

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.05.2020

DELIVERED ON :16.06.2020

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN  
AND  
THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.A.No.3534 of 2019  
and CMP.No.22718 of 2019

Annai J.K.K.Sampoorani Ammal Charitable Trust,  
Represented by its Management Trustee,  
Dr.J.K.K.Munirajah,  
Ethirmedu, Komarapalayam Tk.  
Namakkal District- 638 183. .. Appellant

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,  
Combined Council Building,  
Temple Lane, Kotla Road,  
Aiwan-E-Ghalie Marg,  
Post Box No.7020, New Delhi- 110 002.

3.The Government of Tamil Nadu,  
Rep. by its Secretary,  
Home Department,  
Fort St.George, Chennai.

4.The Union of India,  
Rep. by its Secretary,  
Ministry of Health and Family Welfare,  
New Delhi.

5.Union of India,  
Rep. by its Secretary,  
Ministry of Human Resources,  
New Delhi.

6.All India Council for Technical Education (AICTE),  
7<sup>th</sup> Floor, Chandralok Building,  
Janpath, New Delhi. ...

(R3 to R6 suo motu impleaded vide order  
dated 23.10.2019)

Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 14.10.2019 made in W.P.No.25473 of 2019.

Prayer in WP.No.25473/19: To call for the records relating to the impugned letter issued by the 1<sup>st</sup> respondent in RC.No.Affln.I.(5)/08986/2019 dated 05/08/2019 signed on 07/08/2019 quash the same and direct the 1st respondent to grant consent of affiliation for starting Pharm.D Course for the academic year 2019-2020 without insisting on essentiality Certificate (G.O).

For Appellant : Mr.G.Masilamani, Senior Counsel  
assisted by  
M/s.Prabu Mukunth Arunkumar

For Respondents : Mr.D.Ravichandran for R1  
Mr.G.Karthikeyan,  
Assistant Solicitor General  
for R4 and R5

Mr.M.A.Arunesh  
for M/s.M.T.Arunan for R2

Mr.V.Kathirvelu for R3

Mr.Rabu Manohar, Senior Counsel for R6

JUDGMENT

M.SATHYANARAYANAN, J.

The writ petitioner is the appellant herein. The writ petitioner made a challenge to the order of the first respondent dated 05.08.2019, signed on 07.08.2019, in and by which, the requirement of Essentiality Certificate was directed to be complied with, by filing a writ petition in W.P.No.25473 of 2019 and it had ended in dismissal, vide impugned order dated 14.10.2019 and challenging the legality of the said order, the present appeal is filed.

2. Facts leading to the present round of litigation have been narrated in detail and in extenso in the impugned order passed in the writ petition, which is the subject matter of challenge and therefore, for the sake of brevity, the facts are not restated except the necessary relevant facts for the disposal of this writ appeal.

2.1. It is not in dispute that the petitioner Trust had obtained necessary approvals for starting a Pharmacy College from All India Council For Technical Education [in short "AICTE"] as well as from the Pharmacy Council of

India [in short "PCI"] - second respondent herein for the academic year 2015-2016 for conducting B.Pharm Degree Course and provisional affiliation has also been accorded by the first respondent / University, which has been extended from time to time.

2.2. The first respondent University, vide communication dated 12.10.2018 in Rc.No.Affln.1(5)/08986/2019, had informed that all the affiliated institutions to obtain the requirement of permission letter from the Government for starting Allied Health Science Courses & Paramedical Courses and in this regard, sent a communication dated 08.04.2019 to the appellant/writ petitioner to submit the required documents for considering the issue of Consent of Affiliation to start Pharm.D course including Essentiality Certificate obtained from the Government of Tamil Nadu.

2.3. The appellant/writ petitioner, in response to the said communication, had submitted some of the required documents and having noted that one of the documents namely, Essentiality Certificate have not been obtained from the Government of Tamil Nadu and submitted to the first respondent-University for issuance of Consent of Affiliation, the impugned communication dated 05.08.2019, signed on 07.08.2019, has been issued by the first respondent/University.

2.4. The appellant/writ petitioner, made a challenge to the said order by filing W.P.No.25473 of 2019 by raising among other grounds that the impugned letter of the first respondent/University is without any prescription as contemplated under the Tamil Nadu Dr.M.G.R. Medical University Act and it cannot scuttle or set aside the approval already granted by the Central Expert Body / second respondent created under the Central Statute. It was further pointed out by the appellant/writ petitioner that the impugned letter runs contrary to the decisions of the Hon'ble Supreme Court in Rungta Engineering College Bhilai and Another v. Chattisgarh Swami Vivekanand Technical University [(1995) 4 SCC 104] and Jaya Gokul Educational Trust v. Commissioner & Secretary to Government, Higher Education Department [(2015) 11 SCC 291] and prayed for interference.

2.5. The first respondent has filed a counter affidavit and took a stand that in the absence of challenge to the Government Order dated 31.08.2018, insistence upon production of Essentiality Certificate cannot be put to challenge independently. It is the further stand of the first respondent University that the condition for obtaining Essentiality Certificate from the Government before starting a course for Allied Health Science and Paramedical Courses is inevitable and indispensable and having necessary statutory backing and therefore, prayed for dismissal of this writ petition.

2.6. The learned Judge, in para 12 of the impugned order, observed among other things that though the power of the State Government is restrictive, it does not mean it is without power and the letter of the Government dated 31.08.2018 is instructions to the University to insist upon Essentiality Certificate while granting affiliations to allied Health Diploma and Degree Courses and the learned Judge had also taken note of the fact that the duration of Diploma and Degree courses is 2/3 years and whereas Pharm D Course is 6 years course [5 years Theory and 1 year Intern] and the intention to insist upon Essentiality Certificate is made clear in the above cited letter and it is self explanatory and without any need or essentiality, if the Universities permit institutes to start various courses without assessing the employment implications, it may cause social unrest and law and order issue and therefore, the Government has power to insist upon production of Essentiality Certificate, independent of University Statute. The learned Judge has also placed reliance upon the order dated 11.10.2012 made in W.P.No.18157 of 2012 [Shree Balaji Medical College and Hospital v. Medical Council of India] and dismissed the writ petition.

3. Mr.G.Masilamani, learned Senior Counsel assisted by Mr.Prabu Mukund Arunkumar, learned counsel appearing for the appellant/writ petitioner has invited the attention of this Court to the counter affidavit of the second respondent/Pharmacy Council of India [PCI] and would submit that Pharmacy Act empowers the PCI to regulate the pharmacy education to qualify for registration as a Pharmacist and under the Pharmacy Act, the PCI is empowered to regulate the profession of pharmacy by way of Chapter IV of the Act and Section 32(2) of the Pharmacy Act deals with registration, according to which the State Pharmacy Council is obligated to register only those candidates under Section 33 of the said Act who have passed an approved examination under the Pharmacy Act and neither the provisions of the Pharmacy Act nor the Regulations framed thereunder, insist upon production of Essentiality Certificate issued by the State Government and as such, the said insistence is per se illegal. The learned Senior Counsel appearing for the appellant has also invited the attention of this Court to the counter affidavit filed on behalf of the third respondent, more particularly to para 9 and would submit that concedingly, the third respondent had stated that there is no provision in the Statutes to obtain permission from the Government of Tamil Nadu while starting Allied Health Science and Paramedical Courses in the affiliating institutions and the University is not insisting the institutions to obtain permission from the Government to start Allied Health Science Courses.

4. It is the further submission of the learned Senior Counsel appearing for the appellant that in Para 16 of the counter affidavit, the third respondent took a stand that

the Government have been insisting on Essentiality Certificate for starting of any course in the interest of students welfare, quality education and also for creation of employment opportunities to the students who have completed the courses successfully and therefore, the first respondent/University is rather under compulsion from the Government to insist upon Essentiality Certificate and further pointed out that the first respondent is an autonomous body and it shall abide by the provisions of the Pharmacy Act and rules and regulations framed thereunder and as such, it is not open to the first respondent to insist upon Essentiality Certificate.

5. The learned Senior Counsel appearing for the appellant has also drawn the attention of this Court to 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 and would submit that the said letter has no application to the case on hand for the reason that University itself is running certain stand alone courses, which are not Government by any Statute and in this regard only the said instructions came to be issued. It is also pointed out by the learned Senior Counsel appearing for the appellant that the learned Judge had placed heavy reliance upon the order dated 11.10.2012 made in W.P.No.1815 of 2012 (cited supra) and dismissed the writ petition and the said order has been reversed by a Division Bench of this Court in the decision reported in 2013 (1) CWC 593 : 2013 SCC Online Mad 224 [Sree Balaji Medical College & Hospital v. MCI]. It is further pointed out by the learned Senior Counsel appearing for the appellant that the Division Bench of this Court in the decision in T.N. Dr.M.G.R. Medical University v. Arulmighu Kalasalingam College of Pharmacy and others [AIR 2005 Madras 182] had laid down the proposition that insistence upon the views of the State Government cannot be sustainable and therefore, prays for interference.

6. Per contra, Mr.D.Ravichander, learned Standing Counsel appearing for the first respondent / University would submit that since the Government insist upon Essentiality Certificate for starting of any course and taking into consideration the interest and welfare of the students and employment opportunities, the first respondent is insisting upon obtaining Essentiality Certificate from the Government of Tamil Nadu and production of the same to them and it cannot be faulted with.

7. Mr.Jayaprakash Narayan, learned Government Pleader appearing for the third respondent would submit that Essentiality Certificate is insisted upon to ensure welfare and future career of the students, especially with regard to the employment opportunities of the courses conducted by Pharmacy Colleges and therefore, it cannot be faulted with.

8. This Court has carefully considered the arguments advanced by the respective learned counsel appearing for the parties and also perused the materials placed before it as well as the decisions relied on by the learned Senior Counsel appearing for the appellant.

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 =2020 (2) MLJ 656 (SC)]. 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 as 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.

18. In the light of the reasons assigned above, the impugned order dismissing the writ petition warrants interference.

19. In the result, this Writ Appeal is allowed and the order dated 14.10.2019 made in W.P.No.25473 of 2019 is set aside and as a consequence, the impugned letter of the first respondent / University dated 05.08.2019, signed on 07.08.2019, is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jvm

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,  
Combined Council Building,  
Temple Lane, Kotla Road,  
Aiwan-E-Ghalie Marg,  
Post Box No.7020, New Delhi- 110 002.
- 3.The Secretary to  
The Government of Tamil Nadu,  
Home Department,  
Fort St.George, Chennai.
- 4.The Secretary,  
Union of India, Ministry of Health and Family Welfare,  
New Delhi.
- 5.The Secretary,  
Union of India,  
Ministry of Human Resources, New Delhi.
- 6.All India Council for Technical Education (AICTE),  
7<sup>th</sup> Floor, Chandralok Building,  
Janpath, New Delhi.

W.A.No.3534 of 2019

SVI (CO)

CB(03/08/2020)