

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18214 of 2018

=====

Dr. R. B. Singh Gaya Homeopathic Medical College & Hospital, Amwan,
Bodhgaya, Police Station - Bodhgaya, District - Gaya through its Principal
Dr. Ravindra Kumar Son of Late Dr. R.B. Singh Resident of M.I.G. - 47,
Chanakyapuri Colony, Gaya, Police Station - Rampur, District Gaya.

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of AYUSH, AYUSH BHAWAN, B - Block, G.P.O. Complex, INA, New Delhi - 23.
2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Shddha and Homeopathy, Ayush Bhawan, B - Block, G.P.O. Complex, INA, New Delhi - 110023.
3. The State of Bihar through its Principal Secretary, Department (Health & FW), Department of Health, Vikas Bhawan, New Secretariat, Patna.
4. The Director, Desi Chikitsa, Health Department, Govt. of Bihar, Patna.
5. The Secretary, Central Council of Homeopathy, 61-65, Institutional Area, Opp. D Block, Janakpuri, Delhi - 20058.
6. The Vice-Chancellor, B.R.A. Bihar University, Muzaffarpur.
7. The Registrar, B.R.A. Bihar University, Muzaffarpur.
8. The Controller of Examination, B.R.A. Bihar University, Muzaffarpur.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 18215 of 2018

=====

Dr. Yadurbir Sinha Hemeopathic Medical College & Hospital Bakerganj,
Laheriasarai Darbhanga through its Principal Dr. Bharat Kumar Singh Son of
Late Dr. Narendra Narayan Sinha Resident of Bakerganj, Laheriasarai, P.S.
Laheriasarai, District Darbhanga.

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of AYUSH, AYUSH BHAWAN, B - Block, G.P.O. Complex, INA, New Delhi - 23.
2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Shddha and Homeopathy, Ayush Bhawan, B - Block, G.P.O. Complex, INA, New Delhi - 110023.
3. The State of Bihar through its Principal Secretary, Department (Health & FW), Department of Health, Vikas Bhawan, New Secretariat, Patna.
4. The Director, Desi Chikitsa, Health Department, Govt. of Bihar, Patna.
5. The Secretary, Central Council of Homeopathy, 61-65, Institutional Area, Opp. D Block, Janakpuri, Delhi - 20058.



6. The Vice-Chancellor, B.R.A. Bihar University, Muzaffarpur.
7. The Registrar, B.R.A. Bihar University, Muzaffarpur.
8. The Controller of Examination, B.R.A. Bihar University, Muzaffarpur.

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 18534 of 2018

=====

Maharshi Menhi Homoeopathic Medical College & Hospital, Jeewachh Nagar, P.S. & District- Katihar (Bihar) through Dr. Haresh Kumar Maharaj, son of Sri N.K. Maharaj, resident of Village+ Post- Sangi, P.S. Phulparas, District- Madhubani (Bihar).

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of AYUSH, AYUSH BHAWAN, B- Block, G.P.O. Complex INA, New Delhi- 23.
2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Shddha and Homoeopathy, Ayush Bhawan, B- Block, G.P.O. Complex, INA, New Delhi- 110023.
3. The State of Bihar through its Principal Secretary, Department (Health & FW), Department of Health Vikas Bhawan, New Secretariat, Patna.
4. The Director, Desi Chikitsa, Health Department, Government of Bihar, Patna.
5. The Secretary, Central Council of Homeopathy, 6165, Institutional Area, Opp. 'D' Block, Janakuri, Delhi- 20058.
6. The Vice- Chancellor, B.R.A. Bihar University, Muzaffarpur.
7. The Registrar, B.R.A. Bihar University, Muzaffarpur.
8. The Controller of Examination, B.R.A. Bihar University, Muzaffarpur.

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 19327 of 2018

=====

Mangla Kamla Homeopathic Medical College And Hospital, Sri Nagar, Siwan through its Secretary, Smt. Yasoda Devi, wife of Late Moti Chand Choudhary, resident of Sri Nagar, House No. 30, Ward No. 2, District- Siwan, Bihar.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of AYUSH, AYUSH BHAWAN, B- Block, G.P.O. Complex INA, New Delhi- 23.
2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Shddha and Homeopathy, Ayush Bhawan, B- Block, G.P.O. Complex, INA, New Delhi- 110023.
3. The State of Bihar through its Principal Secretary, Department (Health & FW), Department of Health, Vikas Bhawan, New Secretariat, Patna.
4. The Director, Desi Chikitsa, Health Department, Government of Bihar, Patna.



5. The Secretary, Central Council of Homeopathy, 61-65, Institutional Area, Opp. 'D' Block, Janakuri, Delhi- 20058.
6. The Vice- Chancellor, B.R.A. Bihar University, Muzaffarpur.
7. The Registrar, B.R.A. Bihar University, Muzaffarpur.
8. The Controller of Examination, B.R.A. Bihar University, Muzaffarpur.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 19769 of 2018

B. N. M. Homeopathic Medical College and Hospital, Saharsa (Bihar) through its Principal Dr. Upendra Prasad Yadav, Son of Late G.P. Yadav, Resident of Gautam Nagar, Gangjala, Police Station- Saharsa, District- Saharsa.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of AYUSH, AYUSH BHAWAN, B-Block, G.P.O. Complex, INA, New Delhi- 23
2. The Secretary, Ministry of Ayurveda Yoga and Naturopathy, Unani Siddha and Homoeopathy, AYUSH, AYUSH BHAWAN, B-Block, G.P.O. Complex, INA, New Delhi- 23
3. The State of Bihar through its Principal Secretary, Department (Health & FW), Department of Health Vikash Bhawan, New Secretariat, Patna.
4. The Director, Desi Chikitsa, Health Department, Govt. of Bihar, Patna.
5. The Secretary, Central Council of Homeopathy, 61-65, Institutional Area, Opp. 'D' Block, Janakpuri, Delhi- 10058.
6. The Vice Chancellor, B.R. Ambedkar, Bihar University, Muzaffarpur.
7. The Registrar, B.R. Ambedkar, Bihar University, Muzaffarpur.
8. The Controller of Examinations, B.R. Ambedkar, Bihar University, Muzaffarpur.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 18214 of 2018)

For the Petitioner/s	:	Mr. Bindhyachal Singh Mrs Smriti Singh Mr.Vipin Kumar Singh
For the CCH		Mr. Sanjeet Kumar
For the AYUSH, UOI		Mr S.D. Sanjay(Addl. Sol. General) Dr. P.K. Singh, CGC
For the BRA University		Mr. Sandeep Kumar

(In Civil Writ Jurisdiction Case No. 18215 of 2018)

For the Petitioner/s	:	Mr. Bindhyachal Singh Mrs Smriti Singh Mr.Vipin Kumar Singh
For the CCH		Mr. Sanjeet Kumar
For the AYUSH, UOI		Mr S.D. Sanjay(Addl. Sol. General) Mr. Rajesh Kumar Verma



For the BRA University	Mr. Sandeep Kumar
(In Civil Writ Jurisdiction Case No. 18534 of 2018)	
For the Petitioner/s :	Mr. Chandra Bhushan Das
For the BRA University	Mr. Sandeep Kumar
For the CCH	Mr. Sanjeet Kumar
For the AYUSH, UOI	Mr S.D. Sanjay(Addl. Sol. General)
	Mrs Kanak Verma, CGC
For the State	Mr. S.D. Yadav, AAG IX
	Mr. Nagendra Kumar, AC to AAG IX
(In Civil Writ Jurisdiction Case No. 19327 of 2018)	
For the Petitioner/s :	Mr Niranjan Kumar
	Mr. Santosh Kumar
For the CCH	Mr. Sanjeet Kumar
For the AYUSH, UOI	Mr. S.D. Sanjay, Addl. Sol. Gen.
	Mr. Ram Kumar Singh
	Dr. Punam Kumari Singh, CGC
For the CCH	Mr. Sanjeet Kumar
For the AYUSH, UOI	Mr S.D. Sanjay, Addl. Sol. Gen.
	Dr. Punam Kumari, CGC
For the B.R.A. University	Mr. Anil Singh
For the State	Mr. Mujtabaul Haque, GP 12
	Mr. Manish Kumar AC to GP 12
(In Civil Writ Jurisdiction Case No. 19769 of 2018)	
For the Petitioner/s :	Mr.Bindhyachal Sngh
	Mr. Satya Prakash
	Ms. Smriti Singh
For BRA University	Mr. Anil Singh
For the CCH	Mr. Sanjeet Kumar
For the AYUSH	Mr. S.D. Sanjay, Addl. Sol. Gen.
	Mr. Arvind Kumar Tiwary, CGC

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT AND ORDER

Date : 04-01-2019

Since the issues, which the present batch of the writ applications involve, are common and the reliefs, which the petitioners are seeking, are almost identical and the facts, relevant for adjudication of these cases with slight variations, are same, they have been heard together with the consent of the parties. The cases are accordingly being disposed of by the present common judgment and order.



2. The petitioners, which are Medical Colleges of Homeopathy/Institutions, imparting B.H.M.S. Course, are seeking directions to the B.R.A. Bihar University, Muzaffarpur, to provide admit cards to their students pursuing the B.H.M.S. Course, for the academic session 2016-17 and to allow them to appear in the University Examination, which was scheduled to begin from 11.09.2018. These writ applications have been registered on or after 10.09.2018 and before 03.10.2018. During the pendency of these writ applications, the examination has been held and accordingly a prayer has been made to direct the University to conduct a special B.H.M.S.-1 Examination for the academic session 2016-17, for them.

3. The petitioners of CWJC No. 18214 of 2018 and CWJC No. 18215 of 2018 had earlier approached this Court by filing CWJC No. 19681 of 2016 and CWJC No. 19912 of 2016, respectively, challenging the decision of the Ministry of AYUSH, denying permission to undertake admission to B.H.M.S. Degree Course, under Section 12A of the Homeopathy Central Council Act, 1973 (hereinafter to be referred to as 'the HCC Act'). The permission was denied by the Ministry of AYUSH, based on the shortcomings and deficiencies noticed by the Ministry of AYUSH in course of



surprise inspection by a central team, in relation to maintenance of minimum standard of requirements in terms of faculty, infrastructure etc. in the said two Colleges. A question had arisen in those cases whether under the scheme of the HCC Act or the regulations, framed thereunder, any jurisdiction was conferred on the Ministry of AYUSH to conduct a surprise inspection of an existing College, established prior to 09.12.2002. Taking into account the scheme of the HCC Act, a co-ordinate Bench of this Court by a judgment and order dated 28.06.2017, passed in CWJC No. 19681 of 2016 and its another analogous case **(Dr. R.B. Singh Gaya Homeopathic Medical College & Hospital Vs. The Union of India and others)**, reported in **2018 (1) PLJR 719**, has held that there is no provision under the HCC Act which confers upon the Central Government a power to cause an inspection of a Homeopathic medical institution, for any purpose whatsoever. Relevant portion of paragraph 51 of the said judgment is being quoted hereinbelow:-

“51. There is no provision under the HCC Act, which confers upon the Central Government a power to cause inspection of a medical institution, established under the HCC Act, for any purpose whatsoever. The HCC Act does not confer upon the Central



Government any inherent power, even impliedly, to cause inspection of a medical institution.”

4. The Court further held in paragraph 56 of the judgment as follows:-

“56. Here is a case, where the report of the CCH is not against the petitioners; rather, it appears to have recommended for grant of permission to take admission under the HCC (MS) Regulations. The Central Government conducted the surprise inspection *suo motu*, which power is not traceable under the HCC Act.”

5. The Court directed in the case of **Dr. R.B.Singh** (supra) in paragraph 59 as follows:-

“The Ministry of AYUSH is directed to pass appropriate orders in accordance with law afresh after considering the inspection reports, which have been submitted by the CCH.”

6. Thereafter, in another batch of the writ applications, six in number, another question arose whether the Central Government had the jurisdiction in the matter of grant of permission for undertaking admission, as contemplated under Sub-Regulation (4) of Regulation 3 of the Homeopathy



Central Council (Minimum Standards Requirement of Homeopathic Colleges and Attached Hospitals) Regulations, 2013 (hereinafter to be referred to as 'the Regulations).

7. The petitioners of CWJC No. 18534 of 2018 (Maharshi Menhi Homeopathic Medical College and Hospital Vs. The Union of India and others), CWJC No. 19327 of 2018 (Mangla Kamla Homeopathic Medical College and Hospital Vs. The Union of India and others and CWJC No. 19769 of 2018 (B.N.M. Homeopathic Medical College and Hospital Vs. The Union of India and others), were parties in the batch of the writ cases, they being petitioners of CWJC No.14372 of 2017 (Maharshi Menhi Homeopathic College and Hospital Vs. the Union of India and others), CWJC No. 16554 of 2017 (Mangla Kamla Homeopathy College and Hospital Vs. The Union of India and others) and CWJC No. 16589 of 2017 (B.N.M.Homeopathic Medical College and Hospital Vs. The Union of India and others), respectively. This time also, a Co-ordinate Bench of this Court, dealing with the provisions under the Act, and the Regulations framed thereunder, held in paragraph 56 of the decision rendered in the batch of those writ applications on 12.12.2017, reported in **2018 (1) PLJR 630 (B.N.M. Homeopathic Medical College Vs. Union of India**



and others) that HCC Act did not confer upon the Central Government any such jurisdiction and the Central Government usurped power in denying permission to undertake admission which was vested in CCH in respect of the Colleges established before 2003. Relevant portions of paragraphs 56 and 57 of the said decision are relevant and are accordingly quoted hereinbelow:-

“56.....The statutory provisions under the Act as they existed prior to amendment in the year 2003 vested certain powers to carry out the purposes of the Act in the CCH. Since the Act does not confer upon Central Government any jurisdiction nor there is any specific provision conferring power upon the Central Government, in my view, the Centre usurped the power, which was apparently vested in the CCH for grant of permission to undertake admission in respect of Colleges established before 2003.

57. The submission made on behalf of the Union of India that because the Regulations can be framed only upon prior sanction of the Central Government, power which are vested in the CCH under the Regulations impliedly vests in the Central Government is not acceptable to



this Court. The Regulations have force of law. A delegated legislation is as much binding on every concerned as any other statutory provision. All the functionaries are required to act in accordance with and within the frame work of Regulations which is a subordinate legislation. Nobody claiming to be superior can claim to have the power vested in him on the reasoning that such power is vested in an authority which is subordinate to it.”

8. Be it noted that the said batch of those writ applications related to the academic session 2017-18, whereas the present batch of the writ petitions relates to the academic session 2016-17. These institutions have been granted permission to undertake admission for the academic session 2017-18 onwards. The dispute, in the present case, is thus confined to the academic session 2016-17.

9. Eight letters patent appeals were thereafter filed by the Union of India against the decision rendered on 28.06.2017 [**Dr. R.B.Singh Gaya Homeopathic Medical College & Hospital** (Supra)] and on 12.12.2017 [**B.N.M. Homeopathic Medical College and Hospital** (supra)] and other analogous cases. Those appeals were registered as LPA No. 1801 of 2017, arising out of CWJC No. 16371 of 2016,



LPA No. 1610 of 2017, arising out of CWJC No. 19681 of 2016, LPA No. 1609 of 2017, arising out of CWJC No. 19912 of 2016, LPA No. 1750 of 2017, arising out of CWJC 14864 of 2017, LPA No. 1798 of 2017, arising out of CWJC No. 14372 of 2017, LPA No. 1796 of 2017, arising out of CWJC No. 16554 of 2017, LPA No. 1799 of 2017, arising out of CWJC No. 16838 of 2017 and LPA No. 1752 of 2017, arising out of CWJC No. 16589 of 2017.

10. A Division Bench of this Court allowed the appeals by a common judgment and order dated 13.03.2018 **(The Union, through the Secretary, Ministry of AYUSH and another Vs. Dr. R.B. Singh Gaya Homeopathic Medical College and Hospital and others)** with its other analogous cases **(AIR 2018 Patna 119)**, holding that the Central Government has been vested with vast power to conduct inspection wherever it is deemed necessary by the Central Government. The Division Bench framed the issue in paragraph 34 of its decision in the following terms and thereafter proceed to address the first question as to whether the Central Government had power to grant or deny permission to undertake admission:-

“Only issue which has arisen for consideration in the present case is as



to whether or not the Central Government has got power to carry an inspection of the existing Medical Colleges imparting education in Homeopathy science particularly in the light of the provisions as contained in HCC (MSR) Regulation 2013. If this question is answered in affirmative then only a second question would arise as to whether in the facts of the present batch of cases the Central Government (Ministry of Ayush) has got statutory power to deny permission to an existing Homeopathy College in the matter of taking admission against the sanctioned strength of seats.” (Emphasis added)

11. The Division Bench, as can be easily seen, had opined that if the question whether the Central Government has power to carry inspection of an existing medical college imparting education in Homeopathy is answered in affirmative, then only the second question would arise as to whether the Central Government has got statutory power to deny permission to an existing Homeopathy College in the matter of undertaking admission against the sanctioned strength of the seats. On a careful reading of paragraph 34 of the Division Bench decision in case of **The Union of India and another Vs. Dr. R.B. Singh**



and others with its other analogous cases, totalling eight in number (supra), it can easily be discerned the Division Bench was of the clear view that if the Court reached a conclusion that the Central Government did not have power of inspection, it would not be having statutory power to grant or deny permission to an existing Homeopathy College to undertake admission.

12. Apparently, in view of what the Division Bench had observed while formulating the core issues involved in paragraph 34 of the judgment, as noted above, there could be no requirement of going into the second question if the answer to the first question was in negative.

13. The Division Bench answered the question in affirmative in paragraph 44 of the judgment, after examining various statutory provisions under the HCC Act and Regulations framed thereunder, holding that the Central Government had power of inspection. The Division Bench noted in paragraph 45 of its decision that the writ Court was not required to go into the scope and ambit of the provision of sub-regulation (5) of Regulation 3 on the reasoning that the words of the said Regulations should be understood in the background of the parent enactment under which the Regulation has been framed,



since *vires* of the said Regulation was not under challenge. The Division Bench, thus, held that the power to grant or deny permission to undertake admission vests in the Central Government and not in the CCH. Both the decisions, as rendered in the case of **Dr. R.B.Singh Vs. The Union of India and others** (supra) and **B.N.M. Homeopathic Medical College and Hospital** (supra) were, thus, set aside by the Division Bench. Aggrieved by the decision of the Division Bench, appeals under Article 136 of the Constitution of India were preferred by the petitioners, giving rise to Civil Appeal No. 6734 of 2018 and six other analogous cases. The Supreme Court again dealt at length the HCC Act and the provisions and the Regulation framed under the Act. The Supreme Court in the case of the **Temple of Hanemann Homeopathic Medical College and Hospital and other (Civil Appeal No. 6734 of 2018 and others analogous cases)**, held that various legislations enacted by the Central Government provide for constitution of statutory bodies, experts to deal with such matters of various kinds of education in the country. For Medical Education, Medical Council of India has been constituted. Similarly, for legal education, power has been given under the Advocates Act to the Bar Council of India and



for certain other technical courses to All India Council for Technical Education and other bodies. The role of the Central Government, the Supreme Court has held, is a supervisory one and not to start an investigation by making the appointment of a team of Inspectors, which is not envisaged under the Act. The Supreme Court finally concluded as follows:-

“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.

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).

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.”

14. While allowing the appeals, the Supreme Court
in the case of **Temple of Hanemann Homeopathic Medical**



College and Hospital and other (supra) set aside the judgments of the Division Bench in the case of **Union of India Vs. R.B.Singh** (supra) and restored the judgments of the writ Court in **Dr. R.B.Singh Vs. Union of India** (supra) and **B.N.M. Homeopathic Medical College and Hospital** (supra).

15. These facts have been noted in view of submissions advanced by Mr. S.D. Sanjay, learned Additional Solicitor General of India, that the power to grant or deny permission to undertake admission vests in the Central Government, despite the Division Bench decision in the case of **Union of India Vs. Dr. R.B.Singh** (supra) having been set aside and the judgments of the Single-Judge Bench having been restored because, according to Mr. Sanjay, the Supreme Court did not go into the question of power of grant or denial of permission to undertake admission in the said judgments in the case of **Temple of Hanemann Homeopathic Medical College and Hospital and others** (supra), I reject the said submission at the very outset. There is specific conclusion arrived at in the Single Judge Bench decision of this Court in the case of **B.N.M. Homeopathic Medical College and Hospital and others** (supra) that the power to grant or deny permission to undertake admission vests in the CCH which decision has been restored



by the Supreme Court in the case of **Temple of Hanemann Homeopathic Medical College and Hospital and others Vs. The Union of India and others** (supra). The plea that the Division Bench decision to the extent that such power to deny or grant permission to undertake admission vests with the Central Government will hold good, despite the decision having been set aside by the Supreme Court is a preposterous plea and is rejected at the threshold. The decision of the Division Bench in case of **The Union of India, Ministry of AYUSH and another Vs. Dr. R.B. Singh Gaya Homeopathic Medical College & Hospital and others** with its others analogous cases (supra) cannot be followed for any purpose once the same having been set aside by the Supreme Court. One has to be mindful of the fact that the Division Bench in the case of **The Union of India, Ministry of AYUSH and another Vs. Dr. R.B. Singh Gaya Homeopathic Medical College & Hospital and others** (supra) with its others analogous cases (supra) itself had recorded, as has been noted hereinabove, that the second question as to whether the Central Government had the statutory power to deny permission to an existing Homeopathy College in the matter of undertaking admission against the sanctioned strength of seats would arise only if the first question i.e.



whether the Central Government has got power to carry an inspection of an existing medical college imparting education in Homeopathy, was answered in affirmative. The Division Bench proceeded to answer the second question because it answered the first question in affirmative. Since the Supreme Court, dealing with the statutory provisions, has answered the same question in negative, in terms of what has been observed in paragraph 34 of the judgment in the case of **Union of India Vs. Dr. R.B.Singh** (supra), the second question would not arise.

16. The Central Government purportedly, in compliance of the decision in the case of Dr. R.B. Singh Gaya Homeopathic Medical College and Hospital supra) has passed the order on 22.11.2018, denying permission to the Colleges to undertake admissions. In view of certain facts, which I shall be dealing with hereinafter, the question of grant or denial or permission to undertake admission has become academic for the academic session 2016-17. I, however, note with disgust the conduct of the Ministry of AYUSH. The denial of permission to undertake admission has been communicated on 22.11.2018 which is said to have been passed in compliance of this Court's order dated 28.06.2017. As has been noted above, the said decision dated 28.06.2017 was subsequently set aside by the



Division Bench and finally restored by the Supreme Court by a judgment dated 17.07.2018. In view of this Court's decision which came to be restored by the Supreme Court decision in the case of Temple of Hanemann Homeopathic Medical College and Hospital and others (supra), the Central Government has again taken a decision to deny permission which power, it has been held, vests in the CCH. The Ministry of AYUSH, on the one hand appears to be callous in issuing the letter dated 22.11.2018, more than four months after the Supreme Court's decision in the case of **Temple of Hanemann Homeopathic Medical College and Hospital and others** (supra) was rendered and, on the other, the Ministry has issued the letter in obstinate defiance of the judicial pronouncement. The cryptic manner, in which the decision has been taken, manifests recalcitrant conduct of the decision makers.

17. Interlocutory applications have been filed for setting aside the decision of the Central Government, refusing to grant permission to undertake admission, on behalf of the petitioners.

18. In course of hearing of these cases, my attention was drawn by Mr Anil Singh, learned counsel, appearing on behalf of the University to Homeopathy (Degree Course)



B.H.M.S. Regulations, 1983 (hereinafter referred to as 'Regulation of 1983'), framed in exercise of power conferred under Clauses (i), (j), and (k) of Section 3 of sub-section 1 of Section 20 of the HCC Act with particular reference to Regulation 4A thereof which lays down the criteria for selection of the students for admission. Responding to the plea taken on behalf of the petitioner that they have already taken admission of the students in their Colleges in B.H.M.S. Course, since the CCH found them fulfilling the minimum standards of requirement, he has contended that unless the Colleges are in a position to make out a case that they have admitted the students in the manner, as prescribed under the statutory requirements, the relief which they are seeking, cannot be allowed. This Court, taking into account the above-noted submission, had passed the following order on 04.12.2018:-

“In the background of the plea, which has been taken on behalf of the petitioners that, they have allowed admissions of student in the respective colleges based on merit, let affidavits be filed on their behalf in all thee cases, stating the procedure adopted by them for allowing admissions in their colleges. Such affidavits must be field by 13th December, 2018.”



19. Affidavits have been filed on behalf of the petitioners in compliance of the said order. It is their case that they had adopted their own procedure for selecting the candidates through entrance test on the basis of their respective merits. It is the case of the petitioner in CWJC No. 18214 of 2018 that an entrance test was conducted for admission in 2016-17 session of B.H.M.S. Degree Course after an advertisement inviting applications for the said purpose. The affidavit deals with the manner in which the entrance test was held based on objective type questions. Similar statement has been made in the supplementary affidavit filed in CWJC No. 18215 of 2018. In CWJC No. 18534 of 2018, it has been stated that in the light of the order of this Court dated 01.12.2016, passed in LPA No. 2191 of 2016, the Management of the College had published a notice in a daily newspaper, inviting applications for admission in B.H.M.S. Degree Course and the entrance test was conducted on 22.06.2016. It has also been stated that after the entrance test, date of counselling was fixed on 29.06.2016 and 30.06.2016, merit list of 50 candidates was prepared and the admission of the students was accordingly communicated to the University, through letters dated 15.12.2016 and 21.12.2016. The averments made in the



supplementary affidavit in CWJC No. 18534 of 2018 are self-contradictory and does not at all inspire confidence. It is stated that it was in the light of the Division Bench order of this Court dated 01.12.2016 that the applications were invited through advertisement, on the other hand, according to the petitioner, the entrance test was held on 22.06.2016. Be that as it may, it is again the case of the petitioner that the College had conducted the admission test, based on which, the students were admitted for the academic session 2016-17. It may be noted here that the petitioner of CWJC No. 18534 of 2018 had preferred a Letters Patent Appeal against the order dated 01.12.2016, passed in CWJC No. 18614 of 2016, giving rise to LPA No. 2191 of 2016. This Court, in the background of non-filing of the counter affidavit on behalf of the respondents, had allowed the appeals and the writ petition with direction to the respondents to grant permission to admit the students to 50 seats for the academic session 2016-17 forthwith. In compliance of the said order dated 01.12.2016, the Ministry of AYUSH granted permission for undertaking admission. The case of this petitioner is different from the cases of other institutions to this limited extent that the Ministry of AYUSH has granted permission to undertake admission in compliance of the said Division Bench



decision of this Court. The question still remains whether the College has allowed admission in accordance with the statutory prescription or not?

20. Affidavits have been filed on behalf of the University, stating specifically that B.R.A. Bihar University has not conducted any competitive examination, as stipulated under clause (c) of sub-regulation (i) of Regulation 4A of the Homeopathy (Degree Course) Regulation, 1983 for the academic session 2016-17, since the Regulation was not made applicable for the academic session 2016-17.

21. In view of the nature of relief in the present batch of the writ petitions, it would be apt to take note of Regulation 4A of the Homeopathy Central Council (Minimum Standards Requirement of Homeopathic Colleges and Attached Hospitals), Regulation, 2013(hereinafter to be referred to as '2013 Regulation'), which is being reproduced hereinbelow:-

“4A. Criteria for selection of students.-

(i) The selection of students to the college shall be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country, namely:-

(a) In States, having only one Medical College and one University or



examining body conducting the competitive examination, marks obtained at such qualifying examination shall be taken into consideration.

(b) In States, having more than one University or examining body conducting the competitive examination or where there is more than one medical college under the administrative control of one authority, a competitive examination shall be held so as to achieve a uniform evaluation.

(c) Where there are more than one college in a State and only one University or examining Board conducting the competitive examination, then a joint selection board consisting of the Principals of all the colleges and a representative from the faculty of University or examining Body, or the case may be, shall be constituted by the State Government for all colleges to achieve a uniform method of competitive examination. (Underlined for emphasis)

(d) The Central Government itself or any other agency notified by it shall conduct a competitive examination in the case of institutions of an all India character.

(ii) A candidate shall be eligible for the



competitive examination if he has passed any of the qualifying examinations specified under regulation 4:

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive examination and in case of selection for admission to the B.H.M.S. Degree Course, he shall not be admitted to that courses until he fulfils the eligibility criteria under regulation 4.

22. Evidently, the Regulation deals with three different situations and prescribes procedures to be adopted for admission to B.H.M.S. Degree Course in each situation. Clause (a) of sub-regulation (i) contemplates a situation in respect of the States having only one Medical College and one University or examining body conducting the qualifying/competitive examination; in such situation the marks obtained at the qualifying examination is to be taken into account for determining the respective merits of the candidates. The second situation is in respect of such States which have more than one University or examining body conducting the qualifying examination or where there is more than one medical college under the administrative control of one authority; in



such situation, a competitive examination is to be held so as to achieve a uniform evaluation, for admission to the course. The third situation is where there are more than one college in a State and only one University or examining Board conducting the qualifying examination, in which situation, a joint selection board consisting of the Principals of all the colleges and a representative from the faculty of University or the examining body, as the case may be, is required to be constituted by the State Government for all colleges to achieve a uniform method of competitive examination.

23. On close scrutiny of Regulation 4A of 2013 Regulations, I am of the view that the word 'competitive' in the second line of clause (a), second line of clause (b) and second line of clause (c) of sub-regulation (i) of Regulation 4A of 2013 Regulations have been incorrectly mentioned in place of 'qualifying', which is visibly a result of clerical error. This aspect, this Court had noticed in the order dated 04.12.2018. The Court had expected the Central Government to examine this aspect and issue a clarification, if required. There is no clue whether the Ministry of AYUSH has at all taken note of the observation made by this Court in the order dated 04.12.2018, since there is nothing available on record. However, in my



opinion, the word 'competitive', as noted above, if read as it is in the Regulation, would lead to an absurdity. The error is patent on reading clause (a) of sub-regulation (i) of the said Regulation which lays down that the States having only one medical college and one University or examining body conducting 'competitive examination', marks obtained at such 'qualifying examination' shall be taken into consideration. The phrase competitive examination in clause (a) is succeeded by the phrase 'such qualifying examination'. Had it been competitive, it would not have succeeded by such qualifying examination, it would have rather been 'such competitive examination'. Further, in the first situation, as envisaged in clause (a), the merit is to be determined on the basis of marks obtained in the qualifying examination i.e. the examination, passing of which qualifies a candidate and makes him eligible to be admitted to B.H.M.S. Degree Course. It is in that background that the word 'competitive' will have to be read qualifying so as to avoid absurdity. Similar is the situation with clause (b) and clause (c).

24. While construing a statutory provision, a patent incongruity in the language of the statute must be avoided by the Court so as to give life and force to such provision,



otherwise the whole exercise would become meaningless.

25. It is evident on reading of Regulation 4A of 2013 Regulations that the admission can be taken on the basis of marks scored in the qualifying examination only in case of such State which has only one medical college and one University or examining body taking competitive examination.

26. In the State of Bihar, there is only one University to which all the medical colleges are affiliated. This is a matter common knowledge that in the State of Bihar there is only one examining Board, i.e., the Bihar School Examination Board which conducts Intermediate/+2 examinations, which makes a candidate eligible to seek admission in B.H.M.S. Degree Course, as envisaged under Regulation 4A of the Regulations 2013. This being the situation, there is absolutely no dispute that clause (c) of sub-regulation (i) of Regulation 4A of Regulations, 2013 shall govern the cases of these colleges for the purpose of selection of the candidates for admission to B.H.M.S. Degree Course. I do not have any scintilla of doubt after having noticed the language of Regulation 4A of 2013 Regulations that the provisions are mandatory. Situated thus, it is easily discernible from clause (c) of sub-regulation (I) that there has to be a joint selection board consisting of the



Principals of all the colleges and a representative from the faculty of University or examining Body to be constituted by the State Government for all the colleges to achieve a uniform method of competitive examination for selection. The selection of the students has to be based on merit through a competitive examination to be conducted by a joint selection board, as stipulated under Regulation 4A of 2013 Regulations.

27. As is apparent from the affidavits filed on behalf of the petitioner(s) and the University, which have been noted above, the respective colleges claim that they admitted the students for the academic session 2016-17 on the basis of merit through competitive examination which does not satisfy the requirement of Regulation 4A of 2013 Regulations.

28. Mr. Bindhyachal Singh, learned counsel, appearing on behalf of the petitioner(s), has argued that the Regulations 1983 for B.H.M.S. Degree Course were amended in the year 2005, which came into force on 17.06.2005 which did not contemplate the requirement of a competitive examination for admission of the candidates in B.H.M.S. Degree Course under Regulation 4 of 2013 Regulations. The said Regulations were again amended in the year 2015, which came into force on 14.07.2015, whereby Regulation 4A was



added and mandated the requirement of a uniform selection process for admission of the candidates in B.H.M.S. Degree Course. He contends that the University had requested the Chancellor to grant permission to adopt the amended Regulation, Ordinance and Syllabus of Homeopathy (Degree Course), as prescribed by the CCH through a letter dated 25.09.2017, whereafter the Regulation was approved on 27.04.2018. It is accordingly his submission that so far as B.R.A. Bihar University is concerned, the Regulation 4A of 2013 Regulations came into force only with the approval of the Chancellor of the Universities of Bihar on 27.04.2018 and, therefore, the admission of the students by these colleges cannot be said to be in breach of Regulation 4A. He has drawn my attention to Section 39 of the Bihar State Universities Act, 1976, which provides the manner in which the Regulations are made and with reference to clause (ii) of sub-section 2 of the said Section, he contends that the Regulation shall have effect from the date on which it has been assented to by the Chancellor on being passed by the Senate.

29. I do not find any force in the submissions so advanced by Mr. Singh. The 2013 Regulations have been framed in exercise of the power conferred under clause (i), (j)



and (k) of section 33 and sub-section (1) of Section 20 of the Homeopathy Central Council Act, 1973, which is a Central Act. The subject of 'scientific and technical institutions' falls in List-1 of the Union List and, therefore, once the amendment introducing regulation 4A of 2013 Regulations came to be notified, it became effective from the date of notification itself. The implementation of the said provisions cannot await the approval of an authority/functionary under the State Act, unless specifically provided in the Central Act.

30. Mr. Bindhyachal Singh has, however, submitted that since no competitive examination was held, as envisaged under Regulation 4A of 2013 Regulations, these institutions decided to admit the students through a selection procedure which was not only fair and transparent, but merit was the sole criterion for selection. He has further submitted that equity also demands that the students, who have been admitted under the *bona fide* impression, could not be denied the opportunity to appear for the University examination. He has then referred sub-regulation (iii) of Regulation 14 of the Regulations, which confers upon the University or the Medical institutions a power to relax. The said provision postulates a situation where any University or the Medical institution in India, which grants



medical qualification, feels satisfied that the operation of any of these regulations causes undue hardship in any particular case and for such situation, confers upon such University or the Medical Institution a power to relax the requirement of that regulation to such an extent and subject to such exception and conditions as it may consider necessary for dealing with the case, in a just and equitable manner. He has, thus, submitted that it is a fit case where the University should decide to relax the requirement of sub-regulation 4A of 2013 Regulations. The submission which is being made two years after the Colleges have already taken admission, cannot be accepted. There could have been a situation where in the absence of constitution of the selection board or any other similar situation, the Medical institutions were not in a position to admit the students in accordance with the procedures prescribed under Regulation 4A of 2013 Regulations. In such circumstance, the University could have taken a decision to relax the subject to such exceptions and conditions as it might have considered necessary, but with the approval of the CCH. The power to relax under Regulation 14 is apparently subject to concurrence of the CCH.

31. In view of above discussions, I am of the considered opinion that the admissions which these Colleges



claim to have taken on the basis of the 'merit' through competitive examination, are in clear breach of Regulation 4A of the 2013 Regulations. The Colleges, therefore, after having acted in breach of the Regulations by allowing admission for the academic session 2015-17 cannot seek a direction to the University to allow such students to appear for the University examination.

32. Admissions allowed in breach of Regulation 4A of 2013 Regulations, are *per se* illegal and the students so admitted, therefore, cannot be directed to be allowed to appear for the University examination. This Court cannot issue a direction, overlooking the legislative mandate and the statutory provisions. It is well-settled that if law is clear, no notion of equity can change the law. Equity has to yield to law. Equity follows the law and cannot breach the law.

33. Various submissions have been made at the Bar on different aspects, including an earlier order of this Court dated 22.06.2017 passed in CWJC No. 20353 of 2016, which was preferred by B.N.M. Homeopathic Medical College and Hospital (petitioner of CWJC No 19769 of 2018). The said case also related to 2016-17 academic session, wherein this Court had observed that in the absence of permission to undertake



admission, the College could not have allowed admission.

34. Mr S.D. Sanjay has contended that, in no circumstance, the said College can seek relief for the academic session 2016-17, in the light of the said judgment and order of this Court dated 22.06.2017. He has also submitted that the same reasoning would apply in other cases also.

35. Since I have decided to dismiss these writ applications on the sole ground that the admissions undertaken by the Colleges, as they claim, do not satisfy the requirement of Regulation 4A of 2013 Regulations and, therefore, no relief, as sought in these writ application, can be granted. I have not entered into this aspect of the submission.

36. These writ applications accordingly stand dismissed, but with the observations made hereinabove.

37. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

HR

AFR/NAFR	AFR
CAV DATE	Nil
Uploading Date	05. 01.2019
Transmission Date	

