

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

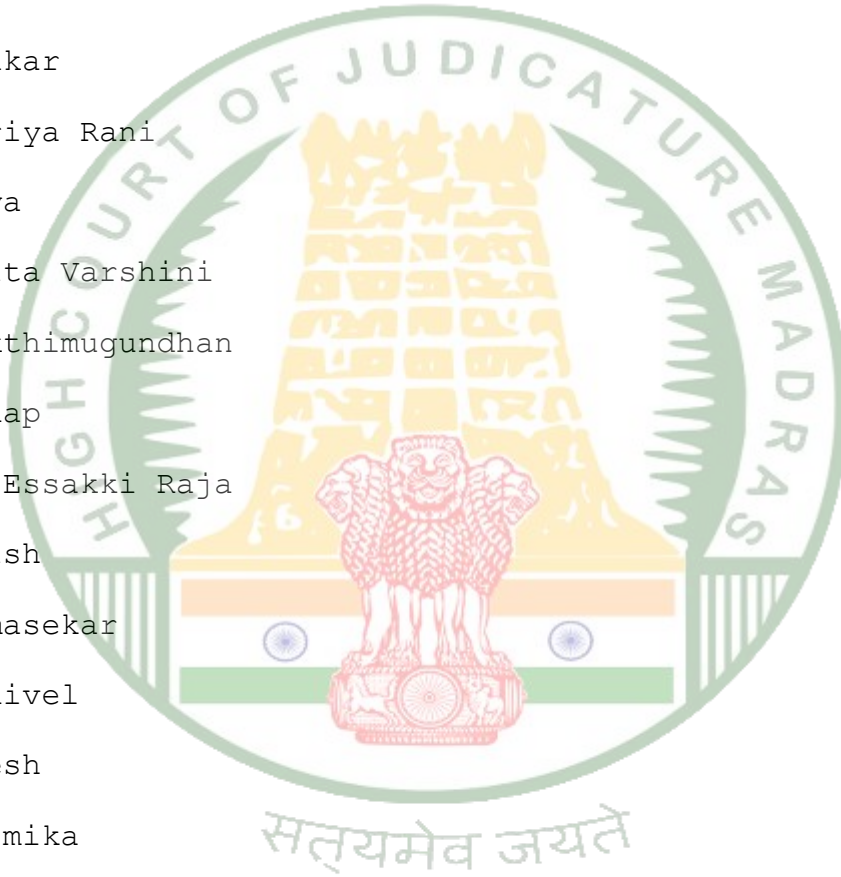
Writ Appeal No.906 of 2016
and C.M.P.Nos.11597 and 11598 of 2016

S.V.S. Educational and Social Service Trust
rep. by its Chairman-cum-Managing Director,
No.74, Gandhi Road,
Kallakurichi-606 202,
Villupuram District. ..
Appellant/Petitioner

Vs

1. Government of India,
Ministry of Ayurveda Yoga and Naturopathy
Unani, Sidha and Homeopathy (Ayush),
Ayush Bhavan,
'B' Block, GPO Complex 110023 INA,
New Delhi-110 023.
2. The Secretary,
Central Council of Homeopathy,
No.61-65, Institutional Area,
Opposite 'D' Block, Janakpuri,
New Delhi-110 058.
3. The Tamil Nadu Dr.MGR Medical University
rep. by its Registrar,
No.69, Anna Salai,
Guindy, Chennai-32.
4. The Special Commissioner,
Directorate of Indian Medicine and Homeopathy,
Arignar Anna Hospital Complex,
Arumbakkam,
Chennai-106.
5. A.Ahamed Basheer
6. R.Krishna Priya

7. K.Prabhavathi
8. B.Hemasaisree
9. T.Subasri
- 10.C.Reshma Priya Dharshini
- 11.R.Nagesh Rao
- 12.R.Roshini
- 13.C.Dhivakar
- 14.M.Isvariya Rani
- 15.K.Kaviya
- 16.J.Nandita Varshini
- 17.P.V.Sakthimugundhan
- 18.N.Prathap
- 19.C.Arul Essakki Raja
- 20.V.Sathish
- 21.C.M.Somasekar
- 22.A.Sakthivel
- 23.M.Vignesh
- 24.M.G.Rasmika
- 25.K.R.Ananthi
- 26.A.Aravindhana
27. C.Rajasekaran
28. S.Sugadev
29. R.Yoganathan
30. V.Ramalingam



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Prayer : Writ Appeal filed under clause 15 of the letters patent praying to set aside the order dated 24.06.2016 made in W.P.No.18510 of 2016 Writ petition filed under article 226 of the constitution of India to issue a writ of certiorarified mandamus, to call for the records of the 3rd respondent culminating in Rc. No.Affln. 1 (3)/11426/2011 dt 8.4.2016 of the Registrar Tamil Nadu Dr. M.G.R. Medical University No.69 Anna Salai Guindy Chennai 32 and quash the same and consequently direct the 3rd respondent to issue provisional affiliation to the petitioner institution for the academic year 2015-2016 to run the Bachelor of Homeopathy Medicine and Surgery Course (BHMS) Degree Course in their College viz. S.V.S.College of Homeopathy and Research Institute Kallakurichi Villupuram District and further direct the 3rd respondent to register the admission of the students in the petitioner Institution.

For Appellant :: Mr.S.Prabakaran
for Mr.K.Balakrishnan

For Respondents:: Mr.V.Ayyadurai,
Senior Counsel
for Mr.D.Ravichander for R3
Mr.P.S.Sivashanmugasundaram,
Special Government Pleader for R4
Mr.C.Jagadish for R5 to R31
For R1 and R2 No appearance

JUDGMENT

(Order of the Court was made by HULUVADI G.RAMESH, J.)

This Writ Appeal is filed as against the order of the learned Single Judge passed in W.P.No.18510 of 2016 dated 24.06.2016.

2. The petitioner in W.P.No.18510 of 2016 has sought to issue a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent culminating in Rc.No.Affln.1(3)/11426/2011, dated 08.04.2016 of the Registrar, Tamil Nadu Dr.

M.G.R.Medical University, No.69, Anna Salai, Guindy, Chennai-32 and quash the same and consequently, direct the 3rd respondent to issue provisional affiliation to the petitioner institution for the academic year 2015-2016 to run the Bachelor of Homeopathy Medicine and Surgery Course (BHMS) Degree Course in their college viz., S.V.S. College of Homeopathy and Research Institute, Kallakurichi, Villupuram District and further direct the 3rd respondent to register the admission of the students in the petitioner Institution.

3. The contention of the writ petitioner/appellant herein in his writ petition is as follows:

(a) This is the sixth round of litigation between the petitioner and the same official respondents. The facts leading to this litigation have been narrated in detail and in extenso in the order dated 09.10.2014 made in W.P.No.32047 of 2013 and also the order dated 06.01.2015 made in W.P.No.28684 of 2014 and therefore, it is not necessary to restate the entire facts once again and it suffice to narrate the relevant facts which are necessary for the disposal of this writ petition.

(b) The first respondent, in compliance of the order dated 09.10.2014 made in W.P.No.32047 of 2013 has conducted inspection of the college run by the petitioner Trust on 06.08.2013 and noted certain deficiencies and an opportunity of hearing was afforded to the college to present their case with respect to the deficiencies pointed out. Accordingly, the College was represented by Chairman and Founder-cum-Secretary of SVS Educational Society made his presentation. The first respondent, having considered the submissions made as to the compliance of the deficiencies, took a decision to deny permission to SVS Education Trust [hereinafter referred to as "Trust"] for establishing a new Homeopathy Medical College in the name and style of "SVS College of Homeopathy Research Institute" at Kallakurichi and conducting BHMS course and accordingly rejected the application dated 06.03.2013. The petitioner Trust made a challenge to the said order by filing W.P.No.28684 of 2014 and a Single bench of this Court, after considering the rival submissions and upon perusal of the materials placed before it, had quashed the order of the first respondent dated 20.10.2014 with a further direction directing the first respondent to grant approval to the petitioner institution for the academic year 2014-2015 by passing appropriate orders within a period of 15 days from the date of receipt of a copy of the order and the Court had also taken note of the fact that since the students had been admitted already pursuant to the interim direction issued by this Court, such a permission shall also be regularized.

(c) The first respondent, based on the recommendation of the Central Council of Homeopath (CCH), has granted permission to the petitioner Trust to start Homeopathy College with an intake capacity of 50 students for the academic year 2015-16, subject to fulfilment of certain conditions and it has also been indicated that permission for the next academic year 2016-2017 is to be obtained to take admissions in BHMS degree course and the college shall fulfill all the requirements of the HCC Act, 1973 and the relevant Regulations framed thereunder.

(d) The petitioner Trust and the college, armed with the said order, had approached the third respondent in the form of representation dated 29.09.2015 for grant of provisional affiliation for BHMS degree course for the academic year 2015-2016. However, no orders have been passed and therefore, the petitioner once again approached this Court by filing W.P.No.34108 of 2015 and this Court having taken note of the fact that the grievance expressed by the petitioner has been substantially complied with in the light of the order dated 23.10.2015, signed on 26.10.2015 by the third respondent, in and by which provisional affiliation has been accorded after due inspection, had directed the fourth respondent to include the petitioner college for admission of students in BHMS degree course for the academic year 2015-2016 forthwith and the third respondent was also directed to send the requisite papers pertaining to the petitioner for counselling forthwith.

(e) The petitioner had approached the third respondent for provisional affiliation for the current academic year 2016-17 and based on the Inspection Report dated 28.10.2015, following deficiencies were noted:

1. The DTCP approved proceeding copy is not available. The management is applied for the same.
2. There is 2 shortfall in Professor/Reader cadre in the department of Anatomy and Organic of Medicine (for starting I BHMS).
3. The Trust has not enclosed the Latest Encumbrance Certificate.
4. The Trust has not furnished Government Pleader opinion in regard to clear title and extent of the land.
5. The Trust should be furnished the Sworn Affidavit from the Notary Public stating that the land and ready build area shown for the College and it will not be used for any other purpose (specify the Survey No. and extent of area).

6. The Trust has not furnished to show the Trust organization has an annual income (Audit Report)
7. The fees has not remitted by the Trust.
8. P.G. Qualified persons to be appointed for the following Departments:
 - a. Anatomy
 - b. Physiology including Biochemistry
 - c. Organic Medicine
 - d. Homeopathic Materia Medica

9. Earmarked building area for BHMS & BNYS - sketch produced and authorized my advocate and Notary Public (specify the Survey No. and extent of land for each course).

and it was also communicated to the petitioner Trust, vide communication dated 17.11.2015.

(f) The petitioner Trust, in response to the said letter, had submitted a letter of compliance dated 09.12.2015 and also indicated that they have remitted all the University fees including the University affiliation fee and requested the third respondent to grant affiliation for the academic year 2015-2016. The third respondent University, after receipt of the letter of compliance dated 09.11.2015 from the Trust, requested the Trust to furnish the following documents, vide communication dated 11.12.2015:

1. To be obtained the building approval plan from Competent authority DTCP along with Proceedings documents.
2. Appointment order for Dr.R.Thankamony, Professor in the Department of Anatomy.
3. The following Clause to be contained in Undertaking Certificate relating to Lease Deed
"It should however be ensured that the Lease Deed is entered between the Trust and Trustee owning the Building/Land should be registered and shall contain a Clause that the Lease Deed cannot be terminated for a period of years...? (Copy enclosed for ready reference)
4. The Sworn Affidavit in Latest date (Annexed the BHMS Degree course Survey Number).
5. The Audit Certificate for the Balance Sheet already submitted.

So as to enable the University to grant of Provisional Affiliation Orders to B.H.M.S. Degree Courses for the academic year 2014-2015.

(g) The third respondent has also sent another communication dated 31.12.2015 pointing out that instead of depositing Rs.40,000/- towards Inspection Fees, the Trust has sent a Demand Draft for Rs.1,75,000/- and returned the same with further request to remit the Inspection Fee of Rs.40,000/- immediately. The third respondent University in compliance of the order dated 24.10.2015 made in W.P.No.34108 of 2015, informed the said facts to the Principal Secretary and Commissioner of Indian Medicine and Homeopathy.

(h) The petitioner Trust was also running a Naturopathy Research Institute and three girl students undergoing studies in the said institute, had committed suicide on 23.01.2016 and it was widely published in print and visual media. The Hon'ble Chief Minister of Tamilnadu, vide Press Release dated 30.01.2016, taking into consideration the interest and welfare of the students studying in the said college, ordered shifting of the students to the Government Yoga and Naturopathy College. Insofar as the students studying in Homeopathy College run by the Society is concerned, necessary permission/approval of the first respondent is required and therefore, directed the fourth respondent to take necessary steps. Accordingly, the fourth respondent sent a letter dated 09.02.2016 in Ref.No.1548/P&D3/2016 dated 09.02.2016 to the Secretary, Central Council of Homeopathy, New Delhi as well as the Secretary, Government of India, Ministry of AYUSH, New Delhi, praying for necessary permission to relocate the students studying in Homeopathy college to the Government institutions.

(i) The first respondent also accorded permission to relocate the students of SVS Homeopathic Medical College, Kallakurichi, Villupuram District, Tamil Nadu into the Government Homeopathic Medical College, Thirumanglam, Madurai District as a one-time measure. The second respondent has also sent a show cause notice dated 08.04.2016 to SVS Medical College of Yoga and Naturopathy & Research Institute, Kallakurichi, informing as to why the said college should not be de-affiliated as per the provisions of the Statute 51 and Affiliation of Naturopathy and Yoga Medical College Statutes. The third respondent also despatched the impugned order dated 08.04.2016 rejecting the request made for grant of provisional affiliation dated 29.09.2015 and 22.12.2015 to start BHMS degree course by

SVS Medical College of Homeopathy and Research Institute, Kallakurichi, Villupuram District and challenging the legality of the said order, the present writ petition is filed.

4. Heard Mr.S.Prabakaran, learned Counsel appearing for the petitioner, Mr.V.Ayyadurai, learned Senior Counsel appearing for the 3rd respondent and Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader appearing for the 4th respondent and Mr.C.Jagadish, learned Counsel appearing for the respondents 5 to 31 in this Writ Appeal.

5. On an anxious consideration of the contentions put before this court, we are of the view that the learned Single Judge, having considered the case of the petitioner/appellant herein in detail, dismissed the said Writ Petition on the ground that though the first respondent has granted recognition in compliance of the orders passed by this Court, granting permission to the petitioner Trust to start Homeopathy college, vide communication dated 28.09.2015 with intake capacity of 50 students for the academic year 2015-2016 subject to certain conditions and one of the conditions is that the petitioner Trust is to obtain permission for the next Academic year i.e., 2016-17 to take admissions in the above said permitted courses and that it shall fulfill all the requirements of the HCC Act, 1973 and the relevant Regulations made thereunder, the petitioner Trust have not produced any material to show that it obtained permission from the 1st respondent to take admissions for the current academic year 2016-2017. Further, in the Inspection Report dated 28.10.2015 furnished to the petitioner Trust, certain deficiencies have been noted and they were also put to notice and though it is the stand of the petitioner Trust that it has rectified all the deficiencies pointed out, the third respondent had felt that it has not done so and placed the said subject in the 243rd meeting of the Governing Council held on 03.03.2016 and passed Resolution No.40, denying the request made for grant of provisional affiliation to start BHMS degree course and also considering the suicide made by three girl students in their Naturopathy Research Institute.

6. In So far as shifting of the students admitted during the year 2015-16 is concerned, there was an untoward incident in which three girl students have committed suicide and it was subject to CBCID investigation and also there was an order passed directing the District Collector to keep the institution under lock and seal and thereafter, on the additional counter affidavit filed by the 5th respondent therein, having satisfied with the law and order situation, this Court, by an order dated 22.08.2016, directed the District Collector to remove the lock and seal.

7. Now, so far as the admission of the students during the academic year 2016-17 is concerned, it appears that as per the requirement of the 3rd respondent University, the application should have been filed within six months prior to the commencement of the academic year and also it is in continuation of the affiliation etc. by the Ayush as required by them. Ayush also noted the infrastructural facilities of the petitioner's Trust and the University, during the year 2013 itself, by the order of the Registrar has accorded permission to admit the students in the year 2015 to run the Ayurvedic Course and also in this regard, the Ayush, namely, Ministry of Ayurveda Yoga and Naturopathy, Unani, Sidha and Homeopathy has given affiliation to the college by way of approval and also with regard to the admission of the students is concerned, the cut-off date for admission has been extended from 31.10.2016 to 30.11.2016 taking into consideration the administrative defects expressed by the concerned institutions for having not cleared the defects. In this regard, it appears that when the matter was taken up day before yesterday i.e. on 07.11.2016, the application for continuance of provisional affiliation by the petitioner Trust was not filed. The appellant has filed the application with the University only on 07.11.2016. Now, they are seeking to issue a direction to the 3rd respondent, namely, Tamil Nadu Dr. MGR Medical University in this regard.

8. It appears that as stated earlier by us, the learned Single Judge having noticed the previous untoward incident during 2015 and commission of suicide by 3 girl students, has rejected the case of the petitioner. However, relevant documents regarding the continuation of affiliation by Ayush was not placed before the learned Single Judge and with regard to the fact of extension of admission of students from 31.10.2016 to 30.11.2016 also. In this regard, this appellant Trust is seeking for issuance of the direction as noted above as per the prayer.

9. The application was not filed on time as per the requirement. When the same was filed belatedly, it is for the University to take a decision at the earliest regarding the college to permit the students to be admitted, by verifying the documents that would be produced by the appellant regarding admission/allotment of the students, if needed, by making preliminary inspection. Since still 20 days are more for completion of the admission, the University can visit the college by collecting Rs.40,000/- and to take a decision regarding admission of the students.

10. With the above observation, the Writ Appeal is disposed of by modifying the order of the learned Single Judge in W.P.No.18510 of 2016 dated 24.06.2016. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. Government of India,
Ministry of Ayurveda Yoga and Naturopathy
Unani, Sidha and Homeopathy (Ayush),
Ayush Bhavan,
'B' Block, GPO Complex 110023 INA,
New Delhi-110 023.
2. The Secretary,
Central Council of Homeopathy,
No.61-65, Institutional Area,
Opposite 'D' Block, Janakpuri,
New Delhi-110 058.
3. The Registrar,
Tamil Nadu Dr.MGR Medical University,
No.69, Anna Salai,
Guindy, Chennai-32.
4. The Special Commissioner,
Directorate of Indian Medicine and Homeopathy,
Arignar Anna Hospital Complex,
Arumbakkam,
Chennai-106.

+1cc to Mr.D. Ravichander, Advocate, S.R.No.64722
+1cc to Mr.K. Balakrishnan, Advocate Sr.No.15406

md (17/11/2016)

Writ Appeal No.906 of 2016