

**GOVERNMENT OF INDIA
SHIPPING
LOK SABHA**

STARRED QUESTION NO:49
ANSWERED ON:13.08.2012
RELAXATION IN CABOTAGE LAW
Dhanaplan Shri K. P.;Thomas Shri P. T.

Will the Minister of SHIPPING be pleased to state:

- (a) the income of Cochin Port Trust during the last three years, year-wise and the impact of Cabotage law on the earning of the Vallarpadam Transshipment Terminal;
- (b) whether the Government has taken any final decision in relaxation of the existing Cabotage law's restrictions in favour of the International Container Transshipment Terminal at Vallarpadam, Cochin and other ports making similar requests;
- (c) if so, the details thereof along with the reasons therefor; and
- (d) the criteria for deciding exemption from Cabotage law restrictions in various ports?

Answer

MINISTER OF SHIPPING (SHRI G.K. VASAN)

(a) to (d): A Statement is laid on the Table of the House.

STATEMENT REFERRED TO IN REPLY TO PARTS (a) TO (d) OF LOK SABHA STARRED QUESTION NO. 49 TO BE ANSWERED ON 13TH AUGUST, 2012 RAISED BY SHRI P.T. THOMAS AND SHRI K.P. DHANAPALAN REGARDING RELAXATION IN CABOTAGE LAW

(a): The year-wise operating income of Cochin Port Trust during the last three years are Rs. 232.07 crore in the year 2009-10, Rs. 276.08 crore in 2010-11 and Rs. 307.10 crore in 2011-12 respectively. Relaxation of Cabotage Law may attract mainline foreign vessels to Vallarpadam Transshipment Terminal, thereby enhancing their earning.

(b): No final decision has been taken yet on relaxation of Cabotage law in favour of International Container Transshipment Terminal at Vallarpadam, Cochin.

(c): Does not arise.

(d): Provision exists under Section 407 (2) of the Merchant Shipping Act 1958 for grant of licence to foreign vessels to engage in coasting trade, for a specific period or voyage, subject to such conditions as may be prescribed by the Director General of Shipping. The extant guidelines on the subject are at Annexure I.

ANNEXURE REFERRED TO IN REPLY TO PART (d) OF STARRED QUESTION NO. 49

Shipping Development Circular No. 2 of 2002 Dated 8.11.2002

Sub : Guidelines for Grant of Licence to Foreign-Flag Vessels.

Legal Provisions and Objectives:

1.1 In public interest and to ensure transparency and equitable consideration for Indian ship-owners, shippers, Project authorities, other public and private parties (citizens/ companies/societies and PSUs and joint ventures), and above all, for the Indian consumers, the Director-General of Shipping is hereby pleased in supersession of all earlier guidelines to lay down the following guidelines for grant of licence for chartering of foreign-flag vessels for export, import, for coasting trade, implementation of projects etc.

1.2 In Part XIV - of the Merchant Shipping Act, 1958 - entitled 'Control of Indian ships and ships engaged in Coasting Trade', the provisions of Section 406 deal with Indian ships and chartered ships to be licensed and provisions of Section 407 deal with licensing of ships for coasting trade in India. As laid down in these sections, the licence has to be granted by the Director-General of Shipping (hereinafter referred to as D.G. Shipping) for taking to sea from a port or place within and outside India of Indian or other ship by a citizen of India or a company or a co-operative society under Section 406. The same is true for ship other than Indian ship or a ship chartered by a citizen of India or a company or a co-operative society for engaging in the coasting trade of India under Section 407.

1.3 Sub-Section (3) of Section 406 and sub-section (2) of Section 407 empower the D.G. Shipping to grant the licence subject to such

conditions as may be specified by him. Consolidated guidelines had been issued by the Director-General of Shipping in this same regard vide No. SD-9/CHART(82)/97-II dated 27 March, 2000. As a result of experience gained during the last 2 ½ years, it is felt necessary to issue the present updated and fresh guidelines.

1.4 It is well-known that in recent years, there has been a tremendous growth in the development of off-shore shipping industry in all its various aspects. It is necessary for the Central Government to ensure the growth and development of Indian off-shore sector, vessels, equipment etc. Consequently while considering the application for grant of licence to any foreign-flag vessel of any type to work in Indian waters anywhere in entire Exclusive Economic Zone, it will be necessary for D.G.Shipping to consider the effect on the growth and encouragement of Indian off-shore industry and vessels, irrespective of whether they are fitted with mechanical means of propulsion or not. Therefore, these Guidelines are applicable to all vessels, as defined under M.S. Act, supporting or performing any services/functions as enumerated below:-

(i) Capital intensive assets such as Floating Storage and Offloading devices etc.

(ii) Oil-field Support Services-rendering vessels engaged in towing, anchor-handling, dredging, off-shore drilling/production rigs, diving support, maintenance support, various types of surveys, cable laying, sea-bed mining operations, pipe-laying, lighterage, salvage marine construction, hook-up, supply and transport of passengers, goods and material, and

(iii) Port and Terminal related support services-rendering vessels.

1.5 These guidelines shall be applicable to any foreign-flag vessel chartered by anyone for operation in the Indian Exclusive Economic Zone of India including its territorial waters and contiguous zone.

1.6 These Guidelines shall come into operation with immediate effect.

2. Chartering of foreign flag vessels for export/import.

2.1 The Applicant should submit the enquiry consisting of details regarding specification of the requirement of vessel, quantity of cargo, nature of cargo, laycan, port of loading and discharge etc. to the Indian National Shipowners' Association (hereinafter referred to as INSA) and to the D.G. Shipping at least three working days prior to laycan. He should submit the application in the appropriate format as prescribed at Annex A, B, C & D with necessary fees, at least three working days prior to commencement of the laycan.

2.2 INSA shall circulate the enquiry to its Member Companies who shall forward to the Applicant the offer they wish to make giving details of a suitable Indian flag vessel, Charter hire/freight etc. informing INSA that the offer has been made giving all details except the price offer and endorsing a copy of the offer made to the D. G. Shipping. The offers should be made by the INSA Members within not more than two working days after receipt of the enquiry in respect of all vessels, except Crude Carriers, Product Tankers, Chemical Carriers, Ammonia Tankers, Gas Carriers, Feeder and Container Vessels. In respect of these latter vessels, INSA Member Companies shall make their offers to the Applicant within one working day after receipt of the enquiry. INSA shall, in response to the enquiry of the Applicant, inform the D.G. Shipping of the offers made by its Member Companies and endorse a copy of the same to the Applicant Company within two working days after receipt of the enquiry in respect of all vessels except Crude Carriers, Chemical Carriers, Ammonia Tankers, Gas Carriers, Product Tankers, Feeder and Container Vessels. In respect of the latter category vessels, INSA shall in response to the enquiry of the Applicant inform the D.G. Shipping of the offers made by its Member Companies and endorse a copy of the same to the Applicant Company within one working day after receipt of the enquiry. In case no copies of offer are received by INSA from its member companies within the stipulated time, INSA shall inform the D.G. Shipping accordingly, with a copy of the same to the Applicant.

3. Chartering permission for Coasting Trade/Offshore Support Operation/Port-related Support Services for Spot Requirement

3.1 The Applicant should submit the enquiry consisting of details regarding specification of the requirement of vessel, quantity of cargo, nature of cargo, laycan, port of loading and discharge etc. to the Indian National Shipowners' Association (hereinafter referred to as INSA) and to the D.G. Shipping at least three working days prior to laycan. He should submit the application in the appropriate format as prescribed at Annex A, B, C & D with necessary fees, at least three working days prior to commencement of the laycan.

3.2 INSA shall circulate the enquiry to its Member Companies who shall forward to the Applicant the offers they wish to make giving details of a suitable Indian Flag Vessel, Charter hire etc., informing INSA that the offer has been made giving the details thereof except the price offer and endorsing copies of the offer made to the D. G. Shipping. The offers should be made by the INSA Members within not more than two working days after receipt of the enquiry in respect of all vessels, INSA shall in response to the enquiry of the applicant inform D. G. Shipping the offers made by its Member companies and endorse a copy of the same to the applicant company immediately within one day in respect of all vessels.

3.3 The procedure specified in the Guidelines (Paragraphs 2.1 - 2.2) also applies to all applications for permission for spot requirements for coasting trade and time or voyage charter of foreign flag vessels where no tender process has been followed for coasting trade. The Applicant shall however refer the enquiry to the Indian Coastal Conference (hereinafter referred to as ICC) as well as to INSA. The ICC shall also follow the same procedure as INSA as specified earlier in Paragraphs 2.1 to 2.2. However, Paragraphs 3.1 to 3.2 shall apply to all requirements in the Offshore Support Services and/or Port/Terminal Support Services where no tender process is followed.

4. Chartering of Vessels done through Tender Process for all types of Requirements

4.1 Unless the Indian vessel becomes successful in the evaluation of the technical bid, it will not of course be eligible for any consideration and support under the provisions of Section 407 of the M.S. Act, 1958.

4.2 Whenever charter of vessel is undertaken through a tender process, open, closed or global tender, or any other process of tender, the provisions of these guidelines are required to be incorporated. Whether the guidelines have been incorporated in any tender or not, the said guidelines would be deemed to have been incorporated as a part of the tender documents.

4.3 Every tender process would provide scope for Indian Citizens/Companies/Co-operative Societies having Indian flag vessels to participate in the said tender. Where the said Indian Citizens/Companies/ Co-operative Societies have failed either to participate or obtain the order, they cannot be allowed to obtain the same or part of the same work at any cost merely through the provisions found in Section 407 and Section 406 of the M.S. Act, 1958. In the said tender process, the right of first refusal will remain with the Indian vessel owner on his showing readiness to take up the job at the lowest price indicated by the foreign flag vessels.

'Right of first refusal' is a right which accrues to a bidder in a tendering process - who offers an Indian flag vessel and whose rate though not being the lowest - to be awarded the tender, subject to his matching of the lowest rate offered by a bidder who offers a foreign-flag vessel. This right is conferred based upon the practices of the industry, and the deliberate intention of the Central Government towards encouragement and development of the Indian shipping industry.

4.4 Right of first refusal will be applicable to:

(a) A vessel, which has been offered by an Indian bidder, and which remains under foreign flag on the date of the price bid opening, would be treated as a foreign-flag vessel for the purpose of bid evaluation. Accordingly, the lowest Indian-flag vessel would be granted the right of first refusal against the foreign-flag vessels including the foreign flag vessel(s) which are offered with an undertaking to convert to Indian flag prior to commencement of operations.

(b) Above the lowest tender with a foreign-flag vessel, where there are more than one Indian tenderer offering Indian flag vessel(s), then the first right of first refusal will be given to the lowest among such Indian tenderers, and on his failure to match the lowest tender, the next higher Indian tenderer will be given the offer and so on.

(c) The offer of any foreign flag vessel by an Indian bidder with an undertaking to convert it to Indian flag prior to commencement of operations but later than the price bid opening can be considered only when and if the Indian bidder/s offering Indian-flag vessel/s have failed to match the lowest price offered by the foreign-flag vessel. In such event the tender-awarding authority shall incorporate deterrent penalties in the award of tender to ensure that the bidder will convert the vessel to Indian flag before commencement of operations.

(d) Similarly, an Indian bidder who offers an Indian flag vessel(s) for a particular tender will not be granted licence by D. G. Shipping to charter a foreign flag vessel(s) for the same work either at the commencement of charter or at any time during the tenure of the charter. The Indian bidder will not be allowed to substitute the Indian flag vessel(s) with a vessel that was being constructed, contracted or flying a foreign flag at the time of bidding but was to be converted to Indian flag prior to commencement of operations, but later than the price bid opening. Nor will he be allowed to bring in another Indian-flag vessel from elsewhere hoping to replace it with a foreign-flag vessel, irrespective of whether tender process was followed or not. Such a request to grant licence for a foreign-flag vessel will not be granted by D.G. Shipping to replace an Indian-flag vessel.

(e) In short, both in (c) and (d), equity will be maintained to ensure a balance between both the objectives of encouraging the existing Indian-flag vessels on the one hand, and of encouraging the acquisition of new Indian tonnage, but with a slight tilt in favour of existing Indian-flag vessels since the investment here has already been made.

4.5 The party, which offers the Indian flag vessel, should meet the commercial requirement by matching the lowest composite effective price and there shall be no price preference in favour of the Indian flag vessels. If any expenditure incurred by the Indian vessel-owner is being borne by the charterer for the foreign-flag vessel that shall be suitably added to the price while comparing the costs. On such calculation if the Indian vessel is offered at the same price as the foreign vessel, the licence under Section 406 and/or 407 will not be granted for the said foreign-flag vessel.

Composite Effective Price is the derived figure from the various price inputs submitted by a bidder/participant in a tender process, wherein all the costs/inputs are summarized. While working out such Composite Effective Price, inputs such as daily hire/daily rate, mob/demob charges, call out rates and conversion charges etc. are taken into account.

5. Amendment to Licence already granted:

5.1 Amendment to licence will be governed by the following provisions:

(a) Not more than twice will amendments be allowed in respect of the same licence.

(b) If an amendment seeks variations in more than three parameters, it will be treated as a fresh case.

(c) Any variation on laycan exceeding one week on either side will be treated as a fresh case.

(d) The fees once paid will not be automatically refunded or adjusted again any fresh application. Separate and adequate justification for refund or adjustment will have to be advanced before the D. G. Shipping, and be accepted by him.

(e) A fresh case would mean that the applicant has to follow the procedure from the beginning once again.

6. Penalty for deviations:

6.1 If INSA or any of the Shipping Companies brings to the notice of the D.G. Shipping that a charterer has violated these Guidelines in chartering foreign-flag vessels, the D.G. Shipping after due verification of the complaint shall take appropriate measures to penalize the charterer concerned as he may consider necessary to prevent recurrence of such events.

6.2 If there is a doubt that technical specifications of the vessel given in the tender advertisement were drawn up with the deliberate intention of avoiding Indian-flag vessels, the matter may be referred to the D. G. Shipping for decision as to whether the Indian vessel with minor difference in specifications should be chartered, and not the foreign flag vessel. As far as practicable, this decision will be taken after discussion with the concerned parties.

6.3 If past payment due on charter of Indian-flag ships is not cleared in time, the D. G. Shipping may decide that no further licence is granted to applicants who are in such arrears.

7. Non-INSA/ICC Members

For non-INSA/ICC Members, a copy of the enquiry shall, as has been the prevailing practice, be displayed on the notice board of the Office of the D. G. Shipping within the relevant time stipulated.

8. Exceptions in public interest

To expedite national project-implementation, to increase Indian tonnage, to encourage development - of Indian hub-ports and sea-trade routes, both new or existing - and to tackle an emergency or overcome a crisis, the D.G. Shipping retains the right to take action as deemed fit, overriding any of the guidelines laid down hereinabove.

Shipping Development Circular No.2 of 2007 NO: SD-9/CHRT(82)/97-III

Dated 20.04.2007

Sub :Simplification of procedure for issuance of licence under section 406 & 407 of M.S. Act, 1958.

(This circular is to be read with SD Circular nos. 2/2002, 8/2003, 1/2005, 3/2005, 3/2006 and 4/2006)

1. This Directorate had earlier issued SD Circular 3/2006 on the cited subject wherein an attempt was made to streamline the procedure for issue of licences under section 406 and 407 to reduce delays due to incomplete paper work.

2. Delays, however, in issue of licences continue to be a source of concern. Taking into account the growth in cargo and the further enhancement in cargo availability envisaged @ 20% p.a. over the next 5-6 years and the consequent increase in licensing work, this Directorate had switched to an online system of processing of licences since 1st January 2007, as announced and described in DGS Circular 4 of 2006.

3. In order to streamline the procedures further, it has been decided to shift to a system with greater reliance on self declaration and self certification which acknowledges that the onus of maintaining the seaworthiness of the vessel rests squarely with its owner and that it is in the own interest of the charterer and shipper to ensure that the vessel contracted is seaworthy and has valid registration certificate and insurance cover.

4. Procedure for issue of approvals for chartering/ Licensing: Applicants wishing to engage a foreign flag vessel and applying for licences under section 406 and 407 for specified period or specified voyage licence/permission would no longer be required to mail/send/enclose copies of any of the certificates concerning the registration, survey or certification of the ship. Instead, they would need to submit complete details on the online form of such documentation, including details of issue & validity of relevant certificates and to certify that all information contained in the checklist has been verified by the applicants against the certificates held by the ship or as submitted by the ship owner and that such all information submitted is true and correct to the best of their knowledge and belief, with full knowledge of the consequences, which may extend to targeting the ship-owner concerned under Port State Control inspection, revoking the licence & reverting the applicant to the existing procedure of verification of all documentation by the Directorate and penal act on under M.S. Act 1958.

However, all applicants would need to submit/enclose:

(i) the fees prescribed with a signed print out of the on-line application with the DD.

4.1 It may further be noted that this relaxation in procedure will not be available to:

(i) Offshore Vessels which carry more than 12 persons,

(ii) Other Offshore Vessels more than 15 years old,

(iii) Single hull oil tankers more than 15 years old,

(iv) All passenger vessels,

(v) Any vessel more than 25 years old.

Applicants desirous of engaging such ship would need to continue to send copies of the appropriate certificates and all documentation to the DGS for verification as per existing procedure.

5. It may be noted that the information furnished by the applicant would be liable for audit and random cross verification and if in course of such audit or verification it comes to light that a firm, company, master or agent of the vessel has furnished false declaration they would also be liable for penal action under M.S. Act, 1958.

6. Procedure for issue of General Trading Licence :

Greater self regulation is now introduced in the procedure under section 406 in respect of Indian ship-owners applying for a General Trading Licence.

6.1 Henceforth, the licence will be issued for a period of 10 years without consideration of the validity of the statutory certificates held by the ship.

6.2 Ship-owners are required to submit undertaking to keep all applicable certificates and insurance cover in place and valid at all times with full knowledge of the consequences of default, which will be an automatic suspension of the licence as well as a reversal in his case to the previous procedure under section 406.

6.3 In cases where a new or second hand vessel is issued provisional registry/temporary pass under section 41 of M.S. Act 1958, such vessels would be issued with provisional General Trading Licence for up to the period of the validity of the provisional registry/temporary pass under section 41. In order to obtain provisional GTL, ship-owners are required to submit application along with duly filled check list indicating details of existing certificates and the prescribed fees.

7. This issues with the approval of the Director General of Shipping and Ex-officio Additional Secretary to the Govt. of India.

Sd/-

(S.G. Bhandare)

Asstt. Director General of Shipping