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W.P.No.30141 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 10.06.2024**

**CORAM**

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH**

**W.P.No.30141 of 2023  
& WMP.Nos.29768 & 29769 of 2023**

Dharma Ayurveda Medical College  
No.48, Grand West Trunk Road  
Sriperumbudur – 602 105  
Kancheepuram District,  
Tamil Nadu.  
Rep. by its Principal

.... Petitioner

Vs

- 1.The Union of India  
Rep. by the Secretary to Government  
Ministry of AYUSH  
AYUSH Bhawan, B Block,  
GPO Complex, INA,  
New Delhi – 110 023.
- 2.National Commission for  
Indian System of Medicine  
Ministry of AYUSH,  
Government of India,  
Rep. By its Chairperson  
61-65, Institutional Area,  
Janakpuri, D-Block,  
New Delhi – 110058.
- 3.Medical Assessment and Rating Board,  
For Indian System of Medicine,



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Rep. By its President,  
61-65, Institutional Area,  
Janakpuri, D-Block,  
New Delhi – 110058.

4. The Tamil Nadu Dr.MGR Medical University  
Rep by its Registrar  
P.B.No.1200, No.69, Anna Salai  
Guindy,  
Chennai – 600 032.

.... Respondents

**Prayer:** Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned proceedings of the 3<sup>rd</sup> respondent in Ref.No.3/2022/MARB/General Matters dated 17/08/2022 in so far as it imposes a penalty of Rs.25 Lakhs per teacher if a faculty in the college is absent but present only on paper and the impugned proceedings of the 3<sup>rd</sup> respondent in Ref.No.Teacher Verification/MARB/2023 dated 22/08/2023 and quash the same.

For Petitioner : Ms.V.S.Manimegalai

For Respondents : Mr.Kamaraj (R2 and R3)  
for M/s.V.K.Raj Law Chambers  
No appearance (R1 and R4)

### **ORDER**

Read this order in conjunction with and in continuation of order dated 06.06.2024 that reads as follows:

*There is no appearance for R1 and R4.*

*2. Learned counsel for the petitioner relies on an order passed*



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in W.P.No.23415 of 2023 dated 04.10.2023 wherein the order of the President, Medical Assessment and Rating Board for Indian System of Medicine, New Delhi in Ref.No.26-75/2021 – Visitation dated 31.08.2021 was challenged. That writ petition came to be allowed and the proceedings dated 31.08.2021 were quashed.

3. Pursuant thereto, the demand of quantum and penalty challenged in W.P(MD).No.21990 of 2023 has also been addressed in favour of that petitioner and at paragraph No.3, the levy of penalty was set aside. The findings in the impugned order were adverse to that petitioner and the petitioner was permitted to file an appeal.

4. Thus *prima facie*, if the ratio of the aforesaid two orders are applied to the case of the petitioner, the factual and legal position being identical, the payment of penalty is liable to be set aside.

5. However, adverse findings in impugned order dated 22.08.2023 would stand, as there has been no challenge to the same.

6. At request of learned counsel for R2 and R3, list on 10.06.2024.

2. Today, Mr.Vellayaraj, learned counsel for R2 and R3 would only reiterate the submissions made in counter including on the ground of alternate remedy.

3. In similar circumstances, the Madurai Bench of the Madras High Court in W.P.(MD)No.23415 of 2023 vide order dated 04.10.2023 while setting aside the proceedings dated 31.08.2021 on which impugned orders penalty were passed, has held as follows:

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*



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*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 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 Sustem 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 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*



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*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 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 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. ”*



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4. Mr.Vellayaraj would also fairly accede to the position that the narration of events contained in order dated 06.06.2024 is correct and that order dated 04.10.2023 has also attained finality and has not been challenged by the Board.

5. In such circumstances and bearing in mind the trajectory of events as noted under order dated 06.06.2024, this Writ Petition is allowed quashing the penalty imposed under orders dated 17.08.2022 and 22.08.2023. No costs. Connected Miscellaneous Petitions are closed.

**10.06.2024**

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Index:Yes/No

Speaking order:Yes

Neutral Citation:Yes

To

1.The Union of India

Rep. by the Secretary to Government

Ministry of AYUSH

AYUSH Bhawan, B Block,

GPO Complex, INA,

New Delhi – 110 023.

2.National Commission for

Indian System of Medicine

Ministry of AYUSH,

Government of India,

Rep. By its Chairperson

61-65, Institutional Area,



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Janakpuri, D-Block,  
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**Dr.ANITA SUMANTH,J.**  
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3.Medical Assessment and Rating Board,  
For Indian System of Medicine,  
Rep. By its President,  
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