

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CONTEMPT PETITION NO. 284 OF 2023
IN
WRIT PETITION NO. 7543 OF 2023

Captain Niranjan Kumar Basak and another. ... Petitioners.
V/s.

Assistant Director General of Shipping
and others. ... Respondents.

Mr.Abhinav Chandrachud with Ms.Gaurangi Patil and Parth
K. Mehta i/b. GP & Associates for the Petitioner.

Mr.Rui Rodrigues with Mr.D.P.Singh for Respondent Nos.1 to 4.

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CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.

DATE : 9 November 2023.

P.C. :

We have heard the learned counsel for the parties.

2. The Petitioners have moved this contempt petition praying to initiate proceeding for contempt against the Respondents for breach of the order dated 26 April 2023 passed in Writ Petition No.7543/2022. The order reads thus:

“1. Mr Rodrigues has taken instructions and we believe it is appropriate and well advised that he has not merely made a statement across the bar. Instead there is an Affidavit at pages

282 to 283. This is taken on record. We note that it has been e-filed. The Affidavit is by the Assistant Director General of Shipping, currently holding charge in the Directorate General of Shipping. The statement is that the Respondents undertake to withdraw the show cause notice in question and the resultant order of 9th June 2022. We treat the show cause notice and the order as withdrawn immediately.

2 In every Affidavit, the Respondents have reserved their right to “find out about the systematic misuse of the online exit system by the various stakeholders in accordance with law.” Mr Khandeparkar for the Petitioner submits that this qualification should not be used to justify a second round of what he describes is an unsustainable and utterly malafide witch hunt against the Petitioner. That is not our understanding of this sentence at all. We note that the sentence is not specific to the Petitioners. When it refers to various stakeholder, we understand that reference to be to all institutes and organisations similar to the Petition. What the Respondents are saying is that it is their responsibility to ensure the integrity of the online exit system and to prevent its misuse. We agree that this is undoubtedly the task of the Respondents. Even in the present manner, our concern was with the process that was adopted, not the reason behind the process. If there is any form of an examination or an online test or an online exit system, it is obviously for the agency that is administering the test to ensure that it is done in a fair manner such that no participant or student gains an unfair advantage by a “gaining the system”.

3. Mr Khandeparkar also submits that the action of the Respondents has caused the Petitioner considerable financial loss. We make no observations in that regard. He states that the Petitioners might well be advised to file a civil action in a jurisdictionally competent court for that claim. We note the statement but we keep all contentions open. We specifically note and record that we have not, in making this order, addressed the matter on merits in view of the Affidavit that Mr Rodrigues has now filed.

4. The Petition is disposed of in these terms.”

3. The factual position briefly leading to this order is that the Petitioner, an institute for marine training received a show cause notice on 2 May 2022 from the Director General of Shipping, Mumbai as to why an action should not be taken against the Petitioners for certain shortfalls which were noticed in the functioning of the Petitioner- institution. This show cause notice later culminated in the order of withdrawal of approval and de-recognition of the Petitioner- institute for a period of one year by order dated 9 June 2022. It is this order that was the subject matter of the Writ Petition No.7543/2022 which came to be disposed by the above order.

4. The contempt petition is moved alleging that since show cause notice dated 2 May 2022 and order dated 9 June 2022 have been withdrawn by the Respondents, it would be as if there is no order or show cause notice against the Petitioner- institute and, therefore, the Petitioner- institute must be permitted to resume its courses, however, the Respondents are not permitting the Petitioners to do so. It is the contention of the Respondents that even for restarting the institution the Respondents must ensure that all norms are fulfilled by the educational institution. According to the Respondents, if these norms are not fulfilled, the students passing out from such institution would have difficulty in securing employment later in future.

5. On the last occasion, during hearing of the contempt petition, it was put to the learned counsel for the parties so as to put end to the dispute as to whether the Respondents could specify the shortfalls and whether the Petitioners could show commitment to remove the same. Accordingly, the hearing of the petition was deferred today.

6. Today, a chart is placed before us by the learned counsel for the Respondents which shows the norms of the courses and the shortfalls specified. There are three shortfalls which are specified, that is, (i) Swimming Pool as per Para-1 to 8 of DGS Circular No.7 of 2018; (ii) Fire Fighting Mock-up as per Para-11.10 of DGS Training Circular No.21 of 2018; and (iii) Faculty Load Matrix as per Para-2 of DGS Training Circular No.11 of 2018. It also needs to be noted that requirement of swimming pool is not for all the courses conducted by the Petitioners but only for some courses.

7. The learned counsel for the Respondents, on instructions, submits that these are the three shortfalls and if they are fulfilled, the Respondents would have no objection for permitting the Petitioners to resume the courses. The learned counsel for the Petitioners submitted that as far as Fire Fighting Mock-up and Faculty Load Matrix are concerned, the Petitioners have complied with the same and will demonstrate the same before the Authorities.

As regards swimming pool is concerned, the learned counsel for the Petitioners submitted that though they do not have swimming pool in their premises, they have tie up with the institution which is located in Navi Mumbai having swimming pool with same dimensions and specifications as required in the Circular. According to the Respondents, such a swimming pool should be either in the premises of the institute or should be approved by the competent authority. According to the Petitioners, there are instances of exemption of this requirement and even once in case of Petitioners earlier. The learned counsel for the Petitioners submitted that it cannot be that exemption is granted to some and not to the Petitioners. However, for this purpose, the Petitioners will have to make an application for exemption which the Respondents will have to decide by giving reasons and also dealing with the contention of the Petitioners regarding giving exemption to others in past.

8. As regards the application to be made, if the Petitioners make such application for exemption in respect of requirement of swimming pool within one week, the same be decided within two weeks thereafter. As regards the other compliances, the same can be jointly discussed in the meeting with the Respondents' examining the same. The exercise regarding other compliances also to be completed within a period of three weeks which we have given for the purpose of swimming pool.

9. According to us, these directions would bring quietus end to the litigation. Though we are aware that we have issued these directions in the contempt petition, we have done so at the joint request of the parties exercising the jurisdiction akin to the writ jurisdiction only to put quietus end to the litigation.

10. Contempt petition is disposed of in the above terms.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)