

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

WA.No. 1763 of 2014 () IN WP(C).21227/2014

AGAINST THE JUDGMENT IN WP(C) 21227/2014 of HIGH COURT OF KERALA
DATED 02-09-2014

APPELLANT(S)/RESPONDENTS IN THE WPC :-

1. THE STATE OF KERALA
REPRESENTED BY THE COMMISSIONER AND SECRETARY
TO HIGHER EDUCATION DEPARTMENT
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF TECHNICAL EDUCATION
THIRUVANANTHAPURAM.
3. THE JOINT DIRECTOR
REGIONAL DIRECTORATE, REGIONAL TECHNICAL EDUCATION
KOTHAMANGALAM.

BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS

RESPONDENT(S)/PETITIONER IN THE WPC :-

KORATTY MATHA TECHNOLOGICAL INSTITUTE & PVT ITI,
NEAR C.M.I.PUBLIC SCHOOL, WEST CHALAKKUDY
THRISSUR DISTRICT - - 680 307.
REPRESENTED BY ITS DIRECTOR M.V.PAUL

BY ADV. SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SRI.M.MANOJKUMAR (CHELAKKADAN)
SMT.ASHA BABU
SMT.AMMU CHARLES

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04-06-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.A. No.1763 of 2014

Dated this the 4th day of June 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard the learned Government Pleader for the appellants as well as the learned Senior Counsel appearing for the respondent.

2. This writ appeal has been filed against the judgment dated 2.9.2014 passed in W.P.(C) No.21227 of 2014. The respondent shall hereinafter be referred to as the writ petitioner. The writ petitioner has been conducting the Kerala Government Certificate Course in Engineering for the last two decades. As per Ext.P2, the petitioner is eligible to conduct the said course till 2010. Though he had made an application for renewal along with required fee, no order has been passed renewing the same. The petitioner had filed writ petition before this Court seeking renewal of licence in regard to all the institutions and this Court directed the respondents to pass orders on the application submitted by the petitioner fixing a time limit. Thereafter, the petitioner was issued with a notice seeking his reply to the proposal to cancel the recognition. Reply was submitted by the petitioner to the Joint

Director and without even considering the objections and without hearing the petitioner, an order, Ext.P12 was passed by the Senior Joint Director (P.S), Department of Technical Education relying on the report submitted by the Joint Director, Technical Education dated 16.9.2010 and 20.12.2010, cancelling the approval granted to the institutions, of which, Sri.M.V.Paul was the Manager. It is stated in the order that without making the students to appear for the examination, fake certificates were fabricated to make it appear that they have passed the examinations in First Class and furnished them to the students. On the basis of that allegation, a criminal case was registered against the Management as Crime No.341 of 2010. After the aforesaid order, a writ petition was filed as W.P.(C) No.8018 of 2011 by the Management challenging Ext.P12 order, in which, an interim order was passed on 3.2.2012, in which, this Court had observed that by an earlier interim order dated 30.3.2011 this Court had given permission to the students of the petitioner's institution to appear and write the examinations notwithstanding the proceedings culminated in Ext.P12 and this shall be provisional and subject to the result of the writ petition. The petitioner, subsequently, prayed for dismissal of the writ petition as withdrawn and the said writ petition was dismissed as

withdrawn on 25.7.2012. It appears that at the time when the writ petition was pending in the High Court, a complaint was submitted by the petitioner to the Chief Minister regarding cancellation of approval. The Senior Joint Director (P.S.) sent a reply dated 17.3.2012, Ext.P14 stating that since a case is pending in the High Court of Kerala, the petitioner is informed that further action can be taken only in accordance with the final decision to be rendered by the High Court in that case. The petitioner again submitted representation dated 17.2.2014 to the Chief Minister and other Ministers, against which, a reply, Ext.P15 was sent by the Government on 10.7.2014, wherein, it was mentioned that charge sheet has been filed against the petitioner before the Judicial First Class Magistrate Court, Chalakudi on 5.3.2014 and in accordance with the final decision in that case, further action shall be taken. After Exts.P14 and P15, the petitioner has come up with the writ petition praying for the following reliefs :-

- “(i) To call for the records leading upto Exhibits P14 and P15 and quash the same by the issuance of a Writ of Certiorari or any other appropriate writ, order or direction.
- (ii) To declare that the failure to renew the recognition granted to the petitioner's institute earlier is violative of Articles 14, 19 and 21 of the Constitution of India.
- (iii) To issue a Writ of Mandamus commanding the respondents to renew the recognition granted to the petitioner's institute in spite of the pendency of a criminal case against it forthwith.”

3. The learned Single Judge, by the impugned judgment, disposed of the writ petition with a direction to the respondents to renew the recognition. The State, aggrieved by the said judgment, has come up with this writ appeal.

4. Sri.P.I.Davis, the learned Senior Government Pleader appearing for the appellants submits that when the approval of the institution had already been cancelled by Ext.P12 dated 8.2.2011 and the writ petition filed against the said order having been dismissed as withdrawn on 25.7.2012, which giving rise to this writ appeal and without there being any challenge against Ext.P12 order, no direction can be issued for renewal. It is further submitted that Exts.P14 and P15 were only replies given on the representations and mere challenging the said orders does not furnish any ground to the petitioner to seek renewal. It is submitted that there being serious allegations against the petitioner's institutions and on the basis of which, a criminal case has been registered and now proceeding for trial, taking into consideration all these aspects, the approval was cancelled. It is further submitted that the learned Single Judge has committed error in issuing a direction for renewal of recognition.

5. Sri.K.Ramakumar, the learned Senior Counsel appearing for the respondent/writ petitioner, disputing the submission of the learned counsel for the appellants, submits that when this Court has already granted an interim order in the earlier writ petition, wherein, Ext.P12 was challenged and the students were permitted to appear for examination, there was no use for continuing the writ petition, which was withdrawn. It is submitted that the subsequent orders, Exts.P14 and P15, wherein, the renewal was not considered, were rightly challenged in the writ petition since the said earlier order, Ext.P12 shall be treated to have merged with the subsequent decision in Exts.P14 and P15. There was no order for challenge in Exts.P14 and P15. It is further submitted that the mere fact that a person is accused in a criminal case is not a ground to deny him rights and that could not have been the basis for cancellation of the approval. He submits that the learned Single Judge has rightly directed for renewal of recognition.

6. We have considered the submissions made by the learned counsel appearing for the parties and perused the records.

7. Before proceeding to consider the submissions, it is useful to refer to Ext.P12, which was an order passed by the

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Department of Technical Education cancelling the approval granted to the institutions, of which, Sri.M.V.Paul was the Manager with immediate effect. A translation of Ext.P12 reads as under :-

“Read :- Report submitted by the Joint Director of the Technical Education Directorate at Kothamangalam, J. No.B/372/10 dated 16.9.2010 and 20.12.2010.

ORDER

Shri.M.V.Paul, Manager of the K.G.C.E. Institutions, such as Korattimatha Technological Institute at Chalakudy, Regional Institute of Technical Course, Chalakudy and Korattimatha Technical Institute of Angamaly, admitted students in those institutions, in violation of the conditions laid down while granting approval for those institutions by the Department of Technical Education and without making the students to appear for the Examination, fabricated fake certificates to make it appear that they have passed the examinations in First Class, and furnished them to the students, alleging those criminal acts, a case was registered against him for the said charge before the Police Station, Chalakudy, making him as the first accused in the case, and thus it is seen that he has committed a very grievous offence and serious lapse. Therefore, the Director of the Regional Directorate of Technical Education, Kothamangalam, has submitted a report recommending cancellation of the approval granted to all the institutions under K.G.C.E., of which the said M.V.Paul is the Manager.

Therefore, orders are hereby issued cancelling the approval granted for the following K.G.C.E.Institutions, of

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which Shri.M.V.Paul is the Manager, with immediate effect :-

1. Korattimatha Technological Institute, Chalakudy.
2. Regional Institute of Technical Course, Chalakudy.
3. Korattimatha Technical Institute, Angamaly.

Sd.K.P. Saleem Kumar,
Senior Joint Director (P.S.)."

8. The decision to cancel the approval was taken on the basis of a report submitted by the Joint Director of Technical Education as well as the fact that a case was registered against the Manager for fabricating fake certificates, before the Police Station, Chalakudi. The order, Ext.P12 dated 8.2.2011 was challenged in W.P.(C) No.8018 of 2011, wherein, an interim order was granted on 3.2.2012, which is to the following effect :-

"By this I.A., the petitioner in the writ petition seeks the following relief :-

".....pleased to allow the students of the petitioner institute to appear and writ their examinations notwithstanding the proceedings culminating in Exhibit P12, pending disposal of the above Writ Petition.

2. I am of opinion that, that relief has already been granted to the petitioner for all examinations by order dated 30.3.2011, the operative portion of which reads thus :

"After hearing both sides, this Court finds it fit and proper to permit the students of the petitioner's institute to appear and write the examinations notwithstanding the proceedings culminated in Ext.P12. This, however, shall be provisional and subject to the result of the writ petition."

As such, no separate orders are necessary in this I.A., insofar as the petitioner has already been permitted to

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write all examinations by that order. The I.A. is closed with the above observation.”

Subsequently, the writ petition was dismissed as withdrawn on 25.7.2012. It is useful to quote the order of dismissal of the writ petition as withdrawn, which is to the following effect :-

“Learned counsel for the petitioner prays for permission to withdraw the writ petition with liberty to move again if required. Permission is granted and writ petition is dismissed as withdrawn.”

9. The submission which has been pressed by the learned counsel for the petitioner is that in view of the fact that the purpose and object of W.P.(C) No.8018 of 2011 having been fulfilled since the students were permitted to appear and write the examinations, the writ petition was rightly withdrawn and that has no effect on the petitioner's recognition/approval. It is submitted that consequence of the dismissal of the writ petition is that all action taken in pursuant to the interim order are wiped out. That has been laid down by the Apex Court in large number of cases. It is useful to refer to the pronouncement of the Apex Court regarding the same in **Abhimanyoo Ram v. State of Uttar Pradesh** [(2008) 17 SCC 1973]. When the writ petition got dismissed on 25.7.2012, all action shall stand wiped out, since the final order did not say that any of the action taken pursuant to the

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interim order survives. More so, since the challenge in the writ petition was Ext.P12 order, the dismissal of the said writ petition has resulted in Ext.P12 continuing to remain in force.

10. Now, the submission, which has been further pressed by the learned Senior Counsel appearing for the petitioner is that Exts.P14 and P15 are subsequent decision taken in the context of renewal. Hence, the earlier order, Ext.P12 shall get merged with the said orders. It is useful to refer to Ext.P14, which is a letter dated 17.3.2012, the translation of which is to the following effect :-

“Sir,

Sub :- Technical Education - Korattimatha Technological
Institute, Chalakudy - Cancellation of approval -
Regarding -

Ref :- Complaint dated 24.12.2011 lodged by you to the
Hon'ble Chief Minister.

As regards cancellation of the approval of the Institutions of which you are the Manager, since a case is pending with the Hon'ble High Court of Kerala, you are hereby informed that further action can be taken only in accordance with the final decision to be rendered by the High Court in that case.

Yours faithfully,

Sd. Senior Joint Director (PS).”

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11. Similarly, the subsequent letter, the translation of Ext.P15 dated 10.7.2014 issued on behalf of the Government was to the following effect :-

“Sub :- Higher Education - Technical - Restoration of approval for the Korattimatha Technological Institute and I.T.C. - Regarding -

Ref :- 1. Government letters of even number dated 15.5.2013 & 18.7.2013.

2. Representations submitted by you to the Hon'ble Chief Minister and other Ministers, dated 17.2.2014.

Your attention is invited to the references cited above. In the case registered against you by the Chalakkudi Police (Crime No.341/2010), you are hereby informed that a charge-sheet has been filed before the Hon'ble Judicial First Class Magistrate's Court, Chalakudi, on 5.3.2014 and that only in accordance with the final decision in that case by the Hon'ble Court that further action can be taken on the application submitted by you.

Yours faithfully,

Sd. T.J. Varkey.

Under Secretary,

For Additional Chief Secretary.”

12. Both the letters, Exts.P14 and P15 as quoted above indicate that they were replies sent to the complaint/representation submitted by the petitioner to the Chief Minister and other Ministers. As far as the first letter dated 17.3.2012 is concerned, it was only an information given to the petitioner that

since a case is pending in the High Court, further action shall be taken in accordance with the final decision to be rendered by the High Court in that case. The said letter in no way improve the case of the petitioner. In the subsequent letter issued by the Government, it was informed that since Crime No.341/2010 had been registered against the petitioner and a charge sheet has been issued on 5.3.2014, further action can be taken on the representation submitted by the petitioner only after a final decision is taken in that case. Thus, the State Government did not accede to the request of the petitioner for renewal, by the said letters. These letters, Exts.P14 and P15 have no bearing or effect on the earlier order, Ext.P12, by which, approval was withdrawn. Ext.P12 still stands in the face of the petitioner and he could not carry on any affairs pertaining to the institution in view of Ext.P12 order.

13. Lastly, the learned Senior Counsel appearing for the petitioner submits that merely because a crime has been registered against the petitioner, no action could have been taken against him. As noted above, the proceedings, Ext.P12 dated 8.2.2011 refers to the registration of crime as well as the report submitted by the Joint Director of Technical Education dated

16.9.2010 and 20.12.2010. Since, the authority was fully competent to cancel the approval on being satisfied, the order dated 8.2.2011 cannot be said to be merely on registration of the crime.

14. As noted above, subsequently, charge sheet has been issued. Thus, the petitioner's grievance that the order was passed mainly on registration of crime cannot be accepted. More so, there being no challenge against Ext.P12 dated 8.2.2011 in the writ petition giving rise to appeal, it is not necessary to consider any submission on that aspect.

15. The learned Single Judge in paragraph 3 of the judgment has stated as follows :-

“I am of the view, any accused under the law shall be presumed to be innocent unless and until he is convicted by a competent court. Therefore, based on presumption of innocence against the petitioner, renewal shall be granted to the petitioner. However, if the petitioner is convicted in the criminal case pending against him in C.C.No.1466 of 2014, the recognition to the petitioner shall be withdrawn based on the decision of the competent Magistrate Court. Needful shall be done to consider the application for renewal in the light of above within a period of three weeks from the date of receipt of a copy of this judgment.”

The learned Single Judge while issuing the direction for renewal, lost sight of the fact that the approval has already been cancelled

by Ext.P12 and there are no orders setting aside the said order, Ext.P12 nor there was any challenge against Ext.P12 order in the writ petition.

16. For the above mentioned reasons, we are of the view that the learned Single Judge committed error in directing for renewal of the recognition. Hence, the writ petition deserves to be dismissed.

In the result, the appeal is allowed. The judgment dated 2.9.2014 is set aside and the writ petition is dismissed. We further observe that in any event the petitioner is acquitted from the charge levelled against him, it is open for him to take such proceedings as permissible under law, including renewal of registration.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE