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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2903 of 2016**

- Maharana Pratap Homeopathy Medical College And Hospital Through: The Director, Maharana Pratap Homeopathy Medical College And Hospital, Near Rishabh Enclave, Imlidih, New Rajendra Nagar, Raipur, Distt. Raipur, (Chhattisgarh)

---- Petitioner**Versus**

1. Union Of India Through: The Secretary, Ministry Of Ayurveda, Yoga And Naturopathy, Unani, Siddha And Homeopathy (AYUSH), Ayush Bhawan, B- Block, G.P.O. Complex, I.N.A. New Delhi, P S- New Delhi, 110023
2. Central Council Of Homeopathy, Through: The Secretary, Central Council Of Homeopathy, 61-65, Institutional Area, Opp. 'D' Block, Janakpuri, Delhi- 110058
3. State Of Chhattisgarh, Through: The Secretary to the Govt. Of Chhattisgarh, Department Of Health And Family Welfare, Mahanadi Bhavan, Mantralaya, New Raipur, (Chhattisgarh)
4. The Director, Department Of Ayurveda, Yoga And Naturopathy, Unani Siddha And Homeopathy (AYUSH), Old Mantralaya Campus, DKS Bhavan, Raipur, PS- Moudahapara, Distt Raipur, (Chhattisgarh)
5. Ayush And Health Science University, Through: The Registrar, Ayush And Health Science University, G E Road- Raipur, Distt. Raipur, (Chhattisgarh)

---- Respondents

For Petitioner

Shri Anurag Dayal Shrivastava,
Advocate

For Respondent No.1/UOI

Shri N. K. Vyas, ASG

For Respondent Nos.3 to 5

Shri Shashank Thakur, GA

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

29/11/2016

1. The petitioner Maharana Pratap Homeopathy Medical College and Hospital (henceforth 'the petitioner college') has preferred this writ petition seeking direction to respondent No.1 to grant conditional recognition to the petitioner college as has been granted to similarly situated colleges and consequently permit admission in the first year BHMS Course for the academic session 2016-17.
2. Facts of the matter, briefly stated, are that the petitioner is running a Homeopathic College at Raipur from the year 2003-04 onwards. Recognition to run the college and admit students is governed under the Homeopathy Central Council Act, 1973 (henceforth 'the Act, 1973') and the Homeopathy Central Council (Minimum Standards Requirement of Homeopathic Colleges and attached Hospitals) Regulation, 2013 (henceforth 'the Regulation, 2013') framed by the Central Council of Homeopathy (henceforth 'the CCH') in exercise of powers under Section 33 (j) of the Act, 1973. All such colleges, who were not having the requisite facilities in the college in terms of and at the time of enforcement of the Regulation, 2013, were granted amnesty to have the requisite facilities

within the stipulated time and conditional recognition was granted on year-to-year basis. When the petitioner college was denied such amnesty in the year 2011, the petitioner along with one more homeopathic college namely, Raipur Homeopathic Medical College and Hospital (henceforth 'the Raipur College') preferred writ petitions, the petitioner's petition bearing WPC No.6302/2011. In the said petition, challenge was also made to the proceedings initiated for de-recognition of the petitioner college. By a detailed order dated 06.02.2013, the writ petition was allowed on merits with the following conclusions:-

“47 : (a) The action of the Central Government in not extending the amnesty to the petitioner colleges and derecognising them is discriminatory, arbitrary and unreasonable. It is violative of article 14 of the constitution;

(b) The Central Council for Homeopathy, New Delhi will conduct a fresh inspection in the Raipur Homeopathic Medical College and Hospital and Maharana Pratap Homeopathic Medical College and Hospital in April, 2013 and will send its representation/report/recommendation to the Central Government;

(c) The Central Government will take fresh decision before start of 2013-14 academic session as to whether the petitioners should be derecognised or not;

(d) In case, there is any delay in taking the fresh decision by the Central Government and the decision is in favour of the petitioners then, the

Central Government may also adjust the equities;

(e) In case amnesty is further extended to other colleges, then the same benefit shall be given to the petitioner's-colleges and this benefit shall not be denied on the ground that action was initiated against them under Section 19 or they were derecognised.”

3. Pursuant to the above stated order passed in petitioner's earlier writ petition, it was enjoying amnesty for the academic sessions 2011-12 to 2015-16 on year-to-year basis. For the present academic session, the CCH conducted inspection of the petitioner college along with two other colleges in the month of May, 2016 finding the following deficiencies in its report:

“Reader not appointed in the Departments of Organon of Medicine, Pharmacy, Pathology, FMT & Repertory. The X-ray, ECG and USG facilities are reported to be available in the MoU Hospital though these need to be provided by the College in its attached Homeopathic Hospital. It has been mentioned as “MOU” against the requirement of ECG machine in the Department of Physiology & Biochemistry though this need to be provided by the Department. The Computer lab is reported to be “Common in department”.

Recommended for admission during 2016-17 subject to removal of above deficiencies.”

The petitioner was thus recommended for admission during 2016-17 session subject to removal of the deficiencies.

Not being satisfied with the recommendation of the Council, the Central Government directed all the State Authorities, including the State of Chhattisgarh, requesting them to furnish a report on the colleges after verifying the position/status through a committee comprising of 3 members. The State of Chhattisgarh in turn conducted its own inspection on 31.08.2016 and submitted its report on 16.09.2016. The report in respect of each of 3 colleges functioning in the State of Chhattisgarh has been placed on record of this writ petition.

4. The record produced before this Court, duly supported with affidavit, deals with all the requirements which a college is required to fulfill under the Regulation, however, after hearing learned counsel for the parties, it appears, the subject controversy concerns only to the extent of making provision of X-ray unit, Ultrasonography (USG), Electrocardiography (ECG) and two house physicians, therefore, I have confined considerations of the petitioner's case on these items only.
5. Admittedly, all the 3 colleges functioning in the State of Chhattisgarh have their X-ray and USG facilities in the MoU Hospital and not in the attached hospital. The two other colleges namely, Raipur College and Chhadmailal Chouksey Homeopathic Medical College & Hospital, Bilaspur (henceforth 'Chouksey College') are having ECG machines in the attached hospital, whereas the petitioner is having such machine in the

MoU hospital and not in the attached hospital. In addition, the petitioner has been denied recognition on the ground that its hospital does not have the facility of two house physicians.

6. Shri Anurag Dayal Shrivastava, learned counsel appearing for the petitioner college, would contend that the Council had recommended the petitioner's case for admission during 2016-17 session subject to removal of deficiencies including the deficiency of having ECG machine in the attached hospital and having two house physicians and the petitioner still willing and ready to have those deficiencies removed within the same time as has been allowed to two other colleges. Shri Shrivastava would also submit that the Chouksey College is also not having two house physicians for which it has been granted time to remove the deficiency, however, the same facility on this count has not been extended to the petitioner. Shri Shrivastava would further submit that the petitioner college is having all other facilities at par or similar to two other colleges, therefore, denying recognition for the session 2016-17 is not only arbitrary, but it also tends to violate the order passed by this Court in the petitioner's earlier writ petition.
7. Shri N. K. Vyas, learned Assistant Solicitor General appearing for the Union of India and Shri Shashank Thakur, learned Government Advocate appearing for the State/respondent Nos.3 to 5 would vehemently argue that the order has been

passed after providing opportunity of hearing to the petitioner, wherein the petitioner college failed to convince the authorities about removal of deficiencies, therefore, the order neither suffers from irrationality nor arbitrariness. Learned counsels would further submit that the order has been passed by an expert body, therefore, this Court under Article 226 of the Constitution of India may not interfere.

8. Having heard learned counsel appearing for the parties and on perusal of the papers, particularly concerning the area of dispute, it would appear that when Chouksey College can be granted time for removing the deficiencies in respect of appointment of two house physicians, the same facility could have been extended to the petitioner. Similarly, when time has been allowed for removal of deficiency concerning bigger machine/instruments like X-ray machine and USG machine then for a comparatively smaller machine i.e. ECG machine, also the same facility could have been extended to the petitioner. True it is that the petitioner does not have the ECG machine in the attached hospital, but at the same time, the same machine is available in the MoU hospital. In any case, denial of recognition for not having a comparatively smaller machine when others have been granted recognition for not having the X-ray or USG machine appears to be a bit harsh. It is more so, when the entire issue is considered in the teeth of the order passed by this Court in the petitioner's earlier writ

petition where this Court has desired that the benefit of amnesty should be extended to all the colleges equally and uniformly, denying such amnesty to the petitioner college for not having the ECG machine in the attached hospital and two house physicians appears to be unreasonable.

9. The Chouksey College is also not having house physicians as has been observed by the State Committee in para 7 of the note sheet filed as Annexure-R-1. Shri Vyas has contended that since the Chouksey College is having 4 additional medical officers, the requirement of having two house physicians has been relaxed for the present, subject to compliance in future, however, this explanation has not appealed to this Court, because house physicians have different qualifications than the medical officers. In any case, it has not been brought to the notice of this Court that in case a college is having any additional strength in some other field, the same would compensate the requirement of having some staff relating to some other field. In absence of any such permissible authority to the Council or to the State Government, drawing of such equivalence is a device rather than a permissible norm recognized under the Act or Regulation.
10. Since Article 14 of the Constitution of India has its application at every stage of process of recognition and at one point of time the said principle has been applied in favour of the

petitioner specifically mentioning that whenever such amnesty is extended to other colleges, the petitioner college is also entitled for amnesty for this session, I fail to see any reason as to why for a trivial deficiency of not having ECG machine in the attached hospital, the petitioner was denied recognition contrary to the order passed in the earlier writ petition.

11. For the foregoing, the order (Annexure-P-1) deserves to be and is hereby quashed. The respondent No.1 shall issue the required recognition in favour of the petitioner for the session 2016-17, as has been issued in favour of the Raipur College and Chouksey College. It is also made clear that the petitioner shall also be liable to remove the deficiencies within the same time, which has been allowed to other colleges. In anticipation of issuance of letter of recognition, the petitioner college shall be allowed to admit the students for the session 2016-17, which is to take place tomorrow i.e. 30.11.2016, which is the last date of admission.
12. Learned counsel appearing for the parties shall intimate their respective clients about this order forthwith.
13. As an upshot, the writ petition is allowed to the extent indicated supra.
14. There shall be no order as to costs.

Sd/-
JUDGE
PRASHANT KUMAR MISHRA