

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :28.11.2019

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.29614 of 2019
and
W.M.P.Nos.29512 and 29514 of 2019

S.Hariprasath

.. Petitioner

/versus/

1.The Director General of Shipping,
O/o The Directorate General of Shipping,
(Ministry of Shipping, Government of India),
9th Floor, Beta Building,
1-Think Techno Campus,
Kanjur Marg(East), Mumbai 400042.

2.The Marine Officers Training Academy,
No.1, Anbu nagar,
Thuthipet, Pondicherry 605 502.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus to call for the records relating to the first respondent's order dated 12.09.2019 published in the website and that of the letter No.TR/Misc/9(19)/2019-2524 dated 28.09.2019 to quash the same and to consequently direct the respondents to issue/restore the completion certificate forthwith thereto to the petitioner.

For Petitioner :Mr.L.Chandrakumar

For Respondents :Mr.G.Karthikeyan,

Standing Counsel for R1

Mr.A.S.Vijayaraghavan for R2

O R D E R

This writ petition has been filed seeking Writ of Certiorarified Mandamus to call for the records relating to the first respondent's order dated 12.09.2019 published in the website and that of the letter No.TR/Misc/9(19)/2019-2524 dated 28.09.2019, to quash the same and consequently to direct the respondents to issue/restore the completion certificate forthwith to to the petitioner.

2. Heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent.

3. The petitioner herein being aggrieved by the communication of the first respondent dated 12.09.2019 through e-mail as well as in the website of the first respondent temporary suspension of his certificate and consequently show cause notice dated 28.09.2019 is before this Court.

4. The petitioner herein has undergone 13 days Certificate course in Maritime Security Training offered by the 2nd respondent-Institute. He was issued Certificate to that effect on 11.04.2019. While so, the 1st respondent having received few complaints regarding the issuance of such certificate without proper training, on 12.09.2019 have issued a notice to the petitioner stating that the certificates are temporarily suspended for verification, without affording opportunity. Following this communication, a show cause notice was issued to the petitioner on 28.09.2019 to submit explanation and documents regarding his training.

5. The learned counsel appearing for the petitioner submits that when the 1st respondent attempted to temporarily deactivate the INDoS number of the certificate holders, they approached this Court and this Court has specifically directed the 1st respondent that they cannot temporarily deactivate the petitioner INDoS number without affording opportunity to the petitioner and the institute, which has issued this certificate. While so, again the first respondent has temporarily suspended the certificate, without affording opportunity and thereafter, cause show cause notice seeking explanation.

6. The show cause notice dated 28.09.2019 issued by the 1st respondent reads as below:

"Whereas it came to the notice of this Directorate that some of the Maritime Training Institutes (MTI) have issued course certificate (s) to candidates without their actual attendance and without imparting the required training.

Whereas in certain cases, signatures of the Course in-charge and Principal/Head of the Institute have been scanned on the certificates and not physically signed.

Whereas in certain cases, biometric attendance date revealed that MTI issued course certificates without the candidate having attended the course for its entire duration.

Whereas the courses in which such irregularities were noticed were identified and the candidate enrolled in those courses has been prevented to travel using emigrant system pending verification of authenticity of certificates.

Whereas you have been issued course certificate(s) for the courses "Security Trng. for Seafarer with Designated Security Duties" from the MTI "Marine Officer Training Academy" which is/are the course(s) identified in which the above said irregularity have been noticed. Accordingly, you have been prevented to travel using emigrant system pending verification of authenticity of certificates and you are hereby being given an opportunity to represent and submit your case. In case you have rightfully acquired your course certificate after attending the course for full duration, you may submit your case along with submission of credible evidence to prove that you had undertaken the course for the entire duration failing which it shall be construed that you were issued course certificate without attendance and without undertaking required training.

Your reply to this show cause notice may be submitted to this Directorate latest by 16.10.2019, failing which action will be initiated against you in accordance with the Training Circular No.11 of 2019, dated 02.07.2019 and any other action which this Directorate may deem fit in exercise of the powers conferred under the Merchand Shipping Act, 1958 as amended.

This show cause notice is issued with the approval of the Director General of Shipping and Additional Secretary to the Government of India."

7.Learned counsel appearing for the petitioner would further submit that the attendance details of the petitioner will be in the custody of the 2nd respondent Institute. While so, without addressing the 2nd respondent for submitting the attendance details, the show cause notice is issued only to the petitioner. Unless and until, the 2nd respondent is directed to produce the attendance details, the petitioner will be handicapped in establishing his attendance and training underwent in the 2nd respondent-Institute.

8.Learned counsel appearing for the 2nd respondent would submit that the 1st respondent on 01.05.2019 has conducted surprise Inspection of the 2nd respondent Institute and taken away the records including and soft copy of the biometric

details regarding the candidates attendance. The team has almost taken away all the computer data, hard disks, important documents and registers without furnishing any seizure mahazar. The 1st respondent officials are targeting the 2nd respondent-Institute and bend up to close down the 2nd respondent-Institute under one pretext or another.

9.Perusal of the information uploaded by the 1st respondent in their website dated 12.09.2019 indicates that the petitioner certificate is temporarily suspended pending verification. Thereafter, on 28.09.2019, the show cause notice has been issued with details, which has been extracted above.

10.In this context, it is relevant to refer the order of this Court in W.P.No.19024/2019 dated 21.08.2019 filed by one Pitta Sreekanth and the operative portion of the judgment reads as below:

"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."

11.In the present case the 1st respondent has temporarily suspended the certificate of the petitioner prior to enquiry. Though the learned standing counsel appearing for the 1st respondent states that the said communication was not given effect. If it is not given effect, the 1st respondent should withdraw the same, if not so far withdrawn.

12.Hence, this Court directs the 1st respondent to withdraw the temporary suspension order passed on 12.09.2019 and upload in the website forthwith.

13.As far as, the show cause notice dated 28.09.2019 is concerned, the petitioner as well as the 2nd respondent shall submit their explanation with available documents. Time for submitting the explanation to the show cause notice shall be within 15 days from today. On receipt of the explanation to the show cause notice, the 1st respondent shall complete the enquiry and pass appropriate orders by 31.12.2019.

14. Accordingly, this Writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To:

1. The Director General of Shipping,
O/o The Directorate General of Shipping,
(Ministry of Shipping, Government of India),
9th Floor, Beta Building,
1-Think Techno Campus,
Kanjur Marg(East), Mumbai 400042.

2. The Marine Officers Training Academy,
No.1, Anbu nagar,
Thuthipet, Pondicherry 605 502.

+1cc to Mr.G.Karthikeyan, Advocate, SR.No.99351
+3cc to Mr.L.Chandrakumar, Advocate, SR.No.99538 & 99592.
+1cc to Mr.A.S.Vijayaragavan, Advocate, SR.No.99593.

SSV(CO)
CSR:23.01.2020

W.P.No.29614 of 2019

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