

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P.Nos.37794 to 37800 of 2015,
W.P.Nos.38303 to 38313 of 2015
and
W.P.Nos.37482 to 37484 of 2015

M.NIVETHA	...	PETITIONER	in WP No.37794 of 2015
R.RAGAVI	...	PETITIONER	in WP No.37795 of 2015
M.CHANDRALEKHA	...	PETITIONER	in WP No.37796 of 2015
G.SWETHA	...	PETITIONER	in WP No.37797 of 2015
C.SRIVATSA	...	PETITIONER	in WP No.37798 of 2015
P.ANUSHANKARI	...	PETITIONER	in WP No.37799 of 2015
S.VINODHINI	...	PETITIONER	in WP No.37800 of 2015
J.NIRMAL KUMAR	...	PETITIONER	in WP No.38303 of 2015
M.PARAMESWARAN	...	PETITIONER	in WP No.38304 of 2015
S.VENKATESH	...	PETITIONER	in WP No.38305 of 2015
V.P.SIVAKUMAR	...	PETITIONER	in WP No.38306 of 2015
K.M.ARCHANA	...	PETITIONER	in WP No.38307 of 2015
S.LAKSHMINATH	...	PETITIONER	in WP No.38308 of 2015
G.VIVEK	...	PETITIONER	in WP No.38309 of 2015
V.MADHAVAN	...	PETITIONER	in WP No.38310 of 2015
P.K.V.UDAYANAN	...	PETITIONER	in WP No.38311 of 2015
M.PRABHU	...	PETITIONER	in WP No.38312 of 2015
M.LOGESWARI	...	PETITIONER	in WP No.38313 of 2015
ROASHAN PRABU RAJ	...	PETITIONER	in WP No.37482 of 2015
GAUTHAM RAJA	...	PETITIONER	in WP No.37483 of 2015
S. NITHYAKUMAR	...	PETITIONER	in WP No.37484 of 2015

Vs.

- 1 THE SECRETARY TO GOVERNMENT
HEALTH & FAMILY WELFARE DEPARTMENT FORT ST.
GEORGE CHENNAI 9
- 2 UNION OF INDIA
REP BY ITS SECRETARY HEALTH & FAMILY
WELFARE DEPARTMENT NEW DELHI
- 3 TAMIL NADU MEDICAL COUNCIL
REP BY ITS PRESIDENT NO.914 POONAMALLEE
HIGH ROAD ARUMBAKKAM CHENNAI 106

- 4 MEDICAL COUNCIL OF INDIA
REP BY ITS SECRETARY SECTOR 8 DWARAKA
PHASE I NEW DELHI 110 077
- 5 THE TAMIL NADU DR. M.G.R.
MEDICAL UNIVERSITY REP BY ITS REGISTRAR NO.
69 ANNA SALAI GUINDY CHENNAI 32
- 6 THE DEAN
MELMARUVATHUR ADHIPRASAKTHI INSTITUTE OF
MEDICAL SCIENCES AND RESEARCH MELMARUVATHUR
KANCHEEPURAM DISTRICT

... RESPONDENT in WP
No.37794,37795,37796,37797
37798,37799,37800,37303,38304,38305,38306
38307,38308,38309,38310,38311,38312,38313,
37482,37483,37484, of 2015

WP No.37794 of 2015 Writ petitions filed under Article 226 of the Constitution of India prayin to issue a writ of mandamus directing the Respondents to enable the Petitioner having Registration No. 52107679 to obtain Permanent Registration of MBBS Course with the 3rd Respondent by providing him Temporary Registration Certificate and CRRI Training during 2015-16 in the 6th Respondent College or any other approved Medical College Hospital within Chennai

WP No.37795 of 2015
Directing the Respondents to enable the Petitioner having Registration No. 52107698 to obtain Permanent Registration of MBBS Course with the 3rd Respondent by providing him Temporary Registration Certificate and CRRI Training during 2015-16 in the 6th Respondent College or any other approved Medical College Hospital within Chennai

WP No.37796 of 2015
Directing the Respondents to enable the Petitioner having Registration No. 52107625 to obtain Permanent Registration of MBBS Course with the 3rd Respondent by providing him Temporary Registration Certificate and CRRI Training during 2015-16 in the 6th Respondent College or any other approved Medical College Hospital within Chennai

WP No.37797 of 2015
Directing the Respondents to enable the Petitioner having Registration No. 52097731 to obtain Permanent Registration of MBBS Course with the 3rd Respondent by providing him Temporary Registration Certificate and CRRI Training during 2015-16 in the 6th Respondent College or any other approved Medical College Hospital within Chennai

Hospital within Chennai

WP No.37798 of 2015

Directing the Respondents to enable the Petitioner having Registration No. 52107728 to obtain Permanent Registration of MBBS Course with the 3rd Respondent by providing him Temporary Registration Certificate and CRRI Training during 2015-16 in the 6th Respondent College or any other approved Medical College Hospital within Chennai

WP No.37799 of 2015

Directing the Respondents to enable the Petitioner having Registration No. 52107605 to obtain Permanent Registration of MBBS Course with the 3rd Respondent by providing him Temporary Registration Certificate and CRRI Training during 2015-16 in the 6th Respondent College or any other approved Medical College Hospital within Chennai

WP No.37800 of 2015

Directing the Respondents to enable the Petitioner having Registration No. 52107747 to obtain Permanent Registration of MBBS Course with the 3rd Respondent by providing him Temporary Registration Certificate and CRRI Training during 2015-16 in the 6th Respondent College or any other approved Medical College Hospital within Chennai

WP No.38303 of 2015

Directing the respondents to enable the petitioner having registration No.52107673 to obtain permanent registration of MBBS course with the 3rd respondent by providing him temporary registration certificate and CRRI Training during 2015-16 in the 6th respondent college or any other approved medical college hospital within Chennai

WP No.38304 of 2015

Directing the respondents to enable the petitioner having registration No.52107683 to obtain permanent registration of MBBS course with the 3rd respondent by providing him temporary registration certificate and CRRI Training during 2015-16 in the 6th respondent college or any other approved medical college hospital within Chennai

WP No.38305 of 2015

Directing the respondents to enable the petitioner having registration No.52107742 to obtain permanent registration of MBBS course with the 3rd respondent by providing him temporary registration certificate and CRRI Training during 2015-16 in the 6th respondent college or any other approved medical college hospital within Chennai

WP No.38306 of 2015

Directing the respondents to enable the petitioner having registration No.52107722 to obtain permanent registration of MBBS course with the 3rd respondent by providing him temporary registration certificate and CRRI Training during 2015-16 in the 6th respondent college or any other approved medical college hospital within Chennai

WP No.38307 of 2015

Directing the respondents to enable the petitioner having registration No.52107607 to obtain permanent registration of MBBS course with the 3rd respondent by providing him temporary registration certificate and CRRI Training during 2015-16 in the 6th respondent college or any other approved medical college hospital within Chennai

WP No.38308 of 2015

Directing the respondents to enable the petitioner having registration No.52097654 to obtain permanent registration of MBBS course with the 3rd respondent by providing him temporary registration certificate and CRRI Training during 2015-16 in the 6th respondent college or any other approved medical college hospital within Chennai

WP No.38309 of 2015

Directing the respondents to enable the petitioner having registration No.52097747 to obtain permanent registration of MBBS course with the 3rd respondent by providing him temporary registration certificate and CRRI Training during 2015-16 in the 6th respondent college or any other approved medical college hospital within Chennai

WP No.38310 of 2015

Directing the respondents to enable the petitioner having registration No.52107663 to obtain permanent registration of MBBS course with the 3rd respondent by providing him temporary registration certificate and CRRI Training during 2015-16 in the 6th respondent college or any other approved medical college hospital within Chennai

WP No.38311 of 2015

Directing the respondents to enable the petitioner having registration No.52107737 to obtain permanent registration of MBBS course with the 3rd respondent by providing him temporary registration certificate and CRRI Training during 2015-16 in the 6th respondent college or any other approved medical college hospital within Chennai

WP No.38312 of 2015

Directing the respondents to enable the petitioner having registration No.52107688 to obtain permanent registration of MBBS

course with the 3rd respondent by providing him temporary registration certificate and CRRI Training during 2015-16 in the 6th respondent college or any other approved medical college hospital within Chennai

WP No.38313 of 2015 Directing the respondents to enable the petitioner having registration No.52107661 to obtain permanent registration of MBBS course with the 3rd respondent by providing him temporary registration certificate and CRRI Training during 2015-16 in the 6th respondent college or any other approved medical college hospital within Chennai

WP No.37482 of 2015 Directing the respondents to enable the petitioner having registration No.52107704 to obtain permanent registration of MBBS course with the 3rd respondent by providing him temporary registration certificate and CRRI Training during 2015-16 in the 6th respondent college or any other approved medical college hospital within Chennai

WP No.37483 of 2015 Directing the respondents to enable the petitioner having registration No.52107636 to obtain permanent registration of MBBS course with the 3rd respondent by providing him temporary registration certificate and CRRI Training during 2015-16 in the 6th respondent college or any other approved medical college hospital within Chennai

WP No.37484 of 2015 Directing the respondents to enable the petitioner having registration No.52107677 to obtain permanent registration of MBBS course with the 3rd respondent by providing him temporary registration certificate and CRRI Training during 2015-16 in the 6th respondent college or any other approved medical college hospital within Chennai

For Petitioner in all W.Ps.:Mr.S.Thanka Sivan

For R1 in all W.Ps. : Mr.V.Subbiah,
Special Govt. Pleader

For R2 in all W.Ps. : Ms.G.Hema,
Central Govt. Standing Counsel

For R3 in all W.Ps. : Mr.Veerakathiravan

For R4 in all W.Ps. : Mr.V.P.Raman

For R5 in all W.Ps. : Mr.Anand David

For R6 in all W.Ps. : No appearance

C O M M O N O R D E R

As the issues involved in all the Writ Petitions are one and the same, they are being taken up and disposed of by a common order.

2. The petitioners joined the 6th respondent for the academic year 2009-10 and 2010-11, respectively, as the case may be. These petitioners form part of the Government Quota as well as the Management Quota. Admittedly, at the time of joining the course, the 6th respondent had the permission/recognition from the authorities including the 4th respondent. Thereafter, it appears that the name of the 6th respondent was not mentioned in the schedule, as certain deficiencies were found not complied with. Resultantly, the petitioners were not given temporary Registration Certificate. Thus, they are unable to continue and complete CRI training followed by issuance of permanent Registration of MBBS course.

3. From the point of view of the students, this Court has held in W.P.No.16812 of 2015 (D.Deeyaneswar and others v. State of Tamil Nadu and others), by an order dated 11.09.2015, in the following manner.

"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."

Therefore, the ratio laid down in the aforesaid decision would be applicable to the case on hand as well.

4. Learned counsel appearing for the petitioners also made an alternative statement stating that the Essentiality Certificate being the lookout of the State Government, in a case like this, it is its bounden duty to take care of the interest of the students particularly, in the light of the Establishment of New Medical Colleges Regulations, 1999 with reference to Form 2(d). Reliance has been made on the judgment of the Apex Court in the case of Government of Andhra Pradesh and another vs. Medwin Educational Society and others, (2004) 1 SCC 86, wherein, it has been held as follows:

26. However, in the matter of implementation of the statutory scheme for grant of permission and annual renewal, the Medical Council of India experienced difficulties and it came across cases where the colleges despite grant of initial permission could not provide the infrastructure, teaching and other facilities as a result whereof

the students who had already been admitted suffered serious prejudice. Only with a view to overcome the said situation, the 1999 Regulations provided for grant of essentiality certificate which is in the following format:

"Form-2

Subject: Essentiality Certificate

No.

Government of _____

The Department of Health

Dated, the _

To (applicant)

Sir,

The desired certificate is as follows:

- (1) No. of institutions already existing in the State.
- (2) No. of seats available or No. of doctors being produced annually
- (3) No. of doctors registered with the State Medical Council.
- (4) No. of doctors in Government Service
- (5) No. of Government posts vacant and those in rural/difficult areas.
- (6) No. of doctors registered with Employment Exchange.
- (7) Doctor population ratio in the State.
- (8) How the establishment of the college would resolve the problem of deficiencies of qualified medical personnel in the State and improve the availability of such medical manpower in the State.
- (9) The restrictions imposed by the State Government, if any, on students who are not domiciled in the State from obtaining admissions in the State be specified.
- (10) Full justification for opening of the proposed college.
- (11) Doctor-patient ration proposed to be achieved. The (Name of the person) _____ has

applied for establishment of a medical college at _____. On careful consideration of the proposal, the Government for _____ has decided to issue an essentiality certificate to the applicant for the establishment of a Medical College with _____ (no.) seats. It is certified that:

(a) The applicant owns and manages a 300 bedded hospital which was established in _____.

(b) It is desirable to establish a medical college in the public interest;

(c) Establishment of a medical college at _____ by (the name of Society/Trust) is feasible.

(d) Adequate clinical material as per the Medical Council of India norms is available. It is further certified that in case the applicant fails to create infrastructure for the medical college as per MCI norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the students already admitted in the College with the permission of the Central Government.

Yours faithfully,

(Signature of the Competent Authority)"

27. Grant of the said certificate in the prescribed form, therefore, emanates from the scheme framed under the Parliamentary legislation. The said form is a part of the Regulations which are required to be considered in the light of the Parliamentary Acts.

28. By reason of clause 11(d), a responsibility has been cast upon the State Government to give an undertaking that in case the applicant who seeks to establish a medical college, fails to create infrastructure for the medical college as per the norms laid down by the Council and in the event the fresh admissions are stopped by the Central Government, the State Government shall be obligated to take over the responsibility of the students already admitted in the college. Such an undertaking on the part of the State Government is unequivocal and unambiguous. The Central Government and the Medical Council of India in the aforementioned premise opined that the selection of

locations for establishment of a medical college is a matter which is required to be dealt with by the respective State Governments and not by the Medical Council of India."

5. Learned counsel appearing for the 3rd respondent submitted that the petitioners will have to approach the Government of Tamil Nadu indicating their options for undergoing CRRi training with the approved/recognised colleges under it. Based upon the letter of the State, the 3rd respondent would issue temporary Registration Certificate.

6. Learned counsel appearing for the 4th respondent submitted that the petitioners will have to obtain the Temporary Registration Certificate. Only on doing so, the question of considering the CRRi training followed by permanent Registration would arise. It is also submitted that for the past two years, the 6th respondent is not having any permission.

7. As the issue involved with respect to the rights of the students to get the appropriate relief is already dealt with by this Court in D.Deeyaneeswar and others v. State of Tamil Nadu and others (2015 (6) CTC 142), the petitioners are entitled for appropriate relief. There is no dispute on facts that the petitioners have joined the course when there was a valid permission and thereafter completed it by passing the examination conducted by the 3rd respondent.

8. Taking into consideration all the facts and circumstances of the case and in the light of the decision of the Apex Court in Government of Andhra Pradesh and another vs. Medwin Educational Society and others, (2004) 1 SCC 86, referred to supra, this Court is of the view that it would be appropriate to permit the petitioners to approach the 1st respondent indicating their options to undergo CRRi training with the approved Colleges. The petitioners are at liberty to make such applications within a period of one (1) week from the date of receipt of a copy of this order. On receipt of the same, the 1st respondent will have to inform the 3rd respondent about the Colleges in which the petitioners can be permitted to undergo CRRi training. Such a letter would have to be sent within a further period of two weeks from the date of receipt of the applications from the petitioners. On receipt of the said communication from the 1st respondent, the 3rd respondent shall issue appropriate temporary Registration Certificates to the petitioners within a period of two weeks thereafter. It is needless to state that after the petitioners complete the CRRi training as required by law, the 3rd respondent will have to issue Permanent Registration Certificate of MBBS Course.

9. Though a statement has been made on the requirement of No Objection Certificate by the 6th respondent, this Court is of the

view that the same is not required, since it does not have any valid permission as of now. Further, though the 6th respondent has been served, none appeared on its behalf. Therefore, it can be taken that it has got no interest in the matter. Moreover, in law, the said respondent cannot have any grievance in view of the action taken by the 4th respondent against it, which has not been put into challenge till now. This order is also passed taking into consideration of the fact that for the past two years, there was no permission granted in favour of the 6th respondent, which also indicates that even on facts, it will only be appropriate to allow the petitioners to undergo CRRI training before some other institutions.

These Writ Petitions are ordered accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

aeb

To :

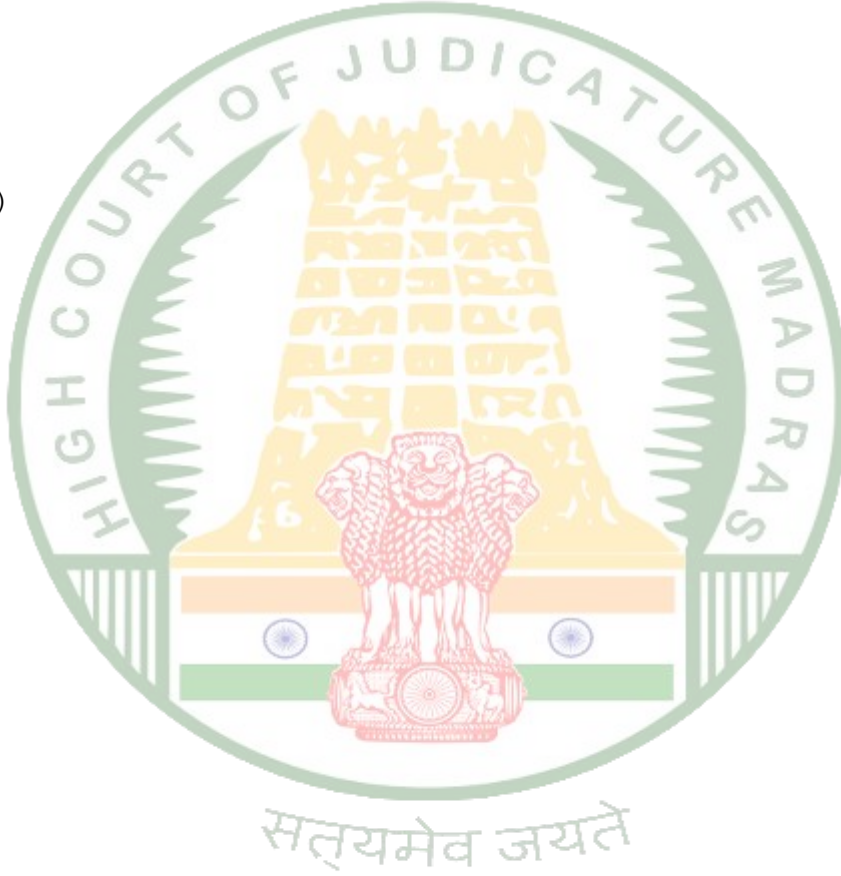
1. The Secretary to Government,
Health & Family Welfare Department,
Fort St. George, Chennai 600 009.
2. The Secretary,
Union of India
Health & Family Welfare Department,
New Delhi.
3. The President,
Tamil Nadu Medical Council
No.914, Poonamallee High Road,
Arumbakkam, Chennai 600 106.
4. The Secretary,
Medical Council of India,
Sector 8, Dwaraka Phase-I,
New Delhi - 110 077.
5. The Registrar,
Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy, Chennai 600 032.

2 ccs to Mr.Veerakathiravan, Advocate, sr. 505, 506
5 ccs to Mr.S. Thankasivan, Advocate, Sr. 639
2 ccs to Government Advocate, Sr. 597, 629

+ 1 cc to Mr.V.P.Raman, Advocate Sr 678 (25/1/16)

W.P.Nos.37794 to 37800 of 2015,
W.P.Nos.38803 to 38313 of 2015
and
W.P.Nos.37482 to 37484 of 2015

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