

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.No.21361 of 2018 and
W.M.P.Nos.25038 and 25039 of 2018

Rabindharanath Tagore Education Charitable Trust,
Administering Vivekanandha Pharmacy College for Women,
Veerachipalayam,
Sankari West, Sankari Taluk
Salem District - 637 303
Rep. by its Chairman Dr.M.Karunanidhi
...Petitioner

Versus

- 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,
Directorate of Medical Education Campus,
Kilpauk, Chennai - 600 010. ...Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for records relating to the impugned order passed by the 1st Respondent in Rc.No.Affln.I (4)/68317/2018 dated 06.06.2018 quash the same and direct the 1st Respondent to grant affiliation to the Petitioner Institution for an intake of 100 students for the academic year 2018-19 pursuant to the approval granted by the 2nd and 3rd Respondent for an intake of 100 students for the academic year 2018-19.

For Petitioner : Mr.D.Prabhu Mukunth Arunkumar

For Respondents : Mr.G.Hari Hara Arun Somasankar, for R1.
Mr.M.T.Arunan for R2.
Mr.B.Rabu Manohar, for R3.
Mrs.V.Annalakshmi,
Government Advocate for R4.

ORDER

This Writ petition is filed for the issuance of Writ of Certiorarified Mandamus to quash the impugned order passed by the first respondent dated 06.06.2018 and to direct the 1st Respondent to grant affiliation to the Petitioner Institution for intake of 100 students for the academic year 2018-19, pursuant to the approval granted by the respondents 2 and 3 for intake of 100 students for the academic year 2018-19.

2. The petitioner is a Trust administering the Educational Institution, viz., Vivekanandha Pharmacy College for Women. The Petitioner applied to the Government of Tamil Nadu to grant permission to start 4 year B.Pharm. Degree Course for the academic year 2017-18 with an annual intake of 60 students.

3. The Government of Tamil Nadu vide G.O.Ms.No.287, dated 29.11.2016 granted permission to start a 4 year B.Pharm. degree course for the academic year 2017-18 with an annual intake of 60 students and the College was started in the year 2017.

4. The second respondent-Pharmacy Council of India granted approval for intake of 60 students for the academic year 2017-18, by its order dated 07.08.2017. The All India Council for Technical Education (AICTE) also granted approval, but only for an intake of 50 students for the academic year 2017-18. Based on the approval granted by the respondents 2 and 3, the first respondent granted provisional affiliation for starting B.Pharm Degree Course from the academic year 2017-18. The petitioner's Institution commenced from the academic year 2017-18 with an annual intake of 50 students.

5. The petitioner also challenged the order passed by the AICTE for not granting approval for intake of 60 students for the academic year 2017-18 in a Writ petition in W.P.No.27105 of 2017. This Court allowed the said Writ petition by order, dated 23.07.2017 and quashed the order passed by the third respondent.

6. The first respondent, based on the order passed in the Writ Petition in W.P.No.27105 of 2017, informed the fourth respondent to make necessary correction in respect of Seat Matrix of the Petitioner's College from 50 to 60, by communication, dated 26.10.2017.

<https://hcservices.ecourts.gov.in/hcservices/>

7. Thereafter, the Pharmacy Council of India, the second respondent herein, recommended to grant approval for intake of

100 students for the academic year 2018-19 in the Executive Committee decision, dated 20.07.2018. The AICTE granted approval for intake of 100 students for the academic year 2018-19, by its order dated 10.04.2018

8. Based on the recommendation of the second respondent and the approval of the AICTE, the petitioner applied before the first respondent University to enhance the provisional affiliation from 60 seats to 100 seats. However, the first respondent, by the impugned order, dated 06.06.2018 rejected to enhance the provisional affiliation from 60 seats to 100 seats on the ground that the request of the petitioner will be considered only after the first batch of students successfully completes the course and leave the College. The order of the first respondent is on the basis of clause 58 of Affiliation of the Pharmacy College Statute. As per the clause 58, no Pharmacy College shall apply to the University for increasing the seats in B pharm. degree course, until the first batch of students have successfully completed the course and leaves the college and the B Pharm degree so obtained is recognised. The impugned order therefore, has been issued only by relying upon clause 58.

9. Challenging the above order, the petitioner has preferred this Writ petition, mainly on the ground that the impugned order is nothing but contrary to the provisions of the Central Act. It is further stated that the issue as to the power of the first respondent to reject the application for affiliation, relying upon clause 58, has already been considered by this Court and held in favour of Institution and therefore, the impugned order is not sustainable.

10. The learned Counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court reported in (2000) 5 SCC 231 in the case of Jaya Gokul Educational Trust Vs. Commissioner & Secretary to Govt. Higher Education Department, wherein the Hon'ble Supreme Court has held that provisions of any enactment conferring powers on the State Government or the University inconsistent with AICTE Act, would be void.

11. The learned Counsel for the petitioner also relied upon the Judgment of the Hon'ble Apex Court reported in (2009) 16 SCC Page 309 in the case of the Mata Gujri Memorial College Vs. State of Bihar and others, wherein, the Hon'ble Apex Court has held that the State Government cannot have any say in the matter of Affiliation of the Institutions to the University in exercising its powers under Section 21 of Bihar State Universities Act to defeat the provisions of the Central Government viz., Medical Council Act, 1956. It is further held that the State Government or University cannot refuse affiliation when the Medical Council of India and the Central Government were satisfied with the capability of the Institution to impart MBBS course for 60 students annually.

12. The Learned Counsel for the petitioner also relied upon the Judgment of the Hon'ble Supreme Court reported in (2015) 11 SCC 291 in the case of Rungta Engineering College, Bhilai and

another Vs. Chhattisgarh Swami Vivekanand Technical University and other, wherein, the Hon'ble Supreme Court has held that the power of examining authority, namely, the University, is limited and the decision of the authority under the Central enactment cannot be by-passed and the University cannot decline to grant affiliation to the petitioner college, despite the eligibility of the college to other courses has been determined based on the criteria fixed in the Central enactment. The relevant portion of the said judgment reads as follows:-

" 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 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 first petitioner College reported that the first 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 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 AICTE, the only course of action available for the respondents is to bring the shortcomings noticed by them to the notice of 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 be 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."

13. In this case, the petitioner has admitted students in B.Pharm Course only during the academic year 2017-18 and those students have not completed the course and left the college. Therefore, it is stated by the counsel for the first respondent that there is prohibition under clause 58 of the statute for increasing the number of seats in the B.Pharm degree course. The University contended before this Court that there is no scope

for entertaining the application for affiliation for additional intake and that the University has rightly rejected the claim of the petitioner for increasing the number of seats in B.Pharm degree course.

14. The learned counsel appearing for the 3rd respondent has fairly submitted that the issue is covered by the order, dated 06.10.2017 in W.P. No. 25361 of 2017, wherein this Court, after referring to various precedents and judgments, which are referred to above, has held as follows;

" 13. In the above Judgment, it has been held that following that 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 counselling for 100 seats."

15. It is further brought to the notice of this Court that the Hon'ble Division Bench of this Court has also taken the same view in the case of Tamil Nadu Dr.M.G.R. Medical University Vs. Arulmighu Kalasalingam College of Pharmacy and Others, reported in 2004 SCC Online Mad 649. The relevant portion of the said judgment is as follows;-

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 13.11.1998, 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 27.03.2003."

16. The learned counsel for the petitioner stated that the issue is covered by the above judgments.

17. The learned counsel appearing for the first respondent-University submitted that the above judgments have no application to the facts of the present case. The learned counsel for the first respondent referred to the fact that the Executive Committee of the Pharmacy Council of India has only recommended to grant approval for additional intake of 100 students for the academic year 2018-19 and the Pharmacy Council of India, has not yet granted approval.

18. However, the learned counsel for the petitioner stated that having regard to the nature of recommendation of the Executive Committee of the Pharmacy Council of India, the order of Pharmacy Council of India is going to be certain.

19. It has been repeatedly held by the Supreme Court that if any provisions of any enactment formed by the State Government or the University is inconsistent with the Central Act, the same will be void. Similarly, it is also settled that the State Government or the University cannot prevent grant of affiliation to the institution for which the recognition and approval had already been granted by the Central Government and the Central Council in exercise of their power under the Central Enactment. The reasons stated by the learned counsel that the petitioner has not obtained approval from the Pharmacy Council of India, is not relevant as the decision for referring to grant affiliation to the petitioner Institution is not on the ground. Inasmuch as the AICTE has granted approval, the University can grant affiliation, subject to the approval that is to be obtained from the second respondent.

20. In that view of the matter, this Court has no hesitation to hold that the impugned order is illegal and ultravires. This Court has already held that Clause 58 of the Statute framed by the Tamil Nadu Dr.MGR Medical University Act cannot override the decision of the respondents 2 and 3 as otherwise, it would be in violation of the decision taken by the AICTE and the Pharmacy Council of India. The impugned order is unsustainable, and accordingly it is set aside. The first respondent is directed to grant affiliation to the petitioner Institution for intake of 100 students for the academic year 2018-19. **"Central Council of Pharmacy Council of India in the resolution dated 07th and 08th August 2018 has approved for intake of 100 students for the academic year 2018-2019."*** The first respondent is also directed to send the name of petitioner's College for the full intake of 100 students for the academic year 2018-19 for the purpose of counseling.

21. With the above directions, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)
dt. 18/09/2018

This order was amended
as per subsequent order
dated 20.09.2018

//True Copy//

Sub Assistant Registrar

To

- 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,
Directorate of Medical Education Campus,
Kilpauk, Chennai - 600 010.
- + 1 cc to Mr.D. Prabhu Mukunth Arunkumar, Advocate Sr.64886
+ 1 cc to Mr. Government Pleader Sr.64984, 65841
+ 1 cc to Mr. M.T. Arunan, Advocate Sr.64439
+ 1 cc to Mr.G. Harihara Arunn Somasekar, Advocate SR.64802
+ 2 ccs to Mr.Rabu Manohar, Advocate Sr.65278

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