

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 27.06.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.26260 of 2018
& W.M.P.Nos.30511 & 30513 of 2018

Martin (Nethra) Homoeopathy Medical College & Hospital,
Rep. by its Principal,
Dr.K.Murugesan,
D.P.F Mill Premises,
G.N.Mills (P.O),
Mettupalayam Road,
Coimbatore - 641 029.

... Petitioner

/versus/

1. Union of India,
Rep. by Under Secretary to the Government of India,
Ministry of Ayush,
Ayush Bhawan, 'B' Block,
GPO Complex, INA,
New Delhi - 110 023.
2. The Registrar,
Central Council of Homoeopathy,
61-65, Institution Area, Opp. to 'D' Block,
Janakpuri,
New Delhi - 110 058.
3. The Government of Tamil Nadu,
Rep. by Secretary to Government,
Health & Family Welfare Department,
Fort St.George,
Chennai - 600 009.
4. The Registrar,
The Tamil Nadu Dr.M.G.R Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 032.

... Respondents

Prayer:- Writ Petition is 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 File No.R-17014/162/2013/2018-EP(H) dated 04.09.2018 issued by the 1st respondent and to quash the same in so far as denial of permission for taking admission in BHMS course with intake capacity of 50 UG seats for the academic session 2018-19 at para

7 and consequently direct the respondents to grant permission to the petitioner college to admit the students in the first year B.H.M.S course for the academic year 2018-2019.

For Petitioner : Mr.R.Murali,
for Mr.V.Venkkatasamy

For R1 : Mr.T.V.Krishnamachari, CGSC

For R2 : Mr.M.T.Arunan

For R3 : Mr.V.Kadhirvelu,
Special Government Pleader

For R4 : Mr.D.Ravichander

O R D E R

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

2. The petitioner Institute is running Homoeopathy Medical College and Hospital from the year 2000 with an annual intake of 50 students. When the 4th respondent/the Tamil Nadu Dr.M.G.R Medical University, Chennai, conducted inspection of the petitioner college, before commencement of the academic year 2017-2018, they found certain deficiencies in the College infrastructure facilities and therefore, they delayed the process of according affiliation to the Institute. In view of the insertion of Rule 12(A) of HCC Act, 1973, the Continuance of Provisional affiliation from the Institute becomes mandatory for the petitioner/Institute, since the 4th respondent/the Tamil Nadu Dr.M.G.R Medical University, delayed the grant of Continuous Provisional Affiliation (CPA), the petitioner Institute, approached this Court in W.P.No.24163 of 2018 and got permission from this Court by way of interim order, to admit the students in the 1st year B.H.M.S course for the academic year 2017-2018. While so, for the academic year 2018-2019, the 1st respondent/Ministry Ayush, conducted inspection for the petitioner/Institute on 27.06.2018. Pointing out deficiencies in the Institute, i.e., infrastructure facilities, show cause notice was issued by the 1st respondent/Ministry of Ayush, New Delhi. The petitioner Institute gave its explanation and the Hearing committee heard the explanation given by the petitioner in the meeting held on 07.08.2018.

3. The deficiencies pointed out by the inspection committee are 1. Operational theatre is not available, 2. USG is not available, 3. Reported Bed occupancy (14 Bed occupancy per day) does not corroborated with the total number of patients in

IPD (442) during the period June 2017- May 2018. Hence, the IPD data needs verification for requisite bed occupancy (30%).

4. According to the petitioner, the students perusing B.H.M.S or any graduate possessing B.H.M.S course are not permitted to conduct operation as per the code of conduct and therefore, the operation theatre within the educational premises is not a basic requirement. The MOU with any hospital which has operational theatre facilities, is sufficient as per the Rules. Therefore, the petitioner Institute entered into the MOU with JM hospital for providing exposure to the students in the clinical field and to understand the depth of Surgery and Operative Gynecology and Obstetrics. As far as, Ultrasonography equipments is concerned any diagnosis center or Institution which intend to install Ultrasonography (USG) equipments should obtain prior permission of the state Government and therefore, the petitioner herein made request to the State Government as early as 01.08.2018 and made all arrangements to purchase USG equipments. Though, these information were furnished to the committee reiterating the following deficiencies. The 1st respondent has passed an order stating that "Recommended for allowing admission in 1-BHMS course for the session 2018-19 with the intake capacity allowed earlier subject to the removal of deficiencies reflected in the report of inspection before 31.12.2018".

5. It is contended by the learned counsel appearing for the petitioner that the 1st respondent has no authority to deny admission, that to without furnishing the copy of the report for the inspection carried out on 27.06.2018. The Central Council for Homoeopathy is the competent Authority regarding the administration of Medical College offering B.H.M.S course. As per Section 19 of the Homoeopathy Central Council Counseling Act 1973, it is the prerogative of the Homoeopathy Central Council to recommend or withdraw the recognition. While so, in spite of substantially compliance of all the requirements and after rectifying the deficiencies pointed out, the 1st respondent has passed the impugned order on 04.09.2018, denying the Institute the permission for taking admission in B.H.M.S course with intake capacity of 50 UG seats for the academic year 2018-2019. The said order is impugned in this writ petition.

6. Pending writ petition, this Court has granted permission to admit students and therefore, the petitioner Institute has already admitted students.

7. The 2nd respondent herein has filed counter, wherein, the powers of Homoeopathy Central Council and the Ministry of Ayush under Union of India, has been reiterated. It is stated in the counter that pursuant to the directions of the 1st respondent, they conducted inspection of the petitioner/Institute

and recommended for admitting students for the academic year 2018-2019, subject to removal of deficiencies on or before 31.12.2018.

8. The 1st respondent has gone into the inspection report and the recommendation of the Executive Committee with the Board of Governors of CCH found that the petitioner/college has not fulfilling the basic eligibility condition namely 1. Operation theatre is not available. 2. USG is not available. 3. Reported Bed occupancies (14 Bed occupancy per day) does not corroborated with the total number of patients in IPD (442) during the period June 2017 - May 2018. Hence, IPD data needs verification for requisite bed occupancy (30%).

9. Opportunity of hearing was afforded to the petitioner to appear before the designated hearing committee in the Ministry of Ayush on 07.08.2018. At that time of hearing, the petitioner/Institute submitted the explanation to the hearing committee. They found that the College hospital was not having operation theatre facilities at that time of CCH visitation and therefore, recorded that the petitioner Institute has not fulfilled the norms. Similarly, the hearing committee has also recorded the non-availability of USG at the time of CCH visitation, which has led to passing of the impugned order.

10. It is brought to the notice of this Court that for the current academic year 2019-2020, the respondents 1 & 2 have revisited the order in the light of the compliance report by the petitioner herein and has accorded permission to admit 50 students. The impugned order is now been tested in the light of the subsequent development. The power of the 1st respondent/Ministry of Ayush, which is supervisory body to CCH (Central Council of Homoeopathy) cannot be questioned by the petitioners. The 2nd respondent/Central Council of homoeopathy, has to monitor and ensure the provisions of regulation under HCC Act are scrupulously followed by the Institutes. However, it does not mean that the 1st respondent/Ministry of Ayush, has no power to have the last call in case of admitting and administrating College of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy (Ayush).

11. Be it as it may, as far as this case is concerned, the two important factual aspects has to be considered. Firstly, the petitioner Institute was given time to rectify the defects till 31.12.2018, by the Inspection committee of CCH. Meanwhile, the admission process for the students for the year 2018-2019 has commenced and in the affidavit, the petitioner has specifically stated that in anticipation, they have already admitted 17 students under the Management quota and thereafter, the 1st respondent has passed the impugned order dated 04.09.2019, placing the College under "No Admission Category".

By virtue of the interim order passed by this Court, the petitioner/Institute has already admitted students for the academic year 2019-2020 and they are perusing their course. As far as, 2nd defect pointed out in the impugned order, the petitioner Institute has a good justification and reasons to say that they have complied the said deficiency by entering into the MOU with JK hospital, which is sufficient compliance of the condition, even according to the 2nd respondent Rules.

12. As far as the procurement of Ultrasonography equipments, the petitioner was asked to produce documents when they actually installed the instrument in their College premises, the learned counsel appearing for the petitioner Institute produced the photocopies of the document, which would indicate that the petitioner/Institute has sought permission with the Joint Director, Medical and Rural Health Service, Coimbatore for installation of Ultrasonography scan machine in their College hospital on 29.08.2018 and the Government has accorded permission and issued Certificate of Registration on 12.03.2019.

13. In the light of the above factual aspect, in view of compliance of the requirement by the petitioner, which is within the time frame earlier granted by the Homeopathy Central Council (HCC) inspection team i.e., 31.12.2018 and the 1st respondent as well as the 2nd respondent being satisfied with the infrastructure facilities available in the petitioner Institute has granted recognition for the subsequent academic year 2019-2020, the impugned order is set aside.

14. For the said reason, the Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. Under Secretary to the Government of India,
Union of India,
Ministry of Ayush,
Ayush Bhawan, 'B' Block,
GPO Complex, INA,
New Delhi - 110 023.

2. The Registrar,
Central Council of Homoeopathy,
61-65, Institution Area, Opp. to 'D' Block,
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4. The Registrar,
The Tamil Nadu Dr.M.G.R Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 032.

+2ccs to Mr.T.V.Krishnamachari, Advocate, S.R.No.53651
+1cc to Mr.V.Venkkatasamy, Advocate, S.R.No.53848
+1cc to M/s.M.T.Arunan, Advocate, S.R.No.54156

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RR(CO)

RRS(31/07/2019)