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W.P.No.10603 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.10603 of 2023
and
W.M.P.No.10557 of 2023**

Indra Ganesan Educational and Charitable Trust,
Represented by its Chairman,
G.Rajasekaran.
IG Valley, NH 45B, Madurai Main Road, Manikandam,
Tiruchirappalli – 620 012,
Established and Administering,
Shri Indra Ganesan Institute of Medical Science,
College of Pharmacy,
Madurai Main Road,
Manikandam Union,
Srirangam Taluk,
Tiruchirappalli – 620 012.

... Petitioner

Vs.

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



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2. The Pharmacy Council

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 St.George,
Chennai – 600 009.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent in Rc.No.Affln.1(4)/27811/2017, dated 20.03.2023 quash the same and direct the first respondent to grant consent of affiliation to the petitioner College to start additional courses, namely, M.Pharm (Pharmaceutics and Pharmaceutical Analysis) and Pharm D., for the academic year 2023-2024 without insisting Essentiality Certificate from the Government.

For Petitioner : Mr.D.Prabhu Mukunth Arun Kumar

For Respondents : Mr.Elayaraj Kumar for R1
for M/s.Ramalingam & Associates

Mr.M.T.Arunan
Standing Counsel for R2

Mr.E.Veda Bagath Singh
Special Government Pleader for R3



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ORDER

This Writ Petition has been filed to call for the records of the impugned order passed by the first respondent in Rc.No.Affln.1(4)/27811/2017, dated 20.03.2023, quash the same and direct the first respondent to grant consent of affiliation to the petitioner College to start additional courses, namely, M.Pharm., (Pharmaceutics and Pharmaceutical Analysis) and Pharm.D for the academic year 2023-2024 without insisting Essentiality Certificate from the Government.

2. By consent of both parties, the Writ Petition is taken up for final hearing at the admission stage itself.

3. The learned counsel appearing for the petitioner would submit that the petitioner is the educational agency, Indra Ganesan Educational and Charitable Trust, who applied to the Government of Tamil Nadu to start additional courses, namely, M.Pharm., (Pharmaceutics and Pharmaceutical Analysis) and Pharm.D for the academic year 2023-24. As per the Scheme



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framed under Regulations of the Master of Pharmacy (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 second respondent / Pharmacy Counsel 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 (first respondent University) and MOU with 300 bedded hospital.

4. The first 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 first respondent University only has a Regulation



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named, Regulation of Pharm.D and Pharm.D (Post Baccalaureate Courses) 2008. As per the statutes for affiliation and the M.G.R.University Act, there is no condition to obtain essentiality certificate / NOC from the Government of Tamil Nadu.

5. In such view of the matter, the petitioner College, vide letter dated 15.02.2023, requested the first respondent University to issue letter of consent of affiliation / certificate of registration for M.Pharm., (Pharmaceutics and Pharmaceutical Analysis) and Pharm.D., for the academic year 2023-24. The first respondent, vide impugned order, dated 20.03.2023 returned the application due to non submission of essentiality certificate from the Government, as per the guidelines issued in G.O.(Ms)No.228 and 229, Health and Family Welfare (PME-2) Department, dated 04.05.2021. Challenging the said order, the present Writ Petition has been filed.



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6. The learned counsel appearing for the petitioner further submits that the issue that arises in the present Writ Petition is no longer *res integra* as this Court in W.P.No.14834 of 2020, vide order dated 10.11.2020 (***PGP Educational and Welfare Society, Represented by its Secretary Mr.K.Kandasamy Vs. The Registrar, Tamil Nadu Dr.M.G.R.Medical University, Chennai***) which view has since been affirmed by the Division Bench of this Court in W.A.No.3534 of 2019 (***Annai J.K.K.Sampoorani Ammal Charitable Trust, Represented by its Management Trustee Vs. The Registrar, Tamil Nadu Dr.MGR Medical University, Chennai and others***), have made it 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 impugned in the present Writ Petition for want of essentiality certificate from the Government, is not sustainable and prayed for appropriate orders.



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7. The learned Standing Counsel appearing for the second respondent has not disputed the facts submitted by the learned counsel appearing for the petitioner and fairly submits that the issue has since been settled.

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:

"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



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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.

The aforesaid view has been reiterated by 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***), holding as follows:

"22.In view of the above discussion, this Court is of the considered view that the Scheme framed under the Regulations



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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 first respondent in Rc.No.Affln.1(4)/27811/2017, dated 20.03.2023, is quashed and the matter is remitted back to the first respondent. The first respondent is directed to process the application



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submitted by the petitioner dated 15.02.2023 for grant of affiliation for starting M.Pharm., (Pharmaceutics and Pharmaceutical Analysis) Course and Pharm.D Course for the academic year 2023-2024 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.

11. This Writ Petition is accordingly allowed with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

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69, Anna Salai, Guindy,
Chennai – 600 032.
2. The Secretary-cum-Registrar,
The Pharmacy Council
NBCC Centre, 3rd Floor, Plot No.2,
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