

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 12.03.2020	Delivered on 16.03.2020
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.34635 of 2019
and
WMP No.35388 of 2019

Eswary Ponnusamy Educational and Charitable Trust,
Rep.by its Secretary,
G.Ponnusamy
No.71/D, Vaniyambadi Road,
(Tirupattur ITI Campus),
Tirupattur 635 601,
Vellore District.

..Petitioner

The Registrar (FAC),
Tamilnadu Dr.MGR
Medical University,
No.69, Anna Salai, Guindy,
Chennai 600 032.

..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the respondent University dated 20.11.2019 made in Lr.No.Affn.I(5)/48539/2019 and to quash the same and consequently direct the respondent University to conduct the 2nd inspection forthwith and issue the consent of Affiliation/Certificate of Registration for the academic year 2019-2020 permitting the petitioner to make admission of students for the academic year 2019-2020 expeditiously within a time frame as may be fixed by this Court.

For Petitioner : Mr.S.Silambanan, Senior Counsel
for M/s.Kaavya Silambanan Associates

For Respondent : Mr.R.Imayavaramban
for M/s. Ramalingam Associates

O R D E R

This Writ Petition has been filed challenging the proceedings of the respondent University dated 20.11.2019 and for a consequential direction to the University to grant affiliation for the academic year 2019-2020.

2.The case of the petitioner is that in line with the object of the Trust, the petitioner started taking steps to establish a new College for B.Pharm Degree Course. The petitioner submitted all the records before the respondent University. The petitioner also obtained due approval from the All India Council of Technical Education [AICTE] through letter of approval dated 10.06.2019 and from Pharmacy Council of India [PCI] on the same date. The petitioner submitted an application along with all the certificates and approvals to the respondent University on 03.08.2019. The petitioner wanted to start the course during the academic year 2019-2020. The respondent University by its letter dated 16.08.2019, directed the petitioner to produce certain documents and the same was produced by the petitioner. In the meantime, the petitioner also obtained necessary permission from the Government of Tamil Nadu to start B.Pharm four years course with an intake of 100 students through G.O.Ms.No.464, dated 14.10.2019. This Government order was also sent to the respondent.

3. The respondent University appointed an inspection Committee and communicated the same to the petitioner. The petitioner also received a letter dated 18.10.2019, wherein apart from other things, the petitioner was directed to furnish Structural Stability Certificate given by a Class 1A Engineer. The petitioner along with a letter dated 23.09.2019, had sent the certificates. The inspection was also conducted on 22.10.2019. The last date for submission of documents for affiliation was on 31.10.2019.

4.The further case of the petitioner is that on the last date i.e., on 31.10.2019, the petitioner was informed that the Structural Stability Certificate issued by Class IA Engineer is not found in the documents furnished by the petitioner. The petitioner furnished the certificate on 01.11.2019.

5.The petitioner received a letter dated 18.11.2019, from the respondent University informing the petitioner that since the process of affiliation is incomplete and it will take further time, the petitioner was informed that consent of affiliation/certificate of registration will be issued for the academic year 2019-2020 and the petitioner was informed not to make any admission for the academic year 2019-2020. This

letter has been put to challenge in the present writ petition.

6. Mr.S.Silambanan, learned Senior Counsel appearing on behalf of the petitioner submitted that the petitioner had received the approval/permission from all the authorities and had also submitted all the certificates to the respondent University. The learned Senior Counsel submitted that by mistake the Structural Stability Certificate issued Class 1A Engineer, was missed out and that was also given on 01.11.2019. The learned Senior Counsel submitted that this Certificate was very much available with the petitioner as early as on 22.02.2019. The learned Senior Counsel submitted that the College had proceeded to admit 24 students and there were instances where the respondent University had permitted certain Colleges to submit certificates even after the due dates. The learned Senior Counsel submitted that the respondent University ought to have granted provisional affiliation and it went wrong in granting only a consent of affiliation. Therefore, the learned Senior Counsel concluded his arguments by submitting that the respondent University must be directed to grant provisional affiliation for the academic year 2019-2020.

7.The respondent has filed a counter affidavit and also an additional counter affidavit. It is stated that the petitioner had given the Structural Stability Certificate after the due date and therefore, the petitioner could not be given provisional affiliation for the academic year 2019-2020. It is further stated that no permission has been granted to any of the Colleges to submit any document after the due date and only those Colleges which submitted all the documents before the due date, was granted affiliation. It is further stated that the Structural Stability Certificate is of prime importance where the building cost is more than Rs.50 lakhs and it must be given by a Class 1A Engineer. Whereas the petitioner had obtained such a certificate only from an approved valuer. It is further stated that the petitioner ought not to have admitted the students without the affiliation granted by the respondent University.

8.The learned counsel appearing on behalf of the respondent apart from reiterating the stand taken in the counter affidavit, submitted that the petitioner was informed about the requirement of a Structural Stability Certificate from a Class 1A Engineer as early as on 18.10.2019 and in spite of the same it was not furnished till the due date and it was given only on 01.11.2019. Therefore, the respondent University was not able to grant provisional affiliation and only a consent of affiliation was granted with a condition that the petitioner should not make any admission of students for the academic year 2019-2020. The learned counsel concluded his arguments by

submitting that the petitioner will have to go through the process again for the academic year 2020-2021 and at that point of time, the respondent University will consider the affiliation, subject to the petitioner fulfilling all the requirements.

9.This Court has carefully considered the submissions made on either side and the materials available on record.

10. This is an unfortunate case where the petitioner had got the approval from AICTE, Pharmacy Council of India and also from the Government of Tamil Nadu. The petitioner had also submitted all the documents to the respondent. By mistake, the petitioner instead of submitting a Structural Stability Certificate of Class 1A Engineer, submitted a certificate given by an approved valuer. This was informed to the petitioner by the respondent University on the last date i.e., on 31.10.2019. The petitioner, who had already obtained such a certificate on 22.02.2019 itself, furnished the certificate the next day on 01.11.2019. This was not considered by the respondent University and the respondent University through the impugned letter dated 18.11.2019, informed the petitioner that the process of affiliation is incomplete and only a consent of affiliation will be granted for the academic year 2019-2020. It must be borne in mind that the University had already conducted the inspection through the Committee in the College on 22.10.2019.

11.In the considered view of this Court, the respondent University ought not to have taken such a hyper technical view in this case. The respondent University ought to have seen that the petitioner had received the permission from all the other authorities and was getting ready to admit the students. Therefore, even though the Structural Stability Certificate was furnished on 01.11.2019, it was more due to oversight that this Certificate did not form part of the documents furnished by the petitioner. The certificate itself has been issued as early as on 22.10.2019, by a Class 1A Engineer, as per the requirements.

12.In the impugned letter, it has been stated that the petitioner has been granted consent of affiliation. This Court is not able to understand the difference between the consent of affiliation and provisional affiliation. The respondent University could have said that it is not granting affiliation. However, the University has used a terminology and made the petitioner believe that a consent of affiliation has been granted. This does not mean that the affiliation has been rejected. It is true that the petitioner ought not to have admitted any students till the provisional affiliation is

granted by the respondent University.

13. The effort taken by the petitioner in getting approvals from all the concerned authorities should not go waste and the reason for not granting provisional affiliation by the respondent University is also not based on any strong grounds. It is only based on the ground that one particular certificate was given one day later after the due date. The respondent surely had a discretion to take this certificate on file and proceed with the grant of provisional affiliation. The fact that the respondent had given consent of affiliation only shows that the respondent was satisfied with all the other requirements. In view of the above discussion, there shall be a direction to the respondent to grant provisional affiliation to the College run by the petitioner for the academic year 2019-2020 and appropriate orders shall be passed within a period of two weeks from the date of receipt of copy of this order.

This writ petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

To

The Registrar (FAC),
The Tamilnadu Dr.MGR
Medical University,
No.69, Anna Salai, Guindy,
Chennai 600 032.

+2ccs to M/s.Ramalingam & Associates, Advocate, Sr.No.23109

W.P.No.34635 of 2019

GS (29/05/2020)