

SUPREME COURT OF INDIA

Tamil Nadu Dr.MGR Medical University

Vs.

SVS Educational and Social Trust

C.A.No.10920 of 2018

(S.A.Bobde and L.Nageswara Rao,JJ.,)

12.11.2018

JUDGMENT

L.Nageswara Rao,J.,

SLP(Civil) No.2194 of 2018

1. Leave granted.

2. The request of the First Respondent for continuance of provisional affiliation for admission of students in Bachelor of Homeopathy Medicine and Surgery (BHMS) degree course for the academic year 2016-2017 was rejected by the Appellant. In a Writ Petition filed by the First Respondent assailing the said order, the High Court of Madras directed the Appellant to permit the First Respondent to participate in the counselling for admission Homeopathic Colleges for the academic year 2017-2018. The Division Bench of the High Court of Madras upheld the said interim order. Hence this Appeal.

3. The Central Council for Homeopathy, the Third Respondent herein, conducted an inspection on 06.08.2013 and recommended for grant of permission to the First Respondent for starting a Homeopathic college with an intake of 50 students. The Government of India, Ministry of Ayurvedic, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH), the Second Respondent herein, refused to grant the permission on the basis of its own assessment. In view of the deficiencies of the requisite facilities found in an inspection conducted later, the application of the First Respondent for admission to the first batch of students to BHMS course was rejected by the Third Respondent. However, the Second Respondent decided to grant permission to the First Respondent to start a new homeopathic medical college under Section 12 A of the Homeopathy Central Council Act, 1973 (hereinafter referred to as the 'Act'). On 28.09.2015, the First Respondent was informed that it can admit 50 students for the academic year 2015-2016 subject to the condition that sufficient infrastructure, hospital facilities and qualified teachers in each department as per the relevant regulations were provided before the admission of students. It was mentioned in the letter dated 28.09.2015 that the First Respondent should comply with the requirements of

the Act and the relevant regulations made there under for obtaining permission to admit students in the academic year 2016-2017.

4. In view of the unfortunate death of three students of BNYS course in the First Respondent institute on 23.01.2016, the Government of Tamil Nadu directed relocation of BHMS students also. The First Respondent- College was closed down by the District Collector, Villupuram and students were adjusted in Government Homeopathy Medical College, Thirumangalam. Thereafter, the First Respondent filed an application for grant of provisional affiliation which was rejected by the Appellant on 08.04.2016. The reason for rejection was the failure on the part of the First Respondent in not rectifying the deficiencies notified to the College in the inspection. Writ Petition No.18510 of 2016 filed by the First Respondent challenging denial of provisional affiliation was dismissed by the High Court. However, a Division Bench of the High Court directed the Appellant to reconsider the grant of affiliation after conducting another inspection in the Writ appeal filed by the First Respondent against the judgment in Writ Petition 18510 of 2016.

5. On a reconsideration of the matter the Appellant rejected the request of the First Respondent for continuance of provisional affiliation for admission of students to BHMS course for the year 2016-2017 by an order dated 08.02.2017. The First Respondent questioned the rejection of his request for grant of provisional affiliation by filing a Writ Petition in the High Court of Madras. Pending disposal of the Writ Petition filed by the First Respondent, the High Court directed the Appellant to include the First Respondent in the counselling for admission to the first year BHMS course for the year 2017-2018. In the Writ appeal filed against the said order, the First Respondent was directed to proceed with the counselling and admit students for the year 2017-2018. By an order dated 29.01.2018 we issued notice in the SLP and stayed the operation of the impugned order of the High Court.

6. The Ministry of AYUSH was formed on 9th November 2014 to ensure the optimal development and propagation of AYUSH systems of health care. The main objective of the Ministry of AYUSH is to upgrade the educational standards of Indian systems of medicines and Homoeopathy Colleges in the country. Section 12 A of the Act postulates that a Homeopathic Medical College shall be started only with the previous permission of the Central Government. Permission was granted in favour of First Respondent to start a Homeopathic Medical College on 28.09.2015. First Respondent could make admissions to 50 seats for the academic year 2015-2016 in the first year BHMS course subject to the condition that the requisite infrastructure, hospital facilities and qualified teachers in each department as per the Central Council for Homeopathic Regulations are complied with before the admission of the students. It was made clear that the College should fulfil all the requirements of the Act before obtaining permission for admission to the academic year 2016-2017. There is no doubt that the approval that was granted by the Second Respondent was valid only for a period of one year. The High Court committed a serious error in proceeding on the basis that the approval granted for the year 2015-2016 was neither rescinded nor cancelled and there was no necessity for the First Respondent to seek for a fresh approval.

7. There is a further requirement of affiliation from the Appellant University for starting a Homeopathic College in the State of Tamil Nadu. The Tamil Nadu Dr. MGR Medical University (Affiliation of Homeopathic Medical College) Statute, BHMS, MD (Homeopathy) prescribes for the procedure relating to affiliation of Homeopathy Colleges according to which an application has to be made for issuance of a "letter of consent of affiliation" for starting a Homeopathy College. According to the said Statute a letter of consent of affiliation is granted only on fulfilment of the conditions mentioned therein. Para 12 of the Statute makes it clear that the application for provisional affiliation can be made only after obtaining letter of permission from the department of AYUSH, Health and Family Welfare to start a Homeopathy Medical College.

8. On 07.06.2013, the Appellant issued a letter of consent of affiliation in the prescribed format. It was mentioned in the said letter that the consent of affiliation was valid for a period of one year from the date of issuance. The First Respondent was also directed not to admit any student till the provisional affiliation is granted by the University to start the first BHMS degree course. A perusal of the consent of affiliation in Form 5 which has been filed by the First Respondent would make it clear that the University agreed in principle to grant affiliation to the proposed Homeopathy College and that the consent was subject to grant of permission by the Government of India under Section 12 A of the Act.

9. The request for grant of provisional affiliation made by the First Respondent was rejected by an order dated 08.04.2016 by the Appellant. There is a reference to an inspection that was conducted pursuant to a letter written by the Government of India on 28.09.2015. It was stated in the letter dated 08.04.2016 that a scrutiny of the inspection report showed that the deficiencies pointed out have not been rectified by the First Respondent. The matter pertaining to grant of provisional affiliation was reconsidered by the Appellant after a direction was issued by the High Court. By a letter dated 08.02.2017, the Appellant informed the First Respondent that the question of continuance of provisional affiliation for the academic year 2016-2017 does not arise as there was no order of provisional affiliation issued to the institute. The request made by the First Respondent for continuance of provisional affiliation for admission of students for the academic year 2016-2017 to BHMS degree course was rightly rejected.

10. The High Court held that the Appellant committed an error in not passing any order on the application made by the First Respondent for continuance of affiliation on 03.08.2017. As stated earlier, the application for continuance of provisional affiliation was reconsidered by the Appellant University and a decision was taken on 08.02.2017. During the pendency of the Writ Petition wherein the said decision was challenged, the Appellant could not have considered yet another application which was made on 03.08.2017. The High Court erred in holding that the non-consideration of the application dated 03.08.2017 for continuance of affiliation is a default on the part of the University. The High Court committed a further mistake in finding that the deficiencies pertained only to land.

11. It is clear from the record that the First Respondent- University does not have the requisite approval from the Central Government as provided in Section 12 A of the Act. As

the consent to affiliation was granted subject to the approval from the Central Government for the period of one year, the request made by the First Respondent for continuance of provisional affiliation was rightly rejected by the Appellant. We are in agreement with the submission made by the learned Advocate General for the State of Tamil Nadu that as the First Respondent did not have provisional affiliation, there was no question of continuance of the provisional affiliation to the First Respondent. The First Respondent is not entitled for the relief that was granted by the High Court for admission of students to the first BHMS degree course for the academic year 2017-2018 as it has neither approval from the Central Government nor affiliation from the Appellant. Exercise of jurisdiction in favour of provisional admissions during the pendency of a Writ Petition exposes the students to the risk of losing precious years in case of dismissal of the Writ Petition. Courts should desist from passing interim orders directing provisional admissions of students. [See: *Krishna Priya Ganguly & Ors. v. University of Lucknow & Ors*¹. and *Union of India v. Era Educational Trust & Anr*²].

11. While affirming the order passed in the Writ Petition, the Division Bench referred to the submissions made by the parties but did not express its views. It is imminent that points raised have to be adjudicated upon and reasons to be recorded in support of the decision. The Division Bench failed to consider the submissions of the Appellant relating to the lack of approval by the Central Government in favour of the First Respondent without which the First Respondent is not entitled to the relief sought for. The Division Bench ought not to have granted the relief without deciding whether the First Respondent had the requisite approval from the Central Government to start a College.

12. For the aforementioned reasons, the order of the High Court is set aside and the appeal is allowed.

Judgment Referred.

¹*AIR 1984 SC 0186*

²*(2000) 5 SCC 0057*