

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.09.2015

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

W.P.Nos.19133 & 15909 of 2015
and
M.P.Nos.1, 1 and 2 of 2015

Christian Medical College,
Vellore Association,
Ida Scudder Road,
Vellore-632 004
rep.by its Secretary

... Petitioner in both
the W.Ps.

Vs

1.The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi-110 001

2.Medical Council of India,
Pocket-14, Sector 8,
Dwarka Phase-I,
New Delhi - 110 077

... Respondents in
both the W.Ps.

Prayer in W.P.No.19133 of 2015: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus to call for the records culminating in communication No.U.12012/258/2015-ME(P-II) dated 2.6.2015 issued by the first respondent and quash the same and consequently direct the respondents to process the application dated 29.4.2015 for introduction of a new course, MD-Family Medicine with 4 seats in accordance with the opening of a New or Higher Course of Study or Training (including Post-Graduate Course of Study or Training) and increase of Admission Capacity in any course of study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000, if the application is otherwise in order.

Prayer in W.P.No.15909 of 2015: Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondent to accept the application dated 29.4.2015 submitted by Christian Medical College, Vellore, for introduction of MD-Family Medicine with 4 seats and grant permission for the introduction of the new course, if the application is otherwise in order.

For Petitioner in .. Mr.Krishna Srinivas for
both W.Ps. M/s.S.Ramasubramaniam
& Associates

For Respondents .. Mr.Su.Srinivasan,Asst.Solicitor General
in both W.Ps. of India (for R1 in W.P.No.19133/15)
Mr.S.Arockiam,CGSC
(for R1 in W.P.No.15909/15)
Mr.V.P.Raman (for R2 in both W.Ps)

COMMON ORDER

The petitioner is considered to be a premier institute, imparting education in the field of medicine, apart from catering to the general public. On 3.3.2014, the petitioner made an application for affiliation of a new course, namely, M.D.Family Medicine, to the Tamil Nadu Doctor M.G.R.University. A letter of consent was given by the University on 4.12.2014 for starting the course M.D.Family medicine with four seats, for the academic year 2015-16. Thereafter, the University issued a letter of consent for affiliation, which is valid for the entire duration of Course i.e. for three years, on 26.12.2014.

2. The petitioner made the application through E-mail and Fax on 29.4.2015, since the last date for submission of application expires on 30.4.2015. By the order impugned, the proposal was returned on the sole ground that the application was received on 1.5.2015 i.e. after the last date, namely 30.4.2015.

3. In fact, the petitioner sought very same permission for increase of seats in MD Geriatric Medicine. The first respondent passed the impugned order dated 2.6.2015, returning the proposal for starting MD Family Medicine and also the proposal for increasing seats in MD (Geriatrics). The petitioner earlier filed a writ petition in W.P.No.15908 of 2015 seeking a direction to the respondents to accept the application, dated 29.4.2015, for increase of seats in MD-Geriatric Medicine, in which, this Court passed an order dated 30.06.2015, directing the first respondent to consider the said application on merits.

4. Now, W.P.No.19133 of 2015 has been filed seeking to challenge the said impugned order and for a consequential direction to the respondents to process the application dated 29.4.2015 for introduction of a new course - MD (Family Medicine) and W.P.No.15909 of 2015 has been filed for a direction to accept the application, dated 29.4.2015.

5. Learned counsel for the petitioner submitted that admittedly, on 29.4.2015 the petitioner sent the application for starting a new course in MD-Family Medicine. The fax message as well

as E-mail has been received by the respondents on the very same date. It is only the hot copy which was received by the respondents on 1.5.2015. The learned counsel would further submit that considering the facts as a whole, this Court, in the earlier writ petition, passed the order in favour of the petitioner, which has also been complied with by the respondents with respect to MD-Geriatric medicine.

6. The petitioner did have the consent for starting MD Family Medicine with four seats from the year 2015-16 onwards. However, the University, by mistake has granted affiliation only for one year i.e. for 2015-16. The petitioner would get the same rectified within the appropriate time, if so required. In any case, it cannot be construed as too fundamental to hold that the application made is incomplete. There is a difference between inadequacy and incomplete. A too hyper technical approach is not required in these matters. If the petitioner is said to be having the consent from the University for the year 2015-16, it is axiomatic that the same will have to be made applicable to the subsequent years. If the petitioner was having the infracture for 2015-16, the same would ipso facto be applicable for the subsequent years. Thus, a procedural lapse by itself cannot be a ground to reject the application from the point of view of the petitioner as well as the public interest. Hence, the learned counsel submitted that the writ petitions will have to be allowed.

7. The learned Assistant Solicitor General appearing for the Union of India submitted that the application though received on 29.4.2015, did not contain the requisite fees, which is disputed by the learned counsel appearing for the petitioner.

8. Mr.V.P.Raman, learned counsel appearing for the Medical Council of India, submitted that it is a question of compliance with the law. The petitioner's application is defective and the same cannot be construed as an application in the eye of law. The learned counsel, in support of his submission made reliance upon the decision rendered by the First Bench of this Court in Medical Council of India rep.by its Secretary Vs. SRM University, rep.by its Registrar (W.A.No.1413 of 2008, dated 5.12.2008).

9. Heard the learned counsel appearing for all the parties and perused the records carefully.

10. The petitioner made an application for introduction of a new course, viz., MD-Family Medicine with four seats, through e-mail and fax, on 29.4.2015. The e-mail and fax were duly received by the first respondent on the very same day. The hot copy reached the Government on 1.5.2015. The question of payment of fees is a factor to be considered at the time of scrutinizing the application. In other words, it can be termed only as procedural. The Demand Drafts have also been taken as early as on 27.4.2015. The copies of the

same have also been enclosed along with the fax. The order impugned shows that the application of the petitioner has been rejected not on that ground. Thus, the objection raised on that ground cannot be countenanced and accordingly, the same is rejected.

11. The second submission made on the ground that the application was not complete is also rejected for the very same reasons. It is the case of the petitioner that the entire records have been sent not only by way of fax, but also by e-mail. The order impugned has not been passed on that ground.

12. Coming to the objections raised by the learned counsel appearing for the Medical Council of India, this Court is afraid that the said objection cannot be raised by the said authority, as at best it can only be raised by the Union of India. Even otherwise, it is a matter to be looked into by the Government while considering the application on merits. Suffice it is to state that the petitioner did have the consent starting from the year 2015-16. Therefore, this Court is not willing to comment anything on that count. In other words, the question as to whether the consent given by the University can be taken as appropriate compliance or procedural one, is the matter to be decided by the Central Government.

13. As far as the judgment of the First Bench of this Court in SRM University, relied upon by the learned counsel for the Medical Council of India, is concerned, in paragraph Nos.4 and 5 of the judgment, it has been held as follows:

"4. Reference in this connection may be made to the judgment of the Honourable Supreme Court in the case of Dental Council of India vs. S.R.M.Institute of Science and Technology reported MANU/SC/0301/2004: AIR2004SC2057. In paragraph 10 of the said judgment, the Supreme Court did not approve of a similar interim order which was passed in that case. The observation made by the learned Judge in paragraph 10 is set out below:

When that is the position in law, the High Court ought not to have made an interim order to process the application even in the absence of the permission or essentiality certificate because the application will not be complete without being accompanied by permission or essentiality certificate by the State Government along with certain other documents. An incomplete application cannot be processed either by the Central Government or the Dental Council. The argument advanced on behalf of the respondents will set at naught the law that in certain cases the courts need not insist on production of permission or essentiality certificate of the State Government,

particularly, when the regulations insist upon the same.

5. In view of the above observations of the Honourable Supreme Court, the learned Judge of the writ court should not have passed the interim order in the way it has been passed. But in the facts and circumstances of the case, the matter has now become infructuous inasmuch as the Essentiality Certificate has now been issued by the State Government. So, even though the matter might have become infructuous, we set aside the interim order which was granted by the Court. The writ appeal is, however, dismissed as having become infructuous.

6. In view of the above, the writ petition also stands dismissed."

14. A careful reading of the entire judgment shows that the said judgment is not applicable to the facts of the present case, as the Central Government has to take a call on that. Admittedly, in the case on hand, no interim order has been passed. This Court is not dealing with the essentiality certificate also. Even in that case, the interim order granted was set aside, by taking note of the subsequent development, namely, the essentiality certificate having been issued by the State Government. Thus, this Court is not willing to accept the objection raised by the Medical Council of India. However, it is made clear that this Court has not expressed anything on the exercise of power by the Union of India in this regard.

15. This Court also will have to take into consideration not only the interest of the institution but also the public interest. Certainly, in the event of the petitioner getting appropriate permission, more qualified Doctors would come out, which would in turn help the society in getting appropriate medical assistance from them. Thus, this Court is of the view that in matters like this, too hyper technical approach is not required, at least to the extent of considering the application made by the Institution, which of course is required to be scrutinized and considered by the appropriate authorities on merits, which this Court is not concerned, in these writ petitions.

16. In view of the foregoing reasons and also the fact that the order passed by this Court in the connected writ petition, in W.P.No.15908 of 2015, has been complied with by the Central Government, these writ petitions are allowed. The Union of India/first respondent is directed to consider the application of the petitioner for introduction of MD-Family Medicine, on merits and in accordance with law. The petitioner is granted a further period of two weeks to re-submit the application returned. After receipt of

the same, the Central Government will have to pass appropriate orders on merits, within a period of eight weeks thereafter. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

msk

To

1.The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi-110 001

2.The Medical Council of India,
Pocket-14, Sector 8,
Dwarka Phase-I,
New Delhi - 110 077.

2 cc to Mr.S.Ramasubramaniam , Advocate Sr.No.49146

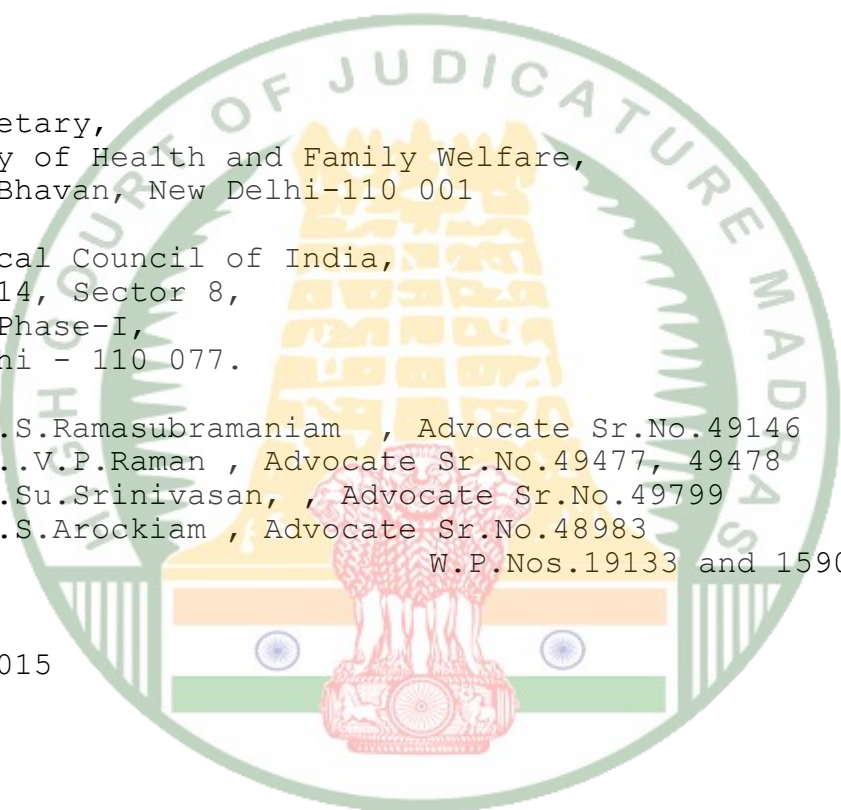
2 cc to Mr..V.P.Raman , Advocate Sr.No.49477, 49478

1 cc to Mr.Su.Srinivasan, , Advocate Sr.No.49799

1 cc to Mr.S.Arockiam , Advocate Sr.No.48983

W.P.Nos.19133 and 15909 of 2015

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pmk.1.10.2015



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