

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.8.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.Nos.692 and 1218 of 2015

THE SECRETARY
DEPARTMENT OF AYURVEDA YHOGA 7 NATUROPATHY
UNANI SIDDHA & HOMEOPATHY AYUSH GOVT OF
INDIA MINISTRY OF HEATH AND WELFARE NEW
DELHI 110 001. appellant in both appeals

Vs

- 1 S.V.S. EDUCATIONAL AND
SOCIAL SERVICE TRUST REP BY ITS
CHAIRMAN CUM MANAGING DIRECTOR NO. 74
GANDHI ROAD VIZHUPURAM DISTRICT.
- 2 THE SECRETARY
CENTRAL COUNCIL OF HOMOEOPATHY NO 61-65
INSTITUTIONAL AREA OPP D BLOCK JANAKPURI
NEW DELHI 110 058
- 3 THE TAMILADU DR. M.G.R.
MEDICAL UNIVERSITY REP BY ITS REGISTRAR
NO. 69 ANNA SALAI GUINDY CHENNAI 600 032.
- 4 THE SPECIAL COMMISSIONER
DIRECTORATE OF INDIAN MEDICINE &
HOMEOPATHY ARIGNAR ANNA HOSPITAL COMPLEX
ARUMBAKKAM CHENNAI 600 106 ... respondent in W.A.692/2015

- 1 S.V.S.EDUCATIONAL AND SOCIAL
SERVICE TRUST REP. BY ITS CHAIRMAN CUM
MANAGING DIRECTOR DR.VASUKI W/O.
SUBRAMANIAN NO.74 GANDHI ROAD
KALLAKURICHI 606 202 VILLUPURAM DT.
- 2 THE SECRETARY
CENTRAL COUNCIL FOR HOMEOPATHY NO.61-65
INSTITUTIONAL AREA OPP D BLOCK JANAKPURI
NEW DELHI 110 058. respondent in W.A.No.1218/2015

W.A.No.692 of 2015 filed against the order in W.P.No.28684/2015 dated 6.1.2015.

PRAYER in W.P.No.28684/2014 : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certioraified Mandamus, to call for records of the first respondent in F.No.R-12014/2011-EP(H) dated 20.10.2014, quash the same and consequently direct the first and third respondents to issue permission to the petitioner to start the Homeopathy College viz., S.V.S College of Homeopathy and Research Institute, Kallakurichi and grant affiliation to the petitioner's College respectively for the academic year 2014-2015.

W.A.No.1218 of 2015 filed against the order in W.P.No.32047/2013 dated 9.10.2014.

Prayer in W.P.No.32047/2013 :Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of Certiorarified Mandamus to call for the records in F.No.R-12014/04/2011-EP(H), dated 19.11.2013 passed by the first Respondent and quash the same and further direct the Respondents to accord sanction to S.V.S. Hameopathy Medical College and Research Institute for conducting Bachelor of Homeopathy, Medicine and Surgery Course (BHMS Course) for the academic Year 2013-2-14.

For appellant : Mr.N.Rajan, SCGSC

For Respondents : Mr.S.Prabakaran,
for Mr.K.Balakrishnan, for R-1

COMMON JUDGMENT

(made by K.K.SASIDHARAN, J.)

Introductory:-

The appellant initially filed the intra court appeal in W.A.No.692 of 2015, challenging the order dated 6 January 2015 in W.P.No.28684/2015 whereby and whereunder, the learned Single Judge quashed the impugned order dated 20 October 2014 and allowed the Writ Petition, consequent to the Mandamus issued by the writ court in W.P.No.32047 of 2013. When it was pointed out during the course of hearing the appeal that the order in W.P.No.28684 of 2015 was passed on account of the finality reached to the issue vide order dated 9 October 2014, in W.P.No.32047 of 2013, the learned Central Government Standing counsel took time and thereafter filed the intra court appeal in W.A.No.1218 of 2015, challenging the order dated 9 October 2014 in W.P.No.32047 of 2013.

2. Heard Thiru.N.Rajan, learned Senior Central Government Standing Counsel, appearing on behalf of the appellant and Thiru.S.Prabakaran, learned counsel for the first respondent.

Discussion and resolution:-

3. The first respondent is a trust established with the object of starting degree courses in various systems of indigenous medicines. The Trust obtained no objection certificate for offering 5 ½ year courses in Bachelor of Naturopathy and Yogic Sciences. The college started by the Trust is stated to be affiliated to Tamil Nadu Dr.M.G.R. Medical University, Chennai.

4. The first respondent initially made an application dated 27 April 2011 for establishing a homeopathy college, along with the no objection certificate issued by the State Government. The application was rejected by the appellant. The first respondent unsuccessfully challenged the order rejecting the application before the writ court and the Division Bench. The first respondent, taking into account the liberty granted by the Division Bench, submitted a fresh application for permission for the academic year 2013-14. The application was rejected on 1 July 2013. The Writ Petition filed by the first respondent challenging the said order was allowed by the writ Court as per order dated 28 February 2013 in W.P.No.1657 of 2013. The appellant unsuccessfully challenged the said order before the Division Bench in W.A.No.792 of 2013. Thereafter, the appellant considered the matter once again and rejected the application by order dated 19 November 2013.

5. The first respondent challenged the order dated 19 November 2013 before the writ court in W.P.No.32047 of 2013. The learned Single Judge by way of a detailed order, accepted the contentions raised on behalf of the first respondent and allowed the Writ Petition. The Central Government was directed to reconsider the matter and issue fresh orders on or before 20 October 2014.

6. The appellant treated the order dated 19 October 2014 in W.P.No.32047 of 2013 as one directing reconsideration of the matter and passed fresh orders on 20 October 2014, rejecting the application once again.

7. The first respondent challenged the order dated 20 October 2014 in W.P.No.28684 of 2014. The writ court, by way of an interim order dated 24 November 2014, permitted the first respondent to admit students for the academic year 2014-15. Thereafter, the Writ Petition was taken up for final disposal. The Writ Petition was ultimately allowed by order dated 6 January 2015.

8. The appellant now wanted this Court to consider the legality and correctness of the order passed by the learned Single Judge dated 9 October 2014 in W.P.No.32047 of 2013, even after passing the order afresh on 20 October 2014, pursuant to the direction. The appellant for reasons best known, failed to challenge the order dated 9 October 2014 in W.P.No.32047 of 2013, within a reasonable period, in spite of the positive direction given by the learned Single Judge to

reconsider the matter and issue fresh orders, in the light of the findings recorded in its order dated 9 October 2014.

9. The order dated 6 January 2015 in W.P.No.28684 of 2014 appears to be a consequential order in view of the direction given in W.P.No.32047 of 2013.

10. When it was pointed to the learned Senior Central Government Standing Counsel that after submitting report of compliance by the first respondent pursuant to the notice dated 15 October 2014, fresh inspection was not conducted to ascertain as to whether the institution has complied with the requirements, the learned counsel, after taking instructions, submitted that no such inspection was made and that the appellant is prepared to conduct a fresh inspection for passing fresh orders on merits. In view of the fair submission made on behalf of the appellant, we consider it not necessary to adjudicate the larger issues raised by the appellant.

11. We are of the view that on account of the subsequent order dated 20 October 2014, there is no need to set aside the order passed by the writ court dated 9 October 2014 in W.P.No.32047 of 2013.

12. Taking into account the submission made by the appellant that the Central Government would look in the matter once again after inspection, we pass the following order with the consent of both the parties.

(i) The appellant is directed to depute an inspection team to inspect the college established by the first respondent to ascertain as to whether the institution has complied with the statutory requirements, taking into account the compliance report submitted by the institution, pursuant to the notice dated 15 October 2014;

(ii) Since the appellant has agreed to conduct inspection within a period of two weeks, there shall be a direction to complete the process of inspection within a period of 14 days;

(iii) The appellant is directed to consider the inspection report and after providing an opportunity of hearing, pass fresh orders on merits as expeditiously as possible and in any case, within one week after the submission of report.

(iv) The entire exercise, including inspection, shall be completed within a period of 21 days from today;

(v) The first respondent is directed to cooperate with the inspection team and appellant for an early disposal of the matter;

(vi) The appellant is directed to adhere to the time schedule strictly.

13. We make it clear that this order would not give right to the first respondent to admit students.

14. The intra court appeals are disposed of with the above direction. No costs. Consequently, M.P.Nos.1/2015 are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

- 1 THE SECRETARY
DEPARTMENT OF AYURVEDA YHOGA 7 NATUROPATHY
UNANI SIDDHA & HOMEOPATHY AYUSH GOVT OF
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DIRECTORATE OF INDIAN MEDICINE &
HOMEOPATHY ARIGNAR ANNA HOSPITAL COMPLEX
ARUMBAKKAM CHENNAI 600 106

2 CC to Ms.K.Balakrishnan, Advocate SR.No.43139

1 CC to M/s.N.Rajan, SCGSC SR.No.43166

W.A.Nos.692 and 1218 of 2015

(CO)
pmk.18.8.2015