A COMMENT ON *JASBIR SINGH* v. *STATE OF PUNJAB*

THE DECISION in *Jasbir Singh* v. *State*[1] of Punjab signifies how accidentally a pernicious practice emanating from the British Indian judicial legacy has come to the notice and later came to be put down by the apex court. The practice in vogue was the 'on the spot disposal' of certain applications by the inspecting high court judges. It took us 55 years after India became a republic to notice this practice.

In the case under comment the appellant was an undertrial prisoner accused of offences under sections 469/467, 468/ 218,120-B IPC and under the provisions of the Prevention of Corruption Act. His first application for bail was rejected. Second one was pending before the sessions judge when he happened to move one before the high court judge who came to visit the jail as part of inspection. He passed an order 'asking' the sessions judge to look into and enlarge him on bail.

The sessions judge, however, without making any reference to this direction/ order dismissed the application. But being informed of the high court judge's order he not only granted bail but also released the appellant's earth-moving machine.

The defacto complainant complained to the chief justice who made the matter to be placed before the administrative judge. He set aside the order of the sessions judge as the latter has not discussed the matter on merit. It was because of this order the petitioner approached the Supreme Court and exposed the whole issue before it.

It appears none cared to look into the legality of the practice which was followed as a part of the inspection exercise.[2] K.G. Balakrishnan J noticed this impression thus:[3]

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1. (2006) 3 SCC (Cri) 470.

2. In High Court of Punjab & Haryana through *Registrar General* v. *Ishwar Chand Jain* (1999) 4 SCC 579, the Supreme Court spelt out the objection of inspection thus:

> "The object of such inspection is for the purpose of assessment of the work performed by the subordinate judge, his capability integrity and competency."

In this context it is worthwhile to note that the Supreme Court therein called for the need for rationalization of inspection and to include it in the agenda of the meeting of Chief Justices Conference.

3. *Supra* note 1 at 475.

> It seems that the stand taken by some of the judges is that the judges of the High Court are vested with the power of superintendence and control over all courts and tribunals subordinate to the High Court under Art. 227, and as part of such constitutional power, the inspecting judges have the right and duty to consider the bail applications during inspection.

It is interesting to note that the Bar Council of Haryana came to support the necessity of this power not on any legal ground but on expediency.

Balakrishnan J.examined the dynamics of article 227 of the Constitution and rightly ruled thus:[4]

> The power of superintendence exercised over the subordinate courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions.

The court then essayed on the concept of independence of judiciary and specifically pointed out that the subordinate judiciary is to be free from all pressures, apparently including from the higher judiciary.

The space provided by article 235 has also been illumined by the court. It said that article 235 gives power to exercise control over the subordinate courts. This includes power for making transfers, power to make inquiries and impose punishments other than dismissal etc. This has however nothing to do with judicial functions. The court categorically ruled thus:[5]

> By virtue of the power under Art. 235 the High Court cannot direct the presiding officer to pass a judicial order in a particular manner as that would certainly amount to interfering with the independence of the subordinate judiciary.

It is heartening to note that the primordial position of the chief justice with regard to allocation of work in the high court came to be categorically spelt out by the Supreme Court in this decision. The court declared in unequivocal terms:[6]

> It is the prerogative of the Chief Justice to assign business of the High Court both on judicial and administrative sides. The Chief Justice alone has the power to decide as to how the

4. *Ibid*.
5. *Id*. at 478.
6. *Id*. at 479.

> Benches of the High Court are to be constituted. That necessarily means that it is not within the competence of any single or Division Bench of the High Court to give any direction to the Registry in that behalf which will run contrary to the directions of the Chief Justice.

The decision under comment is a landmark one in ensuring judicial discipline.

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CONSTITUTIONALITY OF CAMPUS RECRUITMENT BY PUBLIC SECTOR UNDER TAKINGS

'EQUALITY IS one of the magnificent corner–stones of Indian democracy'[1] . It is a necessary corollary of 'Rule of Law', which pervades the Indian Constitution[2] . Many provisions in part – III of our Constitution envisage equality. Article 14 contains general principle of equality that there shall be equality before law or equal protection of the laws whereas article 15 and article 16 deal with the specific application of the general principle of equality. Article 15 and 16 are the species of which article 14 is a genus. They contain separate provisions to cover specific discriminatory situations. Article 16(1) accordingly mandates that 'there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State'. The question under consideration, in this paper, is whether campus recruitment made by the public sector under takings, which doesn't provide equality of opportunity for all citizens as contemplated under article 14 and article 16 is constitutionally valid or does it violate the mandate of article 14 and article 16 (1) of the Constitution of India?

The High Court of Kerala, in *Federation of Central Government SC/ST Employees* v. *Kochi Refineries Ltd.*,[3] while addressing the above question, has held that "the method of campus recruitment as such would not offend Art. 16(1) of the constitution of India". The court was of the opinion that the persons who sought to be recruited through campus recruitment form a class by themselves. Classification of those categories of persons as a group keeping in view the administrative exigencies and efficiency cannot be said to be arbitrary or violative of article 16 (1) of the Constitution. The court further observed that the campus recruitment has a reasonable nexus to the office to which such recruitment is to be made. Classification based on some qualities or characteristics of the persons grouped together cannot be found fault with, provided those qualities have a reasonable nexus to the objects sought to be achieved.

In the instant case, pursuant to an office memorandum of May 29, 2000 issued by the Government of India, permitting public sector enterprises in the country, under compelling circumstances, to recruit

1. Thommen, J, in *Indra Sawhney* v. *Union of India*, AIR 1993 SC 477.
2. *Ashutosh Gupta* v. *State of Rajasthan*, AIR 2002 SC 1533.
3. 2006 (3) KLT 9.

personnel through campus recruitment from reputed institutions like IITs, IIMs, RECs, etc., or through walk-in interview route in rare and exceptional circumstances where there are compelling reasons and with the prior approval of the board of directors, the Kochi Refineries Ltd.,[4] issued intimations to Indian Institute of Technology, Chennai and National Institute of Technology, Kozhikode, Suratkal, Trichy and Warrangal etc., evincing their interests in campus recruitment. Students who met the criteria laid down by the company were called for interview. Eighteen candidates from different engineering disciplines were provisionally selected from the four national institutes of technology. So far as four chartered accountants who were to be recruited were concerned, intimation was given to the Institute of Chartered Accountants at Chennai and Bangalore. Following the similar process of selection, four candidates were provisionally selected. While selecting candidates, however, the order of reservation issued by the Government of India has been duly complied with. Provisional selection of candidates was made subject to passing of their final examinations. Successful candidates who met the eligibility criteria were issued final order. Pursuant thereto those candidates who joined as management trainees were made eligible to be considered, on completion of the training period, for absorption against vacancies in grade 'A' posts in the managerial cadre. The petitioners have challenged the same on the ground *inter alia* that the recruitment of personnel through campus recruitment would offend article 16(1) of the Constitution of India. Negating the contentions of the petitioners, the court said that articles 14 and 16 though forbid hostile discrimination do not forbid reasonable classification and equality of opportunity in the matter of appointment. When state indulges in business or in commercial venture and there is cut throat competition, new and novel methodologies have to be adopted lest they might lose in the race, which will be against national interest. Viewed in the above-mentioned perspective, the court said, campus recruitment, if adopted as one of the sources of recruitment, would have a rational nexus with the objects sought to be achieved.

No doubt, it is a well-accepted proposition that article 14 prohibits class legislation but not reasonable classification for the purpose of legislation.[5] If a law deals equally with all persons belonging to a '*well-defined class*', it is not open to challenge on the basis of denial of

4. It is a subsidiary company of Bharat Petroleum Corporation Limited, a public sector undertaking.

5. *Budhan* v. *State of Bihar*, (1955) 1 SCR 1045 at 1049.

6. *Chiranjit Lal Choudhary* v. *Union of India*, AIR 1950 SC 41; *State of Bombay* v. *F. N. Balsara*, AIR 1951 SC 318; *State of West Bengal* v. *Anwar Ali Sarkar*, AIR 1952 SC 75.

equal protection on the ground that the law does not apply to other persons.[6] What is contemplated under article 14 is not mechanical equality, which may result in injustice since all persons are not equal by nature, attainment or circumstances. It only implies that among equals the law should be equal and equally administered, that the like should be treated alike without distinction of race, religion, wealth, social status or political influence.[7] Reasonable classification of persons, objects and transactions by the legislature for the purpose of achieving specific objectives is always permissible within the scheme envisaged in articles 14 to 16 of the Constitution. But the classification to be reasonable should pass the following two tests:[8]

i. that the classification should be founded on an *intelligible differentia* which distinguishes those that are grouped together from others, and

ii. that the differentia adopted as the basis of classification must have a rational or reasonable *nexus* with the object sought to be achieved by the statute in question.

The differentia which is the basis of the classification and the object of the statute are distinct things and what is necessary is that there must be a nexus between the two. In short, while article 14 forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it doesn't forbid classification for the purpose of legislation, provided such classification is not arbitrary.[9] However, no classification is said to be reasonable or non-arbitrary unless it fulfills the above-mentioned criteria.

Thus, the question that now arises for consideration is not whether the classification is permissible under the scheme envisaged by the Constitution but whether the classification, made in the instant case under comment, satisfies the criteria laid down to pass the test of

7. *Jagannath Prasad* v. *State of Uttar Pradesh*, AIR 1961 SC 1245.

8. *State of West Bengal* v. *Anwar Ali Sarkar*, AIR 1952 SC 75. See also *Chiranjit Lal Choudhary* v. *Union of India*, AIR 1950 SC 41; *State of Bombay* v. *F. N. Balsara*, AIR 1951 SC 318; *Ram Krishna Dalmia* v. *Justice S.R. Tendolkar*, AIR 1958 SC 538; *Lachchman Das* v. *State of Punjab*, AIR 1963 SC 222; *Mewa Ram Kanojia* v. *All Indian Institute of Medical Science*, (1989) 2 SCC 235; *V. Markendeya* v. *State of Andra Pradesh*, (1989) 3 SCC 191; *Saurabh Chaudhari* v. *Union of India*, (2003) 11 SCC 146; *Chattisgarh Rural Agricultural Extension Officers Association* v. *State of Madhya Pradesh*, (2004) 4 SCC 646; *Confederation of Ex-Servicemen Assn.* v. *Union of India*, (2006) 8 SCC 399.

9. Per Das. J in *Anwar Ali Sarkar ibid*.

reasonableness? And further, whether the said method of recruitment is justifiable particularly in view of article 16 (1) of the Constitution as well?

Firstly, as mentioned earlier, articles 14 and 16 form part of the same constitutional code of guarantees and supplement each other.[10] Article 16 is a specific application of the general rule of equality enunciated in article 14 of the Constitution of India, which permits for reasonable classification to certain extent. Any classification based on an intelligible differentia is regarded as reasonable and rational in the light of article 14 of the Constitution. The classification is said to be based on an intelligible differentia, if it, on rational grounds, distinguishes persons grouped together from those left out and that the differences are "real and substantial" having a "rational and reasonable nexus" to the "object sought to be achieved". However, the classification to be reasonable, it need not be *scientifically perfect* or *logically complete*,[11] what is required is that it must be real and substantial.[12]

In the instant case, it is submitted that the classification of institutions for the purpose of conducting campus recruitment is not based on an *intelligible differentia* that distinguishes those institutions that are selected from others. The Kochi Refineries Ltd., selected candidates for the purpose of recruitment as management trainees from certain reputed institutions situated in South India *viz*., Indian Institute of Technology, Chennai; National Institute of Technologies at Kozhikode, Suratkal, Trichy and Warrangal and the chartered accountants were selected from Institute of Chartered Accountants at Chennai and Bangalore. The Institutions that are selected will not constitute a *well-defined group* since many other institutions *viz.*, Indian Institute of Technology, at Delhi, Bombay, Kharagpur, Kanpur, Roorkee, Gawahati and National Institute of Technology at Calicut, Rourkela, Nagpur, Allahabad, Durgapur, Bhopal, Jalandhar, etc., which are similarly situated have been left out of the group. However, one may argue that conducting of tests and interviews at all these places is very difficult and cause inconvenience to the administration. But what is to be understood and applied is that the '*philosophy of convenience*' is not and can never be a valid justification for eroding the existing constitutional norms. Further, it is submitted that there is no rational *nexus* with the object sought to be achieved, which is of paramount importance for any classification to be reasonable. In the present case, the *nexus* could only be established

10. *M.P. Rural Agriculture Extension Officers Assn.* v. *State of M.P.*, (2004) 4 SCC 646 at 653; *State of Mysore* v. *P. Narasingha Rao*, AIR1968 SC 349

11. *Kedar Nath* v. *State of West Bengal*, (1954) SCR 30

12. *Anwar Ali Sarkar*, *supra* note 8; *Ameeroonissa* v. *Mahboob*, (1953) SCR 404; *Suraj Mall* v. *Viswanath*, AIR 1953 SC 545

if reliance is placed on the hypothetical premise that "*only the students studying in such elite institutions selected for campus recruitment are efficient and competent to face the cut throat competition in this era of market economy*," which is, indeed, factually baseless and logically incorrect. Such a hypothetical premise would amount to a '*generalization*', which is a '*logical fallacy*'. Indeed, better candidates with required skills and competence can be selected only when equality of opportunity is given to all those who are eligible for the post.

In addition, what is to be noted is that "the 'doctrine of classification' is only a subsidiary rule evolved by the courts to give practical content to the 'doctrine of equality', overemphasis on the doctrine of classification or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equity enshrined in article 14 of the Constitution. The over emphasis on classification would inevitably result in substitution of the doctrine of classification for the doctrine of equality…lest, the classification would deny equality to the larger segments of the society".[13] The method of 'campus recruitment' for the purpose of selection of candidates to fill the vacancies would amount to cent percent reservation in favour of those educational institutions that are classified for recruitment and the said classification would, in effect, is a substitution for the 'doctrine of equality'.

Secondly, in view of article 16(1) of the Constitution of India, which specifically mandates that 'there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State', equal opportunity should be given, while making recruitment to public sector undertakings, to all those qualified without any discrimination on any of the grounds subject, of course, to the exceptions provided in the Constitution itself.

In the instant case, the equal opportunity as mandated in the Constitution of India has not been given to all the citizens qualified to be considered for appointment in grade 'A' posts in the managerial cadre since the opportunity is restricted only to the students studying in certain elite institutions in South India where campus recruitments were made. No posts were left for open competition through out the nation. Thus, the 'doctrine of classification' has been substituted for the 'doctrine of equality' in *toto*.

Further, the argument that "the campus recruitment is a method adopted to recruit personnel from the campus even before they pass out

13. *LIC of India* v. *Consumer Education and Research Center*, AIR 1995 SC 1811 at 1822. Also see *Mohd. Shujat Ali* v. *Union of India*, AIR 1974 SC 1631, at 1653.

of the college after making screening. If recruitment were resorted to after they qualify inviting applications best talents by the time would have been absorbed by their competitors. In selected areas, where public sector under takings have to compete with other multinational and private sector companies in the present economic scenario methods like campus recruitment can be resorted to," is not tenable. If the idea was to recruit best talents before they pass out and absorbed by the multinational and private sector under takings, the Kochi Refineries Ltd., could have invited applications even from those studying in the qualifying degree. The prohibition on selection of candidates before they obtain degree, if at all there are any as alleged by the petitioner, is a policy matter of the government issued in the form of guidelines, but that is not a constitutional mandate. If the government wants to go for such recruitment, policy could have been changed. What is contemplated in the Constitution is that, even in such cases the constitutional scheme of public employment *i.e.*, the equality of opportunity has to be given to all the qualified citizens. This has been made crystal clear in the recent ruling of the apex court in *Secretary, State of Karnataka* v. *Umadevi (III)*, [14] where the court has cautioned that

> [I]t is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. The approving of such acts also results in depriving many of their opportunity to compete for public employment. It would also mean that appointments made otherwise than by a regular process of selection would become the order of the day, completely jettisoning the constitutional scheme of appointment.

It is no one's case that the public sector undertakings should not compete with the multinationals and private sector under takings. But public sector under takings should not imitate the multinationals and private sector companies on the guise of competition in the matter of recruitment since they are governed by constitutional norms whereas multinationals and private sectors are not. In view of the special constitutional scheme governing employment or appointment to any office under the state, the state is expected not to act as a private individual or private sector under takings but should follow that procedure for recruitment, which is in conformity with the constitutional scheme. Both the method and manner of recruitment should be in conformity with the said scheme envisaged in the Constitution.

The relevant point to be taken note is that the 'campus recruitment', which cannot be permitted even by way of legislative action, is permitted

14. (2006) 4 SCC 1.

by simply an administrative order. And, since such a substantial question of law affecting the most cherished fundamental right of citizens has been resolved without reference to any of the rulings of the hon'ble Supreme Court of India relating to reasonable classification, the judgement may well be termed as *per incurium*.

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A COMMENT ON THE CONCEPT OF MARITIME LIEN

MANY CONCEPTS evolved as part of customary, international practice have come to be universally accepted as part of customary international law. In course of time many of them shaped as legal norms with sufficient justification and rationale. But some of them have had no opportunity to get cut in shape to suit the needs of disciplined study. Maritime lien is such a concept which has come to be accepted by all maritime nations the world over. But it is interesting to note that this has not yet been comprehensively defined or examined entirely.

It is still a concept which is *sui generic*, 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 bonafide purchaser for value and without notice, but it can only be enforced by admiralty claim in *rem*.

An author explains maritime lien thus: There are two alternative definition of a maritime lien: (*i*) a right to a part of property in the *res*, and (*ii*) a privileged claim upon a ship, aircraft or other maritime property in respect of services rendered to, or injury caused by, that property. A maritime lien attaches to the property at the moment the cause of action arises and remains attached (rather like a leech to human skin), traveling with it through changes of ownership. It is, however, inchoate or of little 'positive' value unless enforced by action in *rem*. It is not dependent upon possession nor it is defeated or extinguished because the *res* may happen to be transferred to new ownership for value and without notice.[1]

The very concept of maritime lien is based on the presumption that services have been rendered to the vessel and since the vessel itself is supposed to be a person the claims which attach to the vessel are to be discharged by the vessel only. It is such a binding claim that in the case of a sale of ship the proceeds of such sale are made available for the satisfaction of the maritime lien. The public undertakings such as port, dock or a harbour possessing statutory power to detain and sell a ship cannot sell the *res* free of the lien which have been attached prior to the sale.

The evolution of the concept of maritime lien can be traced back to the 16th and 17th century (pre industrialization of Europe) when maritime

1. Christopher Hill, *Maritime Law* (119) 2003.

commerce and sailing was a major activity in building European nations. Ships from Portugal, Spain and even from other parts of the world were engaged in marine activities. Transactions such as contracts of carriage, repairs done to the ship and services rendered to the ship were very common. The problem arose in situations where these contracts were breached. In such cases it became very difficult for the aggrieved party to get compensation as there was no means to get the assets of these foreigners attached. In some cases these foreigners flew away and in some cases the owners of the vessel disowned the vessel. Such predicaments lead to dissatisfaction in people who were engaged in maritime activities. It was to cure this defect and to enhance maritime trade that the concept of maritime lien was evolved.

This concept was different from the concept of other types of liens in three important respects: *firstly*, it was independent of possession, *secondly*, it did not extinguish due to purchase by a bonafide purchaser and lastly, the lien rest itself irrespective of the owner.

Though customary at inception, the concept of maritime lien started gaining its recognition both in civil law countries as well as in common law countries. Although in civil law countries the proceedings were to be instituted in *personam* but the president of the court had the power to seize the vessel and sell it as any other property of the owner for the satisfaction of claims.

It is interesting to see that though many a nations came up with laws on maritime lien nowhere it came to be cabined in a definition.

United States Maritime Lien Act, 1910 as amended in 1920 and 1971, through sections 971 to 975 (both inclusive) recognize certain situations where maritime lien arises. These are: seamen claim for wages,[2] salvage, collision and personal injury claims, general average, preferred ship mortgage, harbour activities such as piloting, towage etc. It is important to note that section 971 of the Act provides that these maritime claims cannot be taken away by any agreement.

According to English law, it is customary to regard the following causes of action as conferring a maritime lien: damage resulting from collision, bottomry, salvage, wages[3] of seamen, ships master's wages and disbursements and lastly fee and expenses incurred by a receiver of a wreck. Section 16(1) of the Merchant Shipping Act, 1970 provides that a seamen's remedy for the recovery of his wages shall not be capable of being renounced by any agreement.

An international convention on maritime lien and mortgages was entered into in 1993, which came into force on 5th of September 2004. It has 11 signatories till date. Article 4 of the said convention although

2. Claim for seamen wages stand on the first pedestal under the US Law.
3. Claim for seamen wages stand on the fourth pedestal under the English Law.

does not define maritime lien but listed the following as carrying maritime lien:

- Master and crew wages[4] including cost of repatriation and social insurance contributions.
- Claims for loss of life and 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.

As far as India position is concerned, the Merchant Shipping Act (hereinafter referred to as MSA), 1958, Admiralty Courts Act, 1861 and the judicial decisions are in consonance with international practice. Sections 439 to 445 (both inclusive) of MSA, 1958 provide extensive provisions for seamen wages, section 402 of MSA, 1958 provides for maritime lien for salvage. Similarly, section 7 of Admiralty Court Act, 1861 provide for maritime lien in respect of claims for damage done by any ship. Having regard to the international practice the new Admiralty Bill 2005 proposes under article 13 that maritime lien shall attach to a ship or its property in respect of the following, namely:—

- Claim for salvage of life, ship or its property;
- Wages and other sums due to the master or members of crew of the ship in respect of their employment on the ship;
- Claim for loss of life or personal injury having a direct connection with the operation of the ship;
- Claim for contribution to general average;
- Port, canal and other waterway dues and pilotage dues;
- Claim based on tort arising out of physical loss or damage caused by the operation of the ship other than the loss or damage to cargo, containers and passengers' effects carried on the ship, the date of accrual of such maritime lien beng, the date on which the operations giving rise to the said claim were performed.

4. Claim for seamen wages stand on the first pedestal under the 1993 Maritime Lien Convention.

Similarlly the Indian Supreme Court in the case of *M.V AL Quamar* v. *Tsavliris Salvage (International) Ltd.*[5] and *MV Elizabeth* v. *Harwan Investment and Trading (P) Ltd.*[6] held that there are two attributes to maritime lien: first a right over a part of property in the *res* and secondly a privileged claim upon a ship in respect of services rendered to or injury caused by that property. In *Epoch Enterrepots* v. *MV Won Fu*[7] the court listed the circumstances where maritime lien will arise, in the order of their preference. These were, salvage, wages of seamen, collision, general average and port canal and other waterway dues. All these indicate that our laws are in consonance with International law.

In a very recent case of 2006 (*O. Konavalov* v. *Commander Coast Guard Region and Others*[8]) the court had the opportunity of examining the status of seamen wages as a maritime lien. In this case the vessel named Klobe Queen I was seized by the customs department because of violation of section 30 of Indian Customs Act, 1962. The vessel was carrying steel into the territorial waters of India. Subsequently, the custom's commissioner confiscated the vessel absolutely under section 115(2) of Indian Customs Act, 1962. The cargo and the vessel were sold. The chief officer of the vessel O. Konavalov on behalf of the crew asked for the wages which were due to be paid out of the proceeds of the sale of the ship. The customs department argued that as the vessel has been confiscated absolutely, the *res* of the vessel becomes the property of central government and under the principle of sovereign immunity there can be no lien on the vessel.

Section 30 of Indian Customs Act, 1962 provides that any vessel entering the territorial waters of India is required to show their import manifestation and in event of non compliance the vessel will be arrested. Section 115 of Indian Custom Act, 1962 provides the power to confiscate a vessel absolutely in the event of any contraband being brought in India. However, clause two of section 115 of Indian Custom Act, 1962 provides a 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. On the other hand, MSA, 1958 in sections 138, 140, 141 and 144 constitute a scheme of statutory rights towards wages of seamen which can be enforced by proceedings under section 145 of MSA, 1958. As per the provisions of section 144 of MSA, 1958 the right of seamen for wages is unfettered and no limitation on the entitlement to and exercise of such entitlement have been enacted in MSA, 1958.

5. (2000) (8) SCC 278.
6. 1993 Supp (2) SCC 433.
7. (2003) 1 SCC 305.
8. (2006) 4 SCC 620.

Apparently there seemed to be a conflict between the two statutes. On one hand, MSA, 1958 provides for unfettered rights to the seamen for their wages and on the other hand, Indian Customs Act, 1962 provides for absolute confiscation of the vessel and consequent extinguishment of any claim on that *res*. The purpose of the scheme provided under MSA, 1958 is to provide unfettered rights to seamen for their claims of wages, such a right can be curtailed only by an express provision under any statute. Section 115 of Indian Customs Act, 1962 is penal in nature and should be given a literal interpretation. It applies to goods which are contraband and not to goods which are brought in violation of section 30 of Indian Custom Act, 1962. Moreover, it does not seem to be the intent of legislature that such penal provisions should be extended to apply in situations of violation of section 30 of Indian Customs Act, 1962.

Internationally, the seamen's right's to his wages have been put on a high pedestal. It is said that a seamen has 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 *The Neptune*[9] and *Ruta*[10].

The Supreme Court examined the evolution and application of maritime lien and upheld the international practice of recognizing the payment of seamen's wages. The court invoked the Constitution of India also to strengthen its position. Article 21 of the Indian Constitution provides for right to life and personal liberty to everyone whether they are citizens of India or not. Right to livelihood is an important facet of right to life (vide *Olga Tellis*[11] case). The court ruled that section 144 of the MSA, 1958 is in consonance with the scheme provided in the Constitution, as right to wages is essential for a dignified life.

It was innovative of the court that it commanded to its aid even the Constitution of India to uphold an internationally recognized right of the seamen. This decision may enhance the image of the court in international shipping arena wherein India is emerging as a force to be reckoned with.

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9. I Hagg 227.
10. (2000) 1 Lloyd's Rep. 359.
11. (1985)3 SCC 545.

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