IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO.1279 OF 2018

Shri Nitai Atul Dey & Ors. … Petitioners

Vs

Union of India & Ors. … Respondents

Mr.D.J. Damani for the Petitioners
Mr.A.R. Singh for the Respondent Nos.1 to 3 & 5
Mr.Avinash R. Belge I/b M/s.Salgaonkar & Co. for Resp. No.4

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.
DATED: JULY 24, 2019

P.C.:

1. The petitioners have made the following prayer:

> “a) That this Hon’ble Court be pleased to issue the Writ of Mandamus or any other order or direction in nature of Mandamus directing the Respondents Nos.1 & 2 to find out the quantum of the amount deposited towards the Seamen Welfare including the petitioners and with further Order and directions to decide the proportionate ratio in which it is payable to the Petitioners, each one of them according to their CDC (Continuous Discharge Certificate) either through the Respondent No.3 or Respondent No.5, as the case may be and to pay the aforesaid amount so derived including the benefits of Differential Wages, Provident Fund, Pension, and other Allowances to the Petitioners within stipulated period of time.
> b) …
> c) ...”

2. The case of the petitioners in brief appears to be that their predecessors-in-title were engaged by various British shipping companies as Seamen in different capacities. The employees had unpaid wage claims against the employer shipping companies. Representations and efforts were made to recover such unpaid dues. According to the petitioners, they were covered by an advertisement issued by the Government of India, Ministry of Road Transport, Highways & Shipping dated 11.9.2014 inviting eligible persons to claim unclaimed amounts of balance of wages of Seafarers. This notice reads thus:

> “FINAL NOTICE
>
> The unclaimed amount of balance of wages of the seafarers and allotment of wages to the families of the seafarers, deposited by various shipping companies in the past, is lying unclaimed with the Shipping Master, Government Shipping Office, Mumbai, under the Merchant Shipping Act, 1958. The details of Seafarers concerned whose balance of wages are lying, are displayed on the website “www.dgshipping.gov.in”. The notices were given in the past to the seafarers concerned, however, the said amount remained unclaimed till date. Finally, it is notified to all concerned seafarers or their legal heirs as the case may be, to approach the office of the Shipping Master, Government Shipping Office, Nou Bhavan, 10 Ramjibhai Kamani marg, Ballard Estate, Mumbai–400 001, on any working day between 11 A.M. to 5 P.M. along with documentary proof in original, vig. Continuous Discharge Certificate (C.D.C.) and legal heirs certificate duly certified by concerned Tahsildar or District Collector, as the case may be, within a period of 30 days

> (Thirty Days) from the date of publication of this notice. If any seaman/Next-of-kin believe that unclaimed due wages prior to the year 1993 lying in this office & their name are not reflected in this notice are also requested to approach the office as stated above. It is stated that no further claim will be accepted in this regard after this said cut-off date as these unclaimed wages will be utilized for the welfare of seafarers as per section 130-A of the said Act without any further notice."

3. The petitioners have, therefore, made the above noted prayer.

4. The respondents have appeared and resisted the petition. An affidavit in reply dated 1.3.2019 was filed by Admn-cum-Accounts Officer of Respondent No.5 Seamen's Provident Fund Commissioner, giving a background leading to issuance of the said advertisement. Today, Respondent No.3 Chief Administrative – cum – Accounts Officer has also filed an affidavit before us.

5. Having heard the learned Counsel for the parties and having perused the documents on record, we are of the opinion that the petitioners have not made out any case for giving directions as prayed for. The advertisement issued by the Government of India which is reproduced hereinabove, invited the eligible members of the families of the Seafarers to claim unclaimed amount of balance

of wages of Seafarers, who were working under the Indian Shipping Companies. Reference is made to the amount lying unclaimed with the Government Shipping Office, Mumbai, as under Merchant Shipping Act, 1958. This advertisement provided that if any Seaman or next of kin believe that unclaimed due wages prior to 1993 are lying with the said office and the names are not reflected in the notice, would also be able to approach the said office and claim the same by producing necessary documentary proof. Respondent No.5 in the said affidavit in reply has clarified thus:

> "i) With reference to Para II of the Writ Petition, the Respondent No.5 state that the payment made by the Government of India, to the Seamen's Provident Fund Organization was totaling Rs.93.78 Crores in July, 2007. It is stated that the said amount was received as reimbursement of the amount lost by office of Respondent No.5 in Securities Investment and the said amount was the liability towards the Seafarers registered with the office of Respondent No.5. As such the reference of the said amount reimbursed to the office of Respondent No.5 is also not related in any manner to the said Bengal Ex-Seamen's of British Employees Association and totally unrelated to the demand prayed by the Petitioners. There is no direct or indirect connection of claim of differential Wages to this amount. **The Respondent No.5 also state that it is true that the Public Notice was issued by the Government Shipping Office, on 11.09.2014 for submitting claim of "Unclaimed amount of balance of Wages of the Seafarers deposited by the Shipping Companies, which is lying unclaimed with the Shipping Master Government Shipping Offices under the Merchant Shipping Act, 1958". However, this Notice has**

no direct or indirect relation with the differential Wages as claimed by the Petitioners. This Unclaimed Wages were of those Seafarers, who lost their lives while on Duty or who left the Voyage in between on Medical grounds or who were not allotted their Wages as per Articles of Agreement on Indian Flag Ships, which were subsequently deposited by the Shipping Companies, as per the Directions/orders issued by the Shipping Masters. Hence, the contention of the Petitioners that this Unclaimed Wages belongs to them is false."

6. Respondent No.3 has also asserted the same facts. It is averred thus:

> "i) With reference to Para 11 of the Writ Petition, the Respondent No.3 state that the payment made by the Government of India, to the Seamen's Provident Fund Organization was totaling Rs.93.78 Crores in July, 2007. It is stated that the issue is not related to the Seafarers Welfare Fund Society. The Respondent Nos.3 also state that the Public Notice was issued by the Government Shipping Office on 11.09.2014 for submitting claim of "Unclaimed amount of balance of Wages of the Seafarers deposited by the Shipping Companies, which is lying unclaimed with the Shipping Master Government Shipping Offices under the Merchant Shipping Act, 1958." However, this Notice has no direct or indirect relation with the differential Wages as claimed by the Petitioners. This Unclaimed Wages weer of those Seafarers, who lost their lives while on Duty or who left the Voyage in between on medical grounds or who were not allotted their Wages as per Articles of Agreement on Indian Flag ships, which were subsequently deposited by the Shipping Companies, as per the Directions/Orders issued by the Shipping Masters. Hence, the contention of the Petitioners that this unclaimed wages belongs to them is false."

7. The Counsel for the respondents also drew our attention to the communication dated 24.12.2016 made by the Office of Seamen Provident Fund Commissioner to the advocates of the petitioners clarifying as under:

> "4. In this regard it is stated that the Seamen's Provident Fund Scheme 1966 was framed under the Seamen's Provident Fund Act 1966 (4 of 1966) w.e.f. 1st July, 1964 for the establishment of a Provident Fund for Seamen's in accordance with the provision of the SPF Act 1966. The scheme applies to Seamen employees or engaged as a member of crew of ship under the Merchant Ship Act 1958 who are engaged on the Article of Agreement referred in section 100 of Merchant Ship Act 1958 and Seafarers who held the Continuous Discharged Certificate as referred to in section 99 of the Merchant shipping Act 1958. The said Article of Agreement which is operative under said Merchant shipping Act applies to Indian vessels. In this light the issue referred in the said letter of M/s.Damani & Damani, Advocates & legal Consultants is not at all related to the Semen's (sic) Provident Fund Organisation, Mumbai. With regard to receipt of Rs.93.78 crore by the Seamen's Provident Fund organisation, Mumbai from the Government of India, it is stated that the said amount was received as reimbursement of the amount lost by SPFO in securities investment scam and the said amount was the liability towards the seafarers registered with the office of SPFO. As such the reference of the said amount reimbursed to the office of SPFO is also not related in any manner to the said Bengal Seamen's of British Employees Association."

8. It would, thus, emerge unequivocally that the advertisement in question did not include the case of the petitioners. Even if they had any claim, the same was against the British shipping

companies. The respondents have, therefore, correctly refused to entertain their requests or applications for release of unpaid dues pursuant to the said advertisement. No case for interference is made out. Petition is dismissed.

(S.J. KATHAWALLA, J.) **(AKIL KURESHI, J.)**