

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
914 WRIT PETITION NO.12100 OF 2019**

FOSTER DEVELOPMENT TRUST GULMOHAR COLONY THROUGH
SECRETARY AND ANOTHER ..PETITIONERS

VERSUS

THE UNION OF INDIA AND OTHERS ..RESPONDENTS

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Mr. P. M. Shah, Senior Advocate with Mr. S. P. Shah, Advocates for the Petitioners.

Mrs. G. L. Deshpande, AGP for Respondents-State.

Mr. Sanjeev B. Deshpande, ASG for Respondent No.1.

Mr. S. B. Bhosle, Advocate for Respondent No.2.

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**CORAM : S. V. GANGAPURWALA &
ANIL S. KILOR, JJ.**

DATED : 10th OCTOBER, 2019.

PER COURT:-

1. We have heard Mr. Shah, learned senior counsel for petitioners and Mr. Deshpande, learned A.S.G. for the respondents.

2. The petitioner is aggrieved by the reduction of the intake capacity for its UG and PG Homeopathy courses.

3. It is the contention of petitioners that petitioners run the UG courses since 1997 and PG courses since 2001-2002. Since 1997 the UG course had 100 intake capacity and 6 PG courses had intake capacity of 6 students in each PG course. According to petitioners under impugned order the intake capacity for UG has been reduced to 60 and for PG it is reduced to 4 in each PG course. According to

petitioners the said order is passed without show cause notice to petitioners nor affording any opportunity to petitioners to put forth their case. The impugned order also does not depict any reasons for reduction of the intake capacity.

4. According to the learned senior counsel for petitioners, the impugned order is passed on 11.06.2019 and notice is issued to petitioners on 14.06.2019 to make submissions in respect of the insufficiencies pointed out in the inspection carried on 05.04.2019. According to petitioners no deficiencies are pointed out in the inspection report.

5. Mr. Deshpande, learned A.S.G. for respondents submits that upon consideration of all the relevant aspects, the order has been passed. He further submits that, he could not get further instructions in the matter.

6. It is submitted that last date for admitting students for UG and PG courses are 15.10.2019 and 31.10.2019 respectively.

7. We have gone through the inspection report. The inspection report prima facie does not depict deficiencies. From the inspection report it appears that, some of the faculty members and the equipment in the laboratory are in excess than the required.

8. We also cannot comprehend the procedure as adopted by the respondents in first passing the impugned order on 11.06.2019 reducing the intake capacity and thereafter on 14.06.2019 issuing the communication to petitioners to furnish within 30 days its remark about the insufficiency pointed out in the inspection report carried out on 05.04.2019.

9. The issuance of the communication calling for the say of the petitioner on the alleged insufficiency on the inspection report within 30 days as per the communication dated 14.06.2019 was an exercise in futility. The impugned order preceded the said notice. The respondents have put the cart before the horse. The same is not permissible.

10. Considering the inspection report pointing out almost zero deficiency and that the order is passed without say of the petitioner, we set aside the impugned order. The respondents shall grant permission to petitioners of its intake capacity of 100 students for UG and 6 students for each PG course as was being granted for the previous years.

11. Writ Petition accordingly disposed of. No costs.

(ANIL S. KILOR)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/October-19