

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.11.2018

CORAM
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.27859 of 2018
and
W.M.P.Nos.32387 & 32397 of 2018

Annai J.K.K.Sampoorani Ammal Charitable Trust
Represented by its Management Trustee,
Dr.J.K.K.Munirajah,
Ethirmedu, Komarapalayam Tk,
Namakkal District - 638 183
Established and administering
J.K.K.Munirajahh Institute of Health Sciences,
College of Pharmacy,
Thookanaicken Palayam, Erode. Petitioner

Versus

- 1.The Registrar,
MGR Medical University,
69, Anna Salai, Guindy,
Chennai - 600 032.
- 2.The Pharmacy Council of India,
Represented by the Secretary cum Registrar,
Combined Council Building,
Temple Lane, Kotla Road,
Aiwan-E-GHALIE Marg,
Post Box No.7020, New Delhi - 110 002.
- 3.The Member Secretary,
All India Council for Technical Education (AICTE),
Nelson Mandela Marg,
Vasanth Kunj,
New Delhi - 110 067.
- 4.The Director of Medical Education,
Directorate of Medical Education Campus,
Kilpauk, Chennai - 600 010. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st Respondent in Lr.No.Affln1(1)/60375/2018 dated 17.10.2018, quash the same in so far as reducing the intake of seats from 100 to 60 for the Petitioner College in B.Pharm. Degree Course for the academic year 2018 - 19 and direct the 1st Respondent to grant affiliation to the

Petitioner College for an intake of 100 students for the academic year 2018-19 pursuant to the approval granted by the 2nd and 3rd respondents for an intake of 100 students for the academic year 2018-19.

For Petitioner : Mr.D.Prabhu Mukunth Arunkumar

For Respondents: Mr. D.Ravichander,
Standing Counsel for R1.
: Mr.Rabhu Manohar for R3.
: Mr.A.Raja Perumal, AGP for R4

ORDER

This Writ Petition is filed for issuing a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st Respondent in Ir.No. Affln1(1)/60375/2018 dated 17.10.2018, quash the same in so far as reducing the intake of seats from 100 to 60 for the Petitioner College in B.Pharm. Degree Course for the academic year 2018 - 19 and direct the 1st Respondent to grant affiliation to the Petitioner College for an intake of 100 students for the academic year 2018-19 pursuant to the approval granted by the 2nd and 3rd respondents for an intake of 100 students for the academic year 2018-19.

2.The brief facts that are necessary for the purpose of disposal of this writ petition are as follows:

The petitioner Trust has started the petitioner college from the year 2015 - 16. It is not in dispute that the second and third respondents have granted approval for starting B.Pharm Degree Course for the academic year 2015-16 with an annual intake of 60 students to the petitioner's college. The first respondent also granted Provisional Affiliation to the petitioner college for starting B.Pharm Degree Course for the academic year 2015 - 2016 with an intake 60 students on 29.09.2015. Thereafter, the approval was granted for subsequent years and the University also granted Provisional Affiliation in terms of the approval granted by the 2nd and 3rd respondents.

3.The first respondent granted permission for increasing the seats of the Petitioner College from 60 to 100 by its order dated 12.10.2018 for the academic year 2018 - 2019. This is based on the approval granted by the third respondent and the approval granted by the second respondent, namely, the Pharmacy Council of India for conducting B.Pharm Degree Course in the year 2018-2019 with an intake of 100 students by Proceedings dated 08.08.2018. However by the impugned order dated 17.10.2018, the first respondent withdrew the earlier order

dated 12.10.2018 and reduced the intake of seats from 100 to 60 in B. Pharm Degree Course for the petitioner's college. The impugned order is in violation of principles of natural justice as no notice was issued to the petitioner before withdrawing the earlier order passed by the University of 12.10.2018. Hence, it is liable to be quashed.

4. Further, Mr.D.Prabhu Mukunth Arunkumar, learned Counsel for the petitioner relied upon a judgement of this Court in the case of Rabindranath Tagore Education Charitable Trust, Versus the Registrar of MGR Medical University in W.P.No.21361 of 2018 dated 18.09.2018. It is fairly admitted that the University has withdrawn the earlier order only by virtue of Clause 58 of the Statute framed under the Tamil Nadu Dr. MGR Medical University Act. Since the said position is admitted, this Court is of the view that the decision of this Court in W.P.No.21361 of 2018 dated 18.09.2018 will squarely apply to the facts of the present case. It is relevant to extract paragraphs 14, 15 and 20 of the said judgment hereunder :

'14. The learned counsel appearing for the 3rd respondent has fairly submitted that the issue is covered by the order, dated 06.10.2017 in W.P.No. 25361 of 2017, wherein this Court, after referring to various precedents and judgments, which are referred to above, has held as follows;

" 13. In the above Judgment, it has been held that following that decision of the Hon'ble Apex Court the procedure for obtaining affiliation and any condition which could be imposed by the University could not be inconsistent with the provisions of the Central Act. Therefore, Section 58 of the Tamil Nadu Dr.M.G.R Medical University statute cannot be applied to nullify or violate the decision taken by the Pharmacy Council of India and AICTE.

14. Considering the facts of the present case in the light of the above decisions, the impugned order is liable to be quashed and the writ petition stands allowed. The 1st respondent/University is directed to grant affiliation to the petitioner institution for intake of 100 students for the academic year 2017-18 and consequently, include the petitioner's institution for counselling for 100 seats."

15. It is further brought to the notice of this Court that the Hon'ble Division Bench of this Court has also taken the same view in the case of Tamil Nadu Dr.M.G.R. Medical University Vs. Arulmighu Kalasalingam College of Pharmacy and Others, reported in 2004 SCC Online Mad 649. The relevant portion of the said judgment is as follows;-

6. The Honourable Supreme Court having thus made it clear that the procedure for obtaining affiliation and any condition which could be imposed by the University could not be inconsistent with the provisions of the Central Act, it will have to be held that there is no scope for the appellant University to take the stand that by virtue of the ban imposed in G.O. Ms. 610 dated 13.11.1998, the respondent cannot have the affiliation for intake of the students, which has been approved by the Pharmacy Council of India by its order dated 27.03.2003."

20. In that view of the matter, this Court has no hesitation to hold that the impugned order is illegal and ultravires. This Court has already held that Clause 58 of the Statute framed by the Tamil Nadu Dr.MGR Medical University Act cannot override the decision of the respondents 2 and 3 as otherwise, it would be in violation of the decision taken by the AICTE and the Pharmacy Council of India. The impugned order is unsustainable, and accordingly it is set aside. The first respondent is directed to grant affiliation to the petitioner Institution for intake of 100 students for the academic year 2018-19. However, the grant of affiliation by the first respondent is subject to the approval that has to be obtained from the Pharmacy Council of India. The first respondent is also directed to send the name of petitioner's College for the full intake of 100 students for the academic year 2018-19 for the purpose of counselling."

5. In the result, the Writ Petition is allowed and the impugned order passed by the first respondent dated 17.10.2018 is quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

tsi/ebsi

To

1.The Registrar,
MGR Medical University,
69, Anna Salai, Guindy,
Chennai - 600 032.

2.The Secretary cum Registrar,
Pharmacy Council of India,
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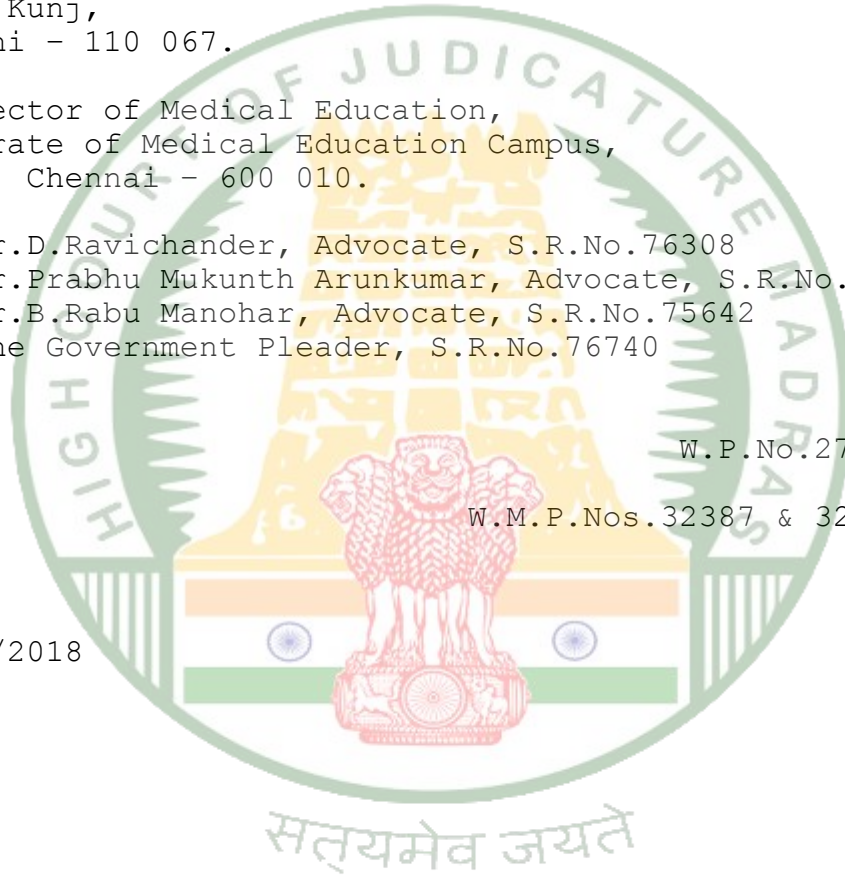
4.The Director of Medical Education,
Directorate of Medical Education Campus,
Kilpauk, Chennai - 600 010.

+lcc to Mr.D.Ravichander, Advocate, S.R.No.76308
+lcc to Mr.Prabhu Mukunth Arunkumar, Advocate, S.R.No.75727
+lcc to Mr.B.Rabu Manohar, Advocate, S.R.No.75642
+lcc to the Government Pleader, S.R.No.76740

W.P.No.27859 of 2018
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BS (CO)

rrs 05/12/2018



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