

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2018

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.15118 of 2018

and

W.M.P.Nos.17876 to 17878 of 2018

M/s.SSM College of Pharmacy

rep. by its Chairman,

Chinnampalayam, Jambai 638 312,

Bhavani Taluk, Erode District.

... Petitioner

vs.

1.The Government of Tamil Nadu

rep. by its Secretary to Government,

Health and Family Welfare Department,

Fort St. George, Chennai-9.

2.The Director of Medical Education,

Kilpauk, Chennai-600 010.

3.The Pharmacy Council of India,

Combined Council's Building,

Kotla Road, Aiwan-E-Ghalib Marge,

New Delhi-110 002.

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent herein in G.O.Ms.No.108, Health and Family Welfare (PME2) Department dated 27.3.2018 and the Proceedings of the 2nd respondent herein bearing Ref.No.64218/BP(1)/2017 dated 17.5.2018 and quash the same in so far as it relates to the condition for submitting the DTCP Approval and building plan drawing with DTCP approval seal before admission of students in D.Pharm Course from the academic year 2018-19 onwards and forbear the respondents from insisting for such Building Plan Approval from DTCP for the petitioner Building at Survey No.834/1 and 2, Jambai Town Panchayat area where the petitioner's college is running.

For Petitioner : Mr.AR.L.Sundaresan,

Senior Counsel

for M/s.AL.Ganthimathi

For Respondents :Mrs.V.Annalakshmi, G.A.

1 and 2

O R D E R

The Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to quash the Proceedings of the first respondent in G.O.Ms.No.108, Health and Family Welfare (PME2) Department dated 27.3.2018 and the Consequential Proceedings of the 2nd respondent bearing Ref.No.64218/BP(1)/2017 dated 17.5.2018 in so far as it relates to the condition of submitting the DTCP Approval and building plan drawing with DTCP approval seal before admission of students in D. Pharm Course from the academic year 2018-19 onwards and forbear the respondents from insisting for such Building Plan Approval from DTCP for the petitioner Building at Survey No.834/1 and 2, Jambai Town Panchayat area where the petitioner's college is running.

2. The petitioner is an existing Pharmacy College which was established in the year 2009. The building of the institution has been constructed in the land measuring an extent of 2.60 acres in Survey Nos.834/1 and 834/2 within Jambai Town Panchayat. It is stated that the construction of the building (approximately 16730 sq.ft.) was put up in the year 2007 and completed in 2009. The Pharmacy Council of India has granted approval to start B. Pharmacy Course in the year 2009-2010. The petitioner, who was desirous of commencing Pharm D Course with an annual intake of 30 students, applied to the first respondent University on 08.08.2014 for Consent of Affiliation. It is stated that after due inspection, the University has granted Consent of Affiliation on 26.3.2015 subject to the grant of approval by the Pharmacy Council of India. It is also stated that the Executive Committee of the Pharmacy Council of India granted approval for conducting the Pharm D Course from the academic year 2016-2017. The University vide letter dated 12.9.2016 appointed an Inspection Commission to assess the availability of infrastructural facilities including the teaching staff in the petitioner institution. The University by letter dated 29.09.2016, called upon the petitioner to send Building Completion Certificate and Approved Building Plan from the Competent Authority, namely, DTCP along with Provisional Affiliation for starting Pharm D Course from the academic year 2016-2017. The requirement of production of DTCP Approval was again reiterated by the University in its letter dated 22.05.2017. It is in the said circumstances, the petitioner states that it was constrained to file a Writ Petition earlier in W.P.No.28198/2017 and this Court disposed of the said Writ Petition by order dated 19.03.2018, directing the University to consider the case of the petitioner for grant of affiliation for Pharm D Course without insisting for DTCP Approval on being satisfied that the building was put up before the amendment.

3. Pursuant to the order of this Court, the University granted affiliation for the Pharm D Course for the academic year

2017-2018. The petitioner subsequently applied to the respondents 1 to 3 herein for grant of approval/affiliation for Diploma in Pharmacy Course from the academic year 2018-2019. The first respondent State vide G.O.No.108, Health and Family Welfare Department, dated 27.3.2018 granted permission to the petitioner to apply to the Pharmacy Council of India to start two years D Pharm Course with an annual intake of 60 students from the academic year 2018-2019 subject to submission of Building Completion Certificate and Building Plan Approval from the competent authority. However, the second respondent by Letter dated 17.5.2018, called upon to submit the DTCP Approval and Building Completion Certificate issued by the competent authority before admission of students for the academic year 2018-19.

4. It is contended that the building was completed by the petitioner in the year 2009 and that the amendment to Section 47-A of the Town and Country Planning Act was introduced only w.e.f. 1.11.2011. Stating that the said provision, namely, Section 47-A of the Town and Country Planning Act can have only prospective effect, the competent authority should be directed to grant permission to the construction put up by the petitioner in the local authority. It is stated that Section 47-A of the Town and Country Planning Act will have only prospective effect and that the amendment came into force after 2011 cannot be applied with retrospective effect. It is further stated that the competent authority to grant permission was only to Jambai Town Panchayat when the building was constructed by the petitioner. In view of the fact that the Local Panchayat has granted the Building Plan Approval, it is stated that the requirement of DTCP Approval cannot be insisted as a condition precedent.

5. A Counter Affidavit has been filed by the respondents one and two reiterating the position as reflected in the impugned order. It is further stated that the Government has recently issued an order vide G.O.Ms.No.76, Housing and Urban Development Department (UD4(3)) Department dated 14.6.2018 prescribing guidelines to obtain concurrence from DTCP for the buildings of Educational Institutions constructed. It is further suggested that the petitioner should be advised to get concurrence for the building. Since the petitioner, instead of exhausting other remedy by applying for concurrence in terms of G.O.No.76 has filed the present Writ Petition, it is contended that the writ petition is devoid of any merits.

6. The learned Senior Counsel appearing for the petitioner submitted that the petitioner has applied Concurrence from the authorities under the Town and Country Planning Act in terms of the Building Rules applicable. Since Building Plan is approved by Local Body, the learned Senior Counsel submitted that there

is approval for the buildings constructed by the school from the competent authority.

7. Having regard to the above facts, it is evident that the petitioner has got a valid approval from the competent authority. By the impugned order, the institution was required to furnish DTCP Approval from competent authorities and the Building Plan Drawings with DTCP Approval. This Court has already held that no DTCP approval is required in case the building is constructed before 2011. It is only for the Local Body which was required to get concurrence from the Town and Country Planning Act.

8. Considering the facts and circumstances, this Court is of the view that the petitioner is entitled to get affiliation or approval without insisting for production of approval from DTCP inasmuch as the concurrence has also been applied by the petitioner in accordance with law. It is also submitted by the Pharmacy Council of India that they have also granted approval for the current academic year.

9. In the result, the Writ Petition is allowed and since the petitioner has applied for the concurrence from the authorities under the Tamil Nadu Town and Country Planning Act in terms of G.O.No.76, the respondents are directed to consider the application for approval without insisting the Building Plan Approval from DTCP, within a period of two weeks from the date of receipt of a copy of this Order. The impugned Proceedings of the first respondent dated 27.3.2018 and the letter dated 17.5.2018 so far as they require submission of DTCP Approval is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George, Chennai-9.

2.The Director of Medical Education,
Kilpauk, Chennai-600 010.

3.The Pharmacy Council of India,
Combined Council's Building,
Kotla Road, Aiwan-E-Ghalib Marge,
New Delhi-110 002.

+1cc to Mr.AL.Ganthimathi, Advocate, S.R.No.75459.

+1cc to Mr.M.T.Arunan, Advocate, S.R.No.75408

W.P.No.15118 of 2018

BR(CO)

rrs 26/11/2018