



W.A.No.1944 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.No.1944 of 2023

1. The Union of India
Rep. by Secretary
Ministry of Shipping
Transport Bhavan
New Delhi 110 001.
 2. The Director General Shipping
9th Floor, Beta Building, I Think
Techno Campus, Kanjur Village Road
Kanjur Marg (East)
Mumbai 400 042.
 3. The Secretary to the Ministry of External Affairs
Akbar Bhavan, Chanakyapuri
New Delhi 110 021.
- .. Appellants

Vs.

Sankar Arumugam .. Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 01.09.2022 made in W.P.No.28350 of 2017.



W.A.No.1944 of 2023

WEB COPY

For the Appellants : Mr.AR.L.Sundaresan
Additional Solicitor General
For Mr.Venkataswamy Babu
Senior Panel Counsel

For the Respondent : Mr.K.F.Manavalan

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard Mr.AR.L.Sundaresan, learned Additional Solicitor General for Mr.Venkataswamy Babu, learned Senior Panel Counsel for the appellants and Mr.K.F.Manavalan, learned counsel for the respondent.

2. The present respondent has filed the writ petition challenging the impugned notification dated 11.08.2017 – Merchant Shipping Notice No.7 of 2017 insofar as it relates to seafarers employed directly by the foreign ship owner.

3. The learned Single Judge allowed the writ petition thereby



W.A.No.1944 of 2023

striking down paragraph 13 of the Merchant Shipping Notice dated 11.08.2017. Aggrieved thereby, the Union has filed the present appeal.

4. Learned Additional Solicitor General submits that the Merchant Shipping Notice No.7 of 2017 is issued with an avowed object of protecting the Indian seafarers who are recruited and placed on board by an unlicensed recruitment and placement services. No fault can be found in the said notice dated 11.08.2017.

5. Learned Additional Solicitor General relies upon Section 115 of the Merchant Shipping Act, 1958 to contend that the Central Government or any officer authorised by it in this behalf, if satisfied that in the national interest or in the interests of seamen generally it is necessary so to do, may, by order in writing, prohibit the owner, master or agent of any ship other than an Indian ship specified in the order from engaging in India or in any specified part of India, any person to serve as a seaman on such ship.



W.A.No.1944 of 2023

WEB COPY

6. Learned Additional Solicitor General also placed reliance on Section 95 of the Act and submits that the Central Government, under Section 95(3), is empowered to make Rules for the purpose of enabling seamen's employment offices effectively to exercise their powers under the Act. Learned Additional Solicitor General further submits that under Section 95(3)(ca), the conditions under which the recruitment and placement service to recruit and place seafarers abroad can be laid down.

7. According to learned Additional Solicitor General, the said Office Memorandum is in tune with the Maritime Labour Convention 2006, as amended from time to time.

8. Learned counsel for the respondent supports the order passed by the learned Single Judge and submits that the Rules framed by the appellants do not permit the appellants to impose any restrictions on the employment of a seafarer by a foreign ship owner directly.



W.A.No.1944 of 2023

WEB COPY

9. We have considered the submissions canvassed by learned counsel for both the parties.

10. Under Section 95(3) of the Act, 1958, the Central Government is empowered and authorised to make Rules for the purpose of enabling seamen's employment offices effectively to exercise their powers under this Act. The realm of the Rules is also delineated in Section 95(3) of the Act. Pursuant to the powers under Section 95(3) of the Act, the Central Government framed the Rules, namely the Merchant Shipping (Recruitment and Placement of Seafarers) Rules, 2016. Rule 3 of the Rules of 2016 states that the Rules shall apply to the seafarers recruited through licensed recruitment and placement services. Sub-rule (2) of Rule 3 further provides that the Rule shall also apply to the Indian ship owners who are recruiting seafarers for any other employers, including recruitment for the foreign flag ships. Proviso to Rule 3 of the Rules of 2016 is couched in a negative language. The said Proviso reads as under:



W.A.No.1944 of 2023

WEB COPY

"Provided that nothing in these rules shall apply to the seafarers who seek any employment through unlicensed entities or any employed directly with the foreign ship owners or employers."

11. Rule 3 of the Rules, 2016 is circumscribed by Proviso. The Proviso can be read in varied ways. The Proviso can be read as an exception to Rule, it can be read as an explanation to the Rule or it can be read as a part of the main Rule. In the present case, the language of Proviso leaves no manner of doubt that the same is an exception to Rule 3. The Proviso succinctly and specifically excludes Rule 3 or any other Rules to apply to the seafarers who seek any employment through unlicensed entities or an employment directly with the foreign ship owners or employers.

12. It is not disputed that the writ petitioner is seeking employment directly with the foreign ship owner or the employer. The Office Memorandum relied upon by the appellants, no doubt, is issued with a benevolent and laudable object viz. to protect the



W.A.No.1944 of 2023

WEB COPY

seafarers from exploitation. However, the Office Memorandum is nothing but an administrative instruction issued under Article 162 of the Constitution of India whereas the Rules of 2016 are framed under its delegated power. It is a piece of subordinate legislation. The Government has powers to issue administrative instructions under Article 162 read with Article 154 of the Constitution of India, if the field is not governed by the statute or the Rules. Once the field is governed by the statute or the Rules, the Office Memorandum cannot override the Rules. The administrative instructions can be issued to fill in the gaps if at all it appears in the statute or the Rules. However, by no stretch, they can circumvent the statute or the Rules for the simple reason that the Rules are part of the subordinate legislation.

13. Unless the Rules are amended, more particularly Proviso to Rule 3(2) of Rules, 2016, the Office Memorandum cannot prevail over the said Rules.



W.A.No.1944 of 2023

WEB COPY

14. Section 115 of the Act, 1958 would also not enure to the benefit of the appellants. Section 115 of the Act reads as under:

115. Power to prohibit engagement of persons as seamen.- The Central Government or any officer authorised by it in this behalf, if satisfied that in the national interest or in the interests of seamen generally it is necessary so to do, may, by order in writing, prohibit the owner, master or agent of any ship other than an Indian ship specified in the order from engaging in India or in any specified part of India, any person to serve as a seaman on such ship."

15. On a reading of the said provision, it is manifest that the Central Government or any officer authorised by it in this behalf, if satisfied that in the national interest or in the interests of seamen generally it is necessary so to do, may, by order in writing, prohibit the owner, master or agent of any ship other than an Indian ship specified in the order from engaging in India or in any specified part of India, any person to serve as a seaman on such ship.



W.A.No.1944 of 2023

WEB COPY

16. There cannot be any dispute that in the national interest or in the interest of seamen, the Central Government can exercise its powers under Section 115 to prohibit/debar a particular ship or an owner, master or an agent of any ship other than Indian ship from engaging in India. The said provision cannot be read as a provision in rem applying to all the foreign ships. If the Government comes to the conclusion that it is necessary, in the national interest, to ban a particular ship or an employer, then, under Section 115 of the Act, it has all the powers to do so, but not as a general Rule.

17. In the light of the above, we do not find any error committed by the learned Single Judge. Accordingly, the writ appeal is dismissed. There shall be no order as to costs. Consequently, C.M.P.No.16634 of 2023 is also dismissed.

(S.V.G., C.J.)

(J.S.N.P., J.)

15.04.2024

Index : Yes/No

Neutral Citation : Yes/No

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WEB COPY



W.A.No.1944 of 2023

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W.A.No.1944 of 2023

15.04.2024