

CASE NO.:
Writ Petition (civil) 657 of 1995

PETITIONER:
Research Foundation for Science Technology and Natural Resource Policy

RESPONDENT:
Union of India and Others

DATE OF JUDGMENT: 11/09/2007

BENCH:
Dr. Arijit Pasayat & S. H. Kapadia

JUDGMENT:

JUDGMENT

O R D E R
I.A. No. 34 of 2006 IN WRIT PETITION (CIVIL) NO. 657 OF 1995
S.H. Kapadia, J.

A short question which arises for determination in this IA is whether this Court should grant permission for dismantling of the ship "Blue Lady" at Alang, Gujarat.

2. The "Blue Lady" ex SS Norway was a passenger liner built at Chantier De Altantic, St. Nazaire, France in 1961. It was a steam turbine driven vessel with a power and rating of 30,000 KW and 40,760 HP respectively. Now the vessel is registered as a Barge under the flag of Bahamas vide official number 710763. The vessel is very luxurious in it's kind and many dignitaries like President of America, Queen of England have travelled during it's golden period. The said ship was beached on 15/16.8.2006 off the Alang coast. The said ship was the passenger ship. It was constructed in 1952. It originated from France. Its last origin was from Norway. The ship is about 291 mt. long. It is 34 mt. wide. It has the capacity of 45886 MT. It has 16 floors. It has 1400 rooms for passengers accommodation. It has restaurant, cinema, health club and free shopping complex.

3. Alang is located on the west coast of Gujarat. It is the largest ship recycling yard in the world. It is one of the choicest ship-scraping destination for the ship owners around the world. There are 183 plots in all to carry out the ship recycling activities. Till today Alang has provided approximately 23 million tonnes of steel in the last 10 years. On 17.2.2006 when the above writ petition came up for hearing before this Court, we found the controversy concerning ship-breaking a recurring controversy. Therefore, this Court decided to lay down norms concerning infrastructure, capacity of Alang to handle large volume of ship-breaking activity, safeguards to be provided to the workers who were likely to face health-hazard on account of the incidence of ship-breaking activity, the environmental impact assessment, regulation of the said activity and strict regulation of the said activity. Accordingly, this Court constituted a Committee of Technical Experts to submit a report on the aforesaid aspects.

4. We quote hereinbelow the said order dated 17.2.2006:

"It is brought to our notice that the ship Clemenceau has been directed to be taken back to France. Therefore, immediate controversy relating to Clemenceau ship seems to be over. But the problem is a recurring one. First and foremost requirement as of today is to find out the infrastructural stability and adequacy of the ship breaking yard at Alang. It has to be found out

whether the same are operational/operating in a way that environmental hazards and pollution are avoided and/or equipped to meet the requirements in that regard. For that purpose, it is necessary to constitute a Committee of technical experts who can, after obtaining views and inviting suggestions from those who would like to give them to find out whether the infrastructure as existing at Alang presently is adequate. If according to the Committee, it is not adequate it shall indicate the deficiencies, and shall also suggest remedial measures to upgrade the infrastructural facilities. For this purpose, Union of India shall, as early as practicable, constitute a Committee of technical experts, some of them having Navy background, preferably retired officers. The Committee shall submit its report to this Court within eight weeks. The expenses of the Committee shall be met by the Ministry of Environment and Forests. Since at various points of time various guidelines have been indicated, it would be appropriate if they are properly codified to be followed scrupulously by all concerned including the Government authorities."

5. In continuation of the said order dated 17.2.2006 a further order was passed by this Court on 12.3.2007 calling for a further report by TEC in which this Court directed inclusion of Gujarat Maritime Board (GMB) and Gujarat Pollution Control Board (GPCB) to assist this Court on three aspects, namely, pre-conditions to be satisfied by the recycler for dismantling and reusability of 80% of the asbestos. This Court also sought assistance of various authorities, including the petitioner herein, on steps to be taken to control the environmental impact of asbestos dust likely to be generated in the process of dismantling. We quote hereinbelow the said order in extenso:

"Having heard learned counsel for the parties, we are of the view that a further report by the T.E.C. is required to indicate as to whether conditions stipulated have been complied with before any action can be taken on the dismantling plan. Let the applicant in I.A. No.34 place materials before T.E.C. as to how and in what manner compliance has been done. While deciding the acceptability of the stand of the applicant, the T.E.C. shall involve the Gujarat Maritime Board and the Gujarat Pollution Control Board and take note of their views. In the report apart from examining the general compliance of the conditions, specific focus has to be drawn on three particular aspects, namely, (a) whether pre-conditions for dismantling have been complied with; (b) whether 80% of the asbestos is reusable as is contended by the applicant; (c) what steps have been taken to control the environmental impact of asbestos dust generated in the process of dismantling. The T.E.C. shall also suggest as to which agency shall oversee and monitor the dismantling in case it recommends acceptance of the dismantling plan. The report shall be submitted within six weeks. The other aspects relating to the reversibility or impermissibility of the beaching, manner of dealing with hazardous from asbestos and other hazardous material shall be considered after the receipt of the report from the T.E.C. The T.E.C. which was constituted pursuant to the order of this court having submitted its report is stated to have become functus officio shall examine the matter as directed."

6. Ultimately, the TEC submitted its report on the aforesaid aspects on 10.5.2007. That report has been accepted by this Court vide order dated 6.9.2007 in writ petition no. 657/95 etc.. We accepted that report mainly because it is all pervasive. It contains opinions of experts including retired naval officers. It indicates State-of-the-Art mechanism to regulate removal of asbestos. The report clarifies that "beaching" is an irreversible process. TEC has also examined the recycling plan and the dismantling plan submitted by the recycler. Apart from the GMB and GPCB, various other authorities like Gujarat Enviro Protection & Infrastructure Ltd. (GEPIL) have also contributed their knowledge and expertise in the preparation of the report dated 10.5.2007. There was also an apprehension rightly expressed by the petitioner regarding radio active material on board the vessel "Blue Lady". Therefore, an immediate inspection of the said vessel beached at Alang since 16.8.2006 was undertaken by Atomic Energy Regulatory Board (AERB) and by GMB. The apprehension expressed by the petitioner was right. However, as the matter stands today, AERB and GMB have certified that the said vessel Blue Lady beached in Alang no more contains any radio active material on board the ship.

7. By the said report dated 10.5.2007, which has been accepted by us vide order dated 6.9.2007, TEC has also recommended grant of permission for dismantling of the ship "Blue Lady" at Alang (Gujarat) in accordance with the recycling plan submitted by M/s Priya Blue Industries Pvt. Ltd. (recycler). Under the said report, TEC has stated that regular monitoring of the ship-breaking operations of Blue Lady shall be undertaken by the competent authority mentioned in the report so as to ensure strict compliance with the guidelines given by TEC in respect of safety and health of the workmen and environment. At this stage, we may mention that breaking of the vessel Blue Lady will provide to this country 41000 MT of steel and it would give employment to 700 workmen.

8. In his Keynote Address, on 'Global Constitutionalism', reported in Stanford Law Review vol. 59 at p. 1155, Lord Goldsmith, Her Majesty's Attorney General (UK), stated that British Constitution though unwritten is based on three principles, namely, rule of law, commitment to fundamental freedoms and principle of proportionality. European Convention on Human Rights ("ECHR") also refers to the concept of balance.

9. In the case of Research Foundation for Science Technology National Resource Policy v. Union of India and anr. (2005) 10 SCC 510 a Division Bench of this Court has held that "precautionary principle" is a part of the concept of sustainable development. We quote hereinbelow paragraphs 16 and 43 of the said judgment, which are as follows:

"16. The legal position regarding applicability of the precautionary principle and polluter-pays principle which are part of the concept of sustainable development in our country is now well settled. In Vellore Citizens' Welfare Forum v. Union of India (1996) 5 SCC 647 a three-Judge Bench of this Court, after referring to the principles evolved in various international conferences and to the concept of "sustainable development", inter alia, held that the precautionary principle and polluter-pays principle have now emerged and govern the law in our country, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes including the Environment (Protection) Act, 1986, these concepts are already implied. These principles have been held to have become part of our law. Further, it was observed in Vellore Citizens' Welfare Forum case that these principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law. Reference may also be made to

the decision in the case of A.P. Pollution Control Board v. Prof. M.V. Nayudu (1999) 2 SCC 718 where, after referring to the principles noticed in Vellore Citizens' Welfare Forum case the same have been explained in more detail with a view to enable the courts and the tribunals or environmental authorities to properly apply the said principles in the matters which come before them. In this decision, it has also been observed that the principle of good governance is an accepted principle of international and domestic laws. It comprises of the rule of law, effective State institutions, transparency and accountability and public affairs, respect for human rights and the meaningful participation of citizens in the political process of their countries and in the decisions affecting their lives. Reference has also been made to Article 7 of the draft approved by the Working Group of the International Law Commission in 1996 on "Prevention of Transboundary Damage from Hazardous Activities" to include the need for the State to take necessary "legislative, administrative and other actions" to implement the duty of prevention of environmental harm. Environmental concerns have been placed on the same pedestal as human rights concerns, both being traced to Article 21 of the Constitution. It is the duty of this Court to render justice by taking all aspects into consideration. It has also been observed that with a view to ensure that there is neither danger to the environment nor to the ecology and, at the same time, ensuring sustainable development, the court can refer scientific and technical aspects for an investigation and opinion to expert bodies. The provisions of a covenant which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can be relied upon by courts as facets of those fundamental rights and hence enforceable as such (see People's Union for Civil Liberties v. Union of India (1997) 3 SCC 433. The Basel Convention, it cannot be doubted, effectuates the fundamental rights guaranteed under Article 21. The right to information and community participation for protection of environment and human health is also a right which flows from Article 21. The Government and authorities have, thus to motivate the public participation. These well-enshrined principles have been kept in view by us while examining and determining various aspects and facets of the problems in issue and the permissible remedies.

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43. Another aspect which deserves to be noticed is about the effect of ship-breaking activity covered by TOR (14). We are not suggesting discontinuing of ship-breaking activity but it deserves to be strictly and properly regulated. When the ship arrives at a port for breaking, the authorities concerned have to be vigilant about the hazardous waste which may be generated if appropriate timely action by various agencies, in particular, the Maritime Board and SPCB are not taken. The major ship-breaking activity in India is at Alang in the State of Gujarat and, therefore, the Gujarat Maritime Board and Gujarat SPCB have to be alive to the consequences of the appropriate steps to be taken before the breaking activities start. According to the recommendations of HPC, the Inter-Ministerial Committee comprising Ministry of Surface Transport,

Ministry of Steel, Ministry of Labour and Ministry of Environment should be constituted with the involvement of labour and environment organisations and representatives of the ship-breaking industries.

(emphasis supplied

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10. The concept of "balance" under the principle of proportionality applicable in the case of sustainable development is lucidly explained by Pasayat, J. in the judgment of this Court in the case of T.N. Godavarman Thirumalpad v. Union of India and Ors. reported in (2002) 10 SCC 606 vide para 35 which reads as under:

"35. It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship."

The above paragraphs indicate that while applying the concept of "sustainable development" one has to keep in mind the "principle of proportionality" based on the concept of balance. It is an exercise in which we have to balance the priorities of development on one hand and environmental protection on the other hand.

11. India after globalization is an emergent economy along with Brazil, Russia and China. India has economic growth of above 9%. However, that growth is lop-sided. A large section of the population lives below poverty line. India has largest number of youth in the world. Unemployment is endemic. Article 21/14 is the heart of the Chapter of fundamental rights. Equality of opportunity is the basic theme of Article 14. In an emergent economy, the principle of proportionality based on the concept of balance is important. It provides level playing field to different stakeholders. Ship breaking is an industry. When we apply the principle of sustainable development, we need to keep in mind the concept of development on one hand and the concepts like generation of revenue, employment and public interest on the other hand. This is where the principle of proportionality comes in. Even in the case of Blue Lady, the figures indicate that 700 workers would be employed in ship breaking. Further, 41000 MT of steel would be made available. To that extent, there will be less pressure on mining activity elsewhere. Even in the judgment, referred to above, vide para 43, it has been observed that this Court is not in favour of discontinuance of ship-breaking activity. However, this Court has held that the said activity needs to be strictly and properly regulated. This concept of balancing is given importance by Dr. Amartya Sen in his book "Development as Freedom". Today ship-breaking provides resources not only in terms of steel but also in terms of employment, skill and capability. Competition exists in the said business of ship-breaking amongst Bangladesh, Pakistan and India. In our view, if "capability" is a resource with our skilled workers it needs to be protected by strict implementation of Health Hazard Preventive Measures suggested in the report of TEC and implementation of Recycling Plans, generation of pollutants like asbestos to the extent of 20% can be almost eliminated. As stated, 85% of asbestos is in form of ACM in panels which is reusable. Therefore, the report provides State-of-the-Art mechanism which is the key element of "sustainable development".

12. One of the main objections raised on behalf of the petitioner was regarding non-quantification of two contaminants, namely, ACM and PCB (rubber). At this stage, we may clarify that ACM exists as material of construction in various vessel components like partitions, walls, ceilings etc. which are an integral part of the vessel structure. In the present case, the vessel does not contain single kilogram of asbestos and/or ACM as cargo. However, there is presence of ACM as "material of construction" in various vessel components like partitions, walls, ceiling etc.. Major quantity of ACM (85%) is in the partitions and ceilings of rooms and galleries. These ACMs are in the panels. TEC, in its report, stated that recyclable material alone can be sold, therefore, PCB cannot be sold. The report further indicates that the quantity of PCB in the present case has to be dumped in land-fills. It is important to note that there are only two alternatives, namely, incineration or dumping PCB in land-fills. In both the cases, there is likelihood of pollution. As regards asbestos is concerned, we find that 85% is insulation and panels. This is where the dismantling plan has to be applied. It is this plan which takes care of the panels and insulation containing asbestos. Under section 3.3.2, the recycler was required to submit a dismantling plan containing requirements to be complied with. We quote hereinbelow section 3.3.2 of the report of the Committee of Technical Experts on Ship Breaking Activities dated 30.8.2006:

"3.3.2. Ship Specific Dismantling Plan:

Before starting the recycling process, the recycler should submit a Dismantling Plan to the authorities, which should include:

- a) Details about the ship, and in particular, a fair assessment of hazardous wastes/hazardous materials.
- b) Ship breaking schedules with sequence of work.
- c) Operational work procedures.
- d) Availability of material handling equipment and PPEs.
- e) Plan for removal of oil and cleaning of tanks.
- f) Hazardous waste handling and disposal plan.
- g) 'Gas-free and fit for hot work' certificate issued by the Department of Explosives, or any competent agency authorized by the Department of Explosives.
- h) Identification and marking of all non-breathable spaces by the Recycler.
- i) Identification and marking of all places containing/likely to contain hazardous substances/hazardous wastes.
- j) Confirmation to the effect that ballast water has been exchanged in the high seas. The tasks should address all the three phases of recycling, i.e.
 - i) Preparation phase.
 - ii) Dismantling phase.
 - iii) Waste stream management
- k) Asbestos being a major area of concern, the scheme for removing asbestos, and asbestos containing materials (ACMs) on board, and on shore, should be specifically provided. The plan should include arrangements for handling, treatment and disposal. Locations having asbestos/ACMs should be marked before commencing dismantling operations.
- l) Systems and procedures to be followed to document and keep

track of all hazardous waste generated during recycling, as well as hazardous substances found onboard the ship, and their transport to the disposal facility or registered recycling facility should be provided."

13. The report dated 10.5.2007 of TEC states that the Dismantling Plan submitted by recycler in the case of Blue Lady complies with section 3.3.2. As stated above, the "precautionary principle" is embedded in the doctrine of sustainable development. In the present case, one of the main apprehensions, justifiable, concerns removal of ACM and PCB from engine room, vent room and insulated pipelines. According to the removal plan, all major quantity of ACM (85%) is in form of wall partitions, ceiling and roofing in rooms and gallery. It is reusable. Therefore, the panels, partitions, ceilings etc. have to be removed in such a way that the ACMs are not damaged. The removal plan submitted by the recycler has been approved by the TEC. Similarly, air monitoring has to be conducted for the air-borne ACM, if any. For that purpose the Committee has recommended appropriate respiratory protection to be provided to the workmen. For each category of work to be done in different areas of the vessel, gears have been provided to the workmen in the form of whole body coveralls, gloves, safety shoes, helmet, safety goggles etc. Similarly, as regards waste generation, the TEC report suggests by way of protection air monitoring respiratory protection to employees, leak tests, negative pressure checks etc. Similarly, storage of contaminated wastes in the land-fills has also been incorporated in the recommendations of the TEC. Therefore, in our view, in the light of the above conditions to be fulfilled by the recycler, the principle of sustainable development based on the concept of "balance" stands satisfied.

14. We may mention one important aspect. Asbestos in the panel exists even in false ceiling constructed in commercial establishments. It is only when those panels are broken that asbestos as a hazardous substance emerges. In the present case, 85% of the asbestos is in the panels and insulation that quantity is reusable. As far as dismantling is concerned, the plan complies with section 3.3.2. However, it is likely that in some cases asbestos as a substance may emerge and, therefore, the report of TEC has taken care to look into and approve the Recycling Management Plan. In our view, the report of TEC is foolproof. It has taken into account international standards to regulate ship-breaking activity. The quantity of PCB has been determined by Gujarat Enviro Protection & Infrastructure Ltd. ("GEPIL"). There is NOC given by GMB as also by GPCB in the matter of ship-breaking of the ship "Blue Lady". The report dated 10.5.2007 has evolved State-of-the-Art mechanism to regulate removal of asbestos. Recycling is a key element of sustainable development. The Committee has examined each and every aspect concerning recycling and dismantling of the ship "Blue Lady". Lastly, we may point out that there is no dispute that on 15/16.8.2006 the vessel beached off Alang coast. It is not in dispute that the process of beaching is irreversible. Taking into account the contours of TEC report dated 10.5.2007 and the opinion of TEC that the recycler M/s Priya Blue Industries Pvt. Ltd. has complied with the norms regarding dismantling and recycling, we accept the report of the TEC dated 10.5.2007 and we accordingly grant permission to the said recycler to dismantle the said ship "Blue Lady" as recommended by TEC (see: para 12 of the TEC report dated 10.5.2007).

15. Accordingly the I.A. stands disposed of.