

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
WRIT PETITION No. 32628 of 2017

ORDER: (*Per AKS,J*)

This writ petition is filed, challenging the action of the 2nd respondent in rejecting the application for the grant of approval for admission to UG-BHMS course with an intake of 50 students for the academic year 2017-2018, vide proceedings, dated 12.09.2017.

2. Heard Mr. V. Hari Haran, learned counsel for the petitioner, Mr. K. Laxman, learned Assistant Solicitor General for the Union of India, and Mr. A. Prabhakar Rao, learned standing counsel for Kaloji Narayanarao University of Health Sciences, appearing for the 4th respondent.

3. The petitioner was originally granted permission to offer BHMS course in the year 2010. On the basis of the permission so granted by the Department of Ayush, the petitioner also secured affiliation from the 4th respondent-University and has been offering BHMS course for the past six years.

4. It appears that the Central Council of Homoeopathy framed a set of Regulations known as “Minimum Standard Requirements of Homoeopathic Colleges and attached Hospitals Regulations, 2013”, hereinafter referred to ‘2013 Regulations’, in exercise of the powers

conferred by Clause (j) of Section 33 of the Homoeopathy Central Council Act, 1973. Under these Regulations, the Central Council laid down the minimum requirements, norms, and standards, in terms of teaching and hospital staff, accommodation, equipments, training and other facilities.

5. However, the existing colleges were granted time up to 31.12.2014 to fulfill the minimum standard requirements of infrastructure, teaching and training facilities. Till then, the colleges were granted permissions.

6. But, a policy was taken by the Ministry for the academic year 2017-2018, to relax certain norms and also grant conditional permission for the academic year.

7. Thereafter, an inspection of the petitioner college was conducted on 13.07.2017. But, even before the report of the inspection was received, the Ministry issued a notice of hearing, dated 09.08.2017, calling upon the petitioner to appear for personal hearing on 25.08.2017. On the said date, the Department pointed out certain deficiencies, to which the petitioner submitted their response. The Hearing Committee made certain observations, and the submissions of the college along with the observations of the Hearing Committee were forwarded to the Ministry.

8. Thereafter, the Government of India passed the order impugned in the writ petition, refusing to grant permission to the petitioner college for the academic year 2017-2018. Therefore, the petitioner has come up with the above writ petition.

9. Primarily, the deficiencies pointed out in the impugned order are (i) that there was deficiency in teaching faculties, (ii) that there were some discrepancies in the records with respect to OPD and IPD, (iii) that one House Physician, who was required to be available, was not available, and (iv) that the college did not fulfill the requirements of a State enactment known as "Anatomy Act".

10. Insofar as the first deficiency is concerned, the petitioner claimed that they had a total of 32 faculties, out of whom, 26 were regular and 6 were guest faculties, and that due to a small mistake in the allotment of faculties between different Departments, the deficiencies pointed out by the Government had arisen. The petitioner claimed that after re-allocation of the eligible faculties among various Departments, the deficiencies stood removed.

11. But, the said contention of the petitioner was rejected, on the ground that in the letter of re-allotment, teaching faculties, who were sought to be re-allocated, themselves had signed. In other words, the authentication of those letters was questioned.

12. But, we find from the letters of re-allotment that they were signed by the competent authority. But, the signature appeared below the words “authorized signatory” very close to the place where the copy of the letter of re-allotment was marked to the concerned Professor. This is apparently a clerical mistake which should not have been put against the petitioner.

13. Once the above issue is clarified, there is no difficulty in coming to the conclusion that there were no deficiencies in the number of faculties.

14. Insofar as the discrepancies with respect to OPD and IPD are concerned, the respondents themselves had come up with some relaxation, in view of the fact that a homoeopathic college cannot be treated on par with an institution teaching allopathic medicine. The out-patients and in-patients in regular allopathic hospitals may not be the same as those in a homoeopathic institution. Therefore, this deficiency cannot really be put against the petitioner.

15. Insofar as the non-availability of one House Physician is concerned, the impugned order itself shows that the petitioner later fulfilled the norms. Insofar as the compliance with the State enactment is concerned, it is not one of the stipulations made in the 2013 Regulations.

16. Therefore, in fine, we find that there are virtually no deficiencies. Hence, the refusal to grant approval appears to be arbitrary.

17. However, relying upon a few decisions of the Hon'ble Supreme Court that the Court cannot sit in judgment over the wisdom of the Hearing Committee and the Government in the matter of deficiencies, it is contended by the learned Assistant Solicitor General that the impugned order does not require any interference.

18. We have carefully considered the above submissions.

19. It is true that this Court cannot sit on appeal over the findings of fact recorded by expert bodies. But, in the case on hand, there is one crucial aspect.

20. The inspection by the team was admittedly conducted on 13.07.2017. Even according to paragraph 18 of the counter affidavit filed by the 2nd respondent, the report of the inspection reached their Office only on 29.08.2017, and that, therefore the same could not be taken into account, before passing the impugned order. The relevant portion of paragraph 18 of the counter affidavit reads as follows:

“It may be noted that the Council vide its letter 14.07.2017 stated that the executive committee of CCH has decided to furnish only the inspection report with highlighting the shortfalls to the Ministry without making any recommendations. Therefore, basing on the infringes of the inspection report Ministry has started to take action and accordingly, hearing was given on

25.08.2017. Whereas, the recommendation was received on 29.08.2017. Hence, the same was not taken in cognizance.”

21. When a vital material, such as, the recommendation made by the Inspection Team, was not even taken note of by the competent authority, it is not open to the respondents to contend that this Court cannot interfere in matters of this nature. As a matter of fact, the report of the Inspection Team, dated 13.07.2017, received by the Ministry on 29.08.2017, is clearly in favour of the petitioner. The concluding portion of the said report reads as follows:

“All the departments in the college and hospital both OPD and IPD were inspected and verified. The teaching and non teaching staff, infrastructure and records are found correct as per the MSR regulations of CCH.”

22. In the light of the above, the denial of permission to the petitioner is completely contrary to the Regulations.

23. Therefore, the Writ Petition is disposed of, setting aside the impugned order and directing the 2nd respondent to pass fresh orders by duly taking into account the Inspection Report, dated 13.07.2017, received on 29.08.2017, within a period of two (2) weeks, and during the interregnum period, the 4th respondent-University may permit the petitioner to make provisional admission into UG-BHMS course. It is further directed that the petitioner-college and the 4th respondent-University shall intimate to all the students, who are likely to take admission into the said college, about the issue of pendency of grant

of approval of the petitioner-college with the 2nd respondent, and their admission will be subject to the grant of approval of the petitioner-college by the 2nd respondent.

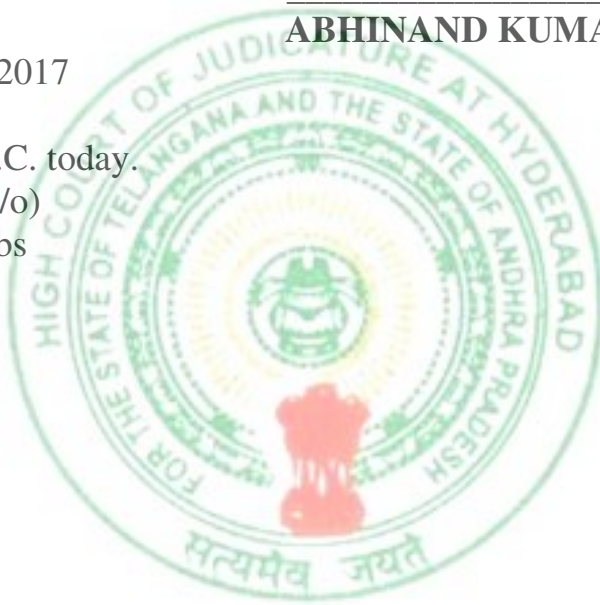
Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

26th October, 2017

Note: Issue C.C. today.
(b/o)
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