

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE HULUVADI G RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.No.1175 of 2016
and W.P.No.2260 of 2017
and

C.M.P.Nos.15122, 15123 & 15889 of 2016
and C.M.P.No.2580 of 2017

1.A.T.S.V.S.Siddha Medical College
& Hospital,
(Run by Akila Thiruvudhancode Siddha
Vaidhya Sangam), Munchirai,
Pudukkadai (P.O.),
Kanyakumari District - 629 171,
Rep. By its Interim Administrator
Justice A.Ramamurthi.

2.The Principal,
A.T.S.V.S.Siddha Medical College & Hospital,
(Run by Akila Thiruvudhancode Siddha
Vaidhya Sangam), Munchirai,
Pudukkadai (P.O.),
Kanyakumari District - 629 171.

... Appellants in
W.A.No.1175/2016 &
Petitioners in
W.P.No.2260/2017

vs.

1.The Secretary,
Government of India,
Ministry of Health & Family Welfare,
Department of Ayush,
Ayush Bhavan, 'B' Block,
GPO Complex, INA,
New Delhi - 110 023.

2.The Secretary,
Central Council of Indian Medicine,
(Government of India),
61-65, Institutional Area, Janakpuri,
New Delhi - 110 058.

3.The Government of Tamil Nadu,
Rep. By Secretary to Government,
Health & Family Welfare Department,
Fort St. George, Chennai - 600 009.

4.The Registrar,
Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 032.

5.The Commissioner of Indian Medicine
& Homeopathy,
Arumbakkam, Chennai - 600 106.

..Respondents in
W.A. & W.P

Writ Appeal filed under Clause 15 of the Letters Patent
praying to set aside the order dated 30.08.2016, passed in
W.P.No.33024 of 2015.

Writ Petition filed under Article 226 of the Constitution of
India praying to issue a Writ of Certiorari, to call for the
records of the 1st respondent in respect of the impugned order
F.No.R-17013/04/2016-EP (IM-1)-Government of India, Ministry of
Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy
(Ayush), "Ayush Bhawan" 'B' Block, GPO Complex, INA, New Delhi -
110 023, dated 18.11.2016 and quash the same.

For Appellants in W.A. : Mr.T.R.Rajagopalan, SC for
& Petitioners in W.P. Mr.C.V.Vijayakumar

For Respondents in :Mr.Su.Srinivasan, ASG for R1
both W.P. & W.A. **in WA.1175/16**

**Mr.Pavesh Kannan ACGSC for
R1 in WP.2260/17***

Mr.C.Kanagaraj for R2

Mr.R.Prathapkumar, AGP for R3 & R5

Mr.D.Ravichander for R4

WEB COPY
COMMON JUDGMENT

[JUDGMENT of the Court was made by HULUVADI G RAMESH, J.]

The writ appeal has been preferred against the learned
Single Judge's order dated 30.08.2016 passed in W.P.No.33024 of
2015.

2. W.P.No.2260 of 2017 has been filed by the appellants herein seeking issuance of a Writ of Certiorari to call for the records on the file of the 1st respondent pertaining to the impugned order in F.No.R-17013/04/2016-EP (IM-1)-Government of India, Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy (Ayush), "Ayush Bhawan" 'B' Block, GPO Complex, INA, New Delhi - 110 023, dated 18.11.2016 and quash the same. By the abovesaid impugned order, direction was issued to the petitioner/appellant to fullfill the shortcomings on or before 31.12.2016.

3. The appellants/petitioners college was established in the year 2001 with permission to admit 40 students every year in the course of Bachelor of Siddha Medicine and Surgery [in short "BSMS"], a 5-1/2 years degree course. The college of the petitioners/appellants is affiliated to the fourth respondent University. The first respondent had notified the Indian Medicine Central Council (Minimum Standard Requirements of Siddha Colleges and Attached Hospitals) Regulations, 2013 (hereinafter called the MSR Regulations, 2013) on 19.02.2013, in and by which, the Central Government had notified 11 Regulations along with VII Schedules in respect of Siddha Colleges established under Sections 13-A and 13-C under the Indian Medical Central Council Act, 1970 (hereinafter called the IMCC Act). As per the Regulation the annual intake of capacity for undergraduate course is prescribed at 60 and, thereafter from 61 to 100 and based on the intake capacity, provision is required to be made for infrastructure, teaching staff, training facilities, etc., as per MSR, 2013. The ratio between the number of students, number of beds, number of outpatients is fixed at 1:1:2 in terms of Regulation 7(2) of the MSR Regulations, 2013.

4. The appellants/petitioners institution, in the light of the said new Regulations, 2013, submitted representations to the first respondent praying for necessary permission to admit 60 students to the undergraduate course of BSMS, stating that it has complied with all the requirements in terms of the new Regulations. However, the first respondent has issued conditional permission, permitting the appellant/petitioner institution to fill 40 seats as against 60 seats in terms of the New Regulations, 2013, though an unanimous positive recommendation was made on 04.02.2014 by the Visitation Committee permitting the appellant/petitioner institution to admit 60 students for the academic year 2014-2015.

5. Aggrieved by the same, the petitioners have filed the W.P.No.33024 of 2015 praying for quashment of the impugned order with a direction to accord permission to admit 60 students in the academic year starting from 2015-2016. The learned Single Judge,

vide order dated 30.08.2016, dismissed the said writ petition holding that the appellants/petitioners institution shall apply under Form-3 of the New Regulations, 2013 seeking necessary permission for increase in admission capacity of students from 40 to 60 and respondents 1 and 2 shall entertain the said application and dispose of the same in accordance with the relevant norms and regulations, after taking note of the report/recommendation of the Visitation Committee dated 04.02.2014 and pass appropriate orders as expeditiously as possible. Aggrieved over the same, the appellants/petitioners institution has preferred the present writ appeal.

6. Learned Senior Counsel appearing for the appellants college submitted that since the Visitation committee made recommendation to admit 60 students after personal verification of the infrastructure, teaching staff and other facilities, such recommendation itself would be sufficient to grant permission and no separate application under Form-3 is required to be made and therefore, the the order passed by the learned single Judge is liable to be quashed.

7. The learned Additional Solicitor General appearing for the first respondent submits that pursuant to the directions of the learned single Judge, the appellant college has not made any such application seeking necessary permission for increase the admission capacity of students from 40 to 60 and therefore, the respondents authorities have not granted permission.

8. Heard the learned counsel appearing for the appellants/petitioners and the respective learned counsel appearing for the respondents.

9. When the appeal came up before this Court on 03.10.2016, this Court directed the appellants college to submit an application to the respondent authority/Government of India and also directed the respondent authority/Government of India to scrutinise the same and act upon the application within a period of two months from the date of receipt of such application. Further, this Court permitted all the students, over and above 40, to write examination and adjourned the matter after four weeks.

10. Thereafter, on 04.11.2016, when the matter was taken up for hearing, after hearing the submissions of respective counsel appearing for the parties, this Court directed the respondent authorities to include the appellant college in the seat matrix with an intake of 40 students. As regards the enhanced intake of 20 sets is concerned, this Court directed the respondent authorities to take a decision on 08.11.2016, as the matter is scheduled on 08.11.2016 for enquiry.

11. By virtue of the interim order passed by this Court on 04.11.2016, it was evident that insofar as the 40 students are concerned, their admission would be confirmed. Out of the additional intake of 20 students, only 18 students have been admitted. The Visitation Committee found that there was necessary infrastructure and other support facilities for an intake of 60 students. Though the appellants college was directed to approach the concerned authorities by submitting a representation for enhanced intake, however, instead of filing such an application and getting approval, the petitioners/appellants institution, of its own, had admitted the 20 students. However, later they made an application to the respondents authority along with necessary documents and the prescribed fee.

12. The learned counsel appearing for the respondents authority contended that without seeking permission, the appellants college had admitted the students and, thereafter, had made an application for additional intake, which is contrary to the settled principles and procedures and against the orders passed by this Court and, therefore, the admission of the 20 students in excess of its approved intake is non-est in the eye of law.

13. In the above factual background, it is clear from the report of the Visitation committee that necessary infrastructure is available for admitting 60 students, which is not contradicted by the respondents authority. The only contention of the respondents authority is that the appellants/petitioners institution had admitted 20 students over and above its approved intake without the prior permission of the respondent authority.

14. Be that as it may. It is not the contention of the respondents authority that there is no requisite infrastructure facilities or teaching facilities or other facilities, but the main grievance is that the procedure contemplated, in that no application has been submitted requesting for additional intake, has not been followed. When there is substantial infrastructure and other required facilities as is evident from the Visitation Committee report, non-following of procedure as contemplated alone should not be a bar for the petitioners/appellants college to admit the students, though such intake is an infraction of procedure. In such view of the matter, there being substantial compliance on the part of the appellants/petitioners relating to infrastructural requirement and other facilities for admission of remaining students, this Court is of the considered view that in the peculiar facts and circumstances of the case, the respondent may be directed to approve the admission beyond the approved intake of 40 students.

15. Accordingly, the respondents authorities are directed to approve the admission of the students over and above the approved intake of 40 seats for the concerned academic year. Further, this Court had already directed the students who were admitted over and above the approved intake to write the examinations. In view of the above order passed by this Court, the respondents authorities are directed to announce the results of the examination of all the students, including the students, who have been admitted over and above the approved intake.

16. The respondents authorities has pointed out certain deficiencies, which needs to be rectified by the petitioners/appellants college. The said deficiencies are on record. The petitioners/appellants institution is directed to look into those deficiencies and rectify the same at the earliest.

17. With the above directions, the writ appeal and the writ petition are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VII)
dt. 05.05.2017

Corrected as per letter
dated 29.6.2017

Sd/-
Assistant Registrar (CS-VII)
dt. 30.6.2017

/true copy/

Sub Asst. Registrar

To

1.The Secretary,
Government of India,
Ministry of Health & Family Welfare,
Department of Ayush,
Ayush Bhavan, 'B' Block,
GPO Complex, INA,
New Delhi - 110 023.

2.The Secretary,
Central Council of Indian Medicine,
(Government of India),
61-65, Institutional Area, Janakpuri,
New Delhi - 110 058.

- 3.The Secretary,
Government of Tamil Nadu,
Health & Family Welfare Department,
Fort St. George, Chennai - 600 009.
- 4.The Registrar,
Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 032.

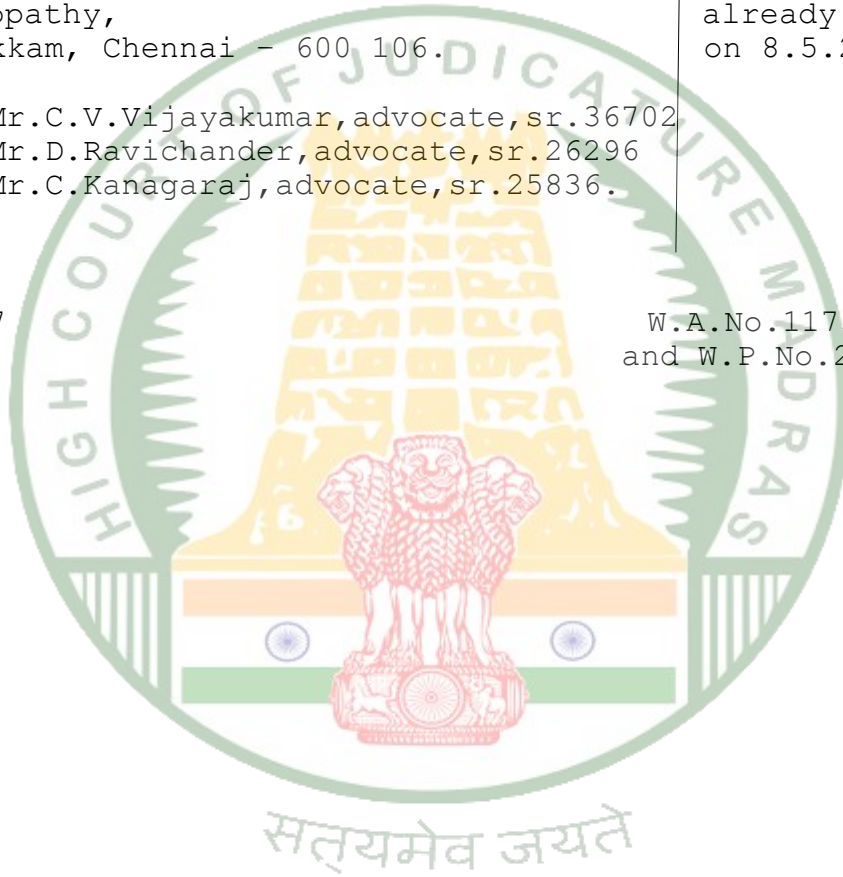
- 5.The Commissioner of Indian Medicine
& Homeopathy,
Arumbakkam, Chennai - 600 106.

- +1 cc to Mr.C.V.Vijayakumar, advocate, sr.36702
+1 cc to Mr.D.Ravichander, advocate, sr.26296
+1 cc to Mr.C.Kanagaraj, advocate, sr.25836.

pvs(co)
krd 5/5
EU 30.6.17

To be substituted
the earlier order
already despatched
on 8.5.2017

W.A.No.1175 of 2016
and W.P.No.2260 of 2017



WEB COPY