

SUPREME COURT OF INDIA

Forward Seamen Union of India

Vs.

Union of India

C.A.No.5645 of 2005

(R. V. Raveendran and Markandey Katju JJ.)

05.03.2009

ORDER

1. The appellant trade union represents "Bazarmen" that is employees of canteen/catering contractors operating in ships sailing between Calcutta/Chennai and Andaman and Nicobar Islands. The said ships belonged to the Andaman & Nicobar administration ('A&N Administration' for short) and were managed and operated by Shipping Corporation of India Ltd. ('SCI' for short). SCI had entered into contract/s, with canteen/catering contractors to run the canteens in the said ships. There were some long pending demands by Bazarmen who were members of appellant union on the one hand, with SCI as also another Trade Union -- National Union of Seafarers of India (NUSI). As the ship services were sometimes disrupted on account of such disputes, a public interest litigation (CO No.87(W) of 1997) was filed by Andaman Chamber of Commerce.

“In that case, the High Court by an interim order dated 3.2.1998 appointed an Ad-hoc Committee consisting of Labour Commissioner of West Bengal, Regional General Manager of SCI, Principal Officer of Mercantile Marine Department of Union of India and Director of Shipping Services of A&N Administration, to amicably resolve the disputes. The Ad-hoc Committee made various recommendations as per its proceedings dated 6.4.1998. One of the recommendations related to operation of two separate lists of Bazarmen : one of a group of 69 Bazarmen and another of a group of 79 Bazarmen, by allotting duties according to their waiting seniority in the respective groups. The Calcutta High Court approved the recommendations dated 6.4.1998 by order dated 26.6.1998. By another order dated 20.11.1998, SCI was directed to discuss all issues relating to Bazarmen only with the Trade Unions recognized and approved by the Ad-hoc Committee in respect of Port of Calcutta.”

2. We are informed that from the year 2002, the role of SCI came to an end. Consequently, the Directorate of Shipping Services, A&N Administration took back the responsibility, decided to make arrangement for canteen facilities on the ships and therefore issued a Tender Notice dated 18.11.2002 inviting tenders for on board services in five vessels, that is catering canteens for cabin class and Bunk Class Passengers, two restaurants for passengers and for

supply of provisions for the officers and crew for the period 26.1.2003 to 25.1.2004. The Brochure provided with the tender form, it is stated, required the tenderer-proposed contractor to ensure (i) that Bazarmen to be employed for the canteens should be in possession of a valid continuous discharge certificate; and (ii) that though entitled to recruit canteen staff of their own choice, the contractors should give preference to local candidates.

3. The Bazarmen who were being employed by the then existing contractor (from the operating lists of 69 and 79 Bazarmen) were aggrieved, as their chances of appointment would be affected if preference was to be given to locals or others who were not in the list. The appellant union, on their behalf approached the Circuit Bench of the Calcutta High Court in W.P. No.40/2003 for quashing the said tender notice dated 18.11.2002.

4. Learned Single Judge allowed the writ petition by order dated 18.6.2003. He declared the terms and conditions tender were illegal and set aside the same. He also directed as follows:

“The Director General of Shipping Services who is maintaining the list of bazarmen in terms of the recommendation of the adhoc committee engaged by the Division Bench of this Court as mentioned above shall forthwith make over the said list to the local Seamens' Employment Office. It shall be deemed that all those who have been listed in the said list have been listed chronologically with the Seamens' Employment Office. Any other person seeking to serve as a bazarmen should be entitled to get himself enrolled in such list, provided he is found fit and eligible by the Seamens' Employment Office. As and when the contractor engaged by the Administration for providing catering services to the vessels in question would require bazarmen, they would notify the seamen employment office accordingly and the seamens' employment office would provide placement service of bazarmen from amongst such list by enrolling such bazarmen from the list of the extent of not less than 140 per cent of the vacancy.”

5. The Union of India (Ministry of Shipping) and its functionaries filed an appeal against the said order of the Single Judge. It was allowed by a division bench by the impugned order dated 22.12.2003. The division bench reversed the learned Single Judge's order and dismissed the writ petition of the appellant. The Division Bench held that the `Bazarmen', that is workers in the canteens run by the contractors were not seamen and that there was no privity of contract between the `Bazarmen' and owner of the ship (A&N Admn.). The division bench held that the directions given by the learned single Judge were contrary to the provisions of the *Merchant Shipping Act, 1958 (as amended by Amendment Act of 2002)* ('Act' for short). It also made the following observations while allowing the appeal and dismissing appellant's writ petition:

“What would be the status and how the contractors would engage the bazarmen could be ascertained only when appropriate rules are framed.

The seamen's Employment Office would no more be responsible for their recruitment and placement. It is the employer, namely, the contractor, who would be free to

recruit its men through recruitment and placement services agencies. In these circumstances, the Central Government, while making the rules, if not already made, shall specifically consider the question as to whether the bazarmen employed through the contractors, though such bazarmen are not seamen or crew, are seafarers within the meaning of section 95 of the Act.”

6. The appellant have challenged the said order primarily with reference to orders dated 3.2.1998 and 26.6.1998 in CO No.87(W) of 1997 of Calcutta High Court. It is contended that the order of the division bench violates the said orders in the earlier cases which have attained finality and should therefore be set aside. The orders dated 3.2.1998 and 26.6.1998 by the High Court in the previous public interest litigation, and the recommendations by the Adhoc Committee, clearly show that the disputes considered or settled were not between Bazarmen and A&N Administration. Further the orders of the High Court were not on merits, but merely provided some interim solution in a public interest litigation. No industrial dispute had been raised nor any writ petition filed by the Bazarmen. The dispute related to engagement of canteen workers by the canteen contractors (M/s. Alankar & Co.) engaged by SCI for providing canteen service and catering business, on board of three passenger vessels belonging to A&N Admn.for specific periods. Their wages were paid by the canteen contractor. Bazarmen, as contrasted from sailors/seafarers, were not crew members of the ship nor employees of the master or owner of the vessel. It is pertinent to note that they were employees of canteen contractor who was not even engaged by A&N Administration, but by SCI. The status of Bazarmen was not equal to that of regular crew members of the vessel employed by the owner and engaged by the master for operating the vessel in terms of the Act. The Bazarmen had no privity with the A&N Administration nor any enforceable right against them. The division bench was therefore justified in dismissing the writ petition filed on behalf of the Bazarmen, on the ground that they did not have any right to challenge the tender notice issued by the A&N Administration. The appeal is therefore dismissed as having no merit.