

(2004) 06 KL CK 0083
In the High Court Of Kerala
Case No : W.A. No. 438 of 2004

The Director General of Shipping and Another

APPELLANT

Vs

A.M. George

RESPONDENT

Date of Decision : 15-06-2004

Acts Referred:

Merchant Shipping (Standards of Training, Certification and Watchkeeping for Seafarers) Rules, 1998 — Rule 33(1)
Merchant Shipping Act, 1958 — Section 3

Citation : (2004) 06 KL CK 0083

Hon'ble Judges : K.K. Denesan, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : Central Government Standing, for the Appellant; Alex Varghese and V. Giri, for the Respondent

Judgement

Cyriac Joseph, J.—This Writ Appeal arises from the Judgment in W.P. (C) No. 17038/2003 which was filed by the Respondent herein. The Appellants were the Respondents in the Writ Petition.

2. The writ Petitioner is a Seaman by profession. He applied for a Continuous Discharge Certificate-cum-Seafarer's Identity Document (C.D.C.). The said application was rejected by the Shipping Master (second Respondent in the writ petition) as per Ext. P-3 communication dated 1st October 2002. According to Ext. P-3, the application was rejected on the ground that the Petitioner's Sea Service is less than 36 months. The Petitioner submitted Ext P-4 representation dated 27th March 2003 stating that the Sea Service Certificate produced by him clearly showed that he had put in 36 months and 6 days of Sea Service on foreign-going vessels and that the Shipping Master rejected his application erroneously without application of mind. In spite of Ext. P-4, C.D.C. was not issued to the Petitioner. Hence he filed the writ petition praying for quashing Ext. P-3 order of the second Respondent and for directing the second Respondent to issue C.D.C. at the earliest. During the pendency of the writ petition the Petitioner received Ext. P-5 communication which was in reply to Ext. P-4

representation of the Petitioner. According to Ext. P-5, the Petitioner's application for C.D.C. was rejected on the ground that the Sea Service Certificate produced by him was of only around 28 months out of which the countable Sea Service was only 10 months as sea service rendered on board vessel M.V. Sea Prince could not be accepted as the G.R.T. of the vessel was below 200. The Petitioner amended the writ petition to challenge Ext. P-5 also. Respondents contested the writ petition by filing a counter-affidavit the learned Single Judge disposed of the writ petition quashing Exts. P-3 and P-5 and directing the second Respondent to consider the Petitioner's application afresh and pass orders issuing C.D.C., if he satisfies the conditions mentioned in clauses (i) to (v) of Sub-rule (10) of Rule 4 of the Merchant Shipping (Continuous Discharge Certificate-cum-Seafarer's Identity Document) Rules 2001 (hereinafter referred to as the Rules). The learned Single Judge held that after coming into force of the Rules, a C.D.C. is required for a Seaman to take employment in foreign-going vessels and in home trade ships of not less than 200 G.R.T. According to the learned Single Judge, a Seaman without a C.D.C. can get employment in home trade ships with less than 200 G.R.T., while a C.D.C. is required for employment in home trade vessels with 200 and above G R.T. The learned Single Judge also observed that the second Respondent completely misunderstood the scope of Rule 1(3) by stating that any Seaman applying for registration under Rule 4(10) needs to have worked for three years in vessels with more than 200 G.R.T. Aggrieved by the judgment of the learned Single Judge, the Respondents in the writ petition have filed this appeal.

3. We have heard Mr. V. Giri, Learned Counsel for the Appellants and Mr. Alex Varghese, Learned Counsel for the Respondent.

4. The issue of Continuous Discharge Certificate-cum-Seafarer's Identity Document (for short "C.D.C") is governed by the provisions of the Merchant Shipping (Continuous Discharge Certificate-cum-Seafarer's Identity Document) Rules, 2001. According to Sub-rule (3) of Rule 1 of the Rules, the said Rules shall apply to persons who fulfill the eligibility conditions as specified under Rules 4 and 5 for employment as Seamen [as defined under Clause (42) of Section 3 of the Merchant Shipping Act] on board ships (including foreign-going ships and home trade ships of not less than 200 tons gross). Hence the learned Single Judge was right in holding that a Seaman requires C.D.C. for employment as Seaman on board foreign-going ships of all categories and home trade ships of not less than 200 tons gross.

5. Rule 4 stipulates the eligibility conditions for Applicant Seaman other than Certificated Officers. Rule 5 deals with the eligibility for certificated officers. Sub-rule (1) of Rule 4 specifies that the Applicant should be a citizen of India. Sub-rule (2) specifies the age limit. Sub-rule (3) specifies the educational qualifications. Sub-rule (4) deals with medical fitness. Sub-rule (5) provides that an Applicant for issue of C.D.C. as Deck, Engine and Catering (Saloon) Trainee shall have successfully completed the pre-sea training for ratings from an

approved Training Institute. Sub-rule (6) says that an Applicant for issue of C.D.C. shall have undergone the basic familiarization training and instructions. Sub-rule (7) says that an Applicant shall not hold any C.D.C. issued earlier by any Shipping Master in India. According to Sub-rule (8), in case of issue of C.D.C. on compassionate grounds, the Director General of Shipping may relax any or all the provisions of Rule 4 except Sub-rules (5) and (6). Sub-rule (9) deals with special provisions in the case of members of any Scheduled Tribe, of the Union Territory of the Andaman and Nicobar Islands or the Union Territory of Lakshadweep. Sub-rule (10) which is crucial for the adjudication of the dispute in this case, reads thus;

(10) Notwithstanding anything contained in Sub-rules (2), (3) and (5) of this rule, an Applicant who has been working on board foreign-going vessels of any flag in any capacity without C.D.C. issued by Indian authority during the period between the 1st January, 1982 and the date of notification of these rules in this Official Gazette, for a minimum period of not less than 3 years shall be issued with a C.D.C. in the same capacity under these rules subject to the following conditions, namely:

(i) the Applicant is a citizen of India.

(ii) the Applicant shall produce with his application his passport or his Seafarer's Identity Document possessed by him giving details of the Sea Service rendered by him duly endorsed by the Master or owner or the owner's authorised agent of the vessel on which the seafarer had served or the owner's authorised agent.

(iii) The Applicant is in possession of a certificate in the prescribed form set out in Annexures "E" and "F" of the Merchant Shipping (Medical Examination) Rule 2000, to the effect that he is medically fit to be employed on board ships.

(iv) The Applicant has undergone the basic familiarization training and instructions as prescribed under Sub-rule (1) of Rule 33 of the Merchant Shipping (Standards of Training, Certification and Watch keeping for Seafarer's) Rules, 1998.

(v) Such application shall be submitted to the Shipping Master's Office within a period of one year from the date of notification of these rules in the Official Gazette.

6. It can be seen from Sub-rule (10) of Rule 4 of the Rules that notwithstanding anything contained in Sub-rules (2), (3) and (5) of Rule 4, an Applicant who has been working on board foreign-going vessels of any flag in any capacity without C.D.C. issued by Indian authority during the period between the 1st January, 1982 and the date of notification of the Rules in the Official Gazette for a minimum; period of not less than 3 years is entitled to get a C.D.C. subject to certain conditions. According to the Petitioner, he satisfied the specifications in Sub-rule (10) of Rule 4 and hence he was entitled to get the C.D.C. In Ext. P-5 it is not stated that the Petitioner has not worked on board a foreign-going vessel

for a minimum period of not less than three years. Ext. P-5 only says that Sea Service rendered by the Petitioner on board vessel M.V. Sea Prince cannot be accepted since the G.R.T. of the said vessel is below 200 G.R.T. Thus the Respondents in the writ petition did not dispute the claim of the Petitioner that the vessel M.V. Sea Prince is a foreign-going vessel. The only objection is that the G.R.T. of the vessel was below 200 G.R.T. But under Sub-rule (10) of Rule 4 there is no requirement that the Applicant should have worked on board foreign-going vessels with not less than 200 G.R.T. On the other hand, what is stated is that an Applicant should have worked "on board foreign-going vessels of any flag in any capacity". Hence the objection mentioned in Ext. P-5 cannot be sustained.

7. Learned Counsel for the Appellants referred to Sub-rule (3) of Rule 1 to support the stand of the Appellants that the foreign-going vessel should be with not less than 200 G.R.T. But Rule 1 does not deal with the eligibility for an Applicant for C.D.C. The eligibility of an Applicant for C.D.C. is dealt with by Rule 4. Hence Sub-rule (3) of Rule 1 cannot support the contention that the sea experience should be on board foreign-going vessel with not less than 200 G.R.T.

8. The Appellants have filed an additional affidavit dated 25th March 2004 contending that the Respondent (writ Petitioner) is not entitled to a C.D.C. since he was not employed on a foreign-going vessel or sea-going vessel. Learned Counsel for the Appellants submits that the present stand of the Appellants is that the two vessels, viz. M.V. Sea Prince and A1 Gazeera II mentioned in Ext P-1 are not foreign-going vessel or sea-going vessel. Learned Counsel for the Respondent asserts that the two vessels mentioned in Ext P-1 are foreign-going vessels and therefore the service in those two vessels can be counted for the purpose of eligibility for C.D.C. We do not propose to consider the above objection of the Appellants since no such objection was raised by the Appellants in Ext. P-5 communication. Since the Respondent's application for C.D.C. has to be reconsidered by the Appellants, we refrain from expressing any opinion as to whether the above-mentioned two vessels satisfy the description of foreign-going vessel or not. It is for the Appellants to obtain necessary documents and information regarding those vessels from the authorities concerned and to establish that they are not foreign-going vessels.

9. In the light of what has been stated above, we hold that if the writ Petitioner had the experience mentioned in Ext. P-1 certificate and if the two vessels mentioned in Ext. P-1 are found to be foreign-going vessels, he will be entitled to get a C.D.C., even if the G.R.T. of the vessels is less than 200, provided that he also satisfies the conditions (i) to (v) mentioned in Sub-rule (10) of Rule 4.

10. Hence the Writ Appeal is disposed of directing the Appellants to consider the application of the writ Petitioner afresh in the light of the findings and observations in this judgment and to pass appropriate orders as expeditiously as possible and at any rate within a period of two months from the date of receipt of a copy of this judgment. The impugned judgment will stand modified to the extent indicated above.