

(1992) 02 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No's. 2833 and 4070 of 1987, 1069, 2181, 3182 and 3775 of 1988, 475, 553, 1011, 1340, 1659, 2052, 2295, 2664, 3203, 3399 and 3610 of 1989, 667, 1557, 1803, 1918, 1960, 2099, 2212, 2248, 2294, 2395, 2654, 2825, 3017, 3051, 3220, 3448, 3630,

Pratap Krishan Rew

APPELLANT

Vs

Director General of Shipping and Others

RESPONDENT

Date of Decision : 20-02-1992

Acts Referred:

Merchant Shipping Act, 1958 — Section 119, 120, 95, 98
Merchant Shipping Rules, 1960 — Rule 2

Citation : (1992) 3 BomCR 367

Hon'ble Judges : K. Sukumaran, J;B.P. Saraf, J

Bench : Division Bench

Advocate : J.B. Chinoi, S.A. Gandhi and S.A. Balwal, Suresh Kumar, instructed by Vyas and Bhalwal, Suresh Z. Chowdhary, C.N. Mehta, N. Chakraborty, N. Chakraborty, instructed by M.V. Chakravorty and Cop., V.B. Sharma, C.N. Saluakhe, V.I. Sharma and G.B. Kumbhar, for the Appellant; Liladhar S. Vyas, instructed by S. Sankaramakrishnan and S.K. Kundu, M.H. Doshi, for the Respondent

Judgement

K. Sukumaran, J.—The petitioners are former Naval Seamen Sailors. They have served for periods ranging between a decade and two. Later they were discharged. They sought a "continuous discharge certificate". This is essential for them to get fresh engagements in the ships. Their requests were not answered. They have now come to the Court for reliefs. "Command the respondents to perform their statutory duty" - is the prayer.

2. The defence is based on a policy decision taken by the Seamen's Employment Board on 8-3-1983 The resolution reads

ITEM No. 5

"To evolve a policy for After hearing the views of both the

the purpose of reserving some Ship owners & the Seafarers side vacancies for Ex-Naval ratings the Chairman opined that in view in the Merchant Navy. of the acute unemployment position among the existing seamen, the time is not opportune to consider reservation of any percentage of vacancies for Ex-Naval Personnel. He stated that the matter be reviewed when the employment position improves."

The issue has to be decided on a consideration of the provisions of the Merchant Shipping Act, 1958, (hereinafter referred to as "the Act") and the rules framed thereunder. Arguments before us proceeded only on that basis.

3. The Act proclaimed in its Preamble that it is 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 Shipping Development Fund, for the objects indicated therein are also other objects". It also indicated another object "to provide for the registration of Indian ships and generally to amend and consolidate the law relating to merchant shipping"., Vessels registered in India and required by the Act to be so registered, apart from the categories covered by Sub-Clause (c) of section 2 are covered by the Act. Sub-clause (9) defines a "distressed seaman". "Indian Ship" is defined u/s 2(18). "Proper Officer" is defined u/s 2(32). "Registrar" means the Registrar referred to in section 24. The definition of "Seaman" is particularly important. It is extracted below :---

"(42) "Seaman" means every person (except a master, pilot or apprentice) employed or engaged as a member of the crew of a ship under this Act, but in relation to sections 148 to 183 (inclusive) includes a master,".

There is no definition for the word "crew", and therefore, it must be understood in its general signification.

4. There are different types of certificates visualised under the Act. Some of them are enumerated in section 77, dealing with the situations where officers are deemed duly certificated. There is a record of all orders dealing with certificate of competency as indicated in section 82. Such types of certificates are not very relevant for resolving the controversy in the case.

5. Sections 95, 98, and 99 were referred to as having greater relevance. Section 95 refers to the business of seaman's employment officers. Many matters connected with the recruitment and retirement of persons, are covered by section 95. Section 98 deals with the qualification and medical examination of the seamen. Certificates of discharge or a continuous certificate of discharge issued under that part, is an indispensable requirement for getting employment, in as much as, the section stipulates that "No person shall engage or carry to sea any seaman under this Act in any ship. ... unless the seaman is in possession of a certificate of discharge or continuous certificate of discharge issued under this Part." The certificate to be obtained by the seaman who has been discharged, is not merely a testimonial of a past service, but a passport for

further employment. Without it, the doors will be closed for him as regards employments in ships in which his past experiences could be profitably invested. Sections 100, 101, 102 and 118 and 120 are some among the other relevant sections. The Master of the ship is obliged to enter into an agreement in accordance with the Act with every seaman who is engaged or is carried to sea as one of the crew from any part in India. The details of the contents of the Agreement are given in section 101. Engagement of a seaman where agreement is made out of India is dealt with in section 102. The Central Government is empowered u/s 115 to prohibit the owner, master or agent of any ship from engaging or employing any person to serve as a seaman.

6. Sections 118 to 120 deal with the discharge of seaman. Section 118 deals with discharge in India of a seaman serving in a foreign ship on the termination of his engagement. Section 119 casts an obligation on the master to sign and give to a seaman discharged from his ship in India, a certificate of his discharge in the prescribed form specifying the period of his service and the time and place of his discharge.

7. The Government have issued rules invoking section 457 of the Act. among others, Rule 5 is particularly important. It unambiguously indicates for a valid certificate of discharge as essential for registration at the employment office. Any engagement of a person contrary to the provisions of the Act, would be an offence.

Sections 95, 96, 98, and 99 in particular would give a background of a useful hint about the character of the employment and the discharge obtained by a seaman.

8. The Rules of 1960, directly arise for consideration as regards the impact on the contention. They have been published in a Notification dated 16-12-1960. Rule 2(b) defines "C.D.C." which expanded, means continuous Discharge Certificate. It has to be applied for by a person desiring to be employed as a seaman; the application is to the Ship Master of the Port. The declaration that has to be made by such an application is indicated in Rule 3(2). Rule 4 stipulates that when a ship master decides to issue C.D.C. he shall affix his signature and official seals in the manner indicated therein. All particulars in the C.D.C are to be obtained in the register maintained by the Ship Master. It is better to extract in its essence Rule 6 :

"6. Entry on discharge - (1) At the time of discharge, the seaman shall, if he so desires, be granted by the master of the ship on which he has been serving an entry in the C.D.C. specifying the particulars referred to in sub-section (2) of section 120 of the Act.

(2) The entries made in the C.D.C. shall be attested by the Shipping Master of the Port of discharge, and thereafter the C.D.C. shall be returned to the seaman concerned."

As to the circumstances in which a cancellation or suspension of a C.D.C. could be effected has been prescribed in Rule 9. We may preface our discussion by indicating that the back ground of the English Act, and the informations from such texts like Timparly also had been kept in mind.

9. The prayer of the petitioners has to be viewed from a larger angle of their constitutional rights. The prayer is in one essence a facet of the fundamental right to carry on business. In the case of an ordinary employer, even if the former employer does not issue a Certificate of discharge, the workman can try his chance in the wide World. There may be an imaginative employer who would detect the potential smartness in the application for the job, standing before him. Such, however, is not the case of the seaman. Without such a certificate, as would be shown later, he has no prospect whatever of future employment. The statutory scheme may be examined better from a historical background of the origin of these adventurous men.

10. The history of daring seamen may date back to the days of Vikings, if not earlier. The constitution of the sea service on a consideration of the report from the Lords by the Committee appointed in that behalf, the formation on 28th October, 1664 of the Admiral's Regiment by King Charles, the employment of the term "Marines" for the first time in 1672, the despicable naval pay system under which "there was never any doubt about who lost - the seamen", (as described by Michael Lewis), and the equally scathing criticism by Sir John Fortescue about "a gigantic superstructure of rascality and corruption..... as old almost as the art of war and rampant all over Europe", the attempt by Admiral Sir Clowdisley Shovell "struggling endlessly to get marines paid with some regularity", the - disbandment of a large number of marines at the culmination of war "the men being simply disarmed and turned adrift", (as was the situation in 1697), and the large number of such able bodied men being lost by disease and desertion, - are all glimpses of the suffering of the seamen of old days. (See The Royal Marines by J.L. Moulton.)

11. The rigours of life at sea, are not properly appreciated., It may appear that even later, the Administrators"used them merely as a source of unskilled labour, looked down on them as stupid redcoats or lobsterbacks.....". That is a cruel attitude to the seamen. It is well known that when they fought "they attacked like heroes, Death alone checked their bold career". This has some link with the current notion where those who have served loyally and for long years, are made to drift soon after the snapping of services in the Navy.

12. The country demanded from them courage and loyalty. Those expectations were fulfilled by them. They were found to be the country's sheet anchor of defence. The seamen as a disciplined long-service body, manned three-quarters of the guns in larger ships, and latterly even soared high as pilots in such forces like the Royal Naval Air Services.

13. The disturbances and the difficulties experienced by the persons who had

somewhat secured and sheltered habitats and occupational fields, when confronted with prospects of disengagement and unemployment, are well known. The Court must then be in a position to appreciate the anxiety of those discharged from the Navy, but who still are in the middle of their life, with families to be looked after, and the responsibilities to be shouldered. Their deep feelings had found poetic expression. The desire of the seamen to leave the shore and sail on the sea, is discernible from the lines :

Like an eagle cag'd I pine
On this dull unchanging shore;
O give me the flashing brine,
The spray and the tempest's roar.

The earlier craving for the blue sea has been portrayed in the poem :

"A life on the ocean wave,
A home on the rolling deep,
where the scattered waters rave
And the winds their revels keep.";

The natural craving now gets an additional impetus, arising from the economic needs and occupational requirements. Even when we dissect the provisions of the Merchant Shipping Act, and the Rules provided thereunder, the human element, visible from the pages of the history, and forming the background of some of the International Statutes, like the Merchant Shipping Act, would be helpful.

14. It would thus be seen that under the statutory scheme, there is no additional requirement for the issue of a C.D.C. than those indicated in these Rules. There is no obligation, apart from the filing of an application in the prescribed form and the submission of a declaration as indicated therein, for the issue of a certificate of discharge. The cancellation or a suspension of a certificate is an entirely different thing. The suspension or cancellation would be relevant only after the issue of the certificate. For the purpose of the issue of the certificate, all that is necessary is an application in the prescribed form, accompanied by the necessary formalities.

15. There is no case that any of the petitioners had conducted themselves in a dis-orderly or - disreputed manner while they were serving in Navy. When the requirements are fully satisfied, the authority does not have any other choice or option than to issue the certificate. Looked at this way, the petitioners' prayer is fully justified in as much as, the application has been filed and the fee has been paid along with the requisite I declaration. Much more is not needed. It follows then that the denial of the certificate is unjustified in law. That injustice could be ended effectively by issuing the writ sought for. We allow the prayer and issue

the writ.

16. There was an apprehension expressed by the authorities as also by a combined group of interveners that the employment potential of others would be affected by the issue of the Certificate. We do not decide that issue in the present case.

17. The contesting Trade Union of Seamen who were similarly discharged but are now fortunately borne on the register, submitted that the petitioner's could not be permitted to have their names cancelled in the record which is relied on by the employers in connection with the future employment. As indicated already, we have not considered that question in this petition and at this stage. Such questions will arise only if an application made by a seaman is blocked by the authorities in one way or the other.

18. The petitioners are all persons who had effectively served the Navy, in the true tradition of the marines. Their history is one of honour and valor. Many amongst them at earlier times had perished on the seas due to disaster or desertion. Such disasters have not discouraged them from seeking fresh opportunities and new life in other ships or in other seas. They may have to wait in queue even when they are armed with a certificate. That is, however, no reason for not issuing the certificate at all. We are clearly of the view, that, in these circumstances, we will be justified in exercising our jurisdiction and compelling the authorities to issue them the continuous discharge certificate. We do so.

19. This Court, at the stage of filing, considered the fitness and justifiability of their prayer by interim order, issued. Virtually, the final relief had been granted. We are happy that the final conclusion we have reached is in accord with the orders in the form of interim relief.