

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.4932 of 2015
and
W.P.No.1463 of 2018

Fathima College of Pharmacy
represented by its Managing Trustee
Ravi @ Mohideen Basha,
103, Main Road,
Krishnapuram, Kadayanallur,
Tirunelveli District. Petitioner in both W.Ps.

vs.

1. The Vice Chancellor,
Tamil Nadu Dr. M.G.R. Medical University,
PB No.1200, Anna Salai,
Guindy, Chennai 600 032.
2. The Registrar,
Tamil Nadu Dr. M.G.R. Medical University,
PB No.1200, Anna Salai,
Guindy, Chennai 600 032.. Respondents in both W.Ps.

W.P.No.4932 of 2015 filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorari calling for the records of the proceedings bearing Rc.No.Affil ii(4)/19891/2014, dated 20.01.2015 and quash the same and further direct the Respondents to grant continuation of provisional affiliation to the Petitioner College for the period 2014-15.

W.P.No.1463 of 2018 filed under Article 226 of the Constitution of India praying for the issuance of writ of mandamus, directing the Respondents to pass orders of continuation of provisional affiliation to the Petitioner's College for the academic years 2014-15, 2015-16, 2016-17 and 2017-18 on the basis of the compliance reported by the Petitioner vide representation dated 12.01.2018 forthwith.

For Petitioner in both W.Ps. : Mr.S.Senthil Nathan

For Respondents 1 & 2 in both W.Ps.: Mr.D.Ravichander
MR.A.V.BHARATHI
Advocate COMmissioner

C O M M O N O R D E R

As the issue involved in both the Writ Petitions is one and the same, the cases are taken up for disposal by a common order. In both the Writ Petitions, the Petitioner is one and the same.

2. Petitioner/College has initially filed W.P.No.4932 of 2015 seeking to quash the impugned proceedings of the 2nd Respondent dated 20.01.2015 and for a further direction to the Respondents to grant continuation of provisional affiliation to their College for the academic year 2014-15. The Petitioner has now come up with W.P.No.1463 of 2018 seeking a direction to the Respondents to pass orders of continuation of provisional affiliation to their College for the academic years 2014-15, 2015-16, 2016-17 and 2017-18 on the basis of the compliance reported by them vide representation dated 12.01.2018 forthwith.

3. The case of the Petitioner is, as follows:

3.1. The Petitioner/College is one of the reputed Colleges in the field of Pharmacy education and was established in the year 1993 for the purpose of imparting education in Pharmacy. The Petitioner/College has obtained statutory approval from the AICTE and also from the Pharmacy Council of India. Further, the Petitioner/College has been affiliated to the Respondents/University and has the intake capacity of 50 students in the Course of Degree in Pharmacy. Since the name of the Petitioner/College was not included in the Prospectus wilfully and inspection was also conducted belatedly, the Petitioner filed W.P.No.12918 of 2011 before this Court, whereby, the 2nd Respondent therein was directed to include the name of the Petitioner/College in the printing forms, from the forthcoming academic year.

3.2. Despite the order of this Court, the Petitioner/College was compelled to file a Writ Petition for every academic year, for running the College. The delay in grant of affiliation affected the admission counselling of the Petitioner/College and the sanctioned strength of the College could not be achieved at all. Though the Petitioner/College is functioning for decades with requisite infrastructure, updated library, etc. the Respondents/University insists that the Petitioner/College should have constructed additional buildings measuring around 1550 Sq. Mts. in strict compliance of the MCI norms. However, the 2nd Respondent, vide letter dated 11.04.2014 suggested for dispensing the condition of construction of the additional building, provided an Indemnity Bond covering the loss, which may arise due to non-compliance of such condition, was sought. The Petitioner/College sent the

indemnity bond dated 20.04.2014, as part of reporting the compliance of the deficiency for availing the continuation of the provisional affiliation. However, the Respondent suggested drafting of deed of indemnity and sent specimen as well, vide letter dated 04.06.2014.

3.3. The specimen of the Indemnity Deed dated 06.06.2014 was duly prepared and attested by the Notary public, and sent to the 2nd Respondent. Upon receipt of the same, the 2nd Respondent sent a letter dated 14.07.2014, asking the Petitioner to re-do the Deed of Indemnity by specifying the period of construction as six months. Thereafter, the Petitioner/College sent the deficiency report dated 16.12.2014. Instead of granting affiliation, the 2nd Respondent has passed the impugned order dated 20.01.2015 asking the Petitioner/College to comply with certain deficiencies. Challenging the same, the Petitioner has filed W.P.No.4932 of 2015.

3.4. Thereafter, the Petitioner/College was constrained to file W.P.No.17258 of 2017 seeking grant of affiliation and permitting the students to write examination for the semester August 2017. The said matter was contested and counter was filed complaining certain discrepancies, which are as under:

(i) Six months' time granted to build 1550 sq. mts. in strict adherence of the guidelines of Pharmacy Council of India was not complied.

(ii) The Seat Matrix was not forwarded to the Selection Committee for admission of candidates for the year 2015-16 and 2016-17.

(iii) Application for the examination was not submitted.

3.5. Thereafter, the said Writ Petition in W.P.No.17258 of 2017 stood dismissed by an order dated 31.10.2017, with the following observation:

"4. Though Mr.S.Senthilnathan has made strenuous efforts to convince this Court that within six months the infrastructure as pointed out by the second respondent/University would be made available, this Court is not in a position to accept the same for the simple reason that lack of infrastructure was pointed out even three years back and in spite of that the petitioner deliberately failed to provide the required infrastructure as per the new amended PCI Regulations/Rules."

3.6. In the meantime, the Petitioner/College took efforts to complete the additional construction and also applied for approval of plan with the Municipality and DTCP approval was also made. The Pharmacy Council, vide letter dated 14.12.2017 has extended approval for the year 2017-18, subject to the condition that the Respondent has to inform about the conduct of Examination and also sought for clarification. Based on the same, Respondents have written a letter dated 15.12.2017 urging the Petitioner to furnish a copy of the Building Plan approval for the additional building, which is the major deficiency pointed out. In response to the same, the Petitioner submitted the Planning sketch and intimation letter dated 12.01.2018 reporting compliance, and requested for inspection and grant of continuation of affiliation. As a matter of fact, the Petitioner/College could not continue to impart education from the academic year 2014-15. Hence, the Petitioner has filed W.P.No.1463 of 2018 with the above prayer.

4. Respondents 1 and 2/Tamil Nadu Dr. M.G.R. Medical University has filed counter affidavit, to the following effect:

4.1. Respondent/University vide its order dated 20.01.2015 made clear that the continuance of provisional affiliation in respect of B.Pharm. Course for the academic year 2014-15 will be issued subject to rectification of the deficiencies pointed out by the University, on or before 31.01.2015. In the meanwhile, pursuant to the orders of this Court, dated 29.10.2016 made in W.P.No.1677 of 2016, candidates, who were admitted during the academic year 2014-15, were permitted to take up their 1st year Regular Examinations and direct II year (Lateral Entry) Examinations in February 2016. However, the results of the said Examination were withheld as directed by this Court.

4.2. Subsequently, Contempt Petition No.1858 of 2016 was filed by the Petitioner/College and by an order dated 17.08.2016, this Court ordered the Respondent/University to decide upon the publication of results of the candidates for the academic year 2014-2016, who appeared for February 2016 examinations and the Respondent/University published the results. However, publication of results was subject to the issuance of order of Approval by Pharmacy Council of India and continuance of provisional affiliation by the Respondent/University for the academic year 2014-2015. As Pharmacy Council of India had not accorded any order of approval for the academic year 2014-2015 during the subsequent period, the students of the academic year 2014-2015 were not permitted to appear in the future examinations for the subsequent period.

4.3. Insofar as the academic years 2015-16, 2016-17 and 2017-18 are concerned, no students were registered by the Respondent/University and further the seat matrix for the said Institution was not informed to the Selection Committee for admission during the academic years and there was no continuance of provisional affiliation by the Respondent/University for the above-said academic years to the Petitioner/College, as many deficiencies in Teaching staff and infrastructural facilities were found during inspection by the Respondent/University for the said academic years. Further, there had been no approval from AICTE and Pharmacy Council of India to the Petitioner/College for the academic year 2015-2016.

5. In respect of the deficiencies pointed out by the Respondent/University, this Court, by an order dated 05.03.2018, appointed two Advocate Commissioners to inspect the Petitioner/College. Accordingly, the Advocate Commissioners so appointed by this Court, inspected the Petitioner/College on 16.03.2018 and 17.03.2018 and filed their Joint Inspection Report. Pursuant thereto, on 05.04.2018, when the matter was taken up for hearing, this Court directed the Respondent-University to conduct a surprise inspection in the Petitioner/College and submit a detailed Report.

6. Learned counsel appearing for the Respondents/University submitted that the Respondent/University was handicapped to execute the order of this Court dated 05.04.2018 made in the above Writ Petition, as none of the members of the Inspection Committee, have expressed their willingness to inspect the Petitioner/College and the same is purely attributable to the rustic attitude of the Petitioner/College in threatening the Inspection Team and intervening with the inspection process. According to the learned counsel, the Petitioner/College is habitual in causing unnecessary intervention during the inspection process and the same stands substantiated by the order of this Court dated 13.08.2015 made in W.P.No.18013 of 2015.

7. Learned counsel for the Petitioner/College submitted that the Pharmacy Council of India has granted approval to the Petitioner/College upto the academic year 2017-18 and that the Petitioner/College has complied with all the deficiencies pointed out by the Respondent/University.

8. Learned counsel for the Petitioner drew the attention of this Court to the order dated 13.08.2015 passed in W.P.No.18103 of 2015, whereby, the Petitioner/College was permitted to conduct First year Examinations for the academic year 2014-15 and it was made clear therein that the declaration of results shall be subject to the approval of the Petitioner/College and

if approval is granted, then the further process of declaration of results shall continue. It was further made clear in the said order that if the Petitioner-College satisfies the requirements for approval for the academic year 2014-2015, then automatically it follows that the Respondents shall consider the approval of the Petitioner-College for the academic year 2015-2016 also.

9. It is seen that the Respondent/University has granted provisional affiliation to the Petitioner/College for the academic year 2013-2014, subject to certain conditions. When the issue of grant of continuance of provisional affiliation by the Respondent/University to the Petitioner/College for the academic years, 2014-15, 2015-16, 2016-17 came up for consideration before this Court in W.P.No.17258 of 2017, after considering the order of rejection of continuance of provisional affiliation for the Petitioner/College for the academic year 2016-17 due to non-compliance of several deficiencies, this Court was pleased to hold that the Respondent/University cannot grant the order of continuance of provisional affiliation, unless the deficiencies in the infrastructure, as pointed out in the rejection order dated 18.09.2017, stand rectified.

10. Pursuant thereto, the Pharmacy Council of India sent a communication dated 14.12.2017 to the Petitioner/College as regards grant of approval for the academic year 2017-2018. For better appreciation, contents of the said letter are extracted hereunder:

"... In this connection, I am directed to state that matter regarding approval of above cited Institution was placed in 282nd Executive Committee of the PCI in its meeting held on 28th November 2017, which decided as under -

It was decided to

(a) remind the Examining Authority to clarify as to whether they have been conducting exams for the students admitted from 2014-2015 to 2017-2018 academic session and granted affiliation to B.Pharm Course.

(b) In case the Examining Authority intimates that exams are conducted under Hon'ble Court's directions, approval be granted upto 2017-18 academic session for 50 admissions."

11. The Examining Authority in the case on hand is the Respondent/University. Subsequent to the said communication of the Pharmacy Council of India, the Respondent/University vide letter dated 12.03.2018 to the Pharmacy Council of India has stated that the candidates of the Petitioner/College have been permitted to take up their Examination in February 2016 for the academic year 2014-2015, as per the order of this Court dated 29.01.2016 made in W.P.Nos.1677 of 2016. Relevant portion of the said order reads thus:

"5. ... this Court is inclined to pass an order, permitting the students to write the examinations from 01.02.2016 onwards. However, the results shall not be published until and unless the 1st Respondent (the PCI) satisfies the compliance at the hands of the Petitioner."

12.1. Based on the said direction of this Court, candidates of the academic year 2014-15 of the Petitioner/College were permitted to write the I year Regulation Examinations and Direct II year (Lateral Entry) Examinations in February 2016 session and results have been withheld till further orders from this Court. Thereafter, this Court vide order dated 17.08.2016 in Contempt Petition No.1858 of 2016, has ordered that the Registrar of the Respondent/University can decide on the publication of the results of the candidates of the academic year 2014-15, who have written the Examination in February 2016.

12.2. Hence, the Respondent/University, in their letter dated 12.03.2018 to the Pharmacy Council of India has stated that based on the direction of this Court, the Registrar has ordered to publish the results of I year and Direct II year candidates of the academic year 2014-15 pending receipt of approval of the Pharmacy Council of India and continuance of provisional affiliation for the academic year 2014-15 and accordingly, the exam results were published.

13. Thus, it is clear that there is no permanent affiliation from the Respondent/University to the Petitioner/College and there is no approval from the Pharmacy Council of India. Furthermore, the Petitioner/College has not impleaded Pharmacy Council of India as a party to the above Writ Petitions.

14. On a reading of the order dated 31.10.2017 passed by this Court in W.P.No.17258 of 2017, it is seen that the Petitioner was bent upon in approaching this Court and trying to get an order without complying with the conditions stipulated by the Respondent/University.

Even assuming that the Petitioner has complied with the deficiencies pointed out by the Respondent/University, on a perusal of the records, it is seen that the deficiencies have not been complied with in entirety, but has been complied with, only in bits and pieces. The Petitioner/College, trying to protract the issue, cannot be a substitute for compliance.

15. When no examination was conducted during the academic year 2014-15, this Court is of the view that the relief sought by the Petitioner cannot be granted and that the qualification, if any, obtained by the candidates, will be invalid.

16. This Court would like to mention that, if inspection is ordered to be conducted in the Petitioner/College for any reasons whatsoever, the same will have to be videographed, to avoid allegations and counter-allegations. This Court hopes that the Petitioner will not instigate the students to approach this Court for a similar relief or to continue to hold the Degree.

17. With the above observations, both the Writ Petitions are dismissed. No costs. Consequently, connected M.P.Nos.1 and 2 of 2015 in W.P.No.4932 of 2015 and W.M.P.No.1868 of 2018 in W.P.No.1463 of 2018 are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

(aeb)

- +1 C.C. to M/S.BHARATHI Advocate SR.NO. 48416
- +1 C.C. to M/S.SENTHIL NATHAN Advocate SR.NO. 48417
- +1 C.C. to M/S.D.RAVICHANDRAN Advocate SR.NO. 49049

Common Order in
W.P.No.4932 of 2015
and
W.P.No.1463 of 2018

ASK(20/08/2018)

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