

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

Writ Petition Nos.22069 & 24302 of 2017
and
W.M.P.Nos.23123 & 23124, 25711 & 25712 of 2017

Lord Balaji Educational and Charitable Trust
Rep. by its Chairman
Dr.S.Rajamanickom
Shri Shellapha Hospital Campus
231, Rajaram Nagar Near Gandhi Stadium,
Salem - 636 007
Established and Administering
(Dr.Hahnemann Homoeopathy Medical
College & Research Centre) ... Petitioner
(in both petitions)

vs.

1.The Government of India
Rep. by its Secretary
Ministry of Ayurveda, Yoga & Naturopathy
Unani, Siddha & Homoeopathy (AYUSH)
AYUSH Bhawan, 'B' Block, GPO Complex, INA
New Delhi - 110 023.

2.The Central Council of Homoeopathy (CCH)
Rep. by its Secretary
Jawaharlal Nehru Bhartiya Chikitsa Avum
Homoeopathy Anusandhan Bhawan
No.61-65, Institutional Area, Opp to "D"Block
Janakpuri, New Delhi - 110 058.

3.Directorate of Indian Medicines & Homoeopathy
Govt. of Tamil Nadu, Rep. by its Commissioner
Arumbakkam, Chennai - 600 106.

4.Tamil Nadu Dr.M.G.R. Medical University
Rep. by its Registrar
69, Anna Salai, Guindy
Chennai - 600 032.

.. Respondents
(in both petitions)

Prayer in W.P.No.22069 of 2017: Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned prospectus issued by the 3rd respondent published on 01.08.2017 for BHMS degree course for 2017-2018 session, quash the same in so far as the annual intake of the petitioner college (Dr.Hahneman Homoeopathy Medical College and Research Centre, Koneripatty Panchayat, Rasipuram Taluk, Namakkal District) mentioned as 50 seats in Serial No.14 in Appendix - III for the academic year 2017-2018 and to direct the 3rd respondent to issue a corrigendum mentioning that the annual intake of the petitioner college as 100 seats for the academic year 2017-2018 for BHMS degree course and pay damages.

Prayer in W.P.No.24302 of 2017: Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in F.No.R.17014/164/2013-EP(H) Part dated 31.08.2017 passed by the 1st respondent in so far as reducing the seats as 50 for the petitioner college (Dr.Hahnemann Homoeopathy Medical College and Research Centre, Koneripatty Panchayat, Rasipuram Taluk, Namakkal District) for admission to BHMS Degree course for the academic session 2017-2018 quash the same and direct the 1st respondent to issue a corrigendum mentioning the number of seats as 100 seats instead of 50 seats for admission to BHMS degree course for the academic session 2017-2018 to the petitioner college (Dr.Hahnemann Homoeopathy Medical College and Research Centre, Koneripatty Panchayat, Rasipuram Taluk, Namakkal District).

For Petitioner in :: Mr.G.Masilamani
both W.P's. Senior Council
for Mr.A.Thirumoorthy

For Respondents in :: Mr.Su.Srinivasan
both W.P's. Additional Solicitor General for R1
(in W.P.No.22069 of 2017)

Mr.B.Rabu Manohar, SCGSC for R1
(in W.P.No.24302 of 2017)

Mr.M.T.Arunan for R2

Mr.T.M.Pappiah,
Special Government Pleader for R3

Mr.P.R.Gopinathan
Standing counsel for R4

COMMON ORDER

In W.P.No.22069 of 2017, the petitioner trust has come before this Court challenging the prospectus issued by the Government of Tamil Nadu on 01.08.2017, in which intake of 50 students alone was shown for the academic year 2017-2018 to the petitioner college and in W.P.No.24302 of 2017, the petitioner challenging the order passed by the Central Government on 31.08.2017, by which the Central Government refused to increase the intake from 50 to 100.

2. The facts of the case is that the petitioner trust established the Homoeopathy hospital in the year 2000 with permission for intake of 50 students and thereafter, the intake was increased by the Central Council of Homoeopathy by an order dated 30.09.2002. While so, the power to grant permission/approval has been vested with the Central Government by virtue of an Amendment, introducing Section ***12(A)** of the Homoeopathy Central Council Act. A clarification has also been issued by the Ministry of Ayush on 23.12.2004 and 12.07.2005, making it clear that the permission already granted by the Central Council would continue till the same is withdrawn as per the provisions of the Act.

3. Though the permission to increase the seats from 50 to 100 was obtained as early as on 30.09.2002, the 4th respondent/University granted permission for intake of 100 students only for the academic year 2012-2013 by virtue of order dated 29.09.2012, based on the petitioner's application. However all of a sudden without notice, the 4th respondent/University reduced the intake of the petitioner college from 100 to 75 by an order dated 17.11.2012. Based on the Central Government's communication dated 14.12.2012, the University passed the order for reducing the intake from 75 to 50. The said order was challenged before this Court in W.P.No.12662 of 2013 and this Court allowed the writ petition on 23.07.2013 and directed the University to restore the intake of 100 students with effect from the academic year 2002-2003. Pursuant to the order passed by this Court, the 4th respondent/University granted permission to the petitioner college to increase the intake from 50 to 100 for the academic year 2013-2014 by order dated 11.11.2013. Thereafter several inspections were made by the 4th respondent/University and based on the order of inspection, the intake of 100 students was also continued for the academic year 2015-2016.

4. In the official website of Ministry of AYUSH, the intake of petitioner college was shown as 100 seats as on 13.10.2015, however, the 4th respondent/University, in the online

publication showed the sanctioned strength of petitioner college as 50 seats and the same was challenged in W.P.No.34078 of 2015, to rectify the sanctioned strength of the petitioner college as 100 instead of 50. The said writ petition was allowed on 27.10.2015, directing the 4th respondent to rectify the sanctioned strength as 100 instead of 50 and subsequently, it was also corrected.

5. On 26.10.2016, the Ministry of AYUSH passed an order, denying permission for admission of students by the petitioner college in undergraduate BHMS degree course for the academic year 2016-2017 and the same was challenged before this Court in W.P.No.38505 of 2016. The said writ petition is still pending after granting interim orders, permitting the petitioner to intake 50 students for the academic year 2016-2017.

6. When things stand so, the 4th respondent/University passed an order dated 23.05.2017, appointing inspection commission to inspect the petitioner college for grant of continuance of provisional affiliation for the academic year 2017-2018 for 50 seats. The said order was challenged before this Court in W.P.No.15460 of 2017, seeking inspection for 100 seats for the academic year 2017-2018. By an order dated 27.06.2017, this Court allowed the writ petition, directing the 4th respondent to correct the sanctioned strength as 100 instead of 50 seats. Inspite of the order passed by this Court on 27.06.2017, the Government of Tamil Nadu, issued prospectus on 01.08.2017, in which the intake of petitioner college has been shown as 50 instead of 100 seats for the academic year 2017-2018. The said prospectus is challenged before this Court in W.P.No.22069.

7. The first respondent - Ministry of AYUSH, by an order dated 31.08.2017, granted permission for continuation of admission with 50 seats for the academic year 2017-2018. The said order is being challenged before this Court in W.P.No.24302 of 2017.

8. Heard Mr.G.Masilamani, learned Senior Counsel appearing for the petitioner in both the writ petitions; Mr.Su.Srinivasan, learned Additional Solicitor General appearing for the first respondent in W.P.No.22069 of 2017; Mr.B.Rabu Manohar learned counsel for the first respondent in W.P.No.24302 of 2017; Mr.M.T.Arunan, learned counsel appearing for the second respondent in both the writ petitions; Mr.T.M.Pappiah, Special Government Pleader appearing for the third respondent in both the writ petitions; Mr.P.R.Gopinathan, learned counsel appearing for the fourth respondent in both writ petitions.

9. Though, various points were argued on both sides, the question is,

(i) As to whether the Amendment Act would apply prospectively or retrospectively?

(ii) When the Homoeopathy council had already granted permission in an onward basis, whether Central Government after the amendment, can refuse the approved intake which has been granted by the Homoeopathy Council, inspite of various orders passed by this Court?

10. It is seen, the petitioner established the institution as early as in the year 2000 and subsequently, obtained permission from the Central council of Homoeopathy to increase the intake from 50 to 100 seats on 30.09.2002. At that point of time, the Council alone has got the power to increase the seats. Thereafter on 28.01.2003, the power to grant permission was taken over by the Government as per Section ***12(A)** of the Amendment Act. Clarifications were also issued on 23.12.2004 and 12.07.2005 by the Ministry of AYUSH which would reveal that the Government had approved the orders already passed by the Central Council of Homoeopathy for establishment as well as for increasing the seats.

11. Though, the petitioner obtained permission to increase the intake from 50 to 100 as early as on 30.09.2002, the petitioner applied for affiliation to the 4th respondent/University only on 23.08.2012. After inspection the 4th respondent/University also granted permission for intake of 100. However, in the impugned order dated 17.11.2012, passed by the University, it was ordered to reduce the intake from 100 to 75 seats and that is sought to be taken advantage of by Mr.Su.Srinivasan, Additional Solicitor General, contending that the 4th respondent has got no power to increase the seat 50 to 100. However, on close scrutiny, the order passed by the 4th respondent in toto would reveal that the petitioner has applied only for affiliation, as evident from the subject mentioned in the order. Therefore, the contention raised by Mr.Su.Srinivasan, Additional Solicitor General is liable to be rejected.

12. Based on the order dated 14.12.2012, passed by the Ministry of AYUSH, the 4th respondent/University has attempted to reduce the intake from 100 to 75 seats and subsequently, based on the order dated 14.12.2012, the number of seats is sought to be reduced from 75 to 50. Resultantly, the 4th respondent/University also reduced the intake from 75 to 50 on 14.02.2013. That was set aside by this Court in W.P.No.12662 of 2013, by an order dated 23.07.2013. The said order dated 23.07.2013 has not been set aside, even though the challenge in the appeal is in SR stage.

13. Another attempt has been made to reduce the intake from 100 to 50 by the 4th respondent/University by online publication dated 05.10.2015, even though, the Central Council of Homoeopathy as well as the Central Government website shows the intake of petitioner college as 100. The order dated 27.10.2015 passed in W.P.34078 of 2015 took care of the said aspect and the 4th respondent was directed to rectify the sanctioned strength as 100 instead of 50. The said order was acted upon and the intake was allowed as 100 seats.

14. The Ministry of Ayush by an order 26.10.2016, denied permission for admission of students by the petitioner college for the academic year 2016-2017, based on the inspection report. The said order has been challenged in W.P.No.38505 of 2016 and the same is pending with an interim order to permit the petitioner to admit 50 students alone.

15. Thereafter on 23.05.2017, the 4th respondent/University appointed an inspection committee for grant of continuation of provisional affiliation for the academic year 2017-2018 for 50 seats and that was challenged and again it was made as 100 seats by an order dated 27.06.2017.

16. In view of the above proceedings, it is very clear that many attempts have been made by the central ***Government** to deny permission for intake of 100 seats and subsequent attempts were also made by the 4th respondent/University. All the orders passed by the Central ***Government** as well as the 4th respondent/University are set aside. It has been made clear in the writ appeal in W.A.No.660 of 2017, filed against the order passed in W.P.No.2749 of 2014, dated 30.04.2014 that the Amendment Act would apply prospectively and not retrospectively. Paragraph 7.6 of the Judgment is extracted as follows:-

" 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."

17. From the above Judgment of the Division Bench, it is made clear that the approval granted by the Central Council of Homoeopathy prior to the Amendment Act is not only for the academic year in issue, but also for the future academic years also. When the Division Bench makes it very clear that the permission to increase the 100 seats would continue even for future academic years, the Central Government or the University cannot reduce the same.

18. Moreover, the inspection report filed by the Central Council of Homoeopathy on 20.07.2017 for the academic year 2017-2018, for intake of 100 seats, does not speak about any shortcomings or lacunae. Therefore, the contention of Mr. Rabu Manohar, learned Central Government Standing Counsel that the petitioner college has not established 10 peripheral OPD's is also liable to be rejected. The report speaks about availability of 10 peripheral OPD's. The relevant portion of the report is extracted hereunder:-

In OPD:

* Total No. of Patient from 1st July 2016 to 30th June 2017 : 78195

* Average Patient per day in College Hospital : 215

* Ten Pheripheral OPD's functioning:

Anbu Illam, R. Pudhupatty, Pudhansandhai, Mullukurichi, Thitumalaipatti, Belukurichi, Namagiripet, Gurusamypalayam, Kalappanaikanpatty, Dasanaikenpatti

Average Patient per day in Peripheral OPD is 21.

19. In view of the above report, the contention made in the counter as well as made across the bar by Mr. Rabu Manohar that there is lack of 10 peripheral OPD's is liable to be rejected.

20. Furthermore, a perusal of the impugned order would reveal that no lacunae or shortcomings in the institution has been pointed out and it only grants permission/approval for 50 seats and no reasons have been given as to why 50 seats alone is given. The Central Council of Homoeopathy already granted permission for increase of 100 seats as early as in the year 2002, which was also upheld by this Court. In the absence of any correct acceptable reasons for denying the intake of 100 seats, the impugned order is liable to be quashed. The earlier orders passed by the Central Government was also quashed by this Court, making it very clear that once an approval has been granted for 100 seats, unless it is withdrawn or modified, the

same would hold good. There is no reason whisper in the impugned order as to why the decision has been taken to restrict the admission only to 50 seats. In view of the quashing of the impugned order, there shall be a direction to the first respondent to issue a corrigendum mentioning the seats as 100 instead of 50 for admission for BHMS degree course for the academic year 2017-2018.

21. As far as W.P.No.22069 of 2017 is concerned, the State Government/3rd respondent issued a prospectus showing the petitioner college with intake of 50 seats. At the risk of repetition, it has to be stated that the Central Council of Homoeopathy granted permission to increase the intake from 50 to 100 seats and subsequently, the 4th respondent/University after inspection also granted affiliation for 100 seats. Thereafter, attempts were made by the Central Government to reduce the intake to 50 and the same was negated by this Court in the various writ petitions mentioned above. Even the 4th respondent/University also tried to restrict the intake to 50 seats and also make publication online for 50 seats and the same was also challenged before this Court and it was also directed to be made as 100 instead of 50 seats. When such is the position, the State Government has got no power to restrict the intake to 50 seats and if at all, it is only the Central Council of Homoeopathy before amendment in the year 2002 and the Central Government after the Amendment under Section ***12(A)** of the Amendment Act, after the year 2002. Neither the State Government nor the 4th respondent/University has got any power to reduce it. If at all the 4th respondent has got power only to grant affiliation, as per the earlier order passed by the Central Council of Homoeopathy.

22. In view of the above stated position, there shall be a direction to the third respondent to make correction regarding the intake of seats as 100 instead of 50 in Serial No.14 in Appendix 3 for the academic year 2017-2018, as far as the petitioner is concerned.

23. In fine, the writ petition stands allowed and the order passed by the Central ***Government is** quashed and even the intake has been directed to be corrected as 100 instead of 50. As far as the petitioner college is concerned, the 3rd respondent/State Government and 4th respondent/University are directed to include the petitioner college for counselling with intake of 100 seats instead of 50 seats in the current counselling, as the counselling had already commenced.

Consequently, connected miscellaneous petitions are closed. No costs.

*** Corrected as per order
of this court dated 23/10/2017**

sd
Asst.Registrar(Cs III)
23/10/2017

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1.The Secretary
The Government of India
Ministry of Ayurveda, Yoga &
Naturopathy
Unani, Siddha & Homoeopathy (AYUSH)
AYUSH Bhawan, 'B' Block, GPO Complex, INA
New Delhi - 110 023.

To be
Substituted the
order already
despatched
on 20/10/2017

2.The Secretary
The Central Council of Homoeopathy (CCH)
Jawaharlal Nehru Bhartiya Chikitsa Avum
Homoeopathy Anusandhan Bhawan
No.61-65, Institutional Area, Opp to "D"Block
Janakpuri, New Delhi - 110 058.

3.The Commissioner
Directorate of Indian Medicines & Homoeopathy
Govt. of Tamil Nadu,
Arumbakkam, Chennai - 600 106.

4.The Registrar
Tamil Nadu Dr.M.G.R. Medical University
69, Anna Salai, Guindy
Chennai - 600 032.

+ 4 cc to Mr.A.Thirumoorthy, Advocate,SR.*74545,74546

+ 2 cc to M/s.P.R.Gopinathan, Advocate,SR.*74575

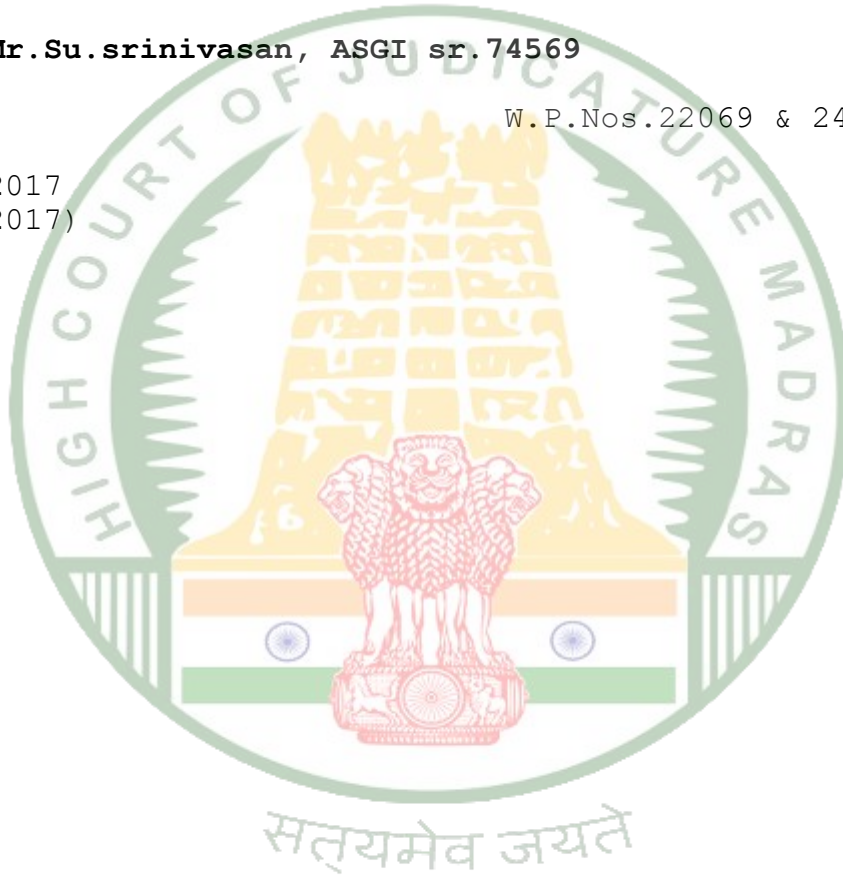
+ 1 cc to M/s.B.Rabumanohar, Advocate,SR.*74384

+ 2 cc to M/s.MT.Arunan, Advocate,SR.73650,73651

***+1cc to Mr.Su.srinivasan, ASGI sr.74569**

W.P.Nos.22069 & 24302 of 2017

NR 13/10/2017
NR(23/10/2017)



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