

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY CIVIL WRIT JURISDICTION
CIVIL WRIT PETITION NO 238 OF 2003

IN THE MATTER OF

CAPT GS BENIWAL & ORS

PETITIONERS

VERSUS

UNION OF INDIA & ORS

RESPONDENTS

WRITTEN SUBMISSION ON BEHALF OF THE PETITIONERS .

The Petitioners most humbly submits as under

1. Section 80 (1) of the MS act lays down that “ A person who has attained the rank of lieutenant in the executive branch of the Indian Navy shall be entitled to a certificate of service as the Master of a foreign going ship without exams”. In addition Sec 80 (6) laid down that “The provisions of this Act including the provisions relating to penalties shall apply in relation to a certificate of service as they apply to a certificate of competency”. As such it is evident that Parliament, in its wisdom, considered that Lieutenants of the Indian Navy were qualified, without passing any exams, to be Masters of foreign going ships & were on par with COC holders who had obtained their certificates in accordance with Section 76 of the MS Act after passing exams.
2. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (“STCW 78”) came into force internationally. India, being a signatory to the Convention, ratified this Convention on 16.2.86.
3. STCW 78, vide **Art VI** mandated that Certificates for masters, officers or ratings shall be issued to only those candidates who meet the various requirements for certificates laid down in this Convention including passing an examination. At the same time **Art VII** laid down that “A certificate of competency or of serviceissued in accordance with the laws of that Party Shall be recognized as valid for service after entry into force of the Convention for that Party.” As such it is evident that the

STCW Convention while barring the fresh issue of any certificates without exams accepted the validity of all COC & COS issued as per the laws of that Party. As COS were issued in accordance with Indian laws (in the same manner as COC) there is no doubt that they continued to be valid in the STCW 78 regime.

4. As COS were being issued without exams Section 80 of the MS Act was in conflict with STCW 78. In compliance with STCW 78, the Act was amended by the Amendment Act of 1986 and Sec 80 was repealed. However the respondents clearly saw that existing COS continued to be valid & acceptable to the STCW convention in accordance with Art VII. As such, the amending act in Sec 5 laid down that “ the amendments made in the principal act by this act shall not apply to ... any certificate of service granted under section 80....before the commencement of this act & the principal act shall apply in relation to such certificates as if this act had not been enacted.” As such, it is evident that all existing COS continue to be valid under Indian law & Sec 80 of the MS Act , though repealed, continues to apply to them.

STCW 78 also laid down the requirement for periodic revalidation of certificates. Both COS & COC holders did the same course & their certificates were revalidated in an identical manner. As such, it is evident that not only were COS legally valid they were also accepted by the Respondents to be valid & continued to be on par with COC.

5. STCW 95. The STCW Convention was extensively amended in 1995 & and is now known as STCW 95, which came into force wef 1.2.02. While parts of it extensively rewritten and parts were added, there was no change in the basic STCW Convention which is contained in the Articles I to XVII. The foreword of STCW 95 in para 1 states that “ No amendments were made to the Articles of the Convention”. As there was no change in Art VII it is evident that STCW 95 continued to accept all existing certificates including COS as valid. There was, as such, no requirement in terms of STCW 95 for the Respondents to make changes in the status of COS & in the process contravene the MS Act.

6. MS STCW Rules 98 were framed by the Respondent No. 2 to implement STCW 95 in India. Rule 15 in violation of the Act and the Convention mandated that only a COC holder could serve as Master of a ship. COS were thereby rendered invalid in complete violation of the MS Act & the STCW convention. An illegal distinction between the two certificates was thus created with the specific purpose of debarring COS holders from getting employment on foreign going ships. Therefore the impugned Rules and notices are also in violation of the fundamental rights of the Petitioners guaranteed under Article 14 and 19(1)(g) of the Constitution of India.
7. The Convention also provides an option to the parties of the Convention in terms of the provision of Section B IX read with Article IX and Regulation VII/1. The Convention nowhere postulates that after coming into force of the Convention, only COC would be valid and all COS holders will have to necessarily convert their certificates to COC.
8. Regulation I/11 (3) of the STCW 95 Code requires that parties shall compare the old (pre STCW 95) standards with those laid down in STCW 95 and determine the need for appropriate refresher & updating training or assessment. It does not mandate the passing of an examination for demonstration of professional competence as sought to have been done by the Respondents vide impugned Rules and Notices. Section A-1/11 provides various ways of establishing the professional competence and one of which is successful completion of approved course(s) as given in sub-clause .3.2. In purported performance of its obligation under Regulation I/11(3), the Respondents, whereas required the existing COC holders to do only an 11 days refresher & updating training, it mandates the COS holders to comply the requirement laid down in the MS Notice 4 of 2001.
9. Refresher & Updating Training. The earlier Revalidation courses (at para 4 above) continued to be attended by both COC & COS holders but post 98 this course was called 'Refresher & Updating Training' for COC holders who were deemed to have met STCW 95 standards. The same course for COS holders continued to be called Revalidation Course &

were endorsed as per STCW 78. This was done so as to implement the contemplated illegality of debarring COS holders from jobs.

10. Standards of COS Holders. MS Act Sec 80 (6) specifically states that COS is on par with COC. Moreover COS holders have been employed as Masters / officers on Indian ships since 58 & continue to do so on the Indian coast even now. As such there is no doubt that COS holders are on par with COC holders & meet the standards of Master FG. The fact that he has not objected to the employment of COS holders in the past implies that he is satisfied with their standards. The issuing authority of a certificate is required to ensure that all officers who hold a particular certificate have met the standards for obtaining that certificate. As such, it cannot be DGs case that COS holders do not meet the required standards just because they did not appear in exams. The adequacy of standards for certified officers / Masters is the reason why Reg I/11 envisages only 'refresher & updating training' & not basic training which a Master or certified officer already has. In any case Section 80(5) of the MS Act allows DG to deny a COS to an entitled person who did not meet the standards for Master FG.
11. Predominance of National Law. It is a well established fact of law that International law & the national law should be in consonance & in case of a conflict between the two it is the latter that must prevail. This fact was well realized by the Respondents when STCW 78 came into force as the MS Act was amended within 6 months & Sec 80 was repealed to comply with Art VI. Rule 15 of the said Rules, which totally and illegally excludes the COS from statutory recognition is ultra virus the Act and the Convention which continues to treat COS as valid. As such till the saving clause 5 has the force of law, it shall prevail over all the rules made in exercise of the rule making power of the Act and the international treaties if the same is in conflict.
12. In view of the submissions aforementioned the WP may be allowed by this Honble Court & the reliefs as prayed be granted.

In view of the submissions aforementioned the writ Petition may be allowed by this Hon'ble Court & the reliefs as prayed be granted.

