

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Monday, the Eighth day of October Two Thousand Eighteen

PRESENT

THE HON`BLE MR JUSTICE S.S.SUNDAR

WMP NO.30875 OF 2018

IN WP.27012 OF 2017

HAHNEMANN HOMOEOPATHIC MEDICAL TRUST, REP. BY ITS MANAGING TRUSTEE, A. SIVASUBRAMANI, 6/177-A, MOUNT POONAMALLEE RD, KARAMBAKKAM, PORUR, CHENNAI ESTABLISHED AND ADMINISTERING (V [PETITIONER]

Vs

1 THE GOVERNMENT OF INDIA [RESPONDENTS]
REP.BY ITS UNDER SECRETARY TO THE GOVT.OF INDIA, MINISTRY AYURVEDA, YOGA & NATUROPATHY UNANI, SIDDHA & HOMOEOPATHY (AYUSH) AYUSH BHAWAN, "B" BLOCK GPO COMPLEX, NEW DELHI 110 023.

2 THE CENTRAL COUNCIL OF HOMOEOPATHY (CCH), REP. BY ITS SECRETARY, JAWAHARLAL NEHRU BHARTIYA CHIKITSA AVUM, HOMOEOPATHY ANUSANDHAN BHAWAN 61-65, INSTITUTIONAL AREA, OPP TO "D" BLOCK, JANAKPURI, NEWDELHI

3 THE COMMISSIONER
DIRECTORATE OF INDIAN MEDICINES AND HOMOEOPATHY ARUMBAKKAM, CHENNAI

4 TAMIL NADU DR. M.G.R MEDICAL UNIVERSITY, REP. BY ITS REGISTRAR, 69, ANNA SALAI, GUINDY, CHENNAI

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to direct the 4th respondent to register the List of 98 below mentioned students of the 1st Year BHMS Course 2017-18 admitted in the petitioner college and permit them to write their periodical examinations including the examination scheduled from 15.10.2018, publish their results till the completion of their course (in

WMP.No.30875/18) pending disposal of the above writ petition 27012/17.

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.MASILAMANI Senior Counsel for M/S.D.PRABHU MUKUNTH ARUNKUMAR Advocate for the petitioner and of M/S.HARIHARA ARUN SUMA SANKAR Advocate for 4th respondent and M/S.P.R.GOPINATHAN Advocate for 1st respondent the court made the following order:-

The main writ petition is filed against the order passed by the 1st respondent dated 31.08.2017 reducing the students from 100 to 50 for the petitioner college for admission to BHMS Course for the years 2017 - 2018. By the impugned order, the admission capacity of the petitioner is reduced from 100 to 50 and the order of the 1st respondent has been stayed by this Court by an independent order. It is stated that the 4th respondent vide its communication dated 17.09.2018 has refused to register the candidates who were admitted pursuant to the interim order granted by this Court to appear for the examination. It is relevant to point out that the reason for denying the permission to the students to appear in the ensuing examination is stated in the communication as follows :-

"In view of the above, if you have obtained any interim order (or) direction from the Hon'ble Division Bench of Madras High Court for permission of candidates to the ensuing examinations of October 2018 for First Year BHMS 2017-2018 the same shall be submitted to the University immediately to conduct the spot verification and register to the candidates temporarily to appear for the ensuing examinations subject fulfillment of I.A. Attendance etc.. otherwise the examination wing will not permit the candidate to appear for the First Year October 2018 examinations."

This Court also granted an interim direction in WMP No.28824 of 2017 in WP No.27012 of 2017 to the respondents 3 and 4 to allow the petitioner college to admit 100 students for 1st year BHMS for the academic year 2017-2018 in the first phase of counseling.

2. The learned senior counsel appearing for the petitioner has advanced his arguments pointing out as to how the impugned order passed by the 1st respondent is contrary to the judgment of Division Bench of this Court wherein the issue has been decided finally on merits. It is further stated that as against the order passed by the Division Bench, holding that permission once obtained from the Central Council before the amendment in 2003 is valid and holds good and no separate permission / approval is required from the central government there is no further appeal and as such, the issue has become final. The impugned order challenged

in this petition is therefore appears to be prima facie illegal and unsustainable. It is only consequent to the impugned order passed by the 1st respondent, the 4th respondent has not considered the application for the grant of provisional affiliation. It is not as if the 4th respondent has found any other valid reasons for refusing to grant provisional affiliation to the petitioner.

3. It is a case where the 4th respondent once again has taken the same stand that in view of the order passed by the 1st respondent, provisional affiliation cannot be granted to the petitioner institution. As a matter of fact, the 4th respondent may also be justified in stating that they cannot give affiliation to the institution without any approval from Central Government in any other case. However, the Division Bench of this Court has held that no fresh permission is required from the Central Government and the permission obtained from the Central Council before the amendment in 2003 holds good. Admittedly, there is no justification for ignoring this vital fact which has been decided and approved by the Division Bench of this Court.

4. In such circumstances, the conduct and attitude of the University declining to consider the application for affiliation is condemnable. This Court is also of the view that the conduct is not that simple to be ignored but contumacious since the 4th respondent by this stand intends to circumvent the order passed by the Division Bench of this Court in the earlier proceedings.

5. Be that as it may, this Court has granted interim order after finding that the permission originally obtained from the Central Council is valid and holds good. In such circumstances, this Court is inclined to grant relief as prayed for as the students in the institution cannot be allowed to suffer on account of the unreasonable, contumacious and condemnable conduct of the 4th respondent and accordingly, this interim application is allowed. However the interim direction given shall be subject to the outcome of the main writ petition.

6. Post the matter after two weeks.

-sd/-

08/10/2018

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

TO

1 THE UNDER SECRETARY TO THE GOVT.OF INDIA,
THE GOVERNMENT OF INDIA
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C.C. TO M/S.D.PRABHU MUKUNTH ARUNKUMAR ADVOCATE SR.NO.12236

C.C. TO M/S.M.T.ARUNAN ADVOCATE SR.NO.12239

C.C. TO M/S.B.RABU MANOHAR ADVOCATE SR.NO.12174

The Government Advocate, High Court, Madras - 104.

Order

in

WMP.30875/2018

in

WP.27012/2017

Date :08/10/2018

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