

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.16995 of 2019
and W.M.P.Nos.16557 & 16559 of 2019

Hahnemann Homoeopathic Medical Trust,
6/177-A, Mount Poonamallee Road, Karambakkam,
Porur, Chennai-600 116.
Established and Administering
Venkateswara Homoeopathic Medical College & Hospital.
Rep.by its Trustee and Principal
Mrs.A.Sakuntala

... Petitioner

-Vs-

- 1.The Government of India,
Rep.by its Secretary to the Government of India,
Ministry of Ayurveda, Yoga & Naturopathy
Unani, Siddha & Homoeopathy (AYUSH),
AYUSH Bhawan, 'B' Block, GPO Complex, INA,
New Delhi-110 023.
- 2.The Deputy Secretary to Government of India,
Ministry of Ayurveda, Yoga & Naturopathy
Unani, Siddha & Homoeopathy (AYUSH),
AYUSH Bhawan, 'B' Block, GPO Complex, INA,
New Delhi-110 023.
- 3.The Central Counsel of Homoeopathy
(Central Council of Homoeopathy),
Rep.by its Secretary, सत्यमेव जयते
Jawaharlal Nehru Bhartiya Chikitsa Avum,
Homoeopathy Anusandhan Bhawan,
No.61-65, Institutional Area, Opp to "D" Block,
Janakpuri, New Delhi-110 058.
- 4.The Commissioner,
Directorate of Indian Medicines & Homoeopathy,
Arumbakkam, Chennai-600 106.
- 5.Tamil Nadu Dr.M.G.R.Medical University,
Rep.by its Registrar,
69, Anna Salai, Guindy,
Chennai-600 032.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 1st respondent in F.No.14014/2000/2009-EP(II) dated 02.05.2019 reducing the intake of the petitioner college (Venkateswara Homoeopathic Medical College & Hospital at No.4/11, Samayapuram Main Road, Karambakkam, Porur, Chennai-600 116) from 100 to 50 for admission to BHMS Degree course for the academic year 2018-19 quash the same insofar as reducing the intake to 50 and direct the 1st respondent to pass orders granting permission to the petitioner college for an intake capacity of 100 seat to BHMS Degree course for the academic year 2019-2020.

For Petitioner : Mr.T.V.Masilamani, Senior counsel
For R1 & R2 : Mr.N.Ramesh
For R3 : Mr.M.T.Arunan
For R4 : Mr.S.Suresh Kumar
Government Advocate
For R5 : Mr.P.Elayaraj Kumar
for M/s.Ramalingam Associates

O R D E R

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. The petitioner trust is running a Homoeopathy College by name Venkateswara Homoeopathic Medical College & Hospital since 2000. On 03.10.2002, the Central Council of Homoeopathy (CCH) granted permission to the petitioner college to increase its intake from 50 to 100 from the academic year 2002-2003 onwards.

3. Subsequently, the Homoeopathy Central Council Act, 1973, was amended, Chapter II-A was inserted which envisages, no person shall establish a Homoeopathic Medical College except with prior permission of the Central Government. This amendment came into effect from 28.01.2003. The Central Government through its Ministry of Health and Family Welfare, Department of AYUSH by its letter dated 23.12.2004 clarified that the colleges granted permission by CCH on onward basis prior to the amendment do no need further permission from the Government of India at this stage. The status of existing college was further clarified by the Central Government vide its letter dated 12.07.2005 as permission once granted by CCH or the Central Government for

BHMS Degree Course on onward basis may have to continue as per provisions of HCC Act, 1973, till the same is withdrawn as per the provisions, if any, of the Act.

4. In the year 2012, when the petitioner institute sought permission to admit students upto 100 seats based on the permission granted by CCH on 03.10.2002, and the clarification issued by the Central Government, the Ministry of AYUSH directed the petitioner to apply afresh under Section 12-A of HCC Act, 1973, for increase of intake from 50 to 100. This direction was challenged by the petitioner institute in W.P.No.2749 of 2014 and this Court has passed an order on 30.04.2014 as below:-

"The impugned communication of the first respondent, requesting the petitioner to apply afresh under Section 12-A of the Act cannot be sustained inasmuch as the petitioner was given approval to increase the intake of students from 50 to 100 for the academic year 2002-2003 on 03.10.2002. However, for admission of the students for the present academic year 2013-2014 is concerned, provisional affiliation was granted to the petitioner to admit only 50 students. As far as admission of the students is concerned, the last date for admitting the student is 30th November as per the cut off date imposed by the Government of India, Ministry of Health and Family Welfare and any admission beyond 30th November cannot be recognised. Therefore, due to efflux of time or expiry of the cut off date granted by the Government of India, at this stage, this Court is unable to grant the consequential relief sought for by the petitioner to admit the students for the academic year 2013-2014. If at all, the petitioner can utilise the intake granted to them only for the next academic year viz., 2014-2015 by admitting the students before 30th November. Therefore, while holding that the impugned communication of the first respondent is unsustainable, this Court reject the consequential relief sought for by the petitioner."

5. While so, due to the introduction of Section 12 C to the HCC Act w.e.f. 18.05.2018, all existing Homoeopathic Colleges functioning prior to this date were directed to apply and get permission from the Central Government within one year in accordance with the provisions specified in the Regulations made by the Central Council of Homoeopathy.

6. Accordingly, the petitioner institute sought permission of the Central Government for an intake of 100 students for the academic year 2018-2019. From the records produced by the petitioner, it appears that the Board of Governors of Central

Council of Homoeopathy conducted inspection of the petitioner institute on 13.06.2018.

7. The Inspection Committee observed that the petitioner institute has not fulfilled the basic eligibility conditions such as :-

"(i) In hospital, Nil House Physician (Resident) available against required 02.

(ii) Operation Theatre is not functioning.

(iii) In Dept. of Anatomy, mummified bodies are not available.

(iv) In Dept. of Medicine, there are Nil specimens.

(v) In Dept. of Homoeopathic Pharmacy, there are Nil models. License for procuring Alcohol/Spirit is not available."

8. The petitioner college was given opportunity of hearing by the designated Hearing Committee in the Ministry of AYUSH. The representative of the petitioner college appeared before the Hearing Committee on 01.08.2018. On considering the oral and written submission made by the petitioner college, the Hearing Committee has submitted its overall observations as under:-

"Overall observation of Hearing Committee:

The college does not have House physician functional OT and specimens are not available in the Department of Medicine. In Department of Anatomy, mummified bodies are available, Models are available in department of Homoeopathic Pharmacy. The college is having license for procuring Alcohol/Spirit."

9. Based on the above observation, the Ministry of AYUSH vide its order dated 12.09.2018 has denied permission to the petitioner college for admitting students in BHMS course with 50 UG seats for the academic session 2018-19. In the said order, the petitioner college was further informed to fulfil the shortcomings observed during the inspection and other requirements mentioned in the order to enable CCH to carry out its inspection of the college for consideration of matter for grant of permission for taking admissions in UG (BHMS) course for the academic year 2019-20.

10. The petitioner college has challenged the above order of the Ministry of AYUSH in W.P.No.24967 of 2018. As interim order, this Court has said:-

"5. The Hon'ble Supreme Court, in a recent decision has upheld the judgment of the Patna High Court, wherein the power of the Central Government has

been considered. The Supreme Court has observed that the Central Government has to pass order only on the recommendation made by the Central Council. The legal position as settled by Hon'ble Supreme Court indicates that the Central Government has no independent power to pass the impugned order. In the absence of any recommendation of Central Council, the impugned order cannot stand. Hence, this Court is of the view that the petitioner is entitled to get an interim order. Hence, there shall be an order of stay as prayed for a period of eight weeks.

6.It is not in dispute that the first respondent Government of India, has passed order in favour of the petitioner for continuing BHMS Degree Course for 100 seats for every academic year from 2014. It is also stated by the petitioner that the fifth respondent University has passed orders acknowledging the petitioner's eligibility for provisional affiliation to 100 seats.

7.In view of the various orders of this Court, this Court is also convinced that the petitioner is entitled to admit 100 students for first year BHMS Degree Course for the academic year 2018-19. Hence, there shall be an interim direction to the respondents 4 and 5 to allow the petitioner's Institution to admit 100 students for the first year BHMS Degree Course for the academic year 2018-19."

11. While so, the 3rd respondent conducted inspection of the petitioner college on 18.03.2019 and based on the recommendation, the first respondent has issued order dated 02.05.2019, permitting the college to make intake of 50 candidates. This order is under challenge in this writ petition.

12. The petitioner institute has pegged his case on the premise that minimum standard requirement of the year 2013 shortly called as HCC (MSR) 2013 is not applicable to the colleges established prior to insertion of Chapter II A by amendment to the HCC Act 1979 w.e.f. 28.01.2003. The clarification letters issued by the Government subsequently been taken into consideration and by Court orders its intake capacity of 100 seats is protected all along. When there is no deficiency in the infrastructure of the college and the CCH has also confirmed the fulfilment of the HCC (MSR) 2013 for 100 seats, the Central Government cannot take a different view in the light of the judgment of the Patna High Court in CWJ.16589/2017 and 19912/2016 dated 12.12.2017 and 28.06.2017 later confirmed by the Hon'ble Supreme Court in SLP.No.11755/2018 dated 17.07.2018.

13. At the outset, it has to make clear that the above judgment passed considering the provisions of pre-amended HCC Act. After HCC (Amendment) Act 2018, which came into effect from 18.05.2018, the observations made in that judgment cannot be made applicable to the facts of the present case.

14. After the amendment of the HCC Act, w.e.f. 18.05.2018, the Central Council of Homoeopathy is superseded and the Central Government has constituted Board of Governors. The order impugned in this writ petition apparently have passed by Central Government based on the recommendation of Board of Governors of CCH. The procedure followed by the respondents is in conformity to Section 12 C of the HCC Act, 2013, as amended by Act, 23/18.

15. From the documents produced, the past track record of the petitioner institute reveals that, being established before 28.01.2003, the date on which Section 12-A of the HCC Act came into force, its intake capacity of 100 seats been protected by Court orders. But then, after insertion of Section 12 C, the institute is bound to get permission of the Central Government on or before 17.05.2019. It cannot harp on the earlier proceedings and refuse appraisal of its infrastructure facility and compliance of HCC (MSR) 2013. under the said circumstance, the institute was earlier inspected by 13.06.2018. Certain deficiencies were noted by the Board of Governors. The Central Government has ordered the institute "Not to admit the students for the academic year 2018-19". This order of the Central Government is under challenge in W.P.No.24967 of 2018, which is pending before this Court.

16. For the academic year 2019-20, the Council has caused inspection on 18.03.2019 and submitted its report with recommendation to the Central Government the first respondent.

Section 12-C of the Act reads as below:-

"12C. (1) If any person has established a Homoeopathy Medical College or any Homoeopathy Medical College has opened a new or higher course of study or training or increased the admission capacity on or before the date of commencement of the Homoeopathy Central Council (Amendment) Ordinance, 2018, such person or Homoeopathy Medical College, as the case may be, shall seek, within a period of one year from the said commencement, permission of the Central Government, in accordance with the provisions specified in the regulations made by the Central Council.

(2) If any person or Homoeopathy Medical College, as the case may be, fails to seek permission under

sub-section (1), the provisions of section 12B shall apply, as far as may be, as if the Central Government has been refused."

17. The said inspection of the petitioner institute on 18.03.2019 is in turn with Section 12 C and it cannot be faulted saying it as "surprise inspection".

18. The other contention raised by the learned senior counsel appearing for petitioner is that the Inspection Committee of Central Council of Homoeopathy has observed that the petitioner institute has fulfilled all the requisite criteria to admit 100 candidates. While so, without any rime or reasons, the recommendation of Central Council of Homoeopathy reducing the intake capacity from 100 to 50 has been accepted by the first respondent. Before passing any adverse order, the Central Council of Homoeopathy ought to have given an opportunity to the petitioner's institute why the permission of intake capacity should not be reduced. At least the first respondent ought to have considered the inspection report of Central Council of Homoeopathy and the Council resolution dated 05.04.2019 and ought to have sought clarification from institute or Central Council of Homoeopathy before reducing the intake. Without following these procedure, the first respondent has reduced the intake granted to the petitioner's institute without affording any opportunity.

19. That apart, the petitioner has challenged the vires of the impugned order attributing motive and malafide.

20. Notice was issued to the respondents through learned standing counsel appearing for the petitioner. However, they have not filed any counter and the matter was adjourned to 21.06.2019. On that day, the learned counsel for the petitioner mentioned before this Court that the first respondent has pre-pended the last date for uploading the seat matrix to 19.06.2019, which was earlier fixed on 25.06.2019. If the petitioner institute failed to upload the seat matrix, they may lose admitting the students in the counselling. In alternate, if the petitioner institute upload the seat matrix, taking note of impugned order then there is all possibility of losing 50 seats. Taking note of the predicament of the petitioner, this Court on 21.06.2019, passed the following order and adjourned the matter to 26.06.2019.

"3.It is made clear that the seat matrix of the petitioner Institute shall be subject to the out come of the writ petition and the particulars uploaded by the petitioner Institute, with reference to the E-mail communication of the first respondent is to be treated

as without prejudice to the writ petition."

21. When the matter was taken up for hearing on 28.06.2019, this Court requested the learned counsel appearing for the Central Council of Homoeopathy as well as the first respondent to produce the recommendation of Central Council of Homoeopathy. Today the learned counsel appearing for the first respondent circulated the extract of the recommendation, which has been communicated by the Central Council of Homoeopathy to the first respondent through a letter dated 12.04.2019.

22. Perusal of the communication sent by Central Council of Homoeopathy to the first respondent, this Court finds that at Serial No.20, the petitioner institute namely Venkateswara Homoeopathic Medical College & Hospital, Karambakkam, Porur, Chennai-600 116 has been recommended for allowing admission in I-BHMS course for the session 2019-2020 with the intake capacity of 50 seats. Under the column "courses run to intake capacity of students" petitioner institute intake capacity is shown as 50.

23. According to the petitioner this is factually wrong. The petitioner's institute claims that it has been permitted intake of 100 seats, whereas the learned counsel appearing for the first respondent would submit that the petitioner institute was permitted to have an intake of 100 only by way of interim order passed by this Court in W.P.No.24967 of 2018. At no point of time this petitioner has admitted more than 50 students in any given academic year.

24. Be that as it may, there can be no doubt that the petitioner's institute earlier intake capacity was 100 before the order dated 12.09.2018, which is subject matter of W.P.No.24967 of 2018. The committee constituted by the Central Council of Homoeopathy has inspected the petitioner's institute on 18.03.2019 and submitted its report, which has been analysed by the team under the Ministry of AYUSH and found that the petitioner institute has fulfilled all the criteria as per HCC MSR 2013.

25. The analysis of the proforma for carrying out inspection, this Court finds that the petitioner's institute has sought for intake of 100 candidates for the BHMS course. The Inspection Committee has also conducted the inspection and has recorded its observation in the report. The remark in the inspection report and recommendation of CCH indicates that the petitioner's institute fulfilled all the criteria for the intake of 100 candidates. While so, for reducing the sanctioned intake, there must be some reasons and it should have been made known to the petitioner herein.

26. The over all observation of the Inspection Committee report and recommendation show that the petitioner college has fulfilled all the criteria as per the HCC (MSR) 2013. As per the CCH report the norms mentioned and availability in the college satisfies the parameter prescribed for 100 seats. The conclusion of the recommendation reads as below:-

"7. Accordingly the Venkateswara Homoeopathic Medical College & Hospital, 6/177-A, Mount Poonamallee Road, Porur, Karambakkam, Chennai may be considered for granting permission for continuing admission in BHMS for the academic year 2019-20 for 100 seats in BHMS Course. Therefore, if approved, we may seek approval of Hon.ble MOS (L.C) for granting conditional permission to the said college for continuing admissions in BHMS course with seat intake of 50 students during the Academic Year 2019-20. Accordingly, a draft letter is placed for consideration."

27. The application and proforma of inspection report is for 100 seats. The inspection done for 100 seats and Committee has recorded fulfilment of criteria for 100 seats. While so, its conclusion is unclear and ambiguous. The first respondent ought to have got clarification from CCH whether their recommendation is for 100 seats or for 50 seats or in alternate it should have apprised the inspection report of the Committee and should have decided about the intake. If the first respondent in its opinion deemed fit to fix the intake permission to be 50 seats, despite the report of the CCH indication, then the respondents ought to have given an opportunity to the petitioner institute before passing the impugned order. Since the first respondent has failed to do either of the above, its order dated 02.05.2019 fixing the intake of the petitioner's institute from 100 to 50 is hereby quashed. In the said circumstances, the first respondent is directed to consider the inspection report of CCH and recommendation of the Board afresh and pass orders on or before 15.07.2019.

28. Accordingly, this writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

rpl

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to the Government of India,
The Government of India,
Ministry of Ayurveda, Yoga & Naturopathy
Unani, Siddha & Homoeopathy (AYUSH),
AYUSH Bhawan, 'B' Block, GPO Complex, INA,
New Delhi-110 023.
2. The Deputy Secretary to Government of India,
Ministry of Ayurveda, Yoga & Naturopathy
Unani, Siddha & Homoeopathy (AYUSH),
AYUSH Bhawan, 'B' Block, GPO Complex, INA,
New Delhi-110 023.
3. The Secretary,
The Central Counsel of Homoeopathy
(Central Council of Homoeopathy),
Jawaharlal Nehru Bhartiya Chikitsa Avum,
Homoeopathy Anusandhan Bhawan,
No.61-65, Institutional Area, Opp to "D" Block,
Janakpuri, New Delhi-110 058.
4. The Commissioner,
Directorate of Indian Medicines & Homoeopathy,
Arumbakkam, Chennai-600 106.

+2cc to M/s.Ramalingam Associates, Advocate, SR.No.55255
+1cc to Mr.N.Ramesh, Advocate, SR.No.55213
+1cc to Mr.M.T.Arunan, Advocate, SR.No.55008
+1cc to Mr.D.Prabhu Mukunth, Advocate, SR.No.55000

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