



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.04.2017

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND**

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.[MD].No.1282 of 2016

and

C.M.P.[MD].Nos.15164 to 15166 of 2016

and 8728 of 2016

and

W.P.(MD).No.21217 of 2016

The Union of India,
Represented by its Secretary,
Ministry of Health & Family Welfare Department
of Ayurveda, Yoga & Naturopathy,
Unani, Siddha & Homeopathy (AYUSH).
AYUSH Bhawan, GPO Complex, Block-B,
INA, New Delhi-110023.

: Appellant

Vs.

1.White Memorial Educational Society,
Represented by its Chairman,
Attor, Veeyanoor-629 177,
Kanyakumari District.

2.The Central Council of Homoeopathy(CCH)
Represented by its Secretary,
Jawaharlal Nehru Bharatiya chikitsa Avum
Homoeopathy Anusandhan Bhawan,
No.61-65, Institutional Area, Opp "D" Block,
Janakpuri, New Delhi-110058.

3.The Commissioner
Directorate of Indian Medicine & Homeopathy,
Arumbakkam, Chennai-600 106.

4.Tamil Nadu Dr.MGR Medical University,
Represented by its Registrar,
69, Anna salai, Guindy, Chennai-600 032. : Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent
against the order dated 19.09.2013 made in W.P.(MD).No.14760 of
2012, on the file of this Court.



Prayer in WP(MD). 14760/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records relating to the impugned proceedings issued by the 1st respondent Central Government in F.No.R 13014/01/2003-EP dated 23.09.2005 and the 4th Respondent TN Dr. MGR Medical University in Proc No. Affln.I(3) / 05759/2011 dated 22.10.2012 and quash the same and pass such further suitable orders.

For Appellant : Mr.N.Shanmugaselvam

For Respondent No.1: Mr.Issac Mohanlal
Senior Counsel
For Mr.S.Xavier Rajini

For Respondent No.2: Mr.T.Arunan
[Not Appeared]

For Respondent No.3: Mr.GR.Swaminathan
Assistant Solicitor General of India

For Respondent No.4: Mr.C.Karthic
Standing Counsel

W.P. [MD].No.21217 of 2016

The Chairman

White Memorial Homoeo Medical College,
Veeyanoor Post, Attoor-629 177
Kanyakumari District.

: Petitioner

Vs.

1.The Union of India

Represented by its Secretary
Ministry of Health and Family Welfare
Department of Ayurveda Yoga and Naturopathy,
Unani, Siddha and Homoeopathy (AYUSH)
IRCS Annexe Building, 1 - Red Cross Road,
New Delhi - 110 001.

2.The Central Council of Homoeopathy (CCH)

Represented by its Secretary
Jawahar Lal Nehru Bhartiya Chikitsa
Ayur Homoeopathy Anusandhan Bhavan,
No.61-65, Institutional Area,
Opp. 'D' Block, Jankpuri,
New Delhi - 110 058.

3.The Commissioner,

Directorate of Indian Medicine and Homoeopathy

<https://hcservices.as.combovki.com/services/>

Chennai - 600 106.



4. Tamil Nadu Dr.MGR Medical University,
Represented by its Registrar, Commissioner,
No.69, Anna Salai, Guindy,
Chennai - 600 032.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned letter issued by the first respondent Central Government (AYUSH) in Letter No.F.No.R-17014/159/2013-EP(H), dated 11.08.2016 in so far as the petitioner college is concerned and the consequential impugned proceedings issued by the fourth respondent University in Rc.No.Affln.I(3)/18301/2015-2, dated 18.10.2016 in so far as the petitioner college is concerned and further direct the respondents herein to continue to treat the admission capacity of the petitioner's college as 100 seats per annum for the BHMS Degree course.

For Petitioner	: Mr.Isaac Mohanlal, Senior Counsel For Mr.T.Cibichakraborty
For Respondent No.1	: Mr.N.Shanmugaselvam
For Respondent No.2	: Mr.T.Arunan [Not appeared]
For Respondent No.3	: Mr.G.R.Swaminathan Assistant Solicitor General of India
For Respondent No.4	: Mr.C.Karthic Standing Counsel

COMMON JUDGMENT

[Judgment of the Court was made **T.S.SIVAGNANAM, J.**]

Heard Mr.N.Shanmuga Selam, learned counsel appearing for the appellant, Mr.Issac Mohanlal, learned Senior Counsel, appearing for Mr.S.Xavier Rajini, learned counsel for the first respondent, Mr.G.R.Swaminathan, learned Assistant Solicitor General of India, for the third respondent and Mr.C.Karthic, learned Standing Counsel appearing for the fourth respondent. By consent, the Writ Appeal as well as the Writ Petition are taken up for final disposal.

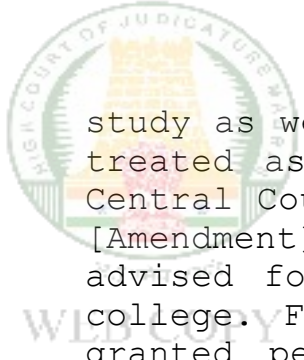
2. The Writ Appeal has been filed by the Government of India, represented by the Secretary, Ministry of Health and Family Welfare Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH), against the order passed in W.P. (MD)No. 14760 of 2012, dated 19.09.2013. The first respondent, in the Writ Appeal, namely, White Memorial Educational Society, was the writ petitioner. In the said Writ Petition, the first



respondent has challenged the order passed by the fourth respondent university, namely, Tamil Nadu Dr.MGR Medical University, dated 22.10.2012. By the said proceedings, the first respondent institution was informed that the permission granted for increase of intake from 50 to 100 students in BHMS degree course has been withdrawn. The said communication, dated 22.10.2012, was not an independent action initiated by the Medical University, but, it was based upon the direction issued by the appellant dated 23.09.2005. Thus, after receiving the said communication, the first respondent/writ petitioner obtained a copy of the same and challenged both the orders, viz., the order of the appellant, dated 23.09.2005 and the consequential proceedings of the Medical University dated 22.12.2012. The question was as to whether the permission granted to the first respondent/writ petitioner, permitting increase of intake from 50 to 100 students from the academic session 2002- 2003 would lapse, after the amendment to the Central Council of Homeopathy Amendment Act 2002.

3. The learned Single Judge took note of the Amendment, which was made by the Central Council of Homeopathy Amendment Act 2002 and examined as to whether the amendment would take away the approval granted for increasing intake. After referring to the circular issued by the Government of India/appellant, dated 12.07.2005, the Writ Court held that the question of obtaining fresh permission or the question of permission getting lapsed does not arise. The appellant, vide clarification dated 12.07.2005, informed the Medical University that the permission once granted either by the Central Council of Homeopathy or the Central Government for conducting BHMS degree course on onwards basis may have to continue, as per the provisions of HCC Act 1973, till the same is withdrawn as per the provisions, if any, of the Act. The Medical University was directed to take action accordingly. However, without reference to the clarification, dated 12.07.2005, it appears that the appellant passed the order, stating that the permission has lapsed, since the increased intake was not implemented by the first respondent institution.

4. It is the admitted fact that the communication, dated 23.09.2005, never reached the first respondent/writ petitioner and for the first time, nearly after lapse of ten years, the first respondent institution came to know about the communication, which was referred to by the Medical University, in their proceedings dated 22.10.2012. That apart, a circular was issued by the appellant, dated 27.12.2004, addressed to the Health Secretaries, All State Government/Union Territories Administration, reiterating the instructions, given in their letter dated 16.04.2014, that permission granted by any agency, including Central Council of Homeopathy or other than the Central Government, viz., Department of Health, Government of India, shall not be valid for opening a new Homeopathic Medical College, open a new higher course of study or training, including Post Graduate Course or training and increase in admission capacity, in any course of



study as well as for existing colleges after 28.01.2003 may not be treated as valid in terms of the Provisions of HCC Act, as the Central Council has been empowered under the provisions of the HCC [Amendment] Act, 2002, to grant permission. Therefore, they were advised for seeking recognition, including extension of existing college. Further, it was clarified that the colleges, which were granted permission by the Central Council of Homeopathy Act, 2002, on onwards basis, prior to the Amendment of the Central Council of Homeopathy Act (Amendment) 2002, do not need further permission from the Government of India at this stage.

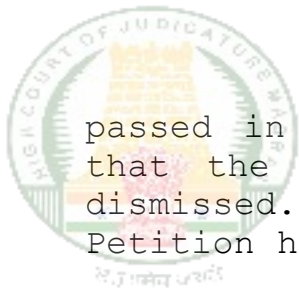
5. After referring to all the communications, referred to above, the Writ Court held that the stand taken by the Medical University, nor the stand, which has been taken by the appellant in their communication dated 23.09.2005, cannot be sustained. Thus, the learned Single Judge was perfectly right in holding that the permission granted by the Central Council of Homeopathy Act, prior to the Amendment shall hold good and the first respondent institution need not obtain fresh permission from the appellant and accordingly, the impugned orders passed by the appellant as well as the Medical University, which were impugned in the Writ Petition were quashed. The appellant has not been able to put forth any valid plea to dispute the factual position, as recorded by the learned single Judge. Therefore, there are no good grounds made out to interfere with the order passed by the Writ Court. However, we clarify that with regard to the infrastructural facilities and other matters, it is always open to the competent authority to cause verification as to whether the first respondent institution have fulfilled all the norms prescribed for conducting course with intake of 100 students.

6. At this juncture, we may point out that the reason as to why the Writ Petitioner could not implement the increased intake from 2002 and was able to implement it only from 2012 is owing to the fact that the Medical University did not grant affiliation for the increased intake and only pursuant to the orders passed by this Court in several Writ Petitions filed by the first respondent, affiliation was granted. Therefore, the non-implementation of additional intake from 2002 cannot be attributable to the first respondent institution.

7. For the foregoing discussion, the Writ Appeal is liable to be dismissed.

8. Now, turning to the Writ Petition in W.P.(MD).No.21217 of 2016 filed by the first respondent institution, the first respondent has challenged the proceedings of the appellant dated 11.08.2016 and the consequential communication of the Medical University dated 18.10.2016. The reason for passing the order dated 18.10.2016 is on the ground that as against the order in the

the appellant has filed Writ Appeal (MD)No.1282 of 2016. In the preceding paragraph, we have held that no good grounds are made out by the appellant to interfere with the order



passed in the Writ Petition and we have come to the conclusion that the Writ Appeal filed by the appellant is liable to be dismissed. As a consequence, the orders impugned in the Writ Petition have to be quashed.

9. In the result, the Writ Appeal is dismissed, confirming the order dated 19.09.2013 made in W.P.(MD).No.14760 of 2012. The Writ Petition filed by the White Memorial Homeo Medical College is allowed and impugned orders are set aside. Consequently, the Medical University is directed to publish the results of the students, who had taken examination in the first respondent institution. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The Central Council of Homoeopathy(CCH)
Represented by its Secretary,
Jawaharlal Nehru Bharatiya chikitsa Avum
Homeopathy Anusandhan Bhawan,
No.61-65, Institutional Area, Opp "D" Block,
Janakpuri, New Delhi-110058.
 - 2.The Commissioner
Directorate of Indian Medicine & Homeopathy,
Arumbakkam, Chennai-600 106.
 - 3.Tamil Nadu Dr.MGR Medical University,
Represented by its Registrar,
69, Anna Salai, Guindy, Chennai-600 032.
 - 4.The Union of India,
Rep by its Secretary,
Ministry of Health & Family Welfare Department of Ayurveda,
Yoga&Naturopathy,Unani,Siddha,Homeopathy(AYUSH) ,
1-Red Cross road,
New Delhi-110001.
- +2cc to Mr.T.Cibi Chakraborty,Advocate,SR.52590,52578
+1cc to Mr.T.Shanmugaselvam,Advocate,SR.52457
+2cc to Mr.C.Karthik,Advocate,SR.52366,52365

W.A. [MD] .No.1282 of 2016
and

W.P. (MD) .No.21217 of 2016
18.04.2017

NB/MYR

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