

**HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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**CM-5056-5057-LPA-2016 in/and**

**LPA No.2429 of 2016 (O&M)**

**Date of Decision: 15.12.2016**

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JRK (Jage Ram Kissan), Homoeopathic  
Medical College and Hospital, Rohtak

... Appellant

VS.

Union of India & Ors.

... Respondents

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**CORAM: HON'BLE MR.JUSTICE SURYA KANT**

**HON'BLE MR.JUSTICE SUDIP AHLUWALIA**

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|--------------------------------------------------------------------------|-----------------|
| 1. Whether speaking/reasoned?                                            | <b>Yes</b>      |
| 2. Whether reportable?                                                   | <b>No</b>       |
| 3. Whether Reporters of local papers may be allowed to see the judgment? | <b>Yes / No</b> |
| 4. To be referred to the Reporters or not?                               | <b>Yes / No</b> |
| 5. Whether the judgment should be reported in the Digest?                | <b>Yes / No</b> |

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Present: Mr. Rajiv Atma Ram, Senior Advocate with  
Mr. Arjun Pratap Atma Ram, Advocate for the appellant

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**SURYA KANT, J. (Oral)**

(1) This Letters Patent Appeal assails an interlocutory order dated 14.12.2016 vide which the learned Single Judge has declined the appellant's prayer for interim relief for permitting it to make admissions against 50 additional seats in BHMS Course and to start Postgraduate Course with an intake of 30 seats. The appellant-Institute sought the permission on the premise that it had applied for increasing the admission capacity from 50 to 100 seats in BHMS Course and to start the Postgraduate Course on 01.04.2015 and since no decision was taken by the Central Government on its request for a period of "one year", Section 12-A of the Homoeopathic Central Council Act, 1973 comes into play and such permission shall be deemed to have been granted under sub-Sections (5) & (6) thereof. Learned Single Judge has declined the interim relief at this stage observing that 'reasonable protection' has

50 students in BHMS Course against the original strength and that at this stage, when the Central Government has declined the appellant's request for increasing the intake or to start the new Course by passing a specific order dated 29.11.2016, it will not be appropriate to issue interim directions granting such relief.

(2) We have heard learned senior counsel for the appellant at length and gone through the decisions cited by him on the legal principle as to how a "deeming fiction" becomes operative.

(3) We find from the order under appeal that the basis for rejection of prayer for interim relief is not the rejection of appellant's claim on merits. The issue whether the 'deeming fiction' got activated under sub-Section (5) or the Central Government has a valid and acceptable defence plea under sub-Section (6) of the Act, is a mixed question of law and facts which is yet to be determined by learned Single Judge. We have no reason to doubt that if the appellant's plea that the 'deeming fiction' indeed became operative for the academic session 2016-2017 is finally accepted, learned Single Judge would consequentially evolve appropriate modalities to suitably compensate the appellant.

(4) As the issue under consideration will have further bearing on the admissions to be made by the appellant-Institute in the next academic session as well, we request the learned Single Judge to decide the writ petition on merits on the date fixed subject to any other part heard case.

(5) If the cut-off date for admissions is extended by the competent authority, we grant liberty to the appellant to apply for preponement of date of hearing in the main case and/or for grant of

interim relief. Such a prayer may be decided by the learned Single Judge  
in accordance with law.

(6) Disposed of. **Dasti**.

**(Surya Kant)**  
**Judge**

**15.12.2016**  
*vishal shonkar*

**(Sudip Ahluwalia)**  
**Judge**