



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P(MD)No.21531 of 2019

and

W.M.P(MD)No.18192 of 2019

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M/s.Maria Homeopathic Medical College and Hospital,
Rep. by Principal,
Perai, Thiruvattar,
Kanyakumari District,
Tamil Nadu.

... Petitioner

vs.

- 1.The Union of India,
Rep. by Ministry of Ayurveda, Yoga and
Naturopathy, Unani, Siddha and
Homeopathy (AYUSH),
Ayush Bhavan, B-Block,
GPO Complex, INA,
New Delhi - 110 023.
- 2.The Central Council of Homeopathy,
Janakpuri,
New Delhi - 58.
- 3.The Tamil Nadu Dr. MGR Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 032.
- 4.The Additional Chief Secretary - cum -
Commissioner of Indian Medicine and
Homeopathy,
Chennai - 600 106.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the third respondent herein to publish the supplementary exam results of the students of academic year 2016-2017 in which students are permitted to appear as per the interim order of this Court in W.M.P(MD)No.6620 of 2019 in WP(MD)No.21883 of 2016 dated 14.05.2019 and permit them to write the examination which is scheduled to be held on 15.10.2019 and also permit the students of the academic year 2017-2018 to write the examination which is scheduled to be held on 15.10.2019.

For Petitioner : Mr.Veerakathiravan
Senior Counsel
instructed by



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Mr.S.Ram Sundar
for M/s.Veera Associates

For RR 1 & 2 : Mr.V.Kathirvelu
Assistant Solicitor General of India
instructed by Mr.K.Prabhu

For R - 3 : Mr.S.Ramesh
Standing counsel

For R - 4 : Mr.K.Mu.Muthu,
Additional Government Pleader.

ORDER

Mr.Veerakathiravan, learned Senior Counsel instructed by Mr.S.Ram Sundar of M/s.Veera Associates (Law Firm) learned counsel on record for writ petitioner and learned Assistant Solicitor General of India, Madurai Bench / Senior Counsel Mr.V.Kathirvelu, instructed by Mr.K.Prabhu, learned counsel, who accepts notice on behalf of respondents 1 and 2, Mr.S.Ramesh, learned Standing Counsel for Tamil Nadu Dr.MGR Medical University, who accepts notice on behalf of third respondent and Mr.K.Mu.Muthu, learned Additional Government Pleader, who accepts notice on behalf of fourth respondent are before this Court.

2.With consent of aforementioned Senior Counsel, Counsel, Standing Counsel and State Counsel, main writ petition is taken up, heard out and is being disposed of.

3.This Court is informed that subject matter of instant Writ Petition pertains to a five year programme which goes by the name 'BHMS' (Bachelor of Homeopathy Medicine Surgery) (hereinafter referred to as 'said course' for brevity) in Writ Petitioner College.

4.This Court is also informed that instant Writ Petition pertains to students who were admitted in the academic years '2016-2017 and 2017-2018 (60 students each)' (hereinafter referred to as 'earlier academic year and said academic year' respectively for brevity).

5.There is no disputation or disagreement that with regard to permission for undertaking admission for said course for earlier academic year and said academic year ran into rough weather and the writ petitioner College has filed three writ petitions namely W.P (MD)Nos.21883 of 2016, 18966 of 2017 and 20417 of 2017.

6.The prayers in these Writ Petitions are as follows:



W.P. (MD)No.21883 of 2019:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the first respondent in F.No.R.12014/12/2014-EP(H) dated 15.11.2016 received by e-mail on 16.11.2016, quash the same and consequently direct the respondents 1-4 herein to issue necessary orders granting permission to the petitioner to continue the BHMS Programme for the academic year 2016-17 for the existing students and also for permitting intake of students for the academic year 2016-2017 without any delay.

W.P. (MD)No.18966 of 2017:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the first respondent herein to grant approval to the petitioner college for running BHMS Course for the academic year 2017-2018 on the basis of petitioners explanation dated 16.08.2017 and its compliance report dated 04.09.2017 to the first respondent and consequently direct the respondents to permit the petitioner to have intake of students for admission into BHMS Course for the academic year 2017-2018 through counselling of third and fourth respondent in the petitioner college and allow the petitioner to continue the III year BHMS Programme for the academic year 2017-2018.



W.P(MD)No.20417 of 2017:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order of the first respondent in F.No.R.12014/12/2014-EP(H) dated 27.10.2017 quash the same and consequently direct the first respondent to approve the BHMS Course for the academic year 2016-2017 with 60 seats of students and continue the educational programme for the academic year 2017-2018 and pass such further.'

7.This Court is informed that the aforesaid Writ Petitions have been heard out in full and this Court is also informed that another Hon'ble Single Judge has reserved orders on 09.08.2019. In other words, these three writ petitions have been heard out and are pending verdict. To put it differently 'CAV' (Consideration And Verdict) is the status of these three writ petitions according to all counsel before this Court. There is no disputation or disagreement before this Court.

8.In the instant Writ Petition, this Court is informed that we are concerned with students admitted in said academic year writing examinations which are scheduled to commence tomorrow ie., 15.10.2019. The examinations are scheduled to go on till 22.10.2019. The time table placed before this Court is as follows:



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THIRD B.H.M.S. COURSE

Tue	15-10-2019 9.30 am to 12.30 pm	I	Surgery - I	581511
Wed	16-10-2019 9.30 am to 12.30 pm	II	Surgery - II	581512
Thu	17-10-2019 9.30 am to 12.30 pm	III	Gynaecology and Obstetrics-I	581513
Fri	18-10-2019 9.30 am to 12.30 pm	IV	Gynaecology and Obstetrics-II	581514
Mon	21-10-2019 9.30 am to 12.30 pm	V	Homoeopathic Materia Medica	581515
Tue	22-10-2019 9.30 am to 12.30 pm	VI	Organon of Medicine	581516

9. There is no dispute or disagreement before this Court that the students whom the writ petitioner College is concerned with had written examinations for said course on earlier occasions also pursuant to series of interim orders that were passed by this Court. Considering that the examinations are scheduled to be held from tomorrow and the matter was listed in the admission board today, in the light of the order which this Court proposes to pass, it may not be necessary to advert to those orders in further detail. Suffice to say that the students wrote examinations only pursuant to such interim orders granted by different Hon'ble Single Judges from time to time.

<https://hcservices.courtservice.in/hcservices/courtservicein/hcservicesin/> admissions made on behalf of writ petitioner can be



broadly summarised as follows:

a) Though instant Writ Petition pertains to earlier academic year and said academic year, first respondent (hereinafter referred to as 'AYUSH' for brevity) has granted permission for undertaking admission for subsequent academic years namely 2018-2019 and 2019-2020.

b) The students will be left high and dry if they are unable to write the examinations which commence tomorrow.

c) With regard to subsequent academic years conditions stipulated in the permission granted by AYUSH have been since complied.

11.Submissions made by learned Assistant Solicitor General and learned Senior Counsel on behalf of respondents 1 and 2 can be summarised as follows:

a) permission for undertaking said course for subsequent academic years namely 2018-2019 and 2019-2020 are not unconditional or absolute but are subject to conditions and the assertion that the conditions have been complied need verification.

b) As far as writing of examination is concerned, it is a matter between third respondent University and the writ petitioner College.

12.With regard to submissions made by learned Senior Counsel for University (third respondent) are as follows:

a) This is an eleventh hour attempt to approach this Court and writ petitioner has filed instant writ petition on 09.10.2019 moved vacation Court on 10.10.2019 while the examination is scheduled to commence on 15.10.2019. Notwithstanding the examination scheduled being published earlier.

b) Writ Petitioner has been running said course by virtue of interim orders.

c) Adverting to Section 36 of Dr M.G.R Medical University (Chennai) Act, 1987, it was submitted that the students can be admitted to University examination only if they are enrolled in an approved institution and the approval qua earlier academic year and said academic year itself is now subject matter of three writ petitions which are CAV.

d) Adverting to communication from first respondent



wherein and whereby first respondent had directed that no admissions be made for said academic years, it was submitted that ultimately the admission was made only pursuant to interim orders of this Court.

e) Writ petitioner is furthering its cause in the garb of espousing the students rights.

f) Another submission made by learned Standing Counsel for University is to the effect that writ petitioner is shedding crocodile tears for the students.

13.Learned State Counsel for fourth respondent submitted that the fourth respondent is a formal party.

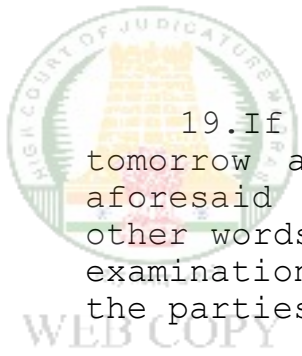
14.In the aforesaid backdrop, this Court carefully considered the rival submissions.

15.Though the submissions of learned Senior Counsel for writ petitioner that first respondent AYUSH has subsequently granted permission for subsequent academic years namely 2018-2019 and 2019-2020, as rightly pointed out by learned Assistant Solicitor, the permissions go with a host of conditions. Further, whether the conditions have been complied with is a matter for verification. However, permission though conditional has been granted.

16.With regard to the submissions of learned Standing Counsel for said University that it is an eleventh hour attempt, this Court cannot agree any less. In other words, this Court has no doubt that it is not only an eleventh hour, but it is fifty-ninth minute of eleventh hour endeavour / attempt.

17.This Court finds that there is considerable force in the eleventh hour plea as the writ petitioner could have certainly been diligent and exercised the same consent at the time of admission rather than approaching it at the fifty-ninth minute of the eleventh hour that too by predicating the plea on the difficulties of the students.

18.With regard to approaching this Court at eleventh hour, learned Senior Counsel for writ petitioner submitted that this Writ Petition is different qua earlier occasions. It is submitted that aforementioned three writ petitions were fully heard out and have been reserved for orders on 09.08.2019. It was submitted by learned Senior Counsel for writ petitioner that writ petitioner was awaiting orders from this Court and therefore they did not have an occasion to come before this Court earlier. To this extent, this Court finds this argument acceptable as far as instant Writ Petition is concerned.



19.If the students do not sit for the examination commencing tomorrow and ultimately if the writ petitioner succeeds in the aforesaid writ petitions, the situation will be irreversible. In other words, one cannot put the clock back. Further, if they sit for examination with certain riders, it can balance the rights of all the parties concerned.

20.In this view of the matter, an order with clear riders, qualifications and exceptions are made, adumbration of which is as follows:

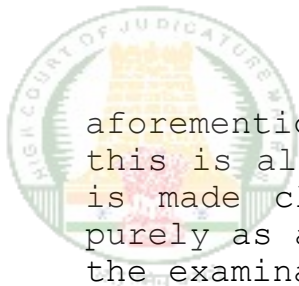
a) All the students admitted in said course in the writ petitioner college in the said academic year ie., 2017-2018 shall be permitted to write the examination conducted by third respondent University which commences on 15.10.2019 (tomorrow) and goes on till 22.10.2019 subject to them satisfying all other eligibility criteria and conditions.

b) The results of the examinations will not be published and publication of the results if at all will be subject to the outcome of the aforesaid three writ petitions namely W.P(MD)Nos.21883 of 2016, 18966 of 2017 and 20417 of 2017 which were reserved for orders ie., CAV on 09.08.2019. To be noted, writ petitioner consents for this clause and this clause is a consent order.

c) This Court permitting the students to write examination in the aforesaid manner will not confer any right either on the writ petitioner college or on the students be it in law or in equity.

d) Writ Petitioner college undertakes to serve a copy of this order on each of the student who will sit for the examination and it is optional on the part of each student to take the examination after giving an undertaking to the University that they will not claim any right or equity and will not agitate this matter in any manner independent of the writ petitioner college. In other words, it is made clear that students who do not give such undertaking will not be permitted to sit for examination.

21.Though obvious, it is made clear that this Court has not expressed any opinion or view on the merits of the matter considering that orders have been reserved on 09.08.2019 in



aforementioned three writ petitions after full contest. To be noted, this is also as a matter of judicial discipline. In other words, it is made clear that instant writ petitioner is being disposed of purely as an interim arrangement to facilitate the students to write the examinations.

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22. Prayer in the writ petition is in two limbs. First limb pertains to publishing supplementary examination results for earlier academic year 2016-2017 written by the students pursuant to order dated 14.05.2019 made by Hon'ble Single Judge in W.M.P(MD)No.6620 of 2019 in W.P(MD)No.21883 of 2016. In the light of consent given by writ petitioner for this order, this limb of the prayer is not acceded to and this limb stands dismissed.

23. The second limb of the prayer pertains to permission to write examinations commencing on 15.10.2019 which is being ordered on above terms.

24. Though obvious, publication of results for examinations written pursuant to 14.05.2019 interim order will also be governed by the ultimate final outcome in the aforesaid three writ petitions ie, their logical end by way of appeals, if any.

25. Instant Writ Petition is disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Union of India,

Rep. by Ministry of Ayurveda, Yoga and
Naturopathy, Unani, Siddha and
Homeopathy (AYUSH),
Ayush Bhavan, B-Block,
GPO Complex, INA,
New Delhi - 110 023.

2. The Central Council of Homeopathy,
Janakpuri,
New Delhi - 58.

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3.The Tamil Nadu Dr. MGR Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 032.

4.The Additional Chief Secretary - cum -
Commissioner of Indian Medicine and
Homeopathy,
Chennai - 600 106.

+1 CC to M/s.S.RAMESH, Advocate (SR-91783[F] dated 14/10/2019)

+1 CC to M/s.K.PRABHU, Advocate (SR-91774[F] dated 14/10/2019)

+2 CC to M/s.VEERA ASSOCIATES, Advocate (SR-91792[F] dated
14/10/2019),17349

W.P (MD) No.21531 of 2019
14.10.2019

PS
KK/SAR/14.10.2019/11P-9C