

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 2699 of 2018**

- Rajiv Lochan Ayurveda Medical College Run By 'Yuva Utthan Samiti' Through The Secretary, 'Yuva Utthan Samiti', Shantikunj, Plot No. 41 Behind Kalibadi Mandir, Katulboard Road Sindhia Nagar, Durg, District- Durg, Chhattisgarh

---- Petitioner**Versus**

1. Union Of India Through The Secretary, Ministry Of Ayurveda, Yoga And Naturopathy, Unani, Siddha And Homoeopathy (AYUSH), Ayush Bhawan, B-Block, G.P.O Complex I.N.A.- New Delhi, P.S.- New Delhi 110 023
2. Central Council Of Indian Medicine Through The Secretary, Central Council Of Indian Medicine 61-65, Institutional Area, Opp. 'D' Block, Janakpuri, Delhi -110058
3. State Of Chhattisgarh Through The Secretary To The Govt. Of Chhattisgarh, Department Of Health And Family Welfare Mahanadi Bhawan, Mantralaya Atal Nagar, New Raipur, Chhattisgarh
4. Ayush And Health Science University Through The Registrar Ayush And Health Science University GE Road- Raipur, District- Raipur, Chhattisgarh

---- Respondent

For Petitioner	Mr. Anurag Dayal Shrivastava, Advocate
For Respondent No.1	Mr. B. Gopakumar, Assistant Solicitor General
For Respondent No.4/ University	Mr. NK Vyas, Advocate
For Respondent/State	Mr. Shashank Thakur, Government Advocate

Order On Board By**Hon'ble Mr. Justice Prashant Kumar Mishra****22/10/2018**

1. Heard.

2. The petitioner would pray for quashment of the order Annexure P/1 issued by respondent No.1, withdrawing permission granted for a period not exceeding five years in BAMS (UG) Course from the academic session 2016-17 to the academic session 2020-21 vide letter dated 15.11.2016 and at the same time denying permission for conducting 60 seats in BAMS (UG) Course under Section 13A/13C of the Indian Medicine Central Council Act, 1970 (for short 'the IMCC Act, 1970') for the session 2018-19.
3. Learned counsel for the petitioner would challenge the order mainly on the ground that in view of the law laid down by the Supreme Court in the matter of **Temple of Hanemann Homoeopathic Medical College and Hospital Vs. Union of India and others, AIR 2018 SC 3699**, the Union Government cannot appoint a Committee or the members thereof for conducting field verification for compliance of the standards in AYUSH Colleges. He would submit that vide communication- Annexure P/3, the Central Government has addressed letters to the members of the Committee constituted for conducting field verification directing them to conduct field verification and pursuant to the said communication, the Chairman of the Committee constituted by the Ministry of AYUSH informed the Principal, Rajiv Lochan Ayurveda Medical College that field verification of compliance of minimum standards shall be undertaken by two members led by Dr. Kandarp Desai, Ex. Director. The members so appointed conducted the field verification and submitted their report, based on which, the present impugned order has been passed.

4. This writ petition was filed on 25.9.2018, which came up for hearing on 26.9.2018, when after hearing learned counsel for the parties, the prayer for interim relief was denied in view of the order passed by the Supreme Court in the matter of **Medical Council of India Vs. Jaipur National University Institute for Medical Sciences and Research Centre, Jaipur and another, AIR 2018 SC 3114**. However, the counselling for allocation of seats to the students is scheduled for tomorrow i.e. 23.10.2018 from 8:30 am to 12:30 pm, therefore, the matter is taken up for final disposal today.
5. Mr. Gopakumar, learned Assistant Solicitor General, would submit that the Central Government has set the law in motion but the actual verification has been conducted by the Committee, therefore, there is no procedural illegality in conducting the verification and the petitioner's case is distinguishable from the case decided by the Supreme Court in the matter of **Temple of Hanemann Homoeopathic Medical College and Hospital (supra)**.
6. Mr. Vyas, learned Counsel for the University and Mr. Thakur, learned State Counsel, would support the contention raised by the learned ASG.
7. In the matter of **Temple of Hanemann Homoeopathic Medical College and Hospital (supra)**, the Supreme Court was considering the *pari materia* provisions under the Homoeopathy Central Council Act, 1973 (in short "the Act, 1973") and the Homoeopathy Central Council (Minimum

Standards Requirement of Homoeopathy Colleges and attached Hospitals) Regulations, 2013 and in such context, the Supreme Court would observe that Section 17 of the Act, 1973 makes it clear that as per statutory provision, duty has been enjoined upon the CCH to appoint a team of Inspectors. Such a power has been specifically conferred on such Expert Bodies under various enactments also and it is the function of the expert bodies in the field and they are supposed to appoint a team of Inspectors and it is for expert bodies to make the recommendations to the Central Government. The role of the Central Government is a supervisory one and not to start an investigation by making the appointment of a team of Inspectors, as that is not envisaged under the Act of 1973 itself.

8. In the above matter before the Supreme Court, the Division Bench of the High Court had approved the initiation of verification by the Central Government. The Supreme Court disapproved the Division Bench Judgment of the High Court to hold thus in para 23 :

“23. Thus, the Division Bench of the High Court has clearly erred in holding that the power to appoint the Inspectors is with the Central Government while interpreting Regulation 3(5) of the Regulations, 2013. The Central Government cannot appoint a team of Inspectors as this power has not been conferred upon the Central Government either under the said Regulation 3(5) or any of provisions contained in the Act.

It is only CCH which can appoint a team of inspectors as per Section 17 if the request is made by the Central Government under Regulation 3(5)."

9. In the teeth of the law laid down by the Supreme Court, the communication Annexure P/3 issued by the Central Government appointing members of the Committee for conducting field verification falls foul of the provisions contained under Section 19 of the IMCC Act, 1970, which confers power on the Central Council to appoint such number of Medical Inspectors to inspect any Medical College, Hospital or other Institution including the Ayurvedic College run by the petitioner. Similarly under Clause 3(2) of the Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016, it is the Central Government or the Central Council who are authorised to conduct random checks on receipt of complaint or otherwise. It does not deal with the aspect as to who will appoint a team of Inspectors for the purpose of inspection to be carried out.

10. The Supreme Court in the matter of **Temple of Hanemann Homoeopathic Medical College and Hospital (supra)**, has observed in para 21 that it is only the Central Council which is empowered to appoint a team of Inspectors under Section 17 and visitors for the examination under Section 18 for making recommendation to the Central Government on the basis of report submitted by the team of inspectors or visitors as envisaged under Sections 17 and 18 of the Act, as applicable in

that case.

11. Since in the case at hand also, it is the Central Government who has appointed the team of Inspectors to carry on the inspection and the said report of inspection has formed the very basis of the impugned order, there being inherent jurisdictional defect at the very inception, the impugned order has to fail. It is accordingly quashed.

12. Necessary fall out of quashment of the impugned order shall work in favour of the petitioner.

13. The writ petition is allowed to the extent indicated above. No order as to costs.

Sd/-

(Prashant Kumar Mishra)

Judge

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