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০৭, ২২/৫/০৭, ২২/৫/০৭, ২৭/৫/০৭, ২৭/৫/০৭

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

WRIT PETITION NO.7260 OF 2008.

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

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

-VERSUS-

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

..... Respondents

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

.....For the petitioner

Ms. Syeda Rizwana Hasan, Advocate

.....In person

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

Ms. Nowazish Ara Begim, Assistant Attorney General

.....For the respondent No.6

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

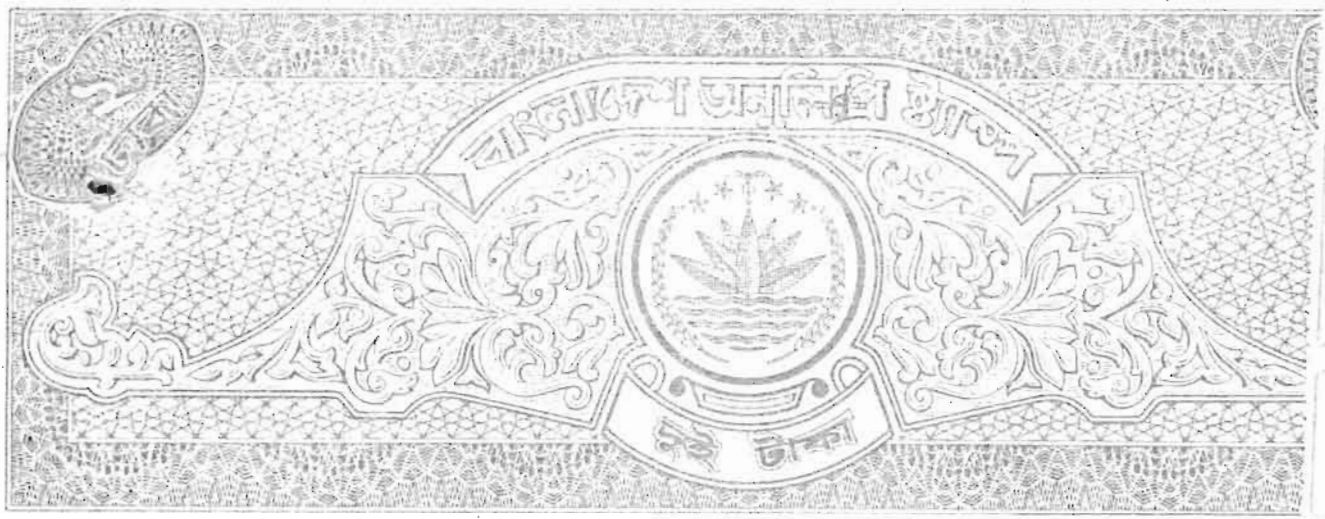
.....For the respondent No.17

Ms. Pawzia Karim Firoza, Advocate

.....For the respondent No.8

Present:  
Mr. Justice Md. Imman Ali  
Amil  
Mr. Justice Shauki Abdul Aziz

Heard on: 02.02.2009, 03.02.2009,  
05.02.2009, 08.02.2009, 10.02.2009,  
12.02.2009 & 21.02.2009  
Judgment on: 05.03.2009 & 17.03.2009

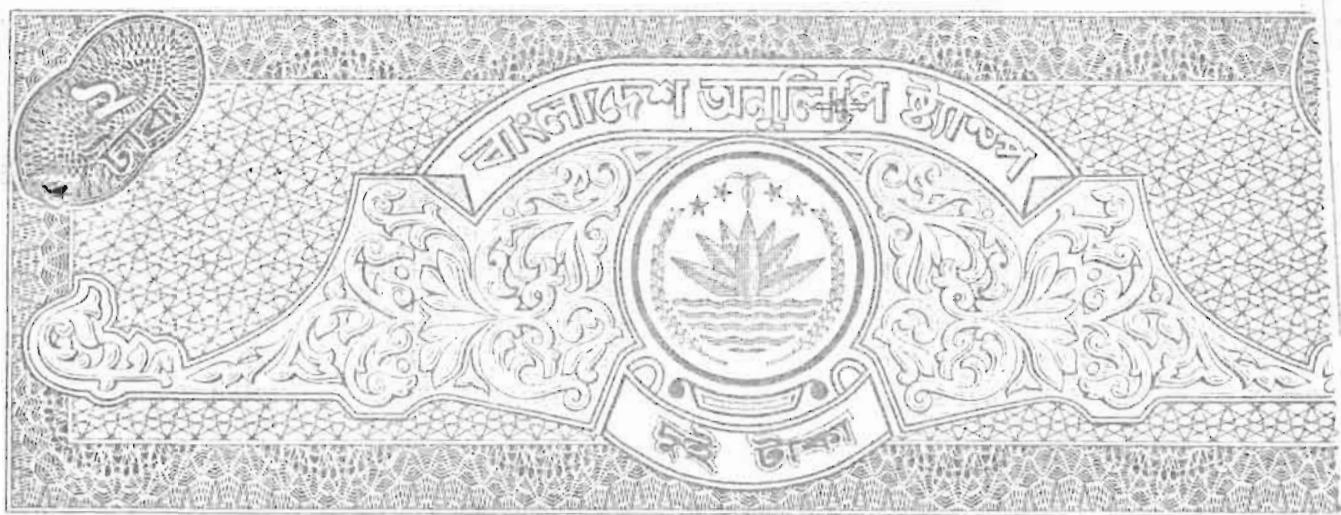


Md. Imman Ali, J.

The subject matter of the instant application is the import of an oil tanker plying under various names, including Atlantia, New Atlantia, Ocean Enterprise and lastly M.T. Enterprise (IMO No.7709136). The vessel was imported by M/S Madina Enterprise (respondent No.17) from a company based in Singapore, Yalumba Inc. (respondent No.19) Before the vessel could be imported there was a requirement to obtain a 'No Objection Certificate' (NOC) for opening a Letter of Credit (L.C) for importing the vessel for the purpose of dismantling.

This Rule Nisi was issued upon an application filed under Article 102(2)(a)(i) and (ii) of the Constitution by Bangladesh Environmental Lawyers Association (BELA) represented by its Director (Programs) Syeda Rizwana Hasan, calling upon the respondents to show cause as to why the issuance of the NOC dated 27.07.2008 vide Memo No.Environment-60/Ship Import/06/Part-19/3430 issued by the office of respondent No.8, (Department of Shipping), for importing MT Enterprise (IMO N0. 7709136) for breaking purpose and the subsequent attempted entry of the said vessel into territorial waters of Bangladesh should not be declared to have been issued without lawful authority and is of no legal effect. The respondents were further asked to show cause as to why they should not be directed to take immediate steps to remove the vessel MT Enterprise out of the territorial waters of the country, why they should not be directed to prevent the entry of any of the remaining

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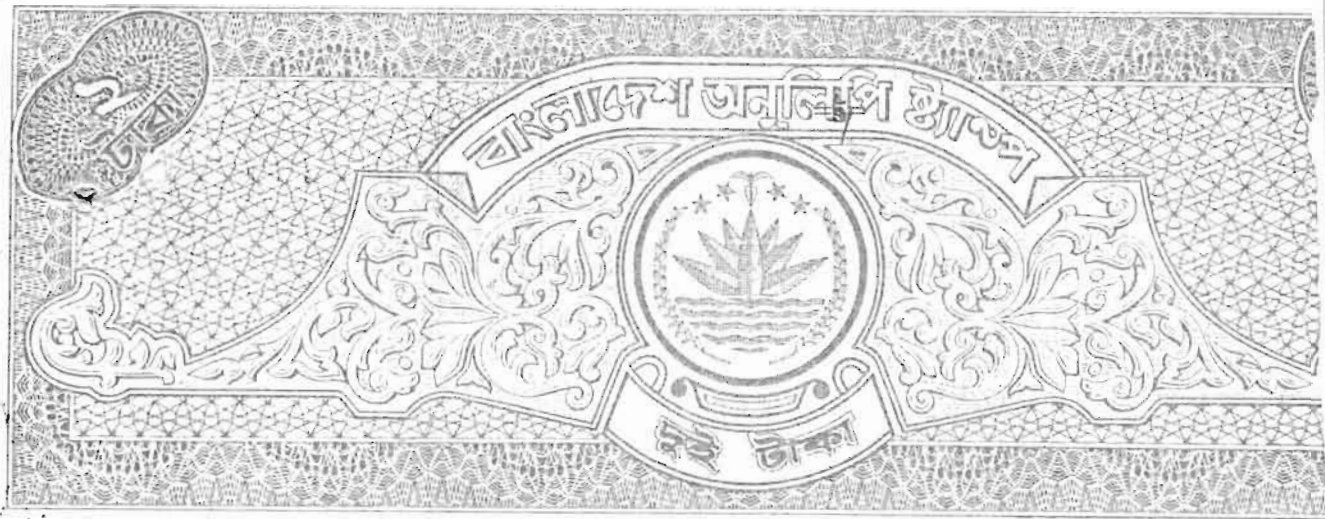


hazardous vessels as listed by Greenpeace (Annexure-C) into the territorial waters of Bangladesh; and also to frame necessary Rules and regulations as observed by the Hon'ble High Court Division in its judgment dated 06.07.2006 in Writ Petition No.3916 of 2006.

The petitioner, BELA is an association registered under the Societies Registration Act, 1860. It is recognised as one of the leading organisations with expertise in the field of environment and ecology and its work done in the public interest. Its reputation and achievements are well documented and need not be recounted here. BELA's locus standi to file this type of application in the form of public interest litigation has been discussed in numerous decisions of our Supreme Court. Reference may be made to Dr. Mohiuddin Farooque v. Bangladesh, 55 DLR 69.

The vessel MT Enterprise, IMO No.7709136 was a single hull oil tanker manufactured in Japan in the year 1979. After changing its name at various times and having plied under the flags of various countries, it was ultimately exported by M/S Yalumba Inc. The formalities for obtaining the NOC were complied with by the importer in making its application, including production of various supporting papers and accordingly, the NOC was issued by the Department of Shipping (respondent No.8). Upon getting information that the vessel was enlisted in the Greenpeace list of hazardous vessels, the Department cancelled the NOC vide Memo No.পরিবেশ-৩০/জাহাজ আমদানী/০৬(অংশ-২০)/৩৭২৪ dated 13.08.2008 (Annexure-I(1)). Thereafter, respondent No.17, the importer,

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filed Writ Petition No.6262 of 2008 challenging the cancellation of the NOC. Respondent No.17 requested the Department of Shipping to conduct an inquiry in order to ascertain whether the vessel was carrying any noxious/hazardous materials. Accordingly, on 26.08.08 the Department of Shipping constituted a Committee of three members comprising Engineer Md. Serajul Islam, Engineer & Ship Surveyor with Mercantile Marine Department, Chittagong, Captain Faridul Alam, Dock Master of the Chittagong Port Authority and Dr. Md. Mosharraf Ashraf, Chief Chemist, Department of Shipping, 'to determine toxic substances on board of M.T. Enterprise in excess of ordinary sea voyage.' After conducting the survey on 27.08.2008 and the Committee submitted its report dated 28.8.2008 giving its opinion as follows:

"Committee is in the opinion that amount of toxic substances determined by the survey of committee are not excessive than the amount generally remain on board for such type of vessel during sea going voyage."

The Department of Shipping by letter dated 08.09.2008 notified the office of the Attorney General confirming that 'this vessel was similar to any other tanker of same size in terms of hazardous waste' and further confirmed that 'it does not contain excessive hazardous waste as compared to other tankers of similar size and specifications.' In the said letter it was intimated that the Department of Shipping wished to withdraw the letter dated 13.08.2008 by which the NOC had been cancelled. Accordingly, the office of the Attorney General filed an affidavit expressing to the Court that the government had decided to withdraw the cancellation with a prayer that the Rule may be

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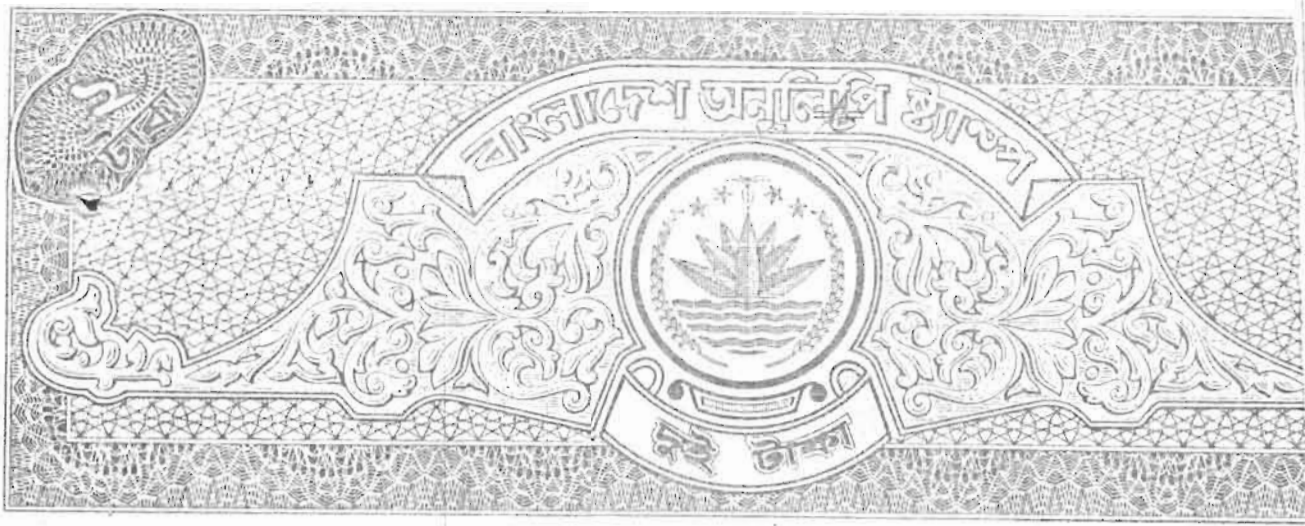
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disposed of. By order dated 10.09.2008 the Rule in Writ Petition No.6262 of 2008 was discharged giving the respondent No.17, the 'liberty to deal with the ship in question in accordance with law in any manner as deem fit and proper.'

Thereafter, the instant petition was filed on 14.09.2008 and after hearing a Rule Nisi was issued on 17.09.2008 as stated above. Pending hearing of the Rule, the operation of the NOC was stayed initially for a period of 2(two) weeks and, subsequently, it has been extended from time to time. By 26.10.2008, respondent No.17 had already started cutting and breaking the vessel MT Enterprise. But upon satisfying this Court that the vessel was enlisted by Greenpeace, as it required decontamination before scrapping, the petitioner obtained an order from this Court on 26.10.2008 restraining respondent No.17 from breaking the vessel further. By order dated 27.10.2008 passed by the Appellate Division, the order of injunction passed by the High Court Division was stayed. Subsequently, the matter came before this Bench for hearing and disposal. In this connection, upon a thorough discussion in the Chamber of the presiding Judge, with Professor Dr. Md. Altab Uddin of the Department of Biochemistry and Molecular Biology, University of Dhaka, Dr. Md. Mosharraf Ashraf, Chief Chemist, Environment and Management Section of Department of Shipping and Mr. Iftekhar Enayetullah, Managing Partner of Waste Concern, an NGO based in Dhaka, it was the consensus of opinion of the 3(three) experts consulted that any amount of hazardous materials to which the workers are exposed can be dangerous and that the pollution created by

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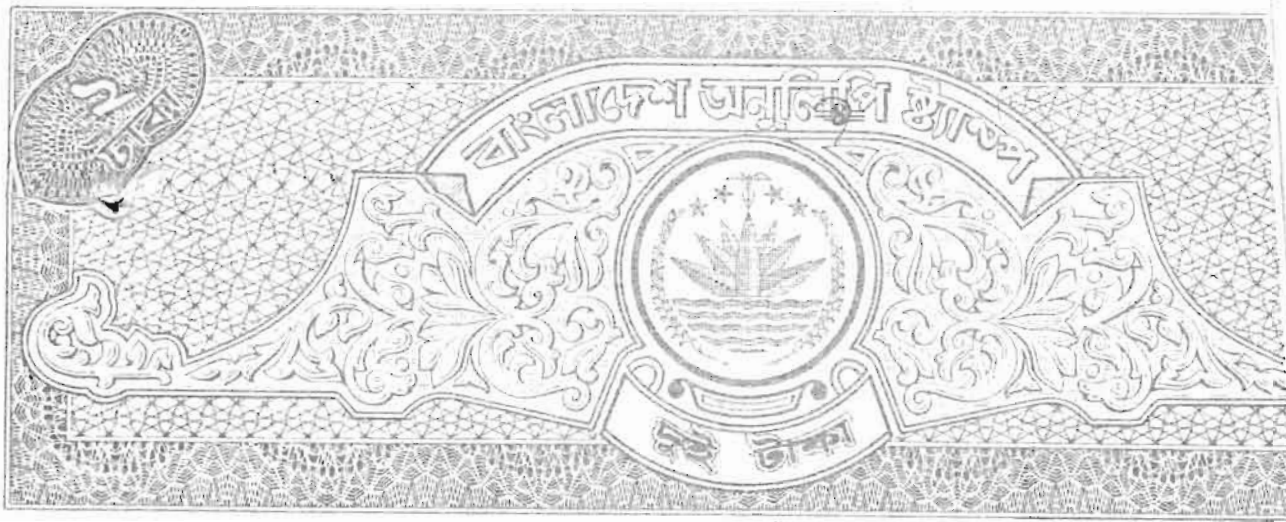
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shipbreaking is detrimental to the environment. Having been prima-facie satisfied that there was risk to health of the employees working in the process of ship breaking, the Bench comprising Md. Imman Ali and Ashfaquul Islam, JJ., by an order of injunction dated 30.11.2008 restrained respondent No.17 from continuing any further work in breaking/dismantling the vessel MT Enterprise.

By the aforesaid order dated 30.11.2008, a further Rule was issued calling upon the respondent No.5, Ministry of Environment to show cause as to why they shall not be directed to ascertain the number of shipbreaking yards and projects which are ongoing within the territory of Bangladesh and to report within 2(two) weeks as to the number of such shipbreaking yards/projects which are operating without obtaining any Clearance Certificate from the Ministry of Environment and also why they shall not be directed to take appropriate action against those concerned who are undertaking shipbreaking without first obtaining clearance from the Ministry of Environment as required by law.

Respondent No.17 by filing affidavit in opposition stated that the vessel MT Enterprise was not contaminated and referred to the report of a survey carried out by Caseth Marine Consulting (S) PTE Ltd., a Singaporean Company, which did not detect any hazardous substance on or inside the vessel. He further referred to the report of the Committee headed by one Engineer Md. Serajul Islam in which the Chief Chemist of the Department of

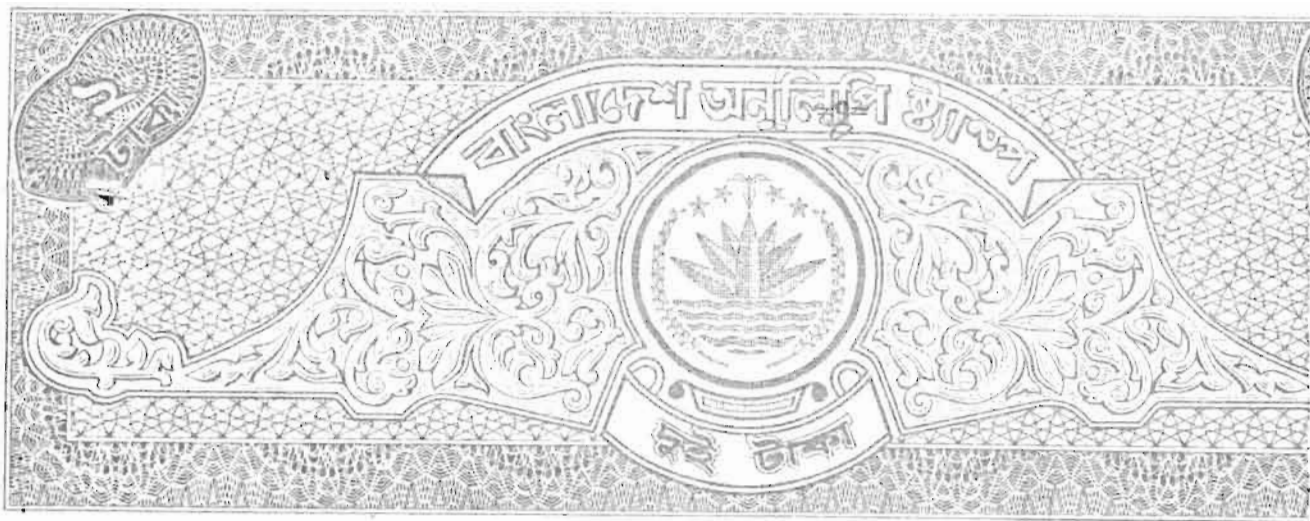
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Shipping was also a member, who upon inspection did not find hazardous materials in excess of the normal quantity found in such vessels and accordingly, the Rule in Writ Petition No.6262 of 2008 was discharged and, in view of the Court's direction that the petitioner was at liberty to deal with the ship in question in accordance with the law, respondent No.17 continued with dismantling the vessel.

Respondent No.8, the Department of Shipping entered appearance by filing affidavit in opposition stating, inter alia, that a Committee was formed to investigate whether the MT Enterprise was carrying hazardous substance and upon conducting survey of the said vessel, it was found that the amount of toxic substance on board MT Enterprise is not excessive compared to the amount generally remaining on board such types of vessel during sea-going voyages. It is further stated that the NOC in respect of the vessel was issued without having knowledge about the ship beforehand. But subsequent to the inspection of the vessel, the Rule in Writ Petition No.6262 of 2008 was discharged and this respondent only acted upon the instruction of the Attorney General's office with regard to the withdrawal of the cancellation order. By a supplementary affidavit respondent No.8 produced papers from the records of the Department of Shipping relating to the application for NOC by M/S Madina Enterprise as well as the file-noting relating to the NOC issued, cancelled and later withdrawal of the cancellation.

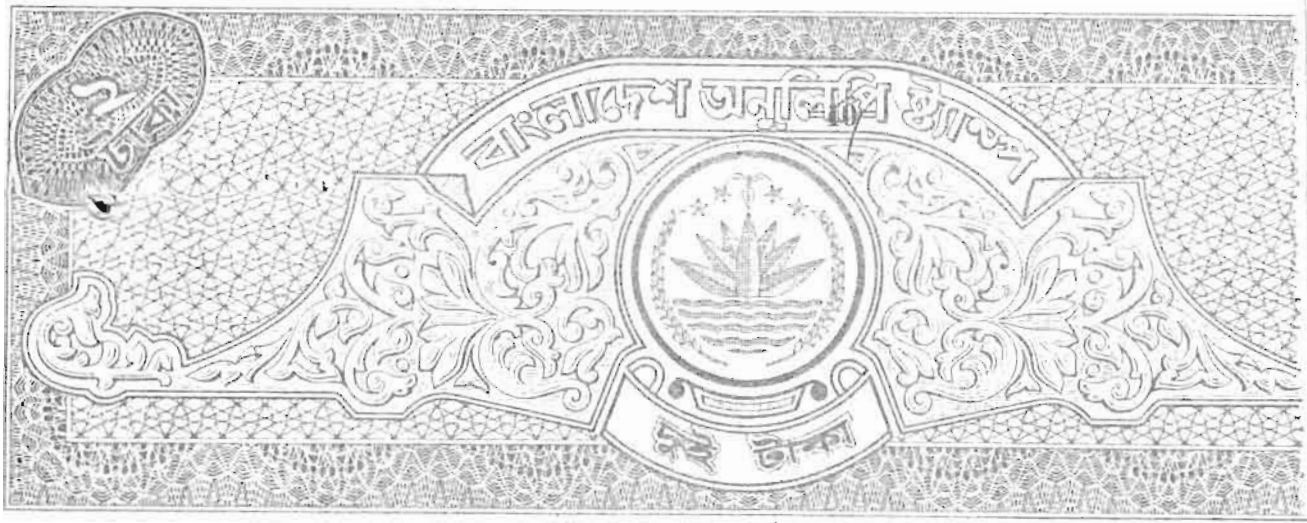
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Respondent No.6 appeared by filing affidavit in opposition through the learned Assistant Attorney General, Ms. Nowazish Ara Begum, and admitted that the statement made in paragraphs 7 to 8 of the writ petition (with regard to the adverse effects of shipbreaking on the environment and ecology) are largely correct, but denied any failure on its part. This respondent also pointed out that steps have been taken already to reclassify the shipbreaking operation from the Orange-B category to the Red category requiring more stringent clearance process. This respondent further pointed out that in the case of vessels SS Norway and MT Alfaship, this respondent took all necessary steps to prevent the entry of those ships into Bangladesh and also took similar steps in the case of MT Enterprise by its Memo No.Po o/chobi/ship breaking-70/85 dated 15.09.2008. Furthermore, this respondent by his letter dated 18.09.2008 also requested respondent No.8 not to allow scrapping of the vessel MT Enterprise. It is pointed out that this respondent has responsibility to deal with hazardous substances and industrial waste, but was not included in the team who inspected the vessel and cannot confirm the finding that no hazardous substance was found in the vessel during the inspection. This respondent pointed out that the knowledge available in the public domain suggests that, in all likelihood, an oil tanker like MT Enterprise will contain hazardous wastes including heavy and toxic metals like lead, mercury, cadmium, copper, zinc, asbestos fibres, dust, organometallic substances like tributyltin, etc., PCBs and polyvinyl chloride (PVC), compressed gas.

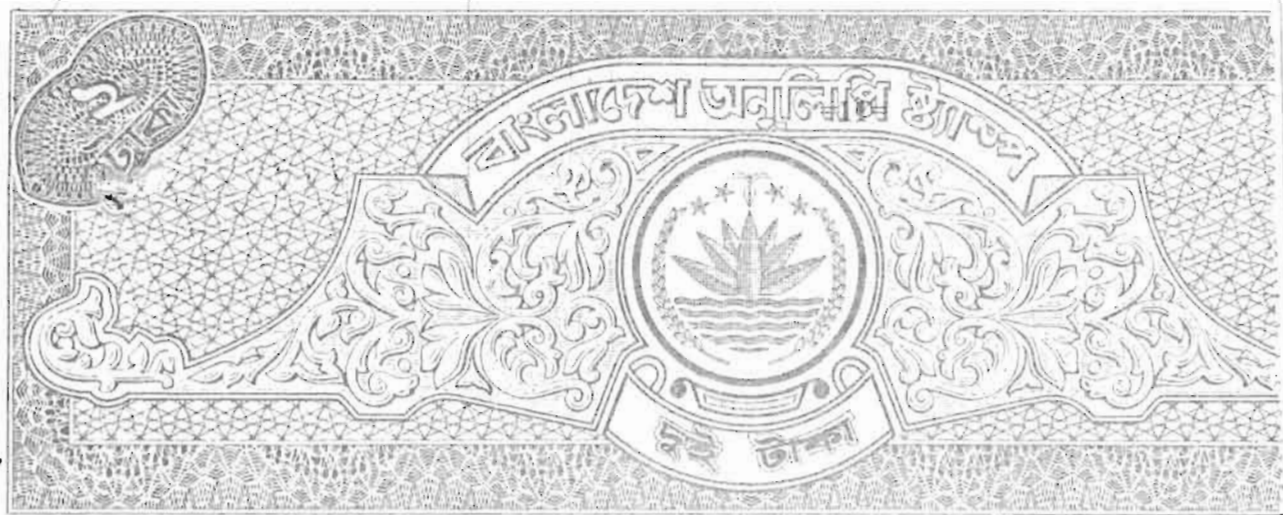
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In reply to the Rule issued against respondent No.5, Ministry of Environment and Forest, respondent No.6, the Department of Environment submitted a report of an inspection undertaken by Dr. Md. Sohrab Ali, Deputy Director (Implementation/বাস্তবায়ন), Dhaka Division of the Ministry of Environment and Forest, which was forwarded to this Court through the Senior Assistant Secretary of the said Ministry vide Memo No.পবম/পরিবেশ শা-৩/০৫/ইভামা-১০/২০০৮/৭৩৯ dated 11.12.2008. It appears from this report that there are 36 shipbreaking yards within Sitakunda Police Station of Chittagong District and that the Bangladesh Ship Breakers Association (BSBA) has 129 listed members employing almost 4,00,000 persons. The shipbreaking yard in question (Madina Shipbreaking Yard) and the other shipbreaking yards in the area never applied for any Environmental Clearance and the workers are working under the open sky and many of them were found working without any mask, gumboots or helmets. The persons-in-charge of the yard admitted that they did not have any facility for management of waste materials. There was no waste oil/sludge oil removal site/holding tank/asbestos/hazardous materials dumping/disposal site. Those concerned were not able to state clearly how and where they have disposed of the hazardous waste materials. It is further observed in the said report that the applicant, Madina Enterprise, did not supply any list of hazardous materials on board and the importer did not supply any papers relating to the pre-cleaning of the vessel.

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By the numerous supplementary affidavits filed by the petitioner it has been sought to impress upon this Court that Bangladesh, being a signatory to the Basel Convention, is obliged to follow the norms laid down in that Convention and that admittedly the vessel MT Enterprise contained hazardous materials and was imported in contravention of the provisions of the Basel Convention. It is further contended that the vessel in question, like all others of a similar nature, contained hazardous materials and ought not to have been granted the NOC, particularly in view of the fact that the applicant for NOC namely, Madina Enterprise, misrepresented the fact that the vessel was listed as one containing hazardous materials in the list of Greenpeace. Moreover, the law requires shipbreaking yards and the process of shipbreaking to be authorized by a clearance to be obtained from the Department of Environment, which is a department under the Ministry of Environment and Forest. No clearance having been obtained, the process of dismantling the vessel was illegal and both the Ministry of Shipping, including the Department of Shipping, and the Ministry of Environment and Forest, including the Department of Environment, were negligent in their duties in allowing the vessel to be imported and dismantled.

Mr. Fida M. Kamal, learned advocate appearing with Ms. Syeda Rizwana Hasan, learned advocate (the petitioner representing BELA) and Mr. M. Iqbal Kabir, learned advocate made submissions on behalf of the petitioner, Bangladesh Environment Lawyer Association (BELA). Mr. Fida Kamal

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submitted that Bangladesh ratified the Basel Convention, 1989 on 01.04.1993 and is bound to implement the provisions and safeguards contained therein. He pointed out that from the facts of the instant case, it is apparent that the NOC for opening L/C for importing a vessel, which is listed in the Greenpeace list as a vessel containing hazardous materials, was in clear violation of the requirements of law. Referring to the file noting of the Department of Shipping, the learned advocate pointed out that clearly the vessel was in the Greenpeace list and the search and report by the Department of Shipping that it was not in the list, was perfunctory and motivated. The learned advocate pointed out that the very same list was previously produced before the Department, when attempt was being made to import the vessels SS Norway and MT Alfaship. At that time MT Enterprise was plying under the name of New Atlantis and was in the Greenpeace list as such. Moreover, the learned advocate pointed out that the report of the committee headed by one Engineer Md. Serajul Islam and also having the Chief Chemist of the Department of Shipping as a member, clearly shows that there were hazardous materials found on board the vessel. Although, their report cannot be accepted at face value, since as admitted by the Department of Environment, such finding showing such low quantities of hazardous materials would not be acceptable. Nevertheless, he submitted, the finding of the Survey Committee that the vessel contained no more than similar vessels, and allowing the vessel to be dismantled for that reason was based on an ingenuous and fallacious

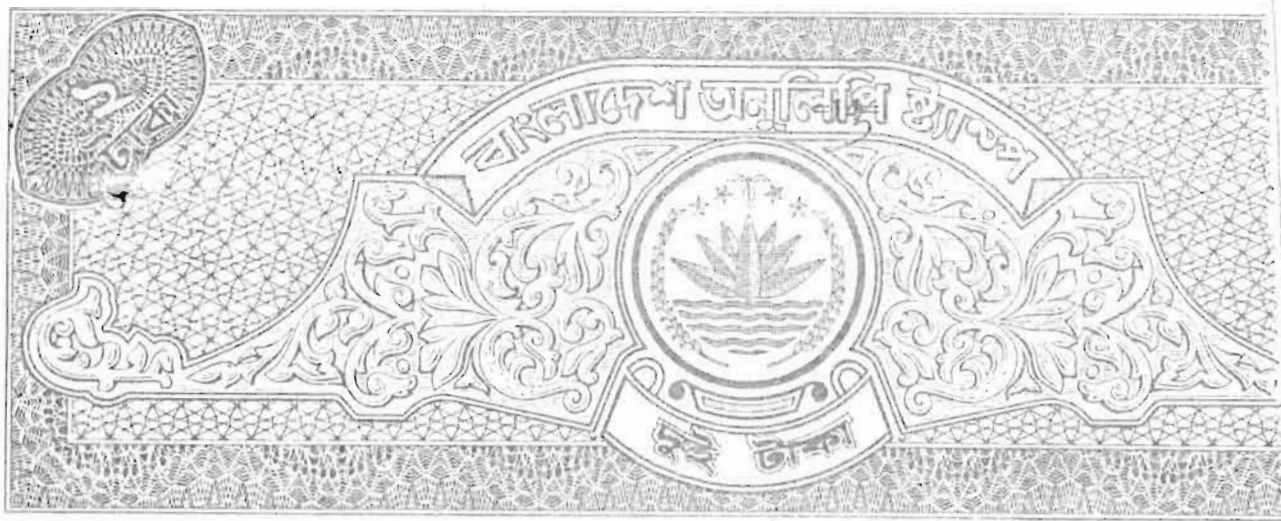
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argument. The consideration should be whether or not the vessel contained hazardous materials which are likely to have a detrimental effect on the environment and the workers who are working in the shipbreaking yards. Comparison with other similar sea-going vessels was the wrong test since the MT Enterprise was no longer a sea-going vessel and was here to be scrapped.

The learned advocate further submitted that the NOC for opening L/C in order to import a vessel for dismantling is only one aspect of the shipbreaking process. The other and more important aspect for the environment and the people of this country is the clearance to be obtained from the Ministry of Environment, through the Department of Environment, for the purpose of shipbreaking. He pointed out that the necessity for obtaining clearance emanates from the need to protect the environment from the damage which may be caused by the hazardous waste generated by the shipbreaking process as well as the injury that may be caused to the workers in the shipbreaking yard, who are not sufficiently protected from exposure to all the hazards present at the site. He submitted that in the absence of any such Clearance Certificate the shipbreaking process ought not to have been allowed to proceed. He submitted that when a similar vessel namely, MT Alfaship was turned back from the waters of Bangladesh and when the Ministry did not issue the NOC for the purpose of its import, there is no earthly reason why the NOC was issued in the case of the instant vessel, MT Enterprise.

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Mr. Fida Kamal submitted that the concept of issuing NOC first came into being as a result of an outcry against the importation of vessel S.S. Norway. At that time, upon the intervention of the Hon'ble Prime Minister, the Ministry of Shipping requested the Bangladesh Bank not to issue L/C for the purpose of importation of any vessel unless the importer had previously obtained the NOC from the Department of Shipping. Accordingly, the Bangladesh Bank issued direction upon the commercial Banks not to issue L/C for importation of vessels for the purpose of shipbreaking without having prior NOC from the Department of Shipping. He submitted that the timely step taken by the Prime Minister saved the country from a lot of pollution. The SS Norway was reported to contain over 1,250 tons of asbestos.

Mr. Fida Kamal referred to Annexure-O which is an article published by Greenpeace in December, 2004 entitled "Destination Unknown," regarding European single-hull oil tankers. He pointed out that in that report the hazardous materials are detailed as assessed by the EU and Det Norske Veritas (DNV) report, which states that oil tankers in general will contain 48 kg of lead, 2,413 kg of asbestos, 3,448 kg of PVC cable insulation and 8.35 kg of Light tube capacitors, 4.82 g PCB per 100,000 DWT units. He pointed out that the vessel in question, MT Enterprise is of 197,000 DWT and, therefore, the quantity of hazardous materials shown by the Survey Committee is neither believable nor acceptable.

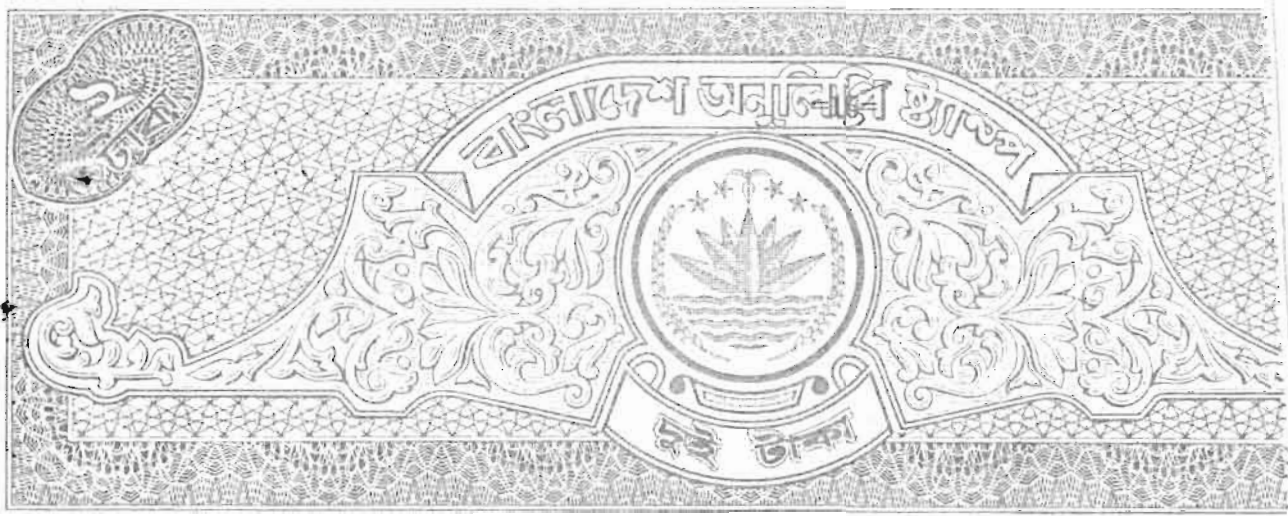
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Referring to Article 2 of the Basel Convention, Mr. Fida Kamal submitted that the vessel which is declared to be disposed of by way of dismantling is itself a hazardous waste and there are certain requirements of the Convention which are to be fulfilled before such a vessel may be exported from the exporting country and imported by the dismantling/scraping yard. The party exporting the vessel ought not to have sold it knowing that or having reasonable belief that the waste in question will not be managed in an environmentally sound manner (Article 4.2(g)).

On the issue of Clearance Certificate, Mr. Fida Kamal pointed out that each and every shipbreaking yard and shipbreaking process required a Clearance Certificate from the Department of Environment in order to carry on the activity of scrapping any sea-vessel. This he highlighted from the বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ as well as the subsequent notification dated 14.11.2007, which has placed shipbreaking in the red category (Annexure-1 in the affidavit in opposition of respondent No.6). He also referred to the Bangladesh Labour Act, 2006 which refers to the process of shipbreaking as an Industrial Establishment (শিল্প প্রতিষ্ঠান) as defined in section 2(61)(Jha) and submitted that it requires an Environmental Clearance Certificate. He submitted that mere obtaining of NOC for opening a Letter of Credit does not obviate the need for obtaining the Clearance Certificate for undertaking the process of shipbreaking.

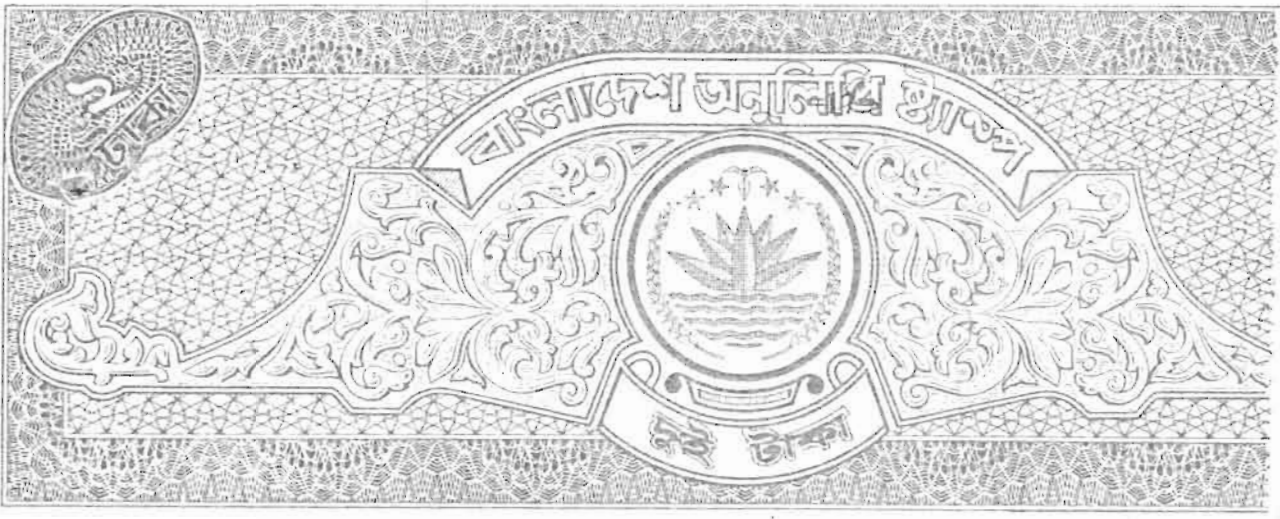
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He further submitted that even obtaining the NOC from the Department of Shipping does not give a go by to the law and Rules created for the protection of the environment, namely পরিবেশ সংরক্ষণ আইন, ১৯৯৫ and পরিবেশ সংরক্ষণ বিধিমালা, ১৯৯৭. The learned advocate also pointed out that the Import Policy Order, 2006-2009 paragraph 26.25 prohibits the import of any ship, oil tanker or fishing trawler over 25 years old. The vessel in question, namely MT Enterprise was manufactured in 1979 and was, therefore, more than 25 years old when it was imported. Therefore, it could not have been imported as a sea-going vessel. He further pointed out that the same আমদানী নীতি আদেশ, ২০০৬-২০০৯ also prohibits the import of hazardous substances including import of waste. He submitted that according to the Basel Convention a vessel which is scheduled to be disposed of by way of dismantling is itself 'waste' and, therefore, on this account also the vessel MT Enterprise was prohibited from being imported into this country. In this regard he pointed out that the second chapter of the আমদানী নীতি আদেশ where Appendix 1 gives a list of items which are restricted items and the footnote to the items restricted for import at paragraph 1.6 provides that all waste material is prohibited for import unless the Rules otherwise provide. He submitted that there are no Rules allowing the import of waste materials.

Finally, the learned advocate submitted that, being a poor country, Bangladesh has become the dumping ground for hazardous waste materials produced by the developed countries and the authority concerned, namely the

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Department of Shipping and its parent Ministry, are not mindful of the disastrous effect of allowing such hazardous materials to be imported and the effect it is likely to have on the environment and the people of the country when they are exposed to such hazardous materials without having regard to the Rules and laws meant for protection of the environment and the people.

Mr. Md. Oziullah, learned advocate with Ms. Amatul Karim, learned advocate appearing on behalf of respondent No.17 submitted that there was no prohibition in operating a shipbreaking yard without obtaining clearance from the Department of Environment. He submitted that a shipbreaking yard is neither an industry nor a project and it, therefore, does not require any formal clearance. He submitted that section 12 of the বাংলাদেশ পরিবেশ সংরক্ষণ আইন refers to Environmental Clearance in respect of setting up an industry or project and is, therefore, not applicable in the case of carrying out dismantling of a vessel on the open beach. He prays that the Rule, so far as it relates to the dismantling the vessel, may be discharged and respondent No.17 may be allowed to complete the dismantling of the vessel in order to prevent further loss being incurred by the respondent. He added that since the NOC issued by the Department of Shipping was for the purpose of importing a vessel for dismantling, there was no further need to obtain a separate Clearance from the Department of Environment for the purpose of dismantling. He submitted that all the shipbreaking yards operating in the area are doing so without obtaining any clearance, which is apparent from the report of respondent No.5. He

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further submitted that the Survey Committee which made inspection of the vessel, before it was beached, found hazardous materials on board, but reported that it was not in excess of the amount which would normally be found in such vessels. He submitted that taking this into consideration, the Department of Shipping withdrew the cancellation of the NOC thereby endorsing the fact that the vessel did not contain any hazardous materials. For the same reasons, he submitted, there was no requirement to obtain any prior clearance from the Department of Environment. He further pointed out that all due clearance was obtained, including clearance from the Customs authority for beaching the vessel. The learned advocate submitted that 60-70% of the dismantling of the vessel has been completed and, therefore, the purpose of the Rule, so far as it relates to dismantling the vessel, has virtually become infructuous.

Ms. Fawzia Karim Firoze, learned advocate appearing on behalf of respondent No.8, Department of Shipping submitted that this respondent did not have any idea that the ship was on the list of Greenpeace as containing hazardous materials and consequently the NOC was issued on an application by respondent No.17, who stated in his application, with supporting documents, that the vessel did not contain any hazardous materials and was not listed in the Greenpeace list. She pointed out that after the issuance of the NOC, the Chief Chemist came to know that the ship was in the Greenpeace list and he cancelled the NOC on 13.08.2008 and, thereafter, a committee was formed in order to inspect the vessel to ascertain whether there was any

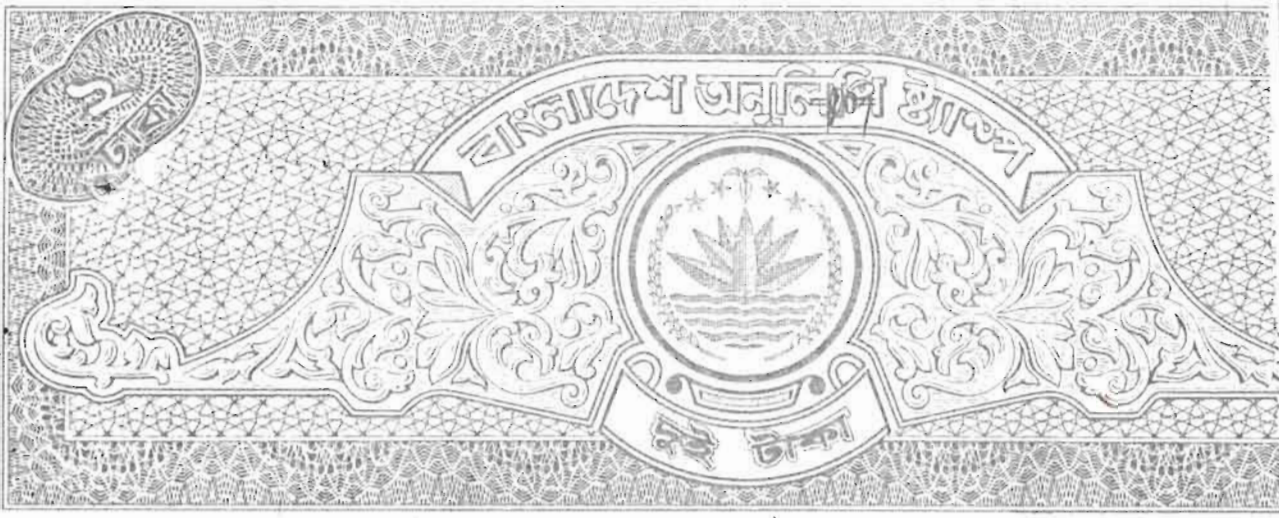
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hazardous material on board. The Committee, after duly inspecting the vessel, reported that the quantity of hazardous material found on board was not in excess of the quantity to be found in vessels of similar nature and accordingly intimated to the Attorney General's office that the Department wished to withdraw the cancellation of the NOC on the ground that the vessel did not contain excessive hazardous materials. The learned advocate submitted that the Department always acted with bona fide and only allowed the NOC to subsist after obtaining the report of the Survey Committee who found that the hazardous materials on board the vessel were not excessive. She further pointed out that the Department received a letter from respondent No.6 dated 15.09.2008 warning that the vessel contained hazardous materials and was on the Greenpeace list, but by that time the specially constituted committee had already reported having conducted the survey on the vessel on 27.08.2008.

Mr. Md. Nazrul Islam Talukder, the learned Deputy Attorney General appeared with Ms. Nowazish Ara Begum, the learned Assistant Attorney General, on behalf of respondent No.6 and submitted that the existing laws are adequate, inasmuch as there is in existence the বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫, which provides for obtaining clearance from the Department of Environment before any industry or project can be carried on, but the law is not being properly implemented and enforced. He pointed out that the Department of Environment previously issued notices to respondent No.8 to prevent the vessels SS Norway and MT Alfaship from entering the waters of Bangladesh.

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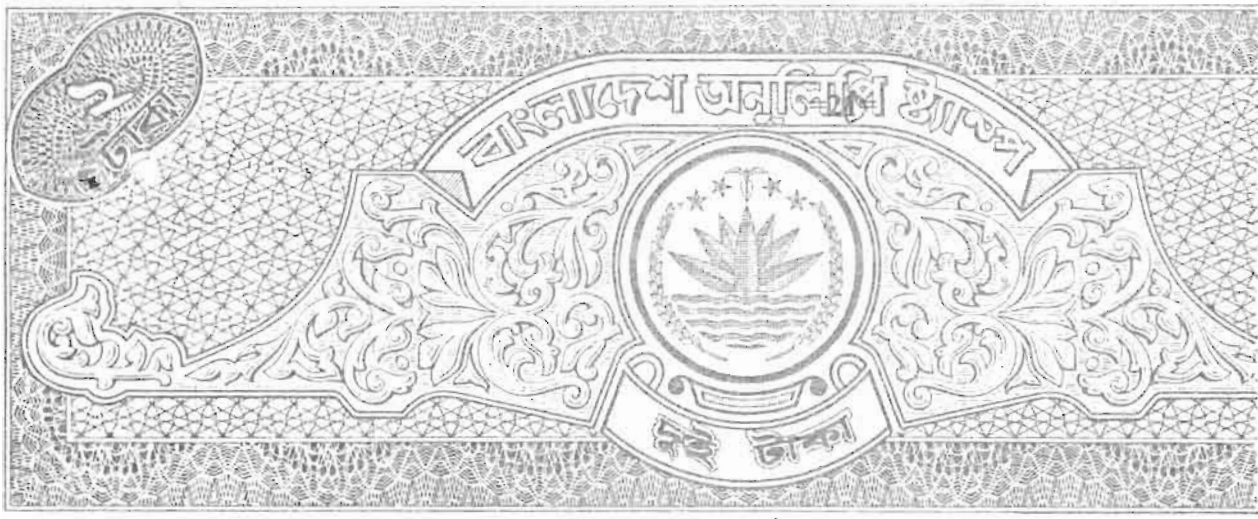
Both those vessels were turned back. He then pointed out that the Department wrote to the concerned authority on 15.09.2008 concerning the vessel MT Enterprise, but the Department of Shipping did not pay heed to the letter.

Now, let us take the matters raised in the Rule one by one.

The legality of the NOC issued in respect of import of vessel MT Enterprise.

From the supplementary affidavit in opposition filed by respondent No.8, we find that an application was made by Madina Enterprise (respondent No.17) for NOC in order to open an L/C for the purpose of importing the vessel MT Enterprise for scrapping. In the application the importer stated, inter alia, that the vessel was an oil tanker manufactured in Japan in 1979 and was being imported for the purpose of scrapping. The importer annexed certificate of registration for the vessel which shows that it was previously known as Ocean Enterprise and there is also a certificate from the seller M/S Yalumba Inc, respondent No.19, who stated that "the vessel is not amongst the list of 50 vessels highlighted by Greenpeace for carrying excessive hazardous materials on board." We also find from annexure-3 to the supplementary affidavit in opposition of respondent No.8 that the vessel was also previously known as New Atlantia. It always bore the same IMO No.7709136. This is also reflected in the sale document of the vessel, an agreement dated 23.07.2008 between M/S Yalumba Inc and Madina Enterprise, wherein also the vessel is described as MT Enterprise, Ex-Ocean Enterprise, Ex-New Atlantia and Atlantia, built in

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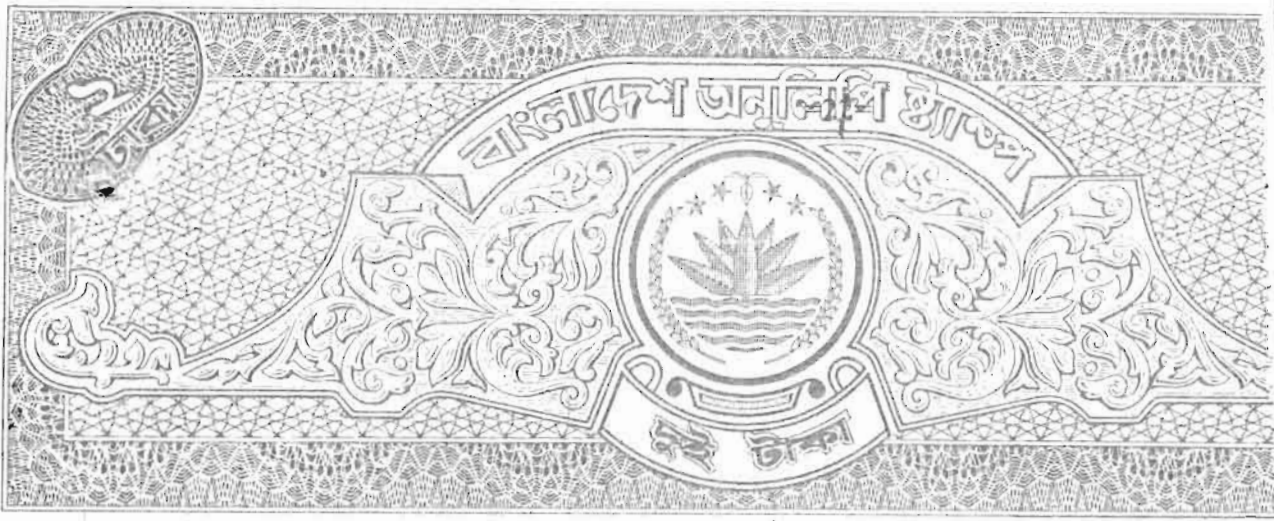
the year 1979 in Japan. It further appears from correspondence between Madina Enterprise and the Department of Shipping that the applicant claimed that the vessel MT Enterprise was not the same as the New Atlantia, which appears in the Greenpeace list of vessels containing hazardous materials. It was on account of this representation dated 14.08.2008 and the request by the importer to undertake the survey of the vessel, which ultimately led to the cancellation of the NOC to be withdrawn. It is clear from the annexures of respondent No.8 that the New Atlantia, and hence MT Enterprise, was indeed in the Greenpeace list of vessels having hazardous materials on board. We note from Annexure-V series that in the file noting the Department of Shipping noted as follows:

“জাহাজটির তথ্যসমূহ রেজি. সার্টিফিকেট ও MOA অনুযায়ী যথাযথ আছে। অন-লাইন কানেকশান পাওয়া যায়নি। জাহাজটি Greenpeace তালিকাভুক্ত নয়। এমতাবস্থায় MT Enterprise এর অনুকূলে NOC No.0807038 অনুমোদন দেয়া যেতে পারে।”

The note is dated 27.07.2008 and bears signatures, amongst others, of the Chief Chemist. It is beyond comprehension how a responsible officer of the Ministry, who admits being unable to get the online connection, declared that the vessel is not listed in the Greenpeace list. The least that is expected of the officer concerned is that he/she should have waited until verification could be completed with regard to the enlistment of the vessel before authorising the issuance of the NOC. It is equally beyond comprehension how the Chief Chemist could countersign the file note knowing that verification was not possible due to lack of internet connection. It is a clear admission from the note

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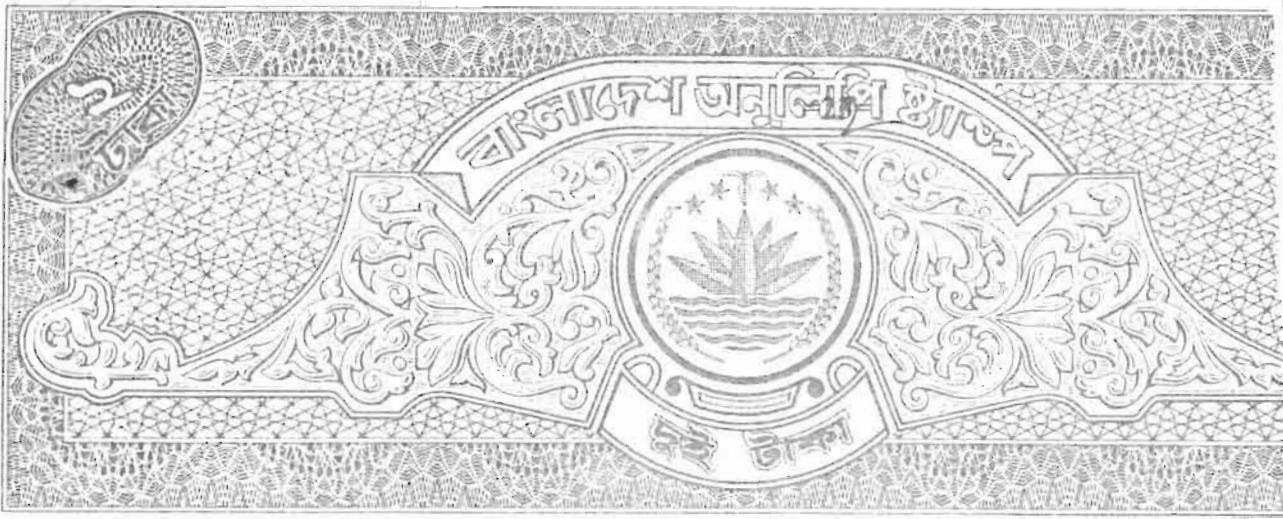
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dated 26.08.08 signed by the Chief Chemist that the Assistant Chemist had presented the earlier note, stating that the MT Enterprise was not on the Greenpeace list, without properly scrutinising the application. However, as we noted earlier, the note dated 27.07.08 recommending issue of NOC was countersigned by the Chief Chemist. It is interesting to note that the Chief Chemist in his note dated 26.08.08 observed that the NOC was void in accordance with clause 8 of the NOC for supplying incorrect information in the application. In view of such observation, the initiation of any survey of the vessel becomes questionable.

Thereafter, the Department of Shipping, upon finding out that the vessel was enlisted in the Greenpeace list cancelled the NOC. No action was taken against the officers who had misled the Department into issuing the NOC in the first place. It appears that even after the decision to cancel the NOC the officer concerned, whose name perhaps is Faozia, insisted on reconsideration of the order to cancel NOC. The same person also recommended the issuance of the NOC on 13.08.2008 in spite of the fact that he or she could not open the online connection to ascertain whether the vessel was on the Greenpeace list. We feel that the Department of Shipping should take appropriate action to ascertain the competency of the officer concerned, namely Faozia. Similarly, the actions of the Chief Chemist are also questionable in the circumstances described above.

With regard to the committee formed to survey the vessel to ascertain whether it contained excessive hazardous materials, we note that the committee

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comprised Engr. Md. Serajul Islam, Engineer & Ship Surveyor, Mercantile Marine Department, Chittagong, Dr. Md. Musharraf Ashraf, Chief Chemist, Department of Shipping, Dhaka, and Capt. Faridul Alam, Dock Master, CPA, Chittagong. In this committee we do not find any representation from the Department of Environment, who are concerned with the environmental aspect of hazardous materials being generated and discharged in the locality and into the atmosphere. Moreover, we find that the terms of reference of the survey and the opinion of the committee is fallacious. The report states as follows:

"Committee is in the opinion that amount of toxic substances determined by the survey of committee are not excessive than the amount generally remain on board for such type of vessel during sea going voyage."

We feel that the Committee has totally missed the point. The purpose of such survey cannot be to find out whether the vessel contained excessive hazardous materials in comparison with other vessels during sea going voyage. In the instant case we are concerned with a vessel, which is to be dismantled and, therefore, such comparison as made by the Committee is misconceived. The vessel in question was no longer a sea-going vessel and was destined to be scrapped. What should have been considered is the state and quantum of hazardous materials which would be generated by the process of dismantling. Moreover, the committee found that the vessel contained 57 Kgs approx. of asbestos, 10 Kgs approx. of PVC, and 15 Kgs approx. of lead. Strangely enough, the quantity of hazardous materials as shown by the committee is

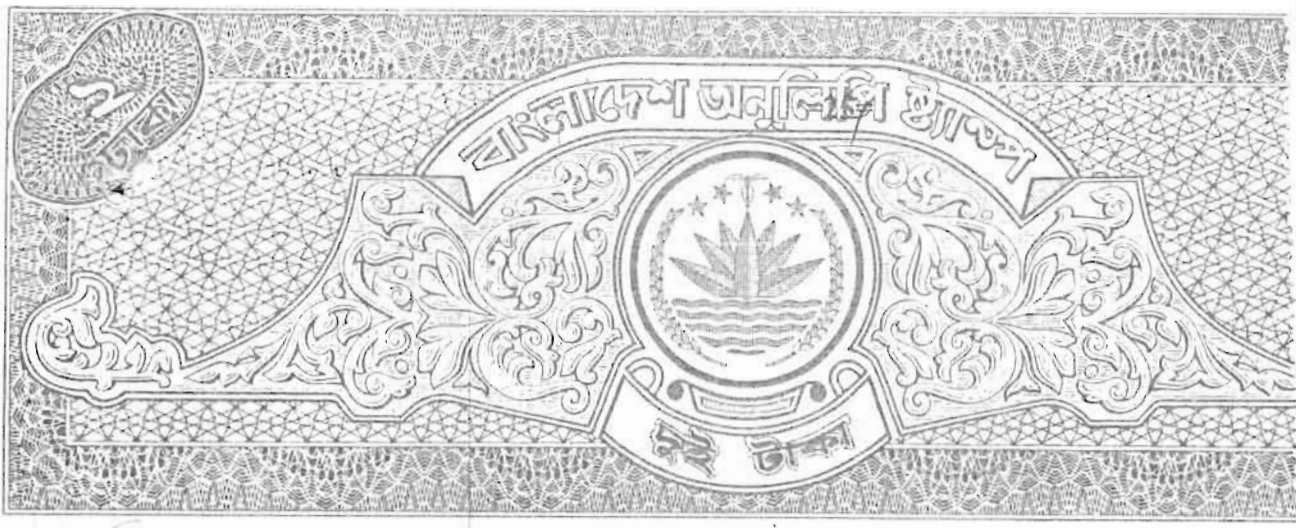
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exactly as reported by the Master of the Vessel which makes us wonder whether the Committee at all made any independent survey of their own. Be that as it may, the fact that the vessel contained hazardous materials of certain quantity should have led the Committee to question whether the materials found would be hazardous to the environment and to the persons who would be handling those materials during the dismantling of the vessel. The finding of the Committee and the decision of the Department of Shipping is in our view short sighted and totally missed the target of the endeavour of the legislature to prevent hazardous materials being imported and to prevent the environment and the people of this country from being exposed to such hazardous materials. We may point out that a number of experts were called by us during the course of hearing of this matter, including the Chief Chemist. They told us that any amount of such hazardous material is a danger and threat to the environment and to the persons handling the materials if proper precautions are not taken to protect the workers and measures are not taken for proper disposal of the waste material.

In the facts discussed above, we are of the view that the Department of Shipping did not issue the NOC having considered all the matters in their proper perspective. It is an admitted fact that the importer misrepresented facts in his application for the NOC and the Chief Chemist had rightly observed in his note date 26.08.08 that the NOC had become void. Any subsequent action to revive the NOC was in our view illegal and motivated. The ultimate

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withdrawal of the letter cancelling the NOC was also ingenuously shifted to the shoulders of the High Court. To say that 'the Honourable High Court in its order dated 10.09.2008 regarding Writ Petition no.6262 of 2008 directed upon the Director General , Department of Shipping to issue the letter withdrawing the impugned cancellation order dated 13.8.2008 within 24 hours. The Court further observed that the writ petitioner is at liberty to deal with the vessel as it pleases. 'This is a distortion of facts because it was the Department through its Chief Chemist who had intimated to the Court that the Department decided to withdraw the letter of cancellation. We find from the record that the order of the Court was as follows:

"During the course of hearing of the application, the respondent No.2, Chief Chemist, Environmental Management Section, Department of Shipping, filed an application for discharging the Rule on the ground that the same has become infructuous as the Government vide its letter dated 8.9.2008 to the Attorney General informed that decision has been taken to withdraw the impugned letter dated 13.8.2008 on the ground that the Ship does not contain any contamination or excessive hazardous waste as compared to other tankers of similar size and specifications. This view has been taken on the basis of the report of the Survey Committee of the Government. The said decision will be communicated to all concerned within 24 hours. Thus the Rule may be discharged for being infructuous.

The learned Advocate for the petitioner submits that he has no objection if the authority revoke the impugned letter.

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Since the government has taken decision to withdraw the impugned letter dated 13.8.2008 which the learned Deputy Attorney General undertakes to communicate within 24 hours, we find merit in the application. As such there is nothing left for adjudication on merit of the Rule.

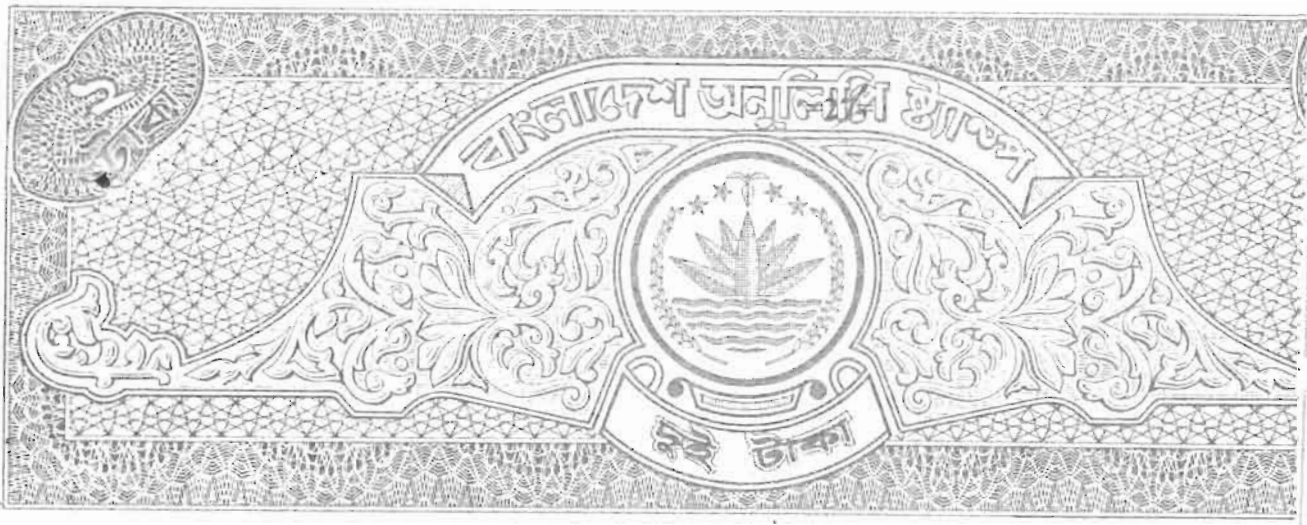
Accordingly, the Rule is discharged subject to withdrawal of the impugned notice within the time as prayed for.

However, the petitioner is at liberty to deal with the ship in question in accordance with law in any manner as deem fit and proper."

We have reproduced above the final portion of that judgment in order to demonstrate how the order of this Court has been distorted and misrepresented by the Department of Shipping in withdrawing the notice of cancellation of the NOC thus allowing the vessel to be dismantled, bearing in mind that the Chief Chemist had himself observed that the NOC was void for breach of condition No.8 of the NOC.

We must also note that while perusing the records of the Department of Shipping we found Yalumba Inc had certified in a number of cases that the vessels are not listed in the Greenpeace list and do not contain hazardous materials, and yet we found in the instant case that the vessel was indeed in the Greenpeace list and did in fact contain hazardous materials, as found by the survey team. We, therefore, strongly recommend that immediate action should be taken to blacklist Yalumba Inc for future reference.

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We also note that respondent No.17 has most blatantly misrepresented facts to the Department of Shipping while attempting to re-instate the NOC after it was cancelled. Madina Enterprise misled the Department into believing that the vessel was not in the Greenpeace list and went to the extent of and succeeded in convincing some officers in the Department of Shipping to believe that the New Atlantia on the list of Greenpeace was not the same as the MT Enterprise and got them to recommend reconsideration of the decision to cancel the NOC [viz. note dated 20.08.08] The officers of the Department would have found on proper scrutiny that the vessel is one and the same and was clearly in the Greenpeace list. We strongly recommend that appropriate action should be taken against all those involved in such underhand activities.

Removal of MT Enterprise from the territorial waters of the country:

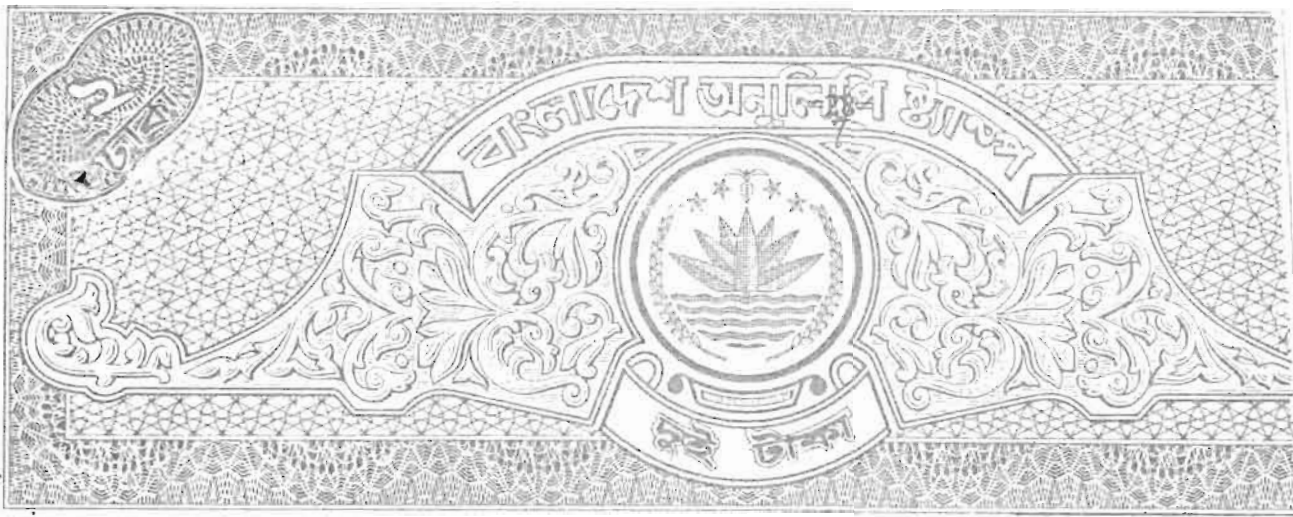
This part of the Rule is obviously now infructuous, since the vessel was brought into the waters of Bangladesh, was beached and is by now almost fully dismantled.

Prevention of entry of any of the hazardous vessels enlisted in the Greenpeace list 'Annexure-C.'

It is now apparent that over and above the 50 vessels listed in the Greenpeace list as containing hazardous materials, there will be approximately 2200 single-hull oil tankers which will be ready for scrapping by the year 2010.

It is accepted that sea-going vessels reach their end of life after 25-30 years:

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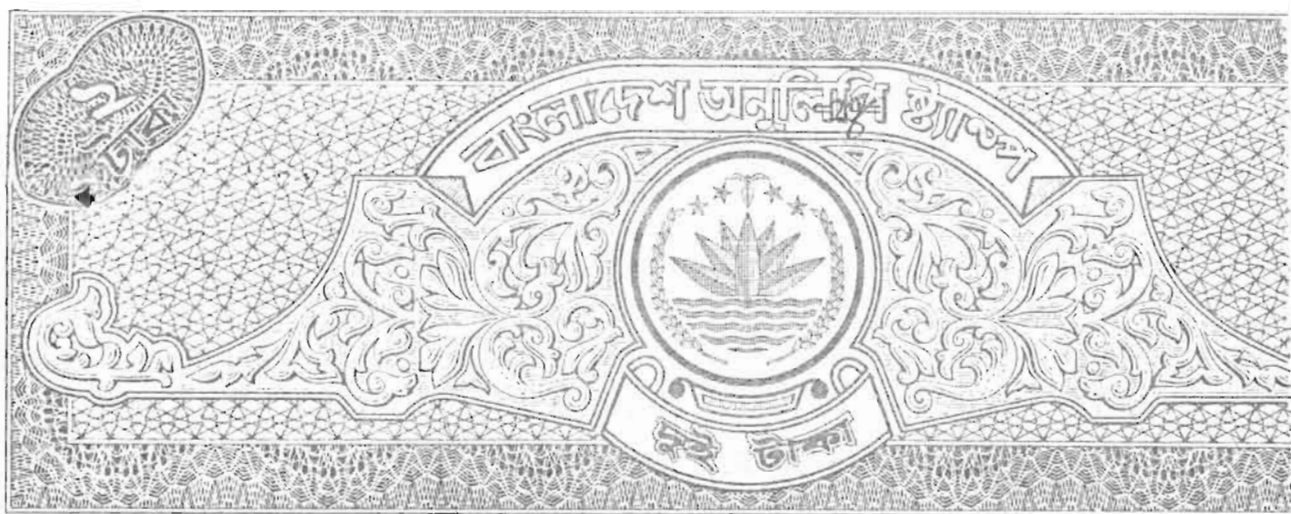


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Unless they can be used for some other purpose, they are sold for dismantling and the bodies as well as other fixtures and fittings are recycled. It is an undeniable fact that at the stage of disposal of the vessels, they contain many hazardous materials and some other toxic wastes are generated in the process of cutting and dismantling. Statistics show that every year around 600-700 larger sea vessels are taken out of service and brought into Asia for scrapping. The open sea and beach in the Sitakunda area of Chittagong provides the perfect location for the larger vessels which can be beached easily at high tide. Hence, while the shipbreaking yard at Alang, Gujarat, India is ranked as the largest, Sitakunda is ranked at the top for the larger vessels.

As a result of a number of disasters connected with leakage of oil and sinking of a number of single-hull oil tankers causing severe pollution to the coastline and beaches of European countries, it was decided to phase out all single-hull oil tankers by the year 2010 and, as has been found, the phased-out vessels find their way to the shipbreaking yards of Asia, in particular India, Pakistan, Bangladesh and China. We have already mentioned that the Ocean Liner S.S. Norway was previously sent away from the territorial waters of Bangladesh, NOC having been refused for the import by the Department of Shipping. That vessel was later renamed as the Blue Lady and ended up in the shipbreaking yards at Alang, Gujarat, India. After inspection and the report by the High-Powered Committee, on the direction of the Supreme Court of India, the Committee pointed out that the shipbreaking site at Alang was highly

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polluted and observed, for example, that during the breaking process various solid wastes some of which were hazardous and highly toxic, such as asbestos sheets, ropes and installation, were generated. The Committee underlined that gases such as ammonia, chlorofluorocarbons from the air conditioning system and inflammable gases may be present in the dismantled pipelines of oil tankers. The Committee also observed that there was considerable and environmentally unsound disposal of solid wastes all over the beach; hazardous waste is generated by the shipbreaking industries, which are not handled as per the laws and guidelines on shipbreaking in force. Finally, the report underlines that this activity was highly hazardous to the health of the workers. It also stated that approximately 5 tons of asbestos are generated from the dismantling of every vessel where men are hardly equipped to handle such toxic material.

A Greenpeace study of Alang confirmed the presence of asbestos dust in the workplace, living quarters and public areas, including the hinterland around Alang. It is stated in the report that every fourth worker in Alang, because of the lack of safeguards in handling hazardous material, is expected to contract cancer.

From a report published by the Law Environment and Development Journal (LEAD), it is observed that the Indian legislation imposes certifications which ensure that all tankers are free of gas residues before they are scrapped, while Bangladesh does not enforce such obligation. The LEAD report tends to suggest that the Blue Lady was beached at Alang breaching the order of the

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Supreme Court which only permitted its anchorage. Having beached, it had reached a point of no return. The LEAD report also comments that the High-Powered Committee does not give any proof that Alang possesses an acceptable destruction technology for asbestos removal and the disposal of hazardous waste compliant with international standards. It further comments that the decision of the Supreme Court in its judgement on the Blue Lady in 2007 is contradictory to its decision on ship dismantling delivered in 2003. Its restrictive approach of sustainable development in the decision in 2003 provided that in order to achieve sustainable development environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it; the shipbreaking operation cannot be permitted to be continued without strictly adhering to all precautionary principles; the court ordered that before a ship arrives at port, it should have proper consent from the concerned authority or the State Maritime Board, stating that it does not contain any hazardous waste or radioactive substances on board; the Court obliges that all ships "should be properly decontaminated by the ship owner prior to the breaking." However, in the later judgment with regard to the Blue Lady the Supreme Court somehow compromised by saying that the report of the committee suggested that in fact 85% of the asbestos could be recycled and that for the purpose of the sustainable development it was appropriate to allow the ship to be dismantled.

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We note that in the Writ Petition No.657 of 1995 Research Foundation for Science vs. Technology National Resource Policy, the Supreme Court of India passed an order dated 14.10.2003 wherein they noted the key objectives of the Basel Convention as follows:

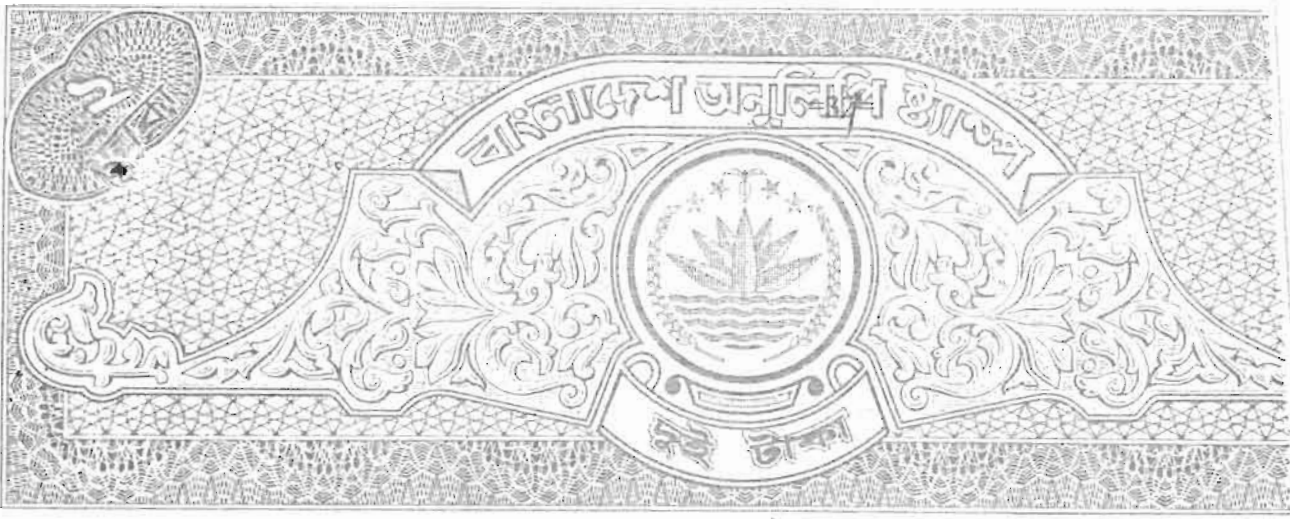
- to minimise the generation of hazardous wastes in terms of quantity and hazardousness;
- to dispose of them as close to the source of generation as possible;
- to reduce the transport and movement of hazardous wastes.

The Court observed that the authorities concerned did not pay proper attention to implementing the Hazardous Waste Management and Handling Rules, 1989 and that the authorities did not appear to appreciate the gravity of the situation and proceeded to engage a High-Powered Committee to examine all matters in depth relating to hazardous waste giving 14 specific terms of reference for the High-Powered Committee.

However in Bangladesh we do not have any such provision. We do not have any Rules regulating management and handling of hazardous waste. So it appears that the observation made by LEAD that Bangladesh does not have any prohibitory regulation is well founded.

We have come across an article from the Internet under the title, "Occupational Health Hazards of Ship Scrapping Workers at Chittagong Coastal Zone, Bangladesh" which was published in the Chiang Mai University Journal, accepted on 15 April 2008. The study was conducted by M Shahadat

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Hossain, Sayedur R. Chowdhury, both of the Institute of Marine Sciences and Fisheries, University of Chittagong and S.M. Abdul Jabbar of the Department of Environmental Science and Resource Management, Moulana Bhasani Science and Technology University, Santosh, Tangail. We find this to be an independent survey which gives some valuable insight into the various aspects of shipbreaking with particular reference to the shipbreaking yards in the Chittagong area. We may advert to certain particular and specific findings relevant to the matter before us:-

- (i) It is noted in the report that 600 end-of-life ships are broken annually with none having ever been cleaned by the owner prior to export, and only a very few cleaned before scrapping.
- (ii) Although the steel is recycled, asbestos, lead, waste oil, TBT, etc. enter into the environment and into the bodies of the workers. A new EU report on the phasing out and the scrapping of single hull oil tankers concluded that 2200 oil tankers would have to be scrapped after the end of their commercial life by the year 2010.
- (iii) Workers of Bangladesh break up European vessels with no protection from explosions, asbestos or a cocktail of toxic chemicals contained in the ship. Over the last 20 years more than 400 workers have been killed and about 6000 were seriously injured.
- (iv) Workers cut down steel plates continuously without uniforms, protective gloves, boots and goggles.
- (v) Workers, local community, beach, coastal water, biodiversity, ground water and air are at risk during the process.
- (vi) [The study area] is the second largest facility in the world with respect to the numbers of vessels being scrapped but the largest facility for large vessels, scrapping some 52% of all vessels above

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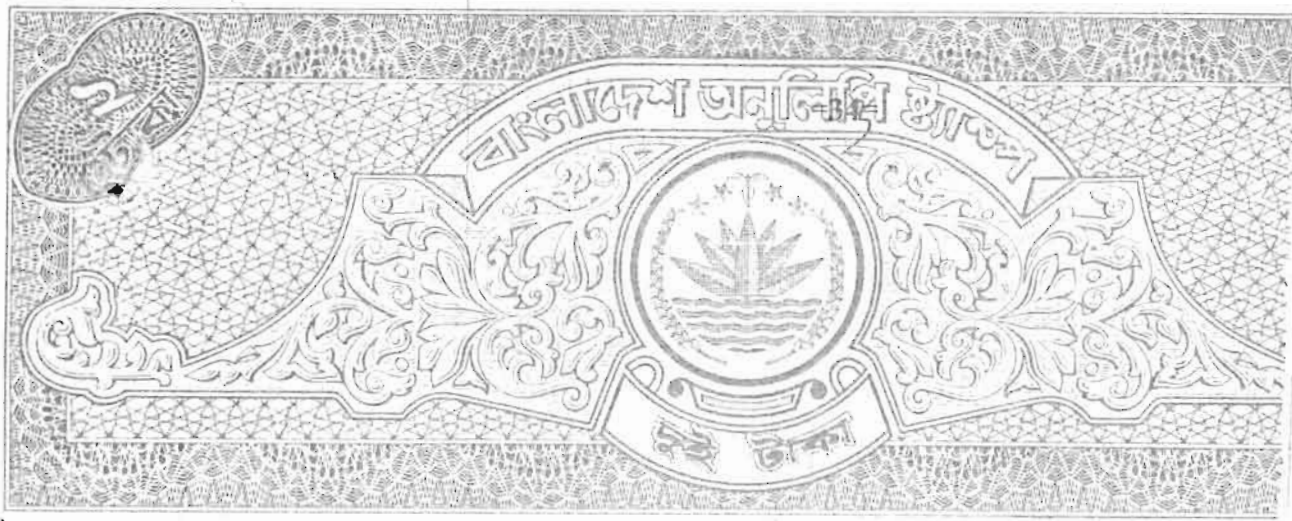


200 DWT due to higher tidal range, suitable industrial zone for beaching large vessels, cheap labour and slack environmental regulations.

- (vii) Although the availability of safety gear observed during field investigation included gloves, boots, goggles and helmets, often workers ended up stripping entire ships with bare hands, sledgehammers and gas torches.
- (viii) Though they use goggles, these are not enough for heavy duty work like ship scrapping activities and thus they face the problem of eye redness, tearing, burning sensation, blurring of vision and conjunctivitis. Asbestos, smoke, dust, isocyanine gas, volatile chemicals may cause respiratory problems. Asbestos dust causes formation of scar-like tissues resulting in permanent breathing difficulties called asbestosis. Other respiratory problems as identified among the workers are asthma, pneumonia, chest pain, cough and sputum. Abdominal, urinary, muscle and skin problems as well as nutritional deficiency are also identified among the workers, which are mainly caused due to toxic metal, oil and chemical contamination as well as excessive workload, long working hours, monotonous work, irregular eating, insufficient diet, unsafe drinking water, inadequate sanitation, and the like.
- (ix) Although many of the hazardous materials such as asbestos, PCBs, TBT, toxic metals, etc are banned today, a ship built 20-30 years ago still contained these materials. It also carries hazardous and flammable chemicals used for painting, repairing and maintenance. Burning of plastic/PVC coated electrical and other control system cables is a common practice in the ship scrapping zone that emits hazardous gases.

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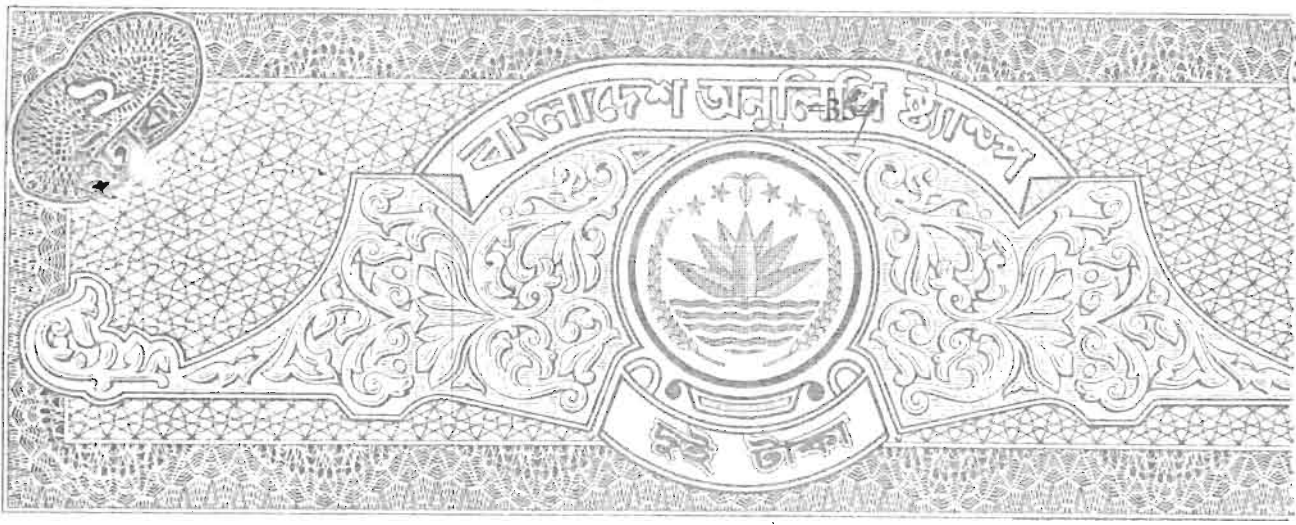


That the process of shipbreaking creates various health-threatening hazardous materials is beyond doubt. Apart from the hazardous materials, namely asbestos, lead, Polyvinyl Chloride (PVC) found present on the vessel, there would be other hazardous, highly toxic gases generated by the cutting of the metal and the painted steel structure with oxyacetylene torches. It is beyond doubt that the workers present on the site will be exposed to chemicals such as Polychlorinated Biphenyls (PCB), Polyvinyl Chloride (PVC), Polycyclic aromatic hydrocarbons (PAH), tin-organic compounds, Tributyltin (TBT), oil, asbestos dust and other fumes and gases containing dioxins, isocyanine gas, sulphur etc. As has been found by the various reports considered by us, the workforce usually live in inadequate facilities and are exposed to the dangerous wastes and gases, which contain carcinogen and eventually lead to development of cancer. We are also mindful of the physical dangers to which the workers are exposed due to falling of heavy metal causing breakage of limbs and also sometimes death. Also there have been reported many cases of death due to explosion. One should not also underestimate the damage that may be caused by excessive noise pollution where workers are engaged in cutting and breaking the metal body of the vessels.

Information found in a Factsheet issued in 2001 by the U.S. Department of Labor, Occupational Safety and Health Administration may profitably be reproduced here:

What are some of the hazards associated with shipbreaking?

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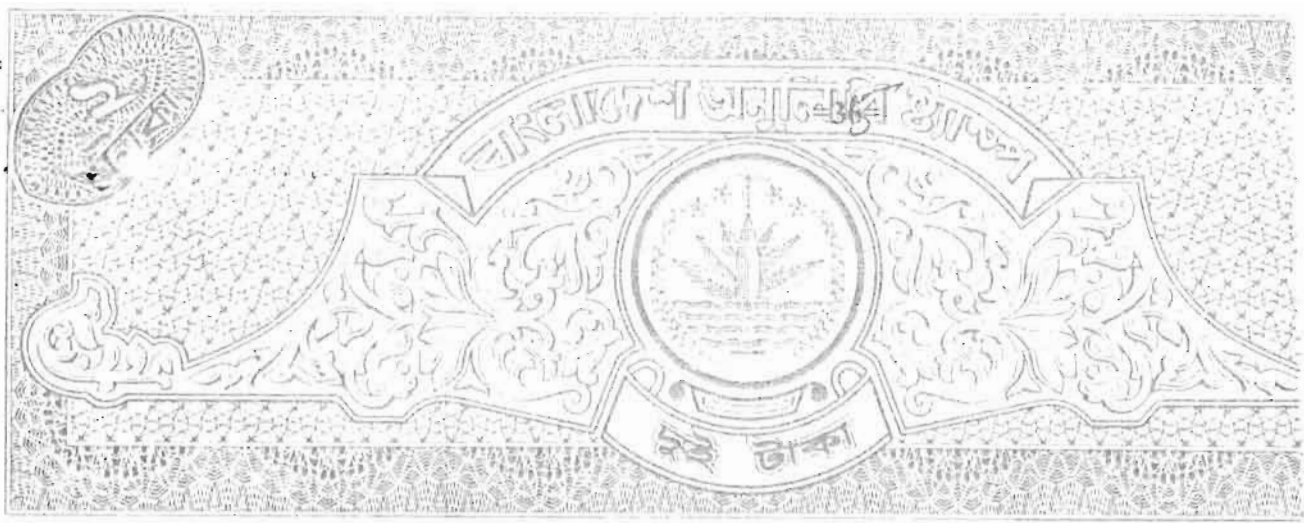


Shipbreaking operations expose workers to a wide range of hazards or workplace activities or conditions likely to cause injury or illness. These include the following:

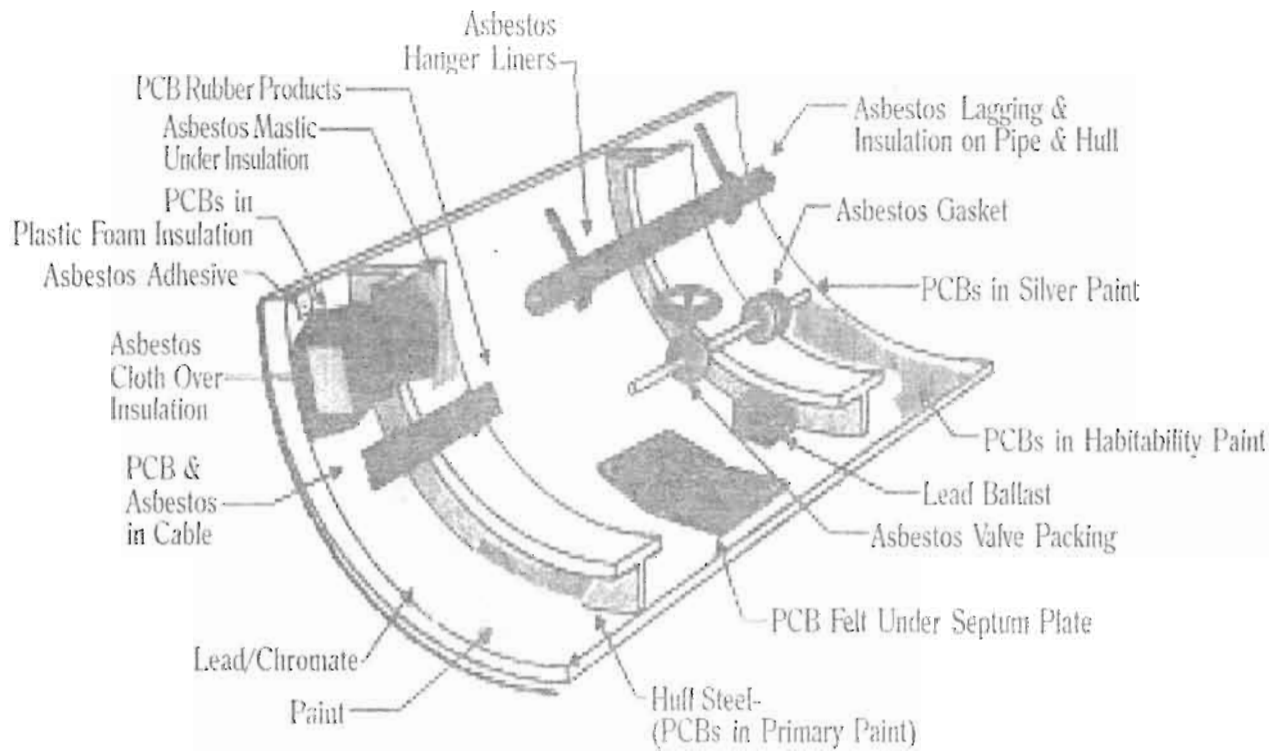
#### Hazardous Exposures

- Asbestos—in hanger liners, mastic under insulation, cloth over insulation, cable, lagging and insulation on pipes and hull, adhesive, gaskets on piping connections, and valve packing.
- Polychlorinated biphenyls (PCBs)—in rubber products such as hoses, plastic foam insulation, cables, silver paint, habitability paint, felt under septum plates, plates on top of the hull bottom, and primary paint on hull steel.
- Lead—from lead and chromate paint, lead ballast, batteries, generators, and motor components.
- Hazardous material and chemicals—including heavy metals in ship transducers, ballast, and paint coatings; mercury in fluorescent light tubes, thermometers, electrical switches, light fittings, fire detectors, and tank-level indicators; and chlorofluorocarbons (CFCs) in self-contained refrigeration devices such as water coolers and small freezer units.
- Excess noise—associated with grinding, hammering, metal cutting, and other activities.
- Fire—from ignited insulation, matting, lagging, and residual fuel; and from lubricants and other flammable liquids.

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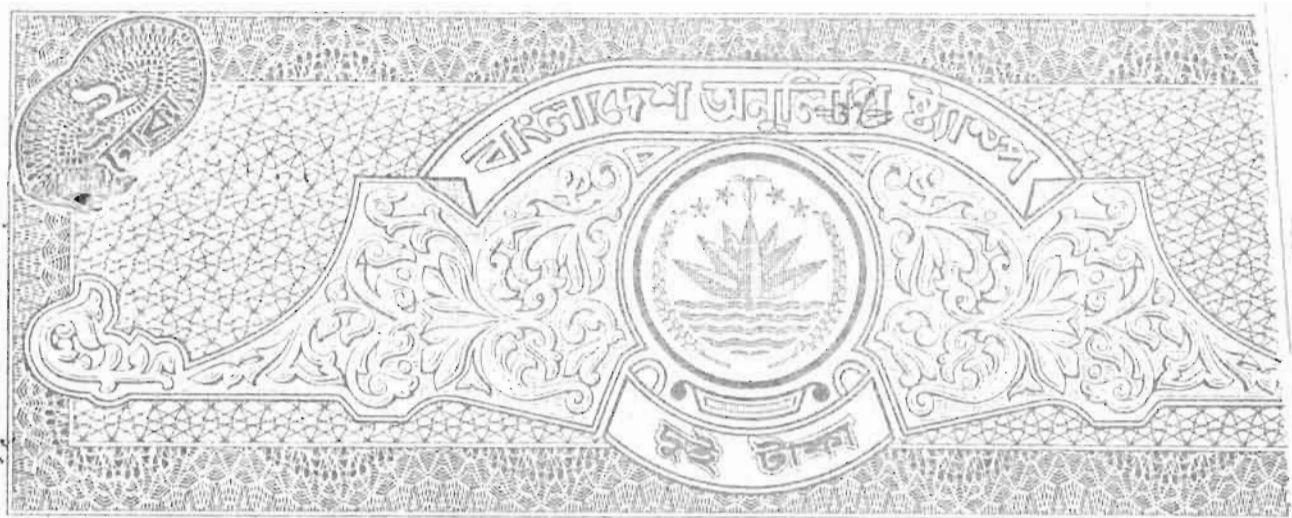
## Potential Locations of Hazardous Materials



The above noted materials are found in all vessels. They are necessary components and were used in all vessels built about 25 to 30 years ago and most of those materials, apart from asbestos, use of which has been totally banned, are still used in modern vessels, but they do not pose any threat while the vessel is in active service. However, they become hazardous and potentially lethal when the vessel is dismantled.

Apart from the exposure of the workforce, the environment itself is exposed to the hazardous materials which fall on the soil surface where the work takes place and permeate through to the water table and the sea. From all reports, there are no facilities for disposal of the hazardous waste generated by the shipbreaking process. As a result some problems have been identified including, impure drinking water for the workers extracted from the tube-wells

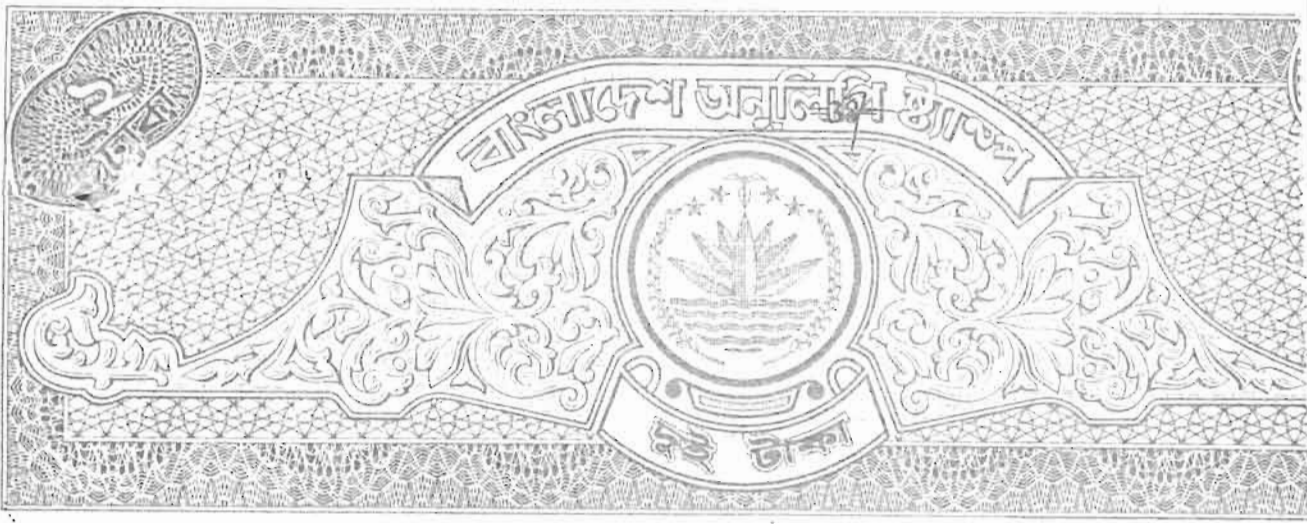
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which are sunk in the shipbreaking yards which are contaminated due to the permeation of the hazardous materials into the subsoil. We have also been shown photographs of shipbreaking sites which clearly show that the oil sludge and other pollutants are left in the open which will in due course pollute the water, the beach and the sea, thus detrimentally affecting the fishing community living in the hinterland of the coastal zone as well as the ecosystem and biodiversity of the region.

✓ The report of respondent No.5 shows that there are 36 shipbreaking yards in operation of the Chittagong area none of which have obtained any clearance certificate from the Department of Environment, as required by law. It is, therefore, clear that there is no way of ascertaining whether the facilities in the shipbreaking yards are at all adequate, firstly for the workers carrying out the dismantling process and secondly for the environment and those living in the immediate vicinity and surrounding region. There can be no doubt that the vessels being imported for scrapping do contain hazardous materials as evidenced by the Greenpeace report Annexure-O, which is unwittingly supported to a certain extent by the report of the Survey Committee set up by the Department of Shipping. Moreover, we have noted earlier that the importation of hazardous waste is prohibited under the আমদানী নীতি আদেশ, ২০০৬-২০০৯. We are inclined to follow the Basel Convention and to hold that vessels destined for scrapping or recycling are hazardous waste and may be

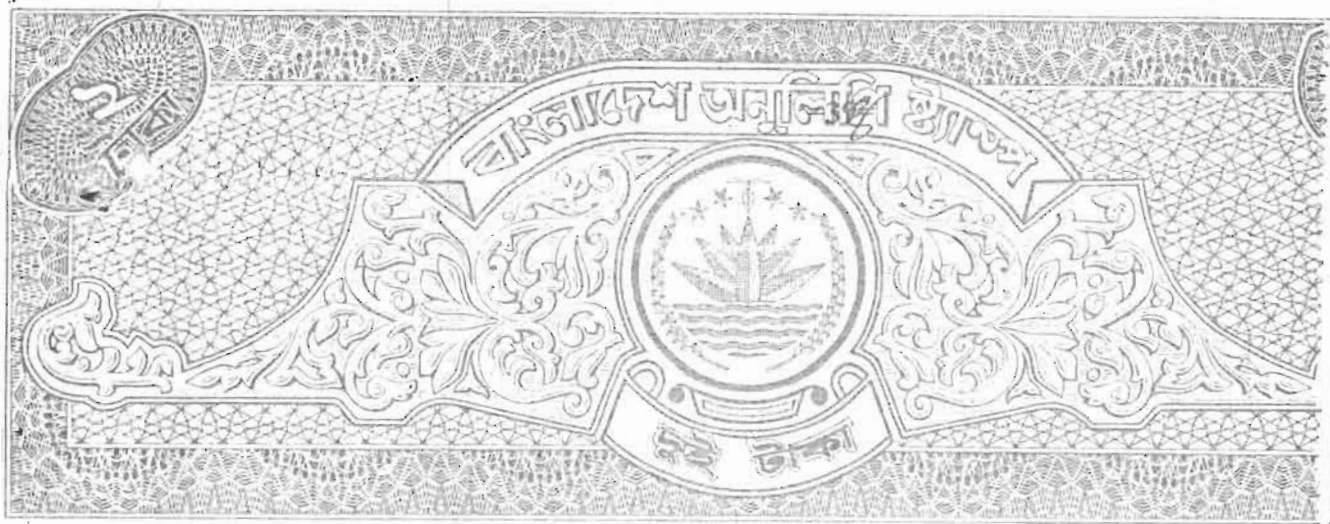
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imported only after due decontamination before it is sold to the Bangladeshi importer.

In view of the above, the import of any further vessel, being hazardous waste or containing hazardous materials, which has not been decontaminated at source, must be prohibited for the purpose of import into Bangladesh until and unless it can be shown to the satisfaction of the authority concerned namely, the Ministry of Environment and Forest, the Ministry of Labour and the Ministry of Shipping and their respective departments that the vessel concerned has been decontaminated and that the dismantling of the vessel will be conducted under strict conditions following the laws of the land keeping in view the need to have satisfactory provisions for safety of the workers, safety and integrity of the environment and adequate provisions for disposal of the waste generated by dismantling process. For this purpose there is an immediate need for the Department of Environment to formulate Rules and regulations in order to ensure first of all that the hazardous materials could not be imported and secondly that the hazardous materials emitted as a result of the shipbreaking process will be contained within the acceptable limit as provided in the Rules to be formulated. Suffice is to say at this stage that the Ministry of Shipping will not allow further import of vessels unless all due certification with regard to their hazardous contents is made available prior to the NOC being granted and the importer is able to show that he has the necessary clearance certificate from the Department of Environment for shipbreaking.

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We also note with some dismay that the Ministries concerned do not appear to be cooperating with each other inasmuch as the Ministry of Shipping appears to be concerned only with import of vessels, but not with the harmful effects that any vessel is liable to cause as a result of dismantling on the beaches of Bangladesh. We also note that the Department of Environment was previously in some way instrumental in the refusal of NOC in respect of S.S. Norway and MT Alfaship. By timely intervention they had intimated to the Department of Shipping that those vessels contained hazardous materials and were in the Greenpeace list. However, in the case of the MT Enterprise, it appears that the Department of Environment was slow to inform the Ministry of Shipping and the Department of Shipping.

Framing of Rules and regulations:

As we have observed earlier, the government must take initiative to frame Rules and regulations in order to ensure that hazardous vessels are not imported into the country and, when the vessels are imported after due compliance of Rules and regulations, having been decontaminated at source or outside the territory of Bangladesh, that their dismantling will take place in a safe manner such that no workers are exposed to hazards and the environment is not exposed to pollution and hazardous materials. We have no hesitation in directing the Ministry of Environment to immediately take steps to formulate Rules and regulations as directed earlier in Writ Petition No.3916 of 2006 by judgment and order dated 06.07.2006. The Ministry of Environment is hereby

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directed to comply within 3(three) months from receiving a copy of this judgment.

Clearance certificate from Ministry of Environment:

On 30.11.2008 this Court issued a Rule upon the Ministry of Environment, respondent No.5. The terms of the Rule have been stated earlier. Respondent No.5, Ministry of Environment, submitted a report supplying information gathered by respondent No.6, stating that there were 36 shipbreaking yards operating within the Chittagong region, and none of them had applied for nor obtained any clearance certificate from the Department of Environment as required by law. We are astounded to note that shipbreaking has been continuing in this country since the mid-1970s and the বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ (আইন, ১৯৯৫) has been in existence since 1995 with Rules formulated there under in 1997 and hundreds of ships have been dismantled in the meantime and yet none has applied for any clearance certificate from the Ministry or the Department of Environment. It is a staggering revelation that the whole operation is continuing under the very nose of the Department of Environment without the Department taking any action whatsoever to prevent the breach of law committed by those running the shipbreaking business, giving rise to grave risks to the citizens of the country as well as irreparable damage to its environment. Section 12 of the আইন, ১৯৯৫ provides as follows:

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১২। পরিবেশগত ছাড়পত্র- মহাপরিচালকের নিকট হইতে, বিধিদ্বারা নির্ধারিত পদ্ধতিতে, পরিবেশগত ছাড়পত্র ব্যতিরেকে কোন এলাকায় কোন শিল্প প্রতিষ্ঠান স্থাপন বা প্রকল্প গ্রহণ করা যাইবে না;

তবে শর্ত থাকে যে, সরকার কর্তৃক সময় সময় এতদুদ্দেশ্যে নির্ধারিত শ্রেণীর শিল্প প্রতিষ্ঠান বা প্রকল্পের ক্ষেত্রে এই ধারার কোন কিছুই প্রযোজ্য হইবে না।

We find the definition of 'শিল্প প্রতিষ্ঠান' in section 2(61) of the বাংলাদেশ শ্রম আইন, ২০০৬, which provides as follows:

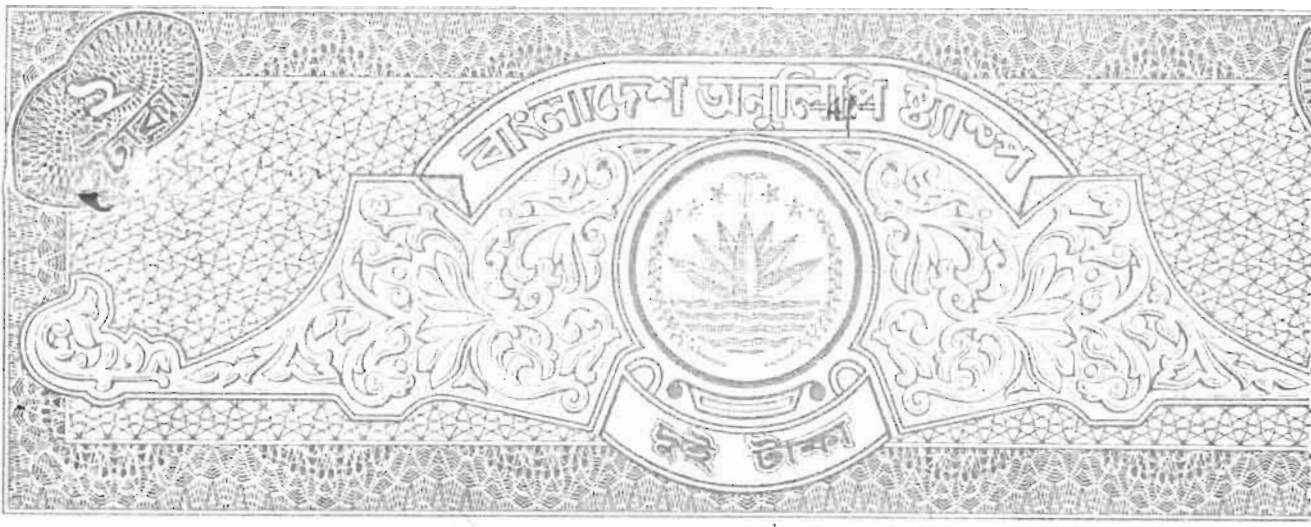
২(৬১). শিল্প প্রতিষ্ঠান অর্থ কোন কর্মশালা, উৎপাদন প্রক্রিয়া অথবা অন্য কোন প্রতিষ্ঠান যেখানে কোন বস্তু প্রস্তুত হয়, অভিযোজিত হয়, প্রক্রিয়াজাত করা হয় অথবা উৎপন্ন হয়, অথবা যেখানে ব্যবহার, পরিবহন, বিক্রয়, চালান অথবা হস্তান্তর করার লক্ষ্যে কোন বস্তু বা পদার্থের তৈরী, পরিবর্তন, মেরামত, অলংকরণ, সম্পূর্ণ বা নিখুঁতকরণ অথবা গাঁট বা মোড়কবন্দীকরণ অথবা অন্য কোনভাবে নির্মাণ প্রক্রিয়ায় আরোপ করার কোন কাজ পরিচালিত হয়, অথবা এমন অন্য কোন প্রতিষ্ঠান যাহা সরকার, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের উদ্দেশ্যে, শিল্প প্রতিষ্ঠান বলিয়া ঘোষণা করে, এবং নিম্ন লিখিত প্রতিষ্ঠানগুলিও ইহার অন্তর্ভুক্ত হইবে, যথাঃ- (emphasis added)

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- (খ)-----
- (গ)-----
- (ঘ)-----
- (ঙ)-----
- (চ)-----
- (ছ)-----
- (জ)-----

(ঝ) কোন বাড়ী-ঘর, রাস্তা, সুড়ঙ্গ, নর্দমা, নালা বা সেতু, জাহাজ নির্মাণ, জাহাজ ভাঙ্গা, পুনঃ নির্মাণ, মেরামত, পরিবর্তন বা ভাঙ্গিয়া ফেলার অথবা জাহাজে মাল উঠানো নামানো বা লইয়া যাওয়া সংক্রান্ত কাজ বা ব্যবস্থা করার জন্য স্থাপিত কোন ঠিকাদার বা উপ-ঠিকাদারের প্রতিষ্ঠান।

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Thus, clearly shipbreaking is an industry. We cannot, therefore accept the contention that shipbreaking has not been defined as an industry.

Section 15(1) of the Ain provides under serial No.8 that in case of breach of section 12 there will be punishment by way of rigorous imprisonment up to 3(three) years or fine of Tk.3,00,000/- or both. But before such sanction can be imposed under the power vested in him the Director General will take action in accordance with the powers given to him under section 4 of the আইন, ১৯৯৫ which provides as follows:

৪। মহাপরিচালকের ক্ষমতা ও কার্যাবলী।-(১) এই আইনের বিধান সাপেক্ষে, পরিবেশ সংরক্ষণ, পরিবেশগত মান উন্নয়ন এবং পরিবেশ দূষণ নিয়ন্ত্রণ ও প্রশমনের উদ্দেশ্যে মহা-পরিচালক তৎকর্তৃক সমীচীন ও প্রয়োজনীয় বলিয়া বিবেচিত সকল কার্যক্রম গ্রহণ করিতে পারিবেন এবং এই আইনের অধীন তাহার দায়িত্ব সম্পাদনের উদ্দেশ্যে যে কোন ব্যক্তিকে প্রয়োজনীয় লিখিত নির্দেশ দিতে পারিবেন।

(২) বিশেষ করিয়া এবং উপরিউক্ত ক্ষমতার সামগ্রিকতাকে ক্ষুণ্ণ না করিয়া অনুরূপ কার্যক্রমে নিম্নবর্ণিত সকল বা যে কোন কার্য অর্ন্তভুক্ত হইবে, যথাঃ

(ক) এই আইনের উদ্দেশ্যের সহিত সম্পর্কযুক্ত কোন কর্তৃপক্ষ বা সংস্থার কার্যালয়ের সহিত সমন্বয় সাধন;

(খ) পরিবেশ অবক্ষয় ও দূষণের কারণ হইতে পারে এইরূপ সম্ভাব্য দূষণ প্রতিরোধ, নিরাপদ ব্যবস্থা গ্রহণ এবং অনুরূপ দূষণের প্রতিকারমূলক কার্যক্রম নির্ধারণ ও তৎসম্পর্কে নির্দেশ প্রদান;

(গ) বিপদজনক পদার্থ বা উহার উপাদানের পরিবেশসম্মত ব্যবহার, সংরক্ষণ, পরিবহন, আমদানী ও রপ্তানী সংক্রান্ত বিষয়ে সংশ্লিষ্ট ব্যক্তিকে পরামর্শ বা ক্ষেত্রমত নির্দেশ প্রদান;

(ঘ) পরিবেশ সংরক্ষণ, উন্নয়ন ও দূষণ সংক্রান্ত তথ্যাদি অনুসন্ধান ও গবেষণা এবং অন্য যে কোন কর্তৃপক্ষ বা সংস্থাকে অনুরূপ কাজে সহযোগিতা প্রদান;

(ঙ) পরিবেশ উন্নয়ন ও দূষণ নিয়ন্ত্রণ এবং প্রশমনের উদ্দেশ্যে যে কোন স্থান, প্রাঙ্গণ, প্লান্ট, যন্ত্রপাতি, উৎপাদন বা অন্যান্য প্রক্রিয়া, উপাদান বা পদার্থ পরীক্ষাকরণ এবং

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প্ররিবেশ দূষণ প্রতিরোধ, নিয়ন্ত্রণ এবং উপশমের জন্য উপযুক্ত কর্তৃপক্ষ বা ব্যক্তিকে আদেশ বা নির্দেশ প্রদান:

(চ) পরিবেশ দূষণ সম্পর্কিত তথ্য সংগ্রহ, প্রকাশ ও প্রচার;

(ছ) যে সকল উৎপাদন প্রক্রিয়া, দ্রব্য এবং বস্তু পরিবেশ দূষণ ঘটাইতে পারে সেই সকল উৎপাদন প্রক্রিয়া, দ্রব্য এবং বস্তু পরিহার করিবার জন্য সরকারকে পরামর্শ প্রদান;

(জ) পানীয় জলের মান পর্যবেক্ষণ কর্মসূচী পরিচালনা ও রিপোর্ট প্রণয়ন এবং সংশ্লিষ্ট সকল ব্যক্তিকে পানীয় জলের মান অনুসরণে পরামর্শ বা, ক্ষেত্রমত নির্দেশ প্রদান।

(৩) এই ধারার অধীন প্রদত্ত নির্দেশে কোন শিল্প কারখানা, উদ্যোগ বা প্রক্রিয়া বন্ধ, নিষিদ্ধ বা নিয়ন্ত্রণ সম্পর্কিত বিষয়ও থাকিতে পারিবে এবং নির্দেশপ্রাপ্ত ব্যক্তি অনুরূপ নির্দেশ পালন করিতে বাধ্য থাকিবে;

তবে শর্ত থাকে যে,-

(ক) কোন শিল্প কারখানা, উদ্যোগ বা প্রক্রিয়া বন্ধ বা নিষিদ্ধ করিবার পূর্বে মহা-পরিচালক সংশ্লিষ্ট শিল্প কারখানা, উদ্যোগ বা প্রক্রিয়ার মালিক বা দখলদারকে উহার কার্যক্রম পরিবেশসম্মত করিবার জন্য যুক্তিসঙ্গত সুযোগ দেওয়ার উদ্দেশ্যে লিখিত নোটিশ প্রেরণ করিবে; এবং

(খ) মহা-পরিচালক সন্মত মনে করিলে উক্ত নোটিশে ইহাও উল্লেখ করিতে পারিবে যে, নোটিশ অনুযায়ী সংশ্লিষ্ট কার্যক্রম পরিবেশসম্মত না করা হইলে ধারা ৪ক এর উপ-ধারা(২) এর অধীন ব্যবস্থা গ্রহণ করা হইবে;

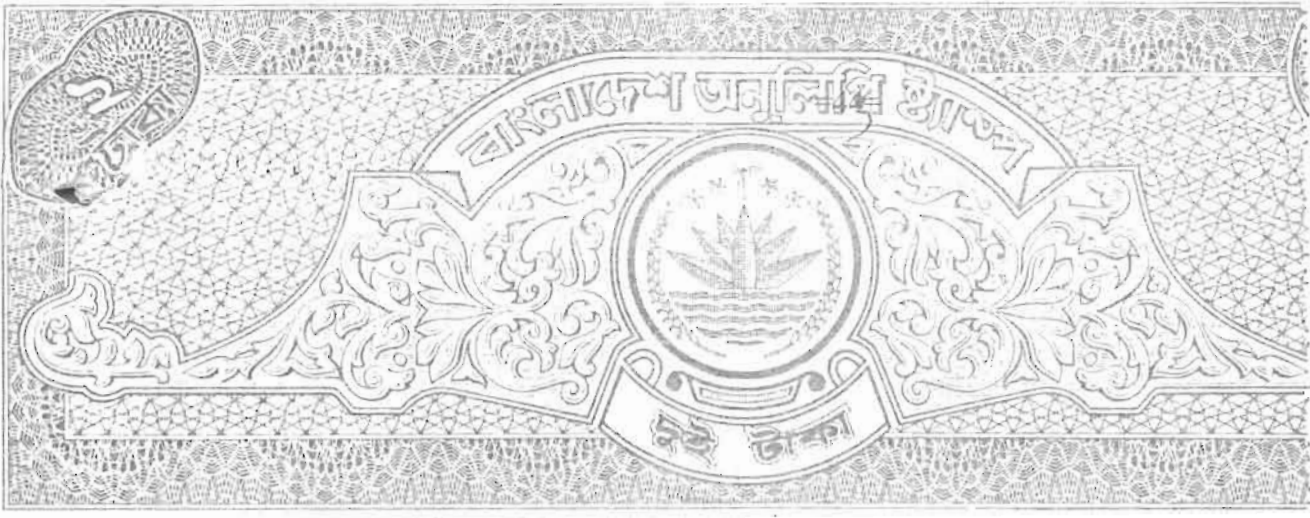
আরো শর্ত থাকে যে, কোন ক্ষেত্রে পরিবেশ দূষণের কারণে জনজীবন বিপর্যস্ত হইবার আশংকা দেখা দিলে মহাপরিচালক, জরুরী বিবেচনায়, তাৎক্ষণিকভাবে প্রয়োজনীয় নির্দেশ দিতে পারিবে।

(৪) মহাপরিচালক কর্তৃক এ ধারার অধীন জারীকৃত নির্দেশ সংশ্লিষ্ট কার্য সম্পাদন করা সময় সীমা নির্দিষ্ট করিয়া দেওয়া যাইতে পারে।

৪ক। আইন প্রয়োগকারী সংস্থা ও অন্যান্য কর্তৃপক্ষের সহায়তা গ্রহণ।- (১) এই আইনের অধীন কোন ক্ষমতা প্রয়োগ বা কার্য সম্পাদনের উদ্দেশ্যে মহা-পরিচালক বা তাহার নিকট হইতে ক্ষমতাপ্রাপ্ত ব্যক্তি আইন প্রয়োগকারী সংস্থা বা অন্য কোন সরকারী বা সংবিধিবদ্ধ কর্তৃপক্ষকে প্রয়োজনীয় সহায়তা করার জন্য অনুরোধ করিতে পারিবে এবং এইরূপ অনুরোধ করা হইলে উক্ত সংস্থা বা কর্তৃপক্ষ উক্ত সহায়তা প্রদান করিবে।

(২) ধারা ৪(৩) এর অধীনে মহা-পরিচালক কর্তৃক কোন শিল্প কারখানা, উদ্যোগ বা প্রক্রিয়া বন্ধ, নিষিদ্ধ বা নিয়ন্ত্রণের নির্দেশ প্রদান সত্ত্বেও উহার মালিক বা দখলদার উক্ত নির্দেশ পালন না করিলে, মহা-পরিচালক উক্ত শিল্প কারখানা, উদ্যোগ বা প্রক্রিয়ার জন্য সরবরাহকৃত বিদ্যুৎ, গ্যাস,

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টেলিফোন বা পানির সংযোগ বা এইরূপ সকল সংযোগ বিচ্ছিন্ন বা অন্য কোন সেবা বন্ধ করিবর জন্য সংশ্লিষ্ট সংযোগদাতা বা সেবা সরবরাহকারী ব্যক্তি বা প্রতিষ্ঠানকে নির্দেশ প্রদান করিতে পারিবেন।

(৩) উপধার ১(২) এর অধীন কোন নির্দেশ প্রদত্ত হইলে, উক্ত সংযোগ বা সেবা প্রদান সংক্রান্ত চুক্তিতে বা অন্য কোন দলিলে ভিন্নরূপ যাহা কিছুই থাকুক না কেন, উক্ত নির্দেশ অনুসারে উহাতে উল্লিখিত ব্যক্তি বা প্রতিষ্ঠান প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবে।

Section 4(Ka) provides that he may obtain assistance from the law enforcing agencies and other authorities in aid of his function. He also has other powers given to him under section 7 which provides as follows:

৭। প্রতিবেশ ব্যবস্থার ক্ষতির ব্যাপারে ব্যবস্থা গ্রহণ-(১) মহাপরিচালকের নিকট যদি প্রতীয়মান হয় যে, কোন ব্যক্তির কাজ করা বা না করা প্রত্যক্ষ অথবা পরোক্ষভাবে প্রতিবেশ ব্যবস্থা বা কোন ব্যক্তি বা গোষ্ঠির ক্ষতি সাধন করিতেছে বা করিয়াছে, তাহা হইলে তিনি উক্ত ক্ষতির পরিমাণ নির্ধারণপূর্বক উহা পরিশোধ এবং যথাযথ ক্ষেত্রে সংশোধনমূলক ব্যবস্থা গ্রহণ বা উভয় প্রকার ব্যবস্থা গ্রহণের জন্য নির্দেশ দিতে পারিবেন এবং উক্ত ব্যক্তি এইরূপ নির্দেশ পালনে বাধা থাকিবেন।

(২) উপ-ধারা (১) এর অধীন প্রদত্ত নির্দেশ অনুসারে নির্দেশ প্রাপ্ত ব্যক্তি ক্ষতিপূরণ প্রদান না করিলে, মহাপরিচালক যথাযথ এখতিয়ার সম্পন্ন আদালতে ক্ষতিপূরণের মামলা বা উক্ত নির্দেশ পালনে বাধার জন্য ফৌজদারী মামলা বা উভয় প্রকার মামলা দায়ের করিতে পারিবেন।

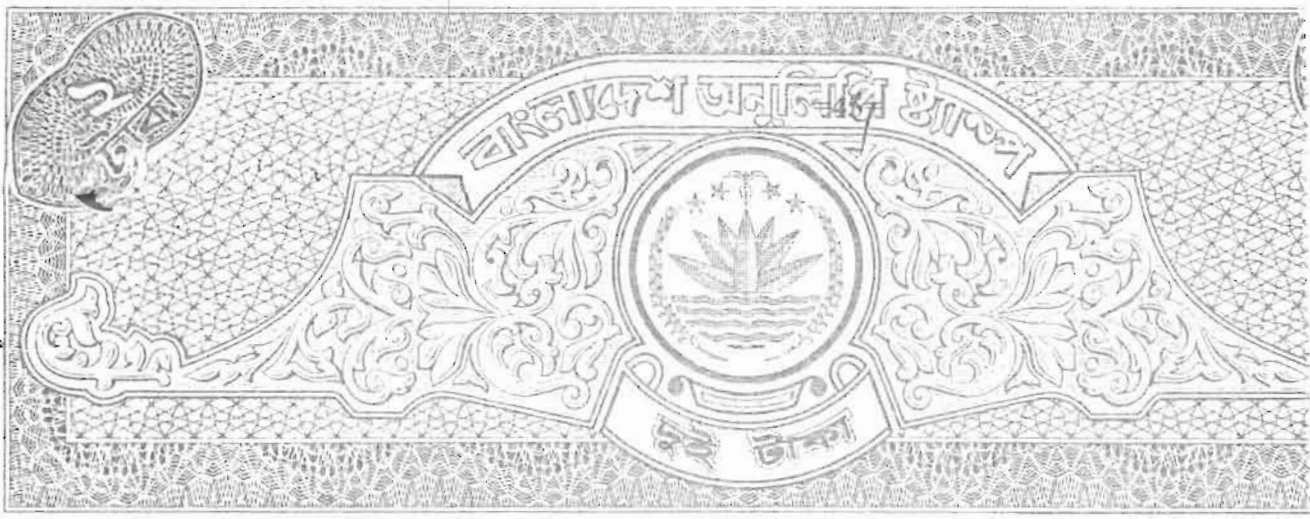
(৩) উপ-ধারা (১) এর অধীনে ক্ষতিপূরণ নির্ধারণের বা সংশোধনমূলক ব্যবস্থা গ্রহণের উদ্দেশ্যে যথাযথ ক্ষেত্রে যে কোন বিশেষজ্ঞ এবং অন্যান্য ব্যক্তিকে মহাপরিচালক দায়িত্ব প্রদান করিতে পারিবেন।

(৪) সরকার এই ধারার অধীনে যে কোন ব্যবস্থা গ্রহণ এবং তৎসম্পর্কে প্রতিবেদন দাখিলের জন্য মহাপরিচালককে নির্দেশ দিতে পারিবেন।

But it appears that the Department of Environment has not followed the provisions of the law in the case of any of the 36 shipbreaking yards operating within the Chittagong region.

At this juncture we may refer to a decision in the case of Dr. Mohiuddin Farooque, cited above, where the Director General, Directorate of Environment

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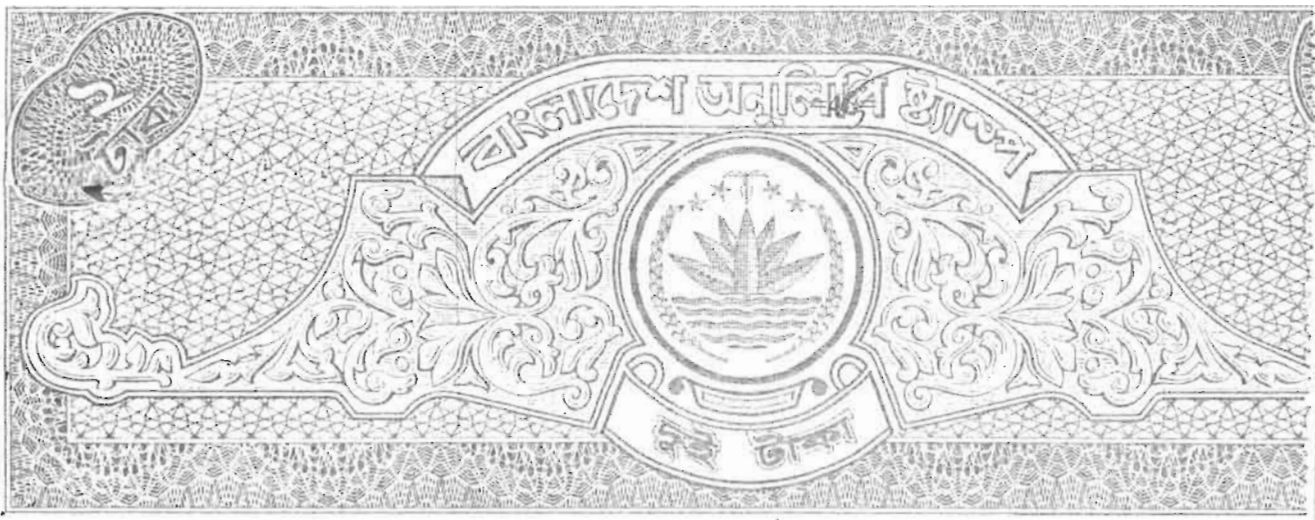


was directed to ensure that the industrial units and the factories which come within the classification 'Red' as stated in rule 7 of the Rules, must adopt adequate and sufficient measures to control pollution within one year from the date of receipt of that judgment, delivered on 15.7.2001. Similar direction was given in respect of Orange-ka and Orange-kha categories of industrial units and factories. Evidently that direction of this Court fell on deaf ears, since apparently no action has been taken to prevent pollution generated by shipbreaking, which is an industrial establishment, as defined in the Labour Act, 2006.

It is an admitted fact that the respondent No.17 did not obtain any clearance from the Department of Environment and also stated that none of the other shipbreaking yards have any clearance certificate for shipbreaking purposes. In the affidavit-in-opposition by respondent No.6 it is stated that the shipbreaking process has been classified now in the 'Red' category, which denotes that it is now considered to be a more serious and hazardous process and yet the Department has taken no steps to ensure that such shipbreaking process does not take place without obtaining a clearance certificate from the Department of Environment. It is, therefore, clear to us that all the shipbreaking yards within Bangladesh are operating without any clearance certificate and are, therefore, operating illegally.

In the above circumstances, we have no alternative but to direct that the Department of Environment take immediate steps to ensure closure of all the

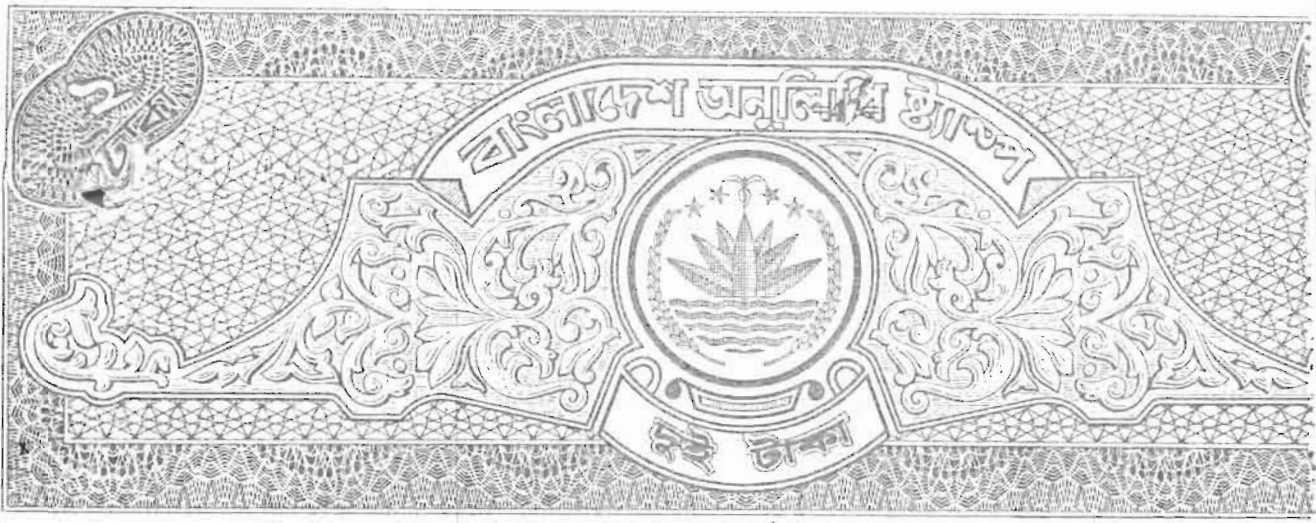
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shipbreaking yards, which are operating without prior clearance from the Department of Environment. If and when the shipbreaking yards apply for the clearance certificate, then the Department of Environment shall deal with the application expeditiously and supply the clearance certificate only upon satisfaction that all the facilities required for proper dismantling of the vessel have been provided, taking into consideration safety measures for the workers, protection of the environment and in particular disposal of hazardous waste generated by the dismantling process. In this regard the Department of Environment may take assistance from all law enforcing agencies and authorities to ensure that no further shipbreaking process takes place within the territory of Bangladesh without first obtaining the proper certification and clearance as required by law. The Department is further directed while dealing with the application for clearance to keep in view the impending Rules and regulations, which they ought to have prepared in view of the direction of this Court in Writ Petition No.3916 of 2006. The Department of Environment is further directed to report to this Court within 3(three) months giving a list of all shipbreaking yards in the Chittagong area giving details of which of the yards has applied for the clearance certificate and which, if any, has been granted such clearance certificate.

With regard to the closure of shipbreaking yards, the Department of Environment is to file compliance within 2(two) weeks given details of what steps they have taken in this regard.

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So far as the vessel M.T. Enterprise is concerned the injunction on further dismantling of the ship will continue until such time as the respondent obtains a clearance certificate from the Department of Environment for the purpose of dismantling the vessel.

✓ We are informed by the petitioners that the Bangladesh Ship Breakers Association (BSBA), respondent No.16, play a vital role in the process of shipbreaking undertaken by the shipyard owners. We are surprised to learn that respondent No.16 is promoting and facilitating the import of vessels which might cause and are in fact causing hazardous waste materials to pollute the environment, including flora and fauna of this country and are also endangering the lives and limbs of those who are working in the shipbreaking yards as well as the lives of future generations. It is the inane duty of such an organisation as the BSBA to ensure the safety of the workers in the shipbreaking yards as well as to protect the integrity of the environment for the future generations.

We may mention that in issuing the above order it is not our intention to totally prohibit the import of vessels for the purpose of breaking in this country, but the government should take steps to prioritise the interests of the public and the interest of the environment as against commercial interest of ship breakers. We can only say that human life and posterity is worth much more than immediate small commercial benefit. The harm caused by shipbreaking might not be so intolerable if the vessels were decontaminated

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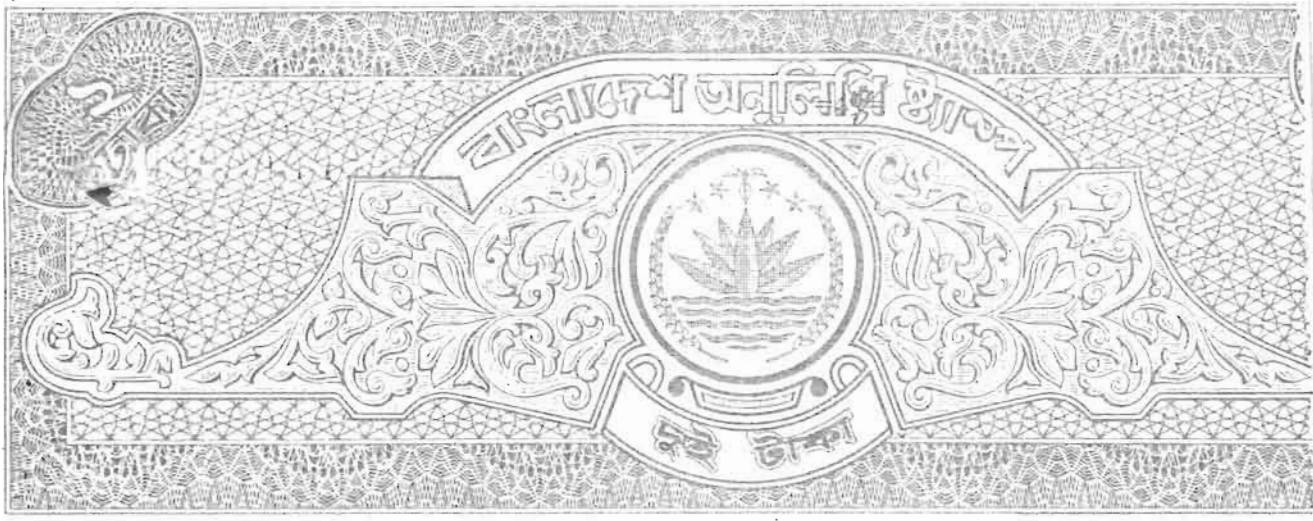
prior of importing the same and if sufficient infrastructure, precautionary and security measures are put in place to deal with hazardous working conditions and for handling and management of harmful waste materials which will inevitably be produced by the process of dismantling. It is our view that the purpose of the law has always been to ensure the safety and security of the persons working in the shipbreaking yards as well as other manufacture industries and also to protect the environment and if sufficient measures are taken to ensure all of this, then there is no reason why shipbreaking should not continue.

On the other hand, protection of the citizens and environment must take first priority. The thoughtful, benevolent and timely action of the Prime Minister, according to Mr. Fida Kamal, saved the nation in 2006. The news was reported in Belgium as follows:

“Bangladeshi government does not let toxic SS Norway enter its waters Brussels, 17 February 2006 - Greenpeace and the European NGO Platform on shipbreaking celebrate a further victory in the battle to prevent toxic end-of-life ships being sent to developing countries for shipbreaking. Following the French government's decision to take back the asbestos laden ex-aircraft carrier Clemenceau, the Banglashi Minister of Environment announced February 16th that his government will not let another notoriously contaminated ship, the SS Norway, enter his country's waters before it has been fully decontaminated.”

We can only hope that similar view will prevail in order to prevent hazardous vessels entering Bangladesh's territorial waters without prior decontamination.

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We express our appreciation to BELA and its officers for the highly commendable work done by them in their unending endeavours to ensure preservation of the environment and protection of the citizens from the various types of pollutions created by industries, manufacturers etc.

We wish finally to declare in no uncertain terms that no hazardous activity should be allowed to take place in breach of provisions of the law which have been promulgated by Act of Parliament for protecting the citizens of this country and the environment. All the Ministries and Departments concerned are to act in a cooperative manner for the proper and meaningful implementation of the law.

With above observations, this matter is disposed of in part. We summarise below our conclusions and directions.

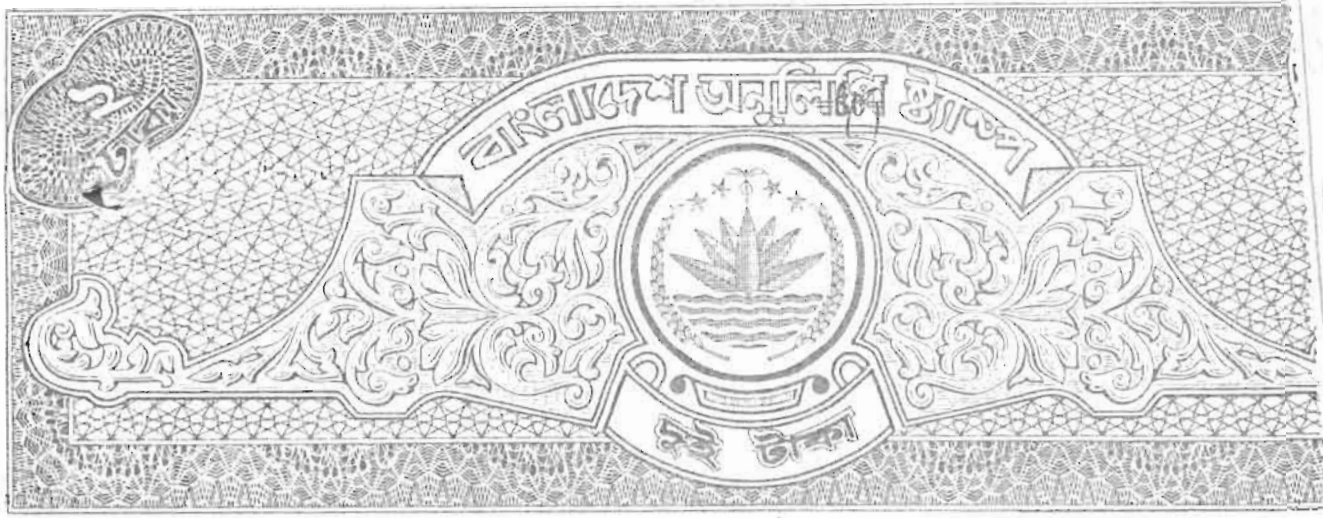
In the light of the above, we draw the following conclusions:

With regard to import of vessels for scrapping generally:

1. Decommissioned sea-going vessels, including end-of-life single-hull oil tankers which have been destined for disposal/recycling, are being sent from European and other countries to be dismantled in Bangladesh without first being decontaminated of hazardous materials as is required by the Basel Convention.
2. Vessels enlisted in the Greenpeace list of vessels containing hazardous materials are being imported on false representation both by the sellers as well as by the importers.

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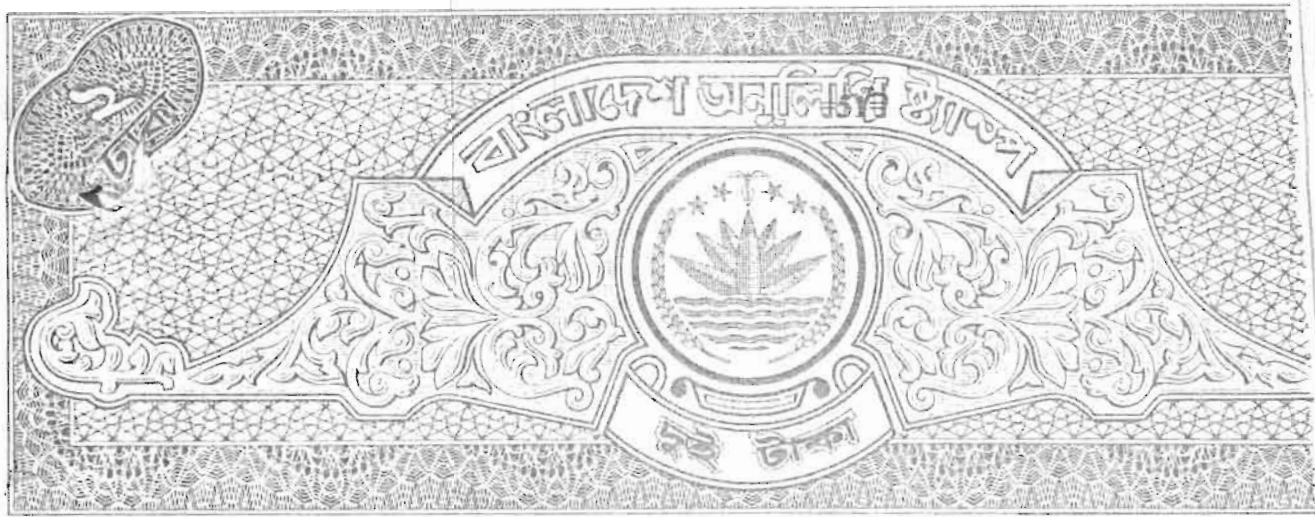


3. Ministry of Shipping through its Department of Shipping is allowing import of hazardous waste (namely vessels meant for scrapping which are classified as waste within the meaning of the Basel Convention) and vessels containing hazardous materials, without proper scrutiny, in flagrant disregard of the safety and security of workers in the shipbreaking yards as well as demonstrating blatant indifference to the integrity of the environment and humans who live in the vicinity of the shipbreaking yards and other citizens of the country and having no consideration for the flora and fauna and ecological balance which are also seriously affected by toxic pollutants generated by the dismantling process.

Import of vessel MT Enterprise:

1. Respondent No. 17, Madina Enterprise initially obtained the NOC for import of vessel MT Enterprise from the Department of Shipping by misrepresenting the fact that the vessel was not enlisted on the Greenpeace list of vessels containing hazardous materials, and that it did not contain any hazardous materials.
2. The Department of Shipping issued the NOC for the import of MT Enterprise without exercising due diligence, in a manner which can be termed as subterfuge.

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3. The Survey Committee appointed by the Department of Shipping was not representative of the relevant persons, inasmuch as the Department of Environment, being a vital component, was totally ignored.
4. The terms of reference of the Survey commissioned by the Department of Shipping appears to be self-serving, motivated and misconceived and does not reflect the real purpose of such survey. The test applied was illogical and the findings of the Committee are unacceptable in view of independent reports regarding similar oil tankers, which lead us to doubt the bona fides of the intention of those instigating and conducting the survey.
5. Having found that at least some hazardous materials exist on board, it was inappropriate to allow the vessel to beach without first ascertaining the capability of the ship breaker to handle the hazardous materials adequately ensuring the safety of the workers and wellbeing of the environment.
6. The way in which the earlier writ petition, W.P. No.6262 of 2008, was caused to be disposed and the way in which the cancellation of the NOC was withdrawn, as if the Court ordered the withdrawal, was demonstration of ingenuity on the part of the Department of Shipping.

With regard to shipbreaking yards operating without prior clearance certificates:

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1. Shipbreaking is an industry as defined in section 2(61) of the বাংলাদেশ শ্রম আইন, ২০০৬.
2. Admittedly, respondent No.17, Madina Enterprise has dismantled the vessel MT Enterprise without obtaining any Environmental Clearance.
3. The shipbreaking yards which are habitually allowing scrapping of vessels, which they import themselves or which are imported by others and are dismantled on their premises are required by law to obtain prior Environmental Clearance from the Department of Environment.
4. Where the premises are not ordinarily used for shipbreaking, but where importers scrap vessels imported by them, the importer is required to obtain prior Environmental Clearance to proceed with the scrapping as a project.
5. According to the report of the Ministry of Environment and Department of Environment 36 shipbreaking yards in the Chittagong area have been and are operating the process of dismantling ships and other sea-going vessels in flagrant violation of the existing laws of the land which require prior Environmental clearance from the Department of Environment.
6. The Department of Environment has failed miserably in its duty to enforce the law, having all the powers to do so as given by the বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ [Environment Conservation Act, 1995] and the Rules framed thereunder.

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

1. So far as the vessel M.T. Enterprise is concerned the injunction on further dismantling of the ship will continue until such time as the respondent No.17 obtains a clearance certificate from the Department of Environment for the purpose of dismantling the remainder of the vessel.
2. The Ministry of Environment and Department of Environment are directed to immediately take steps to ensure closure of all shipbreaking yards which are operating without necessary Environmental Clearance as required by law.
3. The law-enforcing agencies, including the Police, Magistracy and local administration are directed to accord cooperation and assistance to the Department of Environment as enjoined by section 4(Ka) of the বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ in ensuring the closures of shipbreaking yards operating without prior clearance from the Department of Environment.
4. The Department of Environment is directed to file compliance within 2(two) weeks giving details of what steps they have taken in this regard.
5. If and when the shipbreaking yards or any importer of any vessel apply for clearance certificate, then the Department of Environment shall deal with the application expeditiously and supply the clearance certificate only upon satisfaction that all the facilities required for proper dismantling of the vessels, taking into consideration whether safety

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measures for the workers and the conservation of the environment and in particular disposal of hazardous waste generated by the dismantling process, are in place.

6. The Ministry of Environment is hereby directed to frame Rules and regulations for the proper handling and management of hazardous materials and wastes, keeping in view the বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ [Environment Conservation Act], the Rules framed thereunder, the Basel Convention, 1989 the Factories Act, 1965 and বাংলাদেশ শ্রম আইন ২০০৬ [Labour Act, 2006].
7. Thereafter the Ministry of Environment is directed to file compliance in this regard within 3(three) months from receiving a copy of the judgment.
8. The Ministry of Shipping and Department of Shipping are directed to ensure that hazardous vessels enlisted in the Greenpeace list of vessels containing hazardous materials are not imported into the country and when such vessels are imported after having been decontaminated at source or outside the territory of Bangladesh, that prior Environmental clearance has been obtained on showing that adequate safety and precautionary measures have been taken for their dismantling/in accordance with law.

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

Let the concluding portion of the judgment and order along with the directions above be communicated to the respondents namely, respondent No.5, Secretary, Ministry of Environment and Forest, respondent No.6, Director General, Department of Environment, respondent No.1, Secretary, Ministry of Shipping, respondent No.8, Director General, Department of Shipping, and respondent No.17, Proprietor, Madina Enterprise at once by a Special Messenger of this Court at the cost of the petitioner.

Md. Imman Ali

Sheikh Abdul Awal, J.

I agree

Sk. A. Awal

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B.Banu/27.04.2009

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বাংলাদেশ সুলীম কোর্ট, হাইকোর্ট ভবন

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