

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06-10-2017

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.25361 of 2017

and

W.M.P.No.26803 of 2017

Sri Vijay Vidyalaya College of Pharmacy,
Nallampalli (Post Office)
Dharmapuri-636 807

Rep by its Chairman D.N.C.Manivannan

...Petitioner

-Vs-

- 1.The Registrar,
MGR Medical University,
69,Anna Salai,
Guindy,
Chennai-600 032.
2. The Pharmacy council of India
Represented by the Secretary cum Registrar
Combined Council Building,
Temple Lane, Kotla Road,
Aiwan-E-GHALIE Marg,
Post Box No.7020,
New Delhi-110 002.
3. The Member Secretary,
All India Council for Technical Education, (AICTE)
Nelson Mandela Marg,
Vasanth Kunj,
New Delhi-110 067.
- 4.The Director of Medical Education,
Government of Tamil Nadu, Chennai.Respondents

(R4 suo motu impleaded as per order dated 06.10.2017
by NKKJ in W.P.No.25361/2017)

Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned letter by the 1st respondent in Lr.No.Affln.1(6)/29882/2016 dated 21.06.2017 and consequently direct the 1st respondent to grant affiliation to the petitioner Institution for an intake of 100 students for the Academic year 2017-18 pursuant to the approval granted by the 2nd and 3rd respondent for an intake of 100 students for the academic year 2017-18.

For Petitioner : Mr.N.Chandrasekharan

For Respondents : Mr.P.R.Gopinathan for R1

Mr.M.T.Arunan for R2

Mr.B.Rabu Monohar for R3

Mr.Pappiah for R4

Special Government Pleader

O R D E R

The petitioner is a Pharmacy college imparting four year course in B.Pharm. They obtained approval for intake of 60 students from AICTE on 30.04.2016 for the Academic year 2016-2017 and from the Pharmacy Council on 05.01.2017. Similarly, the 1st respondent/University granted affiliation for 60 students for the Academic Year 2016-17.

2.The first year batch was already admitted and they are undergoing the course. Subsequently, for the year 2017-2018, the petitioner approached the 3rd respondent/AICTE for increasing the intake namely, from 60 students to 100 students for the academic year 2017-2018. By an order dated 15.08.2017, the Pharmacy Council granted approval for intake of 100 students for the academic year 2017-2018. However, for affiliation of 100 students, when the petitioner approached the 1st respondent/University, it rejected the increase in intake. The said order is being challenged before this Court.

3.Mr.N.Chandrasekharan, learned counsel appearing for the petitioner would submit that only after obtaining approval from AICTE and Pharmacy Council, the intake has been increased from 60 students to 100 students and accordingly, the affiliation is sought from the 1st respondent/University. Once the central expert body grants approval, the 1st respondent/University has got no role to reject the petitioner's claim for affiliation. In this regard, the learned counsel for the petitioner relied on the following judgments.

1. (2000) 5 Supreme Court Cases 231, Jaya Gokul Educational Trust v. Commissioner & Secretary to Govt. Higher Education Department.
2. (2009) 16 Supreme Court Cases 309, Mata Gujri Memorial Medical College v. State of Bihar and Others.
3. (2015) 11 Supreme Court Cases 291, Rungta Engineering College, Bhilai and Another v. Chhattisgarh Swami Vivekanand Technical University and Another.

4.Per contra, Mr.P.R.Gopinathan, learned counsel appearing for the first respondent would submit that the first respondent is governed by Tamil Nadu Dr.M.G.R Medical University statute. As per Section 58 of the statute, no pharmacy college shall apply to the University for increase in seats in B.Pharmacy Degree Course until the first batch of students has successfully completed the course and has left the college and the B.Pharm Degree so obtained is recognized. While so, the petitioner institution had admitted students in B.Pharm Course only during the academic year 2016-17 and those students had not completed the course and left the college. Therefore, there is prohibition under section 58 of the statute for increasing the number of seats in the petitioner institution. Hence, the 1st respondent/University has rightly rejected the claim of the petitioner for increase in the number of seats in B.Pharm course.

5.On the other hand, Mr.M.T.Arunan, learned counsel appearing for the Pharmacy Council of India would submit that based on the inspection report only, the approval was granted. Similarly, Mr.Rabu Manohar, learned counsel appearing for AICTE would submit that only on subjective satisfaction, AICTE granted approval for increase in the number of seats.

6.Heard the parties and perused the records.

7.There is no dispute with regard to the establishment of pharmacy college and admission of first batch of 60 students during the academic year 2016-17, after obtaining approval from AICTE and Pharmacy Council of India and consequently, the affiliation from the 1st respondent/University. The dispute arises only with regard to the increase in intake namely, from 60 students to 100 students. The increase in intake has been approved by AICTE on 10.04.2017 and by Pharmacy Council of India on 15.08.2017. When the central expert body had already granted approval under the Central statute, the 1st respondent/University which has been constituted under the State Act cannot refuse to affiliate the increase in the number of seats. Therefore, Section 58 of Tamil Nadu Dr.M.G.R Medical University statute cannot be implied in such a way to set aside or to doubt the approval already granted by the Central expert bodies.

8.The Hon'ble Apex Court in the decision reported in (2015) 11 Supreme Court Cases 291, Rungta Engineering College, Bhilai and Another v. Chhattisgarh Swami Vivekanand Technical University and Another had categorically held that the Council is entrusted with power to lay down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing norms and guidelines for charging tuition fee and in these issues, the State University

will have not authority. Paragraphs 24 to 33 of the said decision is usefully extracted here under:

"24.The authority of the States and the Universities established by the States to regulate the establishment and running of institutions imparting technical education has been a subject matter of a long debate in various judgments of this Court. Educational institutions imparting technical education are amenable to the control of AICTE under the 1987 Act in certain aspects and the regulatory authority of the State, and Universities established by or under a legislation of the State, in certain other aspects.

25.This Court in State of T.N. and Another v. Adhiyaman Educational & Research Institute and Others, (1995) 4 SCC 104, after considering the constitutional scheme of various entries of List I and List III of the Seventh Schedule and the language of the 1987 Act and the Madras University Act concluded that the 1987 Act is referable to Entry 66 of List I. The field of "determination of standards in institutions for higher education, or research and scientific and technical institutions" is exclusive to the Parliament and any law made by the Parliament referable to the said field is paramount. The 1987 Act empowers the AICTE, a body constituted under the said Act "to evolve suitable performance appraisal systems incorporating norms and mechanisms for maintaining accountability of the technical institutions" and lay down

"norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing norms and guidelines for charging tuition fee and other fees, granting approval for starting new technical institutions or introducing new courses or programmes".

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This Court categorically held

"30.Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction".

Consequently, this Court held "after coming into operation of the Central Act" the provisions of any other State law overlapping on the area covered by the

Central Act "will be deemed to have become unenforceable...". The argument that the State legislature can stipulate norms of higher standards even in those areas which are covered by the AICTE is clearly rejected by this Court.

26. The question whether the State Government as a matter of policy, can decline to grant approval/permission for the establishment of a new engineering college in view of the perception of the State Government that the opening of new colleges will not be in the interest of the students and employment, fell for consideration of this Court in *Jaya Gokul Educational Trust v. Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, (2000) 5 SCC 231. This Court held that the State could not have any policy outside the AICTE Act and indeed if it had a policy, it should have placed the same before the AICTE and that too before the latter granted permission.

27. The question of the authority of a University to grant or decline affiliation squarely fell for consideration before this Court in *Bhartia Education Society v. State of H.P.*, (2011) 4 SCC 527. The case arose under the National Council for Teachers Education Act, 1993 (hereinafter referred to as "NCTE Act") the scheme of which is also identical to the AICTE Act. This Court held as follows:-

"19. ... On the other hand, "recognition" is the licence to the institution to offer a course or training in teacher education. Prior to the NCTE Act, in the absence of an apex body to plan and coordinate maintenance of the norms and standards in the teacher education system, Government and universities/boards. After the enactment of the NCTE Act, the functions of NCTE as "recognising authority" and the examining bodies as "affiliating authorities" became crystallised, though their functions overlap on several issues. The NCTE Act recognises the role of examining bodies in their sphere of activity.

28. This Court examined the scope of Section 16 of the NCTE Act which prohibited the grant of affiliation by any "examining body" - (a University)

to any institution conducting a course for training people for the occupation of teaching unless such institution obtained recognition from the competent authority under the NCTE Act. Though, this Court made it clear that the "examining body" (University) does not have any discretion to refuse affiliation with reference to any of the factors which ought to be considered by NCTE while granting recognition, recognised that the "examining body" has the authority to demand compliance with its norms in a limited area regarding the "eligibility of the candidates" and "manner of admission" of students etc. It was further held :-

"22. ... For example, NCTE is required to satisfy itself about the adequate financial resources, accommodation, library, qualified staff, and laboratory required for proper functioning of an institution for a course or training in teacher education. Therefore, when recognition is granted by NCTE, it is implied that NCTE has satisfied itself on those aspects. Consequently, the examining body may not refuse affiliation on the ground that the institution does not have adequate financial resources, accommodation, library, qualified staff, or laboratory required for proper functioning of the institution. But this does not mean that the examining body cannot require compliance with its own requirements in regard to eligibility of candidates for admissions to courses or manner of admission of students or other areas falling within the sphere of the State Government and/or the examining body."

At para 24, this Court indicated the areas where the "examining body" can stipulate norms, the non-compliance with which norms authorise the examining body to cancel the affiliation.

"24. The examining body can therefore impose its own requirements in regard to eligibility of students for admission to a course in addition to those prescribed by NCTE. The State Government and the examining body may also regulate the manner of admissions. As a consequence, if there is any irregularity in admissions or violation of the eligibility criteria prescribed by the examining body or any irregularity with reference to any of the matters regulated and governed by the examining

body, the examining body may cancel the affiliation irrespective of the fact that the institution continues to enjoy the recognition of NCTE. Sub-section (6) of Section 14 cannot be interpreted in a manner so as to make the process of affiliation, an automatic rubber-stamping consequent upon recognition, without any kind of discretion in the examining body to examine whether the institution deserves affiliation or not, independent of the recognition."

29. Similarly, under the scheme of the 1987 Act, as noticed by this Court in para 30 of the Adhiyaman Educational & Research Institute case (supra), under Section 10 of the Central Act, the Council is entrusted with the power to lay down norms and standards for courses, curricula, staff pattern, staff qualification, assessment and examination, fixing norms and guidelines for charging tuition fees etc. and further held that in these matters the University will have no authority.

30. The respondents heavily relied upon the last sentence of para 24 of the decision in Bhartia Education Society (supra) (extracted earlier) to assert that the respondents still have the necessary authority to grant or decline affiliation. We are of the opinion that the respondents are reading that sentence out of the context. The judgment was very clear as to the areas which are exclusively within the jurisdiction of the NCTE whose satisfaction regarding the compliance with the standards prescribed by it in those areas is final and the areas where the "examining body" has authority to lay down its own norms (such as eligibility of the students for admission to a course and the manner of admission).

31. We apply the principles of law mentioned above to the facts of the present case. The various objections which (according to the respondent) formed the basis for declining affiliation to the first petitioner institution are contained in the communication dated 26.4.2013 which was extracted in detail at para 26 (supra).

32. An examination of all the objections mentioned in the said communication would reveal that each one of those objections squarely fall within the sweep of one or the other areas which only the AICTE has the exclusive jurisdiction to deal with. None of them are demonstrated before us to be matters falling within the area legally falling within the domain of the respondents. AICTE, on inspection of the Ist petitioner college reported that the Ist petitioner college fulfils all the conditions prescribed by the norms and standards laid down by AICTE. The respondents did not make any specific assertion that such a report of the AICTE is factually incorrect. Assuming for the sake of argument that, in the opinion of the respondents, the petitioner college has not in fact fulfilled any one of the conditions required under the norms specified by the AICTE, the only course of action available for the respondents is to bring the shortcomings noticed by them to the notice of the AICTE and seek appropriate action against the petitioner college.

33. We are, therefore, of the opinion that the decision of the respondent not to grant the affiliation to the first petitioner college is wholly untenable and is required to be set aside. The same is accordingly set aside. Since the respondent did not decline the affiliation to the first petitioner college either on the ground that the petitioner college is admitting wholly ineligible students as per the norms stipulated by the respondent University or that the admission procedure prescribed by the respondents is not being complied with by the petitioners or on any other ground that the petitioners violated any one of the stipulations made by the University which the University is legally competent to make, we have no option but to direct the respondents to grant affiliation to the petitioner college. The operative portion of the judgment of this Court has already been pronounced on 01.9.2014. Therefore, we are not reiterating the same."

9. Similar contention raised by Mr. P. R. Gopinathan, learned counsel appearing for the first respondent in the instant case was also raised in the case of *Jaya Gokul Educational Trust v. Commissioner & Secretary to Govt. Higher Education Department* reported in (2000) 5 Supreme Court Cases 231, wherein at paragraph 27, it has been categorically stated that the State

cannot have any policy outside the AICTE Act. The relevant portion of the said judgment is usefully extracted hereunder:

"27. The so called 'policy' of the State as mentioned in the counter affidavit filed in the High Court was not a ground for refusing approval. In Thirwnuruga Kirupan and Variyar Thavathiru Sundara Swamigal Medical Education & Charitable Trust v. State of Tamil Nadu & Others, [1996] 3 SCC 15, which was a case relating to Medical Education and which also related to the effect of a Central Law upon a law made by the State under Entry 25 List III, it was held (see p. 35 para 34) that the

"essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now vests with the Central Government alone".

Therefore, the State could not have any "policy" outside the AICTE Act and indeed if it had a policy, it should have placed the same before the AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and regulations had been followed under Regulation 8(4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. We may however add that if thereafter, any fresh facts came to light after an approval was granted by the AICTE or if the State felt that some conditions attached to the permission and required by the AICTE to be complied with, were not complied with, then the State government could always write to the AICTE, to enable the latter to take appropriate action."

10. In the decision reported in (2009) 16 Supreme Court Cases 309, Mata Gujri Memorial Medical College v. State of Bihar and Others, it has been held that where Central Government was satisfied about capability of institution to impart medical education and had granted affiliation/recognition to it after following the prescribed procedures, State would have no say in the matter.

11. Even in the decision reported in (2000) 5 Supreme Court Cases 231, Jaya Gokul Educational Trust v. Commissioner & Secretary to Govt. Higher Education Department, it was held that if the State Government had any other valid objections, its only remedy was to place its objections before the AICTE Council under the AICTE Act. In this case, the University would contend that under Section 58 of the Act, there cannot be any increase in the number of seats which is contrary to the AICTE Act and also contrary to the decision taken by Central Councils viz.,

AICTE and Pharmacy Council of India.

12.A Division Bench of this Court, in similar circumstances, in the case of The Tamil Nadu Dr. M.G.R. Medical University v. Arulmighu Kalasalingam College of Pharmacy and Others reported in AIR 2005 MADRAS 182 has held that when increase in the number of seats in Pharmacy courses had been approved by the Pharmacy Council of India, the scope of the very same Dr.M.G.R. Medical University under such issues is virtually nil. Paragraphs 5 and 6 of the said decision is usefully extracted hereunder:

"5.Even assuming B.Pharm course would form part of para-medical course, it will have to be held that in the light of the categoric pronouncement of the Honourable Supreme Court in JAYA GOKUL EDUCATIONAL TRUST VS. COMMISSIONER & SECRETARY TO GOVT. HIGHER EDUCATION DEPARTMENT, THIRUVANANTHAPURAM, KERALA STATE & ANOTHER (2000 (5) SCC 231) in particular paragraph-22 of the said judgment, we are of the considered view that the issue relating to increase in seats are the concern of the council, namely, Pharmacy Council of India and the scope of the appellant's role under such issues are virtually nil. For better appreciation, the said paragraph is extracted, which reads as under :

"As held in T.N. Case the Central Act of 1987 and in particular, Section 10(k) occupied the field relating to "grant of approvals" for establishing technical institutions and the provisions of the central act alone were to be complied with. So far as the provisions of the mahatma gandhi university act or its statutes were concerned and in particular Statute 9(7), they merely required the University to obtain the "views" of the State Government. That could not be characterised as requiring the approval" of the State Government. If, indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of section 10(k) of the aicte act, 1987 and would again be void. As pointed out in T.N. Case there were enough provisions in the central act for consultation by the Council of AICTE with various agencies, including the State Governments and the universities concerned. The State-Level committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, AICTE would have to go by the views of the Central Task Force. These were sufficient safeguards for

ascertaining the view of the State Governments and the universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in T.N. Case it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the central act. The University could not, therefore, in any event have sought for "approval" of the State Government."

6. The Honourable Supreme Court having thus made it clear that the procedure for obtaining affiliation and any condition which could be imposed by the University could not be inconsistent with the provisions of the Central Act, it will have to be held that there is no scope for the appellant University to take the stand that by virtue of the ban imposed in G.O. Ms.610 dated 13.11.98, the respondent cannot have the affiliation for intake of the students, which has been approved by the Pharmacy Council of India by its order dated 27.3.03."

13. In the above judgment, it has been held that following the decision of the Hon'ble Apex Court the procedure for obtaining affiliation and any condition which could be imposed by the University could not be inconsistent with the provisions of the Central Act. Therefore, Section 58 of the Tamil Nadu Dr.M.G.R Medical University statute cannot be applied to nullify or violate the decision taken by the Pharmacy Council of India and AICTE.

14. Considering the facts of the present case in the light of the above decisions, the impugned order is liable to be quashed and the writ petition stands allowed. The 1st respondent/University is directed to grant affiliation to the petitioner institution for intake of 100 students for the academic year 2017-18 and consequently, include the petitioner's institution for counseling for 100 seats.

15. Since the Director of Medical Education is in-charge of conducting counseling, he is a necessary party and hence, "The Director of Medical Education, Government of Tamil Nadu, Chennai" is suo motu impleaded as respondent in this writ petition. Mr.T.M.Pappiah, learned Special Government Pleader takes notice on behalf of the newly impleaded respondent.

16.It is made clear that if counseling has already ended, the concerned respondents shall include the petitioner/institution for the remaining 40 seats in the second counseling or a special counseling shall be conducted.

Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

- 1.The Registrar,
MGR Medical University,
69,Anna Salai,
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+lcc to Mr.R.Rabu Manohar, Advocate sr.71937
+lcc to Mr.N.Chandrasekaran, Advocate sr.71963
+lcc to Mr.M.T.Arun Advocate sr.72036
+lcc to Government Pleader sr.72597

W.P.No.25361 of 2017

GMR(co)
ss(13/10/2017)