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

WRIT PETITION NO. 8466 OF 2017

IN THE MATTER OF:

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

AND
IN THE MATTER OF:

Bangladesh Environmental Lawyers Association (BELA)

.... Petitioner

VERSUS

Bangladesh and others

..... Respondents

Mr. Fida M. Kamal, Senior Advocate with
Ms. Syeda Rizwana Hasan, Advocate,
Mr. Ali Mustafa Khan, Advocate and
Mr. Sayeed Ahmed Kabir, Advocate
... For the Petitioner

Mr. Momtaz Uddin Ahmed (Mehedi), Adv.
... For the Respondent No. 5

Ms. Kazi Zinat Hoque, DAG
... For the Respondent Nos. 7 and 10

Mr. Ahsanul Karim with
Mr. Khairul Alam Chowdhury,
Mr. Aminul Hoque,
Mr. Tanveer Hossain Khan,
Mr. Shamim Ahmed Mehedi,
Ms. Farzana Khan, and
Mr. Mujibul Hoque Bhuiyan, Advocates
... For the Respondent No. 17

Heard on: 16.10.2017, 17.10.2017, 13.11.2017, 10.12.2017, 12.12.2017, 13.12.2017, 24.1.2018, 25.1.2018, 4.2.2018, 11.2.2018, 14.2.2018, 15.2.2018, 21.3.2018, 22.3.2018 and 3.7.2019.

Judgment on: 14.11.2019

Present:
Mr. Justice Syed Refaat Ahmed
And
Mr. Justice Md. Salim

SYED REFAAT AHMED, J:-

This Rule Nisi was issued on 8.6.2017 calling upon the Respondents to show cause as to why (i) the various permissions, NOCs, clearances, renewals given by them in favour of Janata Steel Corporation (Ship-Breaking Yard) for the import, beaching and breaking of the scrap vessel MT Producer (IMO No. 8124058) by virtue of the impugned memos as in Annexures "E", "G" series, "I" and "L" shall not be declared mala fide, without lawful authority, and of no legal effect for being violative of applicable laws and the directions given in Writ Petition No. 7260 of 2008; (ii) the seller of the vessel/importer of the vessel/owner of the Yard shall not be subjected to stringent punishment for giving false declaration about the waste flow of the said vessel and (iii) they shall not be directed to ensure safe dismantling of the said vessel through engagement of impartial and foreign experts at the cost of the importer of the vessel and/or such other or further Order or Orders passed as to this Court may seem fit and proper.

This Petition, in the nature of a public interest litigation (PIL), arises for consideration against the backdrop of the importation, beaching and breaking of the vessel MT Producer (interchangeably referred to hereinafter as the "Vessel"). This Court is reminded at the outset of Krishna Iyer J.'s observation in *Fertilizer Corporation Kamagar Union Vs. Union of India* reported in *AIR 1981 SC 353* that PIL *"is part of the process of participative justice..."*. Speaking about PIL, Bhagwati J.'s enunciation of that notion and process of justice

delivery in *People's Union for Democratic Rights Vs. Union of India* reported in *1982 AIR SC 1473* is quoted below in some detail:

> *"Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation. But it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed ...*
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> *Of course, the task of restructuring the social and economic order so that the social and economic rights become a meaningful reality for the poor and lowly sections of the community as one which legitimately belongs to the legislature and the executive, but mere initiation of social and economic rescue programmes by the executive would not be enough and* ***it is only through multi-dimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective. Public interest litigation, as we conceive it, is essentially a co-operative or collaborative effort on the part of the petitioner, the state or public authority and the court to secure observance of the constitutional or legal rights,*** *benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them.* ***The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position,*** *as the petitioner who brings the public interest litigation before the court.* ***The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority."***
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> (Emphases provided by this Court.) (Extracted from: *"An Expanding Frontier of Judicial Review – Public Interest Litigation"* by Syed Ishtiaq Ahmed, published in 45 DLR (1993), Journal, 36.)

It is in that spirit of collective responsibility and participatory justice that this Court now undertakes to consider and dispose of this Rule Nisi as hereunder.

The Petitioner contends that the No Objection Certificates (NOCs), permissions, clearances have all been given in clear violation of the judgment of March, 2009 in Writ Petition No. 7260 of 2008 *[Bangladesh Environmental Lawyers Association (BELA) vs. Banglaaesh, represented by the Secretary, Ministry of Shipping]* reported as *BELA vs. Bangladesh* in *7LG (2010) HCD, 118*; *the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989* (hereinafter referred to as the "Basel Convention" as necessary); *Ship-Breaking and Recycling Rules, 2011; the Hazardous Wastes and Ship-Breaking Management Rules, 2011,* and *the Atomic Energy Regulation Act, 2012.* It is stated that the NOC to import the Vessel, and the authorizations/clearances for its beaching and breaking have been given unlawfully and by violating articles 3, 4, 6 and 8 of the Basel Convention; Sections 6D and 12 of the *Environment Conservation Act, 1995;* Rules 15, 17, 19 of the *Hazardous Wastes and Ship-Breaking Management Rules, 2011;* Rules 3, 4, 7, 8, 9, 10, 11 of the *Ship-Breaking and Recycling Rules, 2011;* Sections 11, 18, 19, 26 of the *Atomic Energy Regulation Act, 2012 (*also *Rules of 1997)*, and the *Import Policy Order (2015-2018)*. It is stated further that such violations are liable to sanctions provided in article 9 of the Basel Convention, section 15 of the *Environment Conservation Act, 1995*, section 53 of the *Atomic Energy Regulation Act, 2012*, and rules 45 and 46 of the *Ship-Breaking and Recycling Rules, 2011.*

The Petitioner before us is Bangladesh Environment Lawyers Association ("BELA"), a society registered under the Societies

Registration Act, 1860, (Registration No. 1457 (17) dated 18.2.1992) and represented in these proceedings by its Chief Executive, Ms. Syeda Rizwana Hasan. BELA's legal representation is this case is by a team of lawyers led by learned Advocate Mr. Fida M. Kamal and which team also includes Ms. Syeda Rizwana Hasan in her capacity as a learned member of the Supreme Court Bar.

The Petitioner BELA has been at the forefront since 1992 as a leading organization recognized for its expertise in the regulatory field of environment and ecology. Its endeavours have been devoted to consistently protecting public interest against environmental anarchies, thereby, contributing to the promotion of environmental justice. Since inception, BELA has filed several PILs wherein the beneficiaries have not only been the common people but also their surrounding environment, the precious and fragile ecosystem and natural resources that affect peoples' material and spiritual well-being. In this BELA's declared quest has been to promote a healthy sustainable environment by legal mechanism as an effective legitimate tool as necessary.

The Respondents Nos. 1 and 3 are respectively the Secretary, Ministry of Industries and the Secretary, Ministry of Commerce, such ministries controlling the import and beaching of ships and regulating industrial and commercial operations in the country. The Respondent No. 4 is the Secretary, Ministry of Labour and Employment, responsible for promoting labour welfare. The Ministry of Labour is the line ministry of Respondent No. 13, i.e., the Chief Inspector of Factories & Establishment responsible for according registration as

factories/industries to ship-breaking yards and monitoring working conditions in such ship-breaking enterprises.

The Respondent Nos. 2, 7 and 14 are respectively Secretary, Ministry of Environment and Forest; Director General, Department of Environment ("DoE"); and Director, DoE, Chittagong. These Respondents are responsible for the overall management and protection of the environment in line with the *Environment Conservation Act, 1995*, the rules made thereunder and also other international conventions on environment including the *Basel Convention* (ratified by Bangladesh on 1.4.1993) that regulate the import of hazardous waste. These Respondents are also responsible for the implementation of *বিপজ্জনক বর্জ্য ও জাহাজভাঙ্গার বর্জ্য ব্যবস্থাপনা বিধিমালা, ২০১১* or the *Hazardous Wastes and Ship-Breaking Management Rules, 2011*. The Respondents Nos. 5 and 6 are the Chairmen, Bangladesh Atomic Energy Regulatory Authority ("BAERA") and Bangladesh Atomic Energy Commission ("BAEC") respectively responsible for ensuring safety and security against radioactive contamination.

The Respondents Nos. 8, 9, 10, 11, 12, and 15 are respectively the Deputy Commissioner, Chittagong; Director General, Coast Guard; the Collector, Customs; the Chairman, Chittagong Port; Chief Inspector of Explosives Department; and the Principal Officer, Mercantile Marine Department. These Respondents are responsible for regulating ship scrapping activities given that ship-breakers are required to obtain prior permission for engaging in beaching and breaking activities.

The Respondent No. 16 is the President of Bangladesh Ship-Breakers Association, the members of which association are actively involved in ship-breaking operation. The Respondent No. 17 is the Proprietor of Janata Steel Corporation who has brought into Bangladesh the Vessel MT Producer for demolition or scrapping purposes. The Respondent No. 18 is the Managing Director of Messers H. R. Ship Management Ltd., identified as the safety agent appointed by the Respondent No. 1 for the Vessel MT Producer.

In bringing this case and raising the issues therein, BELA primarily asserts that the environment and ecology of Bangladesh are being continuously endangered and threatened by activities originating in the private and public sectors. In identifying the primary causes and sources of environmental degradation, BELA highlights general instances of pollution of the natural elements and resources i.e., air, water and soil on which the survival of life is dependent. BELA submits that such degeneration and contamination have, in all probability, exceeded all norms and standards of human cognition. Environmental degradation has unprecedentedly reached a crisis level, BELA contends, due to the carelessness, myopia and the overwhelming and overriding profiteering proclivity of various industrial/enterprises operating in blatant disregard and often outright violation of applicable laws. This, BELA highlights, is aided and abetted by a lax administrative culture and lack of will to ensure implementation of applicable laws. This régime of lax control and unwarranted latitude accorded, BELA submits, has also bred a culture across the board of acting with impunity.

The fallout of all this, BELA submits, presently places Bangladesh at a considerable risk of being reduced to a dumping ground of transboundary wastes in the name of 'ship-breaking/recycling'. With the objective to thwart such eventuality, and to ensure proper regulation of the *"deadly"* ship-breaking industry, BELA as petitioner filed a series of PIL cases before this Court leading to significant judgments providing clear and categorical directions to regulate the industry and prevent entry of hazardous wastes into the country under disguise of scrap vessels. In one such case, Writ Petition No. 7260 of 2008, this Court, in a judgment in the nature of continuing mandamus, amongst others, directed the Ministry of Environment and Forest to frame rules to regulate the industrial operation in the name of ship-breaking. Writ Petition No. 7260 of 2008 as filed by BELA challenged the issuance of an NOC for importing a vessel (MT Enterprise) for breaking purpose. BELA at that earlier instance also sought immediate steps for removal of that vessel out of Bangladesh's territorial waters and deterrent measures to be adopted against hazardous vessels (as listed by Greenpeace) making their way into this country.

Key players in the regulatory framework within the Executive being various ministries and departments/directorates operating thereunder, a general division of administrative responsibility is noted at the outset Clearances for ship-breaking yards and for ship-breaking activities are notably given by the DoE under section 12 of the *Bangladesh Environment Conservation Act, 1995*. Notable further is that following the 2009 High Court judgment section 6ৎ bas been added to

the said Act, 1995 by an amendment in 2010. The said provision reads as follows:

> ৬গ। ***ঝুঁকিপূর্ণ বর্জ্য উৎপাদন, আমদানি, মওজুদকরণ, বোঝাইকরণ, পরিবহণ, ইত্যাদি সংক্রান্ত বাধা-নিষেধ।-*** পরিবেশের ক্ষতিরোধকল্পে সরকার, অন্যান্য আইনের বিধান সাপেক্ষে, বিধি দ্বারা ঝুঁকিপূর্ণ বর্জ্য উৎপাদন, প্রক্রিয়াকরণ, ধারণ, মওজুদকরণ, বোঝাইকরণ, সরবরাহ, পরিবহণ, আমদানি, রপ্তানি, পরিত্যাগকরণ (Disposal), ডাম্পিং, ইত্যাদি নিয়ন্ত্রণ করিতে পারিবে।

It is also the case, however, that due to an amendment to the *Rules of Business* that made the Ministry of Industries the focal point for ship-breaking, the Department of Shipping no longer plays any role in regulating the import of ships and granting NOCs. It is now the Ministry of Industries instead that grants NOCs for import of scrap vessels.

When in December, 2011 the rules regulating such administrative activity came to be finalized upon the court-led initiative through Writ Petition No. 7260 of 2008, a conundrum had arisen thereby. This came to pass when two ministries, namely the Ministry of Industries and the Ministry of Environment and Forest submitted before the Appellate Division two separate but competing, if not rival, sets of rules addressing ship-breaking. These two sets of rules called the *Hazardous Wastes and Ship-Breaking Wastes Management Rules, 2011* of the Ministry of Environment and Forest and the *Ship-Breaking and Recycling Rules, 2011* of the Ministry of Industries (collectively "Rules") have both been notified in the Official Gazette (respectively on 12.12.2011 and 21.12.2011). While the Petitioner mentions only the pertinent parts of the said Rules in the instant Writ Petition, it has reserved its right to challenge what it terms to be *"the grossly deficient, contradictory and*

contrary Rules in a separate application to be filed under Writ Petition No. 7260 of 2008".

It suffices for the present purposes, however, to note certain essential constituents of the Rules at this juncture. While only the *Ship-Breaking and Recycling Rules, 2011* is expressly declaratory of *"taking into consideration the directions contained in the order"* in Writ Petition No. 7260 of 2008, the Rules collectively bear reference to and/or are based on principles and conditions incorporated *inter alia* in the Basel Convention. The preambular provision in section 1 of the Rules formulated by the Ministry of Industries indeed reflects such an acknowledgement. *The Hazardous Wastes and Ship-Breaking Wastes Management Rules, 2011* formulated by the Ministry of Environment and Forest goes a step further to specifically incorporate the Basel Convention norms and conditions as to exportation and importation of hazardous materials thus in rule 17:

> ১৭। *বাসেল কনভেনশন (Basel Convention)।- বিপজ্জনক পদার্থের আমদানীকারক এবং রপ্তানীকারককে বাসেল কনভেনশন এর শর্তাবলী অনুসরণ করিতে হইবে।*

It is also at this juncture that BELA alerts this Court to the fact that since the notification of the Rules, two government agencies are now seeking to regulate the ship-breaking industry where, since the pronouncement of the judgment in Writ Petition No. 7260 of 2008, at least a hundred and thirty-three workers have been killed and seventy injured. BELA perceives this to be the outcome of poor enforcement overall and non-compliance with existing laws and judicial orders with regard to environmental protection and labour safety in the ship-breaking

yards. BELA adopts the position that the provisions of the Rules on import of vessels (even given that several such provisions BELA submits to *"be lenient"*) and this Court's relevant directions as made in Writ Petition No. 7260 of 2008 are being recklessly flouted resulting in the importation of highly toxic and *'dirty'* ships into Bangladesh.

This particular petition, this Court notes, has been filed against the *"horrifying"* news of the entry into Bangladesh of a reportedly radioactive-contaminated ship called the North Sea Producer (renamed as MT Producer) and the contended persistent failure of the Respondents in regulating the ship-breaking industry and in protecting the coastal environment from the dangerous waste flow of the said industry. The Petitioner, BELA is *"seriously"* aggrieved by the fact that (i) NOC has been granted by the Ministry of Industries for import of the Vessel MT Producer, a highly toxic ship contaminated with Naturally Occurring Radioactive Materials (NORM) and, that (ii) the Vessel has been allowed by the said Ministry or on its request to be beached and even dismantled by virtue of the impugned memos violating the two sets of prevailing Rules on the subject of ship-breaking and also the clear directions of the High Court. While this particular importation, which BELA terms to be *"unlawful and highly questionable"* represents the general lack of strict supervision in allowing imports of toxic vessels, repeated occurrences of death and grievous injuries in the various ship-breaking yards demand judicial scrutiny of compliance, according to BELA.

This Court is apprised that the import and beaching of vessels as scrap are regulated by rules 4-10 of *The Ship Breaking and Recycling Rules, 2011* of the Ministry of Industries that have authorized a Ship Building and Ship Recycling Board ("the SBSRB"), set up by the Ministry of Industry as a one-stop service for ship dismantling recycling, to allow import for breaking and recycling purposes on submission of the following documents by a yard owner:

- Yard Clearance Certificate;
- Details of particulars of the ship;
- Memorandum of Understanding with the buyer;
- Inventory of Hazardous Materials *"on board"*.

BELA takes care to explain that once a vessel is imported as scrap, it is allowed to anchor and then to be boarded only after four identified SBSRB members have collected and considered documents including the Inventory of Hazardous Materials (to be supplied by the buyer/importer) that should mention radioactive material *'on board'*. Indeed, as per rule 8 of the *Ship-Breaking and Recycling Rules, 2011* of the Ministry of Industries, while a ship is boarded at outer anchorage, the DoE shall undertake the assessment, identification, and marking of hazardous wastes/materials in the structure and *'on board'* the ship. The assessment shall be done by DoE *'as far as practicable'* by reference to the vessel's drawings, technical specifications, the vessel's stores, and manifest in consultation with the ship-builder.

Once a scrap vessel is so inspected and its hazardous materials including radioactive material *'on board'* are assessed, the

importer/recycler shall apply for beaching permission to the Port Authority. The SBSRB officials shall then inspect the ship at outer anchorage alongwith officials of Department of Explosives, DoE, Bangladesh Customs, Bangladesh Navy. It is at this stage that the DoE shall, *'in cooperation with SBSRB'*, conduct inspections for issuing *"Environmental Clearance Certificate"* to vessels.

The problem, however, BELA submits, is that although rule 9.9 of the *Ship-Breaking and Recycling Rules, 2011* purports to allow import of scrap vessels with radioactive wastes, the said Rule neither requires cleaning at source prior to import, nor is it broad enough to cover all ships that may be contaminated with radioactive substances. This is evident in the fact that rule 9.9 only requires that if a war ship, naval ship, nuclear powered vessel or a large passenger ship is imported as scrap, representatives of BAEC are to verify the submissions/data provided at the time of desk review/ during physical verification. It is noted that with regard to such vessels, under the said Rule, adequate representative samples may also be taken by BAEC for verification upon which BAEC may give clearance to radioactive laden ships for beaching. Such ships can only be imported under strict monitoring by BAEC, DoE, SBSRB provided there is (i) adequate infrastructure at the yard to handle the identified quantities of radioactive materials, (ii) adequate disposal facility nearby, and (iii) adequately trained staff.

It is pertinent to note that the SBSRB is yet to be established and pending its establishment the Ministry of Industries presently discharges the duties and powers assigned to SBSRB.

On the other hand, as per BELA, is the more stringent requirement as per rule 15 of the *Hazardous Wastes and Ship-Breaking Wastes Management Rules, 2011* of the Ministry of Environment and Forest, under which no environmental clearance for breaking of sea-going vessels, oil tankers, fish trawlers imported as scrap can be given unless inter alia *'appropriate authority'* certify that the scrap vessel has properly been cleansed of hazardous wastes in accordance with the existing Import Policy Order. Alarmingly enough, as per BELA, deviating from the clear directions of the High Court on in-built wastes, the relevant *Import Policy Order (2015-2018)* in item 39 only requires certification from the last exporting agency or owner and declaration from the importer that the scrap vessel is not carrying any poisonous or hazardous wastes *"other than"* the in-built substances.

That said, as per rule 19 of the *Hazardous Wastes and Ship-Breaking Wastes Management Rules, 2011* all ships imported or selected or specified for breaking shall mandatorily have to obtain environmental clearance from the DoE prior to breaking. An application seeking such clearance for breaking of ship shall have to enclose a report by the DoE's listed inspector of hazardous substances as to the hazardous materials and wastes present in the ship.

Additionally, vide a notification dated 6.3.2014, the Ministry of Environment and Forest has formed an eight-member committee to inspect, at the outer anchorage, vessels imported as scrap to identify, mark, collect samples and prepare lists of hazardous wastes present in the vessels.

Turning our attention to the present facts, the Vessel MT Producer (Previous Name: The North Sea Producer; IMO NO. 8124058, jointly owned in equal shares by the Danish Shipping Giant Maersk and Odebrecht) was built as an oil tanker in 1984 at Odense Steel Shipyard-Odense, Denmark. In 1996-97, it was converted into a Floating Production Storage and Offloading ("FPSO") Vessel. After serving for more than thirty-three years, the 52,000-tonne huge Vessel was sold off in 2016 as MT Producer to Janata Steel Corporation (Ship-Breaking Yard), Chittagong, Bangladesh for a recorded sale price of Tk. 51,82,77,570/- (Taka Fifty-one Crore, Eighty-two Lac, Seventy-seven Thousand and Five Hundred and Seventy only). The Vessel arrived at the outer anchorage of Chittagong in August 2016 and was beached on 18.8.2016.

It is BELA's case that available documents suggest that the NOC for the import of the Vessel was obtained by giving false declaration as to wastes and that the beaching permission was given in a rush with no application of mind, without inspecting the Vessel with due caution and diligence, without following the Rules and in gross defiance of the High Court judgment in Writ Petition No. 7260 of 2008. According to BELA, these are evidenced from the facts that the NOC for import of the Vessel was obtained from the Ministry of Industries on 9.8.2016 (impugned memo) by submitting a false and twisted declaration dated 3.8.2016 as to the waste flow of the ship from one Conquistador Shipping Corporation of Nevis (which is the cash buyer and the final seller). While the declaration dated 3.8.2016 mentions that the Vessel contains no

Asbestos and that it is safe without any hazardous material, *the Vendor Chalan* submitted by one H. R. Ship Management Limited, appointed as safety agency for the Vessel, clearly states that at least 500 kgs of glass wool, rock wool and Asbestos have been recovered from the Vessel along with 5,000 kgs of electric cables likely to be laden with dangerous Polymerizing Vinyl Chloride or PVC.

Against this backdrop, BELA is alarmed and aggrieved by the fact that although as per rule 46.12 of the *Ship-Breaking and Recycling Rules, 2011* a false declaration of a ship containing *'unmarageable'* hazardous waste and hazardous materials *'will'* lead to attract a penalty of Taka 1 Crore to its seller or local agent, in the instant case instead of imposing penalty for false declaration, beaching and even breaking permissions were given in favour of the Vessel by or at the initiative of the Ministry of Industries.

We are apprised that the Vessel was inspected on 13.8.2016 by a five-member team comprising of representatives of DoE, Bangladesh Marine Academy, Department of Explosives, Fire Service and Civil Defense, and the Customs. BELA submits that while this committee in its report mentioned nothing about radioactive wastes in the Vessel, it has wrongly stated that after physically inspecting all places of the Vessel that may contain hazardous wastes, no Asbestos was found in the Vessel. In a contradictory statement, the report states that the inspection work has been completed with support form the watchman of the safety agent *"to the extent possible and keeping safe distance"*. BELA highlights that while the committee has claimed that all sixteen tanks of

the Vessel have been inspected (a statement, BELA submits, contradicted by subsequent inspections undertaken by other agencies) and no oil/oily trace/bottom residues were found, it has at the same time admitted that the engine room and the machinery space of the Vessel were not inspected in detail for safety reason but were seen *"to the extent possible"* with lights from the upper deck and were not found to have any hazardous material. The committee report, BELA contends, and not without merit, in a callous manner has concluded that although the amount of the Marine Environment Pollution Control ("MEPC") items could not be ascertained due to informational issues but the Vessel may be permitted to beach subject to removal of all visible and *"built in materials"*.

Speaking for BELA and appearing in person, Ms. Syeda Rizwana Hasan submits that based on such dubious and incorrect statements, and on request from the Ministry of Industries vide letter dated 16.8.2016 (impugned letter), beaching permission for the Vessel was given by the Customs House on 17.8.2016 on *"special consideration"* and also by the Port Authority on the same date (impugned letters).

It had earlier transpired that on 14.8.2016, the *"faulty"* report of the five-member committee was forwarded by DoE to the importer of the ship, the proprietor of M/S Janata Steel Corporation (Ship-Breaking Yard) requesting him to apply for environmental clearance for breaking the ship as per rule 19 (1) of the *Hazardous Wastes and Ship Breaking Wastes Management Rules, 2011* and asking him to refrain from breaking the Vessel before obtaining the clearance. However, ignoring

the legal mandate of the DoE in such matters, the Ministry of Industries, as Ms. Hasan submits, most arbitrarily stepped into the scene encroaching upon the DoE's authority and vide impugned memo dated 8.9.2016 permitted the breaking of the Vessel although available records suggest that its importer (the Ship-Breaker) never applied for an environmental clearance for breaking the ship as further evidenced from the DoE letter dated 9.1.2017.

This Court's attention is drawn at this juncture to the fact that as the importer of the Vessel/owner of the Yard started breaking the Vessel without any environmental clearance, local and international media and environmental groups picked up on the story and started reporting on the risk of breaking the ship in Bangladesh as the yards here have no facilities for removal of NORM and other toxic substances that an FPSO like MT Producer may contain.

Taking a pause, we are here enlightened by BELA on the fact that NORM consist of materials, usually industrial wastes or by-products enriched with radioactive elements found in the environment, such as Uranium (U), Thorium (Th) and Potassium (K) and any of their decay products, such as Radium (Ra) and Radon (Rn). In addition to the hazardous elements of Radium (Ra) and Radon (Rn), there are also other products from radio nuclides that emit alpha and beta particles as well as gamma rays. It is explained that gamma rays are highly penetrating and some can pass through metals.

In a report titled *"MAERSK AND THE HAZARDOUS WASTE IN BANGLADESH"* published in the Danish newspaper DANWATCH on

15.10.2016, it first came to public attention that the Vessel has been sold to Bangladesh. While writing on the unpreparedness of the Ship-Breaking Yard of Janata Steel Corporation in dealing with an FPSO like the North Sea Producer (now renamed as MT Producer) that can be contaminated with Asbestos and radioactive materials in the form of NORM, DANWATCH, by citing shipping experts, has also documented how cumbersome decommissioning a floating oil platform as the Vessel is and the fact that even a country like Denmark cannot manage such vessels that involve different and much greater requirements with respect to safety, clean-up, and the environment as there are more technical systems, pipes and inventory to grapple with in comparison to regular ships.

Focusing on the Ship-Breaking Yard in question of the Respondent No. 17, BELA reveals that although the environmental clearance issued in favour M/S Janata Steel Corporation on 1.1.2011 was last renewed on 15.2.2016, records suggest that at least two major incidences took place at the yard on 10.11.2012 and 9.2.2016 leaving at least two workers dead. Thus, Ms. Hasan has forcefully argued, the investigative report of DANWATCH and subsequent DoE reports (as brought on records as Annexure "F" documents) show that the impugned clearance was issued in favour of the Janata Steel Corporation (Ship-Breaking Yard) without first ensuring safety measures for workers and facilities necessary for proper dismantling and disposal of hazardous wastes as indeed required by this Court's earlier judgment.

Following such exposé, the DoE vide memo 22.02.1500.201.71.177.16.1116 dated 7.11.2016 formed a nine-member committee ("the Second Committee of DoE" wherever necessary) to assess the amount of radioactive substances in the Vessel. Ms. Syeda Rizwana Hasan is quick to point out that of these nine members, three remained the same persons/organizations who earlier gave various clearances in favour of the Vessel including certification stating that the Vessel contains no visible hazardous substances. Moreover, as Ms. Hasan stresses, while an adviser of the Bangladesh Ship Breakers Association ("BSBA") who beached the Vessel was included in this nine-member committee despite having clear conflict of interest, the presence of the representative of the Bangladesh University of Engineering and Technology ("BUET") who could be an impartial member was not ensured during the physical inspection.

That partial report of the Second Committee of the DoE (procured on an application of the Petitioner under the *Right To Information Act, 2009* ("RTI Act, 2009"), Ms. Hasan submits, has quoted definitive findings of the BAEC about the presence of radioactive materials in the Vessel that by BELA's reckoning clearly contradict the report of the five-member committee dated 13.8.2016 earlier referred. This Second Committee report records the findings of BAEC as clearly record the high presence of radiation, Thorium (Th) and Radium (Ra) in some pipes of the Vessel. Furthermore, a BAERA report submitted as per the Second Committee's request contained the following findings as

enumerated in detail thus in this Second Committee partial report of February, 2017:

> *"1. The laboratory report of BAEC doesn't reflect the status of contamination survey over the entire ship; therefore it requires further through radiation survey including all the potential locations of the ship. In addition, it has been mentioned in the BAEC report that the survey doesn't cover 100% area of the Vessel; but at the same time how much of the area was covered it has not been mentioned in the report as well.*
>
> *2. The dismantled pipes containing sludge which have been already found contaminated with Naturally Occurring Radioactive Materials (NORM) should be decontaminated under the guidelines of Waste Management Facility (HRPWMU, Savar) of BAEC. After decontamination, further radiation survey should be carried out to verify whether the pipes are still remaining contaminated. Later on a copy of the survey report should be submitted to BAERA.*
>
> *3. The report doesn't provide any kind of information about the potential volume of the contaminated sludge. In this regard, Waste Management Facility of BAEC can be informed for disposal of contaminated sludge.*
>
> *4. If the metallic structure of pipes are found contaminated, necessary steps should be taken for the disposal of the same under guidelines of Waste Management Facility (HPRWMU, Savar) of BAEC.*
>
> *5. During involvement of labor in the above mentioned works, radiation safety measures of them should be taken according to national regulation. In this case, necessary guidelines can be taken from BAERA.*
>
> *6. For the identification of potential NORM contaminated materials in such a large oil tanker (North Sea Producer), if requires external support then it can be taken by the owner of the Vessel provided that the experts should be experienced and well qualified & certified by relevant agency for performing such type of overwhelming job."*

The said partial report of the Second Committee of DoE also mentions that the Mega Port Initiative ("MPI"), despite having very limited trained manpower, conducted a survey of the Vessel considering the security of the nation, albeit on the basis of the incomplete layout plan of the Vessel. MPI, resultantly, could only inspect two of the Vessel's

tanks. While the DoE report remains silent on the exact findings of the MPI as to radioactivity, it quotes the MPI to have recommended the following for completing the highly technical work (of assessing and measuring radioactivity) with due importance:

A. *Detailed survey (of dead Vessel MT Producer) that covers the whole area to find out the potential risk;*
B. *Special team formation for this assignment for the entire survey;*
C. *Test the sample of "Mud, Water, Marine Creature" around the ship premise;*
D. *Neutralization and decontamination of the present suspects (technical cooperation could be sought from the MPI or Department of Energy, USA);*
E. *Similar Vessels should be surveyed by MPI or similar organization prior to import clearance.*

The Petitioner, BELA now submits, accordingly, that the subsequent reports of BAEC, BAERA, MPI and the Vendor *Chalan* of the so-called safety agent show and affirm that the importer of the Vessel/owner of the Yard has procured clearances for import, beaching and breaking of the scrap Vessel on the basis of incomplete, imprecise and/or false and dubious declarations.

It is pertinent to note here that despite repeated requests made under the RTI Act, 2009, neither the copies of the reports of BAEC, BAERA, and MPI nor the full report of the Second Committee of the DoE were ever given to the Petitioner, BELA. We are apprised that appeals have duly been preferred against such inadequate and incomplete supply of information, an act incidentally punishable under section 27 of the RTI Act.

Meanwhile the DoE vide its memo 22.02.1500.201.71.177.16.1102 dated 5.11.2016 directed the importer of the Vessel/owner of the Yard to refrain from breaking the Vessel till

further directions. The Ministry of Industries vide its letter dated 8.11.2016 written to the DoE, Department of Explosives and the safety agent for the Vessel, H. R. Ship Management Limited asserted that it issued the permission for breaking based on the undertaking of the importer that the Vessel contains no toxic or radioactive substance and the report of the five-member committee dated 13.8.2016 which also did not mention the presence of any toxic wastes or radioactive substances in the Vessel. This letter of the Ministry of Industries *"requested"* the owner of the Yard/importer of the scrap Vessel to refrain from any breaking activities till a new report is submitted on the toxicity of the Vessel. It is noted further that the Department of Explosives that earlier certified the Vessel as safe for dismantling vide its subsequent memo dated 24.11.2016 also issued a similar direction to halt such breaking activity.

Despite, however, clear findings of the BAEC and BAERA on presence of radioactive substances in the said scrap Vessel and the recommendations of BAEC, BAERA and MPI for detailed survey of the Vessel with external support (e.g., Department of Energy, USA) for identification of potential risks of NORM and for neutralization and decontamination of the same, the Second Committee of DoE on 7.11.2016 underplaying the risks associated with NORM and in-built wastes, declared that BAEC, BAERA or MPI have not found any nuclear material/waste or special nuclear material in the scrap Vessel. BELA submits here that the said Committee most arbitrarily decided that the task of surveying the entire Vessel for determining and disposing of

radioactive substances may in the circumstances be done by the importer itself and that given the dangerous and risky nature of the task involved a team comprising of members with requisite physical and mental ability shall be formed to enter every part of the Vessel and collect samples. The said Committee further decided that if radioactive substances are found after surveying the entire Vessel, opinion *"may be"* taken from the Health Physics and Radioactive Waste Management Unit ("HPRWMU") of BAEC and the said Unit's guidelines *"may be"* followed in decontaminating the same. It is in this regard that the Court is shown the report of the Second Committee of the DoE as has been signed by seven-members only with the member of the Atomic Energy Centre, Chittagong refusing to sign the same due to difference of opinion on certain significant issues.

Meanwhile, following a news report dated 17.11.2016 on the presence of high radioactive substances in the scrap Vessel, the Petitioner BELA vide a Notice of Demand for Justice dated 22.11.2016 in questioning the biased and inadequate investigation by the authorities demanded the cancellation of clearances/NOCs in favour of the Vessel and an impartial inspection of the Vessel conducted by experts.

Though the Ministry of Industries, Labour Directorate, BSBA and the importer of the Vessel/owner of the Ship-Breaking Yard responded to the said Demand Notice of the Petitioner, none of these responses, however, addressed either the issues of authenticity of the documents submitted in obtaining NOC for import and beaching permission, or the biased and incomprehensive inspections of the scrap Vessel that led to

the beaching and breaking permissions without environmental clearance. Nor was any commitment made for undertaking an impartial inspection by required experts as demanded in the Notice (and as we have seen recommended by BAERA and MPI).

BELA in all its persistence served upon the Respondents another Notice of Demand for Justice dated 17.5.2017 requesting them to (i) avoid duality in the Rules and ensure that the Rules on ship-breaking and also the *Import Policy Order (2015-2018)* conform to the earlier directions of this Court with regard to import, beaching, breaking of ships and disposal of wastes management, (ii) immediately appoint impartial and foreign experts to assess the amount of radioactive and hazardous substances in the Vessel and to arrange for their safe disposal, and (iii) hand down exemplary punishment to all involved in the import, beaching and dismantling of the Vessel in deviation from the earlier directions of this Court and the existing Rules.

Predicated on the above facts and circumstances BELA submits that the acts and omissions of the Respondents in regulating the ship-breaking industry are violative of articles 18A, 31, 32 of the Bangladesh Constitution; *the Bangladesh Environment Conservation Act, 1995 (Act No. I of 1995)* and *Rules of 1997* made thereunder; *the Ship-Breaking and Recycling Rules, 2011; the Hazardous Wastes and Ship-Breaking Wastes Management Rules, 2011; Atomic Energy Regulation Act, 2012; Bangladesh Nuclear Safety and Radiation Control Rules, 1997; The Basel Convention* and the Judgment and directions passed by this Court in Writ Petition No. 7260 of 2008 and other subsequent directions/orders

and hence the same are against public interest, mala fide, without lawful authority and liable to strict judicial scrutiny and admonition.

It is pleaded that in granting the import NOC in favour of the Vessel, and in allowing its beaching and breaking (by virtue of impugned Memos as of Annexures "E", "G" series, "I" and "L"), the Ministry of Industries, the DoE, the Collector of Customs, Chittagong Port Authority, the Mercantile Marine Department have acted in collusion, aided the seller/importer of the Vessel/Yard owner in dumping the hazardous ship on the beaches of Bangladesh by deliberately relying on the fabricated and incorrect declarations of the seller/importer of the scrap Vessel/Yard owner, and grossly violated the safety-related steps and provisions as categorically mentioned in the judicial verdict and incorporated (albeit partially) in the Rules.

Such clearance permissions clearly, therefore, raise the spectre of unregulated entry of toxic ships into the country in blatant disregard of the law and constitutional safeguards protecting life and the environment.

Emphasized in this context is the fact that the record of accidents in the M/S Janata Steel Corporation (Ship-Breaking Yard) and the investigative report of the DANWATCH clearly show that the Yard is deficient in safety measures adopted and that its owner, in importing the Vessel, has violated the existing rules and the judicial pronouncement. BELA views such acts of the Yard owner/importer of the Vessel/seller of the Vessel and the collusive acts and omissions of the relevant Executive branches of the government and related statutory agencies as

having posed definite threats to the safety and security of the nation which are now liable to the imposition of the strictest of sanctions. Issue is taken here by BELA that by not proactively disclosing the reports of BAEC, BAERA and MPI on the probable threat of radioactive contamination of the Vessel posed to the public at large and by deliberately concealing the reports as above referred, the Respondents are pushing the nation, its citizens, and more particularly the innocent labourers of the Ship-Breaking Yard to the risk of radioactive contamination constituting a deadly threat to their constitutional right to life. In this context, the report of the Second Committee of DoE is slammed by BELA to not only be a mockery and affront to the rule of law but a definite threat to the safety and security of the nation and its citizens inasmuch as the said report, without attempting to punish the seller of the Vessel/importer of the Vessel/owner of the Yard and without engaging impartial and foreign experts (on admission of lack of national expertise), has attempted to rely on the importer for further testing and decontamination and that too in the most unassertive of terms.

Against this backdrop, Ms. Syeda Rizwana Hasan submits that BELA has been persistently working to protect the environment of the country from various polluting and degrading activities and that it has been sincerely and consistently pursing a legal battle to protect the country from becoming a dumping ground of hazardous wastes of the developed countries in the name of ship-breaking/recycling and reduced to harbouring deplorable working conditions in ship-breaking yards. The

picture that is, accordingly, painted for this Court is of a culture of appeasement, turning a blind eye to gross violations and neglect of the law and a laissez-faire attitude producing appalling working conditions as are Dickensian in nature.

Set against these plethora of grievances and issues manifested in the contended violation of the legal provisions and strictures by the Respondents and their failure in performing legal duties and obligations BELA has been constrained to file this Writ Petition to ensure observance of law and uphold overriding public interest. Fundamentally, still, the Petitioner BELA's concern lies with the security of the nation and the right to life of the ordinary citizen viewed from the prism of protection of the environment. Interestingly, this case covers an entire gamut of fundamental guarantees as may be considered as First-generation human civil and political rights (articles 31 and 32 of the Constitution) and a hybrid guarantee under article 18A as partakes of the nature, in this Court's view, of Second and Third-generation human rights essentially socio-economic in their nature but bearing upon emerging issues of sustainable life and living on this planet going beyond conventional concerns with merely the quality of life. It is specifically argued that the State's *"endeavour to protect and improve the environment ... for the present and future citizens"* under article 18A of the Constitution has suffered greatly at the hands of the Respondents evident in light of the importation, beaching and breaking of the Vessel. Accordingly, the guarantees to protection of law (article 31) and life (article 32) here seen to have been seriously compromised.

Through Affidavits filed, written memorials provided and oral submissions made, the Respondent No. 17, Proprietor, Janata Still Corporation (Ship-Breaking Yard) has responded to the various allegations of the Petitioner.

This answering Respondent represented by a team of lawyers led by learned Advocate, Mr. Ahsanul Karim acknowledges that the Vessel was imported for the purpose of ship-breaking. In acknowledging so, it is asserted that in 2016, a U.K.-based radiological monitoring expert, namely, Studsvik Limited, carried out an inspection on the Vessel and certified that the Vessel was free of NORM contamination. Prior to importation of the Vessel, the said Respondent obtained the importation NOC on 9.8.2016 from the Ministry of Industries (Annexure No. 'E'). Subsequently, the Vessel arrived at Chittagong Port on 13.8.2016 and the relevant authority such as Customs, Bangladesh Navy, Department of Explosives conducted the necessary inspection. Accordingly, the Ministry of Industry, after considering the reports of the DoE, Department of Explosives and the safety agencies, vide a letter dated 16.8.2016, permitted the beaching of the said Vessel (Annexure No. 'G' Series). Accordingly, the Vessel was beached on 21.8.2016. Subsequently, after being satisfied with all the reports of the concerned authorities, the Ministry of Industries, vide order dated 8.9.2016, extended its permission to start demolition of the Vessel.

Highlighted is the fact that before extending approval for demolition of the Vessel, a five-member committee, consisting of the representatives of DoE, Department of Explosives, Bangladesh Marine

Academy, Navy and Customs carried out a thorough inspection of the Vessel on 13.8.2016. It is predicated on this, it is submitted, that the Respondent No. 17 commenced demolition of the Vessel in strict compliance with the relevant laws and in adherence to the stringent policies of the relevant authorities. In particular, the relevant provisions, as stipulated in the *Ship-Breaking and Recycling Rules, 2011*, regarding the permissions of DoE, Department of Explosives, Customs, Bangladesh Navy and Ministry of Industries were strictly complied with.

The Respondent No. 17, however, is irked by the fact that in the meantime, being ostensibly influenced by a vested quarter, a watchdog, based in Denmark namely DANWATCH, published a report on 15.10.2016 alleging that there may have been the presence of hazardous waste in the Vessel. The article, it is stated, was portraying the dangerous environment condition of the ship-breaking industry as a whole in Bangladesh and particularly emphasizing the lack of precautionary measures adopted and protective gear made available to workers in the ship-breaking yards. It is contended further that based on the said DANWATCH article, a non-government organization, namely SHIPBREAKING PLATFORM published a report in its website alleging that the Vessel may have been laden with radioactive material. The Respondent No. 17 finds it disconcerting that even though DANWATCH did not make any allegation regarding radioactive materials, SHIPBREAKING PLATFORM went considerably farther alleging that the Vessel carried radioactive materials and contending that Bangladesh did not have the means or technology to remove or safely

and securely store such radioactive material. Premised on the said report a few Bangladeshi newspapers are said to have gone on a speculative tirade and accordingly *Daily 'Prothom-Alo'* on 5.11.2016 published a report *"blindly copying the speculations"* of SHIPBREAKING PLATFORM.

The stance of the Respondent No. 17 is that after these spate of publications the DoE, vide memo dated 5.11.2016, instructed the said Respondent to halt demolition of the Vessel. It is emphasized by the Respondent No. 17 that there was absolutely no basis for the DoE to put a halt to the demolition so.

It is submitted that the DoE formed the nine-member committee on 7.11.2016, i.e., the Second Committee of DoE, *"under increasing pressure from 'Shipbreaking Platform' and its associates"*. On 10.11.2016 the DoE instructed the said answering Respondent to suspend the dismantling of the Vessel. Subsequently, vide a similar letter dated 24.11.2016, the Department of Explosives restrained the said Respondent from continuing the demolition till further order. Later, in January, the MPI, BAEC and BAERA, led by the Second Committee of DoE inspected the Vessel and MPI, BAEC and BAERA submitted reports in January, 2017 before the said Committee. It is asserted that the summary of the DoE report was communicated by the Chairman, BAEC vide letter dated 16.2.2017 where the Chairman opined that a minimal amount of sludge had been found in the open pipeline and the level of radioactivity was slightly more than the acceptable amount. He further

concluded that considering the amount of radioactive material found in the sludge, the said pipelines could be safely removed and preserved.

In the meantime, BAERA in the presence of BAEC and DoE held a meeting on 25.4.2017 and based on the reports of MPI, BAEC and BAERA and the recommendations of the said Second Committee of the DoE decided that a committee would be formed comprising of a representative from the HPRWMU, BAEC, a representative from BAEC and a representative from DoE and the said committee would take all the initiatives to remove and manage the radioactive waste materials found in the Vessel. Consequentially, BAEC formed a three-member committee for determining the level of radioactive material in the Vessel and devising the removal of the same.

The aforesaid chain of events, the learned Advocate for the Respondent No. 17, Mr. Ahsanul Karim has submitted, make it overtly clear that the Vessel did never carry any radioactive or toxic material. Mr. Karim acknowledges that NORM was indeed found in the sludge in the internal oil pipes, which occurred and accumulated, however, automatically over the years as a by-product of the running of the oils through the pipelines. Mr. Karim has gone to great lengths in this regard to produce and bring on record specialist technical research material to bolster his submissions in this regard. Further, according to him, the NORM detected is trifle and well within the acceptable standard and which were removed under the strict supervision of the committee formed at the joint collaboration of BAEC, BAERA, DoE and others. In spite of all the reports from the relevant authorities that the Vessel is

now free of all radioactive material, Mr. Karim submits that a vested quarter, including the Petitioner, is going all out *"to terrorize the Government authorities to put a halt to the ship-breaking projects"*. Proceeding on the same line of reasoning and argument, Mr. Karim seeks also to impress upon this Court that there appears to be equally no logical reason to seek assistance from expensive foreign experts as prayed for by BELA in this Writ Petition.

In responding to the allegation that the importer of the Vessel made false declaration by stating that there is no hazardous materials including Asbestos on board and that the Ministry of Industries, based on false declaration by the Respondent No. 17, accorded NOC for importation of the Vessel MT Producer, the learned Advocates Messrs Ahsanul Karim and Khairul Alam Chowdhury representing the Respondent No. 17 clarify that MT Producer is not within the 'Greenpeace List' of toxic ships. It is also asserted that in keeping with rule 3.1 of the *Ship-Breaking and Recycling Rules, 2011* read with item 39 of the relevant *Import Policy Order* the Respondent No. 17 confirmed by way of a declaration that the scrap Vessel does not carry any hazardous cargo nor any nuclear items on board and accordingly NOC was provided for the importation of the Vessel. It is contented, accordingly, that since no hazardous materials including Asbestos/PCB/PVC were carried as cargo there was, consequentially, no false declaration made. It is stressed by way of clarification that under the *Import Policy Order* in-built hazardous material or waste products are not to be taken into account to gauge the toxicity of a ship.

Mr. Ahsanul Karim has at this juncture gone through the litany of allegations made by the Petitioner, BELA being chiefly that the committee empowered to inspect the Vessel at outer anchorage gave a collusive report, that the representative of the Ministry of Industries was not present during the inspection in violation of rule 7.1 of the *Ship-Breaking and Recycling Rules, 2011* and that the assessment report by the designated team was prepared in a rush, without application of mind and in violation of various laws.

Mr. Karim submits in response that under rule 3.3 of the *Ship-Breaking and Recycling Rules, 2011*, the DoE examines a vessel for hazardous wastes and materials excluding in-built hazardous and toxic materials and issues an Environment Clearance Certificate for that particular vessel. Accordingly, Asbestos being an in-built material with the Vessel, the DOE was exempted from making any inspection thereon under Rule 3.3.

Mr. Karim also submits in clarification that the Ministry of Industries vide letter dated 11.08.2016 requested the Commissioner of Customs, DoE, Department of Explosive and the safety agency of the said Ministry to inspect the Vessel at outer anchorage and to conduct an inspection under rules 7 and 8 of the *Ship-Breaking and Recycling Rules, 2011* and to prepare an inspection report. Given this context, Mr. Karim submits that since the authorised safety agency of the Ministry of Industries inspected the Vessel it is not correct to say that the said Ministry's representative did not inspect the Vessel.

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Mr. Karim further argues that BELA's accusation that the designated team did not visit and inspect the entire Vessel is unfounded and tantamounts to a misrepresentation of fact and law. He submits that the designated team inspected the Vessel in the manner as required by law. The parameters of the law, he submits, are determined in this regard specifically both by rule 3.3 under which the DoE is not authorised to inspect in-built hazardous materials and by rule 8 by reference to which the designated team has to assess any vessel as far as practicable. In the facts Mr. Karim submits, it was not practicable for the designated team to see and inspect either the in-built hazardous materials or the sludge inside the cargo oil pipes. Predicated on the above, Mr. Karim would have this Court appreciate, therefore, that there is nothing wrong with the inspection report dated 13.8.2016.

Stressing further the point that BELA's allegation that the designated team did not look into the cargo oil pipes is frivolous and baseless, Mr. Karim explains that the sludge in cargo pipes existed at such places that could not practicably be looked into without first dismantling the cargo pipes and that there was no scope to dismantle the cargo oil pipes and to look into the same before cutting permission was accorded.

In response to the further allegation that the beaching permission based on a less than perfect and unreliable inspection exercise has also to be declared illegal, Mr. Karim submits that the assessment report of DoE being fully in accordance with law, the beaching permission is also legal. As to the allegation that the beaching permission was given in a rush

without application of mind, it is submitted that rule 9.7 of the *Ship-Breaking and Recycling Rules, 2011* obliges the Ministry of Industries to give the beaching permission within two days. Accordingly, there was no rush on the part of the Ministry to provide the beaching permission but merely an effort to remain strictly in compliance with the law. Furthermore, clause 3 of the beaching permission states that M/s H. R. Ship Management Limited would act as the safety agent in the dismantling process. Mr. Ahsanul Karim also urges this Court to appreciate that the Respondent No. 17 remains fully equipped to handle the entire dismantling process, but since the same process was to be monitored by H. R. Ship Management Limited the issue raised by BELA of the knowledge or capacity of the Respondent No. 17 to undertake the dismantling work is immaterial.

It is at this juncture that this Court has had to confront what it would like to term as *"The rule 15 (gha) Conundrum"* as has emerged in the course of the rival deliberations on the importation prerequisites highlighted by the parties to this case.

Rule 15 (gha) of the *Hazardous Wastes and Ship Breaking Wastes Management Rules, 2011* devised by the Ministry of Environment provides that no ছাড়পত্র or permission can be given by the DoE for ship-breaking purposes unless there is a certificate from the government of the exporting country or any specialized institution authorized by such government certifying that any given vessel is free from hazardous waste. Ms. Syeda Rizwana Hasan has insistently argued that a rule 15 (gha) certification ought to have been forthcoming in this case to guard

against the importation of the toxic Vessel. The problem, however, according to Mr. Ahsanul Karim, is that rule 15 (gha) is predicated on the notion of reciprocity and given that there is no reciprocity between Bangladesh with any foreign/exporting country making or having similar laws corresponding to rule 15 (gha) there remains no scope for any government of any exporting country to be either willing or being able to provide any such certificate. Rule 15 (gha), therefore, as per the Respondent No. 17, is inexecutable, impracticable and unenforceable and, therefore, redundant. The bottom line is that the certification under rule 15 (gha), though basic, is an elusive one given that under the circumstances it is impossible to procure.

Laying bare the facts concerning the cutting permission being accorded, the Respondent No. 17, Proprietor of Janata Still Corporation offers the explanation that rule 11 of the *Ship-Breaking and Recycling Rules, 2011* authorises the Ministry of Industries to accord cutting permission independently of and without reference to any other law. The said Ministry, accordingly, accorded cutting permission vide letter dated 8.19.2016 with copy endorsed to various agencies of the government including the DoE with the latter not raising any issue that the Respondent No. 17 cannot dismantle without express permission being obtained from it. Furthermore, the Ship-Breaking Association wrote to the DoE to dispense with the shipyard obtaining such DoE permission. The Respondent No. 17 highlights in this regard that there is an inter-ministerial decision that in fact dispenses with such separate DoE permission being obtained for cutting a vessel. It is pointed out that, the

DoE upon coming to know that there may be NORM in the Vessel initially vide letter dated 13.11.2016 put a halt to the dismantling of the Vessel. Later, the DoE vide letter dated 14.6.2017 allowed a resumption of the cutting of the Vessel to enable the BAEC to determine the dose of radioactivity in furtherance of a series of inter-ministerial meetings. The dismantling order dated 14.6.2017 by the DoE, according to the Respondent No. 17, has, therefore, to be seen not as a separate, isolated or inexplicable incident as BELA contends but rather as the outcome of inter-ministerial decisions and part of a fabric of inter-connected executive actions.

The Respondent No. 17 also attests to the sufficiency and adequacy of the ship-breaking capacity of its Yard and cites the safety report of H. R. Ship Management Limited to establish that the allegations by DANWATCH are frivolous. Furthermore, compliance with rules 17.19 (e), 17.19 (f), 17.20, 17.22(iv), 17.22(vi) of the *Ship-Breaking and Recycling Rules, 2011* as to equipments expertise, firefighters appliances and safety gear is affirmed by the Respondent No. 17. The said Respondent further assures this Court that previous inspections conducted under the aegis of the Ministry of Industries and DoE regularly without objections ever raised go clearly to vindicate its position and assurances regarding the capacity of its ship-breaking yard in this regard.

Having considered all information and documents brought on record and submissions made by the learned Advocates for all sides, this Court is preliminarily of the view that this case lays bare systemic

deficiencies in regulating the industry of ship-breaking as are indeed violative variously of articles 18A, 31 and 32 of the Constitution, *the Bangladesh Environment Conservation Act, 1995* and *Rules of 1997* made thereunder, *the Ship-Breaking and Recycling Rules, 2011, the Hazardous Wastes and Ship-Breaking Wastes Management Rule, 2011, the Basel Convention, the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 1990* and the judgment and directions of this Court in Writ Petition No. 7260 of 2008. There is no gainsaying that both sets of Rules of 2011 play a dominant role in the regulatory framework governing the ship-breaking industry in this country. Indeed that was the intent behind framing the Rules on the basis of this Court's earlier judgment in Writ Petition No. 7260 of 2008. The thrust of that earlier judgment was to meet the need, nay demand, of the hour to regulate a highly profitable and lucrative industry with a view to, however, ensuring overriding protection of workers' rights and safety and public health and the environment. Where the system previously allowed laxity, the Rules now impose stringent conditions. When previously the practice was of accommodation of vested interests, the legal dictate now guards against cutting corners and perfunctory endeavours at overall protection. When the accepted culture previously was of holding human life and the environment to ransom at the alter of commerce and the unbridled quest for profit, the legal régime is now one that demands a systemic transparency and accountability ruling out the possibility of any incidence of acting with impunity. True to the demands of that legal régime, and as merited by the facts and

circumstances of this case, this Court has necessarily gone through the Rules and other applicable laws with a fine-tooth comb and arrived at specific findings as are recorded hereinbelow.

Accordingly, this Court finds that rule 4 of the *Ship-Breaking and Recycling Rules, 2011* of the Ministry of Industries has made submission of *'Inventory of Hazardous Materials on board'* a prerequisite for importation for scrapping. Indeed, rules 3.1 and 4 of the *Ship Breaking and Recycling Rules, 2011* make the production of such an Inventory mandatory prior to import which in the instant case has been attempted to be met by the Respondent No. 17 by producing the unverifiable declaration of 3.8.2016 by Conquistador Shipping Corporation. Further, the Vessel was allowed to be imported not only without a sovereign or government declaration required under rule 15 (gha) of the *Hazardous Wastes and Ship Breaking Wastes Management Rules, 2011* but also without a reliable and definitive declaration as required under the relevant *Import Policy Order* to the effect that the Vessel is not carrying any toxic or hazardous wastes other than the in-built toxic materials. The inescapable conclusion, therefore, is that as such the presence of toxic and hazardous materials, in-built or otherwise, in the Vessel has been deliberately concealed or left vague by the Respondent No. 17 at the time of importation.

This Court notes in the above context that as per international standards an *Inventory of Hazardous Materials/Wastes* is an inventory of materials present in a ship's structure, systems, and equipment that may be hazardous to health or the environment. It is intended further to be a

reasonable listing of expected or known hazards at the time of drawing up the inventory given in suitable detail for the owner's purposes. (Source: *A Guide to the Inventory of Hazardous Materials, Lloyd's Register Marine: January, 2014).* A globally recognized standard or norm of listing may further be deduced from the *EU Regulation No. 1257/2013,* according to which an *Inventory of Hazardous Materials* shall comprise of lists of

(a) hazardous materials and contained in the structure or equipment of the ship with an indication of their location and approximate quantities;

(b) the operationally generated waste present on board the ship; and

(c) the stores present on board the ship.

It is thus clear to us that the requirements of the Rules for producing *Inventory of Hazardous Materials* prior to import entail a mandatory submission of credible, authentic and readily ascertainable declarations and certificates with genuine indication as to the waste flow of the scrap vessels including in-built wastes that cannot be satisfied on the basis of at best a superficially prepared document or at worst a fabricated one as that produced by Conquistador Shipping Corporation on 3.8.2016 as under Annexure "E-1". In this context we find that the attempt of the Respondents to connote a narrow meaning to the term *"on board"* wastes (to mean wastes that may be carried in a ship in loose form!) is specious and is not legally tenable particularly in the presence of categorical judicial directions according a much extensive and expansive meaning to the contrary to the said term. Furthermore, there is no

denying that rule 15 of the *Hazardous Wastes and Ship Breaking Wastes Management Rules, 2011* prohibits import of vessels without a waste-free certificate/pre-cleaning certificate for scrap vessels, and rule 46.12 of the *Ship Breaking and Recycling Rules, 2011* itself has made *"False declaration of a ship containing unmanageable hazardous waste and hazardous materials"* an offence. These provisions in themselves attest to the mandatory nature of such requirements.

It is to be noted further that while the *Ship-Breaking and Recycling Rules* defines *"International Certificate of Inventory of Hazardous Wastes/Materials"* (rule 2 (xv)) by reference to the government's import policy order and international conventions ratified by Bangladesh, it has not defined *Inventory of Hazardous Material on Board* separately and differently. That scenario, therefore, in this Court's view, permits of, indeed necessitates, such inventory to answer to the descriptions and standards as globally recognized and as above indicated by us.

The Vessel has also been imported, this Court notes, without the mandatory BAERA permission as required under sections 11, 18 and 26 of the *Atomic Energy Regulation Act, 2012 (*also *Rules of 1997).*

These lapses and oversights give credence to the assertion of the Petitioner that the document as to the waste flow of the Vessel (Annexure "E-1") submitted at the time of seeking import clearance is of dubious origin and its veracity doubtful and was not properly scrutinized by the Ministry of Industries prior to issuance of the import permit. It has also not escaped this Court's noted that the Vessel was not properly

inspected for in-built hazardous wastes as evidently proved by the inadequate report of the five-member committee exposed by subsequent BAERA and MPI evaluations.

Furthermore, in according beaching permission to the Vessel *'on special consideration'*, rules 7 and 9 of the *Ship Breaking and Recycling Rules, 2011* have been violated inasmuch as (i) the application for beaching has been forwarded evidently without any credible certificate that the Vessel contains no hazardous material and that there was no original Inventory (rule 7.2; rule 9.1) (ii) in allowing beaching, the faulty report of the five-member committee was relied upon by the Ministry of Industries; (iii) the five-member committee did not have the mandatory representation from the Ministry of Industry itself (neither a private safety agent can be delegated authority of the Ministry of Industry nor do the Rules authorize the Ministry of Industries to delegate its authority); (iv) no Environmental Clearance Certificate was issued by the DoE in favour of the Vessel as required under rule 9.3 of the *Ship Breaking and Recycling Rules, 2011*; (v) the documents of the Vessel were not forwarded to, nor was the Vessel, verified/inspected by BAERA/BAEC; (vi) the Respondent No. 17 was allowed to import the Vessel without having comprehensive and sophisticated infrastructure at its Yard to handle the identified quantities of radioactive and other hazardous wastes with equally adequate and approved infrastructure for disposal facilities nearby, adequately trained staff, and arrangements for strict monitoring by BAERA/BAEC and DoE (rule 9.9).

It is noted further from the submissions made by Ms. Syeda Rizwana Hasan that in pursuance of rule 19.4 of the *Hazardous Wastes and Ship Breaking Waste Management Rules, 2011* that requires assessment of existing hazardous materials/wastes of scrap vessels prior to submission of application for clearance for cutting/dismantling, the Ministry of Environment and Forest has formed an eight-member committee on 6.3.2014 to inspect, at the outer anchorage, vessels imported as scrap to identify, mark, collect samples and prepare list of hazardous wastes present in the vessels. The actual Terms of Reference of the committee in this regard read thus:

> "...***কমিটির কার্যপরিধি*** (Term of Reference)
>
> শিল্প মন্ত্রণালয় বা Ship Building and Recycling Board (SBSRB) হতে এনওসি (No Objection Certificate) প্রাপ্ত স্ক্রাপের জন্য আনীত জাহাজ চট্টগ্রাম বহিঃ নোঙ্গরে আগমনের পর জাহাজ সরেজমিনে পরিদর্শন করতঃ জাহাজে বিদ্যমান বিপজ্জনক বর্জ্যেও সনাক্তকরণ, চিহ্নিতকরণ, নমুনা সংগ্রহ ও তালিকা প্রণয়ন করবে;
>
> কমিটি প্রণীত প্রতিবেদনে নিম্নোক্ত বিষয়সমূহ বিবেচনায় আনতে হবে-
>
> (ক) শিল্প মন্ত্রণালয় কর্তৃক জাহাজের সৈকতায়নের জন্য;
>
> (খ) পরিবেশ অধিদপ্তর কর্তৃক পরিবেশগত ছাড়পত্র প্রদানের লক্ষ্যে;
>
> (গ) বিস্ফোরক পরিদপ্তর কর্তৃক বিপজ্জনক বস্তুসমূহ নিয়ন্ত্রণের লক্ষ্যে;
>
> (ঘ) স্ক্যাপ জাহাজ আমদানীকারক ইয়ার্ড মালিকের জন্য;..."

The expertise and resources of such committee merits fully to be called into operation in the present facts and circumstances.

While rule 3.3 of the *Ship Breaking and Recycling Rules, 2011* provides that DoE is not to examine the hazardous in-built and toxic

materials for giving environmental clearance certificates, rule 8 has required the DoE to nevertheless assess the hazardous wastes/materials of a scrap vessel including, the wastes in structures, on board, stores, and so on and so forth and issue Environmental Clearance Certificate prior to beaching. Rules 9.3, 15, 18 of the *Ship Breaking and Recycling Rules, 2011* and rules 19.4 and 19.5 of the *Hazardous Wastes and Ship Breaking Waste Management Rules, 2011* all additionally necessitate a detailed assessment by DoE of the hazardous wastes/materials of scrap vessels, it is found. There is nothing in the facts that is in evidence of these provisions being strictly followed.

In this context, and given the arguments of the Respondents on this issue, it is this Court's finding that although rule 9.9 of the *Ship Breaking and Recycling Rules, 2011* does not specifically include FPSOs, considering nevertheless that the said rule intends to regulate scrap vessels containing radiated materials, the import of FPSOs that contain radioactive materials/wastes is nonetheless subject to the bar prohibiting import of radioactive wastes/materials.

We note that after all verifications as mentioned in rules 7, 8, and 9- 9.6 are observed, beaching permission has been required under rule 9.7to he given in two days' times. This time limit is necessarily to be construed as a directive one and in no way requires the requisite verifications to be completed in two days come what may as claimed by Respondent No. 17. Instead, the two day time limit is found by this Court to be for the Port Authority to issue beaching permission but only after all verifications have been properly conducted by relevant agencies

including the DoE. The time limit cannot be held to be sacrosanct even at the cost of a due verification process which would otherwise make the entire scheme of verification nugatory per se. It is also this Court's view that the reliance by the Respondent No.17 on the terms *"as far as practicable"* for inspection of hazardous wastes/materials by DoE is misconstrued as rule 8 of the *Ship Breaking and Recycling Rules, 2011* and rule 19 (4) of the *Hazardous Wastes and Ship Breaking Recycling Rules, 2011*, read together, require a detailed assessment of all hazardous wastes/materials by the DoE prior to according beaching and breaking permissions.

We are satisfied too with the submissions by Ms. Hasan that the impugned breaking permission for the Vessel has been given by the Ministry of Industries in clear violation of section 12 of the *Environment Conservation Act, 1995*, rules 19 (4) and (5), Schedules 11 and 12 of the *Hazardous Wastes and Ship Breaking Recycling Rules, 2011*, rules 3.3, 11, 15, 16 of the *Ship Breaking and Recycling Rules, 2011*, and by overruling the conditions (conditions No. (b) and (g) in specific) given in the beaching permission. There is nothing on record to establish or suggest that any formal assessment of hazardous materials has been done. Furthermore, no Environment Clearance Certificate for beaching and dismantling of the Vessel was accorded as required under section 12 of the *Environment Conservation Act, 1995*, rule 3.3 of the *Ship Breaking and Recycling Rules, 2011* and rule 19.4 of the *Hazardous Wastes and Ship Breaking Recycling Rules, 2011*. Similarly, no statement of hazardous wastes in the Vessel was ever submitted to the

DoE as required under rule 19.4, Schedule 11 of *Hazardous Wastes and Ship Breaking Recycling Rules, 2011.*

Against this backdrop, the Ship Recycling Plan (SRP) produced as Annexure "30" of the Supplementary Affidavit-in-Opposition of the Respondent No. 17 reads to this Court to be a perfunctory effort at producing at best a cut-and-paste text that is also an incomplete document as the same has not included the approval of the DoE and has not been approved by any relevant agency. Again, the cutting permission in the facts has been given without being satisfied as to Workers Registration (rule 11.vi of the *Ship-Breaking and Recycling Rules, 2011*), without a fair assessment of hazardous wastes and hazardous materials (rule 16. ii) as evidently, there was no mention of NORM in the reports relying on which cutting permission was given suggesting authorization of cutting without adequate Personal Protection Equipment (PPE).

Due to all the above mentioned illegalities, omissions, deficiencies and discrepancies, this Court arrives at the conclusion that all authorizations/permissions purportedly given for import, beaching, breaking/cutting/dismantling of the Vessel are deficient in form and content and are, accordingly, found to be illegal, without lawful authority and detrimental to public interest. Accordingly, the circumstances of the import of the Vessel into Bangladesh are, hereby, declared to constitute illegal traffic of a toxic ship into our territory.

In that light furthermore, the decisions of an inter-ministerial meeting relied upon by the Respondent No. 17 and held on 4.1.2017

(incidentally held much after the Vessel in question was imported) to exempt scrap vessels from obtaining cutting permission from the DoE under rule 9 of the *Hazardous Wastes and Ship Breaking Wastes Rules, 2011* is found to be totally untenable in law. While an inter-ministerial meeting has no legal mandate to grant exemption from enforceable Rules, the ill-conceived decision taken on the request from the ship-breakers under the auspices of the Ministry of Industries is found to be myopic, illegal and devoid of all legal consequence flowing therefrom. Moreover, the rationale of this decision cited by the Respondent No. 17 that *"it is not logical to apply for cutting permission from DoE after obtaining cutting permission from MoI"* requesting further the DoE *"to avoid any further complications"* is symptomatic, in this Court's view, of the systemic malaise plaguing the ship-breaking regulatory mechanism in this country. This is chiefly by reason of the perceived *"independent and concurrent power"* assumed by the Ministry of Industries by operation of the two sets of Rules the operation of which have been contrived in such a way as to permit the Ministry of Industries to have greater say and an upper hand in all affairs of the ship-breaking industry. The fact that the cause of public health and the environment may suffer as a result is truly to be lamented.

Consequentially further, the practice has been engendered to import *"dirty"* vessels in disregard of legal strictures. It must be borne in mind that there is nothing in the Rules, in spite of all their deficiencies, that can be construed as empowering any government agency to aid an unauthorized importer of radiated wastes to act with impunity. The

mandate clearly is instead to objectively impose legal sanctions wherever such illegality occurs without aiming to do any one or any quarter any favour.

We note that pervasive systemic deficiencies and lapses have contributed to inadequate preparation for environmentally sound management of an entire gamut of activities including importation, beaching and breaking of vessels like the MT Producer. It is our view that a strict adherence to the application of municipal law and international law standards derived from the statutory and the multilateral instruments cited above read with the judgment in Writ Petition No. 7620 of 2008 does not indeed permit of a valid importation of the Vessel in question. A plethora of illegalities, omissions, deficiencies and discrepancies providing the context against which certain authorization and permissions were granted for the importation, beaching, breaking/ cutting/dismantling of the Vessel are, therefore, found to be shorn of all legality.

This case has alerted us to the spectre of importations of hazardous scrap vessels under dubious circumstances aided by generally non-transparent mode of operation of the ship-breaking industry in this country. Notwithstanding the considerable gains made through common law pronouncements and legislative intervention to address such issue, it has nevertheless become imperative in the facts for an intervention by this Court through directions addressed to the Respondents in the manner as hereinbelow provided. In this exercise, this Court views itself as participatory in a cooperative and collaborative exercise as a

stakeholder in a multi-dimensional strategy to address a systemic imbalance exactly in the sense as envisioned by Bhagwati J. as earlier quoted.

Finding overall merit in the application filed by the Petitioner and substance in the Rule issued this Court holds the importation of the scrap Vessel into this country in a mode and manner to be in violation of the applicable laws and judicial directions and notably in the absence of an entrenched and sustainable environmentally sound management system. Such importation is, therefore, declared illegal. It becomes imperative for the government to be directed in this context to henceforth stringently regulate the operation and functioning of cash buyers and pre-cleaning/ waste-certifying agents by enlisting them with all necessary available information and subjecting them to strictest scrutiny and legal sanctions as necessary. This may be accomplished, for instance, through establishing an information clearing house requiring all persons and entities engaged in such trade and transactions to be registered enabling anybody to track their track-record and their past transactions.

It becomes equally imperative for the government to further regulate importations of scrap vessels from *"black/gray listed countries"* and ensure that all future imports of scrap vessels are fully compliant with the prior and informed consent (PIC) requirement of the *Basel Convention* and in line with specific directions already provided in the Judgment in Writ Petition No. 7260 of 2008.

Considering the greater and paramount public interest involved in the case, the DoE is, hereby, directed to ensure that no scrap vessel is imported into Bangladesh and allowed to be beached by a yard not fully compliant with the conditions of any Environmental Clearance Certification, without the availability of proper pre-cleaning certificate and proper verifications as required jointly under the Rules, and no breaking permission in favour of any vessel is given without proper assessment of the hazardous wastes as mandated under rule 19.4 of the *Hazardous Wastes and Ship-Breaking Wastes Management Rules, 2011*, in particular.

Given further the realities on the ground and the developments pertaining to inter-agency decisions culled from various committee meetings and recommendations as recorded and examined hereinabove, it is, hereby, directed that-

(i) further to a plan of action to be drawn up by the Health Physics Radioactive Waste Management Unit (HPRWMU, Savar) of BAEC a thorough radiation survey of 100% area of the Vessel be conducted under the joint auspicious of BAEC, BAERA and the MPI assisted by a special team as already envisaged in the committee and expert reports formed for that purpose;

(ii) the dismantled pipes containing sludge which have already been found to be contaminated with NORM should be decontaminated under the guidelines and oversight of the HPRWMU;

(iii) post-decontamination, a further radiation survey shall have to be conducted with a report to be submitted to BAERA identifying ,in

particular, the volume of the contaminated sludge and spelling out as well the mode of ultimate disposal of both contaminated pipes and sludge under HPRWMU guidelines;

(iv) such survey shall also include tests or samples of mud, water and marine life in the vicinity of the Vessel;

(v) in such activity at least one Senior Scientist or CSO of HPRWMU shall be engaged full time;

(vi) the exercise of decontamination and disposal shall be undertaken and conducted bearing in mind the relevant provisions of the nuclear safety and radiation regulatory provisions of the পারমাণবিক নিরাপত্তা ও বিকিরণ নিয়ন্ত্রণ বিধি, ১৯৯৭ as promulgated by authority of section 16 of the পারমাণবিক নিরাপত্তা ও বিকিরণ নিয়ন্ত্রণ আইন, ১৯৯৩;

(vii) such survey and consequential processes as directed hereinabove shall be undertaken at costs to be borne by the Respondent No. 17. Any participation on the part of the said Respondent in the survey, dismantling and consequential processes, as may be deemed necessary by the other participatory institutions, shall have to be clearly spelt out in the plan of action to be drawn up by HPRWMU but envisaging expressly such role of the said Respondent to be a supervisory and monitoring one but without the active involvement of the said Respondent; and

(viii) in the future any consideration of granting import clearance shall be based on the survey conduct by the MPI or an institution of similar status and capacity.

We have noted that the Director of Environment has during the pendency of this Rule renewed the environmental clearance of the Ship-Breaking Yard of the Respondent No. 17 successively for the years 2018-2019 and 2019-2020. In that context, it is, hereby, directed that the Respondent No. 17 desist forthwith from any individual and independent ship-breaking activity at the Yard until 1.2.2020, that is until such date when the present certification validity period expires. Further renewal of the environmental clearance shall be conditional upon the outcome of the radiation survey of the Vessel in the mode and manner as hereinabove ordered as well as the completion of the dismantling, decontamination and disposal exercise as also previously ordered. Particular heed shall have to be paid to condition No. 14 of the certification as envisages imposition of liability and payment of damages (ক্ষতিপূরণ) in accordance with the *POLLUTERS PAY PRINCIPLE* if the Yard's activities are found to have been prejudicial to public interest and having adversely impacted upon the environment overall.

The Rule Nisi as initially issued is, therefore, disposed of with the observations and directions above.

The Order of Injunction as initially granted on 29.8.2017 is necessarily, hereby, recalled and vacated.

Before parting, it is deemed prudent, however, to add a postscript. While not strictly bearing on the juridical outcome of this case as above, a matter spanning several jurisdictions came to this Court's attention much late into these proceedings. We have been alerted on the enormity and graveness of the fallout from the transboundary movement of the

Vessel culminating in its importation into Bangladesh. The factual dimension of this matter was reflected in this Court's Order of 5.8.2018 thus:

> *"By a Supplementary Affidavit dated 30.7.2018 the Respondent No. 7 Director General, Department of Environment has brought on record developments in the United Kingdom since June, 2017. These are in evidence of the U.K. Environment Agency seeking legal assistance from the relevant authorities in Bangladesh by invoking section 7(5) of the Crime (International Cooperation) Act, 2003 pertaining to the shipment of the vessel M.T. Producer from the U.K. to Bangladesh in May, 2016 for ship breaking purposes. It is alleged that certain offences may have been committed in the process of such shipment. To that effect, the U.K. Environment Agency sent a letter of request to the Ministry of Home Affairs, Bangladesh on 19.6.2017 and forwarded a copy of that letter on 30.6.2017 to the U.K. Central Authority, International Criminality Unit, Home Office, London.*
>
> *The U.K. Home Office in turn has written to the Ministry of Home Affairs on 14.7.2017 forwarding the Environment Agency's earlier request. The Respondent No. 7's Supplementary Affidavit further records inter- Ministry communications between the Ministry of Home Affairs and the Ministry of Forest and Environment in early-2018 to initiate steps for gathering of information urgently on various aspects concerning the sailing of M.T. Producer into Bangladesh's territorial waters.*
>
> *The learned Advocate for the Respondent No. 17 Mr. Ahsanul Karim today apprises this Court of the Environment Directorate's communication of 25.7.2018 addressed to his client predicated on the above developments seeking information on the purchase of the vessel M.T. Producer. The Respondent No. 17 has been alerted to treat such request urgently and the prayer now is for time to be granted to facilitate compliance on a priority basis with the Environment Directorate's request. Mr. Karim submits that material produced in response to the Environment Directorate shall attest to and reinforce further his client's position of being in the clear legally in the facts as arise in the present matter. It is imperative, however, as Mr. Karim submits that the Respondent No. 17 be granted time to attend to the official request as comprehensively as possible before substantive hearing may be revived in this present matter. In that regard, he prays for time with a dispensation to revert a week after the long vacation.*

Given the circumstances above, this Court in favourably considering that prayer allows the time so prayed for and directs that this matter appear as a part-heard matter from 8.10.2018."

The scenario above, we note, points to certain offences as may have been committed in the United Kingdom in the process of shipment of the Vessel from the U.K. to Bangladesh in May, 2016. As the Order above records, the U.K. authorities are in touch with counterparts in Bangladesh for gathering information in this regard. Consequentially, the DoE has been in touch with the Respondent No. 17 seeking information on purchase of the Vessel. The said Respondent sought this Court's indulgence for adjournment so that it could respond to the Directorate as comprehensively as possible.

It is to be noted that on 19.1.2017 the U.K. Environmental Agency sent a request for legal assistance under section 7(5) of the *Crime (International Co-operation) Act, 2003* on the suspicion that an offence has been committed involving the shipment of the Vessel for ship-breaking in May, 2016. Records indicate that such enquiries in the U.K. may result in charges being brought for breaches of *The Transfrontier Shipment of Waste Regulations (TRS), 2007* and/or the Duty of Care provisions in section 34 of *the Environmental Protection Act, 1990. The TRS Regulations* as make it an offence for a person to ship waste (including a waste ship for ship-breaking) from the U.K. in circumstances deemed to be *"illegal traffic"* under *the Wastes Shipments Regulation Ec 1013/2006.* Although, as evident in the Supplementary Affidavit-in-Opposition of the Respondent No. 17, government agencies in Bangladesh have found no wrongdoing in the act of *"importation"* of

the Vessel into Bangladesh, the concerned U.K. agency for its part, however, seeks presently to enquire into the issue of sale and shipment (export) of the Vessel from U.K.

The development above has been rather revealing for this Court. The legal régime that we have dealt with above is dependent, as amply established by the ongoing investigation in the U.K., on reciprocity, and inter-connectivity between and mutual dependence of municipal and international law. This reciprocity is best achieved in instances of consistency of standards and approach. We have ample reason to opine that the Bangladeshi legal régime, dominated by two competing regulatory frameworks, i.e., the Rules, suffers from an overall lack of accountability, inconsistency and disdain, in practice, of strict compliance with international law standards ignoring statutory and official declarations to the contrary. We detect irregularities tolerated in the importation, beaching and ship-breaking processes and a tendency to cover up the same when something goes awry. It is this Court's view that a concerted effort by all, including the judiciary, at a closer alignment of Bangladeshi practices in the field of ship-breaking with ever-tightening and restrictive international standards is the only way out for an industry as this to sustainably operate within these borders. Viewed from a point of constitutional law, it is our view that any regulatory and enforcement system falling short of applicable standards will make the inter-generational promise under article 18A of the Constitution to a protected and improved environment hollow and the

guarantees to the citizenry under articles 31 and 32 to lives lived under the protection of rule of law illusory.

Resultantly, in reiterating our Order above disposing of this Rule with certain observations and directions, we alert the parties concerned and those others engaged in and related to the ship-breaking industry in this country to one reality. That is, the judiciary will brook no blatant and willful disregard of the legal and regulatory framework governing the enterprise of ship-breaking whenever a challenge by rogue and willful acts are mounted against constitutional guarantees as in this case. Both the judgment in the earlier Writ Petition No. 7260 of 2008 and the instant one must be read by all quarters as judicial dictates at engendering a culture of protection and compliance that will enable the potential inherent in the fundamental principle of state policy enshrined in article 18A of the Constitution to be realized to its fullest.

There is no Order as to costs.

Communicate this Judgment and Order at once.

Syed Refaat Ahmed

Md. Salim,J:

I agree.

Md. Salim

Typed by: Rubel. 26.02.2020
Read by:
Exam. by:
Readied by:

প্রত্যায়িত অবিকল প্রতিলিপি

26-02-2020
সহকারী রেজিস্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
(১৮৭২ ইং সনের ১নং আইনের)
৭৬ ধারামতে ক্ষমতা প্রাপ্ত

26-02-2020
মুহাম্মদ নেছারুল শিকদার

26-02-2020
মোঃ গোলাম মোস্তফা ভূইয়া