

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/1/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.666 of 2019
and
WMP Nos. 725, 727, 730 and 731 of 2019

D.I.Nathan

...Petitioner

Vs

1. The Principal Secretary to Government
Government of Tamil Nadu
Health & Family Welfare Department
Secretariat
Fort St. George
Chennai 600 009.
2. The Secretary to Government Law Department
Government of Tamil Nadu
Secretariat
Fort St. George
Chennai 600 009.
3. The Secretary
Tamil Nadu State Legislative Assembly
Fort St. George
Chennai 600 009.
4. Dr. Sithy Athiya Munavarah
5. Dr. Sembon David
6. Dr. Mohan Kameswaran,
Managing Director & Senior Consultant
Madras ENT Research Foundation (P) Ltd.,
7. The Registrar
Tamil Nadu Dr. M.G.R.Medical University
Porur
Chennai.

...Respondents

Prayer Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration, declaring the provisions of clause (ii) of sub-Section (2A) of Section 10 of the Tamil Nadu Dr.M.G.R.Medical University, (Chennai) Act, 1987 (Tamil Nadu Act, 37 of 1987) as it stands amended in Tamil Nadu Act 13 of 2018 and the subsequent G.O.Ms.No.454 Health and Family Welfare (MCA-2) Department, dated 28/9/2018 and G.O.Ms.No.494 Health Family Welfare (MCA-2), Department, dated 23.10.2018 both of the first respondent as unconstitutional, ultravires, null and void.

For Petitioner : Mr.C.Johnson

For respondents : Mr.V.Kathirvel
Special Government Pleader
for R.R.1 to 3.

O R D E R

(Order of the Court was made by S.Manikumar,J)

Claiming himself to be a Public Interest Litigant, instant writ petition has been filed, praying for a writ of declaration, declaring the provisions of clause (ii) of sub-Section (2A) of Section 10 of the Tamil Nadu Dr.M.G.R.Medical University, (Chennai) Act, 1987 (Tamil Nadu Act, 37 of 1987), as it stands amended, in Tamil Nadu Act 13 of 2018 and the subsequent G.O.Ms.No.454 Health and Family Welfare (MCA-2) Department, dated 28/9/2018, as unconstitutional, ultravires, null and void.

2. The petitioner has contended that the Tamil Nadu Dr.M.G.R.Medical University (Chennai) Act, 1987, was enacted by the Government, to provide for Establishment and Incorporation of a Medical University, in the State of Tamil Nadu. Section 10 of the Act deals with appointment of the Vice Chancellor to Dr.M.G.R.Medical University and it reads thus:-

"Every appointment of the Vice-Chancellor shall be made by the Chancellor from out of a panel of three names recommended by the Committee referred to in sub-Section (2). Such panel shall not contain the name of any member of the said Committee:

Provided that if the Chancellor does not approve any of the persons in the panel so recommended by th Committee, he may take steps to constitute another committee, in accordance

with sub-Section (2), to give a fresh panel of three different names and shall appoint one of the persons named in the fresh panel as the Vice Chancellor.

For the purpose of sub-Section (1), the Committee shall consist of three persons of whom one shall be nominated by the Government, one shall be nominated by the Senate and one shall be nominated by the Governing Council:

Provided that the person so nominated shall not be a member or any of the authorities of the University.

3. By virtue of the power conferred, under Section 2 A of the Act, the Legislative Assembly of the State of Tamil Nadu, has amended Section 10 of the Act. Amendment reads as follows:-

"A person recommended by the Committee for appointment as Vice-Chancellor shall -

(i). be a distinguished academician with highest level of competence, integrity, morals and institutional commitment;

(ii). possess such educational qualifications and experience as may be specified by the State Government in consultation with the Chancellor, by an order published in the Tamil Nadu Government Gazette.

4. Amendment has been published in the Tamil Nadu Government Gazette Extraordinary. Pursuant to the amendment, Government have issued G.O.Ms.No.454, Health and Family Welfare (MCA-2), 28th September 2018, by which, three persons have been nominated as members of the Search committee, for recommending a panel of three persons to the office of the Vice-Chancellor and to fill up the ensuing vacancy, in Tamil Nadu Dr.M.G.R.Medical University, Chennai, with effect from 28th September 2018. Nominees of Search Committee are as follows:-

1. Dr.Sithy Athiya Munavarah
2. Dr.Sembon David
3. Dr.Mohan Kameswaran

5. Contending inter alia that Section 2 A of the amendment to Section 10 of the Tamil Nadu Dr.M.G.R.Medical University Chennai, Act, 1987, as ultra vires of the parent Act; the Legislative Assembly lacks competency and power to bring out the Tamil Nadu Amendment Act No.13 of 2018, by introducing Clause

(ii), in sub-Section 2 (A) of Section 10 of the Act, which confers upon the Government unguided powers, to prescribe the educational qualifications and experience and that therefore, the Amendment and G.O.Ms.No.494, Health & Family Welfare Department, dated 23/10/2018, are liable to be declared as violative of Articles 14, 16 and 21 of the Constitution of India, instant writ petition has been filed for the prayer stated supra.

6. List III - concurrent list, of the Constitution of India, deals with Education, including technical education, medical education and Universities, subject to the provisions of Entries 63 to 66 of List I: Vocational and technical training of Labour.

7. Tamil Nadu Dr.M.G.R Medical University Act, 1987, has been enacted to provide for the Establishment and Incorporation of a Medical University in the State of Tamil Nadu. Thus, in exercise of the powers conferred in the Constitution under Entry 25 concurrent list, above said Act has been enacted in the year 1987.

8. It is trite law that once the State Legislative Assembly has enacted the Tamil Nadu Dr.M.G.R.Medical University Chennai, Act, 1987, it has all the powers and competence to make any amendments like insertion, deletion etc., as the case may be. A perusal of the Tamil Nadu Dr.M.G.R.Medical University Act shows that the said Act has underwent many amendments.

9. Therefore, the contention of the petitioner that the Legislative Assembly of the State of Tamil Nadu has no competence to make amendments to the parent Act enacted by the Legislative Assembly, cannot be accepted.

10. As per Section 10 of the Tamil Nadu Dr.M.G.R.Medical University, Chennai as stood before the amendment, every appointment of the Vice Chancellor, shall be made by the Chancellor from out of a panel of three names recommended by the Committee referred to in sub-Section (2). Such panel shall not contain the name of any member of the said Committee.

Provided that if the Chancellor does not approve any of the persons in the panel, so recommended by the Committee, he may take steps to constitute another Committee in accordance with sub-Section (2) to give a fresh panel of three different names and shall appoint one of the persons named in the fresh panel as the Vice Chancellor.

11. Section 2 of sub-Section 10 states that for the purpose of sub-Section 1, the Committee shall consist of three persons of whom one shall be nominated by the Government, one shall be nominated by the Senate and one shall be nominated by the Governing Council:

Provided that the person so nominated shall not be a member or any of the authorities of the University.

12. Now by introduction of Section 2 A, the Legislative Assembly has empowered the State Government to prescribe educational qualification and experience. When the Legislative Assembly is competent to provide for Establishment and Incorporation of Medical University, in the State of Tamil Nadu, Legislative Assembly cannot be said to be without any competence to prescribe educational qualification and experience for the office of the Vice Chancellor for the said University.

13. Contention that Section 2 (A-ii) of the Amended Act, 13/2018 confers the Government unguided powers and therefore, the amended provision has to be declared as ultravires also cannot be accepted.

14. Further going through the qualifications prescribed, we are of the view that State Legislative Assembly has taken into consideration, not only the educational qualification but also the experience of a medical practitioner of not less than 10 years of teaching experience as Professor and not less than six years of administrative experience in any one or more of the following posts, namely:-

- a. Dean of Medical College and Hospital
 - b. Secretary, Selection Committee/Additional Director of Medical Education
 - c. Director of King Institute, Guindy.
 - d. Director of upgraded Institutes in Medical Colleges and Hospitals.
 - e. Medical Superintendent of Medical College Hospitals.
 - f. Principal of Medical College or Dental College
 - g. Vice-Principal of Medical College or Dental College
 - h. Registrar of the Tamil Nadu Dr.M.G.R.Medical University, Chennai or any other deemed University.
- (i). Controller of Examinations of the Tamil Nadu Dr.M.G.R.Medical University, Chennai or any other Deemed University and
- (ii). Must have made not less than five research publications in indexed/national journals.

15. That apart, the Legislative Assembly has also enacted that a person recommended by a Committee for appointment as Vice Chancellor shall -

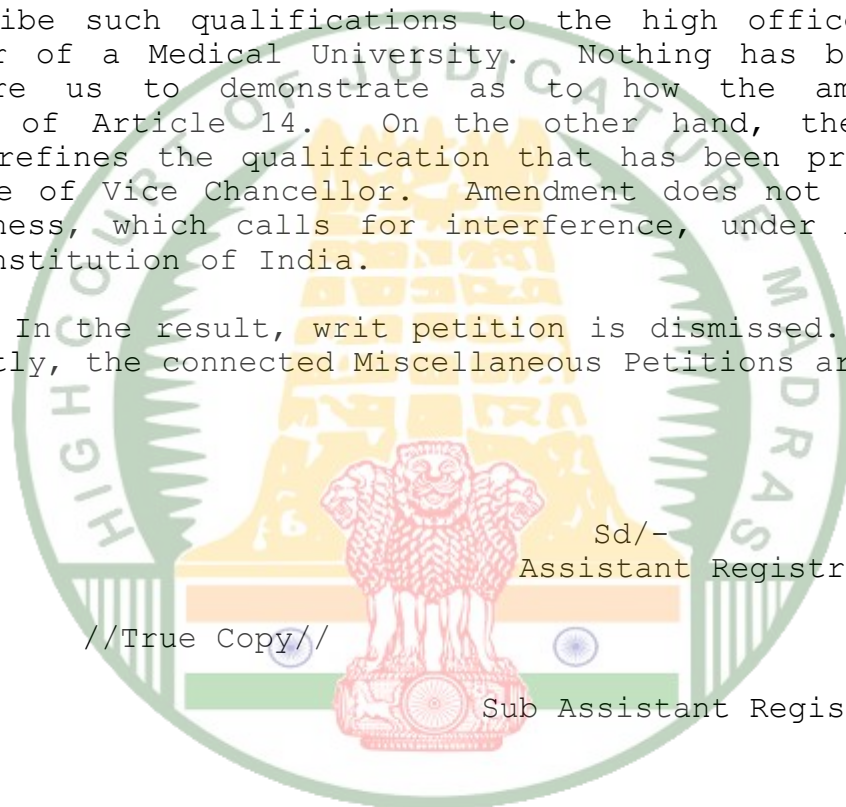
(i) be a distinguished academician with highest level of confidence, integrity, morals and institutional commitment.

(ii). Possess such educational qualification and experience, as may be specified by the State Government in consultation with the Chancellor, by an order published in the Tamil Nadu Government Gazette.

16. We are of the view that the State should be empowered to prescribe such qualifications to the high office of vice chancellor of a Medical University. Nothing has been brought out before us to demonstrate as to how the amendment is violative of Article 14. On the other hand, the amendment actually refines the qualification that has been prescribed to the office of Vice Chancellor. Amendment does not suffer from arbitrariness, which calls for interference, under Article 226 of the Constitution of India.

17. In the result, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

mvs



Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government
Government of Tamil Nadu
Health & Family Welfare Department
Secretariat
Fort St. George
Chennai 600 009.
2. The Secretary to Government Law Department
Government of Tamil Nadu
Secretariat
Fort St. George
Chennai 600 009.

3. The Secretary
Tamil Nadu State Legislative Assembly
Fort St. George
Chennai 600 009.

4. The Registrar
Tamil Nadu Dr. M.G.R.Medical University
Porur
Chennai.

+1cc To Mr.C.Johnson, Advocate, SR.NO.4163

W.P.No.666 of 2019

RSI (CO)
KAK(25/02/2019)



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