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**The Board of Governors, In supersession of the Medical Council of India  
Vs Dr. M.G.R. Educational and Research Institute and Others**

**Writ Appeal No. 2772 of 2012**

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**Court:** Madras High Court

**Date of Decision:** April 15, 2013

**Acts Referred:**

Indian Medical Council Act, 1956 & Section 10A#University Grants Commission Act, 1956 & Section 3

**Hon'ble Judges:** R.K. Agrawal, Acting C.J.; N. Paul Vasanthakumar, J

**Bench:** Division Bench

**Advocate:** V.P. Raman in W.A. 2772/2012 and Mr. S. Haja Mohideen Gisthi in W.A. 256/2013, for the Appellant; V.P. Raman in W.A. 256/2013 for R-4 - Medical Council of India, Mr. S. Haja Mohideen Gisthi, R-2 in W.A. 256/2013 and R-2, R-3 in W.A. 2772/2012 - Union of India, Mr. P.S. Raman for 1st Respondent in both and Mr. R. Muthukumaraswamy for Mr. C.V. Subramanian writ appeals/ACS Medical College, Mr. P.R. Gopinathan for R-4 in W.A. 2772/2012 and R-3 in W.A. 256/2013 - UGC, Mr. S. Prabhakaran for Mr. T.P. Senthilkumar for R-5 in both writ appeals and Mr. N. Vijay Narayan, for Mr. R. Parthiban for RR-6 to 76 in both writ appeals, for the Respondent

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**Judgement**

N. Paul Vasanthakumar, J.

W.A. No. 2772 of 2012 is filed by the Medical Council of India and W.A. No. 256 of 2013 is filed by the

Ministry of Human Resources Development, Union of India, challenging the order in W.P. No. 20995 of 2010 dated 9.11.2012, wherein the

learned single Judge quashed the order dated 31.8.2010 passed by the Ministry of Human Resources Development (HRD), Union of India

(appellant in W.A. No. 256/2013), rejecting the request of Dr. M.G.R. Educational and Research Institute, Chennai (1st Respondent in both

appeals) for inclusion of ACS Medical College and Hospital, Chennai, under the ambit of the institution deemed to be University with a direction to

the Ministry of HRD to issue appropriate notification u/s 3 of the University Grants Commission Act, 1956 by bringing ACS Medical College and

Hospital under the ambit of Dr. MGR Educational and Research Institute (Deemed University) with retrospective effect from the academic year

2008-2009 as positively recommended by the UGC with further direction to consider regularisation of admission made by the College for the

academic year 2009-2010 and grant renewal of permission for the academic year 2010-2011 to consider afresh keeping in mind the directions

made in the order and pass appropriate orders within a period of two weeks. The said directions were issued subject to the decision of the

Supreme Court in Viplav Sharma's case in W.P.(C) No. 142 of 2006. The brief facts necessary for disposal of these writ appeals are as follows:

(a) Dr. MGR Educational and Research Institute was notified as Deemed University u/s 3 of the University Grants Commission Act, 1956

(hereinafter called "UGC Act") in March, 2003 and the Institute was sponsored by Dr. MGR Educational Research Trust in furtherance of the

object of the parent Trust viz., Tmt. Kannammal Educational Trust. The said Institute intended to start Medical College under the name and style

"ACS Medical College and Hospital" as a constituent College of the University and submitted proposals to the UGC to bring the said Medical

College under its ambit. The said Institute obtained essentiality certificate from the Government of Tamil Nadu on 11.6.2007 for starting the

Medical College from the academic year 2007-2008. The first respondent being a Deemed University, had issued consent of affiliation for the

proposed college.

(b) Proposals were submitted to the Ministry of Health and Family Welfare, Government of India, for the grant of necessary permission u/s 10A of

the Indian Medical Council Act, 1956 and simultaneously proposals were also sent to UGC for inclusion of the proposed college under the ambit

of the Deemed University. By order dated 31.7.2007 the UGC expressed no objection for inclusion of the proposed college under the ambit of

the Deemed University subject to the following conditions:

a. It is recognised/approved by Medical Council of India

b. It will follow the norms of Medical Council of India and UGC

c. The proposal will be examined by the UGC with the help of a duly constituted Committee

d. The final approval of inclusion under the ambit will be notified by the Govt. of India, on the advice of UGC (after the establishment of the

College with the permission of the Central Government).

(c) Medical Council of India sent an Inspection Team and based on the report sent, recommendation was sent to the Ministry of Health and Family

Welfare. Consequently the Ministry of Health and Family Welfare issued a letter of intent on 20.6.2008 for starting Medical College from the

academic year 2008-2009, followed with a letter of permission dated 4.7.2008, with a condition that the admission process should be completed

in accordance with the time schedule stipulated under the Graduate Medical Education Regulation, 1997.

(d) On 7.7.2008 the Institute requested the UGC to examine the proposal and recommend to the HRD Ministry for the grant of final approval to

include the college under the ambit of Deemed University from the year 2008-2009. Based on the letter of intent and letter of permission granted,

the College admitted students for first year MBBS Course in the year 2008-2009 on the fond hope of getting orders from the Ministry of HRD

bringing the college under the ambit of Deemed University and commenced the course and also sent the list of students admitted for the year 2008-

2009 to the Medical Council of India.

(e) According to the ACS College, two other colleges viz., Saveetha Medical College and Sri Sathya Sai Medical College, which were placed on

the same footing also admitted students in MBBS course without they being brought under the ambit of the respective Deemed Universities or by

obtaining provisional affiliation from the Tamil Nadu Dr. MGR Medical University and for the said two colleges notifications were issued by

Ministry of HRD bringing them under the ambit of the respective Deemed Universities and the first respondent Institute was discriminated.

(f) The first respondent, by letter dated 16.9.2009 requested the UGC to conduct inspection and to make recommendations for issuing notification

u/s 3 of the UGC Act, 1956 with further reminders. According to the first respondent, recommendation was made to the Central Government to

renew permission for admission of second batch i.e., for the academic year 2009-2010. However, Medical Council of India by its letters dated

15.5.2009 and 24.6.2009 addressed to the Central Government stated that the first respondent's renewal of permission for the second batch is

kept in abeyance till the college is brought under the ambit of the Deemed University. Therefore the first respondent sent a detailed letter on

24.6.2009 to UGC requesting early action for notifying the college as a constituent of the Deemed University by conducting inspection.

(g) On 8.7.2009 Medical Council of India requested the first respondent to produce the notification issued u/s 3 of the UGC Act, 1956, for which

a reply was given on 14.7.2009 stating that action is being taken. However, by order dated 10.8.2009 renewal of permission for the academic

year 2009-2010 was not granted and directed not to admit any fresh student for the academic year 2009-2010 until the college was brought under

the ambit of Deemed University.

(h) The first respondent filed writ petition before this Court in W.P. No. 13419 of 2009 and prayed for issuing direction to UGC and Ministry of

HRD to issue appropriate notification u/s 3. The said writ petition was disposed of on 17.8.2009 with a direction to the Ministry of HRD to take

appropriate decision in accordance with the regulations of UGC, within a period of six weeks.

(i) Thereafter, first respondent filed W.P.(C) No. 349 of 2009 before the Hon"ble Supreme Court and prayed for direction to renew permission

for the academic year 2009-2010.

(j) Pursuant to the directions issued by this Court in W.P. No. 13419 of 2009, UGC appointed a Committee for inspection and without getting

renewal of permission, first respondent admitted second batch of students i.e., for the year 2009-2010 before 30.9.2009, the last date for

admitting students in MBBS course.

(k) In October, 2009, UGC reviewed functioning of various Deemed Universities, including the first respondent Deemed University, for the

purpose of continuing the status by verifying the availability of infrastructural and instructional facilities and UGC recommended Ministry of HRD to

continue the Deemed University status to the first respondent and the said proposal to include the college under the ambit of Deemed University

was delayed due to non-completion of review by UGC regarding review of Deemed Universities. The Ministry of HRD on 11.11.2009 requested

the UGC to reconsider its recommendation dated 30.9.2009. UGC after clarifying various points raised by the Ministry of HRD, reiterated its

recommendations through its communication dated 1.1.2010.

(l) Medical Council of India inspected the first respondent College for the grant of renewal of permission for the year 2010-2011 and pointed out

certain deficiencies by proceedings dated 6.4.2010 and recommended to the Central Government not to renew admission of students for the

academic year 2010-2011 and further stated that no inspection would be conducted by the Council until the institute furnish a certificate that it was

brought under the ambit of the Deemed University. Thereafter writ petition was filed seeking direction to consider the compliance report for the

deficiencies pointed out and order appropriate inspection. Against the order passed in the said writ petition, writ appeal was filed and during the

hearing of the writ appeal first respondent was allowed to withdraw the writ petition itself.

(m) The first respondent again filed W.P. No. 13944 of 2010 and prayed to quash the proceedings dated 15.3.2010 passed by the Ministry of

HRD and the order dated 5.4.2010 passed by the Ministry of Health and Family Welfare with further direction to the Ministry of HRD to consider

and pass orders regarding the claim for issuing appropriate notification u/s 3 of UGC Act, 1956 for bringing the ACS Medical College and

Hospital under the ambit of Deemed University with retrospective effect, without reference to the issue of de-recognition of 44 Universities, which

is pending before the Honourable Supreme Court in W.P.(C) No. 144 of 2006. The said writ petition was disposed of on 14.7.2010 with a

direction and subject to the outcome of W.P.(C) No. 142 of 2006.

(n) Another writ petition was filed by the first respondent in W.P. No. 18682 of 2010 to comply with the order of this Court dated 14.7.2010.

Thereafter on 31.8.2010 the request was rejected. The said order was challenged before the learned single Judge by raising various grounds,

which was allowed as stated supra, against which these writ appeals were filed by the Ministry of HRD and Medical Council of India respectively.

2. Mr. S. Haja Mohideen Gisthi, learned counsel appearing for the Union of India submitted that the learned single Judge was not justified in giving

positive direction to issue notification u/s 3 of the UGC Act, 1956 to bring the ACS Medical College under the ambit of the Deemed University,

and consider the admission of students for the academic years 2008-2009 and 2009-2010. Learned counsel submitted that the learned single

Judge was not justified in giving positive direction when the first respondent College is lacking on many counts, which was pointed out by the

Inspection Committee of Medical Council of India, constituted by the Central Government.

3. Mr. V.P. Raman, learned standing Counsel for the Medical Council of India submitted that the learned single Judge was not justified in issuing

direction to the Ministry of HRD to bring the ACS Medical College and Hospital under the ambit of Deemed University with retrospective effect

and without consent of affiliation, permission to establish a medical College cannot be sought for as per Regulation 2(4) of the Establishment of

Medical College Regulation, 1999, and the College having not been brought under the ambit of the Deemed University, cannot be given consent

for affiliation. The deficiencies pointed out by the Ministry of HRD was not considered by UGC while reiterating the recommendations once again.

The first respondent cannot compare two other colleges viz., Saveetha Medical College and Sri Sathya Sai Medical College, as they were brought

under the ambit of their Deemed Universities and the first respondent College having not been brought under the ambit till date, it cannot admit

students and more so admission made for the year 2009-2010 without renewal of permission cannot at all be considered as valid admission and no

retrospective permission can be ordered to validate the admission made by the college for the year 2009-2010. The learned counsel finally

submitted that giving direction to respondents to reconsider renewal of permission for 2010-2011 based on the positive direction given to UGC to

notify the college under the ambit of Deemed University, is illegal.

4. Mr. P.S. Raman and Mr. R. Muthukumaraswamy, learned Senior Counsels made submissions on behalf of the first respondent/institution. Mr.

N. Vijay Narayan, learned Senior Counsel and Mr. S. Prabhakaran, learned counsel argued on behalf of the students, who were admitted in the

Institution.

5. The learned Senior Counsels argued that the order of the learned single Judge requires no interference as the learned Judge, considering his own

earlier order, gave positive direction. As the first respondent has been discriminated when compared with other two colleges, and the

representation submitted by the first respondent dated 20.7.2010 had not been considered while passing the impugned order by the Ministry of

HRD in the impugned order dated 31.8.2010, and no opportunity of hearing was given to the first respondent before rejecting the request on the

claim of legitimate expectation, the direction issued by the learned single Judge is fully justified. The learned Senior Counsels further submitted that

the Medical Council of India has no locus standi to file the writ appeal, as only a direction is issued to consider regularisation of admission and for

grant of renewal of permission.

6. Mr. N. Vijay Narayan, learned Senior Counsel and Mr. S. Prabakaran, learned counsel appearing for the students submitted that the students,

who have completed their course pursuant to the permission granted for admitting students in the year 2008-2009 and the permission having been

rejected for the academic year 2009-2010 due to non-issuance of notification to bring the college under the ambit of Deemed University, cannot

be put to hardships.

7. In reply Mr. S. Haja Mohideen Gisthi, learned Counsel appearing for the Union of India submitted that the direction issued by the learned single

Judge to issue appropriate notification u/s 3 of the UGC Act, 1956 by bringing the ACS Medical College and Hospital under the ambit of Dr.

MGR Educational and Research Institute, Deemed University with retrospective effect from 2008-2009 cannot at all be sustained and even if the

first respondent has made out a case to quash the impugned order dated 31.8.2010, the matter could be remitted to the Ministry of HRD to

consider the claim made by the first respondent and pass fresh orders, particularly when there is doubt regarding compliance of the infrastructural

and instructional facilities available in the college as pointed out by the Inspection team of the Medical Council of India.

8. Mr. V.P. Raman, learned counsel appearing for Medical Council of India in reply submitted that in view of the positive direction given to issue

notification u/s 3 of the UGC Act, 1956, with retrospective effect from 2008-2009, the learned single Judge in effect is validating the admission of

students made during the academic years 2008-2009 and 2009-2010 and as such discretion is not given to the Medical Council of India to decide

the issue.

9. We have considered the rival submissions made on behalf of the parties.

10. In the impugned order passed by the Ministry of HRD dated 31.8.2010, the proposal received from the Central Government in June, 2007

from the first respondent seeking inclusion of ACS Medical College and Hospital, Chennai, under the ambit of the first respondent Deemed

University is admitted. The University Grants Commission inspected the ACS Medical College and Hospital, Chennai, and recommended to the

Ministry of HRD and submitted its recommendation on 6.10.2009. The Ministry of HRD again called for reconfirmation of the recommendation

from the UGC by its letter dated 11.11.2009 by pointing out four deficiencies/infirmities viz., the location of the college and the college was started

as Medical College and not as new Department or faculty under the ambit of the first respondent University; no clear-cut recommendation was

submitted; the Medical College cannot be said to have come into existence unless recognised both under the UGC Act and Indian Medical

Council Act, 1956; and therefore, admission of students from 2008-2009 in the first year MBBS Course without getting notification as an

approved Unit u/s 3 of the UGC Act, 1956 is not in conformity with the procedures and guidelines. The first respondent was called upon to

appear before the UGC for clarifying the queries raised by HRD Ministry, which were clarified by report dated 29.12.2009 and the UGC

reconfirmed its recommendation by its communication dated 1.1.2010.

11. The Ministry of Health and Family Welfare by order dated 4.7.2008 issued letter of permission to the ACS Medical College and Hospital for

its establishment at Chennai with an annual intake of 150 students with prospective effect i.e., from 2008-2009 with specific condition that the next

batch shall not be admitted unless renewal of permission is granted by the Central Government. It was further directed that the admission process

for the 2008-2009 shall be completed within the time schedule indicated in the Graduate Medical Education Regulation, 1997 as amended and the

said college admitted 150 students for the year 2008-2009 before 30.9.2008. For the year 2009-2010 application was submitted and Medical

Council of India by communication dated 1.5.2009 gave reply stating that renewal of permission for admission of second batch of MBBS Students

is kept in abeyance till the institute is brought under the ambit of Deemed University. On 15.5.2009 Medical Council of India sent a communication

to the Ministry of Health and Family Welfare requesting the Central Government to keep the matter of renewal of permission for admission of

students for the year 2009-2010 in abeyance and to recall the renewal of permission till the institution is brought within the ambit of Deemed

University by UGC. It is an admitted case that thereafter no permission was granted by the Ministry of Health and Family Welfare or by the

Medical Council of India to admit students in ACS Medical College and Hospital. However, the College unilaterally admitted 150 students for the

year 2009-2010.

12. The first respondent filed various cases, to direct inspection of the college; to consider the request for issuing notification u/s 3 of the UGC Act,

1956; and finally an order was passed by this Court made in W.P. No. 18262 of 2010 dated 18.8.2010 to give effect to the order of this Court

dated 14.7.2010 made in W.P. No. 13044 of 2010. In the order in W.P. No. 13044 of 2010 dated 14.7.2010 this Court gave the following

direction:

The Ministry of HRD was directed to pass appropriate orders on the claim of the ACS Medical College and Hospital, constituent of Dr. MGR

Educational and Research Institute based on the recommendation made by the UGC dated 30.9.2009 and 1.1.2010. For granting approval

thereby bringing the college within the ambit of the Deemed University as was done in the case of two other Institutions viz., Saveetha Medical

College and Sri Sathya Sai Medical College, which are similarly placed as that of ACS Medical College and Hospital. After passing such an order

the Ministry of HRD and Ministry of Health and Family Welfare shall act in accordance with law and proceed in accordance with law subject to

the outcome of W.P.(C) No. 142 of 2006, which is pending before the Honourable Supreme Court.

Thereafter the order dated 31.8.2010 was passed stating that before the Medical College was approved by the Government as a constituent unit

of the Deemed University, no college can admit students to its academic degree programmes, the Central Government by communication dated

11.8.2009 directed the ACS Medical College not to make admissions for the academic session 2009-2010. A review of Dr. MGR Educational

Research Institute was made by the Committee comprising of Educational Experts found the institution deficient on various grounds and therefore

bringing yet another institution/College under the ambit of such an institution deemed to be University, would further weaken its academic

standards. Therefore, in exercise of inherent powers u/s 3 of the UGC Act, 1956 and considering all relevant facts, the Government rejected the

recommendation of the UGC dated 30.9.2009.

13. From the perusal of the above order, we are of the view that the Ministry of HRD has not accepted the recommendations of UGC without

stating any reason before passing the order dated 31.8.2010. The discrimination pointed out by the first respondent through its representation

dated 20.7.2010 had not been considered and the said discrimination pointed out by ACS Medical College and Hospital was directed to be

considered by this Court in the order made in W.P. No. 13044 of 2010 dated 14.7.2010. The College has also disobeyed the direction issued by

the Ministry of Health and Family Welfare in admitting students, at least for the academic year 2009-2010, without any permission or approval

from the Ministry of Health and Family Welfare, which in turn directed the College not to admit students for the academic 2009-2010. However,

for the academic year 2008-2009, Medical Council of India permitted the College to admit 150 students and they have completed their course as

on today, and their claim should be considered by Medical Council of India without comparing the case of students admitted during the academic

year 2009-2010.

14. In the report of the Medical Council of India, addressed to the Ministry of Health and Family Welfare dated 6.4.2010, which was drawn on

the basis of inspection made on 4th and 5th February, 2010, which finds place in the typed set of papers, the list of deficiencies are noted viz., 22

teaching staff could not be counted as qualified teaching staff by stating specific reasons viz., not possessing requisite experience; not possessing

academic qualification; not furnishing joining report; not producing relieving certificate from the previous employer; etc., and shortage of teaching

faculty was assessed at 42.20 % i.e., 63 out of 149; the Medical Superintendent was not qualified to hold the post as he was not having seven

years of experience in administration; there is deficiency of 346 teaching beds; auditorium has no door and audio visuals; library is inadequate; no

accommodation is available for boys and girls; no mess facility; etc.

15. In view of the said deficiencies the Medical Council of India decided not to recommend to the Central Government for renewal of permission

for admission of third batch of MBBS students for the academic year 2010-2011 and further stated that till the institute furnishes certificate from

the Ministry of HRD that it has been brought under the ambit of Deemed University, no further inspection could be made. The above deficiencies

pointed out is bound to be rectified/complied with, which has to be verified by the Inspection Team of the Medical Council of India and thereafter

only the medical course can be conducted even if ACS Medical College is notified under the ambit of the first respondent Deemed University.

16. The Hon"ble Apex Court in the decision reported in Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P. and Others, considered the

scope of judicial review in respect of the disputes regarding compliance of conditions of affiliation and held that the said dispute can only be

resolved after physical verification by specialised/expert bodies and not by the Court. The Supreme Court in the said decision relied on its previous

decision reported in Medical Council of India Vs. State of Karnataka and Others, wherein in paragraph 29 it is held thus,

29. A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital

attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out,

he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical

professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their

ailments during the course of their study.....

17. The learned single Judge allowed the writ petition with positive direction to the Ministry of HRD on the ground of non-application of mind,

violation of principles of natural justice, discrimination and on the ground of legitimate expectation, etc. All these factors can be borne in mind by

the Ministry of HRD, if this Court gives direction to consider the claim of the first respondent and pass fresh orders for issuing notification u/s 3 of

the UGC Act, 1956. If the Ministry of HRD is not satisfied with the recommendation of the UGC submitted three years ago, it can very well call

for a fresh recommendation based on fresh inspection as it is well settled in law that the institutions must have infrastructural and instructional

facilities for the grant/continuance of approval/permission/affiliation/ recognition and for issuing notification u/s 3 of the UGC Act, 1956.

18. In the light of above decision arrived by us, we are not inclined to refer to the various decisions cited by the respective counsels and Senior

Counsels appearing for the parties.

19. In fine, we are of the view that the positive direction given by the learned single Judge requires modification and the issue has to be remitted to

the Ministry of HRD to consider the issue of bringing the ACS Medical College and Hospital, Chennai under the ambit of Dr. MGR Educational

and Research Institute deemed to be University, and pass fresh orders after hearing the officials of the first respondent. The said exercise is

directed to be completed by the Ministry of HRD, within a period of four weeks from the date of receipt of copy of this order. The claim of the

students admitted during the academic year 2008-2009 is directed to be decided by the Medical Council of India depending upon the orders to be

passed by the Ministry of HRD. Insofar as the students admitted in the academic year 2009-2010 are concerned, it is open to the Medical Council

of India to decide their rights as it deems fit, in the circumstances of this case. The writ appeals are disposed of with the above directions and

observations. There is no order as to costs. Connected miscellaneous petitions are closed.