



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 6075 OF 2024

Hind Offshore Pvt. Ltd. ... Petitioner

Versus

The Union of India & Ors. ... Respondents

Dr. Virendra Tulzapurkar, Sr. Advocate a/w Mr. Amrut Joshi, Yagad Udwadia, Mr. Nitin Parkhe and Mr. Jacob Kadantot, for the Petitioner.
Mr. Y. R. Mishra, for Respondent / UOI.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 27 March 2024

P.C.

1. We have heard learned counsel for the parties on admission of this petition and on the interim prayers. This petition under Article 226 of the Constitution inter alia assails the detention orders dated 8 May 2023, 22 May 2023 and 3 June 2023, issued by respondent No.3 whereby the petitioner's vessels (accommodation barges) which are non-self propelled vessels stand detained. The detention is stated to be on account of non-compliance by the petitioner of a general order being order dated 20 October 2022 issued by the Director General of Shipping, Mumbai (DGS order XX of 2023) which is also impugned by the petitioner. By such order norms for Certification inter alia of Offshore vessels, accommodation barges, while operating in Indian Exclusive

Economic Zone, has been set out. The application of such order is to self-propelled as well as non-self-propelled vessels irrespective of their size (GT) or the propulsion power (KW) as set out in para 3 of the said order. The petitioner has contended that the requirements under the said order and more particularly under clause “9” - Requirement of Crew Boat and Clause “B”- Requirement for Non-self-propelled accommodation barge, as set out in paragraph 11 and para 12 along with the other requirements under the said order, is being foisted arbitrarily on the petitioner.

2. The primary contention as urged on behalf of the petitioner is that the impugned order dated 20 October 2022 is not applicable to the petitioner’s vessels, firstly on the ground that the said order is issued under the Merchant Shipping Act, 1958 (for short the “**1958 Act**”) which is clear from paragraph 30 of the said order, as the 1958 Act is not applicable to the vessels of the petitioner as the petitioner’s vessels are registered under the Coasting Vessels Act, 1838 (for short the “**1838 Act**”). It is the petitioner’s case that the vessels being non-propelled barges are used as accommodation barges at the offshore sites of the ONGC as contracted with the petitioner.

3. Dr. Tulzapurkar, learned senior counsel for the petitioner has submitted that although the Merchant Shipping Act, 1958 was enacted and brought into force with effect from 30 October 1958, however, the 1838 Act was not

repealed in regard to the continuation of registration of vessels under the 1838 Act, as it was repealed only to the extent as set out in the Schedule to the 1958 Act, namely “*Insofar as it applies to sea-going ships fitted with mechanical means of propulsion and to sailing vessels*”, and not in regard to the vessels of the nature with which the petitioner is concerned in the present proceedings.

4. It is next submitted that the 1958 Act under Section 2 provides for application of the Act to stipulate that it *inter alia* applies to any vessel which is registered in India. An “Indian ship” is defined under Section 3 (18), Section 3 2 (45) defines “ship” and Section 3 (55) defines “vessels”. Such relevant provisions of the 1958 Act read thus:

Merchant Shipping Act, 1958

[Section 2. Application of Act. - (1) Unless otherwise expressly provided, the provisions of this Act which apply to -

(a) any vessel which is registered in India; or

(b) any vessel which is required by this Act to be so registered; or

(c) any other vessel which is owned wholly by by persons to each of whom any of the descriptions specified in clause (a) or in clause (b) or in clause shall so apply wherever the vessel may be.

(2) Unless otherwise expressly provided, the provisions of this Act which apply to vessels other than those referred to in sub-section (1) shall so apply only while any such vessel is within India including the territorial waters thereof.]

[Section 3. Definitions. - In this Act, unless the context otherwise requires, -

.....

(18) **“Indian Ship”** means a ship registered as such under this Act and includes any ship registered at any port in India at the commencement of this Act which is recognised as an Indian ship under the proviso to sub-section (2) of section 22;

(39) **“sailing vessel”**, means any description of vessel provided with sufficient sail area for navigation under sails alone, whether or not fitted with mechanical means of propulsion, and includes a rowing boat or canoe but does not include a pleasure craft;

(45) **“ship”** does not include a sailing vessel;

(55) **“vessel”** includes any ship, boat, sailing vessel, or other description of vessel used in navigation;”

5. It is the petitioner’s contention that the petitioner’s vessels do not fall under the definition of an Indian Ship as defined under Section 3 (18) inasmuch as it is not a vessel which is registered at any port in India at the commencement of the 1958 Act, or falling within the proviso to sub-section (2) of Section 22 which provides for any ship registered at the commencement of the 1958 Act at any port in India under any enactment repealed by the 1958 Act so as to be deemed to be registered under the 1958 Act to be regarded as an Indian Ship. Section 22 of the 1958 Act can also be noted which reads thus:-

“Section 22. Obligation to register.- (1) Every Indian ship, unless it is a ship which does not exceed fifteen tons net and is employed solely in navigation on the coasts of India, shall be registered under this Act.

(2) No ship required by sub-section (1) to be registered shall be recognised as an Indian ship unless she has been registered under this Act:

Provided that any ship registered at the commencement of this Act at any port in India under any enactment repealed by this Act, shall be deemed to have been registered under this Act and shall be recognised as an Indian ship.

(3) A ship required by this Act to be registered may be detained until the master of the ship, if so required, produces a certificate of registry in respect of the ship.”

6. Dr. Tulzapurkar has next drawn our attention to Part IX of the 1958 Act providing for “Safety”, and more particularly, Section 288 thereunder, which provides for ‘power to make rules as to life saving appliances’, which includes under sub-section (2)(f) thereof, securing of boats, life-rafts, life-jackets, life-buoys and buoyant apparatus.

7. Our attention is also drawn to part XIV of the 1958 Act which provides for “Control of Indian ships and Ships Engaged in Coasting Trade”, under which falls Section 405 providing for application of the said part to sea-going ships, fitted with mechanical means of propulsion. Section 405 to Section 407 are relevant in the context of the impugned order dated 20 October 2022 which reads thus:

“405. Application of Part.— This Part applies only to sea-going ships fitted with mechanical means of propulsion of not less than one hundred and fifty tons gross, but the Central Government may, by notification in the Official Gazette, fix any lower tonnage for the purposes of this Part.

406. Indian ships and Chartered ships to be licensed.— (1) No Indian ship and no other ship chartered by a citizen of India or a company 4 [or a co-operative Society] shall be taken to sea from a port or place within or outside India except under a licence granted by the Director-General under this section:

Provided that the Central Government, if it is of opinion that it is necessary or expedient in the public interest so to do, may, by notification in the Official Gazette, exempt any class of ships chartered by a citizen of India or a company 1 [or a co-operative Society] from the provisions of this sub-section.

(2) A licence granted under this section may be-

- (a) a general licence;
- (b) a licence for the whole or any part of the coasting trade of India; or
- (c) a licence for a specified period or voyage.

(3) A licence granted under this section shall be in such form and shall be valid for such period as may be prescribed, and shall be subject to such conditions as may be specified by the Director-General.

407. Licensing of ships for coasting trade.— (1) No ship other than an Indian ship or a ship chartered by a citizen of India 1 [or a company or a co-operative society which satisfies the requirements specified in clause (b) or, as the case may be, clause (c) of section 21], shall engage in the coasting trade of India except under a licence granted by the Director-General under this section.

(2) A licence granted under this section may be for a specified period or voyage and shall be subject to such conditions as may be specified by the Director-General.

(3) The Central Government may, by general or special order, direct that the provisions of sub-section (1) shall not apply in respect of any part of the coasting trade of India or shall apply subject to such conditions and restrictions as may be specified in the order.”

8. Dr. Tulzapurkar has submitted that the order dated 20 October 2022 in clause 30 makes a reference to the provisions of Section 406 (3) and Section 407 (3) in relation to the Indian ships and Chartered ships, to be licensed which can be applicable only to the sea-going ships fitted with mechanical means of propulsion, as Section 405 would ordain. Clause 30 of the impugned order dated 20 October 2022 reads thus:

“DIRECTORATE GENERAL OF SHIPPING, MUMBAI

DGS Order : 20 of 2022

Dated 20 October 2022

Sub : Certification of Offshore vessels, accommodation barges. Etc. while operating in India Exclusive Economic Zone-reg.

.....
30. The operations of the vessels and permissions thereto shall be subject to meeting the above conditions as may be applicable, as per section 406 (3) and section 407 (3) of the Merchant Shipping Act, 1958.”

(emphasis supplied)

9. It is hence submitted that the impugned order dated 20 October 2022 is clearly inapplicable to the petitioner’s vessel which is neither registered under the 1958 Act nor is it a vessel fitted with mechanical means of propulsion, as Section 405 would ordain. It is thus submitted that the impugned detention is wholly without jurisdiction and is *ex facie* illegal.

10. Dr. Tulzapurkar would also submit that in fact the respondents in the reply affidavit have clearly admitted that the respondents would not have jurisdiction to bring the petitioner’s vessel under the 1958 Act and consequentially under the purview of impugned order dated 20 October 2022, unless the legislative lacuna in the 1958 Act is filled, so as to cover the vessels which stand registered under Coasting Vessels Act, 1838. In this regard, our attention is drawn to the reply affidavit filed on behalf of the respondents where the respondents have stated as under :

“Therefore, despite the absence of explicit provisions empowering the Respondent No.3 under the MS Act or CV Act, the Respondent continues fulfill the requirements of the constitution towards India’s obligations under international conventions and treaties to which it is a

party, fulfilling the objects and the purposes of the MS Act, i.e., safety of ships and life at sea and prevention of marine pollution. MS Act sections on Safety Constitution, Load line Conventions, Tonnage Conventions, MARPOL etc. may please be referred, where applicability is not restricted due to absence of propulsion.”

11. Dr. Tulzapurkar would next submit that as a result of the detention order the petitioner is not in a position to execute the ONGC contracts for which the vessels / barges in question were deployed. Also the crew cannot be given work and a huge liability is being incurred on account of the impugned orders. Apart from this, the vessels are rendered of no utility. It is submitted that on account of such illegal order and detention the petitioner is suffering a serious prejudice. It is also submitted that in respect of certain vessels not of Indian origin, respondent No.3 has not foisted compliance of such condition on such vessels. Hence, the action of the respondents is patently discriminatory and selective in victimizing the petitioner. It is submitted that a strong *prima facie* case has been made out by the petitioner for grant of interim reliefs.

12. It is hence submitted by Dr. Tulzapurkar that such stand of the respondents clearly goes to show that the impugned order dated 20 October 2022 is certainly not applicable to the petitioner's vessel for the reason that the 1958 Act itself is not applicable to the petitioner's vessels.

13. On the other hand Mr. Mishra, learned counsel for the respondents in opposing the admission of the petition, as also interim reliefs as prayed for by

the petitioner, would submit that the impugned order dated 20 October 2022 is issued in public interest. It is his submission that it is issued to safeguard the vessels / barges and those deployed thereon in discharging the Offshore contracts. It is submitted that in case of emergencies arising from any natural calamities like cyclone, an utmost necessity of safety measures was felt as required under the international conventions, hence, it was appropriate for respondent No.3 to direct the petitioner to comply the impugned order and on failure of such compliance, the vessels were rightly detained. It is submitted that in fact the petitioner had given an assurance that the petitioner would comply with the requirements of the impugned order, for such reason the petitioner cannot maintain such challenge as made in the writ petition. It is next submitted that once the order dated 20 October 2022 and the consequent detention orders have been issued in public interest, the petitioner cannot raise a challenge questioning the action of the respondents. In support of such contention, reliance is placed on the decision of the Supreme Court in **Rattan Chand Hira Chand Vs. Askar Nawaz Jung (dead) by Lrs and Ors.**¹. However Mr. Mishra is not in a position to point out to us as to how the respondents would have jurisdiction to detain the vessels of the petitioner, by applying the impugned order dated 20 October 2022 and by applying the provisions of the Merchant Shipping Act, 1958.

1 (1991) 3 SCC 67

14. Having heard learned counsel for the parties and having perused the record, we are of the *prima facie* opinion that *ex facie* the provisions of 1958 Act are not applicable to the petitioner's vessels which are subject matter of the impugned detention orders. This, considering the clear provisions of the Merchant Shipping Act, 1958 which we have referred hereinabove, and more particularly on a cumulative reading of Section 2 read with provision of Section 3 (18) and 3 (45) which defines "Indian ship" and "ship" respectively, as also the provisions of Section 405 and 406 as sought to be applied under Clause 30 of the impugned order. The reason being that it is not in dispute that the vessels / barges of the petitioner are of the category which are fitted with mechanical means of propulsion as Section 405 would ordain. It appears that even the rule making power as conferred by Section 288 of the 1958 Act applies to the rules to be made prescribing life saving appliances to be carried by every "Indian ship" going to the sea from any port or place in India. Thus, necessarily no rules can be framed under Section 288 in regard to a ship or vessel which is not of the category of an Indian ship as defined under Section 3 (18) of the 1958 Act. We thus find substance in the contention of Dr. Tulzapurkar that the vessels / barges of the petitioner are not "Indian ships" within the meaning of Section 3 (18), as also within the proviso below sub-section (2) of Section 22.

15. This apart the impugned order dated 20 October 2022 categorically provides in paragraph 30 that the operations for the vessels and permission thereto shall be subject to meeting the conditions as may be applicable as Section 406(3) and 407(3) of the 1958 Act would be applicable. These provisions which we have noted hereinabove, explicitly make it clear, that the said provisions cannot be applied *de-hors* the provisions of Section 405 which applies to Part XIV of the 1958 Act, under which Section 406 and 407 would fall, to the sea going ships fitted with mechanical means of propulsion. It is not the case of the respondents that the vessels / barges of the petitioner are of the category as falling under Section 405 of the Act. We are thus not in agreement with the contentions as urged by Mr. Mishra when he contends that the impugned order nonetheless would apply to the petitioner's vessels.

16. It is hence clear that the respondent No.3 had no jurisdiction to detain the petitioner's vessel under the impugned order dated 20 October 2022, which indubitably has its origin under the 1958 Act, and would have applicability to the vessels covered only under the 1958 Act.

17. We may also observe that the decisions on which reliance is placed by Mr. Mishra are also not applicable in the facts of the case when, in law respondent No.3 has no jurisdiction to include the petitioner's vessels under

the impugned order dated 20 October 2022. These are decisions which are on subject matters totally alien to the case in hand.

18. We may observe that the measures as sought to be imposed on the petitioner as a consequence of the general direction as issued under the impugned order dated 20 October 2022 may be in the larger interest of the vessels and for benefit of the persons deployed thereon, however, when the impugned order is sought to be imposed on the petitioner, it can be imposed only if the law would permit the applicability of the said order to the category of vessels belonging to the petitioner and not otherwise. In our *prima facie* opinion, the provisions of the 1958 Act depicts a position of non-applicability of the said order to the petitioner's vessels, in such event there would be no jurisdiction with respondent No.3 to foist the impugned order qua the petitioner's vessels and for the non-compliance detain these vessels.

19. Thus, the petitioner has made out a strong *prima facie* case for admission of the petition and for grant of interim reliefs. In our opinion, if interim reliefs are not granted to the petitioner, the petitioner would certainly suffer a serious prejudice on foisting of such conditions as contained in the impugned order, in the midst of the vessels being deployed.

20. We accordingly pass the following order :-

ORDER

1. **Rule.** Respondents waive service.
2. Pending the hearing and final disposal of this petition there shall be interim orders in the following terms.
 - (i) The impugned order dated 20 October 2022 (Exhibit “L”) in its application to the petitioner’s detained barges / vessels shall remain stayed.
 - (ii) The impugned detention orders dated 8 May 2023, 22 May 2023 and 3 June 2023 shall also remain stayed.
 - (iii) As a consequence of the interim orders in terms of (i) and (ii) above, the respondents shall release the petitioner’s vessels which be permitted to be used for the contract in questions and as the law would permit.
 - (iv) The consequential demands as raised against the petitioner at Exhibit “T” dated 13 July 2023 and 14 July 2023 shall also remain stayed.
3. Parties to act on authenticated copy of this Order.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)