

W.M.P. No. 33176 of 2016
in
W.P. No. 38721 of 2016

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B. RAJENDRAN, J

The petitioner has filed the above writ petition seeking for issuing a Writ of Mandamus directing the third respondent-University to issue the continuance of provisional affiliation to the petitioner - S.V.S. Medical College of Yoga and Naturopathy and Research Institute, Salem Main Road, Bangaram, Kallakurichi for the academic year 2015-2016, 2016-2017 to conduct the Bachelor of Naturopathy and Yoga Sciences (B.N.Y.S) Degree Course in the petitioner institution and register the admission of students for the academic year 2015-2016, 2016-2017.

2. Pending the writ petition, the petitioner has filed this petition praying for issuing an interim direction directing the Registrar, Tamil Nadu Dr. M.G.R. Medical University, No.69, Anna Salai, Guindy, Chennai - 600 032, the third respondent to send the seat matrix to the Special Commissioner/ Director of Indian Medicine and Homeopathy, having office at Arignar Anna Hospital Complex, Arumbakkam, Chennai - 600 106, the second respondent herein for the counselling to be held from 07.11.2016 onwards and further direct the second respondent to include the name of the petitioner - S.V.S. Medical College of Yoga and Naturopathy and Research Institute, Salem Main Road, Bangaram, Kallakurichi in the counselling scheduled on 05.11.2016 onwards to admit the students in the Bachelor of Naturopathy and Yoga Sciences (B.N.Y.S. Degree Course) 5 1/2 years for the academic year 2016-2017 in the petitioner institution pending disposal of the present writ petition.

3. The writ petition has been filed by the petitioner institution contending that the first respondent has accorded permission in favour of the petitioner institution with an annual intake capacity of 50 students vide GO Ms. No.116 dated 03.04.2008 subject to the petitioner institution satisfying the terms and conditions that may be imposed by the third respondent-University and subject to the concurrence of the fourth respondent herein. On the basis of such permission, the petitioner applied for certificate of registration to the third respondent herein and obtained provisional affiliation for the academic years 2008-2009 on 26.05.2009 after conducting an inspection on 07.06.2008. On the basis of the report of inspection, the Certificate of Registration was issued in favour of the petitioner institution on 16.07.2008. Such affiliation given to the petitioner institution was renewed till 2014-2015 for 50 seats after satisfying with the infrastructural amenities provided by the petitioner institution. While so, an inspection was conducted on 08.07.2015 for conferring provisional affiliation to the petitioner institution for the academic year 2015-2016 in which certain minor deficiencies were pointed out by the inspection team. The petitioner immediately rectified the same and on being satisfied with the compliance of the deficiencies pointed out by the inspection team. However, on 23.01.2015, three students studying in the petitioner institution died under suspicious circumstances in the private well belonging to one Paramasivam. In connection with this incident, a case in Crime No. 1 of 2016 was registered under Section 420, 384 and 306 of Indian Penal Code. In connection with this incident, a show cause notice dated 08.04.2016 was issued by the third respondent to show cause as to why the petitioner institution should not be disaffiliated for which the petitioner sent a reply on 20.05.2016 seeking to drop all further action pursuant to the said show cause notice.

4. As regards the admission of students in Homeopathy course, the Central Government has fixed the cut off date for admission of students in Homeopathy Course till 31.10.2016 and it was subsequently extended till 30.11.2016. However, since the third respondent had sent a show cause notice dated 08.04.2016, the third respondent did not send the seat matrix to the second respondent for the counselling scheduled from 07.11.2016 and consequently the name of the petitioner institution has not been included in the counselling list for the Academic year 2016-2017. In such circumstances, the petitioner, after sending a representation dated 18.10.2016 to the third respondent seeking to forward the seat matrix to the second respondent for the counselling scheduled from 07.11.2016 and to include the name of the petitioner institution in the counselling list for the Academic year 2016-2017. As there was no response from the respondents, the petitioner has come up with the above writ petition.

5. By order dated 16.11.2016, this Court passed an order in the above W.M.P. No. 33176 of 2016 and the operative portion of the order reads as follows:-

"10. The learned Additional Advocate General appearing for the respondents 1 to 3 also fairly submits that there are unfilled seats to be filled up before 30.11.2016. When admittedly there are unfilled seats, no useful purpose will be served in keeping the petitioner institution out of the purview of the counselling schedule. As regards the discrepancies pointed out during the course of inspection of the petitioner institution, such discrepancies are minor in nature besides they are curable. While so, by citing the discrepancies pointed out during inspection, the petitioner institution cannot be kept out of the purview of the counselling schedule. Further, the petitioner is also ready to establish the fact that they have complied with all the infrastructural amenities and rectified the deficiencies pointed out in the earlier inspection, if the respondents conduct an inspection afresh. The learned senior counsel for the petitioner also submits that one of the deficiencies pointed out is that the petitioner institution has not appointed a Reader and that was also rectified by appointing two professors. Further, the first

Division Bench of this Court, in the Public Interest Litigation filed by one Arivazhagan, mentioned supra, has held that affiliation can be granted to the petitioner after inspecting the petitioner institution. Further, in the Judgment dated 11.06.2016 passed by the Division Bench of this Court in W.A. No. 906 of 2016, in respect of the petitioner institution but affiliation in respect of a different subject, it was held that the authorities shall cause appropriate inspection by collecting a sum of Rs.40,000/- from the petitioner and thereafter shall take a decision for admission of the students by the petitioner institution. In such view of the matter, I am inclined to issue a direction as prayed for in this petition.

11. Accordingly, there will be an interim direction directing the third respondent to send the seat matrix to the second respondent for the counselling to be held from 07.11.2016 onwards or any other date. The second respondent is further directed to include the name of the petitioner institution in the counselling scheduled to be held from 07.11.2016 onwards to admit the students in the Bachelor of Naturopathy and Yoga Sciences (B.N.Y.S. Degree Course) 5 1/2 years for the academic year 2016-2017 in the petitioner institution pending disposal of the present writ petition. It is made clear that at the time of admission of the students, in the counselling itself for the petitioner institution, the students shall be informed about the pending writ petition and that their admission has been made purely on the basis of the interim order passed by this Court in this writ petition. The students so admitted shall also be informed that their admission is subject to the result of the writ petition and they cannot claim any equity merely because they are admitted in the course. The respondents are further directed to cause inspection of the petitioner institution within a period of ten days from the date of receipt of a copy of this order so that before completion of the admission process, the respondents shall satisfy themselves with the compliance of the deficiencies pointed out earlier by the respondents, including infrastructural amenities and other requirements provided by the petitioner institution. Accordingly, the miscellaneous petition is ordered."

6. As against the order dated 16.11.2016 passed in W.M.P. No. 33176 of 2016, the University has filed W.A. No. 1508 of 2016 before the Division Bench of this Court. The Division Bench, by Judgment dated 22.11.2016, disposed of the writ appeal, the relevant portion of which is extracted hereunder:-

"5. After having heard the learned counsel appearing for the parties with regard to disaffiliation of the college and also the resolution passed by the governing council, this Court is of the view

that the parties shall raise all the contentions before the learned single Judge to enable the learned single Judge to dispose of the matter, in accordance with law, after hearing both the parties. Even thereafter, if the parties are aggrieved by any such order, by way of final disposal of the writ petition, this Court would take up the issue. As such, it may not be proper to interfere, at this stage, rather the appellant is directed to urge all the contentions before the learned single Judge to pass an appropriate order. It is also represented that there are certain new materials available with the University. Such new materials also shall be produced before the learned single Judge, after serving a copy of the same on the other side. It is for the appellant to move the learned single Judge today itself and in such event, it is for the learned single Judge to pass appropriate orders, after hearing both the parties. The writ appeal is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

7. Pursuant to the direction of the Division Bench of this Court mentioned above, this writ petition was listed before this Court. Today, I heard the learned counsel on either side at length.

8. Mr. N.G.R. Prasad, learned counsel for the petitioner would now contend that the Central Government has extended the time for admitting the students in Homeopathy course till 15.12.2016 i.e., today for the academic year 2016-2017. It is further contend that as the petitioner institution has provided all the infrastructure required, no prejudice will be caused if a direction is issued to the respondents to fill up the seats in the management quota by conducting a special counselling for the petitioner institution.

9. On the other hand, Mr. Ayya Durai, learned Additional Advocate General appearing for the respondents would contend that as on date, the petitioner institution has not even applied for renewal of the affiliation for the academic year 2016-2017. Further, the University has passed an order of

disaffiliation which is challenged by the petitioner in WP No. 42664 of 2016. In such circumstance, the prayer of the petitioner to admit the students is not feasible at this stage. Even otherwise, till yesterday, counselling was conducted in which all the seats have been filled up excluding the petitioner institution.

10. I heard the learned counsel on either side and perused the materials placed on record. Taking into consideration of the fact that till yesterday the counselling was conducted in which all the seats have been filled up, as rightly pointed out by the learned Additional Advocate General appearing for the respondents, it is not possible for this Court to issue any direction to the respondents to permit the petitioner to fill up the management quota seats for the current academic year 2016-2017 at this belated stage. Further, this Court also takes note of the fact that on the one hand the petitioner institution has not submitted an application for renewal of affiliation nor paid the fees for inspection for the year 2016-2017. On the other hand, in the connected case which was also taken on writ appeal, the petitioner institution has paid the inspection fee and also applied for renewal. At any rate, since today is the last date for admission of students in the management quota, no direction could be issued to the respondents to either permit the petitioner institution to fill up the seats today or to conduct a special counselling for the petitioner institution. This is more so that the University has passed an order of disaffiliation which is the subject matter of challenge in WP No. 42644 of 2016. Even though this Court grants an order of interim stay of disaffiliation alone in WMP No. 36586 of 2016 in WP No. 42644 of 2016 in view of the fact that the petitioner was not given an opportunity of hearing before passing the order of disaffiliation, the direction sought for in the present petition cannot be

granted. Accordingly, W.M.P. No. 33176 of 2016 is dismissed.

11. Post the above WP No. 38721 of 2016 along with WP No. 42644 of 2016 for final disposal after four weeks.

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W.M.P. No. 33176 of 2016
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W.P. No. 38721 of 2016

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