

CWP no.16609 of 2018 (O&M) 1

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP no.16609 of 2018 (O&M)

Date of Decision : 30.10.2018

Guru Nanak Ayurvedic Medical College & Research Institute

....Petitioner(s)

Versus

Union of India and another

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE ARUN MONGA**

**Present : Mr.Gurminder Singh, Sr. Advocate with
Mr. J.S.Gill, Advocate for the petitioner(s)**

Mr. Anil Chawla, Advocate for UOI

MAHESH GROVER, J.(ORAL)

CM No.16370 CWP of 2018

Allowed as prayed for.

Main case

The instant writ petition has been filed by an Institute praying for issuance of a writ in the nature of Certiorari to quash notice dated 21.6.2018 (Annexure P-13) issued by respondent No.1.

The petitioner is an institute imparting under Graduate Ayurvedic courses and is in existence since 1998. As per the procedure such institutes can be subjected to periodic inspection which was done in the case of the petitioner. The inspection report is on file as Annexure R-1/6. It records the details of the inspection but does not indicate as a conclusion any shortcomings/deficiencies in the college that would have an adverse effect

on the college for the ongoing admissions. The impugned notice (Annexure P-13) has been issued for rectification of deficiencies as per the inspection report and prescribes the time schedule of 150 days to the petitioner to rectify the deficiencies but in the very same breath the notice goes on to state that in case the deficiencies are not remedied within 20 days i.e by 11.7.2018 the permission granted for a period of 5 years shall be deemed to be withdrawn. For the purposes of reference, the relevant portion of the impugned notice is extracted herebelow:-

“3. The deficiencies found by the visitation team in the college are severely affecting the purpose of rendering quality medical education. As per the provision of Regulation 3 (2) of Indian Medicine Central Council (Minimum Standard Requirements of Ayurvedic Colleges and attached Hospitals) Regulations, 2016, any deficiencies arises within the said period shall be fulfilled by the college within a period of 150 days under intimation to the Central Council otherwise the permission for a period of five years deemed to be withdrawn.

4. As per the above provisions, it is duty of the college to rectify the deficiencies within a period of 150 days when arises under intimation to the Central Council. But the college did not rectify the same and the deficiencies came to the knowledge of the Central Government only through the surprise inspection by the visitation team.

5. Since, the next academic session, 2018-19, is going to be start in the month of July, 2018 therefore, considering the situation, you are hereby directed to rectify the deficiencies within a period of 20 days (i.e by 11th July, 2018) and submit the compliance report otherwise the permission granted for a period of five years shall deemed to be withdrawn.”

In fact we intend to set out the entire impugned notice to make it a part of the narrative and in order to understand that the deficiencies set out in the notice impugned do not even faithfully reflect the ones noticed in the inspection report. Relevant portion of the impugned notice is reproduced herebelow:-

“2. The college was inspected by the surprise visitation team in accordance with Rule 3(2) of the Indian Medicine Central Council (Requirement of Minimum Standard for under-graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016 submitted the inspection report to the Central Government. During the course of inspection, the visitation team has found several fundamental deficiencies which are adversely affecting the purpose of quality medical education. The details of the deficiencies are as under:-

- i. There are 25 faculties available against the requirement of 30 faculties as per RMS, 2016.
- ii. OPD on the visitation day was 97 against the

requirement of minimum 120 patients per day on a average upto 60 seats, which is not available as per RMS, 2016.

iii. IPD attendance on the visitation day was 15 against the requirement of minimum 40% for UG course, which is not available as per RMS, 2016.

iv. Maintenance of Record of attendance of Out Patient Department/ In Patient Department patients is not available as per RMS, 2016.

v. Requirement of Hospital staff for up to 60 bedded hospital are not available as per RMS, 2016.

vi. Central Registration system is not available as per RMS, 2016.

vii. Teacher in each department are not available as per RMS, 2016.

viii. Part time teacher are not available as per RMS, 2016.

ix. Requirements of equipment and instruments (minimum 90% of total requirement) are not available as per RMS, 2016.

x. Requirements of minimum constructed area of the college and hospital are not available as per RMS, 2016.

xi. No. of species & demo room in herbal garden are not available as per RMS, 2016.

xii. Technical and other staffs of an Ayurvedic college are not available as per RMS, 2016.

xiii. Seating capacity of central library is not available as per RMS, 2016.

xiv. Office support is not available as per RMS, 2016.

xv. College council is not available as per RMS, 2016.

xvi. College website is not available as per RMS, 2016.

xvii. Operation Theatre is not available as per RMS, 2016.

xviii. Clinical laboratory, ECG and USG etc. are available as per RMS, 2016.”

During the course of hearing on 18.7.2018 we had voiced our concerns about the inspection report being vague and sans conclusion. While noticing so we had expressed our displeasure as well but did not choose to adopt a harsher course considering the eminence of the people involved in the inspection, we had directed the conclusion to be brought on record and had restrained the UOI from taking any steps pursuant to the notice.

Instead of compliance, respondent No.1-UOI has now placed on record an affidavit of Ms. Shiela Tirkey, under Secretary, Ministry of Ayush, Govt. of India, New Delhi who has substituted her comments in place of the inspection report and highlighted the deficiencies that according to her, exist.

We are afraid that the import of our order dated 18.7.2018 has been completely lost on respondent No.1. We, therefore, reject this affidavit.

Learned counsel for the petitioner has argued that since the report was vague and rather a careful perusal of the same indicates that the college is compliant in all respects but in any eventuality assuming that there

were deficiencies, the petitioner was indeed granted time to rectify the same within 150 days but the very same notice in the next paragraph binds the petitioner to remedy the deficiencies within a period of 20 days otherwise the permission granted to it for a period of 5 years will be deemed to have been withdrawn.

This to our minds is totally arbitrary approach of the respondents. They cannot introduce such a deeming provision to a running institute particularly, when they themselves have granted 150 days time to rectify the deficiencies. Evidently, the notice is a creation of a confused mind and possibly a vindictive one.

Reliance has been placed by learned counsel for the petitioner on the decision rendered by Hon'ble Supreme Court in Civil Appeal No.6734 of 2018 titled as **The Temple of Hanemann Homoeopathic Medical College and Hospital vs. Union of India and others** decided on 17.7.2018 where the Hon'ble Supreme Court while disposing of the matter has observed as follows:-

“22. Regulation 3(5) of the 2013 Regulations envisages random checks to be ordered on receipt of a complaint or otherwise as deemed necessary either by the Central Government or by the CCH. In case, CCH or Central Government receives any complaint, random checks can be ordered, but the regulations stop at that. It does not deal with the aspect who will appoint a team of inspectors for the purpose of inspection to be carried out. In our considered opinion, it is only the Central Council which is empowered to

appoint a team of inspectors under Section 17 and visitors for the examination under Section 18 for making recommendation to the Central Government on the basis of report submitted by the team of inspectors or visitors as envisaged under sections 17 and 18 of the Act.

23. Regulation 3(5) of Regulations of 2013 has to be harmoniously interpreted with the provisions of section 17 of the Act not repugnant thereto. The provision of section 17 is not capable of interpretation empowering the Central Government to appoint a team of inspectors at all. Thus, the power conferred under section 17 has to be exercised only by the CCH. Any other interpretation would be against the legislative mandate. The regulations have to be subservient to the provisions of the Act. No other provision could be pointed out under which the Act may have conferred the power upon the Central Government to appoint a team of Medical Inspectors.

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

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

25. In our opinion, though Central Government on a complaint or otherwise, as contemplated under Regulation 3(5) of the Regulations, 2013 may cause inspection would mean only that inspection to be made by a team to be appointed by CCH. A team of inspectors or visitors as the case may be, can be appointed by CCH under Section 17 or 18 of the Act. However, after an inspection is made, action has to be taken on the basis of the report as provided under the Act and the Regulations by the Central Government on the basis of the recommendation made by the CCH.

26. The appeals are allowed. The impugned judgment and order passed by the division bench are set aside and that of the Single Bench is restored. No costs.”

Learned counsel for respondent No.1-UOI when confronted with this situation has nothing to offer as an explanation.

If that be so, then we are of the opinion that the affidavit filed today (which we have rejected in any case) would be totally without any authority of law. The conclusions which are creation of the officer who has filed the affidavit would have no legal sanctity.

Despite repeated opportunities the inspection team has not

forwarded the conclusion as to whether college is compliant or not. It only

mentions the findings. Taking into consideration the totality of the circumstances offered by the present controversy, we are of the opinion that the petitioner has been dealt with unjustly. Impugned notice (Annexure P-13) does not take into consideration the report of the inspection team and is based entirely on different material. Besides, in terms of the observations of the Hon'ble Supreme Court in The Temple of Hanemann Homoeopathic Medical College and Hospital (supra), UOI would have no authority to pass the impugned order. We, therefore, accept the instant petition and set aside the impugned notice.

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In view of above observations, learned counsel for the petitioner states that instant applications be dismissed as not pressed.

Ordered accordingly.

(Mahesh Grover)
Judge

30.10.2018
rekha

(Arun Monga)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No