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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.6628 of 2022

&

WMP.Nos.6710 & 6711 of 2022

Rabindharanath Tagore Educational Charitable Trust  
Established and Administering Vivekananda  
Pharmacy College for Women, Veerrachipalayam,  
Sankari West, Sankari Taluk,  
Salem District, Tamil Nadu - 637 303,  
Rep. By its Chairman, Dr.M.Karunannithi.

... Petitioner

Vs

1.The Registrar,  
Tamil Nadu Dr.MGR Medical University,  
69, Anna Salai, Guindy,  
Chennai - 600 032.

2.The Pharmacy Council of India,  
Rep. By the Secretary cum Registrar,  
NBCC Centre, 3<sup>rd</sup> 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:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1<sup>st</sup> respondent in Rc.No.Affln.1(4)/65719/2017 dated 01.03.2022 quash the same and direct the 1<sup>st</sup> respondent to grant consent of affiliation to the Petitioner College to start additional courses namely Pharm.D., for the academic year 2022-2023 without insisting Essential Certificate from the Government.



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For Petitioner : Mr.D.Prabhu Mukunth Arunkumar

For Respondents : Mr.Elaya Rajkumar  
for Mr.Ramalingam,  
Asst Standing Counsel - R1

Mr.M.T.Arunan,  
Central Government Standing Counsel - R2

Mr.C.Jayaprakash  
Government Advocate - R3

### O R D E R

Mr.Elaya Rajkumar, learned Counsel representing for Mr.Ramalingam, learned Additional Standing Counsel accepts notice for R1, Mr.M.T.Arunan, learned Central Government Standing Counsel accepts notice for R2 and Mr.C.Jayaprakash, learned Government Advocate accepts notice for R3 and all are armed with instructions to proceed with the matter finally. Hence, by consent of all the counsel, this writ petition is disposed finally even at the stage of admission.

2.The petitioner claims to be a charitable trust that had applied to the Government of Tamil Nadu proposing to commence a Bachelor's degree course in Pharmacy (B.Pharm) at Veerrachipalayam, Sankari West, Sankari Taluk, Salem District, Tamil Nadu - 637 303, under the name and style of Vivekananda Pharmacy College for Women from academic year 2017-2018 with an intake of 60 seats. Permission as sought for was granted under G.O.Ms.No.287 dated 29.11.2016.

3.The petitioner has obtained approval from both the All India Council for Technical Education and the Pharmacy Council of India. The intake as sanctioned, was 50 and 60 seats respectively by the aforesaid two entities vide orders dated 30.04.2017 and 07/08.09.2017. R1, as a consequence, granted affiliation with an intake of 50 seats vide order dated 03.10.2017.

4. The aforesaid orders of AICTE and affiliation granted by R1 came to be challenged in W.P.No.27105 of 2017 before this Court and this Court, vide order dated 23.10.2017, quashed the aforesaid orders directing R1 to grant affiliation as sought for, for 60 seats. This order has been given effect to and the seat matrix accordingly amended.



5. For academic year 2018-19, approval has been granted for intake of 100 students by the AICTE, in spite of which, R1 has proposed to reject the application for enhancement of seats, which order came to be challenged in W.P.No.21361 of 2018 before this Court. This Writ Petition came to be allowed by this Court vide order dated 18.09.2018 upholding the enhancement of seats as sought. This order has also been given effect to.

6. The petitioner is thus engaged in the conduct of classes on a regular basis. While this is so, upon successful completion of course by the first batch of students, the petitioner sought approval for conduct of Pharm.D course, for which one of the pre-requisites is the consent of the examining authority, in this case, R1.

7. According to the petitioner, there is no pre-requisite for obtaining Essentiality Certificate / NOC from the Government of Tamil Nadu, conditional upon which R1 is required to grant approval, in spite of which, the petitioner's application dated 10.02.2022 for issuing consent for affiliation for Pharm.D. course for the academic year 2022-2023, came to be returned on 01.03.2022 citing non-submission of Essentiality Certificate. Inter-alia, R1 refers to G.O.Ms.Nos.228 and 229 dated 04.05.2020.

8. The necessity or otherwise for obtaining Essentiality Certificate from the State for the conduct of Pharm.D course had been raised before this Court in the case of AnnaiJ.K.K.SampooraniAmmal Charitable Trust Vs Tamil Nadu Dr.MGR Medical University and others (W.A.No.3534 of 2019) and this Court, vide order dated 16.06.2020, to which I am party, accepted the contention of the petitioner holding that there was no such necessity.

9. The operative portion of the order at paragraphs 14 to 17 are extracted below:

".....

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.



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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."

10. This order has, admittedly, attained finality as confirmed by Mr.Rajkumar, learned counsel for R1 and has been followed by several learned single Judges of this Court, one such being the case of SreeAbirami Charitable Trust Vs The Tamil Nadu Dr.MGR Medical University (W.P.No.24404 of 2021 order dated 29.11.2021). Incidentally, it appears that the respondents have challenged the aforesaid order of the learned single Judge, while accepting the order of Division Bench that has been applied by the learned Single Judge.

11. In view of the discussion as aforesaid, I see no merit in the impugned order requiring the petitioner to obtain Essentiality Certificate from the State. The impugned order is set aside and this Writ Petition allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sl/kbs



To

1. The Registrar,  
Tamil Nadu Dr.MGR Medical University,  
69, Anna Salai, Guindy,  
Chennai - 600 032.

2. The Secretary cum Registrar,  
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 St.George, Chennai - 600 009.

+1cc to Mr.D.Prabhu Mukunth Arunkumar, Advocate, S.R.No.19331  
+1cc to Mr.M.T.Arunan, Advocate, S.R.No.20346  
+1cc to the Government Pleader, S.R.No.19448

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NSK 02/05/2022