

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2018

C O R A M

THE HONOURABLE Mr.JUSTICE S.S.SUNDAR

Writ Petition Nos.24954 and 34247 of 2012

Dharma Medical Research and Charitable Trust,
No.48, Grand West Trunk Road,
Sriperumbudur 602 105,
Kancheepuram District,
Tamil Nadu.

Rep. by its Trustee. Petitioner in both the WPs.

Vs.

1. The Union of India,
Rep. by the Secretary to Government
Health and Family Welfare Department,
Department of Ayurveda, Yoga & Naturopathy, Unani,
Siddha and Homeopathy (AYUSH)
Indian Red Cross Society Annex Building,
1, Red Cross Road, New Delhi 110 001.
2. The Director,
Government of India,
Ministry of Health and Family Welfare,
Department of Ayurveda, Yoga & Naturopathy, Unani,
Siddha and Homeopathy (AYUSH)
Indian Red Cross Society Annex Building,
1, Red Cross Road, New Delhi 110 001.
3. Central Council of Indian Medicine,
61 - 65, Institutional Area,
Janakpuri, New Delhi 110 058,
Rep. by its Secretary.
4. The Tamil Nadu Dr.MGR Medical University,
P.B.No.1200, No.69, Anna Salai,
Guindy, Chennai 600 032,
Rep. by its Registrar.

5. The Controller of Examinations,
The Tamil Nadu Dr.MGR Medical University,
P.B.No.1200, No.69, Anna Salai,
Guindy, Chennai 600 032. ... Respondents 1 to 5 in both
the WPs.

6. The Under Secretary to the Government of India,
Ministry of Health and Family Welfare,
Department of Ayurveda, Yoga & Naturopathy, Unani,
Siddha and Homeopathy (AYUSH),
Indian Red Cross Society Annex Building,
1, Red Cross Road, New Delhi 110 001.

...6th Respondent in WP.No.34247 of
2012

Prayer in W.P.No.24954 of 2012: Writ Petition has been filed
under Article 226 of the Constitution of India, praying to issue
a Writ of Certiorari to call for the records relating to the
impugned order passed by the 2nd respondent in No.R-
17011/188/2012-EP (IM-I) dated 27.08.2012 to quash the same.

Prayer in W.P.No.34247 of 2012: Writ Petition has been filed
under Article 226 of the Constitution of India, praying to issue
a Writ of Certiorari to call for the records relating to the
impugned order passed by the 6th respondent dated 12.10.2012 to
quash the same.

W.P.No.24954 of 2012:

For Petitioner : Mr.V.Selvaraj,

For Respondents : Mr.N.Rajan for R1,

Mr.G.Karthikeyan for R2 and R3,
Asst. Solicitor General of India.

Mr.Hari Hara Arun Somasankar
for R4 & R5,
Standing Counsel.

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W.P.No.34247 of 2012:

For Petitioner : Mr.V.Selvaraj,

For Respondents : Mr.J.Madanagopal Rao
for R1, 2 & 6.

Mr.Hari Hara Arun Somasankar
for R4 & R5,
Standing Counsel.

Mr.G.Karthikeyan
Assistant Solicitor General of
India for R3.

O R D E R

The Writ Petition No.24954 of 2012 is filed for issuing a Writ of Certiorari to quash the impugned Order passed by the 2nd respondent, dated 27.08.2012 and the Writ petition No.34247 of 2012 is filed for issuing a Writ of Certiorari to quash the impugned order passed by the 6th respondent dated 12.10.2012.

2. By the first impugned order dated 27.08.2012 the 1st respondent after finding that there are short comings and deficiencies particularly pointing out the non availability of required higher faculties and non availability of a genuinely functional hospital required as per the provisions of the Indian Medicine Central Council Act, hereinafter referred to as 'Act', the petitioner institution was denied permission for taking admission to BAMS Degree Course, with 40 seats in the academic year 2012 - 2013.

3. The petitioner is a Trust and it is the Educational Agency of an Ayurvedha Medical College, known as Dharma Ayurvedha Medical College, which is located in Sriperumbudur. It is not in dispute that the first batch of students were admitted in the petitioner's institution during 1997 - 1998.

4. It is stated that after the introduction of Chapter II A of the Indian Medicine Central Council Act 1970 (with effect from 07.11.2003), the petitioner applied for permission in terms of Section 13(C) of the Act and as per the notification dated 06.10.2006 namely Indian Medicine Central Council (Permission to existing Medical Colleges Regulations, 2006). Earlier for the academic year 2008 - 2009 permission to admit students was

refused by order dated 28.08.2008 and the petitioner filed W.P.No.7598 of 2009. Again for the next year permission was refused and petitioner filed W.P.No.3046 of 2010. Both writ petitions were allowed on 20.01.2011. Pending disposal of writ petitions, students were admitted and sat for exams. Again for the academic year 2011 - 2012, permission was denied to the petitioner by an order dated 18.08.2011. The Executive Committee of the Central Council of the Indian Medicine, constituted under Section 3 of the Act, framed Indian Medicine Central Council (minimum standard requirements of Ayurvedha Colleges and attached Hospitals) Regulation, 2012. Based upon the revised standards, as per the regulation framed by the Central Council for Indian Medicine, the Government of India namely the 1st respondent refused permission to the petitioner for admitting students in the academic year 2011 - 2012. This Order was passed on 18.08.2011 and the petitioner filed a Writ Petition in W.P.No.22212 of 2011, to quash the Order passed by the 1st respondent dated 18.08.2011.

5. On 30.09.2011 this Court admitted the writ petition and granted interim order permitting the petitioner's institution to admit students. Taking into consideration the fact that the college run by the petitioner was admitting students for more than 10 years, this Court allowed the writ petition giving liberty to the petitioner to make a detailed representation on or before 24.10.2011 along with the fresh list of faculty before the 1st respondent for the grant of approval for the academic year 2011 - 2012. The 1st respondent was directed to consider the same and to pass appropriate orders on or before 31.10.2011. The Government of India as well as the Central Council of Indian Medicine preferred an appeal before the Hon'ble Division Bench of this Court challenging the order passed by the learned Single Judge of this Court allowing the writ petition filed by the petitioner in W.P.No.22212 of 2011. Similar cases preferred by the students as well and other institutions were also taken up. It is to be noted that the common issue arises in all the matters was identified by the Hon'ble Division Bench as one whether the respondent was correct in evaluating the institutional and infra structure facilities available in all these institutions on the basis of revised regulation dated 18.03.2011, which was notified only after the commencement of the relevant academic year.

6. The Hon'ble Division Bench after considering the fact that the regulations framed in 2011 were not even notified till 2013, found that the impugned order rejecting the application

for permission based on the revised regulations is illegal. The Hon'ble Division Bench observed that the minimum standards prescribed for the grant of permission was revised with retrospective effect and that therefore denial of permission on the basis of regulation which was yet to be notified was found illegal. Taking note of the fact that by virtue of interim orders directing the University to permit the students of the institutions to write the examination, the Hon'ble Division Bench also directed the University namely, The Tamil Nadu Dr.M.G.R. Medical University to declare the results of all the candidates within a period of 4 weeks. There was a further direction to the Department of AYUSH namely, Ministry of Health and Family Welfare, Government of India, to pass consequential orders in respect of each of the institutions to regularize the admissions and to grant permissions for the academic year in question. The Division Bench further directed that such exercise shall be completed within a period of 8 weeks from the date of receipt of copy of the Judgment in the writ appeal.

7. During the pendency of the appeal preferred by the department of AYUSH, Government of India and the Central Council for the Indian Medicine, the petitioner sought for admission of students for the academic year 2012 - 2013. The College was inspected by a team during February 2012. It is stated by the petitioner that the College was put on notice only after its inspection. It is further stated that the petitioner was completely kept in dark after inspection and hence the petitioner submitted a letter dated 15.02.2012 requesting the Government to appoint a team of honest officials to inspect the college and submit a report. However, the Principal of the College received a communication dated 23.05.2012 from the 1st respondent stating that the College was not fulfilling the eligibility conditions. Thereafter, reply also was sent by the petitioner on 05.06.2012. Thereafter, the 1st respondent has passed the impugned order on 27.08.2012 refusing permission to the petitioner's institution to admit students to the BAMS Course for the academic year 2012 - 2013. Challenging the order dated 27.08.2012, the petitioner filed W.P.No.24954 of 2012 and obtained interim order. During pendency of the above writ petition, the petitioner appointed higher faculty members and sent a representation to approve the admissions of students to the BAMS Course in 2011 - 2012 and 2012 - 2013 along with a detailed compliance report. However the said representation was turned down.

8. Hence the petitioner in W.P.No.24954 of 2012 filed another writ petition in W.P.No.34247 of 2012, to quash the

order passed by the 6th respondent dated 12.10.2012. The Under Secretary to the Government of India namely the 6th respondent in W.P.No.34247 of 2012 rejected the request of the petitioner seeking approval of admission of students to BAMS Course for 2011 - 2012 and 2012 - 2013 on the ground that once a decision is taken by the Central Government it cannot be looked back or looked into again.

9. The learned Counsel appearing for the petitioner would submit that, the impugned Order of 6th respondent in W.P.No.34247 of 2012 is contrary to the direction of this Court in the earlier writ petition filed by the petitioner in W.P.No.22212 of 2011, where in the writ petition filed by the petitioner was allowed and a direction was issued to the Union of India to consider the application after making an inspection as to the compliance. It is further contended that by virtue of the final order passed in W.A.No.2044 of 2011, as against the order in W.P.No.22212 of 2011, the order of the first respondent impugned in W.P.No.24954 of 2012 and the order of 6th respondent impugned in W.P.No.34247 of 2012 dated 12.10.2012 are illegal.

10. The learned Counsel appearing for the petitioner submitted further that the impugned order dated 27.08.2012, which is challenged in the first writ petition is on the basis of the regulation which was never notified. The deficiencies pointed out by the Central Council which was the basis for the 1st respondent Government to pass the impugned order refers to the regulation which was neither in force nor can be applied. Since the deficiencies pointed out in the impugned order dated 27.08.2012 is only relying upon the regulation which was framed but not notified before the commencement of the academic year 2011 - 2012 and 2012 - 2013 it is contended that the impugned orders cannot stand particularly when the position is considered and covered by the judgment of Hon'ble Division Bench in W.A.No.2044 of 2011 and batch of cases.

11. It is seen that the new regulations namely the Indian Medicine Central Council (minimum standard requirements of Ayurveda Colleges and attached hospitals) regulations, 2012 was issued on 18th July 2012. As per Section 1 (2) of the regulations, the 2012 regulations would come into force on the date of their publication in the Official Gazette. It is seen that on 19th July 2012, the 2012 regulations was published in the Gazette. Hence, it is contended that the 2012 regulations would be applicable only from the academic year 2013 - 2014 and upto 2012 - 2013, the 2012 regulations will not have the force of law

so as to bind the colleges or to guide the statutory authorities.

12. The learned Counsel appearing for the petitioner fairly conceded that the petitioner was not even aware of this legal position when the earlier writ petition was filed for the academic year 2011 - 2012 and when the present writ petition was filed in 2012 for the academic year 2012 - 2013. It was therefore submitted that this court while disposing of the earlier writ petition namely W.P.No.22212 of 2011 has directed the petitioners institutions to satisfy the 1st respondent regarding compliance of requirements which were found to be lacking at the time of inspection and reflected in the order impugned in the said writ petition.

13. However, the issue was raised only when the writ appeals were argued before the Division Bench along with other writ petitions. It is further submitted by the learned Counsel for the petitioner that the order passed by the Hon'ble Division Bench is also applicable to the present writ petition and therefore the writ petitions have to be disposed of in line with the order passed by the Hon'ble Division Bench of this Court in writ appeal nos.2042 to 2045 of 2011 and other connected appeals. It is to be noted that the respondent Government along with the Central Council filed an appeal as against the Judgment of learned single Judge of this Court in W.P.No.22212 of 2011 filed by the petitioner. The writ appeal in W.A.No.2044 of 2011 is directed against the order passed by the learned Single Judge in W.P.No.22212 of 2011. The Hon'ble Division Bench disposed of several similar matters by common judgment.

14. In the case of **Dr.T.Arutselvam and others Vs. The Government of Tamil Nadu and others** reported in 2012(2) CTC 772, a learned Single Judge of this Court has considered the issue in paragraph no.45 and held as follows:-

"45. From the narration of facts relating to both the colleges that I have given above, the following undisputed conclusions could be drawn:

(i) that the Government Siddha College, which is in existence from 1924 and whose survival depended upon the Regulations of 2006, was granted permission for the academic years 2007-2008, 2008-2009, 2009-2010 & 2010-2011, but denied permission for the academic

session 2011-2012;

(ii) that the Government Ayurveda College was granted permission for the academic sessions 2009-2010 & 2010 - 2011, but denied permission for 2011-2012; and

(iii) that the denial of permission to both institutions is on the basis of Minimum Standards Norms issued on 18.03.2011, but which have not so far been notified".

15. After holding that the minimum standard norms which were on the consideration when the impugned orders in those writ petitions were passed not being notified and seeks to take away the rights already vested in the Government Colleges by virtue of the old regulations, the Hon'ble Judge has categorically held that the stand taken by the respondents are not sustainable. Thereafter, the question that was considered by the Hon'ble Division Bench was whether the department of AYUSH was correct in evaluating the Institutional and Infra Structure facilities available in all the Institutions on the basis of revised regulations dated 18th March 2011, which was notified only after the commencement of the relevant academic year. The Hon'ble Division Bench has held that the impugned orders passed by the department of AYUSH is liable to be set aside on the grounds that the assessment of institutional and infra structure and the academic facilities were sought to be tested on the basis of revised norms dated 18.11.2011 which were not even notified and that the minimum standards prescribed for the grant of permission was revised with retrospective effect. Ultimately the Hon'ble Division Bench has dismissed the writ appeals filed by the 1st respondent and the Council had allowed the Writ Petitions filed by other institutions and students for undergoing courses in certain institutions. Since, the students were to be permitted to undergo the courses and to write the examinations, this court has further directed as follows:-

"34. This Court had earlier passed Interim orders directing the Tamil Nadu Dr.M.G.R. Medical University to permit the students of these institutions to write the examination. We now direct the Registrar, the Tamil Nadu Dr.M.G.R. Medical University, to declare the results of all such candidates within a period of four weeks.

35. The Department of AYUSH, is directed to pass consequential orders in respect of each of these institutions to regularize the admissions and grant of

permissions for the academic year in question. Such exercise shall be completed within a period of 8 weeks from the date of receipt of a copy of this Judgment."

16. The learned Counsel for the petitioner then relied upon the counter affidavit filed by the 1, 2 and 6th respondents in W.P.No.34247 of 2012. In paragraph no.2.5. of the counter affidavit, it is stated as follows:-

"2.5.That the matter relating to the denial of permission in the academic year 2011-12, and 2012-13 is pending adjudication before the Hon'ble High Court of Judicature at Madras in separate Writ Appeal and Writ Petition. Since the issue involving the admission in academic year 2011-12 and 2012-13 are sub-judice, the present writ petition is not maintainable."

17. So, the significance of the order to be passed in the pending Writ Appeal and the issue that was to be answered by the Hon'ble Division Bench is admitted by respondents. It is to be noted that the Writ Appeal No.2044 of 2011 was not disposed of when the counter affidavit was filed by the respondents. Further, it is more important that in the counter affidavit filed by the respondents 1, 2 & 6, it has been categorically admitted that the Indian Medical Central Council (minimum standard requirements of Ayurvedha College and attached Hospitals) regulation 2012 has no ex-facto effect and that it is applicable from the academic year 2013-2015 and not in the academic year 2012-2013. This admission is found in paragraph no.10 of the counter affidavit. Relying upon this admission, the learned Counsel for the petitioner further submitted that the issue is no more res integra in view of the judgment of the Hon'ble Division Bench and the present Writ Petition has to be allowed.

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18. On the merits of the case the learned Counsel for the petitioner submitted that the impugned order dated 18.07.2012 is unsustainable in as much as the petitioner was not given any time or opportunity to comply with the deficiencies. The learned Counsel for the petitioner further relied upon several provisions of the Act namely Indian Medicine Central Council (IMCC Act 1970). Particularly with reference to Sections 13 and 21. It is the specific case of the learned Counsel appearing for the petitioner that Chapter II-A is applicable only for the new colleges and that Section 13-C clearly indicate that the existing institution cannot be denied admission, by referring to

the Sections 13-A & 13-B of the Act. Though the Central Government has power to withdraw recognition in terms of Section 21 of the Act, it is stated that the said power has to be exercised only by following the procedure and that in this case such procedure for withdrawal of recognition has not been followed.

19. Finally, the learned Counsel appearing for the petitioner stated that in view of the fact that there were no deficiencies at the time when the Impugned Order challenged in the second writ petition was passed and hence the writ petitions are liable to be allowed.

20. The 5th respondent writ petitioner namely the Tamil Nadu Dr.M.G.R. Medical University, filed a counter stating that the department of AYUSH has not granted renewal or permission from 2008 to the petitioner's College except for the academic years 2010-2011, 2011-2012 & 2014-2015. Though it is submitted that the provisional affiliation was granted to the petitioner's college for the academic year 1997-1998 with the annual intake of 30 seats and provisional affiliation was granted with intake of 40 seats from the academic year 2005, 2006-2007, 2008 it is asserted that the petitioner's institution was not granted affiliation by the 5th respondent. It is further stated that as per Section 56 of Tamil Nadu Dr.M.G.R. Medical University Act 1987, no candidate can be admitted to any University examination unless he is enrolled as a member of the University or College, Affiliated with the University. Since the candidates admitted by the petitioner's college cannot be registered with the University nor can be permitted to write the University examinations, the Writ Petition is liable to be dismissed.

21. The learned Counsel appearing for the 5th respondent relied upon the proceedings of the 5th respondent dated 13.10.2011, wherein there was a direction to the petitioner not to commence classes unless the petitioner's institution satisfy the deficiencies pointed out by the Government of India on or before 31.10.2011.

22. The learned Counsel appearing for the 5th respondent relied upon the statutes namely the Tamil Nadu Dr.M.G.R. Medical University, regarding Affiliation of Ayurveda Medical College. Clause 12, 18, 20 & 21 of statutes are relevant and they are extracted hereunder:-

"12. The applicant shall before applying for

Provisional Affiliation for the First Batch of B.A.M.S. Degree course fulfil the following conditions, namely:-

(a) Shall have obtained the permission and concurrence of the Central Council of Indian Medicine, New Delhi and the Department of AYUSH, Ministry of Health & Family Welfare, Government of India to start a Ayurveda College;

(b) Shall have appointed a qualified Principal for Ayurveda College;

(c) Shall have appointed qualified staff members for the departments as prescribed by Central Council of Indian Medicine from time to time (Annexure) which are absolutely essential to become eligible to start the First Batch of B.A.M.S. Degree Course;

18(1) The Provisional Affiliation granted by the University as specified in statute No.16 shall be only for the First Batch of B.A.M.S. Degree course. Only thereupon the college shall be permitted to admit students in such number in the First Batch B.A.M.S. Degree course as the University decides. The college shall not admit students before such permission by the University.

(2) Every college shall have a duly constituted Governing body with representatives of the teaching staff, to advise the Principal in the Internal affairs of the college. A record of proceedings of the said Governing Body of the college shall be maintained by the Principal.

(3) Any change in the Governing Body of the college shall be reported to the University immediately.

(4) The Ayurveda College shall furnish a budget for each year and a separate development budget which will cover the expenses for the fulfilment of the requirements prescribed for the Second Batch of B.A.M.S. Degree course.

(5) The Governing Body of the college shall meet at least once in three months to consider the budget estimates and such other matters as may arise in its working. It shall meet in May-June each year to consider the Annual Report, the audited statement of accounts, changes in the staff, subjects or course in which fresh affiliation or approval is to be sought in the following year. A copy of the notice of the meeting shall be sent to the Registrar, at least fifteen clear

days before the date of the meeting. A copy of the minutes of the meeting shall also be sent to the Registrar within fifteen days of the meeting.

20. On receipt of the application for Continuance of Provisional Affiliation for the Second Batch of B.A.M.S. Degree course the University shall send its Inspection Commission atleast five months before the commencement of the Second Batch of B.A.M.S. Degree course.

21. The Inspection Commission sent by the University shall inspect the facilities made available by the management of the college duly verifying the inspection Proforma and report to the University as to whether all the facilities required to be provided by the college are provided. The Inspection commission shall also point out in its report the lacunae, if any, in the fulfilment of the conditions required to be fulfilled and also advise as to the capability of the college to rectify the lacunae within a period of 30 (thirty) days from the date of receipt of the University communication/letter. In case there are lacunae in the fulfilment of the conditions the University may conduct the re-inspection wherever necessary on production of a payment receipt for Rs.40,000/- (Rupees Forty Thousand only) such amount as may be prescribed by the Governing Council from time to time towards the re-inspection fee and shall receive a final report from the Inspection Commission."

23. The learned Counsel appearing for the 5th respondent submitted that before applying for provisional affiliation, the petitioner should get permission or concurrence of Central Council of Indian Medicine, New Delhi, and the department of AYUSH. In as much as the petitioner did not have the permission and concurrence of the Central Council of Indian Medicine and the Central Government namely the Department of AYUSH, Ministry of Health and Family Welfare, Government of India, the University cannot grant the affiliation.

24. The learned Counsel thereafter relied upon Clause 18 of the statute and submitted that the College can be permitted to admit the students in the first batch of BAMS Degree course only in terms of Clause 18. It is further stated that the College shall not admit students before the permission by the University namely provisional affiliation every year. It is further stated that the statute contemplates independent assessment based on

inspection. Sum and substance the stand of University is that unless the petitioner get affiliation periodically from the 5th respondent, it cannot permit students to write exam.

25. The learned Counsel for the 5th respondent, then relied upon several Judgments of this Court for the proposition that the 5th respondent cannot be directed to disobey their own regulations in the sense that the Court cannot direct the 5th respondent University to grant affiliation to the petitioner even before the permission is granted by the 1st respondent, Central Government and the approval of the Central Council.

26. The learned Counsel for the 5th respondent relied upon the Judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Vikas Sahebrao Roundale and others** reported in (1992) 4 SCC 435. Following several precedents of the Hon'ble Supreme Court it has been held that the Court cannot grant permission to the students to appear for examinations on sympathetic grounds contrary to the University Statutes. It was a case where the Hon'ble High Court by an Interim Order permitted the students to study in such Institutions to appear for the examinations conducted by the CBSE and directed the CBSE to issue certificates to the students on the basis of the results in the examinations. It was found by the Hon'ble Supreme Court that the grant of Interim Order in such cases being contravention of the Rules and Regulations of the CBSE, held that the Hon'ble High Court is not justified to issue such an order.

27. The learned Counsel for the petitioner further relied upon the judgment of Hon'ble Supreme Court in the case of **Medical Council of India Vs. Rajiv Gandhi University of Health Sciences and Others** reported in (2004) 6 SCC 76. Taking clue from the principles from the various Judgments of the Hon'ble Supreme Court it was submitted by the learned Counsel for the 5th respondent that allowing the students to appear in the University Examinations, who have not been admitted in an unrecognised institution is illegal.

28. The learned Counsel for the 5th respondent then relied upon the Judgment of the Hon'ble Division Bench of this Court in the case of **Rukmani College of Education Vs. The State of Tamil Nadu and others**, reported in 2008 (1) CTC 545, it has been held as follows:-

"35. We have considered the provisions of the relevant statutes and the decided cases. In our opinion, it is impossible to accept the submission of the learned counsel appearing for the Institution that merely because the recognition to the institution has been granted by the NCTE, affiliation must necessarily be granted by the University. If the interpretation as suggested by the Institution is given, it would only mean that the University has to grant affiliation even if the particular institution does not conform to the standards or does not meet the requirements of the Act, Statutes, Ordinances and Regulations of the University and may have the effect of destroying the very autonomy of the University. Merely because the NCTE Act is a Central Statute it does not mean that it has to be interpreted in a manner which destroys the very fabric and edifice of the University. Therefore, there is a need to interpret the provisions of the Central Act and the State Act, harmoniously so that both are able to survive in the respective fields and also able to achieve their respective objectives. No doubt, Section 14(6) says that the University, on receipt of the order under sub-section (4) of Section 14 of the NCTE Act, shall grant affiliation to the institution where recognition has been granted. However, this does not mean that as soon as the order of recognition from the NCTE is produced before the University, it is bound to close its eyes and straightaway grant affiliation. It would only mean that normally affiliation should not be refused on the ground which are covered by Section 14 (3) of the NCTE Act, as the Council has already satisfied itself that the institute meets these requirements. However, this would not be an absolute rule and the University can make a limited enquiry as to whether the institution has proper facilities, competent teaching staff, etc. in consonance with Section 14(3) of the NCTE Act. If it is found that the college does not have the adequate facilities, qualified teaching staff, adequate financial resources, etc. or permission has been obtained by deception or fraudulent means, it would be open for the University to refer the matter to the NCTE for appropriate action. After all it is the University which confers the degree. It is the credibility, reputation or goodwill of the University which is at stake. Therefore, in our opinion, no institution can claim affiliation as a matter of right.

36. The NCTE Act has been enacted by Parliament under Entry 66 of List I to coordinate with and determine the standards of teacher training institutions as well as Entry 25 of List III. The provisions of the University Act regarding affiliation of teacher training colleges and the conditions for grant and continuation of such affiliation by the University shall remain operative. However, the conditions that are prescribed by the University for grant and continuation will have to be in conformity with the norms and guidelines prescribed by the NCTE in respect of the matters entrusted to it under the NCTE Act. We hasten to add that the grant of affiliation alone entitles the colleges to admit the students and also enables the students to write the examination, subject to the training in the prescribed syllabi and fulfilling the attendance norms, and there cannot be any retrospective affiliation and the attendance before the affiliation would not be taken into consideration. No institution or college is entitled to admit students before the grant of affiliation by the University, and as observed by the learned Chief Justice in *Loordhu Ammal Educational Trusts case*, that any college or institution admitting students for a degree in the University even before the University accords affiliation is really committing fraud on those students and is cheating those students who are given admission, because those students can be left in the lurch if ultimately affiliation is not granted. We may add that it would be impermissible for the Court to permit the students of an unaffiliated institution to appear for the examination conducted by the University under the interim orders of the Court or to direct the University to grant affiliation with retrospective effect, as it would amount to directing the University to disobey the statute to which it owe its existence and the regulations made by the University itself."

29. Again in the case of **All India Council for Technical Education Vs. Surinder Kumar Dhawan & Others**, reported in **AIR 2009 SCC 2322** the Hon'ble Supreme Court has held as follows:-

"13. The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep

their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced."

30. The learned Counsel for the 5th respondent submitted that the petitioner has neither have recognition nor affiliation from the Central Government and the University cannot be allowed to run as the same is contrary to the intention and object behind the regulation.

31. The learned Counsel appearing for the 1st respondent Mr.K.Surendranath, has filed a Counter affidavit in W.P.No.27773 of 2014 and relied upon the submissions and added strength to the Counsel appearing for the 5th respondent.

32. The learned Counsel appearing for the 2nd respondent submitted the following points:-

The impugned order had been passed after ascertaining the facts as to the deficiencies pointed out by the inspection team. Since the petitioner's College has admitted the existence of the deficiencies, the petitioner cannot be permitted to admit students. He also relied upon the Judgments referred to and relied upon by the learned Counsel appearing for the 5th respondent and supported the stand taken by the 5th respondent, that the petitioner cannot be permitted to admit students without the affiliation of 5th respondent. The minimum standard prescribed by the Indian Medicine Central Council as per the regulations are meant for maintaining the standard in the education. Hence it is submitted that in as much as the petitioner has not satisfied the norms, there is no scope for entertaining the writ petition filed by the petitioner.

33. The learned Counsel appearing for the 1st respondent in W.P.No.34247 of 2012 has stated in his counter affidavit that the petitioner has challenged only a letter dated 12.10.2012 issued by the 6th respondent and that the same cannot be construed as an order which can be challenged in the writ petition. It is pertinent to mention that in all the writ petitions, the common stand taken by the respondent in the counter affidavit is that the matter is sub-judice in the Writ Appeal that was pending at the time of filing the Writ Petitions and that therefore the Writ Petition is neither maintainable nor can be adjudicated. This Court has carefully considered the order passed by the learned Single Judge in the batch of cases of **Dr.T.Arutselvam Vs. The Government of Tamil Nadu** reported in

(2012) 2 CTC 772, and the order passed in the earlier writ petition filed by the petitioner in W.P.No.22212 of 2011 and also the common order passed by the Hon'ble Division Bench of this Court in the batch of Writ Appeals and Writ Petitions in the case of **The Secretary, the Government of India and another Vs. Sivaraj Siddha Medical College and other batch of cases**, dated 21.03.2014. In all these cases one fact is admitted, the admitted. That is 2012 regulation which was published in the Gazette on 19.07.2012 cannot have any application for the academic year 2012-2013.

34. It is to be noted that in the Judgment reported in 2012 (2) CTC 772, this Court considered the applicability of regulation which was framed in 2006. Even in the Judgment reported in 2012 (2) CTC 772, it is seen that the learned Judge proceeded on the basis of existence of some valid regulations. However, the Hon'ble Division Bench pointed out that the regulation has been notified only in July 2012 and that it will have application only for the next academic year, that is 2013-2014. In view of the factual position that there was no regulation framed in 2012 the same cannot be the basis for deciding the actual requirement or minimum standard to be maintained by the petitioner's college. The Impugned Order cannot be sustained as the deficiency referred to the order is by applying the 2012 Regulations which cannot have any application.

34.a) From the impugned order it is seen that the CCIM had recommended to grant conditional permission to the college for UG course for the year 2012-2013. Hence, the impugned order denying admission is contrary to the recommendation of Central Council. This Court has taken the view that the Central Government cannot pass the order denying permission to the Institution without the recognition of Central Council. As it has been pointed out earlier that the deficiencies referred to in the impugned order, it had already been complied with by the petitioner in all respects. Hence, such an event, the impugned order is also unsustainable on merits.

35. In so far as the Judgments relied upon by the 5th respondent and the 1st respondent are concerned, it is to be seen that proposition law laid down in all those Judgments cannot be disputed. On the basis of interim order passed during the pendency of Writ Petition, the students cannot be given the privilege of getting a decree, in a case where no recognition or permission is permissible for the institution to conduct the course. In this case the Hon'ble Division Bench has already

considered the position and the invalidity of the order passed by the 1st respondent for the reason that the 2012 regulations can not be relied upon for denying admission to the petitioner's institution for the year 2011-2012 and for 2012-2013. In the final Order passed by this Court, the Hon'ble Division Bench directed the 1st respondent/Central Government to pass consequential orders in respect of the institutions including the petitioner in this case to regularise the admissions and to grant permissions to the academic year in question.

36. It is further directed that such exercise should be completed within a period of 8 weeks from the date of receipt of the copy of the Judgment. In the light of the positive direction issued by the Hon'ble Division Bench, the petitioner's institution is entitled to similar direction in this case. The impugned order passed by the 1st respondent dated 27.08.2012 is set aside, consequently the 1st respondent is directed to pass consequential orders in respect of the petitioner's institution to regularise the admission and grant permission to the academic year 2012-2013. Such exercise shall be completed within a period of two weeks from the date of receipt of the copy of this order. It is not in dispute that pursuant to the interim order granted by this court, the students are permitted to take their examinations.

37. Consequent, to the order in the above Writ Petitions, the 5th respondent is directed to grant affiliation and further direction is issued to the 5th respondent to declare the results of all the candidates who have passed the examination within a period of two weeks. It is brought to the notice of this Court that the students were not permitted to write their examinations as results of the previous examinations written by the students were not published. In writ petition filed by the students, interim order was refused by an elaborate order by referring to the Judgments relied upon by the 5th respondent in the Writ Petition. In the present case, now by virtue of the final order passed by this Court in the Writ Petitions, the 5th respondent University shall also permit the students to write the examinations and publish the results accordingly.

38. In the result, the Writ Petitions are allowed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed, if any.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msvm

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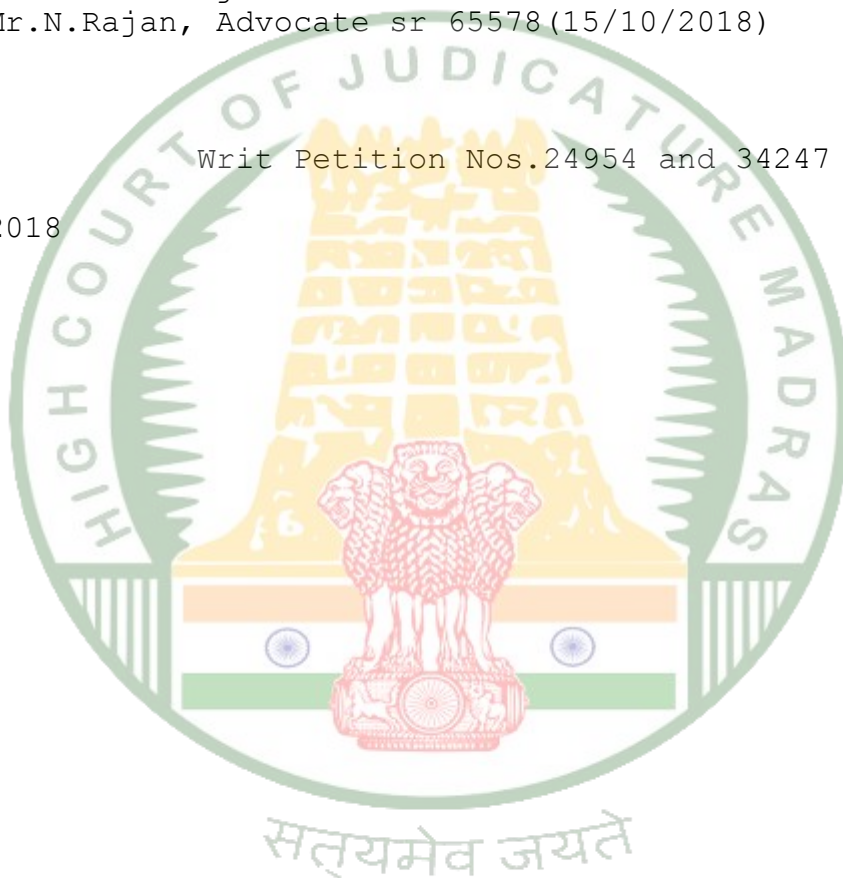
1. The Secretary to Government,
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Indian Red Cross Society Annex Building,
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2. The Director,
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4. The Registrar,
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5. The Controller of Examinations,
The Tamil Nadu Dr.MGR Medical University,
P.B.No.1200, No.69, Anna Salai,
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6. The Under Secretary to the Government of India,
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+1 cc to Mr.N.Rajan, Advocate sr 24954
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Writ Petition Nos.24954 and 34247 of 2012

gsp12/10/2018



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