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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5084/2014

KALAWATI

..... Petitioner

Through: Mr.D.K. Sharma with Mr.S.S. Gill,
Advs.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms.Monika Arora with Mr.Kushal
Kumar, Advs. for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

17.10.2016

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1. This petition by way of Public Interest Litigation has been filed seeking directions to the respondents to constitute a statutory body for regulating the employment of the trained manpower in the field of merchant shipping in India and abroad and also to make appropriate law to provide for compensation and ex-gratia in the event of death or injury of the workman during the course of employment. The petitioner also seeks a direction for implementation of the provisions of the Merchant Shipping Act, 1958 in letter and spirit.

2. It is pleaded that the petitioner's son by name Sandeep Kumar, a qualified technician in the field of Merchant Shipping, was engaged by M/s Noha Marine Services Pvt. Ltd., Mumbai on contract basis and was sent to Nigeria on a tourist visa to work and repair an unseaworthy oil tanker owned by a Nigerian Company. While working on board of vessel along with 14 other

Indian crew members, he lost his life on 04.09.2011 on account of an explosion. The said fact was informed to the petitioner on 06.09.2011 by M/s Noha Marine Services Pvt. Ltd. The said fact was also reported to the Ministry of Shipping, Government of India and the death certificate was issued by the Nigerian Police on 15.09.2011 in which the cause of death was mentioned as 'fire incident' and the occupation of the deceased was shown as 'sea man'. After lot of efforts and correspondence with High Commission of Nigeria, the dead body of the petitioner's son could be brought to India on 27.09.2011. The Nigeria Police filed a police investigation report dated 28.09.2011 stating that the crew were all Indian nationals who were brought to carry out repairs on the ship and that the explosion was not due to any foul play. On 28.09.2011 itself, the petitioner lodged a complaint with the Station House Officer, Palam Vihar, Gurgaon stating that the deceased was engaged by one Suhail Khan, on behalf of M/s Noha Marine Services Pvt. Ltd. and that he was forced to work on the vessel in question at Nigeria and that neither Suhail Khan nor the shipping company is coming forward to pay the compensation for his death. Thereafter, the petitioner got issued a legal notice to the Nigerian Shipping Company calling upon to pay the compensation. Alleging that there is no response either from the shipping company or from the agent who engaged the deceased, the present petition has been filed.

3. The respondent No.3/Ministry of Shipping, Road, Transport and Highways, Directorate General of Shipping (Tech.) filed affidavit dated 15.12.2014 stating that while the protection for safety and security to the Indian

Seafarers working on Indian flag vessels has been ensured in the Merchant Shipping Act, 1958 similar protection is not available for Indian Seafarers working on foreign flag vessels. It is also stated that in terms of International Maritime Labour Conventions which provide that each member country shall satisfy itself the fundamental rights and principles for the seafarers with regard to minimum requirements to work on a ship, condition of employment including wages, hours of work, entitlement of leave, repatriation, compensation in case of injury, loss or unemployment, health protection, medical care, welfare and social security protection which include compensation in case of sickness injury or death occurring in connection with their employment, the Government of India has initiated the following action:-

- a) For the ratification of the Convention by India, necessary bill seeking to amend the Merchant Shipping Act, 1958 was introduced in the Parliament in 2013. It was then referred to the Department Related Parliamentary Standing Committee, which has suggested some changes therein and the same have been approved by the Union Cabinet.
- b) In pursuance thereof, necessary bill for approval of the Parliament for ratification of the convention by India is under way.
- c) Subsequent changes in the Merchant Shipping (Recruitment & Placement of Seafarers) Rules are thus required for which draft amendment to Merchant Shipping (Recruitment & Placement of Seafarers) Rules, 2005 is under process in consultation with stakeholders.

4. During the course of hearing, it is brought to our notice by the learned standing counsel for the Central Government appearing for the respondents that the necessary amendments have been carried out to Merchant Shipping Act, 1958 and the Merchant Shipping (Second Amendment) Act, 2014 has come into force with effect from 01.04.2015 making provisions for placement of Indian Seafarers on foreign flag vessels and their security and protection.

5. Having gone through the provisions of the Amendment Act, we found that the expression 'seafarer' has been defined under Section 88-A(d) as under:

- "(d) "seafarer" means any person who is employed or engaged or works in any capacity on board a sea going ship, but does not include-
- (i) the employment or engagement or work on board in any capacity of any person in a ship of war; or
- (ii) any Government ship used for military or non-commercial purposes."

6. We also found that the sub-heading in Part-VII of the Merchant Shipping Act, 1958 has been substituted as "Classification of seamen, seafarer, maritime labour standards and prescription of minimum manning scale" and thus, the Act has now been made applicable to all the persons employed in a vessel in any capacity and that the maritime labour standards as contained in the Maritime Labour Convention have been extended to all seafarers and ships engaged in commercial activities in terms of Section 88-B. We are, therefore, of the view that the issues sought to be raised in the present petition have been substantively addressed in view of the Amendment Act.

7. However, it is submitted by the learned counsel for the petitioner that the issue of illegal trafficking of manpower for employment abroad on foreign vessels has not been addressed even by the Amendment Act and that it is necessary to issue appropriate directions to check the illegal human trafficking and to regulate the employment of seafarers. It is submitted by the learned counsel for the petitioner that in para-31 of the petition, the petitioner has come out with certain suggestions to address the issue of illegal employment of seafarers and the same deserve consideration in public interest.

8. Accordingly, the writ petition is disposed of with a direction to the respondents to consider the feasibility of making a suitable law with regard to the issues raised by the petitioner in Para 31 of the petition and take an appropriate decision in accordance with law.

9. The writ petition is accordingly disposed of.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

OCTOBER 17, 2016

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