

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).No. 19552 of 2014 (T)

PETITIONER(S) :

**KERALA CHRISTIAN PROFESSIONAL COLLEGE
MANAGEMENT FEDERATION,
RAJAGIRI SCHOOL OF SOCIAL SCIENCES,
RAJAGIRI VALLEY P.O., KAKKANAD, KOCHI-682 039,
REPRESENTED BY ITS SECRETARY.**

**BY SRI.KURIAN GEORGE KANNANTHANAM (SENIOR ADVOCATE)
ADVS. SRI.TONY GEORGE KANNANTHANAM
SRI.THOMAS GEORGE**

RESPONDENT(S) :

**1. THE MEDICAL COUNCIL OF INDIA,
REPRESENTED BY ITS SECRETARY, POCKET-14, SECTOR-8,
DWARAKA PHASE I, NEW DELHI-110 077.**

**2. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH & FAMILY WELFARE,
MINISTRY OF HEALTH & FAMILY WELFARE, NIRMAN BHAVAN,
NEW DELHI-110 011.**

R1 BY ADV. SRI.TITUS MANI VETTOM, S.C

R2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-02-2015, THE COURT ON 22-05-2015 DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : TRUE COPY OF THE CHART SHOWING THE FEES STRUCTURE OF P.G.COURSES.

EXT.P2 : TRUE COPY OF THE NOTICE DATED 04.06.2014 ISSUED BY THE 1ST RESPONDENT.

EXT.P3 : TRUE COPY OF THE LETTER DATED 19.06.2014 TO THE 1ST RESPONDENT.

EXT.P4 : TRUE COPY OF THE LETTER DATED 20.06.2014 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

C.R.

A.V.RAMAKRISHNA PILLAI, J

WPC No.19552 of 2014

Dated this the 22nd day of May, 2015

JUDGMENT

Exts.P2 and P4 communications issued by the respondent Medical Council, by which the principals of the private medical colleges were directed to pay stipend to P.G.students at par with the stipend paid in Government Medical Colleges, are under challenge in this writ petition.

2. The petitioner is the Association of the Managements of Christian Professional Colleges which got approval to run P.G.programmes in their colleges from 2012. This writ petition is filed on behalf of the managements of four medical colleges, viz. Jubilee Mission Medical College, Thrissur, Amala Institute of Medical Sciences, Thrissur, Malankara Orthodoz Syrian Christian Medical College, Kolencherry and the Pushpagiri Medical College, Tiruvalla. The petitioner alleges that admission to these colleges, whether it be to under graduate or post

graduate programs, are strictly on the basis of merit through a centralised allotment process. The petitioners claim that they do not collect money as donation or capitation fee. They also allege that these colleges are paying reasonable amounts as stipend to P.G.students. The petitioner challenges the condition imposed on private medical colleges by the respondent Medical council that they should pay their medical P.G. students stipend at the rates paid in Government Medical Colleges in the State. In Kerala, the average stipend so paid to students in Government Medical Colleges is ₹33,000/- per month. The petitioner points out that if such payment is insisted upon, it would go beyond the total fees collected from the students undergoing the P.G. Course in certain cases. The petitioner alleges that neither the medical council of India nor the Central Government has the jurisdiction or competence to issue such a direction.

3. In the detailed counter affidavit filed by the first respondent, the first respondent has justified the action on the ground that the respondent being a body

constituted under the Indian Medical Council Act, 1956 has the responsibility of discharging the duty of maintenance of highest standard of medical education and this has been endorsed by various decisions of the Apex Court. According to them, the direction to pay stipend at par with Government Colleges is only to maintain the standard of education with the previous permission of the Central Government by virtue of the powers conferred under Section 33 read with Section 20 of the Indian Medical Council Act.

4. I have heard Mr.Kurian George Kannanthanam, the learned senior counsel for the petitioner and Mr.Titus Mani, the learned standing counsel for the Medical Council and the learned standing counsel for the Union of India.

5. The learned senior counsel for the petitioner would point out that neither the MCI nor the Central Government are competent to compel any self financing college to pay stipend to P.G. students at the rates paid in Government Medical Colleges. By virtue of the powers conferred under Section 33 read with Section 20 of the Indian Medical

Council Act, the respondent council has framed Post Graduate Medical Education Regulations 2000 with the previous sanction of the Central Government. According to the learned senior counsel for the petitioners, this is only with the view to prescribe standards of post graduate medical education for the guidance of universities and to advise universities in the matter of securing uniform standards for post graduate medical education throughout India. It was argued that the impugned directions have no nexus with the aforesaid object and therefore, they are incompetent. Clause 13.2 and 13.3 of the regulations read as under:

13.2 - All candidates joining the Post Graduate training programme shall work as full time residents during the period of training, attending not less than 80% (Eighty percent) of the training during each calendar year, and given full time responsibility, assignments and participation in all facets of the educational process.

13.3 - The Post Graduate students of the institutions which are located in various States/Union Territories shall be paid remuneration at par with the remuneration being paid to the Post Graduate students of State Government medical institutions/Central Government Medical Institutions, in the State/Union Territory in which the institution is located. Similar procedure shall be followed in the matter of grant of leave to Post Graduate course.

6. It was argued by the learned senior counsel for the petitioner that the direction to the private medical colleges to pay stipend to the P.G.students at par with the stipend given to students of medical colleges has nothing to do with the standards of post graduate medical education. Therefore, according to the learned senior counsel, the aforesaid direction is totally beyond the competence of the medical council of India. It was further argued that while there is compulsion against the private medical colleges including the petitioners, there is no such compulsive clause in the regulation which says that the Government should pay such stipend to PG students in Medical Colleges. Therefore, according to the learned senior counsel, the direction is discriminatory. It was also pointed out that the stipend paid to students of Government Medical Colleges vary from State to State depending upon the political condition of each State. It was also argued that the imposition of such a direction in the case of Clinical and Non-Clinical course is also discriminatory as the petitioner colleges are not benefited

by the service of the students who undergo non-clinical course as their services are not utilised in the hospitals attached to the college.

7. It cannot be disputed that the respondent is a body constituted and established under the Indian Medical Council Act, 1956 and it has been given the responsibility of discharging the duty of maintenance of highest standards of Medical Education. As an expert body to control the minimum standards of medical education and to regulate their observance, it has an implied power to supervise the qualifications or eligibility standards for admission into medical institutions.

8. In ***Ajay Kumar Singh v State of Bihar*** [(1994) 4 SCC 401], the Apex Court has concluded that the medical council regulations have a statutory force and are to be complied with. There cannot be any quarrel against the proposition that the standards in post graduate course in medicine cannot be relaxed or diluted.

9. The argument advanced by the learned senior counsel for the petitioner is that stipend is being provided

to the students undergoing P.G.course in Government Medical Colleges because their services are utilised in the hospital attached to those medical colleges. It was also argued that the private medical colleges are not getting the services of students undergoing non-clinical post graduate courses. Referring to the fee structure followed by the Medical Colleges in the self financing sector in the State, the learned senior counsel argued that if stipend at the rates paid by Government Medical Colleges are paid to all P.G.students in the private Medical colleges irrespective of the nature of the course, the petitioners would incur huge loss as they are collecting lesser fee from students undergoing non-clinical course.

10. It is crucial to note that the service of the students as doctors at the hospital attached to the medical colleges is mandatory. The economic viability of paying the stipend shall not be the sole criterion for deciding the question whether so much stipend has to be paid or not. Unless a reasonable subsistence allowance in the name of stipend is granted to the students undergoing

P.G.course, competent students will not be attracted and ultimately, it would affect the general standard. The object of establishing the institution is to provide technical or professional education to the deserving candidates and it is not necessarily a commercial venture, as observed by the Apex Court in ***T.M.A. Pai Foundation and others v State of Karnataka and others*** [(2002) 8 SCC 481)]. It has been held in the aforesaid case that conditions of affiliation or recognition which pertain to academic and educational character of the institution which ensure uniformity, efficiency and excellence in educational courses are valid and they do not even violate the provisions of Article 30 of the Constitution of India. The only thing is that the conditions that are laid down for granting recognition should not be such as may lead to the Governmental control of the administration of the private educational institutions.

11. It was strenuously argued by the learned senior counsel that the impugned regulations would violate the minority right of the petitioner guaranteed under Article

19(1)(g) and 30(1) of the Constitution of India. It is settled law that the right of minorities to administer educational institutions do not prevent the making of reasonable regulations in respect of these institutions. It is permissible for the authority to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. Only restriction is that such regulations made by the authority should not impinge upon the minority character of the institution. In this case, no such infringement takes place on the minority right of the petitioner. The right under Article 30(1) has not been laid to be absolute or above other provisions of law. It is well settled that even though the words of Article 30(1) are unqualified, at least certain other laws of the land pertaining to health, morality and standards of education would apply (See paragraph-59 of the judgment in T.M.A.Pai's case). Parliament or the State Legislatures are not denuded of their power having regard to restrictions that may satisfy the test of clause (6) of Article 19 of the Constitution of India or regulations in

terms of Article 30 depending upon the national interest/public interest and other relevant factors. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. The very fact that the private medical colleges are directed to pay stipend at par with the stipend given to the students undergoing P.G. Courses in Government Medical Colleges would indicate that the regulations are equally applicable to all institutions imparting medical education irrespective of the status of the authority running the institution. The contention of the petitioner that the said regulation is violative of Article 19(1)(g) and 30(1) is not correct. The students who are undergoing post graduate studies are Masters in most of the competencies pertaining to their specialities. They are expected to achieve awareness in contemporary advances and developments in the disciplines concerned. They have to achieve spirit of scientific inquiry and principles of research methodology as well as basic skills in teaching of medical and para

medical professionals. The regulations prescribed by the first respondent envisages that the minimum standard of training programme that are to be imparted through which the students undergoing post graduate studies would obtain the aforesaid goals. It is common knowledge that post graduate students, who are having basic degree in medicine, have the major work load of patient care in hospitals and also they are involved in teaching/training of MBBS students. Therefore, it is important that the P.G. students are remunerated uniformly and it is the duty of the authority concerned to see that they are not exploited by any of the medical institutions. That is the reason why the regulations are imposed. It cannot be said that it is discriminatory or is violative of any of the provisions of the Constitution of India.

On a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is not entitled to succeed. In the result, this writ petition fails and accordingly, dismissed.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

CSS/

true copy

P.S.TO JUDGE