



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-29860 of 2024 (O&M)

Reserved on: 28.11.2024

Date of Order: 16.12.2024

Bhai Kanhaiya Sewa Society, Hanumangarh Road

.Petitioner

Versus

Union of India and others

..Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Keshav Pratap Singh, Advocate and
Mr. Gaurav Datta, Advocate, and
Mr. Saurabh Savara, Advocate
for the petitioner.

Ms. Promila Nain, Sr. Panel Counsel
Ms. Harveen Mehta, Advocate
for respondent no.1-Union of India

Mr. Angel Sharma, Advocate
for respondent nos.2 and 3.

Mr. R. Kartikeya, Advocate
for respondent no.4.

ANIL KSHETARPAL, JUDGE

1. **BRIEF FACTS OF THE CASE**

1.1 The petitioner-Society runs a Homoeopathic Medical College and Hospital since 1975, at Abohar. Through this writ petition, the petitioner prays for writ of certiorari to quash the letter issued on 09.08.2024, by the Medical Assessment and Rating Board of Homoeopathic (hereinafter referred to as 'MARBH'), the National Commission for Homoeopathic (hereinafter referred to as NCH), order dismissing petitioner's first appeal on 02.09.2006 as well as Union of India's order dated



21.10.2024, while dismissing petitioner's second appeal.

1.2 In substance, the petitioner has not been granted permission for admitting students in Bachelor of Homoeopathy course for the academic sessions 2024-2025. It is alleged by the petitioner that the members of the Inspection Team nominated by MARBH demanded bribe which the petitioner was forced to pay. The video and photograph of the aforesaid incident has been attached as Annexure P-2 and P-3, respectively. Ultimately, on the report of the Inspection Team, the MARBH refused permission to admit the students for academic year 2024-2025. The relevant part of the report in the affidavit filed in response to the writ petition is extracted as under:-

Hospital Details:

- . OPD and IPD Register, case records were not maintained and were not verified.
- . Central Dispensing Registers were not maintained. During the day of visit, unable to show the registers for verification.
- . At the time of visit computers were non-functional.
- . X-Ray not functioning and ECG, USG were not available.
- . Bed Occupancy could not be calculated as college did not provide data
- . Inspectors are in the view that the college is not genuinely functional and the OPD figures of 142 patients per day during the last one year and the bed occupancy of 78% during last one year as reported by the college hospital appears to be not acceptable.

Teaching Faculty:

- . There is no Assistant Professor in the department of Community Medicine



. 04 guest faculties available against the requirement of 08.

. Most of teaching staff were not present on both days of inspection. College provided the summer vacation notice. Only 8 teachers were present.

. Teaching plan, teaching diary, seminar, tutorial was not available during the inspection.

Physiology and Biochemistry Department

. 14 medical microscopes are available against the requirement of 25

. No sphygmomanometer is available against the requirement of 25.

. 04 Stethoscopes are available against the requirement of 25.

. No ECG machine is available.

. No calorimeter, perimeter, bicycle ergometer, balance chemical/ordinary, double distillation apparatus glass is available.

Pathology Department

. No pH meter, machine for estimation of blood sugar/serological test/no models is available.

. 12 microscopes with oil immersion is available against the requirement of 25.

Miscellaneous:

. Community Medicine department equipment's such as barometer, lactometer, hydrometer and others are not available.

. In the department of Practice of Medicine, no charts, equipment's for identification, specimens is available.

. No software is available in the department of Repertory

. Photocopy machine and internet facility is not available in the library.

. College is not covered under provision of anatomy act.

. Mummified bodies not available.



It has been reported by the inspectors that the college has not provided sufficient cooperation to conduct the inspection.

It is observed that the college and hospital functioning is not genuine and considering the above mentioned shortfalls. Medical Assessment and Rating Board for Homoeopathy has decided to deny permission for Homoeopathic Medical College, Hanumangarh Road (Near Bye Pass), Opposite BSF Campus, Abohar, Punjab-152116 for conducting UG(BHMS) course with 60 seats for the academic year 2024-2025.”

1.3 In the previously filed Civil Writ Petition No.22753 of 2024, the petitioner was permitted to participate provisionally in the counselling process which was disposed of directing Union of India to decide the pending second appeal by passing a speaking order. The appeal was subsequently dismissed on 21.10.2024. Now a fresh writ petition has been filed.

1.4 On 05.11.2024, in this writ petition, the MARBH was directed to nominate members of the Inspection Committee for fresh inspection of the petitioner's college. On 08.11.2024, inspection was carried out and the following deficiencies were pointed out:-

. College was closed on both inspection days. During the 1st inspection (02.08.2024) college informed summer vacation while no notice of university was submitted by the college. And during 2nd inspection (08.11.2024) it was declared as holiday for Chhath Puja, although holiday of Chhath Puja was on 07.11.2024, and notice issued by college Principal was also on 7th November 2024. Also, there was no order from University/ State Government regarding the holiday. No



student was present in the college during inspection, expect few interns in the hospital.

. Subject Repertory is not being taught in 1st year. As per Competency Based Dynamic Curriculum (CBDC), subject of Repertory should have been included in the curriculum of 1st year. As per CBDC clinical classes should be included from 2nd BHMS but the same was not implemented in the college. The duration of clinical classes in 3 BHMS was also less than the guidelines mentioned in CBDC.

. College is not following prescribed NCH/CCH Curriculum; Repertory. Practice of Medicine & Community Medicine is not being taught in 3rd BHMS. Surgery is not being taught in 2nd BHMS. These subjects are not shown in the timetable provided by the college.

. No evidence was produced before the inspection team regarding clinical classes attendance.

. There is no full time Gynaecologist in the hospital. As per MSR 2013 there should be a full time Gynaecologist in the hospital.

. 03 guest faculties available against the requirement of 08.

. No mummified body is available in the college. Presence of muramified body is essential as per MSR 2013.

. There were only 02 wards (Male and female) available in collegiate hospital against the requirement of 04 wards namely, General Medicine (Male and Female ward separately), Paediatrics, Surgery (Male and Female ward separately) and Obstetrics/Gynaecology, which is not as per MSR, 2013. Also, there was no Surgeon/Obstetrics room and Nursing Staff room which is an essential requirement as per MSR, 2013.

. College claimed to have 40 full time teachers but on the



day of Inspection, only 08 teachers were present in the college. Biometric attendance of only October month was provided.

. Information on number of teachers during the inspections conducted on 02.08.2024 and 08.11.2024 was not matching. Full time Professor in 1st Inspection (02.08.2024) were 10 and during 2nd Inspection (08.11.2024) was 11. Also, Guest Professor during 1st Inspection (02.08.2024) were 03 and during 2nd Inspection (08.11.2024), only 02 were shown. .

Acquittance roll of only 03 teachers was submitted by the college which raises serious concern over the availability of teachers for academic activities.

. In the attendance register of teaching faculty, holidays were mentioned for 03.10.2024 and 15.10.2024 which is not explainable, as these were not declared holidays by any authority.

. As per the first Inspection dated 02.08.2024, figures of IPID bed occupancy during last one year was shown as 78% by college and during 2nd Inspection dated 08.11.2024 figures of IPD bed occupancy during last one year was shown as 37% which was not correlating with actual IPD figures. College gave different IPD figures during both Inspections for the same calendar year, hence genuine functioning of IPD is not established.”

2. ARGUMENTS PUT FORTH BY THE LEARNED COUNSEL REPRESENTING THE PARTIES:-

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

2.2 The petitioner's counsel has contended that on comparative



analysis of findings of both the inspection reports dated 09.08.2024 and 08.11.2024, it has been found that the deficiencies as pointed out in the first report do not exist in the second report and the MARBH is only trying to punish the petitioner's college on account of allegations of bribery made against its nominated members. He submits that the college is functioning since 1975 and there is neither any deficiency in the infrastructure nor the faculty is deficient. He also contended that this is an appropriate case where the High Court should interfere particularly in view the allegations made in the petition.

2.3 Per contra, the learned counsel representing the NCH contends that the inspection has been carried out twice but the infrastructure and faculty has been found deficient. While relying upon the judgment in **Medical Council of India vs. Kalinga Institute of Medical Sciences and others, (2016) 11 SCC 530**, he contends that this court should not interfere in the decision of the expert body.

3. **ANALYSIS AND DISCUSSION:-**

31. This court has considered the submissions of the learned counsel representing the parties.

3.2 It is pertinent to note that the scope of judicial review in the decisions taken by the Expert Bodies like MARBH, NCH, is limited. Under Article 226 of the Constitution of India, the Court is not expected to examine the report as an appellate body. In para 21, 22 and 24 of the **Kalinga Institute of Medical Sciences and others' case (supra)**, the Supreme Court held as under:-

“21. A perusal of the decision of the High Court clearly indicates that it considered the latest report of the



Inspection Team as if it was hearing an appeal against the report. In doing so, the High Court went into great details on issues relating to the number of teaching beds in the hospital, the limitations in the OPD Department, the number of units available in the subjects of General Medicine, Pediatrics etc., bed occupancy, number of Caesarean sections, discrepancy in data of major and minor operations, computerization in the institution, number of patients in the ICU, number of static X-ray machines, deficiency of examination halls, lecture theatres, library, students hostel, interns hostel, playground etc. etc. Surely, this was not within the domain of the High Court in exercise of its jurisdiction under [Article 226](#) of the Constitution.

22. The High Court did not appreciate that the inspection was carried out by eminent Professors from reputed medical institutions who were experts in the field and the best persons to give an unbiased report on the facilities in KIMS. The High Court under [Article 226](#) of the Constitution was certainly not tasked to minutely examine the contents of the inspection report and weigh them against the objections of KIMS in respect of each of its 18 items. In our opinion, the High Court plainly exceeded its jurisdiction in this regard in venturing into seriously disputed factual issues.

24. Medical education must be taken very seriously and when an expert body certifies that the facilities in a medical college are inadequate, the Courts are not equipped to take a different view in the matter except for very cogent jurisdictional reasons such as mala fides of the Inspection Team, ex facie perversity in the inspection report, jurisdictional error on the part of the MCI etc. Under no circumstance should the High Court examine



the report as an appellate body – this is simply not the function of the High Court. In the present case there was no ground made out at law for setting aside the report of the Inspection Team.”

3.3 It is evident that the power of judicial review under Article 226 of the Constitution of India has to be exercised within the well known parameters. Though, it is well settled that under Article 226 of the Constitution of India, the jurisdiction of the High Court is plenary, however, in absence of patent perversity, the court is not expected to examine the report as if it was hearing an appeal. In this case, on the direction of the Court, an inspection has been carried out by a Committee constituted of different members and not by the members of the previous Committee as nominated by MARBH which is an autonomous body created to inspect the Colleges and report. From perusal of inspection report dated 08.11.2024, it has been found that the working of the attached hospital was not adequate. In the first inspection report, dated 02.08.2024, figures of IPD Bed occupancy during last one year was shown as 78% by college, whereas during second inspection, dated 08.11.2024, figure of IPD bed occupancy during last one year was shown as 37% and the aforesaid figures do not correlate with the actual IPD figures. Moreover, against the requirement of 8 guest faculties, only three guest faculties were available. Even a full time Gynecologist, as required in the Hospital, was not available. Though, the learned counsel representing the petitioner has submitted that the subsequent report to this extent is contradictory, however, this court in absence of technical knowledge and expertise expresses its inability to enter into the aforesaid arena. The courts while exercising the power of judicial review

can only interfere in matters of apparent arbitrariness, illegality or violation, Judicial review is not intended to supplant administrative or policy decisions unless they are shown to be arbitrary, illegal or ultra-vires. In the matter at hand, no arbitrariness or illegality has been demonstrated. The courts are not equipped to take a different view in the matter unless it is found arbitrary.

3.3 Moreover, it is evident that the disputed question of facts are involved which cannot be appropriately decided unless the parties are granted opportunity to lead evidence. Moreover, by now only stray round of counselling remains to be conducted. The learned counsel representing the University has disclosed that less than twenty students opted for the petitioner-College, however, requests have been received from some of the students seeking shifting.

4. **DECISION**

4.1 Keeping in view the aforesaid facts and discussion, at this stage, this court does not find it appropriate to interfere.

4.2 With these observations, the writ petition is disposed of.

4.3 All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

December, 2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No