

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.962 of 2020
and CMP No.11642 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 ... Appellant

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 Chambers,
Plot No-60, Sector -11
Opp.Raheja Arcade,
CBD Belapur (W), Navi Mumbai,
Maharashtra, India,
Pin Code - 400 614 .. Respondents

Appeal filed under Clause 15 of Letters Patent to set aside
the order passed by this Court in W.P No. 6988 of 2020 dated
06.08.2020.

Prayer in W.P.No.6988 of 2020

Writ Petition filed under Article 226 of the Constitution of
India for issuance of a writ mandamus, to Directing the Ist
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 Appellant : Mr.A. Thiagarajan,
Senior Counsel for
Mr.D. Veerasekaran

For R.1 : Mr.G. Karthikeyan
Asst. Solicitor General of
India

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

Heard Mr.A.Thiagrajan, learned Senior Counsel for the appellant and Mr.G.Karthikeyan, learned Assistant Solicitor General for the first respondent.

2. The appellant Institute approached this Court before the learned Single Judge for a mandamus to direct the first respondent to reopen E-Samudra online portal for two days to enable the appellant to upload all the data relating to the General Purpose Rating Course commencing from 01.07.2019 to 31.12.2019.

3. It may be pointed out that the said request had been moved on 17.07.2019 by the appellant and on 01.08.2019, the appellant is stated to have been informed by the first respondent about the completion of the deficiency of swimming pool in respect of the course in question.

4. The writ petition was filed in March 2020. It is significant to note that there was a show cause notice issued to the appellant on 06.08.2019 with regard to other deficiencies in respect of other courses and the show cause indicated that on account of such deficiencies the first respondent was proposing to blacklist and cancel the affiliation of the Institution. A reply was called for, that was submitted and the Institution was disaffiliated finally by order dated 06.01.2020 which order has been challenged separately by the appellant in W.P.No.1600 of 2020, and is pending before this court.

5. The dispute in the present matter pertains to the approval of the course relating to Training for General Purpose Ratings. It is undisputed that there was an approval existing in respect of the course that was valid till 30.06.2019. The appellant admitted students for the next batch with effect from 01.07.2019 and it is the contention of the respondents that this admission or running of the course by the appellant Institute was invalid, as there was no approval beyond 30.06.2019.

6. In the background aforesaid, the writ petition was filed in March 2020 for a mandamus in order to enable the appellant Institute to cover up the aforesaid deficit, as during the meantime, the appellant Institute had also sent the list of candidates to the second respondent for conducting their examinations. The candidates sent up by the appellant in respect of the aforesaid course did appear in the examinations and 74 of them cleared the same. The results of the said examinations were also declared. The appellant Institution, therefore, came up before this Court contending that the first respondent will be presumed to have granted approval to the said course as the students had been allowed to appear in the examinations and their results had also been declared.

7. Learned Senior Counsel for the appellant has relied on the following judgments, in support of his submissions:

- (a) The State of Orissa vs. Madan Gopal Rungta, AIR 1952 SC 12;
- (b) Krishna Priya Ganguly and Others vs. University of Lucknow and Others, (1984) 1 SCC 307;
- (c) K.A.Selvanachi and Anr. vs. Dr.S.R.Sekar and Anr., (2003) 1 CTC 745;
- (d) M/s.Servo Packaging Ltd., vs. The Customs, Excise and Service Tax Appellate Tribunal and Anr., (2016) 340 ELT 6;
- (e) Govind Chandra Tiria vs. Sibaji Charan Panda and Others; (2020) 3 SCC 803; and
- (f) Judgment of Madras High Court in the case of Rajaram Johra vs. Commissioner of Customs and Anr., C.M.A.No.2683 of 2016 decided on 19.09.2018.

The matter was contested by the first respondent as well as by the second respondent. The first respondent in the counter-affidavit categorically indicated that this conduct of the examinations or the course which was imparted to the students was without any approval and therefore, no relief can be granted and it was further submitted that the candidates should be permitted to undertake the said training course afresh in some recognised Institute in order to save their career.

8. The second respondent also filed a counter-affidavit and in paragraph 13, it has been stated as follows:

"13. This Respondent states that it issued Admit Cards for 80 Students on payment of a sum of Rs.1,36,000/- as Examination Fee by the respective Candidates. This Respondent also confirms that the filled-in Application Forms were sent by the Writ Petitioner to the 2nd Respondent's Office. During the month of December, 2019, Examinations were conducted

and Results were published in January, 2020. The results have been published by the 1st respondent. The same has been sent to the petitioner along with the individual Pass Certificates of the candidates. The candidates are therefore fully aware of their results and have not approached this Hon'ble Court with any grievance against this Respondent."

The second respondent, however, in paragraphs 17 to 19 stated as follows:

"17. When the petitioner has filed another Writ Petition challenging the Cancellation Order dated 06.01.2020, it has not obtained any interim relief in that Writ Petition. It has instead sought for directions in this Writ Petition. The Petitioner is clearly using the case of the Students, who are not parties to the Writ petition, to advance its case. The Petitioner, having failed to obtain Interim Orders in W.P.No.1600 of 2020, will have to canvass its case in that Writ petition and not take its chance by filing this Writ Petition. This Respondent is made a party in this Writ Petition only to lend credibility to this exercise. This Respondent has nothing to do with the relief sought in the Writ Petition but is still made a party only to justify this colourable exercise.

18. The aggrieved parties are the Students, who have passed out the Examination conducted by the 2nd Respondent. On that basis, Certificates have been issued by the 2nd Respondent. They have not questioned the uploading of their names in the 'E-SAMUDRA' website of the 1st Respondent. They have also not given any representation to the 1st Respondent as well as to the 2nd Respondent as evident from the affidavit filed by the Writ Petitioner. Therefore, the Petitioner cannot take the grievance of third party in this Writ petition as their rights are not affected.

19. It is pertinent to note that this Respondent is only a Board of Examiners to conduct and declare the Results of the Candidates beyond which the 2nd Respondent has no role to play. The 1st Respondent alone has

to be addressed for any grievance of the Writ Petitioner. The 'E-SAMUDRA' Portal is created by the 1st Respondent and maintained by them as to the Opening and Closing of the website regarding Registration of Candidates after their passing out. This Respondent does not have any access to monitor the 'E-SAMUDRA' Portal."

9. It is, thus, clear that it was the appellant which had sent the application forms to the second respondent during the month of December 2019 whereafter the examinations were conducted by it and the results were published in January, 2020.

10. Mr. Thiagarajan, learned Senior Counsel, contended that this was done with the endorsement of the first respondent. This fact has been refuted by Mr. Karthikeyan, learned Assistant Solicitor General and from the records that have been placed before us, we do not find either any explicit or tacit consent of the first respondent allowing the appellant Institute either to send the application forms for getting the examinations of the candidates conducted nor is there any document on record to establish that the first respondent had directly or indirectly permitted the appellant to either run the course or get the examinations of the students held. In such view of the matter, when the course itself was not approved, we cannot infer an implied approval on the arguments so advanced on behalf of the appellant Institute. Thus, the conclusion drawn by the learned single Judge on that count does not appear to be suffering from infirmity much less a legal infirmity. The judgments relied on by the learned Senior Counsel for the appellant do not have any application on the facts of the present case.

11. In the background aforesaid, the direction given by the learned single Judge in the impugned judgment dated 06.08.2020 as contained in paragraphs 25 and 26 appears to be justified in the larger interest of the students and keeping in view the conduct of the appellant Institute.

12. The contention raised by the learned Senior Counsel for the appellant is that the approved list of colleges have been reflected in the website of the respondent, for which an additional typed set of papers has been placed before us. Even assuming that the list of colleges as displayed on 29.07.2019 and 08.08.2019 was an information available on the website of the first respondent, the same does not either expressly or impliedly mean that the first respondent had approved the course about which the dispute had arisen. It is, therefore, on record that the Institute had been finally disaffiliated on 06.01.2020 and therefore, the reflection prior to that in the website may be

appropriate, but the same does not amount to condoning or approving the running of the course which was under question or the conduct of the examinations of such students pursuant to such an unapproved course.

13. Accordingly, there is no merit in the appeal and it is hereby dismissed. No costs. Consequently, connected C.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sr.No.
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
No.303, Mayuresh Chambers,
Plot No-60, Sector -11
Opp.Raheja Arcade,
CBD Belapur (W), Navi Mumbai,
Maharashtra, India,
Pin Code - 400 614

+1 cc to M/s.G.Karthikeyan, Advocate Sr.No. 35370
+1 cc to M/s.D.Veerasekaran, Advocate Sr.No. 35368

SS (CO)
RMP (27/11/2020)

W.A.No.962 of 2020

WEB COPY