

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2191 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 18614 of 2016**

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Maharshi Menhi Homoeopathic Medical College & Hospital, near D.S. College, Gas Godown Road, Jiwachh Nagar, P.S. & District-Katihar (Bihar) through Dr. Haresh Kumar Maharaj, son of Sri N. K. Maharaj, resident of village & Post-Sangi, P.S. Phulparas, District-Madhubani (Bihar).

.... Petitioner-Appellant/s

Versus

1. The Union of India through the Secretary, Ministry of AYUSH, AYUSH Bhawan, B- Block, G.P.O. Complex, INA, New Delhi-23.
2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Siddha and Homoeopathy, Ayush Bhawan, B-Block, G.P.O. Complex, INA, New Delhi-110023.
3. The State of Bihar through its Principal Secretary, Department (Health & FW), Department of Health, Vikas Bhawan, New Secretariat, Patna.
4. The Director, Desi Chikitsa, Health Department, Govt. of Bihar, Patna.
5. The Secretary, Central Council of Homoeopathy, 61-65, Institutional Area, Opp. 'D' Block, Janakpuri, Delhi-10058.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sanjay Kumar, Advocate
For the Respondents-UIO	:	Mr. S.D. Sanjay, Addl. S.G.
For the Respondents-State	:	Mr. S. D. Yadav, A.A.G. IX
For the Respondent No.5	:	Mr. Ashok Kr. Sinha, Senior Advocate
		Mr. Atul Kumar Pandey, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 01-12-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 24th November, 2016 whereby, the writ application was dismissed for the reason that there is a provision for appeal against the order dated 4th November, 2016 (Annexure-14 to the writ application).

Learned counsel for the appellant submitted that remedy of appeal is not available. Such assertion could not be controverted by the learned counsels appearing for the respondents.

Faced with the situation when there is no right of appeal, this Court was in dilemma to remit the matter to the learned Single Bench for fresh decision or to hear the appeal for the purpose of interim relief as today is the last date for admission of the students in the Homeopathic System of Medicine.

Yesterday, when the matter was taken up, Mr. S. D. Sanjay, learned Additional Solicitor General of India, sought time to address this Court.

Mr. Atul Kumar Pandey, learned counsel representing respondent no.5 pointed out that the last date of admission has since been extended to 15th December, 2016.

Be that as it may, the fact remains that the appellant was denied permission to admit the students in Undergraduate Course in the Homeopathic System of Medicine to 50 seats for the academic session 2016-17.

A perusal of Annexure-14 to the writ application shows that the Hearing Committee has declined the permission on the ground that the College did not provide any of the original documents for verification, including the original communication dated 12th



November, 1987, whereby, the appellant was granted permission to admit 20 students in BHMS Course in the year 1987. The observation of the Hearing Committee further shows that the Homoeopathic Colleges were closed down by the State Government in the 1996, but by virtue of an order passed by this Court in CWJC No.4343 of 1993 and 4697 of 1993, the Central Council of Homoeopathy allowed admission of students with 50 seats. Such permission is continuing in respect of appellant college from the academic session 2002-03.

In the face of such facts, when the appellant had the permission to admit students from the year 2002-03 continuously, declining permission for the academic session 2016-17, only for the reason that the original of the documents having not been produced, seems to be wholly untenable.

The counsels for the respondents were asked as to whether the appellant was ever directed to produce original documents, but the counsel for the respondents could not point out that there was any such communication sent to the appellant. Since the appellant had the permission to admit students from the academic session 2002-03 to admit 50 students each year, therefore, declining such permission in the present academic session seems to be unjustified.

Consequently, the Letters Patent Appeal is allowed. The order passed by the learned Single Bench of this Court on 24th

November, 2016 in CWJC No.18614 of 2016 and the order dated 4th November, 2016 (Annexure-14 to the writ application) are set aside. The respondents are directed to grant permission to admit the students to 50 seats for the academic session 2016-17 forthwith.

Since no counter affidavit has been filed, we permit the respondents to seek recall of the order on good and sufficient grounds if the facts stated by the petitioner are incorrect in any manner.

(Hemant Gupta, ACJ)

Sunil

(Vikash Jain, J)

AFR/NAFR	N. A. F. R.
CAV DATE	N. A.
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