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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.05.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.R.SWAMINATHAN**

W.P.Nos. 693, 695, 12761, 12182, 12188, 12193, 12476, 12485,
12486, 12482, 12489, 12491 and 12585 of 2022

and

W.M.P.Nos.740, 9238, 11388, 11389, 12218, 742, 9233, 11641,
11636, 11632, 11939, 11940, 11941, 11946, 11948, 11935, 11936,
11938, 11954, 11956, 11951, 11952, 12040, 12041 and 12042
of 2022

W.P.No.693 of 2022

Nandha Ayurveda Medical College and
Hospital rep. by its Chairman,
Pitchandampalayam Post,
Erode - 638 052.

..Petitioner

Vs.

1.The Director of Indian Medicine and
Homeopathy, Arumbakkam,
Chennai - 600 106.

2.The Selection Committee rep. by its
Secretary,
Directorate of Indian Medicine and
Homeopathy,
Arignar Anna Government Hospital Campus,
Arumbakkam, Chennai - 600 106.

3.The Tamil Nadu Dr. M.G.R. Medical University
rep. by its Registrar,
Anna Salai, Guindy, Chennai - 600 032.

..Respondents

**W.P.No.695 of 2022**

Ayurveda College, Coimbatore rep. by its
Secretary,
242-B, Thiruchirappalli Road,
Sulur, Coimbatore - 641 402.

..Petitioner

Vs.

- 1.The Director of Indian Medicine and
Homeopathy, Arumbakkam,
Chennai - 600 106.
- 2.The Selection Committee rep. by its
Secretary,
Directorate of Indian Medicine and
Homeopathy,
Arignar Anna Government Hospital Campus,
Arumbakkam, Chennai - 600 106.
- 3.The Tamil Nadu Dr. M.G.R. Medical University
rep. by its Registrar,
Anna Salai, Guindy, Chennai - 600 032.

..Respondents

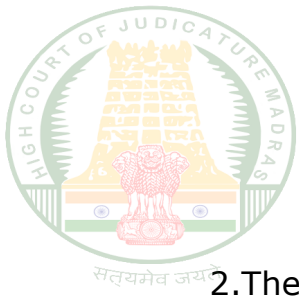
W.P.No.12761 of 2022

White Memorial Homoeo Medical
College Hospital rep. by its
Principal Dr.R.Richard Franklin
Having Office at Veeyanoor Post,
Attoor, Kanyakumari District - 629 177.

..Petitioner

Vs.

- 1.The Secretary to Government,
Department of Health and Family Welfare,
Secretariat, Chennai.



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2.The Secretary,
National Commission of Homeopathy,
Jawaharlal Nehru Bhartiya Chikitsa,
Avum Home, Anusandhan Bhavan,
No.61-65, Institutional Area,
Opp.D Block, Jankpuri,
New Delhi.

3.The Director,
The Directorate of Indian Medicine and
Homeopathy, Arumbakkam,
Chennai.

4.The Secretary,
Union of India, AYUSH Bhavan,
B Block, GPO Complex,
INA New Delhi - 110 023.

5.The Registrar,
Tamil Nadu Dr. M.G.R. Medical University,
Anna Salai, Guindy, Chennai - 32.

6.The Secretary,
Selection Committee,
Indian System of Medicine and
Homeopathy, Anna Hospital Campus,
Arumbakkam, Chennai - 106.

..Respondents

W.P.Nos.12182, 12193 and 12188 of 2022

Dharma Medical Research and
Charitable Trust,
No.48, Grand West Trunk Road,
Sriperumbudur - 602 105
Kancheepuram District,
Tamil Nadu rep. by its Trustee

..Petitioner in
W.P.Nos.12182
& 12193 of
2022



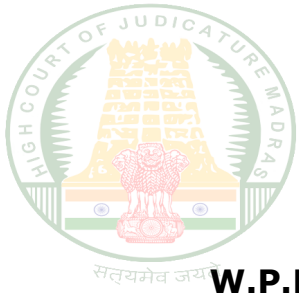
JSA Medical College for Siddha and
Research Centre,
Pali, Ulundurpet,
Kallakurichi District,
Pin - 606 104 rep. by its Principal

..Petitioner in
W.P.No.12188
of 2022

Vs.

- 1.The Tamil Nadu Dr. M.G.R. Medical University
rep. by its Registrar,
P.B.No.1200, No.69, Anna Salai,
Guindy, Chennai - 32.
- 2.The Controller of Examination,
The Tamil Nadu Dr. M.G.R. Medical University,
P.B.No.1200, No.69, Anna Salai,
Guindy, Chennai - 32.
- 3.The Secretary,
Selection Committee,
Department of Indian Medicine &
Homeopathy, Chennai - 600 106.
- 4.The Commissioner of Indian Medicine &
Homeopathy,
Department of Indian Medicine &
Homeopathy, Chennai - 600 106.
- 5.The Secretary,
National Commission for Indian System of
Medicine, No.61-65, Institutional Area,
D Block, Jankpuri, New Delhi.

..Respondents



**W.P.Nos.12476, 12485, 12486, 12482, 12489
and 12491 of 2022**

Maria Ayurveda Medical College
rep. by its Principal
Dr.V.S.Syamala Devi,
Kulathadivilai, Moovatumugham Post,
Kanyakumari District.

..Petitioner in
W.P.No.12476
of 2022

Maria Ayurveda Medical College
and Hospital rep. by its Principal
Dr.S.Soundararajan,
Thottavaram, Moovatumugham Post,
Kanyakumari District - 629 177.

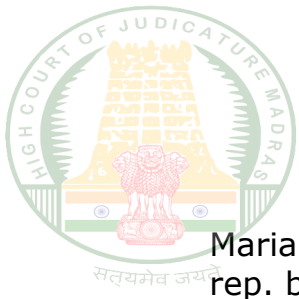
..Petitioner in
W.P.No.12485
of 2022

Maria Siddha Medical College
and Hospital rep. by its Principal
Dr.S.Soundararajan,
Thottavaram, Moovatumugham Post,
Kanyakumari District - 629 177.

..Petitioner in
W.P.No.12486
of 2022

Maria Ayurveda Medical College and
Hospital rep. by its Principal
Dr.V.S.Syamala Devi,
Kulathadivilai, Moovatumugham Post,
Kanyakumari District.

..Petitioner in
W.P.No.12491
of 2022



Maria Homeopathy Medical College
rep. by its Principal
Dr.D.Dilipkumar,
Perai, Thiruvattar, Kanyakumari District.

..Petitioner in
W.P.Nos.12482
and 12489
of 2022

Vs.

1.The Tamil Nadu Dr. M.G.R. Medical University
No.69, Anna Salai, Guindy,
Chennai - 600 032.

2.The Director of Indian Medicine
and Homeopathy,
Arumbakkam, Chennai - 600 106.

3.The Secretary,
The Selection Committee,
Directorate of Indian Medicine
and Homeopathy,
Arignar Anna Government
Hospital Campus, Arumbakkam,
Chennai - 600 106

..Respondents in
all W.Ps

(R2 and R3 suo motu impleaded vide
order dated 13.05.2022)

W.P.No.12585 of 2022

The Principal I/c,
RVS Siddha Medical College and Hospital,
Trichy Road, Kannampalayam Post,
Sulur, Coimbatore - 641 402.

..Petitioner

Vs.



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- 1.The State of Tamil Nadu rep. by its
Secretary,
Department of Health and Family Welfare,
Fort St. George, Chennai - 600 009.
- 2.The Commissioner of Indian Medicine and
Homeopathy,
Department of Indian Medicine and
Homeopathy, Arumbakkam,
Chennai - 106.
- 3.The Secretary,
Selection Committee,
Indian Medicine and Homeopathy,
Arumbakkam, Chennai - 600 106.
- 4.The T.N. Dr. M.G.R. Medical University
rep. by its Registrar,
69/40, Anna Salai, Guindy,
Chennai - 600 032.
- 5.The Secretary,
National Commission for Indian System
of Medicine,
No.61-65, Institutional Area,
D Block, Jankpuri,
New Delhi.

..Respondents

W.P.No.693 of 2022: Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the respondents ending with the order of the third respondent in Ex.IV/15156/2022 dated 30.03.2022 and quash the same and directing the respondents herein to forthwith approve the candidature of Suthi Biswas B for admission to BAMS Degree Course 2020-2021 session in the petitioner college. (Prayer amended vide order dated 13.05.2022 in W.M.P. No.9230 of 2022 in W.P. No.693 of 2022)



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W.P.No.695 of 2022: Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the respondents ending with the order of the third respondent in EX.IV/15156/2022 dated 30.03.2022 and quash the same and directing the respondents herein to forthwith approve the candidature of (i)Sowmiya B and (ii)Sowmiya R for admission to BAMS Degree Course 2020-2021 session under Lapsed Seat category in the petitioner college. (Prayer amended vide order dated 13.05.2022 in W.M.P. No.9237 of 2022 in W.P. No.695 of 2022)

W.P.No.12761 of 2022: Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records on the file of the fifth respondent pertaining to its proceeding in Lr. No.EX.IV(2)/40558/2021 dated 11.03.2022 and to quash the same and consequently direct the respondents to permit Mrs.Rhea Clement to continue BHMS and Mrs.K.M.Jouhara Jasmin to continue MD (Hom) Course respectively without insisting the allotment order from counselling from the academic year 2020-2021 by considering the request made by the petitioner dated 02.05.2022.

W.P.No.12182 of 2022: Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records on the file of the first respondent in Lr. No.EX.IV(1)/01685/2021 dated 29.03.2022 and to quash the same and consequently direct the respondents to approve the admission of (1)S.Miruthubashini and (2)S.Gunavarsha to the 1st year BSMS Degree Course 2020-2021 in Velumailu Siddha Medical College & Hospital, Sriperumbudur, Kancheepuram District.

W.P.No.12188 of 2022: Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records on the file of the first respondent in Lr. No.EX.IV(1)/01685/2021 dated 29.03.2022 and to quash the same and consequently direct the respondents to approve the admission of (1)Vedhapriya G (2)Jothiswari S.M. and (3)Nadhisha S. admitted to the 1st year BSMS Degree Course 2020-2021 in JSA Medical College for Siddha and Research Centre, Ulundurpet, Kallakurichi District.



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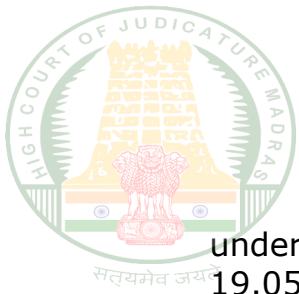
W.P.No.12193 of 2022: Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records on the file of the first respondent in Lr. No.EX.IV(3)/15156/2022 dated 30.03.2022 and to quash the same and consequently direct the respondents to approve the admission of (1)Lohith Kumar J. (2)Vignesh S.A. (3)Anthathi Meghana admitted to 1st year BAMS Degree Course 2020-2021 in Dharma Ayurveda College, Sriperumbudur, Kancheepuram District.

W.P.No.12476 of 2022: Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondent to publish the results of the exams held from 13.09.2021 for petitioner's college students admitted in the lapsed seats of the BAMS Course for the academic year 2019-2020 and permit to write the supplementary examination and consequently to undergo the second year regular examination which is scheduled to be held from 19.05.2022 to 14.06.2022.

W.P.No.12485 of 2022: Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondent to publish the results of first year exams held from 13.09.2021 to 18.09.2021 for petitioner's college students admitted in the lapsed seats of the BSMS Course for the academic year 2019-2020 and permit to write the supplementary examination and consequently to undergo the second year regular examination which is scheduled to be held from 19.05.2022 to 07.06.2022.

W.P.No.12486 of 2022: Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondent to allow the petitioner's college students admitted in the lapsed seats of the BHMS Course for the academic year 2020-2021 to undergo the examination which is scheduled to be held from 19.05.2022 to 27.05.2022.

W.P.No.12482 of 2022: Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondent to publish the results of the exams held from 13.09.2021 to 17.09.2021 for petitioner's college students admitted in the lapsed seats of the BHMS Course for the academic year 2019-2020 and to



undergo the examination which is scheduled to be held from 19.05.2022 to 30.05.2022.

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W.P.No.12489 of 2022: Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondent to allow the petitioner's college students admitted in the lapsed seats of the BHMS Course for the academic year 2020-2021 to undergo the examination which is scheduled to be held from 19.05.2022 to 30.05.2022.

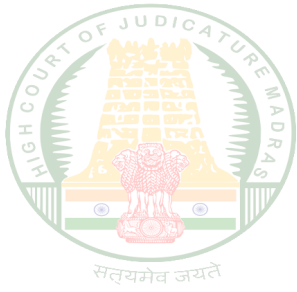
W.P.No.12491 of 2022: Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondent to allow the petitioner's college students admitted in the lapsed seats of the BAMS Course for the academic year 2020-2021 to undergo the examination which is scheduled to be held from 19.05.2022 to 31.05.2022.

For Petitioner

.. Mr.Kandhan Duraisamy
for M/s.Muthumani Duraisamy
in W.P.Nos.693 and 695 of 2022
Mr.K.Govindarajan
in W.P.No.12761 of 2022
Mr.V.Selvaraj
for Mr.D.Jayasingh
in W.P.Nos.12182, 12188 and
12193 of 2022
Mr.M.Sricharan Rangarajan
for Veera Associates
in W.P.Nos.12476, 12485, 12486,
12482, 12489 and 12491 of
2022
Mr.P.Godson Swaminath
for Isaac Chambers

For Respondents

.. Mr.D.Ravichander,
Spl. Govt. Pleader for R1 & R2
in W.P.Nos.693 and 695 of 2022
for R1, R3 and R6
in W.P.No.12761 of 2022
for R3 and R4 in



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W.P.Nos.12182, 12188 and
12193 of 2022
for R1 to R3
in W.P.No.12585 of 2022

Mr.S.Wilson for R3
in W.P.Nos.693 and 695 of 2022
for R5 in W.P.No.12761 of 2022
for R1 and R2
in W.P.Nos.12182, 12188 and
12193 of 2022
for sole respondent
in W.P.Nos.12476, 12485, 12486,
12482, 12489 and 12491 of
2022
for R4 in W.P.No.12585 of 2022

COMMON ORDER

The Director of Indian Medicine and Homeopathy, Arumbakkam, Chennai - 600 106 and The Secretary, The Selection Committee, Directorate of Indian Medicine and Homeopathy, Arignar Anna Government Hospital Campus, Arumbakkam, Chennai - 600 106 are suo motu impleaded as additional respondents in W.P.Nos.12476, 12485, 12486, 12482, 12489 and 12491 of 2022.

2. Mr.D.Ravichander, learned Special Government Pleader takes notice for the impleaded respondents.



3. The writ petitioners herein are institutions imparting education in Indian Medicine and or Homeopathy. Their permitted intake is as follows:

Sl.No.	W.P.No.	Name of the College	Permitted intake
1	693 of 2022	Nandha Ayurveda Medical College and Hospital	60
2	695 of 2022	Ayurveda College	30
3	12761 of 2022	White Memorial Homoeo Medical College Hospital	UG - 100 PG - 25
4	12182 of 2022	Dharma Medical Research and Charitable Trust (Siddha College)	40
5	12188 of 2022	JSA Medical College for Siddha and Research Centre	60
6	12193 of 2022	Dharma Medical Research and Charitable Trust (Ayurveda College)	30
7	12476 of 2022	Maria Ayurveda Medical College	60
8	12485 of 2022	Maria Siddha Medical College and Hospital (2019 Batch)	100
9	12486 of 2022	Maria Siddha Medical College and Hospital (2020 Batch)	100
10	12482 of 2022	Maria Homeopathy Medical College (2019 Batch)	60
11	12489 of 2022	Maria Homeopathy Medical College (2020 Batch)	60
12	12491 of 2022	Maria Ayurveda Medical College and Hospital (2020 Batch)	60



Sl.No.	W.P.No.	Name of the College	Permitted intake
13	12585 of 2022	RVS Siddha Medical College and Hospital	30

4. The Selection Committee represented by its Secretary, Directorate of Indian Medicine and Homeopathy, Arignar Anna Hospital, Arumbakkam, Chennai, sponsors the candidates both for the Government Quota and Management Quota. In all the cases on hand, there was a short fall in the sponsorship of the candidates by the Selection Committee. This arose either because the Selection Committee did not sponsor for the entire intake or some of the sponsored candidates did not join, resulting in vacancies. Such a situation arose either after the second round of counselling or after the mop-up counselling.

5. From the materials enclosed in the typed set of papers, I am satisfied that the college managements had duly intimated the Selection Committee about the resulting position. Since the seats would go waste and unfilled, the respective college managements admitted candidates on their own. Now the question that arises for consideration is whether the said act committed by the college

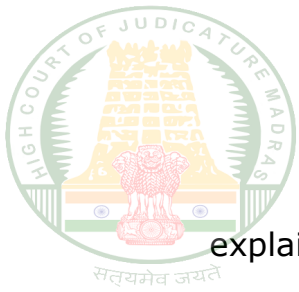


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managements is legal or not. The stand of the authorities / respondents is that the college managements could not have admitted students on their own *de hors* the sponsorship by the Selection Committee that resulted in filing of these writ petitions.

6. The learned Special Government Pleader appearing for the authorities as well as the Standing Counsel for the University relying on the decision reported in **2020 SCC Online Mad 13796 [Venkateshwaraa Medical College Hospital Vs. Medical Council of India]** submitted that the admissions can be made only through the process of counselling and that the college managements could not have admitted students and filled up the vacant seats on their own.

7. I am not persuaded by the aforesaid submission made by the learned Special Government Pleader. Mr.Sricharan Rangarajan, learned counsel appearing for some of the writ petitioners pointed out that the Hon'ble First Bench arrived at such a conclusion by following the decision of the Hon'ble Apex Court reported in **(2017) 8 SCC 627 (Dar-Us-Slam Educational Trust vs. Medical Council of India)**. But then it would apply only for admission to MBBS course. The decision in **Dar-Us-Slam Educational Trust** was subsequently

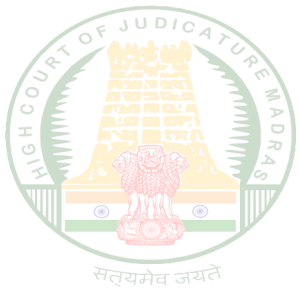


explained by the Hon'ble Supreme Court in the decision in **Christian Medical College Vellore Association Vs. Medical Council of India.**

8. The Hon'ble Supreme Court clarified that the restriction laid down in **Dar-Us-Slam Educational Trust** case would apply only for admission to UG courses and it would not apply even to PG courses. Here we are concerned with admission to courses imparting Indian Medicine and Homeopathy. Therefore, on this ground, I hold that the decision made in Venkateshwaraa case (cited supra) will not have any application.

9. On the other hand, in my view, the issue raised in these writ petitions is no longer *res integra*. The Hon'ble Supreme Court in the decision reported in **2021 SCC Online 318 [Index Medical College, Hospital and Research Centre Vs. State of Madhya Pradesh and Others]** had held as follows:

26. The right to admit students which is a part of the management's right to occupation under Article 19 (1) (g) of the Constitution of India stands defeated by Rule 12 (8) (a) as it prevents them from filling up all the seats in medical courses. Upgradation and selection of subject of study is pertinent only to postgraduate medical course. In so far as undergraduate medical course is concerned, the

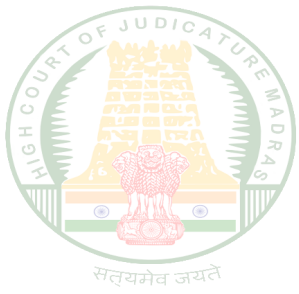


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upgradation is restricted only to a better college. Not filling up all the medical seats is not a solution to the problem. Moreover, seats being kept vacant results in huge financial loss to the management of the educational institutions apart from being a national waste of resources. Interest of the general public is not subserved by seats being kept vacant. On the other hand, seats in recognised medical colleges not being filled up is detrimental to public interest. We are constrained to observe that the policy of not permitting the managements from filling up all the seats does not have any nexus with the object sought to be achieved by Rule 12 (8) (a). The classification of seats remaining vacant due to non-joining may be based on intelligible differentia but it does not have any rational connection with the object sought to be achieved by Rule 12 (8) (a). Applying the test of proportionality, we are of the opinion that the restriction imposed by the Rule is unreasonable. Ergo, Rule 12 (8)(a) is violative of Articles 14 and 19 (1) (g) of the Constitution.

10. Respectfully applying the aforesaid ratio, I hold that the writ petitioners-College Managements were well within their rights to fill up the vacant seats in the respective courses. All the writ petitions stand allowed and the orders impugned in the writ petitions (W.P.Nos.693, 695, 12761, 12182, 12188 and 12193 of 2022) stand quashed. No costs. Consequently, connected miscellaneous petitions are closed.



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11. It is seen that in some of the cases, though the students were allowed to sit for the examinations, their results have not been published, the respondents are directed to publish the withheld results forthwith and without any delay.

12. It is informed by all the learned counsel that the forthcoming examinations are scheduled to be held from 19.05.2022 onwards. The students who are the subject matter of these writ petitions will be allowed to sit for the said examinations and the Hall Tickets will also be issued without any delay.

13.05.2022

Index:Yes/No
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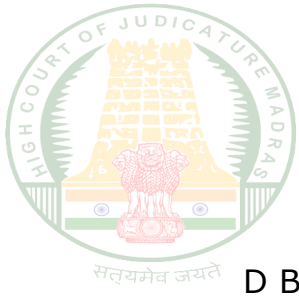
To

1.The Director of Indian Medicine and
Homeopathy, Arumbakkam,
Chennai - 600 106.



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2. The Secretary,
The Selection Committee,
Directorate of Indian Medicine and
Homeopathy,
Arignar Anna Government Hospital Campus,
Arumbakkam, Chennai - 600 106.
3. The Registrar,
Tamil Nadu Dr. M.G.R. Medical University,
Anna Salai, Guindy, Chennai - 600 032.
4. The Secretary to Government,
Department of Health and Family Welfare,
Secretariat, Chennai.
5. The Secretary,
National Commission of Homeopathy,
Jawaharlal Nehru Bhartiya Chikitsa,
Avum Home, Anusandhan Bhavan,
No.61-65, Institutional Area,
Opp.D Block, Jankpuri,
New Delhi.
6. The Secretary,
Union of India, AYUSH Bhavan,
B Block, GPO Complex,
INA New Delhi - 110 023.
7. The Controller of Examination,
The Tamil Nadu Dr. M.G.R. Medical University,
P.B.No.1200, No.69, Anna Salai,
Guindy, Chennai - 32.
8. The Commissioner of Indian Medicine &
Homeopathy,
Department of Indian Medicine &
Homeopathy, Chennai - 600 106.
9. The Secretary,
National Commission for Indian System of

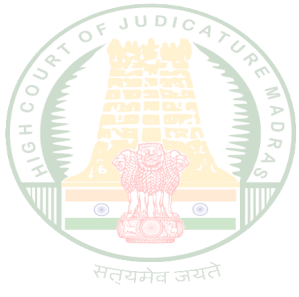


Medicine, No.61-65, Institutional Area,
D Block, Jankpuri, New Delhi.

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G.R.SWAMINATHAN, J.

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W.P.Nos. 693, 695, 12761,
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