

(1997) 11 CAL CK 0008
In the Calcutta High Court
In Re: S.J. Bhupendra

Date of Decision : 18-11-1997

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Law (Amendment) Act, 1932 — Section 7
Merchant Shipping Act, 1958 — Section 121, 456, 99
Penal Code, 1860 (IPC) — Section 188

Citation : (1997) 2 ILR (Cal) 571

Hon'ble Judges : Rabin Bhattacharyya, J

Bench : Single Bench

Advocate : Shyamali Ganguly, for the Appellant; R.S. Saroop, Ashish Kumar Roy for Respondents 5, 7, 8 and H.R. Bahadur, for Shipping Corporation, for the Respondent

Judgement

Rabin Bhattacharyya, J.—This sensitive matter came up before me for consideration as it involved a large number of crews working under the Master of the vessel MV. Nicobar. The said ship embarked at Port Blair on October 29, 1997 from Vizag and there was a marked schedule of sailing of the said ship on November 1, 1997. In pursuance of the schedule, the tickets were sold to the different passengers but surprisingly enough the Petitioners came to know about the re-scheduling of the sailing programme for Chennai on November 4, 1997. The re-scheduling was adhered to dehorn the provisions of the statute and without attending grievance of the Calcutta bound passengers. However, a dissention broke out between the Petitioners on one hand and the Shipping Corporation of India and A & N Administration on the other which was determined to sail the vessel to Chennai. Unfortunately, the ship sailed for Chennai on November 4, 1997 from Haddo Wharf in connivance with the Deputy Commissioner, Andaman District I.G.P., Superintendent of Police and Commissioner-cum-Secretary (Shipping) of A & N Administration. The unauthorised persons were entrusted to board the ship for sail as crew members. The Respondent in complete violation of the statute, mainly, Section 99 of the Merchants Shipping Act, 1958 sailed for Chennai compelling the passengers to ply without the C.D.C. which exposed danger and risk to the Petitioners.

2. The Petitioners for enforcement of their claim in F.M.A.T. No. 1266 of 1996, moved the matter before their Lordships who were pleased to pass an order on March 27, 1997 that no step should be taken to recruit any person contrary to the Section 99 of the Merchants Shipping Act, 1958. The order passed by their Lordships attained the finality in absence of the S.L.P.

3. However, the authorities, in complete disregard of the order engaged the Naval and Police personnel's to staff for Chennai without the C.D.C. It is patent that the Master of the ship did not lodge any complaint against any crew members numbering about 84, who suffered arrest but subsequently were enlarged on bail.

4. The learned C.J.M. Port Blair made some observations in G.R. Case No. 1602 of 1997 initiated against the Petitioners u/s 188 of the Indian Penal Code read with Section 7 of the Criminal Amendment Act. The matter again came up before His Lordship for hearing at Calcutta High Court on November 6, 1997 where His Lordship observed that, in absence of any complaint of the Master of the ship, the authority should be refrained from taking steps against the 84 crew members of the said ship.

5. It is curious to find that on November 16, 1997 the ship returned from Chennai to Port Blair with the same unauthorised crews now scheduled to sail for Vizag on November 19, 1997 to the exclusion of the Petitioners. The claim of the Petitioners cannot be cut down unless the consent for their discharge is obtained as the Petitioners were engaged in assertion of their right sprang up u/s 121 pf the Merchants Shipping Act. No dark cloud hovered over the willingness of the Petitioners working till the time stipulated in the Agreement and that they were discharged by the Master of the ship without any reason whatsoever.

6. The order of the Supreme Court not only has been flouted by the police authorities by making indiscriminate arrest of the Petitioners but also ignored the order of contempt. The Apex Court issued a Rule on November 13, 1997 returnable within one month. The bag and baggage's of the Petitioners are still on board the ship and no seizure of the articles which belonged to the Petitioners found their room in the seizure list. The Petitioner were stripped of their right as they have lost their bag and baggage's which were lying on board the ship, which is absolutely an inroad on Article 21 of the Constitution of India. In the perspective of the above, the Petitioners have lit up their claim in the writ solicited mandamus, certiorari, prohibition and for further relief's which included amongst others an interim injunction to be levied on the Respondents from plying the ship to Vizag on November 19, 1997.

7. The claim of the Petitioners has been resisted by Mr. Saroop appearing for the Respondents-opposite parties.

8. Ms Ganguly to enforce the claim of the C.D.C. to work on board the ship has borrowed inspiration from the contents of the application. To add premium to her claim Ms Ganguly submits that the authority has completely abrogated the

Merchant Shipping Act, 1958 as the agreement between the Master or the ship and the C.D.C. is still subsisting and the authorities cannot snap it to include other crewmen to the exclusion of the present Petitioners. The writ Petitioners according to Ms Ganguly, are law abiding citizens and the authorities arbitrarily dispensed with the service of the crewmen without any reason or rhyme. They have always a right in themselves emanating from the agreement itself to which the Master of the Ship and the crewmen are the flesh and bone and the same cannot be severed by the arbitrary action of the authority. The agreement still survives. Mr. Saroop learned Counsel for the Respondents has submitted most succinctly with much labour that the right of the crewmen is still not alive because of their insubordination and want of discipline, for which the Master of the ship initiated an action within the provision of the statute. I am not oblivious of the position that the ship is not allowed to sail, without the crewmen will result in overwhelming loss which is irreparable, vis-a-vis the loss having been suffered by the crewmen for their discharge, if any as claimed to be illegal and can be easily compensated in terms of money and there is enough scope and adequate remedy provided in the statute for settlement of the dispute either in Bombay or in Calcutta. Unfortunately enough until this day there is a lathering inaction of the Petitioners to explore the remedy either in Calcutta or in Bombay for their illegal discharge.

9. More so, it is patent from the document submitted by Mr. Saroop that the dispensation was adhered to in exercise of the power conferred, vide S.O. No. 3144 dated February 17, 1960 issued by the Ministry of Surface Transport to the Director General of the Shipping, ex-officio Additional Secretary, Government of India, to exercise the power of the Central Government u/s 456 of the Merchant Shipping Act, 1958. In the back-ground of the above the right of the crewmen is not still alive and prima facie illegal and that they were taken to task through the passage of law for insubordination and want of discipline. Sailing of the ship is imminent which cannot be detained at this stage and the loss, if any, incurred by the ship by refusing to sail would be irreparable and that would be beyond repair. That apart, from the series of writ proceedings it is manifest that the Petitioners, prima facie, made an attempt to scuttle the sailing of the ship which is not permissible as the employees can not decide the voyage, locomotion and destination of the ship.

10. In the light of the above, I find no prima facie material on record to entertain their claim for injunction by refusing permission to MV. Nicobar to sail for its destination. But, however, considering their bag and bags, since left on board the ship, the Petitioners, if so advised, may take delivery of the same upon proper receipt.

11. With the aforesaid observation, the writ application is disposed of.

12. The paper, the order dated September 29, 1997 written by the Director of Shipping Service to the Director of Seamen Employees' Office at Calcutta, the order dated November 4, 1997 issued by the Master and the dispensation order

issued by the Director General of Shipping and ex-officio Secretary dated November 10, 1997 be kept on record.

13. Let plain copies of this order be made available to the learned Counsel for the parties, duly countersigned by the Assistant Registrar (Court).