

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.09.2018

Delivered on : 07.06.2019

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No. 10988 of 2018

And

W.M.P.No. 12894 of 2018

The Doctors Welfare Association of Tamil Nadu
Rep. By its General Secretary
Dr.K.Srinivasan
(Registered Society No. 284 of 2001),
No.15, New Street, West Mambalam,
Chennai - 600 033. Petitioner

Vs.

1. The Union of India
Rep. by its Secretary
Department of Health and Family Welfare
NirmanBhavan, Maulana Azad Road,
New Delhi - 110 011.
 2. The Medical Council of India
Rep. By its Board of Governors
Pocket 14, Sector 8, Dwarka Phase -1,
New Delhi - 110 077.
 3. The Tamil Nadu Dr.M.G.R. Medical University
Rep. by its Registrar
No. 69, Anna Salai, Guindy
Chennai - 600 032.
 4. The Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009. Respondents
- (4th respondent is impleaded suo motu by this Court
vide order dated 07.06.2019)

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying for the issuance of a Writ of
Declaration declaring the courses offered namely PG Diploma in
Palliative Medicine, M.D Family Medicine Course through Distance

Education Programme, Fellowship in Medical Sciences of One Year Duration such as 1. HIV Medicine, 2. Occupational Health 3. Clinical Immunology, 4. Palliative Medicine, 5. Sexual Medicine. Two years duration such as 1. Medical Genetics 2. Critical Care Medicine, 3. Clinical Diabetology, 4. Ultra Sound (O & G), or any other P.G. Degree/Diploma / Certificate or Fellowship in Medical Sciences course or training for which MBBS Degree is the Eligibility for admission as illegal and ultra vires to the Indian Medical Council Act 1956 and the Indian Medical Degrees Act 1916 and prohibit the third respondent in conducting the courses above mentioned either by itself or through affiliated Medical College.

For Petitioner :: Mr. P.Ebenezer Paul
For 1st Respondent :: No appearance
For 2nd Respondent :: Mr.V.P.Raman
Senior Counsel
For 3rd Respondent :: Mr. Hari Arun Somasundar
Senior Counsel

ORDER

This Writ Petition has been filed seeking declaration declaring the courses offered by the third respondent University is illegal and ultra vires to the Indian Medical Council Act 1956 and the Indian Medical Degrees Act 1916 and to prohibit the third respondent from conducting the courses as mentioned in the prayer either by itself or through affiliated Medical College.

2.The petitioner Association is a registered Association. It is stated by the petitioner that the Association was formed for the welfare of the Doctors and to promote Medical Education and to arrange awareness of the Healthcare programme to the public.

3.The third respondent has issued an advertisement on 11.02.2018 offering various courses including M.D. Family Medicine through Distance Education, P.G. Diploma in Palliative Medicine without the approval of the Central Government and M.C.I., as required under Section 10A(1) of the Indian Medical Council Act 1956. As per the impugned advertisement issued by the third respondent, the following 9 fellowship in Medical Science courses with MBBS as eligible qualification are being offered by the third respondent without the approval of M.C.I.

One year courses:

1. HIV Medicine
2. Occupational Health
3. Clinical Immunology
4. Palliative Medicine
5. Sexual Medicine.

Two year courses:

1. Medical Genetics
2. Critical Care Medicine
3. Clinical Diabetology
4. Ultra Sound (O&G)

4.It is stated in the advertisement that through Distance Education Programme, two year course in Family Medicine is also offered by the third respondent University. It is stated in the advertisement itself that the said course offered by the third respondent University is without the approval of M.C.I. Further, a list of Post Graduate Diploma containing courses approved by Medical Council of India are given along with a Diploma course in Palliative Medicine, which is not approved by the Medical Council of India. Therefore, the petitioner has challenged the legality of the notification of the third respondent insofar as it relates to offering various courses in the field of medical education without the permission of the Central Government and the Medical Council of India and the validity of such degrees/certificates which are offered by the third respondent University without the approval of the Central Government and the Medical Council of India.

5.It is the prime contention of the petitioner that under Section 10(A) of the Indian Medical Council Act 1956, no person including an University can establish a medical college or a course of study or training without the permission of the Central Government obtained in accordance with the provisions of Section 10(A) of the Indian Medical Council Act.

6.The advertisement issued by the third respondent dated 11.02.2018 was published in the Hindu Newspaper (Tamil Edition). Even in the advertisement, it is stated that some of the courses are not approved by the second respondent, namely, The Medical Council of India. When the General Secretary of the petitioner Association has applied before the third respondent under Right to Information Act 2005, the Public Information Officer of the third respondent University has sent a reply dated 13.03.2018 admitting that the Distance Education Programme in Family Medicine (two year course) and the PG Diploma in Palliative Medicine are being offered without the approval of MCI.

7.Relying upon few precedents by which this Court had already allowed similar Writ Petitions either forbearing the medical colleges offering parallel courses which are not recognised by Medical Council of India or declaring such of those regulations of university introducing Post Graduate Diploma courses without approval from the Central Government and Medical Council of India as illegal and unconstitutional, it is contended that the action of the third respondent offering courses without the approval of M.C.I. either by itself or through affiliated colleges or through Distance Education programme is illegal and the same is liable to be declared as invalid and unconstitutional.

8.It is the case of the petitioner that the Constitutional Scheme and the Parliamentary Legislation in the field of Higher and Technical Education in order to maintain uniform standards through India in terms of Entry 66 of List -I will prevail over any State Legislation under Entry 25 of the Concurrent List.

9.It is also stated by the petitioner that Section 10A of Indian Medical Council Act, 1956 prohibits any one including an University from offering any course of study or training for the award of any recognised medical qualification and that no other qualification which is not included in the Schedule can be recognised for any purpose. Since the third respondent is offering courses without obtaining permission or approval from Central Government or Medical Council of India, it is stated that the advertisement insofar as it relates to the unapproved courses is illegal and unconstitutional.

10.It is further submitted that public will get an impression that a student who get such unrecognised diploma is an expert in the medical field and hence, it will be against public interest to allow the University to offer unrecognised courses.

11.In the counter affidavit filed by the third respondent, it is stated that the P.G. Diploma in Palliative Medicine, M.D. Family Medicine course through Distance Education Programme or Fellowship in Medical Science courses of one year or two year duration are not illegal or ultra vires or contrary to the Indian Medical Council Degrees Act, 1916.

12.It is further stated that the Governing Council of the University has passed an order on 12.05.2010 enabling the University to conduct the fellowship programme. It is stated that the Governing Council consisting of eminent ex-officio members, like Secretary to Government, incharge of Health and Family Welfare and other higher officials have decided to conduct the fellowship programme in the University in order to develop the skills, to update their knowledge and the area which are not concerned by the recognised bodies in the medical field. It is stated that in order to manage scarcity of the Doctors in our Country which has huge population and to fulfill the medical needs and treatments for the patients who are not able to get medical treatment in rural areas the new training courses are introduced. It is further stated that the respondent University is only bound by the provision of Tamil Nadu Dr. M.G.R. University Act 1987 and that the said act empowers the University to conduct the fellowship programme. Since the third respondent University has been empowered to provided for instructions and training in any branches of learning in the field of Medical Science and to institute lectureship,

readership, professorship and other teaching posts required by the University, it is stated that the courses offered by the University are only in accordance with the power conferred on the third respondent University under the provisions of Tamil Nadu M.G.R. University Act 1987.

13. In the counter affidavit of the third respondent, Sections 4 and 5 of the University Act stipulating the objects and power of the University was relied upon by the third respondent to submit that the University is competent to hold examinations and confer degrees, diplomas and other academic distinctions to any person, who pursue any approved course of study or training in a college or University or an approved Institution. Relying upon Section 22 of the University Act, the third respondent submitted that the Governing Council of the University consisting of eminent members have power to confer degrees, diploma and other academic distinctions. It is stated that as per Section 44(1) of the University Act, the Standing Academic Board make regulations consistent with the Act.

14. From the reading of the whole counter, the stand taken by the University is that by virtue the power conferred on the University and the Governing Council of the University, the third respondent University is empowered to offer degree, diplomas, which are not the courses recognised under Indian Medical Council Act. It is also stated that new Courses are offered by the University on need basis for the furtherance of the object of University. Since the University is conducting the fellowship programme and awarding diploma well within the jurisdiction of the University, it is stated that the Writ Petition has no merits and liable to be dismissed.

15. Despite the fact that the petitioner has elaborately given the details of the orders passed by this Court in the affidavit filed in support of the petition, touching the issues that arise for consideration in this Writ Petition, the third respondent has not denied the merits of the contentions based on the precedents relied upon by the petitioner.

16. On behalf of second respondent herein, namely, M.C.I. an elaborate counter affidavit has been filed. Referring to various provisions under Medical Council of India Act, other statutes and several precedents, the second respondent virtually supported the case of petitioner and prayed for granting relief as prayed for.

17. The learned counsel appearing for the petitioner and second respondent Medical Council of India submitted that neither the Government nor the University can introduce or offer parallel courses in medicine or in medical seats without the

approval of MCI. Since the law made by the Parliament, namely, the Indian Medical Council Act, 1956 and the Indian Medical Degrees Act, 1916, comes under Entry 66 of List 1, there cannot be a provision under the State Act under Entry 25 of Concurrent List to override the Central legislation.

18. The learned counsel appearing for the petitioner relied upon a Judgment of this Court in the case of Dr. V. Balaji and others Vs. Union of India and others reported in 2008 (6) CTC 568. In a public interest litigation filed by the some medical practitioners, order of Government by G.O. Ms. (d). No. 572 dated 14.05.2008 issued by Health and Family Welfare (MCI) Department, whereby the Government of Tamilnadu accepted the proposal of Director of Medical Education and accorded permission to start six months certificate course in Diabetology through distance mode in all the Government Medical Colleges was challenged. This Court after referring to the provisions of the Indian Medical Council Act, 1956 found that except with the previous permission of the Central Government in accordance with the provisions of Section 10(A), no medical qualification granted to any student of such medical college shall be a recognised medical qualification for the purpose of the Act.

19. The contention of the petitioners in the Writ Petition that the State Government cannot permit a certificate course for those persons who have obtained MBBS Degree was accepted. The impugned Government Order was held to be contrary to the provisions of the Medical Council of India Act and MCI regulations. The Division Bench reiterated the position that the higher education is controlled by Entry 66 of list-I of the 7th schedule and that the subject under Entry 66 remain as a preserved field of the Parliament. After referring to the principles reiterated by the Hon'ble Supreme Court in several cases in different context, the Division Bench of this Court has held as follows:-

"28. It is, therefore, clear that state cannot by introducing the course in medical education bring about a situation in which it is impossible to ensure co-ordination in matters of medical education by MCI. If the Court allows the certificate course introduced by the impugned G.O., to go on, in that case in Diabetology there will be two parallel courses on is for one year with the permission of MCI and the other is a Certificate Course in Diabetology without its permission. This is certainly incompatible with a 'common pattern of action' and can be prevented in view of Entry 66 of List I. In other words, without the permission of the Central Government and MCI, no course in medical education, even if it is a certificate Course in Diabetology can be started.

Apart from the provisions of Article 162, which provides that the executive power of the State cannot be extended to areas in respect of which it cannot exercise legislative power, the executive power of the State is also subject to other constitutional limitations."

20.The learned counsel again relied upon yet another Judgment of the learned Single Judge of this Court in the case of Dr.M.Ramesh and others Vs. Union of India and others reported in (2012) 1 MLJ 18 wherein a learned Single Judge of this Court considered similar issue. After considering the scope of Section 10(A) of the Indian Medical Council Act and the Tamilnadu Act 37 of 1987 - i.e., Tamil Nadu Dr. M.G.R. Medical University Chennai Act, came to the conclusion that the grant of permission by the University to any institution or medical college to conduct any PG Diploma course in Medical Science without the approval of the Central Government and MCI is violative of Section 10(A) of the Indian Medical Council Act.

21.It is pertinent to mention that the third respondent University was the first respondent in the case decided by this Court and referred to above. When similar courses offered by the University was challenged, the question whether the University is competent to grant permission to conduct PG Diploma course in Medical Science without getting prior permission from the Central Government or MCI was specifically answered in favour of the petitioner therein.

22.In the above two Judgments of this Court it has been unambiguously held that the State Government or the University cannot offer parallel courses without any permission from the Medical Council India and the Central Government.

23.Medical Council of India is a statutory authority created and constituted by the Central Government under an Act of Parliament, namely, Indian Medical Council Act, 1956. Medical Council of India is constituted under the said Act and has been given the responsibility of maintenance of highest standard of medical education. Medical Council of India Regulations lay down in detail the course content, the duration, distribution of teaching and training days on various subjects and examination etc. In discharge of its statutory obligations towards maintenance of highest standards in medical education in the country, by virtue of provisions of Section 33 of the Act, the MCI has been empowered with the prior approval of the Central Government to frame regulations for laying down minimum standards of infrastructure, teaching and other requirements for conduct of Medicine Courses. In the case of MCI v. State of Karnataka (1998) 6 SCC 131, the Hon'ble Apex Court has held that

the regulations of the MCI are binding and mandatory and that all State enactments, rules and regulations framed by universities etc., in relation to the conduct of medicine courses, to the extent they are inconsistent with the Act and the regulations made thereunder by the MCI, are repugnant by virtue of Article 254 of the Constitution of India inasmuch as the Act is relatable to Entry 66 List 1 Schedule VII of the Constitution of India.

24. In this regard it is useful to refer to the judgment of the Hon'ble Supreme Court in the case of Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamikal Medical Educational and Charitable Trust v. State of Tamil Nadu and others reported in AIR 1996 SC 2384 wherein Section 5(5) of Tamil Nadu Dr.M.G.R. Medical University Act was held to be invalid as it is repugnant to Indian Medical Council Act.

25. Section 10A and 11 of Indian Medical Council Act, 1956, read with Section 33 of the Act and the regulations framed under the Act particularly Post Graduate Medical Regulations, 2000, would show that unless a person gets permission from the Central Government, under Section 10A of Indian Medical Council Act, 1956, for starting a medical course, no admission can be made in any medical course in the country. Under Section 10B of the Act, no medical qualification granted to any student shall be recognised. It is admitted before this Court that the judgment of Division Bench of this Court in Dr.V.Balaji and others v. Union of India reported in 2008 (6) CTC 568 was upheld by Hon'ble Supreme Court in SLP No.10306 of 2012.

26. In University of Delhi v. Raj Singh and others reported in AIR 1995 SC 336, the Hon'ble Supreme Court has held as follows:

"13. ...By reason of entry 66. Parliament was invested with the power to legislate on "coordination and determination of standards in institutions for higher education or reach and scientific and technical institutions." Item 25 of List III conferred power upon Parliament and the State legislatures to enact legislation with respect to "vocational and technical training on labour". A six-Judge bench of this Court observed that the validity of State legislation on the subjects of University education and education in technical and scientific institutions falling outside entry 64 of List I as it then read (that is to say, institutions for scientific or technical education other than those financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance) had to be judged having regard to whether it impinged on the

field reserved for the Union under entry 66. In other words, the validity of the State legislation depended upon whether it prejudicially affected the coordination and determination of standards. It did not depend upon the actual existence of union legislation in respect of coordination and determination of standards which had, in any event, paramount importance by virtue of the first part of Article 254(1)."

27.Again the Hon'ble Supreme Court in *Annamalai University v. Secretary to Government, Information and Tourism Department and others* reported in 2009-3-LW 603, has held that UGC Act having been enacted by the Parliament in terms of Entry 66 of List 1 of the Seventh Schedule of the Constitution would prevail over the Open University Act and that a degree obtained from open university system contrary to UGC regulation is invalid.

28.As discussed earlier, a Division Bench of this Court in *Dr.V.Balaji* case quashed the Government order vide G.O.(D) No.572, dated 14.05.2008, according permission to start six months certificate course in Diabetology through Distance mode in Medical Colleges without the approval of Central Government/MCI by reiterating the legal position in several precedents. This Court in the case of *Dr.M.Ramesh* declared the regulations framed by the third respondent University for awarding Post Graduate diploma in Health Science as illegal and ultra vires. The contention of the university that the university can commence courses or grant permission to approved institutions to conduct courses without getting permission under Section 10A of Indian Medical Council Act was negatived. Despite the judgments of this Court in which the university is also a party, the third respondent has issued the impugned advertisement in utter disregard to the directions of this Court in the earlier orders under the guise of a decision taken by Governing Council consisting of eminent members. If the university is permitted to offer or conduct parallel courses without any approval under Indian Medical Council Act, that will lead to other issues. Public will be misled to believe such unrecognised diploma holders as experts and hence, it will be in public interest to allow this Writ Petition. The conduct of university in this matter in flagrant violation of previous judgments is condemned.

29.In the said circumstances, the Writ Petition is allowed with a cost of Rs.5,00,000/- (Rupees five lakhs only). The third respondent university is directed to pay the said sum of Rs.5,00,000/- within four weeks from the date of receipt of a

copy of this order to the Secretary to Government, Education Department, who in turn is directed to utilise the funds for providing infrastructure/facilities to the needy Government Schools in this State. For this purpose, the Secretary to Government, School Education Department, Fort St. George, Chennai - 600 009, is suo motu impleaded as fourth respondent. The fourth respondent is directed to submit a report of compliance within twelve weeks from the date of receipt of a copy of this order.

30. Accordingly the Writ Petition is allowed and disposed of with the above direction.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

VSG/SRM

To

1. The Union of India
Rep. by its Secretary
Department of Health and Family Welfare
Nirman Bhavan, Maulana Azad Road,
New Delhi - 110 011.
2. The Medical Council of India
Rep. By its Board of Governors
Pocket 14, Sector 8, Dwarka Phase -1,
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3. The Registrar
The Tamil Nadu Dr.M.G.R. Medical University
No. 69, Anna Salai, Guindy
Chennai - 600 032.
4. The Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009.

+1cc to Mr.B.Rabu Manohar, Advocate SR.No.45544

+1cc to Mr.P.Ebenezer Paul, Advocate SR.No.45577

+1cc to Mr.V.P.Raman, Advocate SR.No.46078

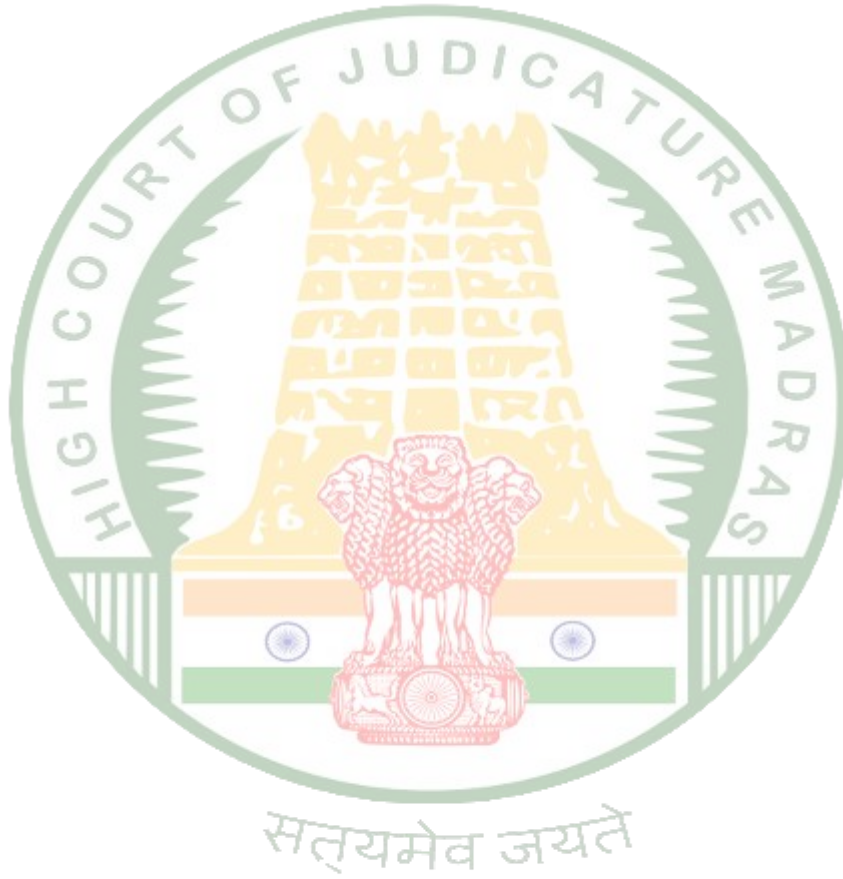
+2cc to M/s.Ramalingam Associates, Advocate SR.No.46581

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And

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GMV (08/07/2019)



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