

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

Date of Reserving the Order	Date of Pronouncing the Order
17.02.2015	05.03.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.12376 of 2014

The Maritime Institutes Association,
Rep., by its President J.Senthil Kumar,
No.41, Giri Road, T.Nagar,
Chennai - 600 017. Petitioner

Vs

- 1.The Government of India,
Rep., by its Secretary,
Ministry of Shipping,
Transport Bhawan, Sansad Marg,
New Delhi - 110 001.
- 2.The Director General of Shipping,
The Directorate General of Shipping,
9th Floor, Beta Building, I-Think Techno Campus,
Kanjurmarg (East), Mumbai - 400042.
- 3.The Board of Examination of Seafarers Trust,
403, Great Eastern Galleria,
Plot No.20, Sector 4, Nerul,
Navi Mumbai 400 706. ... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records of the second respondents in Training circular No.10 of 2005, dated 16.02.2005, in No.11-TR(1)/2005, quash the same.

For petitioner .. Mr.R.Muthukumaraswamy Sr.Counsel
for Mr.A.Jenasenan

For Respondent .. Mr.S.Haja Mohideen Gisthi for RR1&R2
No Appearance for R3

O R D E R

The petitioner is an association called as "The Maritime Institutes Association" registered under the provisions of the Tamil Nadu Societies Registration Act, 1975, and they would state that their members are Maritime Institution, Shipping Companies and Maritime Professionals. In this Writ Petition, they seek for issuance of a Writ of Certiorari, to quash the Training Circular No.10 of 2005, dated 16.02.2005, in Circular No.11-TR(1)/2005.

2. The petitioner would state that their members offered various Degree and Diploma courses in Maritime Education affiliated to various Universities, and the courses being three years B.Sc., Nautical Science course, one year Diploma course, four year Marine Engineering Course, six months General Purpose Ratings Course and six months Certificate Course in Maritime Catering. It is stated that all the above five courses are pre-sea courses that any candidate seeking to serve on board a ship is required to complete. It is stated that the respondents have approved these courses and are issuing various certificates including Continuous Discharge Certificate (CDC), which enables the students to get employment opportunities. It is stated that the first respondent in exercise of its powers under the Merchant Shipping Act, 1958, has been issuing Guidelines for recognizing of Training Institution and one such Guideline was issued in 1977, whereby the first respondent directed any private party may set up Training Institution provided, they maintained the standards prescribed by the second respondent, Director General of Shipping and detailed procedure was described for the inspection of the Institution etc. It is stated that the second respondent issued Guidelines on 05.02.2004, in Circular No.3 of 2004, laying down the Guidelines for conducting Rating courses. Under the Guidelines clause 12 states examination and assessment of students to be done by the Institute itself and in order to ensure proper valuation an External Examiner of the Academic Council or other office, appointed by the Chief Examiner possessing the prescribed qualifications may revalue of the answer scripts at random and also ask questions of some of the ratings to assess overall quality of the training imparted. The petitioner would state that in 2005, the impugned circular was issued in Circular No.10, authorising the Company of Master Mariners India (CMMI) and the Institute of Marine Engineers India (IMEI) to conduct 'All India Exit Examinations for Ratings' from March 2005 onwards and accordingly, a Board of examination was constituted consisting of Senior Office bearers of CMMI and IMEI and other nominated members.

3. The learned Senior counsel appearing for the petitioner submitted that the said circular is wholly without jurisdiction, since under the provisions of the Merchant Shipping Act, only the Central Government is authorised to prescribe the qualifications for Seaman and to that effect guidelines was issued in 1997, relating to approval and conduct of ratings course and the first respondent delegated certain functions to the Director General of Shipping, the second respondent and the second respondent cannot further sub-delegate by issuing the impugned circular. Further it is submitted that clause 7 of the impugned guidelines is also without his jurisdiction, as the second respondent has no power to delegate the conduct of the entire exit examination. Further, it is submitted that several crores of rupees are collected by the third respondent as Exam Fees and this amounts to a private body profiting which should not be permitted. The learned counsel referred to a Writ Petition filed in 2011 by the petitioner Association in W.P.No.29902 of 2011 and also compromise which was arrived at between the parties which was reducing into writing on 02.11.2012, in which nine Institutions have signed and Additional Director General of Shipping has signed on behalf of the second respondent. It is submitted that after such compromise, detailed representation was made regarding the manner in which the third respondent is conducting such examination and there is no jurisdiction to conduct such examination and consequently, requesting to scrap the said circular. Since the same was not done, the petitioner has approached this Court by filing this Writ Petition. Further, it is submitted that the counter affidavit does not state as to the authority of the second respondent to delegate its functions, which have been delegated to the second respondent by the first respondent and therefore, it is submitted that the impugned circular is liable to be quashed.

4. The learned Senior Standing counsel appearing for the respondents by relying upon the counter affidavit submitted that the Government of India for the said reason and for the purpose of monitoring Maritime Education and Training in India, in exercise of powers conferred under Sections 87, 98, 457 and 458 of the Merchant Shipping Act, 1958, has vide Gazette Notification G.S.R., 191 (E), dated 20.04.1998, notified the Merchant Shipping (Standards of Training, Certification and Watchkeeping for Seafarers) Rules, 1998, which deals with various aspects of maritime education, training and certification in the country, so as to make our seafarers on par with the international standards as required by the STCW Convention. It is further submitted that in a Public Interest Litigation filed by the petitioner Association, in W.P.No.16072 of 2010, this Court has deprecated the manner in which the petition has been presented styled as a 'Public Interest Litigation' and abuse the jurisdiction of this Court and it is submitted that this is more than enough to expose the nature of persons managing the petitioner Association whereby they misrepresented and misread and also resorted to falsification and fabrication of facts only with an intention of promoting private

commercial interest of their members. Therefore, it is submitted that this Writ Petition should be dismissed in limine. It is further submitted that the second respondent is the statutory authority under the Merchant Shipping Act, 1958, who has been vested with the power, authority and jurisdiction with regard to the various provisions of the Act, exercisable by the Ministry of Shipping, Government of India, which inter alia include Section 79(2), Section 81 and Section 85 and the power under Section 79(2) has been delegated by the Government of India to the second respondent vide S.O.3144, dated 17.12.1960 and the second respondent has issued various guidelines to regulate and monitor the Maritime Training in India by issuing orders, Training Circulars, DGA Circular and M.S., notices giving wide publicity in their official website.

5. Further, it is submitted that so as to regulate the Standards of Maritime Education, the impugned circular was issued authorising the Board of examinations for Seafarers to conduct the examination in accordance with the process and modalities as defined by the second respondent in the circular. It is submitted that this is applicable to all 36 approved Maritime Training Institutes in India conducting the approved six months GP Rating course and six month Certificate course in Maritime Catering. It is further submitted that the contention of the petitioner referring to the Guidelines issued in 1997 by the first respondent at present has little relevance, since, thereafter, in order to have uniformity in the assessment of the candidates, Rules have been notified. It is submitted that the third respondent is a body constituted by two reputed organisations namely, CMMI and IMEI with an intention to ensure that competent Seafarers pass out of the Training Institute. It is submitted that the conduct of the examination by the second respondent is not feasible due to limited resources and manpower and if the power is given to the Training Institution, it will lead to various other complications. It is further submitted that keeping in view the mandate of STCW Convention, it was decided that this Common Exit Exam will be conducted by a professional body authorised by the Directorate General of Shipping in an open, fair, transparent and independent manner. Accordingly, the two reputed organisations of Merchant Navy in India, viz. "Company of Master Mariner India (CMMI), and The Institute of Marine Engineers India (IMEI), were asked to conduct the said exam, from March 2005 onwards. "The Board of Examinations for Seafarers Trust (BEST)" representing the CMMI and IMEI, was constituted by the CMMI and IMEI, to conduct the said Exit Exams. As per para 5 of Training Circular No.10 of 2005, the Director General of Shipping has authorized the Board of Examination for Seafarers, to conduct the Exit Examinations for General Purpose Ratings and Saloon Ratings, in accordance with the process and other modalities, as defined by the Directorate in the said Circular.

6. Further, it is submitted that the representations sent by the petitioner through E-mail, appropriate reply was sent by the second respondent on 09.05.2014, citing the provisions of law and the necessity for an independent Exit Examination by an external body other than Institute/Institution themselves. Therefore, it is submitted that the contention of the petitioner they have not received any response is factually incorrect. Therefore, it is submitted that if there is no uniform exam system for all the Training Institute in the country approved by the second respondent, there will be a poor quality of out put from the Institution and India takes pride in the quality of its Seafarers and this competitive edge will be lost, if the India Seafarers are poorly trained and poorly assessed.

7. Heard the learned counsels appearing on either side and perused the materials placed on record.

8. The first question, which was posed by this Court to the learned Senior counsel appearing for the petitioner is to explain the reason for approaching this Court during 2014, challenging a Circular issued on 16.02.2005, which has held the field all through. There is no satisfactory explanation in the affidavit filed in support of the Writ Petition, but endeavour of the learned Senior counsel is to state that the petitioner has challenged the jurisdiction of the second respondent to delegate its functions, when the second respondent itself is a delegate of the first respondent and such sub-delegation is without jurisdiction and therefore, the petitioner is entitled to question the impugned circular at any point of time.

9. Before considering the merits of such contention, it would be relevant to refer to an earlier Writ Petition filed before this Court by the very same Association in W.P.No.16072 of 2010. The said Writ Petition was designed as a 'Public Interest Litigation' to quash the notification issued by the Indian Maritime University for admission to various courses and questioning the decision to permit certain private Institutions, which are functioning in other State in the country from participating in the counselling process.

10. A preliminary objection was raised as regards the maintainability of the Writ Petition and the bonafide of the petitioner's attempt and contending that the Writ Petition itself has been filed with an oblique motive and it is not a Public Interest Litigation. The First Bench of this Court after considering the entire facts deprecated the manner in which the petitioner Association filed the Public Interest Litigation and abused the jurisdiction of this Court with a view to promote the private interest of one particular individual who happened to be the President of the Association and also running a Maritime Institution. This strictures passed by this Court in the earlier Writ Petition filed by the very same Association is definitely a factor, which

should be borne in mind to consider as to whose cause the petitioner is canvassing.

11. Be that as it may, the only ground on which the impugned Circular has been challenged is by contending that there is no power to sub-delegate the conduct of the examination to the third respondent. After considering the facts, which have been placed on record including the copies of the Circulars and the Notification dated 17.12.1960, issued by the Government of India in exercise of the powers conferred under Section 7(2) of the Merchant Shipping Act, it is evidently clear that there is no sub-delegation of any power vested with the second respondent. The second respondent has been delegated with certain functions to be carried out and it is not as if that the entire decision vest with the third respondent. The third respondent is a Board of Examination, which is a collaborative body of the Institute of Marine Engineers of India and Company of Masters Marines and it is a ISO certified organisation set up by professional bodies of Shipping Industry in 2005. The Exit Examination conducted is under the full control of the second respondent as per the methods and procedures laid down by the second respondent. The second respondent exercises supervisory control over the third respondent as regards the Exit Examination, the results are not published by the third respondent, it is submitted to the second respondent and forwarded to the Government of India Shipping Officers for the purpose of issuance of CDCs to the passed candidates. The activities of the third respondent is being reviewed by the second respondent, corrective measures are issued from time to time to ensure that the standards of assessment and methods of testing are maintained upto date and transparent. The financial accounts of the third respondent are audited by the Charity Commissioner of Maharashtra State and submitted to the second respondent.

12. Further, it is to be noted that the second respondent by virtue of Rule 3(b) of the Merchant Shipping (Continuous Discharge Certificate-Cum-Seafarers Identity Document) Rules 2001, and Rule 47 of Merchant Shipping (Standards of Training Certification and Watch-Keeping of Seafarers) Rules, 1998, and Government of India notification in SO.3144, dated 17.12.2006, has authority to monitor and control the quality of Maritime Education in India and therefore, it is evidently clear that the work assigned to the third respondent cannot be construed as a sub-delegation, but as an administrative arrangement. Therefore, this Court is fully convinced that such administrative arrangement done by the second respondent in exercise of the power under the statutory Rule and Government of India Notification is not a sub-delegation and cannot be held to be without jurisdiction. Further, the Circular has been in vogue since 2005 and the candidates of the Institutions who are members of the petitioner Association were all subjected to the procedure under the Circular for all these years.

13. In the light of the above reasoning, the prayer sought for by the petitioner is wholly misconceived and the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary, Government of India,
Ministry of Shipping,
Transport Bhawan, Sansad Marg,
New Delhi - 110 001.
 - 2.The Director General of Shipping,
The Directorate General of Shipping,
9th Floor, Beta Building, I-Think Techno Campus,
Kanjurmarg (East), Mumbai - 400042.
 - 3.The Board of Examination of Seafarers Trust,
403, Great Eastern Galleria,
Plot No.20, Sector 4, Nerul,
Navi Mumbai 400 706.
- + 1 cc to Mr.A.Jenasenan, Advocate SR.12714
+ 1 cc to Mr.S. Haja Mohideen Gisthi, Advocate Sr.12688

TM(CO)
Eu 19.03.15

W.P. No.12376 of 2014

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