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MV Seaman Guard Ohio crew member | 8 February 2015



Accredited: The Hindu

HUMAN RIGHTS CASE STUDY

MV Seaman Guard Ohio

Indian Authorities Unlawful Detention of Crew

THE FACTS

1. The vessel concerned was, at that time, the Sierra-Leone flagged MV Seaman Guard Ohio (“the vessel”) which was owned by AdvanFort (“the company”), a US-based firm that provided private maritime security services¹ and was then a member of the international Security Association for the Maritime Industry (SAMI)². The vessel was involved in supporting anti-piracy operations by providing armed escort services to commercial vessels travelling in what was then widely described as pirate-infested waters in the Indian Ocean.
2. On 12 October 2013 the vessel was intercepted by the Indian Coastguard off the Tuticorin coast. Mr. Paul Towers asserted that the vessel was actually 12.8 Nautical Miles (NM) from shore, but that the authorities had concluded they were in fact 10.8NM from shore and within Indian Territorial Waters (TTWs). It is further asserted by the crew that this calculation by the Indian authorities was undertaken by using two small islands as the base line for their measurements. "This [in relation to the Indian authorities calculations] put us inside by 1.2 NM” stated Mr. Towers.
3. The crew were arrested and detained by the Indian Coastguard near Tuticorin Port on suspicion of possession of arms, without a proper license. The crew consisted of 35 individuals, comprising 10 vessel crew and 25 armed guards (“the crew”). They included Indians, Britons, Ukrainians and Estonians. Amongst the crew, the following British nationals were onboard: Mr. Paul Towers, Mr. William Irving, Mr. Nicholas Simpson, Mr. Raymond Tindall, Mr. Nick Dunn and Mr. John Armstrong. Mr. Towers was separated and taken for interrogation by the authorities.



Mr. Paul Towers arrested by Indian Authorities

Photo supplied courtesy of crew. The Hindu

¹ “Operator Support Vessel that provides an accommodations platform for AdvanFort’s counter-piracy guards between transits on client commercial vessels transiting the High Risk Area” <http://www.advanfort.com/PressRelease101413.pdf>

² www.seasecurity.org



4. 6 days later on the 18 October 2013, most of the 35 crew were questioned by Tamil Nadu Police, before being remanded in custody. Two of the crew were not arrested (Captain and Engineer) at that stage and were instead allowed to remain on board the vessel to carry out maintenance work. They would be later arrested by the Tamil Nadu Police.



Crew served with court order

Photo supplied courtesy of crew. The Hindu

5. Investigations were made by the Tamil Nadu Police against the crew for alleged offences under the Essential Commodities Act 1955, as well as the Indian Arms Act 1959.
6. The investigating agency (Q Branch Police) submitted charge sheet No.1/2014 against 45 accused persons including the Company, its Director, 35 crew and 8 locals for offences under the Arms Act 1959, Essential Commodities Act 1955, Motor Spirit & High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order 1998 and Indian Penal Code 1860.
7. The Indian authorities asserted that they had intercepted the vessel when it was sailing 15 nautical miles off the coast of Tamil Nadu³. Inspector-General and Commander Coastguard (Region East), Satya Prakash Sharma, said “the operations centre had received information late on Friday that a vessel with armed guards on board was seen near the Tuticorin coast. After putting the vessel under electronic surveillance, Indian Coastguard Vessel ‘Naiki Devi’ intercepted and escorted it to the Tuticorin Port on Saturday⁴. The police also reported that they found weapons and ammunition on board, which had not been properly declared. Officials stated that the vessel was not authorized to carry arms in Indian waters and that it had never produced the necessary paperwork. The Indian police seized 35 semi-automatic weapons and nearly 5,700 rounds of ammunition from the security guards on the vessel.

³ Outside of Indian TTWs.

⁴ <http://www.thehindu.com/news/national/tamil-nadu/ship-with-armed-guards-detained-in-indian-waters/article5229375.ece>



8. The crew, however, asserted that all weapons and ammunition, personnel and all other relevant information was passed to the Indian Coast Guard on initial VHF contact. On being asked to follow the Coast Guard to port, once again, all relevant information was passed to the port authorities before the vessel's anchor was raised. Further, the Captain asked permission to enter Indian waters and subsequently the Coast Guard requested that the vessel was to follow them in to port.
9. AdvanFort, in an initial press release dated 14 October 2013⁵ stated that India's Coastguard and police allowed the vessel to enter to port to refuel and shelter from a cyclone which hit India's eastern coast. It also said that all weaponry and equipment on board was properly registered. The then flag State asserted that the vessel had been illegally lured into the port⁶.

INDIAN LEGAL PROCESS

10. On 20 October 2013, bail petitions were dismissed by Sessions Judge Paul Durai.
11. On 23 October 2013, 22 foreign nationals among the 35 arrested crew were moved from Palayamkottai Central Prison to Chennai Puzhal Central Prison with tight security days after they complained of poor living conditions in the jail.
12. On the same day, the police sought custody of 3 others (2 Indian nationals and a UK National, Mr. Paul Towers) for 7 days.
 - a. Opposing the plea, counsel for AdvanFort submitted that the vessel was off the Indian territorial waters when it was detained on 12 October 2013, and that there was no illegality whatsoever. He also argued that there was no need for further custodial interrogation as the Q branch police had already completed several rounds of questioning besides preliminary probes by the Indian Coastguard.
 - b. The state government advocate submitted that the vessel had strayed well into Indian waters, and had no proper documents or permission for the vessel.
 - c. Petitioner Munithevan, owner of Vikaline Marine Engineering Pvt Ltd which provides human resources to Indian and foreign vessels, moved an anticipatory bail plea in relation to being wanted by police for illegally supplying 1,500 litres of diesel to the vessel. He submitted that he had supplied diesel only after seeking permission from the Assistant Director of Fisheries in Tuticorin after local agents approached him saying the vessel was stranded in international waters for want of fuel. He said he was not aware that the vessel was loaded with arms, or that it was guilty of [illegally] entering Indian territory.
13. On 24 October 2013, Judicial Magistrate C Kathiravan sent 2 Indian nationals and the UK National, Mr. Towers, to 7 days of police custody for further interrogation.

⁵ <http://www.advanfort.com/PressRelease101413.pdf>

⁶ <http://www.advanfort.com/Republic-of-Sierra-Leone-International-Ship-Registry-protests-unlawful-seizure-of-MV-SEAMAN-GUARD-OHIO-by-India.pdf>



14. On 18 December 2013, bail applications were made on behalf of all crew.
 - a. In their bail plea at the Tuticorin Magistrate Court, the crew alleged that the vessel was coming into port for supplies. On reaching the port, the crew assessed over 60+ officials from 8 different agencies barged passed the designated sentry onto the vessel, the majority refusing to sign the visitors log. Counsel for the crew contended that based on the Doctrine of Innocent Passage as envisaged in Section 3 of the UN Convention on the Law of the Sea 1982, no charge could be leveled at the crew.
 - b. However, the Madras High Court bench dismissed bail applications of all crew, stating that the probe was in the initial stage and if they were released on bail, it could affect the investigation. Mr. Justice M Sathyanarayanan said the petitioners did not provide sufficient documents to justify that they could be released on bail. However, he granted conditional bail to Mr. V Selvam, who was arrested along with 5 others for illegally providing 1,500 litres of diesel to the vessel.
15. On 26 December 2013: Judicial Magistrate-I C Kathiravan granted conditional bail after the crew argued that the Q branch had failed to file the charge sheet even after 60 days of their arrest.
16. On 7 January 2014, the Principal Sessions Court cancelled the conditional bail granted by a lower court to 35 crew allowing a criminal revision petition by Tami Nadu Q Branch police. Chief Judicial Magistrate K Ventatasamy held that it was 'flawed' and went against the orders of higher courts, including the Supreme Court, as the incident posed a challenge to national security.
17. In February 2014, the crew's lawyer filed a new bail application detailing the brutal treatment of the prisoners, including their deteriorating health due to malnutrition, unsanitary conditions, mental harassment and emotional trauma, which they have endured since their arrests. This was supported the International Organisation of Masters, Mates and Pilots (MMP) and who spoke out publicly about the inhumane treatment of the crew and guards⁷.
18. Conditional bail was granted on 26 March 2014, though the men were not released until 6 April 2014 as the Indian authorities repeatedly postponed the decision to release. The court did, however, refuse bail to the vessel's Ukrainian Captain, Dudinik Valentyn, and Mr. Paul Towers, both of whom remained in jail.

⁷ <http://worldmaritimenews.com/archives/127833/mmp-calls-imo-to-regulate-escort-of-commercial-vessels-by-security-ships/>



QUASHING OF CHARGES



Crew released on bail.

Photo supplied courtesy of crew. The Hindu

19. On 10 July 2014, the charges against the Seaman Guard Ohio crew were quashed by Justice P N Prakash in the Indian Madras High Court (Madurai Bench), finding that:
- a. The vessel had made a distress entry into Indian waters in search of food and fuel. It anchored at the outer limit of Tuticorin port out of necessity and was waiting for the supplies. Accordingly, the action was saved by the principle of ‘innocent passage’.
 - b. When the Coastguard questioned them, they admitted that there were arms and ammunitions on board. After bringing them to the port for investigation, they cannot be prosecuted for violation of the notification. There was no material that disclosed the commission of grave offences prejudicial to peace and offences under the Unlawful Activities (Prevention) Act 1967.
 - c. There was no material to suggest that the vessel had come into the territorial waters with ulterior purpose. Hence, the Arms Act against the crew of the vessel was quashed.
 - d. Both the Captain of the vessel as well as the supplier were punishable under the Essential Commodities and Control Act for the supply of 10 drums of fuel.
20. All charges were dropped and the crew were released from prison. However, the Tamil Nadu police held onto the crew’s passports whilst a decision by them was made as to whether or not to appeal the judgment.



21. On 25 August 2014, the State of Tamil Nadu filed an application for appeal (SLP (CrI) No.7099/2014) to the Supreme Court, along with an application seeking an interim stay of operation of the impugned judgment. The Tamil Nadu police maintained that the vessel was a threat to Indian national security, particularly in light of militants entering the country. The Supreme Court admitted the appeal and issued notice to the respondents. However, no order was issued to stay the operation of the impugned judgment as requested by the Tamil Nadu Police.
22. As a result and at the time of writing, the crew continue to be detained in India without access to their travel documents and therefore the ability to return to respective countries.

HUMAN RIGHTS ISSUES

23. In the absence of any judicial order of stay of the impugned judgment of the High Court, the State of Tamil Nadu is bound to implement the order to set the crew free and provide them with their liberty. Their failure to do so amounts to contempt of court, and violates the rights guaranteed under the Constitution of India including Articles 14 and 21:
 14. **Equality before law:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
 21. **Protection of life and personal liberty:** No person shall be deprived of his life or personal liberty except according to procedure established by law.
24. The continued detention of the crew in India without release of their travel documents amounts to illegal detention affecting their personal liberties in violation of Article 21. The National Human Rights Commission (NHRC) India is required under s.12(a) of the Protection of Human Rights Act 1993 to inquire into such violations of human rights, and to ensure that public servant perform their duties as laid down by constitutional provisions and laws.
25. Further, the following international treaties are applicable on the facts:

Universal Declaration of Human Rights (“UDHR”), Article 3: Everyone has the right to life, liberty and security of person.

Universal Declaration of Human Rights (“UDHR”), Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Universal Declaration of Human Rights (“UDHR”), Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.



Universal Declaration of Human Rights (“UDHR”), Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

International Covenant of Civil and Political Rights (“ICCPR”), Article 9(1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

26. As highlighted, the continued unlawful detention of the crew in India is in violation of the Indian constitutional provisions, and additionally violates international covenants.
27. No lawful and coherent justification has been provided for the treatment of the crew. The appeal of the Tamil Nadu police appears to turn on conspiracy theories that have otherwise been dismissed by the High Court, on the grounds that there was no evidence to support Tamil Nadu police assertions.
28. Moreover, Article 9(5) ICCPR and Article 8 UDHR provide for persons subject to violation of their international freedoms to be granted an effective remedy.
29. **SUMMARY. The crew have throughout the past 17 months been without pay causing significant difficulties for their families, and have been the subject of continued unlawful detention and distress at the hands of the Indian authorities. It is therefore vital that they be granted effective relief and immediate release of their travel documents in order that they can return to the UK and other home States.**

FAMILY IMPACT STATEMENTS OF CONTINUED UNLAWFUL DETENTION

30. At the time of writing, Human Rights at Sea has been provided with the following family impact statement evidencing the effects of the continued unlawful detention in relation to the crew, and their families.

Quote. “Daily life has become more of survival, the health of the men is currently questionable. Considering we have little to no contact with the company, they pay for the Lawyer who represents them at the Supreme court, to clear our names for the second time. The only financial assistance we receive is from the MTS [Mission to Seafarers] & Veterans aid (UK). Both organisations have assisted with food, accommodation, medical expenses/dental requirements.

Our families face financial ruin. Men have lost wives, houses have been repossessed, family members have died and one of the men is due to become a father in the next few days. This existence cannot be sustained indefinitely. Politicians on both sides should resolve their differences. It is unfortunate that normal people should suffer in this manner”. Unquote.



CONCLUSION

31. The continued unlawful detaining of the crew of the MV Seaman Guard Ohio, despite quashing of all charges by the Indian Madras High Court (Madurai Bench), is in breach of both Indian national and international human rights law. Failure to rectify the situation extends the suffering of the crew, their families and undermines the lawful application of the Rule of Law in India.

Human Rights at Sea | LONDON | 10 March 2015

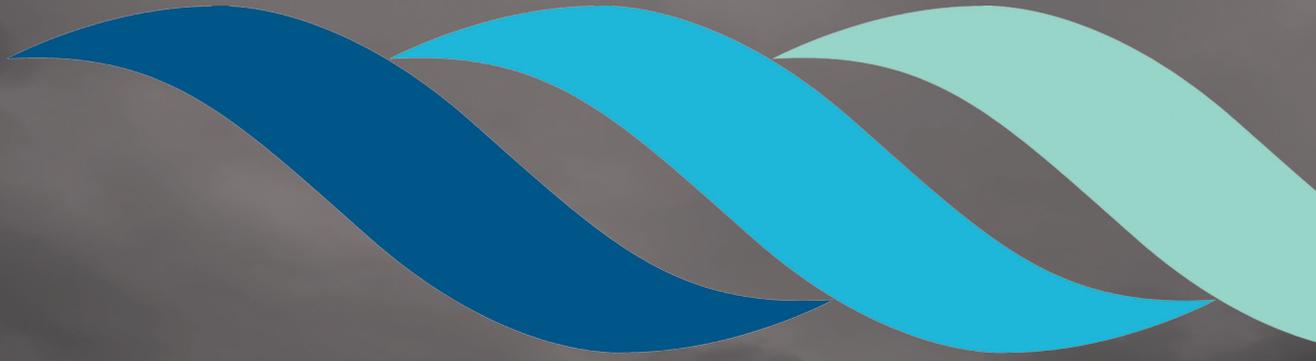


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HUMAN RIGHTS AT SEA

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