

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.11.2020

DELIVERED ON: 10.11.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.NO.14834 OF 2020

AND

WMP NOS.18434 & 18436 OF 2020

PGP Educational and Welfare Society
Rep.by its Secretary Mr.K.Kandasamy,
Establishing and Administering
PGP College of Pharmaceutical Science &
Research Institute,
Karur Main Road, Namakkal-637 207.Petitioner

.Vs.

1. The Registrar,
Tamil Nadu Dr.MGR Medical University,
69, Anna Salai, Guindy,
Chennai 600 032.
2. The Pharmacy Council of India,
Represented by the Secretary cum Registrar,
NBCC Centre, 3rd Floor, Plot No.2,
Community Centre, Maa Anandamai Marg,
Okhla Phase I, New Delhi - 110 020.
3. The Director of Medical Education,
Directorate of Medical Education Campus,
Kilpauk, Chennai 600 010.Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned letter of the 1st respondent in Ir.No.Affln.114)/18081/2020 dated 25.07.2020 quash the same and direct the 1st respondent to grant affiliation to the Petitioner College for an intake of 100 students in B.Pharm Degree Course and an intake of 12 students in M.Pharm Pharmaceuticals Degree Course for the academic year 2020-21 pursuant to the approval granted by the 2nd respondent for an intake of 100 students in B.Pharm Degree Course and an intake of 12 students in M.Pharm Pharmaceuticals Degree Course for the academic year 2020-21.

For Petitioner : Mr.G.Masilamani,
Senior Counsel
for Mr.D.Prabhu Mukunth Arunkumar

For R 1 : Mr. Elayarajakumar
for M/s. Ramalingam Associates

For R 2 : Mr.M.T.Arunan
Standing Counsel
for Pharmacy Counsel of India.

For R 3 : Mr.E.Manoharan
Special Government Pleader
Assisted by:
Mr.Akhil Akbar Ali
Government Advocate

ORDER

The present Writ Petition has been filed challenging the Impugned Letter issued by the 1st Respondent University dt. 25.07.2020, wherein the Petitioner Institution has been directed to obtain permission from the Government to enhance the seats for B.Pharmacy and M.Pharmacy Courses and to submit the same along with the approval given by the Pharmacy Council of India, in order to enable the University to grant affiliation after taking into consideration the increase in intake of students.

2.The Petitioner Institution is imparting Pharmacy Education from the academic year 2007-2008 onwards. The Institution has been conducting the B.Pharmacy and M.Pharmacy Courses after obtaining the necessary approval from the Pharmacy Council of India and it is also affiliated to the 1st Respondent University. The Government of Tamil Nadu had also granted permission to the Institution at the time of starting the Courses from the academic year 2007-2008.

3.It is seen from records that till the academic year 2019-2020, the 1st Respondent University had granted affiliation for the B.Pharm Degree Course for an intake of 60 seats and for M.Pharm Degree Course for an intake of 15 seats. The same is clear from the proceedings of the 1st Respondent University dt.11.09.2019 and 6.12.2019 respectively.

4.The Central Council of the Pharmacy Council of India took a decision on 8/9.04.2020, to increase the intake in B.Pharm Degree Course from 60 to 100 Students. The intake was fixed at 12 seats for the M.Pharm Course. This decision was informed to the petitioner by letter dt. 10.04.2020.

5.The Petitioner Institution made a representation to the 1st Respondent University and sought for provisional affiliation for the academic year 2020-2021, after taking into consideration the increase in the intake that was permitted by the Pharmacy Council of India. On receipt of the representation, the impugned letter dt. 25.07.2020, came to be issued by the 1st Respondent University. Aggrieved by the same, the present Writ Petition has been filed before this Court.

6.The 1st Respondent University has filed a counter affidavit. The relevant portions in the Counter affidavit are extracted hereunder:

"12. I further submit that an order of Continuance of Provisional Affiliation was continuously granted to the Petitioner College to conduct the B.Pharmacy degree course from the academic year 2008-2009 to 2019-2020 with an annual intake of 60 seats. For the academic year 2020-2021, the 2nd Respondent, has given approval of intake of students by increasing the seats from 60 to 100 seats in the B.Pharm Degree Course but however reduced the intake of students from 15 to 12 in the M.Pharm Degree Course in Pharmaceutics to the Petitioner College and further the approval was extended up to the academic year 2022-2023. The said approval was issued by the 2nd Respondent pursuant to the Decisions of 109th Central Council of the PCI held on 8th and 9th April, 2020.

13. I Further state that on such approval being granted by the 2nd Respondent the Petitioner College approached this Respondent University seeking for granting of affiliation, vide their letter dated 18.05.2020. Since the Petitioner College approached the Respondent university without obtaining the permission of the Government of Tamil Nadu which is mandated even as per the 2nd Respondent Notification in F.No.14-154/2015-PCI and Scheme framed under Regulation 9(1) of the Bachelor of Pharmacy (B.Pharm) Course Regulations 2014, this respondent

has requested the Petitioner College to get the Permission of the Government of Tamil Nadu vide letter Lr.No.Affln.1(4)/18081/2020 dated 25.07.2020. This Respondent is extracting the relevant portion of the said Notification in f.No.14-154/2015-PCI, which is also filed along with, for the ready reference of this Hon'ble Court.

B. Qualifying Criteria:-

The following conditions shall be fulfilled by an applicant.

a) No person institution, society, trust or University shall start and conduct B.Pharm Programme without the prior approval of the Pharma Council of India.

b) B.Pharm course shall be conducted only in those institutions which are approved by PCI for B.Pharm course as provided Sub section (1) of Section 12 of the Pharmacy Act, 1948.

c) The applicant shall provide necessary infrastructure facilities as prescribed by PCI under Appendix A of B.Pharm Regulations for starting of the course.

d) Increase in intake upto 100 admissions shall be given to those institutions whose B.Pharm course is approved u/s 12 of the Pharmacy Act, 1948.

e) For increase in intake, the institution has to make a separate request to PCI in prescribed Proforma (SIF B-1) within the date.

f) Prerequisite mandatory documents to be submitted by an applicant:-

i) Application in applicable prescribed form called Standard Inspection Form (SIF).

ii) The application shall be submitted between 1st August to 31st August (both days inclusive) (See Announement dated 30.07.2018 on Home Page and Under "Procedure for Approval") of the preceding year.

iii) Consent of affiliation of the Examining Authority (University) for permission to start the course (or) increase in intake capacity.

iv) No Objection Certificate of the State Government or Union Territory administration as may be applicable.

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18. I have gone through the grounds raised by the Petitioner in support of the above Writ Petition and the same are hereby denied. I specifically deny the contention raised in Ground-A that this Respondent University has issued letter dated 25.7.2020 without any power of authority and it is contrary to the Central Status of P.C.I. On the other hand this Respondent University has acted only based on the above notification issued by the 2nd Respondent and further based on the provisions of the Tamil Nadu Dr. MGR Medical University, Chennai Act, 1987, which,

"Sec-5(5) to affiliate colleges to the University as affiliated colleges, within the University area under conditions prescribed and to withdraw such affiliation;

[Provided that no college shall be affiliated to the University unless the permission of the Government to establish such college has been obtained and the terms and conditions, if any, of such permission have been complied with]

"Sec-5(6) to take over any Government college or institution with the approval of the Government;

Sec-5(7) to approve institutions providing training for admission to the examinations for degrees, diplomas and other academic distinctions of the University under conditions prescribed and to withdraw such approval.

[Provided that no institution shall be approved by the University unless the permission of the Government to establish such institution has been obtained and the terms and conditions, if any, of such permission have been complied with]"

As such this Respondent University has acted strictly in terms of the power and authority vested with them to insist the affiliated institutions to obtain the Government permission from the Government of Tamil Nadu.

19.I specifically deny the contentions raised in Ground-B that the impugned letter in Lr.No.Afflln.1 (4)/18081/2020 issued by the Respondent university is contrary to the decisions of the Hon'ble Apex Court and also contrary to the recent Judgment passed by this Hon'ble Court in W.A.No.3534 of 2019 dated 16.6.2020. Whereas the issue involved in the said case was that the Petitioner therein, one Annai J.K.K.Sampoorani Ammal Charitable Trust applied to this University to grant consent of affiliation for starting Pharm.D courses for the academic year 2019-2020 without insisting on essentiality certificate. The Respondent University insisted the permission from the Government of Tamil Nadu. As against the University order the above Trust filed W.P.No.25474 of 2019. After hearing the final arguments, this Hon'ble High Court dismissed the writ petition. In the Writ Appeal No.3534 of 2019 filed by the above Trust, the Hon'ble High Court allowed the appeal. This Respondent learns that challenging the said order of the Division Bench, the Government is preferring an appeal before the Hon'ble Supreme Court of India. That apart the present case pertains to obtaining permission from the Government for increase of seats from 60 to 100 in B.Pharmacy degree course and as such not relevant to the case referred by the Petition.

20.The entire contentions raised by the Petitioner, in Ground-C, that this Respondent University cannot insist for compliance which is not found in their Statute, Ordinance and Act are hereby denied. On the other hand Statute 56 to 63 of the Affiliation of Pharmacy College Statutes for B.Pharmacy / M.Pharmacy courses deals with increase of seats to the affiliated institutions for the above Courses. Further, the provisions of Section 5 (5), 5(6) and 5(7) of this Respondent University Act stipulate conditions to obtain Government permission by the affiliated institutions.

21.I state that the respondent University is following the same guidelines to all institutions and the under mentioned institutions have submitted their respective permission which they have obtained from the Government of Tamil Nadu in respect of increase of seats in B.Pharmacy degree courses for the academic year 2019-2020 & 2020-2021.

(i) In G.O.(Ms) No.539 dated 16.11.2018 issued by Health and Family Welfare (PM-2) Department, the Government of Tamil Nadu has issued orders for enhancement of seats in B.Pharmacy course from 60 to 100 to Swamy Vivekanandha College of Pharmacy from the academic year 2019-2020.

(ii) In G.O.(Ms).No.236 dated 30.5.2019 issued by Health & Family Welfare (PME-2) Department, the Government of Tamil Nadu has issued orders for increase of intake from 60 to 100 seats to the managing Trustee, Kovai Medical Centre Research & Educational Trust from the academic year 2019-2020.

(iii) In G.O.(Ms).No.355 dated 14.9.2020 issued by Health & Family Welfare (PME-2) Department, the Government of Tamil Nadu has issued orders to enhance the seats in B.Pharmacy course from 60 to 100 to Karpagam College of Pharmacy, Othakkalmandapam Post, Coimbatore from the academic year 2020-2021.

(iv) In G.O.(Ms).No.357 dated 14.9.2020 issued by Health & Family Welfare (PME-2) Department, the Government of Tamil Nadu has issued orders to enhance the seats in B.Pharmacy course from 60 to 100 to PPG College of Pharmacy, Coimbatore from the academic year 2020-2021.

(v) In G.O.(Ms).No.399 dated 30.9.2020 issued by Health & Family Welfare (PME-2) Department, the Government of Tamil Nadu has issued orders to enhance the seats in B.Pharmacy course from 50 to 100 Sri Ram Nallamani Yadava College of Pharmacy, Tirunelveli from the academic year 2020-2021.

22.I submit that the other Contentions raised in Grounds-D of the Affidavit that the Respondent University encroaches upon the field occupied by the 2nd Respondent are hereby denied. On the other hand as stated above only based on the PCI notification this Respondent University is insisting the petitioner institution to obtain the permission of the Government.

23.I further state that as per the Affiliation of Pharmacy College Statutes B.Pharmacy/M.Pharmacy of this University, every proposed Pharmacy Colleges has to apply for Consent of Registration to this University along with Government Permission and documents for starting the B.Pharmacy degree course. On receipt of the Application this Respondent

University will conduct the inspection to verify the infrastructural and teaching faculties of the institution and in the inspection report if no deficiency is pointed out then this Respondent University will issue the Consent of Registration to the concerned applicant college to obtain PCI approval. Thereafter the concerned college will get approval from the Central Council and apply to this Respondent University for grant of provisional affiliation. Again after conducting the inspection and if the applicant college has fulfilled the Statute norms of this Respondent University, then this Respondent University will issue the order of provisional affiliation to the applicant college.

24.I further respectfully submit that off late the Second Respondent is granting the approval to the applicant colleges without Certificate of Registration of this Respondent University as well as Government permission either for starting as well as for increase in intake of seats. Only in view of the same, the applicant colleges are not only violating our Affiliation Statutes of this University but also filing the frivolous cases against this University.

25.I state that the other contentions raised in Ground-E of the Affidavit that this University has granted affiliation with an intake of 18 seats in M.Pharmacy degree course based on the approval of AICTE and that the University is estopped from requesting the petitioner college to obtain permission from the State Government is totally wrong. In this connection, the relevant portion of Notification in F.No.14-154/2015 -PCI and Scheme framed under Regulation 4(1) of the Master of Pharmacy (M.Pharm) Course Regulations 2014, is extracted hereunder for the ready reference of this Hon'ble Court:

B. Qualifying Criteria:-

The following conditions shall be fulfilled by an applicant.

a) No admission or increase in intake shall be made by the applicant to the proposed course(s) without prior permission of the Pharmacy Council of India.

b) M.Pharm course shall be permitted to be conducted only in those institutions which are approved by the Pharmacy Council of India for B.Pharm course as provided under Section 12 of the Pharmacy Act, 1948. However, the institutions established by the Central Government / State Government for the purpose of imparting postgraduate education shall be eligible for starting M.Pharm course.

c) The institutions approved by the Pharmacy Council of India under Section 12 of the Pharmacy Act, 1948 for running undergraduate course prior to the implementation of the Master of Pharmacy (M.Pharm) course Regulations, 2014 and conducting post graduate courses in Pharmacy (M.Pharm) or institutions established by the Central Government / State Government for the purpose of imparting postgraduate education shall submit application(s) to the Council's office during the period from 1st August to 31st August (both days inclusive) (See Annouement dated 30.7.2018 on Home Page and under "Procedure for Approval"). However, for the academic session 2016-2017 only, the last date of receipt of application in Council's prescribed format SIF - E is 29.2.2016.

d) Prerequisite mandatory documents to be submitted by an applicant:-

i) Application in prescribed Standard Inspection Form E (SIF-E) for permission to start M.Pharm course or extension of approval or increase in make up to 15 seats per specialization. A copy of the format is annexed as Annexure-I (M).

ii) The Application shall be submitted during the period as indicated in © above.

iii) Consent of affiliation of the Examining Authority (University) in the prescribed format. A copy of the format is annexed as Annexure II (M).

iv) No Objection Certificate (NOC) of the State Government of Union Territory Administration as may be applicable (Not applicable for existing M.Pharm courses). However, such institutions shall be required to submit NOC for new specializations or increase in intake in existing specialization."

7.The 3rd Respondent has also filed a counter affidavit and the relevant portions are extracted hereunder:

"3.With regard to the averments made in paragraphs 1 to 8 of the affidavit, it is submitted that, the competent authority to grant recognition to start / increase in intake of students of Pharmacy courses is not only the Pharmacy Council of India but also the State Government. As per the G.O.(Ms).No.148, Health and Family Welfare (PME-2) Department, dated: 24.04.2018, "the Private managements / Educational Trusts / Agencies which proposes to open self-financing Pharmacy Colleges shall obtain prior permission of the State Government before applying to Pharmacy Council of India, New Delhi for approval." The Tamil Nadu Dr.MGR Medical University, Chennai and the Director of Medical Education, Chennai, are only the affiliating and examining authorities for four years B.Pharm degree course and for 2 years Diploma course respectively. Hence the action of the petitioner in having applied to the Pharmacy Council of India, New Delhi before obtaining the State Government's approval for increase in intake of seats for B.Pharm course itself is against the norms stipulated in the G.O mentioned above and in any event it would be subject to the approval/permission granted by the State Government.

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5.With regard to the averments made in paragraphs 12 and 13 of the affidavit, it is submitted that as per the Qualifying criteria under the sub heading (f)(iv), of the Scheme framed under regulation 9(1) of the Bachelor of Pharmacy (B.Pharm) Course Regulations, 2014 of Pharmacy Council of India, No Objection Certificate of the State Government of Union Territory administration as may be applicable is a prerequisite mandatory document for applying to the Pharmacy Council of India for starting of a Pharmacy Course/ increase in intake of students. The Petitioner has conveniently ignored this and suppressed this information to this Honourable Court. Further, as per point No.(xii) in the Annexure of the G.O.(Ms).No.148, health and Family Welfare (PME-2) Department, dated 24.04.2018, "No increase in seats over and above

the permitted strength should be made without prior approval of the Government". Moreover, the State Government of Tamil Nadu in its letter reference No.2984 / PME - 2 / 2019-1, Health and Family Welfare Department, dated: 11.02.2019, has clearly instructed to the 1st respondent that the orders of Government for starting of any new course is mandatory in Tamil Nadu. Therefore the act of the 1st respondent in calling for the Essentiality Certificate from the State Government is in order.

8.Mr.G.Masilamani, learned Senior Counsel appearing on behalf of the Petitioner Institution made the following submissions:

- Once the Pharmacy Council of India grants approval for the additional intake, there is no requirement for the Petitioner Institution to obtain the permission of the State Government and the 1st Respondent University ought to have acted upon the approval given by the Pharmacy Council of India and granted affiliation.
- The 2014 Scheme framed under the Regulations only contemplates obtaining No Objection Certificate from the State Government while starting a course and it will not apply to the existing Institutions which are seeking for increase in the intake of students and for which approval is granted by the Pharmacy Council of India.
- The qualifying criteria for B.Pharm Course which is dealt with under Clause B(f)(iii)(iv) does not contemplate any permission from the State Government for the existing Institutions at the time of increase in intake of students.
- The qualifying criteria for M.Pharm Course which is dealt with under Clause B(d)(iv) does not contemplate any permission from the State Government for the existing Institutions at the time of increase in intake of students.
- The Pharmacy Council of India Act occupies the field when it comes to Pharmacy Education and the State Government cannot insist for any permission unless it is stipulated by the Pharmacy Council of India. The State Government cannot have their own law and the same will be unconstitutional in the light of the Central Enactment. The learned Senior Counsel in order to substantiate his submissions, relied

upon the Division Bench Judgment of this Court in W.A. No.3534 of 2019 dt.16.6.2020, wherein it was held that the State Government lacks power to insist upon obtaining the Essentiality Certificate as a precondition for obtaining the affiliation of the university.

- The State Government as well as the University cannot give a different interpretation to the Regulations contrary to the meaning assigned by the Pharmacy Council of India which frames the Scheme under the Regulations.

9.The learned counsel appearing on behalf of the 1st Respondent University apart from reiterating the stand taken in the counter affidavit submitted that the relevant Regulations clearly provides for a prior permission from the State Government both for starting the course and for increasing the intake capacity. The learned counsel further submitted that similarly placed Institutions had obtained the approval of the State Government before the affiliation was granted by the University and therefore, the Petitioner Institution cannot ask for a different treatment and it is bound to get the prior permission of the State Government for the increase in intake of the students.

10.Mr. M T Arunan, learned Standing Counsel appearing on behalf of the 2nd Respondent - Pharmacy Council of India, submitted that the Pharmacy Council of India has already granted the approval to the Petitioner Institution for the increase in intake of students during the academic year 2020-2021 and there is no requirement for getting the permission from the State Government in this regard and the 1st Respondent University ought to have acted upon the approval and granted affiliation to the Petitioner Institution.

11. Mr. E.Manoharan, learned Special Government Pleader who was assisted by Mr. Akhil Akbar Ali, learned Government Advocate submitted that a Government Order has been passed in G.O.Ms.No. 148, dt. 24.04.2018, which clearly stipulates that the Government should be intimated and No Objection must be taken from the Government whenever there is increase in intake. In order to substantiate his submissions, the learned counsel specifically relied upon Clause XII, XIII and XIV of the Annexure to the G.O. The learned counsel further submitted that the Petitioner Institution should have first got the NOC from the State Government and only thereafter applied to the Pharmacy

Council of India, seeking for increase in intake of students. It was further submitted that when all the other Colleges are complying with this procedure, the Petitioner cannot seek for an exemption and if the Petitioner satisfies the norms, the State Government will grant the No Objection and thereafter the Petitioner can get the affiliation from the 1st Respondent University.

12.This Court has carefully considered the submissions made on either side and the material available on record.

13.The issue that arises for consideration in the present Writ Petition is, as to whether, the 1st Respondent University can insist the Petitioner Institution to get permission from the State Government for the purpose of granting provisional affiliation to the Petitioner Institution for the Academic Year 2020-2021 even after the Pharmacy Council of India had granted approval for the additional intake of seats ?

14.There is no dispute with regard to the fact that the Pharmacy Council of India Act governs the field of Pharmacy Education throughout India. It is now a well settled position of law that where a State Legislation is in conflict with the Central Legislation either due to enacting a law which encroaches into an occupied field or due to repugnancy, the State Legislation including Subordinate Legislation will become void and inoperative. The judgement of the Hon'ble Supreme Court in State of Tamil Nadu and Another v. Adhiyaman Educational & Research Institute and Others reported in (1995) 4 SCC 104, makes this position very clear.

15.The Division Bench Judgement of this Court relied upon by the learned Senior Counsel appearing on behalf of the Petitioner Institution also has a lot of significance while deciding this Writ Petition. For proper appreciation, the relevant portions are extracted hereunder:

9. The question arises for consideration in this writ appeal is whether insistence upon Essentiality Certificate for processing the Consent of Affiliation by the first respondent/University is sustainable?

10. It is not in dispute that the appellant/writ petitioner Trust had obtained necessary approvals from AICTE and also from PCI and as of now, it is provisionally

affiliated to the first respondent/University and running Diploma and Degree courses. A perusal and consideration of the counter affidavit of the second respondent filed in this writ appeal would also disclose that the said Council is not insisting upon production of Essentiality Certificate while processing the Consent of Affiliation.

11. The learned Judge in Para 12 of the impugned order, which is the subject matter of challenge in this writ appeal, had observed that though the State Government power is restrictive, it does not mean that it is without any power and also placed heavy reliance upon the order dated 11.10.2012 made in W.P.No.18157 of 2012 (cited supra) and it was not brought to the knowledge of the learned Judge that the said order dated 11.10.2012 passed in W.P.No.18157 of 2012 was put to challenge in W.A.No.2548 of 2012. The Division Bench of this Court, vide judgment dated 18.01.2013 made in W.A.No.2548 of 2012 reported in 2013 SCC Online Mad 224 : (2013) 1 CWC 593, in paragraph No.12 and 14 observed as follows:

12. A comprehensive reading of both the above provisions, would make it clear that no power has been vested with the Board of Governors to make the applicant to get fresh Essentiality Certificate from the State Government since no expiry date of such Essentiality Certificate once issued by the State Government has been contemplated anywhere in the Act and in the Regulations. While that being the case that the Legislature, in its wisdom, has not imposed any such burden on the applicant, the decision of the Board of Governors as if the Essentiality Certificate issued by the State Government will expire in three years, is, definitely, out of its power and competence.

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14. However, if the respondent wants to fix a time limit to the essentiality certificate issued by the State Government, it should have recommended to the Government to amend the law accordingly, specifying the

period of life of essentiality certificate issued by a State Government to a person/College to establish or increase the intake of the students in the medical college. In the absence of such an action, the respondent, on its own cannot insist the applicant, in the case on hand the appellant, to get a fresh essentiality certificate from the State Government as if its life is limited only to three years.

12. The order dated 11.10.2012 has been set aside, vide judgment dated 18.01.2013 in W.A.No.2548 of 2012 and as such, the said decision would not come to the aid of the respondents. Moreover, the Pharmacy Act as well as the Rules and Regulations framed thereunder do not insist upon production of Essentiality Certificate to be issued by the concerned State Government.

13. The scope of Pharmacy Act as well as the All India Council for Technical Education Act came up for consideration before the Hon'ble Supreme Court of India in Pharmacy Council of India v. Dr.S.K.Toshniwal Educational Trust Vidarbha Institute of Pharmacy and Others [2020 SCC Online SC 296]. In the said decision, the issue involved as to the applicability of the Pharmacy Act, 1948 or All India Council for Technical Education Act, 1987 in relation to the subject of Pharmacy including approval of courses of study, minimum standards of education required for qualification as a Pharmacist, registration as a Pharmacist, regulation of future professional conduct etc and it is relevant to extract para 77 of the said judgment:

'77. Applying the law laid down by this Court in the aforesaid decisions, viz., Maharaja Pratap Singh Bahadur V. Thakur Manmohan Dey [AIR 1966 SC 1931 : 1966 [3] SCR 663], and as observed hereinabove, the Pharmacy Act is a Special Act in the field of pharmacy and it is a complete code in itself in the field of pharmacy, the Pharmacy Act shall prevail over the AICTE Act, which, as observed hereinabove, is a general statute dealing with technical education/institutions.

Therefore, the submission on behalf of AICTE and / or concerned educational institutions that the AICTE Act is a subsequent law and in the definition of 'technical education', it includes the 'pharmacy' and therefore, it can be said to be an 'implied repeal', cannot be accepted. At this stage, it is required to be noted that as such in the AICTE Act there is no specific repeal of the Pharmacy Act, more particularly when, as observed hereinabove, the Pharmacy Act is a Special Act and the subsequent enactment of AICTE Act is general and therefore, the Pharmacy Act being a Special Act must prevail. Apart from that, with regard to several aspects, there is no provision made in AICTE Act which are exclusively within the domain of PCI. Thus, it cannot be accepted that there is 'implied repeal' of the Pharmacy Act.'

14. Thus, Pharmacy Act, which is a Special Act, being the occupied field of Pharmacy, there cannot be any insistence in the absence of any norms and regulations to the submission of Essentiality Certificate.

15. The counter affidavit of the first respondent in the writ petition as well as in this writ appeal do not throw any light as to the power of the State Government to insist upon obtaining of Essentiality Certificate and it appears that the first respondent/University merely heeded to that though it does not have any statutory backing.

16. It is also a well settled position of law that if a Statute prescribes a thing to be done in a particular manner, it can be done only in that manner and not in any other manner.

17. The State Government lacks power to insist upon obtaining of Essentiality Certificate for the purpose of production before the first respondent/University for processing the Consent of Affiliation. Though heavy reliance has been placed upon the letter of the Principal Secretary to Government of Tamil Nadu, Department of Health and Family Welfare dated 31.08.2018 in Letter No.38630/PME2/2016-4, referred to supra, the

said letter has no application to the case on hand for the reason that the said instructions came to be issued in the light of stand alone courses conducted by the first respondent/University, which do not have any affiliation with any of the Statutory Councils, namely MCI/DCI/PCI. Therefore, it is held that it is not obligatory on the part of the appellant to obtain Essentiality Certificate from the State Government and produce before the first respondent / University for processing the Consent of Affiliation.

16.The above Judgment of the Division Bench of this Court elaborately deals with the powers and jurisdiction of the Pharmacy Council of India and it has been held that the Pharmacy Act is a Special Act, which occupies the field of Pharmacy Education and there cannot be any insistence by the State Government or the University, in the absence of any norms and Regulations that is stipulated by the Pharmacy Council of India. The Division Bench therefore held that Essentiality Certificate which was not insisted by the Regulations of the Pharmacy Council of India cannot be made as a precondition by the State Government for obtaining the affiliation of the University.

17. In view of the categoric pronouncement of the Division Bench of this Court, this Court will have to now assess as to whether the Regulations of the Pharmacy Council of India insist for getting the permission of the State Government even in a case of increase in intake by an existing Institution, for the purpose of getting the provisional affiliation of the University.

18.At this juncture, it becomes very relevant to take note of the specific stand taken by the Pharmacy Council of India in the present case. The learned Standing Counsel appearing on behalf of the Pharmacy Council of India categorically stated that the permission of the State Government for increase in intake in an existing Institution, is not insisted by the Regulations. This stand taken by the Pharmacy Council of India is very significant since the best person to explain the Regulations will be only the Pharmacy Council of India, who frame the Scheme under the Regulations. Neither the State Government nor the University can attempt to give a different meaning for the Scheme framed by the Pharmacy Council of India.

19.The above stand taken by the learned Standing Counsel appearing on behalf of the Pharmacy Council of India is substantiated when this Court takes into consideration the procedure adopted by the Pharmacy Council of India while granting approval and the documents that needs to be submitted by an Institution at the time of seeking approval for increase in intake. Insofar as B.Pharm Course is concerned, Form-SIF-B-2 deals with documents to be submitted while starting a fresh course. There the Scheme itself insists for a No Objection Certificate/approval of the State Government. This means that the approval itself will not be considered without submitting the NOC/approval from the State Government. Whereas when it comes to increase in intake for an existing Institution, it is covered by Form-SIF-B-1. This Form does not contemplate any NOC or approval from the State Government. Likewise, when it comes to the M.Pharm Course, in the present case it is actually reduction in intake since earlier the Pharmacy Council of India had permitted an intake of 15 students for M.Pharm Course and this was brought down to 9 seats for the academic year 2020-2021. That apart, the Scheme framed under Regulation 4.1b makes it very clear that NOC from the State Government, is not applicable for existing M.Pharm Courses. This would only mean that the Regulations do not contemplate any permission or NOC from the State Government for increase in intake for an existing Institution which is already imparting M. Pharm Course.

20.If the Pharmacy Council of India insists for Prior Approval or No Objection Certificate from the State Government, the Scheme shows that the same is insisted even while submitting the documents to the Pharmacy Council of India which thereafter considers the application for approval by taking note of the permission granted by the State Government. There is no question of seeking for an approval/ permission from the State Government after the approval is already granted by the Pharmacy Council of India. It will be like putting the cart before the Horse and it does not fall within the Scheme framed by the Pharmacy Council of India under the Regulations.

21.The Government Order that was brought to the notice of this Court in G.O.Ms.No.148 dt. 24.04.2018, cannot outweigh the Regulations of the Pharmacy Council of India and it has to necessarily give way to the Regulations which governs the field. Just because some other Institutions have obtained the permission of the State Government after getting approval for additional intake, the same cannot be insisted upon in every case in the absence of any power or jurisdiction available to the State Government and the University.

22. In view of the above discussion, this Court is of the considered view that the Scheme framed under the Regulations by the Pharmacy Council of India does not contemplate any permission from the State Government after approval is granted by the Pharmacy Council of India for increase in intake either in the B.Pharm or M. Pharm Course in an existing Institution and the University must necessarily act upon the approval and grant provisional affiliation to the Institution. This is the manner in which the Pharmacy Council of India has understood the Scheme framed under the Regulations and it is uniformly applied in all the States and therefore the Government of Tamil Nadu cannot give a different interpretation and meaning than the one that is given by the Pharmacy Council of India.

23. In the result, the Impugned Letter issued by the 1st Respondent University dt. 25.07.2020, is hereby quashed and there shall be a direction to the 1st Respondent University to grant provisional affiliation to the Petitioner Institution for the academic year 2020-2021, by considering the representation dt. 18.05.2020.

24. This Writ Petition is accordingly allowed with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Registrar,
Tamil Nadu Dr.MGR Medical University,
69, Anna Salai, Guindy,
Chennai 600 032.

2. The Secretary cum Registrar,
The Pharmacy Council of India,
NBCC Centre, 3rd Floor, Plot No.2,
Community Centre, Maa Anandamai Marg,
Okhla Phase I, New Delhi - 110 020.

3.The Director of Medical Education,
Directorate of Medical Education Campus,
Kilpauk, Chennai 600 010.

+1cc to the Government Pleader, S.R.No.36748
+1cc to Mr.D.Prabhu Mukunth Arunkumar, Advocate, S.R.No.36767
+1cc to Mr.M.T.Arunan, Advocate, S.R.No.36539
+2ccs to Mr.Ramalingam, Advocate, S.R.No.36460

Pre-Delivery Order in
W.P.No.14834 of 2020

SRA (CO)
KKKV/01/12/2020



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