

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 08.03.2016

Pronounced on : 28-03-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 4403, 4404 and 4405 of 2016  
and  
W.M.P. No. 3750 to 3752 of 2016

Dr. T.Madhu Vardhana ... Petitioner in WP 4403/16

Dr. M. Arun ... Petitioner in WP 4404/16

Dr. N. Naveen ... Petitioner in WP 4405/16

Versus

1. Union of India  
represented by its Ministry of Health  
Office of the Health Minister  
New Delhi

2. The President  
Medical Council of India  
Pocket-14, Sector 6  
Dwarka, Phase-1  
New Delhi - 110 077

3. The President  
Tamil Nadu Medical Council  
No.914, Poonamallee High Road  
Arumbakkam  
Chennai - 600 106

4. The Director/The Dean  
Sri Manakula Vinayagar Medical  
College & Hospital  
Puducherry

... Respondents in all  
the Writ Petitions

Petitions filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the second and third respondents to register the name of the petitioners for M.D. Forensic Medicine.

For Petitioners: Mr. P.R. Dinesh Kumar  
in all the Writ Petitions

For Respondents: Mr. V.P. Raman for RR1 to 3  
in all the Writ Petitions

#### COMMON ORDER

The relief sought for in all the writ petitions are identical. The respondents in all the writ petitions are one and the same. The issue arise for consideration by this Court in these writ petition is inter-connected with each other. Therefore, by consent of counsel for both sides, the writ petitions are taken up together and are disposed of by this common order.

2. The petitioners herein have completed their M.B.B.S. course from various institutions during the year 2007 to 2010. Thereafter, the petitioners have also completed the Compulsory Rotatory Resident Internship and obtained a completion certificate thereof. On the basis of such certificate, the petitioners have registered themselves as Medical Practitioner with the third respondent. Thereafter, the petitioners joined the fourth respondent medical college for pursuing MD degree in Forensic Medicine during May 2012. According to the petitioners, at the time when they joined the fourth respondent college for pursuing the Masters degree course, the second respondent has issued letter of permission dated 28.03.2012 under Section 10 (a) of the Indian Medical Council Act, 1956. for starting M.D. Forensic medicine course with an annual intake of 4 students per year prospectively from the academic session 2012-2013. It is on the basis of such letter of permission, the fourth respondent college commenced the MD degree in forensic medicine course in which the petitioners have joined in the year 2012 and completed the course during October 2015. Thereafter, the petitioners were also conferred with provisional certificate by the fourth respondent on 23.11.2015. Though the petitioners have successfully completed the course, they could not registered their MD Degree in Forensic Medicine Degree with the second and third respondents and consequently they could not be considered for selection and appointment to the post of Assistant Professor/Senior Resident in the government run medical colleges and hospitals. According to the petitioners, due to a dispute between the second and fourth respondent, recognition was not accorded to the fourth respondent institution thereby the petitioners are indirectly affected. The petitioners also paid a sum of Rs.17,40,000/- towards fee to the fourth respondent for pursuing the course. However, inspite of completing the course, the delay in grant of recognition to the candidates through the fourth respondent, the petitioners

are unable to registered themselves with the second and third respondents. The petitioners also placed reliance on GO Ms. No.75, Health Secretariat dated 30.10.2007 of the Government of Puducherry wherein and by which the Government of Puducherry granted permission in favour of the fourth respondent institution to conduct Medico Legal Autopsy in their institution. It is on the basis of the said Government Order, the petitioners have pursued the post graduate course in the fourth respondent institution. In such circumstance, the petitioners have come up with these writ petitions.

3. The learned counsel for the petitioners would vehemently contend that the petitioners have joined the fourth respondent institution for pursuing Post Graduate Degree course in Forensic science only on the basis of the letter of permission issued by the second respondent. The second respondent, after having issued the letter of permission, has kept the issue of recognition of MD course pursued by the students through the fourth respondent institution under consideration for a long time by which the petitioners were subjected to grave prejudice. The petitioners can in no way be faulted for having pursued the post graduate course with the fourth respondent especially when the second respondent has issued the letter of permission in favour of the fourth respondent.

4. The learned counsel for the petitioners relied on the order passed by this Court in an identical circumstances on 04.01.2016 in WP Nos. 26326 to 26331, 26333 and 26334 of 2014 wherein this Court has held that for no fault of the petitioners therein, they cannot be made to suffer. Relying on the aforesaid order, the learned counsel for the petitioners prayed for issuing appropriate direction to the respondents as prayed for.

5. The learned counsel appearing for the second respondent opposed the writ petition by relying on the reply affidavit filed by the second respondent. According to the counsel for the second respondent, the procedure for starting a new or higher course, establishment of new medical college, opening of higher course of study or increase of admission capacity has been provided in Medical Education Regulations, 1993 under Section 10-A read with Section 33 of the Medical Council of India Act. A medical institution is entitled to make admission to higher course only after it has been granted permission for the same in accordance with the aforesaid Regulation. Thereafter, the Medical Council of India is required to make an application under Section 11 (2) of the Indian Medical Council Act, 1956 to the Central Government to have such higher qualification recognised and the Central Government, after consulting the Medical Council of India, may by notification



recognise such medical qualification. The statutory scheme so incorporated under the provisions of Section 10-A and the regulations made thereunder have clearly provided for grant of permission by Central Government. Thereafter, at the time of final examinations, the Medical Council of India will conduct inspection for consideration and grant of recognition to such post graduate course. According to the counsel for the second respondent, only in case where a medical college has obtained the initial permission under Section 10-A of the Act, those institutions will be inspected again for consideration of grant of recognition for a post graduate medical course.

6. The learned counsel for the second respondent would further contend that the Central Government, vide letter dated 09.04.2015 forwarded the request of the Registrar, Puducherry University for recognition of MD (forensic science) course in the fourth respondent institution under Section 11 (2) of the Indian Medical Council Act, 1956. The second respondent also conducted an inspection on 15.04.2015. The report of the inspection was considered by the Post Graduate committee of the second respondent in the meeting held on 24.09.2015. The committee, after assessing the report dated 15.04.2015 decided to recommend to the Central Government not to grant recognition to the fourth respondent institution and directed the fourth respondent to submit a report of compliance within six weeks. On 26.10.2015, the fourth respondent also forwarded the compliance report to the second respondent. The compliance report was placed in the Post Graduate Sub-committee in the meeting held on 15.02.2016 and the matter is pending at this stage. Therefore, the learned counsel for the second respondent only contend that based on the outcome of the meeting and after complying with various other formalities, the claim of the fourth respondent institution has to be taken up for consideration. Therefore, the learned counsel for the second respondent prayed this Court for dismissal of the writ petition especially when the fourth respondent institution has not been granted recognition as required.

7. I heard the counsel for the petitioners and the learned counsel for the respondents 1 to 3. On appreciation of the above factual position, it is clear that on 28.03.2012, the second respondent has issued letter of permission in favour of the fourth respondent institution, which is enclosed in page No.4 of the typed set of paper filed in WP No. 4405 of 2016. The letter of permission reads as follows:-

"In continuation to this office Letter of Intent dated 22nd March 2012 and your acceptance on the conditions mentioned therein vide Letter dated 24th March 2012, I am directed to convey the permission of the Board of Governors for starting of M.D. (Forensic Science) course with annual intake of 04 (Four)

student (s) per year with prospective effect i.e., from the academic year 2012-2013 at your institute under Section 10-A of the IMC Act, 1956, as amended.

The permission for starting of the above course and admission of students will be such time the first batch of students admitted against the above course appears for the final examination in the subject. The college authorities may take up the matter for recognition of the qualification under Section 11 (2) of the IMC Act at the time of first batch admitted against the course appears for final year examination.

Please acknowledge receipt of this letter."

8. It is seen from the reply affidavit of the second respondent that even though the second respondent adverted to various provisions of the Act and the compliances required therein, the second respondent has not adverted to the Letter of Permission granted in favour of the fourth respondent institution. It is the specific case of the petitioners that on the basis of the letter of permission granted by the second respondent, they have joined the post graduate course in forensic sciences and I find force in such submission of the petitioners. Therefore, the petitioners cannot be faulted for the non-compliance or otherwise of the various provisions of the Act or Regulations by the fourth respondent.

9. It is pertinent to point out here that the issue involved in this writ petition is no longer res integra. This Court, in identical circumstances, passed an order dated 04.01.2016 in WP Nos. 26326 to 26331, 26333 and 26334 of 2014 wherein this Court has held that for no fault of the petitioners therein they cannot be made to suffer. In the order dated 04.01.2016, this Court also placed reliance on the order passed by the Apex Court in WP No. 16812 of 2015. Para No.5 and 6 of the order dated 04.01.2016 shall be usefully extracted as under:-

5. This Court, while considering a similar issue in W.P. No. 16812 of 2015, after taking note of the earlier decision of the Apex Court and the judgement of the Division Bench of the Bombay High Court, by judgement dated 11.09.2015, was pleased to hold as follows:

"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 a 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 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."

6. The ratio laid down in the aforesaid judgement shall be applicable to the case on hand. It is not as if, the petitioners are at fault. The facts as narrated are not in dispute. In such view of the matter, this Court is of the considered view that the writ petition will have to be allowed. Accordingly, a direction is issued to the respondent Nos. 2 and 3 to register the name of the petitioners in respective courses being M.D.Forensic Medicine, M.D. Community Medicine and M.D.Microbiology, within a period of eight weeks from the date of receipt of copy of this order. It is hereby made clear that the order passed by this Court will not stand in the way of the respondent No. 2, while taking appropriate action, in accordance with law, against the respondent No. 4."

10. In the light of the above decision of this Court, I have no hesitation to hold that the petitioners are entitled for issuance of a Mandamus as prayed for. Accordingly, the writ petitions are allowed. No costs. The second and third respondents are directed to register the name of the petitioners for M.D. Forensic Medicine within a period of eight weeks from the date of receipt of a copy of this order. This order will not in any way prevent the second respondent from taking any action in accordance with law as against the fourth respondent

institution for violation of any statutory provisions, if any.  
Consequently, connected miscellaneous petition is closed.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Ministry of Health,  
Union of India,  
Office of the Health Minister  
New Delhi

2. The President  
Medical Council of India  
Pocket-14, Sector 8  
Dwarka, Phase-1  
New Delhi - 110 077

3. The President  
Tamil Nadu Medical Council  
No.914, Poonamallee High Road  
Arumbakkam  
Chennai - 600 016

+4 ccs to Mr.P.R.Dhinesh Kumar, Advocate sr.19117/16

WP Nos. 4403 to 4405/2016

aa12/04/2016

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