MANU/MH/0707/2004

Equivalent Citation: 2004(3)ARBLR497(Bom), 2004(6)BomCR537

IN THE HIGH COURT OF BOMBAY

Arbitration Petition Nos. 66, 67, 68 and 69 of 2002

Decided On: 01.09.2004

Appellants: **Shipping Corporation of India**
Vs.
Respondent: **Oyster Marine Inc.**

Hon'ble Judges/Coram:
D.K. Deshmukh, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Gaurav Joshi and V. Uttam, Advs. i/b., Mulla & Mull & Craigle Blunt & Caroe

For Respondents/Defendant: Rajani Iyer, S.M. Singh, S.C. Naidu, Manish Dave and Jayesh Choksi, Advs. i/b., C.R. Naidu & Co.

Case Note:
Arbitration - Award - Payment of Interest - Present petition filed against awards passed by Arbitrator directing Petitioners to pay amounts to Respondents on account of performance bonus, arrears of manning fees and premature discharge compensation - Held, respondents made payment of premature discharge compensation to employees engaged by it - It was claiming reimbursement of that payment from Petitioners - It appears from the record that there was nothing in contract which obliges Petitioners to make payment of such compensation, but Arbitrator has relied on admission by Petitioners that they will make payment - Arbitrator has observed that petitioners had agreed to pay premature discharge compensation to crew members - Award of Arbitrator on this count was based on supposed admission of Petitioners of claim, but as Court found there was no such admission on record, Award made by Arbitrator on this count, therefore, was liable to be set aside - Award of interest on claims awarded by Arbitrator - Arbitrator has awarded interest at on amounts awarded - No evidence led by Respondents to show that was current rate of interest and still Arbitrator has awarded interest - On contrary, on behalf of respondents, it was submitted that Arbitrator can Award interest at reasonable rate - Arbitrator has awarded interest - Award of interest was in discretion of Arbitrator and, therefore, this Court should not interfere with Award of interest - Claims awarded were of period and considering rate of interest prevailing then as also that Award of interest was in discretion of Arbitrator, it will not be appropriate for this Court to interfere with Award made by Arbitrator on this count - Petitions partly allowed and Awards made by Arbitrator directing petitioners to pay amounts to respondents on account of performance bonus, arrears of manning fees and premature discharge compensation are set aside - Awards made on remaining counts including Awards made in relation to payment of interest are maintained - Petitions are disposed off

JUDGMENT

D.K. Deshmukh, J.

1. The parties in these four petitions are identical. Some of the issues involved in these petitions are also identical. Before the Arbitrator, the evidence in all these matters was treated as common. Therefore, these four petitions can be conveniently disposed off by a common order.

2. In all these petitions, Awards dated 22nd October, 2000 made by the same learned Arbitrator directing the petitioners to pay various amounts under different heads to the respondents are challenged. The facts that are material and relevant for deciding these petitions are that the petitioners are a Government of India Company engaged in the business of shipping and it owns several vessels. The vessels which are subject-matter of the present proceedings are m.t. Kolandia, m.t. Rafi Ahmed Kidwai, m.v. Lok Vivek and m.v. Harkishin. The respondent company is a partnership firm. It is engaged in the business of providing services of ship management, consultancy, manpower and agency services. The petitioners, who are owners of the abovenamed four vessels had entered into agreements with the respondents. The agreements were described as manning agreement for providing services on the said vessels for their efficient total management. It was the responsibility of the respondents to provide officers and crew members for manning the said vessels. The respondents were liable to pay all the expenses relating to the personnel of the vessels including wages, salaries, etc. By agreements between the parties, the amounts that the petitioners were liable to pay to the respondents for providing the above referred services were fixed. It appears that there were disputes between the parties in relation to amounts receivable by the respondents under certain heads. Therefore, the amounts were not paid by the petitioners, ultimately Summary Suit Nos. 3113 of 1995, 314 of 1995, 324 of 1995 and 3204 of 1995 were filed in this Court. In those summary suits, the parties agreed to refer their disputes to a common Arbitrator. Accordingly, the disputes were referred to the learned Arbitrator, the parties submitted their pleadings, led documentary as well as oral evidence and the learned Arbitrator has passed four different Awards, all dated 22nd October, 2000, each relating to a separate vessel, directing the petitioners to pay different sums under different heads to the respondents.

3. By the Awards, in so far as vessel m.t. Kolandia is concerned, the learned Arbitrator has directed the petitioners to pay an amount of Rs. 7,20,000 towards performance bonus and Rs. 3,766 towards compensation for the provisions left behind by the respondents on board of the vessel. These amounts were directed to be paid with interest at the rate of 18% p.a. up to the date of the Award and at the rate of 12% p.a. from the date of the Award till realisation. In relation to the vessel m.t. Rafi Ahmed Kidwai, the learned Arbitrator has directed the petitioners to pay an amount of Rs. 3,60,000 towards performance bonus, Rs. 17,60,935 towards arrears of manning fee, Rs. 27,612,25 towards loss of provisions on board of the vessel. The learned Arbitrator has also directed the petitioner to pay interest to the respondents at the same rate as in the case of vessel m.t. Kolandia. So far as the vessel m.v. Lok Vivek is concerned, the learned Arbitrator has directed the petitioners to pay Rs. 7,07,000 towards performance bonus, Rs. 26,483,85 towards loss of provisions on board of the vessel, Rs. 15,773 towards price of the provisions left on board of the vessel, Rs. 3,38,000 towards radio calls, Rs. 6,864 towards extra special overtime and Rs. 2,735 towards cost of extra messing. The learned Arbitrator had also directed payment of interest at the same rate as in the case of m.t. Kolandia. So far as the

vessel m.v. Harkishin is concerned, the learned Arbitrator has directed the petitioners to pay an amount of Rs. 4,50,000 towards performance bonus, Rs. 1,27,816 towards special overtime, Rs. 1,42,866 towards premature discharge compensation. The learned Arbitrator has directed payment of interest at the same rate as in the case of m.t. Kolandia. The analysis of the Award made by the learned Arbitrator shows that in relation to all four vessels, the learned Arbitrator has directed the petitioners to pay amounts towards performance bonus. In other words, the issue of performance bonus is common to all the four vessels. The amounts have been directed to be paid by the learned Arbitrator as price of the provisions left behind on board of the vessel in relation to two vessels i.e. m.t. Kolandia and m.v. Lok Vivek. The issue of loss of provisions on board of the vessel is also common in relation to two vessels i.e. m.t. Rafi Ahmed Kidwai and m.v. Lok Vivek. Similarly, the issue of special overtime is common in relation to two vessels i.e. m.v. Lok Vivek and m.v. Harkishin. The other issues are arising in relation to a singular vessel. The issue of interest is also common in relation to all vessels. Therefore, first I propose to take up the issue of performance bonus which is common to all the vessels.

4. In relation to vessel m.t. Kolandia, the manning agreement was signed on 14th June, 1990. As per the agreement, the petitioners were to pay an amount of Rs. 6,15,000 p.m. as manning fees to the respondents. On 12th September, 1990, the petitioners offered an increase in manning fees of Rs. 1,90,000 p.m. and the petitioners also offered an additional amount of Rs. 30,000 p.m. as performance bonus. On 28th December, 1990, the petitioners addressed a letter to the respondents laying down criteria for payment of performance bonus. By that letter, the amount of Rs. 30,000 was split up into three categories : (1) maintenance and upkeep of the vessels Rs. 10,000 ; (2) provision of duly certified and experienced Senior Officers with a minimum of tour duty of six months - Rs. 10,000 ; and (3) achievement of physical performance in respect of bunker and lube oil consumption as per annexure Rs. 10,000. So far as the vessel m.t. Rafi Ahmed Kidwai is concerned, the manning agreement was entered into on 16th December, 1989. The per month manning fees was the same i.e. Rs. 6,15,000. In case of this vessel also on 12th September, 1990, increase in manning fees was agreed i.e. Rs. 1,90,000 p.m. and additional amount of Rs. 30,000 p.m. towards performance bonus was also agreed. On 28th December, 1990, criteria for being eligible for performance bonus was also communicated. So far as the vessel m.v. Lok Vivek is concerned, the manning agreement was entered into on 4th February, 1991. The manning fees was agreed at Rs. 7,95,000 p.m. This agreement is after 28th December, 1990 but in the agreement itself, there is no mention either of performance bonus or of the criteria laid down by letter dated 28th December, 1990 for being eligible for performance bonus. So far as the vessel m.v. Harkishin is concerned, the agreement was entered into on 5th July, 1991, it was effective from 28th June, 1991. The manning fees agreed was Rs. 7,95,000. In relation to this vessel also, though the agreement is subsequent to 28th December, 1990, in the agreement there is no mention of performance bonus nor is there any mention of the criteria to be fulfilled for being eligible for the performance bonus. It appears that manning contracts in relation to all the vessels were extended after 1st July, 1992 and the manning fee was increased. In so far as the period after 1st July, 1992 is concerned, there is a dispute between the parties whether performance bonus was to be paid by the petitioners for that period or it was not to be paid.

5. So far as this aspect of the matter is concerned, perusal of the Award of the learned Arbitrator shows that according to the learned Arbitrator proposal for payment of performance bonus was contained in the letter dated 12th September,

1990 of the petitioners, which stated that performance bonus shall be payable for trouble free operation of the vessel. According to the learned Arbitrator, it is this offer which was accepted by the respondents and, therefore, according to the learned Arbitrator, performance bonus was to be paid for trouble free operation. The learned Arbitrator has held that the criteria which is laid down by the letter dated 28th December, 1990 is not binding because the petitioners paid the performance bonus amounting to Rs. l,38,750;against the invoices of the claimants on or before 29th January, 1991 and, therefore, it shows that the petitioners had given up the norms or criteria laid down in the letter dated 28th December, 1990. Following observations of the learned Arbitrator, in my opinion, are relevant:

> "While making such payments of the performance bonus for the said periods, the respondents had not raised any issue pertaining to any criteria norms stated by the respondents in their said letter dated 28th December, 1990 addressed to the claimants. In the facts and circumstances and the evidence on record, both oral and documentary, I hold that the payment of additional amount of Rs. 30,000 per month by the respondents to the claimants towards performance bonus was subject to the trouble free operation of the vessel by the claimants and that performance bonus was to be paid by the respondents to the claimants on quarterly basis after three months after the expiry of the quarter as mentioned in the respondents said letter dated 12th September, 1990."

Perusal of the Awards in other cases shows that similar reasoning has been adopted by the learned Arbitrator in relation to other vessels also. The learned counsel appearing for petitioners submits that the learned Arbitrator has totally omitted from consideration the letter dated 15th October, 1993 and 22nd September, 1993 written by the respondents to the petitioners submitting their claim for the performance bonus by specifically referring to the letter dated 28th December, 1990. The learned counsel thus submits that these letters show that the criteria for being eligible for payment of performance bonus laid down in the letter dated 28th December, 1990 was accepted by the respondents. The learned counsel also referred to the letter dated 27th May, 1994 and pointed out that in that letter, the respondents specifically referred to the letter dated 28th December, 1990 and the criteria laid down therein and accepted that performance is the sole criteria for deciding the payment of performance bonus. It was also admitted that their performance was not 100%. The learned counsel further submits that the respondents had in the statement of claim specifically referred to the letter dated 28th December, 1990. The learned counsel submits that at no point of time the respondents ever claimed that the criteria laid down in the letter dated 28th December, 1990 was either waived by the petitioners or was not applicable. According to the learned counsel, on the contrary, it was the case of the respondents that the criteria laid down in the letter dated 28th December, 1990 was binding on the respondents. It is submitted that so far as the aspect of satisfying the norms laid down in the letter dated 28th December, 1990 is concerned, apart from the fact that the learned Arbitrator has not considered this aspect of the matter, the letter of the respondents themselves shows that they have not complied with these norms. The learned counsel, therefore, submits that the Award made by the learned Arbitrator in this regard is liable to be set aside. The learned counsel also invited my attention to the statement made by the respondents witness stating therein that the performance norms as set out in the letter dated 28th December, 1990 were binding and that the respondents had submitted their invoices pursuant to those norms. The learned counsel further submits that so far as the payment made which has been relied on by the learned Arbitrator is concerned, it is for the period

before December 1990 and as the norms were issued in December 1990, payment for the earlier period was made without insisting on compliance with the norms set out in the letter dated 28th December, 1990. It is further submitted that the learned Arbitrator has wrongly cast burden to prove that the norms were not fulfilled by the respondents on the petitioners. It is submitted that it was for the respondents to satisfy the learned Arbitrator that they had fulfilled the norms in order to entitle them to the Award of performance bonus. It is submitted that by submitting invoices dated 22nd September, 1993 and 15th October, 1993 by pointedly making reference to the letter dated 28th December, 1990, the respondents had admitted applicability of the norms. Nowhere in the evidence there was even an attempt made to explain this admission and, therefore, in the absence of the explanation, the learned Arbitrator ought to have relied on that admission to reject the claim of the respondents.

6. On behalf of the respondents, on the other hand, it is submitted that offer for payment of performance bonus was made by letter dated 12th September, 1990 and the offer was to pay performance bonus for trouble free operation. The performance bonus was payable from 1st April, 1990, it is this offer which was accepted by the respondents and thus, there was a concluded contract between the parties for payment of performance bonus on satisfying the norm of trouble free operation. According to the respondents, if the petitioners wanted to impose any more conditions, then they would be binding only if they are accepted by the respondents. According to the respondents, the offer made in the letter dated 28th December, 1990 was never accepted by the respondents and, therefore, the norms laid down in the letter dated 28th December, 1990 are not binding on the respondents. It is also submitted that the payment of performance bonus for the period from 1st April, 1990 to 31st December, 1990 by the petitioners without insisting on the satisfaction of the norms shows that even according to the petitioners, the norms laid down in the letter dated 28th December, 1990 were not binding between the parties. It is further submitted that submission of invoices by letters dated 22nd September, 1993 and 15th October, 1993 would also not amount to acceptance of the conditions contained in the letter dated 28th December, 1990 because acceptance of the offer has to be within a reasonable time. It is lastly submitted that in any case, the Award cannot be set aside for this reason. It is further submitted that the witnesses examined for the petitioners have themselves stated that the performance of the respondents was satisfactory.

7. So far as the period after 1st July, 1992 is concerned, according to the petitioners, no performance bonus was paid because the petitioners never offered to pay performance bonus for the period subsequent to 1st July, 1992. According to the petitioners, for considering the offer to be made to the existing manning contractors, for continuation of the contracts for a further period, a meeting of the Standing Committee of the petitioners was held on 2nd July, 1992 and in that meeting the offer to be made was decided upon. In that meeting, it was specifically decided that no performance bonus would be payable. The learned counsel, therefore, submits that as the offer was to be made pursuant to the decision of the Standing Committee dated 2nd July, 1992, no performance bonus could be claimed. No officer of the petitioners had power to offer payment of performance bonus contrary to the decision of the Standing Committee. It is further submitted that even assuming that performance bonus was payable for the period subsequent to 1st July, 1992, it would be payable on the same terms and conditions and, therefore, as the respondents have not complied with the norms laid down in the letter dated 28th December, 1990, the respondents would not be entitled to payment of performance bonus for the period subsequent to 1st July, 1992 also.

8. So far as this aspect of the matter is concerned, the learned counsel for the respondents relies on the deposition of Anil Badle, a witness examined on behalf of the petitioners to claim that the respondents at no point of time were informed that for the period after 1st July, 1992 performance bonus will not be paid.

9. Now, if in the light of these rival submissions the record of the case is perused, it becomes clear from the observations in the Award quoted above that the learned Arbitrator has held that the norms laid down by letter dated 28th December, 1990 were waived by the petitioners because they made payment of performance bonus for the period from 1st April, 1990 to 31st December, 1991, in February 1991, without insisting on compliance of the norms laid down in the letter dated 28th December, 1990. In my opinion, the reason given by the learned Arbitrator omits from consideration following relevant aspects :

(i) That the payment related to the period when no norms were laid down. Norms were for the first time laid down by letter dated 28th December, 1990.

(ii) The learned Arbitrator also did not consider the statements made in paragraph 16 of the statement of claim. Paragraph 16 of the statement of claim reads as under :

> '16. The respondents, by their letter dated 28th December, 1990 for the first time set out the norms against which the claimants would be paid performance bonus. The performance bonus amount of Rs. 30,000 (Rupees Thirty thousand only) per month was split in three equal segments of Rs. 10,000 (Rupees Ten thousand only) to be paid to the claimants against satisfactory performance in the following manner :
>
> (a) Maintenance and upkeep of the vessel — Rs. 10,000
> (b) Provision of duly certified and experienced ship board personnel with minimum of six for 5 Sr. Officers — Rs. 10,000
> (c) (i) Achievement of physical performance norms inspection of speed bunker and lube oil consumption as per attached performance.
> (ii) Down time inspection operation — Rs. 10,000
>
> These requirements were to be periodically reviewed and on compliance therewith the claimants were to be entitled to the performance bonus.'

Perusal of paragraph 16 quoted above shows that the respondents proceeded on the basis that the norms laid down in the letter dated 28th December, 1990 are applicable and are required to be fulfilled.

(iii) The learned Arbitrator did not consider the letter dated 22nd September, 1993. Perusal of that letter shows that it was written in relation to the vessel m.t. Kolandia, seeking payment of performance bonus for the period from April 1992 to March 1993. This letter pointedly referred to the agreement letter dated 28th December, 1990 and by that letter, details were given to claim that the respondents have complied with the norms laid down in the letter dated 28th December, 1990.

(iv) The learned Arbitrator also excluded from consideration the letter dated 15th October, 1993 by which invoices for payment of performance bonus from October 1991 to March 1992 in relation to vessel m.t. Kolandia were

submitted. Here again, the letter dated 28th December, 1990 was pointedly referred to and an attempt was made to show that the norms laid down in the letter dated 28th December, 1990 have been complied with.

(v) The learned Arbitrator also excluded from consideration the letter dated 27th May, 1994. The reference of this letter reads as under :

> 'Re.: Performance bonus due to us for the period from October 1991 to December 1993 in respect of vessels m.v. Lok Vivek, m.v. Harkishin, m.t. Rafi Ahmed Kidwai and m.t. Kolandia.'

Following statements from that letter are relevant :

> 'Sir, as you are already aware this performance bonus of Rs. 30,000 per month/per vessel already sanctioned by you is split into 3 equal segments of Rs. 10,000 each and is determinable and payable to us against satisfactory performance of the Criteria A, B and C specified above.
>
> We are fully aware that the performance is the soul criterion for deciding this payment from our side at this juncture, we can only say that we have performed may not be to your entire satisfaction but at the same time the very fact that the vessels were managed by us for over three years speak for itself. So under the circumstances we should be entitled if not to 100% payment may be to a good percentage which you may favourably consider.....'

By this letter, the respondents accepted the applicability of the norms laid down by letter dated 28th December, 1990 and also conceded that the respondents have not complied with those norms fully.

(vi) The learned Arbitrator also ignored the statements made by the witness of the respondents where he has relied on performance norms as set out in the letter dated 28th December, 1990 and admitted that the invoices were submitted on that basis.

10. In my opinion, exclusion from consideration of these relevant and material aspects vitiates the Award of the learned Arbitrator in so far as the aspect of performance bonus is concerned. The learned Arbitrator, apart from excluding from his consideration relevant and material aspects as indicated above, has considered irrelevant aspects. Perusal of the Award shows that the learned Arbitrator has observed that the performance was considered excellent by the officers of the petitioners and endorsements about the performance of the vessel were noted as satisfactory in the logbooks whereas it is an admitted position that the logbooks though were produced by the petitioners, were not admitted as evidence because of an objection raised by the respondents. It is further to be noted here that the learned Arbitrator has considered the statements made by the witness regarding performance of the vessel in relation to the charter party agreements and not the norms laid down in the letter dated 26th December, 1990. The level of performance of the vessel so far as charter party is concerned is totally difficult than the level of performance for being entitled to the performance bonus.

11. I find that the learned Arbitrator has also placed the burden of proving that the norms laid down in the letter dated 28th December, 1990 were fulfilled by the

respondents on the petitioners. The learned Arbitrator has referred to the deposition of the witnesses Mr. Pinaki Mukherjee and Mr. Ramchandra Bhaskar Zarapker and has said that they had not been able to show that the respondents did not comply with the norms laid down in the letter dated 28th December, 1990. It is pertinent to note here that these witnesses had evaluated the performance of the vessels considering the parameters specified in the relevant charter party agreements and there was no evaluation carried out by them to find out whether the vessels satisfy the norms laid down by the letter dated 28th December, 1990. The evaluation of performance for the charter party agreements was different than the evaluation in relation to the norms laid in the letter dated 28th December, 1990. The learned Arbitrator confused these two norms and held that the performance of the vessels was satisfactory by ignoring an admission on the part of the respondents that the respondents did not fully comply with the norms laid down in the letter dated 28th December, 1990. Submitting of invoices, with reference to the norms laid down in the letter dated 28th December, 1990 by the respondents amounted to an admission by the respondents that the norms are applicable. Unless and until this admission is explained by them, they cannot be allowed to say that the norms laid down in the letter dated 28th December, 1990 are not binding on them. Admittedly, the respondents have not ever made an attempt to explain this admission while leading oral evidence. In the absence of explanation, the admission binds the respondents. This aspect of the matter is totally ignored by the learned Arbitrator. This, in my opinion, shows clear non-application of mind by the learned Arbitrator to the most relevant aspect of the matter and that is enough to vitiate the Award on this aspect of the matter.

12. So far as the period after 1st July, 1992 is concerned, admittedly the Standing Committee of the petitioners had met on 2nd July, 1990 to consider the package to be offered to the respondents and other manning agreement holders for extension of the period of the agreements. Perusal of the resolution passed in the meeting of the Standing Committee held on 2nd July, 1992 shows that the Standing Committee decided that the package to consist of :

> "(a) Additional payments as arrears at the rate of 35% of base rate without the performance bonus amount from the dates contracts expiry to 30.06.1992.
>
> (b) And to continue the contract for a period of one more year from 01.07.1992 at the existing rate plus additional 35% of the base rate. No performance bonus shall be applicable over the offered rates for the abovementioned period of one year."

Thus, the decision of the Standing Committee was clear and unequivocal that for the period subsequent to 1st July, 1992 no performance bonus was applicable. The officers of the petitioners who were subordinate to the Standing Committee had no jurisdiction or power to offer payment of performance bonus contrary to the decision of the Standing Committee. Though this aspect was pointed out to the learned Arbitrator, I find from the Award that this aspect of the matter has not been considered by the learned Arbitrator at all. From the resolution of the Standing Committee referred to above, it is clear that for the period subsequent to 1st July, 1992 the petitioners could not have been liable for payment of performance bonus. Assuming, however, that performance bonus even for the period subsequent to 1st July, 1992 was payable, obviously it would be payable on the same terms and conditions as it was payable before i.e. on compliance of the norms laid down in the letter dated 28th December, 1990. Even for the period subsequent to 1st July, 1992

the respondents have not led any evidence to show that they have complied with the norms laid down in the letter dated 28th December, 1990. On the contrary, their own admission is on record which shows that even according to them, they had not fully satisfied the norms laid down by the letter dated 26th December, 1990. Thus, looking from any point of view, the learned Arbitrator could not have held that the petitioners are liable to pay performance bonus for the period after 1st July, 1992.

13. In so far as the vessels m.v. Lok Vivek and m.v. Harkishin are concerned, though their agreements were subsequent to 28th December, 1990 the correspondence on record shows that the payment of performance bonus was on the terms contained in the letter dated 12th September, 1990 and letter dated 28th December, 1990 and, therefore, it was for the respondents to lead evidence to show in relation to these vessels also that they have complied with the norms laid down in the letter dated 28th December, 1990. In relation to these vessels also, there is no evidence led by the respondents to show that they have satisfied the norms. On the contrary, their admission is that they have not fully complied with the norms.

14. For all these reasons, therefore, the Awards made by the learned Arbitrator directing the petitioners to pay various amounts to the respondents on account of performance bonus are liable to be set aside and they are accordingly set aside.

15. The next point to be considered is regarding provisions left behind. The learned Arbitrator has directed the petitioners to pay Rs. 3,766 in relation to the vessel m.t. Kolandia and an amount of Rs. 15,773 in relation to the vessel m.v. Lok Vivek. Considering that the amounts are not large, I am not inclined to interfere with the finding recorded by the learned Arbitrator which is recorded by him after considering the evidence on record, though I find that there is considerable force in the submission made on behalf of the petitioners that this direction is in the absence of any terms in the contract, making the petitioners liable to pay any amount to the respondents on this account.

16. The next aspect to be considered is the amounts awarded on account of loss of provisions on board. This Award has been made by the learned Arbitrator in relation to vessels m.t. Rafi Ahmed Kidwai and m.v. Lok Vivek. In relation to the vessel m.t. Rafi Ahmed Kidwai, the learned Arbitrator has directed the petitioners to pay an amount of Rs. 27,612.25 and in relation to the vessel m.v. Lok Vivek, the direction is to pay an amount of Rs. 26,483.85. The Award has been made because according to the learned Arbitrator, the responsibility to keep the refrigerators in working condition on the vessel was that of the petitioners and because the petitioners did not keep the refrigerators in working condition, the provisions which were taken on board by the respondents became unusable. The challenge to the Award is that the Award has been made in the absence of any stipulation in the contract. However, I find that as per the contract, it was the responsibility of the petitioners to maintain the equipments on board in working condition. The Award made by the learned Arbitrator is after considering evidence on record, it is essentially a finding of fact. In my opinion, therefore, it would not be appropriate to disturb this finding in the limited jurisdiction of this Court under Section 34 of the Arbitration and Conciliation Act, 1996.

17. The next item to be considered is the amounts awarded on account of special overtime. The Award is made in relation to two vessels. In relation to the vessel m.v. Lok Vivek, the petitioners have been directed to pay an amount of Rs. 6,864 and in relation to the vessel m.v. Harkishin, the petitioners have been directed to pay an

amount of Rs. 1,27,816. Thus, the amounts have been awarded by the learned Arbitrator because the sailors on ship who were engaged by the respondents were required to do the work of cleaning the hatches and for that work, they were required to be paid overtime. The challenge to the Award on this count by the petitioners is that it is contrary to the terms of the contract. According to the petitioners, the petitioners were required to pay the manning fees to the respondents and it was inclusive of all wages and salaries of the personnel engaged by the respondents. Perusal of the record, however, shows that the learned Arbitrator has relied on Clauses 83 and 85 of the National Maritime Board Agreement which require that special allowance be paid to the sailors if they are required to do extra work like cleaning the hatches. The learned Arbitrator has, therefore, held that the manning fees that was being paid by the petitioners to the respondents was for engaging sailors and other crew members for operating the vessel. As per the above referred convention, the work of cleaning the hatches was not one of the routine duties of the sailors and crew members and, therefore, if they were required to do that work, they were required to be made extra payment. Obviously this payment would not be included in the manning fees and, therefore, the learned Arbitrator has directed the petitioners to reimburse the respondents for making payment of overtime to the crew members. In my opinion, it cannot be said that the view taken by the learned Arbitrator is in anyway wrong or that it is impossible to take such a view on the basis of the material on record or that the Award is of such a nature that it causes injustice to the petitioners. In my opinion, therefore, it will not be prudent to interfere with the Award in relation to this aspect.

18. This takes me to the direction of the learned Arbitrator for payment of arrears of manning fees. The learned Arbitrator has by his Award in relation to the vessel m.t. Rafi Ahmed Kidwai directed the petitioners to pay an amount of Rs. 17,60,935 to the respondents towards arrears of manning fees. The claim, it appears, arises this way. By letter dated 23rd September, 1992, the petitioners offered an increase in the existing manning fees of 35% for the period from 16th June, 1991 to 30th June, 1992. This increase was given on the condition that the respondents continue the management contract for one year from 1st July, 1992 to 30th June, 1993. If this offer was accepted, the arrears of manning fees i.e. Rs. 35,21,875 were payable in 12 equal monthly installments. In case this offer was not willing to extend the contract for one year from 1st July, 1992 the petitioners agree to pay 20% increase in the manning fees for the same period, that amount comes to Rs. 1,61,000 p.m. The offer was unconditionally accepted by the respondents, thus they become entitled to 35% increase and were obliged to extend the contract for one year, but according to the petitioners, the respondents created a situation because of which the petitioners were forced to terminate the contract before expiry of the period of one year and, therefore, according to the respondents, the respondents would not be entitled to payment at 35% increase. By the Award, the learned Arbitrator has held that the respondents had agreed to continue the manning contract of one year as was necessary, but the petitioners terminated the contract and, therefore, the petitioners cannot say that the respondents are not entitled to the amount of arrears increased at the rate of 35%.

19. The learned counsel appearing for petitioners submits that it is clear from the letter of offer that the petitioners were liable to pay at the increased rate of 35% if the respondents continued the contract for one year by installments. The respondents accepted the offer and, therefore, were under an obligation to continue the contract for one year. According to the petitioners, on the hand the respondents agreed to continue the contract for one year, on the other hand, the respondents posted such

persons on the board that a situation was created where the petitioners were left with no alternative but to terminate the contract by letter dated 1st December, 1992 with effect from 22nd December, 1992. According to the learned counsel, therefore, as the respondents had never disputed the circumstances which have been referred to in the letter dated 17th December, 1992, the respondents cannot be held entitled to the arrears at the higher rate looking to the conduct of the respondents. On the other hand, on behalf of the respondents, it is submitted that the respondents never agree to continue the contract for a period of one year form 1st July, 1992. It was also submitted that the contract did not provide that if the contract is terminated earlier, the arrears will not be payable at the increased rate. It is submitted that the arrears were for earlier period, therefore, the payment could not be denied for some thing that has happened in future. In my opinion, to consider these submissions, first it is necessary to refer to the letter dated 23rd September, 1992 where the offer for the increase was made. The relevant portion reads as under :

"(a) The Shipping Corporation of India is pleased to offer you an increase of 35% over existing manning fees for all the vessels under your personal managements contracts as listed below :

Vessel	Period	Total Amount (Rs.)
m.t. Rafi Ahmed Kidwai	16.06.1991 to 30.06.1992	35,21,875
m.t. Kolandia	14.12.1991 to 30.06.1992	18,59,550
m.v. Lok Vivek	04.08.1991 to 30.06.1992	30,33,823
m.v. Harkishin	28.06.1992 to 30.06.1992	27,825

The abovementioned increase shall be given to you on the condition that you continue the personal management contract for one year from 01.07.1992 to 30.06.1993 at the revised manning fees as follows :

Vessel	Total Amount Rs. per month (in Rupees)
m.t. Rafi Ahmed Kidwai	10,86,750
m.t. Kolandia	10,86,750
m.v. Lok Vivek	10,73,250
m.v. Harkishin	10,73,750

(1)(b) The arrears on account of above increase shall be paid to you in 12 equal installments from 01.07.1992 to 30.06.1993 each installment being of an amount as listed below :

Vessel	Value of One Instalment
m.t. Rafi Ahmed Kidwai	2,93,490
m.t. Kolandia	1,54,962
m.v. Lok Vivek	2,52,818
m.v. Harkishin	2,318

2. In the event for whatever reasons you do not accept the above offer, then we shall arrange to take back the manning of the vessels at a mutually agreed early date and close your personnel management contract of these vessels with SCI. In this case, the management has decided to give you a special increase of 20% over and above the manning fee for the period as given below :

Vessel	Amount of Spl. Increase in Rs. per month	Duration From	To
m.t. Rafi Ahmed Kidwai	1,61,000	16.06.1991	Date of re-delivery to SCI
m.t. Kolandia	1,61,000	14.12.1991	-do-
m.v. Lok Vivek	1,59,000	04.08.1991	-do-
m.v. Harkishin	1,59,000	28.06.1992	-do-

The abovementioned additional amount shall be paid to you at the time of redelivery of the respective vessels back to us."

It is thus clear that this letter had two types of offers, one offer was for increase at the rate of 35% on the condition that the respondents continue the management for one year from 1st July, 1992 to 30th June, 1993 and the arrears were to be paid in 12 equal monthly installments. The second offer was that the respondents give up the management and an increase of 20% will be given and payment would be made at the time of the delivery of the vessel. The offer was accepted by letter dated 28th September, 1992 of the respondents. The relevant paragraph reads as under :

"We thank you for your letter r.e.f. nil dated 23rd September, 1992 giving us your final offer of 35% increase over the existing manning rates for all vessels under our personal management contract. Your mentioned letter has given us a sign of relief."

It clearly shows that the respondents accepted the offer of 35% increase. This implies that the respondents also agreed to continue the contract for a period of one year from 1st July, 1992 to 30th June, 1993. The next document, in my opinion, which is relevant is letter dated 17th December, 1992. It is by this letter that the contract of the respondents was terminated. It is stated in this letter that from time to time the petitioners have sent several messages to the respondents pointing out the acts of negligence and poor performance by the officers posted on the vessel. It was further stated that:

"Despite our messages, we notice that:

(i) The personnel are being posted without approval from SCI and submitting very late to our approval.

(ii) The performance of the personnel on board has been extremely poor, leading to many incidents of machinery failures including a fire in engine room which cause a heavy financial liability to SCI.

(iii) The Master and Chief Engineers have failed to stand reports as required by SCI, despite reminders.

(iv) The Master has not even reported some of the very important incidents viz. alleged collision with m.v. Skipper I and m.v. Mathaya Nirakshia, in total contravention to the norms of the industry.

(v) Finally it is now reported by our superintendent attending vessel at Cochin, that lack of discipline/attention by the shipboard personnel while transferring oil was about to cause a major accident on board on 14.12.1992.

> In view of the above, SCI management has decided to take back the vessel from your personal management contract.
>
> Your are, therefore, requested to handover the personnel management of m.t. Rafi Ahmed Kidwai back to SCI by about 22.12.1992."

Perusal of the above quoted portion from letter dated 17th December, 1992 shows that there were several acts of negligence on the part of the officers posted on the vessel by the respondents and the respondents did not take any steps despite as many as six letters and telexes being sent by the petitioners, with the result, the petitioners were left with no alternative but to terminate the contract. In my opinion, considering the behaviour of the petitioners, it is not possible to hold that despite this conduct on the part of the respondents, they are entitled to arrears at the rate of 35%. In my opinion, had the respondents not accepted the term of one year's continuance of the contract, they would have been entitled to increase at the rate of 20%. They accepted the increase at the rate of 35% thereby accepted the obligation to continue the management of the vessel for 12 months but created such a situation that the petitioners were left with no alternative but to terminate the agreement and having done so, in my opinion, the respondents cannot be allowed to turn around and claim increase at the high rate 35%. In my opinion, the reasoning given by the learned Arbitrator shows total non-application of mind. The learned Arbitrator has held that as per the contract between the parties, the petitioners could have terminated the contract without giving any reason and, therefore, it was not possible for the respondents to challenge the grounds given in the termination letter. In my opinion, if the termination for misconduct was likely to lead to the consequence of increase at the higher rate being denied to the respondents, they were entitled to challenge the grounds given in the termination letter. The conduct of the respondents of not challenging the grounds given in the termination letter, in my opinion, leads to only one conclusion that the grounds given in the termination letter were correct and, therefore, the respondents could not have been given arrears at the higher rate. The Award made by the learned Arbitrator, therefore, on this count is liable to be set aside, it is accordingly set aside.

20. The next item which is to be considered is the Award made by the learned Arbitrator for Rs. 3,38,000 towards radio calls in relation to the vessel m.v. Lok Vivek. This amount was withheld from the payment to be made to the respondents by the petitioners on account of radio calls made by the crew members from the vessel. Perusal of the Award shows that the petitioners arrived at the amount of Rs. 3,38,000 not on the basis of actuals but by drawing inference. The learned Arbitrator has held that as there is no evidence on record showing that the facility of radio calls to the extent of Rs. 3,38,000 was used by the crew members, the petitioners were not justified in withholding the amount. I do not find any patent error committed by the learned Arbitrator in making this Award. In my opinion, the Award so far as this aspect of the matter is concerned calls for no interference.

21. The next contention that is raised is that the Award made by the learned Arbitrator on account of extra messing. That Award is made in relation to the vessel m.v. Lok Vivek. The amount directed to be paid is Rs. 2,735. Considering this small amount, I do no want to disturb the Award made by the learned Arbitrator in this regard.

22. The next item that falls for consideration is the Award made by the learned Arbitrator on account of premature discharge compensation. That Award has been

made in relation to the vessel m.v. Harkishin. The learned Arbitrator has directed the petitioners to pay an amount of Rs. 1,42,866 towards premature discharge compensation. It appears that the manning contract was required to be terminated by the petitioners because of an incident involving the captain of the vessel. It appears that the captain on board appointed by the respondents was found drunk on the vessel and unpleasant incident took place. The respondent accepted that the captain appointed by it on the vessel was found drunk and that resulted in certain incidents. The petitioners, giving these reasons, terminated the contract and directed the respondents to handover the vessel to the new manning contractor. It appears that the respondents made payment of premature discharge compensation to the employees engaged by it. It was claiming reimbursement of that payment from the petitioners. It appears from the record that there is nothing in the contract which obliges the petitioners to make payment of such compensation, but the learned Arbitrator has relied on an admission by the petitioners that they will make the payment. The learned Arbitrator has observed that the petitioners had agreed to pay the premature discharge compensation to the crew members. The learned counsel appearing for petitioners submitted that there is no such document on record which will show that the petitioners discharge compensation. The learned counsel appearing for respondents also could not point out to me the document which will show that the petitioners had admitted its liability to make payment of this compensation to the respondents and had promised reimbursement. As observed above, the Award of the learned Arbitrator on this count is based on supposed admission of the petitioners of the claim, but as I find that there is no such admission on record, the Award made by the learned Arbitrator on this count, therefore, is liable to be set aside. It is accordingly set aside.

23. The last item that requires consideration is Award of interest at the rate of 18% p.a. on the claims awarded by the learned Arbitrator. The learned Arbitrator has awarded interest at the rate of 18% p.a. on the amounts awarded. It appears that the learned Arbitrator awarded interest at the rate 18% p.a. relying on the provisions of the Interest Act. The submission of the petitioners is that according to the provisions of Interest Act, interest can be paid at the current rate, but there is no evidence led by the respondents to show that is the current rate of interest and still the learned Arbitrator has awarded interest at the rate of 18% p.a. On the contrary, on behalf of the respondents, it is submitted that the learned Arbitrator can Award interest at a reasonable rate. The learned Arbitrator has awarded the interest at the rate of 18% p.a. The Award of interest is in the discretion of the Arbitrator and, therefore, this Court should not interfere with the Award of interest. In my opinion, considering that the claims awarded are of the period from 1992-93 and considering the rate of interest prevailing then as also that Award of interest is in the discretion of the Arbitrator, it will not be appropriate for this Court to interfere with the Award made by the learned Arbitrator on this count. In the result, therefore, all the four petitions succeed in part, the Awards made by the learned Arbitrator directing the petitioners to pay amounts to the respondents on account of performance bonus, arrears of manning fees and premature discharge compensation are set aside. The Awards made on the remaining counts including the Awards made in relation to payment of interest are maintained. There shall be no order as to costs. Petitions are disposed off.

24. Parties to act on the copy of this order duly authenticated by the associate/personal secretary as true copy.

Certified copy expedited.