



W.P.No.37402 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

W.P.No.37402 of 2024 &
WMP.Nos.40407, 40409 & 40411 of 2024

Sengunthar Charitable Trust,
Rep. by its Secretary and Correspondent,
1/311-1, Sengunthar Nagar,
Kosavampalayam,
Tiruchengode- 637 205,
Namakkal District. ... Petitioner
Vs.

- 1.The Secretary,
Department of Health and Family Welfare
Secretariat, Fort St. George,
Chennai – 600 009.
- 2.The Director,
Directorate of Medical Education,
Kilpauk, Chennai – 600 010.
- 3.Tamil Nadu Dr.MGR Medical University,
Rep. by its Registrar,
No.69, Anna Salai,
Guindy, Chennai – 600 032. ... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the third respondent comprised in impugned letter dated 29.11.2024 bearing reference to Lr.No.Affln.V (5)/22556/2024 issued by the third respondent and



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quash the same as being arbitrary, illegal, wholly without jurisdiction and consequently, direct the third respondent to grant affiliation to the petitioner to commence the three courses viz., B.Sc. (Operation Theatre and Anesthesia); B.Sc. (Medical Laboratory Technology), and B.Sc. (Radiography and Imaging Technology) in terms of the approval accorded by the first respondent in GO.Ms.No.144 Health and Family Welfare (PME-2) Department dated 25.06.2024 for the Academic year 2024-25 onwards.

For Petitioner :Mr.Vishnu Mohan

For Respondents

1 and 2 :Ms.M.Sneha, Government Advocate

For Respondent 3 : Mr.A.Md. Gouse

ORDER

The petitioner is a Trust. It is running a pharmacy college. It applied for starting of three allied medical courses. As required, it applied to the first and second respondents seeking for essentiality certificate. This application was made on 22.10.2019.

2. The third respondent refused to grant provisional affiliation in the absence of an order from the Government for starting the allied health services. The petitioner submitted an application on 25.06.2020 to the Directorate of Medical Education seeking “No Objection” to start the courses. The second



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respondent appointed a committee to inspect the petitioner's institution.

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3. In the meantime, by way of two successive letters, the third respondent/University informed the writ petitioner that without the essentiality certificate, it will not process the application. In the meantime, one Dr.S.Karuppannan was included as a member of the Trust by way of Supplementary Deed of Trust dated 25.11.2021.

4. Originally, the Government had passed an order in GO.Ms.No.435, Health and Family Welfare (PME-2) Department, dated 30.09.2019 permitting hospital tie ups “for the purpose of allied health service courses”. Such a hospital should have 100 to 150 beds, 15 beds for Medical ICU and 10 beds for Surgical ICU. Subsequently, this Order was amended by the Government through GO(Ms).No.7, Health and Family Welfare (PME-2) Department, dated 09.01.2024. One of the new conditions inserted was that an institution, which applies for commencing allied health services, should have a hospital with inpatient facilities. No tie-ups were permissible.

5. Prior to the amendment, the petitioner had filed an application for obtaining essentiality certificate from the Government on 04.10.2019. It is



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proposed in the said application to start three allied courses from the Academic Year 2020 -2021.

6. Since the application for essentiality certificate was pending when the amendment came about, the first respondent addressed a letter to the second respondent stating that the second respondent should obtain 14 numbered documents from the writ petitioner. It was pointed out that as GO(Ms).No.7, Health and Family Welfare (PME-2) Department, dated 09.01.2024 had been issued, the writ petitioner should not come up with tie up arrangement, but should have its own hospital. Subsequent to this letter, the second respondent called upon the writ petitioner to rectify the deficiencies pointed out by the first respondent. This was by way of letter dated 01.03.2024.

7. Soon thereafter, on 04.03.2024, the writ petitioner submitted its explanation stating that the hospital, which is being run by Dr.S.Karuppannan, would be treated as a hospital for the purpose of the allied health services. The second respondent was satisfied with the reply and recommended to the first respondent to issue an essentiality certificate. The first respondent was satisfied with the reply and the recommendation, and granted permission by way of G.O.(Ms).No.144, Health and Family Welfare (PME-2) Department, dated 25.06.2024.



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WEB COPY 8. On the strength of this permission, the writ petitioner filed an application to the third respondent seeking affiliation. The third respondent sought for several documents from the writ petitioner, in and by way, of a letter dated 18.07.2024. It also sought for several clarifications from the petitioner. For the purpose of this case, the relevant portions are items 13 and 14.

9. The second respondent informed the writ petitioner that it has to construct a hospital within two years and also to change the ownership of the vehicles in the name of the institution within a period of three months. No other compliance was sought for from the petitioner. It was after having complied with these requirements, the petitioner approached the third respondent-University seeking for provisional affiliation.

10. The third respondent did not process the application on the ground that the hospital, which had been shown by the petitioner, is not its own hospital and tie up hospital not been permitted by GO(Ms).No.7, Health and Family Welfare (PME-2) Department, dated 09.01.2024. Aggrieved by the same, the present writ petition.



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11. When the matter came up before this court on 21.12.2024, the Hon'ble Mr.Justice Battu Devanand directed the matter to be listed finally before the Vacation Court, since the last date for processing the application is 31.12.2024. Hence, the writ petition was listed before me.

12. I heard Mr.Vishnu Mohan for the petitioner, Ms.M.Sneha for the respondents 1 and 2 and Mr.A.Md. Ghose, Standing Counsel for the respondent 3.

13. Mr.Vishnu Mohan, narrating all the aforesaid facts, points out that the petitioner had complied with the requirements that had been placed by the first and second respondents and it was only thereafter, permission had been granted by the first respondent on 25.06.2024. He states that the first respondent had called upon the petitioner through the second respondent with respect to the own hospital condition. This had been explained by the writ petitioner to the satisfaction of the respondents 1 and 2. It is only after recording of the said satisfaction, the Government passed the G.O.(Ms).No.144, Health and Family Welfare (PME-2) Department, dated 25.06.2024. Therefore, he urges that it is not open to the third respondent-University to review the entire proceedings all over again, when the competent authority, the first respondent had been satisfied with the explanation given by the writ petitioner.



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14. Ms.M.Sneha points out that the Government in G.O.(Ms).No.144 Health and Family Welfare (PME-2) Department dated 25.06.2024 specifically called upon the petitioner to comply with the G.O.(Ms).No.435, Health and Family Welfare (PME) Department, dated 30.09.2019. Relying on that line, she states that as the petitioner does not have its own hospital as required by the amendment that was issued on 09.01.2024, it is not entitled to any relief. The said submission of Ms.M.Sneha is echoed by Mr.A. Md Gouse.

15. I have carefully considered the arguments of the learned Counsels.

16. The narration of the facts would show that when the application was filed, the Government Order in operation was G.O.(Ms).No.435, Health and Family Welfare (PME) Department, dated 30.09.2019. In terms of the said Government Order, an entity proposing to start an allied medical course was permitted to start course if it had a “tie up” with a hospital. This Government Order was modified by the Government on 09.01.2024 directing the institutions to have in-patient facilities and not to rely upon tie-up arrangements.

17. As per the judgment of the Supreme Court in the **State of Tamil**



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Nadu vs. Hind Stone, AIR 1981 SC 711, mere filing of an application does

not give right to a party to consider an application on the basis of the old frame work. If there is a change in the framework pending the approval of the application, a party has to comply with the new frame work. That being the position, I have to see whether the petitioner has complied with G.O.(Ms).No. 7, Health and Family Welfare (PME-2) Department, dated 09.01.2024.

18. It is not in dispute that the petitioner did not have hospital on its own originally. Subsequently, it had approached the Care 24 Medical Center and Hospital, Erode to be treated as a “parent” hospital for its allied health service courses. The Care 24 Medical Center and Hospital also agreed to the said proposal and given a certificate that it shall be the parent hospital till the life time of Sengunthar College of Allied Health Services. It also pointed out that the hospital will not allow any other institution to show the said hospital as a parent or affiliated hospital. It also gave an undertaking that the Care 24 Medical Centre and Hospital will be the parent hospital for the writ petitioner/ institution for a period of 30 years. It is on the strength of this undertaking that the petitioner submitted its clarification to the second respondent on 04.03.2024. The clarification became necessary on account of the letter of the first respondent dated 16.02.2024 and of the second respondent dated



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01.03.2024.

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19. The first respondent, even at that stage, had pointed out to the second respondent as regards G.O.(Ms).No.7, Health and Family Welfare (PME-2) Department, dated 09.01.2024. The explanation given by the petitioner together with the records submitted by its letter dated 04.03.2024 found acceptance with the second respondent, who issued the letter recommending the case of the petitioner to the first respondent on 03.04.2024. The proceedings of the second respondent was placed for approval before the first respondent on 25.06.2024. On that date, the Government was convinced that the petitioner has satisfied all the requirements of G.O.(Ms).No.435, Health and Family Welfare (PME) Department, dated 30.09.2019 as well as G.O.(Ms).No.7, Health and Family Welfare (PME-2) Department, dated 09.01.2024 and consequently granted approval. It directed the second respondent to take necessary action consequent to its order.

20. Having complied with the requirements, the petitioner approached the third respondent for provisional affiliation. Surprisingly, the third respondent wanted to sit on appeal as against the order passed by the first and second respondents and reopened the issue, which had already been concluded by the



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respondents 1 and 2. When the Government and the Directorate of Medical Education have been satisfied with the explanation and records that have been given by the writ petitioner as regards the “parent hospital” for the three proposed allied medical courses, it is not open to the third respondent to re-visit the said issue. The Essentiality Certificate was granted by the Government and that would be binding on the third respondent.

21. Therefore, I am of the view that the third respondent cannot refuse to process the application of the petitioner on the basis of a Government Order, when the Government itself had been satisfied that the writ petitioner had complied with the requirements of the said order. Consequently, the **writ petition stands allowed**. There shall be a direction to the third respondent to process the application submitted by the writ petitioner on 28.06.2024. If it complies with the other requirements of law, the third respondent shall grant provisional affiliation to the institution. No costs.

28.12.2024

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Internet: Yes

Index: Yes/No

Speaking/Non speaking order



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To

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Secretariat, Fort St. George,
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V. LAKSHMINARAYANAN. J,

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