

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2015

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THE HONOURABLE Mr. JUSTICE T.S. SIVAGNANAM

W.P.No.27168 of 2014
and
M.P.Nos.1 and 2 of 2014

The Principal,
Ayurveda College, Coimbatore,
242/B, Trichy Road, Sulur,
Coimbatore-641 402,
Coimbatore District. Petitioner

vs.

- 1.The Union of India,
rep. by its Secretary,
Department of Health and Family Welfare
(Department of Ayurveda, Yoga & Naturopathy),
Unani, Siddha and Homoeopathy (AYUSH),
IRCS Building, 1st Red Cross Road,
New Delhi.
- 2.The Central Council of Indian Medicine,
rep. by its Secretary,
Institutional Area, Janakpuri,
New Delhi - 110 058.
- 3.The Commissioner of Indian Medicine
and Homoeopathy,
Chennai-600 106.
- 4.Tamil Nadu Dr. M.G.R. Medical University,
rep. by its Registrar,
No.69/40, Anna Salai,
Guindy, Chennai-600 032.
- 5.The Controller of Examinations,
Tamil Nadu Dr. M.G.R. Medical University,
No.69/40, Anna Salai,
Guindy, Chennai-600 032. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 5th respondent Controller of Examination of TN Dr. M.G.R. Medical University vide Letter No.EX.IV(3)/17944/2014 dated 28.07.2014

informing the college that its request for registering the 6 students (in management quota) admitted in the academic session 2013-2014 could not be complied with, quash the same, and further direct the 4th and 5th respondents herein to register the 6 students (list of students annexed) of the petitioner's college admitted for the BAMS Degree course in the academic year 2013-2014 and to permit them to take the periodical University examinations till the completion of the course including those slated to commence on 15.10.2014 or on any other date and to take the results thereof.

For Petitioner : Mr.P.Godson Swaminath
for
M/s.Isaac Mohanlal

For Respondents : Mr.Su.Srinivasan
Asst. Solicitor General of India
for R1 and R2

Mr.V.Jayaprakash Narayanan
Spl. G.P. for R3

Mr.Sanjai Ramaswami
for R4 and R5

ORDER

Heard Mr.P.Godson Swaminath, learned counsel appearing for the petitioner and Mr.Su.Srinivasan, learned Assistant Solicitor General of India appearing for the respondents 1 and 2; Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing for the 3rd respondent and Mr.Sanjai Ramaswami, learned counsel appearing for the respondents 4 and 5.

2. The petitioner is an Ayurveda College and they have challenged the order passed by the 5th respondent, dated 28.7.2014, viz., The Controller of Examinations of Tamil Nadu Dr. M.G.R. Medical University, Chennai. By the said order, the petitioner Institution has been informed that request for registering 6 students admitted in 2013-2014 against the lapsed seat adjustment of 2012-2013 for Bachelor of Ayurvedic Medicine & Surgery (BAMS) Degree Course could not be complied with as per the norms of the University.

3. The facts which are necessary for disposal of the writ petition are that the petitioner Institution is an un-aided Institution offering Bachelor of Ayurvedic Medicine & Surgery (BAMS) Course. The respondents 1 and 2 have approved the petitioner Institution and granted permission to admit 40 students for each academic year. As per the seat sharing ratio with the State, the Government is entitled to fill up 26 students and the petitioner Institution is entitled to fill up 14 seats under Management quota.

The last date fixed by the respondents 1 and 2 to fill up the seats is 15th November of each year and therefore, till the said cut off date, the Government is entitled to send the names of the candidates, who have been selected to fill up those 26 seats. Further, it is well within the authority of the petitioner to fill up 14 seats under Management quota. During the said year up to 15th November, the Government has not sponsored any candidate as against the Government quota of 26 seats. Therefore, on the 15th of November, the petitioner Institution has filled up 12 seats out of 26 seats and the remaining seats remained unfilled. When the petitioner Institution approaches the University for granting permission to approve admission, the 4th respondent University insisted upon adjustment of candidates as against the next academic session in the ratio of 6 per year. By the impugned proceedings permission has been denied to the petitioner Institution to register 6 candidates, who have been admitted for 2013-2014 session against the lapsed seats for 2012-2013 on the ground that they have filled up the lapsed seats without prior approval of the respondents.

4. Two points fall for consideration in this writ petition. Firstly, jurisdiction of the respondents 1 and 2. Admittedly, seat sharing ratio is only between the petitioner Institution, the State Government and the respondents 4 and 5. So far as respondents 1 and 2 are concerned, they have granted approval for 40 seats for the petitioner Institution. Admittedly, the petitioner Institution has not insisted to raise the sanctioned strength. Therefore, there cannot be any grievance in this regard for the respondents 1 and 2 to interfere in the matter.

5. The second issue is whether the petitioner Institution is entitled to fill up 12 seats out of 26 Government Quota seats. The explanation given by the petitioner Institution for not being able to obtain prior approval till the last date of 15th November is that the Government did not sponsor any candidate. Therefore, they could not obtain prior approval till 15th November and till that date the Government had right to fill up those 26 seats and thereafter, the petitioner Institution was able to fill up 12 seats out of 26 seats and the remaining seats remain vacant. In such circumstances, it is to be seen that whether the respondent University can insist upon the petitioner Institution to surrender those 12 seats for next successive academic years at the ratio of 6 per year. Admittedly, the petitioner Institution did not fill up all 26 seats and the remaining seats lapsed. For the next academic year, 2013-2014 also 4 seats were lapsed seats and the petitioner Institution filled only 3 seats and 1 seat was remaining vacant. In such circumstances, the respondent University was not justified in insisting upon the petitioner Institution to surrender 12 seats at the ratio of 6 per academic year successively for two years.

6. The Honourable Division Bench of this Court in the case of Medical Council of India, New Delhi v. The Chairman, Sree Mookambika

Institute of Medical Sciences, Kulasekharam and others, reported in 2011 (1) CTC 41 was considering an identical issue, considering the regulation notified by the Indian Medical Council and the Honourable Division Bench pointed out that the Medical Council would certainly have the power to regulate the admission of students in the Medical College within the sanctioned intake capacity and if the admission is made over and above the sanctioned strength, it would certainly have the power to take appropriate action and power to take such action is not available if the seats are filled within the sanctioned strength. The decision of the Honourable Division Bench though rendered interpreting the regulation published by the Indian Medical Council, the legal principle laid down is squarely applicable to the facts of the case on hand.

7. As pointed out earlier, the petitioner Institution has not admitted over and above the sanctioned strength of 40 seats and the petitioner Institution cannot be solely blamed for not being able to secure prior approval, since up to the last date, namely, 15th November, the Government did not fill the seats and they proceeded to fill up the seats under Management quota. Therefore, the conduct in filling 12 seats out of 26 seats under Government quota under lapsed category cannot be considered as being the action lacking in bonafide.

8. In the result, the writ petition is allowed and the impugned order 28.7.2014 passed by the 5th respondent is quashed and the respondents are directed to approve the request made by the petitioner and register 6 students, who are admitted in the academic year 2013-2014 against the lapsed seat adjustment for the academic year 2012-2013 for Bachelor of Ayurvedic Medicine & Surgery Course. Pursuant to the interim order passed by this Court on 13.10.2014, the students have already written the examination, however, there was a direction not to declare the results. In the light of the writ petition being allowed, the respondent University is directed to publish the results. The above direction shall be complied with by the respondent University, within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, M.P.Nos.1 and 2 of 2014 are closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

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To

- 1.The Secretary,
Department of Health and Family Welfare
(Department of Ayurveda, Yoga & Naturopathy),
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- 5.The Controller of Examinations,
Tamil Nadu Dr. M.G.R. Medical University,
No.69/40, Anna Salai,
Guindy, Chennai-600 032.

- 1 cc to Mr.Su. Srinivasan, Advocate,a Sr. 6409
1 cc to Mr. Sanjay Ramaswami, Advocate, Sr. 6180
1 cc to Mr. Isaac Mohanlal, Advocate,s Sr. 6056
1 cc to Government Pleader, Sr. 6363

W.P.No.27168 of 2014

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