

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19681 of 2016

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1. Dr. R. B. Singh Gaya Homeopathic Medical College & Hospital, Amwan, Bodhgaya, P.S. Bodhgaya, District-Gaya through its Principal Dr. Ravindra Kumar Son of Late Dr. R.B. Singh resident of M.I.G.-47, Chankyapuri Colony, Gaya, P.S. Rampur, District-Gaya

.... Petitioner

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 of Health & FW, 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-10058

.... Respondents

with

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Civil Writ Jurisdiction Case No. 19912 of 2016

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1. Dr. Yadubir Sinha Homoeopathic Medical College & Hospital, Bakerganj, Laheriasarai, Darbhanga through its Principal Dr. Bharat Kumar Singh, Son of late Dr. Narendra Narayan Sinha, Resident of Bakerganj, Laheriasarai, P.S. Laheriasarai, District - Darbhanga.

.... Petitioner

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 - 23.
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.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Bindhyachal Singh, Advocate Mr. Manish Prakash, Advocate
For the Union of India	:	Mr. S. D. Sanjay, Addl. S.G. Mr. Tuhin Shankar, CGC Ms. Nivedita Nirvikar, CGC
For the State of Bihar	:	Mr. S. D. Yadav, AAG IX Mr. Ajay Behari Sinha, GA VIII Mr. Nagendra Kumar, AC to AAG IX Mr. Neeraj Raj, AC to GA VIII
For C.C.H.	:	Mr. Ashok Kumar Sinha, Sr. Advocate Mr. Atul Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date: 28-06-2017

The common question of law in both the writ applications on the point of jurisdiction of Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (hereinafter referred to as 'Ministry of AYUSH'), Government of India, to conduct inspection of a Homeopathic College and Hospital, established prior to 09.12.2002 and deny permission for taking admission to BHMS Course, in such institution based on the outcome of the inspection under Section 12A of the Homoeopathy Central Council Act, 1973, (hereinafter referred to as 'HCC Act'), is involved and, therefore, with the consent of the parties, both the writ



applications have been heard together and are being disposed of by the present common judgment and order.

2. This application has been filed against the orders, whereby the two petitioners-Colleges, running degree course in Homeopathy (BHMS) have been denied permission for taking admission to BHMS Course, under Section 12 A of the HCC Act, for the academic sessions 2016-17, which is based on shortcomings and deficiencies found out by the Ministry of AYUSH in course of surprise inspection by a central team, in relation to maintenance of minimum standard of requirements in terms of faculty, infrastructure etc. in the Colleges.

3. In CWJC No. 19681 of 2016 (Dr. R. B. Singh Gaya Homeopathic Medical College and Hospital v. The Union of India and Others), an order, dated 08.11.2016, issued by Ministry of AYUSH, Government of India, under the signature of Under Secretary to the Government of India, is under challenge; whereas, the date of order impugned, in CWJC No. 19912 of 2016 (Dr. Yadubir Sinha Homeopathic Medical College and Hospital v. The Union of India and Others), is 22.11.2016. The operative portion of the said two orders, in relation to the academic sessions 2016-17, denying permission for taking admission to BHMS Course, are in paragraph 8 and 7 respectively of the said two orders, which



are being quoted herein below:-

C.W.J.C. No. 19681 of 2016

"8. NOW, THEREFORE, in view of the shortcomings and deficiencies mentioned in para 7 above, which violate the provisions of the HCC Act and the relevant regulations and are of such a serious and fundamental in nature that they adversely affect the ability of the College to provide quality medical education in terms of the provisions of the HCC Act and the relevant regulations, the "Dr. R. B. Singh Gaya Homeopathic Medical College & Hospital, P.O. Amwan, Bodhgaya, Gaya, Bihar" is hereby denied permission for taking admission to BHMS course with 50 UG seats under section 12A of the HCC Act, 1973, for the academic session 2016-17."

C.W.J.C. No.19912 of 2016

"7. NOW, THEREFORE, in view of the shortcomings and deficiencies mentioned in para 7 above, which violate the provisions of the HCC Act and the relevant regulations and are of such a serious and fundamental in nature that they adversely affect the ability of the College to provide quality medical education in terms of the provisions of the HCC Act and the relevant regulations, the



“Dr. Yadubir Sinha Homeopathic Medical College and Hospital, Laheriasarai, Darbhanga-846002, Bihar” is hereby denied permission for taking admission to BHMS course with 50 UG seats under section 12A of the HCC Act, 1973, for the academic session 2016-17.”

4. What is evident from the orders, which are impugned, is that the Ministry of AYUSH purportedly exercised the power, which it claims to have under Section 12 A of the HCC Act. Secondly, the said decision is based on a surprise inspection, conducted by the Ministry of AYUSH of the two Colleges, in question, and based on the report of the said surprise inspection; the impugned orders have been passed.

5. The questions, which have arisen to be answered by this Court are firstly, whether the HCC Act or the Regulations framed thereunder, confer jurisdiction on the Ministry of AYUSH to conduct a surprise inspection of an existing College, established prior to 09.12.2002, and secondly, whether the Ministry of AYUSH has any jurisdiction to allow or deny permission for taking admission to BHMS Course in existing Homeopathic Medical Colleges and Hospitals.

FACTS OF THE CASE:-

6. The facts relevant for determination of the



questions formulated above are not, at all, in dispute, which are brief and common with minor variations, in both the cases. For the present judgment, I shall refer to the facts of CWJC No. 19681 of 2016, and if required, mention those facts of CWJC No. 19912 of 2016 as are found relevant, as and when required, at appropriate stage.

7. Dr. R. B. Singh Gaya Homeopathic Medical College and Hospital, Amwan, Bodh Gaya, was established in the year 1967, for imparting education in Homeopathy by Dr. R. B. Singh Memorial Development Foundation Trust. It was granted recognition earlier by the Bihar State Board of Homeopathy and subsequently it came under Bihar University, Muzaffarpur. Upon reorganization of Bihar University, Muzaffarpur, it came under B. R. Ambedkar Bihar University, Muzaffarpur, which granted statutory affiliation to the petitioner-College on 19.06.1985 and 14.03.2002. Subsequently, the Central Council of Homeopathy (in short, 'CCH'), by notification, dated 13.03.1995, allowed the College to admit 50 students for BHMS course every year.

8. It is the specific case of the petitioner that for each academic session thereafter, the College has been allowed permission for admitting 50 students. The College and was regularly inspected by the CCH for continuation of permission. The petitioner asserts that in accordance with the



provisions of the H.C.C. Act, the College, in question, was inspected by the CCH on 16.05.2016, pursuant to which a report, dated 16.05.2016, was submitted to the Central Government. The CCH, in its report, did not report anything adverse against the College, in question. The examination for the academic session 2016-17 was to commence from 24.08.2016.

9. There is no denial of these averments made in the writ application, in the counter affidavits filed on behalf of the respondents. A surprise inspection was conducted on 24.08.2016 by a team of Ministry of AYUSH, whereafter a notice, dated 07.10.2016, was issued to the College, pointing out the deficiencies noticed by the Inspecting Team of the Ministry of AYUSH, to show cause as to why admission should not be stopped in BHMS course for the academic session 2016-17, as per the provisions of the Homeopathy Central Council (Minimum Standards Requirement of Homeopathic Colleges and Attached Hospitals) Regulations, 2013 (hereinafter referred to as 'HCC (MS) Regulations'). Paragraph 4 of the said notice, dated 07.10.2016, reads thus:-

"4. In view of the above pointed out deficiencies, you are hereby given an opportunity of hearing as a natural justice of being heard in terms of provisions of the first proviso to sub section 4 of section 12A of the HCC Act,



1973, at **10.30 AM** on 14.10.2016 before the designated Hearing Committee in the Ministry of AYUSH. You are given an opportunity to present your case and to show cause as to why the admission should not be stopped in BHMS course for the academic year 2016-17 as per the provisions of HCC (MSR), 2013.”

10. It is the further case of the petitioner that the College did not receive the said notice before 14.10.2016, which was the date fixed for hearing, whereafter another date, i.e. 24.10.2016, was fixed. The College, through its Principal, appeared before the Hearing Committee and submitted its written submission, meeting the deficiencies, as pointed out in the notice. It is also the case of the petitioner that the authorities had not supplied to the College, copy of the inspection report prepared on the basis of surprise inspection, which was the foundation for the issuance of the said show cause notice. It has, accordingly, been pleaded that the petitioner did not have due opportunity of rebutting the allegations made in the notice. There is no denial to these assertions too, in the counter affidavits filed on behalf of the respondents.

11. Similar are the facts asserted by the petitioner-Dr. Yadubir Sinha Homeopathic Medical College and Hospital, Laheriasarai, Darbhanga, which was established in



the year 1929 and managed by Dr. Yadubir Sinha Memorial Trust. With respect to this College also, there is no denial of the plea that it had due recognition initially by Bihar State Board for Homeopathy, whereafter it came under Bihar University, Muzaffarpur and was granted recognition by CCH on 13.03.1995, and since then, it is conducting BHMS course.

12. Other facts are similar in both the writ applications.

SUBMISSIONS OF THE PARTIES:-

13. I have heard Mr. Bindhyachal Singh, learned Counsel for the petitioners and Mr. S. D. Sanjay, learned Additional Solicitor General, appearing on behalf of the Union of India. I have also heard Mr. Ashok Kumar Sinha, learned Counsel for the Central Council of Homeopathy, Mr. S. D. Yadav, AAG IX, and Mr. Ajay Behari Singh, GA 8, representing the State of Bihar.

14. Mr. Bindhyachal Singh, learned Counsel appearing on behalf of the petitioners, in both the cases, made following submissions:-

(i) The Ministry of AYUSH has passed the impugned orders invoking Section 12A of the HCC Act, which power the Central Government does not have. According to him, since, admittedly, these Colleges were established much before introduction of Section 12A of the HCC Act, which



became effective from 09.12.2002, these colleges are not covered by the said provision for the purpose of grant of permission for admission.

(ii) It is his submission that Section 12A of the HCC Act regulates permission for establishment of new medical colleges or new courses of study or any increase of intake capacity, but it does not, at all, govern the ongoing course in an existing Homeopathic College, i.e. a college established, running and recognized from before coming into force of the said Section 12A of the HCC Act.

(iii) The Ministry of AYUSH/Central Government does not have any jurisdiction to conduct inspection, much less surprise inspection, of an existing College for any purpose under the scheme of the HCC Act and any action taken on the basis of an unauthorized inspection conducted by the Ministry of AYUSH is beyond jurisdiction and *ultra vires* the provisions of the HCC Act.

(iv) No statutory provision under the HCC Act, or the Regulations framed thereunder, confer any such power on the Ministry of AYUSH to pass an order, asking the Homeopathic Colleges, having due recognition, to stop admission to BHMS course.

(v) The Central Government/Ministry of AYUSH has usurped the jurisdiction vested in the CCH under the HCC



Act and Regulations framed thereunder in most arbitrary and whimsical manner and for this reason also, the impugned orders deserve to be quashed by the High Court.

(vi) According to him, once the inspection report was submitted by the CCH to the Central Government, the Central Government could have proceeded on the basis of the said report in the matter of grant of permission, as envisaged under sub-Regulation (9) of Regulation 3 of HCC (MS) Regulations, notified on 08.03.2013 and not otherwise.

(vii) It has additionally been submitted that there has been breach of principles of natural justice in passing of the impugned orders inasmuch as the inspection reports of surprise inspection were, admittedly, not made available to the petitioners before hearing was given by Ministry of AYUSH to the petitioners.

15. Mr. S. D. Sanjay, learned Additional Solicitor General, appearing for the Union of India, has very fairly submitted as follows:-

(i) In the facts and circumstances of the case, Section 12A of the HCC Act could not have been invoked for passing the impugned orders since, admittedly, these Colleges are "*existing Colleges*" established prior to coming into force of Section 12A of the HCC Act. He has, however, submitted that mentioning of a wrong section in the orders may not be a



ground for this Court to interfere with the orders since power of the Central Government is traceable under the HCC Act and the Regulations framed thereunder.

(ii) According to him, the Central Government, under the scheme of the HCC Act and the Regulations framed thereunder, plays a crucial role in the matter of grant of recognition/permission for admission to institutions of this nature and, therefore, it has the power, duty and responsibility to ensure that the Colleges, imparting education in Homeopathy, maintained minimum standards of requirement laid down under the statutory provisions for the best interest of the students pursuing the courses and for maintaining high standards of provisions of Homeopathy.

(iii) According to him, power of the Central Government to inspect a College, imparting education in Homeopathy, is inherent because the CCH is under administrative control of the Ministry of AYUSH, Government of India.

(iv) In support of his submission that the Central Government has the power to inspect and pass orders of the nature, which have been passed and are under challenge in the present writ applications, has relied on a Division Bench decision of Madhya Pradesh High Court, dated 11.01.2017, in the case of **Shri Ramnath Singh**



Homeopathic Medical College v. Union of India and Others (Writ Petition No. 8301 of 2016) and another connected matter.

16. Mr. Ashok Kumar Sinha, learned Senior Counsel, appearing on behalf of the Central Council of Homeopathy, has submitted as follows:-

(i) It is the CCH alone, which has the authority to cause inspection of a Homeopathic College under the Act.

(ii) He has not disputed that the CCH had given a favourable report to the Central Government for grant of permission for admission in the Colleges, in question.

(iii) The Central Government, under the HCC Act or HCC (MS) Regulations, does not have any power to inspect a Homeopathic College.

17. Mr. S. D Sanjay has objected to the submission made by Mr. Ashok Kumar Sinha, learned Senior Counsel, appearing for the CCH, wherein he has questioned the authority of the Central Government to cause inspection of a College. According to him, such plea having not been specifically taken in the counter affidavit, cannot be raised by him while making submissions.

18. The objection, so raised by Mr. S. D. Sanjay, deserves to be turned down at this stage itself for two reasons. Firstly, there is specific plea taken in the writ



applications that the Ministry of AYUSH did not have any authority under any law, rules or regulations to conduct a surprise inspection, which is wholly and solely vested with the CCH. This stand has not been specifically disputed by the CCH in the counter affidavit. It has been merely stated in the counter affidavit that the CCH is not obliged to give any reply thereto. In such situation, learned Senior Counsel cannot be said to be arguing against the pleadings in the counter affidavit filed on behalf of the CCH.

19. Secondly, the question whether the Central Government has such jurisdiction or not is purely legal issue, based on the interpretation of the statutory provisions. A Senior Counsel appearing before a High Court has the duty and responsibility to assist the Court to arrive at just and proper decision based on his interpretation of statutory provisions. He cannot be said to be bound by the instructions given to him, even if so given, while making his legal submissions before a Court, particularly, when it comes to pure question of interpretation of statutory provisions. Having found no force in the objection raised by Mr. S. D. Sanjay to this effect, the same is being overruled here itself.

DISCUSSION:-

20. The first submission, made by Mr. Bindhyachal Singh, on behalf of the petitioners, that the



impugned orders, which are said to have been passed under Section 12A of the HCC Act are bad because Section 12A of the HCC Act does not have any application, need not be elaborately dealt with in view of the stand taken by Mr. S. D. Sanjay, learned Additional Solicitor General that the Section has wrongly been mentioned in the impugned orders but mentioning of a wrong section in the order will not vitiate the orders.

21. It is well settled law that mere mentioning of a wrong provision of law in the order under which the order is said to have been passed, cannot be said to be sufficient to invalidate the exercise of power when the power exercised is available, though under a different provision, [See, **Collector of Central Excise, Calcutta v. Pradyumna Steel Ltd.**, reported in **(2003) 9 SCC 234**].

22. Chapter-IIA came to be introduced in the HCC Act with effect from 09.12.2002 with two new sections, 12A and 12B, dealing with the "permission for establishment of new medical institution, new courses of study etc.". It makes it mandatory to have permission of the Central Government in accordance with the provisions of the said section for (i) any person to establish a Homeopathic Medical College, (ii) for any Homeopathic Medication College to open a new or higher course of study, and (iii) for any Homeopathic



Medical College to increase its admission capacity in a course of study or training. The section cannot have any application in relation to the existing Homeopathic Medical College if there is no question of opening up a new course of study or increase in admission capacity in any course of study.

23. This leaves me to examine and address the issue of the power of the Central Government to cause inspection of a Homeopathic College under other provisions of the HCC Act and Regulations framed thereunder, in the light of submission made by Mr. S. D. Sanjay, with reference to sub-Regulation 5 of Regulation 3 of the HCC (MS) Regulations.

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

(5) If a college fulfills the requirement by 31st December, 2014 as per these regulations, it shall be granted permission to undertake admissions for a period not exceeding five years during



which the college shall not be inspected, except for random checks on receipt of any complaint, or otherwise as deemed necessary either by the Central Government or by the Central Council of Homoeopathy.

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

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

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

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



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

25. 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.

26. “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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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 201-15, 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.

32. 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.

33. 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.

34. 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.

35. Coming to the question, which has emerged as to the manner in which the Authorities can proceed under the scheme of the HCC Act and regulations framed thereunder, to determine whether an existing college fulfills the minimum standards requirements, as envisaged under the HCC (MS) Regulations, it is required to be enquired as to whether the Central Government could conduct an inspection for the said purpose or not.

36. There is no gainsaying that if a statutory provision requires something to be done in a particular manner, the same has to be done in that manner alone and



not otherwise. Further, if an enactment or any provisions having the force of law confers some power on an authority; such power can be exercised by that authority only. No Office or Authority can be said to be having any power inherent in it/him howsoever high the position of that Office or person or authority may be, unless such inherent power is vested in the Office, Authority or Person under the law. Keeping these principles in mind, submission advanced on behalf of the Central Government is to be considered for the purpose of tracing power of the Central Government to hold inspection. In oft cited decision, in the case of **Hukum Chand Shyam Lal v. Union of India (AIR 1976 SC 789)**, the Supreme Court stated the law as ".....where a power is required to be exercised by a certain authority in certain way, it should be exercised in that manner or not at all and other modes of performance are necessarily forbidden".

37. For the said purpose, I proceed to examine the whole scheme of HCC Act, which has been enacted to provide for constitution of a Central Council of Homeopathy and maintenance of Central Register of Homeopathy and for matters connected there with.

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



39. Chapter II deals with Central Council and its committees; Section 3 thereof confers upon the Central Government, a duty to 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.

40. 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; whereas, Section 12B provides consequence of establishment of a Homeopathy Medical College or opening a new or higher course of study or training in a Homeopathy Medical College or increase of 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.



41. 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.

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

43. 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 of Institution. Secondly, the Central Government can do so only after consulting the CCH, constituted under Section 3 of the HCC Act.

44. 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.

45. 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 or examinations.

46. 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.

47. 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 an appeal against removal of name of a person from the said Register of Homeopathy.

48. 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.

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

50. On close scrutiny of the provisions under the



HCC Act, it can be easily noticed that the CCH, constituted under Section 3 of the HCC Act, has significant; rather, most important role in carrying out the purposes of the HCC Act and the Central Government has the power to constitute CCH and grant permission for establishment of a 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 is to be exercised by the Central Government in active consultation with the CCH as per the HCC Act.

51. There is no provision under the HCC Act, which confers upon the Central Government a power to cause inspection of a medical institution, established under the HCC Act, for any purpose whatsoever. The HCC Act does not confer upon the Central Government any inherent power, even impliedly, to cause inspection of a medical institution. The CCH, under Section 17 of the HCC Act, is vested with the power to appoint such number of medical Inspectors to inspect any medical college, hospital or other institution. Section 18 enables the CCH to appoint such number of Visitors to inspect any medical college. Sections 17 and 18 of the HCC Act, being relevant, are being reproduced herein below:-

"17. Inspectors at examinations.-

(1) The Central Council shall appoint such number of medical inspectors as it may deem requisite to inspect any



medical college, hospital or other institution where education in Homoeopathy is given, or to attend any examination held by any University, Board or medical institution for the purpose of recommending to the Central Government recognition of medical qualifications granted by that University, Board or medical institution.

(2) The medical inspectors shall not interfere with the conduct of any training or examination, but shall report to the Central Council on the adequacy of the standards of education including staff, equipment, accommodation, training and other facilities prescribed for giving education in Homoeopathy, as the case may be, or on the sufficiency of every examination which they attend.

(3) The Central Council shall forward a copy of any such report to the University, Board or medical institution concerned, and shall also forward a copy with the remarks of the University, Board or medical institution thereon, to the Central Government.

18. Visitors at examinations.-

(1) The Central Council may appoint such number of visitors as it may deem requisite to inspect any medical college, hospital or other institution where education in Homoeopathy is given or to



attend any examination for the purpose of granting recognized medical qualification.

(2) Any person, whether he is a member of the Central Council or not, may be appointed as a visitor under this section but a person who is appointed as an inspector under section 17 for any inspection or examination shall not be appointed as a visitor for the same inspection or examination.

(3) The visitors shall not interfere with the conduct of any training or examination, but shall report to the President of the Central Council on the adequacy of the standards of education including staff, equipment, accommodation, training and other facilities prescribed for giving education in Homoeopathy or on the sufficiency of every examination which they attend.

(4) The report of a visitor shall be treated as confidential unless in any particular case the President of the Central Council otherwise directs:

Provided that if the Central Government requires a copy of the report of a visitor, the Central Council shall furnish the same."

52. On careful reading of Sections 17 and 18 of the HCC Act and comparison thereof, it can be easily noticed that whereas it is obligatory for the CCH to appoint Medical



Inspectors to inspect any medical college, appointment of Visitors for the purpose of inspection is optional for the CCH inasmuch as word "shall" has been used in Section 17 (1); whereas word "may" has been used in Section 19 (1) of the HCC Act.

53. Apparently, under the HCC Act, inspection of any medical college can be conducted by Medical Inspectors appointed by the CCH, or Visitors, appointed by the CCH. The question of withdrawal of recognition, under Section 19 of the HCC Act can arrive only after a report is submitted by the Inspector(s) or the Visitor(s), as is evident from reading of Section 19 of the HCC Act, which reads thus:-

"19. Withdrawal of recognition.-

(1) When upon report by the inspector or the visitor, it appears to the Central Council—

(a) that the courses of study and examination to be undergone in, or the proficiency required from candidates at any examination held by, any University, Board or medical institution, or

(b) that the staff, equipment, accommodation, training and other facilities for instruction and training provided in such University, Board or medical institution or in any college or other institution affiliated to the University,



do not conform to the standard prescribed by the Central Council, the Central Council shall make a representation to that effect to the Central Government.

(2) After considering such representation, the Central Government may send it to the Government of the State in which the University, Board or medical institution is situated and the State Government shall forward it along with such remarks as it may choose to make to the University, Board or medical institution, Board or medical institution may submit its explanation to the State Government.

(3) On the receipt of the explanation, or, where no explanation is submitted within the period fixed, then, on the expiry of that period, the State Government shall make its recommendations to the Central Government.

(4) The Central Government, after making such further inquiry, if any, as it may think fit, may, by notification in the Official Gazette, direct that an entry shall be made in the Second Schedule against the said medical qualification declaring that it shall be a recognized medical qualification only when granted before a specified date, or that the said medical qualification if granted to students of a specified college or institution



affiliated to any University shall be recognized medical qualification only when granted before a specified date or, as the case may be, that the said medical qualification shall be recognized medical qualification in relation to a specified college or institution affiliated to any University only when granted after a specified date."

54. What emerges from reading of the said provision, under Sections 17, 18 and 19 of the HCC Act, is that the process of withdrawal of recognition can be initiated only if it appears to the CCH on the basis of a report submitted by the Inspector or Visitor that the Institution does not conform to the standard prescribed by the CCH in terms of courses of study, staff, equipment, accommodation, etc. and in that event, the CCH can make a representation to that effect to the Central Government. Sub-Section (2) of Section 19 of the HCC Act provides for the procedure to be followed by the Central Government once the CCH makes a representation to the effect that a particular institution does not conform to the standard prescribed by the CCH. The procedure so prescribed requires that the Central Government may send it to the Government of the State in which the University, Board or Medical Institution is situated. The State Government, in that case, is required to forward it to the University, Board of



Medical Institution, with an intimation of the period within which the University, Board or the Medical Institution may submit its explanation to the State Government, and on receipt of the explanation or otherwise, the State Government has to make its recommendation to the Central Government. The Central Government, after making such further enquiry, may thereafter take appropriate decision by way of notification in the Official Gazette, as contemplated under Section 20 (4) of the HCC Act.

55. I reiterate and hold that the Central Government cannot proceed, under Section 19 of the HCC Act, unless there is representation by the CCH, under Section 19 (1) of the HCC Act.

56. Here is a case, where the report of the CCH is not against the petitioners; rather, it appears to have recommended for grant of permission to take admission under the HCC (MS) Regulations. The Central Government conducted the surprise inspection *suo motu*, which power is not traceable under the HCC Act.

57. Mr. S. D. Sanjay, learned Additional Solicitor General, has given much emphasis on the expression under sub-Regulation (5) of Regulation 3 of the HCC (MS) Regulations, which reads ".....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". According to him, since the expression prohibits the Central Government from conducting inspection for a period of five years once a college is granted permission to undertake admission, it implies that the Central Government has the power to inspect. According to him, each and every word used in a legislative document, be it delegated, has to be given meaning while interpreting a statutory provision and any expression should not be allowed to be rendered nugatory. The expression occurring in sub-Regulation (5) of Regulation 3 of the HCC (MS) Regulations cannot be said to be conferring power of inspection on the Central Government in view of specific provisions under Section 17 of the HCC Act, under which the inspection can be conducted either by the Inspectors or the Visitors appointed by the CCH and not other authority. As has already been held, power to inspect a College vests with the CCH only. The correct interpretation of sub-Regulation (5) of Regulation 3 of the HCC (MS) Regulations would be that during the five years, as indicated, a College which has been granted permission to undertake admission shall not be inspected except for random checks on "receipt of any complaint or otherwise deemed necessary either by the Central Government or by the CCH"; meaning



thereby that if any complaint is received “by” the Central Government or the CCH or if it is otherwise deemed necessary by the Central Government or the CCH that inspection for random checks is required, such inspection can be held. However, such inspection cannot be held by the Central Government, as the Central Government does not have any power to inspect a College. I must add here that sub-Regulation (5) of Regulation 3 of the HCC (MS) Regulations cannot be invoked in the present case as it is not the case of the Central Government that the Colleges, in question, have been granted permission to undertake admission. The question of inspection for random checks, under sub-Regulation (5) of Regulation 3 of the HCC (MS) Regulations will arise only if a College, in question, has been granted permission to undertake admission.

The words of sub-Regulation (5) of Regulation 3 of the HCC (MS) Regulations should be understood in the background of the parent enactment under which the regulation has been framed. The HCC Act does not empower the Central Government to cause inspection. Such power cannot be read in the regulation by giving meaning to an expression which has been used in a different context altogether.

58. The Division Bench decision, in the case of



Shri Ramnath Singh Homeopathic Medical College

(supra), of Madhya Pradesh High Court has no applicability in the present case. The question as to whether the Central Government has the power or not to inspect a Homeopathic Medical College was not at all under consideration before the Madhya Pradesh High Court. In that case, action of the Government of India invoking its power under Section 12 A of the HCC Act, read with Regulation 3 (9) of the HCC (MS) Regulations, was under challenge, where there was report of the CCH against the college, in question, to the effect that it did not conform to the minimum standards of requirements.

CONCLUSION:-

59. What has emerged from the discussions, as above, is that power of inspection of a Homeopathic Medical College, Hospital or other Institution, where education in Homeopathy is given, vests in CCH, which is evident from the provisions of Sections 17 and 18 of the HCC Act. Such power does not vest in the central Government/Ministry of AYUSH. The surprise inspection conducted by the Central Government, of the colleges in question, are held to be beyond jurisdiction. The impugned orders, dated 08.11.2016 and 22.11.2016, which are based on such inspection reports, are not legally sustainable. The acts of the Ministry of AYUSH, in holding surprise inspection of the colleges and preparing



reports and thereafter passing the impugned orders based on such inspection report has no legal basis. The impugned orders, dated 08.11.2016 and 22.11.2016, are accordingly set aside. The Ministry of AYUSH is directed to pass appropriate orders in accordance with law afresh after considering the inspection reports, which have been submitted by the CCH.

60. It will be open to the respondents to get the colleges inspected afresh before final decision is taken on the question whether the colleges fulfill minimum standard of requirements or not. In any event, the decision must be taken within a period of one month from the date of receipt/production of a copy of this judgment.

61. These applications are allowed.

62. The parties shall bear their own costs.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	02.07.2017
Transmission Date	N.A.

