

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/09/2004

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

W.A. NO. 3213 of 2004

and W.A. Nos. 3490 & 3491 OF 2004

AND

W.A.M.P. NOS. 6545, 6546 & 6033 OF 2004

The Tamil Nadu Dr. M.G.R. Medical

University, rep. by its

Registrar

No.69, Anna Salai, Guindy

Chennai 600 032. .. Appellant in all WAs

- Vs -

1. Arulmighu Kalasalingam College of

Pharmacy, rep. by its Founder,

Chairman & Correspondent

T.Kalasalingam, Anandanagar

Krishnan Koil

Virudhunagar Dist. .. Respondent in WA No.3213/04

2. Sri Padmavathi College of Pharmacy

rep. by its Chairman

Krishnagiri Main Road (NH7)

Periyanaahalli

Dharmapuri 635 205.

3. The Government of Tamil Nadu

rep. by its Secretary

Higher Education Department

Fort St. George

Chennai 600 009. .. Respondents in WA No.3490/04

4. Pallavan Pharmacy College

rep. By its Principal

Iyyengarkulam 631 502

Kanchipuram Taluk.

5. The Government of Tamil Nadu

rep. by its Secretary

Health & Family Welfare Department

Fort St. George  
Chennai 600 009. .. Respondents in WA No.3491/04

W.A. No.3213/04 preferred against the order made in W.P. No.9118 of 2004 dated 23.06.04 as stated therein.

W.A. No.3490/04 preferred against the order made in W.P. No.877 of 2004 dated 29.6.04 as stated therein.

W.A. No.3490/04 preferred against the order made in W.P. No.21080 of 2004 dated 10.8.04 as stated therein.

!For Appellant : Mr. M.Vellaisamy

^For Respondents : Mr. K.Selvaraj in WA No.3213/04

Mr. Kandavadivel Doraisami, for R1

in WA No.3490/04

Mr. P.S.Jayakumar, GA, for R2

in WA Nos. 3490/04 & 3491/04

:COMMON JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY

F.M.IBRAHIM KALIFULLA, J.)

The Tamil Nadu Dr. M.G.R. Medical University is the appellant before us. The challenge is to the order of the learned Judge dated 23.6.04 in W.P. No.9118/04. The learned single Judge dealt with the claim of the respondent for issuance of a certiorarified mandamus relating to the order of the appellant dated 12.2.03 in Lr. No.Affln.I(3)/4271 3/2003 and for a direction to the appellant to grant permission for increase of ten seats in B.Pharm degree course in the respondent's college for the academic year 2004-05.

2. The admitted facts are that the respondent college had the approval of the Pharmacy Council of India as early as 27.3.03 for the increase of seats in the B.Pharm degree course from fifty to sixty from the academic year 2002-03 upto 2004-05. Based on the said approval, the respondent college applied for affiliation for the additional intake by their letter dated 7.10.03, which has been rejected by the appellant by the impugned order dated 8.12.03.

3. Though very many grounds were urged before the learned single Judge in support of the rejection order dated 8.12.03, Mr.Vellaisamy, learned counsel appearing for the appellant would concentrate his submissions on G.O. Ms.610, Health and Family Welfare Department dated 13.11.98, which the learned Judge has found to be not applicable to B. Pharm course.

4. On a perusal of G.O. Ms.610 dated 13.11.98, we find that under the very caption of the said Government Order, while referring to para-medical education, it is clearly set out that B.Sc (Nursing), B.P.T., B.O.T., C.L.M.T. and Diploma in Nursing course offered by selffinancing private institutions would come within the expression of paramedical education. In paragraph-2 of the said G.O., it is reiterated while referring to para-medical education it would be relating to Diploma in Nursing, B.Sc (Nursing) course, etc. Therefore, on a conspectus reading of the whole G.O., we are also of the view that the interpretation given by the learned Judge with reference to the said

G.O. was perfectly in order and, therefore, we do not find any scope to differ from the said view.

5. Even assuming B.Pharm course would form part of para-medical course, it will have to be held that in the light of the categorical pronouncement of the Honourable Supreme Court in JAYA GOKUL EDUCATIONAL TRUST VS. COMMISSIONER & SECRETARY TO GOVT. HIGHER EDUCATION DEPARTMENT, THIRUVANANTHAPURAM, KERALA STATE & ANOTHER (2000 (5) SCC 231) in particular paragraph-22 of the said judgment, we are of the considered view that the issue relating to increase in seats are the concern of the council, namely, Pharmacy Council of India and the scope of the appellant's role under such issues are virtually nil. For better appreciation, the said paragraph is extracted, which reads as under :

"As held in T.N. Case the Central Act of 1987 and in particular, Section 10(k) occupied the field relating to "grant of approvals" for establishing technical institutions and the provisions of the Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular Statute 9(7), they merely required the University to obtain the "views" of the State Government. That could not be characterised as requiring the approval" of the State Government. If, indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(k) of the AICTE Act, 1987 and would again be void. As pointed out in T.N. Case there were enough provisions in the Central Act for consultation by the Council of AICTE with various agencies, including the State Governments and the universities concerned. The State-Level committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, AICTE would have to go by the views of the Central Task Force. These were sufficient safeguards for ascertaining the view of the State Governments and the universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in T.N. Case it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for "approval" of the State Government."

6. The Honourable Supreme Court having thus made it clear that the procedure for obtaining affiliation and any condition which could be imposed by the University could not be inconsistent with the provisions of the Central Act, it will have to be held that there is no scope for the appellant University to take the stand that by virtue of the ban imposed in G.O. Ms.610 dated 13.11.98, the respondent cannot have the affiliation for intake of the students, which has been approved by the Pharmacy Council of India by its order dated 27.3.03.

7. We, therefore, do not find any scope for entertaining these writ appeals. The writ appeals fail and they are accordingly dismissed. Consequently, connected miscellaneous petitions are also dismissed. No costs.

8. It is reported that the last date for admission is 30.9.04.

Hence, the appellant is directed to permit the respondents/institutions to go ahead with the admissions subject to the grant of its affiliation on a later date and by directing them to follow the prescribed procedure relating to admissions.

Index : Yes

Internet : Yes

GLN

To

1. The Secretary

Govt. of Tamil Nadu

Health & Family Welfare Department

Fort St. George

Chennai 600 009.

2. The Secretary

Govt. of Tamil Nadu

Higher Education Department

Fort St. George

Chennai 600 009.

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