

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1610 of 2017

IN

Civil Writ Jurisdiction Case No. 19681 of 2016

- =====
1. The Union of India through the Secretary, Ministry of AYUSH, Ayush Bhawan, B - Block, G.P.O. Complex, INA, New Delhi - 23.
 2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathu, Unani Siddha and Homeopathy, Ayush Bhawan, B - Block, G.P.O. Complex, INA, New Delhi - 110023.

.... Appellants

Versus

1. Dr. R. B. Singh Gay Homeopathic Medical College & Hospital, Amwan, Bodhgaya, P.S. Bodhgaya, District Gaya through its Principal Dr. Ravindra Kumar Son of Late Dr. R.B. Singh resident of M.I.G. - 47, Chanakyapuri Colony, Gaya, P.S. Rampur, District - Gaya.
2. The State of Bihar through its Principal Secretary, Department of Health & FW, Vikas Bhawan, New Secretariat, Patna.
3. The Director, Desi Chikitsa, Health Department, Government of Bihar, Patna.
4. The Secretary, Central Council of Homeopathy, 61-65, Institutional Area, Opp 'D' Block, Janakpuri, Delhi - 110058.

.... Respondents

With

=====

Letters Patent Appeal No. 1609 of 2017

IN

Civil Writ Jurisdiction Case No. 19912 of 2016

- =====
1. The Union of India through the Secretary, Ministry of Ayush, Ayush Bhawan, B - Block, GPO Complex, INA, New Delhi - 110023.
 2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathu, Unani Siddha and Homeopathy, Ayush Bhawan, B - Block, G.P.O. Complex, INA, New Delhi - 110023.

.... Appellants

Versus

1. Dr. Yadubir Sinha Homeopathic Medical College & Hospital, Bakerganj, Laheriasarai, Darbhanga through its Principal Dr. Bharat Kumar Singh Son of Late Dr. Narendra Narain Sinha Resident of Bakerganj, Laheriasarai, P.S. - Laheriasarai, District - Darbhanga.
2. The State of Bihar through its Principal Secretary, Department (Health & FW), Department of Health, Vikash Bhawan, New Secretariat, Patna.
3. The Director, Desi Chikitsa, Health Department, Government of Bihar, Patna.
4. The Secretary, Central Council of Homeopathy, 61-65, Institutional Area, Opp 'D' Block, Janakpuri, Delhi - 110058.

.... Respondents

With

=====

Letters Patent Appeal No. 1750 of 2017

IN

Civil Writ Jurisdiction Case No. 14864 of 2017

=====



1. The Union of India through Secretary, Ministry of AYUSH, AYUSH BHAWAN, B-Block, G.P.O. Complex, INA, New Delhi-23.
2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Shiddha and Homeopathy, Ayush Bhawan, B-Block, G.P.O. Complex, INA, New Delhi-110023.

.... Appellants

Versus

1. Dr. Ajay Kumar Sharma, Muzaffarpur Homeopathic Medical College & Hospital, Raghu Nath Pandey Nagar, MIC Bela, Muzaffarpur through its Principal Dr. Ajay Kumar Sharma, Son of Late Ram Singar Sharma, Resident of Rohua Appuch MIC Bela, Police Station- Bela, District- Muzaffarpur.
2. The State of Bihar through its Principal Secretary, Department (Health & FW), Department of Health, Vikas Bhawan, New Secretariat, Patna.
3. The Director, Desi Chikitsa, Health Department, Govt. of Bihar, Patna.
4. The Secretary, Central Council Of Homeopathy, 61-65, Institutional Area, Opp. 'D' Block, Janakpuri, Delhi- 20058.

.... Respondents

With

=====

Letters Patent Appeal No. 1801 of 2017

IN

Civil Writ Jurisdiction Case No. 16371 of 2017

=====

1. The Union of India through the Secretary, Ministry of AYUSH, Ayush Bhawan, B - Block, G.P.O. Complex, INA, New Delhi - 23.
2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Siddha and Homeopathy, Ayush Bhawan, B - Block, G.P.O. Complex, INA, New Delhi - 110023.

.... Appellants

Versus

1. The Temple of Hanemann Homeopathic Medical College & Hospital, Opposite post office and telephone exchange Bhagat Singh Chowk, Munger - 811201, Bihar through its acting Principal, Dr. Ashok Kumar Tiwari Resident of Village Rajeev Gandhi Chowk Bazar, Police Station Kotwali, Dist Munger.
2. The State of Bihar through its Principal Secretary, Department (Health & FW), Department of Health, Vikash Bhawan, New Secretariat, Patna.
3. The Director, Desi Chikitsa, Health Department, Government of Bihar, Patna.
4. The Secretary, Central Council of Homeopathy, 61-65, Institutional Area, Opp 'D' Block, Janakpuri, Delhi - 20058.

.... Respondents

With

=====

Letters Patent Appeal No. 1798 of 2017

IN

Civil Writ Jurisdiction Case No. 14372 of 2017

=====

1. The Union of India through the Secretary, Ministry of AYUSH, AYUSH BHAWAN, B-Block, G.P.O. Complex, INA, New Delhi- 23.
2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Siddha and Homeopathy, Ayush Bhawan, B-Block, G.P.O. Complex, INA, New Delhi-110023.



.... Appellants

Versus

1. Maharshi Menhi Homeopathic College & Hospital, Jeewachh Nagar, P.S. & District- Katihar (Bihar) through Dr. Haresh Kumar Maharaj, Son of Sri N.K. Maharaj, Resident of Village + Post- Sangi, P.S. Phulparas, District- Madhubani (Bihar).
2. The State of Bihar through its Principal Secretary, Department (Health & FW), Department of Health, Vikas Bhawan, New Secretariat, Patna.
3. The Director, Desi Chikitsa, Health Department, Govt. of Bihar, Patna.
4. The Secretary, Central Council of Homoeopathy, 61-65, Institutional Area, Opp. 'D' Block, Janakpuri, Delhi- 10058.

.... Respondents

With

=====

Letters Patent Appeal No. 1796 of 2017
IN

Civil Writ Jurisdiction Case No. 16554 of 2017

=====

1. The Union of India through the Secretary, Ministry of AYUSH, AYUSH BHAWAN, B-Block, G.P.O. Complex, INA, New Delhi- 23.
2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy, AYUSH Bhawan, B-Block, G.P.O. Complex, INA, New Delhi- 110023.

.... Appellants

Versus

1. Mangla Kamla Homeopathy College & Hospital, Sri Nagar, Siwan through its Secretary Smt. Yashoda Devi, Wife of Motichand Chaudhary, Resident of Sri Nagar, Siwan, Hosue No. 30, Ward no.2, District – Siwan (Bihar).
2. The State of Bihar through its Principal Secretary, Department (Health & FW), Department of Health, Vikas Bhawan, New Secretariat, Patna.
3. The Director, Desi Chikitsa, Health Department, Govt. of Bihar, Patna.
4. The Secretary, Central Council of Homoeopathy, 61-65, Institutional Area, Opp. 'D' Block, Janakpuri, Delhi- 10058.

.... Respondents

With

=====

Letters Patent Appeal No. 1799 of 2017
IN

Civil Writ Jurisdiction Case No. 16838 of 2017

=====

1. The Union of India through Secretary, Ministry of AYUSH, AYUSH BHAWAN, B-Block, G.P.O. Complex, INA, New Delhi-23.
2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Shddha and Homeopathy, Ayush Bhawan, B-Block, G.P.O. Complex, INA, New Delhi- 110023.

.... Appellants

Versus

1. K. N. M. Homoeopathic Medical College And Hospital , Mayaganj, Bhagalpur,(Bihar), through its Principal Dr. Uma shankar Capor, Son of



- Surendra Narayan Singh Capore, Resident of Mohalla- Mayaganj, P.S. & P.S. Barai, district Bhagalpur.
2. The State of Bihar through its Principal Secretary, Department (Health & FW), Department of Health, Vikas Bhawan, New Secretariat, Patna.
 3. The Director, Desi Chikitsa, Health Department, Govt. of Bihar, Patna.
 4. The Secretary, Central Council of Homeopathy, 61-65, Institutional Area, Opp. 'D' Block, Janakpuri, Delhi- 10058

.... Respondents

With

=====

Letters Patent Appeal No. 1752 of 2017

IN

Civil Writ Jurisdiction Case No. 16589 of 2017

=====

1. The Union of India through Secretary, Ministry of AYUSH, AYUSH BHAWAN, B-Block, G.P.O. Complex, INA, New Delhi-23.
2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Shddha and Homeopathy, Ayush Bhawan, B-Block, G.P.O. Complex, INA, New Delhi- 110023.

.... Appellants

Versus

1. B.N.M. Homeopathic Medical College And Hospital, Saharsa (Bihar) through its Principal Dr. Upendra Prasad Yadav, Son of Late G.P. Yadav, Resident of Gautam Nagar, Gangjala, Police Station Saharsa, District- Saharsa.
2. The State of Bihar through its Principal Secretary, Department (Health & FW), Department of Health, Vikas Bhawan, New Secretariat, Patna.
3. The Director, Desi Chikitsa, Health Department, Govt. of Bihar, Patna.
4. The Secretary, Central Council of Homeopathy, 61-65, Institutional Area, Opp. D Block, Janakpuri, Delhi- 100058.

.... Respondents

=====

Appearance :

(In LPA No.1610 of 2017)

For the Appellants:

Mr. S.D. Sanjay, Addl. S.G.
Dr. Priya Gupta, Advocate
Ms. Parul Prasad, Advocate
Mrs. Punam Kumari Singh, CGC
(In LPA Nos. 1798/17, 1796/17 & 1799/17
Ms. Nivedita Nirvikar, CGC
(In LPA No. 1609/17)
Ms. Kanak Verma, CGC
(In LPA No. 1750/17 & 1801/17)
Mr. Kumar Priya Ranjan, CGC
(In LPA No. 1750/17)

For the Respondents:

Mr. Bindhyachal Singh, Advocate
Mr. Mrigank Mauli, Advocate
Mr. Smriti Singh, Advocate
Mr. Samir Kumar, Advocate
Mr. Ashok Kumar Sinha, Sr. Advocate
Mr. Santosh Kumar Singh, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT



(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 13-03-2018

The batch of Letters Patent appeals have been preferred by the Union of India through the Secretary, Ministry of Ayush for setting aside the judgment and order dated 28.06.2017 passed in CWJC No. 19681/2016 and CWJC No. 19912/2016, LPA Nos. 1750/2017, 1801/2017, 1798/2017, 1796/20017, 1799/2017 and 1752/2017 have been preferred for setting aside the common judgment and order dated 12.12.2017 passed by the learned Writ Court in analogous Writ Applications. Since the impugned judgment and order dated 28.06.2017 in LPA Nos. 1610/2017 and 1609/2017 and the impugned judgment dated 12.12.2017 passed in the aforementioned Letters Patent Appeals are based on undisputed facts deciding the common questions of law, all the Letters Patent Appeals have been clubbed together with the consent of the parties and have been heard and are being disposed of by this common judgment and order.

2. In LPA No. 1750/2017, 1801/2017, 1798/2017, 1796/2017, 1799/2017 and 1752/2017 the writ petitioners in the connected writ were aggrieved by various impugned orders passed by the Ministry of Ayurveda, Yoga and Naturopathy,



Unani, Siddha and Homoeopathy (AYUSH) between 03.08.2017 to 12.09.2017 by which noticing certain deficiencies the colleges in question were denied permission from conducting BHMS course and were not permitted to take admission for the academic session 2017-18.

3. By the impugned judgments and orders which are subject matter of the present Letters Patent Appeals, the learned Writ Court has been pleased to allow the Writ Petitions and the reliefs prayed by the petitioners. In fact, in the subsequent judgment and order dated 12.12.2017 the learned Writ court has referred its judgment and order dated 28.06.2017 passed in CWJC No. 19681/2016 corresponding to LPA No. 1610/2017.

4. We have taken LPA No. 1610/2017 arising out of CWJC No. 19681/2016 (Dr. R.B. Singh Gaya Homoeopathic Medical College and Hospital Vs. Union of India and Ors.) as the lead case and with consent of the parties in the connected Letters Patent Appeal, we propose to dispose off the batch of appeals by this common judgment and order.

5. The writ petitioner in CWJC No. 19681/2016 moved this Court under Article 226 of the Constitution of India seeking following relief/reliefs: -

- (i) Issuance of a writ in the nature of writ of certiorari to quash, set aside the letter issued by the Ministry of



Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (Ayush) which shall hereinafter referred to as AYUSH for the sake of brevity (Respondent No. 2) vide its letter no. R17014/12/2013-EP(H) dated 08.11.2016 as contained in Annexure-11 of the writ application, whereby and whereunder the respondent authority has refused to grant conditional permission for UG (BHMS) course with 50 seats for the academic Sessions 2016-17 to the petitioner college in a most arbitrary and malafide manner without considering the case of the petitioner in proper perspective.

(ii) Issuance of a writ in the nature of writ of mandamus, whereby and whereunder the respondent authorities are commanded and directed by this Hon'ble Court to grant conditional permission for UG(BHMS) course with 50 seats for the academic Sessions 2016-17 as the petitioner college fulfills all the terms and conditions as spelt out in Homoeopathy Central Council (Minimum Standards Requirement of Homoeopathic Colleges and attached Hospitals) Regulations 2013 and without any sufficient cause and for no apparent fault on the part of the petitioner, the petitioner college is being penalized without any legal basis.

(iii) Issuance of any other writ/writs, order/orders and/or direction/directions to grant relief/reliefs to which the petitioners may be found entitled to in the facts and circumstances of the case.”

6. It is the case of the writ petitioner that the College in question was established in the year 1967 and since then it has been imparting education in Homoeopathy Science to the students. The Bihar State Board of Homoeopathy granted recognition to the petitioner's college vide Annexure 1 dated



10.04.1973 to the writ application. Later on the petitioner's college was granted statutory affiliation by the B.R.Ambedkar Bihar University, Muzaffarpur vide Annexure- 2 to the writ application. It is shown from Annexure-3 that the Central Council of Homoeopathy had granted recognition to the petitioner's College vide a notification dated 13.03.1995. The petitioner was allowed to admit 50 students for imparting education for B.H.M.S. Course. The petitioner claims that for each academic session thereafter it has been getting permission from the respondents authorities for admitting 50 students in the said College and was regularly inspected by the Central Council of Homeopathy for continuation of permission.

7. The further case of the writ petitioner is that as per the provisions contained in the Homoeopathy Central Council Act 1973 (hereinafter referred to as the "HCC Act") and the provisions as contained in Homeopathy Central Council (Minimum Standard Requirement of Homeopathy Colleges and attached Hospitals) Regulation, 2013 (hereinafter referred to as the "HCC (MSR) Regulation, 2013"), the College was inspected by the Central Council of Homeopathy (in short the "CCH") on 16.05.2016, pursuant thereto a report was submitted to the Central Government and there is absolutely nothing



negative in the report of the CCH with respect to the petitioner's College. Attempt has been made to show from Annexure-5 to the writ petition that in the report submitted by CCH, there is a remark column and in case of anything negative having been found in the inspection, then, the remark column should have mentioned/recorded the same but in this case, because there was no adverse finding, no such mention was made in the report.

8. The petitioner further states that on 24.08.2016 a team of Ayush made a surprise inspection to the petitioner's College despite the fact that they had no authority under any law, rules or regulations to make an inspection of a Homoeopathy College which is wholly and solely vested with the Homoeopathy Council and yet despite the positive report of the CCH the Ministry of Ayush made a surprise visit of the College brushing aside the statutory recommendations of the CCH. According to the petitioner's College on the said date several faculties member of the College were not present at the College because they had been appointed as external examiner and were sent to other Colleges/Centres for taking practical and other examinations. Petitioner's College received a hearing notice dated 07.10.2016 calling upon the petitioner to report for



hearing on 14.10.2016, but because the said notice was not recommended within the date mentioned in the notice, another date, i.e., 24.10.2016 was fixed for hearing.

9. The petitioner further submitted in the writ application that on 24.10.2016, the petitioner appeared before the hearing committee and submitted its written submissions explaining therein the total number of patients in the OPD register and also highlighted the fact that there is indoor patients department as well comprising Wards, O.T., Labour Rooms etc. as prescribed under the HCC(MSR) 2013 Regulation. The petitioner claims to have provided the list of non-teaching staff as well as the hospital staffs to the hearing committee. It is, however, the grievance of the petitioner that a letter dated 08.11.2016 (Annexure 11 to the Writ Petition) was issued to the petitioner without considering the written submissions made on their behalf and by the letter dated 08.11.2016 the petitioner was denied permission for admitting 50 students for the academic year 2016-2017.

LEGAL ISSUES

10. On legal issues it has been the stand of the petitioner that Ayush has committed a serious error inasmuch Section 12(A) which has been referred in the impugned letter



dated 08.11.2016 will not apply in the case of the petitioner as Section 12(A) is with respect to the establishment of a new medical institution or for starting of a new medical course or for the purpose of enhancement of seats. The petitioner has a submission that as per section 12(A), 17(3) and 19 of the Regulations, the power of inspection of a Homeopathy College is vested in the CCH and not in any other authority. According to the petitioner, nowhere in the Act or Regulations the Ayush has been conferred with any power of making any surprise inspection of a College. Even the regulation 3(4) and 3(9) of the Regulations 2013, according to the petitioner does not permit any other authority except for CCH to make any inspection of a particular college and in the case of the petitioner the CCH has already made its recommendations, therefore, despite having no authority the Ayush has assumed upon itself the power of appellate authority which the petitioner has challenged saying that such assumption of power by the Ayush is not permissible in the eye of law.

11. The writ petitioner relied upon the judgment of the Hon'ble Punjab and Haryana High Court in the Case of **J.R.K.(Jage Ram Kissan), Homeopathic Medical College and Hospital vs. U.O.I. and others**, the judgment of Hon'ble



Madhya Pradesh High Court in the case of **Vasundhara Raje Homoeopathic Medical College & Hospital Vs. Union of India and others** and the judgment of the Hon'ble Uttarakhand High Court in the case of **Chandola Homeopathic Medical College vs. Union of India and others** (Annexure-13 series to the writ application). Reliance has also been placed on a Division Bench judgment of this Hon'ble Court passed in LPA No. 2191/2016 (**Maharshi Monhi Homoeopathic Medical College and Hospital vs. Union of India and Ors.**).

Stand of the Respondent- Union of India

12. On the other hand, respondent no. 1 and 2 in their counter affidavit controverted the contentions and allegations of the writ petitioner. It is their stand that the purpose of the surprise inspection of the petitioner's College was to ascertain the actual status of the availability of infrastructure, equipment, teaching facility, hospital staff and functioning of the hospital in the existing Homeopathic College. Reference has been made to the provisions of the Act whereunder CCH has been constituted as a statutory body and has been vested with the powers under Section 20 of the HCC Act 1973 for prescribing minimum standard of education in Homeopathy, required for granting recognized medical qualification by university, board



or medical institution in India. Under Section 33 of the HCC Act the CCH has been authorized to make regulations with previous sanction of the Central Government to carry out the purposes of the Act. Under the provisions of Clauses (i), (j) and (k) of Section 33 and Section 20 of the HCC Act of 1973, the CCH has made educational Regulations namely: -

- (i) The Homoeopathy (Minimum Standard of Education) Regulations 1983 (as amended up to 2002).
- (ii) The Homoeopathy (Degree Course) Regulations 1983 (as amended in 2003 and 2005 respectively)
- (iii) The Homoeopathy (Graded Degree Course) Regulations, 1983 (as amended in 2001)
- (iv) The Homoeopathy (Diploma Course) Regulations 1983 (as amended in February 1999). The Homoeopathy (Post Graduate Degree Course) M.D.(Hom.) Regulations 1989 (as amended in 1993 and 2001; and
- (v) The HCC (MSR) Regulation, 2013.

13. Respondent Nos. 1 and 2 have relied upon regulation 3(5) and 3(9) of the HCC (MSR) Regulation 2013 which reads as under: -

3(5)

3(9). All the existing colleges, which are not able to achieve full compliance of the requirement as specified in these regulations by the 31st December, 2014, shall be denied permission from academic year 2015-16 onwards and action as envisaged under section 19 of the Act shall be initiated against all such colleges apart from rejection of their applications under sections 12A,



which have been under consideration by way of conditional permissions or denials.”

14. It is the case of respondent no. 1 and 2 that in terms of power conferred under Regulation 3(5) and (9) of the Regulation 2013, respondent no. 1 and CCH inspected the college of the petitioner on 24.08.2016 and 16.05.2016 respectively. It is stated that on the basis of inspection report issued by respondent no. 1 regarding the grounds of deficiency the petitioner college was duly communicated. The petitioner was served with a notice of hearing in consonance with the principles of natural justice and after giving the petitioner an opportunity of hearing and only upon a careful consideration of the visitation report, recommendation of CCH, report of the proposed inspection team constituted by Ministry of Ayush and observation of the hearing committee, it was held that the petitioner college had failed to produce sufficient documents to substantiate their claim as per HCC (MSR) Regulation 2013 and that the petitioner college was not fulfilling the basic eligibility condition. The decision of respondent no. 1 was thereafter duly communicated to the petitioner vide letter no. R-170/12/2013-EP(H). The respondent no. 1 & 2 relied upon the judgment of the Hon’ble Supreme Court in the matter of **Ayurveda Shastra**



Seva Mandal v. Union of India reported in **2013(3) SCALE 213** and on the judgment in the case of **National Council for Teacher Education and Another vs. Venus Public Education Society and Others** to submit that the courts ought not to interfere with the decision of the expert bodies.

15. A counter affidavit has also been filed on behalf of respondent no. 5 (CCH), according to respondent no. 5, after coming into force of Regulation 2013, the Deputy Secretary to the Government of India, Ministry of Health and Family Welfare (Department of Ayush) vide his letters dated 26.08.2013, 25.07.2014 and 29.05.2015 granted amnesty to the colleges for the admission of students by non-enforcement of the HCC (MSR) Regulations, 2013. The relevant part of Annexure-R5/C reads as under: -

“However, as the enabling provision in the HCC Act, 1973 for granting permissions on annual basis to the existing colleges are still not yet incorporated in the said Act. The amnesty for non-enforcement of HCC(MSR) Regulations, 2013 is being granted for the academic year 2015-16 to all existing Homoeopathy Colleges.”

16. According to respondent no. 5, it was asked to inspect the colleges vide letter dated 11.03.2016 issued by respondent no. 1 & 2, and to make available its recommendation



and report to the government of India. Pursuant to the letter dated 11.03.2016 respondent no. 5 in order to ascertain the actual status/functioning of the colleges as also to verify the compliance by the petitioner's college with the statutory regulations, inspected the college and attached hospital of the petitioners college on 16.05.2016 and thereafter a copy of inspection report was sent to the petitioner by CCH letter dated 16.09.2016. Respondent no. 5 has also stated that they had sent their recommendation to respondent Ministry of Health and Family Welfare (Department of Ayush) vide their letter dated 08.08.2016.

17. This counter affidavit is however not discussing and rightly so on the powers of the Central Government, (Ministry of Ayush) in the matter of carrying out inspection or deny permission to the college in question in the matter of taking of an admission for the academic year 2016-17.

FINDINGS OF THE WRIT COURT

18. The Writ Court having discussed the materials available on the record framed two questions for consideration which are reflected in paragraph 5 of the impugned judgment and order. We take note of those questions framed by the learned Writ Court for a ready reference: -



(1) Whether the HCC Act or the Regulation framed thereunder, confer jurisdiction on the Ministry of Ayush to conduct a surprise inspection of an existing college, established prior to 09.12.2002, and

(2) Whether the Ministry of Ayush has any jurisdiction to allow or deny permission for taking admission to BHMS course in existing Homoeopathy College and Hospitals.

19. Having taken note of the Regulation 3 of HCC (MSR) Regulation 2013 and its various sub-regulations as also Regulation 4 to 13, the learned Writ Court examined the whole scheme of the HCC Act and came to a conclusion that on a closure scrutiny of the provisions under HCC Act, it may be noticed that the CCH constituted under Section 3 of the HCC Act has significant and most important role in carrying out the purposes of the HCC Act and the Central Government has the power to constitute the CCH and grant permission of establishment of a new medical institution, start of a new course of study and increase in admission capacity in a course.

20. The learned Writ Court is of the view that even such power of grant of permission is to be exercised by the



Central Government in active consultation with the CCH as per the HCC Act. In this regard the findings arrived at by the learned Writ Court may be found in para 51 and paragraph 55 of the impugned judgment which we quote hereunder: -

“51. There is no provision under the HCC Act, which confers upon the Central Government a power to cause inspection of a medical institution, established under the HCC Act, for any purpose whatsoever. The HCC Act does not confer upon the Central Government any inherent power, even impliedly, to cause inspection of a medical institution. The CCH, under Section 17 of the HCC Act, is vested with the power to appoint such number of medical Inspectors to inspect any medical college, hospital or other institution. Section 18 enables the CCH to appoint such number of Visitors to inspect any medical college. Sections 17 and 18 of the HCC Act, being relevant, are being reproduced herein below:-

“17. Inspectors at examinations.-

(1) The Central Council shall appoint such number of medical inspectors as it may deem requisite to inspect any medical college, hospital or other institution where education in Homoeopathy is given, or to attend any examination held by any University, Board or medical institution for the purpose of recommending to the Central Government recognition of medical qualifications granted by that University, Board or medical institution.

(2) The medical inspectors shall not interfere with the conduct of any training or examination, but shall



report to the Central Council on the adequacy of the standards of education including staff, equipment, accommodation, training and other facilities prescribed for giving education in Homoeopathy, as the case may be, or on the sufficiency of every examination which they attend.

(3) The Central Council shall forward a copy of any such report to the University, Board or medical institution concerned, and shall also forward a copy with the remarks of the University, Board or medical institution thereon, to the Central Government.

18. Visitors at examinations.-

(1) The Central Council may appoint such number of visitors as it may deem requisite to inspect any medical college, hospital or other institution where education in Homoeopathy is given or to attend any examination for the purpose of granting recognized medical qualification.

(2) Any person, whether he is a member of the Central Council or not, may be appointed as a visitor under this section but a person who is appointed as an inspector under section 17 for any inspection or examination shall not be appointed as a visitor for the same inspection or examination.

(3) The visitors shall not interfere with the conduct of any training or examination, but shall report to the President of the Central Council on the adequacy of the standards of education including staff, equipment, accommodation, training and other facilities prescribed for giving education in Homoeopathy or on the sufficiency of every examination which they attend.

(4) The report of a visitor shall be treated as confidential unless in any particular case the



President of the Central Council otherwise directs:

Provided that if the Central Government requires a copy of the report of a visitor, the Central Council shall furnish the same.”

“55. I reiterate and hold that the Central Government cannot proceed, under Section 19 of the HCC Act, unless there is representation by the CCH, under Section 19 (1) of the HCC Act.”

21. The learned Single Judge has rejected the contention of learned Additional Solicitor General representing the Union of India as regards the interpretation to be given to sub-regulation (5) of Regulation 3 of the HCC (MS) Regulation 2013 and *inter alia* held as under:

“ I must add here that sub-Regulation (5) of Regulation 3 of the HCC (MS) Regulations cannot be invoked in the present case as it is not the case of the Central Government that the Colleges, in question, have been granted permission to undertake admission. The question of inspection for random checks, under sub-Regulation (5) of Regulation 3 of the HCC (MS) Regulations will arise only if a College, in question, has been granted permission to undertake admission.”

22. The learned Writ Court also rejected the submission of learned Additional Solicitor General based on the Division Bench Judgment of Hon’ble Madhya Pradesh High Court in the case of **Shri Ramnath Singh Homoeopathic**



Medical College vs. Union of India and Ors. (Writ Petition No. 8301/2016) and held that the said judgment has no applicability in the present case. The said judgment has been distinguished saying that the question as to whether the Central Government has the power or not to inspect a Homoeopathy Medical College was not at all under consideration before the Madhya Pradesh High Court. In that case, action of the Government of India invoking its power under Section 12(A) of the HCC Act read with Regulation 3(9) of the HCC (MS) Regulations was under challenge, where there was a report of the CCH against the college in question, to the effect that it did not confirm to the minimum standard of requirements.

23. The learned Writ Court, therefore, concluded that the surprise inspection conducted by the Central Government, of the college in question, are beyond jurisdiction and hence impugned orders dated 08.11.2016 and 22.11.2016 which were based on such inspection reports are not legally sustainable. The Ministry of Ayush has been directed to pass an appropriate order in accordance with law afresh after considering the inspection reports which have been submitted by CCH. The impugned orders in the writ petitions have been set aside by the learned Single Judge.



Submission in appeal

24. Mr. S.D. Sanjay, learned Additional Solicitor General representing the Union of India (appellants) has assailed the impugned judgment and order of learned Single Judge and the findings recorded by the learned writ court that there is no power vested in the Central Government under the HCC Act to cause inspection to a medical institution established under the HCC Act, for any purpose whatsoever. Learned Addl. S.G. has further assailed the impugned judgment and order of the learned writ court directing the Ministry of Ayush to pass a fresh order taking into consideration the reports submitted by the CCH. According to learned senior counsel the learned writ court could not appreciate the object and purpose of the HCC Act 1973 and the Regulations namely HCC (MSR) Regulation, 2013 particularly laying down the Minimum Standard Requirement (in short the 'MSR') His submission centres around the provisions as contained under Regulation 3(5) and 3(9) of the HCC (MSR) Regulation 2013. It is his submission that under Regulation 3(5) the word 'or otherwise as deemed necessary either by the Central Government or by the Central Council of Homoeopathy' are words of wider connotation and it gives ample power to the Central Government or the CCH to



carry on an inspection of a Homoeopathy College in order to ensure or to find out as to whether the existing Homoeopathy Colleges are fulfilling the MSR to run those colleges.

25. Further it is the submission of learned senior counsel and learned Addl. S.G. that the learned writ court has not been able to appreciate that under sub-Regulation (9) of Regulation 3 of HCC (MSR) Regulation 2013, all the colleges who were not able to achieve full compliance of the requirement as specified in the Regulations by the 31st December, 2014 were liable to be denied permission from academic year 2015-16 onwards and action as envisaged under Section 19 of the Act were liable to be initiated against all such colleges apart from rejection of their applications under Section 12(A) which might have been under consideration by way of conditional permissions or denials.

26. Learned Addl. S.G. submits that vide Annexure-R5/C to the counter affidavit of respondent no. 1 & 2, the Central Government had granted the immunity to all the existing colleges from full compliance of the requirements of the regulations for the academic year 2015-16 for the reasons already mentioned in Annexure-R5/C. Thus, for the academic year 2016-17, the existing colleges which are not able to achieve



full compliance of requirement as specified in the regulations are liable to be denied permission and further action as envisaged under Section 19 of the Act shall be initiated against them.

27. Expanding the argument on behalf of the appellants, the learned Addl. S.G. points out even though Section 12(A) of the HCC Act, 1973. is not attracted in the present case but only because in the impugned letter dated 08.11.2016 (Annexure-11 to the writ application) at one place reference of Section 12(A) of the HCC Act 1973 has been made, a mere mentioning of a wrong section would not render the entire decision illegal or liable to set aside. According to him, the provision as contained under sub-Regulation (5) of Regulation 3 and sub-Regulation (9) of Regulation 3 of the HCC (MSR) Regulation 2013 equally apply to all existing colleges and the action taken under these two sub-Regulations of Regulation 3 in respect the existing colleges is fully permissible and authorized.

28. Learned counsel relied upon the judgment of the Hon'ble Delhi High Court in the case of **Dhanvantri Medical College & Hospital and Research Centre vs. Union of India and Anr.** and submits that in this case the Hon'ble



Delhi High Court having considered the submissions made at the bar rejected the contention of the petitioner in the said case that in absence of a provision under HCC Act, the Union of India could not have stopped the admissions in the academic year 2016-17. Reliance has also been placed on the judgment of the Hon'ble Bombay High Court in the case of **Shiva Trust's Sharadchandraji vs. Union of India and Ors.** decided on 14th December, 2016. In the said case also a challenge was made to the impugned communication issued by Union of India refusing permission to the petitioner's institution in admitting students of 1st Year of BHMS course during the academic year 2016-17. In the said case also the case of the institution was that HCC had recommended the Central Government to accord permission in favour of a college to admit students and, therefore, the Central Govt. ought not to have taken any adverse decision. In the fact of the said case, where it was contended that the institution is functional and the deficiencies have been totally removed, the Hon'ble Bombay High Court deemed it appropriate to exercise its power conferred by Article 226 of the Constitution of India to issue a direction to the Central Government to cause inspection or to make further inquiry within stipulation of sub-section (4) of Section 4(A) of the Act 1973 and may take an



appropriate decision.

29. Learned Addl. S.G. has further relied upon a division Bench judgment of the Hon'ble Madhya Pradesh High Court in the case of **Sofia Homoeopathic Medical vs. Union of India** in which the Hon'ble Madhya Pradesh High Court rejected the plea of the petitioner that the HCC Act 1973 being silent in regard to procedure for stopping the admission, respondents ought to have taken recourse to the procedure prescribed under Section 19 of 1973 Act and not having done so, renders the impugned order vitiated in law. The Hon'ble Court was of the view that clause 3 lays down a detail procedure of affording opportunity to the existing colleges comply with the minimum requisite requirements under HCC (MSR) regulations and also consequential penal action that can be taken if the needful is not done by the existing college before the prescribed date. Thus, it was held that the recourse to the procedure under section 19 for denying permission to induct students need not be taken by the respondents as the said field is occupied by clause 3 of 2013 regulations.

30. Learned Additional Solicitor further submits that Regulation 3(4) is equally applicable to all existing college whether established prior or after 28.01.2003 and they are



obliged to meet the requirement of minimum standards for grant of permission for undertaking admission in the coming academic year. According to him if a college does not fulfill the minimum standards requirements of infrastructure then it follows that it may not be granted permission. This provision, according to learned senior counsel is itself a self contained provision to deny the grant of permission to undertake admission in the coming academic year because this Regulation is mandatory in nature.

31. He submits that Regulation 3(5) provides that it is only when college fulfills the requirement by 31.012.2014 or within the extended period, permission shall be granted to undertake admission which will be for a period of up to five years, meaning thereby that unless it fulfills the requirement it cannot get permission to undertake admission. He submits that the other part of Regulation 5 is regarding inspection of a college after having been granted permission up to five years on receipt of complaint or for random checks done by the Central Government and/or by the CCH, both. According to him, Regulation 3(9) is an additional provision which further mandate the penal consequences and clearly provides that all the existing colleges which are not able to achieve full compliance



of the requirement as per HCC (MSR) Regulations 2013 cannot be granted permission from academic year 2015-16 onwards. He further envisages that action under Section 19 of the Act (for de-recognition) shall be initiated against all such colleges by following the provisions of Section 19 of the HCC Act 1973 read with the relevant provisions of HCC (MSR) Regulations. Learned counsel submits that there is a third facet that for such colleges if any application is made under Section 12(A) then that may be rejected. Thus, according to learned senior counsel for the Union of India it is evident from regulation 3(9) that it is having three facets, the first is to deny admission for an academic year, the second is to initiate action for de-recognition and the third is to reject application under Section 12(A). It is his submission that so far as eligibility to get permission for undertaking admission is concerned, it is always subject to the compliance with the requirement of minimum standards of infrastructure under Regulation 3(4) and 3(5) and it is at this stage that grant of permission and denial of permission are to be considered in the light of mandatory requirement to fulfill the minimum standards of infrastructure.

32. Learned Addl. S.G. has submitted that the recommendation of CCH is only recommendatory in nature and



not binding on the government of India and in the facts of the present case doctrine of implied authority conferring power upon the central government to deny permission to such colleges who are unable to fulfill the minimum requirement of standard would be fully applicable. In this connection he has relied upon the judgment of the Hon'ble Supreme Court in the case of **Sakiri Vasu Vs. State of U.P.** reported in **(2008) 2 SCC 409**, **Union of Undia vs. Paras Laminates** reported in **AIR 1991 SCC 696** and **RBI Vs. Pearless General** reported in **AIR 1996 SCC 646**.

SUBMISSIONS OF THE WRIT PETITIONER – RESPONDENT

33. On the other hand, Mr. Bindhyachal Singh, learned Advocate, representing the writ petitioner – respondent no. 1 submits that the findings of the learned Single Judge that the Central Government has no power to conduct inspection in respect of an existing college is based on reasons. He would further submit that before denying the permission to take admission during the academic session 2016-17, the respondent Union of India has not complied with the established procedure of law. According to the learned counsel, Section 19 of HCC Act 1973 deals with the situation where the Central Government may take a decision regarding withdrawal of recognition of an



existing college affiliated to A University in a particular State. He has referred Sections 17, 18 and 19 of the HCC Act, 1973 to submit that the manner in which an inspection may be carried out by the CCH has been fully provided in Section 17 of the HCC Act 1973. According to him, the Central Government (Ministry of Ayush) has no statutory power to conduct a surprise inspection. He has relied upon the findings of learned Writ Court on this point. Learned counsel submits that the denial of permission as envisaged under sub-Regulation (9) of Regulation 3 of the HCC (MSR) Regulation 2013 without following the procedure prescribed under Section 19 of the HCC Act 1973 would render the decision as contained in Annexure-11 to the writ application illegal and therefore the learned writ court has rightly interfered with the impugned orders.

Consideration

34. We have heard learned counsel for both the sides at length and have perused the records. The facts of this case are not in dispute. Only issue which has arisen for consideration in the present case is as to whether or not the Central Government has got power to carry an inspection of the existing Medical Colleges imparting education in Homoeopathy science particularly in the light of the provisions as contained in



HCC (MSR) Regulation 2013. If this question is answered in affirmative then only a second question would arise as to whether in the facts of present batch of cases the Central Government (Ministry of Ayush) has got statutory power to deny permission to an existing Homoeopathy College in the matter of taking admission against the sanctioned strength of seats.

35. Before we answer those questions it would be just and proper to take note of certain provisions of the HCC (Act 1973). The HCC Act was enacted in the 24th year of Republic of India with an object to provide for constitution of Central Council of Homoeopathy (CCH) and maintain central register of Homoeopathy and the matters connected therewith.

36. Under definition clause (b) of Section 2 “Central Council” means the Central Council of Homoeopathy constituted under Section 3, “Regulation” as defined under Clause (h) of Section 3 means a regulation made under Section 33. According to Section 3(1) of the HCC Act 1973, the Central Government shall, by notification in the official gazette, constitute for the purposes of this Act a Central Council consisting of the members as provided under Clause (a), (b) (c) under Sub-Section (1) of Section 3. According to Section 6 the



Central Council shall be a body corporate by the name of Central Council of Homeopathy having perpetual succession and a common seal with power to acquire, hold and dispose of property, both moveable and immoveable and to contract, and shall by the said name sued and be sued.

37. Chapter IIA containing Section 12A and Section 12B deals with the subjects namely ‘permission’ for establishment of a new medical institution, new course of study, etc. Sub-section (1) of Section 12A specifically provides that “notwithstanding anything contained in this Act or any other law for the time being in force : -

(a) no person shall establish a Homoeopathy Medical College; or

(b) No Homoeopathy Medical College shall (1) open a new or higher course of study or training (including post graduate course of study or training) which would enable students of each course of training to qualify himself for the award of any recognized medical qualification; or (2) increase its admission capacity in any course of study or training (including the post graduate course of study or training), except with the previous permission of central government obtained in accordance with the provisions of this Section. Sub-section (2),



(3), (4) & (5) prescribed the procedures to be followed in the matter of obtaining permission under sub-section (1).

38. Section 12B deals with non recognition of medical qualification in certain cases. We are not concerned with those provisions and therefore for the present we will not deal with them.

39. Section 17, 18 and 19 of the HCC Act 1973 which have been read out by learned counsel representing the writ petitioner in course of hearing are quoted hereunder for ready reference:

Inspectors at examinations.

17.(1) The Central Council shall appoint such number of medical inspectors as it may deem requisite to inspect any medical college, hospital or other institution where education in Homoeopathy is given, or to attend any examination held by any examination held by any University, Board or medical institution for the purpose of recommending to the Central Government recognition of medical qualifications granted by that University, Board of medical institution.

(2) The medical inspectors shall not interfere with the conduct of any training or examination but shall report to the Central Council on the adequacy of the standards of education including staff, equipment, accommodation, training and other facilities prescribed for giving education in Homoeopathy, as the case may be, on the sufficiency of every examination which they attend.

(3) The Central Council shall forward a copy of any



such report to the University, Board or medical institution concerned, and shall also forward a copy with the remarks of the University or medical institution thereon, to the Central Government.

Visitors at Examinations.

18. (1) The Central Council may appoint such number of visitors as it may deem requisite to inspect any medical college, hospital or other institution where education in Homoeopathy is given or to attend any examination for the purpose of granting recognized medical qualification.

(2) Any person, whether he is a member of the Central Council or not may be appointed as a visitor under this section but a person who is appointed as an inspector under section 17 for any inspection or examination shall not be appointed as a visitor for the same inspection or examination.

(3) The visitors shall not interfere with the conduct of any training or examination but shall report to the President of the Central Council on the adequacy of the standards of education including staff, equipment, accommodation, training and other facilities prescribed for giving education in Homoeopathy or on the sufficiency of every examination which they attend.

(4) The report of a visitor shall be treated as confidential unless in any particular case the President of the Central Council otherwise directs:

Provided that if the Central Government requires a copy of the report of a visitor, the Central Council shall furnish the same.

Withdrawal of recognition.

19.(1) When upon report by the Inspector or the visitor it appears to the Central Council –

(a) that the courses of study and examination to be



undergone in or the proficiency required from candidates at any examination held by any University, Board or medical institution, or

(b) that the staff, equipment, accommodation, training and other facilities for instruction and training provided in such University, Board or medical institution or in any college or other institution affiliated to the University, do not conform to the standard prescribed by the Central Council, the Central Council shall make a representation to that effect to the Central Government.

(2) After considering such representation, the Central Government may send it to the Government of the State in which the University, Board or medical institution is situated and the State Government shall forward it alongwith such remarks as it may choose to make to the University, Board or medical institution with an intimation of the period within which the University, Board or medical institution may submit its explanation to the State Government.

(3) On the receipt of the explanation or where no explanation is submitted within the period fixed then on the expiry of that period the State Government shall make its recommendations to the Central Government.

(4) The Central Government after making such further inquiry, if any, as it may think fit, may, by notification in the Official Gazette, direct that an entry shall be made in the Second Schedule against the said medical qualification declaring that it shall be a recognized medical qualification only when granted before a specified date or that the said medical qualification if granted to students of a specified college or institution affiliated to any University shall be recognized medical qualification only when granted before a specified date



or as the case may be, that the said medical qualification shall be recognized medical qualification in relation to a specified college or institution affiliated to any University only when granted after a specified date.”

40. Section 20 provides for Minimum standards of education in Homoeopathy. Under this provision the Central Council has been authorized to prescribe the minimum standards of education in Homoeopathy, required for granting recognized medical qualifications by Universities, Board or medical institution in India. According to sub-section (2) of Section 20 read with Section 33, copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Central Council to all State Governments and the Central Council shall before submitting the regulations or any amendment thereof, as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

41. Section 33 specifically provides that the Central Council, may with the previous sanction of the Central Government make, by notification by Official Gazette, regulations generally to carry out the purposes of this Act, and,



without prejudice to the generality of this power, such regulations may provide for -

- (a) the manner of election of the President and the Vice-President of the Central Council;
- (b) the management of the property of the Central Council and the maintenance and audit of its accounts;
- (c) the resignation of members of the Central Council;
- (d) the powers and duties of the President and Vice-President;
- (e) the summoning and holding of meetings of the Central Council and the committees thereof, the times and places where such meetings are to be held, and the conduct of business thereat and the number of members necessary to constitute a quorum;
- (f) the functions of the committees constituted under Section 9;
- (g) the tenure of office, and the powers and duties of, the Registrar & other officers & servants of the Central Council;
- (ga) the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under clause (b) of sub-section (2) of Section 12A;
- (gb) any other factor under clause (g) of sub-section (7) of Section 12A;
- (h) The qualifications, appointment, powers and duties of, and procedure to be followed by, inspectors and visitors;
- (i) The courses and period of study of practical



training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in any University, Board or medical institution for grant of recognized medical qualification;

(j) the standards of staff, equipment, accommodation, training and other facilities for education in Homoeopathy;

(k) The conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;

(l) The standards of professional conduct and etiquette and code of the ethics to be observed by practitioners of Homoeopathy;

(m) The particulars to be stated, and the proff of qualifications to be given in applications for registration under this Act;

(n) The manner in which and the conditions subject to which an appeal under Section 25 may be preferred;

(o) The fees to be paid on application and appeals under this Act; and

(p) Any matter for which under this Act provision may be made by regulations.

42. It is in exercise of that power under clause (j) of Section 33 of the HCC Act 1973, in supersession of Homoeopathy (Minimum Standards of Education) regulations 1983, except as respects things done or omitted to be done before such supersession, the Central council of Homoeopathy with the previous sanction of the Central Government made the



regulation called HCC (MSR) Regulation 2013. Since Regulation 3 of HCC (MSR) Regulation 2013 is the subject matter of discussion and interpretation in the present case, we quote the entire Regulation 3 as under:

“3. Fulfillment of minimum standard requirement:-

(1) The college and attached hospital(s) shall fulfill the minimum standards requirements of infrastructure and teaching and training facilities referred to in the regulations 4 to 13.

(2) For exposure of the students in the clinical field and to understand the depth of operative surgery and operative Gynecology or Obstetrics as well as management in critical illnesses, a college shall have a Memorandum of Understanding with a reputed nearby located super-specialty hospital (of modern medicine) with all required facilities of operation theatre, labor room, Intensive Care Unit and other required facilities for the management of critical patients.

(3) In case an attached hospital of a college does not have the facilities to handle operation theatre and other critical patients, the students of such a college can be deputed under the strict supervision of concerned teaching faculty of the college for the required exposure in the said field to the attached super-specialty hospital.

(4) The existing colleges and their attached hospitals established under Section 12A of the Act and those colleges and their hospitals established prior to the 28th January, 2003 and recognized by the Central Council of Homoeopathy shall fulfill the minimum standards requirements of infrastructure teaching and



training facilities referred to in these regulations by the 31st December, 2014 for consideration of grant of permission for undertaking admission in the coming academic years.

(5) If a college fulfills the requirement by 31st December, 2014 as per these regulations, it shall be granted permission to undertake admissions for a period not exceeding five years during which the college shall not be inspected, except for random checks on receipt of any complaint, or otherwise as deemed necessary either by the Central Government or by the Central Council of Homoeopathy.

(6) The Central Council shall visit the college *suo moto* three months before the expiry of permission.

(7) The conditional permission shall be granted only to those colleges which are fulfilling at least the requirement of teachers as specified in Schedule-IV, the requirement of functional hospital as specified at sub-regulation (2) of regulation 7 and availability of equipment as specified in schedule-III for each academic year 2013-14 and 2014-15 on the basis of the separate inspections to be carried out by the Central Council of Homoeopathy after the 15th May, 2013 for the academic year 2013-14 and after the 31st December, 2013 for the academic year 2014-15.

(8) Such conditional permitted colleges or those colleges which have been denied permissions during the academic year 2013-14 and/or 2014-15, will be required to fulfill the requirements as specified in these regulations by the 31st December, 2014.

(9) All the existing colleges, which are not able to achieve full compliance of the requirement as specified in these regulations by the 31st December, 2014, shall be denied permission from academic year



2015-16 onwards and action as envisaged under Section 19 of the Act shall be initiated against all such colleges apart from rejection of their applications under Sections 12A, which have been under consideration by way of conditional permission or denials.”

43. In the aforesaid background of the legal provisions we find that under sub-regulation 4 of Regulation 3, even though it is stated that if a College fulfills the requirement by 31st December 2014 as per these regulations it shall be granted permission to undertake admission for a period not exceeding five years during which the college shall not be inspected, the provision carves out an exception and make it very clear that random checks on receipt of any complaint or otherwise as deemed necessary either by the Central Govt. or by the Central Council of Homoeopathy (*emphasis is mine*) may be held. The word ‘or otherwise as deemed necessary either by the Central Govt. or by the Central Council of Homoeopathy’ in our opinion, are words of wider connotation and a literal meaning of the same would lead to an irresistible conclusion that the Central Govt. wherever deemed necessary even if there is no complaint, may carry on an inspection. The words are very clear and unambiguous and therefore power of the Central



Government to effect a surprise inspection may be found well within the purview of sub-regulation (5) of Regulation 3. It appears that in the impugned judgment and order, the attention of the learned writ court was drawn towards sub-regulation (5) of Regulation 3, but the learned writ court could not take into consideration the effect of the words ‘or otherwise deemed necessary’ as occurring under sub-regulation (5) of Regulation 3. The learned writ court would not be correct in saying that such inspection as has been envisaged under sub-regulation (5) of Regulation 3 cannot be carried out by the Central Government in the facts of the present case.

44. The learned Writ Court has at one stage held that there is no power vested in the Central Government under the HCC Act for carrying on an inspection muchless any inherent power. According to learned Writ Court there is no provision under the HCC Act conferring power upon the Central Government even impliedly to cause inspection of a medical institution and it is only the CCH, under Section 17 of the HCC Act is vested with the power to appoint such number of medical inspectors to inspect any medical college, hospital or other institution. We are unable to accept the view taken by the learned Writ Court on this issue. A perusal of the HCC Act



would show that under Section 33, the Central Council has been conferred with the power to make regulation with the previous sanction of the Central Government and such regulations may provide for the various matters enumerated under Clause (a) to (p) of sub-section (1) of Section 33. The CCH is empowered to frame regulations providing for the standards of staff, equipment, accommodation, training and other facilities for education in Homoeopathy. CCH is also empowered to frame regulation providing for any matter for which under the HCC Act provision may be made by regulations. For purpose of the maintaining the standards of education in Homoeopathy, the CCH has framed HCC (MSR) Regulation, 2013 and therein regulation 3(5) provides for carrying on inspection by the CCH, but under sub-regulation (5) of Regulation 3, Central Government has been vested with vast power to conduct inspection wherever it is deemed necessary by the Central Government. The argument of the writ petitioners is that it is only CCH who can carry inspection, if CCH can carry inspection then under the same sub-regulation (5) of Regulation 3, the Central Government is also empowered to carry inspection and on the face of power conferred under sub-regulation (5) of Regulation 3 of the HCC (MSR) Regulation, it



cannot be held that the Central Government has no power.

45. We are unable to agree with the view of the learned writ court that sub-regulation (5) of Regulation 3 cannot be invoked in the present case as it is not the case of the Central Government that the Colleges, in question, have been granted permission to undertake admission. We are afraid such an interpretation would amount to taking away the very object and purpose of framing the Regulation 2013 whereunder the whole emphasis is on the maintenance of minimum standard of requirements. In the present case, the colleges in question were obliged to fulfill the requirement by 31st December, 2014, however the cut off date had been extended by the Central Government by virtue of Annexure-R5/C to the counter affidavit of Respondent no. 1 and 2 and the college had taken admission for the academic year 2015-16. The view expressed by the learned Writ Court that because the colleges were not granted permission is not *ipso facto* correct. In this case, before the learned writ court sub-regulation (5) of Regulation 3 of the HCC (MSR) Regulation was not under challenge and since *vires* of the said Regulation was not under challenge the learned Writ Court was not required to go into the scope and ambit of the provision of sub-regulation (5) of Regulation 3 by observing



that the words of the said Regulations should be understood in the background of the parent enactment under which the regulation has been framed.

46. We do not find any discussion on this aspect of the matter or specific pleadings in the writ application as regards the scope and ambit of sub-regulation (5) of Regulation 3, and therefore, the observation of the learned Writ Court on this score cannot sustain.

47. A reading of sub-regulation (4) of Regulation 3 of HCC (MSR) Regulation 2013 makes it clear that this applies to not only the existing colleges and their attached hospitals established under Section 12A of the Act, but also to those colleges and their hospitals which are established prior to the 28th January 2003 and recognized by the Central Council of Homoeopathy. Learned Addl. S.G. in course of argument has admitted that reference of Section 12A of the HCC Act at one place in the impugned order as contained in Annexure 11 to the writ application is a mere typographical error and will not make any difference because so far as the minimum standard requirement laid down under the HCC (MSR) Regulation 2013 is concerned those applied to all the colleges including the present college in question. We accept the submission as it is not



even otherwise seriously contested by the writ petitioner.

48. Now coming to sub-regulation 9 of Regulation 3 of the HCC (MSR) Regulation 2013, we find that it applies to all the existing colleges which are not able to achieve full compliance of the requirement as specified in these Regulations by 31st December, 2014. In fact sub-regulation (5) and sub-regulation (9) of Regulation 3 are to be read together in order to understand the intention of the legislatures and the Central Government while approving the HCC (MSR) Regulation 2013. According to sub-regulation (9) of Regulation 3, all the existing colleges, which are not able to achieve full compliance of the requirement as is specified in these regulations by the 31st December, 2014 shall be denied permission from the academic year 2015-16 onwards. *(emphasis supplied).*

49. In the present case, in order to take a view as to whether the colleges in question have achieved full compliance of the requirement or not the CCH conducted an inspection, submitted its report but then the Central Government (Ministry of Ayush) decided to conduct a surprise inspection before finally accepting the recommendation of the CCH in the matter of grant of permission or to deny permission from academic year 2016-17 or 2017-18.



50. In our opinion, a combined reading of sub-regulation (5) and sub-regulation (9) of Regulation 3 would lead to a conclusion that in order to ascertain whether a college fulfills the requirement as per HCC (MSR) Regulation 2013 if the Central Government deemed necessary, it may conduct an inspection. There is nothing in the HCC (MSR) Regulation 2013 which envisages or may be construed to mean and understand that the recommendation of the CCH would be mandatory and binding upon the Central Government. If the Central Government has conducted inspection on 24.08.2016 after the inspection report was submitted by CCH, the action of the Central Government in causing such inspection cannot be taken as unauthorized by law.

51. In the present case, the Central Government has denied permission to the colleges in question for the academic year 2016-17, for the reasons stated in the impugned order as contained in Annexure-11 to the writ application and in the impugned order in connected Writ Application. Reasons stated in the impugned order passed by the Central Government are based on the detail discussion of the materials placed before the hearing committee and upon taking note of the observation of the hearing committee in the following words :



8. Now, therefore, in view of the shortcomings and deficiencies mentioned in para 7 above, which violate the provisions of the HCC Act and the relevant regulations and are of such a serious and fundamental in nature that they adversely affect the ability of the College to provide quality medical education in terms of the provisions of the HCC Act and the relevant regulations, the Dr. R.B. Singh Gaya Homeopathic Medical College & Hospital, P.O. Amwan, Bodhgaya, Gaya, Bihar” is hereby denied permission for taking admission to BHMS course with 50 UG seats under Section 12A of the HCC Act, 1973 for the academic session 2016-17.

9. Further it is informed that the college is being provided a period up to 31.12.2016 to fulfill the shortcomings observed during this year as mentioned at para 7 above along with the following requirements, so that the CCH may carry out inspection of the college for consideration of matter for grant of permission for taking admissions in UG course from the academic year 2017-18:

a) the college shall obtain the NABH accreditation for the Hospital within one year and the NAAC accreditation for the College within two years from the issuance of the permission letter and the college shall submit its compliance to this Ministry as well as the CCH within specified period;

b) al the Minimum Standard Requirements of infrastructure and teaching & training facilities as specified in Regulation 3 of the “Homoeopathy Central Council (Minimum Standard Requirements of Homoeopathic Colleges and attached Hospitals)



Regulations, 2013” by 31st December 2016 to get permission for a period not exceeding five years. Failing which, *“all the existing colleges which are not able to achieve full compliance of the requirement as specified in these regulations by the 31st December 2014 shall be denied permission from academic year 2017-18 onwards and action as envisaged under Section 19 of the act shall be initiated against all such colleges apart from rejection of their applications under section 12A, which have been under consideration by way of conditional permissions or denials”* and

c) all the requirements under the provisions of the HCC Act, 1973 and relevant Regulations made thereunder should be fulfilled *in toto*.

52. The submission of learned counsel representing the writ petitioner(s) that before denying permission the Central Government is obliged to follow the procedure as envisaged under Section 19 of the HCC Act has to be taken note of only for the purpose of rejection. Section 19 of the HCC Act 1973 deals with the withdrawal of recognition which stage has yet not come in the present case. By the impugned order dated 08.11.2016 passed by the Central Government for the present the college was denied permission for taking admission to BHMS course for the academic session



2016-17, and further it was provided period up to 31.12.2016 to fulfills the shortcomings observed during this year as mentioned in para 7 of the impugned order of the Central Government. The letter also makes its intention very clear that after fulfilling the shortcomings by following the requirements, the CCH may carry out the inspection of the college for consideration of the matter for grant of permission for taking admission in UG course for the academic year 2017-18. In this view of the matter, we are convinced that impugned order dated 08.11.2016 (Annexure 11 to the writ application) having been passed by the Central Government after giving full opportunity of hearing to the writ petitioner does not suffer from any illegality or infirmity.

53. It appears from perusal of the impugned orders passed between 03.08.2017 to 12.09.2017 by the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH) which were subject matter of challenge in CWJC No. 16589/2017, 16554/2017, 16838/2017, 14564/2017, 16371/2017 and 14372/2017 that by those orders the colleges in question were denied permission to conduct BHMS Course and to undertake admission in the academic session 2017-18. Those impugned orders have also been set



aside by the learned Writ Court for the same reasons and rationale which were provided in the impugned judgment and order dated 28.06.2017 which we have already discussed hereinabove in detail. We take a similar view as regards those impugned orders as well and find no illegality or infirmity on the part of the Central Government in passing of the impugned orders on the ground that there existed certain deficiency on the part of the colleges in not fulfilling the requirement contemplated under Regulation 4 to 13 of the Regulations. In all such cases the Central Government issued notices to the respective colleges pointing out the deficiencies and asked them to appear before the hearing committee, it is only after providing them hearing before the hearing committee, the impugned orders were passed between 03.08.2017 to 12.09.2017. We, thus find that in those cases as well principles of natural justice had been followed and the decision of the Central Government cannot be faulted with. The judgment and order(s) passed by the learned Writ Court is, therefore, not sustainable and is liable to be set aside.

54. In the result, all these Letters Patent Appeals are allowed and the impugned judgment and order passed by the learned Writ Court which are subject matter of the Letters Patent



Appeals are hereby set aside and the writ applications are dismissed.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	22.02.2018
Uploading Date	13.03.2018
Transmission Date	NA

