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W.P.No.37488 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.37488 of 2016
and
W.M.P.No.32107 of 2016

Hahnemann Homoeopathic Medical Trust,
Rep. by its Managing Trustee,
A.Sivasubramani, B.E.,
Managing Trustee,
6/177-A, Mount Poonamallee Road,
Karambakkam, Porur, Chennai – 600 116.

... Petitioner

VS.

- 1.The Government of India
Rep. By its Secretary,
Ministry Ayurveda, Yoga & Naturopathy
Unani, Siddha & Homoeopathy (AYUSH)
AYUSH Bhawan, 'B' Block, GPO Complex,
INA, New Delhi - 110 023.
- 2.The Central Council of Homoeopathy (CCH)
Rep. By its Secretary,
Jawaharlal Nehru Bhartiya Chikitsa Avum,
Homoeopathy Anusandhan Bhawan,
No.61-65, Institutional Area,
Opp to “D” Block, Janakpuri, New Delhi 110 058.



W.P.No.37488 of 2016

WEB COPY

3. The Commissioner,
Directorate of Indian Medicines & Homoeopathy
Aurmbakkam, Chennai 600 106.

4. Tamil Nadu Dr.M.G.R.Medical University,
Rep. by its Registrar, 69, Anna Salai, Guindy,
Chennai 600 032.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned order of the 1st respondent Ministry in F.No.R-17014/159/2013 – EP(H), dated 11.08.2016 and the consequential order of the 4th respondent the Tamil Nadu Dr.M.G.R.Medical University in Rc.No.Affln.I(3)/18301/2015-2 dated 18.10.2016 and quash the same.

For Petitioner : Mr.G.Masilamani, Senior Counsel
for Mr.D.Prabhu Mukunth Arunkumar

For Respondents : Mr.N.Ramesh, Senior Panel Counsel
for RR 1& 2

Mr.P.Anandakumar, Govt. Advocate for R3

Mr.P.Elayarajkumar
for M/s.Ramalingam & Associates, for R4



W.P.No.37488 of 2016

WEB COPY

ORDER

The challenge in this writ petition is to the communication of the Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha & Homoeopathy (AYUSH) addressed to the Registrar of the Tamil Nadu Dr. M.G.R. Medical University stating that the seat matrix in the Homoeopathy College run by the petitioner Trust should be considered as 50.

2. The petitioner Trust runs a Homoeopathy College in the name of Venkateswara Homoeopathic Medical College. Permission was granted to start the College on 03.05.1999 under G.O.Ms.No.172. The Homoeopathy Council granted permission for admission of 50 students. Subsequently, the 2nd respondent by proceeding dated 03.10.2002 increased the number of students to 100, upon the request of the petitioner. However, the Homoeopathy Central Council Act was amended and Section 12A was introduced, which vested the power of granting permission to establish Homoeopathy Colleges, with the AYUSH Ministry. This Amended Act came into force from 28.01.2003.



W.P.No.37488 of 2016

WEB COPY

3. Despite the fact that there were earlier clarifications issued by the Ministry stating that the Colleges that were in existence need not apply again to the Ministry, the Ministry addressed a communication dated 07.01.2014 stating that Section 12A of the Homoeopathy Central Council Act, 1973 as amended would apply for increase of admission capacity also and the petitioner Trust was required to apply to the Ministry under Section 12A of the Act.

4. This letter was challenged by the petitioner Trust in W.P.No.2749 of 2014 before this Court. The essential contention therein was that the amendment is only prospective and it will not apply to colleges that are already in existence. Permission granted to admit more than 50 students will remain unaffected. This Court by order dated 30.04.2015 allowed the writ petition holding that the approval granted prior to the amendment cannot be nullified by virtue of the amendment. In essence it was held that the amendment would be prospective and it will not have the effect of invalidating the approvals granted earlier.



W.P.No.37488 of 2016

5. This order was challenged in W.A.No.660 of 2017. A Division Bench of this Court by the judgment dated 17.08.2017 dismissed the writ appeal. The judgment in the writ appeal has become final. The order impugned in this writ petition had been passed on 11.08.2016 and the consequential communication of the University is dated 18.10.2016. Evidently these orders came to be passed when the writ appeals filed by the Ministry were pending in this Court. Now, that the writ appeals have been dismissed and the conclusion that Section 12A is only prospective in operation has become final, these orders which were passed during the pendency of the writ appeals will have to be necessarily set aside, in view of the conclusion reached by the Division Bench that Section 12A cannot be applied to whatever has been done prior to the amendment.

6. The writ petition will therefore stand **allowed**. The orders impugned will stand quashed. No costs. Consequently, the connected writ miscellaneous petition is closed.

11.07.2022

dsa
Index: No
Internet: Yes
Speaking order

5/7



W.P.No.37488 of 2016

WEB COPY

- To
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