



Writ Petition No.32976 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17/12/2024

C O R A M

THE HONOURABLE Mr.JUSTICE VIVEK KUMAR SINGH

Writ Petition No.32976 of 2024

a n d

W.M.P.No.35774 of 2024

Shree Venkateshwara Educational
& Charitable Trust
rep. By its Managing Trustee
P. Venkatachalam
Administering
Shree Venkateshwara College of Paramedical Sciences
Gobi Main Road, Sri Kalaivani Nagar
Othakuthirai, K.Mettupalayam (Post)
Gobichettipalayam 638 455
Erode District. ... Petitioner

Vs

1. The Registrar
Tamil Nadu Dr.MGR Medical University
69 Anna Salai, Guindy
Chennai 600 032.
2. The Pharmacy Council of India
rep. By the Secretary-cum-Registrar
NBCC Centre, 3rd Floor, Plot No.2
Community Centre, Maa Anandamai Marg
Okhla Phase I
New Delhi 110 020.



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3. The Government of Tamil Nadu

rep. 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 the issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the first respondent vide Lr.No.Affln.I (4)/30792/218 dated 26/7/2024 quash the same and direct the first respondent to grant consent of affiliation to the petitioner College to start additional course namely Pharm.D., for the academic year 2025 – 26 without insisting Essentiality Certificate from the Government.

For petitioner

...

Mr.D.Prabhu Mukunth Arunkumar

For respondents

...

Mr.G.Arumugam
Standing Counsel
for Medical University
for R.1

Mr.T.Arunan
Pharmacy Counsel of India
for R.2.

Mrs.M.Sneha
for R.3.

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ORDER

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This writ petition has been filed to quash the impugned order dated 26/7/2024 passed by the first respondent in Lr.No.Affln.I (4)/30792/218 and direct the first respondent to grant consent of affiliation to the petitioner College to start additional course namely Pharm.D., for the academic year 2025 – 26 without insisting Essentiality Certificate from the Government.

2. The writ petitioner is running a “Shree Venkateshwara College of Paramedical Sciences” at Gobichettipalayam, Erode District. It is a recognized institution. Their sanctioned intake capacity is seats in B.Pharm Degree Course. They applied to the respondents 1 & 2 for increase of the intake to 100 seats in B.Pharm degree course. The pharmacy council informed the petitioner that the petitioner must obtain consent of affiliation of the examining authority for raising intake of B.Pharm seats for the academic year 2025-2026. Accordingly, the petitioner approached the first respondent on 15/7/2024. The first respondent took the stand that the petitioner must obtain the Government order and only after submission of the same, the petitioner's request will be processed. Challenging the stand of the first respondent University as reflected in the impugned communication dated 26/7/2024, the present writ petition came to be filed.



3. Heard Mr.D.Prabhu Mukunth Arunkumar, learned counsel for the petitioner, Mr.G.Arumugam, Standing counsel for the first respondent, Mr.T.Arunan, learned counsel for the second respondent and Mrs.M.Sneha, learned counsel for the third respondent.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

5. The learned standing counsel for the first respondent would submit that they have no role in the matter as of now and that only after the Government gives green signal, they would process the petitioner's application.

6. After carefully considering the contentions made on either side, it is clear that the issue is no longer res integra. A learned Judge of this Court vide order dated 10.11.2020 in W.P.No.14834 of 2020 (PGP Educational and Welfare Society Vs. The Registrar T.N.Dr.M.G.R Medical University) had held as follows:-



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“20. If the Pharmacy Council of India insists for Prior Approval or No Objection Certificate from the State Government, the Scheme shows that the same is insisted even while submitting the documents to the Pharmacy Council of India which thereafter considers the application for approval by taking note of the permission granted by the State Government. There is no question of seeking for an approval/ permission from the State Government after the approval is already granted by the Pharmacy Council of India. It will be like putting the cart before the Horse and it does not fall within the Scheme framed by the Pharmacy Council of India under the Regulations.

21.The Government Order that was brought to the notice of this Court in G.O.Ms.No.148 dt. 24.04.2018, cannot outweigh the Regulations of the Pharmacy Council of India and it has to necessarily give way to the Regulations which governs the field. Just because some other



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Institutions have obtained the permission of the State Government after getting approval for additional intake, the same cannot be insisted upon in every case in the absence of any power or jurisdiction available to the State Government and the University.

22.In view of the above discussion, this Court is of the considered view 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 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.

7. The learned Judge was pleased to follow the decision of the Hon'ble Division Bench rendered in Writ Appeal No.3534 of 2019 (Annai J.K.K.Sampoorani Ammal Charitable Trust Vs. The Registrar, Tamil Nadu Dr.M.G.R.Medical University). Paragraph Nos.13 & 14 of the said order read 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



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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 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."



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8. I am informed that this order passed by the Hon'ble Division Bench was tested before the Hon'ble Supreme Court of India. But then, SLP No. 16085 of 2020 was dismissed vide order dated 12.01.2021. Therefore, the first respondent was clearly not justified in insisting on prior clearance from the Government in order to process the petitioner's application for grant consent of affiliation to the petitioner College to start additional course namely Pharm.D., for the academic year 2025 – 26 without insisting Essentiality Certificate from the Government. The impugned communication is set aside. The matter is remitted to the file of the first respondent to proceed further in the manner known to law. This shall be done as expeditiously as possible.

9. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

17/12/2024

mvs.

Index: yes/No

Neutral Citation: Yes/No



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