

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.A.No.660 of 2017
and C.M.P.No.9232 of 2017

The Union of India
Rep. by its Secretary,
Department of Health and Family Welfare,
Department of Ayurveda, Yoga and
Naturopathy, Unani, Siddha and Homoeopathy
(AYUSH), IRCS Building,
1st Red Cross Road,
New Delhi-110 023. ... Appellant

vs.

1. Hahnemann Homeopathic Medical Trust
Rep. by its Managing Trustee,
Mr.A.Sivasubramani, B.E.,
6/177-A, Mount Poonamallee Road,
Karrambakkam, Porur,
Chennai-600 116.
2. The Central Council of Homoeopathy
Rep. by its Secretary,
Jawaharlal Nehru Bharatiya Chikitsa Avum,
Homeopathy Anusandhan Bhavan,
No.61-65, Institutional Area,
Opp. "D" Block, Janakpuri,
New Delhi-110 058.
3. The Commissioner,
Director of Indian Medicine and Homeopathy,
Arumbakkam, Chennai-600 106.
4. The Tamil Nadu Dr.M.G.R. Medical University
rep. by its Registrar,
No.69, Anna Salai, Guindy,
Chennai-600 032. ... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters
Patent praying to set aside the order dated 30.04.2014 passed
in W.P.No.2749 of 2014.

Prayer in W.P. 2749 of 2014:

Writ Petition filed under Article 226 of the constitution

of India praying for a Writ of Certiorari to call for the impugned communication of the 1st respondent in F.No.R-17014/159/2013-EP (H) dated 7.1.2014 quash the same and direct the 4th respondent to forthwith implement the order of the 2nd respondent Central Council of Homeopathy increasing the intake of students from 50 to 100 with effect from the Academic Year 2002-2003 for BHMS Degree Course.

For Appellant : Mr.N.Rajan

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
for R1

JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. This is an appeal preferred, in effect, by the Central Government against the order dated 30.04.2014, passed by the learned Single Judge.

2. The writ petition was preferred by respondent No.1 herein, i.e., Hahnemann Homeopathic Medical Trust (in short, "the trust").

2.1. To be noted, respondent No.2 is the Central Council of Homoeopathy, (in short, "CCH").

2.2. By virtue of the impugned judgement, the prayers made in the writ petition were, partially allowed.

3. The learned Single Judge, vide the impugned judgement, quashed the communication dated 07.01.2014, issued by the Central Government. The learned Single Judge, however, did not grant consequential relief to the Trust, which at that point in time, required permission to admit students for Academic Year 2013-2014.

3.1. The learned Single Judge, though, in the operative part of the impugned judgement, observed that the Trust could utilise the necessary permission granted to it by CCH for admitting 100 students for the following Academic Year, i.e., 2014-2015.

3.2. This direction had to be passed, as at the point in time, when, the impugned judgement was delivered the cut-off date for Academic Year 2013-2014 had already been crossed.

4. The Central Government, being aggrieved by the impugned judgement, has preferred the instant intra-Court appeal.

5. The main ground of challenge raised on behalf of the Central Government, is that, since, the provisions of Homoeopathy Central Council (HCC) (Amendment) Act, 2002 (in short, 2002 Amendment Act, had kicked-in, the Trust cannot be permitted to reap the benefits of increased intake, based on the approval granted by CCH in 2002, in view of the provisions

of Section 12 A(ii) of the 2002 Amendment Act. In other words, the argument advanced is that the increased intake can only operate, upon approval being granted in that behalf by the Central Government.

5.1. It is important to note that the 2002 Amendment Act, was brought into force with effect from 28.01.2003. Admittedly, prior to that, the Trust had applied for increasing the intake of students from 50 to 100, which was granted by CCH, via the communication dated 03.10.2002. The approval accorded by CCH specifically stated that the Trust could increase its admission capacity from 50 to 100 in 1st B.H.M.S. degree course in Venkateshwara Medical College and Hospital. To be noted Venkateshwara Medical College and Hospital (VMCH), we are told is run by the Trust. This aspect is, clearly, evident upon a bare perusal of CCH's communication dated 03.10.2002.

5.2. As a matter of fact, after the 2002 Amendment Act, got kicked-in, because of, perhaps, confusion arising as to whether approvals already granted by CCH would subsist, two clarificatory communications were issued by the Central Government, which are dated 27.12.2004 and 12.07.2005. The operative part of the letter dated 27.12.2004, being instructive, is extracted hereafter :

".... You are, therefore, requested to follow the provisions of Law for seeking recognition including extension of existing colleges from this Department and inform to all concerned for similar action. It is further clarified that the colleges granted permission by CCH on onwards basis prior to amendment of HCC (Amendment) 2002 do not need further permission from Government of India at this stage."

(emphasis is ours)

5.3. As indicated above, this position was re-iterated by the Central Government in its communication dated 12.07.2005.

5.4. The record indicates that even though, the Trust had obtained approval of the CCH for an increased intake, as far back in 2002, it did not avail of that benefit for nearly ten (10) years. The first step, in that behalf, was taken by the Trust, via VMHC, when, vide the communication dated 11.09.2013, it approached the Tamil Nadu Dr.M.G.R. Medical University (in short, "the University") to permit it to admit students as per the CCH's approval of 03.10.2002.

5.5. Evidently, the Central Government, vide communication dated 07.01.2014, referred the Trust via VHMC to the provisions of Section 12A of the HCC Act, 1973. In effect, the Central Government indicated to the Trust/VHMC that increase in admission capacity was covered by the 2002 Amendment Act, which, as indicated above by us, was given effect to from 28.01.2003.

5.6. The Trust, as alluded to above, being aggrieved, approached this Court, by way of a writ petition under Article

226 of the Constitution. The petition, as indicated at the very outset, laid challenge to the Central Government's communication dated 07.01.2014.

5.7. The learned Single Judge, while, allowing the writ petition, relied upon two judgements of this Court rendered in the following matters : White Memorial Educational Society V. The Union of India, 2013 (5) CTC 689, and the judgement dated 23.07.2013, passed in W.P.No.12662 of 2013, titled : Lord Balaji Educational and Charitable Trust Vs. The Government of India, rep. by its Secretary and others.

5.8. As is evident, upon perusal of paragraph 6 of the impugned judgement, the learned Single Judge, relying on the ratio of the aforementioned judgements, held that the approvals granted by CCH, prior to the 2002 Amendment Act coming into force were valid.

6. We may also indicate that this very issue, i.e., the issue as to whether approvals granted by CCH prior to the passing of the 2002 Amendment Act, were valid, came up for consideration before a Division Bench of the Madurai Bench of this Court in W.A.(MD)No.1282 of 2016, titled : The Union of India V. White Memorial Educational Society. The Division Bench, via its judgement dated 18.04.2017, dismissed the appeal and confirmed the order dated 19.09.2013, passed in W.P.(MD)No.14760 of 2012 [2013 (5) CTC 689], which took the view, that approvals granted by CCH prior to the 2002 Amendment Act coming into force was valid.

6.1. Therefore, in so far as we are concerned, a coordinate Bench of this Court has taken the view that the approvals granted by CCH prior to the 2002 Amendment Act, would be valid. The said view is binding on this Bench, being a coordinate Bench.

7. Mr.Rajan, who appears for the appellant, however, assails the order of the learned Single Judge on the ground that no approval can be granted, unless the requisite infrastructure is in place. As a matter of fact, in support of this submission, learned counsel relies upon the observations made by the Division Bench in White Memorial Educational Society.

7.1. Mr.Rajan submits that the Division Bench has clarified in paragraph 5 of the said judgement that it would always be open to the competent authority to cause inspection of infrastructural facilities and other matters, which require adherence by the concerned institution before admitting students, as per the norm prescribed for increased intake.

7.2. Mr.Rajan, therefore, submits that affiliation is not a matter of right, and that, in this behalf, the University has a vital role to play in the matter. In support of his submission, Mr.Rajan, has relied upon a Full Bench judgement of this Court rendered in : Rukmani College of Education V. State of Tamil Nadu, 2008 (1) CTC 545.

7.3. We may only note that during the course of arguments advanced by Mr.Rajan, we had put a specific query to him as to

whether in the counter affidavit filed before the learned Single Judge or in the grounds adverted to in the instant appeal, any averment had been made, with regard to the lack of infrastructure or deficiency qua the faculty available in VMHC. Pertinently, Mr.Rajan, could not draw our attention to any such averment.

7.4. Besides this, we may also note, which is a fact not disputed before us by Mr.Rajan, that for Academic Years 2014-2015, 2015-2016 and 2016-2017, the Trust/VMHC has admitted students as per the approval granted by CCH.

7.5. The University, all this while, (we are informed by the counsel for the Trust), has neither served upon the Trust/VMHC any communication pointing out any deficiency in infrastructure and/or faculty, nor has it come up to this Court by way of an appeal, to assail the order of the learned Single Judge. Therefore, in our view, the aforementioned arguments, if at all, can be advanced by the University and not by the Central Government.

7.6. As noted by us above, the Central Government itself clarified vide communication dated 27.12.2004 and 12.07.2005, that the 2002 Amendment Act would not apply, where CCH had granted permission prior to the said Amendment Act coming into force, and the approvals so granted operated not only for the academic year in issue, but also qua future academic years. There is no dispute before us that such permission was granted to the Trust/VMCH by the CCH vide communication dated 03.10.2002.

8. Thus, having regard to the consistent view taken in the past by both the learned Single Judges of this Court and the Division Bench, we see no reason to interfere with the impugned judgement. Moreover, we may point out that the Central Government, on its own showing, has not impugned the judgement of the coordinate Bench rendered in the matter of White Memorial Educational Society.

9. For the foregoing reasons, we decline to interfere with the impugned judgement. The appeal, being without merit, is dismissed. Resultantly, pending application shall stand closed. There shall, however, be no order as to costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Secretary, Union of India
Department of Health and Family Welfare,
Department of Ayurveda, Yoga and
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Chennai-600 032.

+1 CC to Mr. Rajan, Advocate sr 59013.

+1 Cc to Mr.D. Prabhu Mukunth, Advocate sr 59022.

W.A.No.660 of 2017

KJI (CO)
sp(06/09/2017)

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