

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.6988 of 2020

Perunthalaivar Kamarajar,
Institute of Maritime Science and Engineering,
Rep. by its Chief Executive Officer,
Thiru. Tamilarasu Sambandam
1069, Thirupaninatham, Keerapalayam - Post,
Chidambaram - 608 602,
Cuddalore District.Petitioner

Vs.

- 1.The Director General of Shipping,
Training Branch,
The Directorate General of Shipping,
9th Floor Beta Building, I-Thinking Techno Campus,
Kanjurmarg (East), Mumbai - 400 042.
- 2.The Board of Examinations for Seafarers Trust,
No.303, Mayuresh Chamber,
Plot No.60, Sector-11,
Opp. Raheja Arcade,
CBD Belapur (W), Navi Mumbai,
Maharashtra, India,
Pin Code - 400 614.Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the first respondent to reopen E-Samudra online portal for 2 days, enabling the petitioner Perunthalaivar Kamarajar Institute of Marine Science and Engineering to upload all the data relating to the General Purpose Rating Course commencing from 01.07.2019 to 31.12.2019.

For Petitioner : Mr.A.Thiyagarajan
Senior Counsel
for D.Veerasekaran

For R1 : Mr.G.Kathikeyan
Assistant Solicitor General

For R2 : Mr.S.Vasudevan

O R D E R

This writ petition has been filed for an issue of writ of mandamus directing the first respondent to reopen the online portal and enable the petitioner to upload the data relating to the General Purpose Reading Course for the period from 01.07.2019 to 31.12.2019.

2. The petitioner institution received an approval from the first respondent dated 06.02.2019 for conducting 12 courses. In the present writ petition, this Court is concerned with training for General Purpose Reading Course. A careful reading of the approval shows that the duration of the Course was six months and the intake that was permitted was for 40 students. It was made clear in the letter of approval that the approval was a conditional approval and it is valid only for one batch till 30.06.2020. It will be relevant to extract the special instruction provided by the approval letter hereunder:

"Special Instruction: With regard to Pre-Sea GP Rating Course this approval is valid for one batch only (till 30.06.2019).

Further approval will be considered only after the institute construct the swimming pool within 06 months, and submit the details of the placement of candidates for onboard training of the passed out batches."

3. The relevant averments with regard to the same, made in the affidavit filled in support of the writ petition is extracted hereunder:

"I submit that for conducting of General Purpose Rating Course for the year 2019, the petitioner applied for the approval, for which the respondent herein has given the due approval on 06.02.2019 for conducting the Certificate Courses. The approval was conditional, subject to the completion of construction of Swimming Pool. I submit that the petitioner institute was given approval dated 06.02.2019 for conducting the General Purpose Rating Courses and was permitted to intake 40 students in four frequency, with a condition that the approval will be extended beyond the 6 months period only on construction of the Swimming Pool in the petitioner's institute. I submit that after the construction of the swimming pool we were assured to get the permanent approval. I submit that as per the special instruction of the respondent, the swimming pool was constructed within the stipulated time at the cost of 90 lakhs.

3. I submit that the petitioner applied for

approval of the General Purpose Rating Course commencing from 01.07.2019 and the ending to 31.12.2019 for two batches, each batch consisting of 40 students and the same was approved by the respondent. I further submit that for the 80 students who were admitted in two batches and attended the courses, their examination fee was paid by the petitioner for a sum of Rs.80,240/- (Rupees eight thousand two hundred and forty only) for batch No.1 on 23.10.2019 and a sum of Rs.80,240/- (Rupees eight thousand two hundred and forty only) for batch No.2 on 24.10.2019 respectively. On the aforesaid payment, the Boards of Examination for seafarers issued admit cards to the 80 students for the examination conducted in the month of December, 2019 and their results were published in the month of January, 2020, wherein the student cleared the examination with roaring results of 93%."

4. The petitioner institution had permitted nearly 80 students to attend the course and they also took the examination conducted by the second respondent. The results were published in January 2020.

5. The petitioner institution attempted to upload the data in the online portal on 17.07.2019 and it was found that the portal had been closed on 16.07.2019 itself. The petitioner made a representation to the first respondent to open the online portal to upload the data. This process was required in order to enable the students to get the completion certificate from the first respondent. Since no action was taken on the representation, the present writ petition has been filed before this Court seeking for appropriate directions.

6. The first respondent has filed a counter affidavit and the relevant portions in the counter affidavit is extracted hereunder:

"6. I submit that, the Respondent No.1 has accorded conditional approval for the General Purpose Rating course to Petitioner vide approval letter dated 06.02.2019 and the condition was:

"With regard to pre-Sea GP Rating Course this approval is valid for one batch only (till 30.06.2019). Further approval will be considered only after the institute constructs the swimming pool within 06 months, and submit that details of the placement of candidates for onboard training of the passed out batches".

7. I submit that, the Petitioner knowingly that they don't have approval for the GP Rating

course for the batch of July 2019 to Dec.2019 admitted the candidates. The Respondent No.1 has no information about how they have conducted the classes of GP Rating Course that too without having Principal and faculties required to impact the course. The petitioner was served with show cause notice dated 06.08.2019.

8. I submit that, as per para 2 of DGS Training Circular No.04 of 2018 all the approved Pre-sea maritime training institute are required to upload the batch details for the course within 15 days from the date of commencement of the course. The petitioner's claim of including two holidays is untenable. The said circular clearly speaks that batch upload is to be done within 15 days of commencement of the course, which is inclusive of all holidays.

9. I submit that, the petitioner contention about the GP Rating batch of July 2019 where 80 candidates have been given admission for the said course.

10. I submit that, the petitioner wrongfully and without having respondent approval admitted 80 candidates for the GP Rating course. All the admitted candidates appeared for the Exit Exam conducted by the Respondent No.2. Out of total admitted candidates 74 of them have successfully cleared the Exit Exam.

11. I submit that, the petitioner had admitted 80 candidates for the GP Rating Course batch of July 2019 which was not approved by the Respondent No.1. Further if any of the candidates from the batch of July 2019 GP Rating Course goes on-board then it will be considered as unauthorised and the concerned flag may take serious action against the candidate. All the 80 candidates of July 2019 batch are advised to redo the course from any DGS approved Institute.

12. I submit that, the certificates are to be issued only for DGS approved maritime courses conducted by a DGS approved Maritime Training Institute in accordance with the STCW convention and MS(STCW) Rules 2014 for it to be internationally recognised by the parties to the convention. Therefore the certificates would not be in accordance with Section 13 of the MS (STCW) Rules 2014 since in this case neither the institute nor the course are DGS approved institute or DGS approved course in terms of Section 4(4), 4(6), 4(7) and 4(8) of the said rules. This will lead to non-recognition of these certificates by other parties to the convention i.e other maritime administration who may take serious actions for presentation of invalid certificates.

13. I submit that, it would be in fitness of things not to allow these 80 candidates to obtain certificates from this unapproved institute since the course conducted from July 2019 was not approved by the Respondent No.1. It is also submitted that these candidates should attend the approved course again at any other approved training institute. The respondent received several complaints against the petitioner from seafarers that they obtained course certificate from the petitioner institute without attending the classes. The Respondent No.1 issued a Show Cause Notice to petitioner on 06.08.2019, based on number of major deficiencies noticed. Some of the major deficiencies noted were:

a) Issuance of course certificate to candidates without imparting training.

b) Uploading batch details of candidates who did not attend the courses.

c) Principal and Course In-Charge signing certificate of candidates without verification of the candidate (No photograph and signature of the candidate) Also, signing certificates for the candidates for whom there is no objective evidence of attending the course.

d) Video recordings for practical training, biometric attendance and other records as required by DGS Training Circular and Guidelines not submitted to the Directorate.

e) The MTI is running courses without having required number of Faculties and Instructors.

14. I submit that, as per the faculty details uploaded by the petitioner on e-Governance portal, there was no Principal shown for the institute, whereas the petitioner was operating MTI with only one faculty and two instructors. In such circumstances, it is evident that the MTI does not have required faculty/instructors for smooth conduct of DGS approved maritime training courses.

15. I submit that, Eighty Five candidates who were issued certificate for basic safety training course from Preunthalaivar Kamarajar Institute of Maritime Science and Engineering and have submitted to the Respondent No.1 that they have obtained these course certificate without attending classes. In view of the above it is evident that the MTI was not following the instruction contained in the DGS Orders/Guidelines issued from time to time and have been involved in issue of course certificate without conducting classes.

16. I submit that, the petitioner MTI, Trust Chairman Shri K.S.Alagiri was given an opportunity of hearing by the DG(S). The conduct of the petitioner MTI management and trustees are involved

in several questionable activities including arranging fake certificate to the candidates.

17. I submit that, the respondent after examining the reply received from the petitioner on Show Cause Notice issued to them, found that the petitioner was found involved in several questionable activities including arranging fake certificates to the candidates to the candidates and subsequently the DG(S) in exercise of the powers of supervision of maritime training as provided in Rule 75 of the Merchant Shipping (Standards of Training Certificate and Watch keeping for seafarers) Rules 2014 notified under Section 78, 87, 88, 98, 456 and 458 of Merchant Shipping Act, 1958, as amended, and in terms of para 5.5 of DGS Order No.5 of 2016 for the preceding reasons spelt out, hereby de-recognizes the institute and also permanently withdraws all the approvals accorded to M/s.Perunthalaivar Kamarajar Institute of Maritime Science and Engineering (MTI No.406027) located at 1069, Chidambaram, cuddalore, Tamilnadu - 608 602 vide DGS Order dated 06.01.2020."

7. The second respondent has also filed a counter affidavit. The second respondent is an organization that is approved by the first respondent for the purpose of conducting examination. The second respondent has taken a stand that the petitioner never informed the second respondent about the fact that there was no approval after 01.07.2019. That apart, it is also stated in the counter affidavit that the petitioner institution is now trying to ventilate the grievance of the students who have not even approached this Court. Therefore, the petitioner is not entitled for the relief sought for in the writ petition.

8. Mr.A.Thiyagarajan, learned Senior Counsel appearing on behalf of the petitioner submitted that the only requirement that had to be satisfied on the part of the petitioner institution for continuation of the approval was that the institution must have completed the construction of the swimming pool. The learned Senior Counsel submitted that this requirement was satisfied and it was also informed to the first respondent. The first respondent did not act upon the representation made by the petitioner and now for the first time a stand has been taken to the effect that there was no approval from 01.07.2019 onwards. The learned Senior Counsel submitted that the second respondent would not have permitted the students to write the examination without the concurrence of the first respondent and the students have already written their final examination and have also passed and they cannot be deprived of their efforts that has put in by them and it is too late for the respondents to take a stand that there was no approval from 01.07.2019 onwards.

9. The learned Senior Counsel further submitted that the online portal had to be kept open for 15 days (working days) and unfortunately it was blocked on the 14th day itself. The petitioner institution had attempted to upload the data on 17.07.2019, which was the 15th day and they were not able to upload the data since the portal had been blocked by the first respondent.

10. The learned Senior Counsel submitted that the first respondent after having slept over the matter from the year 2019 onwards has now chosen to come up with a stand that there was no approval for the Course from 01.07.2019 onwards. Therefore, the learned Senior Counsel concluded his arguments by submitting that the first respondent must be directed to reopen the portal for a day or two in order to enable the petitioner institution to upload the data.

11. Per contra, Mr.Karthikeyan, learned Assistant Solicitor General appearing on behalf of the first respondent submitted that the petitioner is not entitled for the relief sought for in the writ petition. The learned counsel submitted that the letter of approval dated 06.02.2019 made it very clear that the approval for the course is only a conditional approval valid for one batch till 30.06.2019. The petitioner institution being aware of the same, ought not to have admitted students beyond 30.06.2019 till they get an approval from the first respondent.

12. The learned counsel further submitted that the first respondent issued a show cause notice to the petitioner on the ground that several irregularities were found in running the institution and after enquiry, the affiliation and approval granted to the petitioner institution was cancelled by an order dated 06.01.2020. This order has been challenged by the petitioner institution in W.P.No.1600 of 2020 and the said writ petition is pending. The learned Assistant Solicitor General submitted that the admission of the students beyond 30.06.2019 is illegal and just because they have written the examination and cleared it, that does not automatically result in the first respondent to give a completion certificate and such certificates cannot be given for an unapproved course. Therefore, the learned counsel sought for the dismissal of the writ petition.

13. Mr.S.Vasudevan, learned counsel appearing on behalf of the second respondent adopting the arguments made by the learned Assistant Solicitor General, submitted that the petitioner institution never informed the second respondent that there was no approval beyond 30.06.2019 and they merely submitted the application by giving a list of students to undergo the examination. The learned counsel submitted that the second respondent is merely an authority to conduct the examination and it had routinely permitted the students to

write the examination and also evaluated the answer sheets. The learned counsel further submitted that even though the students have cleared the examination, the same will result in the grant of completion certificate by the first respondent only if the course in question is approved by the first respondent. Therefore, the learned counsel sought for the dismissal of the writ petition.

14. This Court has carefully considered the submissions made on either side and the materials available on record.

15. This is yet another text book case where the interest of the students has been taken for a ride both by the petitioner institution as well as the respondents. The petitioner institution was well aware of the fact that the approval was given to the concerned course only up to 30.06.2019. If the petitioner institution wanted to admit the students beyond 30.06.2019, they should have obtained an approval from the first respondent. The petitioner institution cannot assume that the approval is automatic. It is quite unfortunate that at paragraph 3 of the affidavit filed in support of the writ petition, the deponent of the affidavit has gone to the extent of saying that the course that was commenced from 01.07.2019 was approved by the respondent. This statement has been made in the affidavit without any basis and in a cavalier manner by the Chief Executive Officer of the petitioner institution. This statement is made in spite of being well aware of the fact that there was no written approval from the first respondent. In short it is a false averment that has been made in the affidavit.

16. Even though the learned Senior Counsel appearing on behalf of the petitioner submitted that the requirement of constructing a swimming pool was fulfilled and was also informed to the first respondent, that does not automatically result in a deemed approval unless the first respondent makes an inspection and thereafter grants extension of approval in writing. Admittedly this has not happened in the present case.

17. The petitioner institution has admitted 80 students in two batches and the fees was collected from them and all these students have also paid the examination fees. The students had prepared themselves and written the examination conducted by the second respondent. The papers were evaluated and the results were also published and it is found that 93% of the students have cleared the examination.

18. The most pertinent issue that has to be considered in the present case is whether a direction could be issued to the first respondent to grant completion certificate to the students who completed the course in the petitioner institution. This Court must also bear in mind that

subsequently, the first respondent by letter dated 06.01.2020 has cancelled the affiliation and approval of the petitioner institution on the ground of irregularities. Of course this is a subject matter of challenge pending before this Court in W.P.No.1600 of 2020.

19. The counter affidavit filed by the first respondent talks about the consequence of granting a completion certificate. It is stated that the students who complete the course are granted certificate of competency which is a certificate issued under Section 78 of the Merchant Shipping Act, 1958. The first respondent before issuing the certificate should ensure that the course for which the certificate is granted is approved and it is granted to the students of an institution which has conducted the course in accordance with law. India is a party to the STCW Convention 1978, and therefore as a party to the convention, it has to ensure that it maintains quality in maritime education. The students who undergo this training become seafarers and they are not only employed in Indian ships but also in foreign ships. Therefore, there is a lot of responsibility involved in issuing such a certificate which has a statutory backing under the Merchant Shipping Act 1958 and the rules framed thereunder. If certificates are granted by the first respondent for the courses for which there is no approval, it will be in complete violation of the Act and Rules.

20. The Hon'ble Supreme Court and this Court on various occasions have held that the students who have undergone courses for which the institutions don't have any approval, they cannot be permitted to write the examination or given any certificate and such misplaced sympathy cannot sway the Court in exercising its jurisdiction under Article 226 of the Constitution of India to issue such direction. It is unfortunate that the students are the ultimate sufferers but then there is also an equal responsibility for the students and their parents to ensure that the course in which they join has been given proper approval from the concerned authority. In this era where information is available in fingertips, it is not difficult to find out if there is approval for an institution or a course conducted by the institution. This Court cannot issue directions which will ultimately perpetuate illegality.

21. It will be useful to rely upon some judgments in this regard.

"(a) D.D.Medical College v. Medical Council of India reported in 2014 SCC Online Mad 1117 : (2014) 3LW 193 at page 225.

140. The learned Single Judge, having found that the admission of the students of the academic years 2011-12 and 2012-13 were illegal in nature, ought not to have passed the order directing that they should be accommodated in the Government

Medical Colleges. We are not in a position to appreciate such misplaced sympathy. If at all, it is for the students and their parents to initiate appropriate action against the college, if so advised, and if they are of the view that they had been cheated by the college. However, it would not entitle them to claim any right or entitlement, on the basis of equity."

(b) Though in the context of an interim order, the Hon'ble Supreme Court has also made the following observations regarding illegal/irregular admissions in the case of Medical Council of India v. JSS Medical College, reported in (2012) 5 SCC 628 at page 631

12. Without advertting to the aforesaid issues and many other issues which may arise for determination, the High Court, in our opinion, erred in permitting increase in seats by an interim order. In normal circumstances the High Court should not issue interim order granting permission for increase of the seats. The High Court ought to realise that granting such permission by an interim order has a cascading effect. By virtue of such order students are admitted as in the present case and though many of them had taken the risk knowingly but few may be ignorant. In most of such cases when finally the issue is decided against the College the welfare and plight of the students are ultimately projected to arouse sympathy of the Court. It results in a very awkward and difficult situation. If on ultimate analysis it is found that the College's claim for increase of seats is untenable, in such an event the admission of students with reference to the increased seats shall be illegal. We cannot imagine anything more destructive of the rule of law than a direction by the Court to allow continuance of such students, whose admissions is found illegal in the ultimate analysis."

22. In view of the above finding of this Court, it is not necessary for this Court to go into the other issue as to whether the online portal was blocked within 15 days. This issue would require consideration only if the petitioner institution crosses the first major obstacle with regard to the approval for the course. This Court has already held that the petitioner institution admitted the students for an unapproved course.

23. This order will not get complete without commenting upon the conduct of the second respondent in this case. The second respondent has been authorized by the first respondent to conduct the examination and therefore they have a responsibility to ensure that the course for which the

application is made to write the examination, has been approved by the first respondent. The second respondent cannot be mechanically conducting the examination and correcting the papers and declaring the results, even without satisfying themselves as to whether the first respondent has given approval for a particular course or not. The second respondent is only an extended arm of the first respondent and therefore for all those acts of the second respondent, the first respondent must also take the responsibility. The second respondent has conveniently filed the counter affidavit by stating that the course for which the students were admitted did not have an approval beyond 30.06.2019. If the second respondent was so sure about this fact, they should not have permitted the students to write the examination. Atleast that would have saved the energy of the students from preparing for the examination. The second respondent has virtually mislead the students to take the examination and ultimately even declared the results wherein 93% of the students have cleared the course. That is the reason why this Court started this order by saying that both the petitioner institution as well as the respondents have acted in a reckless manner with the hapless students who are now left high and dry. The first respondent now wants the students to again undergo the course and write the examination. Time and Tide waits for none goes the saying. The students have already wasted nearly two years and this precious time can never be regained. These students will have to again undergo the course and again write the examination and clear the same. This is the most unfortunate part in the present case.

24. Even though this Court feels helpless in not being able to give the relief to the students, unfortunately this Court cannot issue any positive direction since it will lead to perpetuating illegality. Atleast if affiliation/approval had continued, this Court would have directed the first respondent to see if post facto approval can be given for the period from 01.07.2019 to 31.12.2019. This is also not possible in the present case since the affiliation/approval granted to the petitioner institution has already been cancelled. Therefore there is absolutely no scope for this Court to grant the relief as sought for in the writ petition and come to the rescue of the students. The students have been used as a shield by the petitioner institution in order to cover up the illegality committed by them in admitting 80 students in an unapproved course. Probably the students were not even aware about the said fact.

25. The petitioner and the respondents must take the responsibility for having wasted the precious time of 80 students. Therefore there shall be a direction to the petitioner institution to refund 50% of the fees received by them from each student within a period of six weeks from the date of receipt of a copy of this order.

26. There shall be a further direction to the respondents to ensure that the 80 students get their seat in the same course in an approved institution and they are allowed to complete the course and get their completion certificates. This process must be completed by the respondents during the academic year 2021-2022. It is high time that this Court should not stop by merely lamenting and the Court should become more proactive in providing substantial justice to the affected parties and more particularly in cases involving students whose interest had been taken for granted.

27. In the result, this writ petition is dismissed with the above direction. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To:

1. The Director General of Shipping,
Training Branch,
The Directorate General of Shipping,
9th Floor Beta Building, I-Thinking Techno Campus,
Kanjurmarg (East), Mumbai - 400 042.
2. The Board of Examinations for Seafarers Trust,
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+1cc to Mr.D.Veerasekaran, Advocate, S.R.No.26383

+1cc to Mr.S.Vasudevan, Advocate, S.R.No.26304

PA(CO)
CB(21/08/2020)

W.P.No.6988 of 2020