
(2020) 02 CAL CK 0024
In the Calcutta High Court
Case No : Writ Petitions (WP) No. 101 Of 2018

Capt. S. Ramesh And Others	Vs	APPELLANT
Union Of India And Others		RESPONDENT

Date of Decision : 10-02-2020

Acts Referred:

Citation : (2020) 02 CAL CK 0024

Hon'ble Judges : Samapti Chatterjee, J

Bench : Single Bench

Advocate : Anjili Nag, Tulsi Lall, Krishna Rao

Final Decision : Disposed Of

Judgement

Samapti Chatterjee, J

The petitioner has filed the present writ petition for direction upon the respondent authorities to implement the decision of the Lieutenant Governor

published in the press note dated 28th May, 2014 read with order dated 26th May, 2014 issued by the Director of Shipping Services, Andaman &

Nicobar Administration, Port Blair. Mrs. Nag, learned advocate appearing for the petitioners submits that petitioners are the residents of Port Blair

who were serving as roster crew in the Administration to man various vessels in Andaman & Nicobar Islands. Their names are entered in the roster

crew maintained by the Directorate of Shipping Services. All the petitioners have subsequently enhanced their qualification by obtaining Navigational

Watch Keeping Certificate (NCV) and consequently have become certified officers. It is also submitted that petitioners also qualified for being treated

as seaman and hence entitled to be in roster and allocated work on the vessels operating in these Islands. Assailing the notice dated 3rd August, 2010,

19th August, 2010 and 2nd December, 2010 passed by the respondent authorities and also claiming preparation of roster for the Navigational Watch

Keeping Officers (NCV), petitioners filed a writ petition before this Honâ??ble Court that writ petition was disposed of on 3rd February, 2012

thereby, inter alia, directing the respondent authorities particularly the Administration as well as the Director General of Shipping Corporation to

consider the petitioners case sympathetically and roster them if permissible under the Merchant Shipping Act, 1958 or any other directive or instruction

of the Director General of Shipping after giving an opportunity of hearing to the petitioners and communicate the same to them within a specific period

of time. Till such decision is taken respondent were prevented from disturbing the petitioners present position in the roster. Thereafter, on 29th June,

2012 the Andaman & Nicobar Administration passed an order rejecting the claim of the petitioner for preparation of separate roster for Navigational

Watch Keeping Officer (NCV). Again challenging that rejection order dated 29th January, 2012 petitioners filed a writ petition before, this

Honâ??ble Court being WP No. 520 of 2012. Considering pendency of the said writ petition the Lieutenant Governor of these Islands directed the

Director of Shipping Services to employ the writ petitioners directly without taking aid from outsourcing. While the said fact was brought to the notice

of this Honâ??ble Court the writ petition was disposed of as infructuous in view of the decision of the Lieutenant Governor Andaman & Nicobar

Islands vide order dated 30th June, 2014. Accordingly, the authorities initiated the proceedings to employ the writ petitioners directly, to that effect

letter dated 12th May, 2014 issued to the Deputy Director (Shipping) thereby explaining the manner in which the department has to undergo manning

of the foreshore sector vessel in-house effort. Accordingly, a press note was also issued inviting candidate to submit their particulars to crew cell by

15th February, 2016. When it was noticed that the respondent authorities failed to take any steps to complete the said process for directly manning in-

house candidates the petitioners without finding any alternative file an application under the Right to Information Act, 2005 to know the status of the

said process. The authorities on 24th January, 2017 issued letter by stating, inter alia, that the decision of the Lieutenant Governor has been reviewed

and the authorities have decided to continue the method of the outsourcing job to a private body. When the petitioners came to know that the

authorities in order to deprive the petitioners from their present employment modified the terms of the tender to provide opportunity to the tenderer that

is say M/s ABS Marine to employ man power from the candidates of mainland, challenging their illegal attempt to disobey the order of the Lieutenant

Governor, petitioners again filed a writ petition being WP No. 25683 (W) of 2017. That writ petition was disposed of on 14th December, 2017 with the

observation that the replacement of clause 2.6 of the earlier tender is illegal and not in accordance with the law. Since it is observed by the

Honâ??ble Court that the issued pertaining to preparation of the roster and the issue pressed by the writ petitioners are different, therefore, liberty

was granted to the writ petitioners to file afresh writ petition on the self same cause of action.

Therefore, it is argued by Mrs. Nag that the decision of the authorities dated 24th January, 2017 is wholly illegal and arbitrary. When the Honâ??ble

Court disposed of the matter on 30th June, 2014 on the basis of the letter of Lieutenant Governor published on 28th May, 2014 in â??The Daily

Telegramsâ??, therefore, the respondent authorities are under obligation to comply with the direction of the Lieutenant Governor as issued on 28th May,

2014. To counter the press note dated 4th February, 2016 Mrs. Nag submits that the aspiring candidates obtain documents to show that 32 candidates

have already complied for the post of Master, 24 for the Chief Officer and 23 for Chief Engineer and 42 for Second Engineer. As per the NMB

agreement in order to maintain a roster the number of candidates should be 140% of the post. Here the post are 17 in numbers. 140% of 17 is 23.8.

Data Shows that the number of candidate who have applied for the posts are more or less than 23.8. Therefore, there are sufficient candidates for the

post of Master, Chief Officer and Second Engineer. Accordingly, Mrs. Nag further submits that there is no requirement for outsourcing as in-house

candidates are sufficient in number as per requirement in respect of those posts. Accordingly, Mrs. Nag contends that the petitioners are the local and

permanent residents of Andaman & Nicobar Islands isolated from mainland as such they should be engaged directly without having the outsourcing

otherwise the petitioners right to be considered for engagement would be highly jeopardised. Per Contra, Mr. Rao, learned advocate appearing for the

respondent authorities submits that the direction of the Lieutenant Governor dated 28th May, 2014 was reviewed on 03rd November, 2016.

Accordingly, on 24th February, 2014 the Deputy Secretary (Shipping) issued the order thereby giving priority to the outsourcing manning instead of in-

house manning to that effect. Mr. Rao relies on some relevant portion of the review of the direction of Lieutenant Governor issued on 28th May, 2014

which are quoted below:-

“This is regarding manning of 17 No.s 75/100/150 pax foreshore vessels. The Seafarers Confederation of India given a notice (page 171/c) among

other to the Hon’ble Minister of Shipping, RT&H for completion of all formalities for commencing in-house manning of these vessels from

December, 2016, as per the decision taken by then Hon’ble LG.

The then Hon’ble LG while according approval for floating tender to outsource the officer manning for the above vessels for a period of two

years, it was also directed that the Shipping Department should gear up to directly contract officers required for manning these vessels by taking the

following action:

(a) Setting up of suitable Cell under the Directorate of Shipping Services for contracting and regulating the officers required for manning of foreshore

vessels;

(b) Appointment of Consultants/Staff required for control and manning of the above Cell, if required on contract basis for efficient running of the Cell;

and

(c) Collection and maintenance of database on NCV officers required to man these vessels and their availability in the market including within the

islands and mainland.”

In this connection, notes and orders on page 33/n of the linked file No. 49-268/2013-TR may kindly be perused. Now the DSS has informed that in

compliance of the directions of Hon’ble LG, an exercise was carried out by the department for collecting data on availability of officers locally for

in-house manning of foreshore vessels. It is, however, found that though junior level officers in rank of 2nd Officer and 3rd Engineer are available in

adequate number locally, availability of senior Officers in the rank of Master, Chief Officer, Chief Engineer and 2nd Engineer are inadequate and

these officers are to be engaged from mainland. The DSS is, therefore, of the view that in-house manning of the foreshore vessels by the department

may not be practical due to the following reasons:

(i) Engagement of officers from mainland will involve payments for advance booking of air tickets, hotel accommodation etc., which the department

may not be able to undertake effectively as the air fare varies on daily basis and advance payment is not permitted.â??

Mr. Rao further contends accordingly, the Directorate of Shipping Services has made some suggestion/recommendations which are referred below:

â??In view of the above, the DSS has made the follow suggestions/recommendations:

(a) The manning of these vessels may continue to be outsource through competitive tendering, as hitherto, since outsource of such services through

qualified and authorized Manning Agent is the trend followed worldwide;

OR

(b) Handing over the manning of these vessels to SCI on the existing manning fee; and

â??Zâ?? (c) Extension of the existing manning contract with M/S AB Marine Service Pvt. Ltd., Chennai on the existing manning fee, terms &

conditions, for a further period of one year accordance with clause 3.14 of the contract agreement or the alternative arrangement is made, whichever

is earlier.â??

Accordingly, recommendation was made for further extension of suggestion (a) (supra) for further extension of period which is going to expire on

30th November, 2016 and that was approved on 29th October, 2016 the same is quoted below :-

â??Option (a) is recommended. Further the existing contract which is due to expire on 30.11.2016 needs to be extended. Hence â??Zâ?? at para 5a

may be approved.

â?|sdâ?|

29/10/16.â??

Therefore, it is vehemently argued by Mr. Rao that non-availability of adequate number of in-house efficient senior officers in the rank of Master,

Chief Officer, Chief Engineer and Second Engineer, therefore, those officers are to be engaged by taking resource of outsourcing manning from

mainland. Though junior level officers in rank of Second Officer and Third

Engineers are available in adequate number from residents of these Islands.

Therefore, Mr. Rao, submits that in-house manning of the offshore vessels by the department may not be practical due to the shortage of competent

persons for the posts of Master, Chief Officers, Chief Engineer and Second Engineer.

Accordingly, Mr. Rao submits there is no illegality or ambiguity in adopting practice of outsourcing manning. In conclusion Mr. Rao submits there is no

merit in the present writ petition. Therefore, same should be dismissed.

Considering the rival submissions advanced by learned advocates appearing for the parties and after perusing the records, I find that petitioners filed

repeated writ petition claiming that the department to resource in-house manning of the foreshore vessel for the post of crews, the senior officers in

the rank of Master, Chief Officers, Chief Engineer and Second Engineer etc. instead of outsourcing the same as the decision was taken by the

Honorable Lieutenant Governor on 28th May, 2014 to that effect which was published in the daily newspaper namely "The Daily Telegrams".

Unfortunately, that decision was subsequently reviewed. Thereafter the Deputy Secretary (Shipping) issued letter dated 24th January, 2017 thereby

making some suggestions/recommendations considering the practical aspect.

Accordingly, on 29th October, 2016 only recommendation of option (a) was approved thereby extending manning contract with M/s ABS Marine

Services Private Limited, Chennai for a further period of one year in accordance with clause 3.14 of the contract agreement.

Unfortunately that one year has already expired long back. In spite of that the department is illegally allowing that manning contract with M/S ABS

Marine Services Private Limited to continue for indefinite period beyond the extended period. Therefore, the petitioners being islanders and also

having requisite qualifications and possessing certificates of Navigating Watch Keeping Officers (NCV) have been deprived of getting any

engagement as the department failed to take any steps for direct manning pursuant to the direction of the Lieutenant Governor published in the daily

newspaper namely "The Daily Telegrams" on 28th May, 2014. I also cannot ignore the fact that since decision was taken by Lieutenant Governor

on 28th May, 2014, therefore, on the basis of that pending writ petition was also withdrawn by the petitioners as the same was infructuous.

Unfortunately, that decision was reviewed on 03rd November, 2016. Accordingly expressed its inability to implement the decision of Lieutenant

Governor dated 28th May, 2014. Ultimately by direction dated 29th October, 2016 the Lieutenant Governor thereby extending the existing manning

contract with M/s ABS Marine Services Private Limited, Chennai for a further period of one year which was due to be expired on 30th November,

2016. Though the extended period had already expired long back, in spite of that department is allowing the manning contractor namely M/s ABS

Marine Services Private Limited, Chennai to continue with that dead contract of outsourcing manning. It is also not out of place to mention that it is on

record that there are adequate number of local senior officer in the rank of Master, Chief Officer, Chief Engineer and Second Engineer. Therefore

outsourcing of manning by the department at this stage in my considered view is not required. After floating tender for the post like rank of Master,

Chief Officer, Chief Engineer and Second Engineer if it is found that the in-house adequate numbers of candidates having requisite qualification are

not available, then the department can take the recourse of outsourcing.

Accordingly, I direct the concerned authorities/ department to immediately take steps in accordance with law for direct engagement from in-house for

the post of junior level officer in the rank of Second officer and Third Engineer as well as for the post of senior level officers in the rank of Master,

Chief Officer, Chief Engineer and Second Engineer etc as per the direction of Lieutenant Governor published on 28th May, 2014 in "The Daily

Telegrams" without any further delay, but positively within six weeks from the date of communication of this order.

Needless to mention, if it is found that for those posts as referred above sufficient local candidates with requisite qualification are not available, only

then department could take steps for outsourcing engagement for those particular posts otherwise not.

Accordingly, the order dated 29th June, 2014 is quashed and set aside and the order dated 24th January, 2017 is quashed save and except that portion

where approval was accorded by Lieutenant Governor in respect of option (a) thereby extending further period of one year of the existing manning

contract which was due to expire on 30th November, 2016.

Accordingly, with the above direction this writ petition is disposed of. However, no

order as to costs.