REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NOS.61 & 62 OF 2012

IN

WRIT PETITION (C) No.657 of 1995

RESEARCH FOUNDATION FOR SCIENCE, TECHNOLOGY AND NATURAL RESOURCE POLICY … **PETITIONER**

VS.

UNION OF INDIA & ORS. … **RESPONDENTS**

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O R D E R

ALTAMAS KABIR, J.

1. On 6th July, 2012, Writ Petition (Civil) No.657 of 1995 filed by the Research Foundation for Science, Technology and Natural Resources Policy

was disposed of by this Court. I.A. No.61 of 2012 which had been filed by M/s Best Oasis Ltd. on 9th May, 2012, and I.A. No.62 of 2012 filed by Gopal Krishna on 18th June, 2012, were heard separately since in the said applications relief was prayed for in respect of a specific ship named "Oriental Nicety" (formerly known as Exxon Valdez), which had entered into Indian territorial waters and had sought the permission of the Gujarat Pollution Control Board and the Gujarat Maritime Board to allow the ship to beach for the purpose of dismantling. Such relief would, of course, be subject to compliance with all the formalities as required by the judgments and orders passed by this Court on 14th October, 2003, 6th September, 2007 and 11th September, 2007 in the Writ Petition. The Applicant, M/s Best Oasis Ltd. is the purchaser of the said ship.

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2. Another prayer was for a direction to the above-mentioned Authorities and the Atomic Energy Regulatory Board to inspect the ship and to permit it to enter into Indian territorial waters and allow it to anchor in Indian waters, which has been rendered redundant, since, as submitted by Ms. Hemantika Wahi, learned Standing Counsel for the State of Gujarat, the said stages have already been completed and the ships is anchored outside Alang Port.

3. After the application had been filed, the Union of India in its Ministry of Environment and Forests, and the Gujarat Maritime Board, were directed to file their respective responses thereto.

4. Appearing on behalf of the Union of India in its Ministry of Environment and Forests, Mr. Ashok Bhan, learned Senior Advocate, submitted that an affidavit had been affirmed by Shri M. Subbarao,

Director, Ministry of Environment and Forests, in which it had been disclosed that a Technical Expert Committee (TEC) had been appointed pursuant to the directions contained in the order dated 6th September, 2007, passed by this Court in the Writ Petition. The said Committee Report dealt in great detail with the hazards associated with the ship breaking industry, occupational and health issues, social welfare activities of workers, occupational hazards associated with breaking of different categories of ships of special concern, handling of hazardous material and the role and responsibilities of various defaulters. Mr. Bhan submitted that the said Report also focused on ships of special concern in assessment of hazardous wastes and potentially hazardous materials. It was urged that a definite procedure for anchoring, beaching and breaking of ships had been laid down in the Report of the Committee which is applicable to ship-breaking activities in all the coastal

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States of India. In fact, it was pointed out by Mr. Bhan that the procedures recommended by the Committee were already in force and in terms of the order dated 6th September, 2007, the Report of the Committee is to remain in force until a comprehensive Report, incorporating the recommendations of the Committee, was formulated. In addition, Mr. Bhan submitted that in compliance with this Court's order dated 14th October, 2003, the Union of India, in its Ministry of Steel, has constituted an Inter-Ministerial Standing Monitoring Committee to periodically review the status of implementation of the recommendations of the Technical Expert Committee.

5. Mr. Bhan submitted that the provisions of the Basel Convention relating to the disposal of hazardous wastes are being strictly followed and as far as the present ship is concerned, it was for the Gujarat Maritime Board, which is the concerned

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local authority to take a decision for anchoring and subsequent beaching and dismantling of the ship, in strict compliance with the directions contained in the order passed by this Court on 6th September, 2007.

6. Mr. Bhan also referred to an affidavit affirmed on behalf of the Ministry of Shipping, in which it was stated that for permitting a vessel to anchor, inspection is to be carried out by the State Maritime Board in consultation with the State Pollution Control Board and Customs Department. In the affidavit, it has been specifically averred that an inspection of the vessel had been carried out by the Gujarat Maritime Board and it was found that the ship had been converted from an oil tanker to a bulk carrier in 2008 and there was no sign of any hazardous/toxic substance on board. It was also stated in the affidavit that the Board had given its "no objection" for beaching of the ship and the

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Ministry of Shipping, therefore, had no say in the matter.

7. Appearing for the Gujarat Pollution Control Board, Gandhinagar, Ms. Hemantika Wahi submitted that in keeping with the directions contained in the order passed by this Court on 6th September, 2007, an Inter-Ministerial Committee and Standing Monitoring Committee to review the status of implementation of the directions of this Court from time to time, had been constituted. However, as a matter of precaution, the Gujarat Pollution Control Board had not recommended that permission be granted to the vessel in question to anchor, until further orders were passed by this Court in the pending Writ Petition. Ms. Wahi submitted that in the order dated 6th September, 2007, this Court had recommended the formulation of a comprehensive code to govern the procedure to be adopted to allow ships to enter into Indian territorial waters and

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to beach at any of the ports in India for the purpose of dismantling. However, till such code came into force, the officials of the Gujarat Maritime Board, the concerned State Pollution Control Board, officials of the Customs Department, National Institute of Occupational Health and the Atomic Energy Regulatory Board, could oversee the arrangements. Ms. Wahi submitted that the application for recommendation for anchoring could be decided in view of the aforesaid order dated 6th September, 2007, and the TEC Report which had been accepted by this Court vide the said order, with liberty to file a response to the application at a later stage, if required.

8. Ms. Wahi then referred to the affidavit affirmed on behalf of the Gujarat Maritime Board by Capt. Sudhir Chadha, Port Officer, Ship Recycling Yard, in the Gujarat Maritime Board at Alang. Ms. Wahi submitted that in terms of the directions

given on 25th June, 2012, on the application of M/s Best Oasis Ltd., the Gujarat Maritime Board instructed the company to bring the vessel to the Port area of Alang for inspection. Ms. Wahi submitted that when the vessel arrived outside the Port area of Alang on 30th June, 2012, officers of all concerned departments, including the Gujarat Maritime Board, the Gujarat Pollution Control Board, Customs Department, Explosives Department, Atomic Energy Regulatory Board, went on board the ship to inspect and ascertain that there was no hazardous/toxic substance on it. Ms. Wahi submitted that upon inspection, nothing hazardous or toxic was discovered on the vessel, which was found to be in conformity with the documents submitted for desk review. The Gujarat Maritime Board, therefore, certified that the ship was fit for breaking/dismantling and beaching permission would be given after following the procedure laid

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down by TEC and approved by this Court in its order dated 6th September, 2007.

9. The recommendations of the Gujarat Maritime Board and the Gujarat Pollution Control Board to allow the vessel to beach at Alang was hotly contested by Mr. Sanjay Parikh, learned Advocate appearing for the Petitioner, Research Foundation for Science, Technology and Natural Resources Policy. Mr. Parikh urged that while disposing of the Writ Petition on 6th July, 2012, this Court had directed the Union of India and the Respondents concerned to follow the procedure which had been laid down in the Basel Convention in the matter of ship-breaking, which often generated large quantities of toxic waste. Mr. Parikh submitted that none of the safeguards which had been put in place by the Basel Convention had been complied with or followed in permitting the Oriental Nicety to enter into Indian territorial waters. Mr.

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Parikh submitted that under the Basel Convention, the country of export of the ship was required to inform the country of import of the movement of the ship in question and that it was non-hazardous and non-toxic. Mr. Parikh submitted that in the instant case such intimation was neither given nor was the ship certified to be free from hazardous and toxic substances.

10. It was also urged that the owners of the vessel were required to obtain clearance from the Government of India to bring the ship into Indian territorial waters, which was dependent upon the availability of landfill facilities, as also facilities for beaching. Mr. Parikh submitted that it is only after completion of the aforesaid requirements, that the ship could be allowed entry into Indian territorial waters and to beach at any of the ship-breaking yards at any of the Ports designated for such purpose. Mr. Parikh submitted

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that in the absence of proper compliance with the norms laid down in the Basel Convention, the vessel ought not to have been permitted to enter into Indian territorial waters or the Port area at Alang by the Gujarat Pollution Control Board and the Gujarat Maritime Board. Mr. Parikh further submitted that now the vessel had been permitted to enter the Alang Ship-breaking Yard, further steps to dismantle the ship should not be permitted, without definite steps being taken to ensure that there were no hazardous substances on board the ship or that the ship itself was not a hazardous object.

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11. Mr. Parikh further submitted that if during the dismantling of the ship any toxic or hazardous materials were found on board the ship or was found to be an integral part of the ship, adequate precautionary measures should be taken immediately to neutralize the same either by incineration or by

creating adequate landfills for disposal of such waste.

12. We have carefully considered the submissions made on behalf of the respective parties in the light of the submissions made on behalf of Applicant, M/s Best Oasis Ltd., the owner of the vessel in question, that huge demurrage charges are being incurred by the ship owner each day. We are of the view that once clearance has been given by the State Pollution Control Board, State Maritime Board as well as the Atomic Energy Regulatory Board for the vessel to beach for the purpose of dismantling, it has to be presumed that the ship is free from all hazardous or toxic substances, except for such substances such as asbestos, thermocol or electronic equipment, which may be a part of the ship's superstructure and can be exposed only at the time of actual dismantling of the ship. The reports have been submitted on the basis of actual

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inspection carried out on board by the above-mentioned authorities, which also include the Customs authorities. The Atomic Energy Regulatory Board has come up with suggestions regarding the removal of certain items of the ship during its dismantling. The suggestions are reasonable and look to balance the equities between the parties.

13. We, therefore, dispose of the two IAs which we have taken up for hearing and direct the concerned authorities to allow the ship in question to beach and to permit the ship owner to proceed with the dismantling of the ship, after complying with all the requirements of the Gujarat Maritime Board, the Gujarat Pollution Control Board and Atomic Energy Regulatory Board. It is made clear that if any toxic wastes embedded in the ship structure are discovered during its dismantling, the concerned authorities shall take immediate steps for their

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disposal at the cost of the owner of the vessel, M/s Best Oasis Ltd., or its nominee or nominees.

14. Before parting with the matter, we would like to emphasize that in all future cases of a similar nature, the concerned authorities shall strictly comply with the norms laid down in the Basel Convention or any other subsequent provisions that may be adopted by the Central Government in aid of a clean and pollution free maritime environment, before permitting entry of any vessel suspected to be carrying toxic and hazardous material into Indian territorial waters.

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14. There will be no order as to costs.

……J.
(ALTAMAS KABIR)

……J.
(J. CHELAMESWAR)

New Delhi
Dated: 30th July, 2012.