

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.08.2019

PRONOUNCED ON : 21.08.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.19024 of 2019 and
W.M.P.Nos.18368 & 18371 of 2019

Pitta Sreekanth

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Petitioner

Vs

1.The Director General of Shipping,
Office of the Directorate General of Shipping,
(Ministry of Shipping, Government of India),
9th Floor, Beta Building,
I-Think Techno Campus,
Kanjur Marg (East), Mumbai - 400 042.

2.Marine Officers Training Academy,
No.1, Anbu Nagar,
Thuthipet,
Pondicherry.

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorari calling for the records of the 1st respondent relating to the impugned common or similar impugned e mail message sent by the first respondent on 21.06.2019, the petitioner, quash the same.

For Petitioner :Mr.Haja Mohideen Gisthi

For 1st Respondent :Mr.Rabu Manohar

For 2nd Respondent :Mr.A.S.Vijayaraghavan

ORDER

The 2nd respondent is a Marine Officers Training Academy (MOTA) approved by the first respondent/The Director General of Shipping (DGS) for conducting various maritime training courses primarily to cater the needs of seafarers to qualify them to work on board merchant and other ships. The second respondent

offer basic modular courses, pre-sea and post sea courses, short term courses with the approval of the first respondent.

2.From the second respondent Institute, the petitioner underwent maritime Personnel Survival Techniques (PST), Elementary First Aid (EFA), Personnel Safety and Social Responsibility (PSSR) and Fire Prevention & Fire Fighting (FPFF) courses (better known as Basic Safety STCW courses) between 03/12/2018 and 14/12/2018. On the first day of joining the course, the 2nd respondent Institute has uploaded the profile of the petitioner along with course detail and batch number into the e-data of the first respondent portal and get the computer generated certificate number which will be reflected in the certificate issued after completion of the training along with the Indian National Database Of Seafarers (INDoS) number. Accordingly, on enrolling into the short term courses (STCW) on 03/12/2018, the petitioner was assigned certificate number and INDoS number by the first respondent through its e-governance system. On completion of the STCW course, certificate was issued which reflect the certificate number and INDoS number. INDoS number is essential for any seaman to get employment in merchant ships or navy.

3.The petitioner after completing his STCW course on 14/12/2018, applied to the second respondent Institute for pre-sea course (6 months duration) and got selected. The classes were supposed to commence from 01/07/2019. He came to Pondicherry on 29/06/2019 to join the course. Then, he was informed by the second respondent that his INDoS number had been de-activated and suspended by the first respondent, so, he cannot pursue the course. Later, the petitioner verified and came to know that on 21/06/2019 the first respondent has sent an e-mail stating that, the INDoS number pertaining to the petitioner is temporarily de-activated for verification of certificates of courses undertaken at the second respondent institute (MTI No. 4020414) and to revoke suspension to submit to the Directorate any objective evidence to prove that the petitioner attended the said course.

4.On further enquiry, the petitioner came to understand that the first respondent has conducted surprise inspection of the second respondent institute on 01/05/2019 and as a sequel to the inspection, the first respondent has banned admission of candidates by the second respondent institute to short term courses and blocked its user ID and caused deactivation notice to all the trainees who underwent short term courses in the 2nd respondent institute during December, 2018.

5.The petitioner is aggrieved by the deactivation of his INDoS number through an e-mail dated 21/06/2019 without any date for enquiry and other details such as nature of objective evidence expected. The suspension of his INDoS number has prevented him from joining the pre-sea course. Thus, his right of education, right of employment and right of life are infringed. Before deactivating the INDoS number of the petitioner, no opportunity to explain was afforded.

6.After verifying the 2nd respondent approval status granted by the first respondent, the petitioner joined the 2nd respondent institute. The training courses conducted by the second respondent are being fully monitored by the first respondent through robust online e-governance module system. All the transaction of course certificates are governed through e-governance system right from the beginning from allotment of INDoS number and completion of course by issuance of Continuous Discharge Certificate (CDC) by shipping Master. Every actions of the institute was duly checked and verified periodically by the authorities of DG shipping. Therefore, deactivation of the INDoS number which is otherwise validly issued through online e-governance system is illegal. The temporary suspension of INDoS number without prior notice is an arbitrary exercise of power.

7.The first respondent in its counter states that, the first respondent (DGS) is competent to approve the Maritime Training Institutes (MTI) and to approve the training courses required under the STCW convention and Diploma & Degree courses, affiliated with universities as per the Merchant Shipping Act, 1958, Merchant Shipping (Standards of Training, Certification and Watch Keeping for Seafarers) Rules, 1998, STCW Convention and Merchant Shipping STCW Rules, 2014 and Regulations/orders/guidelines framed/issued under these provisions.

8.Large scale irregularities and issuance of course certificates without actual training came to the notice of the first respondent which led to surprise inspection of the second respondent institute on 01/05/2019. Based on the recommendation of the surprise inspection committee, certain action has been initiated by the first respondent to prevent fraudulent entry of certificate details in the e-Governance database. The institute was instructed not to upload details in the web portal and not to admit trainees in the short term courses. This action is

challenged by the 2nd respondent before the High court in W.P.Nos.17118 and 19525 of 2019. In the said writ petitions, the respondents therein filed a detailed counter and the writ petitions are pending.

9.Meanwhile, the first respondent has taken up the verification process of the certificates already issued by the second respondent to weed out the certificates issued without conducting the mandatory training. The petitioner and similarly placed others were informed through e-mail to produce objective evidence to prove that they underwent training. Pending verification, the INDoS number of the petitioner is temporarily deactivated.

10.The learned counsel for the first respondent submitted that, the total number of certificates issued by the 2nd respondent during these period is far more than the approved intake strength. Further, complaints from several quarters have been received that the 2nd respondent without imparting training had received money and issued certificates. This has prompted the first respondent being the authority to regulate the training programs to undertake the verification process. The petitioner and many others were given certificate as if they have undergone training between 03/12/2018 and 14/12/2018. The number of certificates issued outnumbers the permitted intake. If the trainees able to produce evidence that they really underwent training their INDoS numbers are re activated. The petitioner instead of producing evidence approached the Court by filing this writ petition. In this writ petition, this Court directed the petitioner to produce the original certificate for verification within three days. The petitioner appeared in person on 18/07/2019 and produced the copy of the Certificate of Proficiency (COP). He informed that the original COP is not in his possession and undertook to produce it on the next day. When he appeared on 19/07/2019 he produced COP issued by the second respondent on 14/12/2018.

11.During the preliminary discussion with the petitioner, though he claims that he underwent 11 days course staying in the Hostel of the second respondent at Pondicherry, he could not produce any evidence to support his claim. He could not produce evidence like video recording or photographs etc. Few elementary questions were asked to ascertain 'whether he had really undergone the mandatory training'. The petitioner was not able to say even the names of the 4 basic safety training course he underwent during his 11 days training. He was not able to identify some of the photographs of safety equipments including

life boat, life rafts, distress signals etc. He also admitted that he did not write any test during his 11 days training. This confirms that the petitioner has not undergone the mandatory training to obtain the Certificate of Proficiency (COP), which entitle the person to join the ship as seafarer.

12.The petitioner has filed a rejoinder, wherein it is stated that, in terms of this court directions, he went to the first respondent office on 18/07/2019 at 11.00 am and waited till 4.30 pm. He was threatened and intimidated by the Maritime and DGS officials to give statement against the second respondent institute. When he refused, they surrounded him and behaved rudely. The Court directed the petitioner to appear before the first respondent only for verification of certificate. The first respondent instead of carrying out verification of the certificate forced to write some exam and forced to give some statement as per their dictate. Senior level Officers of MMD surrounded him and started questioning and out of fear, he was not able to answer in English. During the training, he was not instructed to take video or photographs. Therefore, submission of video recording or photographs by the petitioner does not arise.

13.In the counter filed by the second respondent it is stated that, the institute is fully equipped with infrastructure and training facilities for conducting various maritime courses. It maintains high reputation in the maritime industry across the country. The institute is equipped with specialised maritime training equipments like fire fighting mock up, life boats, life rafts, various ship models, navigational software, engine machinery equipment, etc. Academic excellence in the field of maritime training are made available to the trainees and it maintains high standard in the training of future seafarers.

14.The first respondent conducted surprise inspection with bias and malafide intention to mar the name of the second respondent institute with oblique motive to help the other MTIs who are treated as favoured entities by the first respondent and his subordinates. The inspection team has taken away many computer data, hard disks and important documents and registers without even preparing seizure mahazar in terms of Annexure IX and without the consent of the second respondent. The students who underwent training in the 2nd respondent are being targeted without any reason.

15.Certain allegation imputing regional bias and irregularities in the institute run by the first respondent also made in this counter but they are not relevant for deciding 'whether the communication of the first respondent deactivating the INDoS number of the petitioner without notice is legally sustainable'.

16."Audi Alteram Partem" (no man can be condemned unheard) is the cardinal principle of law. The petitioner has demonstrated through his affidavit how the temporary deactivation of his INDoS number without giving opportunity has deprived his right of getting further education and employment.

17.The first respondent has conducted mini test with the petitioner when he appeared before him to submit his certificates, for verification. The petitioner was not called to attend test or interview with the first respondent. Neither that was the intention of this Court while passing the interim direction. The reason stated in the counter for suspecting the COP certificate produced by the petitioner appears very childish. Admittedly, it is the duplicate certificate issued by the Institute since, the petitioner has lost the original. After comparing the photocopy of the original certificate with the duplicate certificate issued by the Institute in substitute of the original, the first respondent has arrived at a conclusion that the certificate is not genuine. Before arriving to such conclusion, the first respondent ought to have at least called upon the second respondent who has issued the certificate to vouchsafe its authenticity.

18.Yet another reason to justify their action, the first respondent says that the petitioner was not able to give video recording or photographs to show he underwent mandatory training. Expecting such evidence from the Trainee is not contemplated in any of the regulation or circular of the first respondent. At the most such evidence may be available with the institute. The respondent has not ensured with the institute about availability of video recording or photographs to show 'whether the petitioner underwent the mandatory training'.

19.Difficulty in answering in English, failure to identify photographs of some safety equipments by itself cannot be a conclusive proof that the petitioner has not undergone the mandatory training. A surprise test in a hostile atmosphere would have made it difficult for the petitioner. The first

respondent has given the INDoS number to the petitioner only after being satisfied with the data fed in its portal. The entire admission process is monitored by e-governance system maintained by the first respondent. The number of candidates admitted in the course during particular batch must be in their database. Since, on the day of their admission, data are to be uploaded and certificate number/INDoS number are generated. It is not a difficult task to verify 'whether more than permitted strength were admitted by MTI in a particular course, in a particular batch and who were those persons admitted over and above the permitted strength. If at all any difference or excess in admission made by MTI, such excess admission ought to be identified. The deactivation process should be carried on after verification and hearing the parties.

20. It is not the case of the first respondent that the INDoS number of the petitioner is not assigned by them. It is not the case that the petitioner's admission into the 2nd respondent institute on 03/12/2018 is fake. While so, interim action without hearing and decision on random and cursory verification without proper application of mind are not permissible. Court will not approve such action.

21. For the said reasons, the order of temporary deactivation of the petitioner INDoS number is quashed. The first respondent is at liberty to take any action after affording opportunity to the petitioner and the second respondent Institute which has issued the certificate. Accordingly, the writ petition is allowed. The first respondent is directed to restore the INDoS number of the petitioner. No order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

To

1. The Director General of Shipping,
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(Ministry of Shipping, Government of India),
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2.Marine Officers Training Academy,
No.1, Anbu Nagar,
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+2 CCS to Mr.S. Haja Mohideen Gisthi, Advocate sr 71540.
+1 CC to Mr.B. Rabu Manohar, Advocate sr 71105

W.P.No.19024 of 2019

RSK(CO)
SP(26/08/2019)