

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.16956 of 2017
and
WMP.No.18407 of 2017

Kamalam Viswanathan College of Physiotherapy
Run by Dr.G.Viswanathan Institute of Medical Sciences,
Represented by its Secretary
Dr.K.Govindaraj
Keela Street, Murungapettai
Mutharasanallur Post, Sreerangam Taluk,
Tiruchirapalli - 620 101.

...Petitioner

Vs.

The Registrar
The Tamil Nadu Dr.MGR Medical University
Chennai

...Respondent

Prayer :

Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondent University to permit the 20 students undergoing 1st year BPT Degree Course in the petitioner's college to submit their filled up on-line examination forms for the 1st year BPT Degree Examinations for the academic year 2016-2017.

For Petitioner : Mr.A.S.Baalaji

For Respondent : Mr.P.R.Gopinathan
Standing Counsel

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O R D E R

The petitioner Institution seeks for a mandamus directing the respondent University to permit 20 students undergoing 1st year BPT Degree Course in the petitioner's college to submit their filled up on-line examination forms for the 1st year BPT Degree Examinations for the academic year 2016-2017.

2. The case of the petitioner is as follows:

The respondent University by proceedings dated 07.06.1999, permitted the petitioner to start BPT (Bachelor in Physiotherapy) Degree Course with an annual intake of 50 students from the academic year 1998-1999. Subsequently, by proceeding dated 07.09.2002, the respondent University granted Continuance of Provisional Affiliation for the academic year 2000-2001 and 2001-2002 with an intake of 50 students. Likewise, for each year, the respondent University granted Continuance of Provisional Affiliation for BPT Degree Course to the petitioner's college. The petitioner college was running at No.61, Sannadhi Street, Thiruvanaikovil, Trichy, until February 2015, a leased premises and it was decided by the Management to shift the college to their own premises at Keela Street, Murangapettai, Mutharasanallur Post, Srirangam, Trichy. This was communicated to the respondent University by letter dated 22.02.2015. Accordingly, the petitioner college started functioning from the above said address from March 2015. The respondent University by proceeding dated 28.06.2016 granted Conditional Continuance of Provisional Affiliation for the academic year 2015-2016 for conducting BPT Degree Course, subject to the condition that the institution should obtain the shifting Order from the Government, within a period of 6 months. The petitioner college had applied for issuing shifting Order on 20.02.2015 and for obtaining the said Order, building plan approval by the DTCP and other documents were required to be submitted. All requisite documents have been submitted to the Commissioner of Town and Country Planning, Chennai, for obtaining the plan approval from DTCP and the same is under scrutiny for satisfaction of the requisite norms and thus it is pending before the Commissioner of Town and Country Planning, Chennai. By proceeding dated 09.02.2017, the respondent University granted Conditional Continuance of Provisional Affiliation for the academic year 2016-2017, however, also by mentioning not to admit the students for the academic year 2016-2017. As the academic year 2016-2017 started from May 2016 itself, 20 students were already admitted during May 2016. Though the intake was for 50 seats, the petitioner college admitted only 20 students. Since the students have completed 1st year and prepared to write the examination to be commenced on 01.08.2017, the above 20 students ought to have been registered by the respondent University at an earlier point of time. However, they were not registered. Therefore, those students should be permitted to write their 1st year examination.

3. The respondent University filed a counter affidavit, wherein it is stated as follows:-

The respondent University granted Provisional Affiliation to start BPT Degree Course by the petitioner college from the

academic year 1999-2000 onwards. The petitioner college was originally functioning at No.61, Sannadhi Street, Thiruvanaikovil, Trichy. As per the Statute 76 of the Affiliation of Physiotherapy Colleges Statutes for BPT and MPT Courses of the respondent University, prior permission of the State Government / University is mandatory for shifting the college from one place to another place. In April 2015, the petitioner shifted the college from the above said premises to the new premises without obtaining the mandatory prior permission from the Government of Tamilnadu and the permission of the respondent University is based on the prior permission of the Government of Tamilnadu. However, when the petitioner sought Continuance of Provisional Affiliation for the academic year 2015-2016, the respondent University repeatedly insisted the petitioner institution to produce the Government Order from the Government of Tamil Nadu. The petitioner institution submitted a letter on 14.06.2016, enclosing an affidavit stating that they will submit shifting Government Order within six months. The petitioner ought to have submitted the permission granted by the Government on or before 28.06.2017. The grant of Continuance of Provisional Affiliation for the institution to conduct BPT degree course for the academic year 2016-2017 could not be granted by the respondent University and the same was communicated to the petitioner institution through proceeding dated 09.02.2017. The petitioner is yet to submit the Government Order pertaining to the permission accorded for change of place of the college. The respondent University had categorically stated in the letter dated 19.08.2016, that the petitioner institution should not admit any candidates in the 1st year BPT course for the academic year 2016-2017, unless and until the petitioner institution submits the Government Order pertaining to the site change. The petitioner admitted 20 students on its own and such admission has no legal sanction at all. Under such circumstances, the respondent University is prevented from considering the request of the petitioner institution for grant of continuance of Provisional Affiliation for the academic year 2016-2017.

4. The learned counsel appearing for the petitioner submitted that till the academic year 2015-2016, the respondent University granted Continuance of Provisional Affiliation and likewise for the academic year 2016-2017 also they have granted the Continuance of Provisional Affiliation through the proceeding dated 09.02.2017, however, by indicating therein, not to admit the students for the academic year 2016-2017, especially when the admission to the said academic year had already been completed in the month of May 2016 itself. He further submitted that the only condition imposed in the conditional Continuance of Provisional Affiliation is that the petitioner should obtain order from the Government on the

shifting of the premises. Thus, he submitted that when already the petitioner has taken steps to get the said Government Order and only for want of building plan approval by DTCP, for which the papers are pending before the Commission of Town and Country Planning, Chennai, the said order is yet to be issued. Hence, he submitted that in the meantime, the students who are admitted in the academic year 2016-2017 cannot be made to suffer and therefore, they must be permitted to write the examination.

5. The learned counsel appearing for the respondent University vehemently opposed the relief sought for by the petitioner, by specifically contending that no affiliation is granted to the petitioner institution for the academic year 2016-2017 and therefore, the students who were admitted in the said academic year cannot be permitted to write the examination, as such admission itself is illegal. In support of the above said submission, the learned counsel sought to rely on the proceedings dated 09.02.2017, which, according to him, is a rejection of the request for Provisional Affiliation for the said academic year. He strongly relied on a sentence referred to in the said proceedings stating "Not to admit the students for the academic year 2016-2017". The learned counsel further pointed out that till this date, the petitioner has not produced the Order from the Government permitting the shifting and therefore, the students admitted in the petitioner college for the academic year 2016-2017 cannot be permitted to write the examination. He further pointed out that it is settled proposition that permission to write the examination cannot be granted to the students when the institution is not having the Affiliation from the University.

6. Heard both sides.

7. The point for consideration in this writ petition is as to whether the students admitted by the petitioner institution for the academic year 2016-2017 are entitled to write their first year examination commencing from 1st week of August 2017. There is no dispute to the fact that the petitioner institution which was started as early as in the year 1999 is enjoying the Continuance of Provisional Affiliation every year and the students who are admitted in the said institution were permitted to write the examination. It is seen that the petitioner institution which was originally functioning in a leased premises, has shifted to the premises owned by them in the year 2015 and to that effect they have also intimated the respondent University. It is also not in dispute that the petitioner has approached the Government and sought for issuance of requisite Government Order permitting such shifting. Further, it is seen that the said request is not rejected by the Government and the same is still pending before the Government for consideration,

since it is stated that the building plan approval to be granted by the concerned authority is yet to be issued and the relevant papers are pending for consideration before the said Authority. Under such circumstances, a proceeding came to be issued on 09.02.2017 by the respondent University in respect of the Provisional Affiliation for the academic year 2016-2017, which reads as follows:

PROCEEDINGS OF THE REGISTRAR

THE TAMILNADU DR.M.G.R.MEDICAL UNIVERSITY, CHENNAI-600 032

PRESENT: Dr.T.BALASUBRAMANIAN M.S., D.L.O.,

Proc.No.Affln.III(2)/19658/2016

Dated: 09.02.2017

Sub: Affiliation - The Tamil Nadu Dr.M.G.R.Medical University, Chennai - B.P.T.Degree Course- Kamalam Viswanathan College of Physiotherapy, Trichy- Grant of Conditional Continuance of Provisional affiliation for the academic year 2016-2017- Orders -Issues.

Ref: 1. This Uty's lr.of even no. dated 16.2.16.
2. Inspection report dated 30.12.16.
3. V.C's order dated 08.02.17.

ORDER:

The Tamil Nadu Dr.M.G.R.Medical University grants Grant of Conditional continuance of Provisional Affiliation for the academic year 2016-2017 for conducting B.P.T. Degree Course at Kamalam Viswanathan College of Physiotherapy, Trichy with subject to the condition that the Institution have to obtain the shifting G.O. from the Government and as indicated below subject to the usual conditions as already communicated in the Provisional Affiliation order of this University.

Name of the Institution/ College	Name of the course	Governing Council Resolution	Conditional Continuance of Provisional Affiliation for the academic year	Intake of Students
Kamalam Viswanathan College of Physiotherapy, Tiruchirappalli	B.P.T. Degree Course	Res.No.44 of 238 th G.C. held on 13.08.2015.	2016-2017 Not to admit the students for the A.Y.2016-2017	50 seats fifty only

The admission procedure of the Government as per the scheme of admission enunciated by the Supreme Court of India should be followed.

The seats available in BPT degree course shall be filled up as per orders in force. The Management shall follow a transparent and reasonable method of admission for the Management quota as per orders in force.

The admission procedure as laid down in Government Order should be followed. Any admission made over and above will not be permissible on any account.

Any other condition, which the University considers necessary to impose from time to time should be followed.

The receipt of the proceedings shall be acknowledged.

Dr.T.BALASUBRAMANIAN
REGISTRAR

8. The respondent University, which issued the said proceedings, now has chosen to take a 'U' turn and contend before this Court as if the said proceeding has not been issued granting continuance of Provisional Affiliation for the academic year 2016-2017 and on the other hand, it is their specific and categorical stand that there is no affiliation granted to the petitioner institution for the academic year 2016-2017. The learned counsel for the respondent University as well as the respondent in the counter affidavit strongly placed their reliance on the sentence made in the above said order which reads as follows: "Not to admit the students for the academic year 2016-2017".

9. I have read the above order dated 09.02.2017 for more

than one time. A careful and thorough perusal of the said order does not indicate anywhere that the Provisional Affiliation for the academic year 2016-2017 is rejected. On the other hand, the very beginning of the order proceeds to state that the respondent University granted Continuance of Provisional Affiliation for the academic year 2016-2017 for conducting BPT Degree Course subject to the condition that the institution has to obtain a shifting G.O. from the Government subject to the conditions as already communicated to the Provisional Affiliation order of the University. Further perusal of the order would certainly indicate that the University has granted the conditional Continuance of Provisional Affiliation for the academic year 2016-2017 for the intake of 50 students. Having said so in clear and categorical terms, I do not understand as to what prompted the respondent University to further say that the petitioner college should not admit the students for the academic year 2016-2017. I do not think that the said sentence has any meaning to be conveyed, more particularly, when the University has chosen to grant the Provisional Affiliation for the academic year 2016-2017 for intake of 50 students. The vital factor to be noted here at this juncture is that the admission to the said academic year has already commenced and completed in the month of May, 2017 itself. Therefore, when the University has chosen to grant conditional Continuance of Provisional Affiliation for the said academic year 2016-2017 for the students who were already admitted in the month of May 2017, the question of directing the petitioner institution not to admit the students for the academic year 2016-2017 is absolutely meaningless and has no relevance to the matter in dispute. Unfortunately, the University and its learned counsel are harping upon the meaningless sentence referred to in the said order to justify the refusal of permission to the students admitted in the said academic year to take their examination.

10. Considering the above stated facts and circumstances and considering the fact that the only reason stated before this Court is that the petitioner has not obtained the shifting Government Order from the Government and considering the fact that the said request is already pending before the Government and in the meantime, the examination is also commencing, this Court is of the firm view that the respondent University is not entitled to deny permission to those students to write their first year examination commencing from 1st week of August 2017, having given such continuance of Provisional Affiliation dated 09.02.2017. In fact, while entertaining this writ petition, this Court, by way of an interim order passed on 10.07.2017, directed the respondent University to permit the petitioner college to make the application forms of the students admitted in the BPT Degree Course for the academic year 2016-2017 without prejudice to the contention of either parties. It is stated

that in pursuant to the said order, on-line applications were already filed and the University has to issue the hall ticket and permit those students to take part in the examination. Accordingly, this writ petition is allowed and the University is directed to permit the first year students of the petitioner Institution admitted in the year 2016-2017 to take part in the first year examination of BPT Degree Course by issuing necessary hall tickets. The petitioner shall take all effective steps to get the necessary Order from the Government regarding the shifting of the premises and produce the same before the respondent University without loss of further time, at any event within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mk

+1cc to Mr.V.R.MukundaKumar, Advocate SR.No.55004
+1cc to Mr.P.R.Gopinath, Advocate SR.No.55197

GN(03/08/2017)

W.P. No.16956 of 2017

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