

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 31.07.2019

Pronounced on:14.08.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition Nos.17118 & 19525 of 2019
& W.M.P.Nos.16675, 19015 & 19018 of 2019

M/s.Marine Officers' Training Academy,
Rep. by its Director,
No.1, Anbu Nagar, Thuthipet,
Puducherry - 605 502.

... Petitioner
in both cases

/versus/

The Directorate General of Shipping,
Rep. by its Director,
9th Floor, Beta Building,
Think Techno Campus,
Kanjurmarg [East],
Mumbai - 400 042.

... Respondent
in both cases

Prayer in W.P.No.17118 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, to call for the records relating to the proceeding of the respondent inspection report conducted by MMD, Chennai, dated 01.05.2009 and quash the same.

Prayer in W.P.No.19525 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records relating to the website notice of the respondent dated nil suspending the conduct of courses by the petitioner and quash the same forbearing the respondent in any manner interfering with the conduct of courses by the petitioner by blocking and suspending the course without providing show cause notice pursuant to the inspection report dated 01.05.2019 and pass orders.

For Petitioner : Mr.K.M.Vijayan, Senior Counsel,
in both cases for Mr.K.M.Vijayan Associates

For Respondent : Mr.L.J.Vengatesh, (C.G.S.C)
in W.P.No.17118 of 2019

For Respondent : Mr.M.Arvind Kumar, (S.C.G.C)
in W.P.No.19525 of 2019

C O M M O N O R D E R

Heard the Learned Senior Counsel appearing for the Petitioner and the Learned Counsel appearing for the respondent.

2. The Gist of the affidavit filed in support of the Writ Petition W.P.No.17118 of 2019:

The Petitioner Institute was established in the year 1999 at Pondicherry for imparting Marine Education. With the approval of the Directorate General of Shipping (DGS) and the recommendation of jurisdictional Mercantile Marine Department (MMD), the petitioner is conducting various maritime courses, primarily to cater the needs of seafarers to work on board merchant ships. The petitioner Institute is approved for conducting basic modular courses, Proficiency in Survival Craft and Rescue Boat (PSCRB) and Advance Fire Fighting (AFF) Courses. The petitioner Institute possess all the necessary infrastructure to conduct the courses and the Institute consistently maintain about 85% to 95% success, in the examinations.

3. On 18.03.2019, the Southern Academic Council of Mercantile Marine Department (MMD), Chennai, inspected the Institute for additional batch of Basic Safety STCW courses and recommended for continuation of approval for the existing courses and fresh approval for Basic Safety Training Course for 24 candidates per batch/96 batches in a year. Certain observations were made by the committee and the same was rectified and reported to Mercantile Marine Department (MMD), on 02.04.2019 for final approval.

4. On 05.04.2019, CIP DNV-GI, one of the International reputed organisation inspected the Institute as per the comprehensive inspection programme issued by the DG Shipping and inter alia certified that the Institute meets the Training requirement criteria as required under the International Maritime Organisation (IMO) STCW Convention, as amended in 2010.

5. On 01.05.2019, the Officers of Mercantile Marine Department (MMD), conducted surprise inspection of the Institute between 11.19 am and 21.07 pm. The inspection team comprising only internal members did not show any complaint which warranted surprise inspection or any authorisation from Directorate General of Shipping or PO, Mercantile Marine Department, to conduct surprise inspection. The said inspection was conducted contrary to the guidelines and procedure issued by the respondent in DGS Order No.5 of 2016. Particularly, in violation of clause 5.2.1, which mandates such inspection must be done by an Official from the Jurisdiction Mercantile Marine

Department (MMD) along with an approved external Inspector. Hence, the inspection conducted by two officials of Mercantile Marine Department (MMD) without external inspector is against the guidelines and procedure. The inspection by jurisdictional Mercantile Marine Department (MMD) on 18.03.2019 and the inspection conducted by the CIP DNV-GI, on 04.04.2019 pointed only minor admissible deficiencies in the Institute. Whereas, in the surprise Inspection conducted on 01.05.2019 (Holiday in view of May Day) nearly 21 deficiencies all sorting out and bifurcating one or two deficiencies, which can be rectified if opportunity is afforded to the petitioner under clause 5.4 were observed, with malice.

6. Based on the inspection report done with malice and motive, in violation of the guidelines and procedure, the petitioner institute is prevented from admitting students in modular Courses and Basic Safety Training by locking the User-ID of the Institute. The petitioner Institute is thereby prevented uploading the batch details of STCW Basic Safety Training and Modular Courses.

7. The Inspection done on a holiday without external Inspector coupled with the admission by the inspection team that they were not able to complete the inspection on 01.05.2019, due to paucity of time. Inspection done in violation of clause 5.2.1 and 5.4 are some of the grounds of attack on the vires of the proceedings of the respondent inspection report, dated 01.05.2019.

8. Gist of the affidavit filed in support of W.P 19525 of 2019:

In W.P. 17118 of 2019 which was heard by the court on 19.06.2019 the court passed an order "since serious objection has been raised regarding the impugned order (proceedings of the first respondent, dated 01.05.2019) which has locked the website of the petitioner M/s. Marine Officers Training Academy, the respondent shall not precipitate the issue any further. Post the matter on 26.06.2019". While the Court seized of the matter and ordered not to precipitate the issue any further, the respondent sent a e-mail message dated 21.06.2019 to several trainees of the petitioner Institute to the effect that their INDoS numbers have been deactivated. They were directed to submit objective evidence to prove that they attended the course at MTI. Further, when the staff of the petitioner's Institute log the web site of the respondent, they found that 12 courses of the petitioner Institute had been suspended without notice and without affording opportunity to the petitioner to explain their position and without conducting enquiry.

9. The suspension of 12 courses is illegal, arbitrary and unjust since the said order is passed based on the surprise

inspection report, dated 01.05.2019, which was done in violation of the guidelines and same being the subject matter of pending writ petition. Further, it is in disobedience of the Court order which has restrained the respondent not to precipitate the issue any further, by its order dated 16.06.2019.

10. Aggrieved by the suspension of admission to 12 Training programme offered by the petitioner Institute this Second Writ Petition is filed.

11. Gist of the Counter affidavits filed by the respondent W.P 17118 of 2019 and W.P 19525 of 2019:

In the counter, the respondent after referring the statutes which governs the administration and supervision of Maritime Institutes, claims that one Mr.Anesh gave complaint to MMD, Kochi alleging that M/s.Hi-light Marine Kochi, Ernakulam, Kerala issuing certificates for "basic safety Training" courses to candidates on behalf of "Maritime Officer Training Academy (MOTA) Puducherry" (petitioner institute) without training and without attending classes. One Mr.Vevek Kumar lodged a police complaint to Town South Police Inspector, Ernakulam, against the petitioner Institute alleging the Institute has issued certificates for Security Training for seafarers Designating with Security Duties (STSDSD) and PSSR courses to Mr. Anadu Kodamattahil Madhu through M/s.Hi-Light Maritime Consultancy. Four candidates informed the Directorate that they received certificates through courier from petitioner Institute for "Basic STCW Safety Training Course" and Security Training for seafarers Designating with Security Duties (STSDSD) issued without attending courses. In fact he paid fees to "Aryavart Maritime Institute" at Chandigarh. They submitted their certificates to the Directorate for cancellation. Before cancellation, the Directorate sent emails to the petitioner institute to verify the certificates. The petitioner citing issues in their IT system, never responded. Certificates were issued for courses during the period when candidate was on board in ship and even without the knowledge of the candidate his record were updated. The enquiry reveals, course Certificates in the name of the petitioner institute were obtained by candidates from Maritime Training Institutes located in Noida (UP) and Srikakulam (AP). While the petitioner institute was permitted intake capacity of 24/batch at a frequency of 192 batches/year total intake of 4608 candidates/year, it has issued certificates to 6987 candidates exceeding the approved intake capacity.

12. The Directorate granted approval to the petitioner institute to increase its intake capacity for Pre-sea Training - GP rating Courses from 120 to 200 on 11.07.2017 initially for a

period of 12 months, subject to recommendation of the committee after making presentation and actual placement and subject to the condition that the institute shall submit sponsorship letter for individual trainees within 30 days of the commencement of the batch. The petitioner institute has not produced any objective evidence to show that it has submitted sponsorship letters and provided placement to candidates for on-board training.

13. The certificates issued by the petitioner Institutes were not signed by the authorised signatories. The signatures were not made physically. They were scanned/printed. The petitioner website not updated with faculty particulars. Incorrect Data were uploaded and incorrect, incomplete documents were submitted to Directorate, particularly in respect of classroom utilisation matrix and faculty load matrix.

14. Permanent faculty Mr.Vijayan Veliyathodukayil (INDoS No. 99 ELO 647 CDC No.A76383, CoC No.95W1556) employed by the petitioner also found employed as permanent faculty on contract basis in "Euro Tech Maritime Academy" and visiting faculty in "School of Seamanship and Nautical Technology". One of the permanent faculty Mr.Dayanidhi Sethi in the petitioner institute MOTA, Puducherry (MTI No. 402014)also found employed as permanent faculty on contract basis in MOTA, Mumbai. (MTI No. 204020).

15. When the petitioner applied for the approvals of Basic Safety Training course and Training for General Purpose Ratings, taking note of large number of complaints and ineligibility of some of the faculties, the Directorate ordered MMD, Chennai to carry out an inspection. It was also informed that final approval shall be accorded only when the faculty meets all the requirements. MMD, Chennai carried out the inspection on 18.03.2019 and submitted report recording its observation regarding deficiencies.

16. Thereafter, complaint received from one Anil Jose against the petitioner institute that they are issuing certificates in Basic Safety Training Course through their Kochi agent without conducting classes. Sensing malpractices in issuance of large number of certificates in very short span of time, the respondent instructed the Principal Officer, MMD, Chennai to look into that matter. Accordingly, the unscheduled comprehensive Inspection of the institute was held on 01/05/2019. Major deficiencies were noted during the inspection.

17. As per para 5.2.2 of DGS Order No.5 of 2016 jurisdictional MMD on receipt of complaint or based on information Unscheduled (surprise) inspection of any Maritime Institute can be conducted. As per paragraphs 7.3 and 7.4 of the Training Circular No.20 of 2018 dated 02.07.2018, external members during unscheduled inspection is not mandatory. This is further clarified in section 6.3.4 of the Training Manual.

18. The two inspections referred by the petitioner which purported to have given clean chit to the institution are the inspections done on the invitation of the petitioner. They did not suspect serious fraud on unimaginable magnitude committed by the Institute. Only during the unscheduled inspection done based on spate of complaints, the serious deficiencies came to light.

19. The petitioner Institute admitting the serious deficiencies observed by the inspection team sought time to rectify the deficiencies which they are entitle as per clause 5.4 of the DGS order 5/2016. However in view of major deficiencies which warranted immediate withdrawal of approval, the institute has been stopped from uploading any batch details for the Short Duration Safety Courses. To avoid damage to the innocent seafarers/students, the user ID of the petitioner was blocked to prevent it from uploading batch details of Short Duration Safety Courses.

20. The unscheduled inspection was carried out in view of the complaints received from students and from Kochi Police. There is no arbitrary exercise of power or ill motive behind the inspection or order of closure. On 01.05.2019 was not a holiday as per central Government notification. On that day, the petitioner institute was functioning. Classes were being conducted by the instructors for General Purpose Rating Course. Three faculties (including Principal), Nine instructors were present. Bio-matric attendance reveal 164 candidates attended GPRS class on that day.

21. The petitioner Institute is supposed to produce documents to prove that they are imparting training to the students as per the mandate of International Convention on Standards of Training, Certification and Watch-keeping of Seafarers (STCW) and the national guidelines issued by the Respondent. The comprehensive inspection held on 01.05.2019 revealed that the petitioner institute lack compliance of the above requirement. The petitioner institute was restrained to conduct only the short duration course and not the General

Purpose rating course.

22. The petitioner has appeal remedy under the regulations before the Directorate General of Shipping. If the petitioner submits documents supporting compliance of guidelines and regulations, the same will be considered by the appellate authority. The petitioner without exhausting the remedy available, had filed the writ petition. Further, in the reply submitted by the petitioner institute vide letter dated 07.06.2019, it has refuted the deficiencies without substantiating the same with supporting documents.

23. In the counter filed in W.P.No.19525 of 2019, apart from the averments extracted above, the respondent has stated that, the Directorate on 02.05.2019 received the inspection report and recommendation of PO, MMD, Chennai. Owing to serious complaints mostly related to issuance of certificates without imparting training and in view of the major deficiencies noted during the unscheduled inspection, it was proposed on 31.05.2019 that the application for approval of additional batches for the Basic Safety Training Course may be rejected and the petitioner institute be stopped to upload any batch details. This proposal was approved by the competent authority on 31.05.2019. Accordingly, on 04.06.2019 the application for approval of additional batches of Basic Safety courses has been rejected. The approval of 9 modular courses of short duration was suspended from uploading batch details.

24. The unscheduled inspection on 01.05.2019 conducted in the presence of the Principal of the petitioner institute. Though adequate opportunity was given to the petitioner to comment on the inspection, he recorded NONE and signed. The user id of the petitioner was blocked from uploading batch details of the short term courses as an extraordinary interim measure to prevent uploading of batch details fraudulently.

25. The Directorate has not issued any order on 21.06.2019 for deactivation of INDoS number of the petitioner institute as claimed by the petitioner.

26. The respondent in compliance to due process of law has issued show cause notice to the petitioner on 05.07.2019 based on the complaints received from the seafarers and candidates, to explain within 15 days. The respondent did not issue any order against the institute subsequent to the order of the High Court dated 19.06.2019.

27. The contention of the petitioner can be classified

in two folds. First, the Inspection conducted on 18.03.2019 has observed only certain minor deficiencies, which were rectified substantially and the committee satisfied with the infrastructure available and permitted to admit 24 candidates per batch of 96 batches in an year in the Basic Safety Training. While so, the unscheduled Inspection held on 01.05.2019 on the holiday is out of malice and defective since there was no external Inspector in the team.

28. The perusal of the inspection report conducted by the Mercantile Marine Department, Chennai on 18.03.2019, one of the observation made by the Inspection team is regarding training strength. The observations of the team runs as below:

1. Number of trainees should not exceed 24 per course.
2. Practical Training should be undertaken in small groups of not more than eight per instructor.
3. The Teacher to taught ratio should not exceed 1:8.

29. The extend of compliance and remark indicate that, "it will be complied while conducting the course". The response for this observation submitted by the petitioner Institute on 02.04.2019 perused. The Institute has maintained silent about the said observation. This one particular deficiency is taken as a sample to ascertain whether the contention of the petitioner is to be sustained.

30. The unscheduled surprise Inspection held on 01.05.2019, has recorded the following short comings:

Major deficiencies:

1. Eligibility criteria for admitting candidates in various courses not verified by the Institute. Also, record of certificates issued to the candidates not available for STCW and modular courses.

2. Batch details of Refresher course of AFF indicate that 11 candidates attended the course on 27.04.2019. However, details of candidates enrolment form with supporting documents were not available with the Institute. There is no evidence available with the Institute to show that these candidates had attended the training.

3. Batch details of PSCRB course conducted for 15.04.2019 to 20.04.2019 indicates that 40 candidates were issued with certificates on

20.04.2019, which is more than the sanctioned capacity of 24. Also, institute could not produce any evidence to confirm that the candidates had attended the training.

4. Video recording of practical training of PSCRB/FPFF/RPSCRB/RAFF/AFF were not available.

5. Institute has conducted 196 batches of basic safety training and issued 4690 certificates in six-month period against the sanction capacity of 96 batches per year. However, institute could not produce evidence of conduct of training.

6. Institute has conducted 283 batches of STSDSD course and issued 6750 certificates which is much more than the sanctioned capacity of 186 batches with maximum in take of 4704. However, institute could not produce evidence of conduct of training.

7. Institute uploaded batch details of PSCRB and AFF course for the period from 22.04.2019 to 27.04.2019 in the e-governance module and issued certificates to 12 and 7 candidates respectively. However, Institute could not produce any evidence such as application form, attendance record, assessment record, feedback form etc., to confirm that the candidates attended the training program.

8. Out of 12 faculties, only three faculties (including principal) were present during the inspection.

9. Biometric attendance record of all the faculties was not available except one faculty Mr.Nanda.

10. Out of 27 instructors, only nine instructors were present during inspection.

11. Biometric attendance record of all instructors was not available during the inspection. Only seven instructors found registered in biometric system.

12. Institute could not produce any record of payment to the faculty to confirm their

attendance and continual employment.

13. Timetable and other records indicates that instructors took most of the theory classes. On the day of inspection four batches of GP rating course was being conducted. Only three faculties were present.

14. One of the GP rating class was having a strength of 44 students against the limitation of 40.

15. Test papers collected at the end of the course found not corrected and certificate has been issued.

16. Blank course certificates were maintained with the signature of course in charge and principal.

17. Register and copy of issued certificates not maintained.

18. The inspection team contacted few candidates over phone who have obtained the certificates from this institute recently. Mr.Shrikant CDC NO MUM 364248, Mr.Arun Kumar Indos No:05XL0874 and Mr.K.Baskaran, INDoS No:05ZL 7016, confirmed that they received certificates without attending the training. Further, they confirmed that they visited an office of MOTA near Pondicherry Bus stand and got the certificate and they do not know the actual location of the Institute which is 17 Km away from the city.

19. E-mail correspondence between the Institute and other entities and candidates confirms that candidate details are being sent by email from many sources (agents) for preparation of certificates.

20. Deficiencies mentioned herein above clearly confirm that the Institute has been issuing certificates to the candidates without conducting the courses.

21. Number of faculties and instructors present during the inspection are far less than the required number of faculties as per the DGS guidelines for the sanctioned capacity of

courses.

31. The petitioner contents that the Inspection team should consist of external Inspector. For the said purpose, clause 5.2.1 of the DGS order No.5 of 2016 is relied by the petitioner. The said provision reads as below:-

5.2 Role of the jurisdictional MMD:

5.2.1 On receipt of Inspection Order from DGS, the jurisdictional MMD shall carry out an inspection of the institutes for verification of infrastructure, faculty etc. as contained in the application for initial approval, or new courses / additional batches, after giving intimation to the institute. The inspection shall be carried out by an official from the jurisdictional MMD along with an approved external inspector.

32. However, this condition of having an approved external inspector during inspection is not mentioned when unscheduled surprise inspection to be carried out. Clause 5.2.2 of the said order which reads as below:

5.2.2 Jurisdictional MMDs may carry out unscheduled (surprise) inspection to verify compliance with these guidelines or other orders / Circulars on the orders of DGS or the Principal Officer, MMD on receipt of complaints or on the basis of information received or as per the schedule provided in the CIP Guidelines.

33. As pointed out by the Learned Counsel for the respondent, for unscheduled (surprise) inspection, jurisdictional MMD's need not take along with them an approved external inspection.

34. A combined reading of clauses 5.2.1 and 5.2.2 of the DGS Order No.05 of 2016, the composition of the inspection team for regular inspection and Unscheduled Surprise Inspection are not one and the same. The inclusion of approved external Inspector for regular inspection is not mandatory, while conducting Unscheduled Surprise Inspection.

35. The Second fold of the submissions made by the petitioner is that, the order of blocking the website of the petitioner without affording opportunity is arbitrary and illegal. For the said contention, the respondent states that after receiving several complaints and after conducting the Inspection, the petitioner has given his explanation on 07.06.2019, which carries the comments and clarification on the

observations of inspection of MMD made on 01.05.2019. The petitioner Institute has given his clarification and explanations only for 12 deficiencies as against 21 deficiencies. Few observations of the Inspection committee and the explanation of the Institute is as below:

UIC Observation regarding excess admission

Institute has conducted 283 batches of STSDSD course and issued 6750 certificates which is much more than the sanctioned capacity of 186 batches with maximum intake of 4704. However, institute could not produce evidence of conduct of training.

Petitioner Institute response

Similarly, the approved intake of Security Training for Seafarers with Designated Security Duties [STSDSD] for 24 candidates per batch vide Approval No.TR/A/227/2013, dated 20.08.2013 [1st batch] and second batch with 24 candidates per batch vide approval No.TR/A/301/2013 dated 29.10.2013 with frequency of 96 batches in a year. The Institute has conducted the course for 1782 candidates and 1067 candidates on yearly basis for the 1st and 2nd batches respectively for the period from January 2018 to May 2018.

Subsequent to the issuance of combined certificate course issued vide Training Circular No.06 of 2018 dated 21.03.2018 which came into force w.e.f 01.06.2018, the Institute trained 5748 candidates for the period from 01.06.2018 to 30.04.2019 as against the approved intake capacity of 6912 in line with the said circular, wherein it is clearly indicated that STSDSD course is automatically combined with STCW course, which is approved for 24 batches per class per year. Thus, the Institute trained the candidates well within the approved intake in respect of STSDSD Course.

Further, all courses conducted by the Institute were duly accepted by the DGS alone batch system and 1% annual fee were also remitted to Government, and no reference to thereon was received from DG Shipping Office. In addition, recently MMD had conducted inspection on 18th March 2019 and followed with CIP DNV Inspection on 4 & 5, April 2019. For grant of additional batch of basic safety training course, wherein the infrastructure and training facilities including faculties were witnessed and recommended for approval of additional batches.

All the transactions of course certificates are governed through e-governance system right in the beginning from allotment of INDoS and completion of course for issuance of CDC by Shipping Master and collection of 1 % annual fee by DG Shipping, therefore every actions of the Institute duly checked and verified by the DG Shipping authorities in the initial certification and final CDC at all stages through online e-governance system.

36. The observation of the Unscheduled Surprise Inspection Committee Institution.

Regarding shortage of faculty:

Out of 12 faculties, only three faculties (including principal) were present during the inspection.

The other faculties were not present on the day of inspection due to holiday on 01.05.2019 on account of May Day.

37. For non-availability of Biometric attendance record and the observation of the Inspection Committee and the comments of the Institute, which reads as below:

Biometric attendance record of all the faculties was not available except one faculty Mr.Nanda.

Response

The attendance records of all the faculties, though available could not be produced on the day of inspection due to absence, since many of them were not allowed inside the campus by the surrounding labours in the industrial belt on account of May Day. Later, it is realised that subsequent to the inspection, that unauthorised access to the system resulted into loss of the data, which was done without the permission of the Management.

38. Whether the Institute had enough faculties and Instructors and whether the reasoning given by the Institution for excess admission is correct can be tested only with the records available. It is contended by the respondent that excess certificates were issued than the permitted strength. Many of the certificate holders did not attend the classes, but purchased it through the agent of the petitioner. The Police complaint and the statements of some of the certificate holders are relied by the respondent to justify their order of blocking the website ID for the short term courses.

39. When the complaints from various persons alleging malpractice received by the Directorate, the statute empowers the Directorate to take corrective measures. One such measure is causing Unscheduled Surprise Inspection and withdrawal of approval [temporarily or permanently.]

40. Clause 5.5.5 of the DGS Order No.5 of 2016, states that in extraordinary cases, when the deficiencies are so serious and the DGS if comes to the conclusion the approval should be withdrawn from the Institution, he is empowered to do it.

Immediate permanent withdrawal/cancellation of Institute approval:-

In extra-ordinary cases where the deficiencies are so serious that DGS comes to the conclusion that the approval should be withdrawn from the Institute itself, that is, for all the approved courses in the Institute without even waiting for the current batches of students to complete the current course, such action may be taken with immediate effect. This shall also be known as cancellation of approval of the Institute. Attempts should however be made by the Institute to get the eligible students so adversely affected by such immediate withdrawal into some other training institution, after such cancellation. Cancellation shall be resorted to where serious fraud, such as faked records or sale of certificates without attendance by candidates, is detected.

Clause 5.6:- Procedure for Withdrawal.

Normally a show-cause notice will be issued by the DGS indicating the specific deficiencies and the category of withdrawal contemplated, and the period within which reply should be given. Thus, opportunity will be given to the Institute to present its side prior to the final decision on any withdrawal/cancellation. However in the event of immediate withdrawal in extra-ordinary cases as explained in Para 5.5.5, it will not be possible to issue the usual show-cause notice with the usual time

41. Clause 5.2.7 of the DGS Order No.5 of 2016, say that generally no on going course shall be terminated or suspended unless there are ample reasons to justify such withdrawal as in clause 5.5.5.

42. In the present case, petitioner contents that the Unscheduled surprise Inspection itself is motivated and unwarranted. From the records which was produced on the direction of this Court reveals that the Unscheduled Inspection was conducted due to serious complaints and irregularities came to light, after registration of the Criminal complaint at Eranakulam Police Station. After receipt of the Inspection Report, the Directorate has taken a decision to block the website ID for certain courses, since the Institution fail to produce documents.

43. The learned Senior Counsel for the petitioner would submit that in the Surprise Inspection report at the remark column, the respondent admits that the inspection team could not inspect entire infrastructure facilities required for conduct of General Purpose (GP) rating courses due to paucity of time. Therefore, based on the incomplete inspection, the 1st respondent ought not to have blocked the Website ID. In the remark column of the Inspection report, no doubt, it is stated that the inspection was not completed due to paucity of time i.e., in respect of infrastructure and faculty required for conduct of GP rating course. At the same time, one cannot loss sight of the fact that the major deficiencies pointed out in the inspection report are not denied by the petitioner Institute.

44. Even in the comments and clarification on the observations given by the petitioner Institute, through letter dated 07.06.2019, the petitioner admits that they are not in possession of the video recording of practical training and they are not in possession of Bio-metric attendance record. Out of 12 faculties only three were present due to holiday on 01.05.2019 on account of May day. But the Inspection team has observed that three faculties were present including the Principal, 164 students were present and undergoing training and it was not an Holiday declared by Central Government and the Institute was functioning on that day.

45. In such circumstances, this Court finds that the action taken by the respondent pursuant to the complaints received by them cannot be faulted and temporary suspension of uploading the intake of short-term courses are also in consonance with the regulations and in the interest of General public.

46. Now, regarding the relief sought for in W.P.No.19525 of 2019, the petitioner contention is that no action should be taken against them without providing show cause notice pursuant to the inspection report dated 01.05.2019. The respondent has annexed the show cause notice dated 05.07.2019 issued to the petitioner, calling upon the petitioner to submit his explanation within 15 days for why action should not be

taken against them for the deficiencies/compliants stated in the show cause notice.

47. The Learned Counsel for the Petitioner would submit that, they have not received the said show cause notice so far and would submit that the show cause notice has been issued after filing the Writ Petition No.17118 of 2019 and this Court passed the interim order not to precipitate the matter.

48. Considering the grave allegations made against the respondent and the manner in which the unscheduled surprise inspection committee, this Court passed the interim order that the respondent should not precipitate the matter pursuant to the inspection report dated 01.05.2019.

49. From the counter and perusal of the Training manual, the DGS order No.5 of 2016, this Court finds that the temporary measure taken by the respondent to streamline the conduct of the petitioner Institute in respect of admission and training, has warranted due to spate of complaints. However, before passing any order under Clause 5 (Inspection and Disciplinary Action) of the DGS Order, which contemplates Temporary withdrawal of approval (Clause 5.5.2) and Permanent withdrawal of approval (Clause 5.5.3), the respondent has to follow the procedures contemplated under the order and the Principle of Natural Justice. Since the petitioner contents that show cause notice, dated 05.07.2019 was not served on them, it is fair and just to direct the respondent to serve the show cause notice in person to the petitioner and get acknowledgement. From the date of service of the show cause notice, the petitioner shall submit his explanation within 15 days.

50. The Learned Counsel for the petitioner repeatedly states that the respondent is acting unfairly towards the petitioner and bend upon to close the Institute with oblique motive. It is expected from the 1st respondent to act fairly and give opportunity for the petitioner to explain the deficiencies/irregularity referred in the show cause notice and thereafter pass order in accordance with law. The said enquiry shall be completed within a period four weeks from the date of receipt of the explanation.

51. Accordingly, the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bsm

To
The Director,
Directorate General of Shipping,
9th Floor, Beta Building,
Think Techno Campus,
Kanjurmarg [East], Mumbai - 400 042.

+2ccs to Mr.K.M.Vijayan , Advocate SR.No. 69466

+2ccS to Mr.Arvind kmar CGSP , Advocate SR.No. 69244

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& W.M.P.Nos.16675, 19015 & 19018 of 2019

A.SK(14/08/2019)