



W.P(MD)No.23415 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.10.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.23415 of 2023

and

W.M.P(MD)Nos.19629 & 19630 of 2023

Maria Ayurveda Medical College & Hospital,
Represented by the Principal,
V.S.Symala Devi, Kulathadivillai,
Moovatumugham Post,
Thiruvattar, Attoor,
Kanyakumari District.

... Petitioner

Vs.

- 1.The Under Secretary to the
Government of India,
Ministry of Ayush, Government of India,
'B' Block, GPO Complex, INA,
New Delhi – 110 023.
- 2.The Secretary,
National Commission for Indian System Medicine,
61-65, Institutional Area,
'D' Block, Janakpuri, New Delhi – 110 058.
- 3.The President, Medical Assessment and
Rating Board for Indian System of Medicine,
National Commission for Indian System Medicine,
61-65, Institutional Area, 'D' Block, Janakpuri, New Delhi.



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4.The State represented by the Secretary,
Ministry of Health and Family Welfare,
Chennai.

5.The Tamil Nadu Dr.MGR Medical University,
Represented by its Registrar,
Annasalai, Guindy, Chennai.

6.The Commissioner / Director,
Homeopathy, Arumbakkam,
Chennai – 600 106.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorari, to call for the records
pertaining to the impugned order of the third respondent in Ref.No.
26-76/2021 – Visitation dated 31.08.2021 and quash the same.

For Petitioner : Mr.B.Saravanan
Senior Counsel
for Mr.S.Ramsundarvijayraj

For Respondents : Mr.K.Govindarajan
Deputy Solicitor General of India
Assisted by Mr.A.Srinivasan
Central Government Standing Counsel
for R.1

Mr.N.Dilip Kumar
Standing Counsel for R.2 & R.3

Mr.S.RA.Ramachandran
Additional Government Pleader
for R.4 to R.6



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ORDER

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Heard the learned Senior Counsel appearing for the writ petitioner, the learned Deputy Solicitor General of India assisted by the learned Central Government Standing Counsel appearing for the first respondent, the learned Standing Counsel appearing for the respondents 2 and 3 and the learned Additional Government Pleader appearing for the respondents 4 to 6.

2.The writ petitioner Maria Ayurveda Medical College & Hospital was established in the year 2015-2016. Copies of the No Objection Certificate issued by the Government of Tamil Nadu and the affiliation granted by Tamil Nadu Dr.MGR University have been enclosed in the typed set of papers. The National Commission for Indian System of Medicine is responsible for maintaining academic standards of such Colleges. The Commission received complaints that in several Colleges, teaching Indian system of Medicine, the number of teaching faculty is not maintained. In other words, the College Management makes it appear as if the faculty are employed on its own rolls but physically they are not available. The third respondent issued show cause notice to the



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teaching faculty said to have been employed by the writ petitioner College. The College took the stand that out of 15 persons employed by them as teachers, 6 have already been relieved. The remaining 9 persons appeared for enquiry. After considering the materials on record and after interaction with the teaching faculty and also after getting explanation from the College Management, the third respondent came to the conclusion that 7 of them were actually ghost teachers. In consonance with the impugned circular dated 31.08.2021 issued by the Commission, penalty to the tune of Rs.1 Crore 75 Lakhs was imposed on the petitioner College.

3.The imposition of the penalty has been put to challenge in W.P(MD)No.21990 of 2023. Since the power to impose the penalty is traceable to the impugned proceedings dated 31.08.2021, their validity has been independently assailed in WP(MD)No.23415 of 2023.

4.The learned Senior Counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the



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writ petition and argued that the impugned proceedings are patently without jurisdiction.

5.The learned Standing Counsel appearing for the respondents 2 and 3 on the other hand submitted that the impugned proceedings are legally sustainable. He took me through the statutory scheme underlying the Central Act 14 of 2020 and pointed out that maintenance of academic standards is the responsibility of the Commission. Under Section 10(1) of the Act, the Commission is obliged not only to lay down policies for maintaining high quality and high standards in education of Indian System of Medicine but also take such measures to ensure their compliance. He submitted that the Commission has the power to appoint sub committees. The sub-committee deliberated on the issue of ghost teachers and came out with its recommendations. It was duly approved by the Commission in its meeting held on 07.07.2021 and 23.08.2021. The resolution of the Commission has given rise to the impugned proceedings dated 31.08.2021. According to him, the impugned proceedings are traceable to the overall statutory power vested in the National Commission of Indian System of medicine. He called upon this Court to sustain the same and dismiss the writ petition.



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6. I carefully considered the rival contentions and went through the materials on record.

7. The Central Act 14 of 2020 contains 59 Sections in all. All the provisions will have to be read together and not in a piecemeal manner. Section 10(1) of the Act catalogues the functions to be performed by the Commission. It is as follows:

“10. (1) The Commission shall perform the following functions, namely — (a) lay down policies for maintaining a high quality and high standards in education of Indian System of Medicine and make necessary regulations in this behalf;

(b) lay down policies for regulating medical institutions, medical researches and medical professionals and make necessary regulations in this behalf;

(c) assess the requirements in healthcare, including human resources for health and healthcare infrastructure and develop a road map for meeting such requirements;

(d) frame guidelines and lay down policies by making such regulations as may be necessary for the proper



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functioning of the Commission, the Autonomous Boards and the State Medical Councils of Indian System of Medicine;

(e) ensure coordination among the Autonomous Boards;

(f) take such measures, as may be necessary, to ensure compliance by the State Medical Councils of Indian System of Medicine of the guidelines framed and regulations made under this Act for their effective functioning under this Act;

(g) exercise appellate jurisdiction with respect to decisions of the Autonomous Boards;

(h) ensure observance of professional ethics in Medical profession and to promote ethical conduct during the provision of care by medical practitioners;

(i) frame guidelines for determination of fees and all other charges in respect of fifty per cent of seats in private medical institutions and deemed to be Universities which are governed under the provisions of this Act;

(j) exercise such other powers and perform such other functions as may be prescribed.”



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The College has been imposed with penalty by the Medical Assessment and Rating Board by invoking its power under Section 28(1)(f) of the Act. It reads as follows :

“28.(1) The Medical Assessment and Rating Board for Indian Systeem of Medicine shall perform the following functions, namely: -

.....

(f) take such measures, including issuing warning, imposition of monetary penalty, reducing intake or stoppage of admissions and recommending to the Commission for withdrawal of recognition, against a medical institution for its failure to maintain the minimum essential standards specified by the Board of Ayurveda or, as the case may be, the Board of Unani, Siddha and Sowa-Rigpa, in accordance with the regulations made under this Act.”

8. When power has been specifically conferred under Section 28(1) (f) on the Medical Assessment and Rating Board, it is not necessary for this Court to go by the general power conferred under the Commission under Section 10(1) of the Act. Section 28(1) confers certain powers and obliges the Board to perform certain functions. The Board is to carry out



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the mandate as per the regulations made under the Act. Section 28(1) contains the expression “shall perform”. This performance of the functions in the manner set out therein. The performance has to be in accordance with the regulations made under the Act. Section 28(1) sets out as many as six functions. Function (b) is to be carried out in accordance with the provisions of the Act. The other functions are to be carried out in accordance with the regulations made under the Act. The expression “in accordance with” has to be understood as “as per” or “according to”. It is etymologically linked to the word “accord”. It denotes consonance between two or more. One such function is imposition of monetary penalty on those institutions that are remiss in complying with the standards and prescriptions made by the Commission. Since this function has to be exercised in accordance with regulations, the power cannot be exercised in the absence of such regulations. This is all the more so because the sub-section employs the expression “made under the Act”. It means that making regulations is a condition precedent for exercising the functions contemplated by the provision. I wanted to know from the learned Standing Counsel for the Commission if regulations as contemplated under Section 28(1)(f) have



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been issued. The answer is in the negative. He submitted that it is in the pipeline and it is likely to be issued shortly. So long as regulations as contemplated under Section 28(1)(f) of the Act have not been issued, MARB cannot be conferred with any power to impose penalty on the erring institutions. When Section 28(1)(f) is clear and categorical as regards the manner in which the functions of MARB will have to be exercised, one cannot fall back on any general power conferred on the Commission.

9.The learned Standing Counsel would state that it is a well settled proposition that in the absence of regulations, the vacuum can be filled by way of circulars. I am not able to accept this argument. The Act was framed way back in the year 2020. We are now in October 2023. Nothing stopped the Commission from coming out with the regulations in the year 2021 itself. The authorities cannot take advantage of their own wrong. The learned Standing Counsel relied on the decision reported in **(2001) 4 SCC 309 (Union of India Vs Rakesh Kumar)**. The said authority is cited for the proposition that if the rules are silent on any particular point, the Government can fill up the same. The said



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decision holds that where the rules are silent, the gaps can be supplemented by issuing instructions which are not inconsistent with the rules. In this case, the statute is not silent. It has spoken already. Therefore, the aforesaid decision is inapplicable. In this view of the matter, the impugned proceedings dated 31.08.2021 stand quashed as without jurisdiction.

10.This writ petition is allowed accordingly. Consequently, connected miscellaneous petitions are closed.

04.10.2023

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