

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.10.2018
PRONOUNCED ON : 14.12.2018
CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.Nos.25308 and 25363 of 2017 and 24163 of 2018
and
W.M.P.Nos.26770, 26771, 26804 and 26805 of 2017
and
W.M.P.No.28164 of 2018

W.P.No.25308 of 2017:-

Martin (Nethra) Homoeopathy
Medical College & Hospital,
Represented by its Principal. ... Petitioner

Vs.

1.Union of India
Represented by Secretary to the Government of India
Ministry of AYUSH,
AYUSH Bhawan, 'B' Block,
GPO Complex, INA,
New Delhi – 110 023.

2.The Registrar,
Central Council of Homoeopathy,
61-65, Institutional Area, Opp. to 'D' Block,
Janakpuri, New Delhi – 110 058.

3.The Government of Tamil Nadu,
Represented by Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai – 600 009.

4.The Registrar,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy, Chennai – 600 032.

5.The Pondichery University,
Represented by its Vice Chancellor,
Pondichery. ... Respondents

(Fifth respondent impleaded *suo motu* as per order, dated 13.10.2017 in W.P.No.25308 of 2017)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records from the first respondent herein relating to the order dated 12.09.2017 passed in proceeding F.No.R-17014/162/2013-EP(H) and quash the same insofar as it relates to denied permission for taking admission to 1st year BHMS course with fifty seats for the academic year 2017-18 stated in para 8 of the above said order and further consequently to direct the respondents to grant permission to the petitioner college to admit the students in the first year BHMS course for the academic year 2017-18.

For Petitioner :Mr.R.Murali
for Mr.V.Venkatasamy
For RR1 :Mr.Rajagopalan
Additional Solicitor General of India
Assisted by Mr.R.Rabhu Manohar
For RR2 :Mr.M.T.Arunan

For RR3 :Mrs.V.Annalakshmi

For RR4 :Mr.D.Ravichander

W.P.No.25363 of 2017:-

The Principal,
RVS Homoeopathic Medical College,
242-B, Trichy Road, Sular,
Coimbatore, - 641 402.
Coimbatore District. ... Petitioner

Vs.

- 1.The Union of India
Represented by its Secretary,
Department of Health & Family Welfare,
(Department of Ayurveda, Yoga & Naturopathy,
Unani, Siddha and Homoeopathy (AYUSH)),
IRCS Building, 1st Red Cross Road,
New Delhi.
- 2.The Central Council of Homoeopathy,
Represented by its Secretary,
No.61-65, Institutional Area, Opp. to 'D' Block,
Janakpuri, New Delhi – 110 058.
- 3.The Commissioner of Indian Medicine
and Homoeopathy, Arumbakkam,
Chennai – 600 106.
- 4.The Tamil Nadu Dr.M.G.R.Medical University,
Represented by its Registrar,
No.69/40, Anna Salai,
Guindy, Chennai – 600 032.

5.The Pondicherry University,
 Represented by its Vice Chancellor,
 Pondicherry. ... Respondents

(Fifth respondent impleaded *suo motu* as per order, dated 13.10.2017 in W.P.No.25363 of 2017)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in F.No.R.17014/161/2013-EP(H), dated 12.09.2017 denying permission to admit students to the BHMS course in the petitioner's RVS Homoeopathic Medical College, at Suler, Coimbatore in the academic year 2017-18, and to quash the same and consequently to direct the respondents to permit the petitioner college to admit students for the academic year 2017-18.

For Petitioner :Mr.Isaac Mohanlal
 Senior Counsel
 for M/s.Isaac Chambers
 For RR1 :Mr.NRajan
 Senior Central Government Standing Counsel
 For RR2 :Mr.M.T.Arunan
 For RR3 :Mrs.V.Annalakshmi
 For RR4 :Given up
 For RR5 No Appearance

W.P.No.24163 of 2018:-

Martin (Nethra) Homoeopathy
Medical College & Hospital,
Represented by its Principal.

... Petitioner

Vs.

1.Union of India

Represented by Under Secretary
to the Government of India,
Ministry of AYUSH,
AYUSH Bhawan, 'B' Block,
GPO Complex, INA,
New Delhi – 110 023.

2.The Registrar,

Central Council of Homoeopathy,
61-65, Institutional Area, Opp. to 'D' Block,
Janakpuri, New Delhi – 110 058.

3.The Government of Tamil Nadu,

Represented by Secretary to Government,
Health and Family Welfare Department,
Fort St.George,
Chennai – 600 009.

4.The Registrar,

The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy, Chennai – 600 032.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India for issuance of Writ of Mandamus, to
direct the fourth respondent University to provide Continuous

Provisional Affiliation (CPA), to the petitioner college without insisting the conditional permission from the first respondent for the academic year 2017-18 for taking admission to 1st year BHMS course with fifty seats within a time period as may be fixed by this Court.

For Petitioner :Mr.R.Murali

For RR1 :Mr.Rajagopalan

Additional Solicitor General of India

Assisted by Mrs.M.P.Jaisha

For RR2 :Mr.M.T.Arunan

For RR3 :Mrs.V.Annalakshmi

For RR4 :Mr.Harihara Arun Somasankar

COMMON ORDER

W.P.No.25308 of 2017 has been filed by the petitioner in W.P.No.24163 of 2018, for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the first respondent, dated 12.09.2017, insofar as it relates to denial of permission for taking admission to first year BHMS course with fifty seats for the academic year 2017-18 and consequently to direct the respondents to grant permission to the petitioner college to admit the students in the first year BHMS course for the

academic year 2017-18.

2.W.P.No.25363 of 2017 has been filed by RVS Homoeopathic Medical College, Coimbatore, for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the first respondent, dated 12.09.2017 denying permission to admit students to the first year BHMS course in the petitioner college for the academic year 2017-18 and to direct the respondents to permit the petitioner college to admit students in the first year BHMS course for academic year 2017-18.

3.W.P.No.24163 of 2018 has been filed for issuance of a Writ of Mandamus, directing the fourth respondent University to provide Continuous Provisional Affiliation (CPA), to the petitioner college without insisting the conditional permission from the first respondent for the Academic year 2017-18 for taking admission to the first year of BHMS course with fifty seats within a stipulated time as may be fixed by this Court.

4.The brief facts relating to W.P.Nos.25308 of 2017 and 24163 of 2018 are as follows:

4.1.The petitioner institution, namely, Martin (Nethra) Homoeopathy Medical College and Hospital was established in the year 2000. The Government of Tamil Nadu granted permission to start BHMS degree in the name of Nethra Homoeopathy Medical College, Coimbatore, with an annual intake of fifty students, vide G.O.Ms.No.156, Health and Family Welfare (IMI-2)Department, dated 15.04.1999. The Central Council of Homoeopathy granted recognition for the petitioner college on 02.11.1999. The Tamil Nadu Dr.M.G.R.Medical University granted Registration Certificate and also granted provisional affiliation for starting first year BHMS degree course with an annual intake of fifty students from the academic year 2000-01, after conducting due inspection of the facilities and infrastructure.

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4.2.The petitioner college is continuously conducting the courses and admitting students for BHMS course, as per the provisions of Homoeopathy Central Council Act, 1973 and the

regulations framed under the Act namely, Homoeopathy (Minimum Standards of Education) Regulations, 1983. Homoeopathy Central Council (amendment), Act, 2002 was enacted and Sections 12A, 12(B), 25A, 33(1)(ga) and (gb) were inserted in the parent Homoeopathy Central Council Act, 1973, with effect from 28.01.2003. Thereafter, new regulations were made by the Central Council of Homoeopathy with the previous sanction of Central Government in 2013, called Homoeopathy Central Council (Minimum Standards Requirement of Homoeopathy Colleges and attached Hospital) Regulations, 2013, (hereinafter referred to as 2013 regulations'.) As per regulation 3(4) of HCC (MSR) 2013, the existing colleges and their attached hospitals established under Section 12A of the Act and those colleges and their hospitals established prior to 28.01.2003 and recognized by the Central Council of Homoeopathy shall fulfil the minimum standards requirements of infrastructure, teaching and training facilities referred to in the regulations by 31.12.2014, for consideration of grant of permission for undertaking admissions for the ensuing academic years.

4.3. The petitioner college claimed to have the minimum standards requirements of infrastructure, teaching and training facilities as per the 2013 Regulations. On 01.06.2016, an inspection was carried out at the petitioner college for verification of minimum standards requirements as specified in HCC (MSR) 2013, by the Central Council of Homoeopathy and the said report was submitted to the first respondent, who later granted conditional permission for intake of admission for the first year BHMS degree course for the academic year 2016-17 subject to the removal of certain deficiencies. The deficiencies pointed out in the said inspection report were stated to be minor in nature and the same was readily complied with by the petitioner college. As per regulation 3(5) of the HCC (MSR) 2013, if a college fulfills the requirements by 31.12.2014, it shall be granted permission to undertake admissions for the period not exceeding five years during which the college shall not be inspected, except for random checks on receipt of any compliant or otherwise as deemed necessary either by the Central Government or by the Central Council of Homoeopathy.

However, the first respondent granted conditional permission only for one year under the pretext that certain deficiencies have not been complied with.

4.4. Similarly, for the academic year 2017-18, the second respondent carried out an inspection on 15.07.2017 in the petitioner college and based on the inspection report, a notice, dated 10.08.2017 was issued by the first respondent, whereby, the petitioner was called upon to submit its explanation on the deficiencies pointed out in the inspection report and to appear for personal hearing on 26.08.2017. The said inspection report was received by the petitioner on 28.08.2017. However, it is stated that the petitioner appeared before the Hearing Committee on 26.08.2017 and submitted that the deficiencies pointed out are minor in nature and that most of the deficiencies were complied with. It is stated by the petitioner that even with regard to the minor deficiencies pointed out, the petitioner undertook to comply with the deficiencies on or before 31.12.2017.

4.5.By a letter, dated 24.08.2017, which was received by the petitioner on 28.08.2017, the inspection report, dated 15.07.2017, was communicated to the petitioner. After the receipt of the letter, dated 24.08.2017, from the second respondent, the petitioner sent a reply, dated 09.09.2017, to the second respondent, namely, the Central Council of Homoeopathy, focussing the rectification carried out by the petitioner college and sought for grant of permission for admitting students for BHMS degree course. However, it is stated that when reply letter is pending for consideration before the second respondent, the first respondent passed an order, dated 12.09.2017, denying permission to the petitioner for taking admission to the first year BHMS course with fifty seats for the academic year 2017-18, through e-mail.

4.6.Hence, the petitioner was constrained to challenge the order dated 12.09.2017, in the writ petition in W.P.No.25308 of 2017 before this Court and this Court granted interim order in W.M.P.Nos.26770 and 26771 of 2017 in W.P.No.25308 of 2017 permitting the petitioner college to admit students. The interim

order granted by this Court was challenged by the respondents 1 and 2 in writ appeal in W.A.Nos.1336 and 1337 of 2017 and the Honourable Division Bench of this Court disposed of the same on 30.10.2017. The Honourable Division Bench remitted the matter to be reconsidered by the learned Single Judge and dispose of the matter after affording an opportunity of hearing to all the parties concerned, so that the interest of the institution and that of the ensuing students can be protected without putting them into jeopardy.

4.7. In the meanwhile, the fourth respondent sent a letter, dated 06.06.2018 to the petitioner college informing that the spot verification and the process of registration for the candidates admitted is still pending for non-issuance of Continuous Provisional Affiliation) for the academic year 2017-18 and thereby, called upon the petitioner college to obtain Continuous Provisional Affiliation order for the academic year 2017-18 on or before 30.06.2018 to proceed further for the process of the registration for the academic year 2017-18. It is contended by the petitioner that the petitioner college was

affiliated by the respondents in the year 1999-2000 itself and later, as per the amendment made in the Homoeopathy Central Council Act, 1973 in 2002, with effect from 28.01.2003.

4.8. After scrutinizing all the orders passed by this Court and the affiliation granted by the Central Council of Homoeopathy in the year 1999 and the Tamil Nadu Dr.M.G.R. Medical University in the year 2000, fifty students were admitted in the petitioner college for the first year BHMS course in the year 2017-18. Among the fifty students, 33 students were admitted under the Government quota through counselling and only 17 students were admitted through management source. However, the fourth respondent University has directed the petitioner college to obtain the Continuous Provisional Affiliation (CPA) on or before 30.06.2018. Since the communication has been issued by the fourth respondent, who is competent to issue Continuous Provisional Affiliation certificate, the petitioner was constrained to file the second writ petition in W.P.No.24163 of 2018 for issuing a Writ of Mandamus directing the university to provide

Continuous Provisional Affiliation (CPA) to the petitioner college without insisting conditional permission from Central Government.

5. Brief facts in W.P.No.25363 of 2017:-

5.1.The petitioner college, namely, RVS Homoeopathic Medical College, at Suler, Coimbatore, is administrated by a Trust, known as "RVS Medical Trust", Coimbatore. The college was established in the year 2001. It is offering degree course in Bachelor of Homoeopathic Medicine and Surgery (BHMS) for the past 17 years. The petitioner is a private self-financing institution. The petitioner college is functioning with the approval of the Central Government and the affiliation of Tamil Nadu Dr.M.G.R. Medical University, who is the fourth respondent in the writ petition.

5.2.It is stated that the petitioner college is located in an area of 11 acres and that it has got all infrastructure and instructional facilities. The petitioner claims to have 50 bedded Homoeopathy Hospital attached to the college and it has also

got tie-up with a 100 bedded Hospital, by name, Saraswathi Hospital at Coimbatore. The first respondent, namely, Government of India, Department of AYUSH, gave permission for the establishment of the college by proceedings, dated 23.09.2004. Though petitioner college is functioning from 2001 with the approval of Central Council of Homoeopathy, after the amendment in 2003, the first respondent gave permission for the establishment of college vide proceedings, dated 23.09.2004.

5.3. The fourth respondent University has given affiliation to the college. The petitioner college is functioning from 2001 without any interruption with annual admission capacity of 50 seats. It is stated that for the academic year 2016-17, the first respondent granted permission by order dated 26.10.2016. The fourth respondent University also granted affiliation for the academic year 2016-17 by proceedings dated 25.07.2017. It is stated that the Central Council for Homoeopathy (CCH), the second respondent in the writ petition, conducted an inspection on 14.07.2017. It is further stated that the second respondent

though was fully satisfied with the infrastructural and instructional facilities available in the petitioner college, the first respondent, vide communication, dated 21.08.2017, stated that on examining the inspection report of the Central Council for Homoeopathy, the first respondent has found certain discrepancies in the petitioner college, as per the Homoeopathy Central Council (Minimum Standards Requirement of Homoeopathic College and attached Hospitals), Regulations, 2013, (herein after referred as 2013-Regulations). In the same letter, the petitioner college was directed to appear before the Hearing Committee, under the department of AYUSH on 29.08.2017. The discrepancies pointed by the first respondent are as follows:

"i) Reader in the department of Organon of Medicine, Pathology and FMT are promoted with teaching experience in different subject.

ii) Lecturer in department of Pharmacy, Practice and Medicine, Surgery and Repertory are appointed after 40 years of age.

iii) IPD data appears to be not authentic and needs to be verified.

iv) Surgeon, Anesthetic, Obstetrician, Radiologist and Pathologist are not available in attached Homoeopathic Hospital.

v) Equipment, like, Perimeter in the department of Physiology, Glucometer, Rubber Tube, stands clamps in the

department of Bio-chemistry, Centrifuge machine anaerobic apparatus in department of Pathology and Crucibles with tongs, alcoholmeter, lactometer, macerator in department of Pharmacy are less than required. Equipment for measuring height not available in department of FMT."

5.4.It is stated that the petitioner college received the said notice on 23.08.2017 and hence the petitioner college cannot carry the entire files required by the first respondent, at the time of hearing, that was fixed on 29.08.2017. It is further stated that the discrepancies noted in the notice were minor in nature and that therefore, the petitioner could rectify the defects.

5.5.Before the Hearing Committee, it is stated that the petitioner college offered explanation and reported compliance in respect of discrepancies to the satisfaction of the Hearing Committee. It is the specific case of the petitioner that the Hearing Committee instructed the petitioner college to purchase the equipment pointed in fifth item in the list of discrepancies at the earliest. Further, it is stated that the Hearing Committee prepared a report and instructed the representatives of the college to sign, where, it was recorded

that the college accepted certain deficiencies. It is also stated by the petitioner college that the representatives of the college signed the report under protest. Regarding staff strength, it is the contention of petitioner that the petitioner has required teachers in all the departments and that some of the teachers who were deputed as surgeons and doctors in the attached hospital as permissible under 2013 Regulations were ignored by the Hearing Committee. Similarly regarding non-availability of Anaesthetics and Radiologists it is contended that as per Regulations - 2013, they have to be available 'on call' from the tie-up hospital and hence, there is no deficiency. Detailed explanation was offered by the petitioner after making few appointments and staff regarding deficiency in faculties. Regarding IPD, the petitioner submitted that the IPD and OPD registers maintained by the petitioner in huge volumes were brought to the Hearing Committee and the deficiency in this regard is seriously disputed. Regarding the fifth deficiency, the petitioner submitted that immediately after inspection, the petitioner purchased the small equipment and produced the order receipt at the time of hearing. Regarding sixth deficiency

also the petitioner stated that it has physiotherapy and yoga units separately.

5.6.After purchasing few equipments on 05.09.2017, the petitioner claimed to have rectified all the discrepancies pointed out by the Committee. However, it is stated that the petitioner received the impugned proceedings, dated 12.09.2017 from the first respondent denying permission for taking admission to BHMS course for the academic year 2017-18, on the ground that the petitioner college had failed to produce sufficient documents to substantiate the claim of having requisite eligible teaching functional IPD, requisite hospital staff, equipment in different department, separate rehabilitation unit for Physiotherapy and Yoga as per the regulation 7(2) of 2013-Regulations, for granting conditional permission.

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5.7.It is stated that the petitioner college was not given any further opportunity after the meeting with the Hearing Committee. Hence, the petitioner has stated that the order

impugned is in complete violation of principles of natural justice. It is further stated that the report of the Hearing Committee was not furnished to the petitioner college before passing the impugned order. Though the petitioner college pointed out several infirmities in the report of the Hearing Committee, the petitioner college has also given factual details to show how and when the petitioner college had rectified the deficiencies pointed out in the communication, dated 29.08.2017.

5.8. It is stated by the petitioner college that the teaching faculties required for the department of Organon Medicine as per 2013-Regulation, is one Professor or one Reader and one Assistant Professor / Lecturer. It is the specific case of the petitioner that the college appointed one Dr.Dinesh Kumar, as professor in the department of Organon, with effect from 23.08.2017. It is stated that the said incumbent was initially appointed as Lecturer in the petitioner college in the department of Organon of Medicine, on 10.08.2006 and later promoted as Reader on 10.08.2010 and subsequently, promoted

as Professor (Guest Faculty) on 10.10.2013. The appointment order of Dr. Dinesh Kumar was stated to have been submitted before the Hearing Committee. It was stated that the appointment of Dr.Dinesh Kumar as Professor was also accepted by the respondents.

5.9.Similarly, after the inspection, the petitioner college appointed one Dr.Thiyagapriya, as Reader with effect from 23.08.2017. Initially, Dr.Thiyagapriya was appointed as Lecturer in the department of Pathology on 24.12.2007 and promoted as Reader on 24.12.2011. Though Dr.Thiyagapriya resigned on 31.04.2014, she was again appointed as Reader in the department of Pathology, with effect from 23.08.2017.

5.10.With reference to appointment of Reader in the Department of Forensic Medicine and Toxicology, it is stated by the petitioner college that one Dr.Renu was working as Reader and that she had requisite qualification as well as teaching experience in the department of Forensic Medicine and Toxicology (FMT). It was further stated that Dr.Renu was

appointed as Lecturer in the petitioner college on 23.01.2013 and that after the completion of four years of teaching experience in the department of Forensic Medicine and Toxicology, the incumbent was promoted as Reader on 23.01.2017. Since the incumbent had required experience in the same department even before the inspection of Central Council, it is contended by the petitioner college that the incumbent had sufficient teaching experience.

5.11. The petitioner college has given the particulars to show that the petitioner college had sufficient faculty members with required experience in all the department and the fact that some of them who can be deputed to the attached hospitals as per 2013-Regulations was ignored. Regarding the requirements of persons of Anesthetic and Radiologist, it is the specific case of the petitioner college that as per 2013-Regulation, the Anesthetic and Radiologist can be made available on call. It is stated by the petitioner college that there was no deficiency, as the petitioner college had rectified all the deficiencies pointed by the Committee. It is stated by the petitioner that the college

fulfilled all the criteria, as per 2013-Regulation, regarding the requirements of land, infrastructure, qualified teaching and non-teaching faculty, equipment, bed occupancy, etc. Since without providing further opportunity of hearing to the petitioner college, the impugned order has been passed, the writ petitioner has challenged the impugned order on many grounds including violation of principles of natural justice. The petitioner has also raised objections as to the power and jurisdiction of the first respondent, who passed the impugned order without consulting the Central Council for Homoeopathy.

6. Counter Affidavit has been filed by the Officer Incharge, Clinical Research Unit for Homoeopathy, Chennai, under the Central Council for Reserach in Homoeopathy, on behalf of the first respondent in both Writ Petitions. Except the pleading that the impugned order, dated 12.09.2017, has been passed for the deficiencies pointed out, in the impugned order itself, the factual assertion made in the affidavits filed in support of the respective writ petitions have not been specifically dealt with. It is to be noted that in the counter affidavit filed on behalf of the

first respondent in W.P.No.25363 of 2017, it has been stated as follows:

2..... It was brought to the notice of the petitioner college that it those requirements were not fulfilled, by 31.12.2014, permission from academic year 2017-18 onwards will be denied and action for withdrawal of recognition, under Section 19 of the HCC Act, 1973, will be initiated. The petitioner college, instead of complying with the requirements, rushed to this Hon'ble Court, challenging the said order and also sought a direction to the respondents to admit students for the academic year 2017-18....."

7.It has been stated further in the counter affidavit that the petitioner is bound to obtain affiliation from the fourth respondent University independently and that the University can grant affiliation to the college only after the fulfillment of statutory requirements, as envisaged under the 2013- Regulations.

8.In the counter affidavit filed by the second respondent, it is stated that under the provisions of Section 33 of Homoeopathy Central Council Act, 1973, the Central Council has been authorised to make regulations with previous sanction of Central Government and that 2013- Regulations has been notified in supersession of 1983-Regulations in the official

gazette on 08.03.2013. In paragraph 7 of the counter affidavit in W.P.No.25363 of 2017, the second respondent has stated as follows:

7)It is submitted that pursuant to the directions received from the respondent No.1, vide letter dated 26.10.2016, answering the respondent Council inspected the petitioner's college and attached hospital on 14.07.2017 and report of inspection was received by respondent Council. Respondent Council sent the inspection report to respondent Ministry on 11.07.2017. Subsequently, the Executive Committee considered the said inspection report in its meeting held on 22.8.2017 and recommended as under:

"Recommended for allowing admission in BHMS Course for the year 2017-18 subject to the condition that the college shall fulfill all the deficiencies reflected in the report of inspection before allowing admission for the year 2018-2019."

Answering Respondent Council sent its recommendation to respondent No.1 vide its letter, 29.08.2017.

The answering respondent sent the inspection report to the petitioner on 23.8.2017."

9.Even in the counter affidavit filed in W.P.No.25308 of 2018, the first respondent has not specifically disputed the factual averments made in the affidavit filed in support of the writ petition. It is stated in the counter affidavit by the first respondent in W.P.No.25308 of 2018 that the petitioner college did not fulfil the norms, as per 2013-regulations. Since

adequate infrastructure is vital in an institution imparting medical education, it is stated that the ill-equipped colleges who have not fulfilled the norms, cannot be permitted to admit the students. It is further stated that the first respondent has to act as a watch dog on the Medical Colleges to ascertain the extent of qualitative medical education and to check each and every college, to maintain the standards adhering to the Regulations. The first respondent further stated that the petitioners were denied permission to admit the students for 2017-2018 only on the ground of want of infrastructure and that the petitioners who have admitted the deficiencies at the time of inspection, cannot maintain the writ petitions challenging the impugned orders dated 12.09.2017.

10. In both the writ petitions, one of the concerns of respondents 1 and 2 is about the fate of students, who got admission during the pendency of the writ petition pursuant to the interim order granted by this Court at the time when the writ petition was admitted. In the counter affidavit filed by the second respondent in W.P.No.25308 of 2017, the same stand

was taken by the second respondent in the counter affidavit filed in W.P.No.25363 of 2017.

11.The learned Senior Counsel appearing for the petitioner in W.P.No.25363 of 2017 has made the following submissions:

11.1.The petitioner college had all the infrastructure, instructional facilities as per 2013-Regulations as on the date, when the impugned order was passed and the petitioner has produced all the materials to show rectification of deficiencies pointed out, when the petitioner's representatives appeared before the Hearing Committee. However, based on the recommendations of the Hearing Committee, the first respondent has passed the impugned order, without giving further opportunity to the petitioner college. The report of the Hearing Committee was not communicated to the petitioner college before passing the impugned order. Hence, the impugned order is in violation of principles of natural justice.

11.2. Inasmuch as the second respondent has recommended for allowing for admission to the petitioner college in BHMS degree for the academic year 2017-18, subject to the condition that the petitioner college should fulfill all the deficiencies with a report of Inspection before allowing admission for the year academic year 2018-19, the impugned order contrary to the recommendations of the Central Council is without jurisdiction, arbitrary, illegal and unconstitutional.

11.3. The learned Senior Counsel for the petitioner referring to the impugned order, demonstrated before this Court almost to the satisfaction of this Court, non-application of mind with regard to certain deficiencies, as per 2013-Regulations.

11.4. The learned Senior Counsel for the petitioner referring to the provisions of Homoeopathy Central Council Act, 1973 (Herein after referred to as the Act), particularly, the provisions Chapter-IIA and Section 19 of the Act, submitted that the impugned order denying permission to admit students for

the academic year is unsustainable as it is contrary to the recommendations of the Central Council. The impugned order is also without jurisdiction as no power is conferred on the Central Government under the Act to deny permission to admit students.

11.5. The learned Senior Counsel also submitted that the first respondent has not applied his mind with regard to several deficiencies and failed to consider the documents submitted by the petitioner college in the light of 2013-Regulations. Learned Senior Counsel relied upon the Report of Central Council of Homoeopathy dated 12.09.2018 to show that no deficiency is pointed out by the Central Council except few minor aspects which had been rectified and not pointed out in the earlier report.

11.6. The learned Senior Counsel also pointed out that the petitioner institution is conducting BHMS course for 17 long years with the approval and affiliation by the respondents 1 and 4 till the academic year 2017-18. He further submitted that

for minor deficiencies, which can be rectified immediately, the first respondent has passed the impugned orders unmindful of the severe consequences of stoppage of admission to petitioner college. Similar arguments were advanced in the connected writ petitions.

12.Learned Senior Counsel appearing for the petitioner in W.P.No.24163 of 2018 and W.P.No.25308 of 2017 submitted that the petitioner college which is an 18 years old institution, has been illegally denied permission to admit students for 2017-2018 by the first respondent without jurisdiction. He further submitted that the fourth respondent University directed the petitioner college to produce the conditional permission from first respondent to obtain Continuous Provisional Affiliation (CPA) on or before 30.06.2018, even though conditional permission from Central Government is neither required under any statute nor contemplated under Homoeopathy Central Council Act, 1973. The learned Senior Counsel referred to the fact that the petitioner college was permitted by the State Government and the fourth respondent granted affiliation even

prior to the amendment made in the Act, which is, with effect from 28.01.2003. Since the permission for the petitioner college was granted by the State Government prior to the amendment, it is stated that no approval or recognition is required from the Central Government or Central Council. No permission on yearly basis is required from the first respondent.

13.The learned Senior Counsel after referring to the provisions of the Homoeopathy Central Council Act, 1973, submitted that the first respondent has no authority to deny permission to admit students, as no provisions under the Act or regulations enable the first respondent to pass the impugned order denying permission to the petitioner institution to admit students. The learned Senior Counsel by referring to Section 19 of the Act submitted that the first respondent has power to withdraw the recognition only under Section 19 of the Act and that Section 12A of the Act has no application to the existing institutions for which permission was granted before 2003.

14.The learned Additional Solicitor General of India

appearing for the first respondent in W.P.No.24163 of 2018 and in W.P.No.25308 of 2017 has referred to the impugned order and submitted that the first respondent is responsible under the Act for the maintenance of standard in Homoeopathy Medical Education. He further submitted that the Central Government which is competent to grant permission to any college to establish a Homoeopathy Medical College, has power to deny permission to any college to admit students for violation of any regulation that are framed under the Act. Since the first respondent is responsible for the maintenance of standard in all the institutions, which are recognised to conduct courses in Homoeopathy system of medicine, the impugned order cannot be challenged on the ground of jurisdiction or competency of the first respondent. However, the learned Additional Solicitor General of India has not made any serious submissions regarding the factual aspects projected by the learned Senior Counsels appearing for the petitioners in the writ petitions. His endeavour was to point out that the deficiencies at the time of inspection are admitted and that therefore, the impugned orders denying permission to admit students cannot be

questioned. He referred to the 2013-Regulations and submitted that permission can be granted only if the college fulfils the requirements as per 2013-Regulations.

15.The learned Counsel for the first respondent in W.P.No.25363 of 2017 pointed out that the Central Government has framed Regulations in exercise of its power under Section 33(j) of the Act. Since 2013-Regulations have to be complied with by every existing institution, it is submitted that after the framing of Regulations, it is the bounden duty of the first respondent to ensure that every existing institutions satisfy the 2013-Regulations. Since the deficiencies pointed out in the inspection reports in respect of the petitioner institution are not in dispute, he submitted that there is no other option but to take action to deny permission to the petitioner institution. The learned Counsel further submitted that the impugned order cannot be challenged on the ground of violation of principles of natural justice, inasmuch as the impugned order was passed after issuance of show cause notice and after giving further opportunity of hearing by the Hearing Committee before

passing the order. The learned Counsel relied upon Rule 3(9) of the 2013-Regulations, which reads as follows:

"3.Fulfillment of Minimum Standard Requirements:-

(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 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 permission or denials."

16.By referring to the above Rules, the learned Counsel appearing for the first respondent in W.P.No.25363 of 2017 contended that the Central Government has absolute power to deny permission to a particular college to admit students in the event of deficiencies or violation of regulations. The learned Counsel further submitted that the petitioner in both cases have impliedly admitted that there are deficiencies at the time when the inspection team of Central Council inspected the college. Since the petitioners themselves admitted the deficiencies, he submitted that the impugned order passed by the first respondent on the basis of the report of Hearing Committee is perfectly in order. The learned Counsel appearing for the first respondent in W.P.No.25363 of 2017 has also

submitted written arguments reiterating all the submissions, he has made during arguments.

17. The fourth respondent University has filed counter affidavit and contested the writ petitions on the ground that the University has not granted any affiliation to the petitioner colleges for the academic year 2017-18 and that the University, which is an independent body has an independent role to consider whether the institution is entitled to get affiliation de hors the power of Central Government to grant permission for any medical college for Homoeopathy system of Medicine. The learned Counsel for the respondent University further submitted that the University has to satisfy itself as to the adherence of norms prescribed under Regulations by any institution, who is seeking affiliation and that without the affiliation, a college cannot be permitted to admit students. In the absence of affiliation by the fourth respondent for the academic year to the petitioner institutions, it is contended by the learned Counsel for the fourth respondent University that the writ petition cannot be allowed and that the petitioners

cannot be permitted to admit students. This stand of the fourth respondent University was also supported by the Counsel appearing for the respondents 1 and 2.

18. Considering the rival submission of the Counsel on either side, this Court is of the view that it is necessary to understand the scope and object and the power of respondents under the provisions of Homoeopathy Central Council Act, 1973 and 2013-Regulations.

18.1. The Homoeopathy is different from the three system of Indian medicine, namely, Ayurvedha, Siddha and Unani. Since the basic concept of Indian system of medicine were different from the fundamental of Homoeopathy, separate Council for Homoeopathy was provided and separate Central Council was constituted for all the other Indian system of medicine, other than Homoeopathy. Before the introduction of Homoeopathy Central Council Act, 1973, some of the States have constituted State Board or Council either by legislature or by executive order for the purpose of registration of

practitioners in Homoeopathy and for recognition of medical qualification in Homoeopathy. There was no central legislation for the regulation or practice or for minimum standard of training or conduct of examination in Homoeopathy system of medicine. After the enactment of Homoeopathy Central Council Act, 1973, the Central Council of Homoeopathy was the authority to regularise the standard of medical education and practice in Homoeopathy.

19. The Act, after the amendment, mandates prior approval of the Central Government for the establishment of a new college or for increasing number of seats or for introducing a new course. For the purpose of convenience, following provisions of the Act are extract hereunder:

"3. Constitution of Central Council.- (1) The Central Government shall, by notification in the Official Gazette, constitute for the purposes of this Act a Central Council consisting of the following members, namely:-

(a)....

(b) one member from each University to be elected from amongst themselves by the members of the Faculty or Department (by whatever name called) of Homoeopathy of that University:

Provided that until any such Faculty or Department of

Homoeopathy is started in at least seven Universities, the Central Government may nominate such number of members not exceeding seven as may be determined by the Central Government from amongst the teaching staff of medical institutions within India, so however, that the total number of members so nominated and elected under this clause shall in no case exceed seven;"

"6.Incorporation of Central Council:-

The Central Council shall be a body corporate by the name of the Central Council of Homoeopathy having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued."

8.Meetings of Central Council:-

(1) The Central Council shall meet at least once in each year at such time and place as may be appointed by the Central Council.

(2) Unless otherwise prescribed, one-third of the total number of members of the Central Council shall form a quorum, and all the acts of the Central Council shall be decided by a majority of the members present and voting.

9.The Executive Committee and other committees:-

(1) The Central Council shall constitute from amongst its members an Executive Committee and such other committees for general or special purposes as the Council deems necessary to carry out the purposes of this Act.

(2) (i) The Executive Committee (hereafter in this section referred to as the Committee), shall consist of the President and Vice-President, who shall be members ex officio, and not less than five and not more than seven members who shall be elected by the Central Council from amongst its members.

(ii) The President and the Vice-President shall be the President and Vice-President respectively of the Committee.

(iii) In addition to the powers and duties conferred and imposed

upon it by this Act, the Committee shall exercise and discharge such powers and duties as the Central Council may confer or impose upon it by any regulations which may be made in this behalf.

10.Meetings of committees:-

(1) The committees constituted under section 9 shall meet at least twice in each year at such time and place as may be appointed by the Central Council.

(2) Unless otherwise prescribed, one-third of the total number of members of a committee shall form a quorum and all the acts of the committee shall be decided by a majority of the members present and voting.

12.No act or proceeding of the Central Council or any committee thereof shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Central Council or the committee, as the case may be. Permission for establishment of new medical institution, new course of study, etc.

12A. (1) Notwithstanding anything contained in this Act or any other law for the time being in force:-

(a) no person shall establish a Homoeopathic Medical College or

(b) no Homoeopathic Medical College shall

(i) Open a new or higher course of study or training (including postgraduate course of study or training) which would enable students of each course or training to qualify himself for the award of any recognized medical qualification.

(ii) Increase its admission capacity in any course of study or training (including the postgraduate course of study or training.), except with previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1. - For the purposes of this section, "person" includes any University or trust, but does not include the

Central Government.

Explanation 2. - For the purposes of this section, "admission capacity" in relation to any course or study or training (including post-graduate course of study or training) in a medical institution, means the maximum number of students as may be decided by the Central Council from time to time for being admitted to each course or training.

(2) (a) Every person or medical institution shall, for the purpose of obtaining permission under sub-section

(1) submit to the Central Government a scheme in accordance with the provisions of the clause (b) and the Central Government shall refer the scheme to the Central Council for its recommendations.

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme from the Central Government under sub-section (2), the Central Council may obtain such other particulars as may be considered necessary by it from the person or the medical institution concerned, and thereafter, it may:-

(a) If the scheme is defective and does not contain any necessary particulars, give reasonable opportunity to the person or the medical institution concerned for making a written representation and it shall be open to such a person or medical institution to rectify the defects, if any, specified by the Central Council.

(b) Consider the scheme, having regard to the factors referred to in sub section (7), and submit it to the Central Government together with its recommendations thereon within a period not exceeding six months from the date of receipt of the reference from the Central Government.

(4) The Central Government may, after considering the scheme and the recommendations of the Central Council under sub-section (3) and after obtaining, where necessary, such other

particulars as may be considered necessary by it from the person or medical institution concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme & any such approval shall constitute as a permission under subsection (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or medical institution concerned a reasonable opportunity of being heard. Provided further that nothing in this sub-section shall prevent any person or medical institution whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme had been submitted for the first time under sub-section (2).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under the sub-section (2), no order is communicated by the Central Government to the person or the medical institution submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it was submitted, and, accordingly, the permission of the Central Government required under the sub-section (1) shall also be deemed to have been granted.

(6) In computing the time-limit specified in sub-section (5), the time taken by the person or medical institution concerned in submitting the scheme, in furnishing any particulars called for by the Central Council, or by the Central Government shall be excluded.

(7) The Central Council, while making its recommendations under clause (b) sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under subsection (4), shall have due regard to the following factors, namely: -

(a) whether the proposed medical institution or the seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of

medical education as prescribed by the Central Council under Section 20,

(b) whether the person seeking to establish a medical institution or the existing medical institution seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources,

(c) whether necessary facilities in respect of staff, equipment, accommodation, training, hospital and other facilities to ensure proper functioning of the medical institution or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme,

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical institution or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme,

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical institution or the course of study or training by the persons having the recognised medical qualifications,

(f) the requirement of manpower in the field of practice of homoeopathic medicine in the medical institution, and

(g) Any other factors as may be prescribed.

(8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or medical institution concerned.

Non-recognition of medical qualifications in certain cases 12B. (1) Where any medical institution is established without the previous permission of the Central Government in accordance with the provisions of section 12A, medical qualification granted to any student of such medical institution shall not be deemed to be recognised medical qualification for

the purposes of the Act.

(2) Where any medical institution opens a new or higher course of study or training (including a postgraduate course of study or training) without the previous permission of the Central Government in accordance with the provisions of section 12A, medical qualification granted to any student of such institution on the basis of such study or training shall not be deemed to be recognized medical qualification for the purposes of this Act.

(3) Where any medical institution increases its admission capacity in any course of study or training without the previous permission of the Central Government in accordance with the provisions of section 12A, medical qualification granted to any student of such medical institution on the basis of increase in its admission capacity shall not be deemed to be recognized medical qualification for the purposes of this Act.

13. Recognition of medical qualification granted by certain medical institutions in India:-

(1) The medical qualifications granted by any University, Board or other medical institution in India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any University, Board or other medical institution in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have any such qualification recognised, and the Central Government, after consulting the Central Council, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification only when granted after a specified date.

19. Withdrawal of recognition:-

(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 along with 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 expire 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 recognised 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 recognised medical qualification only when granted before a specified date or, as the case may be, that the said medical qualification shall be recognised medical qualification in relation to a specified college or institution affiliated to any University only when granted after a specified date.

32.Power to make rules:-

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

33. Power to make regulations:-

The Central Council may, with the previous sanction of the Central Government, make 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 and other officers and servants of the Central

Council;

(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 recognised 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 of such examinations;

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

(m) the particulars to be stated, and the proof 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 applications and appeals under this Act; and

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

20. From the constituents of Central Council, it is seen that the Central Council is an expert body consisting of members who are practitioners of Homoeopathy or as members of Faculty or Department of Homoeopathy or persons having special knowledge or practical experience in Homoeopathy.

The Executive Committee and other Committees are constituted only amongst the members of council for carrying out the purposes of the Act.

20.1. The Central Council is competent to prescribe the minimum standards of education in Homoeopathy required for granting recognised medical qualifications by universities or medical institutions in India. The Central Council is expected to consider the comments of any State Government before submitting the regulations or any amendment of Regulations for approval of Central Government. The power is also given to the Central Council to make regulations with the previous sanction of Central Government under Section 33 of the Act. Regulations providing for the standards of staff, equipment, accommodation, training and other facilities for education in Homoeopathy are made by the Central Council with the approval of Central Government.

20.2. Section 12-A of the Act, mandates previous permission of the Central Government,

i) for establishing a Homoeopathy Medical College,
ii) for opening a new or higher course of study or training
by an existing medical college.

iii) for increasing its admission capacity in any course of
study in an existing Medical College.

20.3. Even for obtaining permission from the Government, the scheme submitted before the Government has to be referred to the Central Council for its recommendations and it is for the Central Council who can obtain such other particulars and permit the institutions to rectify the defects and to make recommendations, having regard to the factors referred to in Sub Section 7 of Section 12A. It is important to note that the Central Council while approving or disapproving a scheme, shall have due regard to the following factors:

(i) Whether the Medical institution would be in a position to offer the minimum standards of medical education.

(ii) Whether the institution has adequate financial resources.

(iii) Whether necessary facilities and infrastructure as required under the regulations have been provided or would be

provided within the time limit specified in the scheme.

(iv) Whether adequate hospital facilities have been provided or would be provided within the time limit specified in the scheme.

(v) Whether arrangement has been made to secure required qualified teaching faculties.

20.4. From Sub Section 7 of Section 12A, even for making statutory recommendations, the Central Council is not required to confirm the fulfillment of all the requirements of Regulations framed under Section 20 regarding Minimum Standards of Education in Homoeopathy. Section 13 of the Act stipulates that only the medical qualifications granted by any university, Board or Institution which are included in the Second Schedule shall be the recognised medical qualifications. As per Section 15(2) of the Act, no person other than a person who possesses a recognised medical qualification and enrolled on a State Register or Central Register shall hold office as Homoeopathic Physician or shall practice Homoeopathy in any State. The medical qualification included in the Second or Third Schedule

is required for enrollment on any State Register of Homoeopathy. The medical institution in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have such qualification recognised and the Central Government, after consulting Central Council may by notification amend the Second Schedule.

20.5. Under Section 17 of the Act, the inspection by inspectors is only for the Central Council to recommend to the Central Government for granting recognition of medical qualifications by medical institutions. Similarly, the Central Council may appoint visitors to inspect any medical college only for the purpose of granting recognised medical qualification.

20.6. Section 19 of the Act deals with the procedure for withdrawal of recognition. On the basis of report by the inspector or the visitor, the Central Council shall make a representation to the Central Government, if it appears to council that a medical institution do not conform to the

standard prescribed by the central council. The Central Government on receipt of such representation may send it to State Government for its remarks. If the remarks are called for from State Government, the State Government shall call for explanations from the medical institution and make its recommendations to the Central Government. The Central Government, after making such further enquiry and may by notification in the official gazette shall direct proper entries in the Second Schedule against the medical qualification offered by concerned medical institution.

20.7. From the scope and object of the Homoeopathy Central Council Act, 1973, it is seen that the Act was to provide for the constitution of Central Council of Homoeopathy and the maintenance of Central Register of Homoeopathy. Till the amendment, it was only the State Government that was granting permission for establishing medical college for homoeopathy. It was only for the purpose of registration of practitioners in Homoeopathy and for recognition of medical qualification in homoeopathy, the Government enacted

Homoeopathy Central Council Act, 1973. Since the position before 2000 was that any college can start a medical institution in homoeopathy with a permission of the State Government and affiliation of the university without obtaining permission or recognition from the Central Government, the Central Government was not in a position to take corrective steps as it had neither power to intervene nor it can give any directions to the Council. There is no provision in the principal Act making it compulsory on the colleges to seek approval of the Central Council of Homoeopathy for starting new courses of study in Homoeopathy. Recognised medical qualifications in Homoeopathy granted by universities, boards or medical institutions in India were included in the Second Schedule. Even existing medical colleges offering courses in Homoeopathy medicine and institutions who had offered courses in Homoeopathy medicine, but were not in existence at the time of enactment of 1973 Act are shown in the Second Schedule. Hence, the object of the enactment originally was to recognise the medical qualifications offered by several institutions. It was only in 2002, Chapter II (a) was introduced

and Section 12A, 12B were introduced to make it compulsory that new homoeopathic medical college has to obtain prior permission from the Central Government.

21. There is no provision by which the Central Government is required to give permission to the existing institutions, which are permitted by State Government before the amendment, Chapter IIA was introduced by Central Act, 51 of 2002. An institution, which is an existing institution, is therefore entitled to continue and the degree granted by it is valid till an order is passed withdrawing recognition by following procedure contemplated under Section 19 of the Act. It is relevant to point out that the action for withdrawal of recognition can be initiated only on the basis of a representations of the Central Council in terms of Section 19(1) of the Act, complaining deficiencies in terms of Regulations. The Central Government may call for remarks as contemplated under Section 19(2) of the Act from the State Government. The remarks/recommendations of the State Government will be based on the enquiry after getting an explanation from the

institution. It is thereafter, on the basis of the recommendations of State Government, the Central Government is expected to hold an enquiry and pass final order by issuing a declaration as to the appropriate entry in the second schedule against the medical qualification offered by an institution. Except the power under Section 19 of the Act, regarding withdrawal of recognition, by following the procedure contemplated under Section 19 of the Act, no other provision enables the Central Government to pass an order denying permission to the institution to admit students for a particular academic year. The role of State Government in the matter of withdrawal of recognition is more important and that there is no scope for the Central Government to exercise any power under the Act without recourse to the procedure contemplated under Section 19 of the Act. Though calling for remarks from State Government may be held to be optional, the Central Government has no power or authority to grant or deny permission on yearly basis. The inspection by inspection team or by visitor is only for the purpose of taking action under Section 19 of the Act. Hence, this Court hold that the

impugned order denying permission is without jurisdiction and competency and hence, unsustainable. Even an order under Section 19 cannot be passed without a representation from Central Council.

22.Mr.G.Masilamani, learned Senior Counsel, relied upon the judgment of the Uttarakhand / Uttaranchal High Court, reported in ***AIR 2012 Uttarkhand 112***, in the case of ***Chandola Homoeopathic Medical College and another vs Union of India and others***. In a writ petition filed by Homoeopathic Medical College, challenging the order passed by the Central Government denying permission to take admission in first year BHMS degree course for the academic year 2011-12, it was contended by the petitioner institution that the impugned order has been passed by the Union of India without any authority of law. Inasmuch the provisions of Section 19 of the Act had not been adhered to and the Central Council had never considered any report having been made by the Inspector or visitor to the Central Council and the Central Council had not made any representations to the Central

Government with regard to withdrawal of recognition. Similar order of Central Government was held to be without jurisdiction. The learned Single Judge of Uttarakhand High Court has held that Section 12A of the Act is not applicable to the existing medical institution. It is further held that the Central Government has power to withdraw recognition only under Section 19 of the Act and that such power can be exercised only by strictly adhering to the procedure contemplated under Section 19 of the Act. The learned Single Judge has held as follows:

“21. I have pondered over the matter and I am of the considered view that the provisions of Section 19 of the Act are attracted only when upon report by the inspector or the visitor it appears to the Central Council 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 that the staff, equipment, accommodation, training and other facilities for instruction and training provided in the said 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. Thus, it is obvious that there must be report by the inspector or the visitor appointed by the Homoeopathy Central Council on the above mentioned matters followed by the representation made by the Central Council to the Central Government for any action being taken by the Central Government under Section 19 of the Act. Moreover, sub-section (2) of the Act makes it clear that after considering such representation made to the Central Government by the Central Council as envisaged by sub-section (1) of Section 19 of the Act, the Central Government may send it to the Government of the State where the medical institution is situated and thereafter the

State Government is under obligation to forward it to the University, Board or the medical institution concerned with an intimation of the period within which the medical institution may submit its explanation to the State Government as prescribed under sub-section (2) of Section 19. Sub-section (3) provides that on receipt of the explanation or where no explanation is submitted with the stipulated period, then on expiry of that period the State Government shall make its recommendations to the Central Government.

22. In the case at hand, admittedly, the mandatory procedure as laid down under sub-sections (1), (2) and (3) of Section 19 of the Act is entirely lacking. Sub-section (4) of Section 19 provides that 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 as mentioned in sub-section (4). Sub-section (4) of Section 19 cannot be read in isolation. It would be read along with sub-sections (1), (2) and (3) of Section 19 of the Act. In the case at hand, the impugned order has been passed without following the provisions of Section 19 of the Act and the procedure mentioned therein.

23. Besides above, it is further pertinent to mention that Section 19 of the Act does not deal with stopping of admission to any course for any academic session.

24. It also finds place to mention here that this Court while granting interim order dated 28-7-2011 has observed in the order that the procedure contemplated under Section 19 of the Act has been given a go bye and that Regulation 3 read with Regulation 6 of the Homoeopathy Regulation 1983 does not provide any provision for stopping the admission.

25. Having considered the submission made by the learned counsel for the petitioners as well as learned counsel appearing on behalf of the Union of India and in view of the discussion made in the foregoing paragraphs, this Court is of the considered view that in the case at hand, the procedure as contemplated under Section 19 of the Act has been clearly ignored while passing the impugned order, therefore, the impugned order dated 22-7-2011 (Annexure No.1 to the writ petition) cannot be sustained in the eye of law. The writ petition, therefore, deserves to be allowed outright."

23. The order of learned Single Judge of Uttarakhand High

Court was also confirmed by the Division Bench in the following lines:

" 2. On a writ petition, the Central Government was directed to do the needful pertaining to respondent college. The Central Government, accordingly, constituted an inspection team. The inspection team highlighted certain deficiencies on the part of respondent college. Those were duly brought to the notice of the Central Council by the Central Government. According to Central Government, the Central Council is still sitting over the matter. The Central Government, accordingly, by the impugned order restrained the respondent college from giving any new admission to it. The order, thus passed, was the subject matter of dispute in the writ petition, which has been allowed by the judgment and order under appeal. The Central Council appeared before the learned Single Judge, who dealt with the writ petition. The Central Council stated 2 that it has not made any recommendation against the college in question. The Central Government purported to hold out that what it has done is permissible under Section 19(4) of the Act. Section 19(4) of the Act is as follows:

"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."

24. It is also brought to the notice of this Court that the order of Division Bench of High Court of Uttarakhand has been confirmed by the Honourable Supreme Court in Special Leave

to Appeal (Civil).C.C.No.4894 of 2013. My conclusion in this order is also in conformity with the judgments of Division Bench of High Court of Uttarakhand.

25.The learned Counsel appearing for the first respondent in W.P.No.25363 of 2017 relied upon Regulations 3(5) of the 2013-Regulations wherein it is stated as follows:

“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.”

26.The power given to the Central Council to frame regulations under Section 20 of the Act is to prescribe the minimum standards of education in homoeopathy, required for granting recognised medical qualifications by universities or medical institutions in India. The power conferred on the

Central Council do not envisage any competency to prescribe any procedure or to prescribe conditions for granting permission or denying permission. The regulations cannot override the provisions of the parent Act. The power which is not granted either to the Government or to the Central Council cannot be derived by regulations framed by Central Council. Hence, the submissions of the learned Counsel appearing for the first respondent has no legal basis.

27. In this case, assuming that the petitioner institution has not provided the minimum standard requirement as per 2013-Regulations, the procedure contemplated under Section 12A(7) clearly indicate that sufficient time can be given to any institution to rectify the defects or to comply with the deficiencies even while considering the application for grant of permission to the new institutions. The first respondent in this writ petition has taken action contrary to the recommendations of the Central Council. As in the case of the petitioner in W.P.No.25363 of 2017, the Central Council has directed the petitioner to comply with the deficiencies giving time before the

commencement of next academic year.

28. Ignoring the recommendations of the Central Council, the Central Government has passed the impugned order. Even in respect of deficiencies, there are several discrepancies in the remarks of Hearing Committee and many of the remarks do not go well with the 2013-Regulations. It is admitted before this Court that the deficiencies pointed out by the Hearing Committee was the basis for the impugned order. However, the remarks of the Hearing Committee was not served on the respective petitioners giving them further opportunity to give their explanations and objections to the observations of the Hearing Committee. In such circumstances, the impugned order is also in violation of the principles of natural justice. Hence, on the ground of lack of competency and on the ground of violation of principles of natural justice, the impugned order is liable to be quashed and hence, quashed. The orders impugned in W.P.No.25363 of 2017 and 25308 of 2017 are liable to be quashed.

29.The next question is regarding the grant of permission to the petitioner college to admit the students in the first year BHMS course for the academic year 2017-2018. This Court has already held that the Act does not contemplate grant of conditional permission or permission to any Homoeopathy Medical College. Having regard to the conclusions reached by this Court earlier, the petitioner need not be given any relief directing the respondents to grant permission to the petitioner college to admit the students.

30.In W.P.No.24163 of 2018 a direction is sought for against the fourth respondent university to provide Continuous Provisional Affiliation (CPA) to the petitioner without insisting conditional permission from the first respondent for the academic year 2017-2018 and for taking admission to first year BHMS course. Having regard to the fact that the Act do not envisage any permission to the existing medical colleges to get permission, the university cannot insist the petitioner to get conditional permission from the Central Government. The university which is the examining body cannot compel the

petitioner to insist such permission in derogation of the Central Act. In such circumstances, the petitioner in W.P.No.24163 of 2018 is also entitled to succeed. Hence, the fourth respondent university is directed to consider the application for providing Continuous Provisional Affiliation (CPA) to the petitioner college without insisting any conditional permission or permission from the first respondent for the academic year 2017-2018 and for taking admission to the first year BHMS course with 50 seats.

31.This Court has gone through the provisions of Homoeopathy Central Council Act, 1973 as amended in 2002 and the Regulations 1983 and the Regulations 2013. Considering the provisions of the Act, this Court is of the view that the Act should be amended suitably to maintain standard in Homoeopathy Medical Education. Since there is no effective mechanism provided in the Act to stop admission in the existing colleges, any action to withdraw recognition in the manner prescribed under Section 19 of the Act may result in serious prejudice to the students who are studying in Homoeopathy

Medical Colleges. The existing provisions of the Act may bring a situation to poor students to find themselves in an awkward position after completing the course in an institution for which recognition is withdrawn subsequently. There are other infirmities in the existing Act as the Act does not deal with grant of permission or recognition in respect of existing medical colleges in Homoeopathy medicine. Hence, the Central Government may consider the probable anomalies and hardships that may be caused to the students and the lack of power or jurisdiction vested in the Government to prevent the existing colleges to admit students if the colleges do not satisfy the norms prescribed in the 2013-Regulations and may take appropriate steps either to bring about a new legislation or to make appropriate amendments in the existing Homoeopathy Central Council Act, 1973 in public interest.

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32.As a result,

(i) W.P.No.25308 of 2017 is allowed and the impugned order, dated 12.09.2017 passed by the first respondent is

quashed and the fourth respondent is directed to approve the admission of students by the petitioner college for the first year BHMS course for the academic year 2017-18, within a period of two weeks from the date of receipt of a copy of this order.

(ii) W.P.No.25363 of 2017 is allowed and the impugned order, dated 12.09.2017, passed by the first respondent, denying permission to admit students to the BHMS course in the petitioner institution for the academic year 2017-18 is quashed. The fourth respondent is directed to approve the admission of students by the petitioner college for the first year BHMS course for the academic year 2017-18, within a period of two weeks from the date of receipt of a copy of this order.

(iii) W.P.No.24163 of 2018 is allowed and the fourth respondent University is directed to consider the grant of Continuous Provisional Affiliation (CPA) to the petitioner college without insisting the conditional permission from the first respondent for the academic year 2017-18 or for subsequent years for taking admission to the first year BHMS

course with fifty seats within a period of eight weeks from the date of receipt of a copy of this order.

(iv) The fourth respondent University in all these writ petitions is directed to publish the result of the candidates, who are admitted in the petitioner college for the academic year 2017-18, pursuant to the interim order granted by this Court, forthwith and permit the students of petitioners to write ensuing examination. The learned Counsel for the fourth respondent University is also directed to inform the University about the nature of order passed by this Court, as it is submitted that the examination commences from 17.12.2018. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

14.12.2018

Internet : Yes / No
Index : Yes / No
cmr/srm

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To

1. Secretary to the Government of India,
Ministry of AYUSH,
AYUSH Bhawan, 'B' Block,
GPO Complex, INA,
New Delhi – 110 023.
2. The Registrar,
Central Council of Homoeopathy,
61-65, Institutional Area, Opp. to 'D' Block,
Janakpuri, New Delhi – 110 058.
3. The Commissioner of Indian Medicine
and Homoeopathy, Arumbakkam,
Chennai – 600 106.
4. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai – 600 009.
4. The Registrar,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy, Chennai – 600 032.
6. The Pondicherry University,
Represented by its Vice Chancellor,
Pondicherry.

S.S.SUNDAR, J.

cmr/srm



Order made in
W.P.No.25308 and 25363 of 2017 and 24163 of 2018

WEB COPY 14.12.2018