

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 5 of 2008

* Ratnadeep Medical Foundation
 And Research Centre, Ratnapur,
 Taluka Jamkhed,
 District Ahmednagar
 Through its President
 Dr. Bhaskar Rambhau More. **.. Petitioner.**

Versus

- 1) State of Maharashtra,
 Through Secretary,
 Medical Education & Drugs
 Department, Mantralaya,
 Mumbai - 32.
- 2) The Maharashtra University of
 Health Sciences, Nashik,
 District Nashik,
 Through its Registrar.
- 3) Central Council of Homeopathy
 Jawaharlal Nehru Bharitya
 Chikitsa and Homeopathy
 Anusandhan Bhavan, Janakpuri,
 New Delhi.
 Through its Secretary.
- 4) Ministry of Health & Family
 Welfare, Department of ISM & H
 (Education Policy Section)
 Indian Red Cross Society Building,
 Red Cross Road, New Delhi 110 001
 Through its Secretary. **.. Respondents.**

Shri. N.B. Suryawanshi, Advocate, for petitioner.

Shri. Y.G. Gujarathi, Assistant Government Pleader, for respondent No.1.

Shri. K.D. Bade-Patil, Advocate, for respondent No.2.

**Coram: R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

**Judgment reserved on : 23 AUGUST 2017
Judgment pronounced on : 29 AUGUST 2017**

JUDGMENT (Per R.D. Dhanuka, J.)

1) By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari for quashing and setting aside the impugned communications dated 1 August 2002, dated 24 September 2002, dated 26 December 2002 and 19 May 2003 thereby rejecting the proposal of the petitioner for opening a new Homeopathic College in the academic year 2001-2002. He also seeks a declaration that since the petitioner had initiated proposal for opening a new Homeopathy college in the academic year 2001-2002, the petitioner was not liable to pay difference of affiliation fees demanded by the respondent No.2. The petitioner

also seeks appropriate writ to direct respondent No.2 to grant provisional affiliation to the petitioner subject to the compliance, if any. Some of the relevant facts for the purpose of deciding this writ petition are as under :-

2) It is the case of the petitioner that the petitioner Trust is formed with a view to impart medical facilities and medical education in and around Jamkhed area. The area of operation of the petitioner Trust is the entire Maharashtra. The petitioner, however, has concentrated its activities in Jamkhed Taluka.

3) On 29 November 2000 the petitioner submitted a proposal to the respondent No.2 i.e. Maharashtra University of Health Sciences to open a new college of Homeopath course i.e. Proposed Jamkhed Homeopathy College and Hospital” and paid the requisite affiliation fees of Rs.50,000/-.

4) The respondent No.2 however by communication dated 29 December 2000 forwarded to the respondent No.1 recommended to the respondent No.1 that the

permission to the college of the petitioner should not be granted. In the said communication, respondent No.2 had relied upon Section 64(3) of the Maharashtra University of Health Sciences Act, 1998 (for short, "the said Act").

5) It is the case of the petitioner that respondent No.1 granted no objection certificate dated 8th June, 2001 in favour of the petitioner for starting Homeopathic Medical College under section 65(5) of the said Act. The respondent No.2 constituted a three-member committee for conducting the inspection and to visit the petitioner Trust to verify the feasibility of giving provisional affiliation to the petitioner to start a Homeopathic Medical College. On 7 July 2001, the said local inquiry committee visited the petitioner and submitted a detail report to the respondent No.2. In the said report submitted by the Local Inquiry Committee various shortcomings were pointed out in the infrastructure and in respect of various other requirements not complied with by the petitioner.

6) Respondent No.2 vide its letter dated 1 August 2001 informed the petitioner that the Academic Council of

the respondent No.2 had resolved not to grant provisional affiliation to the petitioner to start the Homeopathic Medical College in view of the shortcomings pointed out in the report of the committee. It is the case of the petitioner that the petitioner thereafter complied with the shortcomings pointed out by the said local inquiry committee as far as possible and submitted a compliance report to the respondent No.2. The petitioner once again requested the respondent No.2 to grant provisional affiliation.

7) Respondent No.2 vide letter dated 26 July 2002 asked the petitioner to submit affidavits of teachers in the prescribed format of the University. The petitioner submitted affidavits of 25 teachers and again requested the respondent No.2 to grant provisional affiliation to the petitioner to start Homeopathy college. By a communication dated 24 September 2002, the respondent No.2 once again refused to issue provisional affiliation to the petitioner.

8) On 8 October 2002, the respondent No.1 granted Essentiality Certificate and No Objection Certificate to the petitioner to start Homeopathy College at Jamkhed. It was mentioned in the said letter that out of 42 Homeopathic Colleges and 2885 seats in the State of Maharashtra, only 8 Homeopathic Colleges having only 650 seats were in Nasik Division and thus it was desirable to grant permission to a new Homeopathic College with annual intake capacity of 100 students at Jamkhed of the petitioner Trust. In the said Essentiality Certificate it was mentioned that the petitioner would fulfill the norms and conditions laid down by the respondent Nos.2 and 3.

9) The respondent No.2 vide communication dated 26 December 2002 once again refused to grant provisional affiliation to the petitioner to start the Homeopathic College on the ground that the college proposed by the petitioner Trust did not fall within the perspective plan prepared by the respondent No.2.

10) Vide letter dated 8 May 2003 the petitioner once again requested the respondent No.2 to grant

provisional affiliation to start the said Homeopathic College. Respondent No.2 however vide letter dated 19 May 2003 reiterated that the Academic Council of the respondent No.2 had already taken decision on 30 August 2002 not to grant affiliation to the petitioner and that the said decision was confirmed in the meeting of the Academic Council of respondent No.2 dated 5 December 2002.

11) The petitioner forwarded a letter on 7 April 2003 to the respondent No.3 in respect of opening of a new Homeopathic College. Respondent No.4 vide letter dated 18 June 2003 informed the petitioner that the power to grant permission to start a new College of Homeopathic was with the Government of India and the rules and regulations were in the process of finalization. The petitioner was advised to file fresh application in the prescribed format after amendment of the Homeopathy Central Council (Amendment) Act, 1973 was notified.

12) The respondent No.1 addressed a letter dated 14 July 2003 to the respondent No.2 stating that as per

section 65 of the said Act, respondent No.2 to take appropriate steps for granting provisional affiliation to start Homeopathic College of the petitioner. The petitioner once again requested the respondent No.2 to grant provisional affiliation to the Homeopathy College of the petitioner. Respondent No.2 vide letter dated 25 August 2003 once again informed the petitioner that the earlier decision dated 26 December 2002 was final.

13) The respondent No.4 vide letter dated 21 November 2003 called upon the petitioner to submit the Essentiality Certificate and consent of affiliation and informed that only after receipt of those two documents, the proposal of the petitioner would be scrutinized. It is the case of the petitioner that since respondent No.2 had not granted provisional affiliation, the proposal of the petitioner could not be said to be a complete proposal.

14) Vide letter dated 6 February 2004 respondent No.4 called upon the petitioner to furnish requisite information and to submit documents in accordance with the requirements mentioned therein and was asked to

submit a Demand Draft of Rs.3,50,000/- in favour of respondent No.3 at the earliest. It is the case of the petitioner that in absence of the provisional affiliation of respondent No.2, the proposal of the petitioner being incomplete and thus the petitioner could not submit the Demand Draft as requisitioned by respondent No.4.

15) Respondent No.2 vide letter dated 29 August 2005 informed the petitioner that the proposals for provisional affiliation to which no objection is granted and essentiality certificate is issued by the State Government are to be considered and if the petitioner was interested, it should intimate the respondent No.2 till 15 September 2005 to enable it to constitute a local inquiry committee. The petitioner was made clear that before formation of the committee, it would be obligatory on the part of the petitioner to deposit the difference of the revised affiliation fees of respondent No.2. The revised affiliation fees was fixed at Rs.2.50 lakh.

16) The petitioner vide letter dated 8 September 2005 informed the respondent No.2 that the petitioner

had been granted No Objection Certificate and Essentiality Certificate for 100 students capacity and that the petitioner had complied with all the deficiencies pointed out by the local inquiry committee and that the petitioner being interested in the provisional affiliation and thus the local inquiry committee be formed. The petitioner also showed his willingness to pay the difference of the revised affiliation fees.

17) By a letter dated 14 September 2005, the respondent No.2 asked the petitioner to deposit an amount of Rs. two lakh. It is the case of the petitioner that since the proposal of the petitioner for provisional affiliation was already instituted earlier and the petitioner was in the process of removing deficiencies for compliance of the shortcomings pointed out by the respondent No.2, the petitioner was under a bona fide impression that the process of the compliance was going on and did not pay the said amount as demanded by the respondent No.2.

18) Vide letter dated 24 November 2005 the respondent No.1 called upon the petitioner to deposit the amount towards inspection charges. The petitioner, however, did not deposit the said amount on the ground that no provisional affiliation was granted to the petitioner to start Homeopathic College.

19) By a letter dated 21 February 2006, respondent No.2 called upon the petitioner that since the petitioner has not deposited difference of the revised affiliation fees, the petitioner should take refund of 50% of the affiliation fees deposited by the petitioner and to comply with the necessary formalities.

20) The petitioner made a representation on 24 October 2006 to the respondent No.2 contending that the petitioner had not deposited the difference of the affiliation fees as demanded by the respondent no.2 since the local inspection committee had already inspected the petitioner college and since the petitioner had also complied with the shortcomings pointed out by the said committee.

21) On 24 November 2006, the respondent No.2 addressed a letter to the petitioner and informed that from the year 2007-2008, the fees for affiliation was revised and for the Homeopathy Branch, the affiliation fees was fixed at Rs.4 lakh. The petitioner was informed that if the petitioner deposits amount of Rs.3.50 lakh by a Demand Draft, respondent No.2 will do the needful about the affiliation to the petitioner. The petitioner was called upon to deposit the difference of affiliation fees of Rs.3.50 lakh within 15 days from the date of the communication of the said letter. The petitioner did not deposit the difference of the affiliation fees with the respondent No.2 and filed this petition for various reliefs.

22) Mr. N.B. Suryawnashi, learned counsel for the petitioner submits that respondent No.1 had already issued Essentiality Certificate and had also recommended to the respondent No.2 to grant provisional affiliation to the petitioner. He submits that the petitioner had already removed all the deficiencies as pointed out by the local inspection committee and had submitted a compliance report. It is submitted by the learned counsel that

respondent No.2 had instructed the petitioner to file affidavits of various teachers which requisition was also complied with by the petitioner by filing affidavits of 25 teachers. He submits that though several representations were made by the petitioner from time to time and the petitioner had removed all the deficiencies as pointed out by the local inspection committee, the respondent No.2 passed very cryptic orders and refused to issue the provisional affiliation to the petitioner.

23) It is submitted that though vide a letter dated 8 September 2005, the petitioner had shown willingness to pay the difference of the affiliation fees, since the petitioner had already paid part of the affiliation fees pursuant to the proposal made by the petitioner in the year 2000, and had already removed the deficiencies, the petitioner was not liable to pay differential amount of affiliation fees, the petitioner did not pay the differential amount of affiliation fees to the respondent No.2.

24) It is lastly submitted by the learned counsel for the petitioner that, the respondent No.2 thus be

directed to grant provisional affiliation to the petitioner on the basis of the compliance of the requisitions made by the respondent No.2 already made by the petitioner without payment of any additional affiliation fees and the impugned orders passed by the respondent No.2 refusing the grant provisional affiliation to the petitioner be set aside.

25) Mr. Bade, learned counsel for the respondent No.2, on the other hand, invited our attention to the various correspondence annexed to the petition by the petitioner and would submit that the proposal made by the petitioner for starting Homeopathic College was processed by respondent No.2. A local inspection committee is required to be appointed to visit the petitioner and to ascertain whether the petitioner is in a position to start a new college and has complied with the conditions of eligibility. He submits that the local inspection committee vide report dated 7 November 2001 had pointed out several deficiencies in the said proposal submitted by the petitioner for starting Homeopathic College. He submits that such deficiencies were

communicated to the petitioner vide letter dated 1 August 2001.

26) It is submitted that in the said report there were several deficiencies in the said proposal made by the petitioner and accordingly the petitioner was not at all eligible to be granted provisional affiliation. He invited our attention to the letter dated 7 November 2001 from the Dean, Faculty of Homeopathy of the respondent No.2 and would submit that though large number of deficiencies were pointed to the petitioner, most of the deficiencies were not rectified by the petitioner. The petitioner did not have hostel facility for boys and girls near the college. The petitioner did not have its own existing hospital or land and building for the hospital. There was no registered contract for any temporary hospital arrangement submitted by the petitioner. There were several deficiencies also in respect of the staff required for starting Homeopathic College. The petitioner had also not complied with the requirements regarding library and staff.

27) It is submitted by the learned counsel for the respondent No.2 that, since the petitioner had not removed the deficiencies pointed out by the respondent No.2, the respondent No.2 had repeatedly rejected the proposal of the petitioner for starting Homeopathic College.

28) It is submitted by the learned counsel that on every application made by the petitioner for provisional affiliation, the respondent No.2 was required to appoint a local inspection committee to inspect whether the requisitions / deficiencies were complied with by the petitioner or not. He submits that though the petitioner vide letter dated 8 September 2005 had shown its willingness to pay the differential amount, the petitioner refused to pay the amount. The affiliation fees was revised from time to time and was required to be paid by the petitioner. He submits that since the petitioner did not pay differential amount, the respondent No.2 also called upon the petitioner to take refund of 50% of the amount deposited by the petitioner. The petitioner did not comply with the said requisition also.

29) It is lastly submitted by the learned counsel for the respondent No.2 that on the basis of the alleged compliance of the requisition made by the respondent No.2 by the petitioner in the year 2001-2002, as on today this Court cannot direct respondent No.2 to grant provisional affiliation to the petitioner.

30) A perusal of the record indicates that there were large number of deficiencies which were major in nature pointed out by the local inspection committee in the proposal submitted by the petitioner. The learned counsel for the petitioner could not point out from the record of these proceedings that all the deficiencies pointed out by the local inspection committee were removed by the petitioner. It is not the case of the petitioner that the petitioner owns existing hospital land and building for hospital. It is also not the case of the petitioner that the petitioner had produced registered contract for any temporary hospital arrangement. The record of I.P.D. and O.P.D. was also not produced.

31) It is not disputed that though respondent No.1 had issued Essentiality Certificate to the petitioner the same was subject to compliance of other conditions as may be prescribed by respondent No.2. It was the respondent No.2 who was to verify the compliance of the requisitions and conditions of eligibility, whether made by the petitioner or not. A perusal of the record indicates that the petitioner had not removed all the deficiencies pointed out to the respondent No.1. Learned counsel for the petitioner across Bar could not point out the compliance of the deficiencies pointed out by the local inspection report before this Court.

32) Upon raising a query by this court as to whether the petitioner seeks to make fresh application for provisional affiliation at this stage, the learned counsel for the petitioner could not make any statement before this Court.

33) A perusal of the record further indicates that the petitioner has not paid revised affiliation fees though was required to pay from time to time for processing its

application for provisional affiliation though was called upon by the respondent No.2. Though by letter dated 8 September 2005 addressed by the petitioner, the petitioner had shown willingness to pay the differential amount of the affiliation fees, the petitioner admittedly did not pay the said differential amount and subsequently refused to pay the said amount. The format of the application for permission to the Government to establish a new Homeopathic College annexed to the petition and the check list issued by the Maharashtra University of Health Sciences Nashik clearly indicate that the petitioner was required to pay the revised affiliation fees on making proposal for starting Homeopathic College. The petitioner, however, did not pay the differential amount and thus the respondent No.2 could not appoint local inspection committee subsequently.

34) In these circumstances, we cannot find any infirmity in the decisions taken by the respondent No.2 thereby refusing to grant provisional affiliation to the petitioner on various grounds referred to aforesaid. This Court cannot direct respondent No.2 to ignore the serious

deficiencies pointed out by the local inspection committee and to grant to the petitioner provisional affiliation to start Homeopathic College. In our view, the petition is thus devoid of merit. We, therefore, pass following order.

35) The Writ Petition No.5/2008 is dismissed. Rule is discharged. There shall be no order as to cost.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(R.D. DHANUKA, J.)

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