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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.16823 of 2021
and
W.M.P.Nos.17804 & 17805 of 2021

G.Niranjani

...Petitioner

-Vs-

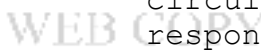
1. The State of TamilNadu
rep by its secretary to Govt. Health and
Family Welfare Department, Fort St. George
Secretariat, Chennai-600 009
2. The National Medical commission
Rep by its Chairman, Sector-8, Pocket 14,
Dwarka Phase-1, New Delhi-110 077.
3. The Registrar
The TamilNadu Medical Council,
No.914, Poonamallee High Road,
Amaravathi Nagar, Arumbakkam,
Chennai-600 106.

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 3rd respondent in connection with the impugned circular in Ref.No.TNMC/P.No.7/2020 dated 12.11.2020 and circular in Ref.No.TNMC/ P.N.11/ 2020 dated 24.12.2020 and quash the both as illegal and arbitrary and consequently direct the 3rd respondents to register the petitioner for Internship of Foreign medical Graduates in the academic session from 2020 for CRRI Training.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mr.A.Selvendran,
Government Advocate - for R1
Ms.Subharanjani for R2





iv) The above said exercise shall be completed within two weeks from the date of receipt of the application from the petitioners."

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4. In view of the above, this writ petition is allowed in terms of the above order. No costs. Consequently, connected miscellaneous petitions are closed.

Kst

11/08/2021

This case having been listed today ie., Monday, the Twentieth day September 2021 Under the Caption for Clarification before the Hon'ble Mr. Justice N. Anand Venkatesh in pursuance to the order of this Court dated 11/08/2021 and made herein in the presence of the above said Counsels on the either side, this Court made the following order;

N. ANAND VENKATESH., J.

Today, the matters are listed under the caption "for clarification".

2. Some of the above writ petitions were disposed of by this Court by passing a final order on 29.07.2021. Thereafter, the above order was followed in the subsequent writ petitions that were filed by orders dated 5/8/2021, 6/8/2021 and 11/8/2021.

3. When the writ petitions of similar nature came up for admission and this Court was inclined to pass similar orders, it was brought to the notice of the Court that the earlier orders passed by this Court did not yield the result, since the Tamil Nadu Medical Council was not able to issue the certificate of provisional registration on the ground that the concerned petitioners did not undergo the practical and clinical training in physical form in the relevant medical universities, where the candidate had undergone the course. Therefore, the learned counsel who appeared in all those writ petitions sought for a clarification of the earlier order passed by this Court on 29.07.2021.

4. Taking into consideration, the interest of the students and in order to ensure that there is more clarity before any directions are issued to the Tamil Nadu Medical Council, this Court decided to once again hear the counsel appearing on either side. Accordingly, the first order was passed by this Court on 18.08.2021 and the same is extracted hereunder.



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"It is brought to the notice of this Court that the National Medical Commission has issued a note containing the instructions, while processing the applications before issuance of certificate of registration to the students, who had completed the MBBS course. Clause IX of the said note is extracted hereunder:

"IX. With due reference to the Curriculum of the petitioning students, it is seen that the same pertain to universities duly recognised by the NMC and having standard of education on par with those prescribed in India. However, only certain petitioners have filed consolidated mark sheets, Provisional Certificates. It is also however, noted that all petitioning students have appended copies of the Screening Test Passing Certificate. The petitioners are required to reproduce Certificate of successful completion of theory as well as practical and Clinical training during the course of MBBS having being done in physical form in the Medical University and in affiliated Hospital."

2. The learned counsel appearing on behalf of the petitioners submitted that in spite of the earlier orders passed by this Court in various other writ petitions, none of those petitioners were issued with the certificate of provisional registration on the ground that they have not undergone the practical and clinical training in physical form in the Medical University, where they had undergone the course. The learned counsel therefore, submitted that the third respondent is not issuing the certificate and therefore, sought for some clarity on this issue.

3. Mr.G.Sankaran, learned counsel appearing on behalf of the Tamil Nadu Medical Commission, submitted that the Medical Council is bound by the instructions given by the National Medical Commission and the above clause specifically insist for practical and clinical training in physical form and none of the students, who had completed the course in the Foreign University fulfil this criteria, since they have undergone the entire course through online mode. Therefore, the learned counsel submitted that the National Medical Council must issue a clarification in this regard.



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4. The learned standing counsel appearing on behalf of the National Medical Commission sought for some time to take instructions in this regard and also to ascertain the manner in which the issue is dealt with in the other States.

5. In the considered view of this Court, the students do not have any choice except to undergo the course through online mode due to the Pandemic situation. However, insofar as the MBBS course is concerned, only the theoretical part can be undergone through online mode and when it comes to practical and clinical training, it has to be necessarily undergone only in the physical form. Unfortunately, none of these students could have undergone the practical and clinical training in physical form, since they had no opportunity to go their concern Universities and attend this training. The same was the case even for those students, who underwent MBBS course in India. Therefore, by now, the National Medical Commission should have evolved some mechanism to ensure that the completion of the course is recognized and at the same time there is no compromise on the quality of education and hence should device a method to make the students undergo the practical and clinical training in physical form.

6. If the provisional registration of those students, who completed the course in the Foreign Universities is postponed on this ground, it will have a cascading effect since it will delay the students from registering for PG course and pursuing with their higher studies. In view of the above, the learned standing counsel appearing on behalf of the National Medical Commission shall take instructions and report before this Court. The learned counsel shall ascertain from the National Medical Commission as to whether the provisional registration can take place and these students, as a special case can be permitted to undergo the practical and clinical training in Colleges with affiliated Hospitals for a particular period of time, so that they fulfill the requirements. "

5. The matter was once again taken up for hearing on 13.09.2021 and this Court passed the following order:

The learned Standing Counsel appearing for the National Medical Commission once again sought for indulgence of this Court and seeks for some time. The learned Standing Counsel submitted that the decision to



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be taken by the National Medical Commission will have a ramification across the country and therefore, it is taking some time for the Commission to arrive at a decision. The learned counsel submitted that one last opportunity may be given to the National Medical Commission to come up with the proposal.

2.The learned counsel appearing on behalf of the Tamil Nadu Medical Commission submitted that the Council has already made a detailed representation to the National Medical Commission by making some suggestions and the same can be taken into consideration by this Court and orders can be passed in these batch of writ petitions.

3.The learned counsel appearing on behalf of the petitioners ventilated the grievance of the petitioners since, the petitioners who had completed the courses in May 2020 and have also completed the FMGE in December 2020 are sitting idle without being able to proceed further with their carrier. It was further submitted that when students in the other States are permitted to register themselves before the Medical Council, there is no reason to deprive the students belonging to this State and come up with certain additional conditions. It was submitted that the same yardstick that was used for the other students should be extended to the petitioners also and they must be permitted to get themselves registered before the Tamil Nadu Medical Commission.

4.This Court is fully aware about the hardship faced by the petitioners. This Court requires a decision to be taken by the National Medical Commission as suggested in the earlier order passed on 18.08.2021 since, it involves a larger public interest. When such a decision is taken by the National Medical Commission, it will have a ramification across the country and the decision cannot confine itself to the State of Tamil Nadu. However, a decision has to be taken by the National Medical Commission since, it will be too risky to permit registration before the Medical Council even without a candidate undergoing the practical and clinical training. These are areas which require physical training and it cannot be done on-line. Therefore, for all those students who have completed the course on-line in the foreign Universities, it must be made mandatory to undergo the practical and clinical training.



The petitioner students have not completed their Clinical and practical training in the Foreign Medical University in physical form. They cannot be permitted to register provisionally in India. Such students are required to complete their incomplete clinical and practical training from the same foreign medical college/university in physical form as soon as the COVID conditions permit. Students with such incomplete clinical training cannot be allowed to practice medicine to jeopardize the life of patients in India.

7. The entire confusion seems to have arisen by virtue of the note that was circulated by the National Medical Commission and more particularly Clause IX of the said note. A reading of the note shows that the students are required to reproduce certificate of successful completion of theory as well as practical and clinical training while undergoing the MBBS Course in "Physical Form" from the concerned medical university and its affiliated hospital.

9. There is no dispute with regard to the fact that all the petitioners had completed the entire duration of the



course in the concerned institutions in a foreign university. Thereafter, the students had applied before the concerned authority seeking for the screening test certificate which is a mandatory requirement under Section 13(4-A) of the Indian Medical Council Act, 1956. For proper appreciation the same, is extracted hereunder.

"13 (4-A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised for enrolment as medical practitioner in that country after such date as may be specified by the Central Government under sub-section (3), shall not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his name entered in the Indian Medical Register unless he qualified the screening test in India prescribed for such purpose and such foreign medical qualification after person qualifies that said screening test shall be deemed to be the recognised medical qualification for the purposes of this Act for that person."

10. The Screening Test Regulations 2002 provides for the entire procedure with regard to the qualification and eligibility and also the ultimate certificate that is issued to the students after the screening test. For the purposes of this case, Clauses 4(3) to 11 of the Regulations are extracted hereunder:

"4 (3) he/she has studied for the medical course at the same institute located abroad for the entire duration of the course from where he/she has obtained he degree:

Provided in cases where Central Government is informed of condition of war, civil unrest, rebellion, internal war or any such situation wherein life of Indian citizen is in distress and such information has been received through the Indian embassy in that country then the council shall relax the requirement of obtaining medical education from the same institute located abroad in respect of which communication has been received from the Indian Embassy in that country.

(4) Provided further that a person seeking provisional or permanent registration shall not have to qualify the screening test if he/she holds an Under Graduate medical qualification from Australia/Canada/New Zealand/United Kingdom/United States of America and the holder thereof also been awarded a post-graduate medical qualification in Australia/Canada/New Zealand/United Kingdom/United States of America and has been recognized



for enrolment as medical practitioner in that country.

(5) The purpose of conducting the screening test shall be only to determine the eligibility or otherwise of a candidate for his or her registration with the Medical Council of India or any State Medical Council and qualifying the same shall not confer any other right, whatsoever, on a candidate.

(6) The details regarding the scheme for conducting the screening test and the syllabus of the test shall be announced by the Medical Council of India from time to time for the information of the candidates.

(7) The screening test shall be conducted twice every year as per the Schedule of examination announced by the Prescribed Authority. The procedure of conducting the test shall be in accordance with the Scheme announced by the Medical Council of India in this regard.

(8) There shall be three papers of multiple choice questions in Pre-clinical, Para-Clinical and Clinical Medicine and its allied subjects including Obstetrics and Gynaecology. The language of the test shall be English. The test for each paper will be of three hours duration.

(9) A candidate shall be declared as having passed only if he/she obtains a minimum of 50% (fifty percent) marks in each paper separately. The minimum qualifying marks shall apply to all categories of candidates without exception.

(10) A candidate shall have to pass all the three papers in the same attempt. However, there shall not be any restriction on the number of attempts to appear in the test.

(11) The prescribed Authority shall intimate the result of the Screening Test to the candidates as well as to the Secretary, Medical Council of India and the State Medical Councils. The unsuccessful candidates shall also be appropriately informed. The candidates who qualify the Screening Test may apply to the Secretary, Medical Council of India, New Delhi or to any State Medical Council for provisional registration/permanent registration along with the requisite registration fee in favour of Secretary, Medical Council of India or the State Medical Council. The Medical Council of India or the State Medical Councils shall issue provisional registration to such successful candidates, who are yet



to undergo one year internship in an approved institution and issue permanent registration to such eligible candidates who have already undergone one year internship, as the case may be."

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11. It is clear from the above that once the candidate qualifies in the screening test and is issued the necessary certificate by the concerned authority, the candidate gets a right to apply for provisional registration before the concerned medical council. Thereafter, the candidates can undergo one year internship (CRRI) in an approved institution and apply for a permanent registration before the same council. On the candidate being given the permanent registration, the candidate actually completes the course and becomes eligible to practice medicine or to proceed further with higher education.

12. The scope of the above said provision was dealt with by the Hon'ble Supreme Court in Medical Council of India vs. J.Saai Prasanna and others reported in 2011 (11) SCC Page 748 and the relevant portions are extracted hereunder.

"5.The High Court, after exhaustive consideration, allowed the writ petitions holding that the writ petitioners fulfilled the requirements of Section 13(4-A) of the Act and Regulation 4 of the Screening Regulations, that is, (i) they were citizens of India, (ii) they had obtained a medical qualification outside India, granted by a medical institution (IMT University) in Tanzania, (iii) the medical qualification granted by the said medical institution in Tanzania is recognised for the purpose of enrolment as a medical practitioner in Tanzania, (iv) the Indian Embassy in Tanzania has confirmed that the medical qualification granted by IMT University, Tanzania (which granted the medical qualifications to the writ petitioners) was a recognised qualification for enrolment as a medical practitioner in Tanzania; and (v) the writ petitioners appeared and qualified in the screening test conducted by the National Board of Examinations in India. As a consequence, the High Court held that the foreign medical qualification of the writ petitioners was deemed to be recognised medical qualification for the purpose of the Act and that subject to completion of the required internship, they were entitled to be enrolled on the medical register maintained by any State Medical Council or to have their names entered in the Indian Medical Register.

6. Section 13(4-A) of the Act and Regulation 4 of the Screening Regulations referred to in the decision are extracted below:



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"13. Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule :-

4-A. A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognized for enrollment as medical practitioner in that country after such date as may be specified by the Central Government under sub-section (3), shall not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his name entered in the Indian Medical Register unless he qualifies the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies the said screening test shall be deemed to be the recognized medical qualification for the purposes of this Act for that person."

7. Regulation 4 of the Screening Regulations as it originally stood is extracted below:

"4. Eligibility criteria.- No person shall be allowed to appear in the screening test unless:

(i) he/she is a citizen of India either whose name and the institution awarding it are included in the World Directory of Medical Schools, published by the World Health Organization, or and possesses any primary medical qualification, which is confirmed by the Indian Embassy concerned to be a recognized qualification for enrollment as medical practitioner in the country in which the institution awarding the said qualification is situated;

(ii) he/she had obtained 'Eligibility Certificate' from the Medical Council of India as per the 'eligibility requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2001'. This requirement shall not be necessary in respect of Indian citizens, who have acquired the medical qualifications from foreign medical institutions or have obtained admission in foreign medical institution before 15-03-2002."

8. The High Court by the impugned judgment elaborately considered the various issues with reference to Section 13(4-A) of the Act and Regulation 4 of the Screening Regulations, and answered the questions of law as under:



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(i) When Parliament chose to treat all Indian citizens who obtained medical qualification from abroad as one category, there is no scope to resort to classifying those who underwent part of the course in Indian institutions as a separate category.

(ii) Medical qualification granted by IMT University, Tanzania, is recognized for enrollment as a medical practitioner in Tanzania and it is neither specifically nor impliedly excluded from the purview of Section 13(4-A) of the Act.

(iii) Once a medical graduate of a foreign university qualifies the screening test, the primary medical qualification acquired by such person from the medical institution abroad is deemed to be a recognised medical qualification for the purposes of the Act. Such person cannot be denied grant of permanent/provisional registration.

9. On a careful consideration of the facts and the legal position, we find no error in the impugned judgment of the High Court. The special leave petitions are therefore liable to be dismissed.

10. MCI contends that where students of a foreign university undergo a part of their training in an institution in India which has not obtained the permission from the Central Government/MCI, as required under Section 10-A of the Act, such students are not eligible for registration as medical practitioners in India. The requirements for recognition of a medical qualification granted by a medical institution outside India are different from the requirements for recognition of medical qualification granted by the universities or medical institutions in India. It is no doubt true that if a student in India does a course of study in medicine in a medical college in India which does not have the permission of the Central Government under Section 10-A of the Act, the medical qualification granted to any student of that college will not be a recognised medical qualification for the purposes of the Act and consequently such student will not be entitled to be enrolled in the Indian Medical Register or State Medical Register.



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11. But medical qualifications granted by medical institutions outside India are dealt within a special provision, that is, Section 13(4-A) of the Act. Necessarily, for examining the validity of the medical qualification granted by a medical institution in any country outside India, the norms and tests of the country where the medical institution is situated, will have to be fulfilled for recognition of the degree in that country and the norms that are prescribed by the Indian Medical Council Act, 1956 in regard to Indian medical institutions will have no relevance. So long as the medical institution in a country outside India has granted a medical qualification and that medical qualification is recognized for enrollment as medical practitioner in that country, all that is required for the purpose of enrollment in the medical register in India is qualifying in the screening test in India."

13. It is clear from the above judgment that, the Hon'ble Supreme Court in no uncertain terms has held that so long as the medical institution in a country outside India has granted a medical qualification and that medical qualification is recognized for enrollment as medical practitioner in that country, all that is required for the purpose of enrollment in the medical register in India is qualifying in the screening test in India. There is no doubt in the mind of this Court that all the petitioners have fulfilled this criteria. This factual aspect has also been acknowledged under Clause IX of the note which refers to the students having appended the copies of the screening test passing certificates.

14. The Tamil Nadu Medical Council has filed a status report. Mr.G.Sankaran, learned Standing Counsel appearing on behalf of the Medical Council fairly submitted that, the present case cannot be treated as an adversarial litigation and this Court must only ensure that the standards of medical education is maintained and at the same time, the interests of the students must also be taken into consideration. Learned Standing Counsel brought to the notice of this Court the detailed representation that was given by the Tamil Nadu Medical Council on 01.09.2021 by explaining the entire issue and by providing suggestion as to how the students can be made to undergo practical training for a particular period of time in any one of the Government Headquarters Hospital as a special one time measure.

15. The written instructions given by the National Medical Commission clearly shows that the National Medical Commission wants to reiterate their original position that the



practical and clinical training must be done in the physical form and it must be undergone by the students in the same medical university and its affiliated hospitals. It is clear from the stand taken by the National Medical Commission that, it does not contradict the stand taken by the Tamil Nadu Medical Council and both these bodies want to ensure that the prevailing situation should not lead to degradation in the quality of doctors who ultimately pass out and take up practice. The intention behind the concern shown by the National Medical Commission as well as the Tamil Nadu Medical Council is clearly understandable and it has to be taken into consideration by this Court since these are expert bodies and they are taking such a stand keeping in mind the larger public interest involved in this case.

16. In this case, admittedly the petitioners have not undergone the practical and clinical training in physical form. However, they have undergone the course through online mode for the entire duration. Thereby, they have satisfied the requirement under Regulation 4(3) of the Screening Test Regulations. Thereafter, they have applied before the concerned authority seeking to undergo screening test. The concerned authority in the present case is the National Board of Examinations, which conducted the screening test for all the petitioners. The authority has proceeded to issue the screening test passing certificate. A reading of Clause 11 of the Regulations shows that, once a candidate has been issued a screening test passing certificate by the concerned authority, he gets a right to be provisionally registered before the concerned Medical Council.

17. In the present case, the hesitation on the part of the Tamil Nadu Medical Council to provisionally register the students was only on the ground that the students did not fulfill the requirements as per Clause IX of the note issued by the National Medical Commission.

18. If the petitioners are provisionally registered before the Tamil Nadu Medical Council, they have to undergo one year internship (CRRI). This is the period during which the petitioners will be exposed to on-the-job training in various areas. The learned Standing Counsel appearing on behalf of the National Medical Commission also explained this Court the various areas to which the petitioners will be exposed at time of undergoing the internship. Therefore, it is only on completion of the CRRI, the petitioners will ultimately get the completion certificate and only pursuant to the same, they will be issued the permanent registration by the Tamil Nadu Medical Council. Therefore, it is not a case where the petitioners will be allowed to practice without any exposure in the practical and



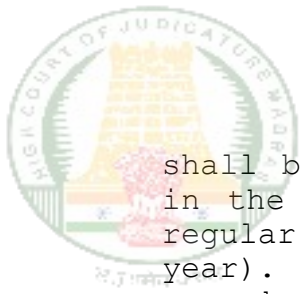
clinical part of their course. It may be true that the practical and clinical training which a student undergoes while doing the MBBS Course is a separate component and what is undergone while doing the internship is a different component altogether. However, in both these phases, the concerned students are exposed to the practical and clinical training and therefore, considering the extraordinary situation, the petitioners must be allowed to go through the (CRRI) after being provisionally registered before the Tamil Nadu Medical Council.

19. There is yet another reason as to why this Court has to come to such a conclusion. The problem has arisen only in the state of Tamil Nadu and in all the other states, the students who have undergone the course in foreign universities and had been given the screening test passing certificate have proceeded to register before the concerned council and are undergoing the CRRI. None of the other council had insisted and come up with the circular by quoting the requirement as stipulated by the National Medical Commission and stopped the students from getting themselves provisionally registered. Therefore what applied to those students must equally apply to the students who belong to this state also. That is the only way in which consistency can be maintained in treating the students during this extraordinary situation. If this Court is to hold that the students will have to go back to the respective universities and undergo the practical and clinical training and get the certificate and only thereafter, they will be considered for provisional registration, this has to be applied across the board throughout India and it will lead to a very chaotic situation. The clock cannot be put back and those students who have already been given provisional registration in other States cannot be asked to get back to the respective universities to undergo the practical and clinical training midway during their internship.

20. Therefore, this Court wants to strike a balance in spite of the specific stand that was taken by National Medical Commission. Hence, this Court is inclined to clarify the earlier order passed on 29.07.2021 by adding the following directions:

(a) the petitioners who submit their applications to the Tamil Nadu Medical Council shall be provisionally registered and they shall be permitted to undergo the internship (CRRI);

(b) Taking into consideration the fact that the petitioners had not undergone the practical and clinical training during the MBBS Course in physical form in the medical university where they had undergone the course, there shall be a direction to the effect that the petitioners will undergo the internship for a period of 14 months and the additional 2 months



shall be utilized for providing practical and clinical training in the initial phase of their internship and thereafter, the regular internship shall follow for a period of 12 months (1 year). This Court is aware of the fact that this requirement goes beyond what is provided under clause 11 of the screening test regulations 2002. However, instead of making the students go back to the respective universities and complete the practical and clinical training which may be impossible in the prevailing situation, it will be a better via-media to make them undergo the same in the initial phase of the internship for a period of 2 months. This will sufficiently satisfy the requirements for maintaining better quality in medical education and at the same time safeguarding the interest of the students;

(c) It is made clear that all these directions issued by this Court are peculiar to the given situation and this can never be taken as a precedent in future. The Tamil Nadu Medical Council shall ensure that the students who apply for provisional registration are possessing screening test passing certificate issued by the concerned authority and only thereafter register them provisionally, and:

(d) This Court expects that this order will be made applicable to all the students who are similarly placed and they are not made to knock the doors of this Court.

21. This clarification order shall form part of the final orders already passed in the above Writ Petitions.

Ub

20/09/2021

Sd/-
Assistant Registrar (CS-II)

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Sub Assistant Registrar

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To

1. The Secretary to Govt.
State of TamilNadu
Health and Family Welfare Department,
Fort St. George
Secretariat, Chennai-600 009

To be substituted
for the order
already despatched
on 17/09/2021



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2. The Chairman,
The National Medical Commission
Sector-8, Pocket 14,
Dwarka Phase-1, New Delhi-110 077.

3. The Registrar
The TamilNadu Medical Council,
No.914, Poonamallee High Road,
Amaravathi Nagar, Arumbakkam,
Chennai-600 106.

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.39806

+1cc to the Government Pleader, S.R.No.40074

W.P.No.16823 of 2021

KG(CO)
SU(31/08/2021)

srg 23/09/2021