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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.24404 OF 2021

AND

W.M.P.NOS.25717 & 25718 OF 2021

Sree Abirami Charitable Trust,
33, Madhu Karai Road,
Sundarapuram, Coimbatore,
Tamil Nadu - 641 021.
Established and Administering
Sree Abirami College of Pharmacy,
Machegoundanpalayam,
Seerapalayam Village,
Eachnari Post,
Coimbatore - 641 021.
Rep. by its Chairman,
Dr.P.Periyaswamy.

... Petitioner

.Vs.

1. The Registrar,
Tamil Nadu Dr.M.G.R.Medical University,
69, Anna Salai, Guindy,
Chennai - 600 032.
2. The Pharmacy Council of India,
Rep. 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 Government of Tamil Nadu,
Rep. by its Secretary,
Health and Family Welfare Department,
Fort St.George,
Chennai - 600 009.

... Respondents



PRAYER:-

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 order passed by the 1st Respondent in Rc.No.Affln.1(4)/27811/2017 dated 03.08.2021 quash the same and direct the 1st Respondent to grant consent of affiliation to the petitioner College to start additional courses namely M.Pharm (three branches namely 1. M.Pharm (Pharmaceutics) 2. M.Pharm (Pharmacetutical Analysis) 3. M.Pharm (Pharmacology and Pharm.D.) for the academic year 2022-2023 without insisting Essentiality Certificate from the Government.

For Petitioner : Mr.Mukunth

For Respondents : Mr.D.Ravichander
Special Government Pleader
(Higher Education) for R1

Mr.M.T.Arunan,
Standing Counsel for R2

Mr.U.Baranidharan
Additional Government Pleader
For R3

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 1st Respondent in Rc.No.Affln.1(4)/27811/2017 dated 03.08.2021 and quash the same and direct the 1st Respondent to grant consent of affiliation to the petitioner College to start additional courses

2. The case of the petitioner is that the petitioner is the educational agency, Sree Abirami Charitable Trust, who applied to the Government of Tamil Nadu to start a four years Bachelor of Pharmacy Degree Course (B.Pharm) at Machegoundanpalayam, Seerapalayam Village, Eachnari Post, Coimbatore 641 021, under the name and style of Sree Abirami College of Pharmacy from the academic year 2014-15, with an intake of 60 seats. The Government of Tamil Nadu granted permission to start four year B.Pharm Degree Course from the academic year 2014-15 with an annual intake of 60 students. Originally both All India Council for Technical Education (AICTE) and the Pharmacy Council of India, had granted approval to start B.Pharm Course with an intake of 50 seats and 60 seats respectively. Based on the



approval granted by AICTE, the 1st respondent University granted affiliation with an intake of 50 students and the said order was challenged in W.P.No.26455 of 2017, before this Court and this Court vide order dated 10.10.2017, quashed the order passed by the 1st respondent and directed the 1st respondent to grant affiliation for an intake of 60 seats for the academic year 2017-18. Thereafter, All India Council for Technical Education and the Pharmacy Council of India granted approval for an intake of 100 students for the academic year 2018-19 vide orders dated 10.04.2018 and 08.08.2018. Though the said order was passed, the 1st respondent has rejected the application to enhance the provisional affiliation from 60 to 100 seats. Hence, the same was challenged in W.P.No.16464 of 2018 and this Court vide order dated 17.07.2018, allowed the petition in favour of the petitioner and the petitioner College has been granted affiliation by the 1st respondent University upto the academic year 2020-21, with an intake of 100 seats for conducting B.Pharm Degree course. While such being the position, as per the Scheme framed under Regulations of the Master of Pharmach (M.Pharm) Course Regulation 2014 dated 18.01.2021 and Scheme framed under Regulation 9 of the Pharm.D Regulations 2008, Institutions which are approved by the Pharmacy Council of India for B.Pharm. Course under Section 12 of the Pharmacy Act 1948, for the purpose of Registration as a Pharmacist, are eligible to apply to the 2nd respondent Pharmacy Council of India for starting M.Pharm. And Pharm. D Courses and the pre-requisite mandatory documents to be submitted as per the said Regulations are consent of affiliation of examining authority (1st respondent University) for M.Pharm and MOU with 300 bedded hospital.

3. The 1st respondent University is an independent Statutory Body created under the Statute and its actions are governed by the Act, Regulation, Statutes and Ordinance and the affiliation is governed by the Tamil Nadu Dr.M.G.R.Medical University (affiliation of Pharmacy College) Statutes B.Pharmacy/M.Pharmacy and with respect of affiliation of Pharm.D. Courses, the 1st respondent only has a regulation named, Regulation of Pharm.D and Pharm.D.(Post Baccalaureate Course) 2008.

4. In such view of the matters, the petitioner College applied vide letter dated 27.07.2021, requesting the 1st respondent University to issue certificate of registration and consent of affiliation for M.Pharm (3 branches namely 1.M.Pharm.(Pharmaceutics), 2.M.Pharm.(Pharmaceutical Analysis), 3.M.Pharm.(Pharmacology) and Pharm.D., for academic year 2022-23. The 1st respondent vide impugned order dated 03.08.2021, returning the applications due to non submission of essentiality certificate from the Government, as per the guidelines issued in the G.O.Ms.No.228 and 229, Health and Family Welfare (PME-2) Department, Secretariat, Chennai. Challenging the said order,



the present petition is filed.

5. The learned counsel appearing for the petitioner submitted that the issue of obtaining essentiality certificate/ no objection certificate by way of the said Government Order from the Government for starting M.Pharm. Course and Pharm.D., Pharm. D (PB) Courses has already been settled by this Court in W.P.No.14834 of 2020, dated 10.11.2020 and W.A.No.3534 of 2019, dated 16.06.2020, wherein it was held that G.O./Essentiality Certificate/NOC from the Government of Tamil Nadu is not required as the Regulation by the Pharmacy Council of India, the 2nd respondent herein does not require as the 1st respondent is an independent statutory body and therefore, the G.O. Referred in the impugned order will not confer powers to the University to insist on the Essentiality certificate from the Government. Therefore, it is not obligatory on the part of the petitioner to obtain Essentiality Certificate from the State Government and produce before the first respondent, who is a Statutory Body, for processing the consent of affiliation.

6. Further, the learned counsel appearing for the petitioner submitted that the issue involved in the present petition is no longer res integra as the Single Bench as well as Division Bench of this Court in W.P.No.14834 of 2020 and W.A.No.3534 of 2019, respectively, have made clear 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 for increase in intake either in the B.Pharm or M.Pharm Course in an existing Institution. Hence, the order, returning the application for want of essentiality certificate from the Government, is not sustainable and prays for quashment of the same.

7. Mr.D.Ravichandar, learned Special Government Pleader appearing for the 1st respondent has not disputed the facts submitted by the learned counsel appearing for the petitioner and further brought the fact to the notice of this Court that the State Government has decided to prefer an appeal against the order of the Division Bench in W.A.No.3534/2019.

8. This Court has carefully considered the rival submissions and also perused the materials placed before it.

9. The Division Bench of this Court in the case in W.A.No.3534 of 2019 (Annai J.K.K.Sampoarani Ammal Charitable Trust, rep.by its Management Trustee vs. the Registrar, Tamil Nadu Dr.M.G.R.Medical University, Chennai), held as follows:

'17. The State Government lacks power to insist upon obtaining of Essentiality Certificate



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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.''

and the learned Single Judge in the case in W.P.No.14834 of 2020, dated 10.11.2020 (PGP Educational and Welfare Society, rep.by its Secretary Mr.K.Kandasamy Vs. The Registrar, Tamil Nadu Dr.M.G.R.Medical University, Chennai), held as follows:

'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.

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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.''

10. In view of the aforesaid ratio laid by the Hon'ble Division Bench and the learned Single Bench of this Court, the impugned order passed by the 1st Respondent in Rc.No.Affln.1(4)/27811/2017, dated 03.08.2021, is quashed and the 1st respondent is directed to process the applications submitted by the petitioner dated 27.07.2021 for grant of consent of affiliation for starting M.Pharm. course (3 branches namely 1.M.Pharm. (Pharmaceutics), 2.M.Pharm.(Pharmaceutical Analysis), 3.M.Pharm. (Pharmacology) and Pharm.D., for academic year 2022-23 on merits and in accordance with law and pass appropriate orders, within a period of two weeks from the date of receipt of a copy of this order. This writ petition is accordingly disposed of with the above observations. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
Tamil Nadu Dr.M.G.R.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 Secretary,
The Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.

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+1cc to Mr.D.Ravichander, Advocate, S.R.No.62161
+1cc to Mr.Mukunth, Advocate, S.R.No.62283
+1cc to Mr.M.T.Arunan, Advocate, S.R.No.62339
+1cc to the Government Pleader, S.R.No.62218

W.P.NO.24404 OF 2021

GPL(CO)
PBS/05/01/2022