

(2009) 08 GUJ CK 0005
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1386 of 2009 in Miscellaneous Civil Application No. 1491 of 2009 in Special Civil Application No. 4548 of 2009 With Civil Application No. 7120 of 2009 in Letters Patent Appeal No. 1386 of 2009

Gujarat Maritime Board and Another	Vs	APPELLANT
Sea Green Marine and Others		RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Maritime Board Act, 1981 — Section 1 10, 17, 24, 3, 37

Citation : (2009) 3 GLH 333

Hon'ble Judges : K.S. Radhakrishnan, C.J.; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Kamal B. Trivedi, A.G. with Mr. P.R. Nanavatis 1 - 2, for the Appellant; Devang Vyas, Assistant Government Pleader For Respondent 2, Mr. Mihir Thakore with Mr. Bharat T. Rao for Respondent 1 and Mr. Viren G. Dave for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

Mr. K.S. Radhakrishnan, C.J.—Gujarat Maritime Board and it's Port Officer at Alang - Sosiya Ship Breaking Yard have come up with this appeal, being aggrieved by the direction of the learned Single Judge to grant permission to first respondent to beach and to break vessel in plot No. 50 at Alang - Sosiya Ship Breaking Yard of Messrs Hussain Sheth Ispat (Shipbreaking), [permission holder] as per Clause 2 of Schedule IV of the Gujarat Maritime Board (Conditions and Procedures for Granting Permission for Utilising Ship Recycling Plots) Regulations, 2006 (for short "the Ship Recycling Regulations 2006"). Plot No. 50 at Alang-Sosiya Ship Breaking Yard belongs to Gujarat Maritime Board (hereinafter called "the Board") which was allotted to Messrs Hussain Sheth Ispat (Shipbreaking) granting permission for beaching and breaking of vessels. Permission was subsequently renewed by the Board vide its letter dated 11. 12. 2008 for period

from 1. 10. 2004 to 30. 9. 2009 as per the Recycling Regulation, 2006. Beaching and recycling of vessels at Alang Recycling Yard is governed by the Ship Recycling Regulations, 2006. Messrs Hussain Sheth Ispat (Shipbreaking) submitted applications on 14. 8. 2008 and 15. 4. 2009 for transfer of plot No. 50 in the name of first respondent. No action was taken by the Board on the requests made, evidently because such a transfer was not permissible under the amended Regulations. First respondent also preferred an application dated 30. 4. 2009 seeking permission to beach the vessel and to break the same in plot No. 50 as per clauses 2 and 3 of Schedule V of the Regulations, 2006 as if it was permitted by Hussain Sheth Ispat (Shipbreaking). The 1st respondent also filed Special Civil Application No. 4548 of 2009 before this Court, seeking a direction; to the Board to permit them to beach and break the vessel in plot No. 50. Learned Single Judge by order dated 15th May, 2009, directed Gujarat Maritime Board to take a decision on the applications within one week, with certain observations. Consequently. Board issued notices to the 1st and 3rd respondents, heard them and rejected the requests vide order dated 1. 6. 2009 stating as follows:-

"(i) As per GMB's record permission to use the plot No. 50 is in the name of M/s. Hussain Sheth Ispat (Ship Breaking).

(ii) No provisions under the Regulation 2006 permits any person other than permission holders to beach vessel at the plots. However, condition No. (2) under Schedule IV to the Regulation 2006. provides regularizing, with prior permission of GMB, request of the permission holder to beach vessel not belonging to them, in their plot on certain conditions including charging a fee of Rs. 10 lakhs per instance. In the present case M/s. Sea Green Marine is not a permission holder and permission holder of Plot No. 50 M/s. Hussain Sheth Ispat (Ship Breaking) has mentioned during the hearing and also vide letters dated 20. 5. 2009 and 26. 5. 2009 that they have not given permission/NOC to M/s. Sea Green Marine for beaching and breaking of their ship on plot No. 50.

(iii) The permission holder did not take prior approval of the Gujarat Maritime Board - the Land lord of the Plot in question - before committing so called deal for sell of permission rights. This violates terms of the agreement executed with the permission holder."

2. The 1st respondent aggrieved by that order filed Misc Civil Application No. 1491 of 2009 in Special Civil Application No. 4548 of 2009 for modification of the order dated 15. 5. 2009 passed by this Court by deleting later half of para 5 and also to quash order dated 1. 6. 2009 passed by the Board. Learned Single Judge vide order dated 3. 7. 2009 allowed the application and gave a positive direction to the Board to grant permission within one week from the date of receipt of the order. Learned Judge also made certain observations, which is extracted hereunder: -

"It appears that the permission holder i. e. M/s. Husain Sheth's decision about

raising an objection is taken under pressure of Board's Officials. The Board might have brought some undue pressure on M/s. Husain Sheth and it is only because of that he has conveyed the Board that he has only transferred his right of use to the applicant, and he has not granted permission to beach vessel. It is hardly believable that once the right to use the plot was transferred, permission to beach the vessel on such plot is not given. The original permission holder cannot raise any objection against use of plot for beaching the vessel on such plot after its transfer. The whole exercise undertaken by the Board's Officials seems to be not bonafide and it is only with a view to deny the permission to the applicant for the reasons best known to them. Such a stand taken by the Board cannot be approved or justified on the basis of some observations made by the Court in its earlier order."

3. Learned Advocate General appearing for the Board submitted that the Board has rightly declined the request for permission to use Plot No. 50 by the 1st respondent. Learned Advocate General referred to the Notification dated 23. 6. 2008, whereby Clause (P) of Schedule III was substituted by a new clause, which confers no power on the Board to transfer a plot other than to family members, and in the case of death of permission holder to his legal heirs only. It was pointed out that the 1st respondent does not fall in that category and therefore, there is no question of transferring the plot which is legally not permissible. Further, learned Advocate General also submitted that considerable discretion is conferred on the Board to permit or not to permit beaching of a vessel brought unauthorisedly by a third party to whom consent was given: by the permission holder. Learned Advocate General submitted that learned Single Judge has committed grave error in directing the Board to grant permission to beach a vessel of a third party which is contrary to the Regulations. Learned Advocate General also submitted that the petitioner's case cannot be equated with the case of Dynamic Recyclers since that company itself was a permission holder and they had applied to the Board to allow beaching of their vessel at another plot with written consent of the permission holder of that plot and hence, the example cited by the petitioner, according to the learned Advocate General, is not identical.

4. Learned Senior Counsel Mr. Mihir Thakore submitted that Messrs Hussain Sheth Ispat (Shipbreaking) has stated before the Board as well as this Court that they have no objection in the petitioner using plot No. 50 for beaching and breaking the vessel. Learned Counsel further submitted that petitioner has already complied with Clause 2 of Schedule IV of Ship Recycling Regulation, 2006 and consequently, Board is obliged to grant permission to beach the vessel. Learned Counsel submitted that no amount is outstanding from the permission holder as well as from the vessel owner to the Board and consequently, there is no justification in rejecting their request. Further it is also stated that petitioner is willing to pay amount of Rs. 10 lakhs as stipulated in the Schedule. Learned Senior Counsel also submitted that in similar circumstances permission was granted to Messrs Dynamic Ship Recyclers Private Limited and therefore, denying

permission to the petitioner is illegal, arbitrary and discriminatory.

5. We heard learned Counsel on either side at length. Large number of cases are coming before this Court seeking permission to transfer the plot to third parties or seeking permission to beach a vessel of someone else on the ground that the vessel is anchored in high-seas and unless permission is granted, parties would be put to considerable prejudice. Interim orders used to be issued by this Court when extreme urgency is highlighted. In the wake of these facts, it is necessary to examine the legal matrix for deciding this issue and also for future guidance.

5.1 Gujarat Maritime Board Act, 1981 has been enacted to make provision for the constitution of a Maritime Board for minor ports in the State of Gujarat and to vest the administration, control and management of such ports in that Board and for matters connected therewith. Board has been established u/s 3 of that Act, which says that Board shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and may by the said name sue and be sued. Board shall consist of such number of members, not being less than five and not more than twelve, who shall be appointed by the State Government. Chief Executive Officer of the Board appointed as such u/s 17 shall be an ex-officio member of the Board and he shall also be its Vice Chairman. Powers and functions of the Board under the Act has been elaborately considered by a Division Bench of this Court in the case of Alang Marine Pvt. Ltd. and Another Vs. Gujarat Maritime Board and Others, and hence requires no further elucidation. Section 24 of the Act empowers the Board to enter into contract with certain Government controls. Section 10 empowers the Board to make Regulations. The Board in exercise of powers conferred under Sections 37, 38, 39, 41 read with Sec. 10 has framed Ship Recycling Regulations, 2006. Regulation 4 of the Ship Recycling Regulation, 2006 has conferred power on the Chief Executive Officer to grant permission for utilising ship recycling plots in the manner provided therein upon fulfilment of the terms and conditions laid down in the Regulation and Schedule thereto, after obtaining applications in the proforma prescribed in Schedule VI. Regulation 4 also deals with the manner in which the plots have to be allotted. As per the said Regulation, plots which are, or will become available after 4. 10. 2006 shall be permitted to be utilised for ship recycling activities on tender-cum-auction basis and any existing plot falling vacant from the categories mentioned in Clauses (a) and (b) of Regulation 4 shall be permitted for utilising for ship recycling on tender-cum-auction basis. Regulation 5 says that permission for utilising ship recycling plots shall be valid for a period of 5 years with a provision for renewal for further period of 10 years subject to fulfilment of all terms and conditions stated in these Regulations and Schedule thereto from the date of issue of permission letter, subject to the condition that upon expiry of the aforesaid period of five years, or upon the expiry of shorter period as may be determined in accordance with these Regulations, the permission shall come to an end without any further action by the Board. Further it is also stated that no party, which is granted permission

under these Regulations, shall have any right, title or interest to or in the plot, nor shall any party, which is granted such permission, be deemed to be in possession or occupation of the plot. Further it is also stipulated that renewal may be granted by the Chief Executive Officer, but with prior permission of the State Government. Regulation 6 deals with eligibility criteria. Schedule II to the Regulations says that any person, firm, company etc. intending to claim permission for utilising a ship recycling plots for ship recycling purpose shall have to apply in the prescribed form in Schedule VI giving full details as required therein. Schedule III to the Regulations refers to Terms and Conditions for permission for utilising the ship-recycling plot. Substituted Clause (p) to Schedule III, which is relevant for our purpose, is extracted hereunder:-

"Transfer of the plot permission and change in the directors, partners, financial stakeholders shall be restricted to family members and in case of death of permission holder to his legal heirs only. No other transfer/change shall be allowed."

(emphasis added)

Above clause was introduced vide Notification dated 23. 6. 2008 published in the Gazette and thereafter, transfer of plot permission and change in the directors, partners and financial stakeholders shall have to be restricted to family members, and in case of death of permission holder, to his legal heirs and not to any other persons.

5.2 Schedule IV of the Regulations deals with wrong beaching and the heading of Schedule IV itself has to be noted. Schedule evidently does not confer any right on a third party to make an application for permission for beaching a vessel. Schedule deals with a situation where the permission holder, without permission of the Board beaches a vessel brought by him, and also a situation where the permission holder allows to beach a vessel not belonging to him. Of course power is conferred on the Board to regularize, cancel or grant permissions at its discretion. For easy reference, we are extracting all the clauses of Schedule IV: -

"Schedule - IV (Wrong Beaching)

The charges in following specified cases will be levied as given below subject to the conditions mentioned therein.

(1) Without the prior permission of Gujarat Maritime Board, a person or a party to whom a permission for utilizing ship-breaking plot has been granted, (hereinafter referred to as permission holder), cannot beach a vessel, brought by him on the plot for which he is granted permission. In case such beaching is done without the permission of GMB, the Board may regularize at its own discretion such beaching on a condition that there is no outstanding of any dues by permission holder, to the Board, Fees to be charged for such permission for regularization shall be Rs. 10 lakhs.

Explanations:

The outstanding dues would, for the purpose of this clause and the subsequent clauses, mean any amount outstanding against: -

(i) Development Charges Due

(ii) Plot rent

(iii) LDT charges

(iv) Tug hire

(v) Pilotage

or on any account whatsoever

(2) If the permission holder allows to beach the vessel not belonging to him for breaking without the prior permission of the Gujarat Maritime Board on the plot for which permission is given to him. the permission to utilise the plot for breaking the vessel shall be liable to be canceled. However, the Gujarat Maritime Board may grant permission to beach such vessel at its own discretion, subject to a condition that there is no outstanding of any dues by the "Permission holder" as well as the vessel owner to the Board in respect of the plot on which vessel is to be beached and the party to whom vessel belongs. The fees to be charged for permission to beach the vessel in such case shall be Rs. 10 lakhs.

(3) If beaching of the vessel is not done on the specific plot for which permission has been given by Gujarat Maritime Board, GMB at its own discretion may regularize such beaching on a condition that there is no outstanding of any dues by such permission holder to whom the permission is given to utilise the plot and the party so beaching the vessel. The fees to be charged for permission to beach the vessel in such case shall be Rs. 10 lakhs, if the beaching on such plot is not "accidental". If the same is accidental or intentional shall be decided by the Vice-Chairman and Chief Executive Officer of the Board and his decision shall be final and binding."

5.3 Schedule IV (1) deals with a situation where permission holder, without prior permission of the Board beaches a vessel to the plot allotted for breaking. Board is however, empowered to regularise such illegality, on condition that there is no outstanding dues by the permission holder and also on a payment of Rs. 10 lakhs. Schedule IV (2) deals with a situation where the permission holder allows to beach a vessel not belonging to him but to a stranger, so far the Board is concerned. In such a situation, power is conferred on the Board to cancel the permission granted to the permission holder. The mere fact that the discretionary power is conferred on the Board to grant permission to beach such a vessel on certain conditions, does not confer any legal right to a stranger to beach a vessel he has brought. Provision confers discretion on the Board but not a discretion coupled with duty. Only if there is a legal right, there will be a corresponding duty. Where a statutory power coupled with a liberty to exercise it and not to exercise it, no direction be given to exercise it. Further to maintain, a writ of

mandamus, a party must show that he has a judiciously enforceable right. Exercise of a legal right and corresponding legal duty are the conditions precedent for issuing a writ of mandamus. Reference may be made to the recent decision of the Supreme Court in *State of Manipur and Others Vs. Y. Token Singh and Others*, . Letters issued by the permission holder to a stranger will not confer on him a right to beach a vessel, nor a corresponding duty on the Board to consider his request. The 1st respondent has therefore in our view no subsisting enforceable legal right to be enforced as against the Board.

Board in a given situation may at its own discretion, grant permission to beach a vessel, brought by a stranger on fulfilment of certain conditions. Such a situation arises only when a permission holder violates first limb of Clause 2 of Schedule IV and allows a stranger to beach a vessel. The Board in such a case has got the power to cancel the permission granted to the permission holder. Once, the Board proposes to cancel the permission, there is no question of applicability of the second limb of clause (2) of Schedule IV. Further, mere fact that a party is willing to pay the fees of Rs. 10 lakhs and the permission holder has no objection in allowing beaching and breaking of a vessel in his plot, does not mean that Board has to grant permission to beach such a vessel, especially when Clause (p) of Schedule III of Regulation as amended prohibits transfer of plot to a third party. The general rule is that if the permission holder is not using his plot for the purpose for which it was allotted, Board can always re-possess that plot and auction it so that it can be allowed to be utilised by others for ship breaking. Considerable discretion is vested on the Board while granting permission to beach a vessel. Security of the State and the country is of paramount importance. Clause (2) of Schedule V clearly states that the permission holder shall have to follow directives/guidelines issued by Ministry of Defence, Government of India, in the interest of national security. Background of a person who applies for permission to beach a vessel has to be scrupulously examined. While exercising discretion, the Board is not acting as a quasi-judicial Authority, but as an administrative Authority and public interest being a paramount consideration and a Court sitting under Article 226 of the Constitution will not substitute its views to that of authorities unless there is a violation of a statutory rule or acted on extraneous consideration.

6. We are not prepared to say that in the instant case, Board has exercised its jurisdiction irrationally or illegally. It is trite law that a Court would not interfere with, or probe into, the merits of a decision made by an Authority in the exercise of its discretion, as the Court is not a forum to hear appeals from the Authority's decisions. Scope of judicial review is limited to the deficiency in decision-making process and not the decision of the administrator. When Parliament confers power on an Authority to be exercised by it in its discretion, the decision ought to be that of the Authority concerned and not that of the Court. It is not for the Court to interfere with the Authority's choice and to insist that this and not that view ought to have been adopted by the Authority.

7. We are of the view that Board in this case has acted in accordance with law in rejecting the application of Messrs Hussain Sheth Ispat (Ship Breaking) as well as application made by Sea Green Marine. Even if Messrs Hussain Sheth Ispat (Ship Breaking) gives consent to transfer its plot, it cannot be transferred after 23. 6. 2008, in view of the amendment to Schedule III. In our view, if Messrs Hussain Sheth Ispat (Ship Breaking) is not interested in the plot, it is open for the Gujarat Maritime Board to take back possession of the plot and auction it if found necessary. We are also of the considered view that the insinuations made by the learned Judge, which, we have extracted in the early part of the judgment, against the officials of the Board are totally uncalled for, and we expunge those observations, which they do not deserve. A judicially trained mind shall not be swayed away by the mere allegations or assertions in the petition filed by the party which they are not expected to make unless supported by reliable materials. Judge has to address, the issue dispassionately in a totally detached mind. Remember, the esteem and prestige of a judicial system commands in the eyes of the general public, depends on the breadth of the percepts of its functionaries and the rectitude and potency of their sense of responsibility towards the system, they serve. We therefore allow the appeal, set aside the orders dated 15. 5. 2009 and 3. 7. 2009 passed by the learned Single Judge and all other Misc. Applications also disposed of.