

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20353 of 2016

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B. N. M. Homoeopathic Medical College and Hospital, Saharsa (Bihar), through its Principal Dr. Upendra Prasad Yadav, Son of Late G.P. Yadav, Resident of Gautam Nagar, Gangjala, P.S. +District-Saharsa.

.... Petitioner/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 Homeopathy, 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 Homeopathy, 61-65, Institutional Area, Opp. "D" Block, Janakpuri, Delhi- 10058.

.... Respondent/s

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Appearance :

For the Petitioner/s :Mr. Sanjay Kumar, Adv.

For the Respondent/s :Mr. S.D. Sanajy, ASG

:Mr. Tuhin Shankar, CGC

:Mr. Ashok Kr. Sinha, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 22-06-2017



The present writ application, under Article 226 of the Constitution of India, has been filed seeking quashing of the letter, dated 10.10.2016, issued by the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy, New Delhi **(in short "AYUSH")**, whereby, the Department of AYUSH has refused to grant conditional permission in favour of B.N.M. Homoeopathic Medical College and Hospital, Saharsa (Bihar), the petitioner, for running UG (BHMS) course, with 50 seats for the academic session 2016-17,.

2. This application has been filed on behalf of the said B.N.M. Homoeopathic Medical College and Hospital, Saharsa (Bihar) **(hereinafter referred to as the "College")**, through its Principal. It is the claim of the petitioner that the College, in question, was established in the year 1973 and it fulfills all the necessary conditions, which are essential for grant of permission to undertake admissions to the said UG (BHMS) course for the concerned academic session 2016-17.

3. The fact, which is not in dispute, is that the said decision of Department of AYUSH is based on an inspection report submitted by the Central Council of Homoeopathy, New Delhi **(hereinafter referred to as the "CCH")**, on the basis of the inspection of the College done on 18.07.2016. The report of the CCH is of the same day on which, the inspection was held. The status of the College, as reported by the CCH in its



report, is being reproduced hereinbelow:-

"Reader not appointed in Anatomy, Physiology, Pathology, FMT, Practice of Medicine, Obs./Gyn. And Community Medicine. Lecturer not appointed in Organon of Medicine. Only Pathologist is available against the requirement of teachers of consultants of modern medicine in various specialty in addition to teaching staff. X-ray and USG not available. MoU with Super specialty Hospital not available. Surgeon, Anesthetist, Obs./Gyn., Radiologist, Pathologist, House Physician, X-ray Technician, Nursing Staff I/c, Yoga Expert, Physiotherapist and Dietician not appointed in the Hospital. Lab Technician in Physiology and Lab Attendant not appointed. Bicycle Ergometer in Physiology, Computer with accessories, Photographs of 05 Philosophers of Homoeopathy and HPI in Pharmacy not provided. Only 02 Computers and 02 Software available in Repertory against the requirement of 05 each. License for Alcohol/Spirit not available. **Not recommended for admission in BHMS Course during 2016-17."**

4. A counter affidavit has been filed on behalf of the Department of AYUSH, bringing on record the entire report



submitted by the CCH, based on inspection of the College carried out by the CCH on 18.07.2016.

5. Learned counsel, appearing on behalf of the petitioner, has drawn my attention to the said report to demonstrate that the inspection team had found at least 1 Professor working in each of the Departments. He has submitted that under the Regulations, each Department must have a teacher of the rank of Professor or Associate Professor (Reader). According to him, on the basis that there was no person of the rank of Associate Professor/Reader found working in the College, the CCH ought not to have held the College deficient on that count. He has submitted that both, the CCH and the Department of AYUSH, have failed to duly appreciate Schedule-IV of Minimum Teaching Staff for Degree Course, 2013, prepared under sub-Regulation (7) of Regulation 3, sub-Regulation (1) and (2) of Regulation 9, sub-Regulation (1) of Regulation 11 and proviso to Regulation 12, in order to strengthen his contention.

6. On perusal of the said Schedule-IV, I find that it specifies the Minimum Teaching Staff for Degree Course. Learned counsel for the petitioner is right in his submission that the requirement is of having 1 Professor or 1 Associate Professor/Reader in each of the Departments, namely, Anatomy, Physiology, Pathology, Forensic Medicine &



Toxicology, Practice of Medicine, Obstetrician & Gynecology and Community Medicine. He has submitted that it is not the case either of the CCH or Department of AYUSH that the College, in question, is not having Professors in the said Departments.

7. Learned senior counsel, appearing on behalf of the CCH, drawing my attention to the status of the College on the basis of inspection done by it and as reported to Department of AYUSH, has submitted that there are several other insufficiencies reflected in the inspection report and the CCH rightly refused to recommend the College for grant of permission for undertaking admissions in UG (BHMS) course during academic session 2016-17.

8. Mr. S.D. Sanjay, learned Addl. Solicitor General, appearing on behalf of the Union of India, has submitted that the decision of the Department of AYUSH is based on what was reported by the CCH on the status of the College on the basis of inspection held by an inspecting team, constituted by the CCH. He has also submitted that there being deficiencies, as reported in the inspection report, of serious nature, the impugned communication, dated 10.10.2016, needs no interference by this Court.

9. What is apparent on the basis of materials available on record is that in course of inspection, the inspecting team found at least 1 Professor working in each of the



Departments, as indicated above. Schedule-IV to the Regulations clearly provides that there should be 1 Professor or 1 Associate Professor/Reader in each of the Departments. In such circumstance, holding the College, in question, to be deficient in the matter of maintaining minimum teaching staffs of the rank of Associate Professor/Reader for the said degree course, in the academic session 2016-17, by the CCH and Department of AYUSH, in my view, is contrary to the statutory provisions. It seems that the CCH and the Central Council missed to appreciate that each Department required, under the regulations, either 1 Professor or 1 Associate Professor/Reader in each of the Departments, in terms of Schedule-IV for satisfying the requirement of minimum teaching staffs. Apparently, therefore, the consideration is based on something, which did not exist. Deficiency at least to this extent, as pointed out by the CCH, was incorrect. For better clarity relevant portion of the Inspection Report, showing teaching staff in the College, is being reproduced hereinbelow:-

TEACHING STAFF (under Graduate & Post Graduate)

(Enclose a list of teachers duly attested by the Principal/Director and authenticated by the Inspectors/Visitors showing their Name, Qualification, Designated, whether FT/GF, Department, Registration Number.)

Department	Number of Teachers in position							
	For BHMS Course						For MD (Hom) Courses	
	PROFESSOR		READER/ ASSOCIATE PROFESSOR		LECTURER/ ASSISTANT PROFESSOR		PROFESSOR/ READER	LEC- TURER
	FT	GF	FT	GF	FT	GF		
Anatomy	1	-	-	-		1	-	-
Physiology	1	-	-	-	1	-	-	-



Organon of Medicine	1	-	3	-	-	-	-	-
Pharmacy	1	-	2	-		1	-	-
Materia Medica	2	-	2	-	1	1	-	-
Pathology & Microbiology	1	-	-	-	1	-	-	-
Forensic Medicine & Toxicology	1	-	-	-	1	-	-	-
Practice of Medicine	2	-	-	-	1	-	-	-
Surgery	1	-	1	-	1	-	-	-
Obstetrics & Gynecology	1	-	-	-	1	-	-	
Community Medicine	1	-	-	-	1	-	-	-
Repertory	1	-	1	-	1	1	-	-
Pediatrics	-	-	-	-	-	-	-	-
Psychiatry	-	-	-	-	-	-	-	-
TOTAL	14	-	09	-	09	4	-	-

10. The impugned communication, therefore, cannot sustained and is set-aside on this limited ground that the decision is based on irrelevant considerations. The letter, dated 10.10.2016, is, accordingly, set-aside.

11. The matter is remanded back to the Department of AYUSH, Govt. of Bihar, with a direction to take a decision afresh based on the entire materials, which are there in the inspection report, submitted by the CCH, and without being influenced by the final recommendation made by the CCH. It is made clear that the Department of AYUSH will be free to take into account other deficiencies as pointed out by the CCH in the said inspection report, dated 18.07.2016, for the purpose of taking a decision afresh.

12. It has also been pointed out that the academic session 2016-17 is almost over and any decision, which can be taken by the Department of AYUSH, can be taken only for the next academic session 2017-18. Learned counsel, appearing on



behalf of the petitioner, in reply, has submitted that the College has already taken admission of students for the academic session 2016-17. The Court fails to understand the circumstance under which the College took admission of students for the academic session 2016-17, when it did not have the permission under the Regulations to undertake admission.

13. This application is, accordingly, allowed, but with the observations as above.

14. Considering the urgency of the matter, since academic session 2017-18 is also going to begin very soon, I direct the Secretary, Department of AYUSH to take a final decision, in the light of the present order, within a period of two months from today.

15. It will be open to the competent authority to get the inspection of the College done for the purpose of grant of permission to undertake admissions for the academic session 2017-18, but in no event there will be delay in decision taking process.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading	06.07.2017



Date	
Transmission Date	N/A

