courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

Forward Seamen''s Union of India (UOI) Vs Union of India (UOI) and Others

Court: Calcutta High Court

Date of Decision: April 9, 2002

Acts Referred: Constitution of India, 1950 â€" Article 14, 19, 21, 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 â€" Section 17
Merchant Shipping Act, 1958 â€" Section 100, 12, 456, 95, 96

Citation: (2003) 2 CALLT 395

Hon'ble Judges: Asok Kumar Ganguly, J

Bench: Single Bench

Advocate: Bikash Ranjan Bhattacharjee and U. Roy, S. Venkateshwaran, P.S. Sengupta and O.P. Khaitan, for the Appellant; D. Ghosh, A.S.G., P.K. Ghosh and B. Samaddar, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Ganguly, J.
This writ petition has been filed by the Forward Seamen''s Union of India, a registered Trade Union, seeking to

represent various categories of seamen engaged in Indian and Foreign vessels and also home trade vessels. The subject matter of challenge in this

writ petition is primarily in respect of two notifications being annexures P/2 and P/3 issued by the Government of India, Ministry of Surface

Transport, Director General of Shipping. The actual notification is dated 27.03.2001 being the order of Director General of Shipping, the second

respondent and the communication dated 30.03.2001 is a covering letter. Annexure P/3 is a communication dated 11.04.2001 issued on behalf of

the Director, Government of India, Ministry of Surface Transport, Seamen''s Employment Branch, addressed to the Shipping Corporation of India,

the sixth respondent. In the said communication, the Director General of Shipping informed the sixth respondent that in terms of the order of the

second respondent dated 27.03.2001, the Director is not in a position to accept the indent dated 11.04.2001 for selection of two ratings on

12.04.2001. A copy of the said communication has also been forwarded to the General Secretary of the petitioner-union. In fact, annexure P/3 is

consequential in view of annexure P/2.

2. In the writ petition, an attempt has been made to give the background and the mode and manner in which the seamen were engaged and

employed prior to the promulgation of the Merchant Shipping Act 1958 (hereinafter called as "MSA"). It has been stated that the procedure

relating to the employment of seamen prevailing prior to MSA gave ample opportunity for exploitation of the seamen by the brokers and the so-

called trade union leaders. It has also been urged that the Government of India accepted the recommendation of the Second Maritime Session of

the International Labour Conference of 1920 about the placement of Seamen and the Indian Merchant Shipping Act, 1923 (hereinafter called as

''IMSA'') was introduced. It has been further contended that pursuant to the recommendation of the said conference all licences of the brokers

were withdrawn. Previously the brokers used to control the recruitment process of maritime labour. Sometime in the month of October 1953, the

Asian Maritime Conference was held in Ceylon and resolutions taken at the said conference have been also adverted to in the writ petition;

Therefore, in the year 1954, the Government of India established the Seamen''s Employment Office at Mumbai and in the year 1955, the

Seamen''s Employment office was established at Calcutta. Then came MSA in the year 1958.

3. It has been argued by the learned counsel of the petitioner that u/s 12 of MSA, the Central Government has been empowered to establish at

every Port in India, in which it thinks necessary so to do, a Seamen''s Employment office and in which, Director, Deputy Director and Assistant

Director may be appointed. The learned counsel further submits that in the context of such an office, the provisions of Sections 95 and 96 of MSA,

have considerable importance. The attention of the Court has also been drawn to the notification dated 10.09.1986 issued by the first respondent.

The said notification was issued in exercise of the power under Sub-section (3) of Section 95 of MSA about the functioning of the Seamen''s

Employment offices in Mumbai, Chennai, and Calcutta. It is the case of the petitioner that a result of the said notification, there has been

engagement and supply of seamen without any complaint or corrupt practices.

4. The impugned order in annexure 2, according to the learned counsel of the petitioner, will give rise of corruption and disrupt the present trend of

recruitment. The said order has been challenged on various grounds.

5. Before adverting to those grounds, one thing may be made clear that the vires of Section 456 of MSA under which the impugned order was

passed has not been challenged.

6. Since the argument has been advanced by counsel for all the parties on the interpretation of Section 456 of MSA, in the fitness of things, it

would be proper to set out the aid section:

456. Power to exempt.-- (I) Notwithstanding anything contained in this act, the Central Government may, by order in writing and upon such

conditions, if any, as it may think fit to impose, exempt any ship or sailing vessel or any master, tindal or seaman from any specified requirement

contained in or prescribed in pursuance of this Act or dispense with the observance of any such requirement in the case of any ship or sailing vessel

or any master, tindal or seaman, if it is satisfied that requirement has been substantially complied with or that compliance with the requirement is or

ought to be dispensed with in the circumstances of the case:

(2) Where an exemption is granted under Sub-section (1) subject to any conditions, a breach of any of those conditions shall, without prejudice to

any other remedy, be deemed to be an offence under this sub-section.

7. The main argument of the learned counsel for the petitioner is that Section 456 of MSA, must be read in such a manner, as not to render any

other provisions of MSA a mere surplusage or redundance. The learned counsel wanted to develop this argument by referring to Sections 95 and

96 and explaining before this Court the welfare nature of those provisions and the importance of keeping those provisions functioning as they are.

8. The learned counsel for the petitioner submitted that Section 95 provides for the business of the Seamen Employment Officers (hereinafter

referred to as "SEOS") and under the said section it is provided that the SEOS should regulate and control the supply of such categories of

Seamen and for such class of ships as may be prescribed. The SEOS should also regulate and control the recruitment of persons for employment

as Seamen and the retirement and promotions of such Seamen and also the change of their categories. Under MSA the SEOS are to maintain the

register of Seamen. The learned counsel for the petitioner further submitted that under Sub-section (2) of Section 95, it is made very clear that in

any Port in which there is an existing SEO no person shall receive or accept to be entered on board any ship any seamen of the categories

mentioned in Sub-section (1) unless such seamen have been supplied by the existing SEO. Under subsection (3) of Section 95, the Central

Government may make rules for the purpose of enabling the SEOS to effectively exercise their powers under MSA.

9. Section 96 of MSA provides that a person shall not engage or supply a seaman to be entered on board any ship in India, unless that person is

the owner/master or mate of the ship or the agent of the owner or is a bona fide servant and in the constant employment of the owner. Sub-section

(3) of Section 96 is relevant for this purpose. Under the said sub-section, it is made very clear that a person shall not receive or accept to be

entered on board any ship any seamen if that person knows that the seaman has been engaged or supplied in contravention of either Section 96 or

Section 95.

10. In other words, the learned counsel for the petitioner urged that Section 95 provides for the manner of engagement of seamen and Section 96

provides for the prohibition and makes the arrangements under sections 95 and 96 mandatory. The learned counsel for the petitioner further

submitted that such wholesome provisions introduced for the purpose of fair engagement of the Seamen cannot be made nugatory by issuing an

order in exercise of power u/s 456 of the Act. The learned counsel for the petitioner further submitted that the provisions of MSA, 1958 should be

harmoniously construed and it must be so construed as to keep alive the provisions of Sections 95 and 96 of MSA. The learned counsel for the

petitioner also submitted that if the impugned order is complied with, the same will bring back the days of recruitment prevailing u/s 24 of IMSA.

The said method of recruitment u/s 24 of IMSA will breed corruption and nepotism in a large scale. The learned counsel also submitted that the

Seamen Employment Scheme through SEOS was introduced as a wholesome practice on the basis of the recommendation of the Ministry of

Transport, Government of India. Adverting to the said scheme, the learned counsel submitted that the First Asian Maritime Conference held under

the auspices of the International Labour Organisation called upon all the Asian countries to take effective steps for eradication of the then mal-

practice in the method of recruitment and quoting the said recommendation of the Government of India, the learned counsel submitted that the

setting up of SEOS was a step in that direction.

11. In the background such wholesome practice, welfare legislation was introduced through Sections 95 and 96 of MSA. Therefore, the power of

exemption must be reasonably and harmoniously construed keeping in view, the purpose for which those provisions were enacted.

12. The learned counsel also urged that the Central Government can exercise the power of exemption only when it is approached by either the

Seamen or the owner of the ship in order to tide over some difficult situation. Here admittedly no one approached for exemption. So the said

power cannot be exercised as to render nugatory the provisions under Sections 12, 95 and 96 of MSA.

13. In support of his submissions, the learned counsel for the petitioner placed his reliance on certain judgments which this Court now proposes to

consider. Reliance was first placed on the decision of the Hon''ble Supreme Court in the case of Commissioner of Income Tax, Delhi Vs. S. Teja

Singh, . The learned counsel for the petitioner placed reliance on para 8 of the said judgment. In that case, the Court was constructing a penal

provision in a fiscal statute. While construing the penal provisions of the statute, the learned Judges held in para 9 of the said judgment that

construction should be made without straining or overstretching the words of the statute where they are clear that the penalty should be imposed.

In other words, in para 9, the learned Judges held that a construction which leads to a result which fails to achieve the object of the statute should

be avoided. This Court cannot appreciate the applicability of those principles in the facts of the present case. The next decision cited was in the

case of Mohmedalli and Others Vs. Union of India (UOI) and Another, . In that case, u/s 17 of the Employees'' Provident Fund Act, 1952, the

appropriate Government was authorised to exempt certain establishments from the operation of the provisions of the scheme framed under the

Act. Explaining the provisions of the Act, the learned Judges held in paras 6 and 7 of the said judgment that the underlying idea behind the Act is to

bring all kinds of employees within its fold as and when the Central Government might think fit after reviewing the circumstances of each class of

establishment.

14. Explaining the exemption provisions u/s 17 of the Act, the learned Judges in para 8 observed that the exemptions are to be granted by the

appropriate Government only when the exempted establishment, in its opinion, has provisions for Provident Fund which are at least equal if not

more favourable to its employees than the scheme in the other establishments. The learned Judges held that the provisions of exemption is with a

view to avoiding duplication and permitting the employees the benefit of the pre-existing scheme which is wording satisfactorily.

15. The learned Judges held that Section 17 of the Act saves such beneficial pre-existing schemes of provident fund pertaining to appropriate

establishments.

16. But in the instant case, the purpose of exemption provision is totally different. Therefore, the principles on which the exemption provisions of

the Employees'' Provident Fund Act were construed in Mohamedalli (supra) are not applicable here.

17. The learned counsel also relied on a decision in the case of Nelson Motis Vs. Union of India and another, . The learned counsel relied on the

principles enumerated in para 8. The said decision lays down where provision of the section is plain and unambiguous and admits of only one

meaning, no question of construction arises for the reason that the act speaks for itself. Therefore, the learned counsel urged that in such a situation

it is not permissible to read down the provisions. The learned counsel also relied on the decision in the case of Shyam Kishore and others Vs.

Municipal Corporation of Delhi and another, . In that case, provisions of Section 170(b) Delhi Municipal Corporation Act came up for

consideration. The said section was one providing for appeal, The learned Judges of the Hon''ble Supreme Court construing the purpose of the

said section in the context of the property tax came to the conclusion that the said provision should not be so rigidly construed as to disable the

appellant from filing the appeal. The learned Judges held that filing of an appeal is not to be barred because of non-deposit of penalty. This,

according to the learned Judges, should be the interpretation. This Court, however, does not find any relevance of the rules of statutory

interpretation decided in the case of Shyam Kishore or in the case of Nelson Motis to the present case.

18. The learned counsel appearing for the Shipping Corporation of India, in support of his case, has mainly relied on the impugned order passed

by the Director General of Shipping, the second respondent. The learned counsel submitted that in the said impugned order, the first paragraph

refers to an earlier order dated 12.11.1992 issued by the then Director General of Shipping. Under the said order dated 12.11.1992, fourteen

shipping companies were exempted from certain provisions of the Merchant Shipping (Seamen''s Employment Offices) Rules, 1986. The said

exemption was also issued in exercise of the power u/s 456 of MSA. Therefore, the grant of exemption under the impugned order is not a new

feature. This was being done, argued the learned counsel, in a phased manner. The learned counsel further submits that the exercise of power by

the second respondent in passing the impugned order is based on the recommendation of Praveen Singh Committee Report. The attention of this

Court was drawn to the fact that the said committee was constituted to examine various aspects relating to the issue of constant discharge

certificates (hereinafter, called CDCs) and other related matters under the Chairmanship of Sri Praveen Singh, who was a retired Director General

of Shipping. One of the members of the said Committee was Sri Sadhan Kanjilal, who is the General Secretary of the petitioner-Union. This Court

also finds that Sri Kanjilal was a signatory to the said report. The learned counsel has also drawn the attention of this Court to the summary of the

recommendations of the said report and one of the said recommendations is that the functions of SEOs should be reduced to the minimum and one

of the recommendations is that relieving the SEOs of its functions laid down in MSA should be made by amending the MSA if necessary. The

summary of the recommendations about SEO against Item No. 12 which has been disclosed by the petitioner in the Affidavit-in-Reply is set out

below:

In general, for opening a Seamen''s Employment office (SEO), there has to be not only a demand from employers to source their man-power

from the concerned port but there should also be adequate work load and financial justification for the same.

The trend of SEO functions being passed on to the employers and the unions under the Retainer Scheme at Bombay and Calcutta should continue

so that the functions of the SEOs are reduced to the minimum.

The SEO should handle the general roster to meet the requirements of employers who do not have a Retainer Scheme/Company Roster and to

take care of those sectors which do not have a Retainer Scheme.

The legal tenability of relieving the SEOs of the functions laid down in the Merchant Shipping Act, 1958 should be established by amending the

MS Act, if necessary.

The Committee is not able to recommend the continuance of the SEO at Madras as there is no demand for the same from the ship-owners--both

Indian and foreign--or from the recognised unions of seafarers. The current work-load also does not justify a SEO there.

For similar reasons, the Committee is not able to recommend the opening of SEOs at Goa or at other ports.

19. It has been urged that since the General Secretary of the petitioner-Union is a signatory to the said proposal for reducing the functions of the

SEOs to the minimum and the impugned order has been passed to ensure that there is no reason why the petitioner should feel aggrieved. The

learned counsel also submitted that the impugned order, apart from being based on the recommendations of the said Committee, has also

considered the guidelines issued by the Ministry of Surface Transport dated 07.02.1997 for recognition of the Training Institutes in the private

sector for ratings and selection of the candidates for pre-sea training in general. The policy of the Government is to open up Maritime Training

Sector and encourage the setting up of the Training Institute in the private sector. After such institutes are set up, those who pass out from these

institutes and fulfill the eligibility criteria must get some employment opportunity. Under the impugned order, the shipping companies were given the

freedom to employ those qualified seamen without the need to go through any bureaucratic process under the SEO. Therefore, as a matter of

policy, it was decided that the Government should cease to control the process of employment of the Seamen by Indian Shipping Companies.

Accordingly, a meeting was held on 07.08.1997 under the Chairmanship of the Director General of Shipping where it was decided to discontinue

the system of registration of the seamen at the SEO and similarly, instructions were issued to all the 3 SEOs in the country. The learned counsel

also submitted that the impugned order was passed considering the necessity of giving the Indian Shipping Companies a freedom to select any

qualified Indian CDC holder and, thus, provide the Indian Shipping Companies a level playing field to compete with the Foreign Companies who

are free to recruit such qualified Indian CDC holders. Therefore, instructions were issued by the Director General of Shipping in the year 1997 to

the leading Indian Shipping Companies to set up their Company Roster by selection of qualified CDC holders from the open market by using their

own criteria for selection without any Government control.

20. But it was found that the position in Mumbai, Kolkata and Chennai in respect of Company Roster and the seamen in General Roster is not

uniform. Therefore, a further need was felt to introduce uniformity in approach and to ensure national integration which must be consistent with the

policy of liberalisation.

21. Considering the aforesaid factors the impugned order was issued by the second respondent in continuation of the process of liberalisation set in

motion in the year 1992 and followed In the year 1997. The requisite satisfaction of the second respondent in passing the impugned order is based

on these objective facts that the requirement of Sections 95 and 96 of MSA, mainly requirement of registration and employment of the seamen

through SEOs should be dispensed with. Under these circumstances the exercise of power was made u/s 456 of MSA by the delegated authority.

As such, the seamen were exempted from going through the SEOs for the purpose of registration and further guidelines were issued for the

functioning of the SEOs. As a result of the guidelines given under the impugned order the following position, which is relevant in this case, emerges:

(a) There shall be no more fresh registration of Seamen at any SEO at Mumbai, Kolkata and Chennai.

(b) Consequently, in furtherance of the order issued by the Director General of Shipping in November 1992 and relying on the order 1997 all

Seamen who are registered with any of the SEOs at Mumbai, Kolkata and Chennai, who are either in General Roster or Company Roster are

exempted with immediate effect from the provisions of Rules 27 to 34 and Rules 36, 37, 39, 40 and 45 of the Merchant Shipping (Seamen

Employment Offices) Rules, 1986.

(c) However, every shipping company is now free to open its own Company Roster as may be found suitable,

(d) Any Indian Shipping Company is free to employ any qualified sea fearer from open market.

(e) In making such recruitment, the Indian Companies should keep in mind the welfare measures, viz. recruitment of dependents of Seamen, who

have died or have become physically incapacitated while in service.

22. The learned counsel for the Union of India also supported the impugned order on the ground of it being a policy decision. The learned counsel

further submitted that if any policy decision is taken which does not shock the conscience of the Court and is not "per se" unreasonable, the

Court"s power of interference in respect of such a decision is limited.

23. The learned counsel also questioned the locus standi of the petitioner Union to maintain this writ petition, inter alia, on the ground that no

seamen has come forward to say that he is personally aggrieved as a result of the policy decision. The petitioner which is a registered Trade Union

cannot be a person aggrieved as a result of the impugned decision. Therefore, the writ petition should fail on this preliminary ground itself. The

learned counsel further submitted that the allegation that as a result of the impugned order, corruption will be introduced in the matter of recruitment

of Seamen is wholly without any basis and the writ Court should not proceed on the basis of such unfounded allegation.

24. The learned counsel for the Union of India further urged that the instant writ petition has not been filed by way of a Public Interest Litigation,

nor is it the case that by reason of poverty or ignorance the seamen cannot come before this Court. Therefore, since the seamen, the persons who

can be personally aggrieved, if at all, have not come before this Court, this Court should not entertain this writ petition.

25. In support of such contentions, the learned counsel relied on the judgment of the Hon"ble Supreme Court of India in the case of Jasbhai

Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, . The learned counsel relied on para 12 of the said judgment contend that

according to the decisions of English Court, in order to invoke Certiorari jurisdiction, the petitioner should be a "person aggrieved". If the petitioner

does not fulfill that character and is a stranger, the Court will, in its discretion, deny him the extra-ordinary remedy, save in very special

circumstances. The learned Judges explained the concept "person aggrieved" by saying that it is an elusive concept and cannot be confined within a

rigid formula. The learned Judges made it clear that the scope and meaning of the expression "person aggrieved" depends on diverse and variable

factors, such as the content and intent of the statute whose contravention is alleged, the specific circumstances of the case, the nature and extent of

the petitioner"s interest and the nature and extent of injury and prejudice suffered by the petitioner. The learned Judges also observed that the

English Court sometimes gave a restricted and sometimes a wide construction of the expression "person aggrieved".

26. The learned counsel also relied on para 33 of the said judgment, where it has been laid down that tn order to have the locus standi to Invoke

the writ jurisdiction, an applicant ordinarily should be one who has a personal or individual right at stake in the application. Though In some writs,

like Writ of Habeas Corpus, Quo Warranto, this principle does not apply. The learned counsel submitted that in the instant case, the petitioners

have prayed for Mandamus, where the locus standi is required to be shown. The learned counsel also relied on para 48 of the said judgment,

where it has been said that the availability of remedy of under Article 226 in general and the issue of Certiorari in particular is discretionary. In that

paragraph the learned Judges also referred to the practice of filing of thousands of writ petitions in the High Court and, in such circumstances, a

strict ascertainment of the standing of the petitioner should be insisted upon in order to weed out a large number of frivolous writ petitions at the

threshold.

27. The learned counsel further relied on the decision of the Hon''ble Supreme Court in the case of Chiranjit Lal Chowdhuri Vs. The Union of

India (UOI) and Others, and urged the Court to take a strict view of locus standi in writ petitions.

28. The learned counsel also relied on the judgment of the Calcutta High Court in the case of Director General Ordnance Factories Employees''

Association Vs. Union of India (UOI) and Director General Ordnance Factories, . In that case, it has been held by the learned single Judge that

when an association of Government employees has been recognised by the Government, it gives the Employees'' Association a status in its

relationship and dealings with the employer. But it has nothing to do with the representation of its members in a proceeding before a Court below.

29. This question of locus standt may be dealt with first since it goes to the root of the matter.

30. This Court is of the opinion that subsequently both the Supreme Court and the English Court have taken a much broader view on the question

of locus standi especially in field of public law and writ petitions.

31. In the case of Fertilizer Corporation of India Kamagar Union v. Union of India & Ors., reported in AIR 1981 SC 344, a Constitution Bench

of the Supreme Court examined the question whether the workers of the Fertilizer Corporation of India have the locus standi to question the sale

of redundant plant and equipments of the factory by a Government company.

32. Examining the said question, the learned Judge held that the Workers'' Union has such a right. In that judgment, Justice Krishna lyer dealt with

the question of access to justice under Article 226 and that discussion contains the Court''s view on the question of locus standi. Chief Justice,

Y.V. Chandrachud in para 23 observed on merit, that the sale of machinery does not infringe any of the fundamental rights of the workers'' Union.

But, His Lordship observed in the same para that in an appropriate case, it may become necessary, in the changing awareness of legal rights and

the social obligation, to take a broader view of the question of locus standi for institution of a proceeding whether it be under Article 226 or Article

32 (para 23 page 350 of the Report).

33. Justice Krishna Iyer dealt with the question of locus standi in some details. In para 35 of the judgment, Justice Iyer observed that the concept

of locus standi must be liberalised to meet the challenge of time. Again in para 39 of the said Judgment, the learned Judge referring to Article 226

observed that in the said Article, there is no expression like ''person aggrieved''. The learned Judge, after considering the legal development in

different jurisdictions observed in para 48 of the judgment that if a citizen belongs to an organisation which has special interest in the subject matter

and if he has some concern deeper than that of a busy body, he cannot be told off at the gates. After saying so, the learned Judge observed that

the petition at the instance of the workers'' union is clearly permissible under Article 226. The aforesaid view of Justice Krishna Iyer is the view of

the Constitution Bench of the Supreme Court.

34. In another judgment, also Justice Krishna Iyer also applied the same principle in the case of Akhil Bharatiya Soshit Karamchari Sangh

(Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, . The question was

specifically raised whether a writ under Article 32 can be filed by a recognised association. In para 63 page 317 of the said judgment, this question

has been answered by the Apex Court by saying whether the petitioners belong to a recognised union or not, the fact remains that a large body of

persons with common grievance exists and they approached the Apex Court under Article 32. The Apex Court observed that the current

jurisprudential trend is a broad based one and based on people oriented approach ensuring access to Justice through class actions. The Apex

Court further observed that the petitioners coming in a large number seeking remedies from Courts through collective proceedings instead of

multiplying proceeding is ''an affirmation of participative justice in our democracy''. So the narrow concept of cause of action and ''person

aggrieved'' is ''becoming obsolescent in some jurisdiction'', (para 63, page 317 of the report).

35. In that case, the union was an unrecognised organisation. Here the petitioner union is a registered and recognised union. Therefore, the locus

standi of the petitioner union, in the instant case, stands on a better footing. Apart from that, the instant proceeding is one under Article 226, which

has a wider canvas than a proceeding under Article 32, which is merely confined to question of violations of fundamental right. But, it is well known

that the proceeding under Article 226 in its sweep would include complains about infringement of fundamental right and also about infringement of

any other legal or statutory rights as well.

36. The concept of locus standi has also undergone a considerable expansion by the Courts in England and this well appear from the judgment of

the House of Lords in the case of England Revenue Commissioner v. National Federation of Self-employed & Small Business Limited, reported in

1982 AC 617. In that case, the basic facts were that the Revenue Authorities granted amnesty in favour of some 6000 casual workers in Fleet

Street, who worked for newspapers on specific occasions. The Federation of Small Businessmen objected that in dealing with those casual

workers, the revenue authorities treated them favrouably and thus sustaining a loss of revenue. As such, the Federation prayed for a Mandamus

directing the Revenue Authorities to assess and collect income tax from the casual workers on a proper basis.

37. On this aspect, the question of locus standi of the Federation came up for consideration before the Court.

38. Lord Diplock in His Lordship''s speech relied on Lord Denning''s formulation of principles of locus standi in Regina v. Greater London Council

Ex parte Black Burn, reported in 1976(1) WR 550. At page 559 of the report, Lord Denning held as follows:

I regard it as a matter of high constitutional principle that if there is good ground for supposing that a Government department or a public authority

is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty''s subjects, then any one of those

offended or injured can draw it to the attention of the Courts of law and seek to have the law enforced, and the Courts in their discretion can grant

whatever remedy is appropriate.

39. Lord Diplock expressly approved that passage in his speech at page 641 of the report and at page 644 of the said report stated his own

formulation as follows;

It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the Federation, or even a single public-spirited

taxpayer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the Court to vindicate the rule of

law and get the unlawful conduct stopped.

40. In fact, Justice Krishna Iyer in the case of Fertilizer Corporation (supra) expressed the same view about a year ago. His Lordship stated that if

the person belongs to an organisation which has special interest in the subject matter and if he has some concern deeper than that of a busy body,

he cannot be told off at the gates.

41. In view of those authoritative pronouncements, this Court is of the opinion that the objection raised on behalf of the Union of India about the

locus standi of writ petitioner must fall. This Court finds that the petitioner-Union is not only a recognised but is a registered one and was consulted

at every stage by the Central Government and the Director General of Shipping in the matters of policy relating to the employment of the Seamen.

The Union was also one of the members of the Praveen Singh Committee and before that Committee, one Sri Sadhan Kanjilal, who is the General

Secretary of the petitioner-union represented the said Union. Therefore, the said Union certainly has an interest in the matter which is more than

that of a busy body. So this special interest of the petitioner-union clothes it with sufficient locus standi to maintain this petition. As such the

objection about locus standi, in my judgment, is not well founded and is overruled.

42. Now coming to the merits of the controversy, this Court finds that the changes introduced by the impugned order are the result of a policy

decision of the Central Government which has been considered by the second respondent, Director General of Shipping in his order. In so far as

the policy decision is concerned, it has been repeatedly held by Courts that the power of judicial interference is limited. Recently, in the case of

Balco Employees'' Union, reported in JT 2001 (10) SC 486, the learned Judges of the Apex Court after considering the case law on the point,

held in para 46 at page 488 of the report that it is neither within the domain of the Court nor a facet of judicial review to embark upon an enquiry

as to whether a particular public policy is wise or whether a better policy can be evolved. The learned Judges also held that our Courts are not

inclined to strike down a policy at the behest of the petitioner merely because it is urged that a different policy would have been fairer and wiser or

more logical. In para 51 at page 491 of the report, it is noted that policy of the Government ought not to remain"" static and changes with the

economic climate and the manner in which the Government will run the establishment may require re-consideration and the concept of public

interest may change from time to time. From the discussion in trie said judgment, it is clear that unless a policy is absolutely capricious and is ''not

being informed by any reason whatsoever'' and is ""founded on mere ''ipse dixit'' of the executive functionaries, it cannot be said to offend the

principles of Article 14"". Going by the aforesaid test, this Court cannot hold that the policy which has been introduced by the impugned order is

totally capricious or is not informed by any reason whatsoever.

43. To the same effect is the judgment of the House of Lords in the case of Council of Civil Service Union and Ors. v. Minister for Civil Service,

reported in 1984(3) All ER 935. The learned counsel for Union of India referred to the speech of Lord Diplock at page 950 and 951 of the report

where the learned Judge has laid down three grounds on the basis of which the policy decision or an executive action by the Government can be

assailed. Those grounds are illegality, irrationality and procedural impropriety. The learned Judge held that by illegality is meant a ground which

would show that the decision maker has not understood the law correctly. By irrationality, the learned Judge has meant a decision which is so

outrageous in its defiance of logic and accepted morals that any sensible person who has applied his mind to the question would not arrive at the

same decision. The third ground is procedural impropriety which should mean a decision which is marked by its failure to observe basic rules of

natural justice or procedural fairness.

44. The said formulation of Lord Diplock has also been accepted by the Supreme Court in various judgments. This Court does not find that the

impugned order in this case can be attacked on any of the grounds enumerated above. Reliance was also placed by the learned counsel on another

judgment of the Supreme Court in the case of M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, . In that case, the matter, which

came up for consideration of the Court, is the legality of the policy of the Government in regulating the liquor trade in Delhi. Upholding the policy,

Chief Justice, Anand, in para 18 of page 643 of the report, stated that unless a policy can be faulted on the ground of mala fide, unreasonableness

or arbitrariness, it cannot be attacked merely on the ground that it would hurt the business interest of any party. The learned Chief Justice relied on

the judgment in Laker Airways case, reported in 1972(2) All ER 182 and quoted the speech of Justice Lawton. Applying the principles laid down

in those cases, it is not possible for this Court to hold that the impugned order is based on a policy which on face of it is either unreasonable,

arbitrary or unfair.

45. In so far as the interpretation of Section 456 of MSA is concerned, this Court on a perusal of the said section finds that it starts with an

overriding clause. This is the first feature of section. The next thing to be noted is that the section is an enabling provisions and authorises the

Central Government to pass orders of exemption on such conditions as the Central Government "may think fit to impose". The said section has

two distinct parts. The first part deals with the power of granting general exemption in respect of any ship or sailing vessel or in respect of any

master, seamen, tindal etc. Such general exemption may be in respect of any specified requirement contained in MSA or prescribed in pursuance

of MSA which obviously means rules and regulations framed under MSA. The second part enjoins a power of dispensation with the observance of

any requirement under MSA contemplated in the first part in respect of any ship or sailing vessel or master etc. if the Central Government is

satisfied the said requirement has been substantially complied with or that compliance with the said requirement is or ought to be dispensed with in

the circumstances of the case.

46. Therefore, there is a qualitative difference between the first and the second part. The first part deals with the power of exemption to be granted

by the Central Government on such condition as the Central Government may think fit to impose. This is a rather wide power and this power has

been granted to the Central Government without stipulating any condition, leaving condition to be decided by the Central Government. But the

second part being a power of dispensation with the observance of any requirement has to be exercised on the satisfaction of the Central

Government in the circumstances of the case. Therefore, the second part contemplates cases of granting dispensation with the requirement of the

act having regard to the circumstances of the case or any change of policy of the Central Government. For the purpose of granting such

dispensation, the satisfaction of the Central Government is the sine qua non.

47. On a plain reading this appears to this Court to be the extent of powers contemplated in Section 456 of MSA, 1958.

48. So far as the proviso to Section 456 and Sub-section (2) of Section 456 are concerned, they are not attracted to the facts of this case.

49. On the question of construction of statute, the decisions which have been cited by the learned counsel for the petitioner have already been

discussed above and it shows that those decisions have no relevance to the points at issue in this case.

50. The learned counsel very much relied on the doctrine of harmonious construction and said that the provision of Section 456 must be so

construed as to keep the provisions of Sections 95 and 96 alive. But this argument has nothing to do with the principle of harmonious of

construction. In a case of conflict, either express or implied between two provisions of a section, the Court may lean in favour of a harmonious

construction to give effect to the objects of both the sections and in the process, may, if it is required in a given case, ''iron out the creases''. But

here there is no conflict, no ''head on clash'' between the sections under consideration.

51. On the other hand, the Court has to keep in mind that Section 456 is also a part of MSA. If Section 456 authorises the Central Government to

pass an order of exemption, and which it does, then in the exercise of that power it can certainly pass an order which grants exemption from the

operation of provisions of Sections 95 and 96. There is no disharmony at all in the case of such statutory dispensation. It is a common feature in

many statues. On the other hand, if that is not permitted by Court in the name of harmonious construction, Section 456 will be rendered a dead

letter. That will be doing violence with the provisions of the statute. Here the provisions of Section 456 grants a comprehensive power of

exemption and this power is extended to all the sections of MSA. In fact, the provisions of exemption u/s 456 have been designedly introduced as

a part of the legislative scheme and the same must receive the fullest application and should not be curtailed or whittled down by any interpretative

process. The exemption provisions have been introduced to accommodate any changes in policy based on national interest so as to keep pace

with emerging global trends in merchant shipping. There is nothing wrong in making the legislative scheme compatible with the national executive

policy in business and trade. As a matter of fact such a compatibility is most desirable. Therefore, exemption provisions are there to further and not

frustrate the statutory scheme under MSA.

52. In the instant, case, such power of exemption has been deliberately given to the Central Government which is the best judge to formulate the

policy and the Central Government u/s 7(2) of MSA can delegate such power in favour of the Director General of Shipping. In the instant case,

there is a valid delegation in favour of the Director General. That has not been disputed before this Court.

53. Therefore, vires of Section 456 have not been challenged. The power of delegation by the Central Government in favour of the Director

General Shipping, the second respondent, has not been challenged. In that view of the matter, the mere challenge to the impugned order on the

principle of harmonious construction is not at all tenable.

54. It is well known that when the words of the statute are plain and clear, they do not call for any interpretation on the basis of its intention. The

Supreme Court has repeatedly made it clear in so many decisions. Reference may be made in this connection to the decision of M/s. Oswal Agro

Mills Ltd. Vs. Collector of Central Excise and others etc. etc., . The most classical exposition of this principle can be found in the words of Lord

Atkin in the case of AIR 1935 47 (Privy Council) of the report, the learned Judge put it as lucidly as that by saying ""when the meaning of the word

is plain, it is not the duty of the Court to busy themselves with the supposed intentions"". Justice Subba Rao advanced the same principle by saying

when a language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises for the Act speaks for

itself in the case of State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj, .

55. Applying those principles, this Court finds that the words in Section 456 are plain and do not call for any interpretation and in the name of

harmonious construction effect of the section cannot be either diluted or undermined.

For the reasons aforesaid, the writ petition fails and is dismissed. Interim order, if any, stands vacated.

There will be, however, no order as to costs.

Later

Xerox certified copy of the judgment and order be made available to the parties expeditiously, if applied for.