

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: December 06, 2016

Judgment delivered on: December 22, 2016

- + W.P.(C) 10098/2016, CM No. 39981/2016
- + W.P.(C) 10100/2016, CM No. 39985/2016

**DHANVANTRI MEDICAL COLLEGE & HOSPITAL & RESEARCH CENTRE
GANDHI NATHA RANGJI HOMEOPATHIC MEDICAL COLLEGE**

..... Petitioner(s)

Through: Mr.Joginder Sukhija and Mr.Nikunj Saluja,
Advs.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr.Rajesh Gogna, CGSC with
Ms.L.Gangmei, Adv. for R-1.
Mr.Kundan Kr. Mishra, Mr.Ajay Kumar,
Advs. for R-2.

**CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO**

J U D G M E N T

V. KAMESWAR RAO, J

As these two petitions involve identical issues for consideration, same are being decided by this common order.

Facts in W.P.(C) 10098/2016

1. The present petition has been filed by the petitioner with the following prayers: -

“It is, therefore, most humbly prayed that this Hon’ble Court may kindly be pleased to issue an appropriate writ/Directions/Orders in the nature of certiorari or otherwise thereby quashing the order dated 10.10.2016 whereby which the petitioner has been denied permission to undertake admission of students in bachelor of homeopathic medicine and surgery (BHMS) course in the academic year 2016-17 with intake capacity of 50 students.

This Hon’ble Court may kindly be pleased to issue an appropriate writ/Directions/Orders in the nature of mandamus or otherwise thereby directing respondents to grant permission to the petitioner to undertake admission of students in bachelor of homeopathic medicine and surgery (BHMS) course in the academic year 2016-17 with intake capacity of 50 students.

It is prayed accordingly.”

2. It is the case of the petitioner that it is a Society registered under the Societies Registration Act, 1860. In the year 2000, the petitioner established a Homeopathic Medical College in the name and Style of Dhanvantri Medical College and Hospital and Research Centre (College in short). Since 2002, the petitioner has been running Bachelor of Homeopathic Medicine and Surgery (BHMS) Course and is affiliated with Maharashtra University of Health Science, Nasik with an intake capacity of 50 seats. The affiliation by the University continues even for the year 2015-2016. Respondent no. 2 conducted an inspection of the College on 7th June, 2016 for considering admission in BHMS Course for the year 2016-2017. Respondent no. 2 submitted its recommendations to the respondent no.1. It is the case of the petitioner that the respondent no.2 has falsely alleged in its recommendations that the College is not fulfilling the conditions as per the said regulations.

Respondent no. 1 had issued a notice dated August 23, 2016 calling upon the College to submit its reply to the shortcomings raised by the respondent no.2. The representative of the petitioner appeared before the Hearing Committee on September 7, 2016. It is the case of the petitioner that apart from explaining its stand, the petitioner submitted a detailed explanation and satisfactory documentary evidence to substantiate that the deficiencies noted by the respondent no.2 are false and not tenable. The Hearing Committee after considering the representation of the petitioner submitted a report dated September 7, 2016. It is the case of the petitioner that without considering the report of the Hearing Committee or the petitioner's written explanation and documentary evidence, respondent no.1 had passed the impugned order dated October 10 2016 thereby denying permission for undertaking the admission of students by the said College in BHMS for the academic year 2016-2017. Respondents have filed their counter-affidavits. Respondent no.1 in its counter-affidavit has stated that the Central Council of Homeopathic (the Central Council) has been constituted by the Government of India under the provisions of Homeopathic Central Council Act, 1973 (in short Act of 1973) for maintaining the Central Register of Homeopathic and the matters connected therewith. The Central Council has been vested with the powers under Section 20 of the Act of 1973 for prescribing the minimum standards of Education of Homeopathy, required for granting recognized medical qualification by University, Board or Medical Institution in India.

3. Under the provisions of Section 33 of the Act of 1973, the Central Council has been

authorized to make Regulations with previous sanction of the Central Government to carry out the purpose of the Act of 1973. Under the provisions of Clauses (i), (j) and (k) of Section 33 and Section 20 of the Act of 1973, the Central Council with the previous sanction of the Central Government has made Regulations, which included the Homeopathy (Minimum Standard of Education) Regulations, 1983 (as amended up to 2002) and the HCC (MSR) Regulations, 2013. It may be stated here, the Regulations of 2013 superseded the Regulations of 1983. As per Regulation 3(9) of the Regulations of 2013 all the existing Colleges, which are not able to achieve full compliance of the requirement as specified in the said Regulations by December 31, 2014, shall be denied permission from the academic year 2015-2016 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 Section 12A, which have been under consideration by way of conditional permissions or denials.

4. It is the case of the respondent No.1 that the spirit behind the Regulations is to ensure that hundred percent norms are fulfilled so that the respective medical institution is equipped for imparting quality medical education. The ill equipped Colleges would produce insufficiently skilled doctor who would not give proper medical treatment and therefore the health of citizens would be at risk. Vide letter dated March 11, 2016 of the Ministry, the Council was requested to provide recommendations as per the latest status of availability of infrastructure, equipment, teaching faculty, hospital staff and functioning of hospital in the existing Homeopathic Colleges. The respondent No.1 received the

recommendation from Central Council after conducting inspection of the petitioner College on June 7, 2016. In terms of the recommendation of the Central Council qua the petitioner College is concerned, the following has been stated at page 95:-

“No documents were provided during the Inspection relating to experience as Professor in respect of Dr. Ramesh Balpandey appointed as Principal. Reader not appointed in the subjects of Anatomy, Physiology, Practice of Medicine & Repertory. Though appointment of 01 Professor, 01 Reader and 01 Lecturer on Full Time basis is compulsory in the Departments of Practice of Medicine & Repertory lacking in this College. All Guests Professor were absent on the day of Inspection. Professor of Repertory was also absent. Documents related to qualification of teaching staff were not found in the personal file of teaching staff. 07 doctors were shown as Guests Professor also working as Hospital Staff. The Professional experience of Dr. Rupali Shilpi and Dr. Triveni Gharate was short on the day of their appointment as Lecturer. Consultants of Modern Medicine in addition to Teaching Faculty have not been appointed. Provision for Dressing Room has not been done. Average bed occupancy per day has been reported as 21. Paediatrics & RCH OPD is not provided. Clinical Laboratory for hospital, X-ray, ECG, USG not provided. Labor Room provided but not functioning. On the day of Inspection total 07 patients were seen in IPD. In hospital staff X-ray attendant has not been appointed. An intern student name (Mr. Abhishek Saundarkar) is also given in the list of hospital staff as Dispenser. Many of the hospital staff were absent on the day of Inspection... Sterilizer, backrest, chair trolley with wheels not provided in the hospital. In Deptt. Of Anatomy, Physiology, pathology etc. equipment have been insufficient. Pharmacy

Garden is not provided.”

5. Pursuant thereto, an opportunity of hearing was given to the petitioner on September 7, 2016 and the deficiencies were communicated to the College. The submissions were made by the College at the time of hearing by the Hearing Committee and the Committee examined all the submissions and documents of the College in terms of the Act of 1973 and the Regulations of 2013. The Competent Authority disapproved the permission for undertaking admission by the petitioner in under graduate course with 50 seats for the academic year 2016-2017. The decision was conveyed to the petitioner vide order dated October 10, 2016.

6. As per the provisions of Regulations of 2013, the Colleges have to meet the complete norms of MSR by December 31, 2014 for obtaining five years permissions, else the colleges would be succumbed for action under Section 19 of the Act including stopping of admissions. It is the case of the respondent No.1 that as there is no provision for granting conditional permissions in the MSR after the year 2014, a policy has been approved by the Minister In-Charge for granting conditional permission during 2016-2017 and also to relax 10% of deficiency in teaching staff, considering bed occupancy as 20% instead of 30% and to exempt USG facility if an alternative arrangement is shown by the college. The petitioner College is neither meeting the norms of MSR, 2013 for granting five years permission nor meeting relaxed policy for giving conditional permission for one year. Therefore, the college was considered for denial of permission during academic year 2016-

2017.

7. The respondent No.2, apart from narrating the facts as noted above, has stated that the respondent No.1 vide its letter dated August 19, 2011 and March 12, 2012 informed about the non enforcement of Regulations of 1983 and for grant of amnesty for admission of students in the colleges. It is further stated by the respondent No.2 that the Central Government through concerned Ministry issued letters dated August 26, 2013, July 25, 2014 and May 29, 2015 respectively informing non enforcement of the Regulations of 2013 and for grant of amnesty for admission of students in the College. Therefore, the respondent No.1 vide its letter dated March 11, 2016 asked the Central Council to inspect the colleges and furnish its recommendation and reports of inspection. Rest of the contents being factual and have already been narrated are not repeated for the sake of brevity.

Facts in W.P.(C) 10100/2016

8. In this writ petition, I am only giving the facts, which would be relevant and not repeating the position under the provisions of the Act of 1973 and the Regulations of 2013. The petitioner is a Homeopathic Medical College in the name and style of Gandhi Natha Rangji Homeopathic Medical College. It is the case of the petitioner, since 2002 the petitioner has been running bachelor of homeopathic medicine and surgery course duly approved by the respondents. The College is affiliated with Maharashtra University of Health Sciences, Nasik and has intake capacity of 50 seats. It is the case of the petitioner that the University of Health Sciences, Nasik continued affiliation of the said College even

for the year 2015-2016. The respondent No.2 conducted an inspection of the College on July 21, 2016 for considering admission in BHMS course for the session 2016-2017. It is the case of the petitioner, the respondent No.2 submitted its recommendations to respondent No.1 falsely alleging that the College is not fulfilling the conditions as per the Regulations of 2013. The respondent No.1 issued a show cause notice dated August 24, 2016 calling upon the College to submit its reply to the shortcomings raised by the respondent No.2. It is the case of the petitioner that its representative appeared before the Hearing Committee on September 21, 2016. The representative explained the stand of the petitioner and submitted a detailed explanation along with documentary evidence to contend that the deficiencies pointed out by the respondent No.2 are false and not tenable.

9. It is the case of the petitioner that the Hearing Committee after considering the representation of the petitioner, submitted a report dated September 21, 2016 with the respondent No.1. After considering the report of the Hearing Committee and the petitioner's written explanation and documentary evidence, the respondent No.1 passed the impugned order dated October 10, 2016 denying permission for undertaking admission of the students for the academic year 2016-2017.

10. On the other hand, the respondent No.1 in its counter-affidavit apart from reiterating the legal position as narrated above and the factual aspect, would submit that the Central Council conducted the inspection of the petitioner College on July 21, 2016 and recommended as under:-

“Professor not appointed in Pharmacy, Practice of Medicine and Repertory. Reader not appointed in Physiology, Organon, FMT, Obs./Gyn., Community Medicine and Repertory. The average daily no. of patients attended the OPD is only 70 and the bed occupancy is of 04 patients (20%). USG is not available. The Hospital Kitchen are not available. It has been reported that only 19 beds are available but the availability of 17 beds only has been reflected in the table for hospital equipments. Only one back rest is available. Diagnostc Set (ENT) and Infra-red Lap not available. It has been reported that the Hospital is attached with the Hospital of Allopathic Nursing home run by the same management. The OPD and IPD records from 1.1.2016 to 21.7.2016 not provided.

Not recommended for admissions in 2016-2017.”

11. It is the case of the respondent No.1 that the petitioner College do not fulfil the norms of MSR, 2013.
12. Suffice to state, the respondent No.2 has filed its counter-affidavit wherein they have referred to certain letters issued by the respondent No.1, a reference of which has already been given in W.P.(C) No. 10098/2016.
13. Mr. Joginder Sukhija, learned counsel for the petitioners would make three broad submissions, inasmuch as the impugned orders in these writ petitions are non-speaking as there are no reasons given for denying permission for undertaking admission of students by the Colleges for the academic year 2016-2017. He qualifies his statement by stating that the impugned orders does not specify as to how the petitioners herein have not fulfilled the norms of the MSR, 2013 including the relaxed norms. He would state that the impugned

orders have been passed in violation of the rights of the petitioners despite they fulfilling the norms of Regulations of 2013. In fact, it is his contention that the respondent No.1 failed to consider and appreciate documents submitted by the petitioners before the Hearing Committee thereby establishing there was sufficient teaching as well as non teaching staff working in the College with requisite experience. He would also submit that there are sufficient equipments and instruments in each of its Departments. However, the submissions and the documents were ignored by the respondent No.1. According to him, there was no rebuttal to the submissions made by the petitioners in their replies and in the absence of any rebuttal to the facts brought on record by the petitioner, the conclusion of the respondent No.1 are baseless and contradictory. He also states that the impugned orders in these writ petitions have been passed in a biased manner with mala fide intent, inasmuch as the respondent No.1 has granted permission to various other Colleges to undertake admission of students in BHMS course for the academic session 2016-2017.

14. That apart, it is his submission that the hearing was given by two officers whereas the impugned order has been passed by the Deputy Secretary to the Government of India. The procedure adopted by the respondent No.1 is extraneous to the provisions of Section 12A of the Act. It is also his submission that under the Scheme of the Act of 1973, there is no provision which enable the respondent No.1 to stop admissions in Colleges which are not conforming to standards specified in the Regulations made under the said Act. He has filed on record, the 68th report submitted to the Parliamentary Standing Committee on Health &

Family Welfare on the Homeopathic Central Council (Amendment Bill), 2015, which reveals the understanding of the respondent No.1, that there is no enabling provision in the Act for stopping admissions in Colleges, which do not have minimum norms as specified under the Regulations of 2013. In other words, it is his submission, in the absence of provisions under the Act, the respondent No.1 could not have stopped the admissions in the academic session 2016-2017. Mr. Sukhija would rely upon the following judgments:-

- (i) *AIR 1959 SC 308 Gullapali Nageswara Rao v. Andhra Pradesh;*
- (ii) *AIR 2014 SC 22-42 Union of India v. Shiv Raj & Ors (and connected appeals);*
- (iii) *AIR 1971 SC 862 M/s Travancore Rayons Ltd. v. Union of India;*
- (iv) *Narendar Prakash Kohli vs. Union of India, W.P.(C) No. 2968/2014 decided on May 8, 2015 [2015 (220) DLT 165];*
- (v) *Malla Reddy Institute of Medical Sciences and anr. V. Union of India, W.P.(C) No. 7106/2015 and connected writ petition decided on September 29, 2015;*
- (vi) *K. Raj Arora v. State Bank of India W.P.(C) No. 154/2000 decided on September 8, 2006 [2015 (10) AD (Delhi) 565];*
- (vii) *Samir Sharma and another vs. Union of India W.P© No. 6109/2015 decided on July 27, 2016;*

15. On the other hand, Mr. Rajesh Gogna, learned counsel appearing for the respondent No.1 would justify the impugned orders in the petitions. According to him, the impugned orders are reasoned and speaking one. That apart, he states that the order is administrative in nature and has been passed by the Competent Authority to the note prepared by the Hearing Committee. He states, there is no illegality in that regard. That apart he would state that the

Regulation 3(4) of the Regulations of 2013 contemplates, all existing Colleges and their attached hospitals established under Section 12A of the Act need to fulfil the minimum standards requirements of infrastructure, teaching and training facilities for consideration of grant of permission for undertaking admissions in the coming academic years. According to him, if the said provision is read with Regulation 3(5), if a College fulfils the requirement, then the permission to make admissions is given for 5 years. Otherwise, the permission shall not be granted for the coming academic year.

16. It is his submission that the impugned action, is as per the Regulation 3(4) of the Regulations of 2013. According to him, the Amendment Bill, on which reliance has been placed by Mr. Joginder Sukhija, was with an endeavor that in the absence of enabling provision in the Act for stopping admission in such Colleges, which do not have the minimum norms as specified in the Regulations of 2013, the de-recognition of the degree being awarded by such Colleges under Section 19 of the Act, could not be implemented. According to him, it is with that view, the amendment was sought to be carried out. He would rely upon the judgment of the Supreme Court in the cases reported as **2013 (5) SCC 252 Kalinga Mining Corporation v. Union of India** and **2002 (5) SCC 685 Indian National Congress (I) v. Institute of Social Welfare**.

17. Learned counsel for the respondent No.2 would reiterate the stand taken in its counter-affidavit.

18. Having heard the learned counsel for the parties, insofar as the plea of Mr. Joginder

Sukhija that the impugned orders are non-speaking is concerned, no doubt that in the impugned orders, the respondent No.1 has broadly mentioned the Colleges/Hospitals in the writ petitions were lacking in certain requirements. In what manner, the petitioners were lacking in those requirements have not been mentioned or spelt out in the impugned orders; but merely because the impugned orders does not specify so, would not make the impugned orders bad, inasmuch as the impugned orders preceded by show cause notices dated August 23, 2016 (W.P.(C) No.10098/2016), August 24, 2016 (W.P.(C) No.10100/2016), wherein the respondent No.1 had pointed out the deficiencies, which were found on inspection of the Colleges/Hospitals. Against those show cause notices, the petitioners had submitted their reply and have tried to clarify the deficiencies, which have been pointed out by the respondent No.1. The show cause notices were followed by a hearing given by the respondent No.1. It is thereafter that the impugned orders were passed. Mr. Sukhija may be right that in the absence of the reasons in the impugned orders, the petitioners could not justify/clarify the deficiencies in the writ petitions. But I note, in its counter-affidavit, the respondent No.1 has, in detail, given its remarks against the deficiencies/submissions of the petitioners and the observation of the Hearing Committee in the following manner:-

Writ Petition (Civil) No. 10098/2016

<i>Deficiency conveyed to the petitioner</i>	<i>Submission of the applicant</i>	<i>Observation of the Hearing Committee</i>	<i>Remarks of the Ministry</i>
<i>1. The previous teaching experience in respect of Dr. Ramesh Balpande</i>	<i>Dr. Ramesh Balpande who is having MUHS approval Prof. &</i>	<i>The College has not submitted any documentary proof in support of salary paid</i>	<i>As per observation of Hearing Committee the college unable to substantiate their</i>

who appointed as Principal was not available.	temporary Principal. The joining date of the Principal & Professor with effect from 28.5.2016. The teaching experience since 1984-85 certificate dated 19.5.2000 at page 42 clearly show that he is officiating Professor in Anatomy Department since year 1996 we have produce his educational qualification, experience certificate etc.	and TDS deducted from Dr. Ramesh Balpandey.	claim regarding Principal.
2. No Reader was appointed in the subjects of Anatomy, Physiology, Practice of Medicine & Repertory	Dr. Ramesh R. Balpande is teaching in Anatomy as Prof. & Dr. Rupesh Marda is working as a Lecturer in Anatomy. The order dated 7.6.2016 indicate the University approval is at page No.44. Approval given MUHS at page 45 shows the approval to the teacher which include Dr. Rupesh Marda. University approval given to the Professor in Medicine Dr. Karuna Mankar, Dr. Neena Modak Professor in Physiology is at page 51. As per the norms fixed by CCH Institute can appoint either Professor or	The college has submitted the detailed of their employee appointed/approved by MUHS and verified the same from the records.	As per the observation of the Hearing Committee, it may not be accepted. Hence, the college does not appointed Reader in the subjects of Anatomy, Physiology, Practice of Medicine & Repertory. Hence, the college is neither fulfilling the criteria as per HCC MSR for giving permission for 5 years nor fulfilling relaxed approved policy for granting conditional permission for 1 year.

	<i>Reader of Anatomy & Physiology. The appointment process is carried out by committee duly appointed by Govt. Colleges submits proposals to the University for approval.</i>		
<i>3. No Professor, no Reader and no Lecturer on Full Time basis are available I the Departments of Practice of Medicine & Repertory</i>	<i>We have produced on record approval given by University to Dr. Karuna Mankar, Professor in practice medicine (on regular basis) & Dr. Neena Modak, with effect from 23.4.2016 at page 58. Dr. Triveni Gharte, Lecturer also obtained University approval wit effect from 21.10.2012 and the same page is 60. All professors, Reader & Lecturer are appointed on full time basis. Only Guest Professor attend college as per requirement for completion of syllabus. University approval in favour of Dr. Barishadriwala Murtaza as Professor with effect from 21.10.2012 at page 59. Dr. Mateen Shaikh is working as Lecturer with effect from 21.10.2012 in the subject of</i>	<i>As per the documents/records submitted by the College the following is observed as under:- University has appointed all professors, Reader & Lecturer on full time basis. Dr. Karuna Mankar, Professor in Medicine on regular basis Dr. Neena Modal, Professor in Physiology w.e.f 23.4.2016 at page 58. Dr. Triveni Gharte, Lecturer, Medicine, University approval w.e.f. 21.10.2012 at page is 60. Guest Professors are called for completion of syllabus as per requirement. As per University approval, Dr. Barishadriwala Murtaza, was appointed as Professor in Repertory w.e.f. 21.10.2012 at page 59 Dr. Mateen Shaik is working as Repertory Lecturer w.e.f. 21.10.2012.</i>	<i>Hence, fulfilling the criteria as per HCC, MSR</i>

	<i>Repertory.</i>		
<i>4. All Guests Professor were absent on the day of Inspection. Professor of Repertory was absent on the day of visitation.</i>	<i>Except Dr. Sheetal Deshmukh, Guest Professor (n Repertory), Dr. Patil Sandeep, Guest Professor (in Medicine) remaining 10 were present. We are producing Xerox copy of attendance register. We have shown the original attendance register at the time of hearing & the same is verified</i>	<i>College has stated that except Dr. Sheetal Deshmukh, Guest Professor (in Repertory) and Dr. Patil Sandeep, Guest Professor (in Medicine) remaining 10 were present. However, as per the records the statement of the college is incorrect which may be seen at page no. 480.</i>	<i>As the college representative could not substantiate their claim to the Hearing Committee, hence it cannot be accepted. The college is nether fulfilling the criteria as per HCC, MSR for giving permission for 5 years nor fulfilling relaxed approved policy for granting conditional permission for 1 year.</i>
<i>5. Documents related to qualification of teaching staff were not found in the personal file of teaching staff.</i>	<i>We are submitting relevant paper regarding the qualification of educational staff along with their Approval Letter issued by University, their appointment and joining letter from page no. 80 to 372.</i>	<i>They have submitted the data reg. education qualification, approval letter and joining letter. But they have not submitted the records regarding mode of payment, TDS deducted designation not mentioned in the attendance register.</i>	<i>As per observation of Hearing Committee the college unable to substantiate their claim regarding mentioned deficiency.</i>
<i>6. The professional experience of Dr. Rupali Shilpi and Dr. Triveni Gharate was short on the day of their appointment as Lecturer.</i>	<i>Dr. Rupali Shimpi, Lecturer (in Organon) & Dr. Triveni Gharte, Lecturer (in Medicine) obtained University approval letter as Lecturer on regular basis at page No.60 and the same is filed.</i>	<i>No experience is required for the post Lecturer. Details at page No.60.</i>	<i>Hence fulfilling the deficiency conveyed.</i>
<i>7. 07 doctors who were show as Guest Professor also working as Hospital staff. X-ray</i>	<i>As per MSR 2013 there is no bar not to allowed Doctors to place in the hospital.</i>	<i>As per MSR 2013, Guest Professors who are teaching in the College and their services can be utilized in hospital also.</i>	<i>As per observation of Hearing Committee fulfilling the deficiency conveyed.</i>

attendant has not been appointed in the hospital. An intern student name (Mr. Abhishek Saundarkar) is also given in the list of hospital staff as Dispenser. Many of the hospital staff were absent on the day of Inspection.	We have produce the agreement executed in between our Institute and Dr. Manoj Chaudhari at page 375 which clearly specify that he is X-ray & Sonography (USG) is attached to our College and he is rendering his services with effect from 16.11.2015 and it is boundent duty of Dr. Manoj Chaudhari to provide Attendant as and when required and hence there is no necessity of appointing any attendant in our college. We have filed on record Purchase bill of ECG Machine at page no. 377 it is dated 5.4.2013. We have appointed Mr. Ulhas Bodke as a Dispenser. His appointment letter & joining letter is at page 380 and 381 & qualification document at page 378 and 379. The name of Abhishek Saundarkar is wrongly shown in the list of hospital staff.	As regard, X-ray attendant, College has submitted that the Dr. Manoj Chaudhary consultant appointed for X-ray, ECG & Ultra sound etc. who will bring his own attendant. Further, they have submitted that the name of Abhishek Saundarkar is wrongly shown in the list of hospital staff which is regretted.	
8. Consultants of Modern Medicine in addition to Teaching	There is no mandatory requirement for the	The College has submitted that there is no mandatory requirement	As per observation of Hearing Committee fulfilling the

<i>Faculty have not been appointed</i>	<i>appointment of consultant in modern medicine.</i>	<i>for the appointment of consultant in modern medicine.</i>	<i>deficiency conveyed.</i>
<i>9. Provision for Dressing Room has not been done</i>	<i>We have produced the photograph showing the Dressing Room is available in our College. The photograph is at page 382 for which register is not available.</i>	<i>The College has submitted a photo of one vacant single room shown as dressing room but no dressing material and register for treating patients etc. is seen which was agreed by the college.</i>	<i>Same as remark given in point 4.</i>
<i>10. Average bed occupancy per day is not as per HCC (MSR), 2013. On the day of Inspection total 07 patients were seen in IPD against the required 30% as per HCC (MSR), 2013.</i>	<i>On the day of Inspection 16 patients were admitted in hospital. The Xerox copy of extract of IPD register is filed.</i>	<i>As per the records and submissions of the College, the calculation of bed occupancy is not at all possible as there is no mentioning about OPD & IPD numbers, bed number, date of discharge details and follow up details are not recorded in the case sheet which may be seen at page No.496 to 512.</i>	<i>Same as remark given in point 4.</i>
<i>11. Paediatrics & RCH OPD is not provided</i>	<i>We have produced the record photographs at page 383 to 388 showing that OPD is functioning in our college for which register is not maintained.</i>	<i>The records in respect of Paediatrics & RCH OPD are not submitted by the College. The photographs submitted in respect of these units cannot be expected.</i>	<i>Same as remark given in point 4.</i>
<i>12. Clinical Laboratory, X-ray, ECH USG is not available in the hospital.</i>	<i>Since our college is having services of Dr. Manoj Chaudhari by agreement we are not having X-ray Machine & USG machine. Students & patient are taking services from Dr. Manoj Chaudhari.</i>	<i>No records were shown.</i>	<i>Same as remark given in point 4.</i>

	We have purchased ECG Machine and the same is available with our hospital. Agreements is at page 375 & receipt for purchase of ECG machine is at page 377 Dr. Manoj Chaudhari is duty to maintained the register.		
13. Labour Room not functional.	Our Labour Room is very much functional and photographs are at page 382 we are only providing ENC only. But register not maintained.	No records were shown except one photograph.	Same as remark given in point 4.
14. Sterilizer, backrest, chair trolley with wheels not provided in the hospital.	Backrest is available in the Hospital. Chair trolley with wheels not available photographs showing backrest is available at page 467. And our Institute will make compliance in the deficiency of Sterilizer & wheel chair trolley with immediate effect.	College has agreed assured that they will compliance the deficiency.	
15. In Deptt. Of Anatomy, Physiology, Pathology etc equipment have been insufficient.	We have produced the list of equipment's which are available with our hospital. The list of equipment's is at page 396 to 466 & 468, 469. The photograph showing equipment are available is at page 389.	The College has submitted the list of equipment but not submitted main stock register, purchasing/Departmental stock register, purchasing order, bill paid etc (page 396 to 466 & 468, 469). So it is very difficult to know the status of instrument present in the	Same as remark given in point 4.

		<i>College/Department.</i>	
<i>16. Pharmacy Garden is not provided.</i>	<i>Pharmacy garden is not available but we are maintaining plants (Gamla) and hence we have produce on record photographs of plant at page 470 and the list of medicinal plant is at page 471.</i>	<i>Pharmacy garden is not available but they are maintaining plants (Gamla)</i>	<i>As per observation of Hearing Committee fulfilling the deficiency conveyed.</i>

That the Additional requirement for considering permission upto 5 years as per MSR.

<i>Parameter</i>	<i>Requirement of MSR</i>	<i>As per CCH Report</i>	<i>Remarks</i>
<i>Website</i>	<i>Each and every college or institution shall have its own website containing the complete details of the requirements of MSR. which are to be updated in the first week of every month,</i>	<i>Website is not available.</i>	<i><u>Does not fulfil the norms for granting permission up to 5 yrs.</u></i>
<i>College Council:</i>	<i>A College Council comprising of the Head of all departments as members and Principal Chairperson.</i>	<i>Formed and meetings held quarterly.</i>	<i><u>Fulfills the norms for granting permission upto 5years.</u></i>

Writ Petition (Civil) No. 10100/2016

<i>Deficiency conveyed to the petitioner</i>	<i>Submission of the applicant</i>	<i>Observation of the Hearing Committee</i>	<i>Remarks of the Ministry</i>
<i>1) Professor is not appointed in department of Pharmacy practice of Medicine and</i>	<i>It is submitted that the professor in the Department of Repertory has not been appointed.</i>	<i>The college representative informed that the professor in the Department of</i>	<i>As per the observation of Hearing Committee, it cannot be accepted. Hence the</i>

<i>Repertory, Reader not appointed in Department of Physiology, organon, FMT, Obs/Gyn. Community Medicine and Repertory.</i>	<i>However we have tried our level best by giving advertisement for the purpose but unable to find suitable candidate. The relevant details of the Faculty position is tabulated at p. 26/c.</i>	<i>Repertory has not been appointed. The college has made advertisement for the fulfilment of the post. Page 155/sub.d. The representative detailed about the existing staff position and submitted the copies of Biometric attendance, salary statement, PF statement, Appointment and Joining letter, Qualifications of the teaching staffs etc. Page 1 – 148/sub.d. However they failed to submit Form 16</i> <i>The hearing committee observed that the college is having 1 reader each for department of Pharmacy, Practice of Medicine and FMT. They also have one professor each for the Departments of Physiology, Organon, Obs/Gyn., Community Medicine the college is not having Professor or Reader in the Department of Repertory.</i>	<i>college is neither fulfilling the criteria as per HCC, MSR for giving permission for 5 years nor fulfilling relaxed approved policy for granting conditional permission for 1 year.</i>
<i>2. The average of daily no. of patients attended the OPD is 70 against the</i>	<i>We accept the deficiency, i.e, average daily no. of patients attended the</i>	<i>The college representative accepted that average daily</i>	<i>As per the observation of Hearing Committee, it cannot be</i>

<i>require 120 as per HCC (MSR)</i>	<i>OPD is 70 against the required 120 as per HCC (MSR) 2013. We promise to increase our OPD football more than 120 per day within 6 months of time. We will organise camps, free check-ups etc. to increase our daily OPD attendance.</i>	<i>numbers of patients attended the OPD is 70 against the required 120. (p28/c). The hearing committee agreed with the acceptance of the college.</i>	<i>accepted. Hence the college is neither fulfilling the criteria as per HCC, MSR for giving permission for 5 years nor fulfilling relaxed approved policy for granting conditional permission for 1 year.</i>
<i>3. The bed occupancy is of 20% against the requirement of 30% as per HCC (MSR) 2013</i>	<i>We accept that the bed occupancy is 20%. It is to submit that we are striving hard to meet the requisite as stated above, we will remove this deficiency.</i>	<i>The college representative accepted that bed occupancy is 20%. The hearing committee agreed with the acceptance of the college.</i>	<i>As per the observation of Hearing Committee, it cannot be accepted, the college is neither fulfilling the criteria as per HCC, MSR for giving permission for 5 years but fulfilling relaxed approved policy for granting conditional permission for 1 year.</i>
<i>4. The Hospital Kitchen is not available.</i>	<i>We accept that the Hospital is not having kitchen. For the attendants of the patients and others, there is college canteen which serves the purpose.</i>	<i>The college representative accepted that the Hospital is not having kitchen. There is college canteen which serves for the attendants of the patients and others also. The hearing committee also agreed with the acceptance of the college that there is no Hospital Kitchen.</i>	<i>As per the observation of Hearing Committee, it cannot be accepted. Hence the college is neither fulfilling the criteria as per HCC, MSR for giving permission for 5 years nor fulfilling relaxed approved Policy for granting conditional permission for 1 year.</i>
<i>5. It has been reported only 19</i>	<i>It is to submit that college is having 19</i>	<i>The college representative</i>	<i>Hence, it cannot be accepted. The</i>

beds are available but the availability of 17 beds only has been reflected in the table for Hospital equipment's. Only one back rest is available. Diagnostic set (ENT) and Infra-red lamp not available.	beds with required paraphernalia, however we forgot to bring the relevant proof in this regard. It is further submitted that the college has purchased Otoscope and Infra-red Wt. UVR Table Model on 09.09.2016 i.e., after CCH visit. Xerox copy of invoice is being submitted.	informed that college is having 19 beds with required paraphernalia, however they forgot to bring the relevant proof in this regard. They informed that the college has purchased Otoscope and Infra-red Wt. UVR Table Model on 09.09.2016 i.e. after CCH visit, and submitted the Xerox copy of invoice. The hearing committee was not agreed with the statement of college about the availability of 19 beds in the absence of relevant records / proof. It was also observed that the college has purchased Otoscope and Infra-red Wt. UVR table Model on 09.09.2016 i.e. after CCH visit Page 149-150/sub.d. However the same could not be verified from stock register. The college is not having complete ENT set.	college is neither fulfilling the criteria as per HCC, MSR for giving permission for 5 years nor fulfilling relaxed approved Policy for granting conditional permission for 1 year.
6. USG is not available	It is to submit that the college has done MoU with Yashodhara Super Speciality Hospital Siddeshwarperth Solapur for the purpose of providing		Hence, it cannot be accepted. The college is neither fulfilling the criteria as per HCC, MSR for giving permission for 5 years nor fulfilling relaxed approved

	<i>OPD training IPD training and other clinical activities. At the said hospital facilities like X-ray, Sonography, lab investigation and ECG etc. is being provided. A copy of said MoU is being submitted.</i>		<i>Policy for granting conditional permission for 1 year</i>
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That the additional requirement for considering permission up to 5 years as per MSR.

<i>Parameter</i>	<i>Requirement of MSR</i>	<i>As per CCH Report</i>	<i>Remarks</i>
<i>Website</i>	<i>Each and every college or institution shall have its own website containing the complete details of the requirements of MSR. which are to be updated in the first week of every month,</i>	<i>Website is not available.</i>	<i>Does not fulfil the norms for granting permission up to 5 yrs.</i>
<i>College Council:</i>	<i>A College Council comprising of the Head of all departments as members and Principal Chairperson.</i>	<i>Formed and meetings held regularly,</i>	<i>Fulfills the norms for granting permission upto 5years.</i>

19. The petitioners have not made any attempt in their rejoinder-affidavits filed before this Court to clarify/contradict the remarks of the respondent No.1 against each deficiency. In the absence of any denial to the remarks given by the Ministry against each of the deficiency, it must be held that the petitioners College had not met the requirement of the

provisions of the Act of 1973/Regulations of 2013. I also note that the petitioners have filed in the writ petitions their reply to the show cause notices without Annexures. Even, during the course of submissions, the deficiencies could not be vociferously contested. I reject the plea of Mr. Sukhija on this account.

20. Insofar as the second submission of Mr. Sukhija that the Competent Authority has not given a hearing, instead two others officers have given a hearing, on whose note, the Competent Authority who was discharging the quasi-judicial function has passed the impugned orders by relying upon the judgment of the Supreme Court in the case of ***Gullapali Nageswara Rao (supra)*** is concerned, before I deal with the submission made by Mr. Sukhija, it is relevant to refer and consider the judgment as relied upon by Mr. Sukhija. In the said case, the facts as noted are that the petitioners have been carrying on motor transport business in Krishna District for several years by obtaining permits under the Motor Vehicles Act, 1939 in respect of various routes. The amending Act of 1956 inserted a new Chapter, Chapter IV-A in the Act providing for the State Transport Undertaking running the business to the exclusion, complete or partial, of all other persons doing business in the State. Chapter IV-A provided for a machinery called the State Transport Undertaking, defined under Section 68-A(b) as an undertaking providing road transport service, to run the transport business in the State. In exercise of the powers conferred by Section 68-C of the Act, one Shri Guru Pershad, styled as the General Manager of the State Transport Undertaking of the Andhra Pradesh Road Transport, published a scheme for the

purpose of providing an efficient, adequate, economical and properly coordinated transport service in public interest to operate the transport service mentioned therein with effect from the date notified by the State Government. Objections were invited within 30 days from the date of the publication of the proposal in the Official Gazette, viz., November 14, 1957. 138 objections were received. Individual notices were issued by the State Government by registered post to all the objectors. On December 26, 1957, the Secretary to Government, Home Department, in charge of transport, heard the objections. 88 of the objectors represented their cases through their advocates; three of them represented their cases personally and the rest were not present at the time of hearing. After considering all the objections and after giving an opportunity to the objectors, their representatives and the representatives of the State Transport Undertaking, the State Government found that the objections to the scheme were devoid of substance. On that finding, the State Government approved the scheme and the same was published in the Andhra Pradesh Gazette dated January 9, 1958. The scheme was ordered to come into force with effect from January 10, 1958. The Government of Andhra Pradesh also established a Road Transport Corporation under the Road Transport Corporations Act, 1950 called the Andhra Pradesh Road Transport Corporation, with effect from January 11, 1958, and by its order dated January 11, 1958, the said Corporation was empowered to take over the management of the erstwhile Road Transport Department. The said Transport Corporation is now implementing the scheme of nationalization of bus transport under a phased programme. The petitioners,

who are plying their buses on various routes in Krishna District, apprehending that their routes would be taken over by the Corporation pursuant to the aforesaid scheme, sought the aid of the Supreme Court to protect their fundamental right to carry on their business against the action of the State Government on various grounds. One of the contention before the Supreme Court was that the State Government approving the scheme was discharging a quasi-judicial act and therefore the Government should have given a personal hearing to the objectors instead of entrusting that duty to its Secretary. Secondly, it is stated that a judicial hearing implies that the same person hears and gives the decision. But in this case the hearing is given by the Secretary and the decision by the Chief Minister. Thirdly, it is contended on the same hypothesis, that even if the hearing given by the Secretary be deemed to be a hearing given by the State Government, the hearing is vitiated by the fact that the Secretary who gave the hearing is the Secretary in charge of the Transport Department. The Transport Department, it is stated, in effect was made the judge of its own cause, and this offends one of the fundamental principles of judicial procedure. The Supreme Court went into the aspect whether the State Government acts quasi-judicially in discharging the functions under Section 68(C) of the Act. The Court held that the Government order under Section 68(D) is a quasi-judicial act. I may only point out here that in subsequent decisions, more particularly in the ***Indian National Congress-I***, the Supreme Court has culled out the following attributes of a quasi-judicial act:-

(a) a statutory authority empowered under a statute to do any act;

(b) which would prejudicially affect the subject;

(c) although there is no lis or two contending parties and the contest is between the authority and the subject; and

(d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

21. Coming to the question, which also arose in that case whether the Secretary could have given a hearing when the order was passed by the Chief Minister, the Supreme Court held as under:-

“31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party-appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.”

22. In a recent judgment in the case of **Kalinga Mining Corporation (supra)**, on which reliance was placed by Mr. Gogna, wherein the Supreme Court had considered the judgment in the case of **Gullapali Nageswara Rao (supra)**, the Supreme Court has in para

48 held as under, wherein a similar question arise.

“48. We are of the considered opinion that the conclusions reached by the High Court cannot be said to be contrary to the established principles and parameters for exercise of the power of judicial review by the courts. At this stage, we may also make a reference to a submission made by Mr. Krishnan that the High Court did not give due consideration to the grievance of the appellant raised in the writ petition with respect to the merits because it assumed that the appellant had attempted to bye-pass the alternative remedy of revision available to it under Section 30 of MMDR Act read with Rules 54 and 55 of the Rules. We are of the considered opinion that the aforesaid submission of the learned counsel is wholly misplaced. The High Court merely noticed that the matter had been referred back to the Central Government on a limited issue. Therefore, it was not open to the Central Government to re-open the entire controversy. It has been observed by the High Court that such a power would only be available to the Central Government in exercise of its Revisional Powers under Section 30 read with Rules 54 and 55 of the Rules. We also do not find much substance in the submission made by Mr. Krishnan that the order dated 27th September, 2001 is vitiated as it has been passed by an officer who did not give a hearing to the parties. This is clearly a case of an institutional hearing. The direction has been issued by the High Court for a hearing to be given by the Central Government. There was no direction that any particular officer or an authority was to give a hearing. In such circumstances, the orders are generally passed in the relevant files and may often be communicated by an officer other than the officer who gave the hearing. The legality of institutional hearing has been accepted in England since the case of Local

Government Board Vs. Arlidge (supra). The aforesaid judgment was quoted with approval by this Court in Pradyat Kumar Bose (supra). This Court approved the following passage from the speech of Lord Chancellor in the aforesaid case:

“My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its enquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff.”

In view of the aforesaid settled position of law, it is difficult to accept the submissions of Mr. Krishnan that the order dated 27th September, 2001 suffers from any legal or procedural infirmity. In our opinion, the conclusions reached by the High Court are in accordance with the settled principles of law. Although a large number of cases have been cited by the learned counsel for the parties on either side, but it is not necessary to consider all of them

individually as the principles with regard to observance of natural justice are well entrenched in our jurisprudence. Undoubtedly, any decision, even if it is administrative in nature, which causes adverse civil consequences must be passed upon hearing the concerned parties. In our opinion, the Central Government has fully complied with the aforesaid principle in passing the order dated 27th September, 2001.”

23. From the above, it is clear that in the present case, Section 12A contemplates a decision to be taken by the Central Government with regard to the application for grant of permission to establish a Homeopathic Medical College and in case the scheme is disapproved by the Central Government, it necessarily has to give a reasonable opportunity of being heard and in this case under the relevant Rules, the Competent Authority, even though has decided to disapprove the Letter of Permission on the basis of a note given by two officers, who had given a hearing, it would not vitiate such a decision. Moreover, I note that the petitioners have subjected themselves to the jurisdiction of the two officers. No objection with regard to the competency of such officers to give a hearing has been taken or objected to by the representative of the petitioners. In view of the above, this submission needs to be rejected.

24. Insofar as the submission of Mr. Sukhija based on the 68th report of the Parliamentary Standing Committee relating to the amendment to the provisions of the Act of 1973 to include a provision restraining a homeopathic College from admitting a new batch of students in any course of study or training and also his reliance placed on the

opinion of the then Attorney General on March 28, 2012 to the extent that there is no provision, under which permission can be granted or denied to undertake admissions in the forthcoming year are concerned, suffice to state that noting the reliefs as made in these petitions and the Regulations of 2013, which vide Regulation 3(4) contemplates that the permission for undertaking admissions in the coming academic years would only be granted if the College and their hospitals, established under Section 12A of the Act/prior to January 28, 2003, fulfill the minimum standards requirements of infrastructure, teaching and training facilities referred to in the said Regulations.

25. The vires of the said Regulation has not been challenged by the petitioners. I note, there is no ground urged by the petitioners in that regard. In the absence of any challenge to the said Regulation i.e. Regulation 3(4) being ultra-vires to the Act, the action of the respondents cannot be interfered. Rightly or wrongly, there is a provision exist in the Regulations of 2013, which enables the respondent No.1 to restrain the College from admitting students in a future academic year. This plea has been taken during the course of the arguments. It is not known as to whether the amendments, which were sought for, have been effected in the Act of 1973. I may reproduce Regulation 3(4) as under:-

“3. *Fulfillment of minimum standard requirements:-*

(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. ”

This submission of Mr.Sukhija, is also rejected. Further, in view of my above conclusion on the three issues, which have been urged by Mr. Sukhija, the other judgments need not be considered as none of the judgments have any bearing on the submissions so urged.

26. In view of my discussion above, I do not see any merit in the petitions. The same are dismissed.

CM No. 39981/2016 in W.P.(C) 10098/2016 (for stay)
CM No. 39985/2016 in W.P.(C) 10100/2016 (for stay)

Dismissed as infructuous.

DECEMBER 22, 2016
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V. KAMESWAR RAO, J