

CWP no. 20862 of 2018 (O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP no. 20862 of 2018 (O&M)

Date of Decision : 17.09.2018

Mai Bhago Ayurvedic College for Women

....Petitioner(s)

Versus

Union of India and others

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE MAHABIR SINGH SINDHU

Present : Mr.Rajiv Atma Ram, Sr. Advocate with
Mr. Arjun Pratap Atma Ram, Advocate for the petitioner(s)

Mr. Arun Gosain, Advocate for UOI

Mr. R.Kartikeya and
Mr. Sunny Deep Juneja, Advocates for respondent no.3

MAHESH GROVER, J.(ORAL)

The petitioner has impugned Annexure P-8 which mandated the petitioner to rectify the deficiency within a period of 20 days and submit a compliance report failing which the permission granted for a period of 5 years shall be deemed to have been withdrawn. The said direction is issued on the basis of inspection carried out by a team appointed by Union of India.

The petitioner approached this Court with a grievance that the Central Govt. would have no authority to conduct the inspection and in this regard he has relied upon the decision of the Hon'ble Supreme Court rendered 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.”

The Union of India has filed its reply and has been unable to justify the course adopted by them resulting in the impugned order. However, it is stated that a review petition has been filed against the aforesaid order of the Hon'ble Supreme Court but it is conceded that as on today the aforesaid order has not been varied.

After hearing learned counsel for the parties and noticing the controversy which stands concluded by the judgment of the Hon'ble Supreme Court as noticed above, we accept the instant petition and set aside the impugned order on the aforesaid ground. This, however, shall not mean that the competent authority cannot proceed with the inspection.

(Mahesh Grover)
Judge

17.09.2018
rekha

(Mahabir Singh Sindhu)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No