

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.10.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.Nos.1336, 1337 and 1328 of 2017
and
C.M.P.Nos.18499, 18500, 18501 and
18449 of 2017

W.A.Nos.1336 & 1337 of 2017

Union of India,
rep. by Under Secretary to the
Government of India,
Ministry of Ayush, Ayush Bhawan,
"B" Block, GPO Complex, INA,
New Delhi 110 023. Appellant/Ist Respondent

Versus

1. Martin (Nethra) Homoeopathy
College & Hospital,
rep. by its Principal,
D.P.F.Mill Premises,
G.N.Mills Post Office,
Mettupalayam Road,
Coimbatore 641 023. Ist Respondent/Petitioner
2. The Registrar,
Central Council of Homoeopathy,
61-65, Institutional Area,
Opp. to "D" Block, Janakpuri,
New Delhi 110 058.
3. The Government of Tamilnadu,
rep. by Secretary to Government,
Health & Family Welfare Department,
Fort St. George, Chennai 600 009.
4. The Registrar,
The Tamil Nadu Dr. M.G.R.Medical University,
No.69, Anna Salai, Guindy, Chennai 600 032.

2 to 4 Respondents/2 to 4
Respondents

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 10.10.2017 passed in W.M.P.No.26770 and 26771 of 2017 in W.P.No.25308 of 2017 on the file of this court.

WP No.25308 of 2017:filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate Writ or order or direction in the nature of Writ calling for the records from the 1st respondent herein relating to his order dated 12.09.2017 passed in proceeding F.No. R-17014/162/ 2013-EP(H) and quash the same in so far as it relates to denied permission for taking admission to 1st BHMS Course with 50 seats for the academic year 2017-18 stated in para 8 of the above said order and further consequently direct the respondents to grant permission to the petitioner college to admit the students in the first year B.H.M.S. course for the Academic year 2017-18

WMP.No.26770 of 2017:pleased to stay all further proceedings of the order dated 12/09/2017 passed in proceeding F.NO.R.17014/162/2013-EP(H) by Ist respondent here in so far as it relates to denied permission for taking admission to Ist BHMS Course with 50 seats for academic year 2017-2018 stated in para 8 of the said order dated 12.09.2017.

WMP.No.26771 of 2017:pleased to grant an order of interim direction, directing the respondent 3 & 4 to include the name of the petitioner college for the counseling session to be held to admit the students to the course of BHMS for the academic year 2017-2018 in the Government Quota.

W.A.No.1328 of 2017

Union of India,
rep. by Under Secretary
Department of Health and
Family Welfare,
Department of Ayurveda, Yoga &
Naturopathy,
Unani, Siddha & Homoeopathy (AYUSH),
IRCS Building,
1-Red Cross Road,
New Delhi 110 001.

Appellant/Ist Respondent

Versus

1. The Principal
R.V.S. Homeopathic Medical
College,
242-B, Trichy Road, Sular,
Coimbatore 641 402.
Coimbatore District. Ist respondent/Petitioner
2. Central Council of Homeopathy,
rep. by its Secretary,
No.61-65, Institutional Area,
Opp. to "D" Block, Janakpuri,
New Delhi 110 058.
3. The Commissioner of Indian Medicine
and Homeopathy,
Arumbakkam, Chennai 600 106.
4. The Tamil Nadu Dr. M.G.R.Medical University,
rep. by its Registrar,
69/40, Anna Salai, Guindy, Chennai 600 032.
2 to 4 Respondents /2-4
Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 10.10.2017 passed in W.M.P.No.26804 of 2017 in W.P.No.25363 of 2017 on the file of this court.

WP.No.25363 of 2017:filed under Article 226 of the Constitution of India to issue a Writ order or direction in the nature of a writ of certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in F.No.R.17014/ 161/2013-EP (H) dated 12.09.2017 denying permission to admit students to the BHMS Course in the petitioners RVS Homeopathic Medical College at Sular Coimbatore in the academic year 2017-18 quash the same and further direct the respondents to permit the petitioners college to admit students for the academic year 2017-18

WMP.No.26804/17:please to grant and interim stay of the impugned order by the Ist respondent in F.No.R.17014/161/2013-EP(H) dated 12.09.2017 so as to enable the petitions college to admit the students for BHMS-Course for the academic year 2017-2018

For appellant in all the three
appeals

: Mr.G.Rajagopalan,
Additional Solicitor General of India
for Mr.N.Rajan, (SCGSC) and
Mr.Rabu Manohar,
Senior Central Govt. Panel Counsel

For R1 in WA 1336 & 1337
of 2017

: Mr.R.Murali

For R1 in WA 1328 of 2017: Mr.P.Godson Swaminathan for
Mr.Isaac Mohanlal

For R3 in all the three appeals: Mr.R.Prathapkumar, AGP

COMMON JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned Additional Solicitor General appearing for
the appellant on the issue.

2. The matters relate to admission of students to Homeopathy
Courses for the academic year 2017-18. Challenging the order of
stay granted by the learned Single Judge against the impugned
order which denied permission to the Colleges concerned for
taking admission of the students for the academic year 2017-18,
the present writ appeals have been filed.

3. Para 5 of the order passed by the learned Single Judge
reads thus:

"When the counselling is to be conducted soon,
all of a sudden, without even providing the so
called inspection report, the petitioner has
been directed not to admit the students.
Moreover, the short comings could not be
invented this year alone, as the institution
has been functioning for the past 17 years.
If the petitioner is not included in the
counselling, opportunity of getting
meritorious students to the institution would
be lost. That apart, 65% of the seats are
only going to State Government and if the
institution is not included, the students
under the Government quota would be deprived
of getting admission in the Homeopathy
College. Therefore, the impugned order is
liable to be stayed and accordingly, it is
stayed. There shall be a direction to the
respondents 3 and 4 to include the petitioner
college for counselling which is going to be
started from tomorrow (11.10.2017). Post the

matter after four weeks."

4. The stand of the learned Additional Solicitor General is that without there being compliance of deficiencies pointed out by the Central Council of Homeopathy, the learned Single Judge has proceeded to grant stay and directed for inclusion of the colleges concerned for counselling with regard to the admission for the ensuing academic year and therefore, it is ultra vires and illegal.

5. On perusal of the order passed by the learned Single Judge, it appears that having observed that prima facie there cannot be any lack of infrasture in the institution and had there been any lack of infrastructure in the in the previous years, then approval would not have been granted, proceeded to pass the interim order. The learned Single Judge has also observed that the impugned order came to be passed without even providing the inspection report to the Colleges concerned, based on which the Colleges were denied permission to take admission of the students. It further appears that the learned Single Judge has considered the fact that the dispute which has arisen based on the report of the Committee should not put the students at stake. Further, in para 3 of the order, the learned Single Judge has observed that only on satisfaction of the availability of the infrastructure, based on the report, the Central Government has been granting approval to the Colleges for the past 17 years and also observed that prima facie it would show that there is no lack of infrastructure in the institution.

6. It is the submission of the learned counsel appearing for the respondent Colleges that when the inspection committee visited the colleges 14/15.7.2014, hearing notice was issued only on 21.8.2017 that too without any copy of the inspection report prematurely, they proceeded to deny permission to the Colleges to admit the students for the academic year. Accordingly, he sought to contend that such a decision taken without giving opportunity of hearing to the colleges concerned would not only jeopardize the interest of the colleges in conducting the courses, but, also jeopardize the interest of the meritorious students getting admitted in the colleges. He would further contend that certain of the deficiencies pointed out viz., there is no infrastructure available are only minor in nature which are being capable of being explained or being complied with had they been given sufficient opportunity by given reasonable time. It is further contended on behalf of the colleges concerned that certain defects have already been complied with as found in page 4 of the typed set of papers.

7. In view of the observation made by the learned Single Judge and the submissions of the learned counsel appearing for the parties and also the fact that the institution is running for more than 17 years, we are of the view that the grievance expressed by the learned Additional Solicitor General has to be placed before the learned Single Judge once again and the learned Single Judge can revisit into the decision taken at the earliest directing the Medical University or the Central Council of Homoeopathy to afford an opportunity, having regard to the fact that nature of deficiencies pointed out appear to be not so vital and not coming in the way of the admission of the students for the academic year especially, when the last date of admission for the academic year happens to be 31st October 2017. The order passed by the learned Single Judge is only an interim order. Such being the case, we feel it is proper that the matter has to be re-considered by the learned Single Judge, after affording an opportunity of hearing to all the parties concerned to arrive at a decision so that the interest of the institutions and that of the ensuing students can be protected without putting them into jeopardy. We also direct the authorities concerned to appear before the learned Single Judge on 31st October 2017 and raise their contentions. Accordingly, these writ appeals are disposed of. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Under Secretary
Union of India,
Government of India,
Ministry of Ayush, Ayush Bhawan,
"B" Block, GPO Complex, INA,
New Delhi 110 023.

2. The Registrar,
Central Council of Homoeopathy,
61-65, Institutional Area,
Opp. to "D" Block, Janakpuri,
New Delhi 110 058.
 3. The Secretary
The Government of Tamilnadu,
Health & Family Welfare Department,
Fort St. George, Chennai 600 009.
 4. The Registrar,
The Tamil Nadu Dr. M.G.R.Medical University,
No.69, Anna Salai, Guindy, Chennai 600 032.
 5. The Commissioner of Indian Medicine
and Homeopathy,
Arumbakkam, Chennai 600 106.
 6. The Secretary Department of Health and
Family Welfare, Department of Ayurveda
Yoga & Naturopathy Unani Siddhas
Homoeopathy (Ayush) IRCS Building, 1-Red cross Road
New Delhi 110 001
 - 7.The Secretary
The Central Council of Homeopathy
No.61-65 Institutional area
Opp-to D.lock Janakpuri
New Delhi 1100 058
- +1 cc to Mr.B.Rabu manohar Advocate sr 76315
+1 cc ot Mr.Isacc chambers sr 76332
+1 cc to Mr.N.Rajan Sr 76312
+2 ccs to Mr.V.Venkataswasmy Advocate sr 76601

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