

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2015

CORAM

THE HONOURABLE Mr. JUSTICE T.S. SIVAGNANAM

W.P.No.27225 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, 1<sup>st</sup> 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 State of Tamil Nadu,  
rep. by its Secretary,  
Department of Health & Family Welfare,  
Fort St. George, Chennai-600 009.

4.The Commissioner of Indian Medicine  
and Homoeopathy,  
Chennai-600 106.

5.The Secretary,  
Selection Committee,  
Indian Medicine & Homeopathy,  
Arumbakkam, Chennai-600 106.

6.Tamil Nadu Dr. M.G.R. Medical University,  
rep. by its Registrar,  
No.69/40, Anna Salai,  
Guindy, Chennai-600 032.

7.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 7<sup>th</sup> respondent Controller of Examinations of the University vide Letter No.Ex.IV(1)/44484/2014 dated 17.09.2014, quash the same, and further direct the respondents herein to permit the 4 students (list of students annexed) admitted in the petitioner-College during the academic year 2013-2014 to pursue the Bachelor of Ayurveda Degree Course (BAMS) and to take periodic examinations (both theory & practical), including the ensuing 1<sup>st</sup> year examination scheduled to commence on 15.10.2014 or any other date.

For Petitioner : Mr.P.Godson Swaminath  
for  
M/s.Isaac Mohanlal  
For Respondents : Mr.Su.Srinivasan  
Asst. Solicitor General of India  
for R1, R2 & R4  
Mr.V.Jayaprakash Narayanan  
Spl. G.P. for R3 & R5  
Mr.Sanjai Ramaswami  
for R6 & R7

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, 2 & 4; Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing for the respondents 3 & 5 and Mr.Sanjai Ramaswami, learned counsel appearing for the respondents 6 & 7.

2. The petitioner is an Ayurveda College and they have challenged the order passed by the 7<sup>th</sup> respondent, dated 17.9.2014, viz., The Controller of Examinations of Tamil Nadu Dr. M.G.R. Medical University, Chennai. By the said order, the petitioner Institution was called upon to produce the prior permission letter received from the Government for the admission of the lapsed seats for the academic year 2013-2014 made by the Management. In the said impugned order, it was also informed to the petitioner Institution that if prior permission has not been obtained from the Government, the candidates admitted under the lapsed seat category will not be registered and will not be permitted to write the First Year BAMS, BNYS, BSMS ad BHMS Examinations, to be held in the month of October 2014/February, 2015.

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 15<sup>th</sup> November of each year and therefore, until 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.

3.1. The 5<sup>th</sup> respondent - Secretary of the Selection Committee vide its e-mail dated 30.10.2013 sent a list of 24 candidates to be admitted in the Government Quota and also sent another list of 2 candidates to be admitted in the Government Quota. Out of these 26 seats, only 24 candidates joined as on 01.11.2013 and the petitioner Institution by its letter dated 01.11.2013 communicated the same to the 5<sup>th</sup> respondent. The petitioner Institution sent a letter dated 08.11.2013 to the 4<sup>th</sup> respondent informing the details of 4 candidates, who have not joined and requested permission to fill up the 4 vacant seats in Government Quota.

3.2. As there was no response from the 4<sup>th</sup> respondent, the petitioner Institution admitted 4 candidates in the lapsed/vacant seats from the College wait list. The petitioner Institution submitted a representation on 11.6.2014 in person to the 6<sup>th</sup> respondent and requested for registration of the candidates. By the impugned proceedings dated 17.9.2014, the University informed the petitioner to submit prior permission letter received from the Government for admission of the lapsed seats for the academic year 2013-2014 and if prior permission has not been obtained from the Government, the candidates admitted under the lapsed seats category will not be registered and will not be permitted to write the first year BAMS examinations.

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 6 and 7. 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 nor admitted over and above 40 students. 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 4 lapsed seats which fell under Government Quota. The explanation given by the petitioner Institution for not being able to obtain prior approval is that since there was no response for the representation before the cut off date, the College admitted 4 candidates in the lapsed vacant seats. The academic year 2013-2014, 4 seats were lapsed seats and the petitioner Institution filled 4 seats. In such circumstances, the respondent University was not justified in insisting upon the petitioner Institution to produce prior permission letter from the Government for admission of the lapsed seats for the academic year 2013-2014.

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, 30<sup>th</sup> November, the Government did not fill the seats and therefore the Management proceeded to fill up the seats. Therefore, the conduct in filling 4 seats under lapsed category cannot be considered as being an action lacking in bonafide.

8. In the result, the writ petition is allowed and the impugned order 17.9.2014 passed by the 7<sup>th</sup> respondent is quashed and the respondents are directed to approve the request made by the petitioner and register 4 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 (Lok adalat)

/true copy/

Sub Asst. Registrar

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To

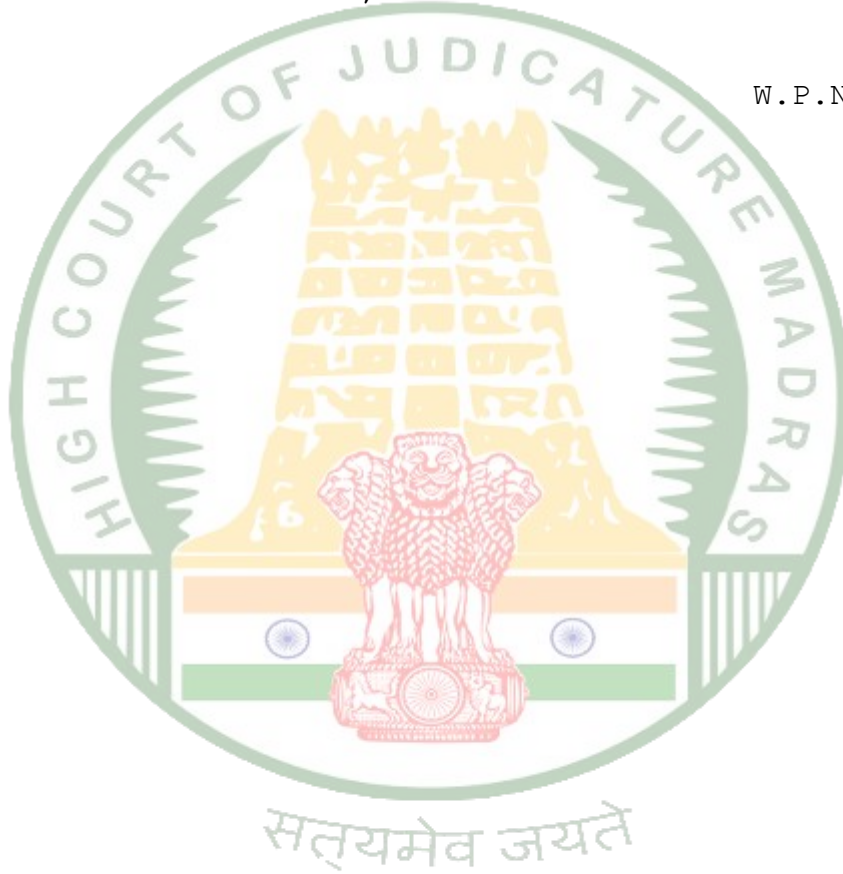
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1 cc to Mr.Su Srinivasan, Assistant Solicitor General, sr. 6410  
1 cc to Mr. Sanjay Ramawami, Advocate, sr. 6181  
1 cc to Mr.Isaac Mohanlal, Advocate, sr. 6055  
1 cc to Government Pleader, Sr. 6362

W.P.No.27225 of 2014

SR (CO)  
kk 3/3



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