

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11772 OF 2016

Shiva Trust's
Sharadchandraj Pawar Homeopathic
Medical College and Hospital,
Shiva Trust Campus, Wadala Mahadev,
Tq.Shrirampur, District Ahmednagar,
through its President
Dr.Balasaheb Shivajirao Pawar,
age: 49 years, Occ: Social Service,
R/o G-57, N-4, CIDCO,
Aurangabad, District Aurangabad.

Petitioner

Versus

- 01 The Union of India,
through its Secretary,
Ministry of Ayurvedic, Yoga,
Neturopathy, Unani, Siddha and
Homeopathy (Ayush),
at Ayush Bhavan, B Block,
GOP Complex, New Delhi.
- 02 The Central Council of Homeopathy,
through its Secretary,
at Jawaharlal Neharu Bhartiya
Chikichsa Yavam Homeopathy,
Anusandhan Bhavan, 61-65,
Institutional Area Opposite
D Block, Janakpuri, New Delhi.
- 03 The Maharashtra University of
Health Sciences, Dindori Road,
Mhasrool, Nashik, Tq. & Dist.Nashik,
through its Registrar.
- 04 The Competent Authority and
Commissioner, State Common
Entrance Test Cell, Maharashtra
State, Mumbai, 305,
Government Polytechnic Building,

Kherwadi, All Yawarjang Marg,
Bandra (East), Mumbai.

05 The State of Maharashtra,
through its Secretary,
Medical Education and Drugs
Department, Mantralaya,
Mumbai.

Respondents

Mr.V.D.Hon, Senior Counsel i/by Mr.A.D.Shinde, advocate for the
petitioner.

Mr.S.B.Deshpande, Assistant Solicitor General for Respondent
No.1.

Mr.C.A.Jadhav, advocate holding for Mr.S.B.Bhosale, advocate for
Respondents No.2 and 3.

Mr.Murar V. Deshpande, advocate for Respondent No.4.

Mr.M.B.Bharaswadkar, A.G.P. for Respondent No.5.

**CORAM : R.M.BORDE &
SANGITRAO S. PATIL, JJ.
DATE : 14th December, 2016**

ORAL JUDGMENT (Per R.M.Borde, J.):

Heard. Rule. Rule made returnable forthwith and
heard finally by consent of learned Counsel for respective parties.

2 Petitioner is praying for issuance of writ of certiorari or
writ or direction in the nature of writ of certiorari to quash and set
aside the impugned communication dated 17.11.2016 issued by
Respondent No.1-Union of India, thereby refusing permission to
petitioner-Institution to admit students for Ist year of B.H.M.S.
course during the academic year 2016-17.

3 The petitioner-Institution operates Homeopathy College and intake capacity of the College is 100 students. The Institution, for the first time, was granted permission by the Central Government to start new College with intake capacity of 100 students under Section 12A of the Homeopathy Central Council Act, 1973 (for short, "the Act of 1973"), for the academic year 2015-16. The permission accorded to admit the students was conditional subject to fulfillment of requirements specified in paragraph 5 of the order, which reads thus:

5 The College administration will ensure that sufficient qualified teachers in all the Under Graduate Department are in position as per HCC (MSR), 2013 before the admission of the students in the above mentioned UG courses is made, under intimation to the Central Government and CCH.

(i) that, the applicant shall fulfill all the relevant requirements of infrastructure for teaching and training facilities as specified in the Homeopathic Central Council (Minimum Standard Requirements of Homeopathic Colleges and attached Hospitals) Regulation, 2013.

(ii) that, before inspection by CCH regarding the matter for consideration of permission for academic year 2015-16 for the proposed new college, the college shall appoint all the consented teachers (Lecture/Reader/Profession) in the relevant Departments.

(iii) Further to obtain the permission for the next Academic year i.e. 2016-17 to take admissions in the above said permitted courses, the college shall fulfill all the requirements of the HCC Act, 1973 and the

relevant Regulations made thereunder.

(iv) The applicant shall fulfill all the relevant provisions of Regulations namely "Establishment of New Medical College, opening of new Higher course of study or training and increase of admission capacity by a medical college Regulations, 2011".

(v) The College has also to submit the requisite performance bank guarantee of Rs.2.00 Crores (1 Crore for 50 UG admissions and 20 Lakhs per every additional 10 admissions) to have 100 seats as specified under section 6(1)(g) of notified Regulations, 2011.

4 Clause (iii) of paragraph 5 of the communication dated 15.10.2015, mandates the Institution to obtain permission for the next academic year i.e. 2016-17 for admitting students, after fulfilling all requirements of Homeopathy Central Council Act, 1973 and relevant Regulations made thereunder.

5 In observance of the stipulation put in paragraph 5(iii) of the order dated 15.10.2015, petitioner-Institution tendered an application seeking permission for admitting students in the next academic year i.e. 2016-17. The expert body i.e. Central Council of Homeopathy caused inspection of the College and recommended to the Central Government to accord permission to petitioner-Institution to admit students for Ist or IInd year B.H.M.S. Course for the academic year 2016-17, subject to appointment of Readers in Departments of Anatomy, Pharmacy, Pathology and F.M.T., besides ensuring appointment of Professors, Readers and Lecturers in Departments of Surgery, Obstetrics and Gynecology.

The permission letter further directs that the College needs to appoint additional teachers/consultants of Modern Medicine like Ophthalmologist, Paediatrician and Dentist. It is further stipulated that the College needs to establish Departments of Surgery, Obstetrics and Gynecology with all prescribed equipments and other teaching material. It is also mentioned that the College needs to provide photocopying and internet facilities in its Library.

6 The Central Government, after receipt of recommendations from the Central Council of Homoeopathy, caused inspection of the facilities provided by the College and took a decision not to permit the petitioner-Institution to admit students. The order dated 17.11.2016, to that effect, has been communicated to the petitioner-Institution. The observations made by the Inspection Team have been recorded on consideration of submissions of the petitioner. Detailed reasons have been recorded in the order imposing prohibition on the Institution to admit students. After presentation of instant petition, this Court, upon hearing respective parties, refused to grant interim relief and passed a detailed order on 28.11.2016. In paragraphs no. 4, 5 and 6 of the order, following observations have been made:

4 The Inspection Committee, in its report of inspection, has concluded as follows:-

- (i) OPD and IPD of the hospital were totally not functional.
- (ii) It is evident that OPD/IPD data was fabricated and not correlating each other.
- (iii) Hence, the College is not fulfilling the specified requirement under HCC

Regulations (MSR-2013) especially in terms of Hospital OPD and IPD which are not functional.

5 The deficiencies conveyed to the petitioner, the submissions of the petitioner and the observations of the Hearing Committee are recorded in paragraph No.6 of the impugned order. The overall observations of the Hearing Committee are :-

- (a) At present, the college is having a Principal and Professor in Physiology and Bio-chemistry and Pharmacy but no Professor in Repertory. Although the college is claiming for 12 guest faculties, only 2 are verified as guest faculty from their attendance register and salary record.
- (b) At present, the existence of Homoeopathic hospital is doubtful. There is no separate SMO room, Staff Nurse, Dressing Room and Medicine dispensing room.
- [c] OPD of the hospital is doubtful.
- [d] MoU with super specialty hospital is not in stamp paper and it is not signed by the notary.
- [e] There is disparity in the IPD and OPD patient figure when cross checked with the central register and IPD medicine dispensing register.

6 In view of the shortcomings and deficiencies mentioned in paragraph No.7 of the impugned order, which violate the provisions of the HCC Act and the relevant regulations and are of such a serious and fundamental nature that they adversely affect the ability of the College to provide quality medical education in

terms of the provisions of the HCC Act and the relevant regulations, the petitioner is denied permission to admit the students to B.H.M.S. Course for the academic year 2016-2017.

7 Aggrieved by the order, refusing to grant interim relief, petitioner-Institution approached the Hon'ble Supreme Court by presenting Special Leave Petition [C] No.35095 of 2016. The SLP was taken up for consideration by the Hon'ble Supreme Court on 30.11.2016 and following order was passed:

“After arguing the matter for some time, Mr.H.A.Ahmadi, learned senior counsel seeks leave to withdraw this special leave petition reserving liberty for the petitioner to approach the High Court with an application for re-inspection.

The special leave petition is dismissed as withdrawn with liberty prayed for.

We express no opinion as to the merits of the contention which petitioner proposes to raise before the High Court in the proposed application.”

8 We have heard learned Counsel for respective parties. According to the learned Senior Counsel appearing for the petitioner, since the expert body i.e. Central Council of Homoeopathy has recommended the Central Government to accord permission in favour of the College to admit students, the Central Government ought not to have taken any adverse decision.

9 It is the contention of the petitioner that the expert

body i.e. Central Council of Homoeopathy is constituted under the Central Act with the responsibility of maintaining operational standards and judging the infrastructure and facilities available for imparting professional education. Since the expert body has issued favourable recommendation, the Central Government ought not to have adopted a different view overlooking the recommendations of the Central Council of Homoeopathy.

10 Learned Assistant Solicitor General, appearing for Union of India, strenuously contended that the observations of the expert body, in the inspection report, are merely of recommendatory character. The expert bodies are appointed only to aid and assist the Central Government to arrive at a decision and the recommendations of the expert body, constituted under the Central Act, are not binding on the Central Government. It is further contended that looking to the tenor of the recommendatory letter forwarded by the Central Council of Homoeopathy, it is seen that there are deficiencies in the facilities available with the petitioner-institution and as such, the Central Government was justified in making further investigation in the matter and causing inspection of the facilities available in the petitioner-institution and adopting a different view.

11 As has been recorded above, since initial permission granted in favour of the petitioner-institution was conditional one and permission letter itself stipulates tendering of an application for continuation during the next academic year, the Institution is required to fulfill the norms and conditions specified in Section 12A of the Homoeopathy Central Council Act, 1973 (for short, “the

Act of 1973"). Regulation No.3 of the Homoeopathy Central Council (Minimum Standards of Requirement of Homoeopathic Colleges and attached Hospitals) Regulations, 2013 provides for fulfillment of minimum standard requirements. Those are quoted below:

3 Fulfillment of minimum standard requirements-

(1) The college and attached hospital(s) shall fulfill the minimum standards requirements of infrastructure and teaching and training facilities referred to in the regulations 4 to 13.

(2) For exposure of the students in the clinical field and to understand the depth of operative surgery and operative Gynecology or Obstetrics as well as management in critical illnesses, a college shall have a Memorandum of Understanding with a reputed nearby located super-specialty hospital (of modern medicine) with all required facilities of operation theatre, labor room, Intensive Care Unit and other required facilities for the management of critical patients.

(3) In case an attached hospital of a college does not have the facilities to handle operation theatre and other critical patients, the students of such a college can be deputed under the strict supervision of concerned teaching facility of the college for the required exposure in the said field to the attached super specialty hospital.

(4) The existing colleges and their attached hospitals established under section 12A of the Act and those colleges and their hospitals established prior to the 28th January, 2003 and recognized by the Central Council of Homoeopathy shall fulfill the minimum

standards requirements of infrastructure teaching and training facilities referred to in these regulations by the 31st December, 2014 for consideration of grant of permission for undertaking admissions in the coming academic years.

(5) If a college fulfills the requirement by 31st December, 2014 as per these regulations, it shall be granted permission to undertake admissions for a period not exceeding five years during which the college shall not be inspected, except for random checks on receipt of any complaint, or otherwise as deemed necessary either by the Central Government or by the Central Council of Homoeopathy.

(6) The Central Council shall visit the college *suo moto* three months before the expiry of permission.

(7) The conditional permission shall be granted only to those colleges which are fulfilling at least the requirement of teachers as specified in Schedule-IV, the requirement of functional hospital as specified at sub-regulation (2) of regulation 7 and availability of equipment as specified in schedule-III for each academic year 2013-14 and 2014-15 on the basis of the separate inspections to be carried out by the Central Council of Homoeopathy after the 15th May, 2013 for the academic year 2013-14 and after the 31st December, 2013 for the academic year 2014-15.

(8) Such conditional permitted colleges or those colleges which have been denied permissions during the academic year 2013-14 and/or 2014-15, will be required to fulfill the requirements as specified in these regulations by the 31st December, 2014.

(9) All the existing colleges, which are not able to achieve full compliance of the

requirement as specified in these regulations by the 31st December, 2014, shall be denied permission from academic year 2015-16 onwards and action as envisaged under section 19 of the Act shall be initiated against all such colleges apart from rejection of their applications under sections 12A, which have been under consideration by way of conditional permissions or denials.

12 The Institution is expected to adhere to the minimum standard requirements and in view of sub-section (4) of Section 12A of the Homoeopathy Central Council Act, 1973, the Central Government is invested with the powers. The Central Government may, after considering the scheme and the recommendations of the Central Council under sub-section (3) and after obtaining, where necessary, such other particulars, as may be considered necessary by it from the person or medical institution concerned, and having regard to the factors referred to in sub-section (7), either approve with such conditions, if any, as it may consider necessary or disapprove the scheme and any such approval shall constitute as a permission under sub-section (1).

13 Learned Assistant Solicitor General, appearing for Union of India, strenuously contends that role of the Central Government is not merely to accord approval to whatever recommendations those are made by the Homoeopathy Central Council, but the Central Government is entitled to cause further inspection and call for particulars and may take an independent decision, after adopting such procedure, as it may deem appropriate. It does appear that the Central Government has

passed an order disapproving the scheme in exercise of powers conferred under sub-section (8) of Section 12A of the Act of 1973 and has communicated the Medical Institution accordingly.

14 Learned Senior Counsel, appearing for the petitioner, strenuously contends that the Institution is functional since last one year and the deficiencies, those have been pointed out by the expert body i.e. Central Council of Homoeopathy, have been removed. It is further contended that the Institution is in a position to demonstrate that certain observations made in the order issued by the Central Government are either incorrect or uncalled for.

15 Since the petitioner contends that the deficiencies have been totally removed and the Institution is functional since last one year, we deem it appropriate to exercise the powers conferred under Article 226 of the Constitution of India and to issue directions to the Central Government to cause inspection or to make further inquiry within stipulation of sub-section (4) of Section 12A of the Act of 1973 and may take appropriate decision. The Hon'ble Supreme Court in SLP (c) No.35095 of 2016, has granted liberty to the petitioner to approach this Court with an application for re-inspection and in view of the order passed by the Hon'ble Supreme Court, we deem it appropriate to direct Respondent No.1 to cause further inspection to be made or to make further inquiry within contemplation of sub-section (4) of Section 12A of the Act of 1973 and after giving an opportunity of hearing to the petitioner to pass an order. The process of hearing and taking appropriate decision shall be completed within a period

of two weeks from today. It is clarified that the Central Government may take appropriate decision in accordance with the provisions of law and considering merits of the proposal of the petitioner.

16 Rule is made absolute in above terms. There shall be no order as to costs.

Pending Civil Applications, if any, do not survive and stand disposed of.

(SANGITRAO S. PATIL)

JUDGE

adb/wp1177216

(R.M.BORDE)

JUDGE