



11/3/2010, 11/3/2010, 11/3/2010, 16/3/2010, 16/3/2010

IN THE SUPREME COURT OF BANGLADESH.

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 7260 OF 2008.

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:

Impugned letter/No. Objection Certificate (NOC) dated 27.07.08 vide memo No. Environment-60/Ship Import/06/Part-19/3430 issued by the office of respondent No. 8 and the subsequent attempted entry of M.T. Enterprise (IMO Number 7709136) into the territorial waters of Bangladesh for breaking purposes:

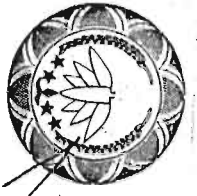
And

In the matter of:

The Merchant Shipping Ordinance, 1983 (Ordinance No. XXVI of 1983), the Territorial Water and Maritime Zones Act, 1974 (Act No. XXVI of 1974) and the rules of 1977 made thereunder, the Bangladesh Environment Conservation Act, 1995 (Act No. 1 of 1995) and rules of 1997 made thereunder, the Coast Guard Act, 1994 (Act No. XXVI of 1994), the Basel convention on the control of Transboundary Movements of Hazardous Wastes and their Disposal 1989, Import Policy Order.

And

In the matter of:



Bangladesh Environment 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.....Petitioners.

Versus

1. Bangladesh, represented by the Secretary, Ministry of Shipping, Bangladesh Secretariat, P.S. Ramna, Dhaka.
2. The Secretary, Ministry of Industries, Bangladesh Secretariat, P.S. Ramna, Dhaka.
3. Secretary, Ministry of Commerce, Bangladesh Secretariat, P.S. Ramna, Dhaka.
4. The Secretary, Ministry of Labour and Employment, Bangladesh Secretariat, P.S. Ramna, Dhaka.
5. The Secretary, Ministry of Environment and Forest, Bangladesh Secretariat, P.S. Ramna, Dhaka.
6. The Director General, Department of Environment, Poribesh Bhaban, E-16 Agargaon, Sher-e-Bangla Nagar, P.S. Rejgaon, Dhaka.
7. The Director General, Coast Guard, Head Quarter, DOHS, Baridhara, Dhaka.
8. The Director General, Department of Shipping, 141-143 Motijheel C/A, Dhaka.
9. The Chief Inspector of Explosives, Department of Explosives, Segunbagicha, P.S. Ramna, Dhaka.
10. The Chief Inspector of Factories & Establishment, 4 Rajuk Avenue, Motijheel, Dhaka.

2/2



11. The Deputy Commissioner, Office of the Deputy Commissioner, P.S. Kotwali, Chittagong.
12. The Collector of Customs, Custom House, Saltgola, P.S. Bandar, Chittagong.
13. The Chairman, Chittagong Port Authority, Bandar Bhaban, P.S. Bandar, Chittagong.
14. The Director, Department of Environment, Chittagong Divisional Office: Zakir Hossain Road, Fayeze Lake, Khulshi Chittagong.
15. The Principal Officer, Mercantile Marine Department, CGO Building, Agrabad Commercial Area, Chittagong.
- ✓ 16. The President, Bangladesh Ship Breakers Association, Kabir Super Market (First Floor), 149 Gosail Dangi, Agrabad double mourning, Chittagong.
17. The proprietor, Madina Enterprise, Road No. 3, Plot No. A/19 CDA R/A, Cornalhat, Police Pahartali, District-Chittagong.
18. The Prime Bank Ltd. Agrabad Branch, Chittagong.
19. YALUMBA INC. office at No. 5, Shenton way, Hex- # 10-12, U/E Building Singapore 068808, represented by Attorney Anand Kumar Agarwal C/O AHZ Shipping lines House 348 Road 14 CDA Agrabad Residential Area, Chittagong, Bangladesh.

.....Respondents.

Present

Mr. Justice Md. Imman Ali.

And

Mr. Justice Md. Abu Tariq.

The 8th March, 2010.



Mr. M. Iqbal Kabir, Advocate,

.....For the Petitioner.

Mr. Md. Mizanul-Huque, Advocate.

.....For the respondent No. 16.

Mr. Md. Nazrul Islam Talukder, Deputy Attorney General with

Ms. Purabi Saha, Assistant Attorney General.

Mr. Md. Shahidul Islam Khan, Assistant Attorney General and

Mr. Bhibuti Bhusan Biswas, Assistant Attorney General

.....For the Respondents.

We have perused the affidavits filed by respondents No. 5 and 8 consequent upon the direction in our order dated 26.1.2010 the respondents No. 8 Department of shipping was directed to give details of vessels imported for the purpose of scrapping/breaking since 17.03.2009 and also to provide the copies of the LCs and Pre-cleaning certificates. In all this time the respondent No. 8 has not been able to produce copies of the LCs or the pre-cleaning certificates. We do not find relevant details in the affidavit in opposition to ascertain what sort of information was produced before the Department of Shipping for obtaining the NOCs. We are unable to ascertain the nature and quality of the vessels imported for breaking and in this regard we hereby direct the Department of Shipping to produce the records relating to all the vessels in the list in annexure-13 which were manufactured between 1973 to 1980 inclusive and also to produce the wanting copies of the LCs and pre-cleaning certificates.

From the affidavit in opposition filed on behalf of respondent No. 5 it appears that the respondent No. 5 has simply produced a copy of the draft Rules in



Bangla. However, the affidavit does not answer the direction of this Court, inasmuch as there is no mention in the said Rules with regard to-

- i. The authority of the High Powered Committee to oversee that the Rules framed under the direction of this Court are comprehensive and effective and that the laws, Rules and regulations are properly being implemented. We may further explain that Rules may be changed from time to time and it is our view that the High powered Committee should have the authority to oversee what matter are included in the Rules and also to oversee and amendment of the Rules.
- ii. Authority to oversee the conditions and facilities at the shipbreaking yards whether they comply with the requirement of all relevant laws.

These two aspects we find absent in the draft Rules and there is no explanation for their absence in the affidavit in opposition. The learned Deputy Attorney General submits that the Rules are not yet finalised. The respondent No. 5 is hereby directed to explain their position clearly with regard to the direction earlier given and mentioned above with regard to the authority of the High Powered Committee as mentioned in the terms of reference.

The respondent No. 5 Department of Environment is further directed to report whether or not the 172 vessels which have been admittedly imported for breaking/scrapping since 17.03.2009, applied for or received any environmental clearance certificate from the Department of Environment as required by law.

Respondent No. 5 is further directed to report whether, in the event that no



clearance has been obtained, any action was taken by the Department of Environment in respect of the breaking/scrapping of the vessel in breach of law.

The explanation/report and records to reach this Court by 18.03.2010.

We also heard Mr. Md. Mizanul Huque, learned advocate appearing on behalf of the respondent No. 16 Bangladesh Ship Breakers Association. He submits that the Bangladesh Ship Breakers Association is willing to cooperate with the Ministries, but expressed his view that the Basel Convention is no longer of specific relevance to the shipbreaking industry and that there is a subsequent convention namely, the Hong Kong international Convention for Safe Shipbreaking which ought to be implemented. In response to our query the learned advocate submits that approximately 150 vessels have been broken in the last one year and admits that none has obtained any clearance for the purpose of breaking the vessels. He submits that there is no legal requirement for importers to obtain any clearance from the Department of Environment. He admits that the shipbreaking yards are required to obtain environment clearance for the purpose of shipbreaking, but none have obtained such clearance and that 31 applications are pending before the Department of Environment.

We can only express our indignation and disapproval of the fact that shipbreaking is continuing in this country without obtaining the clearance certificate as required by law. We are horrified to note that many innocent lives are being lost due to the failure of the shipbreaking yards to provide proper safety and security measure for their indigent and hapless employees. It is sad to note that the Bangladesh Shipbreakers Association is allowing its members to operate in breach of law resulting in death with impunity only for the sake of their business. It appears

6




to us that they have little concern for the safety and security of their employees and even less concern that the shipbreaking yards have been operating in breach of law and are continuing their operation of Shipbreaking without first obtaining any licence/clearance from the appropriate authority. The poor employees continue to work in unsafe conditions, forced by hunger and poverty, Where is the conscience and humanity in the businessmen who exploit the workers. We cannot agree with the learned advocate that the Basel Convention is of no relevance. Bangladesh is a signatory to the Convention and the concerned authorities are, therefore, obliged to implement its provisions. Until better rules are available we rely upon the upon the beneficial provisions of the existing Basel Conventions.

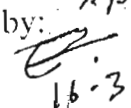
Let the matter appear in the list on 18.03.2010 for orders.

Md. Imman Ali.

M.A. Tariq.

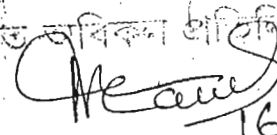
Type by:  15.3.2010.

Read by: 

Exd. by:  16-3-10

প্রত্যাখিত অন্নিপি ইন্ডাস্ট্রিজ

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


16.3.10

16.3.10