

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 31.01.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.4358 of 2018 and
W.M.P. Nos.5351 & 5352 of 2018

Tamil Nadu Private Professional Colleges
Association - Health Sciences
represented by its Secretary,
'Prasanna Enclave', 1st Floor,
No.30 Bharathi Avenue, Kotturpuram,
Chennai-600 085.

.. Petitioner

Versus

1.Union of India,
rep. by its Joint Secretary,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi-110 001.

2.The Chairman,
All India Council for Technical Education (AICTE),
Nelson Mandela Marg,
Vasant Kunj, New Delhi-110 070.

3.Pharmacy Council of India,
Combined Council's Building,
Kotla Road, Aiwan E-Ghalib Marg,
New Delhi-110 002.

4.State of Tamil Nadu,
rep. by the Secretary to Government,
Education Department,
Secretariat, Fort St. George,
Chennai-600 009.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records of the second respondent comprising of the Approval Process Handbook, 2018 and to quash the same as being arbitrary, illegal and unconstitutional in so far as the inclusion of "Pharm.D" Courses in clause 2.11.2 of the Approval Process Handbook, 2018 is concerned.

For Petitioner : Mr.Subhanj Nair for
Mr.R.Parthasarathy

For Respondents: Mr.J.Madana Gopal Rao,
CGSC for R1

Ms.A.L.Gandhimathi for R2

Mr.M.T.Arunan for R3

Mrs.P.Rajalakshmi,
Additional Government Pleader for R4

O R D E R

The writ petition has been filed challenging the impugned records of the All India Council for Technical Education (hereinafter referred to as 'AICTE' in short), New Delhi, the second respondent, comprising of the Approval Process Handbook, 2018.

2.Learned counsel appearing for the petitioner would submit that the second respondent has notified the inclusion of Pharm.D Course in Approval Process Handbook 2018, without taking note of the fact that the Pharmacy Council of India (hereinafter referred to as 'PCI' in short) under the Pharmacy Act has to regulate Pharm.D in the country. According to the learned counsel for the petitioner, the PCI is a statutory body constituted under the Pharmacy Act, which is a Central Act passed by the Parliament, with an objective of regulating the education and practice of profession of pharmacy in the country in order to ensure that only qualified and skilled manpower takes care of the health of the society. Learned counsel for the petitioner would further submit that when it is well settled law that if a Rule goes beyond the rule making power conferred by the statute, the same has to be declared ultra vires and hence, the first respondent, by including Pharm.D Courses in their hand book for 2018, overreached the power conferred to them under the AICTE Act. Therefore, the inclusion of Pharm.D in the Approval Process Handbook by the second respondent is being challenged as arbitrary, illegal and unconstitutional apart from being in violation of the mandate on the ground that the inclusion of Pharm.D course in Approval Process Hand book of 2018 by the second respondent, contrary to the objects and provisions of the AICTE Act, travels beyond the scope of the Act since the Pharm. D course is purely clinically oriented course relating to health and does not come under the purview of the technical courses as defined under the AICTE Act 1987.

According to the learned counsel for the petitioner, there cannot be dual inspection both by AICTE and PCI and if dual inspection been allowed, the same would create multiplicity of proceedings. In a similar circumstance, the Division Bench of this Court reported in 2006-3-L.W.499 in the case of Sathyabama Institute of Science and Technology, Chennai vs. Union of India and others has held that the AICTE which has the duty to ensure that the Universities adhere to the standards and norms of excellence shall function cohesively with UGC, there should be mutual understanding between UGC and AICTE, always keeping in mind that neither shall act in a manner that reduces the importance of the other in their common object. While so, in the present case also, the PCI is an expert body and the role played by the AICTE is only advisory and therefore, the expert body alone should be given importance. More particularly, in the light of the Office Memorandum dated 05.10.2018 issued by the Under Secretary to the Government of India, it is made clear that till the amendment takes place, PCI and AICTE will jointly inspect the institutions as and when required for maintaining required standards of education and the AICTE Act governing the general technical education would be amended deleting 'Pharmacy' from its mandate and the pharmacy education would thereafter be governed by the Pharmacy Act, 1948. He would further submit that during the Minutes of Ministerial Meeting between Hon'ble Minister of Health and Family Welfare and Hon'ble Minister for Human Resource Development held on 03.01.2018, it was noted that both the Pharmacy Act of 1948 and AICTE Act of 1987 contain provisions regarding pharmacy education leading to duplication of regulations and considerable confusion at the field level and it was unanimously agreed that the dual regulation should be ended forthwith and finally, it was resolved that the AICTE Act governing the general technical education should be amended deleting 'pharmacy' from its mandate. Since the PCI is an expert body and the AICTE is only an advisory body, it should be made clear that instead of dual inspection, only PCI should be given the power of inspection and the consequential grant of approval.

3. Heard both sides.

4. I also find merits on the submission made by the learned counsel for the petitioner supported by the reason that the PCI is the expert body in comparison with the AICTE which is discharging only the advisory role. Secondly, the dual regulation that exists in the pharmacy education has already been creating undue hardship and cost escalation to the institutions, students and stake holders. Thirdly, AICTE does not have the expertise required to regulate the Pharm.D Course as the same is only clinical oriented course relating to health only like medical practitioners, dentists, nurses etc.

5. When it has been unanimously resolved in a joint meeting that the AICTE Act governing the general technical education, would be amended deleting 'pharmacy' from its mandate and the pharmacy education would thereafter be governed by the Pharmacy Act, 1948 and till such time the amendment takes place, PCI and AICTE will jointly inspect the institutions as and when required for maintaining required standards of education, this Court is of the considered opinion that a decision has already been taken that PCI will be given primacy over the AICTE instead of dual inspection and hence, it is better to allow the PCI to undertake inspection to find out the infrastructure facilities and then to grant the consequential approval therein.

6. Needless to mention that the petitioner need not apply to AICTE for inspection and also approval.

7. With this observation, the writ petition stands allowed. Consequently, connected W.M.Ps are closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. Union of India,
rep. by its Joint Secretary,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi-110 001.

2. State of Tamil Nadu,
rep. by the Secretary to Government,
Education Department,
Secretariat, Fort St. George,
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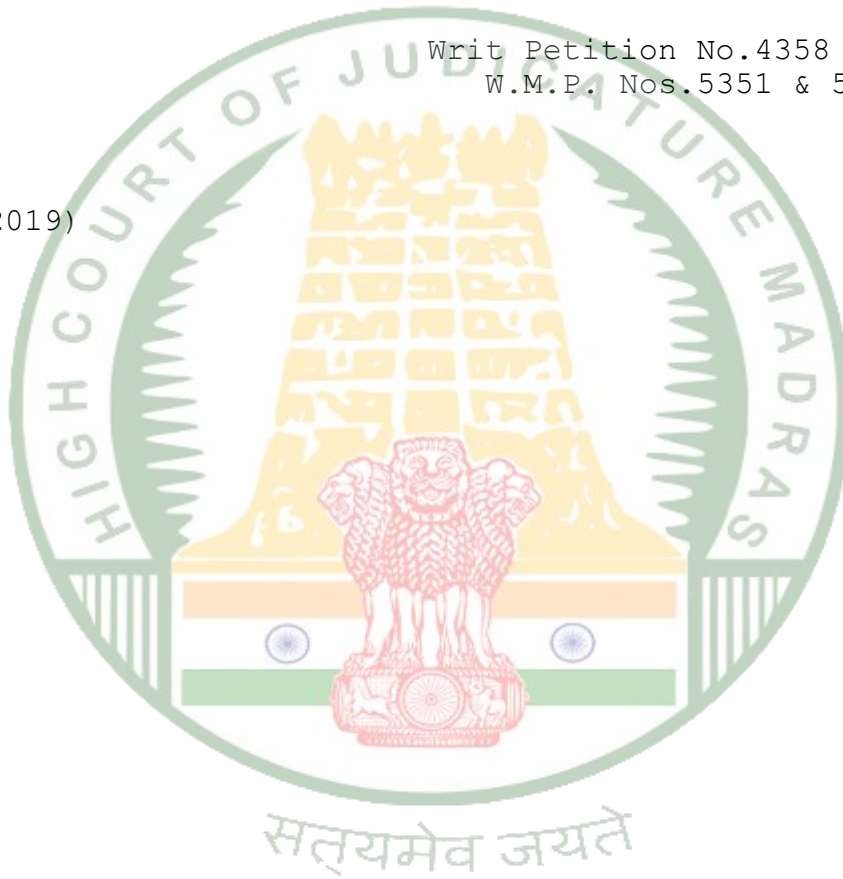
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New Delhi-110 002.

+1cc to Mr.R.Parthasarathy, Advocate, S.R.No. 8594
+1cc to Mr.A.L.Ganthimathi Advocate, S.R.No. 8890
+1cc to Mr.M.T.Arunan, Advocate, S.R.No. 8546
+1cc to Mr.J.Madanagopal, Advocate, S.R.No.8271
+1cc to the Government Pleader, S.R.No. 8763

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PA (CO)
GN(26/02/2019)



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