

In the High Court of Judicature at Madras

Reserved on: 07.09.2015

Dated : 11.09.2015

Coram

The Honourable Mr.JUSTICE M.M.SUNDRESH

Writ Petition No.16812 of 2015
and M.P.No.1 of 2015

1 D.Deeyaneswar
2 Abirami S.
3 Agalya M.
4 Akshathaa P.
5 Anagha Sasikumar S.
6 Anusha K.
7 Arun Gokul Pon.
8 Arun K.
9 Arvind Kumar V.
10 Bala Subha A.
11 Bavithra R.
12 Brinda J.
13 Charanya S.
14 Cynthiya R.
15 Deepalakshmi C.
16 Dhivya
17 Dinesh M.
18 Dinesh S.D.
19 Dinesh S.
20 Divya Bharathy J.
21 Elanchezhiyan E.
22 Geetha Priya G.
23 Gunasundari P.
24 Hazira Shafiya Siddika F.
25 Kausikka N.
26 Kavitha S.
27 Koppolu Venkata Vinod Kumar
28 Lakshmi Narayanana S.
29 Manju Priya M.
30 Manoranjith V.
31 Mathivadhani A.
32 Meena P.
33 Monica Aarthy A.
34 Monica Kurinchi C.I.
35 Murali Rajan R.
36 Nancy Prasanna
37 Nandhinee
38 Niranjani R.

39 Nishanthini M.
40 Nithiyalakshmy B.
41 Nithiyapriya M.
42 Nivedha P.
43 Pazhaniyandi Pillai K.
44 Poovizhi T.E.
45 Poovizhi V.
46 Pradeep Rao R.
47 Prashanth R
48 Pravardhana D.
49 Preethi S.
50 Priyadharshini A.
51 Purushothaman M.
52 Raguram Chandar A.
53 Rahini S.
54 Revathi K.
55 Sakthikirubananth M.
56 Sangameswaran G.
57 S.Sanjay Kumar
58 Saranya S.
59 A.Shameen Raja
60 Shanmugapriya C.
61 Sharanya V.C.
62 Shenbaka V.
63 Shruti S.
64 Sidharthan S.
65 Silambarasan M.
66 Sindhu
67 Sureshkumar K.
68 Susila Sharmili K.
69 Swathi
70 Swathi Sri M.
71 Uma Maheswari I.
72 Vaideki B.
73 Valarmathi S.
74 Varsha M.
75 Vidhya M.R.
76 Vinoprabha S.
77 Yogeshwari S.

... Petitioners

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary, Health and Family
Welfare Department, Fort St. George,
Chennai-600 009.

2.The Medical Council of India,
Rep. by its Secretary, Sector 8,
Dwaraka Phase-I,
New Delhi-110077.

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3. Tamilnadu Medical Council,
Rep. by its President, No.914, Poonamallee
High Road, Arumbakkam,
Chennai-600 106.

4 The Tamilnadu Dr. M.G.R.
Medical University, Rep. by its Registrar,
No.69, Anna Salai,
Guindy, Chennai-32.

5 The Dean
Melmaruvathur Adhiparasakthi Institute of
Medical Sciences & Research, Melmaruvathur,
Kancheepuram District-603319.

6 Union of India,
represented by The Secretary,
Ministry of Health and
Family Welfare Dept.,
New Delhi. .. Respondents

Respondent No.6 is Suo-motu impleaded as per Order
dated:06.07.2015 made in W.P.No.16812/2015.

Prayer: Writ Petition is filed under Article 226 of Constitution
of India praying to issue a Writ of mandamus directing the
respondents 1 / 2 and 3 to recognize the MBBS degree course issued by
the 4th respondent university as recognized medical qualification and
register the petitioners in the state medical register and issue
permanent registration certificates to the petitioners.

For Petitioners : Mr.Vijay Narayan, Senior Counsel for
Mr.A.Edwin Prabhakar

For Respondents : Mr.D.Krishna Kumar,
Special Government Pleader for R1
Mr.V.P.Raman for R2

Mr.Veerakathiravan for R3

Mr.Anand David for R4

Mr.A.S.Balaji for R5

Mrs.G.Hemawathi,

Central Govt. Standing Counsel for R6

ORDER

As per the law governing the State of Tamil Nadu, the seats for
the M.B.B.S Degree Course in the private colleges are being filled up
in the ratio of 65: 35 by the Government and the respective private
colleges. Thus, 65% of the seats are to be filled up from the merit

list of the Government. The students so admitted, though under the Government quota, are required to pay the requisite tuition fee fixed by the private Colleges as per law. Accordingly, seats have been filled up for the year 2009-2010 following the said ratio qua the 5th respondent. Admittedly, at the time of allotment and the consequential joining of the course, the 5th respondent was having due permission from the 2nd respondent.

2. The examinations for the students are being conducted by the 4th respondent. The petitioners, who joined in the year 2009-10 in the 5th respondent College, duly wrote the examinations and passed out successfully. Provisional certificates have also been issued to them. However, they were not permitted to continue their Compulsory Rotatory Residential Internship (CRRI). This was for the reason that the 2nd respondent has cancelled the permission and recognition of the 5th respondent on the ground of non-compliance of the deficiencies pointed out.

3. In the month of April, 2014, the petitioners filed a writ petition in W.P.No.10582 of 2014 seeking to direct the 3rd respondent therein - Medical Council of Tamil Nadu to give temporary recognition, so as to enable them to continue the CRRI. After hearing the parties at length, the following interim order was passed.

"13. It is brought to the notice of this Court that in the absence of recognition, the fifth respondent student has not admitted any students for the academic year 2013-2014. This submission has nothing to do with permitting the petitioners inasmuch as they were admitted during the year 2009-10 in the fifth respondent college and they have completed the course. Till their completion of the course, the recognition given to the fifth respondent college has not been cancelled. In any event, the Medical Council of India has no serious objection for granting temporary recognition to enable the petitioners to complete the internship.

14. Having regard to the above facts, this Court is of the view that the petitioners, who have completed 4 years of their course, need not be subjected to any hardship by not permitting them to undergo the C.R.R.I., either in the fifth respondent College or in other Colleges in which they opted to undergo such internship. For this purpose, this Court is inclined to issue appropriate directions to the third respondent, as prayed for in these petitions.

15. Accordingly, the third respondent is directed to give temporary registration to the fifth respondent college so as to enable the petitioners to

continue the C.R.R.I., i.e., Compulsory Rotatory Residential Internship either in the fifth respondent college or in other colleges, wherever the students have opted. It is made clear that this order is passed subject to the result of the writ petition. It is also made clear that the petitioners shall not claim any equity or preferential right by virtue of this order. The third respondent is further directed to pass appropriate orders for grant of temporary recognition in favour of the fifth respondent college or No Objection to the petitioners to undergo CRRI in any other recognised colleges within a period of two weeks from the date of receipt of a copy of this order."

4. The petitioners in pursuant to the interim order granted referred supra, completed the training in the month of April, 2015. The 4th respondent issued provisional certificates to the petitioners on completion of CRRI. However, the petitioners' names were not registered in the State Medical Register and permanent registration certificates were not issued in view of the decision taken by the 2nd respondent. Therefore, the petitioners have come forward to file this writ petition seeking a direction to respondents 1 to 3 to recognise the M.B.B.S Degree course issued by the 4th respondent University as the recognised medical qualification and register them in the State Medical Register by issuing permanent registration certificates. These are all the background facts.

Submissions of the petitioners:

5. Mr.Vijay Narayan, learned Senior Counsel appearing for the petitioners submitted that as the 4th respondent University, having given the certificates, by a necessary consequence of it, the prayer sought for by the petitioners will have to be granted. For the mistakes committed by the 5th respondent, even assuming they are true, the petitioners cannot be found fault with. Admittedly, at the time of entry of the petitioners, permission to the 5th respondent was in existence. The petitioners have completed their course. The examination is conducted by the 4th respondent University. The petitioners are discriminated as against the batch of students, who passed out in the year 2008-09, and are similarly placed students belonging to Shri Satya Sai Medical College, as the 2nd respondent has recommended for grant of recognition to the said College, which in turn, was duly accepted by the 6th respondent. For no fault of them, the petitioners are unable to do their P.G.Course. Therefore, considering the facts of the case, the writ petition will have to be allowed. Learned Senior Counsel made substantial reliance upon the following decisions:

''(1) Suresh Pal and others Vs. State of Haryana and others, (AIR 1987 SC 2027);

(2) Apollo College of Veterinary Medicine Vs. Rajasthan State Veterinary Council and others, ((2015) 2 SCC 291);

(3) Dr.Ujwal Narayanrao Chirde Vs. Union of India through Secretary, Ministry of Labour and Employment & Others, (CDJ 2015 BHC 913) and

(4) Medical Council of India Vs. M.G.R.Educational and Research Institute University and another, ((2015) 4 SCC 580).'

Submissions of the respondents:

6. Mr.V.P.Raman, learned counsel appearing for the 2nd respondent submitted that ample opportunities have been given to the 5th respondent to comply with the deficiencies pointed out. Despite the order of Apex Court giving one more opportunity, deficiencies remain as such. As the 5th respondent is not included in the I Schedule along with the 4th respondent University as required under Section 11 (2) of the Indian Medical Council Act, 1956, the petitioners are not entitled for the relief. There is a difference between the permission and recognition. The question of recognition would come into consideration at the time of completion of five years. The 5th respondent has lost permission for the years 2014-15 and 2015-16. Even as per the report submitted before this Court, the 5th respondent has not complied with the deficiencies pointed out. Accordingly, decision has been made not to recognise and approve the 5th respondent for the award of MBBS Degree. Therefore, no interference is required. Learned counsel submitted that the ratio laid down in the above said decisions do not have any application to the case of the petitioners.

7. Learned counsel appearing for the 4th respondent University submitted that mere provisional affiliation given without complying with Section 11(2) would not give any legal right to seek the prayer sought for. The provisional certificates have been given to the petitioners based upon wrong facts, as the said respondent was not aware of the correct facts and unfortunately they have not been informed of the subsequent developments.

8. Learned counsel appearing for the 6th respondent submitted that as and when the said respondent would look into the matter, appropriate orders would be passed based upon the relevant materials.

9. It is the case of the petitioners, being innocent students, they were made to suffer by the inaction or failure to comply with the conditions on the part of the 5th respondent. Thus, only question is the appropriate relief qua the petitioners and not from the point of the 5th respondent. Therefore, this Court is not inclined to go into the issue of deficiencies, which are said to be not complied with by the 5th respondent, perhaps that is the reason, no permission

has been granted for the subsequent years, which this Court is not concerned with in this writ petition.

10. The fact that the petitioners were admitted to the 5th respondent by following the ratio as recorded above and cleared the examination conducted by the 4th respondent University, is not in dispute. Now, they have also completed the CRRI. Because of the failure of the 5th respondent to comply with the requirements as mandated under law, admittedly, it has not been included in the I Schedule. When the 5th respondent is not included in the I Schedule, then the MBBS Degrees awarded to the petitioners would not become a recognised medical qualification under the Act. Thus, the temporary certificates given by the 4th respondent University has got no legal sanctity and therefore the submission of the learned Senior Counsel appearing for the petitioners placing reliance upon the same to allow the writ petition cannot be accepted.

11. However, what is to be seen is, the interest of the students. In *Suresh Paul and others Vs. State of Haryana and others*, (AIR 1987 SC 2027), while dealing with the Certificate course in Physical Education, which was derecognised subsequently, the Apex Court was pleased to hold as follows:-

"3. We are of the view that since at the time when the petitioners joined the course, it was recognised by the Govt. of Haryana and it was on the basis of this recognition that the petitioners joined the course, it would be unjust to tell the petitioners now that though at the time of their joining the course it was recognized, yet they cannot be given the benefit of such recognition and the certificates obtained by them would be futile, because during the pendency of the course it was derecognized by the State Govt. on 9th January, 1985. We would, therefore, allow the appeal and direct the State Govt. to recognize the certificates obtained by the petitioners and others similarly situate as a result of completing the certificate course in Shri Hanuman Yayayam Prasarak Mandal Amravati for the purpose of appointment as Physical Training Instructor in Govt. Schools in Haryana. Of course, if any person has joined the certificate course after 9th January, 1985 he would not be entitled to the benefit of this order and any certificate obtained by him from the said Institute would be of no avail. There will be no order as to costs of the appeal."

12. In *Apollo College of Veterinary Medicine Vs. Rajasthan State Veterinary Council and others*, ((2015) 2 SCC 291), while dealing with a *pari materia* provision, it has been held by the Apex Court in the following manner:

"45. The Division Bench of the High Court, in our opinion, was manifestly in error in holding that since

B.V.Sc. & A.H. degree possessed by the students was not one obtained from a recognized College it could not be treated as a valid qualification for the purpose of registration under the Veterinary Council of India (Registration) Regulations, 1992 and for other purpose.

46. Similar is the position with regard to students of Mahatma Gandhi College. In fact favourable reports were given, by the Inspection Committee all time did Veterinary Council of India allowed the College to admit students and recommended the Central Government to amend the First Schedule by entering the name of the College. It is only when the students who have passed out from College moved before the High Court for direction to the Central Government to issue appropriate notification including the Mahatma Gandhi college, in the First Schedule, the Veterinary Council withdrew the recommendation. What we observed with regard to students who have passed out from Apollo College is equally applicable to the students who have passed out from the Mahatma Gandhi College. In fact the subsequent development, as noticed above, shows that the Veterinary Council of India again recommended Central Government to recognize the Apollo College and Mahatma Gandhi College and the Central Government has already made certain queries.

47. In the facts and circumstances of the case, we are of the view that the Division Bench of the High Court should have given a possible legal solution in respect to the students who have already passed out from the Apollo College and the Mahatma Gandhi College affiliated to Swami Keshwanand Rajasthan Agricultural University, Bikaner by directing the Central Government to make appropriate amendment in the First Schedule of the Indian Veterinary Council Act, 1984 so as to include the Apollo College and the Mahatma Gandhi College in the First Schedule for the purpose of recognition of B.V.Sc. & A.H. degree on or before 11th July, 2011 in so far as it relates to Apollo College and 8th December, 2011 in respect of Mahatma Gandhi College. We direct accordingly. So far as the other students who have been admitted in the Apollo College and the Mahatma Gandhi College and are pursuing their studies are concerned the Central Government is directed to call for a fresh report from the Veterinary Council of India and to pass appropriate order u/s 15 (2) r/w Section 21 (4) of the Indian Veterinary Council Act, 1984. In case it is not possible to recognize the Apollo College and the Mahatma Gandhi College beyond such date as ordered above, the Veterinary Council of India is directed to take steps to transfer the students to some other recognized Colleges

against their corresponding year to complete the B.V.Sc. & A.H. Course. "

13. The ratio laid down in the above two judgments have been taken note of by the Division Bench of the Bombay High Court in Dr.Ujwal Narayanrao Chirde Vs. Union of India through Secretary, Ministry of Labour and Employment & Others, (CDJ 2015 BHC 913). In that case, the Bombay High Court was dealing with the case of post graduate medical students, who joined the course when permission under Section 10-A of the Indian Medical Council Act, 1956 was in force. The following paragraphs of the said judgment would be apposite:

"9. We are therefore of the view that since, at the time when the petitioners joined the post graduate course the respondent No.2 had permission under Section 10-A of the Indian Medical Council Act, 1956 and it was on the basis of this permission that the petitioners joined the course, the petitioners' medical qualifications on the basis of the post graduate course of study offered by respondent No.2 shall be a recognized medical qualification for the purpose of the said Act, irrespective of the fact that the respondent No.2 has decided to stop taking fresh students and has decided to discontinue the college-respondent No.2. It would otherwise, in any event, be unjust and unfair to the petitioners if they are told that though at the time of their joining the course, college was recognised but they cannot be given the benefit of such recognition and the certificates obtained by them would be futile, because during the pendency of the course or just before completion of the course the respondent No.5 decided to close down respondent No.2.

.....

12. The petitions are hereby disposed of by observing that the medical qualifications that the petitioners will be granted when they successfully clear their examination conducted by respondent No.2/4 shall be a recognised medical qualification for the purposes of the Indian Medical Council Act, 1956. The respondents to recognize the post graduate degree that may be awarded to the petitioners on completion of post graduation examination scheduled to be held in May-2015 or May 2016, as the case may be, for all purposes."

14. In a recent judgment, the Apex Court in Medical Council of India Vs. M.G.R.Educational and Research Institute University and

another, ((2015) 4 SCC 580), considering the case of students, who are admitted in a College for which the recognition earlier given was withdrawn, and who have undergone the entire course of study and thereafter waiting to commence the internship, held as follows:-

'42. We also find a substantial difference between the referred case and the present appeals inasmuch as in A.P. Christian Medical Educational Society, ((2015) 4 SCC 580), the students had undergone one or two years of study. However, in the present appeals they have undergone the entire course of study and are now waiting to commence their internship. Having spent five years in pursuing their MBBS course, to now tell the students that they have simply wasted their time would hardly be a just and fair view to take. The students in the present case appear to be mere pawns in a bigger game played by the Institute and the College in which the MCI, the MH&FW, the UGC and the MHRD have participated as spectators. We cannot let the matter rest at that simply because the admission of the 2nd batch of students in the academic year 2009-10 has been recognized and approved by the MHRD.

15. It appears that there is no specific provision to deal with the interest of the students in a situation like this. However, the 2nd respondent did consider the said issue with respect to Shri Satya Sai Medical College in the letter of the 2nd respondent dated 1.5.2014, the relevant portion of which is extracted hereunder:

'The Members of the Executive Committee of the Council considered that the students were admitted in the Medical College after the grant of permission by the Central Government on the recommendation of the Council. It was also considered that the annual renewals of permission were granted to the Medical College on the students who were admitted from 2008-09 to 2012-13 on valid permission given by the Central Govt on the recommendation of the MCI cannot be made to suffer at this hour for the misdeeds of the management of Melmaruvathur Adhiparashakti Institute of Medical Sciences & Research. The members of the Executive committee observed that in the similar facts and circumstances in the case of Shri Satya Sai Medical College, the then Board of Governors in super-session of the Council to safeguard the interest of the students who were not at all at fault had decided and recommended to the Central Government to grant recognition to the Medical College. The Central Government accepted the recommendation of the MCI and issued Notification dated 27/11/2013 with respect to the students who had been admitted on the strength of valid letter of permission of Central Government/Board of Governors.'

16. Thus, it is clear that for a similarly placed students, though studying in a different College, recommendations were indeed made by the 2nd respondent and accepted by the Government viz., the 6th respondent (since impleaded). There is no reason why the said yardstick shall not be adopted to the students of the 5th respondent. There is no material to hold that case of the petitioners is different with that of the students in that case. Hence, this decision coupled with the observation in paragraph No.42 of the judgment of Apex Court in Medical Council of India Vs. M.G.R.Educational and Research Institute University and another, ((2015) 4 SCC 580) would certainly come to the aid of the petitioners. Though in the said decision, the facts would reveal the illegality committed by the College, the present case is a better one as at the time of entry of the petitioners, there was indeed a proper permission and hence the ratio laid down therein would apply to the case on hand with all fours. For the same reasoning, this Court is of the view that the direction given thereunder to the students to undergo the examination once over again may not have an application to the case on hand, since in that case, examinations have been conducted by the Management as against the present case, when it was done by the 4th respondent University. There is also no quarrel about the nature of examinations conducted by the 4th respondent University. Perhaps, that is the reason why even the 2nd respondent did not impose any condition on the students of Shri Satya Sai Medical College. Therefore, this Court is of the view that the petitioners are entitled to succeed.

17. Accordingly, the 2nd respondent is directed to send his recommendations to the 6th respondent by only taking into consideration of the piquant situation in which the petitioners and other students joined in the year 2009-10 are placed, within a period of four weeks from the date of receipt of copy of this order and based on the same, the 6th respondent will have to pass appropriate orders to include the petitioners along with the 5th respondent for the relevant year within a period of eight weeks thereafter, thus making it clear that it is applicable only to the students who joined in that particular year. The order passed in the writ petition may also be made applicable to the students who joined in the year 2008-09, as they are also similarly placed. This direction, though positive in nature, is passed also by taking note of the decision taken by the 2nd respondent in respect of Shri Satya Sai Medical College, which was duly accepted by the 6th respondent. Insofar as the next batch of students after the petitioners are concerned, the respondents viz., particularly, the 2nd respondent will have to take appropriate decision in consultation with the other respondents, if so required. As the petitioners would be deprived from being considered for the P.G. Course, the respondents are directed to permit the petitioners to take part in the selection process of the said P.G.Course, as if they have valid and recognised degree. Considering the facts of the case, this Court is of the view that the 2nd respondent could have been more diligent while deciding not to recognise the Degrees, by taking appropriate steps to protect the interests of the students and so is the case of the other

respondents. Therefore, this Court deems fit that it would be appropriate for the 2nd respondent to take appropriate steps much in advance in future when a similar situation might arise.

18. The writ petition is ordered accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

- 1.The Secretary,
Health and Family Welfare Department,
State of Tamil Nadu,
Fort St. George, Chennai-600 009.
- 2.The Secretary, Medical Council of India,
Sector 8, Dwaraka Phase-1,
New Delhi-110077.
3. The President, Tamilnadu Medical Council,
No.914, Poonamallee High Road,
Arumbakkam, Chennai-600 106.
4. The Registrar, Tamilnadu Dr. M.G.R.
Medical University, No.69, Anna Salai,
Guindy, Chennai-32.
5. The Dean
Melmaruvathur Adhiparasakthi Institute of
Medical Sciences & Research, Melmaruvathur,
Kancheepuram District-603319.
6. The Secretary, Union of India,
Ministry of Health and
Family Welfare Dept.,
New Delhi.

+1 cc to Mrs.G.Hemawathi, Advocate, sr.50198
+1 cc to Mr.Anand DAvid, Advocate, sr.49920
+1 cc to Mr.V.P.Raman, Advocate, sr.49812
+1 cc to Mr.A.S.Balaji, Advocate, sr.49488
+4 ccs to Mr.A.Edwin Prabakar, Advocate, sr.49806

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W.P.No.16812 of 2015