

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.08.2016

Delivered on : 31.08.2016

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

WP.Nos.20890 & 20891/2016

&

WMP.Nos.17974/2016 & 17900/2016

Paavai College of Pharmacy and
Research administered by Pavai Varam
Educational Trust, No.64-C, Rotary
Nagar, Namakkal Road, Rasipuram 637406
Namakkal District

rep.by Chairman Mr.V.Natarajan Petitioner in WP.No.20890/2016

Sengunthar College of Pharmacy
administered by Sengunthar Charitable Trust
1/311-1, Sengunthar Nagar, Thiruchengodu
Namakkal District, rep.by the
Secretary and Correspondent
A.Baladhandapani

Petitioner in WP.No.20891/2016

Versus

1 The Member Secretary
All India council for Technical
Education, 7th Floor, Chandralok Building, Janpath
New Delhi 110 001.

2 The Regional Officer
All India Council for Technical
Education, Sashtri Bhavan
Haddows Road,
Chennai-6.

Respondents in both WPs.

Prayer in WP.No.20890/2016:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the 1st respondent in F.No.Southern/2016/1-28666650481-LOR dated 30.04.2016, quash the

same and further direct the respondents to conduct necessary inspection and grant recognition for the 4 year B.Pharm course conducted by the petitioner's college from the academic year 2016-17 by accepting the planning permission for the building granted by Kalyani Panchayat dated 20.02.2010.

Prayer in WP.No.20891/2016:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the 1st respondent in F.No.Southern/2016/1-2864028021-LOR dated 30.04.2016, quash the same and further direct the respondents to conduct necessary inspection and grant recognition for the 4 year B.Pharm course conducted by the petitioner's college from the academic year 2016-17 by accepting the planning permission for the building granted by Mandagapalayam Panchayat dated 20.10.2007.

For Petitioners in
both WPs. : Mr.V.Selvaraju, Senior Counsel
assisted by Mr.D.Prabhu Mukunth
Arunkumar

For RR 1 & 2 in
both WPs : Mrs.A.L.Gandhimathi

COMMON ORDER

By consent, the writ petitions are taken up for final disposal. Since the issue involved in both the writ petitions, is one and the same, they are disposed of by the following common order.

WP.No.20890/2016:-

2 The Chairman of the petitioner / Trust, in the affidavit filed in support of this writ petition, avers as follows:-

[a] The Trust has started various Institutions and Colleges in and around Namakkal District for the benefit of poor and downtrodden and a decision has been taken to start a four year B.Pharmacy Degree Course [B.Pharm] at R.Puliyampatti, Kalyani Village, Puduchatram Block, Namakkal District. The petitioner / Trust for that purpose, had purchased 3.79 acres of land and constructed more than 8000 sq.m. of building for the purpose of putting up a Pharmacy College and the President of the Local Body, viz., Kalyani Village Panchayat, had granted Planning Approval to the said buildings vide Approval Order dated 20.02.2010. The petitioner / Trust had initiated started a MBA Programme [Master of Business Administration] in the name of Paavai Group of Institutions [Integrated Campus] and it was

also approved by the All India Council for Technical Education [AICTE] - respondents herein, and vide order dated 02.08.2010, had granted recognition to start the said course and for that purpose, it also accepted the Planning Approval dated 20.02.2010, granted by the Local Body.

[b] The MBA Course started during the academic year 2010-2011 was discontinued from the academic year 2015-2016 and a Closure Report to that effect, was filed before the 2nd respondent on 07.04.2015 and it also acknowledged the same and as such, the running of MBA Course cease to function from the academic year 2015-2016 onwards.

[c] The competent authority to grant recognition to start a Four Year B.Pharm. Degree Course is the 2nd respondent and before them, the petitioner submitted an application for recognition through on-line on 28.02.2016 and it was generated on 09.03.2016 and the requisite processing fee of Rs.7 lakhs was also remitted on 28th and 29.02.2016. Various procedural formalities have to be complied with, such as infrastructural and other facilities for starting and running the said College and according to the petitioner, it had fulfilled all the relevant norms and regulations. The Scrutiny Committee of the 2nd respondent has scrutinised and considered all the certificates/documents enclosed along with the on-line application and its report was published in their official website on 09.03.2016 and according to the petitioner, the only deficiency pointed out was that the Building Plan was approved by the Local Body/Panchayat dated 20.02.2010, was only for MBA Course and it was not approved by the Director of Town and Country Planning.

WP.No.20891/2016:-

3 [a] The Trust has started various Institutions and Colleges in and around Namakkal District for the benefit of poor and downtrodden and a decision has been taken to start a four year B.Pharmacy Degree Course [B.Pharm] at Kosavapalayam, Thiruchengodu, Namakkal District. The petitioner / Trust for that purpose, had purchased 2.5 acres of land and constructed more than 3999 sq.m. of building for the purpose of putting up a Pharmacy College and the President of the Local Body, viz., Mandagapalayam Village Panchayat, had granted Planning Approval to the said buildings vide Approval Order dated 20.10.2007. The petitioner / Trust had initiated started a MBA Programme [Master of Business Administration] in the name of Sengunthar College of Business School and it was also approved by the All India Council for Technical Education [AICTE] - respondents herein, and vide order dated 13.08.2008, had granted recognition to start the said course and for that

purpose, it also accepted the Planning Approval dated 20.10.2007, granted by the Local Body.

[b] The MBA Course started during the academic year 2008-2009 was discontinued from the academic year 2015-2016 and a Closure Report to that effect, was filed before the 2nd respondent on 24.12.2015 and it also acknowledged the same and as such, the running of MBA Course cease to function from the academic year 2015-2016 onwards.

[c] The competent authority to grant recognition to start a Four Year B.Pharm. Degree Course is the 2nd respondent and before them, the petitioner submitted an application for recognition through on-line on 19.02.2016 and it was generated on 10.03.2016 and the requisite processing fee of Rs.7 lakhs was also remitted on 19.02.2016. Various procedural formalities have to be complied with, such as infrastructural and other facilities for starting and running the said College and according to the petitioner, it had fulfilled all the relevant norms and regulations. The Scrutiny Committee of the 2nd respondent has scrutinised and considered all the certificates/documents enclosed along with the on-line application and its report was published in their official website on 10.03.2016 and according to the petitioner, the only deficiency pointed out was that the Building Plan was approved by the Local Body/Panchayat dated 20.10.2007, was only for MBA Course and it was not approved by the Director of Town and Country Planning.

4 According to the petitioners, the amendment to section 47 of the Tamil Nadu Town and Country Planning Act, 1971, [TCP Act] came into being and a new section, viz., section 47[a] was inserted by way of the Amendment Act 46 of 2010 and under the said amendment, the power to grant planning permission, if the total construction plinth area is below 26850 sq.ft., is granted to the Regional Deputy Director of Town and Country Planning and anything over and above the same, is to be granted by the Director of Town and Country Planning. The said amendment was published in the Tamil Nadu Government Gazette dated 03.12.2010 and the said amendment is prospective from that date and it is not having retrospective effect. The petitioners would state that in all other States in the Country, building plans approved by the Local Bodies are being accepted by the respondents and whereas, only in this State, by misinterpreting the above said amendment, insisted for permission /approval from the Director of Town and Country Planning even in respect of the buildings which came into existence prior to the said amendment and citing the said reason, the 2nd respondent has rejected the petitioners' applications/permission vide orders dated

08.04.2016 and it was put to challenge by filing WP.Nos.14608 & 14609/2016 and the petitioners have also filed appeals before the 1st respondent and during pendency of the writ petition, the appeals also came to be rejected vide the impugned orders dated 30.04.2016 and challenging the legality of the same, the present writ petitions are being filed by the respective petitioners.

5 Mr.V.Selvaraj, learned Senior Counsel assisted by Mr.D.Prabhu Mukunth Arunkumar, learned counsel appearing for the petitioners, made the following submissions:-

[i] Section 47-A was inserted by way of the Amendment Act 46 of 2010 to the Tamil Nadu Town and Country Planning Act, and it came into effect in the form of Publication made in the Tamil Nadu Gazette dated 03.12.2010 and admittedly, it is prospective in nature and as such, it cannot be made applicable in respect of the buildings which came into existence prior to the said amendment and the said vital fact has been completely overlooked by both the respondents. The petitioners have also made necessary alterations/arrangements to suitably modify the existing buildings to enable them to start a full-fledged four year B.Pharm Degree Course and the only ground on which their applications came to be rejected is that, non-obtaining of planning permission from the Directorate of Town and Country Planning and in all fairness, the 2nd respondent ought to have conducted re-inspection leaving out the said unjustified requirement and ought to have found out as to whether the existing buildings with suitable modifications, is sufficient to run the B.Pharm Degree Course and since the only ground on which the applications came to be rejected is on account of the above cited reason, it warrants interference.

[ii] Learned Senior counsel appearing for the petitioners has also placed reliance upon the decisions reported in 2015 [6] CTC 737 [The Director of Matriculation Schools, Directorate of Matriculation Schools, DPI Campus, Chennai-5 V. Kaviyan School rep.by its Correspondent C.Deenathayalapandian, Indira Nagar, Malayakoundanpatti, Ammayanickanur, Nilakottai, Dindigul District] ; and 2013 WLR 925[DB] [The District Collector/Chairman, Local Planning Authority, Madurai District, Madurai and others Vs. Danial Thangaraj and another].

6 Per contra, Mrs.Al.Gandhimathi, learned counsel appearing for the respondents 1 and 2 in both the writ petitions, has invited the attention of this Court to the Counter Affidavits filed by the 2nd respondent on his behalf and also on behalf of the 1st respondent and would submit that the Scrutiny Committee, on perusal of the documents filed along with the respective applications seeking permission to start and run

B.Pharm Course, has noted down two deficiencies, viz., [a] The Certificate of the Sub Divisional Magistrate or Collector or Tahsildar, has not been submitted ; and [b] that the building plans were approved by the respective Local Bodies in the years 2010 and 2007 respectively for MBA Course and at present, there is no building plan approval issued by the competent authority as required by the All India Council for Technical Education Regulations [AICTE Regulations] for starting a B.Pharm Degree Course. It is the submission of the learned counsel appearing for the respondents that the altered regulations came to be amended in the year 2011 and as per the Approval Process Handbook being prepared in terms of the said amendment for starting of new Institutions/extension of approval, the building plan and the floor plan should be duly approved by the competent authority and it is mandatory and admittedly, the building plans produced by the petitioners were approved by the respective Local Bodies during the years 2010 and 2007 respectively and in the light of the new Regulations, the DTCP Approval is a must and since it has not been produced, the applications were rightly rejected. The learned counsel would further submit that insofar as the modification of the buildings to suit the requirement to start the B.Pharm Course is concerned, the Instructional areas and the Administrative areas have not been certified by the Architect as per the requirements and not also approved by the competent authority and the original as well as the Appellate Authority after due and proper application of mind, have rightly reached the conclusion to reject the applications and since the said decision has been taken by an Expert Body, it may not be normally interfered with by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India and prayed for dismissal of this writ petition.

7 This Court has considered the submissions made by the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents and also perused the Counter Affidavits and the typed set of documents filed in support of these writ petitions and the decisions relied on by the learned counsel appearing for the petitioners.

8 The Amendment Act 46 of 2010 to the Tamil Nadu Town and Country Planning Act, 1971, has received the consent of the Government on 02.12.2010 and was published in the Tamil Nadu Gazette Extraordinary, on 03.12.2010 and the date of coming into force of the said Amendment has been notified in the Tamil Nadu Government Gazette Extraordinary as 01.01.2011. Therefore, on 01.01.2011, the said amendment came into force. It is relevant to extract the amendment made to section 47:-

"47-A-Development of land in an area other than planning area - [1] Any person intending to carry out any development on any land in an area other than planning area shall make an application in writing to the local authority for permission in such form and containing such particulars and accompany such documents as may be prescribed.

[2] The local authority shall before according permission under sub-section [1], shall obtain the prior concurrence of the Director and shall also collect such fees at such rate as may be prescribed ;

Provided that in the case of wet lands, the prior concurrence of the Collector of the District concerned is necessary.

[3] The Collector shall give his prior concurrence to the local authority under sub-section [2], upon fulfillment of such guidelines as may be prescribed.

[4] Where any development of land has been carried out -

[a] without permission required under this section ; or

[b] in contravention of any permission granted or of any condition subject to which permission has been granted ; or

[c] after the permission for development of land has been duly revoked ; or

[d] in contravention of any permission which has been duly modified.
the local authority shall exercise the powers of the appropriate planning authority under sections 56 and 57 with such modifications as may be necessary.

Explanation - The term 'wet land' in this section shall have the same meaning as in the Tamil Nadu Additional Assessment and Additional Water Cess Act, 1963 [Tamil Nadu Act 8 of 1963]".

9 It is not in serious dispute that the petitioners, after obtaining appropriate permission/approval, had started the MBA Course and the respondents have accorded permission for closing the said course and thereafter, the petitioners

submitted applications through on-line seeking permission/approval to start the B.Pharm degree Course from the academic year 2016-2017 in the form of generated copy application dated 09.03.2016 and 10.03.2016 respectively. A perusal of the reports of the Scrutiny Committee dated 09.03.2016 and 17.03.2016 respectively available in Page Nos.51 and 69 [WP.No.20890/2016] and Page No.55 [WP.No.20891/2016] of the typed set of papers filed in support of these writ petitions, would disclose that the only deficiency pointed out is that the "non-obtaining of DTCP Approval". The Local Bodies, viz., the President of Kalyani Village Panchayat, Puduchatram, Namakkal District, has accorded approval to construct the buildings in SF.No.446/1, 2A, 2B, 497/1BA and 436/2A at Paavai Vidya Nagar, NH-7, R.Puliyampatti Village, Puduchatram Post, Namakkal Taluk and District vide order dated 20.02.2010 and the President of Mandagapalayam Village Panchayat, Tiruchegode, Namakkal District, has accorded approval to construct the buildings in S.No.36/1D at Sengunthar Nagar, Kosavampalayam Post, Tiruchengode Taluk, Namakkal District, vide order dated 20.10.2007 and the said buildings were cited as the Institution Buildings to run MBA course and such a permission was also accorded by the very same respondents, vide proceedings dated 02.08.2010 and 13.08.2008 respectively in File No. SRO-2010-1-10994721 [WP.N.20890/2016] and File No.TN-004/W/MBA/2008-09 [WP.No.20891/2016]. Therefore, it can be safely concluded that there is no violation noted after construction of the buildings in accordance with the said Planning Approval. The petitioners, after obtaining necessary permission to close the MBA Course, submitted applications to the 2nd respondent to start a B.Pharm Degree Course during the academic year 2016-2017 through on-line application and it was also generated on 09.03.2016 and 10.03.2016 respectively. It is the stand of the petitioners that since amendment to section 47 of the TCP Act, in the form of section 47-A came into being from 01.01.2011, it need not obtain approval from the Director of Town and Country Planning.

10 In the Judgment reported in 2013 WLR 925 [DB] [Danial Thangaraj's case [cited supra]], the facts would disclose among other things that the 1st respondent therein had applied for planning permission for construction of respective building and the 2nd respondent therein, viz., the Corporation of Madurai, had granted such a permission prior to July 2010. In pursuant to the direction issued by the Director of Town and Country Planning, in exercise of the powers conferred under section 91-A[1] of the TCP Act, 1971, a Clarification Letter was issued on 03.08.2010 based on the Circular of the Director of Town and Country Planning dated 14.10.2010 and by virtue of the same, the planning/building permission can be given only by the

District Collector/Chairman of the Local Planning Authority and not by the Commissioner of the Corporation after 14.10.2010. Notices were sent to the owners of the buildings informing about the lock and seal of the premises for the reason that they failed to get the planning permission from the District Collector/Chairman of the Local Planning Authority and it

was put to challenge and the writ petitions were allowed and challenging the same, the District Collector, Madurai District and others had filed Writ Appeals. A Division Bench of this Court had noted the delegation of powers granted to the Corporation of Madurai, was in force till the issuance of the Circular by the Director of Town and Country Planning dated 14.10.2010 and therefore, it cannot be construed that the building plan approval granted by the Corporation of Madurai prior to the said Circular will not become invalid. The Division Bench further observed that unless the permission granted to the respective 1st respondent therein, are not cancelled in the manner known to law, the notices given to lock and seal the premises are bad in law and even held that even if the planning permissions obtained are not granted as per law, the same have to be cancelled / challenged in the manner known to law and also placed reliance upon the decision rendered by the Hon'ble Supreme Court of India reported in 2011 [3] SCC 363 [Krishnadevi Malchand Kamathia Vs. Bombay Environmental Action Group].

11 A Single Bench of this Court, in the order dated 15.06.2012 made in WP.No.11031/2011[Rt.Rev.G.Devakadasham Vs. The Regional Officer, Southern Regional Office, All India Council for Technical Education, Sastri Bhavan, Chennai and others] in paragraph 14, has also held so.

12 It is the primordial stand of the respondents that since the regulations of AICTE came to be amended in the year 2011 and as per the Approval Process Handbook prepared after the said amendment for starting new Institutions/extension of approval, the building plan and the floor plan approved by the competent authority is mandated and even according to the petitioners, they wanted to start new Pharmacy Colleges for the academic year 2016-2017 onwards and therefore, they are under an obligation to submit necessary approval accorded by the Director of Town and Country Planning, viz., Section 47-A of the TCP Act, 1971. In the considered opinion of the Court, the said stand taken by the respondents defies the logic and common sense. As already pointed out based on the approval granted by the respective Local Bodies in the year 2010 and 2007, buildings were constructed and the 2nd respondent had accorded permission

to start and run a MBA programme and after some time, it was closed and it is not even the case of the respondents that the buildings/superstructures were put up not in accordance with the planning permission/approval accorded by the respective Local Bodies during the years 2010 and 2007 respectively. It is also the specific stand of the petitioners that whatever modification required, has been done to start a new Pharmacy College and the only deficiency pointed out, is non-obtaining of the approval from the competent authority, viz., the Director of Town and Country Planning. However, this Court is of the view that the same is not required in the light of the prospective operation of the Tamil Nadu Amendment Act 46 of 2010 inserting section 47-A which is prospective in nature as it came into effect on and from 01.01.2011 only.

13 In paragraph 10 of the respective Counter Affidavits of the respondents 1 and 2 dated 04.07.2016, it has been stated that certain other deficiencies were noted and according to the petitioners, they have complied with/rectified the same and the impugned orders passed by the 1st respondent would also disclose that only on account of non-obtaining of DTCP Approval, their request to start the B.Pharm Course from the academic year 2016-2017 came to be rejected. In the considered opinion of the Court, the said stand is wholly untenable in the light of the reasons assigned above and therefore, the impugned orders passed by the 1st respondent warrants interference and requires re-consideration.

14 Insofar as WP.No.20891/2016 is concerned, certification by the Architect is available. Page No.3 of the typed set of papers and if it is so, the only deficiency is non-obtaining of DTCP approval and in the light of the reasons assigned above, the impugned order is to be set aside and it requires re-consideration.

15 In the result, the writ petitions are partly allowed and the impugned orders of the 1st respondent dated 30.04.2016 made in F.No.Southern/2016/1-28666650481-LOR and F.No.Southern/2016/1-2864028021-LOR respectively, are hereby set aside and the respondents are directed to conduct necessary inspection in the petitioners' Colleges as to the availability of the infrastructural and other facilities for starting B.Pharm Degree Course by the petitioners' Trusts other than the requirement of DTCP Approval ; and pass appropriate orders as expeditiously as possible so as to enable the petitioners to start the academic session relating to the said course at least from the academic year 2017-2018. The petitioners have to pay necessary inspection and other fees to the respondents for the said purpose. However, in the circumstances of the case, there

shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

AP

To

1 The Member Secretary
All India Council for Technical
Education, 7th Floor, Chandralok Building, Janpath
New Delhi 110 001.

2 The Regional Officer
All India Council for Technical
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+2 CC to Mr. D.Prabhukuntharunkumar, Advocate Sr.Nos.49729,49730
+2 CC to Ms.AL. Gandhimathi, Advocate Sr.Nos.49759,49760

WP.Nos.20890 & 20891/2016

GJ (CO)
MD : 20/09/2016

सत्यमेव जयते

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