Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1123 OF 2003

Shri S.P. Mahajan
C-211/212, Jaldarshan Ruid Park,
Juhu, Mumbai 400 049. .. Petitioner

Vs.

1. Chairman and Managing Direcor
Shipping Corporation of India Ltd.,
having its registered office at
Shipping House, 245 Madame Cama
Road, Nariman Point, Mumbai 400 021

2. Union of India .. Respondents

None for the Petitioner.
Mr.Manek J. Kalyaniwalla i/b Mulla & Mulla Craigie Blunt & Caroe, for Respondent No.1.

CORAM : A.A.SAYED &
M.S.KARNIK, JJ.

DATE : 01st JULY, 2017

P.C. :

1. No one has appeared on behalf of the petitioner. Writ Petition is of the year 2003. The petitioner at the relevant time was working as an Assistant General Manager (Legal) with the respondent No.1. The petitioner was charge-sheeted vide memo

issued by the Disciplinary Authority by letter dated 15/01/2001. The petitioner was charged for flagrant violation of respondent No.1's systems and procedures and exercise of powers in excess of jurisdiction in concluding time chartering of M. V. Kaumudi.

2. The departmental enquiry was initiated by the Disciplinary Authority on 30/04/2001 and Enquiry Officer was also appointed. The Enquiry Officer after recording evidence by the enquiry report dated 23/04/2002 held that the first charge is proved and the second charge is partly proved as against the petitioner. The Enquiry Officer in his report has observed thus :

> "The first charge against CO-3 is that he along with his GM (CO-2) in flagrant violation of SCI's systems and procedures concluded time charter of MV Vishva Kamaudi to M/s.R.Piyarelall International Ltd. through a freight broker M/s.Fatechand & Sons who was not on SCI 's panel of brokers. CO-3 's note at Ex.S-2a is quite clear. It shows that chartering was done through BNT Division. Further, Fatechand & Sons was not in the listed panel of brokers of SCI.
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> From the reply given by CO-3 in his general examination, it is quite clear that he was aware of the proper procedure to be followed for time chartering of vessels. He was also aware that M/s.Fatechand & Sons were not in the SCI 's panel of brokers. His defence is that he did it under the order of GM (CO-2). However, it is only his word against CO-2. CO-2 said that he had not given any such order to put up the proposal It cannot be ascertained now who is telling the truth. One thing is clear that when Fatechand & Sons was not in the approved list of SCI's panel of brokers, CO- 3 should have mentioned in his note at Ex. S-2a that the proposal is being put up as per order of GM

(CO-2). Nothing is mentioned in this regard at Ex.S-2a. Even it is accepted for a moment that CO-3 put up the proposal as per order of CO-2, this order itself is not valid (because M/s.Fatechand & Sons was not in the approved list of SCI's panel of brokers) he thereby helped the authorities i.e. CO-2 and CO-1 (i.e. Director/L&PS) to give the vessel on time charter, without following proper procedure. CO-3 submission that if he did not follow GM's order, it would have amounted to insubordination is not valid, because GM's order was not as per procedure, in that case CO-3 should have asked for the order in writing. In any case, as per rule, verbal order is to be confirmed later by written order. Particularly, when the verbal order is not as per procedure, CO-3 should have asked for written order. It clearly proves that CO-3 is also a party in not following the proper procedure in time chartering the vessel, either knowingly or unknowingly. CO-3's other point is that he had no power to give the vessel on time chartering. Agreed, that he has no power, but his action (by putting up the note) has helped CO-2 and CO-1 to give the vessel on time chartering without following proper procedure. So, considering the overall spirit of the charge, the same is totally proved against CO-3.

The second charge against CO-3 is that he did not ascertain the background and financial standing of the party (M/s. R. Pyarelall). Defence has brought out that the party was awarded the status of Star Trading House by Govt. of India. It may be stated that the GOI had awarded Star Trading House' status to the party due to their export performance but it does not say anything about their role as a charterer. Before putting up the note by CO-3 (or even after), financial status and market reputation of the party was not enquired into. CO-3 had stated that he met SW-1 at Calcutta and discussed this issue with him. But SW-1 in his deposition had stated that CO-3 never discussed this issue with him. Further, the vessel was handed over to the party in Feb. 1999 but CO-3 we to Calcutta in March, 1999. So, it is quite clear that the aspect of checking the financial status of the party was not gone into. The defence of the COs are that the party was given Star Trading House status. From this it is quit clear that CO-3 did not ascertain the financial status of the party. So, this part of the charge is proved against CO-3.

The next point of this charge is regarding loss incurred

> by SCI as the vessel MV V. Kaumudi was stuck in Bangladesh. It is quite evident that even if all the procedures were followed and the chartering was given to a proper charterer, brought by a broker on SCI's approved list, the same thing might have happened and the vessel might have stuck in Bangladesh. In that case also SCI would have suffered loss. Earlier also some vessel got stuck in foreign ports. The matter was brought to the notice of CMD in June, 1999. Thereafter, action has been taken. The case was also fought in Bangladesh High Court, who gave ruling in favour of Sci (Bangladesh Govt. went on appeal in Supreme Court). It is thus clear that action was taken at the highest level of SCI, so once it is established that in June 99, the matte was brought to the notice of CMD, it is not fair to hold CO-3 responsible. It has also been brought out that in respect of perishable item, it is of no use to have lien on goods. So, considering the totality of the 2nd charge, the same is partly proved against CO-3."

3. We find that the petitioner has been given reasonable opportunity to defend himself during the enquiry proceedings and the enquiry is conducted by observing the principles of natural justice.

4. The Disciplinary Authority on the basis of the Enquiry Officer's report awarded major penalty to the petitioner of reduction to a lower stage in a time-scale and fixed his basic as Rs.17,900/- in the AGMs pay scale of Rs.17,500-400-22,300/- effective from the date of order.

5. The petitioner filed appeal before the Appellate Authority. The Appellate Authority was pleased to reduce penalty imposed by the Disciplinary Authority. The Appellate Authority imposed the following punishment :

> "reduction to a lower stage in a time-scale and fix his basic as Rs.17900/- in the AGMs pay scale of Rs.17,500-400-22,300/- effective from the date of this order. Shri S.P. Mahajan will also not earn increment for next two years in that scale without cumulative effect."

6. We find that during the course of enquiry, the charges against the petitioner as regards allegations of violation of systems and procedures existing in respondent No.1 and that the petitioner has violated such system and procedure and undertaken to do a job which was neither his job nor his job requirement are duly proved. In this light of the matter, we do not find any reason to interfere with the order imposing penalty on the petitioner. There is thus no merit in this Petition and the same is dismissed with no order as to costs. Rule is discharged.

(M.S.KARNIK, J.) **(A.A.SAYED, J.)**