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Writ Petition No.4295 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-02-2025

CORAM

**THE HONOURABLE MRS JUSTICE N. MALA**

**WP No. 4295 of 2025**

**& WMP Nos.4803 & 4804 of 2025**

Erode Builder Educational Trust  
Ebet Knowledge Park, Erode Road,  
Nathakadaiyur-638108.  
Established And Administering Kangeyam  
Institute Of Pharamaceutical Sciences and  
Research Ebet Knowledge Park, Erode Road,  
Nathakadaiyur-638 108,  
Rep. by its Managing Trustee and Chairman,  
N.Ramalingam.

Petitioner(s)

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.
3. The Director Of Medical Education,  
Directorate Of Medical Education Campus,  
Kilpauk, Chennai-600 010.

Respondent(s)



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**PRAYER** : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 1st respondent in Lr.No. Affln.1(4) / 26677/ 20124 dated 23.12.2024 quash the same and direct the 1st respondent to grant consent of affiliation to the petitioner College for increase intake of seats from 60 to 100 in B.Pharm Degree Course for the academic year 2025-26.

**For Petitioner(s):**

Mr.D.Prabhu Mukunth Arun Kumar

**For Respondent(s):**

Mr.L.Praveen Kumar

For M/s.C.Latharani For R1

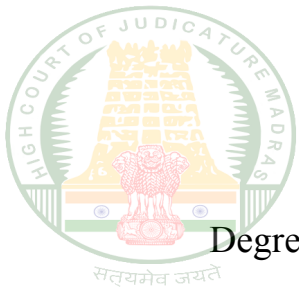
Mr.M.T.Arunan For R2

Mr.E.Sundaram Govt.Advocate For R3

**ORDER**

The petitioner, aggrieved by the impugned order rejecting the petitioner's request for increasing the intake of seats from 60 to 100 for the academic year 2024-25 in B.Pharm Degree, has filed the present Writ Petition for the aforesaid relief.

2. The petitioner Trust was granted permission to start B.Pharm



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Degree Course vide G.O.Ms.No.191 dated 30.07.2024, with an annual intake of 60 students from the academic year 2024-25 onwards. The second respondent, Pharmacy Council of India, granted approval to admit 60 students for the academic year 2024-25 vide its decision dated 21.10.2024. The first respondent University granted provisional affiliation on 29.10.2024, for starting B.Pharm Degree Course to the petitioner college with an annual intake of 60 students from the academic year 2024-25. The petitioner Trust, in view of the increased demand for Pharmacy Course applied for increasing seats from 60 to 100 in appropriate form along with the requisite fee to the 1<sup>st</sup> respondent University. However, to the petitioner's shock and surprise, the first respondent rejected the petitioner's application vide impugned order dated 23.12.2024, for the increase in intake of seats from 60 to 10 in B.Pharm Degree Course. Aggrieved by the same, the petitioner has filed the present Writ Petition for the aforesaid relief.

3. According to the respondents, the petitioner Trust started B.Pharm Degree Course from the academic year 2024-25 and as the first batch of students admitted by the petitioner Trust, were yet to complete the Course,



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the petitioner's application could not be considered and hence lawfully rejected. The respondents relying on G.O.Ms.No.148, Health and Family Welfare (PME-2) Department, dated 24.04.2018, contended that there could be no increase of seats over and above the permitted strength that too without prior approval of the Government. As the petitioner Trust failed to obtain approval from the Government for increase in seats from 60 to 100 in B.Pharm Degree Course, the petitioner Trust's application was rightly rejected. The respondents therefore submitted that there were no merits in the Writ Petition and the same deserved to be dismissed.

4.The learned counsel for the petitioner submitted that the approval for increase and decrease in seats was in the realm of the second respondent and therefore, the respondent was bound to consider the petitioner's application. The learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of ***“Pharmacy Council of India Vs. Dr. S.K.Toshniwal Educational Trusts Vidarba Institute of Pharmacy and Others”*** reported in (2021) 10 SCC 657 in support of his submission that the 1<sup>st</sup> respondent University could not rely on serial no.58 of its statute to deny the petitioner consent of affiliation for increase in intake. The learned



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counsel for the petitioner submitted that the first respondent, University selectively applied serial no.58 of its statute to the petitioner Institution alone while granting permission to similarly placed institutions thus offending Article 14 of the Constitution of India and hence the impugned order was liable to be set aside on the short ground of discrimination also.

5. The learned counsel for the petitioner further relied on the judgment of a Division Bench of this Court dated 16.06.2020, in W.A.No.3534 of 2019, and also an order passed by a learned Single Judge of this Court, dated 10.11.2020 in W.P. No.14834 of 2020 in support of his case.

6. The learned counsel for the respondents reiterated the contentions raised in the counter affidavit.

7. Heard both sides and perused the entire materials available on record.

8. The impugned order dated 23.12.2024, reads as follows:



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“L.r. No. Afin. 1(4)/26677/2024

Dated: 23.12.2024

Thiruvalluvar Aandu - 2055

The Chairman,  
To Erode Builder Educational Trust,  
EBET Knowledge Park,  
Erode Road, Nathakadaiyur -638 108.  
Kangeyam Taluk, Tiruppur District.

Sir/Madam,

Sub: Affiliation The Tamil Nadu Dr. M.G.R Medical  
University, Chennai B.Pharmacy Degree Course and  
Research. Tiruppur Dist. Academic year 2024 2025  
Kangeyam Institute of Pharmaceutical Sciences  
Increase of annual intake from 60 to 100 seats  
Requested - Regarding

|                             |      |        |        |
|-----------------------------|------|--------|--------|
| Ref:                        | Your | Letter | No.    |
| EBET/KIPSR/TNMGRMU021/2024, |      |        | dated: |
| 09.12.2024                  |      |        |        |

With reference to your letter cited, I am to inform you, that in the Tamil Nadu Dr. M.G.R. Medical University (Affiliation of Pharmacy Colleges) Statutes under Sl. No 58 it is stated that "No Pharmacy college shall apply to the University for increase in seats in B. Pharmacy Degree Course until the first batch of students has successfully completed the course and has, left the college and the B.Pharm. Degree so obtained is recognized".

Based on the above Statutes, the institution, Kangeyam Institute of Pharmaceutical Sciences and Research, Tiruppur Dist. is eligible for increase in annual intake only after the first batch of students completes the B.Pharm. degree course. Whereas the institution has started B. Pharm. Degree course from the academic year 2024-2025/Therefore, an application



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along with DD No. 735740, Bank of Baroda dated: 10.12.2024 and the relevant documents received are herewith returned.

REGISTRAR (FAC)”

9.From a perusal of the impugned order, it appears that the only reason cited is that as per Sl. no.58 of the Tamil Nadu Dr.M.G.R.Medical University (Affiliation of Pharmacy Colleges), statute, no Pharmacy college could apply to the University for increase in seats in B. Pharmacy Degree Course until the first batch of students successfully completed the course, left the college and the B.Pharm. Degree obtained was recognized.

10.It is pertinent to note that in the Pharmacy Act, which is a Special Act, and which occupies the field of Pharmacy Education there is no such restriction. Therefore, the first respondent University in the absence of similar norm or regulation in the Pharmacy Council of India Act, cannot impose its statute. The Pharmacy Act covers all areas of Pharmacy Education including approval of courses, laying down course content, eligibility conditions for students as well as teachers, evaluation of standards of examinations, etc so as to carry out the objective and intent of



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the Act. The Pharmacy Council of India (PCI), has been constituted for the said purpose and in exercise of powers vested in it under the Pharmacy Act, the PCI has framed a number of regulations prescribing minimum standards of education as well as regulating the subject of pharmacy in India. One such Regulation is, the Bachelor of Pharmacy (B.Pharm) Course Regulations, 2014, wherein under Regulation 2, the 'Qualifying Criteria', are laid down. The conditions mentioned in the 'Qualifying Criteria' have to be fulfilled by an applicant (college). The regulation provides that the applicant institution shall not start, conduct or increase the intake in B.Pharm course without the prior approval of the Pharmacy Council of India. Regulation 3 provides 'Prerequisite mandatory documents to be submitted by an applicant, and it reads as under:

**“3. Prerequisite mandatory documents to be submitted by an applicant:**

a) The institution shall submit the following documents for starting of new pharmacy institution/introduction of new B.Pharm course by existing institution -

**For Private institutions/Government institutions**

**For B. Pharm course**

i) Consent of affiliation of Examining Authority i



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ii) NOC of the State Government

In case, the State Government has done away with the issuance of NOC of the State Government for starting of pharmacy course, in that case institution shall upload the said communication from the State Government as a documentary evidence.”

Further, Clause (e) of Regulation 3, reads as follows:

For consideration of raise in admissions where applicable the institution shall apply for the same as per the provisions of the regulations/scheme for consideration of the council, however the admissions for the raise which is being sought shall be done only after the approval of the PCI and the examining authority.

It will be the responsibility of the institution to obtain the consent of Examining Authority for raise in admission before making admission and submit to PCI.

In case, the institution fails to obtain and submit the consent of the Examining Authority for raise in admission, it shall not admit the students (for raise) failing which the consequences shall rest on the institution. The PCI in no way shall be responsible for the same.

11.From a reading of the said regulation, it is clear that for starting of a B.Pharm Degree Course, NOC of the Statement Government is necessary and as regards increase in intake, the only criteria provided under the



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regulations are approval of the PCI and the examining authority. While so, the rejection of the request of the petitioner for increase of annual intake from 60 to 100 seats by the 1<sup>st</sup> respondent vide impugned proceedings relying on Sl. no.58 of its statute on the ground that "no Pharmacy college shall apply to the University for increase in seats in B. Pharmacy Degree Course until the first batch of students has successfully completed the course and has, left the college and the B.Pharm. Degree so obtained is recognized", in the opinion of this Court, cannot be sustained. Serial no.58 of the statute of Tamil Nadu Dr.M.G.R.Medical University (Affiliation of Pharmacy Colleges) cannot be imposed by the first respondent for granting consent of affiliation to the petitioner Trust.

12.The law on the subject is fairly settled and though there are multiple judgements on this issue, suffice it to refer to the following judgment of the Hon'ble Supreme Court which is a forerunner for the March of law on this issue. The Hon'ble Supreme Court, in the case of *"Pharmacy Council of India Vs. Dr. S.K.Toshniwal Educational Trusts Vidarba Institute of Pharmacy and Others* reported in (2021) 10 SCC 657 held as follows:



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“20. In view of the above and for the reasons stated above, it is held that in the field of Pharmacy Education and more particularly so far as the recognition of degrees and diplomas of Pharmacy Education is concerned, the Pharmacy Act, 1948 shall prevail. The norms and regulations set by the PCI and other specified authorities under the Pharmacy Act would have to be followed by the concerned institutions imparting education for degrees and diplomas in Pharmacy, including the norms and regulations with respect to increase and/or decrease in intake capacity of the students and the decisions of the PCI shall only be followed by the institutions imparting degrees and diplomas in Pharmacy. The questions are answered accordingly.”

13. From the aforesaid judgment it is lucid that norms and regulations laid down by the PCI under the Pharmacy Act, alone occupy the field even for increase or decrease in intake of seats. The first respondent University cannot for the purpose of consent of affiliation impose its own statute. Hence, in my view the reason cited in the impugned order for rejecting the petitioner's request for increase in intake of seats, cannot be sustained as it runs counter to the PCI norms and regulations which alone prevail. Even though, the impugned order does not refer to the NOC of the Government,



the respondents have referred to the same in their counter. As the impugned order does not refer to the said objection, the respondents cannot be permitted to raise it in their counter. Even otherwise, the Division Bench of this Court in WA.No.3534 of 2019 dated 16.06.2020 categorically held in para nos.13 &14 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 observe hereinabove, is a general statute dealing with technical education/institutions. Therefore, the submission on



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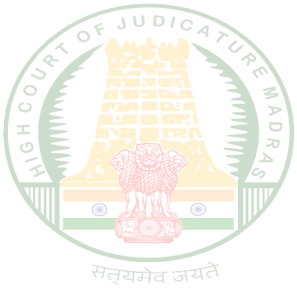


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behalf of AICTE and / or concerned educational institutions that the that the AICTE Act is a subsequent law and in the definition of "technical education", it includes the "pharmacy" and therefore, it can be said to be an "implied repeal", cannot be 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.”

14. In view of the aforesaid judgment, I am not inclined to accept the said objection. I am also of the view that the said ground deserves to be rejected because the respondents cannot raise fresh objections in the counter, which are not already referred to in the impugned order. Useful reference in this regard can be made to the judgment of the Hon' ble Supreme Court in “*Mohinder Singh Gill and Others Vs. Chief Election Commissioner*” (AIR1978SC851).



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**WEB COPY** 15. In view of the above discussions, I am of the view that the impugned order cannot be sustained and hence, the same is set aside. The first respondent is directed to grant consent of affiliation to the petitioner Trust within a period of eight(8) weeks from the date of receipt of a copy of this order.

16. Accordingly, the Writ Petition is allowed.

No costs.

Consequently connected miscellaneous petition is closed.

**24.02.2025**

Index : Yes/No  
Speaking order: Yes/No  
dn



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To

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,  
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**N.MALA, J**

dn

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**24.02.2025**