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W.P. No.6428 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.6428 of 2023

and

W.M.P. Nos.6459 and 6460 of 2023 and 8659 of 2023

Sidham Trust

Rep. by its Managing Trustee

Dr. D.R. Sudhamani

... Petitioner

Vs

1. Under Secretary to the Government of India,
Ministry of Ayush,
Government of India,
Ayush Bhawan,
'B' Block,
GPO Complex, INA,
New Delhi – 110 023.

2. Secretary,
National Commission for Indian System Medicine,
61-65, Institutional Area,
'D' Block,
Janakpuri,
New Delhi – 110 058.

3. President,
Medical Assessment and Rating Board for Indian System of Medicine,
National Commission for Indian System Medicine,
61-65, Institutional Area,
'D' Block, Janakpuri,

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New Delhi – 110 058.

4. State of Tamil Nadu,
Rep. By its Principal Secretary (Health and Family
Welfare Department),
Secretariat,
Chennai.

5. The Registrar,
Tamil Nadu Dr. M.G.R. Medical University,
No.69, Anna Salai,
Guindy,
Chennai – 600 032.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the Order dated 01.02.2023 passed by the 1st respondent in File No.P-14012/1/2023 confirming the Order dated 05.01.2023 passed by the 2nd respondent in Ref. No.NCISM/Comm. / Appeal (2022-23) confirming the Order dated 26.10.2022 passed by the 3rd respondent in Ref. No.18-12/sec 29/2022 –23 / SSSC disapproving the petitioner's application for approval and quash the same and consequentially directing the respondents to issue Letter of Indent to start Sudha Saseendran Siddha Medical College and Hospital, Mecode, Kaliakkavilai Post, Kanyakumari District, Tamil Nadu with 50 seats in UG(BSMS) Course for the academic Session 2022-23.

For Petitioner : Ms. AL. Gandhimathi, SC, for
for Mr.J.Titus Enock



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For Respondents

: Mr. AR.L.Sundaresan,
Additional Solicitor General – I
Assisted by
Mr.Venkatasamy Babu,
Senior Panel Counsel for R1

Mr.K.Vellaiyaraj, for
M/s.V.K. Raj Law Chambers
for R2 & R3

Mr.K.M.D. Muhilan,
Addl. Govt. Pleader for R4

Mr.Imayavarman for
M/s.Ramalingam & Assoc. for R5

ORDER

This writ petition has been filed aggrieved by the order passed by the original authority dated 26.10.2022, which is confirmed by the appellate authorities and for a consequential direction.

2. It is the case of the petitioner that based on the recommendation accorded by the Government in G.O. Ms. No.142, dated 04.04.2001, the petitioner Trust has filed an application for approval of Siddha Medical College before the 3rd respondent, who is the Original Authority. However, their application has been rejected due to non-existence of fully functional Siddha hospital and thereby certain defects have been pointed out. Aggrieved by the same, they filed an appeal before the second respondent,

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who is the appellate authority and the same was dismissed for the academic year 2022-2023 owing to non-fulfilment of the pre-requisite condition mentioned in MSR – 2016 i.e., Regulation 10(a)(i), at the time of submission of application. Challenging the said order passed by the 2nd respondent / appellate authority, the petitioner preferred second appeal before the 1st respondent, who is the second appellate authority, which has also ended in dismissal due to certain shortcomings mentioned therein. Aggrieved over the same, the petitioner has approached this Court by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India with the aforesaid prayer.

3. Ms.AL. Gandhimathi, learned Senior Counsel appearing for the Petitioner submitted that the respondents failed to consider the report of the Inspection Committee stating that the petitioner Trust is a fully functional Hospital and having necessary infrastructure. She further submitted that the appellate authorities have not considered the documents produced by the petitioner and they merely confirmed the orders of the original authority, who has mechanically passed the impugned order.



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4. More so, she placed her submissions in respect of the requirements stated by the respondents in the impugned orders, particularly for Registration of the Hospital for two years prior to the date of application is contrary to Rule 10(1)(a)(i) of the Indian Medicine Central Council (Requirements of Minimum Standard for Under-graduate Siddha Colleges and attached Hospitals) Regulations, 2016. In view of the aforesaid lapses on the part of the respondents, she submits that the impugned orders are unsustainable and illegal and thus, she prays for quashing of the same as well as for issuance of appropriate directions in the above regard.

5. Per contra, Mr.ARL.Sundaresan, learned Additional Solicitor General, assisted by Mr.Venkatasamy Babu, learned Senior Panel Counsel appearing for the 1st respondent vehemently opposed the contentions raised by the learned Senior Counsel for the petitioner and submitted that the petitioner has not enclosed Registration Certification at the time of submitting their application. That being so, without establishing compliance



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on the part of the petitioner, stating that impugned orders having been passed by the respondents without considering the documents is highly unreasonable.

6. He drew the attention of this Court to Section 11 of the Clinical Establishments (Registration and Regulation) Act, 2010, which mandates that **"No person shall run a clinical establishment unless it has been duly registered in accordance with the provisions of this Act"**. Thus, he submitted that seeking approval prior to the date of Registration Certificate will naturally lead to non consideration and accordingly, the respondents have rightly passed the impugned orders. He further submitted that even though the petitioner may put forth their contention that the application seeking approval has been forwarded in the year 2019, it is to be noted that the Registration Certificate has been obtained only in the year 2022. Furthermore, the defects pointed out by the respondents in the impugned orders have not been rectified by the petitioner. In view of the above, the impugned orders are sustainable and he prays this Court not to entertain this writ petition.



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7. Mr.K.Vellaiyaraj, learned counsel appearing for the respondents 2 and 3 has also sailed along with the submissions placed by the learned Additional Solicitor General appearing for the 1st respondent and prays for dismissal of this writ petition.

8. This Court paid its undivided attention to the arguments advanced by the learned counsel on either side and perused the materials placed on record.

9. It is not in dispute that the petitioner Trust submitted their application seeking for approval of their College on 28.08.2019 and their Date of Registration Certificate was only on 05.01.2022. However, it is the case of the petitioner that the act of respondents is contrary to Rule 10(1)(a)(i) of Indian Medicine Central Council (Requirements of Minimum Standard for Under-graduate Siddha Colleges and attached Hospitals) Regulations, 2016, which necessitate this Court to peruse the records in depth and for better appreciation, the said Rule is extracted hereunder

10. Phase-wise specific requirements of new colleges (1)....

a(i) at the time of submission of application, a fully



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developed hospital building as specified in regulations 4 and 5 with functional Siddha hospital prior two years from the date of application, having appropriate number of beds, bed occupancy and Out-Patient Department attendance corresponding to the annual students intake capacity as specified in the requisite sub-regulation (2) of regulation 7

10. The Clinical Establishments (Registration and Regulation) Act, 2010, which prescribes registration is mandatory came into effect in the year 2010, it has been notified in the official gazette only in the year 2019. It can be safely inferred that to fulfil the mandatory condition, stated supra, the petitioner Trust submitted their application in the year 2019. More so, it is clear that even though they submitted the application for approval of their College before the Competent Authority in the year 2019, the same was under process and they obtained Registration Certificate only in the year 2022. There can be no dispute that the petitioner Trust has to satisfy the genuine functioning of their Hospital, which is a minimum requirement as per MSR-2016. The petitioner not having produced the relevant materials to show the genuine functioning of the hospital along with the Registration Certificate, the issuance of impugned orders cannot be questioned, as they



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are very well sustainable. Hence, the prayer sought for by the petitioner for the academic Year 2022-2023, cannot be granted, more so, the session has already ended.

11. When the Court expressed the above opinion, learned Senior Counsel for the petitioner submitted that considering the seat matrix prevailing as of now, this Court may permit the petitioner to make out an application for the year 2023-2024, for which, learned counsel appearing on the side of the respondents have no objection for issuance of such a direction, but their stand is that the petitioner has to rectify the defects pointed out in the impugned orders and only after completing the formalities / inspection, the respondents can act further.

12. In the abovesaid background, since the petitioner Trust has obtained Registration Certificate in the year 2022, there is no legal impediment for this Court to permit the petitioner to submit a fresh application seeking approval for their College for the academic year 2023-24, along with requisite documents, after rectifying the defects pointed out



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by the respondents within the time frame to be fixed by this Court.

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13. In the above circumstances, this Court directs the petitioner to submit an appropriate application before the respondents seeking for approval for their College for the academic year 2023-24, along with requisite fee and necessary documents after rectifying the defects pointed out by the respondents, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said application, the respondents, shall pass appropriate orders on merits and in accordance with law, within a period of four weeks thereafter. The respondents are also directed to pass appropriate orders, only after due verification/inspection and subject to rectification of defects pointed out, the approval shall be accorded. In case of failure to fulfil the requisite procedures/formalities, the respondents are at liberty to pass appropriate orders on the application of the petitioner.

14. With the aforesaid observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

27.03.2023



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Note to office : Issue order copy on 03.04.2023

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Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

To

1.The Under Secretary to the Government of India,
Ministry of Ayush,
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Ayush Bhawan,
'B' Block,
GPO Complex, INA,
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2. The Secretary,
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M.DHANDAPANI, J.

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