

CASE NO.:
Appeal (civil) 3877-3878 of 2001

PETITIONER:
O. Konavalov

RESPONDENT:
Commander, Coast Guard Region & Ors.

DATE OF JUDGMENT: 23/03/2006

BENCH:
H.K. Sema & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T

Dr. AR. Lakshmanan, J.

The above two appeals were filed against the final judgment and order dated 10.01.2001 passed by the High Court of Judicature at Madras in O.S.A. Nos. 309 and 350 of 2000 whereby the High Court allowed both the appeals filed by respondent Nos. 1 and 2, namely, The Commander, Coast Guard Region (East), Chennai and Inter Cargo Insurance Company acting as underwriters and agents for T.W. Metals Limited, Chennai. The Owners of the vessel, Nominator Shipping Corporation Monroviya Liberia, Chairman, Madras Port Trust and Deputy Port Conservator, Pondicherry were also impleaded as proforma respondents in the above appeals. The appellants in this appeal are the crew men.

The short facts of the case are as follows:

The vessel named \026 Kobe Queen I also known as Gloira Kopp was registered in Panama with its crew members belonging to Ukraine was spotted by the Officers of the Customs Department in the Indian territorial waters. It was noticed by the Department that the vessel was loaded with steel products on 22.12.1999.

On 24.12.1999, interim order arresting the vessel was passed and a receiver was appointed for valuing the cargo and to take possession of it. On the same day, the master of the ship committed suicide. The crew were kept under arrest till 01.01.2000. Due to the suit filed by the under writers for T.W. Metals Ltd., the vessel was towed to Madras Port. On 14.01.2000, the learned Single Judge of the Madras High Court ordered for sale of ship. The appellant \026 O. Konavalov, who was the Chief Officer, filed

an application No. 633/2000 claiming wages from out of the sale of the ship. The application was filed under Order XIV Rule 8 of the Original Side Rules read with Section 125 of the Merchant Shipping Act, 1958 praying to direct the receiver to pay wages to crew members out of the proceeds of the sale of the vessel. However, the Coast Guard moved the Division Bench of the High Court by way of OSA No. 42/2000 seeking the stay of the sale of the ship in view of the pending investigations. Respondent No.2 moved the Division Bench for withdrawing their claim of arrest and sale of the vessel. The Superintendent of Customs (Prevention), Chennai passed an order under Section 110 of the Customs Act, placing the vessel and cargo under seizure. They were placed in the custody of respondent No.1. The above appeal was heard and allowed by the Division Bench of the High Court. The High Court noted the withdrawal of prayers by respondent No.2 and permitted respondent No.1 Coast guard to deal with the crew, vessel and the cargo. The Commissioner of Customs issued a show cause notice to the Chief Officer of the ship calling upon him to explain why the cargo cannot be confiscated and penalty should not be imposed on the persons under Section 112(a) of the Customs Act, 1962. The counsel for the crew sent a reply mentioning the non-involvement of the crew in dealing with any narcotics/drugs and prayed that the crew be paid their wages and the cargo be dealt with according to law. The appellant moved three fresh applications, which are, Application Nos. 590/2000, 2449/2000 and 2450/2000. Application No. 2450/2000 was filed to pay the wages from the sale proceeds of the cargo or alternatively a direction for sale of the ship and pay the wages as a first charge. Respondent No.1 filed a counter affidavit

contesting the applications. The respondents contested the applications stating that the crew of the vessel has not filed any independent suit and an application for the same is not maintainable and since the vessel has violated the sovereignty of the Indian territorial waters and the provisions of the Customs Act, the vessel is liable to be confiscated and there is no question of making any first charge on the vessel.

The learned Single Judge of the High Court passed an order in the above applications directing the Coast Guard Authorities and the Customs Authorities to pay the wages lawfully due to the crew members on board of the ship and that the crew should be deported to their country and that the expenses should also be made by the Government Agencies out of the funds retained by them after selling the cargo. In other respects, the High Court dismissed the applications. It was further held that it is the duty of the Government Agencies to consider the legal dues payable to the crew men who are already suffering and they should not be made to suffer again by denying their legitimate wages. The Court has further observed that since the Custom Authorities have already sold the cargo for a price of Rs.16 Crores and the money is available with them, it is the paramount duty of the Government Agencies to meet the lawful claim of the crew men belonging to a different country.

Aggrieved by the above order, respondent Nos. 1 and 2 filed two appeals, namely, O.S.A. Nos. 309 and 350 of 2000 before the Division Bench of the High Court. The Commissioner of Customs, Madras passed an order confiscating the vessel absolutely under Section 115(2) of the Customs Act, 1962.

Before the Division Bench, the respondents contended the following:-

(a) The Merchant Shipping Act, 1958 is not applicable to the foreign sea

men.

(b) The crew members had to file an independent Suit and an application in the pending matter is not maintainable.

(c) Since the Government has confiscated the ship the crew men have no lien on the ship.

(d) The Petitioner herein who has been served with a copy of the Order of confiscation has not challenged the same and it cannot be set aside in the proceedings before the High Court unless it is challenged separately before the Appellate Tribunal

The Division Bench allowed both the appeals and held as follows:-

"Para 22: We hold that the Chief of the Ship and crew can invoke the provisions of the Merchant Shipping Act as they are the sea men in a ship under the Act, or in other words, the words "under this Act" would refer and qualify the words "the ship" and not "Employed or engaged as a member of the crew"

\005. \005..

\005.. We are in entire agreement with the Ld. Single Judge that the provisions of the Act enables a sea man to resort to such a process and such process need not necessarily be an independent Civil Suit or any other independent or separate proceeding and in appropriate cases, it could be a step in aid in proceedings already pending at the instance of another party"

Referring to a judgment in *The Bold Buccleugh* (1852) 7 MOD PC 267 cited in Maritime Law by Christopher Hill, the High Court held that as per the legal position in England it appears that Maritime lien can be defeated where the res is transferred to a foreign Government who can plead sovereign immunity.

The High Court further held that there is no transfer by the owner of the ship to a foreign Government. It held that since it is a case where the owner of a ship is deprived of the ship completely by way of penalty and the ship has vested by virtue of confiscation order, the State has become the absolute owner. The High Court compared this with the category where a Government claims sovereign immunity and held that the Maritime lien for wages on the ship extinguishes on the ship being confiscated by the Government.

The High Court, however, made it clear that notwithstanding the decision, the Chief of the ship and the crew can question the validity of the order of confiscation separately, since it has only considered the effect of the order as to whether the vesting is subject to the crew's Maritime lien for their wages.

Aggrieved by the order of the Division Bench, the appellant preferred the above two appeals.

We heard Mr. R. Venkataramani, learned senior counsel assisted by Mr. Ashok Panigrahi and Ms. V. Mohana, learned counsel appearing for the appellant and Mr. Ravi P. Mehrotra, learned counsel and others for the contesting respondents.

Mr. Venkataramani, learned senior counsel for the appellant submitted the following at the time of hearing:-

- a) That the action of the State has to be based on reasonableness and it cannot deprive the basic human rights afforded under the Constitution of India more so under Article 21;
- b) That the judgment of the Division Bench is contrary to the principles laid down by this Court in M.V. Al Quamar's Case and M.V. Elizabeth's Case. In these cases, this Court has held that Maritime lien is a right which continues even if the ship is taken legally from an owner by requisition;
- c) That the crew are not responsible for confiscation;
- d) That in a recent decision of the Queens' Bench in the Admiralty Jurisdiction in the Lloyds Reports in the matter of "RUTA", it has been held that the wage claims have no alternative forms of redressal, but for claiming it from the proceeds of the ship and that it takes priority even to claims for salvage;
- e) That even though the 1926 Convention of Maritime Liens and Mortgages has not yet been ratified by India the principles are very well adopted in Merchant Shipping Act, 1958. Under the Merchant Shipping Act, the wages of the crew cannot be attached under any law;
- f) That the application made by the crew members for payment of wages for the crew has been made much prior to confiscation and that the High Court has failed to appreciate that the right of the crew is pre-existing right and it is a priority claim which will have precedence over all matters and that this principle has been well recognized in Indian and Foreign Courts widely;
- g) That the cargo fetched a huge price of approximately more than Rs. 20 Crores due to the very good condition in which it was maintained which credit goes to the crew of the ship;
- h) That the Division Bench failed to appreciate that the crew members were suffering without wages from May, 1999 till the time they were deported by the Consulate. They have suffered a lot of mental and physical agony. Though their entitlement for wages has never been disputed by any of the respondents they have not been given their wages till date due to technicalities and a narrow approach.

Per contra, Mr. Ravi P. Mehrotra, learned counsel for the first respondent submitted as follows:-

- a) That the investigations were carried out and it has come to the light that the vessel has carried narcotic drugs since traces of opium were detected at various parts of the ship;
 - b) That as there were no claimant for the cargo, after the process of law, the 15,000 MT steel cargo was confiscated by the Commissioner of Customs and then sold in public auction;
 - c) That the owners had completely disowned the ship and were untraceable after the Government Authorities detained the ship;
 - d) That the auction of the steel cargo was held on July, 2000 and the highest bid was offered for Rs.12,500/- per MT;
 - e) That the Commissioner of Customs, vide order dated 26.09.2000, confiscated the vessel absolutely under Section 115(2) of the Customs Act. The reasons given were:
 - i) Unauthorised deviation from the route required for cargo discharge;
 - ii) Entry into Indian territorial waters without intimating appropriate authorities;
 - iii) Violation of customs legal formalities in receipts of provisions/fuel clandestinely;
 - iv) Changing the name and colour of vessel during voyage for no valid reasons.
- The Customs Authorities then auctioned the confiscated ship.
- f) That the ship was purchased by M/s Chaudhary Industries Ship Breakers on tender held on 21.11.2001;
 - g) That since the ship has been confiscated, the Maritime lien ceases to

exist. Quoting the ruling in THE BOLD BUCCLEUGH (1852) 7 MOO PC 267 case, it was submitted that Maritime lien ceases to be applicable in a situation where a Government has confiscated the vessel and claims sovereign immunity.

h) That the vessel was confiscated by the Customs Authorities under Section 110 of the Customs Act, 1962. The said order has deprived the crew members the property on which they could claim if at all, their wages;

i) That a penalty has been levied by the Government for offences committed by the ship against the State, the involvement of the crew members cannot be ruled out as the circumstantial evidences and the suspicious manner in which the ship has traversed the globe points to some illegal activities. The owners have not till date claimed the ship nor give any valid explanation regarding the whole incident;

j) That the entire nature of voyage of the ship is shrouded in mystery and, therefore, the claim of just wages is to be viewed in the context of the illegal activities carried out by the ship over the period of years;

k) That the right of the crew for wages will exist on an merchant vessel which is due to its independent presence in international waters. When the freedom of the vessel has been deprived by means of confiscation as penalty the vessel becomes sovereign property of the confiscating Government. In such a case, the claim for wages cannot be considered as the vessel has become the property of the State in absolute;

l) That at no point of time had the crew or any other agency agreed that the claim for wages can be attached to the ship in case the claim on cargo is foregone.

In view of the submissions made, Mr. Mehrotra contended that the appeal has no merits and deserves to be dismissed.

Counsel for the Union of India (Customs Department) filed a separate counter affidavit through its Under Secretary (AS) Ministry of Finance, Department of Revenue. Learned counsel submitted that a show-cause notice was issued to the person calling upon them to show-cause as to why the vessel on arrival with Indian waters had not complied with the provisions of the Customs Law in force and as to why the vessel had entered the Indian territorial waters without proper filing of import general manifest required under Section 30 of the Customs Act, 1962. As no reply was received, the cargo was absolutely confiscated for contravening the provisions of Section 30 of the Customs Act, 1962 as unclaimed. It was further submitted that the cargo was sold off by customs through auction and a sum of Rs.18.75 Crores was realised. Since the vessel was used as a means of transport of the said cargo, it was deemed to have smuggled the cargo into the country and by virtue of the unauthorised entry on to Indian customs water and by not calling on at a specified port and not filing the import manifest the said vessel was absolutely confiscated under Section 115(2) of the Customs Act, 1962 and was sold later through tender sale for Rs.2.36 Crores to M/s Chaudhary Industries, Gujarat. It was further submitted that as a result of confiscation, the property in the ship vests absolutely with the Government and that in this view of the matter, no claim as to wages of the seamen can be entertained by the Government of India.

We have carefully perused the entire pleadings, all the annexures and judgments passed by the learned single Judge and of the Division Bench of the High Court.

The view taken by the Division Bench that consequent upon the confiscation of the ship, the property in the ship including all interests attached to the ship gets forfeited does not admit of any exception, in our opinion, is not tenable. The Division Bench of the High Court reaches the said conclusion on the basis of the proposition that the confiscation of the goods are proceedings in rem and that once an order of confiscation is passed, it operates against all even if they are not parties to the proceedings. Reliance was placed upon Shewpujanrai Indrasanrai Ltd. vs. The Collector of Customs & Others, [1959] S.C.R. 821 and Collector of Customs, Madras and Ors. Vs. D.Bhoormul, [1974] 3 S.C.R. 833 by the Division Bench. In our view, the reliance placed by the Division Bench is inappropriate. Neither of these cases concern or relate to the assertion of Maritime liens or seamen's wages which are

protected both under the Admiralty Law and the Merchant Shipping Legislation. The said judgments also relate to goods which are found to be smuggled goods. They can have no manner of application to the confiscation of the vessel, which, in our view, is subject to several rights and interests.

In our view, the members of the ship in question from the day of the engagement till their deportation were lawfully in the employment of the ship. In Maritime law, the ship or the vessel is personified and attached with several liabilities as

could be seen from M.V. AL Quamar vs. Tsavliris Salvage (International) Ltd. and Others (2000) (8) SCC 278 and M.V. Elisabeth and Others vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-de-gama, Goa, 1993 Supp (2) SCC 433. One of the distinctive features of admiralty practice is proceedings in rem which are against maritime property i.e. vessel, cargo or freight as the case may be. This rests on the principle that the ship as the matter causing harm, loss or damage to others or to their property.

The Merchant Shipping Act, 1958 (hereinafter referred to as 'the MSA') in Sections 138, 139, 140, 141 and 144 constitute a scheme of statutory rights towards wages which can be enforced by proceedings under Section 145. In terms of the provisions of Section 144, the right of the seamen to wages is unfettered and no limitations on the entitlement to and exercise of such entitlement have been enacted in the Act. It, therefore, follows that such a right conferred by the statute cannot be infringed, affected or neglected except by express provisions to the contrary. The provisions of Section 115 of the Customs Act, 1962 cannot be treated as such provisions to the contrary. The right to wages of seamen as wages of any employee is an integral part of the right to livelihood and is entitled to the protection under Article 21

of the Constitution of India. The right to dignity, which is recognised as guaranteed by Article 21 insofar as it is infringed by withholding of the means of livelihood by any means or process whatsoever would attract Article 21. The provisions of Section 144 of the MSA duly reflect this position.

This apart, provisions of Sections 115 and 126 of the Customs Act, 1962 cannot be read to include ex-proprietary power in regard to any property and, in particular, a property which is subject to charges and claims, the power to destroy and deny such charges and claims which are otherwise legal, valid and legitimate. In other words, in the context of Maritime law the exercise and power under Sections 115 and 126 are subject to the satisfaction of claims and charges created and recognized by law in all civilized countries.

The most unique concept of all in Admiralty law is the Maritime lien. It is a concept which is sui genesis, but for practical purposes it may be considered as a charge upon maritime property, arising by operation of law and binding the property even in the hands of a bona fide purchaser for value and without notice, but which can only be enforced by an Admiralty claim in rem.

A Maritime lien "adheres to the ship from the time that the facts happened which gave the Maritime lien, and then continues binding on the ship until it is discharged, either by being satisfied or from the laches of the owner, or in any other way which, by law, it may be discharged. It commences and there it continues binding on the ship until it comes to an end".

Admiralty jurisdiction all over the world recognize the existence of Maritime liens which have evolved over years of State and judicial practice. The existence and enforceability of such liens outside statute law is well established. The statutory law in regard to Admiralty or Maritime claims is not exhaustive of the subject. Courts recognize and applied such members of Maritime liens as capable of enforcement through Admiralty. M.V. Elisabeth and Others case (supra). The above judgment very elaborately deals with the Admiralty powers of the High Courts in India. In para 86, it has been clearly held that the judicial power of this country, which is an aspect of national sovereignty, is vested in the people and is articulated in the provisions of the Constitution and the laws and is exercised by Courts empowered to exercise it. It is absurd to confine that power to the provisions of imperial statutes of a bygone age. Access to court which is an important right vested in every citizen implies the existence

of the power of the court to render justice according to law. Where statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience. (underlining is ours)

In the words of Chief Justice Marshall ((1812) 11 US (7 Cranch) 114, 143: 3 L Ed 287):

"87. The jurisdiction of courts is a branch of that which is possessed by the nation as an independent sovereign power. The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself....." (Schooner Exchange (The) v. M'Faddon).

88. Admiralty jurisdiction is an essential aspect of judicial sovereignty which under the Constitution and the laws is exercised by the High Court as a superior court of record administering justice in relation to persons and things within its jurisdiction. Power to enforce claims against foreign ships is an essential attribute of admiralty jurisdiction and it is assumed over such ships while they are within the jurisdiction of the High Court by arresting and detaining them. \005.. \005.

91. Admiralty jurisdiction, despite the peculiarities of its origin and growth - rooted as it is in history and nurtured by the growing demands of international trade - is nevertheless a part of the totality of jurisdiction vested in the High Court as a superior court of record, and it is not a distinct and separate jurisdiction as was once the position in England before the unification of courts. The 1890 and 1891 Acts specifically conferred admiralty jurisdiction on the Indian High Courts by reason of their being courts of unlimited jurisdiction. These Acts did not create any separate or distinct jurisdiction, but merely equated the Indian High Courts to the position of the English High Court (united and consolidated as that Court has been since 1875) for the exercise of admiralty powers within the jurisdiction of the former. The contrary view expressed in some of the decisions of the High Courts referred to earlier is clearly wrong.

92. Once a foreign ship is arrested in Indian waters by an order of the High Court, in exercise of the admiralty jurisdiction vested in it by statute, or inherent in it as a court of record, in respect of any maritime claim against its owner, wherever the cause of action may have arisen, and whether or not the ship is subsequently released by the owner furnishing security, proceedings must continue against the owner as in any other suit. The arrest of the vessel while in Indian waters by an order of the High Court concerned, as defined under the Merchant Shipping Act, 1958 (Section 3(15)) attracts the jurisdiction of the competent court to proceed with the trial, as in the case of any other suit, as an action against the owner, and any decree obtained by the plaintiff is executable against any property of the owner available within jurisdiction, including the security furnished by him for release of the vessel.

Judicial opinion and text book writers hold that a Maritime lien such as seamen's wages is a right to a part of property in the res and a privileged claim upon a ship, aircraft or other maritime property and remains attached to the property travelling with it through changes of ownership. It is also acknowledged that it detracts from the absolute title of the 'res' owners (see 1. Maritime Liens by D.R. Thomas British Shipping Laws Vol. 14 PP 51-67 2. Law by Cristopher Hill 2nd Edition 1985 PP 107-111 and 3. Principles of Maritime by Susan Hodges and Cristopher Hill 2001)

The seamen's right to his wages have been put on a high pedestal. It is said that a seamen had a right to cling to the last plank of the ship in satisfaction of the wages or part of them as could be found in Neptune 161 ER 81 and also RUTA (2000) 1 LLR 359.

Having regard to the universally recognized status of Maritime liens and, in particular, the position accorded to seamen's wages, and having due regard to the constitutional and statutory protection of such wages there can be no extinction of loss of such lien owing to the act of confiscation under Section 115 read with Section 126 of the Customs Act, 1962. The lien of a Pawnee traceable to Sections 172, 173 and 176 of the Contract Act is capable of satisfaction from property in the hands of the Government obtained even by lawful seizure. In Bank of Bihar vs. State of Bihar &

Ors. [1971] Supp. S.C.R. 299. It was held as follows:

"The pawnee had special property and a lien which was not of ordinary nature on the goods and so long as his claim was not satisfied no other creditor of the pawnor had any right to take away the goods or its price. After the goods had been seized by the Government it was bound to pay the amount due to the plaintiff and the balance could have been made available to satisfy the claim of other creditor of the pawnor. But by a mere act of lawful seizure the Government could not deprive the plaintiff of the amount which was secured by the pledge of the goods to it. As the act of the Government resulted in deprivation of the amount to which the plaintiff was entitled it was bound to reimburse the plaintiff for such amount which the plaintiff in ordinary course would have realized by sale of the goods pledged with it on the pawnor making a default in the payment of debt."

Seamen who have a right to wages, which right is enforceable against the ship can legitimately lay a claim to the payment of such wages out of the proceeds of the ship obtained by its sale. In our view, it is immaterial as to why and by what process brings up the ship for sale either by way of proceedings in rem or otherwise. What is material is that the proceeds of the sale of the ship are available for satisfaction of the Maritime liens. The absolute character of vesting, following confiscation can be absolute, only against persons having proprietary right in the ship or goods and more particularly denoting a suspension or abeyance of such rights, till the confiscation is lifted in accordance with law. It would be misconceived to extend the scope of such vesting to the point of extinction of Maritime liens particularly seamen's wages. It is equally well settled that public undertaking such as the port, dock or a harbour possessing statutory power to detain and sell a ship cannot sell the res free of the liens which have attached prior to the sale [see *Corps & Corps vs. Queen of South* [1968] 1 LLR 182]. The seamen's lien will follow the ship and its proceed in whatsoever hand they may come by title or purchase from owner and the lien reattaches to the thing after sale and to whatever is substituted for it. [see *James Sheppard vs. Lemuel Taylor* 8 Led 269 \026 see also para 1907 Vol.43 (2) Halsbury Laws of England 4th Edn. Re-issue] Obtaining jurisdiction to the res in pursuance of statutory powers should be put on the same footing as acquisition of the title following the transfer of res.

Section 141 of the MSA enables the seamen to receive certain amount of wages plus compensation by reason of the wreck, loss or abandonment of the ship among other reasons. Destruction of a neutral ship by a belligerent State has been said to constitute loss [see *Sieveright vs. Allen* (1906) 2 KB 81] and further where unknown to the crew the vessel is carrying contraband of war, the crew's right to wages does not cease with the capture of the ship. See *Austin Friars vs. Strack* [1905] 2 KB 315; 1906 2 KB 499]

POWER TO CONFISCATE

The power to confiscate and the consequent forfeiture of rights or interests are drastic, being penal in nature. Statutes conferring such powers must be read very strictly. There can be no exercise of power under such statutes by way of extension or implication. No expansive meaning can be given therefore to Section 115 of the Customs Act merely from the dictionary meaning the word absolute as has been done by the Division Bench of the High Court. Since the order passed by the Commissioner of Customs proposed confiscation not on the ground of detection or seizure of any contraband which is sought to be brought into the territorial waters but for reasons of non-compliance with Section 30 of the Customs Act, 1962. The scope of Section 115(2) cannot be extended and be invoked as if this is a case of transport of contraband goods.

It is evident that because of the cargo which was being carried by the Ship (namely Steel) was treated as smuggled goods for reasons of non-compliance with Section 30 of the Customs Act, the confiscation of the Ship ensued owing to the confiscation of the goods. Sub-section (2) of Section 115 provide for relief against confiscation if it is established by the owner or the person incharge of the conveyance that the conveyance has been used for the prohibited purpose without their knowledge or connivance. The conclusion drawn by the Commissioner is set out below:-
"When the master is in command of the vessel, the Chief Officer or the other members of the crew have no say in the decisions of the Master and as such, I do not find any justification for imposing penalties either on the Chief Officer or on the other members of the crew."

Having regard to the fact that the Maritime liens and, in particular, seamen's wages, have a hallowed place in the Admiralty law, the benefit of the exception under Section 115(2) should, in our view, be extended to the crew.

It was argued that the appellant need not independently question the legality of the confiscation of the ship. We have already seen the order passed by the Commissioner of Customs. The benefit of exoneration was given to the crew by the Commissioner of Customs. Therefore, in our view, they can seek an exception to the absolute failure of the ship on the basis of provisions of Section 115(2) of the Customs Act. They can enforce their liens regardless of the validity or otherwise the order of confiscation of the goods or the vessel. In our opinion, it is open to the seamen to assail the claim of absolute forfeiture in the Admiralty proceedings. It has been held in 273 US 612, *Hardford Accident and Indemnity Co.*]

"Where a court of equity has obtained jurisdiction over some portion of a controversy, it may and will in general proceed to decide the whole issues and award complete relief even where the rights of parties are strictly legal and the final remedy granted is of the kind which might be conferred by a court of law."

SUBMISSIONS BEFORE THIS COURT

? The appellants claimed that, the High Court has failed to appreciate the principles laid down in the *A.L. Quamar and M.V. Elizabeth* case.

(notwithstanding the fact that the order of arrest of the ship ceased to be in force by virtue of the withdrawal of the claims for the arrest of the vessel and sale of the vessel and notwithstanding that the suit which was originally suit in rem has now become suit in personam, this Court continues to have the power, authority and jurisdiction to consider the said application on merits and dispose it of. This was the view taken by this Court in the case of *Elizabeth*). (This Court in the case of *M.V. AL Quamar v. Tsavlis Salvage (International) Ltd*, where the court noted that, there are two attributes to maritime lien, (i) right over a part of property in the res, (ii) a privileged claim upon a ship in respect of services rendered to or injury caused by that property. Maritime lien attaches to the property in the event the cause of action arises and remains attached. Further the court observed that the lien continues even if the ship is taken legally from an owner by requisition).

? It was argued by the appellant, quoting Sections 138, 139, 140, 141 and 144, that the right of the seaman to wages is unfettered and no limitation on the entitlement is under the Merchant Shipping Act. Therefore Section 115 of the Customs Act which talks about confiscation will not operate to the contrary.

? Another argument that was raised by the appellant in the present appeals is that the right to wages of seamen as wages of any employee is integral to Article 21 of the Constitution, which talks about the right to life and liberty of every individual. Therefore it can be safely concluded that section 144 of the Merchant Shipping Act and Article 21 of the constitution is tantamount. In this respect the appellants referred to *Bank of Bihar v. State of Bihar* (supra) case which laid down that the right to wages out of proceeds of the ship obtained after sale is available with the crewmen of the ship if their wages are not paid.

? The appellants referred to Section 141 of Merchant Shipping Act, which enables seamen to receive certain amount of wages and compensation by reason of the wreck, loss or abandonment of the ship among other reasons. Also the provision contemplates a situation where the crew is unaware that the vessel they are working in is carrying contraband goods; the crew's right to claim will survive even after the vessel is arrested or captured.

? The appellants argued that the reliance placed by the Division Bench on *Shewpujanrai Indrasanrai Ltd.* (supra) and *Collector of Customs, Madras & Ors.* (supra) decisions in holding that, after order of confiscation of a vessel and goods is passed, it operates against all even if they are not parties to the proceedings, is inappropriate because neither of the above cited cases concern or relate to the assertion of maritime liens or seamen's wages which are protected both under the Admiralty law and the Merchants Shipping legislations. Since the order passed by the Commissioner of Customs proposed confiscation not on the ground of detection or seizure of any

contraband goods which is sought to be brought into the territorial waters but for reasons of non-compliance with section 115 (2) cannot be extended and be invoked as if this is a case of transport of contraband goods.

OBSERVATION

It has been long recognized that under the general maritime law as administered in the English Court of Admiralty, a seaman possesses a maritime lien in respect of a claim for wages. However, till the present date this kind of lien has never been expressly incorporated into the merchant shipping legislation [D.R. Thomas, *Maritime Liens*, Vol: 14, British Shipping Laws, Steven & Sons, 1980].

Statutes enlarging the jurisdiction of the court to entertain claims for wages have been construed by the courts as impliedly extending the ambit of the lien [ibid, p:174]. Therefore the jurisdiction of the court and the existence of a maritime lien are coterminous.

A seaman's maritime lien for wages arises from the fact of service rendered to the ship and is independent of agreement and of personal liability on the part of the ship owner. Section 16 (1) of the Merchant Shipping Act, 1970 provides that, 'A seaman's lien, his remedies for the recovery of his wages shall not be capable of being renounced by any agreement'.

According to English Law, it is customary to regard the following causes of action as conferring a maritime lien,

- i) damage resulting from a collision
- ii) bottomry
- iii) salvage
- iv) wages of seamen
- v) ship's masters wages and disbursements
- vi) fee and expenses incurred by a receiver of wreck

A Convention had come into place in 1993 which dealt with Maritime Regulations, however, the Convention does not define maritime liens but only listed them under Article 4 (convention Liens) namely:-

- ? master and crew wages including costs of repatriation and social insurance contributions
- ? claims for loss of life or personal injury in direct connection with the operation of the vessel
- ? salvage
- ? claims for port, canal and other watering dues and pilotage dues
- ? claims based on tort arising out of physical loss or damage caused

William Tetly in "Maritime Claim and Liens" observed that, 'the seaman's lien is a true traditional maritime lien. The key is service to the ship, the lien is not dependant on who hired the seaman, be it the owner of the vessel or not. Thus seamen were granted a lien even where they were employed by the master or not'.

Maritime lien of the crewmen attaches to the ship in respect of which the employment service is rendered including the vessels tackle, apparel and furniture. In the words of Sir John Nicholl, "If any portion of the ship be saved, the mariner has a lien on the thing for wages". [The *Lady Durham* (1853) 3 Hag. Adm 196, p:201]. The lien extends to freight as well including freight payable by sub-charterers. Therefore in case of any deficiency in the proceeds from the sale of the vessel the freight can be called to the court [D.R. Thomas, "Maritime Liens", p: 181]. The ship however represents the first charge and the lien on the freight is only consequential, therefore if there is no lien on the vessel there can be no lien on the freight. However there is no lien for wages on the cargo [Ibid, p: 182].

Therefore, in the fact situation of the present case, the crewmen definitely, by virtue of them being crewmen have a lien on the vessel and are entitled to claim such wages that are due to them. The rationale being wage lien arises from service rendered to the ship. Thus, it can be said that the order of the single judge which ordered the payment of wages for the crewmen from the proceeds from the sale of cargo is wrong, but again the order of the division bench saying, once the order of confiscation of the vessel is passed the crewmen cannot exercise any lien on the vessel even to get their wages is also wrong.

There exists a maritime lien on the vessel of its crew as established by judgments and authorities earlier cited. And also as understood maritime lien is a concept that evolved through the ages by way of customs prevailing in the law of the seas, no legislation specifically provides for maritime lien to the crew on the vessel. And it is very clear in judicial practice that no statutory rule can ever come in the way of the

implementation of any customary practice which has the force of law. The requirement for any customary practice to have force of law is its practice for a long time and the absence of any statutory provision expressly prohibiting the implementation of that particular custom in force, the customary practice of the exercise maritime lien by the crew members satisfies both these requirements. Thus Section 115 of the Customs Act which talks about confiscation will not operate to disentitle the crew of the lien that they

can exercise on the vessel for the recovery of their wages which is an established practice in the law of the seas.

Also the reliance placed by the division bench on 1959 SCR 821 and (1974) 3 SCC 833 decisions in holding that, after order of confiscation of a vessel and goods is passed, it operates against all even if they are not parties to the proceedings, is inappropriate as stated by the counsel for the appellants before the High Court because neither of the above cited cases concern or relate to the assertion of maritime liens or seamen's wages which are protected both under the Admiralty law and the Merchants Shipping legislations. Since the order passed by the Commissioner of Customs proposed confiscation not on the ground of detection or seizure of any contraband goods which is sought to be brought into the territorial waters but for reasons of non-compliance with Section 115 (2) cannot be extended and be invoked as if this is a case of transport of contraband goods.

Further, the right to wages of seamen as wages of any employee is integral to Article 21 of the Constitution, which talks about the right to life and liberty of every individual. Also Section 144 of the Merchant Shipping Act states that the right of the seaman to wages is unfettered and no limitation on the entitlement is under the Merchant Shipping Act. Therefore it can be safely concluded that Section 144 of the Merchant Shipping Act and Article 21 of the Constitution is tantamount. In this respect the appellants referred to Bank of Bihar v. State of Bihar case (supra) which laid down that the right to wages out of proceeds of the ship obtained after sale is available with the crewmen of the ship if their wages are not paid which is integral to the right to life and liberty guaranteed as a fundamental right to every individual under the Constitution.

Judicial Review and Court craft in environmental adjudications, apart from open and shut cases in the traditional law of nuisance is basically a practice of forging fellowship and a mutuality of concern extended to strangers in nature and in one's own community. There will thus be no excluded categories of State Policy or Practice which can claim exemption from judicial consideration.

A vivid illustration of how morality informs the subjects' presentation of their disputes and the King's morality in resolving them is given in the story of a fanciful meeting between Alexander the Great, and the legendary King Katzya, ruler of a fabulous land beyond the dark mountain:

The visiting Alexander bypassed Katzya's gold and silver but wished to see 'your customs, your behaviour, and how you administer justice'. The conqueror then watched King Katzya heard a case between the buyer and the seller of a field in which hidden treasure had been found. Each disclaimed the treasure, not having bargained for it in the sale. After hearing their briefs, the king found that one man had a son and other a daughter. He arranged their betrothal to one another and bestowed the trove on them. Alexander, laughing, was asked how he would have ruled on such a case in his own land.

I would have executed both of them and confiscated the treasure". So King Katzya set out a meal all of gold. When Alexander objected that he did not eat gold, the King exclaimed, with an imprecation: "Why then do you love it so?" He then asked whether the sun shone and the rain fell in Alexander's country and whether there were livestock there. On hearing that there were, he exclaimed, again with an imprecation, "Why then it is only by the desert of those cattle that you survive.

Judicial Review would therefore have to be the ever sustaining appreciation of the 'desert' of all beings in nature and all orders of nature to the possibility of human life

and the need to avoid at any cost the high probabilities of not only the extinction of the species but destruction of the rich and wonderful variety of Nature's productions. In other words it is more urgent to see judicial review as one of the most immediate means

of generating concern for life beyond us and orders sustaining us, in the minds of people wielding economic and social power.

CONCLUSION:

In our opinion, the appellant and other crew members are entitled to a fair and just treatment and the confiscation of the ship shall not be treated as a prized catch of an enemy Ship deserving condemnation without exception. The case on hand does not present features of clear and demonstrated complicity of the crew. The comity of nations is a reciprocal courtesy which one member of the family of nations owes to the others. In our opinion, the crew members are not responsible for the confiscation and sale of the ship and the cargo. It is settled law that action of the State has to be based on reasonableness and it cannot deprive the basic human rights afforded under the Constitution of India more so under Article 21.

In our view, the impugned judgment is contrary to the principles of law laid down by this Court in M.V. Al Quamar's and M.V. Elizabeth's Cases (supra). In these cases, this Court has held that Maritime lien is a right which continues even if the ship is

taken legally from an owner by requisition. The argument advanced by learned counsel for the first respondent that the Maritime lien is extinguished by confiscation has no force and is without any merit. The Courts have recognized and upheld the welfare of the citizens and have always recognized the rights of those who are in the lowest strata of the society especially when it comes to workers and their wages. The seamen have suffered a lot without wages from May, 1999 till the time they were deported by the Consulate. They have suffered a lot of mental and physical agony in spite of that they have not been given their wages till date due to a narrow approach. State should always be fair and reasonable in settling the lawful claims. It is seen from the counter affidavit filed by the Customs Department that the ship was sold for Rs.2.36 Crores through tender sale and the Cargo was sold off by customs through auction and a sum of Rs.18.75 Crores was realised. The seamen can claim their wages only from and out of the sale proceeds of the vessel.

This Court in various judgments beginning from R.C.Cooper's case and Maneka Gandhi's case etc. have laid down that deprivation of rights is subject to judicial review.

The State action is restrained by principles of reasonableness, justice and fair play. The principles enshrined in Article 21 are equally applicable to a foreigner as it is to a citizen. The confiscation by the Government of the vessel cannot extinguish the pre-existing rights of the crew men. India has become a signatory to various International Conventions honouring the social, political, civil, economic rights of human beings. The Directive Principles of State Policy has also become fundamental right and justifiable.

The Merchant Shipping Act, 1958 has laid down exhaustive provisions for seamen's wages. The Act itself recognizes that recovery of wages shall not be subject to attachment. Section 445 of the Act provides that payment of wages of Seamen can be made by sale of ship. In the Companies Act, under Section 529(a) an overriding effect has been given and it has been provided that in winding up proceedings the worker's dues have priority over other claims. The Madras High Court has failed to appreciate that India has travelled very far from 1950 and that the Courts have given way to a dynamic constructive approach in the aspect of social justice while referring to International Conventions etc.

We, therefore, unhesitantly hold that all the seamen who were on board the vessel Kobe Queen I also known as Gloria Kopp are entitled to their full wages and perks. We, therefore, direct the Commander Coast Guard Region (East), Fort St. George, Chennai \026 600 009 and the other respondents including the Customs Department and the concerned Department of the Government of India to pay the wages forthwith to all the crew members who were on board in the vessel Kobe Queen I also known as Gloria Kopp at any rate not later than three months from the date of this judgment through the Consulate of the country concerned.

We place on record our deep appreciation for the valuable assistance rendered by senior counsel Mr. Venkataramani and Mr. Ravi P. Mehrotra who made our job easier.

In the result, the order impugned in these appeals passed by the Division Bench of the Madras High Court is set aside and the appeals stand allowed. However, we order no costs.

JUDIS