

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NOS.288-289 OF 2021

M/S ENVITECH MARINE CONSULTANTS PRIVATE
LIMITED AND OTHERS

...PETITIONER (S)

VERSUS

UNION OF INDIA & ANR.

...RESPONDENT(S)

ORDER

1. The writ petition filed by the petitioners, seeking a 'No Objection Certificate' from the Ministry of Defence of the Government of India, for the conversion of the warship INS Viraat from scrap to preserve having been disposed of by the High Court of Bombay, without commenting upon the merits of the claim of the petitioners, but merely directing the Union of India to dispose of a pending representation of the petitioners, the writ petitioners before the High Court have come up with the above Special Leave Petitions.

2. We have heard Mrs. Rupali Vishnukant Sharma, petitioner No.3 appearing in person both on her own behalf and on behalf of petitioner Nos.1 and 2, Shri Balbir Singh, learned Additional Solicitor General for the Union of India and Shri Rajeev Dhavan, learned senior counsel appearing for the second respondent.

3. INS Viraat, formerly known as HMS Hermes, is the oldest serving warship in the world. It served the British Navy from November, 1959 to April, 1984 and after refurbishment it was commissioned into the Indian Navy in 1987.

4. On 1.07.2019 the Parliament was informed that the Government had taken a decision, in consultation with the Navy to scrap INS Viraat, as the Indian Navy had been incurring expenditure on its upkeep and no State Government was willing to take the ship, on account of financial liability. Therefore, the sale of the decommissioned vessel through public auction was arranged through a Metal Scrap Trade Corporation Limited (MSTC Ltd.)

5. In December, 2019, a public auction was held, but the same was cancelled, as the highest bid was not deemed sufficient.

6. According to the petitioners, they wanted to preserve INS Viraat as a memorial to promote and strengthen Indian and British Navy traditions, history and heritage and they approached various corporate houses to make the project a public private partnership.

7. It is the case of the petitioners that Blackstone Corporation, Canada, issued a Letter of Interest dated 26.03.2020. Therefore, petitioner No.3 addressed a letter dated 28.07.2020 seeking advice on converting the warship into a Maritime Museum cum adventure centre. Though the first respondent acknowledged receipt of the representation of the petitioners and directed the petitioners to re-submit the proposal, subsequently the first respondent sought a NOC from the Government of Goa. But by a reply dated 20.09.2020, the Chief Minister of Goa stated that the State Government can issue no objection provided the Ministry of Defence agreed to the proposal of the petitioners and no financial obligation fell upon the State Government.

8. But in the meantime fresh tenders were opened and the second respondent became the highest bidder. Therefore, a letter

of acceptance was issued on 13.08.2020 by MSTC Limited, to the second respondent. The second respondent made a total payment of about Rs. 38.54 crores, and the second respondent was issued with a delivery Order dated 22.10.2020.

9. In the meantime the ship was permanently beached on 30.9.2020 and the petitioners appear to have approached the second respondent. By a mail dated 6.10.2020 the second respondent, without giving any guarantee, advised the petitioners to take a NOC from the Government of India with a direction to the associated departments of the Central and State Governments for taking the ship out of the yard and converting it into a Museum. It was made clear by the second respondent in the said mail dated 6.10.2020 that their agreement to the proposal was subject to two more conditions namely **(i)** that 100% payment should be made before 12th October, 2020 and **(ii)** that the deadline for pulling the ship towards the ocean was 15th October, 2020.

10. Obviously the petitioners could not comply with those conditions. However, they moved the High Court of Bombay by way of a writ petition in Writ Petition No.5412 of 2020. This writ petition was disposed of by the High Court of Bombay by an Order dated 3.11.2020, directing the Union of India to take a decision on the representation of the petitioners. It was clarified by the High Court that they have not commented on the merits of the petitioners' claim nor had they recognized any right in favour of the petitioners.

11. Not satisfied with the said order, the petitioners came up with the above special leave petitions. Considering the spirit with which the petitioners had come to Court, notice was ordered in the special leave petitions and an interim order to maintain status quo with regard to dismantling/breaking of the ship was also granted.

12. Thereafter, the second respondent came up with applications for urgent hearing and vacating the status quo order and we took up the Special Leave Petitions for consideration.

13. Three factual aspects clinch the issue arising for our consideration. The first is that the second respondent was willing to subscribe to the sentiments of the petitioners, subject to certain conditions stipulated in the E-Mail dated 6.10.2020, but the petitioners could not comply with those conditions. The second is that subsequent to the disposal of the writ petition by Order dated 3.11.2020, the Ministry of Defence passed an Order dated 27.11.2020 rejecting the representation of the petitioners. This order has not been challenged by petitioners. Obviously the petitioners cannot do anything with the warship, without the NOC from Ministry of Defence and the letter of the Ministry of Defence dated 27.11.2020 has virtually put the lid on the aspirations of the petitioners. Thirdly, the second respondent claims to have started the dismantling/recycling work three months ago and according to the certificate issued by the Marine Surveyors, about 35 to 40% work of dismantling had already been completed. The certificate of the surveyors shows that the vessel got severe hull damage in many areas, during embarkation of loose parts and equipments. All

documents and certificates as well as the operational manuals have been removed and the navigational items and communications devices broken and removed. According to the surveyors, the vessel is in 'grounded condition' and can be called a dead structure.

14. Therefore, while appreciating the sentiments of the petitioners, we are afraid that we cannot do anything at this stage and in these circumstances. Hence the Special Leave Petitions are dismissed. There will be no order as to costs.

.....CJI
(S.A. BOBDE)

.....J.
(A.S. BOPANNA)

.....J.
(V. RAMASUBRAMANIAN)

New Delhi
April 12, 2021