

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16589 of 2017

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B. N. M. Homeopathic Medical College And Hospital, Saharsa (Bihar),
through its Principal, Dr. Upendra Prasad Yadav, son of Late G. P. Yadav,
resident of Gautam Nagar, Gangjala, Police Station Saharsa, District Saharsa
... .. Petitioner

Versus

1. The Union of India through Secretary, Ministry of AYUSH, AYUSH BHAWAN, B-Block, G.P.O. Complex, INA, New Delhi-2
2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Shddha 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- 100058

... .. Respondents

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with

Civil Writ Jurisdiction Case No. 16554 of 2017

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Mangla Kamla Homeopathy College & Hospital, Sri Nagar, Siwan through its
Secretary Smt. Yashoda Devi, Wife of Motichand Chaudhary, Resident of Sri
Nagar, Siwan, House No.-30, Ward No.2, District- Siwan (Bihar).

... .. Petitioner/s

Versus

1. The Union of India through 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 Shddha 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- 100058

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 16838 of 2017

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K. N. H. Homoeopathic Medical College And Hospital, Mayaganj, Bhagalpur (Bihar), through its Principal Dr. Uma Shankar Capore, Son of Surendra Narayan Singh Capore, Resident of Mohalla- Mayaganj, P.O. and P.S.- Barari, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of AYUSH, AYUSH BHAWAN, B-Block, G.P.O. Complex, INA, New Delhi-23.



2. The Secretary, Ministry of Ayurveda, Yoga an Naturopathy, UnaniShddha and Homeopathy, AyushBhawan, 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- 100058.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 14864 of 2017

Dr. Ajay Kumar Sharma, Muzaffarpur Homeopathic Medical College & Hospital, Raghu Nath Pandey Nagar, MIC Bela, Muzaffarpur through its Principal Dr. Ajay Kumar Sharma, Son of Late Ram Singar Shrma, Resident of Rohua Appuch MIC Bela, Police Station- Bela, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The Union of India through 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 Shddha 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 Homoeopathy, 61-65, Institutional Area, Opp. 'D' Block, Janakpuri, Delhi- 100058.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16371 of 2017

The Temple Of Hahnemann Homeopathic Medical College & Hospital, Opposite- post office & Telephonw Exchange, Bhagat Singh Chowk, Munger-811201, Bihar through its Acting Principal Dr. Ashok Kumar Tiwari, Son of Ram Das Tiwari, resident of Village- Rajiv Gandhi Chowk, Chowk Bazar, Police Station- Kotwali, District- Munger.

... .. 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, Shddha and Homoeopathy, 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 Homoeopathy, 61-65, Institutional Area, Opp.'D' Block, Janakpuri, Delhi- 100058.

... .. Respondent/s



with
Civil Writ Jurisdiction Case No. 14372 of 2017

Maharshi Menhi Homeopathic College & Hospital, Jeewachh Nagar, P.S. & District- Katihar (Bihar) through Dr. Haresh Kumar Maharaj, Son of Sri N.K. Maharaj, Resident of Village + Post- Sangi, P.S. Phulparas, District- Madhubani (Bihar).

... .. 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 Homoeopathy, 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 Homoeopathy, 61-65, Institutional Area, Opp. 'D' Block, Janakpuri, Delhi- 110058.

... .. Respondent/s

Appearance :

For the petitioners	:	Mr. Bindhyachal Singh Mr. Mrigank Mauli Ms. Smriti Singh Mr. Vipin Kumar Singh Mr. Samir Kumar Mr. Sanjay Kumar Mr. Parmendra Kumar Singh
For Min. of AYUSH	:	Mr. S. D. Sanjay, Add.S.G. Ms. Parul Prasad Ms. Vipula Kanoria Mr. Kumar Priya Ranjan Dr. Punam Kumari Singh Ms. Kanak Verma
For the State	:	Mr. S. D. Yadav, AAG 9 Mr. Vinod Kumar Yadav, SC 18 Ms Kalpana Mr. Anil Kumar Verma
For the CCH	:	Mr. Ashok Kumar Sinha, Sr. Adv.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date : 12-12-2017

Once again a question has arisen in the present batch of writ applications on the jurisdiction of the Central Government, this



time, in the matter of grant of permission for undertaking admission as contemplated under Sub-Regulation (4) of Regulation 3 of the Homeopathy Central Council (Minimum Standards Requirement of Homeopathic Colleges and Attached Hospitals) Regulations, 2013 (hereinafter referred to as 'the Regulations'). The Regulations have been framed by the Central Council of Homeopathy (CCH) with the previous sanction of the Central Government in exercise of the powers conferred by Clause (j) of sub-Section (1) of Section 33 of the Homeopathy Central Council Act, 1973, (hereinafter referred to as 'HCC Act'). Clause (j) of sub-section (1) of Section 33 authorizes the CCH to make regulations by notification in official gazette, with the previous sanction of the Central Government, *inter alia*, to provide for the standards of staff, equipment, accommodation, training and other facilities for education in Homeopathy. Regulation 3 of the Regulations deals with fulfillment of minimum standards of requirement for Homeopathy Colleges, Sub-regulation (1) of which requires that the College and attached Hospitals shall fulfill the minimum standard requirement of infrastructure, teaching and training facilities referred to in Regulations 4 to 13 of the Regulations. Sub-regulation (4) of Regulation 3 states that existing Colleges and their attached Hospital under Section 12A of



the Act and those Colleges and their Hospitals established prior to 20th January, 2003 and recognized by the Central Council shall fulfill minimum standard requirements of infrastructure, teaching and training facilities referred to in these Regulations by 31st December, 2014, for consideration of grant of permission to undertake admission in the coming academic year.

2. A question has arisen in the present batch of writ applications as to which Body is competent to grant permission to undertake admission as envisaged in Sub-regulation (4) of Regulation 3 of the Regulations? In the present batch of cases, the petitioners are aggrieved by various impugned orders passed by the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH), between 03.08.2017 to 12.09.2017 and have been brought on record by way of Annexures, whereby the Ministry of AYUSH, noticing certain deficiencies has denied the Colleges conducting BHMS Course, permission to undertake admissions for the academic Session 2017-18.

3. Since the questions of law involved in all the cases are identical, they have been heard together and are being disposed of by the present common judgment and order with the consent of the parties.



4. I have heard Mr. Bindhyachal Singh, learned counsel appearing on behalf of the petitioners, Mr. S. D. Sanjay, learned Additional Solicitor General appearing on behalf of the Union of India, Dr. Poonam Kumari Singh, learned C.G.C, Mrs. Kanak Verma, learned C.G.C and Mr. Ashok Kumar Sinha, learned counsel appearing on behalf of CCH.

5. I have considered it apt to deal with the statutory provisions first before coming to the facts of the case over which there is no much dispute. As has been noticed, the Regulations have been framed by the CCH in exercise of power under Section 33 (1) (j) of the Act, which lays down, *inter alia*, a cut off date of 31.12.2014 by which the existing Colleges are required to fulfill the minimum standard requirements of infrastructure in respect of teaching and training facilities referred to in Regulations 4 to 13 of the Regulations. There should be no two opinions that the said Regulations which have been framed by the CCH are statutory and have force of law. Therefore, there should be no doubt that the cut off date as prescribed in the Regulations, i.e. 31.12.2014, by which the existing Colleges were required to fulfill the minimum standard etc, is also statutory in nature.

6. Sub-Regulation (5) of Regulation 3 of the Regulations deals with a situation where a College fulfills the requirement by



31st December, 2014 and mandates that in such a circumstance, it shall be granted permission to undertake admissions for a period not exceeding five years during which the College shall not be inspected. It does not, however, prescribe that such permission to undertake admission shall be granted by the Central Government. Sub-Regulation (7) of Regulation 3 stipulates grant of conditional permission to undertake admission to those Colleges which were fulfilling at least the requirement of teachers as specified in Schedule IV, the requirement of a functional Hospital as specified at Sub Regulation (2) and availability of equipment as specified in Schedule III, for each academic year 2013-14 and 2014-15 on the basis of separate inspections to be carried out by the Central Council of Homeopathy after 5th May, 2013 for the academic year 2013-14 and after 31st December, 2014 for the academic year 2014-15. The Regulation 8 further prescribes that such conditionally permitted Colleges or those Colleges who had been denied permission for the academic years 2013-14 and/or 2014-15 would be required to fulfill the requirements as specified in these Regulations by 31st December, 2014.

7. There is another situation contemplated under Sub-regulation (9) of Regulation 3 which deals with such existing Colleges, which are not able to achieve full compliance of



requirement as specified in these Regulations by 31.12.2014 and mandates that such Colleges shall be denied permission from the 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 Section 12A of the Act. Evidently, action under Section 19 of the Act is an essential consequence of the situation as discussed in Sub-regulation (9) of Regulation 3 of the Regulations. Section 19 of the Act deals with withdrawal of recognition granted in favour of a Homeopathic Medical College/Institution.

8. What is disturbing to this Court is the way the Ministry of AYUSH has handled the matter *de hors* the statutory provisions under the Regulations framed by the CCH. It is evident from the pleadings on record that the Ministry of AYUSH decided to grant 'amnesty' to the Colleges for admission of students by deciding not to enforce the Regulations. A letter dated 26.08.2013 is there on record from which it appears that the Ministry declared 'amnesty' for non-enforcement of the Regulations for the academic year 2013-14 for all existing Homeopathy Colleges. In the same breathe, the Ministry of AYUSH in the said letter mentioned that 'amnesty' will not be extended for subsequent academic sessions and the CCH shall be inspecting all Colleges



from 31.12.2013 onwards as per the provisions of the said Regulations for granting conditional permission for the academic year 2014-15. Again by subsequent letter, dated 25.07. 2014, the Ministry of AYUSH wrote to the Secretary of the CCH extending 'amnesty' for non-enforcement of the Regulation for the academic session 2014-15. The Ministry came out with yet another letter, dated 29.05.2015, granting another 'amnesty' for non-enforcement of the Regulations for the academic year 2015-16 to all existing Homeopathy Colleges.

9. Whereas, it was statutory requirement under the Regulation that the existing Colleges and attached Hospitals established prior to 20th January, 2003 and recognized by the Central Council of Homeopathy shall fulfill minimum standard requirement of infrastructure etc, by 31.12.2014, the Central Government decided not to enforce the statutory provisions by issuing letters written to the CCH as has been noticed above. It has already been noted that the said Regulations, which has been framed by the CCH in exercise of statutory power under Clause (j) of sub-Section (1) of Section 33 of the Act came into force with the publication of the notification in official gazette, with the previous sanction of the Central Government with effect from 08.03.2013. Power to frame Regulations apparently vests in the



CCH. There is no power which has been shown to this Court under the Act, which could be said to have authorized the Ministry of AYUSH to have stopped enforcement of statutory provisions. As is evident, the Central Government does not have the power to make Regulations under Clause (j) of Sub-Section (1) of Section 33 of the Act rather such power to make Regulations lies with the CCH with the prior sanction of the Central Government. What the Central Government did with the issuance of the letters to the Secretary of the CCH, which have been noticed as above, that it, by executive *fiat* attempted to negate the statutory provisions without any authority. It stopped enforcement of the statutory provisions under the Regulations, a power which the Ministry of AYUSH did not have.

10. In the background of the stand, which has been taken on behalf of the Central Government, justifying the action of the Ministry of AYUSH in issuing letters as indicated above, it appears that the Ministry of AYUSH has proceeded under a wrong assumption that Ministry is all powerful in the matter of dealing with the Homeopathy Colleges. Under the said assumption, the Ministry of AYUSH, it seems, believed that the Regulations which have the force of law could be ignored, twisted, nullified *de hors* the provision under the HCC Act.



11. These are in relation to the academic session 2013-14, 2014-15 and 2015-16. In respect of the academic Session 2016-17, it appears that the Ministry of AYUSH itself had caused inspection of Homeopathy Colleges. The question of jurisdiction of the Ministry of AYUSH to conduct inspection of such Colleges and Hospitals established prior to 09.12.2002 and denial of permission to the colleges to undertake admissions on the basis of outcome of the inspection had cropped up in this Court in case of **Dr. R. B. Singh Gaya Homeopathic Medical College & Hospital v. Union of India and Others (CWJC No. 19681 of 2016)** and another analogous matter, which came to be decided on 28.06.2017, holding specifically that the power of inspection did not vest in the Central Government/Ministry of AYUSH. Before coming to the said conclusion the Court had deliberated extensively on the provisions of the Act and the Regulations. I would be referring to the said decision at appropriate stage.

12. There are certain facts, which are almost common in all the cases over which there is no dispute. All the Colleges which have approached this Court by filing present batch of writ applications were established before 20th January, 2003 and these are accordingly existing Colleges within the meaning of Sub-Regulation (4) of Regulation 3 of the Regulations. They are



covered by the said provision of the Regulations. In view of the provisions under Sub-Regulation (4) they were required to fulfill the required standards by 31st December, 2014. Whether they fulfilled the requirements or not by the cut off date could have been decided on the basis of inspection. However, in view of the communication made by the Central Government allowing the so-called 'amnesty', the Colleges were allowed to undertake admission for the academic session 2013-14, 2014-15 and 2015-16. For the academic session 2016-17, as has been noticed above, the Central Government had conducted inspection which this Court had held to be beyond the competence of the Central Government. On the basis of the said inspections conducted by the Ministry of AYUSH some of the Institutions were not given permission to undertake admissions. Two of such Institutions which were not given such permission had approached this Court by filing writ application before this Court leading to the decision dated 28.06.2017, in the case of **R. B. Singh Gaya Homeopathic Medical Colleges** (supra).

13. These present batch of cases relate to academic session 2017-18. It appears that the CCH, on the basis of inspection conducted by it has found that the Colleges are fit for grant of permission to undertake admission. The Central Government by



the impugned orders has, however, refused to grant permission to undertake admission on the ground that there existed certain deficiencies inasmuch as the Colleges did not fulfill the requirements contemplated under Regulations 4 to 13 of the Regulations. It also appears that the Central Government considered the recommendations of CCH, issued notices to the respective Colleges pointing out certain deficiencies and asked them to appear before a Hearing Committee. Such notices were issued between 27.07.2017 to 24.08.2017. The representatives of the Colleges were required to appear before the hearing Committee of the Ministry of AYUSH. After giving an opportunity of hearing to the representatives of the Colleges, the Ministry of AYUSH passed the orders, which are impugned in the present batch of writ applications.

14. This is not in dispute at least in respect of the petitioners of CWJC Nos. 14864 of 2017, 16589 of 2017, 16371 of 2017, 14372 of 2017 and 16554 of 2017 that the recommendations made by the CCH were favourable meaning thereby that the CCH, on the basis of inspection held, was of the view that these Colleges ought to be granted permission to undertake admission under Sub-Regulation (4) of Regulation 3 of the Regulations. Only in respect of petitioner of CWJC No. 16838 of 2017, a plea has been taken



by Mr. S. D. Sanjay, learned Additional Solicitor General, appearing on behalf of the Union of India that the opinion of the CCH in respect of the said College cannot be said to be favourable. As regards the said College, following is the remarks of the CCH:-

“Keeping in view the contents of the report of inspection, recommended for allowing admission in BHMS Course for the year 2017-18, subject to the condition that the College shall fulfill all the deficiencies reflected in the report of inspection before allowing admission for the year 2018-19,

However Ministry may decide the authenticity of the report as the Visitors have written the report with pencil.”

15. In view of the aforesaid observations made by the CCH, a plea has been taken that the opinion of the CCH cannot be said to be favourable to K. N. H. Homeopathic Medical College and Hospital, Bhagalpur.

16. Though arguments have been made at length on behalf of the parties in all the cases, for the convenience of the present judgment I am taking the facts of CWJC No. 14864 of 2017, which has been argued as the lead case.

17. Mr. Bindhyachal Singh, learned counsel appearing on behalf of the petitioner, apart from his submission that the Ministry



of AYUSH did not have any authority to deny permission in exercise of power under the Regulations has contended that the Central Government has no such power at all. He has drawn my attention to the hearing notice, dated 08.08.2017 issued by the Ministry of AYUSH and subsequent impugned order, dated 12.09.2017.

18. He has placed heavy reliance on the decision of this Court in case of *Dr. R.B. Singh Gaya Medical College and Hospital* (supra), in support of his contention over the jurisdiction of the Ministry of AYUSH to pass the impugned order.

19. In addition, he has placed reliance on Supreme Court's decisions, in the cases of *State of Rajasthan v. Mohinuddin Jamal Alvi and another*, reported in (2016) 12 SCC 608), *Hussein Ghadially v. State of Gujarat*, reported in (2014) 8 SCC 425), *Medical Council of India v. Medicit Institute of Medical Sciences and Others*, reported in 2016 (1) PLJR (SC) 194) and *Manohar Lal v. Ugrasen*, reported in (2010) 11 SCC 557), in support of his contention that the power which is vested in the CCH under the Act and Regulations can be exercised by the CCH only and not by any other authority including the Central Government on the ground of being a superior body than the CCH. He has submitted that admittedly the CCH found the College fit



for grant of permission for undertaking admission on the basis of inspection conducted in accordance with the provisions of the Act. He has submitted that there was no occasion for the Ministry of AYUSH to have taken upon itself the jurisdiction to grant or not grant permission for undertaking admission. Referring to the notice issued by the Ministry of AYUSH, dated 08.08.2017, he has submitted that the Ministry of AYUSH vaguely and without any basis mentioned in the notice that bed occupancy of 58 per cent with only 218 patients during the last one year as shown in the inspection report was unrealistic. This was the only deficiency shown in the hearing notice. In the impugned order, however, the Ministry of AYUSH has referred to so many facts, which were not part of the hearing notice, he contends.

20. Mr. S. D. Sanjay, learned Additional Solicitor General, appearing on behalf of the Union of India, has contended that the CCH is a Body constituted by the Central Government. He has submitted that CCH has only recommendatory power and no other jurisdiction. According to him, the Central Government can exercise all such powers, which are vested in the CCH. He has also submitted that it was well within the jurisdiction of the Ministry of AYUSH to grant 'amnesty' as has been done in the best interest of the Institutions imparting BHMS Course in order to



avoid imminent chance of closure of many of such Institutions. He submits that such power is impliedly vested in the Central Government because such Regulations can be framed only after prior sanction by the Central Government.

21. He has next submitted that the Central Government/ Ministry of AYUSH is not bound by the recommendation of the CCH and is competent to take its own decision on the basis of materials available on record in this regard, in the matter of grant of permission for undertaking admission. He has placed reliance on a decision of Delhi High Court dated 30th November, 2010, passed in case of *Acharya Gyan Ayurved College v. Department of AYUSH and Others (W.P.C. No. 7634 of 2010)*, to buttress his contention that the Central Government is not bound by the recommendation of the CCH. The said decision, has been upheld by the Supreme Court, according to him, by order, dated 09.01.2012 in *Civil Appeal No. 244 of 2012*, he contends.

22. He has also placed reliance on another decision of the Delhi High Court, in case of *Dhanvantri Medical College & Hospital & Reserach Centre v. Union of India and Another*, dated 22.12.2016, passed in *W.P. (C) No. 10098 of 2016* and another analogous case. Mr. S. D. Sanjay has also relied on Supreme Court's decision in the case of **Mediciti Institute of**



Medical Sciences (supra). He has contended that only such Medical Institutions should be allowed to undertake admission which fulfill prescribed standard otherwise it will lead to production of half-backed professionals.

23. Mr. Ashok Kumar Sinha, learned Senior Counsel, representing the CCH has submitted that the jurisdiction of the Central Government in the matter of Homeopathy Institutions is confined to the provisions under Section 12A of the Act and not otherwise. Section 12A of the Act deals with permission for establishment of new Medical Institutions, i.e., the institutions established after coming into force of the amendment in the Act leading to insertion of Section 12A of the Act and other provisions.

24. He has also submitted that after insertion of Section 12A in the Act with effect from 20th January, 2003, all Institutions either established before 2003 or after 2003 are to be *at par* so far as maintenance of the required standards is concerned, and they are to be adjudged accordingly either for grant of permission to establish or for the purpose of grant of permission to undertake admission.

25. Similar arguments have been advanced by the learned counsel appearing on behalf of the petitioners in all the cases.



26. I would be first referring to the decision of this Court in case of **Dr. R. B. Singh, Gaya Homeopathic Medical College** (supra), which has been relied on by the learned counsel appearing on behalf of the petitioners. It is noticeable from the said decision that various provisions of the Act and the Regulations have been dealt with and considered extensively. I must reiterate what has been discussed in the said decision right from Chapter-II of the Act to various provisions of the Regulations.

27. The HCC Act has altogether five chapters. Chapter I is preliminary, which contains name of the Act, definitions of expressions, etc.

28. Chapter II deals with Central Council and its Committees; Section 3 whereof confers up on the Central Government, a duty constitute for the purposes of the HCC Act a Central Council, consisting of members and office bearers, as provided therein. In Chapter II of the HCC Act, neither any role has been assigned nor is power vested in the Central Government to do anything or discharge any function other than constitution of a Central Council.

29. Chapter II A, which contains two sections, namely, 12A and 12B, has been inserted by Homeopathy Central Council (Amendment) Act, 2002, which appears to have come into force



with effect from 28.01.2003. Section 12A makes it mandatory to obtain previous permission of the Central Government for establishing a Homeopathy Medical College or opening a new or higher course of study or training in a Homeopathy Medical College or increase or admission capacity by a Homeopathy Medical College in any course of study without previous permission of the Central Government. The power, which is vested by Chapter II A in the Central Government, is of grant of permission for establishing a new Homeopathy Medical College, opening of a new or higher course of study or training or increase in admission capacity.

30. Chapter III deals with recognition of a medical qualification, Section 13 whereof mandates that only such medical qualification shall be recognized medical qualifications for the purpose of the HCC Act, which are included in the Second Schedule of the HCC Act. A University, Board or Institution, which grants a medical qualification and not included in Second Schedule, can apply to the Central Government to have any such qualification recognized, in accordance with Sub-Section 2 of Section 13. The said provision empowers the Central Government to amend the Second Schedule so as to include such qualification therein and by any such notification, the Central Government may



direct that an entry shall be made in the last column of the Second Schedule against such medical qualification only when granted after a specified date.

31. It is evident from Section 13 that the power, which there with the Central Government, is to receive application from the University, Board of Institution for the purpose of the same being included in the Second Schedule by way of notification in Official Gazette, after consulting the CCH.

32. Two things emerge from the provisions under Section 13 of the HCC Act. Firstly, after having received the application for inclusion in Schedule II from a University, Board or Institution, the Central Government can amend the Second Schedule by including the name of such University, Board or Institution. Secondly, the Central Government can do so only after consulting the CCH, constituted under Section 3 of the HCC Act.

33. Section 14 of the HCC Act is in relation to the recognition of medical qualifications granted by medical institution in the States or Countries outside India. The Central Government has been empowered under the said provision to amend the Third Schedule of the HCC Act so as to include therein any medical qualification, which the CCH has decided to recognize. In a case, where CCH refuses any foreign medical qualification to be



recognized the Central Government may, on an application, after obtaining reasons from the CCH for refusal, issue notification in the Official Gazette and declare that such qualification shall be recognized medical qualification.

34. Sections 16, 17 and 18 of the HCC Act deals with the power of the CCH to receive information from University, Board of Institution, which grant recognized medical qualifications and to appoint inspector(s) and Visitor(s) for the purposes of inspection of examinations.

35. Section 19 of the HCC Act requires the CCH to make representation to the Central Government for withdrawal of recognition of University, Board of Institution, if it appears to the CCH that the course of study and examination to be undergone or the staff, equipment, accommodation, training and other facilities do not conform to the standard prescribed by the CCH. It is only after considering the representation from the CCH that the Central Government can proceed towards withdrawal of recognition after seeking explanation from the concerned University, Board of Institution and fulfilling other requirements contemplated in the said provision.

36. Section 20 of the HCC Act is an important provision for the purpose of present adjudication. Sub-Section (1) of Section 20



of the HCC Act provides that the CCH may prescribe the minimum standards of education in Homeopathy, required for granting recognized medical qualifications by the Universities, Boards or Medical Institutions in India. Sub-Section (2) of Section 20 of the HCC Act prescribes that copies of draft regulations and all subsequent amendments thereof shall be furnished by the CCH to all State Governments and the CCH shall, before submitting the regulations and amendments thereof, as the case may be, to the Central Government for sanction, take into consideration the comments of any State Governments received within three months from the furnishing of the copies of the draft regulations. It is manifest from the language of Section 20 of the HCC Act that minimum standards of education in Homeopathy is to be laid down by the CCH and not by the Central Government. Sub-Section (2) of Section 20 of the HCC Act provides the manner in which the draft regulations and all subsequent amendments thereof are to be processed. The role of the Central Government is limited to sanction the draft regulations.

37. As has been noticed, consequence of situation as envisaged in sub-Regulation (9) of Regulation 3 of the Regulations is an action under Section 19 of the HCC Act. Section 19 of the HCC Act provides for withdrawal of recognition. The action under



Section 19 of the HCC Act for withdrawal of recognition can be undertaken only on a representation made by the CCH to the Central Government. If, in the opinion of the CCH;

(a) The course of study and examination to be undergone or the proficiency required from the candidates at any examination held by any University, Board or Medical Institution

or,

(b) The staff equipment, accommodation, training and other facilities for instruction and training provided in such University, Board or Medical Institution affiliation to the University,

do not conform to the standard prescribed by the CCH.

38. A conjoint reading of Sections 19 and 20 of the HCC Act leads me to a conclusion that it is the CCH which has to lay down the minimum standards of education in Homeopathy, required for granting recognized medical qualifications by Universities, Boards or Medical Institutions in India and the Central Government may consider the question of withdrawal of recognition only upon a representation to this effect is made by the CCH, if it appears to the CCH that any University, Board or Medical Institution does not conform to the standard prescribed by the CCH.



39. It is clear, thus, that whether a Medical Institution conforms to the standards prescribed by the CCH or not will have to be decided by the CCH alone at the first instance under the scheme of the HCC Act. Only when the CCH is satisfied that a recognized University, Board or Medical Institution does not conform to the standard prescribed by the CCH, the question of withdrawal of recognition or refusal to grant permission to undertake admission will arise. There is no provision under the HCC Act to suggest that even if the CCH is of the opinion that a College or Medical Institution conforms to the minimum standards of education, yet the Central Government exercising powers under the HCC Act may take a different view. I form this opinion in view of the procedure which has been laid down under Section 19 of the HCC Act, which deals with withdrawal of recognition. If there is a negative representation made by the CCH under sub-Section (1) of Section 19 of the HCC Act made to the Central Government, the Central Government is required to proceed in the manner as prescribed under the Act.

40. Chapter IV of the HCC Act deals with Central Register of Homeopathy and the Central Government has nothing to do with the provisions contained in Chapter IV of the HCC Act, except for



entertaining can appeal against removal of name of a person from the said Register of Homeopathy.

41. Chapter V contains miscellaneous provisions including power of the Central Government to make rules and power of the CCH to make regulations with the previous sanction of the Central Government, Section 30 thereof takes care of a situation where the central Government is of the opinion that CCH is not complying with the any of the provisions of the HCC Act.

42. Section 30 of the HCC Act reads thus:

“Commission of Inquiry :

30. (1) Whenever it is made to appear to the Central Government that the Central Council is not complying with any of the provisions of this Act, the Central Government may refer the particulars of the complaint to a commission to inquiry consisting of three person, two of whom shall be appointed by the Central Government, one being a Judge of a High Court, and one by the Central Council and such Commission shall proceed to inquire in a summary manner and to report to the Central Government as to the truth of the matters charged in the complaint and in case any charge of default or of improper action being found by the commission to have been established, the commission shall recommend



the remedies if any, which are in its opinion necessary.

(2) The Central Government may require the Central Council to adopt the remedies so recommended within such time as having regard to the report of the commission, it may think fit and if the Central Council fails to comply with any such requirement, the Central Government may amend the regulations of the Central Council or make such provision or order or take such other steps as may seem necessary to give effect to the recommendations of the commission.

(3) A commission of inquiry shall have power to administer oath, to enforce the attendance of witnesses and the production of documents and shall have all such other necessary powers for the purpose of any inquiry conducted by it as are exercised by a civil court under the code of Civil Procedure, 1908.”

43. It cannot be said, thus, that the Central Government does not have any control over the functioning of the CCH under the scheme of the HCC Act.

44. There is no power vested in the Central Government under the HCC Act than what has been noted above, much less, any inherent power.



45. Regulation 3 of the HCC (MS) Regulations, which are required to be looked into for the purpose of present adjudication, is being reproduced herein below for the benefit of quick reference:-

“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 faculty 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 Homeopathy 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 Homeopathy.

(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.”

46. On close scrutiny of the said provision, it can be easily noticed that it lays down a requirement that a College and attached



Hospital shall fulfill the minimum standards requirements of infrastructure and teaching & training facilities, referred to in Regulations 4 to 13 of the HCC (MS) Regulations.

47. “College”, under the HCC (MS) Regulations, has been defined as a medical college of Homeopathy in which a person undergoes a course of study and training which will qualify him for the award of a recognized medical qualification in Homeopathy. There should be no dispute that all colleges, including colleges established prior to 09.12.2002, come within the definition of “College” under Regulation 2 (c) of the HCC (MS) Regulations.

48. Sub-Regulation (4) of Regulation 3 of the HCC (MS) Regulations states that the existing colleges and their attached hospitals established under Section 12A of the HCC Act and those colleges and their hospitals established prior to the 28th January, 2003 and recognized by the CCH shall fulfill the minimum standards requirements of infrastructure teaching and training facilities referred to in these regulations by 31.12.2014, for consideration of grant of permission for undertaking admissions in the coming academic years. It has been informed at the bar that the said cutoff date of 31.12.2014 has, subsequently, been shifted to 31.12.2015.



49. The Homeopathic Medical Colleges, for the purpose of fulfilling minimum standards of requirements, have been classified in two categories, namely, (i) Colleges established prior to 28.01.2003 and (ii) Colleges established thereafter, i.e. after coming into force of Section 12A of the HCC Act.

50. Sub-Regulation (5) of Regulation 3 of the HCC (MS) Regulations mandates that if a college fulfills the requirement by specific date, it shall be granted permission to intake admission 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 CCH.

51. Sub-Regulation (6) of Regulation 3 of the HCC (MS) Regulations casts a duty on the CCH to visit the colleges suo motu, three months before expiry of the permission.

52. Sub-Regulation (7) of Regulation 3 of the HCC (MS) Regulations provides that additional permission shall be granted only to those colleges, which are fulfilling, at least, the requirement of teachers, as specified in Schedule-IV of the HCC (MS) Regulations, 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 inspection to be carried out by the CCH after 15.05.2013 for the academic year 2013-14 and after 31.12.2013 for the academic year 2014-15.

53. Apparently, sub-Regulation (7) has to be read in the backdrop of sub-Regulation (4) of Regulation 3 of HCC (MS) Regulations, which prescribes 31.12.2014 (2015) as the cutoff date by which the Homeopathic Colleges are required to fulfill the minimum standards requirements of infrastructure teaching and training facilities. The HCC (MS) Regulations came into force with effect from 08.03.2013. In that background, a provision for additional permission has been made for the interregnum period.

54. Sub-Regulation (8) of Regulation 3 of the HCC (MS) Regulations, then, says that Colleges, which have been granted additional permission or those which have been denied permission, will also be required to fulfill the requirements by the cutoff date.

55. Sub-Regulation (9) of Regulation 3 of the HCC (MS) Regulations lays down that the existing colleges which are not able to achieve full compliance of the requirements as specified in the HCC (MS) Regulations by the cutoff date shall be denied permission from the next academic sessions and in that case action, as envisaged under Section 19 of the HCC Act, shall be



initiated against all such colleges, apart from rejection of their application under Section 12A of the HCC Act.

56. It has been held by this Court in case of ***Dr. R. B. Singh Gaya Homeopathic Medical College and Hospital*** (supra), that the CCH constituted under Section 3 of the Act has a significant, rather most important role in carrying out the purposes of the Act and the Central Government has the power to constitute CCH and grant permission for establishment of new Medical Institution, start of a new Course of study and increase in admission capacity in a course. Even such power of grant of permission for establishment of a new Medical Institution is to be exercised by the Central Government in active consultation with the CCH. While dealing with the issue as to whether the Central Government had the power to cause inspection of the Medical Institution, since the Court failed to trace such powers under the provisions of the Act held that the Act did not confer upon the Central Government any power even impliedly to cause inspection of a Homeopathy Medical Institution. Taking a cue from the said decision, I am of the view that the Central Government can exercise only such powers under the Act, which are vested in it by the provisions of the Act that power of the Central Government under the Act is confined to establishment of



new Institution for commencement/ introduction of new course. It is evident from the language and various provisions of the HCC Act that the intention of the legislature was to constitute a Central Council for the purpose of carrying out the provisions of the Act. The Act envisages experts in the field to be the members of the Central Council. The statutory provisions under the Act as they existed prior to amendment in the year 2003 vested certain powers to carry out the purposes of the Act in the CCH. Since the Act does not confer upon Central Government any jurisdiction nor there is any specific provision conferring power upon the Central Government, in my view, the Centre usurped the power, which was apparently vested in the CCH for grant of permission to undertake admission in respect of Colleges established before 2003.

57. The submission made on behalf of the Union of India that because the Regulations can be framed only upon prior sanction of the Central Government, power which are vested in the CCH under the Regulations impliedly vests in the Central Government is not acceptable to this Court. The Regulations have force of law. A delegated legislation is as much binding on every concerned as any other statutory provision. All the functionaries are required to act in accordance with and within the frame work of Regulations



which is a subordinate legislation. Nobody claiming to be superior can claim to have the power vested in him on the reasoning that such power is vested in an authority which is subordinate to it.

58. I agree with the submissions advanced on behalf of the petitioners in this regard while placing reliance on Supreme Court's decisions in case of *Manohar Lal* (supra). The Supreme Court, in the said case, has held that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor can the superior authority act in a particular manner, on the basis that the CCH has been constituted by the Central Government and that the Regulations have been framed with the sanction of the Central Government, the Central Government or the Ministry of AYUSH cannot take a plea that the powers, which are vested in the CCH under the Act or under the Regulations can be exercised by the Central Government. Reference may also be made to another Supreme Court's decision in case of *Mohinuddin Jamal Alvi* (supra), wherein the Supreme Court taking into account the previous binding precedents held that even an authority higher in rank would not be competent to give approval as required under Section 20-A of the TADA Act and such approval could be given by the designated authority under the Act only. The Supreme



Court while taking this view relied on Supreme Court's decision in case of ***Hussein Ghadially Vs. State of Gujarat (2014) 8 SCC 425***, paragraph 21.3. of which is apt to answer the submission advanced on behalf of the Union of India and is, therefore, being reproduced herein below:-

“21.3. Thirdly, because if the statute provides for a thing to be done in a particular manner, then it must be done in that manner alone. All other modes or methods of doing that thing must be deemed to have been prohibited. That proposition of law first was stated in Taylor V. Taylor 3 and adopted later by the Judicial Committee in Nazir Ahmad V. King Emperor 4 and by this Court in a series of judgments including those in Rao Shiv Bahadur Singh V. State of Vindhya Pradesh 5, State of U.P. V. Singhara Singh 6, Chandra Kishore Jha V. Mahavir Prasad 7, Dhanajaya Reddy V. State of Karnataka 8 and Gujarat Urja Vikas Nigam Ltd. V. Essar Power Ltd. 9. The principle stated in the above decisions applies to the cases at hand nor because there is any specific procedure that it is prescribed by the statute for grant of approval but because if the approval could be granted by anyone in the police hierarchy the provision specifying the authority for grant of such



approval might as well not have been enacted.”

(Emphasis is added)

59. The decision of Delhi High Court in case of *Acharya Gyan Ayurved College* (supra), can have no application in the facts and circumstances of the present batch of writ applications. The Delhi High Court in the said case did not have occasion to deal with 2013 Regulations on the question of grant of permission for undertaking admission. From the said decision, I find that the Delhi High Court had the occasion to deal with the effect of recommendation and in that background, following settled law that the Central Government is not bound by the recommendation held that the recommendations are not binding. This is not a question involved in these cases as to whether the Central Government was bound by the recommendation of the CCH. The question involved is as to whether the Central Government had any authority either to consider the question of grant of permission for undertaking admission under Regulation 3 (4) of the Regulations. In my view, therefore, Delhi High Court's decision shall have no application to the facts and circumstances of the present batch of writ applications. Further, the jurisdiction of the Central Government while dealing with the provisions under the Act has been discussed in detail in the decision of this



Court in case of ***Dr. R.B. Singh Gaya Homeopathic Medical College and Hospital*** (supra). I am bound by the said decision. Till the Act is amended or specific provision is made under the Regulations, the Central Government cannot be said to be having any power to exercise for the purpose of grant of permission for undertaking admission.

60. I am further convinced with the submissions advanced on behalf of the petitioners that the manner in which the AYUSH Department has dealt with the inspection report of the CCH opining that these Colleges did not deserve to be given permission to undertake admission is nothing but arbitrary inasmuch as by just doubting correctness of the findings recorded in the inspection report, the Central Government formed its own opinion and denied permission to undertake admission.

61. For the same reason, another decision of Delhi High Court in case of ***Dhanvantri Medical College and Hospital and Reserach Centre*** (supra), cannot be relied on, particularly, in view of the decision of this Court in case of ***Dr. R. B. Singh Gaya Homeopathic Medical College and Hospital*** (supra).

62. In the background of the discussion as above, the orders impugned, dated 12.09.2017, (Annexure-11 of CWJC No. 14864 of 2017), order, dated 11.09.2017, (Annexure-15 of CWJC No.



16589 of 2017), order, dated 11.09.2017, (Annexure-12 of CWJC No. 16371 of 2017), order, dated 04.09.2017, (Annexure-10 of CWJC No. 16838 of 2017), order, dated 03.08.2017 of CWJC No. 14372 of 2017 and order dated 23.08.2017 of CWJC No. 16554 of 2017 require interference. The said orders are, accordingly, quashed as without jurisdiction.

63. It has been informed at the Bar that last date for admission to BHMS Course was initially fixed as 31.10.2017, which was extended thrice by the Central Government and last time it was extended to 29.11.2017. This Court in the peculiar facts and circumstances of the case directs extension of the cut off date to 15.12.2017, as the petitioners were pursuing the matter before this Court. Since the reports of the CCH are favourable to these Colleges, these Colleges can undertake process of admission by adopting transparent and fair procedure as required for admission to professional courses. This observation is being made in the background of the submission made on behalf of the petitioners that on the basis of transparent and fair process of selection they are having list of candidates for admission.

64. I need not comment upon the fact as to whether transparent and fair selection with due weightage to the merit of the respective candidates has been taken care of by these Colleges



or not. I would have normally asked the CCH to pass appropriate orders for grant of permission to undertake admission but because of the paucity of time and in the absence of any objection on behalf of the CCH, this order is being passed.

65. This is made clear that this order is confined to the academic session 2017-18. I direct the CCH, in the background of the facts and circumstances of the case to cause inspection of these Colleges again and allow these Colleges to undertake admission for the next academic session, only if CCH is satisfied that the institutions, in question, conform to the minimum requirements of standard.

66. These applications are allowed accordingly.

(Chakradhari Sharan Singh, J.)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	22-12-2017
Transmission Date	N/A

