

**THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 12.03.2018****CORAM:****THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN****W.P. (MD)No.22143 of 2016**

and

W.M.P. (MD) .Nos. 15857, 15858 and 18687 of 2017

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The Chairman
White Memorial Homoeo Medical College,
Veeyanoor post, Attoor - 629 177,
Kanyakumari District.

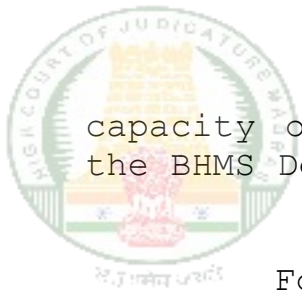
... Petitioner

Vs.

1. The Union of India,
represented by its Secretary,
Ministry of Health and Family Welfare Department
of Ayurveda Yoga & Naturopathy,
Unani, Siddha & Homeopathy (Ayush)
IRCS Annexe Building,
1-Red Cross Road,
New Delhi-110 001.
2. The Central Council of Homeopathy (CCH)
represented by its Secretary,
Jawaharlal Nehru Bhartiya Chikitsa
Avum Homeopathy Anusandhan Bhavan,
No.61-65, Institutional Area,
Opp. 'D' Block, Janakpuri,
New Delhi -110 058.
3. The Commissioner,
Directorate of Indian Medicine and Homeopathy
Arumbakkam, Chennai-600 106.
4. Tamil Nadu Dr.MGR Medical University,
represented by its Registrar,
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 Certiorarified Mandamus calling for the records relating to the impugned order by the first respondent Central Government (AYUSH) in File No.R.14014/18/2015-EP (EP-II) dated 26.10.2016 (received on 07.11.2016) and further direct the respondents herein to continue to treat the admissoin



capacity of the petitioner's college as 100 seats per annum for the BHMS Degree course.

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For Petitioner	: M/S. Isaac Mohanlal Senior Counsel for Mr.T.Cibi chakraborty
For R1 and R2	: Mr. N.Shanmugaselvam Standing Counsel
For R3	: Mr. Aayiram K. Selvakumar Additional Government Pleader
For R4	: Mr.C.Karthick Standing Counsel

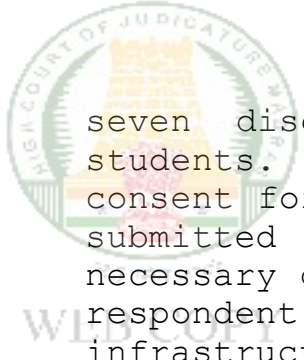
ORDER

This petition has been filed challenging the order passed by the first respondent, stopping the admission to the BHMS course with 50 seats for the academic year 2016-2017.

2. According to the petitioner, they are running a Homeopathic Medical College namely, White Memorial Homeo Medical College, which was established in the year 1978, having a annual intake of 50 students, as per the permission granted by the Central Council of Homeopathy. Thereafter, the annual intake has been increased from 50 students to 100 students from the academic year 2002 to 2003. After getting permission for increasing of annual intake, the petitioner approached the fourth respondent university for grant of affiliation. Even though, the 4th respondent initially refused to grant permission, after several proceedings, the fourth respondent granted affiliation for increased the annual intake of 100 students, by order dated 31.08.2012. Thereafter, by another order dated 22.10.2012, the fourth respondent withdrawn the affiliation for the increased annual intake of 50 students, based on a direction issued by the first respondent on 23.09.2005.

3. The petitioner challenged both the orders of the first respondent dated 23.09.2005 and the fourth respondent dated 22.10.2010, in a W.P.(MD)No.14760 of 2012, and this Court by an order dated 19.09.2013 allowed the writ petition and set aside the order passed by the first and the fourth respondents. A writ appeal filed by the first respondent in W.A.(MD)No.1282 of 2016 was also dismissed. Hence the petitioner is entitled to a annual intake of 100 students.

4. In the meantime there are several other proceedings were filed against the petitioner. In the year 2010, the petitioner's college wants to start a new Post Graduate Courses in



seven disciplines in Homeopathy with a total intake of 35 students. For that, the fourth respondent also issued a letter of consent for affiliation on 21.01.2011. Thereafter, the petitioner submitted an application before the second respondent along with necessary documents. After receipt of the application, the second respondent Council conducted an inspection to verify the infrastructure facilities available in the college.

5. After inspection, the second respondent also decided to recommend the first respondent for granting of permission to start Post Graduate Course. On receipt of the recommendations, the first respondent has pointed out some deficiencies and issued a show cause notice to the petitioner. Then, the petitioner appeared and explained before the first respondent and produced relevant records to show that there is no deficiency in the college. Thereafter, number of inspections have been conducted in the petitioner's college. Finally, the first respondent has conducted a surprise inspection in the petitioner's college and issued a show cause notice pointing out some deficiencies. The petitioner also submitted suitable explanation. Thereafter, to the shock and surprise of the petitioner, the first respondent passed the impugned order, cancelling the petitioner's proposal to start a new Post Graduate Course and also stopped admission capacity of 50 students in BHMS Course in the petitioner's college for the academic year 2016-2017. Now, to challenge the above order, the present writ petition has been filed.

6. The learned Standing Counsel appearing for the petitioner submitted that so far as the annual intake of petitioner's college with 100 students has been upheld by the order passed by this Court in W.P.(MD)No.14760 of 2012, which is also confirmed by the Hon'ble Division Bench of this Court in W.A(MD)No.1282 of 2016 filed by the first respondent. In view of the same, the first respondent cannot stop the petitioner from admitting students without any enquiry whatsoever.

7. The Senior Counsel further submitted that the petitioner is running the institution for several years. While, on the application filed by the petitioner for granting permission to start Post Graduate course, an inspection was conducted by the first respondent for granting permission to start a post graduate course, based on that inspection, the first respondent cannot cancel the permission already granted for the BHMS courses, which is not permissible. The above order has been passed under violation of principles of natural justice, and the order is liable to be set aside.

8. The first respondent did not file any counter affidavit and the learned counsel appearing for the first respondent submitted that the petitioner's college made an application for grant of permission to start post graduate courses. During the



inspection, there are various deficiencies were found in the college and the first respondent issued show cause notice to the petitioner, and after considering the explanation submitted by the petitioner, the first respondent passed the impugned order rejecting the petitioner's application for permission to start Post Graduate Courses, and also the admission to the existing BHMS Courses for the academic year 2016-2017 is also stopped, there is no illegality. The fourth respondent is also filed his counter affidavit, explaining the affiliation granted by the first respondent college.

9. I have considered the rival submissions and also the perused the materials on record.

10. It is a admitted fact that the writ petitioner's college was originally granted permission with a annual intake of 50 students, subsequently increased to 100 students. When the additional intake was refused, that was challenged before this Court, and this Court allowed the writ petition. The relevant portion of the order passed by this Court reads as follows:

"16. Admittedly, as on 31.10.2002, when permission was granted for the petitioner to increase 50 seats, the competent authority was undoubtedly, the second respondent. A perusal of the amendment Act would go to show that it is only prospective in nature. There is no provision introduced by means of amendment that the permission granted already, namely prior to the amendment, will either stand cancelled or nullified by means of the amendment. It is not even the case of the first respondent that permission once granted shall stand terminated by means of the amendment. That is why the Central Government has clarified the position to all the Health Secretaries of the States in the letter F.No.R.11011/03/2003/EP, dated 27.12.2004. Referring to the above, similarly in another letter of clarification, addressed specifically to the 4th respondent also, the 1st respondent has stated so. Having clarified the same so, it is surprising for this Court to note that strange stand has been taken in the counter stating that fresh permission is required from the 1st respondent for an additional intake of 50 students. In my considered opinion, the stand taken by the 1st respondent in the counter affidavit cannot be accepted at all. If this stand is to be accepted, then even for the 50 seats, which were originally available for the petitioner, fresh permission is to be obtained from the first respondent. This stand is totally against the Act. As I have already

pointed out, amendment Act does not nullify the permission granted already by the 2nd respondent. It nowhere states fresh permission should be obtained from



the 1st respondent. If that be so, the permission granted by the 2nd respondent prior to the amendment shall hold good for ever and thus there is no need for obtaining fresh permission from the 1st respondent. In such view of the matter, the impugned proceedings of the 1st respondent as well as the 4th respondent are liable to be set aside.

17. In the result, the writ petition is allowed. The impugned proceedings of the 1st and the 4th respondent are hereby set aside. No costs. Connected M.P. (MD) Nos. 2 and 3 of 2012 are closed."

11. Challenging the above order, appeal has been filed in W.A. (MD) No. 1282 of 2016 and the Hon'ble Division Bench of this Court has dismissed the interim order which reads as follows:

"7. This Court, after considering the rival submissions, is of the view that the petitioner Institution can admit 100 students for the current academic year and the fourth respondent shall also accord necessary permission to write the examination, in the event of they are being otherwise qualified. It is made clear that this interim order is subject to the result of this writ petition as well as the writ appeal and neither the petitioner Institution nor the students can claim any enquiry on the basis of this interim order at the time of disposal of the writ petition and the writ appeal."

In view of the above order, the petitioner is entitled to have an annual intake of 100 students.

12. Now, the petitioner has filed an application seeking permission to start a new Post Graduate Course in the petitioner's college and based on the inspection conducted for granting permission to the Post Graduate Course, the first respondent stopped the petitioner from admitting students in the BHMS Course from the academic year 2016-2017.

13. On perusal of records, it is seen that the inspection was conducted only for grant of approval for the Post Graduate Course. No separate inspection was conducted in respect of the BHMS courses and no notice was issued to the petitioner pointing out any deficiencies relating for the BHMS Course. If at all, any shortcoming or deficiencies, the first respondent ought to have issued suitable notice to the petitioner and conducted inspection, thereafter they can take suitable action in accordance with law. Instead of that, they cannot stop the permission of the petitioner's college from admitting the students without conducting inspection and without issuing notice. In the above circumstances, the impugned order is passed in total violation of principles of natural justice.



14. At this stage, the learned counsel appearing on behalf of the first respondent states that for the academic year 2018-2019, already the first respondent has issued notice to the petitioner's college pointing out deficiencies. In the above circumstances, it is always open to him to proceed further as per law.

15. In the said circumstances, the impugned order passed by the first respondent so far as stopping the petitioner from admitting students in BHMS course for the academic year 2016-2017 is set aside, and accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

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

- + 1 cc TO Mr.N.Shanmuga Selvam , Advocate in SR No. 54876
- + 1 cc TO Mr.T.Cibi Chakraborty , Advocate in SR No. 55027
- + 1 cc TO Mr.C.Karthik , Advocate in SR No. 54635
- + 1 cc TO The Special Government Pleader in SR No. 55091

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AE/SV MMS/SAR4/02.04.2018/6P/6C

W.P. (MD) No.22143 of 2016
12.03.2018