

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.29494 of 2018

Senghundhar College of Pharmacy
administered by
Sengunthar Charitable Trust
No.1/311-1, Sengunthar Nagar
Tiruchengode
Namakkal District

represented by A.Baladandapani
Secretary and Correspondent
Kosavampalayam Village
Kumaramangalam Post
Tiruchengode, Namakkal District .. Petitioner

-vs-

1. The Government of Tamil Nadu
represented by the Principal Secretary to the Government
Health and Family Welfare Department
Fort St. George
Chennai 600 009
2. The Director
The Director of Medical Education
No.162, EVR Periyar Salai, Kilpauk
Chennai 600 010 .. Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorarified Mandamus, to
call for the entire records in respect of the communication sent
by the Principal Secretary to the Government in Letter
No.21459/PME-2/2018-1 dated 27.09.2018 and the communication
dated 28.09.2018 in Reference No.41987/BP(1)/2018 and quash the
same consequently direct the respondents not to insist DTCP
approval on the petitioner's college "Senghundhar College of
Pharmacy" situated at Sathyanayakampalayam, Tiruchengode Taluk,
Namakkal District.

For Petitioner :: Mr.D.Rajagopal

For Respondents :: Mr.K.Karthikeyan
Government Advocate

ORDER

The petitioner is the Secretary and Correspondent of Senghundhar College of Pharmacy administered by the Senghundhar Charitable Trust, which is running engineering colleges and schools. When the said Trust decided to establish a Pharmacy College under the Educational Trust, they started B.Pharm course and thereafter they decided to start the Diploma in Pharmacy course at Sathyanayakampalayam, Tiruchengode Taluk, Namakkal District. Accordingly, they filed an application before the Pharmacy Council of India and approval was also given to start the institution in the month of September, 2017. In this regard, a communication was also sent to the petitioner in December, 2017, based on which the petitioner got permission from the Director of Medical Education to run the institute from the academic year 2016-17. When the Trust had constructed buildings with the approval of the local bodies before 1.1.2011, they were conducting Master of Business Administration course with the approval of All India Council for Technical Education ("AICTE" in short) and the said course was discontinued from the academic year 2015-16 and thereafter, they sought permission to start the four year B.Pharm degree course. Since the competent authority to grant permission to start the four year B.Pharm degree course is the Pharmacy Council of India and AICTE, the Pharmacy Council of India had granted permission, as mentioned above, to the petitioner from the academic year 2016-17. But the AICTE refused to grant permission on the ground that the building plan was not approved by the DTCP. It is also stated that challenging the said order issued by the AICTE, Writ Petition No.20891 of 2016 was filed by the petitioner. This Court, accepting the case of the petitioner that the approval granted by the local bodies in the year 2007 was sufficient and the approval of the DTCP was not required, allowed the writ petition by a common order dated 31.8.2016 passed in W.P.Nos.20890 & 20891 of 2016. Therefore, it is the claim of the petitioner that the approval of DTCP and the production of the building completion certificate would not apply, for the reason that the buildings had been constructed before 1.1.2011, on which date an amendment was made to the Tamil Nadu Town and Country Planning Act, 1971 by introducing Section 47-A. Considering a similar issue in Writ Petition Nos.14601 & 14694 of 2018 filed by the very same petitioner and another college, this Court, by order dated 21.6.2018, issued the following direction:-

"8. Perusal of the records reveal that the Competent Authority had granted permission to

the petitioners / Trusts for commencing the course of D.Pharm, but the only deficiency is non-production of DTCP approval and the building exemption certificate. It further reveals that the Single Judge of this Court by following the earlier decisions of the Division Bench and the Single Judge of this Court had allowed the Writ Petitions by a common order as stated supra. In respect of the petitioners' case observed that the Local Bodies, which granted the building planning approval in the years 2007 and 2010 respectively, were competent and the amendment and the insertion of Section 47A is prospective in nature and it came into effect on and from 01.01.2011. It is informed that the respondents have not preferred any appeal against the judgment.

9. In the light of the above facts, this Court is of the considered opinion that the petitioners are entitled for interim direction to admit students in D.Pharm course from the academic year 2018-19."

2. Subsequently, dealing with almost a similar issue, I have also, vide order dated 10.12.2018 passed in W.P.Nos.18539 of 2018 etc., batch (Tamil Nadu Catholic Educational Association represented by its Secretary cum Treasurer, Santhome, Chennai etc., v. The Principal Secretary to Government, Housing and Urban Development Department and others), held that if any educational institution either school or college had constructed buildings before 1.1.2011, prior to the introduction of Section 47-A of the Act, after obtaining valid and lawful permission from the competent authority, the G.O.Ms.No.76, Housing and Urban Development (UD4(3) Department dated 14.6.2018 requiring educational buildings in non-planning areas constructed prior to 1.1.2011 to obtain concurrence from the Town and Country Planning Department, cannot be made applicable to them. The relevant paragraph of the said order reads as follows:-

"12. In view of the above, firstly, it is made clear that if any educational institution, either school or college, building is constructed before 01.01.2011, i.e. prior to the introduction of Section 47-A of the Act, after obtaining valid and lawful permission from the competent authority, the G.O.Ms.No.76 cannot be made applicable to them. Because, if any new building was constructed after 01.01.2011 in any part of the State without getting proper concurrence

from the Director of Town and Country Planning, the G.O.Ms.No.76 can be made applicable. Secondly, it is made clear that if any building is constructed even prior to the said Section 47-A came into force i.e. before 01.01.2011 leaving any deficiencies to be rectified now and not rectified even today, such buildings will be covered by the impugned proceedings. In any event, if the three months time given in the said G.O. had already lapsed, the 2nd respondent is also entitled to take appropriate action against all those educational buildings which have not obtained planning permission and put up even prior to 01.01.2011 and not rectified any of the deficiencies till 02.01.2011. Lastly, in respect of the charges of Rs.7.50/- per square feet, if any application is made during the relevant period i.e. before the expiry of three months, the 2nd respondent shall consider the same to grant the benefits."

3. The learned Government Advocate for the respondents also, placing on record the order copy dated 10.12.2018 passed by me in the aforementioned writ petitions, submitted that the issue has already been considered by this Court.

4. In the light of the order dated 10.12.2018 passed in W.P.Nos.18539 of 2018 etc., batch, the impugned orders are quashed and the writ petition stands allowed. Consequently, W.M.P.Nos.34457 & 34458 of 2018 are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ss

To

1. The Principal Secretary to Government
Health and Family Welfare Department
Fort St. George
Chennai 600 009

2. The Director

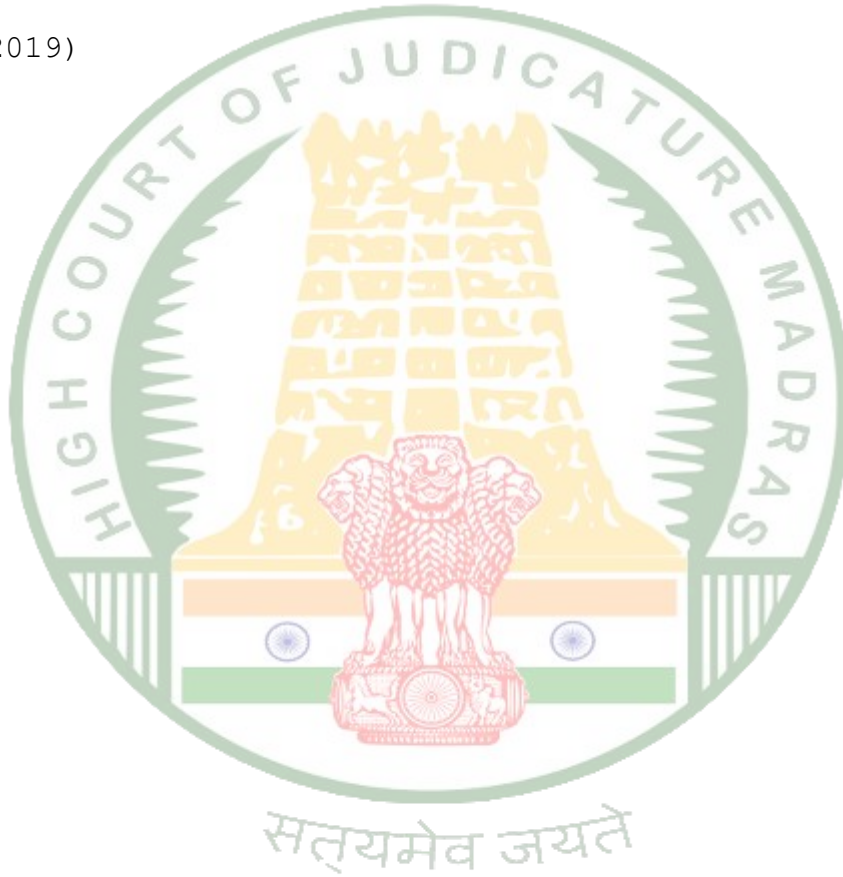
The Director of Medical Education
No.162, EVR Periyar Salai, Kilpauk
Chennai 600 010

+1cc to Mr.D.Rajagopal, Advocate, S.R.No. 1609

+1cc to the Government Pleader, S.R.No. 1422

W.P.No.29494 of 2018

MG (CO)
GN (28/01/2019)



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