

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1819 of 2019
and
CMP No.12356 of 2019

Southern Academy of Maritime Studies,
Rep. by Director,
Maritime Education Private Ltd.,
No.108, East Madha Church Street,
Royapuram, Chennai - 600 013. Appellant

Vs.

1. A.M.Akash
2. Alan K.Joy
3. S.Shabaz Khan
4. T.Antony Xavier Thilman
5. J.Surendher
6. R.Vinith
7. Shriyash Yogesh Shridharan
8. R.Arjun Raj
9. N.Mohammed Thariq
10. Mohammed Rashid
11. Sanju Varghese
12. The Director General of Shipping,
Office of the Director General of Shipping,
9th Floor, Beta Building,
IThink Techno Campus,
Kanjur Marg (East),
Mumbai - 400 042.

13. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Higher Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.

14. The Vice Chancellor,
Indian Maritime University,
East Coast Road,
Uthandi, Chennai - 600 119.

15. The Registrar,
Alagappa University,
Karaikudi - 630 003.

16. The Registrar,
Bharathiar University,
Marudhamalai Road,
Coimbatore - 641 046.

17. Southern Academy of Maritime Studies,
Rep. by Principal, No.82
Panapakkam Chennai Tirupati Road Near
Periyapalayam Uthukottai Taluk
Thiruvallur District

18. SAMS Maritime Business School,
Rep. by Principal No.82 Panapakkam
Chennai - Tirupati Road Near Periyapalayam
Uthukottai Taluk Thiruvallur District ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the interlocutory Order dated 17.05.2019 made in WP
No.14567 of 2019.

Prayer in WP No.14567 of 2019 : writ Petition under article 226
of the Constitution of India ma be pleased to issue a writ of
mandamus or any other appropriate writ order or direction in the
nature of writ, directing the Respondents 6 to 8 refund the fees
paid by the petitioners for the academic year 2018-19 for BSC
(Nautical Science) Course and to return the certificates
immediately to enable the petitioners to Join any other regular
college for the academic year 2019-20 forthwith, within a time
frame to be fixed by this Hon'ble Court and to pass such further
or other orders as this Hon'ble Court may deem fit and proper.

For Appellant : Mr.M.S.Krishnan, Sr. Counsel
for M/s.Ganesh and Ganesh

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J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Respondents 1 to 11, have filed WP No.14567 of 2019, for a
writ of mandamus, directing the appellant and others to refund
the fees paid by the them for the Academic year 2018-19 for
B.Sc. (Nautical Science) Course and to return the certificates
immediately to enable them to join any other regular College for
the Academic Year 2019-2020 forthwith.

2. Pending disposal of the writ petition, writ petitioners / Respondents 1 to 11, have sought for an interim direction against Southern Academy of Maritime Studies, Maritime Education Private Limited, Royapuram, Chennai, appellant herein to refund the fees and return the original certificates to the writ petitioners/respondents 1 to 11, forthwith.

3. Upon hearing the learned counsel for the writ petitioners/respondents 1 to 11 and the material on record, writ Court, while admitting WP No.14567 of 2019, has directed 6th respondent therein / appellant to return the original certificates on or before 17.06.2019 and to report compliance. Being aggrieved, instant writ appeal is filed on the grounds inter alia that no opportunity was given by the writ Court to the appellant to put forth their contentions on the merits of the case and the prayer sought for.

4. Placing reliance on the decision of the Hon'ble Apex Court in Johra & Ors Vs. State of Haryana & Ors., reported in 2019(2) SCC 324, Mr.M.S.Krishnan, learned senior counsel for the appellant submitted that it is a basic fundamental principle of law that no order can be passed by any Court in any judicial proceedings against any party to such proceedings, without hearing and giving such party an opportunity of hearing. He also drew the attention of this Court to paragraph No.9 of the said judgment, which is as follows:

"9. Principle of natural justice demands that the party to the proceedings must be heard by the Court before passing any order in relation to the subject matter of such proceedings (see observations of an eminent Judge Vivian Bose in Sangram Singh v. Election Tribunal (AIR) 1955 SCC 425).

5. When attention of the learned senior counsel was invited to Article 226 (3) of the Constitution of India and when this Court observed that the appellant, ought to have moved an application for vacating the interim order, instead of filing the instant writ appeal, Mr.M.S.Krishnan, learned senior counsel submitted that when the Court had granted one portion of the main relief, even at the admission stage, without providing an opportunity of hearing, the appellant is entitled to approach the appellate Court, on the grounds that main relief has been granted at the interim stage, itself.

6. Heard Mr.M.S.Krishnan, learned senior counsel for the appellant and perused the materials available on record.

7. Article 226 (1) of the Constitution of India, reads thus:

"Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."

8. Article 226(3) of the Constitution of India, reads thus:

" Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

9. Though Mr.M.S.Krishnan, learned senior counsel relied on the decision in Johra's case stated supra, perusal of the order shows that in the said reported judgment, writ petition itself was disposed of, without providing an opportunity of hearing and that therefore, the Hon'ble Supreme Court was pleased to observe that no order can be passed by any Court in any judicial proceedings against any party to such proceedings, without hearing and giving such party an opportunity of hearing.

10. In the case on hand the appellant is not remediless. Though at the interim stage writ Court has granted one portion of the main relief sought for, the writ petition is pending and it is open to the appellant to move an application under Article 226(3) of the Constitution of India to vary the order. Merits of the case and whether the writ petitioners/respondents 1 to 11, are entitled for the return of the certificates, or not can be urged before the writ Court.

11. The issue as to whether a writ appeal under clause 15 of the Letters Patent is maintainable as against an interim order granted in a writ petition, is no longer res integra. The same has been dealt with by Hon'ble Division Bench of this Court and held that when an interim order is passed, an application under Article 226(3) of the Constitution of India, can be filed for vacating the said order and that appeal directly against such interim order should not be entertained. Reference can be made to the following decisions.

(i) In, *The Anna University v. Narayanaguru International Institute of Science and Technology (Regd. Trust) and others* in W.A.(MD) No.466 of 2015 dated 14.05.2015, after considering the earlier decisions of this Court, a Hon'ble Bench, held that a writ appeal as against an interim order, which has not attained finality, granted in writ petition, is not maintainable.

(ii) A similar question came for consideration before a Hon'ble Division Bench of this court in *R.Kannan v. Indcom Electronics Ltd.*, stating that the order impugned therein is not a judgment within the meaning of Clause 15 of Letters Patent of this court, a Hon'ble Division Bench, elaborately considered the matter, and held that the interim order made in the petition, which has not reached finality, determining the rights and liabilities between the parties cannot be said to have caused grave and substantial injustice to the appellant and will not fall within the meaning of the word 'judgment' occurring in Clause 15 of the Letters Patent. Accordingly, the Hon'ble Division Bench held that writ appeal was not maintainable against an interim order.

(iii) In *Dr.Chinnaraj Joseph Jeyakumar Joseph Jeyakumar v. The Governing Counsel of American College and Others* in W.A.No.540 of 2008, dated 02.08.2008, another Hon'ble Division Bench of this court held that ex-parte interim orders are not judgments for an aggrieved person to invoke the jurisdiction of the Appellate Court, under clause 15 of the Letters Patent. Adopting the same legal principle, W.A. No.2347 of 2012, dated 05.12.2012, was disposed of by the Hon'ble First Bench giving liberty to the appellant therein to file application to vacate the interim order.

(iv) In Hindu Nadar Educational Trust, represented by its Managing Trustee and others vs. Hindu Nadar Uravinmurai, Nilakottai, in W.A.(MD) No.312 of 2016 dated 22.02.2016, a Hon'ble Division Bench of which one of us, is a party (Justice S.Manikumar), held as follows:

"In the abovesaid circumstances, we would only clarify that the interim order, granted in W.M.P(MD)Nos.23 and 24 of 2016 in W.P(MD)No.23 of 2016 dated 05.01.2016, would be an interim order, till the miscellaneous petitions are finally heard and decided, along with the vacate stay petition. It shall not be an interim order, as prayed for, in the miscellaneous petitions, till the disposal of the writ petition. It could only be an interim order, till the parties to the lis, are put on notice, in the interim applications and heard. With the above clarification, we only request the Writ Court, to take up the injunction petitions in W.M.P(MD)Nos.23 and 24 of 2016 in W.P(MD)No.23 of 2016, along with the vacate stay petition, and pass orders, as expeditiously as possible. Registry is directed to place the matter before the learned single Judge. Accordingly, the writ appeal is disposed of. No costs. Consequently, C.M.P(MD)No.1856 of 2016 is closed."

(v). In Special Tahsildar No.III, Land Acquisition, Lignite Project, Neyveli, vs. V.Rangasamy Reddiar, reported in AIR 1988 Madras 162, this Court, has held as follows:-

"2.We are very much concerned to note a disturbing tendency that is fast developing now-a-days. In the recent past, we have come across several matters in which appeals are filed against ad interim exparte orders without resorting to the normal course of approaching the court which passed such orders and seeking appropriate further orders in spite of the law having been clearly laid down by a Division Bench of this Court in Abdul Shukoor v. Umachander AIR 1976 Mad 350. No doubt, that case arose out of an order emanating from a Subordinate Court. The ratio of the decision will apply with more force to an order passed by a learned single Judge of this Court. Moreover the ad interim orders are not judgments within the meaning of clause 15 of the Letters Patent.

3.What concerns us most is that the Government and statutory Corporations very often indulge in by-passing the only lawful course and adopting a course expressly disapproved by this court. We hold that the appeals ought not to have been filed in this case. The only

course open to the Government was to approach the court in charge of civil miscellaneous petitions and pray for the passing of appropriate final orders in the civil miscellaneous petition. We hope that there will be no recurrence of similar instances in future. We make it clear that if we come across any such appeals in future, we will be constrained not only to dismiss such appeals, but also penalise the parties concerned with orders of heavy costs.''

The above said decision has been followed in Syed Zehera Jabeen vs. S.Padmanabhan, reported in 1988 II MLJ 423 = 1989 (1) L.W 112, and Telecom Regulatory Authority of India vs. Bharti Airtel Ltd., reported in 2013 (5) CTC 264.

12. Therefore, in the light of the decisions quoted above, we are not inclined to entertain the instant writ appeal. Hence, Writ Appeal is dismissed. However, it is open to the appellant to move the writ Court under Article 226(3) of the Constitution of India. If any such application is filed, writ Court is requested to deal with the same on merits. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Director General of Shipping,
Office of the Director General of Shipping,
9th Floor, Beta Building,
IThink Techno Campus,
Kanjur Marg (East),
Mumbai - 400 042.

2. The Principal Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.

3. The Vice Chancellor,
Indian Maritime University,
East Coast Road,
Uthandi, Chennai - 600 119.

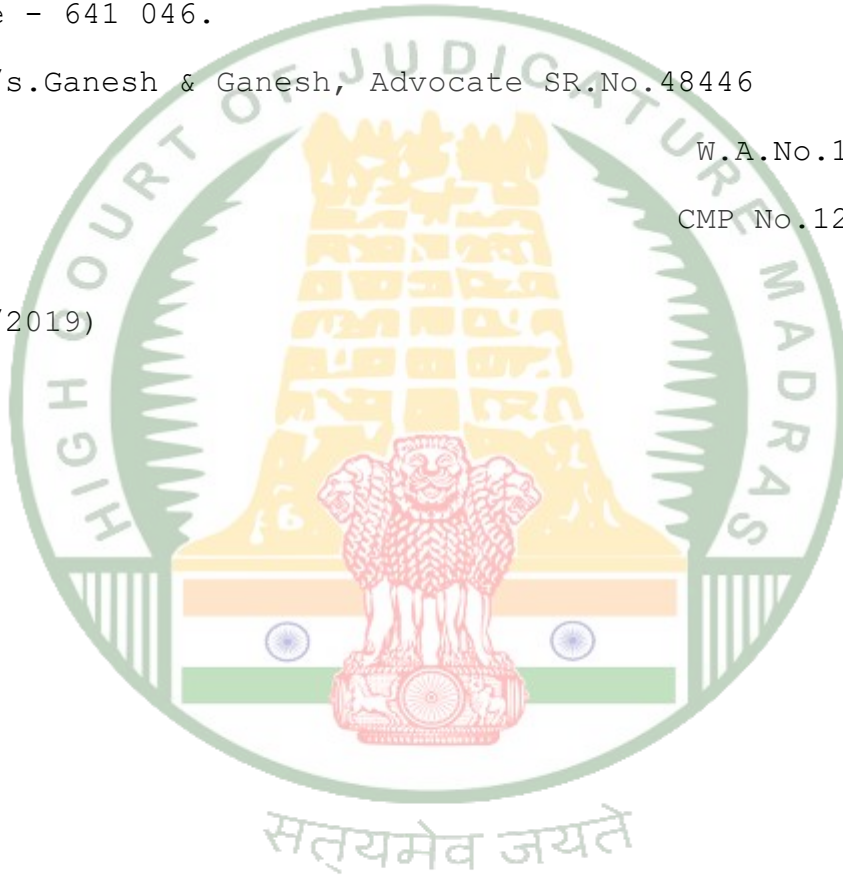
4. The Registrar,
Alagappa University,
Karaikudi - 630 003.

5. The Registrar,
Bharathiar University,
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+1cc to M/s.Ganesh & Ganesh, Advocate SR.No.48446

W.A.No.1819 of 2019
and
CMP No.12356 of 2019

SPD(CO)
GMY(17/06/2019)



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