



W.P.(MD)No.5076 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)No.5076 of 2023

Dr.Kalam College of Pharmacy,
represented by its Director,
Mr.Ajit Daniel,
Tanjore District.

... Petitioner

VS.

1.The Registrar,
Tamil Nadu Dr.M.G.R.Medical University,
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 Anandmai 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.

4.The Director,
Directorate of Medical Education,
Kilpauk, Chennai- 600 010.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent in Lr.No.Affln.1(4)/33097/2018, dated 17.02.2023 to quash the same and consequently, to direct the first respondent to issue the Letter of consent to Affiliate the M.Pharm (Pharmacology) and M.Pharm (Pharmaceutical Analysis) without insisting for the NOC or Essentiality certificate from the State Government for starting the courses in the Academic year 2023-24.

For Petitioner	:Mr.P.Srinivas
For R1	:Mr.S.Ramesh
For R2	:Mr.K.R.Laxman
For R3 and R4	:Mr.M.Ramesh
	Government Advocate

ORDER

This Writ Petition has been filed in the nature of Certiorafied Mandamus to call for the records of the first respondent in Lr.No.Affln. 1(4)/33097/2018, dated 17.02.2023 and to quash the same and consequently, to direct the first respondent to issue the Letter of Consent to affiliate the M.Pharm (Pharmacology) and M.Pharm (Pharmaceutical Analysis) without insisting for the NOC or Essentiality Certificate from the State Government for starting the courses in the Academic year



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2023-24.

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2.Heard Mr.P.Srinivas, learned Counsel for the petitioner, Mr.S.Ramesh, learned Counsel for the first respondent, Mr.K.R.Laxman, learned Counsel for the second respondent, Mr.M.Ramesh, learned Government Advocate appearing for the third and fourth respondents.

3.In the affidavit filed in support of this Writ Petition by the Director of the petitioner College, Dr.Kalam College of Pharmacy, Periyannayagipuram Village, Avanam Post, Peravanurani Taluk, Tanjore District, it had been stated that the petitioner College had permission for conducting B.Pharm and D.Pharm courses with the annual intake of 100 and 65 seats respectively. The petitioner had then applied for consent to affiliate the M.Pharm (Pharmacology) and M.Pharm (Pharmaceutical Analysis) to the first respondent/Registrar, Tamil Nadu Dr.M.G.R.Medical University at Chennai. It had been stated that the first respondent had insisted that the petitioner should obtain a No Objection Certificate or an Essentiality Certificate from the State Government.



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4.The learned Counsel for the petitioner placed very strong reliance on the observation of a Division Bench of this Court in similar issue, wherein, the Division Bench had stated that necessity for such certificates are not required. The Division Bench judgment had been delivered in ***W.P.(MD)No.3534 of 2019*** in the case of ***Annai J.K.K.Sampoorni Ammal Charitable Trust represented by its Management Trustee vs the Registrar, Tamil Nadu Dr.M.G.R. Medical University and five others***. The Writ Appellant therein had also obtained necessary approval for starting B.Pharm course and the first respondent, namely, the Registrar, Dr.M.G.R.Medical College University, had insisted upon for production of Essentiality Certificate from the Government of Tamil Nadu. After examining the issues in detail, the Division Bench had relied on the judgment of the Honourable Supreme Court reported in ***Pharmacy Council of India vs Dr.S.K.Toshniwal Educational Trust Vidarbha Insistute of Pharmacy and others [2020 SCC Online SC 296 : 2020 (2) MLJ 656 (SC)]*** and observed as follows:

“13. The scope of Pharmacy Act as well as the All India Council for Technical Education Act came up for consideration before the Hon'ble Supreme Court of India in ***Pharmacy Council of India v. Dr.S.K.Toshniwal Educational Trust Vidarbha Institute of***



Pharmacy and Others [2020 SCC Online SC 296 =2020 (2) MLJ 656](SC)]. In the said decision, the issue involved as to the applicability of the Pharmacy Act, 1948 or All India Council for Technical Education Act, 1987 in relation to the subject of Pharmacy including approval of courses of study, minimum standards of education required for qualification as a Pharmacist, registration as a Pharmacist, regulation of future professional conduct etc and it is relevant to extract para 77 of the said judgment:

"77.Applying the law laid down by this Court in the aforesaid decisions, viz., Maharaja Pratap Singh Bahadur V. Thakur Manmohan Dey [AIR 1966 SC 1931 : 1966 [3] SCR 663], and as observed hereinabove, the Pharmacy Act is a Special Act in the field of pharmacy and it is a complete code in itself in the field of pharmacy, the Pharmacy Act shall prevail over the AICTE Act, which, as observed hereinabove, is a general statute dealing with technical education/institutions. Therefore, the submission on behalf of AICTE and / or concerned educational institutions that the that the AICTE Act is a subsequent law and in the definition of "technical education", it includes the "pharmacy" and therefore, it can be said to be an "implied repeal", cannot be accepted. At this stage, it is required to be noted that as such in the AICTE Act there is no specific repeal of the Pharmacy Act, more particularly when, as observed hereinabove, the Pharmacy Act is a Special Act and the subsequent enactment of AICTE Act is general and therefore, the Pharmacy Act being a Special Act must prevail. Apart from that, with regard to several aspects, there is no provision made in AICTE Act which are exclusively within the domain of PCI. Thus, it cannot be accepted that there is "implied repeal" of the Pharmacy Act."

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."

5. Thereafter, the Division Bench had further held as follows:



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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.

18. In the light of the reasons assigned above, the impugned order dismissing the writ petition warrants interference.”

6.This judgment of the Division Bench had been subsequently followed by a learned Single Judge of this Court in ***W.P.No.24404 of 2021***, in the case of ***Sree Abirami Charitable Trust, represented by its Chairman vs the Registrar, Tamil Nadu Dr.M.G.R. Medical University and two others***, by order, dated 29.11.2021.

7.In view of the consistent pronouncements made by this Court, it would only be appropriate that this Court also applies the same ratio as



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stated by the Division Bench and followed by the learned Single Judge.

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8.The Writ Petition is allowed and a direction is issued to the first respondent to proceed further to affiliate M.Pharm (Pharmacology) and M.Pharm (Pharmaceutical Analysis) courses for the petitioner College herein provided the petitioner satisfies all other requirements and rules and regulations, but without insisting on either No Objection Certificate or the Essentiality Certificate from the State Government. The said order by the first respondent may be passed within a period of two weeks from the date of receipt of a copy of this order. No costs.

Index :Yes / No
Internet :Yes
NCC : Yes/No

23.03.2023

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To
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1.The Secretary,
The Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George, Chennai- 600 009.

2.The Director,
Directorate of Medical Education,
Kilpauk, Chennai- 600 010.



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C.V.KARTHIKEYAN, J.

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Order made in
W.P.(MD)No.5076 of 2023

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