



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.08.2019

Coram::

The Honourable Dr. Justice G. Jayachandran

W.P.No.21143 of 2019
& W.M.P.Nos.20341 & 20343 of 2019

Sri Rengaswamy Educational Trust.

Rep by its Director,

NH-544, Salem Main Road,

Pallakapalayam, Sankari West Post,

Komarapalayam Taluk,

Namakkal District - 637 303.

... Petitioner

/verus/

1. Government of India,

Ministry of Ayurveda, Yoga & Naturopathy,

Unani, Siddha and Homoeopathy (AYUSH),

Rep. by its Secretary,

AYUSH Bhavan,

'B' Block, GPO Complex, INA,

New Delhi - 110 023.

2. Central Council of Homoeopathy,

Rep. by its Secretary,

61-65 Institutional Area,

Opp, 'D' Block, Janak Puri,

New Delhi - 110 058.

3. The Health and Family Welfare Department,

Rep. by its Secretary,

Government of Tamil Nadu,

Fort St. George,

Chennai - 600 009.

4. Indian Medicine and Homoeopathy,

Rep. by its Director,

Arignar Anna Govt. Hospital,

Arumbakkam, Chennai - 600 106.

5. The Tamil Nadu Dr.M.G.R. Medical University,

Rep. by its Registrar,

No.69, Anna Salai,

Guindy, Chennai - 600 032.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records of the respondents ending with the order of the 1st respondent in File No.R.14012/18/2018-EP-II, dated 08.07.2019 and quash the same and consequently directing the 1st respondent to issue letter of Intent (LOI) to Sri Rengaswamy Educational Trust for starting Bachelor of Homoeopathy Medicine and Surgery (BHMS) degree course in the name and style of Excel Homoeopathy Medical College and Hospital" at Pallakkapalayam, Komarapalayam, Namakkal District 637 303, Tamil Nadu State with an annual intake of 100 seats from the academic year 2019-2020.

For Petitioner : Mr.Muthumani Doraisami
Mr.Kandhan Duraisami

For R1 & R3 : Mr.B.Rabu Manohar, Standing Counsel

For R2 : Mr.G.Karthikeyan,
Asst. Solicitor General

For R4 : Mr.S.Sureshkumar, Government Advocate

For R5 :Mr.P.Rajalakshmi,
Additional Government Pleader

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The petitioner/Sri Rengaswamy Educational Trust has established a Homoeopathy Medical Hospital at Namakkal District and since 2015 they are attempted to get approval to start Homoeopathy Medical College not been fructified due to various reasons.

3. Now, the grievance of the petitioner is that the Central Council of Homoeopathy (CCH) Inspection Team conducted inspection of the petitioner/Institute and gave a report pointing out certain deficiencies particularly the faculty and percentage of impatient admitted in their Hospital, which was below the required norms. Pursuant to that, the Ministry of Ayush, Government of India, gave an opportunity to the petitioner/Institute to rectify the deficiencies pointed out and called for personal hearing on 24.05.2019. Accordingly, the petitioner participated in the personal hearing before the Hearing Committee and submitted the report regarding the deficiencies pointed out. However, without considering the compliance report, the Ministry of Ayush, Government of India, has issued the

impugned order dated 08.07.2019 disapproving the proposal of the petitioner/Institute dated 28.07.2018 to start Homoeopathy Medical College in the name and Style of "Excel Homoeopathy Medical Hospital" at Namakkal District with an annual intake of 100 seats in Bachelor of Homoeopathy Medicine and Surgery (B.H.M.S) degree course, from the academic year 2019-2020.

4. The Learned Counsel appearing for the Petitioner/Trust, would submit that during the Central Council of Homoeopathy (CCH) inspection held on 24.04.2019, the inspection team has pointed out the following deficiencies:-

(i). The college is not having required teaching faculty as per the schedule iv of CCH MSR 2013- Among 12 faculties, one faculty of Anatomy Dept (Reader) is with BHMS, M.Sc (Medical Anatomy) and One Faculty (Reader) of Dept of Organon is with BHMS qualification. Status of teaching staff along with qualification need to be verified.

(ii). Average bed occupancy is reported 40.32% but on calculation it is 8.43% only. Functionality of the IPD need to be verified.

(iii). 01 Library Assistant available against the requirement of 02.

5. Thereafter, the petitioner/Institute, pursuant to the opportunity given by the Hearing Committee appeared before the committee and produced documents to show that they have recruited the faculty in Anatomy the professor by name Dr.S.Rajasekar and also produced the records satisfying that the IPD Bed Occupancy Percentage in College Hospital is not 33.00% as found by the Inspection team but it is 39.42%. However, the Ministry of Ayush, Government of India, has passed the impugned order dated 08.07.2019 holding that over all observation of the hearing Committee does not satisfy the Homoeopathic Medical College Regulation - 2011.

6. The Learned Counsel for the petitioner would point out patent error in the impugned order.

The Hearing Committee has not considered the compliance report submitted by the petitioner and had gone by the report of CCH Inspection Team. Further, the Hearing Committee has taken into consideration, the Homoeopathic Medical College Regulation 2011, whereas, the said regulation has been superseded subsequently and the Homoeopathic Medical College Regulation - 2016 has come into force.

7. The Learned Counsel for the respondent would submit that as per the position note, the petitioner college applied for

establishment of new Homoeopathic Medical College under Section 12A of the Homoeopathy Central Council Act, 1973. It has to satisfy the procedure contemplated under the Act and the regulations framed thereunder. Under Regulation 9 of the Homoeopathy Medical College it has to first get the permission order which is in the following subsequence. The Central Government, on recommendation of the Central Council of Homoeopathy shall issue a Letter of Intent to set up a new Homoeopathic Medical College. Thereafter, the Letter of permission shall be issued on compliance of the conditions referred in Letter of Intent.

8. The case of the petitioner is that due to severe deficiencies in faculty, the Ministry of Ayush, Government of India, has decided not to issue Letter of Intent and disapproving the application made by the petitioner to start a new Homoeopathic Medical College.

9. On perusal of the impugned order, this Court finds that the reasoning given by the Ministry of Ayush for disapproving the request of the petitioner herein appears to be not in accordance with law. While the petitioner was given an opportunity to appear before the Hearing Committee and to satisfy the Hearing committee about the rectification of the deficiencies pointed out by the Inspection committee of Central Council of Homoeopathy (CCH), the Hearing Committee ought to have consider the compliance in accordance with law in force and ought to have pass the order. Whereas, the impugned order dated 08.07.2019, carry the following basic infirmity:-

(i). The compliance Report of the petitioner not been considered and

(ii). They have gone by the superseded Homoeopathic Medical College Regulation - 2011 and not the Homoeopathic Medical College Regulation - 2016, which is in force. For these twin reasons, the impugned order is liable to the set aside.

10. Accordingly, the order passed by the Ministry of Ayush, Government of India, dated 08.07.2019 is quash. The Hearing Committee shall give fresh opportunity to the petitioner herein to satisfy the hearing committee about the compliance of the deficiencies pointed out by the Central Council of Homoeopathy (CCH). If necessary, fresh inspection may also be conducted and appropriate orders shall be passed as per the Regulation in force.

11. Eight weeks time is granted to the respondents, from the date of receipt of a copy of this order to complete the process of granting Letter of Intent.

12. Accordingly, the Writ Petition is disposed of. No costs. Consequently, Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To,

1. The Secretary,
Government of India,
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Unani, Siddha and Homoeopathy (AYUSH),
AYUSH Bhavan,
'B' Block, GPO Complex, INA, New Delhi - 110 023.
2. The Secretary,
Central Council of Homoeopathy,
61-65 Institutional Area,
Opp, 'D' Block, Janak Puri, New Delhi - 110 058.
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The Tamil Nadu Dr.M.G.R. Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 032.

+1 cc to Government Pleader Sr.No.66343
+1cc to Mr.G.Karthikeyan , Advocate SR.No. 66168
+1cc to Mr.Muthumani , Advocate SR.No. 66053
+1cc to Mr.B.Rabu manohar , Advocate SR.No. 66010

W.P.No.21143 of 2019

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A.SK(05/09/2019)