

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

IN THE MATTER OF:

An application under Article 102(2)(a)(i) and (ii) of the Constitution of the People's Republic of Bangladesh.

And

IN THE MATTER OF:

Bangladesh Environmental Lawyers Association (BELA), represented by its Director (Programs) Syeda Rizwana Hasan, having office at House No. 15A, Road No. 3, Dhanmondi R/A, Dhaka 1205.

.... Petition.

Versus

Bangladesh, represented by the Secretary, Ministry of Shipping Bangladesh Secretariat, Ramna, Dhaka others.

.... Respondents.

Mr. Fida M. Kamal with
Mr. M. Iqbal Kabir, Advocate

... For the Petition.

Ms. Syeda Rizwana Hasan, Advocate

... In Persons.

Mr. Md. Nazrul Islam Talukder, Deputy Attorney General with
Ms. Nowazish Ara Begum, Assistant Attorney General.

.... For the respondent No. 6.

Mr. Md. Oziullah with
Ms. Amatul Karim, Advocate.

.... For the respondent No. 17.

Ms. Fawzia Karim Firoze, Advocate.

.... For the respondent No. 8.

Heard on: 02.02.2009, 03.02.2009, 05.02.2009, 08.02.2009, 10.02.2009, 12.02.2009 & 23.02.2009.

Judgment on 05.03.2009 & 17.03.2009.

Present

Mr. Justice Md. Imman Ali

And

Mr. Justice Sheikh Abdul Awal.

(Operative Portion of Order).

In the light of the above, we draw the following conclusions;

With regard to import of vessels for scrapping generally;

1. Decommissioned sea-going vessels, including end-of-life single-hull oil tankers which have been destined for disposal/recycling, are being sent from European and other countries to be dismantled in Bangladesh without first being decontaminated of hazardous materials as is required by the Basel Convention.
2. Vessels enlisted in the Greenpeace list of vessels containing hazardous materials are being imported on false representation both by the sellers as well as by the importers.
3. Ministry of Shipping through its Department of Shipping is allowing import of hazardous waste (namely vessels meant for scrapping which are classified as waste within the meaning of the Basel Convention) and vessels containing hazardous materials, without proper scrutiny, in flagrant disregard to the safety and security of workers in the shipbreaking yards as well as demonstrating blatant indifference to the integrity of the environment and humans who live in the vicinity of the shipbreaking yards and other citizens of the country and having no consideration for the flora and fauna and ecological balance which are also seriously affected by toxic pollutants generated by the dismantling process.

Import of vessel MT Enterprise:

1. Respondent No. 17, Madina Enterprise initially obtained the NOC for import of vessel MT Enterprise from the Department of shipping by misrepresenting the fact that the vessel was not enlisted on the Greenpeace list of vessels containing hazardous materials, and that it did not contain any hazardous materials.

2. The Department of Shipping issued the NOC for the import of MT Enterprise without exercising due diligence, in a manner which can be termed as subterfuge.

3. The Survey Committee appointed by the Department of Shipping was not representative of the relevant persons, inasmuch as the Department of environment, being a vital component, was totally ignored.

4. The terms of reference of the Survey commissioned by the Department of Shipping appears to be self-serving, motivated and misconceived and does not reflect the real purpose of such survey. The test applied was illogical and the findings of the Committee are unacceptable in view of independent reports regarding similar oil tankers, which lead us to doubt the bona fides of the intention of those instigating and conducting the survey.

5. Having found that at least some hazardous materials exist on board, it was inappropriate to allow the vessel to beach without first ascertaining the capability of the ship breaker to handle the hazardous materials adequately ensuring the safety of the workers and wellbeing of the environment.

6. The way in which the earlier writ petition, W. P. No. 6262 of 2008, was caused to be disposed and the way in which the cancellation of the NOC was withdrawn, as if the Court ordered the withdrawal, was demonstration of ingenuity on the part of the Department of Shipping.

With regard to shipbreaking yards operating without prior clearance certificates;

1. Shipbreaking is an industry as defined in section 2(61) of the Environment Protection Act, 1986.

2. Admittedly, respondent No. 17, Madina Enterprise has dismantled the vessel MT Enterprise without obtaining any Environmental Clearance.

3. The Shipbreaking yards which are habitually allowing scrapping of vessels, which they import themselves or which are imported by others and are dismantled on their premises are required by law to obtain prior Environmental Clearance from the Department of Environment.

4. Where the premises are not ordinarily used for shipbreaking, but where importers scrap vessels imported by them, the importer is required to obtain prior Environmental Clearance to proceed with the scrapping as a project.

5. According to the report of the Ministry of Environment and Department of Environment 36 shipbreaking yards in the Chittagong area have been and are operating the process of dismantling ships and other sea-going vessels in flagrant violation of the existing laws of the land which require prior Environmental clearance from the Department of Environment.

5. The department of Environment has failed miserably in its duty to enforce the law, having all the powers to do so as given by the *envsja'k cwi#ek msi¶Y AvBb*, 1995 and the Rules framed thereunder.

in view of the above conclusions, we hereby issue the following directions:

1. So far as the vessel M. T. Enterprise is concerned the injunction on further dismantling of the ship will continue until such time as the respondent No. 17 obtains a clearance certificate from the Department of Environment for the purpose of dismantling the remainder of the vessel.

2. The Ministry of Environment and Department of Environment are directed to immediately take steps to ensure closure of all shipbreaking yards which are operating without necessary Environmental Clearance as required by law.

3. The law-enforcing agencies, including the Police, Magistracy and local administration are directed to accord cooperation and assistance to the Department of Environment as enjoined by section 4(ka) of the *envsja'k cwi#ek msi¶Y AvBb*, 1995 in ensuring the closures of shipbreaking yards operating without prior clearance from the Department of Environment.

4. The Department of Environment is directed to the compliance within 2(two) weeks giving details of what steps they have taken in this regard.

5. If and when the shipbreaking yards or any importer of any vessel apply for clearance certificate, then the Department of Environment shall deal with the application expeditiously and supply the clearance certificate only upon satisfaction that all the facilities required for proper dismantling of the vessels, taking into consideration whether safety measures for the workers and the conservation of the environment and in particular disposal of hazardous waste generated by the dismantling process, are in place.

6. The Ministry of Environment is hereby directed to frame Rules and regulations for the proper handling and management of hazardous materials and wastes, keeping in view the [evsjv`k cwi`ek msiY AvBb, 1995 [Environment Conservation Act, 1995], the Rules framed thereunder, the Basel Convention, 1989 the Factories Act, 1965 and evsjv`k k`ag AvBb [Labour Act, 2006]

7. Thereafter the Ministry of Environment is directed to file compliance in this regard within 3(three) months from receiving a copy of the judgment.

8. The Ministry of Shipping and Department of Shipping are directed to ensure that hazardous vessels enlisted in the Greenpeace list of vessels containing hazardous materials are not imported into the country and when such vessels are imported after having been decontaminated at source or outside the territory of Bangladesh, that prior Environmental clearance has been obtained on showing that adequate safety and precautionary measures have been taken for their dismantling in accordance with law.

9. The Government is directed to set up a High Level Technical Committee comprising representatives from the Ministry/Department of Shipping, the Ministry/Department of Environment, Ministry of Labour and Manpower, Retired Naval officers, Academicians/Experts in the field of Marine Engineering, Marine Biology Specialists in the field of Environment, Soil Science and Ecology, Hazardous Waste Management and relevant NGOs, such as BELA.

Let the concluding portion of the Judgment and order along with the directions above be communicated to the respondents namely, respondent No. 5, Secretary, Ministry of Environment and Forest respondent No. 6, Director General, Department of Environment, respondent No. 1, Secretary, Ministry of Shipping, respondent No. 8, Director General, Department of

Shipping, and respondent No. 17, Proprietor, Madina Enterprise at once by a special Messenger of this Court at the cost of the petitioner.

Md. Imman Ali

Sk. A. Awal.