

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1998 of 2019

and CMP Nos.13517 and 13518 of 2019

The Tamil Nadu Dr.MGR Medical University,
Rep by its Registrar,
No.69, Anna Salai, Guindy,
Chennai – 600 032

.. Appellant

-VS-

1. The Doctors Welfare Association of Tamil Nadu,
Rep by its General Secretary,
Dr.K. Srinivasan,
(Registered Society No.284 of 2001),
West Mambalam,
Chennai – 600 033.

2. The Union of India,
Rep by its Secretary,
Department of Health and Family Welfare,
Nirmanbhavan, Maulaa Azad Road,
New Delhi – 110 011.

3. The Medical Council of India,
Rep by its Board of Governors,
Pocket 14, Sector B,
Dwaraka Phase 1, New Delhi 110 077.

4. The Secretary to Government,
School Education Department,
Fort St.George, Chennai – 600 009

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.10988 of 2018 dated 07.06.2019.

For appellant : Mr.Omprakash
for M/s Ramalingam &
Associates

For 1st respondent : Mr.P. Ebenezer Paul

For 2nd respondent : Ms.Sunita Kumari

For 3rd respondent : Mr.V.P. Raman

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

We have heard the learned counsel for the appellant University, learned counsel for the Medical Council of India as well as learned counsel for the first respondent / writ petitioner and the learned counsel for Union of India.

2. The appeal comes up questioning the correctness of the impugned judgment dated 07.06.2019, whereby, the learned Single Judge, has ultimately allowed the writ petition declaring that the courses that were being offered by the University could not be run and any such attempt made by the University was violative of

Section 10(A) of the Indian Medical Council Act, 1956, inasmuch as, neither had the Medical Council of India given any such permission nor the Central Government had permitted any such course to run in the University.

3. The learned Single Judge also further imposed a cost of Rs.5,00,000/-(Rupees five lakhs only) on the appellant University after having recorded this finding, as the Courses had been run without any such approval or permission as indicated above.

4. What we find is that the writ appeal was entertained and the following orders were passed from time to time:-

28.06.2019

After arguments at some length, Mr.Om Prakash, learned Senior counsel appearing for the appellant wants to take instructions as to whether to press the writ appeal or withdraw the same.

2. In the course of arguments it was also learnt that the appellant Tamilnadu Dr.MGR Medical University is a State funded University and the appellant University has filed this litigation in this

Court seeking permission to run nine fellowship programs, without seeking the approval of the Indian Medical Council under the provisions of the Indian Medical Council Act, 1956 which action was challenged by the respondent Doctors Welfare Association, and the writ petition came to be allowed by the learned Single Judge, which order of the learned Single Judge is under appeal before us filed by the aforesaid State University.

3. Prima facie, there is no escape from undertaking any such educational or qualification program in Medical Science without approval by Medical Council of India. The appellant University itself has many such Degree and Post Graduate courses approved by the Medical Council of India as per 1st schedule to the Act.

4. Therefore, we are satisfied that there is no error in the order of the learned Single Judge and therefore, after some arguments, the learned counsel for the appellant prays for short accommodation to take instructions from the appellant whether to pursue the appeal or withdraw the same.

5. He shall also place on record the copy of the order of sanction passed by the competent

authority to file the present writ appeal. This Court may consider fixing up the responsibility upon such official for filing frivolous appeals on the next date of hearing.

6. Post on **01.07.2019.**

01.07.2019

ADMIT

2. Fresh Notice need not be issued, as the Respondents have already been served and represented.

3. Having heard the learned counsel for the parties for some time and on the Undertaking given by Mr.Vijay Narayan, learned Advocate General, appearing for the Appellant-University, that the University will not go ahead with the conduct of '**9 Fellowship Programmes**' in question until the Court passes further orders in the matter, Mr.G.Rajagopalan, learned Additional Solicitor General of India, and Mr.V.P.Raman, learned counsel for third respondent-Medical Council of India, are directed to produce before the Court the relevant Notification, constituting "**The Board in Supersession of the Medical Council of India**", which is said to have been constituted, and also to take instructions from the Union of India, as to whether the said Board is a temporary

body in substitution of Medical Council of India to take policy decisions or any new law is being envisaged to put in place the Regulations for governing the Medical Education and Qualification in the country.

4. For the aforesaid purpose, the matter stands adjourned to **23.07.2019**.

14.08.2019

Heard Mr.Om Prakash, learned Senior Counsel appearing for the appellant, Mr.M.S.Krishnan, Senior Counsel for M/s.P.Ebenezer Paul, appearing for the first respondent, Ms.Sunita Kumari, learned counsel for the second respondent and Mr.V.P.Raman, learned counsel appearing for the third respondent Medical Council of India.

2. Mr.V.P.Raman, learned counsel appearing for the Medical Council of India, submits that the new enactment known as **"Medical Council Amendment Act (Act 30 of 2019)"** has received the assent of the President of India on 08.08.2019 and has been notified in the Gazette of India Part 49 published on 08.08.2019. However, the Act is yet to be enforced by a separate notification to be issued by the Central Government under Section

1(3) of the said Act. He further submits that the **'National Medical Commission'** to be constituted under Section 3 of the said Act is yet to be constituted and therefore, as of now the Board of Governors in supercession to the Medical Council of India, constituted in the month of September 2018, is still continuing.

3. On the other hand, learned counsel for the appellant Dr.MGR Medical University submits that they are likely to receive some communication from the said Board of Governors in supercession to the Medical Council of India and therefore, two weeks time may be granted to place on record, if any such communication is received from the Board of Governors in supercession to the Medical Council of India.

4. In view of the same, the hearing of the present case is adjourned by four weeks. List after four weeks ie., on **11.09.2019**.

01.10.2019

It is submitted by the learned counsel appearing on behalf of Dr.M.G.R.University that from the year 2010 onwards, the courses are being conducted. Therefore, Dr.M.G.R.University has to give the following details on the next date of

hearing, failing which, the Vice Chancellor of Dr.M.G.R.University shall appear before this Court:

i.Number of students who had undergone various courses (course wise and year wise).

ii.What is the fees collected from each of the student?

Iii.What is the mode of selection of the students?

iv.How the students are taught, either directly or through distance education?

v.If it is through distance education, how the students are taught?

2.The Medical Council of India has to give the details in case of any violation done by any of the parties like Dr.M.G.R.Univesrity, what is the action contemplated under the law.

3.Mr.V.P.Raman, learned counsel appearing on behalf of the Medical Council of India would submit that after the previous hearing, Dr.M.G.R.University has written a letter seeking opinion of the Board of Governors regarding conduction of the courses. In this regard, the Board of Governors which is administering the Medical Council of India has written a letter on 30.09.2019 and the said letter also placed before this Court. Call the matter on 14.10.2019.

5. Today when the matter has been taken up, learned counsel has invited the attention of the Court to the communication dated 14.10.2019 from the Board of Governors of Medical Council of India and the same is extracted herein under:-

Board of Governors
IN SUPPRESSION OF MEDICAL COUNCIL OF INDIA

No.MCI-7(10)/2019-Legal/(17820)/153945 date:14.10.2019

BY EMAIL

Sh.V.P. Raman
Advocate,
New No.15, Old No.7,
Ajay Apartments,
4th Floor, Flat No.2,
Hanumantha Road,
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Chennai – 600 014
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Subject: The Tamilnadu Dr.MGR Medical University Vs The
Doctors Welfare Association and Ors – Writ Appeal No.1998
of year 2019 in Writ Petition No.10988 of Year 2018 in the
Hon'ble Madras High Court at Chennai.

Sir,

This is with reference to your email dated 03.10.19
whereby you have conveyed the proceedings in the matter.
In this regard, I am directed to inform you that it may be
respectfully submitted to the Hon'ble High Court as the
considered view of the Board of Governors in suppression of

Medical Council of India in the above captioned matter as under:-

Firstly, that the medical education courses other than those covered under sections 10A and 11 of the Indian Medical Council Act, 1956 are neither regulated nor supervised by the MCI/Govt. Of India, as they are not as per the IMC Act, 1956 and the Regulations made thereunder. Holders of such certifications cannot be granted any registration of additional qualification on the strength of these courses, as these are not recognised medical qualification(s) in terms of the Indian Medical Council Act, 1956 and cannot be included in the First Schedule to the Indian Medical Act, 1956. Furthermore, the participants of such courses cannot be enrolled in the State Medical Register for additional qualifications and called specialist(s) on the basis of such a course(s), since in order to get registration of additional qualification an individual must hold a 'recognised medical qualification'.

Secondly, the University conducting certificate/fellowship course(s) other than those qualifying as 'recognized medical qualification' explained above:

a. Cannot use any nomenclature used in the First Schedule of the Indian Medical Council Act, 1956 (i.e.Diploma, MD/MS/DM/M.Ch) for such courses, nor use the name of the disciplines prescribed for in the Postgraduate Medical Education Regulations, 2000 (as these are applicable only to the courses leading upto 'recognised medical qualification' as per the IMC Act.)

b. Must clearly inform the prospective candidates, that the courses being offered are not recognised by the Medical Council of India or, Government of India under IMC Act, 1956, and the same must be stated in bold letters in the certificate to be issued to the candidates after completion of such course.

If required you may place this communication before the Hon'ble High Court as the decision of the Board of Governors in super-session of the Medical Council of India.

In addition to above, this is further to request you that in further correspondence related to this petition, you may kindly quote the MCI file No.i.e., (17820).

*Yours faithfully,
(Shikhar Ranjan)
Law Officer*

6. A perusal of the aforesaid communication leaves no room for doubt that no concession had been made by Medical Council of India and therefore, there is no material before us so as to find fault on the findings recorded by the learned Single Judge in the absence of any error much less a legal infirmity. We find no reason to take a different view in the matter than that has been taken by the learned Single Judge.

7. However, on the issue of cost, we find that the appellant University is a State run University and the activities carried out by it which have been found to be faulted with by the learned Single Judge may have been under misconception as if the University had the authority to run its courses on its own. The State run University, therefore, cannot be said to have acted malafidely to the detriment of its very purpose and consequently, the imposition of cost of Rs.5,00,000/-(Rupees five lakhs only) by the learned Single Judge may not be attributable to the activities carried out by the University.

8. In the background aforesaid, we uphold the impugned judgment of the learned Single Judge passed in W.P.No.10988 of 2018 dated 07.06.2019, but, we set aside the order imposing Rs.5,00,000/-(Rupees five lakhs only) as costs.

9. The Writ Appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

(A.P.S., C.J.) (S.P., J.)
05.03.2020

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sr

: Yes/No



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W.A.No.1998 of 2019

The Hon'ble Chief Justice
and
Subramonium Prasad, J.

sr



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