

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Thursday, the Tenth day of May Two Thousand Eighteen

PRESENT

THE HON`BLE MR JUSTICE S.M.SUBRAMANIAM

WMP NO.14185 OF 2018

IN WP.12161 OF 2018

1 AGALYA UMAPATHY

[PETITIONERS]

2 G.L.AJITHA

3 D.AMIRTHA KADESH ABIRAM

4 S.EZHIL

5 P.HARIHARAN SREE

6 T.KEERTHANA

7 V.MOHAN ARAVIND

8 W.M.NAVIN MUKKESH

9 T.NISHANTH KUMAR

10 S.NIVETHA

11 A.PAVITHRA

12 U.PRADEEPA

13 S.SIVAKUMAR

14 K.VENKAT VISHAL

15 U.VENMANI

16 P.S.DHIVYA

17 S.K.EBENEZER SAMUEL

18 S.ESWARI

19 R.HEMALATHA

20 J.IDHAYA DEEPAN

21 V.JAGADEESWARI

22 K.JAIMURUGA RAJ

23 S.KARTHIKA

24 M.MALLIKA

25 A.MEGALA

26 R.MUBEEN

27 NATASHA SINGH

28 M.PITCHAYEEAL PONMANI

29 PRITHA BISWAS

30 V.ROOPASHREE

31 S.SUBBLAKSHMI

32 B.VIKNESWARI

33 P.V.VINUSHA

34 P.T.SHAHNA BINCY

35 V.VAITHEESHWARI

36 M.GNANASEKARAN

Vs

1 DHARMA MEDICAL RESEARCH [RESPONDENTS]
& CHARITABLE TRUST NO.48,
GRAND WEST TRUNK ROAD SRIPERUMBUDUR - 602105
KANCHEEPURAM DIST. TAMIL NADU
REP.BY ITS TRUSTEE.

2 THE UNION OF INDIA
REP. BY THE SECY. TO GOVT. HEALTH & FAMILY
WELFARE DEPT. DEPT. OF AYURVEDA, SIDDHA AND
HOMOEOPATHY (AYUSH) AYUSH BHAWAN, B BLOCK,
NEW DELHI - 23.

3 CENTRAL COUNCIL OF INDIAN
MEDICINE 61-65, INSTITUTIONAL AREA JANAKPURI,
NEW DELHI - 110058 REP. BY ITS SECRETARY

4 THE TAMIL NADU DR. MGR
MEDICAL UNIVERSITY P.B. NO.1200, NO.69, ANNA
SALAI GUINDY, CHENNAI - 32 REP. BY ITS
REGISTRAR.

5 CONTROLLER OF EXAMINATIONS
THE TAMIL NADU DR.MGR MEDICAL UNIVERSITY P.B.
NO.1200, NO.69, ANNA SALAI GUINDY,
CHENNAI -32.

6 THE GOVERNMENT OF TAMILNADU
REP. BY THE SECRETARY TO GOVERNMENT HEALTH &
FAMILY WELFARE DEPARTMENT, FORT ST.GEORGE,
CHENNAI - 9.

7 THE COMMISSIONER OF INDIAN
MEDICINE & HOMOEOPATHY COMMISSIONERATE OF
INDIAN MEDCINE & HOMOEOPATHY ANNA HOSPITAL
CAMPUS, ARUMBAKKAM, CHENNAI - 106.

Petition praying that in the circumstances stated therein
and in the affidavit filed therewith the High Court will be pleased
to

direct respondents 4 and 5 to publish the results of the
following petitioners admitted to the BAMS Degree Course in Dharma
Ayurveda Medical College & Hospital during the academic year 2014-
2015 namely M.Gnanasekaran who has written the 1st year Examination
and depending upon the result allow him to write the II Year
examination or in the event of his failing the examination to write
the I Year Examination in the subjects in which he has failed,
publish the results of (1) Agalya Umapathy, (2) G.L.Ajitha, (3)
D.Amirtha Kadesh Abiram, (4) S.Ezhil, (5) P.Hariharan Sree, (7)
T.Keerthana, (7) V.Mohan Aravind, (8) Navin Mukkesh W.M, (9) T.

Nishanth Kumar, (10) S.Nivetha, (11) A.Pavithra, (12) U.Pradeepa, (13), S.Sivakumar, (14) K.Venkat Vishal and (15) U.Venmani who have written the II Year BAMS examination and based upon the results permit those two who have failed to write the II Year examination in the subjects in which they have failed and also permit 91) P.S.Dhivya, (2) S.K.Ebenezer Samuel, (3) S.Eswari, (4) Hamalatha R, (5) J.Indhaya Deepan, (6) V.Jagadeeswari, (7) K.JaiMuruga Raj, (8) S.Karthika, (9) M.Mallika, 910) A.Megala, (11) R.Mubeen, (12) Natasha Singh, (13) Pitchayeeal PonmaniM, (14) Pritha Biswas, (15) V.Roompashree, (16) s.Subalakshmi, (17) B.Vikneswari (18) P.V.Vinusha, (19) P.T.Shahana bincy and (20) V. Vaitheeshwari to write the II BAMS Examinations commencing on 15.05.2018 (in WMP.14185/18) pending in WP.No.12161/18.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.T.SELLAPANDIAN Advocate for the petitioner and of M/S.G.HARI HARA ARUN SOMA SANKAR Advocate for 4 & 5th respondent the court made the following order:-

The present miscellaneous petition has been filed seeking a direction to direct respondents 4 and 5 to publish the results of the following petitioners admitted to BAMS Degree course in Dharma Ayurveda Medical College & Hospital during the academic year 2014-15 namely M.Gnanasekaran, who has written the 1st year Examination and depending upon the result allow him to write the II Year examination or in the event of his failing in the examination to write the I Year Examination in the subjects in which he has failed, publish the results of (1) Agalya Umapathy, (2) G.L.Ajitha, (3) D.Amirtha Kadesh Abiram, (4) S.Ezhil, (5) P.Hariharan Sree, (6) T.Keerthana, (7) V.Mohan Aravind, (8) Navin Mukkesh W.M., (9) T.Nishanth Kumar, (10) S.Nivetha, (11) A.Pavithra, (12) U.Pradeepa, (13) S.Sivakumar, (14) K.Venkat Vishal and (15) U.Venmani who have written the II Year BAMS examination and based upon the results permit those who have passed the examination to write the III Year Examination and those who have failed to write the II Year Examination in the subjects in which they have failed and also permit (a) P.S.Dhivya, (b) S.K.Ebenezer Samuel, (c) S.Eswari, (d) Hemalatha R., (e) J.Idhaya Deepan, (f) V.Jagadeeswari, (g) K.Jai Muruga Raj, (h) S.Karthika, (i) M.Mallika, (j) A.Megala, (k) R.Mubeen, (l) Natasha Singh, (m) Pitchayeeal Ponmani M., (m) Pritha Biswas, (o) V.Roopashree, (p) S.Subalakshmi, (q) B.Vikneswari (r) P.V.Vinusha (s) P.T.Shahna Bincy and (t) V.Vaitheeshwari to write the III BAMS Examinations commencing on 15/05/2018 pending disposal of the writ petition.

2. The learned counsel appearing on behalf of the writ petitioners made a submission that no affiliation was granted to the institution for the academic years 2012-13 and 2014-15. However, the institution admitted the students and during the subsequent years, the University also issued hall tickets for the purpose of writing examinations. Thus, this year also, the same procedure has to be followed and accordingly, the students must be permitted to write the examinations and the results also to be

published.

3. It is a growing practice now the institutions, which are all not affiliated and not providing requisite infrastructure facilities and other facilities to the students, are running the colleges by getting many interim orders from this Court. Such a practice of running institutions by obtaining orders from this Court is to be deprecated. The basic legal principle, whether the institution is granted with an approval and an affiliation by the University has been complied with or not. It is a condition precedent that any person for commencing of an educational institution must get an approval and an affiliation from the University concerned before admitting the students for the purpose of undergoing the courses offered. In the absence of any approval and affiliation from the University concerned, the institutions are not permitted to admit the students and the same would amount to violation of the regulations issued by the University as well as by the Government of India.

4. The learned counsel for the petitioners states that during the previous academic years, the students were permitted to write the examinations, the same order to be passed once again permitting the students to write the examinations and consequentially, the results also to be published.

5. The learned counsel appearing for respondents 4 and 5 opposed the contentions of the writ petitioners by stating that the University has not granted any affiliation to Dharma Medical Research & Charitable Trust, No.48, Grand West Trunk Road, Sriperumbudur, Kancheepuram District, Tamil Nadu. It is further contended that the said institution is admitting students from the academic year 2008 onwards without any affiliation. The institution is committing illegalities and irregularities continuously for the past about ten years. Thus, the University cannot grant permission to write the examinations as far as the students admitted by the said institution at their own volition without obtaining a valid affiliation from the University. In the absence of any affiliation granted by the competent authorities of the University, no institution can admit students to undergo the courses.

6. The learned counsel for respondents 4 and 5 further proceeded by stating that the management of the said institution has already filed Writ Petition Nos.24954 of 2012 and 27773 of 2014 in respect of the rejection of grant of affiliation and those writ petitions are pending before this Court. During the pendency of these writ petitions, they are obtaining interim orders from this Court and accordingly, the students are permitted to write the examinations and thereafter, filing writ miscellaneous petitions for publication of the results. Such a practice cannot be continued indefinitely. At one point of time, we are bound to stop such illegal activities of the institution admitting the students to undergo the courses without any affiliation. It is not as if keeping these writ petitions pending and allowing the students to

write the examinations by virtue of the interim orders. We are not only encouraging such illegality, but also causing damage to the future career of those students, who are admitted in the institution without affiliation. The Court is more concerned about the future of young minds, who all are the sources for the development of our nation. If these kind of activities are permitted, then the young minds will end with frustration and they will involve in any other activities, which are not good for the development of our great nation. These young minds are to be guided properly and it is the duty of the Court and all concerned, including the parents to see that the students seeking admission in various courses in various colleges are guided properly by the Universities, staffs and all concerned. Undoubtedly, the students, who are seeking admission in an institution may not be aware of the fact that the institution is having or not having an affiliation. After getting admission, they come to know that there is no affiliation for the college. Then they cannot have any option because, the Management will not return the fees, which are the hard earned money of their parents. The students will always think about the agony undergone by their parents. The parents by spending their hard earned money are providing education to their children.

7. The learned counsel for respondents 4 & 5 informed this Court that no affiliation had been granted to this institution from the academic year 2008 onwards. The menace of obtaining interim orders and permitting the students to appear examinations continued for the past ten years.

8. In this regard, the learned counsel for respondents 4 and 5 cited judgement of the Hon'ble Supreme Court in the case of **Laxmi Sharma and others v. Vice-Chancellor, Chhatrapati Shahuji Maharaj University and others** reported in (2006) 9 SCC 138. The relevant portion of the judgment reads as follows:

"20.As far as the appeals preferred by the college against the common judgment and the order passed on the review application are concerned, we agree with the view expressed by the High Court that it is not for Court to direct the authorities concerned to grant affiliation as that would amount to trespassing on the jurisdiction of the University. We can only request the University to consider the grant of such affiliation in view of the several inspection reports and the recommendations made by the inspection teams for grant of such recognition. The appeals preferred by the college are, therefore, disposed of with a direction upon the University to consider the grant of permanent affiliation to the college after giving the college authorities a reasonable opportunity of being heard."

9. He cited another judgment of the Hon'ble Supreme Court in the case of **C.B.S.E and another v. P.Sunil Kumar and others**

reported in **(1998) 5 SCC 377**. Paragraph 4 of the said judgment is extracted hereunder:

"4. On the admitted position and in view of the law laid down by this Court referred to above, Mr. Altaf Ahmed, Additional Solicitor General appearing for the appellants, contended that the impugned direction of the High Court is wholly erroneous and cannot be sustained. The learned counsel appearing for the students in different appeals did not dispute the position that the schools from where their clients have perused their studies are not yet affiliated to the central board of secondary education. But they mainly contended that the students having been permitted to appear at the examination and they having been successful and certificates having been issued in their favour, it would work out great injustice, if the impugned directions of the High Court are set aside at this length of time. In support of this contention they placed reliance on a recent decision of this Court in the case of Central Board of Secondary Education V. Nikhil Gulati (1998) 3 SCC 5. In the aforesaid case, this Court deprecated the practice followed by the High Court to issue direction and also observed that such aberrations should not be treated as a precedent in future but did not interfere with the ultimate direction of the High Court on the ground that fond hopes have been raised in the minds of the students and therefore, it would be inappropriate to interfere under Article 136 of the Constitution. We are unable to apply the reasoning given in the aforesaid case, inasmuch as there is no iota of material placed before us to indicate that the Central Board of Secondary Education, the appellants herein, either directly or indirectly had held out to the students at any point of time that the institutions in which they are prosecuting their studies have been affiliated or are going to be affiliated in the near future. We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students. In view of the aforesaid premises, we set aside the impugned judgment of the Division Bench of the Kerala High Court as well as the interim orders issued by the Single Judge in several petitions out of which the writ appeals arose and the writ petitions filed by the respondents stand dismissed. These

appeals are allowed but in the circumstances, there will be no order as to costs."

10. At this juncture, the learned counsel for the petitioners informed this Court that the University itself granted hall tickets during previous and subsequent occasions. Such an attitude of the University authorities are also to be condemned. The Vice Chancellor of the University is duty bound to ensure initiation of appropriate disciplinary action and all other required action against the officials of the University, who are committing such illegalities and irregularities by granting or issuing hall tickets in respect of the institutions, which are all not affiliated. The Vice Chancellor is directed to institute proper proceedings against all those officials and to see that they are prosecuted in accordance with law.

11. This Court is duty bound to protect the interest of the students also. However, this Court cannot grant permission for the continuance of any such illegality or irregularity committed by the parties concerned. To adopt a pragmatic approach and to stop these kind of menace at once, this Court is of an opinion that the students must be awarded with exemplary compensation and the said compensation be directed to be paid by the institution concerned. The students are entitled for such a compensation and the quantum of compensation to be paid to those students are to be decided during the final hearing of these writ petitions.

12. So far as the grant of interim orders are concerned, it is brought to the notice of this Court that the institution has not been granted with affiliation and they are running institution and admitting the students illegally and the admissions of the writ petitioners in the institution are invalid. Thus, the University cannot grant permission for writing the examinations as per the regulations.

13. In this regard, the Tamil Nadu Dr.M.G.R.Medical University Chennai Act, 1987 (for short "the Act") provides definition for an affiliated college in Section 2(a), which reads as follows:-

"2.In this Act, unless the context otherwise requires.-

(a) "affiliated college" means any college or institution, situate within the University area and affiliated to the University and providing courses of study in medical science for admission to the examinations for degree, diplomas and other academic distinctions of the University and includes a college deemed to be affiliated to the University Under this Act and includes an autonomous college;"

14. Section 5 of the Act deals with powers of University. Section 5(1) of the Act reads as follows:-

"5.The University shall have the following powers, namely:-

(1) to hold examinations and to confer degrees, diplomas and other academic distinctions on any person who,-

(a) shall have perused an approved course of study or training in a college or University laboratory or an approved institution unless exempted there from in the manner prescribed by the statutes and shall have passed the examinations prescribed by the University; or

(b) shall have carried on research under condition prescribed by the statutes;"

15. Chapter VI of the Act deals with admission of students. Section 35(1) of the Act states that no person shall be admitted to a course of study or training in a college or University laboratory or an approved institute to appear for any examination held by the University for conferring any degree, diploma or other academic distinction unless, (a) he has passed the qualifying examination prescribed there or by the University; and (b) fulfils such other condition as may be prescribed by the regulations.

16. Section 36(1) of the Act denotes no candidate shall be admitted to any University examination unless, (a) he is enrolled as a member of a University college, University laboratory, affiliated college or approved institution; and (b) he has satisfied the requirement as to the attendance prescribed by the regulation.

17. When the statute provides specific provisions for grant of affiliation and for admitting students in the colleges, the provisions must be implemented scrupulously by the competent authorities. There cannot be any violation or dilution of these statutory provisions and if any such dilutions are admitted, the same will create lot of issues in respect of the students, who all are admitted illegally. Thus, this Court cannot dilute or interpret the provisions of law contrary to its intention and the spirit. Thus, the writ petitioners have not established any legal right to grant permission to write the examinations to be conducted by the fifth respondent/University. In view of the fact that the writ petitioners are not having any legal right, this Court cannot grant any interim order in the miscellaneous petition. In respect of the award of compensation and the quantum of compensation to be awarded to the students, the same will be decided on 11.06.2018.

18. The writ miscellaneous petition stands dismissed, accordingly.

Post the writ petition 'for further orders' on 11.06.2018.

-sd/-
10/05/2018
/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE SECRETARY,
UNION OF INDIA TO GOVT. HEALTH & FAMILY
WELFARE DEPT. DEPT. OF AYURVEDA, SIDDHA AND
HOMOEOPATHY (AYUSH) AYUSH BHAWAN, B BLOCK,
NEW DELHI - .

2 CENTRAL COUNCIL OF INDIAN
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INDIAN MEDCINE & HOMOEOPATHY ANNA HOSPITAL
CAMPUS, ARUMBAKKAM, CHENNAI - 106.

+2 C.C. to M/S.T.SELLAPANDIAN Advocate SR.No.5906

The Government Advocate, High Court, Madras - 104.

Order

in
WMP.14185/2018

in
WP.12161/2018

Date :10/05/2018

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SDR 15.05.2018