

SAMIR MEHTA V. UNION OF INDIA

[National Green Tribunal]

Facts:

- The case is related to pollution caused due to ship sinking and oil spill in the Territorial Water, Contiguous Zone and Exclusive Economic Zone (EEZ) of India and the liabilities and consequences arising thereof.
- On 12th October, 2011 a ship (M.V. RAK) owned by Delta Group International was in its voyage from Indonesia to Dahej (Gujarat), carrying approximately 60054 metric tons (MT) coal in its hold, 290 tonnes of fuel oil and 50 tonnes of diesel. The ship was chartering the coal for Adani Enterprises Limited.
- The ship sank due to water ingress in ballast tanks which was a result of technical faults, approximately 20 Nautical Miles from the coast of South Mumbai.
- The oil spillage caused marine pollution and damaged the aquatic life, ecology and the mangroves of the Mumbai Coast.
- Continuous trail of oil leak was noticeable up to 12 Nautical Miles. A very thick slick of oil was visible up to a few miles, the lower portions of mangroves in Bandra had turned dark and were eventually destroyed due to the oil. Further, it was observed that the copious amount of coal chartered by the ship was still lying on the sea bed and was a continuous cause of pollution.
- Neither Adani Enterprises, Delta International Group or any of the parties involved took any step to rectify and control the damage done by the spillage.
- As a result, the Indian Coastguard intervened and took steps to mitigate the damage, incurring huge costs for the Indian government.
- In view of the pollution, an environmentalist, Samir Mehta, filed a petition with the National Green Tribunal. Samir Mehta questioned the importance of environmental law in respect to contamination caused by shipwrecks and oil spills in the country's territorial waters, contiguous zone, and Exclusive Economic Zone, as well as the resulting penalties and obligations.
- The petition was therefore filed u/s 14 and 15 of the National Green Tribunal Act, 2010 (hereinafter referred to as “2010 Act”).

Issues:

1. Whether the NGT has competent jurisdiction to hear this matter because the incident occurred 20 Nautical Miles off the coast of Mumbai, well beyond India's territorial waters, which only stretch up to 12 nautical miles?
2. Whether the Tribunal is empowered to award compensation in lieu of the Government of India's (Indian Coast Guard) legal exercise of preserving the environment?
3. The sender and his subsidiaries intended to play the blame game, the insurer was registered outside India and claimed bankruptcy, the re-insurer, also a foreign entity, was not a party, and the receiver (Adani) was claiming no fault theory; his claim is that his goods (non-choking coal) had no impact on the marine or coastal ecosystem. In such a case who should be held liable?
4. Whether sinking in this case, can be held as dumping?

Rules:

1. Section 7, 8 and 9 of the Environment Protection Act, 1986.
2. Section 43 and 45A of the Water (Prevention & Control of Pollution) Act, 1974.
3. Section 15 and 17 read with Section 14 and 20 of the National Green Tribunal (NGT) Act, 2010.
4. Section 71 of the Merchant Shipping Act, 1958
5. Provisions of Public Liability Insurance Act, 1991.
6. Maritime Zone Act, 1976.
7. Polluter Pays and Precautionary Principle

Applicability:

Addressing the 1st issue where the NGT's jurisdiction was questioned by the respondents, on the grounds that the cause of action did not take place in the territory of India.

The contention was dismissed and the Tribunal clarified that it has the competent jurisdiction since according to Section 7 of the Maritime Zone Act, 1976, India's sovereignty on natural resources extends over the contiguous zone and exclusive economic zone (EEZ). The Central Government

has exclusive jurisdiction under this Act to maintain and safeguard the maritime environment in the specified zones, and the tribunal has jurisdiction to deal with disputes relating to maritime pollution in exclusive economic zones in order to achieve this goal.

The 2nd issue where again the power of the tribunal to grant compensation was questioned, the Tribunal held that it has the authority to award compensation for the costs incurred by the Central Government in cleaning up wrecks that could endanger navigation and the maritime environment. Several international treaties have provisions to that effect.

With this, under section 15 and 17 read with section 14 and 20 of the NGT Act, 2010, respondent no. 5, 7, and 11 (Delta International Group – owner of the ship) were held liable of Rs. 100 Crores as environmental compensation to the Government of India's Ministry of Shipping.

Section 14 affirms that the tribunal has the jurisdiction to try such environmental cases of civil nature, it is competent to settle such disputes and pass orders. Section 15 empowers the tribunal to provide relief and compensation to the victims, and restitution of the damaged property and the environment of the affected area. Section 17 puts liability on the party to pay the relief or compensation. Lastly, section 20 says that the Tribunal must consider the principles of sustainable development, the precautionary principle, and the polluter pays principle when making any order, decision, or award. In this case these principles were upheld by the tribunal and the order was accordingly passed.

The question of liability is always a critical one, especially in cases where a handful number of respondents appear to be liable, and includes international foreign parties. The owner of the ship was made liable due to the fact that it was their responsibility to check the condition of the ship and rectify all the technical damages if any, however, grave negligence was shown on their side and an unseaworthy ship was set to be sailed.

But Adani Enterprises defended itself saying there was no negligence on their part, since they did not have an active role in the technicality of the ship's working. However, in terms of Adani Enterprises' liability, the Tribunal held that under Section 71 of the Merchant Shipping Act, 1958, even if a person is not an owner of a ship but has a beneficial interest in it other than through a mortgage, he is responsible to pay pecuniary damages. Adani Enterprises, thereof, was liable to pay Rs. 5 Crore to the Ministry of Shipping as compensation.

The Company failed to fulfill its obligations. Even though they did not have a role in the technical working of the ship, after the wreckage huge amount coal was lying in the sea bed, being a constant source of pollution, the respondent took no action, instead they let the coal (which apparently belonged to them) damage the environment.

The Tribunal, prudently invoked the Precautionary Principle and the Polluter Pays Principle in this case and prevented Adani Enterprises from escaping its liability. It also recognized the right to clean environment as a fundamental right under Article 21 of the Constitution of India, which the respondents in this case were very conveniently hampering.

On the last issue, where the tribunal had to determine if the incident was mere sinking or was dumping, it determined that the ship sinking disaster resulted in contamination of the marine environment on three counts: (a) the ship's cargo, i.e., coal, was dumped into the sea; (b) The release of fuel oil carried on-board, as well as the resulting oil spill; and (c) the wreckage of the ship, which included the materials. The ship employed in the conveyance in this instance was unseaworthy, and the respondents should never have used it for transportation. As a result, in such a scenario, sinking of the ship is considered equivalent to dumping. The polluting elements were left as it is, without considering or rather ignoring how it would hamper the environment.

The Tribunal observed *“No party from any country in the world has the right or privilege to sail an unseaworthy ship to India's Contiguous and Exclusive Economic Zone and, in any case, to dump it in such waters, causing marine pollution, damage, or degradation of any kind.”*

Conclusion:

The shipwreck posed important problems about pollution caused by the shipwreck and oil spill in India's territorial waters, contiguous zone, and exclusive economic zone, as well as whether the NGT had jurisdiction to hear the case and what liabilities may be imposed.

The National Green Tribunal stressed the need of protecting the marine environment from damage caused by oil spills, wrecks, and other hazards in this landmark decision. The Tribunal took a proactive role in emphasizing the need of safeguarding the environment from degradation by requiring polluters to pay for their actions. As a result, it might be claimed that this decision boosted humanity's expectations for a "clean environment."

The above case creates history and an excellent precedent for cases in the future. Humans are never going to stop acting carelessly while dealing with nature, one person tries to fix the environment and the next thing you know is ten people damaging it like its no big deal. This case is a strong weapon against such wrongdoers.

We have had enough evidence by now as to why it is important to respect the nature. The subsequent thing we can do is to act as prudently as possible and aid others in the same. Small steps matter as much as the big ones do.