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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.1670 of 2022

And

W.M.P.Nos.1813 and 1814 of 2022

Excel College of Pharmacy
Represented by its Chairman

...Petitioner

Vs.

1. Tamil Nadu Dr.MGR Medical University,
Represented by its Registrar,
69, Anna Salai,
Guindy,
Chennai 600 032.
2. The Pharmacy Council of India
Represented 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
Represented by its Secretary,
Health and Family Welfare Department,
Fort Saint George,
Chennai.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records, pertaining to the impugned order passed by the 1st Respondent in Lr.No.Affln.I(1)/15826/2016 dated 13.01.2021 and quash the same and consequently direct the 1st Respondent to grant consent of affiliation to the petitioner college to start additional courses namely M. Pharm (2 branches namely M. Pharm (Pharmaceutics) and M.Pharm (Pharmacy Practice)) and Pharm.D for the academic year 2022-23 without insisting on the Essentiality Certificate from the Government.



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For Petitioner : Mr.J.Vinoth

For Respondents : Mr.D.Ravichandran for R1
Special Government Pleader
Mr.C.Jeyaprakash for R3
Government Advocate

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records, pertaining to the impugned order passed by the first respondent in Lr.No.Affln.I(1)/15826/2016 dated 13.01.2021 and to quash the same and to consequently direct the first respondent to grant consent of affiliation to the petitioner college to start additional courses namely M.Pharm (2 branches namely M. Pharm (Pharmaceutics) and M.Pharm (Pharmacy Practice)) and Pharm.D for the academic year 2022-23 without insisting on the Essentiality Certificate from the Government.

2.The case of the petitioner is that the petitioner institution was established under the management and administration of Sri.Rengaswamy Educational Trust and is affiliated with the first respondent with the approved intake of 100 seats from the Pharmacy Council of India/ second respondent. The affiliation accorded by the first respondent in favour of the petitioner institution is subsisting and is in force for the academic year 2021 - 22.

3.The further case of the petitioner is that as per the Scheme framed under the Regulations of the Master of Pharmacy (M.Pharm) Course Regulation 2014 and Scheme framed under Regulation 9 of the Pharm.D Regulations 2008, institutions which were 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 second respondent for starting M.Pharm and Pharm.D Courses. Accordingly, the petitioner institution applied to the first respondent for its consent to start M.Pharm (2 branches namely M. Pharm (Pharmaceutics) and M.Pharm (Pharmacy Practice)) and Pharm.D courses for the academic year 2022-23, however, the first respondent returned the petitioner's application on the ground that the petitioner institution did not submit the Essentiality Certificate from the Government. Challenging the same, the petitioner has filed this writ petition.



4.The learned counsel appearing for the petitioner submitted that the issue involved in this writ petition is no longer res integra and further submitted that already the Hon'ble Division Bench of this Court had dealt with similar issue in W.A.No.3534 of 2019 (Annai J.K.K.Sampoorani Ammal Charitable Trust Represented by its Management Trustee Vs. The Tamil Nadu Dr.MGR Medical University) and further submitted that the said decision was followed by this Court in W.P.No.24404 of 2021 (Sree Abirami Charitable Trust Vs. The Registrar, Tamil Nadu Dr.MGR Medical University).

5.The learned Special Government Pleader appearing for the first respondent did not dispute the facts submitted by the learned counsel appearing for the petitioner, however, he sought time to file a formal counter and submitted that the petitioner has not produced the permission granted to the petitioner under Section 12 of the Pharmacy Act and further submitted that if the petitioner produce the same, there is no impediment for the first respondent to consider the petitioner's request without insisting for the Essentiality Certificate.

6.Heard the arguments advanced on either side and perused the materials placed on record.

7.The issue involved in this writ petition is no longer res integra. Already the Hon'ble Division Bench of this Court had dealt with similar issue in W.A.No.3534 of 2019 (Annai J.K.K.Sampoorani Ammal Charitable Trust Represented by its Management Trustee Vs. The Tamil Nadu Dr.MGR Medical University) on 16.06.2020 and the said decision was followed by this Court in W.P.No.24404 of 2021 (Sree Abirami Charitable Trust Vs. The Registrar, Tamil Nadu Dr.MGR Medical University) dated 29.11.2021.

8.For better appreciation, the relevant portion of W.P.No.24404 of 2021 (Sree Abirami Charitable Trust Vs. The Registrar, Tamil

Nadu Dr.MGR Medical University) dated 29.11.2021 is extracted hereunder:

"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.Sampoorani Ammal Charitable Trust, rep.by its Management Trustee vs. the Registrar, Tamil Nadu Dr.M.G.R.Medical University, Chennai), held as follows:

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''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.''

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:



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''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.

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."



9. In view of the above, this Court is inclined to allow this writ petition. The petitioner is directed to produce the permission granted to the petitioner under Section 12 of the Pharmacy Act before the first respondent today (01.02.2022) itself. If such permission is produced by the petitioner, the first respondent shall consider the request of the petitioner and pass appropriate orders.

10. The writ petition is allowed on the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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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
NBCC Centre, 3rd Floor,
Plot No.2, Community Centre,
Maa Anandamai Marg,
OKhla Phase I,
New Delhi 110 020.
3. The Secretary, Government of Tamil Nadu
Health and Family Welfare Department,
Fort Saint George,
Chennai.

+1 CC to Mr.J.Vinoth, Advocate sr 5854

+1 CC to The Government Pleader sr 6451(21/03/2022)

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And

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NK(CO)

SP(01/02/2022)