

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20..02..2007

CORAM

THE HONOURABLE MR.A.P. SHAH, CHIEF JUSTICE
and
THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P.No.8029 of 2006

S.T.Krishnamoothi ... Petitioner

Vs.

1. Union of India
Rep. by its Secretary to Government
Ministry of Human Resources & Development
Shastri Bhavan
New Delhi - 110 001
2. University Grants Commission
Rep. by its Secretary
Bahadur Shah Zafar marg
New Delhi - 110 002
3. The All India Council for Technical Education
Rep. by its Member Secretary
Indira Gandhi Sports Complex
I.P. Estate
New Delhi - 110 002
4. Medical Council of India
Rep. by its Acting President
Dr.P.C.Kesavan Kutty Nair
Pocket - 14, Sector - 8
Dwarka Phase - 1
New Delhi - 110 075
5. Rajendra Medical College Hospital
& Research Institute
(Extension Medical School of Southern
Medical University, Govt. of China)
Rep. by its President Mr.Pappa Rajendran
Oragadam Village
Mathur PO
Kanchi Dt. - 602 105

6. Sri Balaji Medical College & Trust Hospital
Rep. by its Dean
No.7 Works Colony
Chormepet
Chennai - 44
7. Meenakshi Medical College & Research Institute
(Deemed University)
Rep. by its Dean
Enathur
Kancheepuram
8. Sri Ramachandra Medical College & Research Institute
(Deemed University)
Rep. by its Dean
No.1 Ramachandran Nagar
Porur
Chennai - 116
9. Bharath Institute of Higher Education and Research
(Deemed University)
Rep. by its Registrar
173 Agaram Road
Selaiyur
Tambaram
Chennai - 73
10. Amrita Vishwa Vidyapeetham
(Deemed University)
Rep. by its Registrar
Ettimadai
Coimbatore - 641 105
11. SRM Medical College Hospital & Research Institute
(Deemed University)
Rep. by its Dean
SRM Nagar
Potheri
Kattankulathur
Kancheepuram
12. Vinayaka Mission's Research Foundation
(Deemed University)
NH-47 Sankari Main Road
Ariyanoor
Salem

13. Christian Medical College
Rep. by its Dean
Bagayam
Vellore - 632 002
14. Raja Muthaiah Medical College
Rep. by its Dean
Annamalai Nagar
Chidambaram
15. PSG Institute of Medical Sciences
Rep. by its Dean
Peelamedu
Coimbatore
16. Dr.MGR Educational and Research Institute
(Deemed University)
Rep. by its Registrar
E.V.R. Periyar Salai (NH4 Highway)
Maduravoyal
Chennai
17. Saveetha Institute of Medical and Technical Sciences
(Deemed University)
Rep. by its Registrar
Saveetha Nagar
Thandalam Post
Sriperumbudur Taluk
Kancheepuram District
18. Sri Chandrasekarendra Saraswathi Vishwa
Mahavidyala, (Deemed University)
Rep. by its Registrar, Enathur,
Kancheepuram 631 561.
19. Shanmuga Arts Science Technology and
Research Academy (Deemed University)
represented by its Registrar,
Thirumalai Samudram, Thanjavur-613 402.
20. Vellore Institute of Technology
(Deemed University) represented by its
Registrar, Vellore-632 104.
21. Sathyabama Institute of Science and Technology
(Deemed University) represented by its Registrar
Jeppiar Nagar, Old Mamallapuram Road,
IT High way, Chennai-600 119.

22. Karunya Institute of Science and Technology
(Deemed University) represented by its
Registrar, Karynya Nagar, Coimbatore-641 114.
23. Avinashilingam Institute for Home Science
and Higher Education for Women
(Deemed University) represented by its
Registrar, Ayya Avinashilingam Nagar,
Varapalayam, Coimbatore-641 108. ..Respondents.

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus commanding the first respondent to verify and publish for the benefit of the students, the legal status (recognition / approval) of the institutions and courses run by respondents 5 to 23, and cause publication of the mandatory disclosures, cited in para 8 of the affidavit, besides initiation of appropriate action, for Non-Compliance of the regulations / rules on the subject of technical and Medical / para-medical education.

For Petitioner : Mr.V.Manikandan Vathan Chettiar

For Respondent 4 : Mr.R.Singaravelan

For Respondent 5 : Mr.S.K.Selvaraj

M/s.S.Udayakumar SCGSC : Respondent 1 and 2.

M/s.Muralikumar : Respondent 3.

M/s.B.Saraswathy : Respondent 7

M/s.A.Jenasenan : Respondent 13

Mr.G.Rajagopalan,
Senior Counsel for
M/s.G.R.Associates : Respondent 19.

M/s.Sathish Parasaran : Respondents 12 and 16.

WEB COPY

O R D E R

K. CHANDRU, J.

This writ petition is filed in public interest seeking for a direction to the first respondent Union of India to verify and publish for the benefit of the students, the legal status (recognition / approval) of the Institutions and courses run by the respectfully 5 to 23, and cause publication of the mandatory disclosures cited in paragraph 8 of the affidavit and also to initiate appropriate action for non-compliance of the regulations / rules on the subject of technical, medical and para-medical education.

2. Excepting for the fifth respondent, the respondents 6 to 23 were all granted the status of Deemed University by the second respondent University Grants Commission [for short, 'UGC'] in terms of Section 3 of the University Grants Commission Act, 1956 [for short, 'UGC Act'] and they are fully under the supervision and control of the second respondent. Therefore, we directed the writ petitioner to confine his petition only with reference to the prayer regarding the fifth respondent, which has been shown as Rajendra Medical College Hospital and Research Institute.

3. We have heard Mr.V.Manikandan Vathan Chettiar, learned counsel appearing for the writ petitioner, Mr.R.Singaravelan, learned counsel appearing for the fourth respondent and Mr.S.K.Selvaraj, learned counsel appearing for the fifth respondent and perused the records.

4. Learned counsel appearing for the petitioner readily conceded and we directed notice to be issued only to the fifth respondent apart from the other official respondents. The learned counsel also submitted that the fifth respondent is not at all a Medical College either recognised by the fourth respondent Medical Council of India [for short, 'MCI'] or by the first respondent Union of India. It is neither deemed University in terms of Section 3 of the UGC Act nor is it affiliated to any University in terms of the UGC Act. The learned counsel also drew the attention of this Court to a newspaper advertisement given by the fifth respondent in the "Daily Thanthi", which is a leading Tamil Newspaper dated 25.02.2006 as well as on 05.3.2006. The said two advertisements are reproduced below:

WEB COPY

Advertisement dated 25.02.2006

RAJENDRA MEDICAL COLLEGE HOSPITAL & RESEARCH INSTITUTE

College : Oragadam Village, Mathur P.O. Kanchi Dt. - 602 105 Ph:0416 -
32003319, 32003480

Extension Medical School of SOUTHERN MEDICAL UNIVERSITY, GOVT. OF CHINA
OPENING TODAY

Admission MBBS Few Seats
2005-06 Only

Eligibility:12th grade minimum 50% Marks in Physics, Chemistry, Biology
Course : 5 Years. 2 Years Clinical rotation in Southern Medical University
- China

Eligible to practice in India on Passing the MCI Screening Test.

SMU is Listed in WHO World Directory of Medical Schools

NO DONTIONS - ONLY FEES - Separate Hostel for Ladies & Gents

Admin. Office:No.537, Poonamallee High Road, Arumbakkam, Chennai-600 106.
INDIA.

Ph: 044-24759172, 24754433, 42660063/64/65, Cell : 9444029172, 9884170777

ADVERTISEMENT IN DAILY THANTHI Dt.05.3.2006

RAJENDRA MEDICAL COLLEGE
HOSPITAL & RESEARCH INSTITUTE

College : Oragadam Village, Mathur P.O. Kanchi Dt.-602 105. Ph:0416 -
32003319, 32003480

Joint Co-operation with Medical School of SOUTHERN MEDICAL UNIVERSITY,
GOVT. OF CHINA

Southern Medical University

Government of China

Admission 2005-06

NOW OPEN!|

MBBS

No Donations

Pay only the fees

Few
Seats
only

Separate Hostel
for Ladies & Gents

Eligibility:

*Minimum.12th grade Admin. Office: No.537, Poonamallee *50% marks in
Physics High Road, Arumbakkam, Chennai- Chemistry, Biology 600
106. INDIA.

Course: Ph : 044-24759172, 24754433,
* Total 5 years. 42660063/64/65.
*2 years Clinical rotation Cell : 9444029172, 9884170777
in Southern Medical University-China
(SMU is listed in WHO's
WORLD DIRECTORY OF MEDICAL SCHOOLS)

5. Since the learned counsel for the petitioner submitted that the said institution is admitting students and collecting huge amounts, it is necessary to injunct them from running the institution as they have no affiliation with any University nor recognised by MCI.

6. This Court by an order dated 24.3.2006 directed the fifth respondent not to start the admission process or admit students until further orders. Thereafter, we also directed the Government Pleader to take the assistance of the Superintendent of Police of Kancheepuram District and to verify and inform about the status of the said institution. Accordingly, the Superintendent of Police, Kancheepuram District, sent a letter dated 27.4.2006 to the Government Pleader which the Government Pleader has also produced before us for the reference of this Court. It is convenient to reproduce the report verbatim.

"As per the above said reference, I visited the premises where the Rajendra Medical College Hospital and Research Institute is functioning and the following details are furnished:

1. The Rajendra Medical College Hospital and Research Institute is functioning from the premises which was leased for a period of 24 months from Sakthi Educational Trust having address at Oragadam village (via) Padappai, Kanchipuram District. The M.B.B.S. Classes in this college started functioning from 25th February 2006.
2. There is no hospital and there is no research institute as claimed by the college in the premises. Also there is no lab for the students. Only a few class rooms are available.
3. The name board in the college mentions that the college is affiliated to the University of Health Sciences Antiua, West Indies. However, the college brochures (sic. Brochures) show that the college is an extension medical school of Southern Medical University, Government of China. Preliminary enquiry reveal that the students are learning the syllabus of MGR Medical

University, Tamil Nadu and the Southern Medical University, Government of China is not providing course materials or syllabus to the students.

4. The college is housed in an erstwhile Engineering College and the building construction is yet to be fully completed. No electricity connection is provided and the electricity demand is taken care of by a generator. No proper road is available to reach the college.
5. The Chairman and CEO of Rajendra Medical College & Research Institute Dr.Pappa Rajendran was recently arrested and remanded to Judicial custody on 11.4.2006 by Chennai City Police in Central Crime Branch Crime No.307/06 under Sections 406, 420, 465, 468 and 471 IPC.
6. The qualification of the staff, the facilities offered to the students, syllabus, course materials and academic schedule, the nature of link between Rajendra Medical College Hospital & Research Institute and the Southern Medical University, Government of China, all needs to be probed in detail."

7. Thereafter, the fifth respondent entered appearance and also sought to vacate the interim order granted by this Court. But, however, since the issue involves public importance, with the consent of the parties, it was decided to take up the main writ petition itself. In the meanwhile, the fourth respondent MCI also entered appearance and filed a counter affidavit regarding the status of the fifth respondent College. It is an admitted fact that the fifth respondent does not have any affiliation to any University or not recognised by the MCI.

8. The learned counsel for the fifth respondent has stated that they had entered into a joint collaboration with the Southern Medical University, China. The Southern Medical University agreed to cooperate with the fifth respondent College for the MBBS programme.. As per the agreement, the first two years of pre-medical studies and basic science would be in the fifth respondent College in India and two years clinical rotation would be in Southern Medical University, China and the final year study would be at the fifth respondent College. The examination will be conducted in China and the degree is also awarded by the Southern Medical University. It was also stated that there is no legal bar for the Indian citizen to get a medical qualification in any foreign country. It only requires that if a person requires such a foreign medical degree,

he should give an undertaking that without obtaining the Eligibility Certificate, he shall not be eligible to appear in the screening test and that the fifth respondent is functioning fully in accordance with the provisions of Section 13(4-A) and 13 (4-B) of the Indian Medical Council Act [for short, 'IMC Act']. It was further stated that the fifth respondent is a genuine institution and with the authority of the Southern Medical University, they will be conducting the pre-clinical training in India and will send the students for clinical rotation in the Southern Medical University for obtaining medical qualification. It was further stated that the students are fully aware of this condition and they are not misled by the fifth respondent in any event. It is also pointed out that there are some other institutions, which are preparing students in the similar fashion and it is their understanding that MCI had granted the Eligibility Certificate to those students to study in those Medical Colleges. It was further stated by them by an affidavit dated 27.4.2006 that the petitioner College admitted 33 students on the date of the affidavit and six out of them have left the College and they are not attending the College.

9. The learned counsel appearing for the fifth respondent thereafter drew the attention of this Court to the decision of the Kerala High Court and also the Andhra Pradesh High Court and stated that in view of those authoritative pronouncements, no action can be taken against the fifth respondent College for having entered into collaboration agreement with the Southern Medical University, Republic of China. He also drew the attention of this Court to an interim order dated 11.9.1997 passed by the learned single Judge of this Court in W.M.P.No.18290 of 1997 [R.Sethuraman v. Union of India and others] and other M.Ps. in W.P.No.11416 of 1997 which was also referred to by the Kerala High Court.

10. We have directed the office to circulate the papers relating to the said writ petition and it is found that the said writ petition is still pending for final disposal and it is only an interim order passed by the learned single Judge. We also found that in that writ petition, which was directed against various institutions running technical education sponsored by some foreign University, the prayer was to take suitable steps to prohibit foreign University conferring any degree in India either directly or by establishing centre through local establishments or otherwise. As it is only an interim order and since the main writ petition is yet to be disposed of, we do not express any final opinion on the said order. Even otherwise, the said order does not help the case of the petitioner. Further, in that case, there is no reference to IMC Act and the case did not deal with any medical education. We are also told that the All India Council of Technical Education [for short, 'AICTE'] is already making regulations permitting the technical education in India to have collaboration with foreign University or vice-versa. Since this case relates to medical education, we strictly confine our order only by interpreting the relevant legislation pertaining to medical education in India.

11. With reference to the Division Bench decision of the Andhra Pradesh High Court dated 24.11.2002, the full text of the decision was not circulated before us. However, a reference to the said order is found in paragraph 47 of the judgment of the Kerala High Court made in W.P.(C) No.33104 of 2003 dated 27.01.2004. The passage extracted therein clearly shows that there was no discussion with reference to the various provisions of the IMC Act and largely, the Court went by the fact that there is no provision of law under which the Government can interfere with the conduct of classes by an institution, which is not affiliated either to any of the Universities in Andhra Pradesh or in India.

12. Turning to the decision of the learned single Judge of the Kerala High Court, we find that the Kerala High Court largely went by the fact that the institutions, which had similar claim as that of the fifth respondent, are not demanding any recognition of the qualifications either by the Central Government or by the MCI and that Section 10-A of the IMC Act has to be addressed to in the context of Section 10-A, 10-B and 10-C of the IMC Act and in terms of the said sections, the permission of the Central Government is required only for the recognition for medical qualifications. According to the Kerala High Court, a further reading of provisions of sub-section 4-A and 4-B of Section 13 of the IMC Act will clear the situation because those provisions provide that after undergoing constant training in any country outside India recognised for enrolment as medical practitioner, he shall not be enrolled by such Medical Council or Indian Medical Council unless the candidate is qualified in the screening test in India and by virtue of Section 13(3), a person who is an Indian citizen is not eligible for admission in any foreign country without the Eligibility Certificate issued. Therefore, the Court was of the view that the apprehension raised by the authorities that the students will be fleeced or they will be free from granting degree for under graduation should be checked in the absence of any legal bar. In the absence of legal prohibition, there was nothing wrong in the institution having such collaboration agreement with the Universities / Institutions.

13. However, Mr.R.Singaravelu, learned counsel appearing for the MCI drew the attention of this Court to the counter affidavit dated 29.9.2006 filed on behalf of the fourth respondent MCI and in paragraph 20, it is stated as follows:

"It is further respectfully submitted that there is no permissibility under the provisions of the Act for any arrangement where the entire teaching and training of the candidate for a graduate medical course is not in the medical institution abroad. There is no permissibility for teaching and training partially in the foreign medical institution. In any case, there is no permissibility of any

teaching/training of any candidate stated to be undertaking a medical course, in a medical institution in India which has not obtained the statutory prior permission u/s 10A of the Act. It is most humbly submitted that if any such impermissible arrangement has been placed before the Hon'ble Court in the present proceedings, in the most humbly submission of the MCI, it being not permissible in law, would deserve appropriate prohibitory orders by this Hon'ble Court so as to protect the innocent and gullible students of this country."

14. In elaborating the said contention, the learned counsel also drew the attention of the communication dated 06.11.2006 sent by the fourth respondent MCI to their counsel that the Council has not been informed by the fifth respondent and no Eligibility Certificate was given by the MCI to the students of the fifth respondent College. MCI has given a public notice in the Times of India dated 16.8.2006 warning the students in getting admission to such institutions without the Eligibility Certificate. He also drew the attention of this Court to the communication dated 14.8.2006 sent by the MCI to the Union of India wherein it was clearly stated that Section 10-A of the IMC Act is clearly applicable to any institution.

15. In the light of the rival submissions made by the parties, it is necessary to examine the provisions of the UGC Act and IMC Act. The right to confer a degree has been dealt with under Section 22 of the UGC Act, which reads as follows:

"22. Right to confer degrees.-- (1) The right of conferring or granting degree shall be exercised by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette."

16. Further, the UGC Act also makes it an offence under Section 24 imposing a penalty on any person, who contravenes the provisions of Section 22 of the UGC Act. Once there is an obligation coupled with the penalty, the Section will have to be construed as mandatory. Therefore,

no institution in contravention of Section 22 can confer any degree.

17. With reference to the study in a foreign institution, Section 13 of the IMC Act provides for recognition of medical qualification granted by certain medical institutions whose qualifications are not included in the first or second schedule. Section 13 (4-A) and (4-B) of the IMC Act are extracted below:

"(4-A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised for enrolment as medical practitioner in that country after such date as may be specified by the Central Government under sub-section (3), shall not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his name entered in the Indian Medical Register unless he qualifies the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies the said screening test shall be deemed to be the recognised medical qualification for the purposes of this Act for that person.

(4-B) A person who is a citizen of India shall not, after such date as may be specified by the Central Government under sub-section (3), be eligible to get admission to obtain medical qualification granted by any medical institution in any foreign country without obtaining an eligibility certificate issued to him by the Council and in case any such person obtains such qualification without obtaining such eligibility certificate, he shall not be eligible to appear in the screening test referred to in sub-section (4-A) :

Provided that an Indian citizen who has acquired the medical qualification from foreign medical institution or has obtained admission in foreign medical institution before the commencement of the Indian Medical Council (Amendment) Act, 2001 shall not be required to obtain eligibility certificate under this sub-section but, if he is qualified for admission to any medical course for recognised medical qualification in any medical institution in India, he shall be required to qualify only the screening test prescribed for enrolment on any State Medical Register or for entering his name in the Indian Medical Register."

18. With reference to the application of this provisions, the MCI has issued instructions and also prescribed a format and the finality of the format prescribed is pending consideration by the Delhi High Court in W.P. (C) No.12792 to 12797 of 2006 in the case of Ishan Kaul and others. Therefore, suffice to say that we are not concerned with a case of the student or any parent coming on his behalf to this Court for Eligibility Certificate so as to enable them to join in any foreign University.

19. The present case stands on a completely different footing. Even as per the admission of the fifth respondent, which is referred to earlier, that the collaboration agreement they had allegedly signed with the Southern Medical University, Republic of China, the two years of pre-clinical and basic studies will be imparted in India and also final year study will be in the fifth respondent College. This position has been reiterated in more than one place in the counter affidavit. It has also been referred to in the advertisement extracted above.

20. Apart from that, the advertisement also shows that the fifth respondent College is an extension Medical School of the Southern Medical University, Republic of China and it is further advertised that the students who are undergoing the Course are eligible to practice in India after passing screening test in India. Even though it is claimed that two years study would be imparted in Southern Medical University, China, the first two years and the last year will be imparted in the fifth respondent College at Kancheepuram, the report submitted by the Superintendent of Police clearly shows that there is not even any laboratory facility and only a few class rooms are available and no course material or syllabus of the Southern Medical University are provided to the students. Even the electricity facility is lacking and the place is electrified with a generator. Since the MCI has taken a stand that under Section 10-A of the IMC Act, there is a total prohibition for any person to run an institution in India, it is relevant to extract Section 10-A 1 of the IMC Act.

"10-A. Permission for establishment of new medical college, new course of study, etc. - (1) Notwithstanding anything contained in this Act or any other law for the time being in force-

- (a) no person shall establish a medical college; or
- (b) no medical college shall
 - (i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification"

21. It is important to note that Section 10-A of the IMC Act was introduced by an Amending Act 31 of 1993 with effect from 27.8.1992. The objects and reasons which was appended to the Bill when it was introduced in the Parliament, is also relevant and so far as the purpose for Section 10-A as found in paragraphs 3 and 4, is extracted below:

"3. Meanwhile, it had been noticed that some State Governments were giving approvals for the opening of new medical colleges on their own, without insisting on the provision of basic prerequisites of hospital, equipment, laboratories or qualified faculty members, etc. In certain cases, after the colleges gave admission to students, they began exercising the combined pressure of the management students and their families for grant of approval to the medical colleges by the Medical Council of India.

4. In order to curb such mushroom growth of medical colleges, the President promulgated the Indian Medical Council (Amendment) Ordinance 1992 (Ord 13 of 1992) on the 27th August, 1992 to amend the Indian-Medical Council Act, 1956 by incorporating therein provisions for prior permission of the Central Government for establishing any new medical college and for starting any new or higher courses of study or increasing admission/capacity in any course of study or training including, post graduate course of study in any existing medical college."

22. Once the objects and reasons are kept in mind, the import of Section 10-A can be clearly understood. Though the Kerala High Court referred to the objects and reasons behind the amendment, it did not take it into consideration by stating that the objects and reasons can only give background of the history of legislation and it cannot be pressed for interpreting the provision. The said amendment has been brought into effect by the Parliament fully conscious of the fact that there has been unauthorised entry of institutions and the State Governments are also granting approvals without insisting on basic pre-requisites which are required for any Medical College, the Central Government itself has taken upon the task of granting prior permission.

23. In fact, the Supreme Court had an occasion to consider the situation created by a bogus Medical College vide its decision reported in 1986 (2) SCC 667 [A.P. CHRISTIANS MEDICAL EDUCATIONAL SOCIETY V. GOVERNMENT OF ANDHRA PRADESH AND ANOTHER] and the relevant passage is found in paragraph 7, which is extracted below:

"As we had already mentioned the petitioner had the temerity to admit or pretend to admit students in the first year MBBS course without any permission being granted by the government for the starting of the medical college and

without any affiliation being granted by the University. The society did this despite the strong protest voiced by the University and the several warnings issued by the University. The society acted in defiance of the University and the Government, in disregard of the provisions of the Andhra Pradesh Education Act, the Osmania University Act and the regulations of the Osmania University and with total indifference to the interest and welfare of the students. The society has played havoc with the careers of several score students and jeopardised their future irretrievably. Obviously the so-called establishment of a medical college was in the nature of a financial adventure for the so-called society and its office bearers, but an educational misadventure for the students. Many, many conditions had to be fulfilled before affiliation could be granted by the University. Yet the society launched into the venture without fulfilling a single condition beyond appointing someone as Principal. No one could have imagined that a medical college could function without a teaching hospital, without the necessary scientific equipment, without the necessary staff, without the necessary buildings and without the necessary funds. Yet that is what the society did or pretended to do. We do not have any doubt that the society and the so-called institutions were started as business ventures with a view to make money from gullible individuals anxious to obtain admission to professional colleges. It was nothing but a daring imposture and sculduggery. By no stretch of imagination, can we confer on it the status and dignity of a minority institution."

24. The Supreme Court in the decision reported in (2005) 1 SCC 45 [SANJEEV GUPTA AND OTHERS v. UNION OF INDIA AND ANOTHER AND BACTCH CASES] in paragraph 48 observed as follows:

"MCI is the expert body which can lay down the criteria for grant of permanent registration to person to practice medicine and involving himself in the patient care and management. Otherwise also we are not inclined to permit the petitioners to practice medicine overriding the provisions of the Act as the Court has to take into consideration the interest of the public at large as well. A person who is not duly qualified as prescribed by MCI cannot be permitted to involve himself in public health care and play with the lives of human beings. It is not for this Court to decide as to who is duly qualified to practice medicine. MCI being the expert body is the best judge to do so..."

25. Further, while dealing with a private University established under a State Act, the Supreme Court has held in its decision reported in (2005) 5 SCC 420 [PROF. YASHPAL AND ANOTHER v. STATE OF CHHATTISGARH AND OTHERS] in paragraph 23 as follows:

"23. Shortly after Independence on 4.11.1948, the Government of India constituted a Commission known as "University Education Commission" of which Dr.S.Radhakrishnan was the Chairman. Dr.Tara Chand, former Vice-Chancellor, Allahabad University, Dr.Zakir Hussain, Vice-Chancellor, Aligarh Muslim University, Dr.A.Lakshmanaswami Mudaliar, Vice-Chancellor, Madras University, Dr.Meghnad Saha, Dean, Faculty of Science, Calcutta University and 5 other eminent personalities in the field of education were its members. The Commission gave a very long and exhaustive report. Chapter II of the report deals with the aims of university education and para 2 of Part I is illustrative and the same is being reproduced below :

"2. Universities as the organs of civilisation - He indeed must be blind who does not see that, mighty as are the political changes, far deeper are the fundamental questions which will be decided by what happens in the universities. Everything is being brought to the test of reason, venerable theologies, ancient political institutions, time-honoured social arrangements, a thousand things which a generation ago looked as fixed as the hills. If India is to confront the confusion of our time, she must turn for guidance, not to those who are lost in the mere exigencies of the passing hour, but to her men of letters and men of science, to her poets and artists, to her discoverers and inventors. These intellectual pioneers of civilisation are to be found and trained in the universities, which are the sanctuaries of the inner life of the nation."

24. In the introductory paragraph of Chapter IV dealing with standards of a teaching, the Commission recorded its views in the following words:

The need for high standards

Introduction : It is the primary duty of a university to maintain the highest standards of its teaching and examinations. A university is a place of higher education where the personality and capacities of the students are developed to the utmost by teachers who should themselves be at work at the frontiers of knowledge in their respective fields. The success of a university is to be judged as much by the type of graduates it turns out as by the amount and

quality of research contributed by its teachers and research students. It must be clearly recognised that there is no conflict involved between the twofold function of a university to educate its members and to advance the frontiers of knowledge - the two functions are, in fact, complementary. Unless high standards of teaching and examinations are maintained, research will suffer, since research can continue uninterrupted only if there is a regular supply of graduates well prepared by general education for specialised research work. On the other hand, if research is neglected by teachers, their teaching will lack vitality and will rapidly become stale. A degree must always be what a university makes it by the kind of teaching it imparts and the type of intellectual and social life it provides for its members. If our universities are to be the makers of future leaders of thought and action in the country, as they should be, our degrees must connote a high standard of scholarly achievement in our graduates."

26. The Supreme Court further held that the nature of the University as contemplated in terms of UGC Act in paragraph 33 is follows:

"33. The consistent and settled view of this Court, therefore, is that in spite of incorporation of universities as a legislative head being in the State List, the whole gamut of the university which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State Legislature on account of a specific entry on coordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which Parliament alone is competent. It is the responsibility of Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained."

27. In interpreting Section 22 of the UGC Act, the Court held in paragraphs 37 to 39 of the judgment as follows:

"37. It is important to note that in view of Section 22 of the UGC Act, the right of conferring or granting degree can be exercised only by a university or an institution deemed to be university under Section 3 of the aforesaid Act or institution especially empowered by an Act of Parliament to confer or grant degrees. What is a 'degree' and what it connotes is not given in the UGC Act but the meaning of the word as given in dictionaries and standard books is as under:

.....
... Omitted ...

38. A degree conferred by a university is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. In the case of a doctorate degree, it certifies that the holder of the degree has attained a high level of knowledge and study in the subject concerned by doing some original research work. A university degree confers a kind of status upon a person like a graduate or a postgraduate. Those who have done research work and have obtained a PhD, DLitt or DSC degree become entitled to write the word "Doctor" before their names and command certain amount of respect in society as educated and knowledgeable persons. That apart, the principal advantage of holding a university degree is in the matter of employment, where a minimum qualification like a graduate, postgraduate or a professional degree from a recognised institute is prescribed. Even for those who do not want to take up a job and want to remain in a private profession like a doctor or lawyer, registration with the Medical Council or the Bar Council is necessary for which purpose a degree in medicine or law, as the case may be, from an institution recognised by the said bodies is essential. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies.

39. Mere conferment of degree is not enough. What necessary is that the degree should be recognised. It is for this purpose that the right to confer degree has been given under Section 22 of the UGC Act only to a university established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a university under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this section provides that 'degree' means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. The value and importance of such degrees which are recognised by the Government was pointed out by a Constitution Bench in *S.Azeez Basha v. Union of India*."

28. After analysing the various provisions of the UGC Act and other analogous provisions, the Court held the 2002 enactment passed by the Chattisgarh State as ultravires and the same was struck down.

29. Section 2(e) of the IMC Act defines Medical Institution, which reads as follows:

"medical institution" means any institution, within or without India, which grants degrees, diplomas or licences in medicine"

30. Even as per the admission of the fifth respondent, they have proposed to run two years pre-medical course in India and also the fifth year course in India and only a clinical rotation has to be done abroad as alleged by them. Therefore, it is a clear case of the fifth respondent starting a medical institution without the prior permission of the Central Government under Section 10-A of the IMC Act. While on one hand any person can start medical College subject to the provisions of the IMC Act in India and also get affiliation to an University or, in the alternative, students, who want to study in Colleges abroad, shall, after getting the Eligibility Certificate as provided under Section 13 (4-A) and (4-B) of the IMC Act, the case of the fifth respondent does not fall within these two permissible limits provided under the IMC Act. On the contrary, the fifth respondent wants to establish a medical institution as defined under Section 2(e) of the IMC Act without the prior permission of the Union of India and without the approval by the MCI. Without being affiliated to any of the Universities established as per the UGC Act, wants to conduct courses in India ostensibly as per the agreement with a foreign University. That type of a situation was never contemplated in any of the decisions relied on by the fifth respondent College. The MCI has not come up with any regulation providing for any collaborative arrangement with a foreign University by an Indian Institution or vice versa.

31. Since the case of the fifth respondent does not fall under the categories provided in terms of Section 13 and they have also not obtained any permission in terms of Section 10-A, the institution started by them and also advertised by them and pursuant to that, admitting of students, is clearly illegal and they are also liable for penal action in terms of the IMC Act as well as UGC Act. Since the very starting of the institution without prior permission of the first respondent Union of India itself is illegal, we are not going into the question as to whether the fifth respondent is having any infrastructural facilities as contended by them. We have only put it on record the report submitted by the Superintendent of Police regarding the lack of infrastructural facilities available with the fifth respondent. Even as per the admission of the fifth respondent College, they have proposed to run pre-medical courses for two years and they will be giving training for the students allegedly

on behalf of the Southern Medical University, Republic of China.

32. It is the endeavour of this Court to prevent the fifth respondent playing a role with the careers of the students and jeopardise their future irretrievably and we cannot allow the fifth respondent to function without legal sanction and without any infrastructural facilities and to run it as a business venture with a view to make money from gullible individuals anxious to obtain admission to professional Colleges. As pointed out by the Supreme Court in A.P.Christians Medical Educational Society case (cited supra), this is nothing but a daring imposture and sculduggery. But for entertainment of the public interest litigation filed by the petitioner, the fifth respondent would have admitted the gullible students and would have gone ahead with their business venture.

33. As was held in the Prof. Yashpal's case (cited supra), the Supreme Court emphasised the need for a quality education in paragraph 63 as follows:

"63. The impugned Act which enables only a proposal of a sponsoring body to be notified as a university is not likely to attract private capital and a university so notified cannot provide education of any kind much less of good quality to a large body of students. What is necessary is actual establishment of institutions having all the infrastructural facilities and qualified teachers to teach there. Only such colleges or institutions which impart quality education allure the best students. Until such institutions are established which provide a high level of teaching and other facilities like well-equipped libraries and laboratories and a good academic atmosphere, good students would not be attracted. In the current scenario, students are prepared to go to any corner of the country for getting good education. What is necessary is a large number of good colleges and institutions and not universities without any teaching facility but having the authority to confer degrees."

34. In the light of the above, we have no hesitation in holding that the fifth respondent has no legal right to run an institution of this kind, which has been advertised by them in the newspapers, and they are hereby permanently enjoined from running the institution without complying with the provisions of the IMC Act and UGC Act referred to above.

35. The writ petition shall stand allowed to the extent indicated above. It is open to the authorities especially respondents 1 and 4 to take appropriate action against the fifth respondent in accordance with law. However, there will be no order as to costs. Consequently, W.P.M.P.Nos.709 of 2006, 8932 of 2006 and 11027 of 2006 will stand closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary,
Union of India,
Ministry of Human Resources & Development
Shastri Bhavan
New Delhi - 110 001
2. The Secretary,
University Grants Commission,
Bahadur Shah Zafar marg,
New Delhi - 110 002
3. The Member Secretary
All India Council for Technical Education
Indira Gandhi Sports Complex
I.P. Estate
New Delhi - 110 002
4. The Acting President,
Medical Council of India
Dr.P.C.Kesavan Kutty Nair
Pocket - 14, Sector - 8
Dwarka Phase - 1
New Delhi - 110 075

+ 1 CC To Mr.N. Muralikumar, ACGSC SR NO.10200

+ 1 CC To M/S.G.R.Associates, Advocate SR NO. 10212

+ 1 CC To M/s.S.Udayakumar, SCGSC, SR NO. 9994

+ 1 CC To M/s.A.Jenasenan, Advocate SR NO. 9789

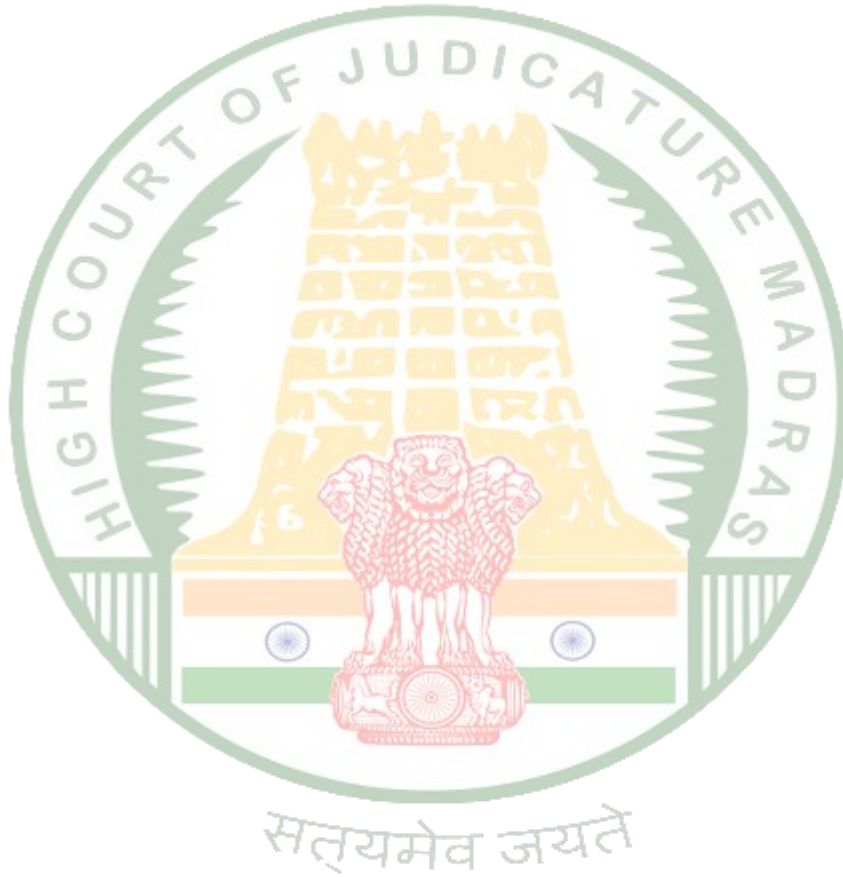
+ 1 CC To M/s.K.Selvaraj, Advocate SR NO.9802

+ 1 CC To M/s.B.Saraswathi, Advocate SR NO.9773

+ 1 CC to the Government Pleader SR NO 10048

W.P.No. 8029 of 2006
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