

(2017) 04 SC CK 0105

SUPREME COURT OF INDIA

Case No: Civil Appeal No. 5428 of 2017 (Arising out of S.L.P. (Civil) No. 25015 of 2016)

Halliburton Offshore Services
INC

APPELLANT

Vs

Principal Officer of Mercantile
Marine Department

RESPONDENT

Date of Decision: April 20, 2017

Acts Referred:

- Merchant Shipping Act, 1958 - Section 40

Citation: AIR 2017 SC 2897 : (2017) 6 JT 240 : (2017) 5 Scale 89 : (2017) 6 SCR 764 : (2017) 14 SCC 238

Hon'ble Judges: Dipak Misra, J; R. Banumathi, J

Bench: Division Bench

Advocate: Dinesh Chandra Pandey, Advocate, for the Appellants; Krishnayan Sen, Advocate, for the Respondents

Final Decision: Disposed Of

Judgement

Dipak Misra, J.—Leave granted.

2. The assail in the present appeal, by special leave, is to the judgment and order dated 25.07.2016 passed by the High Court of Judicature at Bombay in Writ Petition No. 1668 of 2016 whereby it has quashed the order dated 13.04.2016 passed by the Principal Officer, Mercantile Marine Department, the first respondent herein, revoking the Provisional Certificate of Registration (PCOR) dated 16.10.2015 issued in respect of "Vessel Sita Devi" on the basis of materials coming to its notice. It is necessary to state here that the 4th respondent, Oil and Natural Gas Corporation Limited (ONGC) had issued a tender inviting competitive bids for the charter hire of a stimulation vessel for Mumbai Offshore for three years on the terms and conditions set out in the tender. One of the terms and conditions basically related to get a PCOR. For the present, I am not concerned with the tender conditions and

compliance thereof, for this Court though heard the learned counsel appearing for the parties on facts as well as on law, but at the subsequent stage, it was thought apposite that the Court should answer the issue relating to law inasmuch as it is fundamentally required to be dealt with what are the requirements to get a PCOR under Section 40 of the Merchant Shipping Act, 1958 (for brevity, "the Act"). Therefore, I shall advert to the law in that regard and answer the same and, thereafter the controversy shall be dealt with on the basis of the judgment presently rendered and other facts, if required.

3. For the determination of the issue, I have heard Shri Kapil Sibal, learned senior counsel for the appellants, Shri Mukul Rohatgi, learned Attorney General for India and Shri Ajit Kumar Sinha, learned senior counsel for the Union of India, Shri C.A. Sundaram, learned senior counsel for the respondent No. 5 and Dr. Abhishek Manu Singhvi, learned senior counsel for respondent No. 7. It is worthy to mention that Shri Mukul Rohatgi has also addressed the Court on behalf of ONGC.

4. To appreciate the controversy in proper perspective, it is necessitous to appreciate and interpret certain provisions of the Act commencing from Section 2 to Section 41. I shall also refer to other provisions of the Act as my attention has been drawn to some of them for scrutinizing the marrows of Section 40 of the Act and not merely to dissect it. I also make it clear that the provisions which are required to be focussed from Section 2 to Section 41 shall only be delved upon.

5. Prior to referring to the provisions, I think it pertinent to refer to statement of objects and reasons. It reads as follows:-

"An Act to foster the development and ensure the efficient maintenance of an Indian Mercantile marine in a manner best suited to serve the national interests and for that purpose to established a National Shipping Board to provide for the registration, certification, safety and security of Indian ships and generally to amend and consolidate the law relating to merchant shipping."

6. Section 2 deals with application of the Act. It is as follows:-

"Section 2. **Application of Act.**-(1) Unless otherwise expressly provided, the provisions of this Act which apply to-

(a) any vessel which is registered in India; or

(b) any vessel which is required by this Act to be so registered; or

(c) any other vessel which is owned wholly by persons to each of whom any of the descriptions specified in clause (a) or in clause (b) or in clause (c), as the case may be, of section 21 applies, shall so apply wherever the vessel may be.

(2) Unless otherwise expressly provided, the provisions of this Act which apply to vessels other than those referred to in sub-section (1) shall so apply only while any such vessel is within India, including the territorial waters thereof."

7. Section 3 is the dictionary provision. Sub-section (23) defines "owner" as follows:-

"(23) "owner" means-

(a) in relation to a ship, the person to whom the ship or a share in the ship belongs;

(b) in relation to a sailing vessel, the person to whom the sailing vessel belongs;"

8. Sub-section (35) defines "registrar" means the registrar referred to in Section 24.

Sub-section (39) defines "sailing vessels" as under:-

"(39) "sailing vessel", means any description of vessel provided with sufficient sail area for navigation under sails alone, whether or not fitted with mechanical means of propulsion, and includes a rowing boat or canoe but does not include a pleasure craft;"

9. Sub-section (41) defines "sea-going" in relation to a vessel. It reads as follows:-

"(41) "sea-going", in relation to a vessel, means a vessel proceeding to sea beyond inland waters or beyond waters declared to be smooth or partially smooth waters by the Central Government by notification in the Official Gazette;"

10. Sub-section (45) defines "ship" does not include a sailing vessel. Sub-section (55) defines "vessel" in the following terms:-

"(55) "vessel" includes any ship, boat, sailing vessel, or other description of vessel used in navigation;"

11. I have referred to the aforesaid definitions as the learned counsel for the parties have differently placed interpretation on the words used in the statute. Part II deals with National Shipping Board and Part III deals with General Administration. For the present, I am concerned with Section 9 that occurs in Part III. Section 9 is extracted below:-

"Section 9. **Surveyors.** (1) The Central Government may, by notification in the Official Gazette, appoint at such ports as it may consider necessary as many persons as it may think fit to be surveyors for the purposes of this Act.

1A. Without prejudice to the provisions of sub-section (1), the Central Government, in the case of cargo ships, may, by notification in the Official Gazette authorise any person or body of persons, on such terms and conditions as may be specified therein, to be surveyor or surveyors for the purposes of this Act.

(2) The surveyors may be nautical surveyors, ship surveyors or engineer and ship surveyors.

(3) At any port at which no surveyor appointed under this section is available, the Central Government may, by notification in the Official Gazette, appoint any qualified person to perform the functions of a surveyor under this Act.

(4) All acts done under this Act by a principal officer of the Mercantile Marine Department or a person appointed under sub-section (3) relating to matters within the competence of a surveyor shall have the same effect as if done by a surveyor for the purposes of this Act."

12. Part V deals with Registration of Indian Ships. Section 20 provides that Part V applies only to sea-going ships fitted with mechanical means of propulsion. Section 21 provides for the purposes of the Act, a ship shall not be deemed to be an Indian ship unless owned wholly by persons to each of whom the descriptions mentioned therein applies. Section 22 provides obligation for registration to the Indian ships. The said provision, being significant, is reproduced below:-

"Section 22. **Obligation to register.**-

(1) Every Indian ship, unless it is a ship which does not exceed fifteen tons net and is employed solely in navigation on the coasts of India, shall be registered under this Act.

(2) No ship required by sub-section (1) to be registered shall be recognised as an Indian ship unless she has been registered under this Act:

Provided that any ship registered at the commencement of this Act at any port in India under any enactment repealed by this Act, shall be deemed to have been registered under this Act and shall be recognised as an Indian ship.

(3) A ship required by this Act to be registered may be detained until the master of the ship, if so required, produces a certificate of registry in respect of the ship.

Explanation.-For the purposes of this section, "ship" does not include a fishing vessel".

13. Section 23 to Section 33 come under the heading Procedure for Registration. Section 23(1) provides for that the ports of Bombay, Calcutta and Madras and such other ports in India as the Central Government may, by notification in the Official Gazette, declare to be ports of registry under this Act shall be such ports where registration can be made. Sub-section (2) stipulates that the port at which the Indian ship is registered for the time being under the Act shall be deemed to be a port of registry and port to which she belongs. Section 24 deals with Registrars of Indian Ships. Section 25 states about the Register book. The said provision reads as follows:-

"Section 25. **Register book.**-Every registrar shall keep a book to be called the register book and entries in that book shall be made in accordance with the following provisions:-

(a) the property in a ship shall be divided into ten shares;

(b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than ten individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial interest of any number of persons represented by or claiming under or through any registered owner or joint owner;

(c) a person shall not be entitled to be registered as owner of a fractional part of a share in a ship; but any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares therein;

(d) joint owners shall be considered as constituting one person and shall not be entitled to dispose in severalty of any interest in a ship or any share therein in respect of which they are registered;

(e) a company or a co-operative society may be registered as owner by its name."

On a perusal of the aforesaid provision, it is quite clear the property in a ship has to be divided into ten shares and also deals with who can own a ship.

14. Section 26 provides for an application to be submitted for the registry of Indian ship. Section 27(1) stipulates that the owner of every Indian ship in respect of which an application for registry is made shall cause such ship to be surveyed by a surveyor and the tonnage of the ship ascertained in the prescribed manner. Sub-section (2) of the said provision mandates that the surveyor shall grant certificate specifying the ship's tonnage and build and such other particulars descriptive of the identity of the ship to be prescribed and the certificate of the surveyor shall be delivered to the registrar before such registry.

15. Section 28 deals with Marking of ship. I think it appropriate to reproduce the said provision:-

"Section 28. **Marking of ship.**-(1) The owner of an Indian ship who applies for registry under this Act shall, before registry, cause her to be marked permanently and conspicuously in the prescribed manner and to the satisfaction of the registrar and any ship not so marked may be detained by the registrar.

(2) Subject to any other provision contained in this Act and to the provisions of any rules made thereunder, the owner and the master of an Indian ship shall take all reasonable steps to ensure that the ship remains marked as required by this section, and the said owner or master shall not cause or permit any alterations of such marks to be made except in the event of any of the particulars thereby denoted being altered in the manner provided in this Act or except to evade capture by the enemy or by a foreign ship of war in the exercise of some belligerent right."

The aforesaid provision lays stress on the marking of ship that brings identity to the ship.

16. Section 29 deals with declaration of ownership on registry. It lays down that a person shall not be registered as the owner of an Indian ship or of a share therein until he or, in the case of a company, or a co-operative society the person authorized by the Act to make declarations on its behalf has made and signed a declaration of ownership in the prescribed form referring to the ship as described in the certificate of the surveyor. The said provision requires that the declarations should contain certain particulars. Sub-sections 29(a) to (e) deal with such particulars. They read as follows:-

"(a) a statement whether he is or is not a citizen of India; or in the case of a company, or a co-operative society, whether the company or a co-operative society, satisfies the requirements specified in clause (b) or, as the case may be, clause (c) of section 21;

(b) a statement of the time when and the place where the ship was built or if the ship is built outside India and the time and place of building is not known, a statement to that effect; and in addition, in the case of a ship previously registered outside India, a statement of the name by which she was so registered;

(c) the name of her master;

(d) the number of shares in the ship in respect of which he or the company, or the co-operative society], as the case may be, claims to be registered as owner; and

(e) a declaration that the particulars stated are true to the best of his knowledge and belief."

The aforesaid provision commands that a statement with regard to time and place where the ship was built has to be made. It is imperative.

17. Section 30 provides for evidence on first registry. It requires that on the first registry, of an Indian ship certain evidence have to be produced in addition to the declaration of ownership. Sub-section (b) of the said Section requires that in the case of a ship built outside India, the same evidence as in the case of a ship built in India unless the declarant who makes the declaration of ownership declares that the time and place of her building are not known to him or that the builder's certificate cannot be produced and in that event, it shall be required only the instrument of sale under which the ship or a share therein has become vested in the applicant for registry.

18. Section 31 deals with the entry of particulars in register book. It is necessary to extract the said Section:-

"Section 31. **Entry of particulars in register book.** -As soon as the requirements of this Act preliminary to registry have been complied with, the registrar shall enter in the register book the following particulars in respect of the ship:-

(a) the name of the ship and the name of the port to which she belongs;

(aa) the ship identification number;

(b) the details contained in the surveyor's certificate;

(c) the particulars respecting her origin stated in the declaration of ownership; and

(d) the name and description of her registered owner or owners, and, if there are more owners than one, the number of shares owned by each of them."

19. The said provision, as is demonstrable, requires the particulars contained in the surveyor's certificate, the ship identification number and the name of the ship and name of the port to which it belongs, etc. Section 32 enumerates that the documents, namely, the surveyor's certificate, the builder's certificate, any instrument of sale by which the ship was previously sold and all declarations of ownership to be retained by the registrar in his custody on the registry of a ship.

20. Section 34 to Section 41 come under the heading "Certificate of registry". The grant of certificate of registry is controlled by Section 34. It stipulates that on completion of the registry of an Indian ship, the registrar shall grant a certificate of registry containing the particulars respecting her as entered in the register book with the name of her master. Section 35 provides for custody and use of certificate. Section 36 deals with power to grant new certificate when original certificate is defaced, lost, etc. Section 37 makes provision for endorsement on certificate of change of master. Section 38 similarly deals with endorsement on certificate of change of ownership.

21. Section 40, which is the provision that calls for interpretation, is extracted below:-

"Section 40. **Provisional certificate for ships becoming Indian ships abroad.**-(1) If at any port outside India a ship becomes entitled to be registered as an Indian ship, the Indian consular officer there may grant to her master on his application a provisional certificate containing such particulars as may be prescribed in relation to the ship and shall forward a copy of the certificate at the first convenient opportunity to the Director General.

(2) Such a provisional certificate shall have the effect of a certificate of registry until the expiration of six months from its date or until the arrival of the ship at a port where there is a registrar whichever first happens, and on either of those events happening shall cease to have effect."

22. The question that arises for consideration in the interpretative process of the aforesaid provision basically pertains to requirements for grant of provisional certificate for ships becoming Indian ships abroad. On a careful scrutiny of the said provision, it is discernible that any port outside can be a port to grant the provisional registration certificate. In this context, Section 23 becomes relevant, for apart from domestic ports, the Central Government has been conferred the power

by Parliament to issue notification in the official gazette to declare the ports of registry under this Act. Sub-section (1) of Section 40 provides that if at any port that has been notified to register an Indian ship then the Indian Consular Officer is empowered to grant to the master of the ship, who is entitled to be registered as an Indian ship on an application being made, a provisional certificate containing such particulars as may be prescribed in relation to the ship and forward the copy of the certificate at the first convenient opportunity to the Director General. The key words of this provision are "entitled to be registered".

23. Sub-section (2) of Section 40 provides that a provisional certificate shall have the effect of a certificate of registry until the expiration of six months from its date or until the arrival of the ship at a port where there is a registrar whichever first happens, and on either of those events happening shall cease to have effect. Thus a provisional certificate has a maximum life span of six months. The submission on behalf of the appellants is that a ship has to be a completely built ship and it has to be fully compliant with the necessary documents as provided in the rules and the circulars. The Union of India had taken a different stand before the High Court. The affidavit filed by the Union of India before the High Court is quite different.

24. The stand taken by the department before the High Court need not detain me as my obligation is to interpret the provision regard being had to the language employed by the legislature. Mr. Mukul Rohtagi, learned Attorney General appearing for the Union of India as well as for ONGC would contend that Section 40 has to be understood in the context. Similar submissions have been advanced by Mr. Ajit Kumar Sinha, learned senior counsel appearing for the Union of India. The argument by them is that sub-section (2) has to be interpreted with a purpose. It is urged by them that a provisional certificate is granted to the master on certain particulars being furnished and the said certificate remains in force for six months so that it is to be ready and travel to the identified port or a port in India. The submission of Mr. Rohatgi and Mr. Sinha is that from the language employed, it cannot be construed that it refers to a ship which is built completely or ready for delivery.

25. At this junction, I think it appropriate to state that when a legislation is made by Parliament, it is the duty of the courts to interpret it and this Court is the final interpreter. It is because no one is a spokesman for the Parliament. In this regard, a passage from **Sanjeev Coke Manufacturing Company v. M/s Bharat Coking Coal Limited and another, (1983) 1 SCC 147** would be quite instructive:-

"25. ... Once a statute leaves Parliament House, the Court is the only authentic voice which may echo (interpret) the Parliament. This the court will do with reference to the language of the statute and other permissible aids. ..."

Similar view has been expressed in **Yogendra Kumar Jaiswal and others v. State of Bihar and others, (2016) 3 SCC 183**.

26. At this juncture, I may refer to the relevant rules of the Merchant Shipping (Registration of Indian Ships) Rules, 1960 (for short, 'the Rules'). Rule 11 provides that on completion of the preliminaries to registry, the registrar shall enter the particulars of the ship in the register book and issue to the owners a certificate of registry.

27. Rule 12 which provides to acquisition of ship abroad. It is as follows:-

"(1) If any ship is built or acquired out of India and becomes the property of persons qualified to own an Indian ship, the owner or master of the ship shall apply to the Indian Consular Officer at the nearest port for the issue of a provisional certificate of Indian registry and such officer may, on production of satisfactory proof of ownership, grant the same to the owner or master."

28. Rule 38 provides for Forms. The said Rule, being relevant, is extracted below:-

"Forms - Every application, certificate, advertisement, declaration, return report or any other documents referred to in these rules shall, if a form therefore has been prescribed in Schedule I to these rules, be in the appropriate form."

29. The Schedule I to Rule 38 gave description of Forms and registry Form number. Registry Form No. 14 deals with provisional certificate of Indian Registry. Registry Form No. 17 deals with certificate of survey. Registry Form No. 14 reads as follows:-

"Provisional Certificate of Indian Registry

(Merchant Shipping Act, 1958, Sections 40(1))

Expiry on or before the day of19....

Issued by the Government of India

Name of Ship (a)	Where and when Built	Steam or Motor Ship, how propelled.
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Number of Decks Framework and description of ship

Number of Masts Number of bulkheads

Rigged.....

Steam

Stern..... Number of water ballast tanks and Their capacity in tons.

Build....

Measurements	Feet	Tenths	Metres

Length from the fore part of stem to the aft side Of the head of the stern post Main breadth to outside of plating Depth in hold from tonnage deck to celling amidships Length of engine room			
---	--	--	--

Number of engines

Combined Horse Power

Name and address of engine maker

Particulars of Tonnage

Gross Tonnage	No. of tons	Cubic meters	Deductions allowed	No. of tons
Under tonnage deck space or spaces between decks			On account of space required for propelling power	
Turret or trunk			On account of spaces provided by way of crew accommodation as follows:	
Forecastle				
Bridge space				
Poop or break			(Number of seamen or apprentices for whom accommodations certified ???)	

Side houses				
Deck houses				
Chart houses				
Spaces for machinery and light and air				
Excess of hatchways Gross tonnage Deductions, as per contra Register tonnage			Other deductions: Total	

Note 1: The tonnage of the engine room spaces below the upper deck is ... Tons and the tonnage of the total spaces framed in above the upper deck for propelling machinery and for light and air is tons.

Note 2 : The undermentioned spaces above the upper deck are not included in the cubical contents forming the ship's register tonnage -

Note 3 : The location and tonnage of the boatswains store rooms are as follows
.....

1. That the ship, the description of which is prefixed to this my Provisional Certificate, has been duly surveyed, and that the above description is true (b)

2. That..... of..... is Master of the said Ship.

3. That the person or persons whose names are hereunder written purchased at on the day of 19 ...

Or

3. That the Ship was built at On account of the persons or persons whose names are hereunder written.

Name, Residence and Occupation of the owner	Number of Tenth Shares
--	------------------------------

Dated at the day of..... one thousand nine hundred and Indian Consul."

[emphasis supplied]

30. Registry Form No. 17 deals with surveyor certificates requires the surveyor to address the following aspects:-

Name of Ship	Port of intended Registry	Name and Official Number if there has been any former registry	
Whether Indian or Foreign Built	Whether a Steam or Motor Ship; how propelled	Where Built	When Built
			Name and address of Builders

Number of Decks	Length from fore part of stem, to the aft side of the head of the stern post/fore side of rudder stock	Meters
Number of Masts	Main breadth to outside of plating	
Rigged	Depth in hold from tonnage deck to ceiling amidships	

Stem	Depth in hold from upper deck to ceiling amidships, in the case of two decks and upwards	
Stern	Depth from top of upper deck at side amidships to bottom of keel	
Build	Round beam on upper/deck	
Framework and description of ship	Length of engine-room (if any)	
Number of Bulkheads		

Particulars of Tonnage

Gross Tonnage	With exempted Tween Deck	Without exempted tween deck	Deduction allowed	Cubic Meters
Upper tonnage deck Spaces or space between Decks. Turret or Trunk.. Forecastel.. Bridge space.. Poop Break.. Side Houses Deck Houses.. Chart Houses.. Spaces for Machinery, and light, and air Excess of	Cubic Meters		On account of space required for propelling power. On account of spaces provided by way of crew accommodation, as follows:- (Number of seamen or apprentices for whom accommodation is certified Other	
Hatchways Gross Tonnage			deductions:-	

Deductions, as per contra Register Tonnage	Tonnage Mark not submerged	Tonnage Mark submerged		
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Note 1 : The tonnage of the engine room spaces below the tonnage deck is cubic meters and the tonnage of the total spaces framed in above the tonnage deck for propelling machinery and for light and air is Cubic meters.

Note 2: The undermentioned spaces above the tonnage deck are not included in the cubical contents forming the ship"s register tonnage.

Note 3: The location and cubic capacity of the boatswains store rooms are as follows:

I, the undersigned Surveyor appointed under Section 9 of the Merchant Shipping Act, 1958, having surveyed the above named ship hereby certify that the above particulars are true and that here name is marked on each of her bows and her name and the port of registry are properly marked on a conspicuous art of her stern and a scale of meters denoting her draft are marked on each side of her stem and of her stern post as prescribed.

Date at

Surveyor

This day of.....19..... "

31. It is seemly to note that a circular has been issued by the competent authority on August 28, 2008 prescribing the modified procedure for Registration of Vessels under the Merchant Shipping Act. It states the purpose in the following terms:-

"IN ADHERENCE TO the fundamental tenet of Merchant Shipping Act 1958 as amended, and considering the reservations expressed by the shipping industry with regard to certain prevailing guidelines / practices; the Directorate General of Shipping (DGS) has identified areas to be addressed for expanding maritime sector and encouraging the growth of "quality" Indian tonnage.

REALISING the need of Shipping industry for detailed and modified guidelines on registration of vessels and regarding procedures on matters including technical clearance, survey prior registration, provisional registration, and mortgage entry.

UNDERSTANDING the difficulties that ship owners face, due to the delay in processing the registration and other proceedings thereof, which extends from acquisition till registration formalities are completed.

NOTING THAT Part V of the Merchant Shipping Act, 1958 and the Merchant Shipping (Registration of Indian Ships) Rules, 1960 as amended in 1966, 1970, 1994 and 1997, by the Central Government provide for and prescribe the procedure for registration and provisional registration of Indian Ships.

WITH A VIEW to codify the existing guidelines on registration of ships and REVIEWING therefore the procedures, current practices of survey and certification related thereto."

32. Thus, it is manifest that the procedures have been amended and it is also meant to expanding the maritime sector and encouraging the growth of "quality" Indian tonnage. It also deals with procedures pertaining to issues of Certificate of Survey and tonnage certificate for Technical clearance/Survey prior to Registration. Para 2.1 provides as follows:-

"2.1 Application for allotment of name, Official number and Call Sign combined with the application for allotment of MMSI number will be made by the owner through the Registrar to DGS by fax and approval by DGS would be made by return fax within 24 hours.

After applying for registration/name-approval of his vessel with a Registrar in the prescribed format, the prospective ship-owner, shall put up the vessel for survey as required vide Section 27(1) of the M.S. Act and Rule 5 of the M.S. (Registration of Indian Ships) Rules, 1960, either by the Mercantile Marine Department (MMD) or the Indian Register of Shipping (IRS)."

33. Para 2.2 deals with Certificate. It is as follows:-

"The survey as referred to in para "2.1" above, shall be carried out for the purpose of verifying the particulars to be included in the Certificate of Survey as mentioned in Section 27(2) of the M.S. Act and not principally for assessing the compliance of the applicable statutory rules.

The attending Surveyor may issue a Certificate of Survey and a Provisional Certificate of Registry irrespective of the location of the vessel, if duly authorized by a Registrar of Ships."

34. Para 2.3 reproduced as follows:-

"Issuance of the Certificate of Survey as stated in para. "2.2" above and/or the Certificate of Registry as stated in Section 34 of M.S. Act and Rule 11 of the Merchant Shipping (Registration of Indian Ships) Rules, 1960, does not entitle the vessel to ply, unless she has in her possession, the required statutory certificates and valid documents."

35. Para 3 deals with the procedure in regard to Surveys for issuance of Statutory Certificates. Para 4 deals with the issues pertaining to provisional registration, carving and marking etc., The said paragraph reads thus:-

"4. Issues pertaining to provisional registration, carving and marking etc.

4.1 The ship owner, shall in his own interest make every endeavour to have his vessel registered on provisional or permanent basis at the very outset.

4.2 The name of the vessel, her port of registry and other markings need only be painted as per specifications at the time of change of flag in line with global maritime practices. However, the IMO Number (Ship Identification Number) has to be permanently marked as per Regulation 3(4) of Chapter XI-1: Special measures to enhance maritime safety, of SOLAS, 1974 as amended. The Official Registration No. and registered net tonnage shall continue to be affixed on bridge as mentioned in Rule 10 of the Merchant Shipping (Registration of Indian Ships) Rules, 1960, as amended.

4.3 The age of the vessel is to be computed from her date of delivery from the shipyard as may be established by the ship owner, with documentary evidence.

4.4 A provisional certificate of registry shall continue to remain valid till the date of its expiry, regardless of the location of the vessel."

36. The check list No. 1 that has been brought on record provides for basic documents. Para 4 of the same deals with provisional registry. It is as follows:-

"Provisional Registry: On request of owner, the RoS can authorize the Consular Officer/MMD/IRS to verify the required documents, witness the markings on board the vessel as per C&M Note and issue provisional certificate of registry irrespective of age or location of the vessel."

37. Para 6 deals with Permanent Registry. It reads as follows:-

"Owner to provide all documents for permanent registration as per check list. Every detail required to be filled up in the "Certificate of Survey" and "Particulars of Ship" are to be made available and evidences for such data be given."

38. Para 5 deals with Permanent/Provisional Registry. I think it appropriate to reproduce the same:-

" Permanent/Provisional Registry:

❖ Application for Registry as per Checklist No. 1 (Available on MMD website) alongwith an online application in DGS and MMD site.

❖ Alternatively a Provisional Certificate of Registry can be issued to the vessel for six months, if the vessel is abroad or if the documents are not complete as per the requirements.

❖ For provisional Certificate of Registry, the documents required are i) An application, ii) Original Carving & Marking duly verified by the Surveyor, iii) Certificate of Survey, iv) Original Board Resolution for a company or signed by all the

partners for Partnership Firm, v) Original Declaration of Ownership duly signed before Principal Officer, vi) Original Bill of Sale for a second hand vessel or Original Builder's certificate for a new ship.

◆ When the vessel is abroad and a Provisional Certificate of Registry (PCOR) is to be issued for taking delivery, the owner has to apply for a blank Provisional Certificate of Registry (online & hard copy - Fees Rs. 100/-). A separate application to be made to instruct the class for issuance of PCOR giving date and place of delivery and a copy of Memorandum of agreement."

39. On a perusal of statutory provisions, the Rules and the instructions, it is abundantly clear that requirement for grant of registration and provisional registration is the same. The Surveyor's report and the ownership are extremely significant. The language employed in various rules and the instructions clearly lay down that the certificate of survey has to convey that the ship was built. There is distinction between "being complete" and "complete" or "was built" and, therefore, I am compelled to construe that unless the ship is completely built and ready sea-going, the owner cannot apply for provisional registration certificate.

40. Section 40(2) has another aspect. It stipulates the provisional certificate shall be for six months or until the arrival of the ship at the port, wherever there is a registrar, whichever first happens. Once either of the events happens, the certificate of registration ceases to have effect. Thus understood, the period of six months time is mandatory. The peremptory facet clearly conveys that the ship has to be completely built and ready for sailing into the sea. I am compelled to so interpret that Section 3(41), which I have reproduced hereinbefore, defines "sea-going" which means in relation to a vessel, which proceeds to sea beyond inland water or beyond waters declared to be smooth or partially smooth waters by the Central Government by notification in the Official Gazette.

41. Mr. Rohatgi, learned Attorney General has drawn my attention to various provisions of the Act that relate to safety. The concept of safety occurs in Part IX of the Act. It is urged by him that unless Rules are followed, a ship cannot enter Indian sea. The aforesaid submission on a first blush looks quite attractive but on a keener scrutiny pales into insignificance. It is to be borne in mind that Section 20 that occurs in Part V of the Act which deals with registration of Indian ships applies only to sea-going ships fitted with mechanical means of propulsion. A ship that is granted certificate of registration under Section 34 has to satisfy the similar conditions for grant of PCOR. Unless such a construction is placed, it is likely to create incurable anomaly.

42. The legislative intendment, the rules framed by the department and the instructions which have been issued from time to time clearly support the interpretation that the ship has to be completely built and ready for sea-going. If it cannot comply with Section 40 within six months, that is, arriving at the port where

there is a registrar, the validity of PCOR shall cease to exist. The words "shall cease to have effect" mean that it will have no validity in the eyes of law and, in fact, the document would be absolutely null and void. In this regard, the authority in **Ponds India Ltd. v. Collector of Central Excise, Madras, (1997) 2 SCC 577** would be instructive. In the said case, while interpreting the terms of the Finance Act, it was held that special excise duty so levied would cease to have effect at the close of the financial year and, therefore, it was an annual levy and may or may not be levied in the following year. Thus understood, after expiry of six months, PCOR gets extinct. Be it clarified, that Section 40 has a mandate inherent in it and it has to be viewed from the holistic perspective. Interpretation of the provision in any other manner would dilute the legislative intent.

43. I will be failing in my duty if I do not take note of the submission advanced by Mr. Rohatgi, learned Attorney General that Section 40 was drafted when India had not grown in the shipping arena and, therefore, at that juncture, ships were booked in a different stage. In the case at hand, as I find, the provision is plain, clear and unambiguous. Section 40 does not come all of a sudden. It has a host of preceding provisions. Therefore, it has to be read with the preceding provisions contained in Section 34 onwards till Section 41. The said Chapter is a complete Code. The schematic effect is that precautions have to be taken. Though surveyors have been chosen, they have to be extremely careful to see that the ship is completely built and thereafter being satisfied with regard to tonnage and other aspects, give the requisite certificate to make it sea-going. These are the conditions precedent to get a provisional certificate.

44. I had stated earlier that first I shall deal with the legal aspect and thereafter, if required, will deal with the issue that arises from the tender conditions by the ONGC. However, I may note that the ship in question has not arrived at the port within the mandatory period of six months. Therefore, the PCOR that had been granted in favour of "Vessel Sita Devi" has ceased to exist. It has lost its validity. Needless to say, the owner can apply for the fresh PCOR which can be considered keeping the judgment in view.

R. Banumathi J.—I have gone through the draft judgment prepared by His Lordship Dipak Misra J. and I agree with the reasonings recorded by His Lordship. However, in view of the importance of the questions involved and interpretation of the provisions of the Merchant Shipping Act, 1958, (For short 'the M.S. Act') I would prefer to give my own reasonings for my concurrence.

45. The issue relates to Provisional Certificate of Registry (PCOR) dated 16.10.2015 issued to vessel Sita Devi by the Mercantile Marine Department (MMD). Issuance of PCOR was challenged by Halliburton Offshore in W.P. No. 961/2016. While the said Writ Petition was pending, PCOR issued to vessel Sita Devi was revoked by an order dated 13.04.2016 which became a subject matter of challenge in W.P. 1668/2016 preferred by Sita Offshore India Private Limited.

46. The counsel for the parties, though elaborately argued the matter on facts as well as on law, after hearing the matter at length, vide proceeding dated 02.02.2017, it was thought apposite that this Court first answers the issues relating to law. It was realised that the law on the point is not yet clearly laid down, specifically the requisites for obtaining a Provisional certificate of registry (PCOR) prescribed under Section 40 of the M.S. Act, 1958 and its effect after expiry of six months.

47. While dealing with the core issue, as stated above, what pertinently require to be dealt with are as under:-

(i) Whether the requisites for obtaining Provisional Certificate of Registry (PCOR) are the same as in the case of obtaining permanent registration, as stipulated under Sections 21 to 32 of the Merchant Shipping Act, 1958, in terms of (i) Ownership (ii) Built/construction (iii) other requisites of permanent registration.

(ii) When sub-section (2) of Section 40 of the Merchant Shipping Act uses the language "provisional certificate shall have the effect of certificate of registration until the expiration of six months from its date.....", whether PCOR is statutorily renewable/ extendable after the expiry of six months of Provisional Certificate of Registry.

48. Before considering the above issues in detail, in the light of the scheme of the M.S. Act, 1958, and allied rules and circulars, I would like to briefly refer to the origin of the Act and the importance of registration and maritime flag, so as to emphasize the establishment of link between the vessel and the country whose flag it flies, and the national interest involved therein.

Importance of Registration and Maritime Flag:-

49. As the registration of a ship enables the ship to fly the flag of the country where it is registered, registration and the maritime flag assumes great importance. Every unit of transport, whether public or private, such as motor vehicles while operating on land or an aircraft operating in sky must bear some legal recognition for ascertainment of jurisdiction. Similarly, when the ship is in the high seas or in the ports and harbours or in the territorial water of maritime States, it is necessary that the ship bears the maritime flag. Importance of registration of a ship and the identification marks in the case of a ship is succinctly dealt with in the book titled "Maritime Flag and International Law, 1978 Edition"- at page no.1 authored by a well-renowned scholar and jurist Mr. Nagendra Singh, issued under the auspices of the Maritime Law Association of India and the Indian Society of International Law and published by Thomson Press (India) Limited, as under:-

"Every unit of transport whether a public carrier or a private one, irrespective of the fact whether it is operating on land such as a motor vehicle or on water such as a ship or in the skies such as an aircraft, has to bear an identification mark since an unidentifiable object of traffic would elude fixation of responsibility for its acts of

omission and commission and thus defy maintenance of law and order particularly in the context of the open sea which is not subject to the jurisdiction of the sovereign States. If the rule of the road necessitates an identification mark for every carrier with a view to securing an orderly conduct of traffic, it becomes the responsibility of none other than the State itself both in the municipal and in the international sphere to register transport vehicles with a view to giving them the necessary distinguishing marks. Thus, registration of vehicles becomes an inescapable procedural agency once it is decided that the grant of identification marks is essential since a record has simultaneously to be kept of which mark has been assigned to which particular unit of transport. In the maritime sphere too, the position is not different since sovereign States, members of the family of nations, are themselves responsible for the maintenance of law and order on the open sea and hence the duty to register and give identification marks to carriers on the high seas falls on the sovereign State itself."

50. Maritime flag is the direct result of the registration of the ship. Law of seas, by custom, imposes a duty upon every State having ships owned by itself or by its nationals to: (i) insist on registration of all ocean-going ships and (ii) to provide by its domestic law, the conditions to be fulfilled before its vessels could be registered to sail under its flag with the necessary distinguishing marks. The first provision ever made on the law of registration, flag and nationality of ships in a multilateral convention was the result of the deliberations of the Law of the Sea Conference held in Geneva in 1958. The Geneva Convention on the High Seas (1958) scribes the importance of a genuine link between a ship's owners and its flag state in the following words:-

"Article 5.

1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect."

51. The principle enshrined in Article 5 of the Geneva Convention was re-emphasized in Article 91 of the United Nations Convention on the Law of the Seas (UNCLOS), 1994. 167 States of the world are party to the said convention. Article 91 of UNCLOS reads as under:-

"Article 91. Nationality of ships:-

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect."

52. There is diversification in the conditions prescribed by the States for registration of ships at their ports. The important requisites are, however, broadly confined to following items, namely: (i) construction and origin of ship; (ii) captain, officers and the crew; (iii) ownership of ships; and (iv) importance of registration and the maritime flag. Law of registration of ships differs from country to country though the act of registration has far reaching legal consequences both nationally and internationally. The learned author Shri Nagendra Singh in pages 17 to 21 of the above book refers to the above diversity in the conditions prescribed by the States for registration of ships, broadly under three categories, namely:-

(1) **The National School Countries**—which believe in a rigid law of registration which would firmly tie the ship to the registering State not only by construction in its national shipyards and manned by captain and crew of its nationality but ownership also being national (Countries like Portugal);

(2) **The School of the Relaxed Law**—Countries which believe in a relaxed law imposing no conditions on registration and permitting foreign nationals to register ships within the national territories almost on the same basis as its own nationals (countries like Liberia and Panama); and

(3) **The Balanced School**—In between the above two rival groups, there exists a middle of the road thinking on the subject which insists on ownership being in national hands on a majority basis but imposes no other conditions such as relating to crew or captain (countries like United Kingdom and India).

53. I have, in detail, referred to the diversity in the conditions prescribed by the States in registration of ships, only to emphasize upon the importance of registration and grant of maritime flag consequent to the registration. Be it the National School or Relaxed School or Balanced School, it is the act of the State to register a ship which is very vital. The significant consequence of registration is the establishment of a link between the ship and the flag state. This link is very vital for the purpose of regulating inter-state intercourse, while a ship voyages from one national port to another national port and also while she voyages in the high seas. Registration also casts nationality rights on the ship, thereby conferring privileges upon the ship and responsibilities upon the flag state. If the nationality of the ship and that of its owner are the same (as in the case of United Kingdom and India), the responsibility is indicated by the flag which would be decisive in every aspect. On the other hand, if the ship is registered at Flag 'A' State and the owner is of 'B' State

(like in the case of Liberia and Panama) then there arises complications which we do not like to elaborate upon as the same is not relevant for the questions under consideration.

54. Registration of ship is a means of bestowing nationality upon the ship which is an age old practice in maritime industry. By registration under the M.S. Act, 1958, a ship is recognised as an Indian Ship and becomes entitled to fly Indian Flag and is thus eligible to claim the benefits, privileges, advantages or protection enjoyed by Indian Ships under the Act. Flag of the ship is the prima facie or visible evidence of registry. Under customary international law, ships are regarded as part of the territory of the Flag State-an extension of the country or floating island. Registration, therefore, operates as a bridge between the ships and the mainland and extends nationality rights to the Ship; it serves as a legal institution linking the ship to a State. The flag-state or the State of registry, has the right to exercise jurisdiction over the ship, is responsible for it and has the right to protect it. Therefore, there is no gainsaying that registration of a ship casts serious responsibilities on the registering State. For this very reason, it is important to ensure that all the requisites for registration of a ship are strictly complied with, be it an Indian ship or ship built abroad entitled to become Indian ship.

The Merchant Shipping Act, 1958

55. The Merchant Shipping Act, 1958 is a comprehensive law dealing with regulation and control of ships, aiming at promotion of marine mercantile in a manner best suited to serve the national interest. The distinguishing feature of the Merchant Shipping Act, 1958 is that it has consolidated and codified all laws concerning merchant shipping. One of the distinct purposes behind the M.S. Act, 1958, is that it laid down provisions for registration of sea-going ships. Earlier, there was no provision dealing with the registration of sea-going ships except the Coasting Vessels Act, 1838 and the Indian Registration of Ships Act, 1841, under which only sailing vessels were being registered; other ships were registered only under the United Kingdom Merchant Shipping Act, 1894 and were technically regarded as British Ships. The preamble of the Act reads as under:-

"An Act to foster the development and ensure the efficient maintenance of an Indian Mercantile marine in a manner best suited to serve the national interests and for that purpose to establish a National Shipping Board and a Shipping Development Fund, to provide for the registration of Indian ships and generally to amend and consolidate the law relating to merchant shipping."

56. The M.S. Act opens by providing for establishment and powers of National Shipping Board and other authorities, moving towards registration of ships, certificate of officers, safety mandates to be observed by ships, security of ships etc. and ends by laying down penalties in lieu of contravention of any of the provisions of the Act. The Act also addresses situations of collisions, accidents at sea and

liabilities thereof. Provisions of civil liability for oil pollution damage and international oil pollution compensation fund are also not alien to the Act. This shows that the Act envisions to achieve a safe and regulated framework for carrying out trade through sea in India. For achieving the said objective, it is apposite to ensure that the mandate of the Act are strictly complied with.

57. Part V of the Merchant Shipping Act deals with registration of Indian ships. "Indian ship" as per Section 3(18) of the M.S. Act, essentially means a ship registered under the Act. Sub-section (18) of Section 3 reads as under:-

"3(18).Indian ships" means a ship registered as such under this Act and includes any ship registered at any port in India at the commencement of this Act which is recognized as an Indian ship under the proviso to sub-section (2) of section 22."

Although the term `ship" is not defined in its actual sense, sub-section (55) of Section 3 of the Act provides that a ship is included within the term `vessel". Sub-section (55) of Section 3 of the Act defines the term `vessel" to include `any ship", boat, sailing vessel, or other description of vessel used in navigation". Further, Section 3(45) of the Act provides that "ship" does not include a sailing vessel.

58. Part V of the M.S. Act and Registration of Ships Rules, 1960 as amended from time to time are concerned with the registration of Indian ships. Part V begins with Section 20 of the Act which provides that Part V applies only to `sea-going ships fitted with mechanical means of propulsion". Interpretation of the term `sea-going", therefore, becomes very important in the present case. The term `sea going" is defined in sub-section (41) of Section 3 of the Act in the following words:

"3(41).sea-going", in relation to a vessel, means a vessel proceeding to sea beyond inland waters or beyond waters declared to be smooth or partially smooth waters by the Central Government by notification in the Official Gazette."

59. Part V provides for compulsory registration of every Indian ship, unless it is a ship which does not exceed fifteen tons net and is employed solely in navigation on the coasts of India, Part V also lays down detailed procedure for getting a ship registered in India. Section 21 deals with `Indian ships". Section 21 reads as under:-

"21. Indian Ships.- For the purposes of this Act, a ship shall not be deemed to be an Indian ship unless owned wholly by persons to each of whom [any] of the following descriptions applies:-

(a) a citizen of India; or

(b) a company or a body established by or under any Central or State Act which has its principal place of business in India; or

(c) a co-operative society which is registered or deemed to be registered under the Co-operative Societies Act, 1912, or any other law relating to co-operative societies for the time being in force in any State."

Section 22 stipulates obligation to register every Indian ship. Every Indian ship must, unless exempted, be registered, and any ship which should be registered, but is not so registered, shall not be recognized as an Indian ship (Section 22 of the M.S. Act).

60. Ships which qualify to be registered are required to be registered only at ports designated as ports of registry. Section 23 of the Act provides for 'Ports of registry'. As per Section 23 of the Act, Bombay, Calcutta and Madras and such ports in India as the Central Government may, by notification in the official gazette declare to be ports of registry under the M.S. Act are the Ports at which registration of ships shall be made. Section 24 provides for 'Registrars of Indian ships' and Section 25 provides for 'Register book' to be maintained by every registrar. In their capacity as registrar of Indian ships, the principal officers are required to maintain a complete record of ships on the register indicating status of the ship on a particular date. A central register is maintained by the Director General of Shipping, which contains all the entries recorded in the register books kept by the registrar at the port of registry in India.

61. Section 26 deals with 'Application for registry of Indian ships'. Section 26 reads as under:-

"26. Application for registry—An application for the registry of an Indian ship shall be made:-

(a) in the case of an individual, by the person requiring to be registered as owner or by his agent;

(b) in the case of more than one individual requiring to be so registered, by some one or more of the persons so requiring or by his or their agent; and

(c) in the case of a company or a co-operative society requiring to be so registered, by its agent,

and the authority of the agent shall be testified by writing, if appointed by an individual, under the hand of the person appointing him and, if appointed by a company, or a co-operative society under its common seal."

62. Rule 3 of Merchant Shipping (Registration of Indian Ships) Rules, 1960 deals with documents to accompany application for registry. As per Section 26 and Rule 3, application for registry has to be accompanied by the following documents:-

"3. Documents to accompany application for Registry-

(a) the declaration of ownership;

(b) the builder's certificate, that is to say, a certificate signed by the builder of the ship and containing a true account of the proper denomination and of the tonnage of the ship as estimated by him and the time when and the place where she was built.

(c) if the ship has been purchased, the instrument of sale under which the property in the ship was transferred to the applicant..."

63. Section 27 envisages survey and measurement of ships before registry. Section 27 reads as under:-

"27. Survey and measurement of ships before registry- (1) The owner of every Indian ship in respect of which an application for registry is made shall cause such ship to be surveyed by a surveyor and the tonnage of the ship ascertained in the prescribed manner.

(2) The surveyor shall grant a certificate specifying the ship's tonnage and build and such other particulars descriptive of the identity of the ship as may be prescribed and the certificate of the surveyor shall be delivered to the registrar before registry."

64. Section 28 provides for "Marking of ship" and Section 29 provides for "Declaration of ownership on registry". Sections 28 and 29 read as under:-

"28. Marking of ship- (1) The owner of an Indian ship who applies for registry under this Act shall, before registry, cause her to be marked permanently and conspicuously in the prescribed manner and to the satisfaction of the registrar and any ship not so marked may be detained by the registrar.

(2) Subject to any other provision contained in this Act and to that provisions of any rules made thereunder, the owner and the master of an Indian ship shall take all reasonable steps to ensure that the ship remains marked as required by this Section, and the said owner or master shall not cause or permit any alterations of such marks to be made except in the event of any of the particulars thereby denoted being altered in the manner provided in this Act or except to evade capture by the enemy or by a foreign ship of war in the exercise of some belligerent right.

29. Declaration of ownership on registry- A person shall not be registered as the owner of an Indian ship or of a share therein until he or, in the case of a company or a co-operative society, the person authorised by this Act to make declarations on its behalf has made and signed a declaration of ownership in the prescribed form referring to the ship as described in the certificate of the surveyor and containing the following particulars:--

(a) a statement whether he is or is not a citizen of India; [or in the case of a company or a co-operative society, whether the company or the co-operative society satisfies the requirements specified in clause(b) or, as the case may be, clause (c) of Section 21];

(b) a statement of the time when and the place where the ship was built or if the ship is built outside India and the time and place of building is not known, a statement to that effect; and in addition, in the case of a ship previously registered outside India a statement of the name by which she was so registered;

(c) the name of her master;

(d) the number of shares in the ship in respect of which he or the company [or the co-operative society], as the case may be; claims to be registered as owner; and

(e) a declaration that the particulars stated are true to the best of his knowledge and belief.

Explanation- In respect of a ship or share owned by more than one person, a declaration may be made by such one of them as may be authorised by them."

65. As per Rule 5, after the Registrar has satisfied himself as to the evidence of ownership, he shall cause the ship to be surveyed. Rule 6 deals with 'Survey of Ships outside India'. Rules 5 and 6 read as under:-

"5. Survey and Measurement—After the registrar has satisfied himself as to the evidence of ownership he shall cause the ship to be surveyed by a surveyor and her tonnage ascertained in accordance with the Merchant Shipping (Tonnage Measurement of Ships) Rules, 1960. Thereafter, the surveyor shall grant a certificate of survey in respect of the ship.

6. Survey of ships at ports outside India—Where it becomes necessary for a ship to be surveyed for purposes of registration at a port outside India, the Director General may depute a surveyor or request the government of the country where the ship is lying to appoint a qualified surveyor to survey the ship for the issue of a certificate of survey."

66. Rules 9 and 10 deal with 'Carving and Marking Note' and 'Marking of ships' which read as under:-

"9. Carving and Marking Note—Where in respect of a ship an official number has been allotted and the name approved by the Director General and the certificate of survey granted by the surveyor, the registrar shall issue to the owners a Carving and Marking Note which shall be returned to the registrar after the carving and marking have been duly carried out and certified by a surveyor.

10. Marking of ships—Every ship shall, before registry, be marked permanently and conspicuously to the satisfaction of the registrar as follows -

(a) her name shall be marked on each of her bows, and her name and the name of her intended port of registry shall be marked on her stern, on a dark background in white or yellow letters or on a light background in black letter which shall be not less than one decimeter or four inches in height and 1.3 centimeters or half an inch in breadth.

(b) her official number and the number denoting her registered tonnage shall be cut in on her main beam.

(c) Her scale of draught marks shall be cut or welded in feet and inches and in metres and decimeters in two columns side by side both forward and aft on the port and star board side respectively. The relative position of the two rows of markings should be separated by a reasonable distance in order to avoid errors in reading them.

In the case of modern type of ships having a raked soft stem and cruiser stern, the marks shall be cut in or welded as close and aft of the stem as possible following the contour of the stem. The marks aft or at the stern shall be cut a few feet forward of the after perpendicular in two columns parallel to each other."

67. Section 30 deals with production of evidence on the first registry of an Indian ship in addition to declaration of ownership. Section 30 reads as under:-

"30. Evidence on first registry—On the first registry of an Indian ship, the following evidence shall be produced in addition to the declaration of ownership:-

(a) in the case of a ship built in India, a builder's certificate, that is to say, a certificate signed by the builder of the ship and containing a true account of the proper denomination and the tonnage of the ship as estimated by him and the time when and the place where she was built, and the name of the person, if any, on whose account the ship was built; and if there has been any sale, the instrument of sale under which the ship or the share therein has become vested in the applicant for registry;

(b) in the case of a ship built outside India, the same evidence as in the case of a ship built in India unless the declarant who makes the declaration of ownership declares that the time and place of her building are not known to him, or that the builder's certificate cannot be procured, in which case there shall be required only the instrument of sale under which the ship or a share therein has become vested in the applicant for registry."

68. Registration of a ship built in India: Section 26 authorises the owner of the ship or his agent to move an application for the registration of an Indian ship. By a combined reading of Section 26, Rule 3 and other provisions for registration and Checklist-I issued by MMD, it emerges that, for registration of a ship built in India, an applicant has to submit following documents to the concerned registry:-

(a) **A declaration of ownership**—As per Rule 4, every declaration of ownership shall be made before a registrar, a Justice of the Peace, a Commissioner of Oaths, or an Indian Consular Officer in one or the other prescribed forms, as may be applicable, depending upon whether he is a sole proprietor, joint owner or a company;

(b) **Builder's Certificate**—A certificate signed by the builder () of the ship containing a true account of the proper denomination and of the tonnage of the ship as estimated by him and the time, when and the place where the ship was built, (for new ship as per Forms 3, 4 and 5);

(c) **Secondhand Ships**—If the ship has ? been purchased, the instrument of sale under which the property of the ship was transferred to the applicant, who requires it to be registered in his name;

(d) **Name proposed for the ship**—To give a minimum of 14 days notice to the registrar of the name proposed for the ship. The registrar before registering the vessel in the name of the applicant shall obtain prior approval of the name from the Director General of Shipping who will also allot an official number for the ship." (Rule 7)

69. Title/ownership of the ship is very vital for registration of Indian ship. Section 33 deals with "Power of Central Government to inquire into the title of Indian ship to be so registered". Section 33 reads as under:-

"33. Power of Central Government to inquire into title of Indian ship to be so registered- (1)Where it appears to the Central Government that there is any doubt as to the title of any Indian ship to be registered as an Indian ship, it may direct the registrar of her port of registry to require evidence to be given to his satisfaction within such time, not being less than thirty days as the Central Government may fix, that the ship is entitled to be registered as an Indian ship.

(2) If within such time as may be fixed by the Central Government under sub-section (1) evidence to the satisfaction of the registrar that the ship is entitled to be registered as an Indian ship is not given, the ship shall be liable to forfeiture."

Section 33 makes it clear that the title/ownership of Indian ship is very vital. As per Section 33(2), if the evidence is not given to the satisfaction of the registrar within the time fixed by the Central Government, the ship shall be liable to forfeiture.

70. Section 34 deals with Grant of Certificate of registry of an Indian ship, which reads as under:-

"Grant of certificate of registry—On completion ? of the registry of an Indian ship, the registrar shall grant a certificate of registry containing the particulars respecting her as entered in the register book with the name of her master."

71. Rule 11 deals with issuance of certificate of registry which reads as under:-

"11. Issue of Certificate of Registry—On completion of the preliminaries to registry, the registrar shall enter the particulars of the ship in the register book and issue to the owners a certificate of registry."

72. The purpose of registration is to keep the vessel identified throughout its operational life. Registration of a ship acts as a proof of the following:-

(a) The ownership of the vessel;

(b) The exact type of the vessel with its dimension and specifications for which the vessel is surveyed and measured and any alterations in engine or hull;

(c) distinguishing marks of the vessel by way of its name, number so that identity of the ship is fixed and known.

73. If we carefully analyse the provisions of Part V of the Act, in the context of the definitions of important terms contained in Section 3 of the Act, we find that "ownership" of the ship is central to the scheme. As per Section 21 of the Act for the purpose of this Act, a ship shall not be deemed to be an Indian ship unless owned wholly by persons to each of whom the description in Section 21 clauses (a) to (c) applies. The inevitable corollary is that the ship shall be deemed to be an Indian ship, if it is wholly owned by the persons who are the citizens of India or qualify under clause (b) or (c) of Section 21. However, such a proposition cannot hold good as status of an Indian ship can be obtained only by complying with the procedure for registration of ship, laid down in the Act and Rules. Therefore, 'ownership by an Indian' is a pre-requisite of provisional as well as final registration. Forms 3 to 5 contained in Schedule I to 1960 Rules deal with Declaration of Ownership by Individuals, Declaration of Ownership by Joint Owners and Declaration of Ownership on behalf of a company respectively. As per Section 27, 'the owner of every Indian ship' in respect of which an application for registry is made shall cause such ship to be surveyed by a surveyor. 'The owner of an Indian ship' who applies for registry under the Act shall, before registry, under Section 28 mandate marking of the ship permanently. Section 29 directs the owner of the vessel to furnish a declaration of ownership of the ship containing, inter alia, specification of the time and place where the ship was built. Section 30 mandates filing of a builder's certificate with the particulars of the ship, like proper denomination, tonnage etc. as indicated in Section 30. A careful analysis of the provisions of Part V of the Act, in particular Section 20 to Section 32, makes it clear that ownership of the ship and completion of construction of the ship i.e. the ship being 'fully built' are central to Part V.

74. The upshot of the above discussion is that the essentials of permanent certificate of registry are as under:-

(i) The ownership of the ship in terms of Section 21 of the Act;

(ii) The ship must be fully built; and

(iii) Other requirements as stipulated under Sections 23 to 32.

As discussed earlier, title of the ship must be pertinently looked into while registering it. As per Section 33, where it appears to the Central Government that there is any doubt as to the title of a ship to be registered as an Indian Ship, after inquiry, the Central Government shall direct that the title document to be produced before the Registrar of port of registry and if not furnished within the stipulated time, the ship shall be liable to forfeiture.

75. **Registration of an Indian ship acquired abroad:-** Section 40 of the Act provides for provisional registration of the ship which shall have the effect of

certificate of registry of the ship until the expiration of six months or until the arrival of the ship at the port. Section 40 has been borrowed from Section 22 of the English Merchant Shipping Act, 1894 with a little modification. Section 40 reads as under:-

"40. Provisional certificate for ships becoming Indian ships abroad—(1) If at any port outside India a ship becomes entitled to be registered as an Indian ship, the Indian consular officer there may grant to her master on his application a provisional certificate containing such particulars as may be prescribed in relation to the ship and shall forward a copy of the certificate at the first convenient opportunity to the Director General.

(2) Such a provisional certificate shall have the effect of a certificate of registry until the expiration of six months from its date or until the arrival of the ship at a port where there is a registrar whichever first happens, and on either of those events happening shall cease to have effect."

76. If a ship is built or acquired abroad and becomes the property of persons qualified to own an Indian ship, Rule 12 of 1960 comes into play. Rule 12 reads as under:-

"12. Acquisition of ships abroad—(1) If any ship is built or acquired out of India and becomes the property of persons qualified to own an Indian ship, the owner or master of the ship shall apply to the Indian Consular Officer at the nearest port for the issue of a provisional certificate of Indian registry and such officer may, on production of satisfactory proof of ownership, grant the same to the owner or master."

77. Section 40 and Rule 12 go hand-in-hand for grant of "Provisional certificate for ships becoming Indian ships abroad". As per Section 40 of the Act, a vessel entitled to become an Indian ship is issued a Provisional certificate of registration, valid for six months. An analysis of Section 40 of the Act in consonance with other provisions of the Act and the Rules made thereunder and the circular issued would bring forth the requisites for validly obtaining a PCOR for ship acquired abroad, for registering as an Indian ship under the Act. In order to acquire a provisional certificate of registration for ships becoming Indian Ships abroad, following conditions must be satisfied:

- (a) The ship is built or acquired out of India;
- (b) The ship becomes property of persons qualified to own an Indian ship and is entitled to be registered as an Indian ship.
- (c) The owner or master of the ship applies to the Indian Consular Officer at the nearest port for the issue of a provisional certificate of Indian registry.
- (d) The ship is sea-going, fitted with mechanical means of propulsion. [Ref: Section 20 of the Act]

On production of satisfactory proof of ownership and of other requisites, the Indian Consular Officer may grant the Provisional certificate of registry to the owner or master of the ship.

78. Section 40 provides for grant of permanent certificate of registry (PCOR) for ships becoming Indian ships abroad. Section 40 occurs in Part V of the Act. Part V of the Act deals with "Registration of Indian Ships". As noticed earlier, Part V applies only to "sea-going ships" fitted with mechanical means of propulsion. The term "sea going" is defined in Section 3 (41) as under:-

"sea-going", in relation to a vessel, means a vessel proceeding to sea beyond inland waters or beyond waters declared to be smooth or partially smooth waters by the Central Government by notification in the Official Gazette."

Thus, as per sub-section (41) of Section 3, for obtaining PCOR for ships becoming Indian Ship, the ship must be "sea-going" that is proceeding to sea beyond inland waters or beyond waters declared to be smooth or partially smooth waters by the Central Government. In other words, to proceed into the sea beyond inland waters or beyond waters declared to be smooth, the ship must be fully built.

79. Checklist-1 for Registration of Merchant Ships issued by MMD, Serial No.4 deals with Provisional registry which reads as under:-

"4. Provisional Registry: On request of owner, the RoS can authorise the Consular Officer/MMD/IRS to verify the required documents, witness the markings on board the vessel as per C & M Note and issue provisional certificate of registry irrespective of age or location of the vessel."

80. The circular issued by the Marine Department (MMD) on 28.08.2008 deals with the modified procedure for registration of a vessel under the Act. Para 5 of the said circular deals with permanent/ provisional registry. Para 5 reads as under:-

"Permanent/ Provisional Registry:

- ◆ Application for Registry as per Checklist No. 1 (Available on MMD website) alongwith an online application in DGS and MMD site.
- ◆ Alternatively a provisional Certificate of Registry can be issued to the vessel for six months, if the vessel is abroad or if the documents are not complete as per the requirements.
- ◆ For provisional Certificate of Registry, the documents required are i) An application, ii) Original Carving & Marking duly verified by the Surveyor, iii) Certificate of Survey, iv) Original Board Resolution for a company or signed by all the partners for Partnership Firm, v) Original Declaration of Ownership duly signed before Principal Officer, vi) Original Bill of Sale for a second hand vessel or Original Builder's certificate for a new ship.

❖ When the Vessel is abroad and a Provisional certificate of Registry (PCOR) is to be issued for taking delivery, the owner has to apply for a blank Provisional Certificate of Registry (online & hard copy - Fees Rs. 100/-. A separate application to be made to instruct the class for issuance of PCOR giving date and place of delivery and a copy of Memorandum of agreement."

On a perusal of the above guidelines/ instructions, it is clear that PCOR is issued for a ship fully built. Unless, a ship is fully built, it may not be possible to produce original Builder's Certificate, because Section 30 of the Act requires that Builder's Certificate must contain particulars of the ship like proper denomination, tonnage etc.

81. Sub-section (2) of Section 40 provides that a provisional certificate obtained under sub-section (1) of Section 40 shall have the effect of a certificate of registry until the expiration of six months from its date or until the arrival of the ship at a port where there is a registrar whichever first happens. Section 40(2) of the Act thus provides for Provisional registration of the ship which shall have the effect of final registration of the ship until the expiration of six months or until the arrival of the Ship at the port where there is a registrar, whichever happens first. Therefore, it becomes very important to ensure that all the requisites for obtaining a permanent registration under the Act are mandatorily satisfied in case of provisional registration as well. It is unconceivable how a ship can be provisionally registered, conferring status of a permanently registered ship, even though for a limited period of time, without ensuring that the owner of the ship is an Indian and the ship is fully built and ready for delivery so as to sail from foreign port to Indian port. In terms of sub-section (2) of Section 40 of the Provisional certificate of registry has the effect of Certificate of registry, the requisites for permanent registration of a ship must be fulfilled for provisional registration also.

82. The sole purpose of getting a provisional registration for a ship built abroad, is to enable it to travel to port of registry in India and obtain permanent registration in India after completion of other statutory formalities. Suppose, if the ship is owned by a foreign national and the ship is not fully built to navigate and sail to Indian port through High Seas, and still a PCOR is granted under the Act, the ship would not be able to voyage to Indian port of registry and acquire all the necessary certificates for obtaining a permanent registration within the requisite period of six months. In such a case, the Provisional certificate of registry shall cease to have effect. If PCOR is to be granted even to a ship not fully built, then the mandatory prescription of six months period will be meaningless.

83. If PCOR is granted to a partially built ship or incomplete ship, consequences will be serious. In such a state of affairs, the ship will enjoy the status of an Indian Ship with all the privileges, like claiming preference for contracts/tenders etc. That apart, for all the mishaps either on the high seas or in ports concerning the said ship, Indian Government will be responsible. In no case, the legislature could have

intended to lay down such a law as envisaged in the above proposition. While enacting Section 40, clearly the intent of the legislature was to enable an Indian Ship to reach safely at Indian port and thereafter obtain a permanent certificate of registration by complying with other statutory requirement as prescribed under the Act, within six months.

84. The above view i.e. for obtaining PCOR the ship must be fully built, is also fortified by the provisions made in the Rules with respect to details to be furnished for PCOR. Form 14 contained in Schedule I of 1960 Rules which deals with Provisional certificate of Indian registry, reads as under:-

	PROVISIONAL CERTIFICATE OF INDIAN REGISTRY (Merchant Shipping Act, 1958 , Section 40 (1))		
	Expiry on or before the <input type="text"/> <input type="text"/> day of <input type="text"/> <input type="text"/> <input type="text"/> 19 <input type="text"/> ..(see footnote)		
Issued by the Government of India			

Name of ship (a)	Where and when Built	Steam or Motor Ship, how propelled,

Number of Decks		Framework and description of ship	
Number of Masts	Number of Bulkheads	
Rigged	
Stem		
Stern		Number of water ballast tanks and Their capacity in tons.	
Build			

MEASUREMENTS	FEET	INCHES	METRES
Length from the fore part of stem to the aft side of the head of the stern post			
Main breadth to outside of planting			
Depth in hold from tonnage deck to ceiling amidships			
Length of engine room			

Number of engines..... Combined Horse Power..... Name and address of engine maker.....	
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PARTICULARS OF TONNAGE

Gross Tonnage	No. of Tons	Cubic Metres	Deductions Allowed	No. of Tons

Under tonnage deck space or spaces between decks				
Turret or trunk				
Forecastle				
Bridge space				
Poop or break				
Side houses				
Deck houses				
Chart Houses				
Spaces for machinery and light and air				
Excess of hatchways				
Gross tonnage				
Deductions, as per contra Register				
tonnage				
			On account of space required for propelling power	
			Other deductions	
			Total	

NOTE 1: The tonnage of the engine room spaces below the upper deck is.....Tons and the tonnage of the total spaces framed in above the upper deck for propelling machinery and for light and air is.....tons.
NOTE 2: The undermentioned spaces above the upper deck are not included in the cubical contents forming the ship's register tonnage-
NOTE3: The location and tonnage of the boatswains store rooms are as follows.....

I, undersigned.....Indian Council at the Port of.....hereby certify:-
1. That the ship, the description of which is prefixed to this my Provisional Certificate, has been duly surveyed, and that the above description is true(b)
2. That.....of.....is Master of the said Ship.
3. That the person or persons whose names are hereunder written purchased aton theday of 19.....
or
3. That the ship was built aton account of the person or persons whose names are hereunder written.

Name, Residence and Occupation of the owner	Number of Tenth Shares

	Dated at.....the.....day of.....one thousand nine hundred andIndian Consul.
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<p>NOTE.....This Provisional Certificate of Registry, issued under the provisions of Section 40(1) of the Merchant Shipping Act, 1958, continues in force only until the.....day of.....19.....or until the Ship completes her voyage fromTo some port where there is a Registrar of Indian Ships, whichever first happens.</p>

(a) The name of the Ship to be inserted should be the existing foreign name unless a change of name has been authorized by the Director General of Shipping. (b) If this ship has not been surveyed for the purpose, the Consul must insert the description as fully and accurately as he can, stating how he has procured it, *Strike out inapplicable works. Here insert the date six months from the date of issue of this certificate."

The above requisites mentioned in Form No.14, like measurements, gross tonnage, spaces etc. could be given only if the ship is fully built.

85. After applying for registration, Section 27(1) of the M.S. Act and Rule 5 of the Merchant Shipping (Registration of Indian Ships) Rules, 1960, requires the owner of the Indian ship to cause such ship to be surveyed by a surveyor and the tonnage of the ship ascertained in the prescribed manner. Form No.17 deals with certificate of survey. The details as stated in Form No.17 and the particulars of tonnage etc. coupled with other particulars to be supplied by the builders, owners or engineers also show that before applying for registration, the ship must be fully built. If we compare the requisites mentioned in Form 1 which deals with "Certificate of Indian registry" (In terms of Section 34 of the Act) with the requisites mentioned in Form No.14 (PCOR), we find that the requisites for both PCOR and final registry of the ship are almost the same and that the ship is mandatorily required to be fully built.

86. I am not impressed with the contention that Section 40 is a stand-alone provision. Title/ownership is very vital for Registration of Indian Ships. As discussed earlier, 'ownership' is central to the scheme for registration under the M.S. Act. For registration of a vessel the ownership is the first thing to be determined. In case of a second hand acquisition of a vessel by the intended Indian owner for registration in India (gaining Indian Flag), an 'Instrument of sale' of the vessel (as per Section 30 of Act) executed by the seller in favour of the Indian buyer and acceptance of the same as per applicable Rules of the losing Flag, is required. As per Rule 12, the authorised officer on production of satisfactory proof of ownership grant the provisional certificate of Indian registry, which means that the ownership of the ship is to be satisfactorily established. Therefore, in order to apply for PCOR, as per the scheme of the Act, there is no concept of prospective ownership. Equally, for obtaining PCOR, there is no question of 'partially built' or 'almost built' ship. In my view, the statutory mandates for permanent registry, under Section 34 of the Act are to be

satisfied even for obtaining the provisional certificate of registry under Section 40. The language of Section 40 makes it clear that the Provisional certificate of registry issued "shall have the effect of a certificate of registry until the expiration of six months from its date....." Since the PCOR shall have the same effect as that of certificate of registry issued under Section 34 of the Act, in my view, the essentials that are required for permanent registration (in case of a new ship) like (i) application for registry; (ii) builder's certificate; and (iii) survey and measurement and all other requirements as stipulated under Sections 23 to 32 are to be strictly complied with. I say so even more firmly, in the light of important link established between the ship and the flag state, by virtue of registration.

87. Let us take a hypothetical situation to analyse the effect of granting a PCOR to a partially built ship or to a ship whose ownership is either disputed or not clearly established by a registered title deed. After a ship obtains a PCOR, the ship becomes entitled to all the benefits of being an Indian Ship. The Indian Government gives preference to Indian Ships in forming contracts, either for moving cargo on domestic routes, or for carrying out other marine-related activities in its territorial waters, contiguous zone, or Exclusive Economic Zone (EEZ). While inviting such tenders, preference is given to Indian Ships. If the ship is not completely built, then execution of the tender becomes difficult. In grant of PCOR, the legislature could not have intended such consequences.

88. The provisions relating to registration and safety of the ships goes to the very heart of the statute and failure on part of the authorities to strictly comply with the same may lead to disastrous consequences, gravely affecting national interest. Sub-section (2) of Section 40 of the Act lays down one such mandate which needs to be strictly complied with. If we consider Section 40 and sub-section (2) of Section 40, objectively, six months" time prescribed as a validity period for PCOR, is only to ensure that a ship in abroad, becoming Indian ship is able to travel and get itself permanently registered at the port of registry in India. Six months" time is accepted as a reasonable period for bringing the ship to the port of registry in India and complete other formalities of obtaining various compliance certificates requisite for final registration. This is made explicit by the second part of sub-section (2) of Section 40 which provides, ".....or until the arrival of the ship at a port where there is a registrar whichever first happens, and on either of those events happening shall cease to have effect". If we consider Section 40 and sub-section (2) of Section 40, the time of six months is stipulated only to enable the ships in abroad becoming Indian ships to travel on the high seas with the Indian registration/Indian flag unto complete statutory certificates requisite for final registration are obtained, though in that course, the vessel may voyage to ports of other countries.

89. As per sub-section (2) of Section 40, the provisional certificate issued under Section 40 shall have the effect of a final certificate of registry and it shall cease to have effect on expiration of six months from its date or on the arrival of the ship at

the port. The clause says nothing more; there is no provision for renewal or extension of the provisional certificate contained either in Section 40 itself or in any other provision of the Act. The necessary corollary is that the legislature intended to limit the validity of the provisional certificate of registration, obtained under Section 40 to six months or till the time the ship arrives at the port. It seems more logical in the light of purpose of issuing a provisional certificate of registration, which is to enable an Indian national to bring the ship built abroad to the Indian port for completion of other requisites of obtaining statutory certificates for final registration.

90. The intent of the legislature is clear and unambiguous in limiting the validity of provisional certificate of registration and not providing any provision for renewal of the certificate. The only remedy which can probably be resorted to in case of expiration of provisional certificate is applying for a fresh provisional certificate of registry which may be considered by the authorities independently on its own merits. If the phrase, "shall cease to have effect" in sub-section (2) of Section 40 is not interpreted in its letter and spirit and if the provisional certificate is renewed again and again, the provisional certificate of registration will continue to have the effect of final certificate of registration for an indefinite period. This will frustrate the very purpose of granting a PCOR. I, thus hold that the Provisional certificate of registry cannot be renewed nor its validity can be extended beyond six months.

91. I sum up my conclusions as under:-

◆ For grant of PCOR to a ship becoming Indian ship abroad, all the requisite conditions for obtaining final registration must be satisfied viz.:(i) satisfaction of ownership of ship in terms of Section 21 of the M.S. Act; (ii) the ship must be fully built and sea-going so that it can reach the Indian port for obtaining certificate of final registry and (iii) satisfaction of other requirements contained in Sections 23 to 32 of the M.S. Act.

◆ As per sub-section (2) of Section 40 of the M.S. Act, the Provisional certificate of registry will cease to have effect after six months of the date of issuance or until the arrival of the ship at a port where there is a registrar whichever first happens. The Provisional certificate of registry cannot be renewed nor its validity can be extended beyond six months.