

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.23572 of 2016 (O&M)

Date of Decision : 08.01.2019

JRK(Jage Ram Kissan) Homoeopathic
Medical College and Hospital

....Petitioner

Versus

The Union of India and others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE LALIT BATRA

Present : Mr.Rajiv Atma Ram, Sr. Advocate with
Mr.Sube Sharma, Advocate
for the petitioner.

Mr.Arun Gosain, Advocate
Sr.Panel Counsel for Union of India.

Mr.Divjyot S.Sandhu, Advocate
for respondent No.2.

Mr.Ankur Mittal, Addl.AG, Haryana.

Mr.Ramesh Hooda, Advocate
for respondent No.4.

MAHESH GROVER, J.(O)

The present writ petition has been filed with a prayer that letter dated 28.07.2016 and show cause notice dated 22.09.2016 as also the inspection report dated 29.08.2016 be quashed.

The facts for the purpose of present petition as also to understand the grievance of the petitioner has been succinctly noticed in the order of this Court passed on 15.11.2016 while issuing notice of motion. We, therefore, make it a part of the present narration and extract it here-below :-

“Inter alia submits that the petitioner-Institute had been

granted provisional permission by respondent No.1 for setting up Homoeopathic Medical College on 08.11.2004 (Annexure P1). The provisional affiliation had been granted on 29.11.2004 (Annexure P1 Colly.) The application for permission to increase the admission capacity from 50 to 100 seats in B.H.M.S. Course had been filed on 01.04.2015 (Annexure P2) and also for permission to start higher courses (Post Graduate Courses of study). NOC had been granted by the State on 15.07.2014 (Annexure P3) and the consent of affiliation had already been granted on 10.09.2014 (Annexure P4) and inspection had been done. A favourable report of inspection had been forwarded on 09.07.2015 (Annexure P9).

It is submitted that a inspection team was constituted by respondent No.1 vide communication dated 28.07.2016 (Annexure P26), of team members who were Ayurvedic Doctors, which was in violation of the instructions dated 10.02.1999 (Annexure P27). Accordingly, show cause notice was issued on 22.09.2016 (Annexure P28), which was replied on 28.09.2016 (Annexure P29) but no decision has been taken on the same. Accordingly, reference is made to Section 12A(1)(i)(ii) & (5) of the Homoeopathy Central Council Act, 1973, to submit that in spite of a period of over one year having lapsed, permission for increase and to start higher courses has not been granted and there would be deemed sanction.”

The fact that stands out is that the petitioner was granted provisional permission for setting up Homoeopathic Medical College on 08.11.2004 and the provisional affiliation was granted on 29.11.2004, implying thereby that the College is functional since 2004. The petitioner made an application for increase in intake capacity from 50 to 100 seats in the B.H.M.S. Course (undergraduate) and also for permission to start postgraduate courses on 01.04.2015.

The State gave its no objection on 15.07.2014 with the consent of affiliation following inspection thereafter on 10.09.2014. The inspection carried out by the Council was favourable to the petitioner and forwarded to the Government of India on 09.07.2015.

It is at this stage that the Union of India got another inspection done through its own team consisting of Ayurvedic Doctors to result in a report which formed the basis of a show cause notice issued to the petitioner on 22.09.2016, to which the petitioner responded by submitting its reply on 28.09.2016.

No decision emerged from the process for more than a year and it is at this stage that the petitioner approached this Court questioning the show cause notice as also the inspection report dated 29.08.2016 and composition of the team. The petitioner places reliance on Section 12A(1)(i)(ii)&(5) of the Homoeopathy Central Council Act, 1973 (in short 'the Act') to claim acceptance of the scheme on a deeming fiction envisaged in the said provisions.

We may notice here that the scheme referred to in the aforesaid provisions of law, in the case of the petitioner was for increase in the number of seats from 50 to 100 in so far as the undergraduate courses are concerned and for starting postgraduate courses.

It is also important to note here that the Council in its inspection carried out in terms of the statute gave a report in favour of the petitioner and it is only Union of India which undertook its own inspection by constituting a team of Ayurvedic Doctors which was

clearly in violation of the provisions of the statute. In fact, the entire scheme of the Act does not assign any such powers or role to the Central Government. Learned counsel for the petitioner apart from referring to the bare provisions of the statute which we have referred above places reliance on the decision of the Gujarat High Court dated 03.02.2017 rendered in LPA No.1475 of 2016 (**Parul University Vs. Union of India and Ors.**), where it allowed a petition of an institute almost identically placed as the petitioner, which matter was then tested before the Hon'ble Supreme Court resulting in dismissal of the SLP.

We have heard the learned counsel for the petitioner and have perused the record and are in agreement with the contention raised by the learned counsel for the petitioner that the Union of India would have no authority to order an inspection on its own and that too from a team of Doctors not conversant with the Homeopathic stream of Medicine. We draw sustenance for this observation from the view expressed by the Hon'ble Supreme Court in **The Temple of Hanemann Homoeopathic Medical College and Hospital v. Union of India & ors.**, Civil Appeal No.6734 of 2018, decided on 17.07.2018 as also the decision rendered by us in **CWP-20862-2018**, decided on 17.09.2018.

Having settled this issue we traverse to the next one regarding acceptance of the scheme as per the deeming fiction envisaged in Section 12A(1)(i) & (5) of the Act. The language of the status is unambiguous. If the decision regarding the scheme is not

communicated to the applicant, the scheme would be deemed to have been accepted. The learned counsel for Union of India would seek refuge in Clause (6) of Section 12A of the Act which is extracted herebelow to contend that the period consumed in seeking clarifications and inter se communication would have to be excluded for computing the period of one year that would grant the benefit of acceptance of a scheme on the basis of a deeming fiction :-

“(6) In computing the time-limit specified in sub-section (5), the time taken by the person or medical institution concerned in submitting the scheme, in furnishing any particulars called for by the Central Council, or by the Central Government, shall be excluded.”

We have perused the reply filed by the Council wherein in para 3 the period consumed in inter se communication has been detailed. The same is extracted herebelow :

“(3) In respect of paras 4 to 13 of the petition, it is respectfully informed that in terms of provisions of section 12A of HCC Act, 1973 and Establishment of New Medical College (Opening of Higher Course of Study or Training and increase of Admission capacity by a Medical College) Regulations, 2011, two applications dated 01.04.2015 of petitioner were forwarded by Respondent No.1 to Answering Respondent & both were received on 01.06.2015. Regarding Petitioner's application dated 01.04.2015 to increase its intake capacity in BHMS Course, the Central Council vide its letter dated 01.07.2015 requested for clarification & information. The Petitioner responded vide its letter dated 9.6.2015 and 22.7.15 & provided information in respect of Central Council's letter dated

01.07.2015. Regarding Petitioners Application for new postgraduate courses, the Central Council vide its letter dated 25.6.2015 asked for some information. Copies of Central Councils letters dated 01.07.2015, 25.6.15 and copy of letters dated 09.07.2015 and 22.7.2015 of Petitioner are placed as Annexure R-2/4 (colly). The college was inspected on 13.8.2015 for ascertaining the fulfillment of minimum requirements for assessing the both requests (made in terms of section 12A of HCC Act).

So even if the best case of the respondents is considered, it does not impact the case of the petitioner adversely considering that the time spent on clarificatory communications inter se between the applicant and the respondents still does not dilute the claim of the petitioner. In any eventuality, the perusal of Clause (6) restricts the period to be excluded in furnishing any particulars that may be called for by the Central Council or the Central Government. We are thus of the opinion that failure of the respondents to respond to the petitioner's scheme within the stipulated period of one year would activate Clause (6) of Section 12A and result in acceptance of the scheme on the deeming fiction envisaged by the statute.

We also find that the case of the petitioner is squarely covered by the judgment of Gujarat High Court which was tested before the Hon'ble Supreme Court resulting in dismissal of the SLP. We also notice that in para 23 of the judgment of the Gujarat High Court the Central Council has been granted liberty to inspect the premises of the petitioner.

In the present case we had during the course of hearing

granted liberty to the Central Council to carry out the inspection of

the petitioner's premises and on 10.12.2018 we had while noticing the default in carrying out the inspection as per the mandate of the Court granted another opportunity to the Central Council to do so and produce the report before us well before the date fixed i.e. 08.01.2019, failing which we had asked the Chairman, Board of Governors, Homoeopathy to remain present in Court.

We have been informed that the report has been prepared but has not been produced before us in terms of our order dated 10.12.2018. We, therefore, refuse to take any report on record considering that there has been a complete defiance of our order as even the Chairman has not come present. In any eventuality, once the scheme has been accepted on the strength of the deeming fiction of law the only course available to the Central Council would be to ensure that the institute is compliant in removing the deficiencies that may have been noticed. We, therefore dispose of the petition by holding that the scheme as prayed for by the petitioner for increase in intake capacity of undergraduate students from 50 to 100 and commencing the postgraduate courses shall be deemed to have been accepted. Since the Council has already undertaken the inspection, it shall furnish the report to the petitioner and ensure compliance.

All admissions made during the pendency of the petition and under the orders of the Court would be protected subject to the College becoming compliant. For the current session the necessary formalities be extended to the petitioner to commence with the admission process within one week. The cut off date for admission

shall be extended upto 17.01.2019 as a one time measure but the petitioner shall report 100% compliance by that date.

(MAHESH GROVER)
JUDGE

08.01.2019
dss

(LALIT BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No