SUPREME COURT OF INDIA

Research Foundation for Science Technology and Natural Resource Policy

Vs.

Union of India

W.P.(Civil)No.657 of 1995

(Altamas Kabir and J.Chelameswar,JJ.)

06.07.2012

JUDGMENT

Altamas Kabir,J.

1. This writ petition has been filed by the Research Foundation for Science Technology and Natural Resource Policy, through its Director, Ms. Vandna Shiva, for the following reliefs:

> "1. Direct the Union of India banning all imports of all hazardous/toxic wastes;
>
> 2. Direct amendment of rules in conformity with the BASEL Convention and Article 21, 47 and 48A of the Constitution as interpreted by this Court;
>
> 3. declare that without adequate protection to the workers and public and without any provision of sound environment management of disposal of hazardous/toxic wastes, the Hazardous Wastes (Management Handling) Rules, 1989 are violative of Fundamental Rights and, therefore, unconstitutional;"

2. On 29th October, 1995, this Court directed notice to issue on the writ petition and also on the application for stay. The basic grievance of the Writ Petitioner was with regard to the import of toxic wastes from industrialized countries to India, despite such wastes being hazardous to the environment and life of the people of this country. The Writ Petitioner sought to challenge the decision of the Ministry of Environment and Forests permitting import of toxic wastes in India under the cover of recycling, which, according to the Petitioner, made India a dumping ground for toxic wastes. It was alleged that these decisions were contrary to the provisions of Articles 14 and 21 of the Constitution and also Article 47, which enjoins a duty on the State to raise the standards of living and to improve public health. In the writ petition it was also contended that Article 48A provides that the State shall

Endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

3. In the writ petition, Ms. Vandna Shiva, the Director of the Petitioner Foundation, who is a well-known environmentalist and journalist, while highlighting some of the tragedies which had occurred on account of either dumping or release of hazardous and toxic wastes into the atmosphere, such as the tragedy which took place in the Union Carbide factory at Bhopal in 1984, referred to the BASEL Convention on the Control of Tran boundary Movements of Hazardous Wastes and their disposal. It was submitted that an international awareness had been created under the BASEL Convention against the movement of hazardous wastes and their disposal in respect whereof the United Nations Environment Programmed (UNEP) had convened a Conference on the Global Convention on the Control of Tran boundary Movements of Hazardous Wastes pursuant to the decision adopted by the Governing Council of UNEP on 17th June, 1987. The said Conference met at the European World Trade and Convention Centre, Basel, from 20th to 22nd March, 1989. India also participated in the Conference. On the basis of the deliberations of the Committee, the BASEL Convention on the Control of Tran boundary Movements on Hazardous Wastes and their Disposal was adopted on 22nd March, 1989. It was the grievance of the Writ Petitioner that since India became a signatory to the BASEL Convention on 22nd September, 1992, it should have amended the definition of "hazardous wastes", as provided in Article 3 read with Articles 4.1 and 13 of the said Convention. It was the further grievance of the Writ Petitioner that India should have enacted laws in regard to the Tran boundary Movement procedures with regard to hazardous wastes. Some of the relevant provisions of Article 4 of the aforesaid Convention have been quoted in the writ petition and are extracted herein below:

> "1. (a) Parties exercising their right to prohibit the import of hazardous wastes or other wastes for disposal shall inform the other parties of their decision pursuant to Article 13.
>
> (b) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes, when notified pursuant to sub-para (a) above.
>
> (c) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes.
>
> 2. Each Party shall take the appropriate measures to: xxx xxx

(c) Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;

(d) Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement; xxx xxx

(g) Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner."

4. Even restrictions on transboundary movement between parties contained in Article 6 of the Convention, inter alia, provide that the State of export shall not allow the exporter to commence the transboundary movement until it has received written confirmation that the notified has received from the State of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.

5. On 25th March, 1994, 65 countries which participated in the Convention agreed by consensus to ban all exports of hazardous wastes from OECD to Non-OECD countries immediately. It is the grievance of the Writ Petitioner that inspite of such consensual decision to ban all exports of hazardous wastes from OECD to Non- OECD countries, consistent efforts were made by the industrialized countries to break down the Non-OECD solidarity and to weaken the resolutions adopted at the BASEL Convention, and, in the process, Asia was fast becoming a vast dumping ground for international waste traders.

6. In the Writ Petition various instances were provided of the type of toxic wastes imported into the country under the garb of recycling. The Writ Petitioner has also drawn the attention of the Court to the provisions of the Hazardous Wastes (Management Handling) Rules, 1989, hereinafter referred as the H.W.M.H. Rules, 1989, and complained of the fact that the same had not been implemented both by the Central Government and the State Governments and Union Territories and their respective Pollution Control Boards.

7. Based on the said allegations, this Court initially asked all the State Governments and Union Territories and their respective Pollution Control Boards to submit affidavits as to how far the provisions of the aforesaid Rules had been implemented. The Central Government was asked to file a comprehensive affidavit in respect thereof. From the affidavits filed, this

Court appears to have come to the conclusion that the States and their respective authorities did not seem to appreciate the gravity of the matter and the need for taking prompt measures to prevent the adverse consequences of such neglect. In the said background, this Court by its order dated 13th October, 1997, appointed a High-Powered Committee, with Prof. M.G.K. Menon as its Chairman, and referred 14 issues to the Committee on which it was required to give its report and recommendations. Since the said 14 terms of reference are of great relevance in the matter of disposal of the writ petition, the same are reproduced herein below:-

> "(1) Whether and to what extent the hazardous wastes listed in the Basel Convention have been banned by the Government and to examine which other hazardous wastes, other than listed in the Basel Convention and the Hazardous Wastes (Management and Handling) Rules, 1989, require banning.
>
> (2)To verify the present status of the units handling hazardous wastes imported for recycling or generating/recycling indigenous hazardous wastes on the basis of information provided by the respective States/UTs and determine the status of implementation of the Hazardous Wastes (Management and Handling) Rules, 1989 by various States/UTs and in the light of directions issued by the Hon'ble Supreme Court.
>
> (3) What safeguards have been put in place to ensure that banned toxic/hazardous wastes are not allowed to be imported?
>
> (4) What are the changes required in the existing laws to regulate the functioning of units handling hazardous wastes and for protecting the people (including workers in the factory) from environmental hazards?
>
> (5) To assess the adequacy of the existing facilities for disposal of hazardous wastes in an environmentally sound manner and to make recommendations about the most suitable manner for disposal of hazardous wastes.
>
> (6) What is further required to be done to effectively prohibit, monitor and regulate the functioning of units handling hazardous wastes keeping in view the existing body of laws?
>
> (7) To make recommendations as to what should be the prerequisites for issuance of authorization/permission under Rule 5 and Rule 11 of the Hazardous Wastes (Management and Handling) Rules, 1989.
>
> (8) To identify the criteria for designation of areas for locating units handling hazardous wastes and waste disposal sites.

(9) To determine as to whether the authorisations/permissions given by the State Boards for handling hazardous wastes are in accordance with Rule 5(4) and Rule 11 of the Hazardous Wastes Rules, 1989 and whether the decision of the State Pollution Control Boards is based on any prescribed procedure of checklist.

(10) To recommend a mechanism for publication of inventory at regular intervals giving areawise information about the level and nature of hazardous wastes.

(11)What should be the framework for reducing risks to environment and public health by stronger regulation and by promoting production methods and products which are ecologically friendly and thus reduce the production of toxics?

(12) To consider any other related area as the Committee may deem fit.

(13) To examine the quantum and nature of hazardous waste stock lying at the docks/ports/ICDs and recommend a mechanism for its safe disposal or re-export to the original exporters.

(14) Decontamination of ships before they are exported to India for breaking."

8. Each one of the said terms of reference are of special significance as far as the reliefs prayed for in the writ petition are concerned. The said High Powered Committee, comprised of experts from different fields, submitted its report after making a thorough examination of all matters relating to hazardous wastes. On 14th October, 2003, the Writ Petition was taken up by this Court to consider the report of the High Powered Committee on the Terms of Reference which had been made to it. Although, initially, the deliberations with regard to the contents of the Writ Petition were confined to different toxic materials imported into India, at different stages of the proceedings, a good deal of emphasis came to be laid on the issue relating to imported waste oil lying in the ports and docks, as well as on ship breaking. This Court observed that the ship breaking operations could not be allowed to continue, without strictly adhering to all precautionary principles, CPCB guidelines and upon taking the requisite safeguards, which have been dealt with extensively in the report of the High Powered Committee, which also included the working conditions of the workmen.

9. One of the other issues which was required to be dealt with was the disappearance of hazardous waste from authorized ports/Indian Container Depots/Container Freight Stations and also as to how to deal with the containers lying there. Since disappearance of hazardous waste was one of the Terms of Reference, by order dated 10th December, 1999, this Court directed that a list of importers who had made illegal imports be placed on record. Since the same was not done, this Court on 3rd December, 2001, directed the Government to inquire into the matter, which resulted in the appointment of an eight-member Committee by the

Government, chaired by Mr. A.C. Wadhawan. The report dated 26th July, 2002, submitted by the said Committee suggested that action should be taken against the importer for illegal import under the Customs Act, 1962, and also under the Central Excise Act, 1944. This Court categorized the matter into two parts. The first part related to imports made and cleared, where the consignments had already found their way to the market. The second part related to the stocks of hazardous waste lying at various ports/ICDs/CFSs. The question which arose was as to how the said stock was to be cleared from where they were lying. This Court was of the view that the stock in question could be divided into two categories; one, relating to imports of goods which were banned under the H.W.M.H. Rules, 1989, as amended up to date or falling under the banned category as per the Basel Convention and the other relating to waste in respect whereof there was no ban and being regulated, it was permissible to recycle and reprocess the same within the permissible parameters by specified authorized persons having requisite facilities under the Rules, as amended up to date. The Court directed that the said consignments falling under the said category were to be released or disposed of or auctioned in terms of the Rules, to the registered recyclers and preprocessors. However, in case the importer of such goods remained untraceable, the authorities were directed to deal with the same at the risk, cost and consequences of the importer. It was specified that the consignment of such importer could not be allowed to remain at the ports etc. indefinitely, merely because the importer was not traceable.

10. For the purpose of dealing with such consignments where the importer could not be traced, this Court was of the view that the same should be dealt with, disposed of/auctioned by a Monitoring Committee which was appointed by the Court by the said order itself. The Monitoring Committee was comprised of existing members of the Committee constituted by the Ministry of Environment and Forests, along with one Dr. Claude Alvares, NGO and Dr. D.B. Boralkar. The Committee was directed to oversee that the directions of this Court were implemented in a time-bound fashion.

11. One of the other issues which came up for consideration before this Court was the MARPOL Convention which made it compulsory for signatory nations to allow discharge of sludge oil for the purposes of recycling. In the wake of the other issues which were taken up by this Court while considering the report of the High Powered Committee and that of the Wadhawan Committee, the issue relating to the provisions of the MARPOL Convention was set apart for decision at a later stage.

12. The original MARPOL Convention was signed on 17th February, 1973, but did not come into force. Subsequently, in combination with the 1978 Protocol, the Convention was brought into force on 2nd October, 1983. As will be noticed from the acronym, the expression “MARPOL” is the short form of “Marine Pollution”. The same was signed with the intention

of minimizing pollution on the seas, which included dumping, oil and exhaust pollution. Its object was to preserve the marine environment through the complete elimination of pollution by oil and other harmful substances and the minimization of accidental discharge of such substances. As far as this aspect of the matter is concerned, the Central Government was directed to file an affidavit indicating in detail how the said oil was dealt with. The issue relating to the import of such sludge oil was left unresolved for decision at a subsequent stage.

13. However, during the course of hearing in regard to the import of waste oil purportedly in violation of the H.W.M.H. Rules, 1989, the two dominating principles relating to pollution, namely, the polluter-pays principle and precautionary principle, were examined at length. The report of the Committee indicated that the hazardous waste oil was imported into the country in the garb of furnace oil and, in fact, the containers and the vessels in which they were being transported, were also highly polluted, causing a tremendous risk to the environment and to human existence. Ultimately, by the said order of 14th October, 2003, certain directions were given regarding the procedure to be adopted, with regard to ship breaking, to the Central Pollution Control Board, to prepare a national inventory for rehabilitation of hazardous waste dump sites. The State Pollution Control Boards were directed to ensure that all parties dealing in hazardous chemicals which generated hazardous wastes, displayed online data in that regard outside their respective factories, on the pattern of Andhra Pradesh. The Ministry of Environment and Forests were also directed to consider making provision for Bank Guarantees. Certain recommendations were also made with regard to legislation in order to destroy any trans- boundary movement of hazardous wastes or other wastes and to punish such illegal trafficking stringently.

14. The matter rested there and only interim directions were given from time to time till it surfaced again before the Court on 25th January, 2003. On this occasion, the focus of this Court was directed towards the presence of hazardous waste oil in 133 containers lying at Nhava Sheva Port, as noticed by the High Powered Committee. On the directions of the Court, the oil contained in the said 133 containers was sent for laboratory test to determine whether the same was hazardous waste oil or not. After such examination it was found to be hazardous waste. Considering the detailed report submitted by the Commissioner of Customs (Imports), Mumbai, and the Monitoring Committee, and after hearing learned counsel for the parties, this Court observed that the issue to be determined in the proceedings was limited to the environment and in giving proper directions for dumping consignments in question, having regard to the precautionary principle and polluter-pays principle. The main question before the Court was whether only a direction was required to be issued for the destruction of the consignment in order to protect the environment and, if not, in what other manner could the consignments be dealt with. Having considered the provisions of the Basel Convention on

the Control of Trans-Boundary Movement of Hazardous Wastes and their disposal, and the report of the Monitoring Committing recommending destruction of the consignments by incineration, but also keeping in mind the fact that import of waste oil was permitted for the purpose of recycling, this Court directed that where the consignment was found fit for recycling, the same should not be destroyed, but recycling should be permitted under the supervision of the Monitoring Committee. However, it was also recorded that if recycling was not considered advisable by the Government, the said consignment would also have to be destroyed by incineration along with other consignments. In such a case the cost of incineration was to be borne by the Government.

15. Taking further note of the precautionary principle forming part of the Vienna Declaration and also having regard to the polluter-pays principle, this Court directed that it would be feasible to dispose of the oil under the supervision of the Monitoring Committee by incineration which would have no impact on the environment. It was directed that the 133 containers in question be destroyed by incineration as per the recommendations of the Monitoring Committee and under its supervision, at the cost of the importer which was assessed by the Monitoring Committee at Rs.12/- per kilo, which would have to be paid by the importers in advance. In the order dated 9th May, 2005, this Court took up for consideration the Fifth Quarterly Report of March 2005, filed by the Monitoring Committee from which it was seen that the waste oil contained in the 133 containers had not been destroyed in terms of the direction given on 5th January, 2005, on account of non¬payment of the cost of incineration by the importers. None of the importers had made the payment for incineration, though, a direction had been given to deposit the cost of incineration within four weeks from the date of the order. However, while taking serious note of non-payment of the incineration cost, this Court also felt that the destruction of the waste oil could not be delayed any further and directed immediate destruction of the waste oil in terms of order dated 5th May, 2005, by the Monitoring Committee and for the said purpose the cost of incineration was to be initially borne by the Customs Department, to be recovered from the importers. Simultaneously, a further opportunity was given to the importers to deposit the cost of incineration with the Monitoring Committee within two weeks, failing which they were directed to remain present in the Court on 18th July, 2005, and to show-cause why proceedings for contempt should not be taken against them. The Monitoring Committee was directed to file a report in that regard on the next date.

16. One other aspect was also taken note of with regard to the directions given to the Jawaharlal Nehru Port Trust, Mumbai Port Trust and the Commissioner of Customs, to furnish requisite information with regard to the 170 containers, which were lying unclaimed, to the Monitoring Committee. Since the same had not been filed within four weeks, as

directed, the Chairperson of the Jawaharlal Nehru Port Trust, the Mumbai Port Trust and the Chief Commissioner of Customs Department, were directed to file personal affidavits as to why the order of the Court had not been complied with. Subsequently, suo-motu contempt proceedings, being No.155 of 2005, in Writ Petition(C) No.657 of 1995, were initiated for non¬compliance of the directions contained in the order of 9th May, 2005.

17. As far as the suo-motu contempt proceedings are concerned, the same are an off-shoot of the various orders passed in the writ proceedings and the same will have to be considered separately from the reliefs prayed for in the writ petition itself.

18. At the very beginning of this judgment we have set out the reliefs prayed for in the writ petition, which, inter alia, include a prayer for a direction upon the Union of India to ban imports of all hazardous/toxic wastes and for a further direction to amend the rules in conformity with the BASEL Convention and Articles 21, 47 and 48A of the Constitution. Apart from the above, a declaration has also been sought that without adequate protection of the workers and the public and without any provision of sound environment management of disposal of hazardous/toxic wastes, the Hazardous Wastes (Management Handling) Rules, 1989, are violative of the Fundamental Rights guaranteed under the Constitution and, therefore, unconstitutional.

19. Since the proceedings became a continuing mandamus, this Court from time to time took up several issues emanating from the first prayer in the writ petition to ban imports of all hazardous/toxic wastes. However, in the process, one of the Conventions, namely, the impact of the MARPOL Convention, though referred to, was not decided and left for decision at the final hearing. Accordingly, that aspect of the matter has to be decided also in these proceedings.

20. In one of the earlier orders passed on 5th May, 1997, two Hon'ble Judges had occasion to deal with the enormous generation of hazardous wastes in the country each day and Their Lordships were of the opinion that the said fact alone indicated sufficiently the magnitude of the problem and the promptitude with which it was needed to be tackled before the damage became irreversible. Their Lordships observed that prompt action was required to be taken, not only by the Central Government, but also by the State Governments and the Central and the State Pollution Control Boards. Accordingly, notice was given to all the State Governments and the State Control Boards to file their replies, and directions were also given that with effect from that date no authorization/ permission would be given by any authority for the import of wastes which had already been banned by the Central Government or by any order made by any Court or any other authority. In addition, it was also directed that with effect from the date of the order, no import would be made or permitted by any authority or

any person of any hazardous waste, which was already banned under the Basel Convention or was to be banned subsequently, with effect from the date specified therein. Notice was also issued to the State Governments to show cause as to why an order should not be made directing closure of the units utilizing the hazardous wastes where provision had already been made for requisite safe disposal sites. In addition, the State Governments were also directed to show cause as to why immediate orders should not be made for the closure of all unauthorized hazardous waste handling units.

21. Thereafter, during the pendency of the matter, a fresh Special Leave Petition was filed, being SLP(C)No.16175 of 1997, by Dr. Surendra Dhelia against the Union of India and others regarding import of contaminated waste oil and their disposal, since despite directions given to the State Governments and the Union of India, no affidavits were forthcoming and, as a result, on 4th February, 2002, a direction was given to the Secretary in the Ministry of Environment and Forests to file affidavits in compliance with the orders passed on 14th September, 2001 and 3rd December, 2001. A sum of Rs.10,000/- was also imposed as costs against the Ministry of Environment and Forests.

22. The matter came up again before the Court on 24th September, 2003, in which the H.W.M.H. Rules, 1989, fell for consideration having regard to Section 11 of the Customs Act, 1962, which empowers the Central Government to prohibit either absolutely or subject to such conditions as may be specified in the notification, the import and export of the goods, if satisfied that it is necessary so to do for any of the purposes stated in Sub-Section (2). Since on behalf of the Central Government it was submitted that the import of 29 items had already been prohibited under Schedule 8 of the Hazardous Waste Rules, the Court directed the Central Government to issue a notification without further delay under Section 11 of the Customs Act, 1962, prohibiting the import of the said 29 items. Their Lordships also noted that the BASEL Convention had banned 76 items. Their Lordships were of the view that the remaining items were also required to be examined and, if necessary, to issue additional notifications to comply with any ban that may have been imposed in respect of remaining items.

23. What is more important is the fact that the Hon'ble Judges took note of the provisions of the Hazardous Waste Rules which allowed import of certain items subject to fulfillment of certain conditions. This Court directed that before the imported consignment was cleared, the requisite notification was to be issued making the compliance of the said conditions mandatory. In particular, in paragraph 7 of Their Lordships' order, a direction was given to the Competent Authority to the effect that while disposing of hazardous waste, in exercise of power under Sections 61 and 62 of the Major Port Trusts Act, 1963, they were required to

ensure that the H.W.M.H. Rules, as amended up to date, and in particular, Rules 19 and 20 thereof, were complied with.

24. The said direction becomes relevant in relation to the third prayer made in the writ petition, as referred to hereinabove, relating to the constitutionality of the H.W.M.H. Rules, 1989. One thing is clear that even at the interim stage, there was no challenge as such to the constitutionality of the aforesaid Rules and that, on the other hand, directions were given by the Court to ensure compliance thereof.

25. Then came the orders relating to the import of 133 containers of hazardous waste oil, in the garb of lubricating oil, which led to the appointment of a Monitoring Committee to oversee the destruction by incineration of the waste oil, as well as the containers thereof. Detailed orders having been passed in relation to the destruction of the waste and hazardous oil imported into the country in the garb of lubricating oil, and the directions given to the Monitoring Committee regarding re-export of the same, we will consider the impact of the MARPOL Convention against such background.

26. The MARPOL Convention, normally referred to as "MARPOL 73/78", may be traced to its beginnings in 1954, when the first conference was held and an International Convention was adopted for the Prevention of Pollution of Sea by Oil (OILPOL). The same came into force on 26th July, 1958 and attempted to tackle the problem of pollution of the seas by oil, such as,

(a) crude oil;

(b) fuel oil;

(c) heavy diesel oil; and

(d)lubricating oil.

27. The first Convention was amended subsequently in 1962, 1969 and 1971, limiting the quantities of oil discharge into the sea by Oil Tankers and also the oily wastes from use in the machinery of the vessel. Prohibited zones were established extending the setting up of earmarked areas in which oil could be discharged, extending at least 50 miles from the nearest land. In 1971, reminders were issued to protect the Great Barrier Reef of Australia. 1973 saw the adoption of the International Convention for the Prevention of Pollution from Ships. The said Convention, commonly referred to as MARPOL, was adopted on 2nd November, 1973, at the International Marine Organization and covered pollution by:

(i) oil;

(ii) chemicals;

(iii) harmful substances in packaged form;

(iv) sewage; and

(v) garbage Subsequently, the 1978 MARPOL Protocol was adopted at a Conference on Tanker Safety and Pollution Prevention in February, 1978.

28. The overall objective of the MARPOL Convention was to completely eliminate pollution of the marine environment by discharge of oil and other hazardous substances from ships and to minimize such discharges in connection with accidents involving ships. The MARPOL 73/78 Convention has six Annexures containing detailed regulations regarding permissible discharges, equipment on board ships, etc. They are as follows:

> "Annex I: Regulations for the Prevention of Pollution by Oil, 2 October,1983.
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> Annex II: Regulations for the Control of Pollution by Noxious Liquid
>
> Substances (Chemicals) in Bulk, 6 April, 1987.
>
> Annex III: Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form, 1 July 1992.
>
> Annex IV: Regulations for the Prevention of Pollution by Sewage from ships, 27 September 2003.
>
> Annex V: Regulations for the Prevention of Pollution by Garbage from Ships, 31 December 1988.
>
> Annex VI: Regulations for the Prevention of Air Pollution from Ships and Nitrogen oxide. Will enter into force on 19 May 2005."

29. Apart from the said Regulations, the MARPOL Convention also contains various Regulations with regard to inspection of ships in order to ensure due compliance with the requirements of the Convention.

30. India is a signatory, both to the BASEL Convention as also the MARPOL Convention, and is, therefore, under an obligation to ensure that the same are duly implemented in relation to import of hazardous wastes into the country. As we have noticed earlier, the BASEL Convention prohibited the import of certain hazardous substances on which there was a total ban. However, some of the other pollutants, which have been identified, are yet to be notified and, on the other hand, in order to prevent pollution of the seas, under the MARPOL

Convention the signatory countries are under an obligation to accept the discharge of oil wastes from ships. What is, therefore, important is for the concerned authorities to ensure that such waste oil is not allowed to contaminate the surrounding areas and also, if suitable, for the purposes of recycling, to allow recycling of the same under strict supervision with entrusted units and, thereafter, to oversee its distribution for reuse.

31. As far as the first two prayers in the writ petition are concerned, the same have already been taken care of by the orders dated 13th October, 1997 and 14th October, 2003. By the first of the two orders, this Court appointed the High- Powered Committee with Prof. M.G.K. Menon as its Chairman and 14 issues were referred to the said Committee. After the said Committee submitted its Report, another Committee under the Chairmanship of Mr. A.C. Wadhawan was appointed to enquire into the disappearance of hazardous wastes from various ports and container depots, and the question relating to the working conditions of the workmen who handle such wastes. After the Wadhawan Committee submitted its Report, various directions were given with regard to the handling of such hazardous wastes. Furthermore, the contamination risks involved in ship breaking also came into focus in the light of the provisions of the Hazardous Wastes Rules, 1989, and directions were given as to how ships, which were carrying wastes, were to be dealt with before entering into Indian waters, which included the prohibition on the exporting country to export such oil or substance without the concurrence and clearance from the importing country. During the course of hearing, an issue was raised by Mr. Sanjay Parikh, learned counsel appearing for the petitioner, that some conditions may be laid down in relation to vessels containing hazardous wastes entering Indian waters without proper compliance with the provisions of the BASEL and the MARPOL Conventions. However, since the question of ship breaking and distribution of hazardous wastes are being considered separately in the contempt proceedings, in these proceedings we expect and reiterate that the directions contained in the BASEL Convention have to be strictly followed by all the concerned players, before a vessel is allowed to enter Indian territorial waters and beach at any of the beaching facilities in any part of the Indian coast-line. In case of breach of the conditions, the authorities shall impose the penalties contemplated under the municipal laws of India.

32. The directions contained in the second order is based on the polluter pays principle, which is duly recognized as one of the accepted principles for dealing with violation of the BASEL Convention and the H.W.M.H. Rules, 1989, and the same will be applicable whenever such violations occur. However, till such time as a particular product is identified as being hazardous, no ban can be imposed on its import on the ground that it was hazardous. Such import will, however, be subject to all other statutory conditions and restrictions, as may be prevailing on the date of import. Accordingly, the general prayer made in the writ petition that the Government of India should put a total ban on all hazardous wastes, can be

applied in respect of such hazardous wastes as have been identified by the BASEL Convention and its Protocols over the years and/or where import into the country have been restricted by the municipal laws of India. In respect of such banned items, directions have already been given in the order dated 13th October, 1997, to issue a notification to ban the import of such identified hazardous substances. In the event, any other items have since been identified, the Central Government is directed to issue appropriate notifications for banning the import of such hazardous substances as well.

33. The third prayer, that in the event of non-compliance, the provisions of the Hazardous Wastes (Management Handling) Rules, 1989, should be declared as unconstitutional, cannot be granted, since the same are in aid and not in derogation of the provisions of Articles 21, 39(e), 47 and 48A of the Constitution. In fact, as

mentioned hereinabove, even at the interim stage, directions were given for compliance with the said Rules, particularly in the matter of destruction of the waste oil contained in 170 containers by incineration at the cost of the importer.

34. The writ petition has been entertained and has also been treated by all concerned not as any kind of adversarial litigation, but litigation to protect the environment from contamination on account of attempts made to dump hazardous wastes in the country, which would ultimately result in the destruction, not only of the environment, but also the ecology as well and, in particular, the fragile marine bio-diversity along the Indian Coast- line. The petitioner Foundation has played a very significant role in bringing into focus some very serious questions involving the introduction of hazardous substances into the country, which needed the Courts' attention to be drawn having regard to the BASEL Convention, aimed and protecting marine biology and countries having coast-lines alongside seas and oceans.

35. The writ petition is, therefore, disposed of by reasserting the interim directions given with regard to the handling of hazardous wastes and ship breaking in the various orders passed in the writ petition from time to time and, in particular, the orders dated 13th October, 1997 and 14th October, 2003. The Central Government is also directed to ban import of all hazardous/toxic wastes which had been identified and declared to be so under the BASEL Convention and its different protocols. The Central Government is also directed to bring the Hazardous Wastes (Management Handling) Rules, 1989, in line with the BASEL Convention and Articles 21, 47 and 48A of the Constitution. The further declaration sought for that without adequate protection to the workers and public, the aforesaid Rules are violative of the Fundamental Rights of the citizens and are, therefore, unconstitutional, is, however, rejected in view of what has been discussed hereinabove.

36. In the peculiar facts of the case, there will be no order as to costs.