
(2006) 04 MAD CK 0269

In the Madras High Court

Case No : Writ Petition No. 25573 of 2001

S. Chandru and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 10-04-2006

Acts Referred:

Merchant Shipping (Amendment) Act, 2002 — Section 1(2)

Merchant Shipping Act, 1958 — Section 12, 456(1), 95, 95(3), 96

Citation : (2006) 04 MAD CK 0269

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : K. Srinivasamurthy, for the Appellant; K. Sridhar, SCGC, for the Respondent

Judgement

M. Jaichandren, J.—The prayer in this writ petition is to issue a writ of declaration that the order No. 1 of 2001 dated 27.03.2001 issued

by the 2nd respondent on behalf of the 1st respondent is illegal and unconstitutional and consequently to direct the respondents to register the

petitioners in the Seamen's Employment Office at Chennai and to further discharge their obligations under Part-VII of the Merchant Shipping Act,

1958 and the Merchant Shipping (Seamens Employment Officers) Rules, 1986.

2. The writ petition has been filed by the petitioners challenging the decision of the respondents in dispensing with the employment/registration of

seamen through the Seamen's Employment Office at Chennai vide order No. 1 of 2001, dated 27.03.2001, stating that it is in violation of the

mandatory provisions of the Merchant Shipping Act, 1958 and the Merchant Shipping (Seamen Employment Office) Rules, 1986. As a result of

the impugned order, the seamen are subject to many disadvantages due to the

discretion vested with the shipping companies and in turn, the seamen are forced to face loss of livelihood and other hardships.

3. It is also stated on behalf of the petitioners that the regulation of Seamen Employment came about as a result of deliberations of the concerned

parties at the international level in order to avoid malpractices in the employment of seamen and to protect them from the exploitation by the

shipping companies. The problems faced by the seamen were taken note of by the International Labour Conference in 1920. A high level

committee was constituted in 1921 to examine the problems in the matter of recruitment of seamen and to suggest regulatory measures. After a

detailed survey, the committee recommended curtailment of the privileges of licenced brokers and the establishment of the Special Employment

Offices. In 1931, the Royal Commission which went into the conditions of labour in India, recommended the withdrawal of the licence of all the

brokers, due to rampant malpractice and harassment of the seamen. Thereafter, they were eliminated from the recruitment procedure for

employment of seamen.

4. It is further stated that in 1947, the Government of India again convened a Tripartite Maritime Labour Conference. The consensus that emerged

was that there should be Governmental action to set up employment offices for supply of maritime labour on the principle of rotation. In October

1953, the International Labour Organisation convened the Asian Maritime Conference in Sri Lanka, which made certain recommendations.

Accepting the recommendations in 1954, the Government of India established the Seamen Employment Office at Bombay and one at Calcutta in

1955. Thereafter, Merchant Shipping Act, 1958, was enacted. Section 12 of the Act provided for the establishment of Seamen Employment

Offices at every port in India by notification in the Official Gazette. Section 95 of the Act provided for the business of Seamen Employment Offices

and mandates that it shall be the business of the Seamen Employment Office to regulate and control the supply and recruitment of persons for

employment as seamen for ships.

5. Further Section 95(3) of the Act authorised the Central Government to make rules for the purpose of the functioning of the Seamen

Employment Offices and for other incidental matters relating thereto. By

notification dated 23.04.1993, published in the Official Gazette of India in exercise of powers conferred u/s 12 of the Merchant Shipping Act, 1958, the Central Government established Seamen Employment Office at Chennai. Recruitment and engagement of seamen was, thereafter, made only through that office. Further, in recent times, the respondents have made the Seamen Employment Office almost defunct and have restricted its work to engagement of seamen who were already registered. Simultaneously, they have permitted engagement of seamen directly by the shipping companies.

6. The Director General's order No. 1 of 2001 dated 27.03.2001, purports to be an order u/s 456(1) of the Merchant Shipping Act, 1958. The order said that in consonance with the policy of liberalisation, the recruitment of registration and employment of seamen through Seamen Employment Offices, under the provisions of Sections 95 and 96 of the Act, are to be dispensed with. The order exempted seamen from going through the employment offices.

7. According to the petitioners, the decision of the respondents gives a complete go by to the provisions of Sections 95 and 96 and several other provisions governing the recruitment, qualifications, discharge, disciplinary and other matters regarding employment of seamen. Therefore, challenging the order No. 1 of 2001, dated 27.03.2001, issued by the 2nd respondent, the present writ petition has been filed.

8. Heard the learned Counsel appearing for the petitioners as well as the learned Counsel appearing for the respondents.

9. At this stage of the hearing of the writ petition, it is brought to the notice of this Court that in para 23 of the counter affidavit, filed by the 3rd respondent, it is stated that the impugned notification is not in operation any more, in view of the amendment made in Section 95 of the Merchant Shipping Act, 1958, in the year 2002, which was notified in the Official Gazette on 01.02.2003, by Sub-section (2) of Section 1 of the Merchant Shipping Amendment Act, 2002.

10. In view of the submission made by the 3rd respondent, the petitioners seek liberty to challenge the amendment brought in as stated above.

Therefore, the writ petition is disposed of granting liberty to the petitioners to challenge the said amendment, if so advised. No costs.