

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21-12-2012

CORAM:

THE HON'BLE MR.JUSTICE N.PAUL VASANTHAKUMAR

W.P.Nos.29948, 30197, 30900, 30991, 30992, 30993, 31801, 31941, 31942, 31943, 31944, 31945, 31946, 31947 of 2012 and connected miscellaneous petitions

W.P.No.29948, 30197, 30900, 30991, 30992 & 30993/2012

Sankara Narayanan ... Petitioner in W.P.No.29948/2012

K.N. Kothandapani ... Petitioner in W.P.No.30197/2012

K.J. Joseph ... Petitioner in W.P.No.30900/2012

Namrata Ramesh Khamitkar ... Petitioner in W.P.No.30991/2012

P.P. Chandrasekaran ... Petitioner in W.P.No.30992/2012

Chandrakant S.Jadha ... Petitioner in W.P.No.30993/2012

Vs.

1. The Secretary,  
Ministry of Shipping,  
Transport Bhawan, Sansad Marg,  
New Deli - 110 001.
2. The Home Secretary,  
Government of Tamil Nadu,  
Secretariat, Fort St.George,  
Chennai - 600 009.
3. The Director General of Police,  
Tamil Nadu Police Head Quarters,  
Kamarajar Salai,  
Chennai - 600 005.
4. The Commissioner of Police,  
Chennai City, Egmore, Chennai.

5. The Inspector of Police,  
Pattinapakkam Police Station, Chennai.
6. The Fleet Manager,  
Pratibha Shipping Company Limited,  
Mumbai.
7. The Chief Commissioner,  
Customs and Central Excise Department,  
Chennai Zone,  
26/1, Mahathma Gandhi Road,  
Chennai - 34.
8. The Chairman of Port Trust,  
Chennai Port Trust,  
Chennai.
9. The Manager,  
The Sea world Shipping,  
53/54, Rajaji Salai,  
Chennai. ... Respondents in W.P.29948, 30197,30900  
30991, 30992 and W.P.30993 of 2012

(R-7 to R-9 in W.P.No.29948/2012 are impleaded as per order of this Court in M.P.No.4/2012 in W.P.29948/2012 dated.7.11.2012)

Prayer in W.P.No.29948, 30197, 30900, 30991, 30992 & 30993/2012:  
Writ petitions filed under Article 226 of the Constitution of India  
praying this Court to issue a writ of mandamus directing the  
respondents 1 to 5 to conduct proper enquiry and to take appropriate  
action against the 6<sup>th</sup> respondent Company and to pay compensation to  
the petitioner's family.

W.P.Nos.31801 & 31941 to 31947/2012

P.G. Gopikrishnan	... Petitioner in W.P.No.30801/2012
K. Narendra Kumar	... Petitioner in W.P.No.30941/2012
Shanmugam Rajasekar	... Petitioner in W.P.No.30942/2012
Jiwan Parkash	... Petitioner in W.P.No.30943/2012
Somireddy Kotilingeswara Reddy	... Petitioner in W.P.No.30944/2012
Bhuvanesh	... Petitioner in W.P.No.30945/2012

Jayanth P.Narkar

... Petitioner in W.P.No.30946/2012

Joy Herman Corda

... Petitioner in W.P.No.30947/2012

Vs.

1. The Secretary,  
Ministry of Shipping,  
Transport Bhawan, Sansad Marg,  
New Delhi - 110 001.
  2. The Commandant,  
Indian Coast Guard,  
Fort St.George,  
Chennai - 600 001.
  3. The Chairman,  
Chennai Post Trust,  
Chennai - 600 001.
  4. M/s.Pratibha Shipping Company Ltd.,  
rep.by its Chairman and Managing Director  
Sunil Pawar,  
1201-02, Arcadia Building,  
NCPA Road, Nariman Point,  
Mumbai - 400 021.
  5. The Shipping Master,  
Mercantile Marine Department,  
Anchor Gate Building,  
Chennai Port, Rajaji Salai,  
Chennai - 600 001.
- ... Respondents in WP.No.31801,31941  
to 31947

Prayer in W.P.Nos.31801 & 31941 to 31947/2012: Writ petitions filed under Article 226 of Constitution of India praying this Court to issue a writ of mandamus directing the first respondent to conduct an enquiry as to the incident in respect of the Vessel M.T.Pratibha Cauvery, which got grounded on 31.10.2012 of Chennai Coast and to take appropriate action against the 4<sup>th</sup> respondent.

For Petitioners in W.P.29948, 30197, : Mr.S.Prabakaran,  
30900, 30991 to 30993/2012 for Mr.T.P.Senthilkumar

For Petitioners in W.P.31801 & : Mr.S.Vasudevan  
31941 to 31947/2012

For 1<sup>st</sup> Respondent  
in all writ petitions

: Mr.G.Masilamani, SC  
Addl. Solicitor General,  
assisted by  
Mr.C.V.Ramachandramurthy,  
Central Govt. Standing Counsel

For RR-2 to 5 in WP.29948/2012, etc.:

Mr.A.Navaneethakrishnan,  
Advocate General,  
assisted by  
Mr.D.Raja, Addl.Govt.Pleader

For 6<sup>th</sup> Respondent in  
W.P.29948/2012 etc., &  
4<sup>th</sup> Respondent in  
W.P.31801/2012 etc./  
Shipping Company Ltd.

: Mr.Muizz Ali,  
for M/s.Lex Magnum Chambers

For 8<sup>th</sup> Respondent in  
W.P.29948/2012 etc., &  
3<sup>rd</sup> Respondent in  
W.P.31801/2012 etc./  
Chennai Port Trust

: Mr.R.Karthikeyan

For 9<sup>th</sup> Respondent in  
W.P.29948/2012 etc.

: Mr.S.Ragunathan

COMMON ORDER

W.P.Nos.29948, 30197, 30900, 30991, 30992 and 30993 of 2012 are filed by the legal heirs of the deceased persons, who were employed in the Vessel viz., MT Pratibha Cauvery, owned by the 6<sup>th</sup> respondent therein, praying for a direction to the respondents 1 to 5 to conduct proper enquiry and take appropriate action against the 6<sup>th</sup> respondent, owner of the Vessel and to pay compensation to the family of the deceased employees.

2. In W.P.Nos.31801 and 31941 to 31947 of 2012, the persons who are in employment in the very same Vessel MT Pratibha Cauvery, are praying for issuing writ of mandamus directing the first respondent to conduct an enquiry as to the incident in respect of the Vessel M.T.Pratibha Cauvery, which got grounded on 31.10.2012 in Chennai Coast and to take appropriate action against the owner of the Vessel/4<sup>th</sup> respondent therein.

3. The case of the petitioners is that the deceased persons viz., Anand Mohandoss was appointed as Marine Engineer from 18.5.2012; K.K.Niranjan was appointed as Marine Engineer from 4.5.2012; Joman Joseph was employed as Oiler for 8½ years; Khamitkar Raj Ramesh completed Nautical Science in Indian Maritime University at Chennai and joined the service in the ship as Deck Cadet on 26.9.2012; Krishna Chandra joined the service in the ship as Tr.Seaman on 29.6.2012; Rushabh C.Jadhav joined as Deck Cadet on 29.9.2012, have all died while they were in service in the Vessel MT Pratibha Cauvery on 31.10.2012. The Vessel was used as a cargo for carrying crude oil. The said Vessel arrived at Chennai Port on 25.9.2012 with 37 crew members/employees on board, including the six deceased persons. On 28.9.2012 the crude oil was unloaded and the Vessel was heading to Mumbai on 29.9.2012. However it did not sail to Mumbai and from 8.10.2012 to 31.10.2012 the Vessel was kept in Chennai outer anchorage.

4. It is the contention of the petitioners that the ship was roving in Chennai Port area as it had no sea-worthiness and all its certificates were expired. The crew members of the Vessel, including the deceased were not paid salary in spite of their repeated request and were sending several E-mails to the owner of the ship, shipping authorities and shipping agents. The ship was not in good condition, though it was sailing for 33 years. The ship was kept in outer anchorage for 40 days and during those days, the employees including the deceased were not provided with basic needs such as water, food and only once in a day food was provided and they suffered due to starvation. Even drinking water was not made available to the employees and they were forced to drink A/c waste water to quench their thirst.

5. At the time of 'Neelam storm' six crew members, in order to save their lives, used the life-boats provided in the Ship and as the said boats were not having fuel and due to starvation and poor health condition, the above stated six crew members could not withstand the sea pressure and subsequently died and their bodies were found in different location on the sea-shore in and around Chennai. The State Police initially registered cases under Section 174 Cr.P.C. and subsequently the cases were altered for the offence under Section 304 (ii) IPC. Two agents of the company were arrested and criminal cases were registered against 12 persons, including the Chairman and Managing Director, Directors, and persons responsible for maintenance of Vessel and supply of food. The grievance of the legal heirs of the deceased employees and other petitioners having not been enquired into by the first respondent and six persons having lost their lives, the legal heirs of the deceased employees and other eight other employees filed these writ petitions with the above said prayer.

6. This Court passed an interim order on 7.11.2012 to the effect that if the owner of the Vessel or anybody interested in the

Vessel wants to move the Ship out of the territorial jurisdiction of this Court, such person shall deposit a sum of Rs.6 crores to the credit of the Registrar General of this Court. Subsequently, the owner of the Vessel deposited a sum of Rs.30 lakhs to the credit of the Registrar General of this Court for payment of interim compensation of Rs.5 lakhs each to the legal heirs of the deceased crew members. The said amounts were also ordered to be withdrawn by the legal heirs, after producing the legal heirship certificate issued by the competent authority.

7. Eight employees (crew members) have filed W.P.Nos.31801 and 31941 to 31947 of 2012 praying for similar direction contending that they were also put to sufferings and their salary arrears have not been paid and all of them have lost their certificates and it will take time for them to apply and get duplicate certificates and until they get their duplicate certificates, they cannot go for any other employment and therefore the Shipping Company is liable to pay arrears of salary as well as compensation.

8. The Chairman and Managing Director of the Shipping Company filed counter affidavit contending that the Company is mourning the death of six crew members. The grounding of the Vessel is only due to cyclone 'Neelam' and there is no negligence, misfeasance or malfeasance on the part of the Shipping Company and due to panic and violation of the general code of conduct of the crew members, six of them died. Safety of the crew members was ensured in all respects and those who remained on board have survived. The whole issue is under investigation by the Mercantile Maritime Board as per the Maritime Shipping Act, 1958. On 31.10.2012 the Vessel, as instructed by the Port authorities was started to move to the outer limit of the Port due to adverse weather condition and started drifting towards shore, as she lost both anchors and eventually she grounded ashore due to adverse weather and rough sea, which is an "Act of God". It is further stated in the counter affidavit that there were enough supply of food and nutrition of all kinds and the allegation of starving is only a make belief story. The compensation to the deceased crew persons are to be arrived under their respective terms and conditions of the contract and the claim of compensation can be set out as arrived by Maritime Union of India and National Maritime Board as the said organisation protect the interest of the crew members in case of death and disability compensation. It is also stated in the counter affidavit that the Vessel is mortgaged with various financial institutions and the said mortgages have been registered with the Mercantile Marine Department and Registrar of Companies. A sum of Rs.30 lakhs was deposited with the Registrar General of this Court by a Demand Draft bearing No.471617 dated 3.11.2012 towards interim compensation payable to the legal heirs of the six deceased crew members. The conditional order passed to deposit a sum of Rs.6 crores is highly excessive and the same is to

be vacated. These writ petitions are not maintainable as the petitioners have to move under the Admiralty jurisdiction of this Court or before the Industrial Tribunal as the case may be, for arrears of salary or other dues. The allegation of culpability/negligence cannot be tried through affidavit and compensation can be determined only after proper trial. The Vessel being of Indian origin, flying Indian Flag, is bound by Indian Laws and therefore the claimants can be directed to approach the appropriate forum. On 23.11.2012 the Director General of shipping recommended to make an agreement for sale of the ship and without prejudice to the rights and contentions, 6<sup>th</sup> respondent pray for appointment of a licenced Surveyor for surveying and selling the Vessel so that the sale proceeds can be deposited with the Registrar General of this Court for disbursement as per priority.

9. The Assistant Commissioner of Police, who is investigating the criminal case registered against the Directors, and others for the incident, filed a progress report on 12.12.2012 stating that cases in

- (i) Cr.No.4592 of 2012 on the file of Sastri Nagar Police Station;
- (ii) Cr.No.103 of 2012 on the file of B3 Fort Police Station;
- (iii) Cr.No.716 of 2012 on the file of B6 Anna Square Police Station;
- (iv) Cr.No.59 of 2012 on the file of B5 Harbour Police Station; and
- (v) Cr.No.118 & 119 of 2012 on the file of E4 Kattur Police station were registered under Section 304(ii) IPC against the following persons arraigning them as accused 1 to 12:

सत्यमेव जयते

WEB COPY

No.	Name of Accused	Overt Act
A1	Sunil Anandarao Pawar (Managing Director)	I. Knowingly not implemented the company's Safety and Environmental Protection Policy which resulted in the death of 6 crew members.
A2	Madan A.Pawar (Director)	II. Knowingly not provided the essential fuel to run the generators so as to operate the main engine and thus the Vessel was declared disabled and later grounded which resulted in the death of 6 crew members.
A3	Suhas A. Pawar (Director)	III. Knowingly not provided food and water and that made the crews in a unhealthy condition, which resulted in the death of 6 crew members.
A4	Suresh A. Pawar (Director)	IV. Knowingly not provided spares and repairs of life boat engines and that made the vessel unseaworthy and endangered the life of crew members, which resulted in the death of 6 of them.
A5	Nilkanth B.Vidwans (Director/Financial Advisor)	V. Knowingly not replaced/repaired the essential machineries of the vessel, which made the unseaworthiness of the Vessel and which resulted in the loss of life of 6 crew members.
A6	Sachin Keshav Chavan (Director/Chartered Accountant)	VI. Knowingly not renewed the licences on time which expired on 30.9.2012 and made the Vessel to be anchored in the outer anchorage and unable to enter the port for signing off the crew members, which resulted in the death of the 6 crew members.
A7	Captain S.K.Rai (Designated person Ashore-DPA)	
A8	Captain Avinash Mohan (Additional DPA)	

No.	Name of Accused	Overt Act
A9	Ved Prakash Sharma (Technical Superintendent)	I. Knowingly not provided the spares and repairs of life boat engines and that made the Vessel unseaworthy and endangered the life of crew members, which resulted in the death of 6 of them.  II. Knowingly not replaced/ repaired the essential machineries of the Vessel, which made the un-seaworthiness of the Vessel and which resulted in the loss of life of 6 crew members.
A10	Jayaraman, Branch Manager, Seaworld Shipping and Logistics P Ltd.	I. Knowingly not provided the essential fuel to run the generators so as to operate the main engine and thus the Vessel was declared disabled and later grounded, which resulted in the death of 6 crew members.
A11	Chittibabu, Operation Assistant, Seaworld Shipping and Logistics P Ltd.	II. Knowingly not provided the food and water and that made the crews in a unhealthy condition, which resulted in the death of 6 crew members.
A12	Sanjay Dalvi, Vice President, Seaworld Shipping and Logistics Pvt Ltd., Mumbai.	III. Knowingly not provided a boat for signing off the crew members in the distress situation and thus resulted in the death of 6 crew members.

The Shipping Company Directors/Officials and its Chennai local agent Sea World Shipping and Logistics Pvt Ltd., persons knowingly failed to take responsibilities over the life of crews and failed to provide essential commodities, which can be termed as deadly act with knowledge of causing the death of crew members. It is also stated that some more witnesses and documents have to be collected from the Mercantile Marine Department and the cases are under investigation.

10. The first respondent also filed counter affidavit stating that the Vessel MT Pratibha Cauvery is an Oil Tanker, registered with the Registrar of Ships, Principal Officer, Mercantile Marine Department, Mumbai, under section 22 of the Merchant Shipping (MS) Act, 1958. The ship arrived at Chennai Port on 25.9.2012 with 37 employees on Board. As per the general condition of the Vessel, availability of fuel, non- payment of salary to the employees and

relieving them, the 6<sup>th</sup> respondent has to answer. The representation of the relatives of the deceased crew members dated 15.10.2012 was taken up for investigation by forwarding the same to the 6<sup>th</sup> respondent on 16.10.2012 by E-Mail and post. Before receiving reply from the 6<sup>th</sup> respondent, the casualty occurred and enquiry started. The Vessel's stay at outer anchorage from 8.10.2012 to 31.10.2012 is due to lack of sea-worthiness. The first respondent took all efforts to enquire into the matter through the Principal Officer MMD, Chennai, by appointing two officers and preliminary enquiry was also ordered. A preliminary report is also filed before the first respondent. It is further stated that final report would be comprehensive and the reasons to be stated can be used by the petitioners for all practical purposes to remedy their grievances and take appropriate steps for reliefs as per law. In the counter affidavit filed by the first respondent it is further stated that once comprehensive report on the reason for the casualty is filed, the same can be used by the petitioners for all practical purposes to remedy their grievances and take appropriate steps as per law.

11. A report is filed by the first respondent on 3.12.2012 to the Director General of Shipping, Mumbai and a copy of the same is produced before this Court for perusal. In the said report it is specifically stated that the Vessel's certificates were valid when it came to berth at Chennai and got expired at the anchorage on 1.10.2012, among other things.

12. Mr.S.Prabakaran, learned Counsel appearing for the legal heirs of the six deceased crew members submitted that only due to the criminal negligence on the part of the Shipping Company and agents, six crew members died and even the life boats were not having diesel and the deceased employees were not able to stay in the ship on the fateful day due to starvation as no food and water was provided or made available. Therefore, according to the learned counsel, the Shipping Company is liable to pay not only compensation as provided under Maritime law, but also under the Common Law Principle and the legal heirs are entitled to get adequate compensation. Learned counsel also submitted that some of the deceased crew members borrowed education loan from Banks and the Banks are pressing the family members for repayment of the education loans.

13. Mr.S.Vasudevan, learned counsel appearing for the petitioners in other writ petitions submitted that the crew members/petitioners were not paid salary and their certificates were lost and only after getting duplicate certificates, they can go for any employment and till such time the Shipping Company is liable to pay compensation as well as salary dues. Learned counsel also submitted that on the fateful day, no other ship in Chennai Harbour was washed away and the subject ship was not having any anchorage and its certificates also expired as early as on 1.10.2012. Therefore, learned counsel submitted that the petitioners in these writ

petitions are entitled to get arrears of salary as well as due compensation and they need not approach the appropriate Court.

14. Mr.Muizz Ali, learned counsel appearing for the Pratibha Shipping Company Limited submitted that there was no shortage of food as alleged and the deceased employees are to be blamed for jumping out of the Ship due to which they died, as all other crew members, who stayed in the Vessel could be saved on the next day. The learned counsel also submitted that the writ petitions filed claiming compensation are not maintainable as the facts are in dispute in these cases. The learned counsel further submitted that the petitioners are having effective alternate remedy of invoking the Admiralty jurisdiction of this Court and Labour Court. The company is trying for revival and therefore the Vessel need not be sold by conducting auction, even though a consent was given in the counter affidavit. The learned counsel also submitted that the Pratibha Shipping Company is totally having 9 ships and it is having sufficient means to settle the claim of the petitioners, if appropriate court is approached by the petitioners and proper amount of compensation or wages are determined. The learned Counsel produced a rough calculation of compensation amounting to Rs.87,45,300/- payable to the families of the six deceased crew members.

15. Mr.G.Masilamani, learned Additional Solicitor General of India appearing for the first respondent submitted that enquiry was ordered under Section 358 of the Merchant shipping Act, 1958 and a report was also prepared and submitted as required under Section 359 of the Act. Therefore the prayer sought for in the writ petitions to conduct proper enquiry against the Shipping Company is already met and further action will be taken based on the report already submitted.

16. Mr.A.Navaneethakrishnan, learned Advocate General appearing for the State of Tamil Nadu and State Police based on the investigation progress report dated 12.12.2012 submitted that all effective steps are taken to investigate in respect of the death of six crew members and original criminal complaint registered under section 174 Cr.P.C. was subsequently altered under Section 304(ii) IPC and 12 persons are now named as accused. The investigation is now being carried out by the Assistant Commissioner of Police and the investigation will be completed and final report will be submitted within short time.

17. Mr.R.Karthikeyan learned counsel appearing for the Chennai Port Trust submitted that the Vessel being berthed at Chennai Port Trust, the demurrage charges are to be paid by the Shipping Company.

18. Mr.S.Ragunathan, learned counsel appearing for the Sea World Shipping Agent submitted that even though they are not at fault, they

are being harassed and pendency of these writ petitions is shown as defence by the police in opposing the bail petition filed by them and the said issue may be clarified.

19. I have considered the rival submissions made by the respective learned counsels appearing for the parties concerned.

20. The arrival of the Vessel M.T.Pratibha Cauvery, which was used as a Cargo, owned by the Pratibha Shipping Company Ltd., Mumbai, 6<sup>th</sup> respondent in W.P.No.29948 of 2012, etc., at Chennai Port on 25.9.2012 with 37 crew members on Board, including six deceased employees, carrying crude oil; and the crude oil was unloaded on 28.9.2012; and the Vessel was kept in Chennai outer anchorage without moving towards Mumbai, are all not in dispute. The reason stated by the petitioners as well as the first respondent for not moving the Vessel towards Mumbai is want of sea-worthy certificates and all the certificates relating to the Vessel got expired as on 1.10.2012.

21. The first respondent in the counter affidavit at paragraph 7 specifically stated that the Vessel's statutory and mandatory certificates expired on 1.10.2012 and the same were not renewed by the Shipping Company/6<sup>th</sup> respondent and it is the responsibility of the owner of the Vessel to maintain the condition of the Ship after survey, as per the provisions of the Merchants Shipping Act, 1958, and the rules made thereunder.

22. Petitioners are contending that the crew members were not paid salary and not even given proper food as well as drinking water and the crew members suffered of starvation inside the Vessel and the said fact was intimated to the Shipping Ministry and Port authorities seeking their intervention, but no action was taken by the officials of the first respondent or Chennai Port Trust.

23. A storm alert signal was made in Chennai harbour on 31.10.2012 due to the fact that 'Neelam Storm' was going to cross Chennai coast. Due to storm, the ship was washed away to the shore and six of the crew members died. According to the Shipping Company/6<sup>th</sup> respondent, had they stayed in the Vessel, they could have been saved like all other crew members, as all the members stayed in the Vessel were rescued on the next day, that was on 1.11.2012. It is the contention of the petitioners, who are legal heirs/relatives of the deceased six crew members that the said crew members, in order to save their lives, used life boats but the life boats were not having fuel and they were in starvation, due to which they could not withstand the storm and died and their bodies were found in different location of the sea shore. It is an admitted fact that criminal cases were registered initially under Section 174 Cr.P.C. and after investigation, the State Police altered the criminal cases for offences under section 304(ii) IPC on 26.11.2012 and totally 12 persons, named above, are arraigned as accused. Now the cases are

being investigated by the Deputy Commissioner of Police, Adyar Police District. In the report filed by the Assistant Commissioner of Police, Adyar Range dated 12.12.2012 it is stated that some more witnesses, apart from documents like E-mail communication, certificate of shipping, VHF communication, vessel log book and other documents, digital evidences and technical expert's reports were to be collected from the Mercantile Marine Department and the cases are still under investigation.

24. It is also the contention of the first respondent that the first respondent can order investigation if the Vessel is anchored in violation of the Shipping Laws and the first respondent cannot suo-motu initiate any action for Vessel's stay at outer anchorage and as per section 335 of the Act, the owner of the ship is under obligation to crew, with respect to sea-worthiness. Section 335 reads as follows:

"335. Obligation of owner to crew with respect to seaworthiness.-

(1) In every contract of service, express or implied between the owner of an Indian ship and the master or any seaman thereof, and in every contract of apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to ensure the seaworthiness of such ship for the voyage at the time when such voyage commences, and to keep her in a seaworthy state during the voyage.

(2) For the purpose of seeing that the provisions of this section have been complied with, the Central Government may, either at the request of the owner or otherwise, arrange for a survey of the hull, equipment or machinery of any seagoing ship by a surveyor."

The first respondent also issued 'Merchant Shipping Notice No.18/2009 - Monsoon Advisory to Shipping', which prescribes the precautions to be taken by the ship in the event of encountering storm conditions in Indian coastal waters, including ports outer shipyard operations throughout the year, with special reference to monsoon months. The said advisory is still in force. The Principal Officer, MMD Chennai, is conducting enquiry into all aspects raised by the petitioners. It is the specific stand of the first respondent that the first respondent has taken all efforts to expedite preliminary enquiry and the Principal Officer MMD, Chennai will be submitting a report and a report was also submitted as stated supra.

25. Thus, it is evident that the criminal investigation by the State Police as well as the investigation by the first respondent's officials are in progress and no final report is filed and culpability of the Directors of the 6<sup>th</sup> respondent is not finally determined, though prima facie case is made out to prosecute under Section 304(ii) IPC against 12 persons, including the Directors and others.

26. In these writ petitions, petitioners have prayed for conducting proper enquiry and take appropriate action against the Shipping Company Limited. The enquiry having commenced and is in progress, the first part of the prayer is now complied with and for taking proper action against the Shipping Company, the enquiry has to be completed. Only based on the final findings in the enquiry further action will have to be taken.

27. Insofar as the claim of compensation for the death of six crew members are concerned, it is the specific case of the Shipping Company/6<sup>th</sup> respondent that the petitioners can claim compensation only under the provisions of the Merchant Shipping Act, 1958/Service agreement/Rules. During the course of the hearing, the learned counsel appearing for the Shipping Company/6<sup>th</sup> respondent has produced a rough calculation of the compensation amount payable to the legal heirs of six crew members as per existing agreement, which reads as follows:

Name of Crew	Category	Applicable agreement	Basic Wages in Rs.	Base of Compensation	Amount of Compensation in Rs.
Anand Mohan	2/Engineer	MUI	22,230	110 months basic wages subject to a minimum of Rs.9,00,000	24,45,300
Rushabh Jadhav	Dk/Cadet	MUI	5,000	110 months basic wages subject to a minimum of Rs.9,00,000	9,00,000
Kanganpadi Niranjan	Jr.Engineer	MUI	5,000	110 months basic wages subject to a minimum of Rs.9,00,000	9,00,000
Khamitkar Raj Ramesh	Dk/Cadet	MUI	5,000	110 months basic wages subject to a minimum of Rs.9,00,000	9,00,000
Krishna C.Puthiya Purayil	Tr.Seaman	NMB	5,000	w.e.f.1.4.2012, death compensation increased to Rs.18 lakhs from existing amount of Rs.12.75 lakhs	18,00,000
Joman Joseph	Oiler	NMB	5,200	w.e.f.1.4.2012, death compensation increased to Rs.18 lakhs from existing amount of Rs.12.75 lakhs	18,00,000
				TOTAL	87,45,300

28. The learned counsel for the Shipping Company/6<sup>th</sup> respondent further argued that the compensation payable to legal heirs of the deceased six crew members has to be ascertained or determined by the appropriate court as the factual aspects regarding culpability of the management/agents of the Vessel have to be established only after adducing oral and documentary evidence and the exact quantum of compensation cannot be determined in writ petitions filed under Article 226 of the Constitution of India.

29. During pendency of the writ petition learned counsel appearing for the petitioners expressed apprehension about moving of the Vessel from the territorial jurisdiction of this Court. Considering the said factual aspect, this Court passed an interim order on 7.11.2012 to deposit a sum of Rs.6 crores before the Registrar General of this Court for moving the Vessel outside the jurisdiction of this Court by the 6<sup>th</sup> respondent or any other person interested in the Vessel. Subsequently, a sum of Rs.30 lakhs was deposited before the Registrar General of this Court by the Shipping Company on 3.12.2012 and the said amount was ordered to be disbursed to the legal heirs of the six deceased crew members at Rs.5 lakhs each, on production of legal heirship certificate, by order dated 5.12.2012.

30. There is no dispute regarding the liability of payment of compensation to the families of the deceased crew members. Even according to the Shipping Company, as per the rough calculation sheet produced before this Court, a sum of Rs.87,45,300/- is payable to the legal heirs of the six deceased crew members, i.e, Rs.24,45,300/- to the legal heirs of deceased Anand Mohan - W.P.24498/2012; Rs.18,00,000/- each to the legal heirs of deceased Joman Joseph and Krishna C.Puthiya Purayil - W.P.Nos.30900 & 30992/2012; and Rs.9,00,000/- each to the legal heirs of deceased K.Niranjan, Khamitkar Raj Ramesh and Rushabh Jadhav - W.P.Nos.30197, 30991 & 30993/2012. Hence, the Shipping Company/6<sup>th</sup> respondent can safely be directed to pay the said amounts to the legal heirs of the deceased crew members as an interim measure. The Shipping Company can adjust the sum of Rs.30 lakhs, already deposited, from the admitted sum of compensation of Rs.87,45,300/- payable by them.

31. Further amount of compensation payable to the legal heirs of the deceased crew members has to be necessarily determined by the appropriate forum after adducing oral and documentary evidence. Hence the petitioners' claim for award of compensation, even though is eligible, is unable to be determined by this Court in these writ petitions and the petitioners/legal heirs are granted liberty to approach the appropriate forum, for claiming compensation, apart from the amount of Rs.87,45,300/-, which is the admitted amount of compensation payable by the Shipping Company/6<sup>th</sup> respondent, as stated supra.

32. This Court sitting under Article 226 of the Constitution of India is unable to determine the actual compensation amount payable to the legal heirs of the deceased crew members as well as other crew members. The Honourable Supreme Court in the decision reported in 2012 (10) Scale 317 (Sabeeha Faikage & Others v. Union of India & Others) considered similar issue regarding claim of compensation of legal heirs of the deceased 13 crew members and ordered to pay interim compensation, without prejudice to their claim for higher compensation in any appropriate forum.

33. As the ship is now abandoned and not seaworthy, the Shipping Company/6<sup>th</sup> respondent is bound to give sufficient surety for moving the ship from the territorial jurisdiction of this Court with a view to safeguard the interest of the legal heirs of the deceased crew members for getting reasonable compensation to be determined by the appropriate forum on being approached by the petitioners/legal heirs. Hence the 6<sup>th</sup> respondent is directed to either deposit a further sum of Rs.5 crores or bank guarantee for the said amount or give immovable property security worth Rs.5 crores to the satisfaction of the Registrar General of this Court before moving the Vessel MT Pratibha Cauvery from the territorial jurisdiction of this Court or before selling the same.

34. Insofar as the claim of wages and compensation by the other members of the crew, who have filed W.P.Nos.31801 & 31941 to 31947 of 2012 are concerned, the Shipping Company is duty bound to calculate the arrears of salary payable till the end of October, 2012 as per their monthly wages and allowances and pay the same within a period of four weeks from the date of receipt of copy of this order. The Shipping Company is also duty bound to pay due compensation to be determined by the appropriate forum. If there is any dispute regarding the quantum of arrears of salary payable to these petitioners, they can approach the appropriate forum and prove their claim.

35. In fine, all these writ petitions are disposed of with the following directions:

(a) The Pratibha Shipping Company Ltd., Mumbai, is directed to pay the admitted sum of Rs.87,45,300/- as interim measure to the legal heirs of the deceased crew members as follows:

- Rs.24,45,300/- for the legal heirs of deceased Anand Mohan - W.P.24498/2012;
- Rs.18,00,000/- each to the legal heirs of deceased Joman Joseph (W.P.Nos.30900/2012) and Krishna C.Puthiya Purayil (W.P.30992/2012);
- and Rs.9,00,000/- each to the legal heirs of deceased K.Niranjan (W.P.30197/2012), Khamitkar Raj Ramesh (W.P.30991/2012) and Rushabh Jadhav (W.P.30993/2012).

(b) The Pratibha Shipping Company Ltd., Mumbai, is directed to deposit the above amounts, after deducting Rs.30 lakhs already deposited on 3.12.2012, before the Registrar General of this Court, within a period of four weeks from the date of receipt of copy of this order.

(c) On such deposit, the Registrar General of this Court is directed to disburse the above mentioned respective amounts to the legal heirs of the deceased crew members on production of legal heirs certificate, issued by the competent authority.

(d) The legal heirs of the above said six deceased crew members are at liberty to approach the appropriate forum for determining further compensation payable.

(e) The Pratibha Shipping Company Ltd., Mumbai, is directed to either deposit a further sum of Rs.5 crores or bank guarantee for the said amount for a period of three years or give immovable property security worth Rs.5 crores to the satisfaction of the Registrar General of this Court before moving the Vessel MT Pratibha Cauvery from the territorial jurisdiction of this Court or before selling the same.

(f) The Pratibha Shipping Company Ltd., Mumbai is also directed to calculate the admitted arrears of salary payable till the end of October, 2012 to the petitioners in W.P.Nos.31801 & 31941 to 31947 of 2012 and pay the same within a period of four weeks from the date of receipt of copy of this order.

(g) In case of any dispute regarding the quantum of arrears of salary payable to the petitioners in W.P.Nos.31801 & 31941 to 31947 of 2012, they are at liberty to approach the appropriate forum to prove their claim.

(h) With regard to the claim of compensation by the petitioners in W.P.Nos.31801 & 31941 to 31947 of 2012 for loss of their certificates, etc., they are directed to approach the appropriate forum.

(i) The first respondent as well as the State Police are directed to finalise the investigation and take appropriate action, not later than three months from today.

(j) There will be no order as to costs.

(k) Connected miscellaneous petitions are closed.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

vr

To

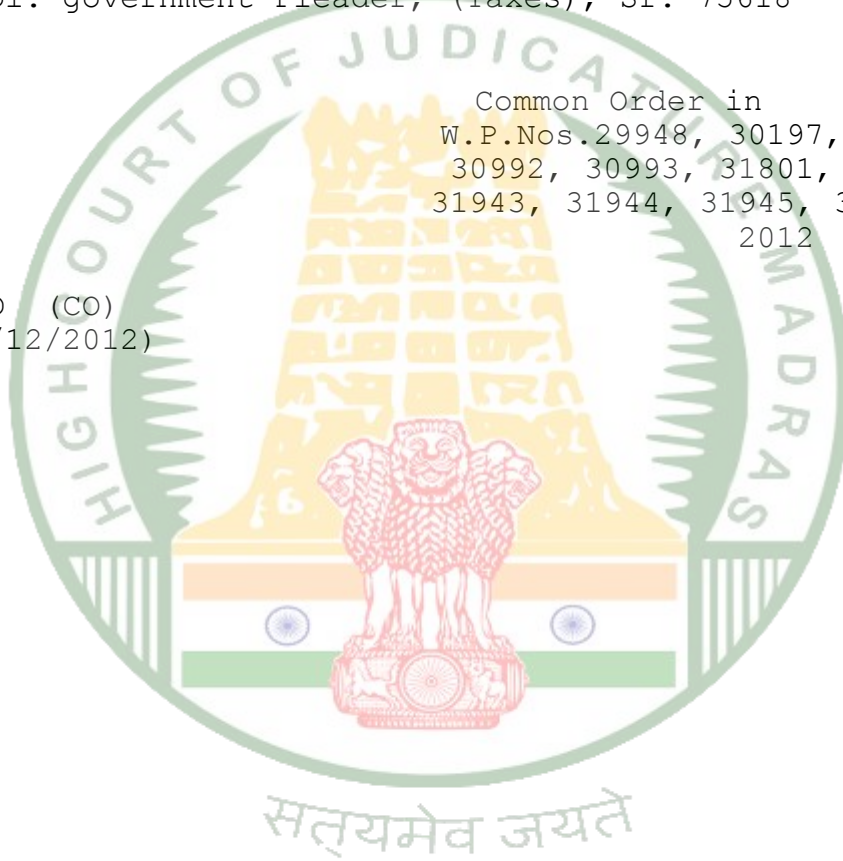
1. The Secretary, Ministry of Shipping, Transport Bhawan, Sansad Marg, New Delhi - 110 001.
2. The Home Secretary, Government of Tamil Nadu, Secretariat, Fort St.George, Chennai - 600 009.
3. The Director General of Police, Tamil Nadu Police Head Quarters, Kamarajar Salai, Chennai - 600 005.
4. The Commissioner of Police, Chennai City, Egmore, Chennai.
5. The Inspector of Police, Pattinapakkam Police Station, Chennai.
6. The Chief Commissioner, Customs and Central Excise Department, Chennai Zone, 26/1, Mahatma Gandhi Road, Chennai - 34.
7. The Chairman of Port Trust, Chennai Port Trust, Chennai.
8. The Commandant, Indian Coast Guard, Fort St.George, Chennai - 600 001.
9. The Shipping Master, Mercantile Marine Department, Anchor Gate Building, Chennai Port, Rajaji Salai, Chennai - 600 001.
10. The Chairman and Managing Director, M/s.Pratibha Shipping Company Ltd., 1201-02, Arcadia Building, NCPA Road, Nariman Point, Mumbai - 400 021.

11. The Fleet Manager, Pratibha Shipping Company Limited,  
Mumbai.

2 ccs to M/s.T.P. Senthilkumar, Advocate, Sr. 78400  
2 ccs to M/s. Lex megnum chambers Muizzali, Sr. 78328  
1 cc to Mr.C,.V. Ramachandramurthy, Advocate, Sr. 78385  
3 ccs to Mr.S. Raghunathan Sr. 78135  
1 cc to Mr.R. Karthikeyan for Respondent, Sr. 78189  
1 cc to Spl. government Pleader, (Taxes), Sr. 75618

Common Order in  
W.P.Nos.29948, 30197, 30900, 30991,  
30992, 30993, 31801, 31941, 31942,  
31943, 31944, 31945, 31946, 31947 of  
2012

MS, CES, SCD (CO)  
SRA, KK (21/12/2012)



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