

(2003) 12 CAL CK 0051

Calcutta High Court

Case No: M.A.T. No. 17 of 2003 and C.A.N. No. 98 of 2003

Union of India (UOI) and Others

APPELLANT

Vs

Forward Seamen Union and
Others

RESPONDENT

Date of Decision: Dec. 22, 2003

Acts Referred:

- Merchant Shipping Act, 1958 - Section 95, 96, 97, 97A

Citation: (2004) 3 CHN 509 : 108 CWN 235

Hon'ble Judges: Subhro Kamal Mukherjee, J; Dilip Kumar Seth, J

Bench: Division Bench

Advocate: Bimal Kumar Das and Tamali Biswas, in CAN No. 98 of 2003, for the Appellant; Upendra Roy and Ashish Kumar Ray, for the Respondent

Final Decision: Allowed

Judgement

Subhro Kamal Mukherjee, J.

This is an appeal against the judgment and order dated June 18, 2003, passed by the learned Single Judge of this Court in W.P. No. 40 of 2003.

2. This writ petition relates to engagement, recruitment or employment of 36 (thirty six) bazarmen/canteen crew on the ship M.V. Akbar. The relief that has been claimed by the petitioners has to be considered in the light of the amended provisions of Merchant Shipping Act, 1958 as amended by Merchant Shipping (Amendment) Act, 2002. The bazarmen could claim the benefit of seamen or seafarers only if they could satisfy the test of the definition given in the Explanation (b) to Section 95 of the said Act.

3. There was a long-standing dispute regarding appointment of the employees for providing canteen facilities to the passengers of the vessels. Ultimately, public interest litigation was moved before this Court and a Division Bench of this Court by order dated February 3, 1998, constituted an ad hoc committee to find out ways and

means for settlement of the dispute between the parties amicably. The ad hoc committee submitted its recommendations. The committee recommended that an authority other than the Union should do the allotment of duties to bazarmen and the Director General of Shipping, through shipping masters/appropriate authorities, should do such allotment of duties. The members recommended that two separate lists should be maintained : (i) for 69 bazarmen, who were allotted duties by the Shipping Corporation of India for the vessel MV Akbar and the second one for 79 bazarmen, who were allotted duties by FSUI for MV Nancowry and MV Harshavardhan. It was, further, recommended that allotment of duties should be done according to their waiting seniority in the respective groups. The above recommendations were accepted and implemented. Consequently, the office of the Director General of Shipping allotted duties to the bazarmen according to their waiting seniority in their respective groups.

4. The Shipping Corporation of India requested the administration to take over the responsibility of providing canteen facilities to the passengers on the vessels concerned.

5. The administration floated a tender notice on November 18, 2002 inviting sealed tenders in prescribed form for providing such services to the vessels. It was provided in the said notice that the bazarmen to be employed for providing canteen facilities should be in possession of a "valid continuous discharge certificate" and that contractor would be entitled to recruit the canteen staff entirely of the choice of the contractor, but preference should be given to local candidates of Andaman & Nicobar Islands having local certificates issued by the district authorities.

6. Since the contractors did not engage the bazarmen, whose names were included in the aforesaid two lists, they have approached this Court by filing the present writ petition.

7. The learned Single Judge by the impugned judgment and order disposed of the said writ petition with the following directions :

"(a) In relation to bazarmen though it is now the business of Seamen Employment Office to regulate and control their recruitment and their placement services, there is no necessity of maintaining 140 per cent limit in the roster. However, having regard to the fact that 140 per cent limit has been prescribed in the matter of engagement of seaman on the basis of experience earned, such a limit may be treated to be a reasonable limit but not a compulsory limit. It is to be kept in mind that when by the 2002 Amendment the Seamen's Employment Officer has been obliged to regulate and control the recruitment and placement of the bazarmen, the bazarmen must be registered with the Seamen's Employment Office. Anyone, who is desirous to be so appointed and any one found fit by the Seamen's Employment Office to be so appointed, can be registered with the Seamen's Employment Office. From such registered members, recruitment and placement service should be

provided on the basis of requisition keeping in view their respective waiting seniority.

(b) The people who had been engaged by the contractor or contractors on the basis of such terms shall, however, continue to discharge their duties for a period not exceeding two months from today. The Director General of Shipping Services who is maintaining the list of bazarmen in terms of the recommendation of the ad hoc committee engaged by the Division Bench of this Court as mentioned above shall forthwith make over the said list to the local Seamen's Employment Office. It shall be deemed that all those who have been listed in the said list have been listed chronologically with the Seamen's Employment Office. Any other person seeking to serve as a bazarman would be entitled to get himself enrolled in such list, provided he is found fit and eligible by the Seamen's Employment Office. As and when the contractor engaged by the administration for providing catering services to the vessels in question would require bazarmen, they would notify the Seamen's Employment Office accordingly and the Seamen's Employment Office would provide placement service of bazarmen from amongst such list by enrolling such bazarmen from the list to the extent of not less than 140 per cent of the vacancy.

(c) In the matter of placement service the Seamen's Employment Office shall take into account the waiting seniority of the listed candidates. The Seamen's Employment Office shall also ensure engagement of the listed bazarmen by devising appropriate rotation so that the listed bazarmen get an opportunity of being engaged.

(d) In the event no Seamen's Employment Office has been established in these islands, then the functions of the Seamen's Employment Office as directed above shall be conducted by the Director General of Shipping Services of these islands until such time the Seamen's Employment Office is constituted."

8. The Union of India, Director General of Shipping, Shipping Master, Kolkata and the Principle Officer, Mercantile Maritime Department, Kolkata, have come up with the appeal challenging the said judgment and order dated June 18, 2003 passed by the learned Single Judge in W.P. No. 40 of 2003.

9. As an active member of the International Maritime Organisation ("IMO" in short), India has acceded to a number of international conventions and protocols adopted by the said IMO. The Merchant Shipping Act, 1958 governs matter relating to shipping in India. The main objective of the said Act of 1958 is to ensure development and efficient maintenance of the Indian mercantile marine. As a member of the said IMO, India was required to make suitable provisions in the said Act of 1958 to enable the Government of India or its agencies to give effect to those conventions and protocols.

10. Section 95 of the said Act of 1958 has been amended by Merchant Shipping (Amendment) Act, 2002. Such amendments were brought in to redefine the role of

Seamen's Employment Offices to control and regulate the manning agents and recruitment and placement service instead of controlling and regulating the employment of seamen.

11. Section 97 has been amended to bring the Unions within its purview to enable curbing of malpractices by the Seamen's Unions and a new Section 97A has been inserted to prohibit any discrimination in recruitment of seafarers.

12. The amended Section 95 of the said Act of 1958 reads as under :

"95. Business of Seamen's Employment Office.--(1) It shall be the business of the Seamen's Employment Offices--

(a) to issue licence, to regulate and control the recruitment and placement service, and to-

(i) ensure that no fees or other charges for recruitment or placement of seafarers are borne directly or indirectly or in whole or in part, by the seafarers,

(ii) ensure that adequate machinery and procedures exist for the investigation, if necessary, of complaints concerning the activities of recruitment and placement services, and

(iii) to maintain registers of seamen in respect of the categories of seamen;

(c) to perform such other duties relating to seamen and merchant ships as are, from time to time, committed to them by or under this Act.

(3) The Central Government may make rules for the purpose of enabling Seamen's Employment Offices effectively to exercise their powers under this Act, and in particular and, without prejudice to the generality of such power, such rules may provide for-

(a) consultation with respect to any specified matter by Seamen's Employment Offices with such Advisory Boards or other authorities as the Central Government may think fit to constitute or specify in this behalf.

(b) the levy and collection of such fees as may be specified for the issue of licences to recruitment and placement services, renewal of such licences and services to be rendered by the Seamen's Employment Office;

(b) the issue of directions by the Central Government to any Seamen's Employment Office or any recruitment and placement service with reference to the exercise of any of its powers;

(ca) the conditions under which the recruitment and placement service to recruit and place seafarers abroad;

(cb) the circumstances and conditions under which licence to be suspended or withdrawn;

(cc) the conditions under which seafarers' personal data to be processed by the recruitment and placement services including the collection, storage, combination and communication of such data to third parties;

(d) the supersession of any Seamen's Employment Office which fails to comply with any such direction.

Explanation.--For the purpose of this section,-

(a) "recruitment and placement service" means any person, company, institution, agency or other organization, in the public or private sector which is engaged in recruiting seafarers on behalf of employers or placing seafarers with employers;

(b) "seafarer" means any person who fulfils the conditions to be employed or engaged in any capacity on board a sea-going ship other than a Government ship used for military or non-commercial purposes."

13. Prior to amendment of the said Section 95 of the said Act of 1958 the business of the Seamen's Employment Offices, inter alia, was to regulate and control (i) the supply of such categories of seamen and for such class of ships as may be prescribed; (b) the recruitment of persons for employment as seamen and the retirement of seamen from such employment; (c) the promotion of seamen or changes of their categories; (d) to maintain registers of seamen in respect of the categories prescribed under the said Act of 1958.

14. The entire gamut of the roll of the Seamen's Employment Offices has been changed by the Merchant Shipping (Amendment) Act, 2002. Now, it is the business of the Seamen's Employment Offices to issue licence to regulate and control the recruitment and placement services, particularly, to issue licence, to regulate and control the recruitment and placement service of seafarers. Explanation appended to the said Section 95 of the said Act of 1958 clarifies that recruitment and placement service means any person, company, institution, agency or other organisation, in the public or private sector, which is engaged in recruiting seafarers on behalf of the employers or placing seafarers with the employers. It, further, explains that seafarers means any person, who fulfils the condition to be employed or engaged in any capacity on board of sea-going ship other than a Government ship used for military or non-commercial purposes. Section 96 prohibits supply or engagement of seamen in contravention of the said Act and Section 97 prohibits receipt of remuneration, donation, fees etc. from seamen for shipping them.

15. Admittedly, the bazar-men are not the seamen. Whether they come under the definition of seafarers or not is not required to be gone into by us. The contractor running the canteen in the ship employs the bazar-men. There is no privity of contract between the bazar-men and the owner of the ship. Mr. Asish Kumar Ray, learned senior Counsel appearing on behalf of the Director General of Shipping Services, respondent No. 5, points out that the bazar-men do not possess the

requisite qualification of seamen.

16. The Government of India decided to constitute a committee to examine various aspects relating to issue of continuous discharge certificates and other related matters under the Chairmanship of Shri Praveen Singh, a retired Director General of Shipping. The said committee submitted its recommendations sometime in September, 1995. The said committee, inter alia, recommended that there was no legal compulsion on the Government to continue the Seamen's Employment Office at Madras (Chennai) and, therefore, the committee expressed its inability to support continuation of the said office at Chennai. On the basis of the materials placed before the said committee, the committee refused to recommend establishment of more Seamen's Employment Office.

17. The aforementioned recommendations have been accepted by the Central Government.

18. Therefore, the directions contained in the impugned judgment and order are contrary to the said Act of 1958 as amended by the Merchant Shipping (Amendment) Act, 2002 and, therefore, are not sustainable in law.

19. Our attention has been drawn that the Central Government has not yet published the rules for the purpose of enabling the Seamen's Employment Offices effectively to exercise their powers under the said Act of 1958.

20. What would be the status and how the contractors would engage the bazar-men could be ascertained only when appropriate rules are framed. The Seamen's Employment Office would no more be responsible for their recruitment and placement. It is the employer, namely, the contractor, who would be free to recruit its men through recruitment and placement services agencies. In this circumstances, the Central Government, while making the rules, if not already made, shall specifically consider the questions as to whether the bazar-men employed through the contractors, though such bazar-men are not seamen or crew, are seafarers within the meaning of Section 95 of the said Act of 1958.

21. The appeal is, thus, allowed and the impugned judgment and order dated June 18, 2003, passed by the learned Single Judge, is set aside. The writ petition stands dismissed.

22. In view of the order proposed in this appeal, in our opinion, the application for addition of parties being CAN No. 98 of 2003 has become infructuous. We, therefore, make no order on the said application.

23. We make no order as to costs.

Dilip Kumar Seth, J.

24. I agree.