

NARESH KUMAR AND ANR.

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v.

UNION OF INDIA AND ORS.

APRIL 5, 2004

[S.N. VARIAVA AND H.K. SEMA, JJ.]

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Merchant Shipping Act, 1958:

Section 80(since omitted)—Certificate of Service (COS)—Officers of Indian Navy were issued COS without any examination—Such COS saved under S. 5 of Amendment Act of 1986—Validity of—Held: After entry into force of the 1978 Convention as amended in 1995, such COS valid only temporarily—The governing provision is Art. VI of the Convention—Now there can only be Certificates contemplated by the Convention—Merchant Shipping (Amendment) Act, 1986, S. 5—International Convention on Standards of Training, Certification and Watch Keeping for Seafarers, 1978 (as amended in 1995), Arts. VI and VII and Regns. 1/2 and 1/11.

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Merchant Shipping (STCW) Rules, 1998:

Rules 11, 15 and M.S. Notice No. 4 of 2000—Provided for conversion from Certificate of Service (COS) to Certificate of Competency (COC) after undergoing necessary refresher course, completing training or assessment—Different courses prescribed for successful conversion from COS to COC—Validity of—Held: Distinction between COS and COC was based on intelligible differentia and not violative of Arts. 14 and 19—Rr. 11 and 15 intra vires the 1995 Convention and the Merchant Shipping Act, 1958—Constitution of India, 1950, Arts. 14 and 19.

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Rules 11 and 15 and M.S. Notices Nos. 4, 5 and 6 of 2001:

Chief Mate—No provisions existed to enable a COS holder to get an endorsement as Chief Mate in case he did not desire a COC as a Master—Central Government gave an undertaking to make suitable provisions in that regard—Held: In accordance with its undertaking, Central Government to make suitable provisions.

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The appellants were serving in Indian Navy as officers. They got

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A released from the Indian Navy and were employed in the Merchant Navy. As Officers in the Indian Navy they obtained, without examination, Certificates of Service (COS) as the “Master of Foreign Going Ship” or “First Class Engineer” or “Second Class Engineer”. The COS was issued under Section 80 (as it then stood) of the Merchant Shipping Act, 1958.

B The International Convention on Standards of Training, Certification and Watch Keeping for Seafarers, 1978 (“STCW” 78) came into force globally. India was one of the signatories to the Convention and ratified the Convention in 1986. The object of the Convention was to have uniform standard of training and Certification. Article VI of the 1978

C Convention enjoined that Certificates be issued for masters, officers or ratings. It provided that these shall be issued to those candidates who meet the requirements for service, age, medical fitness, training, qualification and examinations in accordance with the appropriate provisions. The 1978 Convention was amended in 1995 and was known as STCW 1995. This 1995 Convention extensively amended the 1978 Convention but Articles I

D to XVII of the 1978 Convention remained un-amended. Consequently, the Merchant Shipping (STCW) Rules, 1998 were also framed. Rule 11 required that existing COS holders who intended to become holders of COC shall be required to complete approved training assessment. Similarly, Rule 15 required that every Master on a seagoing ship of 500

E gross tonnage or more shall hold an appropriate COC in the prescribed form. Accordingly, the respondent issued M.S. Notice Nos. 2 of 2000, 4, 5 & 6 of 2001 in compliance with Rules 11 and 15 by prescribing the procedure of continued employment of COS holders by obtaining a COC as amended under STCW 1995.

F Being aggrieved by the aforesaid procedure, the appellants filed a writ petition before the High Court, which was dismissed. Hence the appeal.

G On behalf of the appellants, it was contended that though Section 80 of the Act was repealed the appellants would continue to hold the COS in view of S. 5 of the Amendment Act of 1986; that Art. VII of the 1995 Convention continued to accept the COS as valid; that Rule 15 framed under STCW Rules, 1998 was violative of the Act and the Convention and that the arbitrary distinction sought to be made between COS and COC was in violation of Arts. 14 and 19 of the Constitution.

H The following question arose before the Court:-

Whether the Certificate of Service issued under Section 80 of the Merchant Shipping Act, 1958 could be treated as a Certificate under the Convention after the 1978 Convention, as amended by the 1995 Convention, came into force? A

Disposing of the matters, the Court

HELD: COS issued under Section 80 and validity thereof B

1. The appellants' contention that despite deletion of Section 80 of the Merchant Shipping Act, 1958, the Certificate of Service (COS) would continue to apply cannot be accepted for more than one reason. Firstly, Section 5 of the Amendment Act of 1986 related to COS. No doubt Section 80 of the Act was holding the field before it was amended but it had eclipsed with the emergence of the International Convention on Standards of Training, Certification and Watch Keeping for Seafarers, 1978 as amended by the 1995 Convention. With the emergence of the 1995 Convention there is no provision for indefinite continuance of COS in respect of the Officers of the Merchant Ships. India being a signatory to the 1995 Convention, it has to ensure uniform standards, as prescribed by the Convention. [784-C-D] C
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Effect of Article VII of the 1978 Convention

2.1. Even though temporarily a COS was valid, after entry into force of the Convention of a party, a Certificate of Competence (COC) has to be issued for a period not exceeding five years. The last part of Article VII(2) enjoins that "all other candidates" (i.e. those who do not have COC) "shall be examined and certified in accordance with the Convention". E

[785-E] F

2.2. Article VII only permits continuance of COS temporarily. It is a transitional provision. The governing provision remains Article VI, which now requires that Certificates be issued to those who meet the requirements. Now there can only be Certificates contemplated by the Convention. [785-G] G

Rule 15 and M.S. Notice 4 of 2001 are not discriminatory and violative of Articles 14 and 19 of the Constitution

3.1. From a reading of the prefaces of the 1978 Convention, it is clear that the rationale behind the signing of the International Convention, H

A of which India is a signatory, is to bring uniformity of standard internationally. This has become necessary to comply with the STCW 95 requirement to provide evidence of training and competency regarding emergency procedures, occupational safety, medical care, survival functions and radio communications etc. The whole idea behind convening of such Conventions is to attain uniformity of standard of competence internationally because the ships sail on international waters. [787-F-G]

3.2. From a reading of M.S. Notice No. 4 of 2001, it is clear that different standards are prescribed for different categories to achieve the competence par excellence, keeping in view the emergency situation, occupational safety, medical care, survival functions etc. while sailing on sea. Thus, such procedures have been prescribed to attain uniformity of standard internationally. [792-B]

4. The Director General Shipping is required to determine the need for requiring the holders of certificates to undergo either refresher course or competing training or assessment before he can certify as required under Regulations 1/2 and 1/11 of the 1995 Convention. The Master of a Merchant Navy Ship, by the time he attains the rank of a Master, will have given 15 examinations and 3 orals. But the Naval Officers who, by virtue of Section 80, as it then stood, got the COS, had never been assessed and were merely given the COS without any examinations. [792-E-F]

5. The M.S. Notice No. 4 of 2001 was issued in conformity with Rules 11 and 15 framed under the Convention. The distinction between COS and COC is clearly based on intelligible differentia. Article 14 forbids discrimination but allows reasonable classification based on intelligible differentia. In the present case, the reasonable classification is aimed at to achieve uniformity of competence internationally. Such a classification cannot be termed as discriminatory or violative of Articles 14 and 19 of the Constitution. The Rules framed thereunder are intra vires the Convention and the Act. [792-G-H; 793-A]

6. There are no provisions in M.S. Notice No. 4 of 2001 to enable holders of COS who do not desire to have a Master's competency but want only an endorsement under the 1995 Convention as a Chief Mate. However, the respondent agreed to make necessary provisions in that regard and it is ordered accordingly. [793-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6699 of 2002.

From the Judgment and Order dated 31.7.2001 of the Bombay High Court in W.P.No. 1314 of 2000. A

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C.A. No. 6700/2002, T.C. (C) No. 112 of 2002 W.P. (C) Nos. 238, 207 of 2003. B

M.N. Krishnamani Venketeswaran, Joseph Vellapally, Ms. Kamakshi S.Mehiwal, Anish Dayal, Ms. Anitha Shenoy, Abhishek Misra, Ms. Naresh Verma, Pradheep Misra, Rajesh K. Mittal, Anil Mittal, Ms. Shashi Kiran, Ms. S. Priya, Ms. Anil Katiyar for the Appearing parties.

The Judgment of the Court was delivered by C

SEMA, J. In all these petitions a common question of facts and law has been raised and as such they are being disposed of by this common judgment. For brevity, we are taking the facts from Writ Petition No. 238 of 2003. D

Briefly stated the facts are as follows:-

The petitioners were serving in Indian Navy as Officers. They got released from Indian Navy and are now employed in Merchant Navy. As Officers in the Indian Navy they obtained, without examination, Certificates of Service (CoS) as the "Master of Foreign Going Ship" or "First Class Engineer" or "Second Class Engineer" as the case may be. The CoS was issued under Section 80, (as it then stood) of the Merchant Shipping Act, 1958 (in short "the Act"). As the Naval Officers were granted Certificates of Service without examination, in most cases, the owners of the merchant ship would employ these persons in a lower rank than that shown in the Certificates of Service. E F

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 ("STCW 78") came into force globally. India was one of the signatories to the Convention and ratified the Convention on 16.2.1986. The object of the Convention is to have uniform standard of training & certification. Thus, Article VI of 1978 Convention enjoins that Certificates be issued for masters, officers or ratings. It provides that these shall be issued to those candidates who meet the requirements for service, age, medical fitness, training, qualification and examinations in accordance with the appropriate provisions. The 1978 Convention was amended in 1995 and is known as STCW 1995. This 1995 Convention extensively amended H

A the 1978 Convention but Articles I to XVII of 1978 Convention remained unamended. Consequently, the Merchant Shipping (STCW) Rules, 1998 were also framed. Rule 11 *inter alia* requires that existing CoS holders who intend to become holders of CoC shall be required to complete approved training assessment. Similarly, Rule 15 requires that every Master on a sea-going ship of 500 gross tonnage or more shall hold an appropriate Certificate of Competency in Form 3. The respondent also issued M.S. Notice Nos.2 of 2000, 4, 5 & 6 of 2001 in compliance with Rules 11 and 15 by prescribing the procedure of continued employment of CoS holders by obtaining a CoC as amended under STCW 1995.

C Being aggrieved by the aforesaid procedure, a writ petition had been filed *inter alia* praying for the following relief:-

A. Issue Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate Writ or direction under Article 32 of the Constitution of India declaring that impugned Notices Nos. 2 of 2000 and 4, 5, & 6 of 2001 and Rules are unconstitutional and ultra vires the MS Act and STCW 95 Convention and consequently illegal, invalid, null and void and of no effect whatsoever; and

B. Issue Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate Writ or direction under Article 32 of the Constitution of India to quash and/or set aside the impugned M.S. Notice Nos. 2 of 2000 and 4,5 & 6 of 2001; and

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 F We have heard S/Shri Joseph Vellapalli, M.N. Krishnamani and Venkiteswaran, learned Senior counsel appearing for the parties.

The short question that arises for consideration in these batch of petitions is that as to whether the CoS issued under Section 80 of the Act could be treated as a Certificate under the Convention after the 1978 Convention, as amended by 1995, came into force.

G Counsel for the petitioners argued that the petitioners who have attained the rank of lieutenant in the executive branch of the Indian Navy, being the holder of CoS without examination under Section 80 of the Act, would continue to hold such certificate in view of saving clause of Section 5 though Section 80 was repealed by an Amendment Act of 1986 in consonance with H STCW 1978. It is argued that Article VII of 1995 Convention continued to

accept all existing certificates including CoS as valid. It is argued that Rule 15 framed under STCW Rules 1998 was in violation of the Act and the Convention which prescribed that only a CoC holder could serve as a Master of a ship. It is further argued that arbitrary distinction between the two certificates was created with malafide intention of debarring CoS holders from getting employment on foreign going ships. It is argued that such arbitrary distinction sought to be achieved is in violation of Articles 14 and 19 of the Constitution. These are the sums and substances of the submission. A B

CoS issued under Section 80 and validity thereof:

Section 80 as it stood before amendment reads:- C

“80. (1) 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 examination. D

(2) A person who has attained the rank of lieutenant or sub-lieutenant in the engineering branch of the Indian Navy shall be entitled without examination, if a lieutenant to a certificate of service as first class engineer and if a sub-lieutenant to a certificate of service as second class engineer. E

(3) The Central Government may, by rules made under this Act and subject to such conditions and restrictions as may be specified therein, provide for the grant of certificates of service to officers of the Indian Naval Reserve Forces who have attained the prescribed ranks. F

(4) A certificate of service shall differ in form from a certificate of competency and shall contain the name and rank of the person to whom it is delivered, and the Central Government shall deliver a certificate of service to any person who proves himself to be entitled thereto. G

(5) Notwithstanding anything contained in this section, the Central Government may, if it is of opinion that a person who is entitled to a certificate of service under this section is not a fit person to hold such certificate, refuse to grant or deliver such certificate to him. H

(6) The provisions of this Act (including the provisions relating to penalties) shall apply in relation to a certificate of service as they apply in relation to a certificate of competency.”

Section 80 has been deleted by an Amendment Act of 1986. This was done in compliance with STCW 1978. H

A Counsel for the petitioners heavily relied upon Section 5 of the amending Act, which deals with the saving clause. It reads:

B “Sec.5. For the removal of doubts, it is hereby declared that the amendments made in the principal Act by this Act shall not apply to, or in relation to, any certificate of service granted under section 80 or recognised under section 86 of the principal Act before the commencement of this Act and the principal Act shall apply in relation to such certificates as if this Act had not been enacted.”

C Counsel argued that despite deletion of Section 80 of the principal Act, the CoS would continue to apply as if the principal Act had not been amended. We are unable to countenance with this submission for more than one reason. Firstly, Section 5 of saving clause relates to CoS. No doubt Section 80 of the Act was holding the field before it was amended but it has eclipsed with the emergence of 1978 Convention as amended by 1995 Convention. With the emergence of 1995 Convention there is no provision for indefinite continuance of CoS in respect of the officers of the Merchant Ships. As already noticed, D the petitioners are now serving in Merchant Navy. India being a signatory to the 1995 Convention, it has to ensure uniform standards, as prescribed by the Convention.

E **Effect of Article VII:**

Article VII provides transitional provisions. It reads:-

F (1) A certificate of competency or of service in a capacity for which Convention requires a certificate and which before entry into force of the Convention for a Party is issued in accordance with the laws of that Party or the Radio Regulations, shall be recognized as valid for service after entry into force of the Convention for that Party.

G (2) After the entry into force of the Convention for a Party, its Administration may continue to issue certificates of competency in accordance with its previous practices for a period not exceeding five years. Such certificates shall be recognized as valid for the purpose of the Convention. During this transitional period such certificates shall be issued only to seafarers who had commenced their sea service before entry into force of the Convention for that Party within the specific ship department to which those certificates relate. The Administration shall ensure that all other candidates for certification

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shall be examined and certificated in accordance with the Convention. A

(3) A Party may, within two years after entry into force of the Convention for that Party, issue a certificate of service to seafarers who hold neither an appropriate certificate under the Convention nor a certificate of competency issued under its laws before entry into force of the Convention for that Party but who have: B

(a) served in the capacity for which they seek a certificate of service for not less than three years at sea within the last seven years preceeding entry force of the Convention for that Party;

(b) produced evidence that they have performed that service satisfactorily; C

(c) satisfied the Administration as to medical fitness, including eyesight and hearing, taking into account their age at the time of application.

For the purpose of the Convention, a certificate of service issued under this paragraph shall be regarded as the equivalent of a certificate issue under the Convention.” D

Thus even though temporarily a Certificate of Service was valid, after entry into force of the Convention for a Party, a Certificate of Competence has to be issued for a period not exceeding five years. The last part of sub-clause (2) of Article VII enjoins that “all other candidates” (i.e. those who do not have Certificate of Competence) “shall be examined and certified in accordance with the Convention.” E

Counsel has strenuously contended that CoS issued under Section 80 would continue to be valid and acceptable in terms of Article VII(3) of the 1978 Convention as amended in 1995. According to the counsel, all existing CoS issued under Section 80 and saved by Section 5 of the Act are being recognised and accepted under Article VII of the Convention. Reading Article VII as it is, in our view, it only permits continuance of CoS temporarily. It is a transitional provision. The governing provision remains Article VI which now requires that Certificates be issued to those who meet the requirements. Now there can only be Certificates contemplated by the Convention. In India Certificates contemplated by the Convention are continued to be called Certificates of Competence only for sake of convenience. F G

Rule 15 and M.S. Notice 4 of 2001 are being discriminatory and violative H

A of Articles 14 and 19 of the Constitution.

Before we answer this question we may at this stage notice the prefaces of the 1978 Convention and 1995 Convention. The preface to 1978 convention reads:-

B “THE PARTIES TO THIS CONVENTION,

DESIRING to promote safety of life and property at sea and the protection of the marine environment by establishing in common agreement international standards of training, certification and watchkeeping for seafarers,

C CONSIDERING that this end may best be achieved by the conclusion of an International Convention on Standards of Training, Certification and Watchkeeping for Seafarers,

HAVE AGREED AS FOLLOWS:

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Further, the introduction of 1995 Convention reads:-

E INTRODUCTION:

1. The revised STCW Convention (STCW 95) entered into force on 1 February, 1997. Transitional arrangements allow existing certificates to remain valid (subject to existing revalidation requirements) for 5 years until 1 February 2002. The Convention requires that certificates issued under STCW 78 be assessed and updating training undertaken where necessary to meet the STCW 95 requirements.

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G 1.2 In the United Kingdom we have taken the opportunity provided by the revision of STCW to review our domestic certificate structure. The new structure came into force on 13 March 1997 with the Merchant Shipping (Training and Certification) Regulations 1997. Training and examination under the existing arrangements leading to certificates of competency Class 1 to 5 may only be undertaken by those seafarers who commenced seagoing service which formed part of an approved training or educational programme before 1 August 1998. All candidates for merchant navy certificates starting training after 1 August 1998 must receive training which meets the

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requirements of STCW 95.

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6. CERTIFICATE OF SERVICE:

6.1. Holders of certificates of service who wish to become holders of certificates of competency complying with the requirements of STCW 95, will be required to undertake some assessment before the issue of any such certificate. That assessment will make full use of the VQ system and take account of previous experience. Certificate holders will be assessed to ascertain that their competence level matches that of the STCW 78, certificate of competency they are assumed to hold under existing equivalency arrangements (see Appendices 4 and 5), or that of a lower level of their choice. Additional training or updating may be required in order to comply with the STCW 95 requirement to provide evidence of training and competency regarding emergency procedures, occupational safety, medical care, survival functions and radio communications including GMDSS, appropriate to the category of certificate involved. Following satisfactory assessment and any additional retraining or updating required, certificate of service holders will be issued with equivalent STCW 95 certificates of competency as indicated in Appendices 2 and 3. Alternatively, certificate of service holders may retain their certificates and revalidate them at the due date. However, revalidation will only last until 31 January 2002 after which date the certificate of service will no longer be recognised.

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Reading of prefaces of 1978 Convention and 1995 Convention, it is clear that rationale behind the signing of the International Convention, of which India is a signatory, is to bring the uniformity of standard internationally. This has become necessary to comply with the STCW 95 requirement to provide evidence of training and competency regarding emergency procedures, occupational safety, medical care, survival functions and radio communications etc. The whole idea behind convening of such Conventions is to attain the uniformity of standard of competence internationally because the ships sail on international water.

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Rule 15 reads:-

“Minimum requirements for certification of Master (Master of a

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- A foreign-going ship) on ships of 500 gross tonnage or more:-
1. Every Master on a sea-going ship of 500 gross tonnage or more shall hold an appropriate Certificate of Competency in Form 3.
 2. Every candidate for certification shall-
 - B (i) hold a certification of competency as First Mate of foreign-going ship (Chief Mate on ships of 500 gross tonnage or more);
 - (ii) have approved sea-going service as an Officer in charge of a navigational watch on ships of 500 gross tonnage or more for a period of not less than three years. However, this period may be reduced by the Chief Examiner concerned to a period of not less than thirty months, or pro-rata, if not less than one year of such sea-going service served as Chief Mate;
 - C (iii) have completed an approved ship management course;
 - D (iv) have completed approved simulator training in ship handling, and manoeuvring; and have completed approved examination and assessment.

M.S. Notice 4 of 2001 was issued on the basis of 1978 convention as amended in 1995. The relevant paragraphs read as under:-

- E Preamble: The M.S Notice No.4 of 2001 Supercedes the M.S. Notice No.2 of 2000 pursuant to the Statement of Counsel appearing the the Director General of Shipping to the Hon'ble Division Bench of Mumbai High Court presided by Hon'ble Mr. Justice A.P.Shah and Hon'ble Mr. Justice S. Vazifdar in Writ Petition Nos. 1314/2000, 1347/2000, 1348/2000, 1546/2000 and 2322/2000.

1. Purpose of the Notice:-

- G The purpose of this notice is to prescribe the procedure of continued employment of officers presently in possession of Certificate of service as Master (F.G.) by obtaining a Certificate of Competency referred in Article VI. Regulation 1/2 of the STCW 78 Convention as amended in 1955 (hereafter referred to as STCW 1995). This has become necessary because the amended STCW Convention provides that the candidate for certification need to demonstrate their competence to the certifying authorities through appropriate assessment. Further merchant ship's design, construction operation, manning and
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management practices have become considerably specialized and vastly different from those of naval ships. Hence the holders of the Certificate of Service from Indian Navy will be required to undergo the procedures of certification as described hereunder. A

2. Requirement under amended STCW Convention:-

In accordance with STCW Convention as amended in 1995 and M.S. (STCW) Rules, 1998 (GSCR 91 (E) dated 28th April 1998), which will be fully implemented by 1st February 2002, officers in possession of the Certificate of Service are encouraged to obtain Certificate of Competency issued under the amended STCW Convention. As such, those officers who are in possession of the Certificate of service and desirous of converting their Certificate of service into certificate of Competency shall be required to undertake steps as early as possible under Rule 11 with regard to guidelines to be followed by such officers to convert their Certificate of Service into Certificate of Competency. B
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4. Categories of Naval Officers:-

For the purpose of determining the appropriate training, education and assessment program, the holders of Certificate of Service as Masters of a foreign going ships are divided into the following categories:- E

(a) Officers in possession of Certificate of service with minimum of 36 month of approved sea going experience of which at least 12 months in the capacity as Master on a trading ship of 3000 GT or more. F

(b) Officers in possession of Certificate of service with approved sea going experience of 18 months of more but less than 36 months as a Watch Keeping Officers, of which at least 6 months in the capacity of Master, on a trading vessel of 3000 GT or more. G

(c) Officers in possession of Certificate of Service with a minimum approved sea-going service of 6 months or more but less than 18 months as a Watch-Keeping officer on a trading ship of 3000 GT or more. H

A (d) Officer in possession of Certificate of Service with minimum of 36 months of approved sea going experience, of which at least 12 months in the capacity as Master, on a trading ship of 500 GT or more but less than 3000 GT.

B (e) Officers in possession of Certificate of Service with approved Sea going service of 18 months or more but less than 36 months as a watch-keeping officer, of which at least 6 months in the capacity as Master, on a trading vessel of 500 GT or more but less than 3000 GT.

C (f) Officers in possession of Certificate of Service with an approved sea-going service of 6 months or more but less than 3000 GT.

(g) Officers in possession of Certificate of Service with less than 6 months approved sea-going service as a Watch-keeping officer on a trading ship of 500 GT or more.

D 5. Officers in possession of Certificate of Service with minimum of 36 months of approved sea-going experience of which at least 12 months in the capacity as Master on a trading vessel of 3000 GT or more.

E Every such candidate shall successfully complete 1 month of Advanced Ship Board Management Course being conducted at LBSCAMSAR Mumbai. On successful completion of the said course, a candidate is required to complete all modular courses as applicable for Master's certification except ship maneuvering simulator course. The candidate is required to appear for oral assessment of Master (FG) by a panel of examiners appointed by Chief Examiners of Master & Mates.

F On successful completion of the same, the candidate will be issued with Masters (FG) STCW 95 Certificate of Competency.

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G 7. Officers in possession of certificate of service with approved sea-going service of 6 months or more but less than 18 months as a watch-keeping officer on a trading ship of 3000 GT or more.

Every such candidate shall successfully complete relevant course for the following written and oral assessment of Management Level.

H (i) Management level Function—I—Navigation

(a) Navigation Aids Including Compasses

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(ii) Management level Function-II

(a) Cargo Handling and Stowage

(iii) Management level Function III—Controlling and Operation of Ships and care for persons on board

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(a) Naval Architecture Paper-II

(b) Maritime Legislation

(iv) Master's Advanced Shipboard Management Paper—after successful completion of relevant papers of management level written examination as above.

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The candidate shall thereafter complete all required modular courses and appear for oral assessment of Master (FG) including syllabus of the relevant subjects of the Management Level by the panel of examiners as appointed by Chief Examiner of Master & Mates.

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On successful completion of the same, Master (FG)'s STCW Certificate of Competence will be issued.

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9. Officers in possession of certificate of Service with minimum of 36 months of approved sea-going experience of which at least 12 months in the capacity as Master on a trading ship of 500 GT or more but less than 3000 GT.

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Every such candidate shall successfully complete 1 month of Advanced Ship Board Management Course. On successful completion of the said course, a candidate is required to complete all modular courses as applicable for master's certification except ship maneuvering simulator course. The candidate is then required to appear for oral assessment in Advanced Ship-board management Functions, Navigation and Cargo Handling Functions of Master (FG) by a panel of examiners appointed by Chief Examiners of Master & Mates.

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On successful completion of the same, the candidate will be issued with Master (FG) STCW 95 Certificate of Competency with the endorsement "Limited to vessels less than 3000 GT".

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B From a cursory reading of the notice, it is clear that different standards are prescribed for different categories to achieve the competence of par excellence, keeping in view the emergency situation, occupational safety, medical care, survival functions etc. while sailing on sea. Thus, such procedures have been prescribed to attain the uniformity of standard internationally. As already noticed India is a signatory to the Convention.

C Even though the 1995 Convention made no changes in the Articles Regulation 1/2 provided that the certificate which was to be issued under Article VI required the Director General of Shipping to certify that the person has been found duly qualified in accordance with the provisions of the Regulation 1/2. Further, Regulation 1/11 of the 1995 Convention states as follows:-

D “Each party shall compare the standards of competency required prior to 1st February 2002 and as per Part-A of the STCW Code-1995, and determine the need for requiring the holders of all such certificates to undergo appropriate refresher, competing training or assessment.”

E Thus, now the Director General of Shipping is required to determine the need for requiring the holders of certificates to undergo either refresher course or competing training or assessment before he can certify as required under the 1995 Convention. It cannot be denied that a Master of a Merchant Navy Ship, by the time he attains the rank of a Master, will have given 15 examinations and 3 orals. It cannot be denied that the Naval Officers who, by virtue of Section 80, as it then stood, got certificates of service had never been assessed and were merely given certificates of service without any examinations. The 1995 Convention specifically requires the Director General of Shipping to determine the competency.

G The aforesaid notice was issued in conformity with Rules 11 and 15 framed under the Convention. The distinction between CoS and CoC is clearly based on intelligible differentia. Article 14 forbids discrimination but allows reasonable classification based on intelligible differentia. In the present case, the reasonable classification is aimed at to achieve the uniformity of competence internationally. By no stretch of imagination such classification
H can be termed as discriminatory or violative of Articles 14 and 19 of the

Constitution. Clearly in our view such Rules framed thereunder are intra A
vires of the Convention and the Act.

However we found that provisions had been made in M.S. Notice Nos. B
4, 5 and 6 for a holder of Certificate of Service (CoS) to convert this into a
Certificate of Competency (CoC), as a master, including for those who had
not sailed as a master. For such persons who do not desire to have a master's
competency but want only an endorsement, under 1995 Convention, as a
Chief Mate, no provisions were made. It was however clarified that under the
"Merchant Shipping Rules" framed under the 1978 Convention, a Chief Mate
in order to obtain a Master certificate of competency (CoC) needed to go
through written examinations of 5 papers and an oral examination. However, C
under the Rules made under the 1995 Convention, these examinations are
already covered for the Chief Mate Certificate and, therefore, a Chief Mate
has to only pass orals and a course of Advanced Ship Board Management,
for one month, to convert himself into a master under the 1995 Convention.
As a CoS holder who will be given a CoC as a Chief Mate under 95 Convention
would not have to go through an examination for conversion to Master's D
Certificate it will be contrary to Regulation 1/11. It was thus clarified that on
completion of the requirements, the Certificate of Service holders, who have
sailed as Chief Officers or as Second Mates, will be granted Certificates of
Competency as Chief Officers with a notation "E". This notation is only to E
identify the holders of such Chief Mate certificates and to ensure that, when
they come for conversion as masters, they would be required to undergo
written examinations covering phase-II of Chief Mate courses. If any of the
Certificate of Service holders desire to convert his certificate into Certificate
of Competency, without the endorsement "E", he may, at any time, undergo
written examinations of phase-II courses, whereupon the endorsement "E"
would be deleted. F

Mr. Venkiteswaran, on instructions from the Director General of
Shipping, gave an undertaking that the following provisions shall be made:-

"(1) Ex-Naval Officers in possession of Certificate of Service (COS) with minimum 36 months of approved sea-going experience of which atleast 12 months in the capacity as Chief Mate on a trading vessel of 3000 GT or more. G

Every such candidate shall successfully complete 3 months of
Phase II course of Management level. On successful completion of
said course a candidate is required to complete all modular courses H

A as applicable for Chief Mate certification. The candidate is then required to appear in oral assessment of Chief Mate (FG) by a panel of examiners appointed by Chief Examiners of Master & Mate from The Directorate General of Shipping, Ministry of Shipping.

B On successful completion of the same the candidate will be issued with Chief Mate (FG) certificate of competency (COC) with suffix "E".

C **2. Ex-Naval Officers in possession of Certificate of Service (COS) with minimum 36 months of approved sea-going experience of which atleast 12 months in the capacity as Chief Mate on a trading vessel of 500 GT or more but less than 3000 GT.**

Every such candidate shall successfully complete 3 months of Phase II course of Management level. On successful completion of said course a candidate is required to complete all modular courses as applicable for Chief Mate certification.

D The candidate is then required to appear in oral assessment of Chief Mate (FG) by a panel of examiners appointed by Chief Examiners of Master & Mate from The Directorate General of Shipping, Ministry of Shipping.

E On successful completion of above, the candidate will be issued with Chief Mate (FG) certificate of competency (COC) with endorsement "Limited to Vessel less than 3000 GT & with suffix "E".

F **(3) Ex-Naval Officers in possession of Certificate of Service (COS) with approved sea-going experience of 18 months or more but less than 36 months as a watch-keeping officer, of which atleast 6 months in the capacity as Chief Mate on a trading vessel of 3000 GT or more.**

G Every such candidate shall successfully complete 3 months of Phase I & 3 months of Phase II course of Management level. On successful completion of said course a candidate is required to complete all Modular courses as applicable for Chief Mate certification. The candidate is then required to appear in oral assessment of Chief Mate (FG) by a panel of examiners appointed by Chief Examiners of Master & Mate from The Directorate General of Shipping, Ministry

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of Shipping.

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On successful completion of above, the candidate will be issued with Chief Mate (FG) certificate of competency (COC) with suffix "E".

(4) Ex-Naval Officers in possession of Certificate of Service (COS) with approved sea-going experience of 18 months or more but less than 36 months as a watch-keeping officer, of which atleast 6 months in the capacity as Chief Mate on a trading vessel of 500 GT or more but less than 3000 GT.

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Every such candidate shall successfully complete 3 months of Phase I & 3 months of Phase II course of Management level. On successful completion of said course a candidate is required to complete all Modular courses as applicable for Chief Mate certification. The candidate is then required to appear in oral assessment of Chief Mate (FG) by a panel of examiners appointed by Chief Examiners of Master & Mate from The Directorate General of Shipping, Ministry of Shipping.

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On successful completion of above, the candidate will be issued with Chief Mate (FG) certificate of competency (COC) with endorsement "Limited to Vessel less than 3000 GT & with suffix "E".

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(5) Ex-Naval Officers in possession of Certificate of Service (COS) with 12 months of approved sea-going experience in the capacity as Watch-keeping officer on a trading vessel of 3000 GT or more.

Every such candidate is required to complete all modular courses as applicable for 2nd Mate (FG) certification & appear in oral assessment of 2nd Mate (FG) by a panel of examiners appointed by Chief Examiners of Master & Mate from The Directorate General of Shipping, Ministry of Shipping.

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On successful completion of the same the candidate will be issued with 2nd Mate (FG) certificate of competency (COC).

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(6) Ex-Naval Officers in possession of Certificate of Service (COS) with minimum 12 months of approved sea-going experience in the capacity as Watch-keeping officer on a trading vessel of 500 GT or more but less than 3000 GT.

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A Every such candidate is required to complete all modular courses as applicable for 2nd Mate (FG) certification & appear in oral assessment of 2nd Mate (FG) by a panel of examiners appointed by Chief Examiners of Master & Mate from The Directorate General of Shipping, Ministry of Shipping.

B On successful completion of the same the candidate will be issued with 2nd Mate (FG) certificate of competency (COC) with endorsement "Limited to Vessel less than 3000 GT.

C **(7) Ex-Naval Officers in possession of Certificate of Service (COS) with minimum 6 months or more but less than 12 months of approved sea-going experience in the capacity as Watch-keeping officer on a trading vessel of 3000 GT or more.**

D Every such candidate is required to successfully complete 4 months of 2nd Mate (FG) course. On successful completion of the said course, the candidate is required to complete all modular courses as applicable for 2nd Mate (FG) certification. The candidate is then required to appear in oral assessment of 2nd Mate (FG) by a panel of examiners appointed by Chief Examiners of Master & Mate from The Directorate General of Shipping, Ministry of Shipping.

E On successful completion of above, the candidate will be issued with 2nd Mate (FG) certificate of competency (COC).

F **(8) Ex-Naval Officers in possession of Certificate of Service (COS) with minimum 6 months or more but less than 12 months of approved sea-going experience in the capacity as Watch-keeping officer on a trading vessel of 500 GT or more but less than 3000 GT.**

G Every such candidate is required to successfully complete 4 months of 2nd Mate (FG) course. On successful completion of the said course, the candidate is required to complete all modular courses as applicable for 2nd Mate (FG) certification. The candidate is then required to appear in oral assessment of 2nd Mate (FG) by a panel of examiners appointed by Chief Examiners of Master & Mate from The Directorate General of Shipping, Ministry of Shipping.

H On successful completion of the same the candidate will be issued with 2nd Mate (FG) certificate of competency (COC) endorsement

“Limited to Vessel less than 3000 GT.

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(9) Ex-Naval Officers in possession of Certificate of Service (COS) with less than 6 months of approved sea-going experience in the capacity as Watch-keeping officer on a trading vessel of 3000 GT or more.

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Every such candidate is required to successfully complete 4 months of 2nd Mate (FG) course and appear in written examination for 1) Ship Construction, Stability, Ship Safety & Environment Protection 2) Cargo Handling & Stowage. In addition, complete all modular courses as applicable for 2nd Mate (FG) certification & appear in oral assessment of 2nd Mate (FG) by a panel of examiners appointed by Chief Examiners of Master & Mate from The Directorate General of Shipping, Ministry of Shipping.

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On successful completion of the same the candidate will be issued with 2nd Mate (FG) certificate of competency (COC).

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(10) Ex-Naval Officers in possession of Certificate of Service (COS) with minimum 12 months of approved sea-going experience in the capacity as Watch-keeping officer on a trading vessel of 500 GT or more but less than 3000 GT.

Every such candidate is required to successfully complete 4 months of 2nd Mate (FG) course and appear in written examination for 1) Ship Construction, Stability, Ship Safety & Environment Protection 2) Cargo Handling & Stowage. In addition, complete all modular courses as applicable for 2nd Mate (FG) certification & appear in oral assessment of 2nd Mate (FG) by a panel of examiners appointed by Chief Examiners of Master & Mate from The Directorate General of Shipping, Ministry of Shipping.

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On successful completion of the same the candidate will be issued with 2nd Mate (FG) certificate of competency (COC) endorsement “Limited to Vessel less than 3000 GT.

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NOTE

(1) Suffix “E” indicates that the candidate has undergone the course but not passed the written examination. Therefore, such candidates are required to pass examination of Phase II subjects, namely,

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- A navigational Aids including compasses, Bridge Watch-keeping, Ship Handling & Emergencies, Engineering Knowledge, instruments & control systems, Naval architecture paper II & Maritime legislation (Total 5 Nos.) prior to being considered eligible for Master's examination.
- B This is required to facilitate such candidates fulfill the competence & eligibility criteria for Master's examination.
- (i) "Trading ships" in the merchant navy means tanker, bulk carrier, container ship, general cargo ship or passenger ship and such other ships which are used for carriage of cargo or passenger or both.
- C (ii) The assessment of approved sea time shall be carried out as per prescribed guidelines in META Manual Volume—1 (Reference Section M-II/11)
- D (iii) Successful completion of course means completion of the prescribed term of the respective courses and completion of the process of internal assessment by any institute approved by the Directorate General of Shipping.
- (iv) Those who have completed the modular courses at any institute approved by the Directorate General of Shipping on or before 1st March 2001 would be accepted as having successfully completed the modular courses.
- E (v) The expiry date for assessment of sea time eligibility criteria for officers in possession of Certificate of Service is 31st January, 2002.
- F (vi) The panel of examiner, appointed by the Chief Examiner of Master & Mates shall include at least one external examiner from the industry, on the basis of the guidelines laid down for this purpose."
- G We order accordingly.

This bunch of petitions is being disposed of in the above terms. Parties are asked to bear their own costs.