BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.07.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.405 of 2014
and
M.P.(MD)No.1 of 2014

The President,
R L Institute of Nautical Sciences,
TVR Nagar, Aruppukottai Road,
Madurai – 625 022,
Madurai District. ...Appellant

/Vs./

1.The Union of India,
Rep. by its Secretary,
Ministry of Shipping, Road Transport
& Highways (Department of Shipping),
Transport Bhawan, 1, Sansad Marg,
New Delhi – 110 001.

2.The Director General of Shipping,
Office of the Directorate General of Shipping,
Jahaz Bhavan, W H Marg,
Mumbai – 400 001. ...Respondents

PRAYER:- Writ Appeal - filed under Clause XV of Letters Patent Act, to set aside the order dated 04.07.2013 in W.P.(MD)No.10055 of 2013 on the file of this Court and allow the Writ Petition.

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| For Appellant | : Mr.S.Xavier Rajini<br>for Mr.Isaac Mohanlal<br>Senior Counsel |
| For Respondents | : Mr.Karthikeya Venkatachalapathy<br>Central Government Standing Counsel |

## JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.)**

The appellant is an Institution running Maritime courses and holding an approval from the Director General of Shipping (in short 'DGS'). It is admittedly not a member of the Maritime Institute Association (in short 'Association'). The Association had challenged a Circular in Order No.2 of 2007 dated 31.10.2007 (in short '2007 Order') by way of writ petition in W.P.No.12919 of 2012 . That order had dealt with the question of deduction and remittance, at one percent, of tuition fee and other dues from the candidates.

2. The 2007 Order provided, in clause 4.20 thereof that approved Institutes and Workshops conducting maritime training courses shall pay to the DGS '*one percent of the total fees which will include tuition and all other fees chargeable from a student, for the sanctioned strength of all courses, every financial year from 1st April to 31st March, the minimum of which shall be less than Rs.10,000*'.

3. The challenge had been on various grounds including that the DGS did not have power to levy a tax. The writ petition had been dismissed by the Writ Court under order dated 18.07.2012 in W.P.Nos. 12919 and 12920 of 2012. The specific argument supra, had been rejected noticing that the DGS, being a statutory body was empowered to levy fee in respect of services provided by its affiliated institutions.

4. The 2007 order does not amplify on the scope of '*tuition fee and other dues*', and the interpretation of the aforesaid phrase by the Court in order dated 18.07.2012 is on the basis that the entirety of the receipts of the training institution shall be subject to the deduction.

5. Order dated 18.07.2012 elaborates, at paragraph 4 thereof, the various components upon which the deduction would have to be made, being *tuition fee, university examination, mark sheet, convocation, boarding and lodging, laundry, uniform, linen, bed, books, furniture, medical expenses, library, laboratories, transportation, educational equipments, swimming training, computer training, internet facility, ship visits, boat rowing practice, gym, saloon, etc*.

6. We called for the writ records to peruse the material on the basis of which the adumbration, as above, was made. Though there is reference to counter filed by DGS at para 7 of order dated 18.07.2012, a copy of that counter relates only to W.P.No.12920 of 2012, which has been filed by the International Maritime Academy, which writ petition

has been disposed along with W.P.No.12919 of 2012 filed by the Association. With this, we do not have benefit of the material on the basis of which the various components upon which the fee of 1% is to be remitted, were set out in order dated 18.07.2012.

7. A perusal of Order No.2 of 2007 also does contain any clue in this regard as Clause 4.23, which defines 'fees' and which is extracted below, is silent on this aspect:-

> *"4.23 Annual remittance to Government:*
> *All approved Institutes and workshops themselves conducting maritime training course, shall pay to the DGS one percent of the total fees which will include tuition and all other fees chargeable from a student, for the sanctioned strength of all courses, every financial year from 1st April to 31st March, the minimum of which shall be less than Rs.10,000......"*

8. The challenge in the present writ petition is to Training Circular No.9 of 2013 dated 09.05.2013 (in short '2013 Order') and we have encapsulated the events commencing from issuance of the 2007 Order, to set the present writ petition in context.

9. According to the appellant, the 2007 Order was applicable only to tuition fees and statutory charges and it is only in the 2013 Order that the scope of the deduction has been amplified. The attempt of the writ petitioner / appellant is to state that the scope of the deduction of 1% has been expanded only in the 2013 Order to include items such as food, mess charges and accommodation, university, books, transportation fee, etc., collected from the students.

10. This challenge is misconceived in light of the discussion in the previous paragraphs. The scope of the 2007 Order has been understood to mean and encompass a gamut of levies including fees, statutory charges and various other costs. In our understanding however, one percent that is required to be paid would relate to the tuition fee and other charges payable to the regulatory bodies.

11. Order of the Writ Court dated 18.07.2012 has attained finality as on date. Though the writ petitioner states that it has filed a

third party appeal challenging the same which is pending in SR stage, no such appeal has, admittedly seen the light of day, thus far. We thus do not give any credence to this submission.

12. The 2013 Order is, infact, beneficial as far as the petitioner is concerned. In paragraph No.2 thereof, the competent authority / DGS confirms that the collection of fee shall not be on '*sanctioned strength*', but shall be on the *'admitted strength*' alone. Paragraph 2 of the 2013 Order reads as follows:

> *“2. The competent authority has now decided that the 1% Annual Fee shall be enforced on the actual fee i.e. total fee (inclusive of tuition and all other fees collected from a student in any nomenclature i.e. charges for food, mess charges, accommodation, uniforms, books examination fee, transportation strength of the respective batch. Accordingly, clause 4.23 of DGS Order No.2 of 2007 [F.No.21-TR (2)/2007 dated 31.10.12] is modified to the extent that the words 'sanctioned strength' shall be replaced by the words 'admitted strength'. All other stipulations in the said provision shall remain the same.”*

In our considered view, there can be no other reading of the 2013 Order.

13. We however reiterate that the requirement to deduct 1% (gross) can only be on the amounts collected as tuition fee or other charges to the regulatory body / University in the absence of any stipulation to the contrary in the primary Order, ie., the 2007 Order. Collection of charges such as food, mess charge, accommodation charge, books, transportation fee, etc., would be by way of reimbursement of the costs incurred by the Appellant on those accounts. The deduction can thus be effected on net basis, on those receipts less the actual costs incurred by the petitioner Institute on those heads.

14. The writ petitioner prays for a reduction of the liability which we are not inclined to consider seeing as the grant of such reduction would fall within the prerogative of the competent authority, the DGS. The institute is always at liberty, if it is believes it is so entitled, to approach the DGS for a waiver / reduction and it is for the DGS to consider such request in accordance with law and applicable Regulations/Circular. This Writ Appeal is dismissed though with liberty

as above. No costs. Consequently, connected Miscellaneous Petition is closed.

**[A.S.M.J.,] & [R.V.J.,]**
**31.07.2023**

NCC :Yes/No
Index :Yes/No
Internet :Yes
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TO:

1.The Union of India,
Rep. by its Secretary,
Ministry of Shipping, Road Transport
& Highways (Department of Shipping),
Transport Bhawan, 1, Sansad Marg,
New Delhi – 110 001.

2.The Director General of Shipping,
Office of the Directorate General of Shipping,
Jahaz Bhavan, W H Marg,
Mumbai – 400 001.

**DR.ANITA SUMANTH, J.**
**AND**
**R.VIJAYAKUMAR, J.**

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Judgment made in
W.A.(MD)No.405 of 2014

Dated:
31.07.2023