

Synopsis of Writ Petition No. 8466 of 2017

Case Filed: 06.06.2017

Court: Hon'ble High Court Division of the Supreme Court of Bangladesh

High Court Bench: Mr. Justice Syed Refaat Ahmed and Mr. Justice Md. Salim

Judgment Date: 14.11.2019

Parties of the Case

Bangladesh Environmental Lawyers Association (BELA) (Petitioner)

VS

Bangladesh represented by the Secretary, Ministry of Industries, Bangladesh Secretariat, P.S.
Ramna, Dhaka.

-and-

Seventeen others.....(Respondents)

This writ petition (which is Public Interest Litigation-PIL in nature) was filed against the above mentioned Respondents under Article 18A, 31, 32 of the Constitution of the People's Republic of Bangladesh; the Bangladesh Conservation Act 1995 and rules of 1997 made thereunder; the Right to Information Act 2009, Atomic Energy Regulation Act, 2012; Bangladesh Nuclear Safety and Radiation Control Rules, 1997; the Ship Breaking and Recycling Rules, 2011; the Hazardous Wastes and Ship Breaking Wastes Management Rules 2011; the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989; Import Policy Order, 2015-2018 and other applicable laws, regulations and policies.

1. The Petitioner is an Environmental Lawyer's Association of Bangladesh, popularly known as BELA. The main objective of BELA is to promote and ensure the environmental justice in Bangladesh.
2. This writ was filed against the Respondents on 06.06.2017 for their actions which has allowed Jananta Steel Corporation (a Ship Breaking Yard, which is Respondent No. 17 of this writ) in importing, beaching and breaking of a scrapped ship, named, North

Sea Producer (renamed MT. Producer) which was jointly owned by Danish Shipping Company Maersk and Odebrecht. As per the petition, this vessel has served more than 33 years and sold off in 2016 as MT. Producer for an alleged record sale price of BDT 51,82,77,572.00 (Bangladeshi Taka fifty-one crore eighty two lac seventy seven thousand five hundred and seventy only) to Janata Steel Corporation. [1 Danish Krone = 12.56 Bangladeshi Taka]

3. Upon receipt of the news from various sources that the said vessel is contaminated with radioactive materials such as Uranium, Thorium, Potassium, Radium, Radon and also daughter products from radio nuclides that emit alpha and beta particles well as gamma rays, such writ petition was filed by the Petitioner Association. The Petitioner claimed that they were seriously aggrieved by the fact that:
 - i) NOC was granted by the Ministry of Industries for import of MT. Producer
 - ii) Permission was given by the Ministry of Industries for dismantling MT. Producer.
 - iii) Report given by the Department of Environment regarding this vessel highlighting no radioactive substance found.
 - iv) No Environment Clearance was issued in favour of Janata Steel Corporation
 - v) No Inspection was made for dismantling this vessel.
 - vi) No Regulation and legal procedures was followed for dismantling this ship.
4. The Petitioner also referred investigation reports of DANWATCH and a Brussels-based NGO named Shipbreaking Platform which says that the Janata Steel Corporation has deficiency in safety measures and the owner of this Ship Yard has violated the existing rules and judicial pronouncement in importing this vessel. The petitioner alleged that such act of the yard owner and collusive acts and omissions have definite threats to the safety and security of the nation and are liable to strictest sanctions.
5. That based on the facts, evidence, reports and submission, the Petitioner prayed in this writ in the following manner:
 - a) To issue Show cause to the Respondents as to why various permissions, NOCs, clearance, renewal given by them in favour of Janata Steel Corporation should not be declared illegal;
 - b) Both the Seller/Owner and Importer of the Vessel should be subject to stringent punishment;

- c) To engage impartial and foreign experts at the cost of Importer of the Vessel to ensure safe dismantling of the said vessel;
 - d) To order an interim injunction against the breaking of the vessel MT. Producer;
 - e) Appoint impartial and foreign experts recommended by Bangladesh Atomic Energy Regulatory Authority to assess waste flow and radioactive contamination of the vessel;
 - f) And pass any other order as the court may seem fit and proper.
6. In total 46 dates were fixed for hearing for this writ petition [A copy of the online cause list of the Hon'ble Court listing out the dates is annexed as **Annexure -I** for your reference]. On 09.10.2017 a stay was granted against the NOC given by the Ministry of Industries for dismantling this ship. By another supplementary petition pending this writ petition, the same petitioner sought injunction on this ship breaking and after hearing the petitioner Hon'ble High Court passed an order imposing restrictions on scrapping MT Producer at the ship-breaking yard till October 5, 2017.
7. On 14 November, 2019 the Hon'ble High Court delivered the final judgment disposing of this matter. This judgment includes multiple directions and orders addressing different Government Authorities. As per the concerned bench officer of the Hon'ble High Court Division, the judgment is not yet reduced into writing by the Hon'ble judges and as such the copy of the judgment is not yet signed and hence not available.
8. However, one of the most prominent and reliable newspaper of Bangladesh named "**The Daily Star**" published news on 15.11.2019 i.e. the next day of pronouncing the judgment. The relevant portions of the newspaper report in relation to the judgment is described below:

The High Court declared that the permission given for importing, beaching and scrapping of radiation-contaminated vessel MT Producer was illegal. No ship can be imported and beached at the ship-breaking yards violating the conditions of environmental clearance. Every domestic and international law has been violated in this case. The court asked the Health Physics and Radioactive Waste Management Unit (HPRWMU) of Bangladesh Atomic Energy Commission

(BAEC) to adopt an action plan to complete 100 percent scrutiny of the contamination and wastes in the MT Producer. The action plan will be developed under the supervision of BAEC, Bangladesh Atomic Energy Regulatory Authority and Mega Port Authority and in presence of a senior scientist. Janata Steel Corporation, which imported the ship, should bear the cost of scrutinising, but would not be allowed to participate in the process. As per the environment conservation law, the Department of Environment can order Janata Steel Corporation to compensate for polluting the environment by violating the conditions of the environmental clearance.

High Court ruled that the buyers and the agencies that certify whether the ships are free from contamination and hazardous wastes must be listed and controlled strictly by the relevant laws. Steps will have to be taken to regulate the import of ships from the countries that operate ships in violation of international laws. The Judges also ordered the Department of Environment (DoE) not to allow any import and beaching of any ship for breaking without getting complete and detailed information about their waste. The DoE must follow the rules of domestic and international laws in this regard.

9. Another Newspaper named **The Business Standard** published news on the judgment on 15.11.2019 which is described below:

The Court asked the government to prepare a list of the cash buyers and other agencies concerned that give certificates whether any ship is free from contamination and hazardous wastes. The government has also been asked to control their activities strictly with enforcement of the relevant laws. To get authentic information if the ships contain toxic wastes, the court said the government should take necessary measures to control the import of ships from the countries holding "Gray" and "Black" flags (Comoros, Palau, Cambodia, Tanzania, Vanuatu, St. Kitts and Nevis, Belize, Cook Islands, Sierra Leone, Togo and so on).

10. For your reference the links of the Newspaper publications are given below:

<https://www.thedailystar.net/backpage/news/import-toxic-ship-mt-producer-illegal-hc-1827265>

<https://tbsnews.net/bangladesh/court/ships-scrap-cannot-be-imported-without-environmental-clearance-high-court>

11. The photocopy of the writ petition along with the order dated 08 June, 2017 as collected by us from the court is annexed and marked as **Annexure-II**. As stated above as the judgment dated 14.11.2019 has not yet been prepared and hence the same could not be collected.

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