

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.08.2019

PRONOUNCED ON : 09.09.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition Nos.40370, 40371, 42306, 42307 of 2016,
1415, 2892, 20830, 20831, 32885, 34869 of 2018,
1278, 1639 and 1651 of 2019

and

W.M.P.Nos.34441, 34443, 36211, 36213 of 2016,
1800, 1801, 3566, 24447, 24448, 24449. 24450 to 24452, 38102,
38103, 38105, 40420, 40421, 40423 of 2018
1432, 1434, 1436, 1819 and 1848 of 2019

THE MARITIME EDUCATION AND TRAINING
INSTITUTES ASSOCIATION,
REPRESENTED BY ITS SECRETARY,
108, EAST MADHA CHURCH STREET,
ROYAPURAM,
CHENNAI - 600 013.

...Petitioner in W.P.40370 OF 2016.

INTERNATIONAL MARITIME ACADEMY
REP BY ITS MANAGING DIRECTOR
J.SENTHIL KUMAR

...Petitioner in **W.P.42306/2016**,
1415/2018, 2892/2018,
20830/2018, 42307/2016.

THE MATITIME INSTITUTES ASSOCIATION
REP BY ITS SECRETARY

...Petitioner in **W.P.40371/2016**.

THE MARITIME EDUCATION AND
TRAINING INSTITUTES ASSOCIATION
REP. BY ITS SECRETARY

...Petitioner in W.P.34869/2018.

THE MATITIME INSTITUTE ASSOCIATION
REP BY ITS PRESIDENT

... Petitioner in W.P.1278/2019,
1639/2019 & 1651/2019.

Vs

THE DIRECTOR GENERAL OF SHIPPING,
THE DIRECTORATE GENERAL OF SHIPPING,
9TH FLOOR, BETA BUILDING, I-THINK TECHNO CAMPUS,
KANJURMARG (EAST), MUMBAI - 400 042.

..R1 in W.P.40370, 40371,
42306, 42307/2016

..R2 in W.P.1415/2018,
32885/2018, 34869/2018,
1278/2019, 1639/2019 & 1651/2019.

THE GOVERNMENT OF INDIA
REP BY ITS SECRETARY
MINISTRY OF SHIPPING
TRANSPORT BHAWAN
SANSAD MARG
NEW DELHI-110 001

..R1 in W.P.1415/2018, 32885/2018,
34869/2018, 1278/2019, 1639/2019,
1651/2019.

THE ASSISTANT DIRECTOR GENERAL OF SHIPPING
THE DIRECTORATE GENERAL OF SHIPPING
9th FLOOR, BETA BUILDING, I-THINK
TECHNO CAMPUS KANJURMARG (EAST)
MUMBAI- 400 042

..R2 in W.P.2892/2018
..Respondent in W.P. 20830/2018.

WP No.40370 of 2016
Calling for the records of the Respondent in DGS order No.4 of 2016 issued by the Respondent in File No.TR/ CIR/ 6(6)/ 2012 of the Training Branch dated 12.09.2016, quash the same

WP No.40371 of 2016
Calling for the records of the Respondent in DGS order No.4 of 2016 issued by the Respondent in File No.TR/ CIR/ 6(6)/ 2012 of the Training Branch dated 12.09.2016, quash the same

WP No.42306 of 2016
Calling for the records of the respondent dated 17.11.2016 in DGS order No.7 of 2016, quash Clause 1.12 of the same relating to the placement of trainees for shipboard training

WP No.42307 of 2016
Calling for the records of the respondent dated 17.11.2016 in Training Circular No.8 of 2016 in F.No.TR/POL/ 8(3)/2013 and

dated 17.11.2016 in DGS order No.7 of 2016, quash clause 16 in Annexure 1 of the former and Clause 1.12 of the latter relating to the placement of trainees for shipboard training

WP No.1415 of 2018

calling for the records of the 2nd Respondent in the Training, Examination and Assessment Programme (TEAP) Part-A insofar as it prescribes Entry criteria (Educational qualification) for admission to the B.Sc. Nautical Science Course and Diploma in Nautical Science (leading to B.Sc. Nautical Science Degree) in Flow Diagram No.II/ 1-1 (A) and the order dated 26.09.2017 in reference NT/ EXAM. CIRCULAR NO.02 of 2017, quash the same and consequently forbear the 2nd Respondent from prescribing any minimum eligibility criteria for admission into the degree/ diploma maritime courses

WP No.2892 of 2018

Calling for the records of the 2nd respondent dated 22.01.2018 in Training Circular No.01 of 2018 in F.No.TR/Cir/ 8(3)/2013, quash Clause 16 of the same relating to the placement of trainees for shipboard training

WP No.20830 of 2018

Calling for the records of the Respondent in order dated 27.07.2018 in reference no.3-TR(48)/99-Main IV, quash the same and consequently direct the Respondent to consider the application dated 06.04.2018 submitted by the petitioner and grant approval to the petitioner to enhance the intake by 80 seats in the Pre-sea training for GP Ratings and Diploma in Nautical Science courses

WP No.20831 of 2018

Calling for the records of the Respondent in order dated 27.07.2018 in reference no.3-TR(48)/99-Main IV, quash the same and consequently direct the Respondent to consider the application dated 06.04.2018 submitted by the petitioner and grant approval to the petitioner to begin the new course called Pre-Sea 1 year training for graduate engineers with an intake by 80 seats

WP No.32885 of 2018

Calling for the records of the 2nd respondent dated 24.10.2018 in Training Circular No.30 of 2018 in F.No.TR/POL/8(7)/2018, quash the same.

WP No.34869 of 2018

Calling for the records of the 2nd respondent dated 24.10.2018 in Training Circular No.30 of 2018 in F.No.TR/POL/ 8(7)/2018 quash the same

WP No.1278 of 2019

To calling the entire records of the 2nd respondent with respect to its impugned training circular no 30/2018 in F.NO TR/POL/8(7) 2018 DATED 24-10-2018 and quash the same in so far as the members of the petitioner associaton is concerned

WP No.1639 of 2019

Declaring that with regard to the Pre-Sea Maritime Higher Education Courses Viz. Degree, Diploma, Advance Diploma, Post Graduate Degree and Post Graduate Diploma, which fall within the purview of the Universities under Entry 66 of List -I and Entry 25 of List - III of Schedule VII of the Constitution of India, the 2nd Respondents.

WP No.1651 of 2019

to declare that in respect of Maritime Rating Courses, the role of the 2nd respondent is limited and circumscribed with regard to the duration, syllabus, examination and certification specified by the 1st Respondent through Notifications and the Rules framed from time to time and consequentially hold the exercise of the 2nd respondent prescribing eligibility criteria for admission, insisting sponsorship and placement, awarding of marks beyond 50 percent in the passing out examination, appointing thrid parties for inspectin, insisting for Grading of the Institutions, etc, as illegal.

For Petitioners:

Mr. Abishek Jenasenan

for Petitioner in : W.P.1415/2018, 2892/2018, 40370/2016, 40371/2016, 42306/2016 and 32885/2018.

Mr.A.L. Somayaji

Senior Counsel for

Mr.Abishek Jenasenan : W.P.34869/2018.

Mr.N. Murali Kumaran

for MCGAN Law firm : W.P.1278, 1639 & 1651/2019.

Mr.N. Murali Kumaran

for Mr.R. Gopinath : W.P.42307/2016, 20830 & 20831/2018.

For Respondents:

Mr.G.Rajagopalan
Additional Solicitor General
Assisted by L.J. Vengatesh

CGSC for Respondents : W.P.32885/2018, 1278/2019, 1639/2019
and 1651/2019.

Asst.by Mr.B. Rabu Manohar : W.P.1415/2018, 2892/2018

Asst.by Sunitha Kumari
SCGSC : W.P. 20830 & 20831/2018

Asst.by Swarnalatha
CGSC : W.P.34869/2018.

Asst.by R. Ramalingam
CGSC : W.P.40370/2016, 40371/2016.

Asst.by B.L. Jayakandan : W.P.42306, 42307/2016.

COMMON ORDER

This batch of writ petitions are filed either by the individual or by the Institutions imparting maritime training or Association of such Institutions. These writ petitions are primarily against the orders passed by the Director General of Shipping (hereinafter referred to "the DGS") or Circulars issued pursuant to those orders. The prime contention of the Petitioners herein is that, the power of DGS is very limited in respect of Institutions imparting training in maritime courses. Whereas, the DGS without jurisdiction, time and again issuing orders and circulars, touching upon the admission of the candidates by the Institutions for short term or long term courses offered by them. The writ petitions and its respective prayers are extracted below:-

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Sl.No	W.P.No.	Prayer
1	40370 and 40371 of 2016	Writ of Certiorari calling for the records of the respondent in DGS Order No.4 of 2016 issued by the respondent in File No.TR/CIR/6(6)/2012 of the Training Branch dated 12.09.2016, quash the same.
2	42306 & 42307 of 2016	Writ of Certiorari calling for the records of the respondent dated 17.11.2016 in Training Circular No.8 of 2016 in F.No.TR/POL/8(3)/2013 and dated 17.11.2016 in DGS order No.7 of 2016 quash clause 16 in Annexure 1 of the former and clause 1.12 of the latter relating to the placement of trainees for shipboard training.
3	32885, 34869 of 2018, 1278 of 2019	Writ of Certiorari calling for the entire records of the second respondent with respect to its impugned training Circular No.30 of 2018 in F.No.TR/POL/8(7)/2018 dated 24.10.2018 and quash the same, in so far as the members of the petitioner Association is concerned.

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Sl.No	W.P.No.	Prayer
4	1415 of 2018	Writ of Certiorari calling for the records of the second respondent in the Training, Examination and Assessment Programme (TEAP) Part-A insofar as it prescribes Entry criteria (educational qualification) for admission to B.Sc Nautical Science Course and Diploma in Nautical Science (leading to B.Sc Nautical Science Degree) in Flow Diagram No.II/1-1(A) and the order dated 26.09.2017 in reference NT/EXAM.CIRCULAR NO.2 of 2017, quash the same.
	2892 of 2018	Writ of Certiorari calling for the records of the second respondent dated 22.01.2018 in Training Circular No.1 of 2018 in F.No.TR/Cir/8(3)/2013 quash clause 16 of the same relating to the placement of trainees for shipboard training.

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Sl.No	W.P.No.	Prayer
	20830 and 20831 of 2018	Writ of Certiorarified Mandamus calling for the records of the respondent in order dated 27.07.2018 in reference no.3-TR(48)/99-Main IV, quash the same and consequently direct the respondent to consider the application dated 06.04.2018 submitted by the petitioner and grant approval to the petitioner to begin the new course called pre-sea 1 year training for graduate engineers with an intake of 80 seats.
	1651 of 2019	Writ of Declaration to declare that in respect of Maritime Rating Courses, the role of the second respondent is limited and circumscribed with regard to the duration, syllabus, examination and certification specified by the first respondent through notifications and the Rules framed from time to time and consequentially hold the exercise of the second respondent prescribing eligibility criteria for admission, insisting sponsorship and placement, awarding of marks beyond 50% in the passing out examination, appointing third parties for inspection, insisting for grading of the Institutions, etc., as illegal.

Sl.No	W.P.No.	Prayer
	1639 of 2019	Writ of Declaration delcaring that with regard to the pre-sea Maritime Higher Education courses viz., Degree, Diploma, Advanced Diploma, Post Graduate Degree and Post Graduate Diploma, which fall within the purview of the Universities under Entry 66 of List - I and Entry 25 of List - III of Schedule VII of the Constitution of India, the second respondent's exercises of fixing Eligibility Marks, Educational Qualification, Age, Fixing Intake capacity, Grading, Assurance for on-board training, Inspections through 3 rd parties etc., in violation to the Standards of Training, Certification and Watch Keeping (STCW) Code for Seafarers, are illegal.

2.W.P.Nos.32885, 34869 of 2018 and 1278 of 2019:-

These three writ petitions in the chain of cases relates to the Circular No.30/2018 issued by the DGS dated 24.10.2018. Since, it convers the facts of almost all other petitions, this set of petitions is taken up for narration of facts.

3.According to the petitioners, they are conducting Maritime Degree, Diploma courses under the memorandum of understanding with the Indira Gandhi National Open University (IGNOU); Karnataka State Open University and Annamalai University besides certificate courses.

"a).3-year B.Sc Nautical Science course;

b).1-year Diploma in Nautical Science
leading
to 3 years B.Sc Nautical Science course;

- c).4 years B.Tech Marine Engineering Course and
- d).General Purpose Ratings Course"

4.The G.P Rating courses are approved by the DGS for issuance of various certificates including Continuous Discharge Certificate (CDC) and Certificate of Competency (COC) to enable the students to get employment opportunity in on board sea going ships. The above mentioned courses are termed as per sea training courses. Any candidate seeking employment in onboard/ship has to first undergo the above mentioned courses. On completion of these courses, the candidate has to obtain CDC from the respondents to serve as Trainee, Marine Engineer/DIG cadet on board/ship.

5.Onboard training is provided by the shipping companies approved by the DGS. The candidates who complete the prescribed onboard training can pursue post sea training course at any of the Institute approved by the DGS for the purpose of Certificate of Competency (COC).

6.In the year 1997, the Ministry of Shipping, Government of India, issued guidelines wherein, the Government decided to issue CDC to all candidates who successfully complete their training in an approved Institute. It prompted the private parties to set up training institutes subject to maintenance of minimum standard laid down by the DGS from time to time and such Institutions were subjected to annual inspection to be conducted through Academic Council/Team of experts nominated by the DGS.

7.The recognition so granted also subject to cancellation if the minimum standards prescribed were not maintained. The DGS is authorised by the Ministry of Shipping, Government of India to decide upon the duration of pre-sea training course, syllabus, examination and certification in confirmation with the International Convention on Standards of Training, Certification and Watch Keeping for Seafarers (STCW), 1978 (hereinafter referred to as "the STCW Code").

8.The Institutes were free to decide their own selection process and procedure. In exercise of power conferred under Section 457 of the Merchant Shipping Act, 1958 (44 of 1958), the DGS has framed various rules. One such rule is Merchant Shipping (Continuous Discharge Certificate cum Seafarers Identity

Document) Rules 2001 (hereinafter referred to as "the CDC Rules"). It prescribes various procedures regarding the eligibility for obtaining Continuous Discharge Certificate (CDC). The CDC Rules are framed in conformity with STCW Code.

9. Section 78 of the Merchant Shipping Act, 1958 prescribes different grades of Certificate of Competency (COC) that can be awarded. Section 78 of the Merchant Shipping Act, 1958 laid down the provision for the examination and for grant of Certificate of Competency. In exercise of the Rule making power under Section 87 of the Merchant Shipping Act, 1958, the Central Government has framed the Merchant Shipping (Standard of Training, Certification and Watch keeping for Seafarers) Rules 1998. This rule provides for the procedure to conduct examination qualification to be possessed by the candidate to obtain various Certificates of Competency. Rule 47 of Merchant shipping (Standard of Training, Certification and Watch keeping for Seafarers) Rules 1998 empowers the DGS to supervise all training institutions and make assessment of seafarers for certification.

10. The contention of the petitioners in these three writ petitions is that, neither guidelines issued by the Government in the year 1997 regarding issuance of CDC nor the STCW Code nor the Merchant Shipping (Continuous Discharge Certificate - cum Seafarers Identity Document) Rules 2017 confers power to the DGS to fix additional eligibility criteria for admission of the candidates.

11. Likewise, under the Merchant Shipping (Standard of Training, Certification and Watch Keeping for Seafarers) Rules 1998, the DGS has no role. His power is only to supervise and verify 'whether the post sea training is imparted as per the STCW Code' and by persons qualified under the STCW Code. It is averred that the DGS without any power under the Act or Rules framed there under, started issuing various circulars and orders imposing eligibility criteria for selection of candidates to various pre-sea maritime course.

12. Earlier, when the powers of International Maritime University was attempted to be interfered by the DGS in respect of diploma and degree courses offered by the Maritime Training Institute, this Court vide order dated 14.10.2011 has held that there is total compartmentalization between the education leading to diploma and degree courses and the courses for getting Certification of Competency (COC) from the DGS.

13. In the affidavit, filed in support of these writ petitions, various orders/circulars issued by the DGS and the challenges made by the Institutes before the High Court has been stated and the same also shown in the tabular column above which is further elaborated below for easy appreciation of facts and to understand the prolonged tug of war between the Maritime Training Institutes and the DGS over the authority and competency of the later:

"a. With respect to the G.P Ratings course, the 2nd respondent issued D.G Shipping Circular No.7 of 2005 dated 17.06.2005 which laid down that a candidate will have to Pass with aggregate 40% marks in 10th standard from a recognized Board with English as a subject with minimum 40% marks in English language and be less than 20 years of age to be eligible for admission to the G.P ratings course. The same was questioned by the Maritime Institutes Association before this Hon'ble Court in W.P.No.11858 of 2014 granted an order of interim stay dated 25.04.2014 staying the operation of the impugned order in so far as the clause pertaining to the educational qualification.

b. With respect to diploma course, the 2nd respondent issued Training Circular No.5 of 2013 dated 17.04.2013 by which the eligibility criteria for admission was raised from 55% to 60% PCM in 10+2 standard. The MTIs questioned the same W.P.No.12670 of 2014 filed and this Hon'ble Court by interim order stayed the eligibility criteria prescribed vide its order dated 30.04.2014.

c. The 2nd respondent issued DGS order no.7 of 2016 dated 17.11.2016 laying down Guidelines and procedures to obtain approval from the respondent for the conduct of approved pre-sea training course for training seafarers in India. The said guidelines has detailed procedures for the grant of approval to maritime institutes

including the eligibility conditions, infrastructure requirements, faculty requirements, course facilities and fees, disciplinary action etc. Clause 1.12 of the Order imposed mandatory conditions upon the maritime training institutes to admit only those candidates for whom they have secured sponsorship from shipping companies for on-board training. The said Clause was challenged in W.P.No.42306 of 2016 interim stay was granted, vide order dated 01.12.2016.

d.The 2nd Respondent issued Training Circular no.8 of 2016 dated 17.11.2016 in which it was laid down that requests for new approvals and enhancement of existing capacity of G.P.ratings course will be subject to fulfillment of the requirements of DGS order no.7 of 2016. Clause 16 of the Training Circular no.8 of 2016 stated that maritime institutes shall admit only those candidates for whom they have secured sponsorship from shipping companies for six months on board training. The maritime institutions Association challenged the same in W.P.No.42307 of 2016 and obtained an order of interim stay vide order dated 01.12.2016.

e.The 2nd respondent issued Training Circular no.1 of 2018 dated 22.01.2018 in super session of the above-mentioned Training Circular no.8 of 2016. This Training Circular under Clause no.16 mandates undertaking from new MTI or MTIs seeking approval for enhanced capacity placement to be done through Indian Shipping Companies or DGS approved RSPL agencies and the maritime training institutes (MTI) shall admit only those candidates for whom they have secured sponsorship for shipping companies for six months on board training. This circular was challenged in W.P.No.2892 of 2018 by an interim order dated 09.02.2018 the clause 16 was stayed."

14.The training circular No.30/2018 dated 24.10.2018 was issued replacing Section 1.12 of DGS order No.7/2016 and inserting new clauses re-introducing the clause mandating memorandum of understanding with shipping companies in India or DGS approved RPSL companies (Recruitment and placement service Ltd) for providing onboard training and restricting the admission of candidates to an extend of number of candidates for which the maritime institute have arrangements with the shipping companies or DGS approved RSPL companies covered under the memorandum of understanding.

15.The contention of the petitioners is that, the similar clause introduced through clause 16 in the DGS Order No.7 of 2016 dated 17.11.2016, is the subject matter of the writ petition and stayed by the interim order of this Court. While so, the DGS has issued the training circular No.30 of 2018 dated 24.10.2018. When the act, guidelines or rules does not permit the DGS to impose any additional admission criteria over and above what is mentioned in the rule, violating the act and rules, the DGS time and again issue circulars and orders despite stay granted by the High Court. Hence, Training Circular No.30/2018 is impugned.

16.Petitioners contentions:-

According to the petitioners, the the Union Government of India, represented by its Ministry of Shipping has delegated its power to the DGS. Therefore, the DGS who is the delegated authority cannot further delegate his power to a third party and cannot exercise power which has not been conferred on him. Nowhere in the statute power is conferred upon the DGS to prescribe eligibility criteria for selection of candidates to pre sea training courses.

17.The Training Circular No.30 of 2018 is illegal and in violation of the statute. The guidelines of the year 1997 and rules of the year 2017, only empowers the DGS to lay down norms with respect of duration of pre-sea training course, its syllabus, examination and certification. Pre condition for admission of candidates through the impugned circular is illegal and liable to be set aside. The Merchant Shipping Rules lay down only two conditions for admitting the candidates. Namely, the candidates must not be less than 18 years of age and ought to have passed X standard. While so, the condition in the impugned circular (Circular No.30 of 2018) that the candidates ought to have secured sponsorship from the Shipping Company for six months on board training before admission and MTI's shall ensure

placement of candidates on board / on ship, within 12 months after competition is excessive exercise of power and contrary to the Rules.

18.The learned counsel for the petitioners would contend that the DGS is empowered to supervise the training and the association of seafarers for certification to ensure 'whether the training is structured in accordance with STCW code' and 'whether it is conducted, monitored and evaluated by persons qualified in accordance with the STCW code'. The power of supervision is confined to post sea courses which candidate has to undergo. The supervising power cannot be extended for admission in the pre sea courses.

19.Relying upon the observation of this Court in Sairam Shipping Science Institute v. Indian Maritime University (2011 SCC Online Mad 1776). The learned counsel for the petitioners would contend that there is a total compartmentalization of imparting education leading to degrees and diplomas issued by the University and the candidates undergoing training to get COC/CDC certificates from the DGS. While University has to be considered as an autonomous body in the matter of granting affiliation and admitting the institutes from getting the privilege of awarding degrees and diplomas, the University alone has the exclusive right to prescribe criteria for admission into the maritime courses. The power of the University cannot be usurped by the DGS. Further, the terms of additional qualification for admission of students to the GP rating course, the inclusion of the condition that the maritime institute shall ensure placement for onboard training of a minimum of 85% of all its trainees who have passed out from the G.P ratings course within the period of 12 months is termed as arbitrary by the petitioners.

20.The petitioners also attributes motive for insisting memorandum of understanding with shipping companies for on board training. Neither Merchant Shipping Act nor the Rules framed there under mandates the maritime training institutes should have facilities to provide on board training. Insisting upon on board training and placement of candidates will unduly favour the institutes which are set up by the shipping companies.

21.Pointing out that the earlier attempt made by the second respondent to introduce almost identical clause vide its earlier DGS order No.7 of 2016 dated 17.11.2016 same was challenged and interim order was granted by this Court. The subsequent training circular No.1 of 2018 dated 22.01.2018 in supersession of training circular No.7 of 2016 dated 17.11.2016 which contain

the very same requirement of placement of candidates was challenged and interim stay granted. The learned counsel for the petitioners took serious exception to the conduct of the DGS for issuing identical circulars despite issue being seized by the Court and interim stay granted by this Court.

22.Contentions of the Respondents:-

In the counter filed by the DGS, it is contended that, by virtue of Merchant Shipping Act, the Central Government appointed DGS and through notification in the official gazette certain powers of the Central Government is delegated to the DGS. Further, the DGS by general or special orders also conferred power to further delegate the powers conferred on him as per the statute. Under Section 78 of the Merchant Shipping Act, the DGS is the authority for the purpose of examining the qualification of the persons desirous of obtaining the Certificate of Competency. This legal position has been reiterated and confirmed by the Division Bench of this Court in W.A.No.151 to 154 of 2010 dated 22.06.2010 in the following words:-

".....we clarify that as far as the Certificates of Competency for the grades under Section 78 of the Merchant Shipping Act, 1958 are concerned, the Director General of Shipping is the authority for the purpose of examining the qualifications of persons desirous of obtaining the certificates of competency thereunder, and has the authority to do all that is needful in respect of grant of these qualifications. There will be no order as to costs."

23.The Central Government vide order No.S.O.3144 dated 17.12.1960 published in Official Gazette of India, has delegated the functions to be performed by the Central Government under section 79(2) of Merchant Shipping Act, 1958 to the performed by Director General of Shipping (DGS), Government of India. Besides, for monitoring of the maritime education and training in India, in exercise of powers conferred under sections 87, 98, 457 and 458 of the Merchant Shipping Act, 1958, vide gazette Notification G.S.R.191(E) dated 20.04.1998, Government has notified the "Merchant Shipping (Standards of Training, Certification and Watch keeping for Seafarers) Rules, 1998" and updated it in the year 2014. This Rule deals with various aspects of the maritime education, training and certifications in the Country and empowers the DGS to regulate and supervise

the training programmes so as to make our Seafarers compliance with the International standards as required by the STCW convention.

24.By virtue of the above provisions of law and notification of the DGS has got power to regulate all training programmes including studies conferring diploma and degree regulations are issued in compliance with STCW convention, so that, the candidates passed out from the approved institutes become fully eligible for the examination to obtain the COC which is a statutory requirement under Section 78 of the Merchant Shipping Act 1958 r/w Rule 5 of STCW Rules 2014. The guidelines, training circulars and orders were issued to monitor and regulate the maritime institutes. If a students is only given pre sea training and not provided with subsequent approved seagoing service as part of the structured training programme, then he will not meet the requirement of approved training programme. Therefore, in order to ensure that the students who are admitted in maritime training institute approved by DGS gets an opportunity to complete the approved training programme, the MoU for onboard training is insisted through the circular which is impugned.

25.In order to ensure that the training Institutes impart complete training to the prospective seafarers in accordance with the STCW convention, DGS order 7/2016 was issued wherein, vide clause 12.1, the existing institutes approved by DGS were asked to admit students for pre sea courses only after securing sponsorship from shipping companies from six months on board training.

26.The High Court of Madras in W.P.No.42306 of 2016, granted interim stay for the operation of clause 12.1 of circular No.7 of 2016. Similarly, clause 16.1 of training circular No.1 of 2018 also challenged by the petitioners in W.P.No.2892 of 2018. The said writ petitions are misconceived since para 16.1 of training circular No.1 of 2018 relates to new institutes or institute which seeks approval to take additional intake from DGS to enhance its intake capacity. This circular does not apply to existing MTIs operating as per its sanctioned capacity. The eligibility criteria imposed by DGS for admission is compliance of STCW convention and it is incorrect to say that despite stay order of training circular No.1 of 2018, DGS training order No.30 of 2018 with very same provisions been re-introduced.

27.It is also contended by the respondents that the word placement in para 16 of training Circular No.1 of 2018 has been wrongly understood as "placement for jobs" instead of

"placement for onboard training" towards completion of approved training programme. So in order to provide clarity, the DGS has issued training circular No.30 of 2018 replacing paragraph 16 of earlier circular No.1 of 2018.

28.Contending that MTI's by false promise collect high fees from students hailing from poor strata and cheat them. Those students are unable to get proper placement after completion of their course so, in order to ensure that the students who are admitted in the training institutes get opportunity to completion the approved training programmes, certain conditions are imposed by the DGS to ensure the candidates get onboard training. Alleging that out of 154 approved maritime training institutes except the petitioners none other institutes have difficulty in complying the conditions imposed in training circulars. Hence, the respondents would contend that the circulars issued by the DGS are in legal and the same are well within his competency.

29.Rejoinder by the petitioners:-

In response to the counter filed by the second respondent, on his behalf and on behalf of the first respondent, the petitioners have filed re-joinder wherein, they have objected second respondent filing counter on his behalf and on behalf of the first respondent without authorization. Pointing out that the primary ground of attack in the writ petition is in respect of power exercised by the second respondent (DGS) is only a delegated authority of the first respondent and have no power to issue impugned circulars altering the condition laid down by the first respondent in the statutory rules, while so, the second respondent is not a competent authority to file counter affidavit on behalf of the first respondent. Further, it is stated in the re-joinder that in the light of the observation made by a learned single judge of this Court in W.P.No.15464 of 2010 vide order dated 14.10.2011, the role and power of the DGS cannot interfere the domain of university which has already occupied the field of regulating marine courses offering degrees and diplomas. The various stages and types of training also tabulated in the re-joinder which is extracted below for easy reference:-

STAGE	Type of Training
1-A	Basic training courses: .Basic training courses known as STCW Modular Courses such as Personal Survival techniques, Fire Prevention and fire fighting etc. .Duration of these courses is only three days .These courses are compulsory for all students who wishes to be employed in any kind of vessel. .These courses can be undergone by the student independently or simultaneously along with Pre-sea Training courses. .On completion these Basic Modular Courses Continuous Discharge Certificate (CDC) is issued by the 2nd respondent.



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STAGE	Type of Training
1-B	Pre-Sea training: . Pre-sea Training Course imparted by institutes such as the petitioner. .The student joins the degree/diploma/G.P.Ratings course depending on the nature of employment sought for. .Degree/Diploma courses - Eligibility criteria for admissions, exams are prescribed and conducted by concerned University for Degree/Diploma .G.P.Ratings course - Exams are conducted by Private Trust authorized by 2nd respondent. .The course duration is between 6 months to 4 years. .On successful completion a candidate shall proceed to the Stage-II with Continuous Discharge Certificate (CDC) .

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STAGE	Type of Training
II	On-Board training: .The candidates who successfully complete Stage I, approach the Shipping Companies authorized by the 2nd Respondent for on-board training. .The Shipping Companies normally conduct written test and interview and select suitable candidates as Trainee for onboard training for various categories and offer them stipend. .The on-board training period is from 6 to 9 months. .The institutions imparting Stage-I courses are not authorized to impart on-board training. .The institutions imparting Stage-I courses do not have any power to compel the Shipping Companies to provide on-board training to its successful students, as it is the sole discretion of the Shipping Companies. .The training details are recorded in CDC

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STAGE	Type of Training
III	Post-sea training courses: .Is conducted by the institutes which are approved by the 2nd Respondent for the said purpose. .The Stage-I institutes and Stage - III institutes are different. The Stage III courses are separately approved by the 2nd respondent. .After completion of the course, exams are conducted by the respective Institutes imparting post-sea training courses. .The course period is between 5 days to 3 months .On successful completion, the candidate is eligible to appear for Certificate of Competency (CoC) examination i.e., Stage - IV.

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STAGE	Type of Training
IV	Certificate of Competency: .Upon completion of the post-sea training courses, the candidate is eligible to appear for CoC exam conducted by the 2nd respondent. .Once the candidate clears the exam, he is awarded the CoC by the 2nd respondent in the relevant grade .The CoC are licenses to work on board a ship in various grades and in various ship categories - They are analogous to licenses issued by the Ministry of Road Transport for driving light motor vehicles, heavy motor vehicles etc.

30. According to the petitioners, the members of the petitioner association involved in imparting education in stage I-B (pre sea training) basic training courses and they are not involved in any other form of training. Therefore, the action of the second respondent prescribing mandatory placement for on board training (stage II) as pre condition for admission in stage I-B is entirely arbitrary and illegal.

31. It is also contended by the petitioners that STCW Code only relates to the nature of training and it does not lay down any condition regarding admission criteria. Therefore, the stand of the second respondent placing reliance upon STCW Code to justify the impugned circular is misconceived. It is also contended by the petitioners that earlier CDC was issued to the candidates by the second respondent on completion of those who have finished pre sea training course. Now, the second respondent have decided to issue CDC to any candidate who completes five basic safety courses. Presently, pre-sea training course is not a mandatory requirement for the candidates to join the ship. Any candidates who has completed basic safety course can directly approach the shipping company and join the ship. Therefore, the stand of the second respondent that the impugned circular has been issued to regulate the maritime training to equip seafarers in compliance to STCW Code, is false and

contrary to their own actions.

32.Finally, it is contended by the petitioners that, it is not few petitioners who are opposing the act of the second respondent as alleged in the counter. Nearly 30 institutes all over the country, who are members of the petitioners association are aggrieved by the excessive exercise of power executed by the second respondent.

33.Observations and Conclusions:-

Prior to the Training Circular No.30 of 2018, the DGS has issued Training Circular No.1 of 2018 on 22.01.2018. The application of that Circular is stated in para 2.4 which reads as below:-

"2.4.Application
Compliance with these guidelines, read in conjunction with DGS Order no:7 of 2016 dated 17.11.2016, and DGS order no.5 of 2013 dated 15.03.2013, shall be mandatory for all institutes, Existing Institutes are required to ensure full compliance with these Guidelines by 1st January 2018. These guidelines are course-specific, superseding Training Circular No.09 of 2010 dated 07.09.2010, Training Circular No.08 of 2016 dated 17.11.2016 and other guidelines issued earlier specifically for this course."

34.This Circular was issued in continuation of DGS order No.7 of 2016 dated 17.11.2016. The qualification, eligibility of candidates including their age, physical standard, attendance, course intake limitations, infrastructure requirements, course details, faculty requirement are all specified in this circular. It is specifically stated in this circular that these guidelines are to be read in conjunction with DGS order No.7 of 2016 dated 17.11.2016 and DGS order No.5 of 2013 dated 15.03.2013. Subsequent to Circular No.1 of 2018, the DGS has issued the impugned Circular No.30 of 2018 on 24.10.2018. Thus, the circulars are intertwined and sequential in nature.

35.In view of complaint received from the candidates of various pre sea course that they are not been provided with on board training by the maritime institute which is an integrated part of their approved training programme DGS has issued these training circulars insisting upon on board training as integral part of the approved training programme for pre sea courses.

Through Circular No.30/2018, the DGS has replaced clause 1.12 of its earlier order No.7 of 2016. In this circular, paragraph No.3 DGS has made it clear that the condition of the training circular is meant to replace and supersede clause 16 of DGS circular No.1 of 2018 dated 22.01.2018. For easy reference, the replaced guidelines by virtue of Training Circular No.30 of 2018 is extracted below.

"1.12 Onboard training programme.

1.12.1 The STCW Convention 1978, as amended in 2010 provides the standards for training, certification and watchkeeping and India is a Party to this Convention. The STCW Convention defines the competence required and the methods for demonstrating competence to be eligible for acquiring the certificate of competency or certificate of proficiency to be eligible to serve on ships.

1.12.2 The STCW Convention 1978, as amended and the M.S STCW Rules, 2014 prescribes approved training programme for various certifications and consists of approved education and training, workshop skills training, special training, approved training record book, minimum period of bridge/engine-room watchkeeping duties, minimum period of approved seagoing service etc as applicable. Compliance to these requirements is a prerequisite for the candidates to complete their training programme and to obtain the eligibility to apply for the assessment and examination for obtaining certificate of competency or certificate of proficiency, to be gainfully employed on ships.

1.12.3 The Sections 1.12.1 and 1.12.2 clearly indicate that the approved training programme as required by the STCW Convention 1978, as amended consists of an approved training programme that is a combination of onshore education and training with approved seagoing service. Any approved pre-sea course if not provided with the minimum prescribed approved seagoing service for each individual candidate making him eligible to apply for the assessment and/or examination for obtaining certificate of

competency or certificate of proficiency, as the case may be, shall not be considered as fulfilling the requirement of the respective approved training programme. The maritime training institute desiring to seek approval for conducting any pre-sea courses should, therefore, be fully capable of providing the required period of approved seagoing service, as above, to all its candidates in a time bound manner.

1.12.4 The maritime training institute shall have in advance verifiable Memorandum of Understanding (MoU) with Shipping Companies having office in India or DGS approved RPSL companies for providing onboard training towards achieving the required period of approved seagoing service for their entire intake capacity.

1.12.5 The maritime training institute shall admit only such number of candidates for which they have arrangements with Shipping Companies or DGS approved RPSL Companies and covered under the MoU as mentioned in clause 1.12.4 above, for the onboard training requirements. The Maritime Institute has to intimate in writing, prior to admission, to every individual candidate of a pre-sea course about the arrangements already in place for their onboard training and same details have to be forwarded to the Directorate. Irrespective of any frustrations in the MoU for onboard training the ultimate responsibility for the completion of same for all candidates shall rest with the Maritime Training Institute. The Directorate reserves the right to nullify or disapprove any MoU for onboard training without citing any reasons to the Maritime Training Institute.

1.12.6 The existing maritime training institute conducting Pre-sea courses, if have achieved, commencement of onboard training for 85% of their students within one year of completion of a course is exempted from submitting onboard training sponsorship letters for the batches already

approved for that pre-sea course by the Directorate. However, for any additional course or enhancement of the existing capacity will require submission of onboard training sponsorship letters for the 100% of the enhanced capacity. The existing institutes' which have not achieved, commencement of onboard training for 85% of their students within one year of completion of course shall submit verifiable MoU's from Shipping Companies having office in Indian/RPSL companies and must obtain clearance from the Directorate before admitting new students and commencement of admission.

1.12.7 Notwithstanding any of the above, all the Maritime Training Institutes shall ensure that a minimum of 85% of candidates who have successfully completed the on shore education and training of a pre-sea course shall commence with their onboard training programme within 12 months from the date of completion of the course and also endeavor to complete their full requirement of approved seagoing service in the shortest possible time, with minimum delays and waiting periods. Candidates who are not placed for onboard training within one year of completion of their onshore education and training shall have priority over the next batch of students in same course and their numbers shall be also included while calculation of the minimum requirement of 85%.

1.12.8 The maritime training institute shall maintain records of all the pre-sea course students till they obtain the required certificate of competency or certificate of proficiency as the case may be. These records shall include all the details of their training programme including the on-shore and onboard training. These records shall be subject to verification during approval inspections, CIP inspections, scheduled inspections, surprise inspections and visit by officers from the Directorate

or Allied officers. Any non-compliance will result in reduction of the MTI's intake capacity for the next batch or withdrawal of approval for the specific pre-sea course.

1.12.9 This Section is applicable to all pre-sea courses except basic five STCW pre-sea modular courses - Personal Survival Techniques (PST), Fire Prevention and Fire Fighting (FPFF), Elementary First Aid (EFA), Personal Safety and Social Responsibility (PSSR), and Security Training for Seafarers with Designated Security Duties (STSDSD)."

36. In W.P.No.1651 of 2019 filed by the Maritime Institute Association, the petitioner listing out various circulars and notifications issued by the second respondent, time to time has sought for a declaration that in respect of maritime training course, the role of the second respondent is limited. The circulars issued by the second respondent prescribing eligibility criteria for admission, insisting for sponsorship, placement condition to secure 85% for the trainees within 12 months from the date of passing out the examination, appointing third parties for inspection, grading for the institution etc., are illegal.

37. In these batch of writ petitions, several circulars and notifications issued by the DGS time to time has been challenged. The last in the row is the training Circular No.30 of 2018. Hence, the writ petitions challenging Circular No.30 of 2018 discussed as above first. The facts of the other writ petitions which are factually intertwined with each other cases are dealt as the narration of facts and the law goes as per the sequence.

38. Merchant Shipping Act, 1958 is the post independence statute replacing statutes of British era, however, substantially carrying the trappings of post independence statute. Section 7(1) of Merchant Shipping Act 1958 deals with appointment of DGS. It is the Central Government which by notification appoint the DGS for the purpose of exercising, discharging powers, authority, duties conferred are imposed upon the Director General by or under the Act. Further, Section 7(2) deals with delegation of power to DGS by the Central Government. The power of DGS to further delegate the power delegated to him is given under section 7(3) of the Merchant Shipping Act, 1958. The Central Government has specifically conferred its power to the DGS in respect of several sections of Merchant Shipping Act, 1958 through gazette notification dated 17.12.1960.

39. Section 78 of the Merchant Shipping Act, 1958 lists out the grades and Certificate of Competency (COC) to be granted. Section 79(2) of the Merchant Shipping Act, 1958 empowers the Central Government or the person duly authorised by the Central Government in its behalf to appoint persons for the purpose of examining the qualification of persons desirous of obtaining Certificate of Competency (COC) under Section 78 of the Merchant Shipping Act, 1958 and such person authorised by the Central Government shall grant to every applicant a Certificate of Competency (COC) as the case requires based on the report of the Examiner that the applicant has passed the examination satisfactorily.

40. Further, if the Central Government may have reasons to believe that Examiner report has been unduly made, require before granting a certificate a re-examination of the applicant or a further enquiry into his testimony and character. Thus, a conjoined reading of Sections 7, 78 and 79 of Merchant Shipping Act, 1958 coupled with the notification of the Central Government dated 17.12.1960 no one can have doubt about the power of DGS to regulate the training programme leading to issuance of Certificate of Competency (COC).

41. In Merchant Shipping Act, 1958, the Central Government is empowered to frame Rules under various sections for effective implementation of the Act in respect of training, recruitment, etc. In exercise of power conferred under sub section (3) of Section 95 of Merchant Shipping Act, 1958, the Central Government has framed rules known as Merchant Shipping Recruitment and Replacement of (Seafarers) Rules, 2005 likewise, under Section 87 of Merchant Shipping Act, 1958 the Central Government shall make rules to carry out the provisions of this act, particularly, the qualification and the conduct of the examination for the persons desirous of obtaining Certificate of Competency and endorsement thereof falling under Section 79 of the Merchant Shipping Act. Section 87 (2)(c) & (d) specifically mentions about the power of Central Government to make rules in this regard. This rule provides for inspection of recruitment and placement service. Under this Rule, the DGS is the ultimate authority for issuance of licence and cancellation of the same.

42. The Merchant Shipping (Standards of Training, Certification and Watch Keeping for Seafarers) Rules, 2014 was notified on 30.07.2014. Rules 8 and 9 of STCW Rule 2014 explain the power of DGS in the matter of training and assessment of seafarers. Merchant Shipping (Continuous Discharge Certificate

cum Seafarers Identity Document) Rules 2017, came into force on 14.07.2017 superseding the Merchant Shipping (Continuous Discharge Certificate cum Seafarers Identity Document) Rules, 2001. In this Rule, the DGS is conferred with the power of issuing Continuous Discharge Certificate (CDC), cancellation, withdrawal or suspension of the same.

43. So, it is inappropriate to contend that the role of the DGS is very restricted and limited and he has no power at all to issue circulars regulating the training programmes offered by the petitioners herein. The test which could be done on his action could only be 'whether the regulations and circulars issued through the office of the second respondent has any nexus to the object for which the notification issued'.

44. In the counter, the second respondent referring the provisions of Merchant Shipping Act, 1958 which confers power on the DGS to regulate the training programmes also refer the International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW) 1978 and the STCW Code which has led to formulating Merchant Shipping (Standards of Training, Certification and Watch-Keeping for Seafarers) Rules, 2014 justify the regulations and circulars issued by the DGS. Referring the regulations under STCW Convention, the second respondent states that, as per Rule 5(1) of Merchant Shipping (Standards of Training, Certification and Watch-Keeping for Seafarers) Rules, 2014, which was framed in exercise of power under Sections 78(4), 87, 88, 98, 456, 457 and 458 and Merchant Shipping Act, 1958 grades of Certificate of Competency (COC) are issued.

45. The Certificate of Competency (COC) has to be issued by the Chief Examiner concerned on behalf of the Government of India following verification of the authenticity and validity of any necessary documentary evidence. As per the definition under the said Rule, the Chief Examiner means, the Nautical adviser to the Government of India for Master and Deck Department personnel of Chief Surveyor with the Government of India for Engine Department Personnel as the case may be. While rule 9 of the Rules empowers the DGS for Examination, assessment, certification and registration of Certificates. Rule 11 explains the responsibility of the DGS.

"11. Quality standards.- (1) The Director General of Shipping shall in accordance with the provisions of section A-I/8 of the STCW Code ensure that all training, assessment of competence, certification, including medical

certification, endorsement, revalidation activities under his authority and record keeping are continuously monitored through a quality standards system to ensure achievement of defined objectives, including the qualifications and experience of instructors and assessors.

(2) The Director General of Shipping shall ensure that an evaluation is periodically undertaken, in accordance with the provisions of section A-1/8 of the STCW Code, by qualified persons who are not themselves involved in the activities concerned.

(3) The evaluation referred to 8 in sub-rule (7) shall include all changes to national regulations and procedures in compliance with the amendments to the STCW Convention and STCW Code, with dates of entry into force later than the date information was communicated to the Secretary-General of the International Maritime Organization.

(4) The Director General of Shipping shall once in five years communicate the report containing results of the evaluation required by sub-rule (2) and sub-rule 93) to the International Maritime Organization in accordance with the format specified in section A-I/7 of the STCW Code."

46. Thus, it is amply clear that DGS under the Rules has to supervise the training and he is the authority to ascertain and supervise the quality standards of training which shall be in accordance with the provisions of Section A-I/8 of the STCW Code.

Section A-I/8 of the STCW Code reads as below:-

"Section A-I/8 Quality standards
National objectives and quality standards

1 Each Party shall ensure that the education and training objectives and related standards of competence to be achieved are clearly defined and that the levels of

knowledge, understanding and skills appropriate to the examinations and assessments required under the Convention are identified. The objectives and related quality standards may be specified separately for different courses and training programmes and shall cover the administration of the certification system.

2 The field of application of the quality standards shall cover the administration of the certification system, all training courses and programmes, examinations and assessments carried out by or under the authority of a Party and the qualifications and experience required of instructors and assessors, having regard to the policies, systems, controls and internal quality assurance reviews established to ensure achievement of the defined objectives.

3 Each Party shall ensure that an independent evaluation of the knowledge, understanding, skills and competence acquisition and assessment activities, and of the administration of the certification system, is conducted at intervals of not more than five years in order to verify that:

1 all applicable provisions of the Convention and STCW Code, including their amendments, are covered by the quality standards system; .

2 all internal management control and monitoring measures and follow-up actions comply with planned arrangements and documented procedures and are effective in ensuring achievement of the defined objectives; .

3 the results of each independent evaluation are documented and brought to the attention of those responsible for the area evaluated; and .

4 timely action is taken to correct deficiencies."

47. So, from considering these provisions, Court finds that DGS under the statute is the person who has been authorised by the Central Government to ensure the quality of training and also having an international obligation to maintain the standard of training par with the international expectation which is reduced into STCW code and the conventions of International Maritime Organization. The power of the DGS by no means be undermined. He is conferred with the powers to regulate and supervise MTIs offering any course or training in Marine.

48. On 12.09.2016, the DGS has issued order No.4 of 2016. The intention or the object of this order No.4 of 2016 dated 12.09.2016 was to bring reference in the monitoring process for Maritime Training Institutes on a regular basis. Hence, a comprehensive programme by integrating and upgrading the existing inspection process while introducing an effective grading mechanism for the Maritime Training Institutes was developed and to achieve this object, guidelines and assessment check lists, acts issued under this order partially making the earlier DGS training circulars and DGS orders superseded. This order come into effect from 01.10.2016.

49. This order dated 12.09.2006 challenged by the petitioners in W.P.No.40370 of 2016 and 40371 of 2016. In these two writ petitions, the petitioners have contended that under Section 87 of Merchant Shipping Act, 1958, the Central Government is authorised to make rules to carryout the provisions of part VI relate to certificate of officers. Pursuant to this power, the central government has framed Merchant Shipping (Standard of Training, Certification and Watch keeping for Seafarers) Rules 1998 and under Rule 47, the DGS has power only to supervise the training and assessment of Seafarers for certification which is the power delegated by the Central Government to the DGS for supervision and inspection. Therefore, the DGS cannot formulate a comprehensive inspection programme and delegate power to Recognised Organization (RO) for conducting inspection and award marks for grading the institutes more particularly awarding 50% of the total marks on which institutes are to be created based on the placement records.

50. Reading DGS order 4/2016 dated 12.09.2016, this order has been issued under the powers conferred by virtue of powers conferred under Rule 75 chapter IX of the Merchant Shipping (Standards of Training, Certification and Watch Keeping for Seafarers) Rules, 2014. Rule 75 reads as below:-

"75. Supervision by the Director General of Shipping - (i) The Director General of Shipping shall supervise training and assessment of seafarers for certification is-

(a) structured in accordance with written programmes including such methods and media of delivery, procedure course material as are necessary to achieve the standard of competence as specified in Chapters II to VIII STCW Code; and

(b) conducted, monitored, evaluated and supported by persons qualified in accordance with paragraph 3 section A-I/6 of the STCW Code."

51. Thus, it is not mere power of supervising and assessment of seafarers for certification alone is vested to the DGS under this rule, it is his responsibility to ascertain 'whether the training programmes are structured in accordance with the standard of competence as specified in chapter II to VIII of STCW Code conducted monitoring evaluated and started by persons qualified in accordance with paragraph No.3 of section A-I/6 of STCW Code'.

52. There again, the petitioners have failed to understand that the DGS Order No.4 of 2016 was not issued pursuant to the power under Rule 47 of Old Rule (1998) but under Rule 75 of the New Rules (2014), which has superseded the 1998 Rule. The expression of Rule 75 not merely restricts the power of DGS to supervise the training and assessment of Seafarers for certification, it includes structuring the programme and monitoring and evaluating the programmes conduction of programmes in accordance with the standards specified by STCW Code.

53. On 17.11.2016, the DGS has issued Order No.7 of 2016. This order was issued in superstition of DGS order in 2/2017. This order is in relation to guidelines and procedure to obtain approval from DGS, Government of India for the conduct of approved pre sea course for training of seafarers in India. The objectives of this order is stated in paragraph 1.2 of part I of the order.

54. The introduction note to this order indicates that, the Government with intention to increase the supply of trained Seafarers encourage maritime training by the private sector on the large scale since 1997. The second respondent being vested

with power and responsibility with implementation of matters relating to Merchant Shipping, to ensure that the candidates for pre-sea training on completion of training must have knowledge, maturity and balance that enables them to react competently and resourcefully in an emergency and also know the manner of working and of behaving in their respective work-stations, accommodation, recreation rooms, dining halls and in all formal and informal contexts on board the ship and elsewhere. The maritime institutes were mandated to admit only those students for whom they have secured sponsorship from shipping for on board training and the maritime training institute should also give undertaking about the placement to be done through Indian shipping companies or DGS and approved RPSL agencies.

55. Further, the institute should also ensure placement for on board training to a minimum of 85% of all its trainees who have passed out G.P rating course within a period of twelve months from the date of passing out examination results. The placement records will be checked during every Comprehensive Inspection Programme (CIP) conducted by Recognised Organizations (ROS), MMD inspection and surprise inspection as per the norms.

56. In continuation of order no.7 of 2016, the DGS has issued training circular No.8/2016 on 17.11.2016. The DGS has laid down guidelines incorporating the placement criteria and the comprehensive institution programme as enumerated in the DGS order Nos.4 and 7 of 2016 and informed the Maritime Training Institute that the request for institution approval and enhancement of existing courses in G.P rating will be considered on merit as per the Merchant Shipping requirements and will be subject to fulfillment of the requirements of DGS order No.7/2016. The same was challenged by the petitioner institutes in W.P.Nos.42306 & 42307 of 2016 to call for records and quash clause 1.12 of DGS order 7/2016 which in turn reflected in clause 16 in annexure 1 of training circular No.8 of 2016.

57. Pending writ petitions, the DGS issued a training circular No.1/2018 in supersession of training circular No.8/2016 dated 17.11.2016. The object of this training Circular No.1 of 2018 dated 22.01.2018 was to ensure compulsorily residential regimented and disciplined courses to impart training that would satisfy prescription under regulation II/4 and III/4 of STCW convention as amended in 2010. To achieve this object, the guidelines for institutes seeking approval of DGS to conduct pre sea training courses for G.P ratings restricted the course intake limitation as 40 per class and further increase intake will be subject to administering the placement demand and satisfaction of conditions laid down by the DGS. The placement

requirement of trainees for ship onboard training also been reiterated under clause 16 of this training circular. This clause in the training circular No.1/2018 was challenged by one of the petitioner herein namely, International Maritime Academy in W.P.No.2892 of 2018 on the ground that the very same provisions is found in Training Circular No.8/2016 and it is subject matter of earlier writ petition in W.P.No.4230 of 2016 and of W.P.No.4237 of 2016 however, it is again been re-introduced in the training circular No.1/2018 in spite of interim stay granted by this Court.

58.In the said circumstances, the second respondent issued training circular No.30/2018 replaced Section 1.12 of DGS Circular Order No.7/2016 to dis spell the mis construction of the word 'placement for job' instead of 'placement for on board training' towards of completion of approved training programme. In order to provide a clarity, this order has been passed.

59.While fact being so, in the year 2008, the Union of India, taking into consideration the increasing demand of Indian Seafarers Worldwide to upgrade the quality of Education and Training With Uniform Standards established Indian Maritime University Act, 2008 which came into force on 11.11.2008.

60.This act was passed with an object to establish and incorporate a teaching and affiliating university at the national level to facilitate and promote maritime studies and research and to achieve excellence in areas of marine science and technology, marine environment and other related fields and to provide for matters connected there with. Under this act, the University is empowered to recognise institutions providing maritime studies, training and research. To grant Diplomas, Degrees other distinctions other than the Certificate of Competency (COC) of Seafarers which has been continued to be issued by DGS, Government of India, till the Central Government otherwise decides. To confer degrees and other academic distinctions on the basis of examinations, evaluation or any other method of testing on persons and to withdraw any such diplomas certificates degrees or other distinctions for good and sufficient cause.

61.Section 50 of the Indian Maritime University Act, 2008 identifies the role of central government and DGS in the matter of discharging and functions of maritime University which reads as below:-

"50. (1) The University shall, in discharge of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time. (2) The decision of the Central Government as to whether a question is one of policy or not shall be final."

62. After the International Maritime University came into force, based on DGS circular No.7/2005 dated 17.06.2005, the DGS has issued a circular prescribing qualification for admitting students in one year pre-sea Diploma in Nautical Science (DNS) leading to B.Sc nautical science course. According to this circular, for admission to DNS, a minimum of 55% in Physics, Chemistry, Mathematics put together. Later, it was revised from 55% to 60% in Physics, Chemistry, Mathematics in the higher secondary course by circular 5/2013 dated 17.04.2013. That was challenged by international maritime academy in W.P.No.12670 of 2014 wherein, power of DGS to fix the eligibility criteria for admission into pre-sea diploma and degree course was challenged. Order of interim stay in so far as the eligibility qualification in respect of mark for degree and diploma courses was ordered. Pending writ petition, DGS framed training examination and assessment programme (TAP). As per this programme, TAP students joined B.Sc nautical training course have to undergo a minimum of 18 months approved sea going service and the students who have joined diploma in nautical science, should have to undergo a minimum of 12 months approved sea going service. On completion of the prescribed training they can undertake post sea training course and obtained Certificate of Competency (COC) in the rank of officer incharge of navigation watch. Based on this training programme DGS issued circular 2/2017 stating that candidates who have undergone the degree or diploma course and have not complied with the educational qualification mentioned in maritime STCW Rules, 2014 or the TAAP, then the sea going requirement has to be fulfilled by such candidates which mean, candidates should undergo 18 months sea going training for degree course and 12 months sea going training for diploma course. This circular No.2/2017 and TAAP programme is challenged in W.P.No.1415 of 2018.

63. While so, when the international maritime academy sought for enhancement of intake in the two existing course conducted namely two courses pre-sea training for G.P rating and diploma in nautical science conducted by the petitioner, the same was rejected by the second respondent on the ground that institute has not submitted in memorandum of understanding for structured

'on board training' for the additional intake members and the application is not in accordance with training circular 9/2017. Further, the DGS in the rejection letter has pointed out that the Institute has failed to furnish detail shipping companies ship management agency/ RPSL for candidates for whom they can provide on board training for 18 months. This communication is challenged in W.P.No.20830 of 2018. Similarly, the request of the petitioner to grant approval to the petitioner to begin new degree course called pre sea training with graduate engineers with intake of 80 students was rejected by the second respondent on 27.07.2018. The reason stated by the second respondent for rejection is that, the application is not in consonance with clause 1.4.22 of DGS order 7/2016. Aggrieved by the rejection, IMA has preferred W.P.No.20831 of 2018.

64. Finally, the maritime institute association has preferred W.P.No.1639 of 2019 to declare that, with regard to per-sea higher education course namely, diploma, degree, advanced diploma, post graduate diploma and post graduate degree will fall within the purview of the University and under List I -Union List, Entry 25 of Schedule 7 of the Constitution of India. The DGS has no power to regulate these courses which is governed by the University statute namely Indian Maritime University 2008 and control by the University.

65. All these writ petitions centers around the power of DGS in the matter of regulating marine education. The orders and circulars issued by DGS time to time has been challenged by way of Writ petition by the Maritime Training Institute or through its associations which has been narrated in nutshell in the above paragraphs.

66. The legislations which deals with marine education are the Merchant Shipping Act 1958 and Rules framed there under. More particularly, the Merchant Shipping (Standard of Training, Certification and Watch keeping for Seafarers) Rules 1998 followed by the Merchant Shipping (Standards of Training, Certification and Watch Keeping for Seafarers) Rules, 2014 and the Merchant Shipping (Continuous Discharge Certificate - cum Seafarers Identity Document) Rules 2017. The International Maritime University Act and the Circulars and orders passed by the DGS time to time. The contention of the petitioners that, the Circulars and orders passed by the DGS is not in consonance with respective acts and rules.

67. As pointed out earlier, Section 7 of Merchant Shipping Act, 1958 deals with appointment of DGS by the Central Act. His Appointment and power of DGS emanates from Section 7 of Merchant

Shipping Act, 1958. Under Section 7 by general or special order, the power and jurisdiction of Central Government shall be exercised by the DGS. Accordingly, the Central Government has conferred its power substantially to the DGS vide order dated 17.12.1960. The most important power regarding training, examination and grant of certificate which is conferred with Central Government under Section 79 of the Merchant Shipping Act, 1958 is delegated by the Central Government to the DGS under the order dated 17.12.1960. The several types of training and certificate courses are mentioned in Section 78 of Merchant Shipping Act, 1958 and the same deals with grades of certificate of competency (COC). Yet another certificate referred under the Act itself is Continuous Discharge Certificate (CDC).

68. Time and again in exercise of power conferred under Section 457 of Merchant Shipping Act, 1958, guidelines rules were framed for issuance of Continuous Discharge Certificate (CDC), the latest rule is of the year 2017. For obtaining Continuous Discharge Certificate (CDC), the candidate has to complete the basic modular course such as transfer survival techniques, fire prevention and fire fighting etc. Those basic courses referred in Rule 4 of the Merchant Shipping (Continuous Discharge Certificate - cum Seafarers Identity Document) Rules 2017. Every person who is desirous of obtaining Continuous Discharge Certificate (CDC) and fulfills eligibility criteria prescribed in Rule 4 shall apply to the shipping master as per Rule 3(1) and every such application shall be in form I appended to the Rules and in the manner as may be specified by DGS as per sub Rule 2(3). Further, under Rule 9 of the said Rules, the power of cancellation, withdrawal and issuance of CDC is vested with DGS.

69. The petitioners herein are Institutes mostly providing basic training course and pre sea training. The duration of basic training courses varies from few days to six months. The pre-sea training ranges from six months to four years. This includes certificate/diploma/degree. Some of the popular pre sea training courses conducted by these Institutes are G.P rating course, Diploma in Nautical Science degree in Nautical science B.E /B.Tech Marine Engineering and Post Graduate Diploma in graduate Marine Engineering Advanced Diploma Course in Marine Engineering for diploma holders.

70. Section 5 of the Indian Maritime University Act, 2008, demarcated the domain of the university and the domain of DGS. As far as the training diploma and degrees, it is conferred by the University CDS and CDC certificates are issued by DGS. In this connection, this Court has also held earlier that the powers of University and DGS is compartmentalized in respect of

diploma/degree, post graduate degrees. At the same time, the Court cannot lose sight of Section 50 of the Indian Maritime University Act, 2008 which recognises the role of the Central Government and the DGS as the authority to take policy decisions regarding the manner in which the provisions of the Indian Maritime University Act would be discharged and their decision will be final.

71.As pointed out the Central Government, under Section 7(2) of the Merchant Shipping Act, 1958 has delegated most of its power to DGS including the matter relating to regulating training programmes. The statute itself has conferred certain powers of DGS regarding training and issuance of certificates. So, it is highly preposterous to contend that DGS has no power to issue orders or circulars in connection with training. In fact, the provisions of Merchant Shipping Act and the Rules framed there under clearly indicate that the intention of the Central Government is to provide qualified man power for shipping industry and for that purpose, the DGS has been conferred with power to regulate the Marine training.

72.Above all, unlike the other education, marine education being a specialized education involving international community and India being the member of International Maritime Organization, they are bound by the Code and the reforms which are brought in by the Central Government in consequence to the international convention. The DGS is the authority and through him, the Central Government implement its policy. Hence, the attack on the DGS circulars and orders questioning his competency and jurisdiction is untenable and liable to be rejected.

73.The next point for consideration is 'whether the eligibility criteria prescribed by DGS in his order for appointment of candidates into sea training course more particularly, the placement recruitment and tie up with shipping company for on board training is arbitrary and illegal'.

74.The intention of imposing tie up with shipping company for on board training is stated in paragraph 1.2 of part I of the order No.7 of 2016. As a follow up, training circular No.30/2018 has been issued which again indicate that the reason for insisting on board training programme and MOU with shipping companies for providing on board training.

75.From reading of the above clauses (extracted at paragraph No.34 of this order), the intention of the DGS to insist upon a minimum prescribed approved sea going service for each

individual candidates making him to eligible to apply for assessment and/or examination for obtaining Certificate of Competency (COC) or Certificate of Proficiency examination as the case may be cannot be doubted and it is in consonance with STCW Code Convention 1978 as stated in the training circular No.30/2018. But insisting the maritime training institutes to have an advance MOU with shipping company having office in India or RPSL for providing onboard training towards achieving the required period of approved seagoing service for their entire intake capacity as contemplated under Clause 1.12.4 appears to be an onerous condition on the Marine Training Institutes. More so, when the DGS reserves the right to disprove any MOU for on board training without citing any reason to the maritime training institute as found in clause 1.12.5. Therefore, this Court is of the opinion to the extend that the condition imposed in training Circular No.30/2018 which has been issued in superstition of Section 16 of DGS Training circular No.1/2018 dated 22.01.2018 insisting advance MoU is liable to be quashed.

76. Apart from offending clauses relating to MoU, yet another contentious issue in this batch of writ petitions is that, the guidelines relating to placement. As pointed out by the learned counsel for the petitioners, placement of candidates is outside the scope and control of training institutes. First of all, not all candidates successfully completed the training and obtain certificates may opt for a job in shipping company, or may get a job in a shipping company immediately. It all depends upon the candidates aptitude, inclination and requirement of man power by the shipping industry.

77. The object as stated by the Central Government, while enacting Merchant Shipping, 1958 is to ensure the efficient maintenance of an Indian Indian Mercantile Marine in the manner best suited to serve the national interests. The Merchant Shipping (Standards of Training, Certification and Watch Keeping for Seafarers) Rules, 2014, has been framed with an object to give full and complete effect of implementation to the provisions of International Convention on Standards of Training, Certification and Watch Keeping for Seafarers (STCW), 1978, as adopted by conference of parties to STCW convention in Manila 2010, taking into consideration the relevant national requirements.

78. Therefore, it is not the inland requirement of sea farers alone to be taken into consideration. If the DGS is going to restrict the intake based on the inland requirement and placement, the object of training Seafarers to cater the need of

the world, and for a supremacy intended in marine power may get curtailed. Therefore, while DGS is fully empowered to regulate the standard of education and training the regulations should be pragmatic and of training by imposing restrictions which are not practical and detrimental to the object.

79. Yet another contention raised by the learned counsel for the petitioners is that, the Combined Inspection Programme (CIP), introduced by the DGS amounts to delegation of power which has already been delegated by the Central Government to DGS. Further, it is contended that DGS cannot engage third party experts to assess the performance of the institute.

80. According to the petitioners, the DGS is exercising the power on delegation by the Central Government so, he cannot further delegate his power to third parties to assess ISO upgradation and bench mark rating. Therefore, the DGS order No.25 of 2013 dated 31.12.2015 introducing Comprehensive Inspection Programme (CIP) and subsequent order passed on 12.09.2016 superseding the order No.25 of 2013 but with effect of further delegation is unconstitutional and ultra vires.

81. The intention of DGS as found from this order is to have three different mode of inspection of training institutes to enhance the quality of training. The said three mode of inspection are (1) Inspection by Academic Council; (2) Inspection for ISO upgradation and (3) Inspection for bench mark rating.

82. According to the second respondent, the purpose of CIP is to integrate all the three inspection process and to streamline it. The main objection by MTI's is employment of third party as a recognised organization (RO) for the purpose of inspection. According to the petitioners, this will undermine the autonomy of the institute and will put the institutes under multiple scanners, some of them not Government Agencies. Whereas, the DGS order No.4 of 2016 dated 12.09.2016 issued exercising the powers conferred under Rule 75 of the Merchant Shipping (Standards of Training, Certification and Watch Keeping for Seafarers) Rules, 2014 indicates that the institute have the option to approach any of the RO authorised by the Ministry of Shipping, Government of India, to get the service of inspection gradation and certification of the institute.

83. The relevant portion of the Comprehensive Training Programme (CIP) for pre sea maritime institutes as found in DGS order No.4 of 2016 issued in partial modification of earlier DGS order and circulars including DGS order No.25 of 2013 reads as below:-

"4. Inspecting Authority:

4.1. Any classification society authorized by the Government of India as Recognized Organization (RO) vide Govt. of India, Ministry of Shipping Notification, S.O.2044 (E) dated 06.09.2011 having entered into agreement with DGS may offer their services for the inspection, gradation and certification of the institutes. The inspection team shall comprise of auditors with atleast 50% of them holding the Certificate of Competency (CoC) as Master (Foreign Going) or Chief Engineer (Unlimited power) issued and/or recognized by Indian Maritime Administration.

4.2. The institute shall have the option of approaching any of the above mentioned Ros for the inspection and certification. However, once the certificate is issued, the annual inspections shall be undertaken by the same RO, during the validity period of the Certificate, unless there are pressing reasons to the contrary, to be explained in writing to the Directorate. In case, the institute desires to change the inspecting agency during the validity of the certificate necessary permission in this regard may be obtained from the Directorate and the institute shall undergo a complete initial inspection for the purpose of this change. "

84. Further, there is also right of appeal provided under this DGS order No.4/16 in Rule 16. While so, the apprehension of the Institutes regarding the Comprehensive Inspection Programme (CIP) is dispelled in view of sub clause (4) of Clause 16.

85. Regarding objections to the minimum mark prescribed for admission in degree and diploma offered by the Institutes affiliating with, this Court find that it does not amounts to interfering the field occupied by the university.

86. According to the learned counsel for the petitioners, determination of standard of any institutes for higher education falls under entry 66 of list I and entry 25 of list III in the VII schedule of Constitution of India. Therefore, the DGS appointed by the Central Government under the Merchant Shipping

Act, cannot regulate the subject occupied by another Central Legislation namely Indian Maritime University Act, 1958. The fallacy in the above argument could be easily understood on reading the relevant entries in schedule 7 of the Indian Constitution. List I of entry 25 of List I in the VII schedule of the Constitution of India reads as below:-

"25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies."

Whereas, the entry 66 of List (I) and Entry 25 of List (III) of VII Schedule of Constitution of India read as below:-

"66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

.....

[25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.] "

87.While Entry 66 to List I of Schedule VII of Constitution of India is general in nature covering higher educations Entry 25 to List I of Schedule VII of the Constitution of India is specific to marine education and training. Therefore, both the Merchant Shipping Act, 1958 and the Indian Maritime University Act, 2008 get their source of legislation only under entry 25 list I of Schedule VII of the Constitution of India. While under Section 7 of Merchant Shipping Act, 1958 speaks about appointment of DGS, the role of DGS is spoken in Section 50 of Indian Maritime University Act. Hence, the prescription of minimum mark for admission in diploma or degree course offered by the university by DGS have persuasive value. If any University other than Indian Maritime University offers degree or diploma shall be subject to the test of Entry 25 of List I of VII Schedule to the constitution.

88.This Court on an earlier occasion while dealing with the powers of DGS in context of some specific averments have made

certain observations about powers of DGS. After the Merchant Shipping (Continuous Discharge Certificate - cum Seafarers Identity Document) Rules 2017 and the Merchant Shipping (Standard of Training, Certification and Watch keeping for Seafarers) Rules 2014, the power of the DGS to issue circular and orders has to be understood in the light of the provisions of these two rules framed in exercise of power conferred under Merchant Shipping Act, 1958. Further, one should also bear in mind that the international conventions regarding the Seafarers and the Code framed there under.

89. On a cumulative appreciation of these provisions, this Court come to the irresistible conclusion that the DGS has got the power to regulate training courses on marine education which includes diplomas, degrees and post graduate diplomas. However, it shall be subjected to the rules and code. There cannot be any fetter in his power to prescribe qualification norms which are reasonable and in consonance with rules and code. Except diploma, degree, post graduate degree and higher degrees offered by the universities, the DGS is the absolute authority to impose conditions for qualification and training programmes. As far as diplomas, degrees and Post Graduate Diploma etc., granted by Universities, the Central Government decisions conveyed through the DGS carry persuasive effect on the universities.

90. As far as the reliefs sought in this batch of writ petitions, except the condition regarding on board training and placement, this Court finds no other provisions are contrary to rules and code. Therefore, the clauses which impose on board training compulsorily tie up with shipping companies and placement as pre-condition for admitting candidates in basic training programme alone struck down.

91. It is advised that the DGS shall come out with a composite order based on International Convention on Standards of Training, Certification and Watch Keeping for Seafarers (STCW), 1978 ; Merchant Shipping (STCW) Rules 2014 and the Merchant Shipping (Continuous Discharge Certificate - cum Seafarers Identity Document) Rules 2017 so that, the maritime institutes offering training programmes will also be properly guided to conduct their institutes in consonance with the Act and Rules issued in exercise of the power under the statute referred. Such an endeavour shall be completed, within a period of four months from today.

92. To sum up the writ petitions are disposed of with the following findings and directions:-

(i) The Director General of Shipping is the authority vested with absolute power to regulate all training programmes leading to examinations for grant of certificates;

(ii) As far as Diplomas, Degrees and Post Graduate Diplomas offered by the Institutes affiliated to Universities, the policy of the Central Government binds the Universities and the Institutes affiliated to the Universities. DGS power to prescribe minimum eligibility marks for admission in Diploma and degree courses flows from Entry 25 in List I of Schedule VII of the Constitution of India.

(iii) Any order or regulation issued by DGS shall be with the object to enhance the quality of training and standard of education and not detrimental to the object;

(iv) MoU with Shipping company for onboard training for specified number of candidates and restricting the admission to that specified number alone is an onerous condition;

(v) Continuation of approval based on placement within specified period is unconstitutional and ultra vires and

(vi) In superstitution of orders and training circulars, the DGS is directed to frame a composite regulation for institutes offering Marine Education and training within four months from the date of this order. Till such time, except clauses regarding tie up for on board training and placement which is struck down as unconstitutional all other clauses in the orders and circulars shall be in force.

No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS VI)

Dated: 15.10.2019

*** Corrected as per
letter dated 25.11.2019 made
herein**

**sd/- Sub Assistant Registrar
Dated: 28.11.2019**

True Copy

Sub-Assistant Registrar

jbm

To

1. THE DIRECTOR GENERAL OF SHIPPING,
THE DIRECTORATE GENERAL OF SHIPPING,
9TH FLOOR, BETA BUILDING, I-THINK TECHNO CAMPUS,
KANJURMARG (EAST), MUMBAI - 400 042.

2. THE GOVERNMENT OF INDIA
REP BY ITS SECRETARY
MINISTRY OF SHIPPING
TRANSPORT BHAWAN
SANSAD MARG
NEW DELHI-110 001

3. THE ASSISTANT DIRECTOR GENERAL OF SHIPPING
THE DIRECTORATE GENERAL OF SHIPPING
9TH FLOOR, BETA BUILDING, I-THINK
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W.P.Nos.40370, 40371, 42306, 42307 of 2016,
1415, 2892, 20830, 20831, 32885, 34869 of 2018,
1278, 1639 and 1651 of 2019

EV(CO)
SP(17/10/2019)
SP(28/11/2019)

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