer empowered in this behalf by the Government may, without following the formalities mentioned in this section, make complaint directly to the Special Magistrate as to the commission of an offence under the environmental law and the Special Magistrate, on the basis of such complaint, may take cognizance of the said offence and try it or send the case for trial, as the case may be.

13. Taking assistance from the law enforcing agencies and other authorities.- For carrying out the purposes of sections 12 and 13, the investigating officer may request any law enforcing agency or other government authority or statutory organizations for assistance and the authority or organization shall accordingly provide with such assistance.

14. Procedure and power of Environment Court.- (1) Unless otherwise provided in this Act, the provisions of the Code of Criminal Procedure shall be applicable in case of lodging a complaint about an offence under this Act and trial thereof and the Environment Court shall be deemed to be a Criminal Court, and for trial and disposal of a case, it shall follow the procedures specified for disposal of a case by the Sessions under the Code of Criminal Procedure.

(2) The Environment Court shall be competent to order the investigating officer or other person to hold further investigation of the offence in relation to which a case is pending before it and also to specify the time-limit for submission of the report of such further investigation.

(3) The Environment Court shall be competent to exercise any power conferred on it by this Act or the environmental law.

(4) A case triable by an Environment Court shall be conducted by a lawyer appointed by the Director-General and the lawyer so appointed shall be deemed to be the Special Public Prosecutor in case of criminal offences and, the Special Government Pleader in case of suits of civil nature:

Provided that the Inspector or an officer authorized by the Director-General may assist the said lawyer in conducting the case and if necessary may make his submission before the court.

(5) If any offence is so combined with the offence under the environmental law that for the end of justice, both the offences require trial together or in the same proceeding, the offence under other laws shall be triable in the Environment Court.

(6) Subject to provisions of this Act, the provisions of Code of Civil Procedure shall be applicable to the trial and disposal of a case relating to compensation, and the Environment Court shall, for the purpose of trial and disposal of a suit for compensation, be deemed to be a Civil Court and shall be competent to exercise all the powers of a Civil Court.

(7) No witness present before the court who is called for by the Environment Court shall be returned or released without taking evidence; however, where the hearing of any case or taking evidence starts in the last hour of the daily working hour of the court, such hearing or taking evidence may continue even after the working hour.

(8) The Environment Court shall conclude the trial within 180 (one hundred eighty) days from the date of framing charge in respect of an offence and from the date of framing issues in respect of claim for compensation.

(9) Where the trial is not concluded within the time-limit prescribed in sub-section (8), the Environment Court shall record the reason for not concluding trial and within 15 (fifteen) days after expiry of 180 (one hundred eighty) days, inform the Environment Appellate Court of the matter and shall conclude the trial of the case within 90 (ninety) days after the expiry of such 180 (one hundred eighty) days:

Provided that if the proceeding of any case is not concluded within the said extended period, the Director-General or any officer or lawyer authorized by him this behalf may apply to the Environment Appellate Court within 15 (fifteen) days after the expiry of such extended period to transfer the relevant case to other Environment Court and the Environment Appellate Court, on the basis of such application, may pass an order to transfer the case.

(10) The Environment Court to which any case is transferred under sub-section (9) shall not commence the trial afresh, rather the court shall complete the remaining proceeding which remained unfinished by the preceding Environment Court and shall complete the trial within 90 (ninety) days from the date of receiving the record of the case.

(11) If the trial of a case is not concluded within the time-limit prescribed in sub-sections (8), (9) and (10), the Environment Appellate Court shall, within 60 (sixty) days after the expiry of the said time-limit, determine who is responsible for such delay after holding an inquiry and on the basis of such inquiry, shall recommend the concerned authority for taking legal action against the person liable.

(12) The said authority shall submit to the Environment Appellate Court the action and outcome taken on the basis of such recommendations in the form of a report within 60 (sixty) days from the date of receiving such recommendations under sub-section (11).

15. Power to give cost or compensation out of fines.- (1) The Special Magistrate Court or Environment Court may, in its judgment, pass an order to the effect that the amount spent by the prosecution in conducting the case or, as the case may be, the compensation to the persons or institutions affected by the commission of the offence under trial in such case may be paid out of the money realized from the person or institution sentenced with fine.

(2) If any claim for compensation is so connected with an offence under the environmental law in such a manner that the trial of the offence and the claim need to be held in the same proceeding, then the Environment Court shall try the offence first, and if giving compensation as fine of the offence is not appropriate or sufficient, the application for compensation may be considered separately.

16. Procedure for realization of fine.- The amount of fine or compensation imposed by the Special Magistrate Court or the Environment Court upon a person or institution found guilty, or any other amount of money apart from the fine or compensation charged by the said court to any of the party shall be realized in accordance with the provisions of sections 386 and 387 of the Code of Criminal Procedure.

17. Power of inspection by Environment Court.-(1) If, at any stage of the trial of a case, any question arises regarding any property, thing or place of occurrence of an offence, the Environment Court may inspect the property, thing or the place of occurrence after serving due notice on the parties or the lawyer appointed by them as to the place and time of inspection.

(2) During inspection or immediately thereafter, the Judge shall record the result of the inspection in the form of memorandum and such memorandum shall be considered as evidence in the trial of the case.

18. Compounding of offence.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, certain offences under the Bangladesh Environment Conservation Act, 1995 (Act No. 1 of 1995) may, subject to the satisfaction of the Director-General, be compounded in the following manners, namely:-

- (a) in case of committing an offence for the first time resulting from non-compliance of a direction issued under sub-section (2) or (3) of section 4 of the said Act, if a compliance report is submitted after complying the said direction and a minimum fine of 50 (fifty) thousand Taka is paid;
- (b) in case of offence for the first time resulting from the violation of sub-section (4) by continuing or initiating activities or processes prohibited under sub-section (1) of section 5 of the said Act in any area declared as an ecologically critical area, if undertaken, after stopping permanently and not to reopen the prohibited act or processes, is submitted and a minimum fine of 50 (fifty) thousand Taka is paid;
- (c) if the Director-General or an officer authorized by him in this behalf being prima facie satisfied with the compliance report or, as the case may be, the undertaken in case of sub-section (a) or (b), submits a written report to the court that the case has been compounded within 5 (five) working days from the date of submission of compliance report or, as the case may be, the undertaking and payment of fine, whichever is later.

(2) The cases mentioned in sub-section (1) may also be compounded during investigation after filing of the case, during preparation for trial after submission of police report, during trial and at the stage of appeal or revision.

(3) If, in any case, a report of compounding any offence is submitted by the Director-General to the court or, as the case may be, the Appellate Court, the court shall, if it accepts the report, conclude the trial of the case from the stage where it is, and the accused, if in custody, shall be released, discharged from bail bonds if on bail, and the warrant of arrest issued upon the accused shall be recalled cancelling it.

19. Appeal.- (1) Notwithstanding anything contained to the contrary in the Code of Civil Procedure or the Code of Criminal procedure, no question shall, except in accordance with the provisions of this Act, be raised before any court or other authority on the proceeding, order or decision of, or a decree of compensation passed and penalty imposed by, the Environment Court.

(2) Any party aggrieved by a judgment or a decree of compensation passed, or a penalty imposed, by the Environment Court may prefer an appeal to the Environment Appellate Court established under section 20 within 30 (thirty) days from the date of the passing the judgment, decree of compensation or penalty, or the order of dismissal of a civil suit or an order specified in sub-section (3).

(3) An appeal or revision may lie to the Environment Appellate Court against an order of interim or temporary injunction, an order to maintain status quo, an order granting or refusing bail, order of framing charge or discharge, and an order of taking cognizance of an offence or refusal thereof passed by an Environment Court, and no other interim order shall be appealed against or the legality or propriety thereof shall be called in question before the Environment Appellate Court or any other court.

(4) An appeal or revision may lie to the Environment Appellate Court against an order of conviction or acquittal, an order granting or refusing bail, and order of framing charge or discharge, and an order of taking cognizance of an offence or refusal thereof passed by a Special Magistrate, and no other order shall be appealed against or the legality or propriety thereof shall be called in question before the Environment Appellate Court or any other court.

(5) Notwithstanding anything contained in sub-section (1), a party aggrieved by a judgment or decree passed by an Environment Court in a suit for compensation shall not be entitled to prefer an appeal against the said judgment or decree without depositing 25% (twenty five percent) of the decreed amount with the court which passed the decree.

20. Environment Appellate Court.- (1) For carrying out the purposes of this Act, the Government shall, by notification in the official Gazette, establish one or more Environment Appellate Courts.

(2) An Environment Appellate Court shall consist of one judge and, in consultation with the Supreme Court, the Government shall-

- (a) appoint an officer of the judicial service of the rank of District Judge to dispose of cases in such court; or
- (b) if it considers necessary, appoint a District and Sessions Judge of a district to act as the Judge of an Environment Appellate Court for a specified area in addition to his ordinary duties.

(3) For the purpose of disposal of appeals relating to offences, the Environment Appellate Court may exercise all the powers of a Sessions Court as an Appellate Court under the Code of Criminal Procedure.

(4) For the purposes of disposal of an appeal relating to a suit for compensation, the Environment Appellate Court may exercise all the power of an Appellate Court under Code of Civil Procedure.

21. Transfer of cases.- The Environment Appellate Court may, on an application or other information,-

- (a) transfer a pending case or retransfer such a case from one Environment Court to another Environment Court subordinate to it;
- (b) transfer a pending case or retransfer such a case from one Special Magistrate Court to another Special Magistrate Court or to an Environment Court subordinate to it.

22. Pending cases.- A case under the environmental law pending in any court immediately before the commencement of this Act shall be continued and be disposed of in such court as if this Act had not been enacted.

23. Power to make rules.- For carrying out the purposes of this Act, the Government may, by notification in the official Gazette, make rules.

24. Repeal and savings.- (1) The Environment Court Act, 2000 (Act No. 11 of 2000) is hereby repealed.

(2) Despite such repeal, anything done or any action taken under the repealed Act shall be deemed to have been done under the provisions of this Act, notwithstanding anything contained in this Act.
