

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.01.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.28684 of 2014 &
M.P.Nos.1 & 2 of 2014

S.V.S.Educational and Social Service Trust
rep. By its Chairman cum Managing Director
.. Petitioner

Vs.

- 1.The Under Secretary
Department of Ayurveda, Yoga & Naturopathy
Unani, Siddha & Homeopathy (AYUSH)
Government of India
Ministry of Health and Welfare
IRCS Annex Building 1- Red Cross Road
New Delhi 110 001.
- 2.The Secretary
Central Council of Homeopathy
No.61-65 Institutional Area
Opp. "D" Block, Janakpuri
New Delhi 110 058.
- 3.The Tamil Nadu Dr.M.G.R.Medical University
rep. By its Registrar
No.69, Anna Salai, Guindy
Chennai 600 032.
- 4.The Special Commissioner
Directorate of Indian Medicine and Homeopathy
Arignar Anna Hospital Complex
Arumbakkam, Chennai 600 106. ..Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certioraified Mandamus, to call for records of the first respondent in F.No.R-12014/2011-EP(H) dated 20.10.2014, quash the same and consequently direct the first and third respondents to issue permission to the petitioner to start the Homeopathy College viz., S.V.S College of Homeopathy and Research Institute, Kallakurichi and grant affiliation to the petitioner's College respectively for the academic year 2014-2015.

For Petitioner : Mr.R.Muthukumarasamy, Sr.Counsel
for Mr.A.Jenasenan

For Respondents: Mr.Haja Mohideen Gisti-R1 & R2
Sr.Central Govt. Standing Counsel

Mr.Sanjay Ramasamy - R3

Mr.R.Vijayakumar - R4

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2.Heard Mr.R.Muthukumarasamy, learned Senior counsel appearing for the petitioner, Mr.Haja Mohideen Gisti, learned Senior Central Government Standing Counsel appearing for respondents 1 & 2, Mr.Sanjay Ramasamy, learned counsel appearing for third respondent and Mr.R.Vijayakumar, learned Additional Government Pleader appearing for fourth respondent.

3.The petitioner which is a Trust, which has established a Homeopathy College offering Bachelor degree in Homeopathy Medicine and Surgery Course, has approached this Court for the third time battling for their recognition by the respondents 1 & 2.

3.1 The petitioner established the Institution after obtaining 'No Objection Certificate' from the State Government during 2011 and they are affiliated to the third respondent University. The petitioner's Application for recognition by the respondents 1 & 2 was forwarded to the second respondent who conducted inspection on 23.7.2011. Defects were pointed out and based on which the first respondent rejected the petitioner's application by order dated 6.3.2012. Aggrieved over the said order, the petitioner filed W.P.No.12601 of 2012, praying for issuance of a writ of mandamus to direct the first respondent to consider the representation of the petitioner and conduct re-inspection. That Writ Petition was dismissed and against which W.A.No.1327 of 2012 was filed, which was dismissed by directing the petitioner to submit a fresh scheme in terms of section 12A (2) of the Homeopathy Central Council Act, 1973. Accordingly, the petitioner made a fresh application on 30.11.2012 for the academic year 2013-2014. However, the same was rejected by the first respondent by order dated 7.1.2013, stating that re-submission of the application cannot be considered under section 12A of the Act. The petitioner once again approached this Court by filing W.P.No.1657 of 2013, which was disposed of by order dated 28.2.2013, directing the petitioner to submit a fresh application for the year 2013-14, with a further direction to the respondents to consider the same. Accordingly, the petitioner submitted fresh

application on 6.3.2013, to the first respondent, which was forwarded to the second respondent. The petitioner also obtained 'No Objection Certificate' from the Government of Tamil Nadu, vide letter dated 13.05.2013. The petitioner also applied and obtained consent for affiliation from the third respondent University for setting up Homoeopathy College with an intake of 50 students. The petitioner deposited a sum of Rs.3.5 lakhs towards inspection fees. Thereafter, the first respondent filed W.A.No.792 of 2013, against the order passed by this Court in W.P.No.1657 of 2013 and an order of interim stay was granted.

3.2 On 6.8.2013, the second respondent team conducted inspection of the petitioner's proposed college and forwarded the recommendation to the first respondent. The Inspecting Committee which inspected the petitioner's College recommended for grant of permission with an intake of 50 students. However, after hearing the petitioner, the first respondent did not accept the recommendation made by the inspecting committee and rejected the petitioner's application.

3.3 The Hon'ble Division Bench modified the earlier order dated 14.11.2013, directing the first respondent to consider the petitioner's application and pass orders on merits, within a period of two weeks. Thereafter, the first respondent passed the order dated 19.11.2013, rejecting the application based on certain deficiencies and shortcomings. The petitioner challenged the said order dated 19.11.2013, by filing W.P.No.32047 of 2013. This Court after considering the contentions raised on either side, held that the order dated 19.11.2013, was incapable of being sustained and accordingly the same was set aside. While considering the grant of relief to the petitioner taking note of the fact that the academic year 2013-14 was already over and for the academic year 2014-15, the last date for admission was upto 31.10.2014, directed the first respondent to reconsider the matter and issue fresh orders on or before 20.10.2014, so that the petitioner would not lose the benefit of the academic year 2014-15. Pursuant thereto, the present impugned order has been passed rejecting the petitioner's application stating that they are deficient in all the nine heads, which have been pointed out earlier.

4. The learned Senior counsel for the petitioner contended that the impugned order is a clear case of having committed contempt of the direction issued by this Court in the earlier Writ Petition No.32047 of 2013 dated 9.10.2014. Further it is submitted that the impugned order is an outcome of total non-application of mind, without considering the scope and direction issued by this Court in the earlier writ petition and the direction was very clear to the effect that the first respondent has to consider and issue fresh orders on or before 20.10.2014, so that the petitioner will not lose the benefit for the academic year 2014-15. Further it is submitted

that all the deficiencies pointed out in the order dated 19.11.2013, were considered by this Court in the earlier writ petition and each one of the defects were held to be unsustainable and inspite of that, the impugned order has been passed. Further, it is submitted that even in the impugned order in paragraph No.5, it has been admitted that inspecting committee which was nominated to inspect the petitioner's institution has conducted the inspection on 6.8.2013 and furnished the copy of the inspection report recommending the Central Government for grant of permission for intake of 50 students in BHMS Degree course and there is no valid reason for rejecting the findings of the inspecting team which has been dealt with in the earlier order passed by this Court. Therefore, it is submitted that the impugned order is arbitrary, unreasonable and the respondents 1 & 2 are bent upon to reject the petitioner's application on untenable grounds.

5.The learned Senior Central Government Standing Counsel appearing for the respondents 1 & 2 submitted that after the order was passed by this Court, opportunity was granted to the petitioner, show cause notice was issued and only after considering the explanation, first respondent has passed a detailed order and the deficiencies have been pointed out and the observation regarding hearing the committee has also been dealt with point-wise and therefore the until the petitioner satisfies all the requirements, the question of granting approval for the petitioner institution does not arise.

6.The learned counsel appearing for the respondent University submitted that as against the interim direction issued by this Court on 24.11.2014, directing the name of the petitioner institution to be included for counselling, the University has filed Writ Appeal and the same is yet to be numbered.

7.Heard the learned counsel appearing on either side the perused the materials placed on record.

8.The short issue which falls for consideration is as to whether the impugned order is sustainable in the light of the earlier order passed by this Court in W.P.No.32047 of 2013 dated 9.10.2014. The challenge in that writ petition was to an order dated 19.11.2013, rejecting the petitioner's application for approval to start the BHMS Course for the academic year year 2013-14, with an intake of 50 students. In the order dated 19.11.2013, nine defects were pointed out. It is to be noted that prior to the passing of the order dated 19.11.2013, Inspection Committee submitted a report and the copy of the tabulated proforma containing the findings recorded by the inspection committee is placed in the typed set of papers. From the said report, it is found that the petitioner has satisfied the conditions required for starting the course and it is not in dispute that the inspecting committee recommended for granting approval to the petitioner institution with intake of 50 students. However, the

first respondent chose to disagree with the findings of the inspecting committee. It has been pointed out that no fresh inspection was ordered and probably based on the materials which are on record, the first respondent took a decision to reject the petitioner's application and passed the order on 19.11.2013.

9. In my view, the same could not have been done, unless and until there are cogent and adequate materials to show that the inspection committee has committed a blatant error or the order passed by the inspecting committee is palpably false or wholly unsustainable. However, the order dated 19.11.2013 does not record any such finding.

10. Be that as it may, the petitioner challenged the said order raising several contentions. This Court after taking note of the contentions raised on either side, proceeded to deal with each one of the objections in the tabulated form. This is found in paragraph No.16 of the order dated 09.10.2013. Apart from the tabulation given, in the order dated 09.10.2013, one more column was added by this Court in the earlier writ petition regarding the observations/findings of the report of the CCH.

11. On a perusal of the report, it is evidently clear that all the defects pointed out were wholly untenable and therefore this Court held that answer to each one of the deficiencies as contained in the report of the CCH and its support to demolish the stand taken by the respondents. The Court further pointed out that none of the parameters laid down by the respondents have any relation to the Homoeopathy, yet the petitioner is found by the inspection team to have satisfied the requirements and the Central Council has accepted the same. Therefore, the order dated 19.11.2013 was held to be incapable of being sustained and it was set aside and the Writ Petition was allowed, and a moulded relief was granted to the petitioner.

12. This Court appears to have not inclined to issue positive direction to approve the petitioner institution, but considering the fact that academic year viz. 2013-14 is already over, the first respondent was directed to re-consider the matter and issue a fresh order by fixing the outer date as 20.10.2014, with a direction that the petitioner should not lose the benefit for the academic year 2014-15. The scope of the order passed by this Court has been thoroughly misunderstood by the first respondent while passing the impugned order herein. The first respondent is not entitled to redo the entire exercise or bring any fresh material so as to negative the claim made by the petitioner. However, in the impugned order, the first respondent has verbatim referred to the allegations which were contained in the order dated 19.11.2013. It has to be noted that the said order dated 19.11.2013 was quashed by this Court and therefore the question of placing reliance on the said order does not arise.

Therefore, the observations made in paragraph 10 of the order is an outcome of sheer non-application of mind. The inspection committee which inspected the institution found the petitioner to have complied with the required conditions. The completion certificate was also produced at the time of hearing pursuant to notice issued by the first respondent after the order passed in the earlier writ petition. This appears to have been ignored to by referring to certain photographs and vedigraphs. In fact the Hon'ble Supreme Court observed that infrastructure facilities cannot be verified by photographs or vedigraphs and personal inspection alone is the proper method to ascertain the genuineness and correctness of the infrastructure facilities.

13. In the light of the above, it is evidently clear that that first respondent has passed the impugned order without taking note of the earlier order passed by this Court, by which each one of the deficiencies pointed out in the order dated 19.11.2013 was found to be unsustainable. Further, inspite of the direction issued by this Court in the earlier writ petition, directing the first respondent to pass orders in a particular manner, the first respondent has misunderstood the scope and direction issued in the earlier writ petition and therefore this Court is inclined to issue positive direction to the first respondent in this Writ Petition.

15. Accordingly, the Writ Petition is allowed and the impugned order is quashed and the first respondent is directed to grant approval to the petitioner institution for the academic year 2014-15 by passing appropriate orders, within a period fifteen days from the date of receipt of a copy of this order. Since already students have been admitted pursuant to the interim direction issued by this Court, such admission shall also be regularised. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

To

1. The Under Secretary

Department of Ayurveda, Yoga & Naturopathy
Unani, Siddha & Homeopathy (AYUSH)
Government of India, Ministry of Health and Welfare
IRCS Annex Building 1- Red Cross Road
New Delhi 110 001.

2.The Secretary

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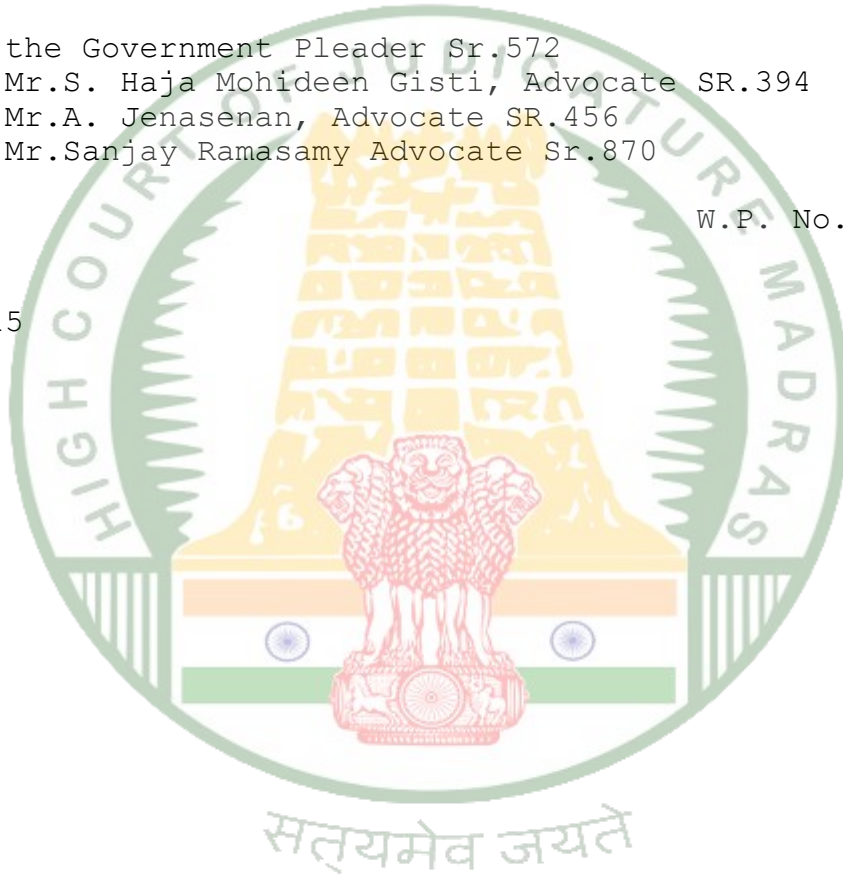
4.The Special Commissioner

Directorate of Indian Medicine and Homeopathy
Arignar Anna Hospital Complex
Arumbakkam, Chennai 600 106.

- + 1 cc to the Government Pleader Sr.572
- + 1 cc to Mr.S. Haja Mohideen Gisti, Advocate SR.394
- + 1 cc to Mr.A. Jenasenan, Advocate SR.456
- + 1 cc to Mr.Sanjay Ramasamy Advocate Sr.870

W.P. No. 28684 of 2014

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