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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 1st June, 2019

CM No. 28244/2019 in

+ W.P.(C) 12904/2018

R. N. KAPOOR MEMORIAL HOMOEOPATHIC HOSPITAL
AND MEDICAL COLLEGE Petitioner

Through: Mr. Siddharth R.Gupta and
Ms. Priyashree Sharma Ph., Adv.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Bhagvan Swarup Shukla,
CGSC for R-1 with Mr. Sarvan Kumar
Shukla, Adv.
Mr. Sunil Narula, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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JUDGMENT (ORAL)

CM No. 28245/2019 (exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 12904/2018 and CM No.28244/2019

3. The prayers in this application read thus :

“(i) Stay the impugned order dated 25.10.2018 by which the Petitioner's application for opening a new medical college has been rejected.

(ii) Direct the respondent-CCH to proceed and carryout the fresh inspection in terms of the applicable provisions/rules and regulations of the petitioner society's Institution within a time bound period of two weeks, followed by decision on the grant/issuance of LOI to the petitioner further within a time bound period.

(iii) And thereafter, post the exercise as prayed for under Clause (2) as prayed above is over, direct the respondent-Central Government (AUysh) to take a final decision on the issuance of formal Letter of Permission/Approval in favour of the petitioner-Institution for the current academic year 2019-20 within a time bound period.”

4. Having heard learned counsel at length, and with their consent, this writ petition is being taken up for final disposal.

5. Before considering the above prayers, a brief elucidation of the relevant facts would be necessary. *Vide* letter dated 27th April, 2017, the Ayushmati Education and Social Society, Indore, M.P. (hereinafter referred to as “Ayushmati”), Indore submitted an application, under Section 12A of the Homeopathic Central Council Act, 1973 (hereinafter referred to as the HCC Act”) to the Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (AYUSH), for permission to start a new Homeopathy medical college in the name and style of “R.N. Kapoor Memorial Homeopathic Hospital and Medical College” with 100 seats in the BHMS (Bachelor of Homeopathy Medical Sciences) Course, from the academic session 2018-2019. The application was forwarded to the Central Council for Homeopathy (CCH), on 23rd May, 2017, for conducting an inspection of the petitioner’s college and drawing up a recommendation/report as

contemplated by the HCC Act. Pursuant thereto, an inspection of the petitioner's college was conducted by the CCH on 8th September, 2017. Observing there were various deficiencies, the CCH recommended, to the Central Government, that letter of intent (LOI) be not issued to the petitioner. As many as 15 deficiencies were noted by the inspection team of the CCH.

6. The Ministry of AYUSH (Respondent No.1 herein), thereafter, deputed a field verification team to verify the factual position, regarding availability of the requisite facilities with the petitioner as per the norms prescribed under the provisions of the HCC Act and the Regulations made therein. The said team visited the premises of the petitioner on 7th June, 2018, and found eight deficiencies in the petitioner's college, of which three deficiencies overlapped, with the deficiencies noted by the CCH in its report.

7. Following this, the petitioner was given an opportunity of hearing, by the Respondent No.1, on 6th December, 2017 and 24th September, 2018, to present its case regarding the shortcomings found by the CCH as well as those found by the field verification team of the Respondent No.1. Written and oral submissions were made by the petitioner, following whereupon the impugned order, dated 25th October, 2018, was passed by the Respondent No.1, disapproving the proposal, dated 27th April, 2017 (*supra*) by Ayushmati for grant of permission to start a new Homeopathy medical college.

8. The petitioner assails the said decision.

9. It is necessary to reproduce paras 7 and 8 of the impugned order/decision dated 25th October, 2018, thus :

“7. WHEREAS, after considering the inspection report & recommendation of CCH and the field verification report of the team constituted by the Ministry, written and oral submissions of the college representative, observation of the hearing committee it has been observed that the trust does not fulfil the norms prescribed under the provisions of HCC Act, 1973, Establishment of new Medical College (opening of new or higher course of study or training and increase of admission capacity by a Medical College) Regulation, 2011 and HCC (MSR), 2013, required for granting letter of intent (LoI) to start a new Homeopathic Medical college in the name and style of “R.N. Kapoor Memorial Homeopathic Hospital & Medical College” Indore (MP), with 100 seats in BHMS course from the academic session 2018-19 under Section 12 A of HCC Act, 1973 in respect of deficiencies as under:-

i. The proposed college does not have genuinely functional IPD with requisite bed occupancy of 30% functional OPD, functional dispensing pharmacy in the attached homeopathic hospital.

ii. the X-ray, USG, Clinical laboratory, Operation theatre, Kitchen of the attached homeopathic hospital found to be non-functional.

8. NOW, THEREFORE, in view of the shortcomings and deficiencies mentioned in Para 6-7 above, which violate the provisions of the HCC Act and the relevant regulations and are of such a serious and fundamental in nature that they adversely affect the ability of the College to provide quality medical education in terms of the provisions of the HCC Act and the relevant regulations, the proposal dated 27.04.2017 of Ayushmati Education

and Social Society, Indore, MP seeking grant of permission of Central Govt. to start a new Homoeopathic Medical college in the name and style “ R.N. Kapoor Memorial Homoeopathic Hospital & Medical College” Indore (MP), with 100 seats in BHMS course from the academic session 2018-19 under Section 12A of HCC Act, 1973, is hereby disapproved.”

(Emphasis supplied)

10. Mr. Siddharth Gupta, learned counsel appearing for the petitioner has, at the very outset, drawn my attention to the judgment of the Supreme Court in the *Temple of Hanemann Homeopathic Medical College and Hospital v. UOI, 2018 SCC OnLine SC 818*. The said decision examined, in detail the provisions of the HCC Act, *inter alia*, in the matter of conducting inspection pursuant to applications submitted for setting up new homeopathic colleges. The following passages, from the judgment of the Supreme Court in *Temple of Hanemann Homeopathic Medical College and Hospital (supra)* merit reproduction in extenso :

“2. The question involved is with respect to the power of the Central Government to appoint a team of Medical Inspectors for the purpose of inspection of colleges etc. or it is within the power of the Central Council of Homoeopathy (CCH) to appoint a team of Inspectors.

11. It is clear from the provisions contained in the Sections 17 and 18 that Inspectors can only be appointed under the Act of 1973 by the Central Council in order to enable it to make the requisite recommendation to the Central Government. Appointment of visitors can also be made exclusively by the Central council alone and not by the Central Government. The Act does not confer upon

the Central Government to appoint a team of inspectors to inspect the colleges etc. or visitors at the examination for making the recommendation for recognition or for withdrawal dealt with under the aforesaid provisions of Sections 17, 18 and 19.

18. After hearing the learned counsel for the parties, we are of the considered opinion that various legislations enacted by the Central Government, it has provided for constitution of statutory bodies, experts to deal with such matters of various kinds of education in the country for Medical Education, Medical Council of India has been constituted. Similarly, for legal education, power has been given under the Advocates Act to the Bar Council of India and with respect to other technical courses, power has been given to the AICTE and other bodies.

19. The Central Government has not reserved the power to appoint Inspectors with it under the main enactment itself, i.e., the Act of 1973.

20. A bare reading of the provisions contained under Section 17 makes it clear that as per statutory provision, duty has been enjoined upon the CCH to appoint a team of Inspectors. Such a power has been specifically conferred on such Expert Bodies under various enactments also. It is the function of the expert bodies in the field and they are supposed to appoint a team of Inspectors and it is for expert bodies to make the recommendations to the Central Government. The role of the Central Government is a supervisory one and not to start an investigation by making the appointment of a team of Inspectors, as that is not envisaged under the Act of 1973 itself.

21. Regulation 3(5) of the 2013 Regulations envisages random checks to be ordered on receipt of a complaint or otherwise as deemed necessary either by the Central Government or by the CCH. In case, CCH or Central Government receives any complaint, random checks can be ordered, but the regulations stop at that. It does not

deal with the aspect who will appoint a team of inspectors for the purpose of inspection to be carried out. In our considered opinion, it is only the Central Council which is empowered to appoint a team of inspectors under Section 17 and visitors for the examination under Section 18 for making recommendation to the Central Government on the basis of report submitted by the team of inspectors or visitors as envisaged under Sections 17 and 18 of the Act.

22. Regulation 3(5) of Regulations of 2013 has to be harmoniously interpreted with the provisions of section 17 of the Act not repugnant thereto. The provision of section 17 is not capable of interpretation empowering the Central Government to appoint a team of inspectors at all. Thus, the power conferred under section 17 has to be exercised only by the CCH. Any other interpretation would be against the legislative mandate. The regulations have to be subservient to the provisions of the Act. No other provision could be pointed out under which the Act may have conferred the power upon the Central Government to appoint a team of Medical Inspectors.

23. Thus, the Division Bench of the High Court has clearly erred in holding that the power to appoint the Inspectors is with the Central Government while interpreting Regulation 3(5) of the Regulations, 2013. The Central Government cannot appoint a team of Inspectors as this power has not been conferred upon the Central Government either under the said Regulation 3(5) or any of provisions contained in the Act. It is only CCH which can appoint a team of inspectors as per Section 17 if the request is made by the Central Government under Regulation 3(5).

24. In our opinion, though Central Government on a complaint or otherwise, as contemplated under Regulation 3(5) of the Regulations, 2013 may cause inspection would mean only that inspection to be made by a team to be appointed by CCH. A team of inspectors or visitors as the case may be, can be appointed by CCH

under Section 17 or 18 of the Act. However, after an inspection is made, action has to be taken on the basis of the report as provided under the Act and the Regulations by the Central Government on the basis of the recommendation made by the CCH.”

11. A reading of the above passages from *Temple of Hanemann (supra)* makes it apparent that the exercise of inspection of the applicant college has necessarily to be undertaken by the team of inspectors of the CCH. The Central Government is required to take a decision on the report of the CCH, pursuant to its inspection, and has no power or authority, whatsoever to conduct a fresh inspection on its own.

12. Mr. Bhagvan Swarup Shukla, learned Standing Counsel for the Central Government, sought to urge that in the present case, the exercise conducted by the Central Government, consequent to the report of the CCH, was not in the nature of a fresh inspection, but was only by way of a verification of the report of the CCH. Mr. Siddharth Gupta responds – and in my opinion, correctly – that the nature of the said exercise cannot be decided merely on the basis of the nomenclature attached. Though the impugned order refers to the exercise as a “verification”, Mr. Shukla candidly concedes that, consequent to the said verification, a number of fresh deficiencies were found in the petitioner’s college. Such finding of fresh deficiencies necessarily implies that the exercise conducted by the team was not merely in the nature of a verification but was actually an inspection, which according to the judgment of the Supreme Court in

Temple of Hanemann Homeopathic (supra) was completely impermissible.

13. Mr. Shukla also sought to contend that, in passing the impugned order, the Ministry was influenced only by the inspection report of the CCH, and not by the findings of the field verification committee. This submission is already belied by para 7 of the impugned order, reproduced in para 8 (*supra*) and is, accordingly, rejected outright.

14. *Prima facie*, therefore, the impugned order, to the extent it relies on the findings of the field verification committee constituted by Respondent No.1, appears to have been passed in excess of jurisdiction, and contrary to the law laid down by the Supreme Court in *Temple of Hanemann (supra)*.

15. The question, then, arises, as to the appropriate course of action which would required to be followed, in the alternative.

16. In its order dated 9th May, 2019, in *Rishiraj Singh Memorial Homeopathic Hospital and Medical College v. UOI*, (W.P.(C) 2829/2019), this Court, while dealing with the application filed, for *interim* relief, in the said case, directed the CCH to take a decision on the issuance of letter of intent (LOI) to the petitioner, on the basis of its inspection report, in accordance with the schedule to the Establishment of New Homeopathy College (Opening of New or Higher Course of Study or Training) Regulations, 2018 (hereinafter referred to as the “2018 Regulations”).

17. Mr. Siddharth Gupta, submits that the petitioner is entitled to an opportunity of personal hearing by the CCH before it decides to forward its inspection report, or the recommendations made on the basis thereof, to the Respondent No.1.

18. I am unable to agree.

19. *Temple of Hanemann Homeopathic Medical (supra)* does not refer to any such opportunity of personal hearing; neither is there reference to any such opportunity in the 2018 Regulations or in the HCC Act.

20. Mr. Siddharth Gupta, relies for the above submission, on the judgment of the Supreme Court in *Swami Devi Dayal Hospital v. UOI, (2014) 13 SCC 506*.

21. The ratio of the said decision, however, actually militates against the submission of Mr. Gupta rather than in favour thereof. In the said case, the Supreme Court was concerned with a situation somewhat similar to obtaining in the present case, in which an inspection of the petitioner-s Hospital in that case conducted by the Dental Council of India (DCI), and thereafter the report, regarding the deficiencies, found on inspection, was forwarded to the Central Government to take a decision on whether to renew, for the next academic session, the provisional permission granted to the Hospital for conducting new courses. The Hospital disputed the report of the

DCI, qua the deficiencies referred to therein. With this backdrop, paras 10 to 13 and 15 to 17 of the said decision may be reproduced, to advantage thus :

“10. With respect to the High Court, we are unable to subscribe to the aforesaid interpretation given to the provision of Section 10-A of the Act. No doubt, heading of this section suggests that it deals with “permission for establishment of new dental college, new courses of study, etc.” However, holistic reading of the provisions of this section prescribing the scheme containing the procedure for establishment of new dental college and new courses of study, etc. would clearly demonstrate that this provision applies even to the cases of renewal of such permission as well.

11. In the present case, as already noticed above, the two courses in question were the new courses, along with other courses, for which permission was given by Respondent 1 for the academic session 2012-2013. It is a common case that the procedure contained in Section 10-A for seeking permission, applies to new courses of studies as well. Section 10-A(1)(b) deals with opening of new or higher course of study or training as well as increasing its admission capacity in any course of study or training. In both the eventualities prior permission of Central Government is to be obtained. Explanation 2 clarifies the meaning of “admission capacity” in relation to any course of study or training to mean “the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.”

12. When the permission to start courses in two specialties in question was granted for the academic session 2012-2013 intake of three students, for seeking renewal for the next academic session 2013-2014 it was to seek fresh permission to have the same admission capacity for this year as well. We are, therefore, of the opinion that the cases of renewal cannot be excluded

from the provisions of Section 10-A of the Act. It was not disputed before us that when the petitioner College applied for renewal of the permission, the application was processed in accordance with the procedure laid down in Section 10-A. As per this procedure, when a request is received in the form of a requisite scheme, as required in sub-section (2) of Section 10-A of the Act, the same is to be processed in the manner provided under sub-section (3) thereof. Once it is found by DCI that all the parameters for granting permission are met, it recommends the grant of approval of the scheme to the Central Government. In case a scheme is found to be deficient, sub-section (3)(a) of Section 10-A of the Act casts an obligation on the part of DCI to give a reasonable opportunity for making a written representation and also to rectify the deficiencies, any, specified by DCI. After the recommendation is sent by DCI to the Central Government, Central Government is required to process the same in accordance with the procedure contained in sub-section (4) of Section 10-A. It can either approve or disapprove the scheme. However, *in case the Central Government is proposing to disapprove the scheme, a final decision in this behalf can be taken only after giving the person, authority or institution concerned, a reasonable opportunity of being heard.* This is the mandate of the proviso to Section 10-A(4) of the Act.

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15. It is trite that even in the absence of specific provision of giving hearing, the hearing is required in such cases unless specifically excluded by a statutory provision. In such a situation the proviso to sub-section (4) of Section 10-A has to be liberally construed to encompass the cases of renewal of permission as well.

16. In fact, this case itself provides an excellent example of the importance of such a hearing and adhering to the principle of natural justice viz. audi alteram partem. According to DCI, even after second inspection some deficiencies were found. On that basis and without confronting the petitioner and further, it sent its report to

the Central Government recommending denial of permission. However, as per the petitioner, there were no such deficiencies. It had filed the additional affidavit dated 2-7-2013 in the High Court in its attempt to refute the stand of DCI regarding deficiencies. To demonstrate, one of the deficiencies pointed out by DCI was that the total number of surgeries/major as well as minor, conducted by the petitioner College were far less than the benchmark stated in the Regulations to enable the petitioner to seek renewal of permission.

17. DCI had stated that there is requirement of one (1) major surgery and eight (8) minor surgeries per week as per performa. However, the surgeries performed by the petitioner College, as per the performa attached by the College itself was much less than the aforesaid requirements. The petitioner College sought to clarify and explain this position in its aforesaid affidavit dated 2-7-2013 by pointing out that while calculating the figure, DCI had taken into consideration PG surgeries only and ignored the figure pertaining to UG surgeries whereas the inspection performa supplied by DCI categorically mentioned “both UG and PG together”. It was sought to demonstrate that if figures of UG and PG surgeries are taken together, the petitioner College had satisfied the stipulated requirements. At this juncture, we are not commenting as to whether the aforesaid stand of the petitioner College is correct or not. We are highlighting the importance, necessity and justification of granting an opportunity of being heard *by the Central Government as well, before taking final decision after the report of DCI is sent to the Central Government which is against the applicant seeking permission for renewal. In that event, if the opportunity of being heard is given, the applicant would get a chance to point out mistakes if any, factual or otherwise, in the report of DCI and the Central Government would have version of the applicant also before it at the time of taking final decision on the report.* In the given case itself on such an opportunity of being heard given by the Central Government to the petitioner, the petitioner could have explained its stand before the

Central Government to enable the Central Government to take a view as to whether it should accept the report of DCI or discard the same finding the explanation of the petitioner thereto, as satisfactory.”

(Emphasis supplied)

22. The above passages, from the judgment in *Swami Devi Dayal Hospital (supra)*, make it clear that, even in a case where the college, or Hospital, concerned, was disputing the findings of the DCI, an opportunity of hearing was contemplated *only at the stage of consideration of the report of the DCI by the Central Government. The judgment does not contemplate grant of any opportunity of hearing at the stage when, DCI forwards its report to the Central Government.*

23. In view thereof, the submission of Mr. Gupta, that the petitioner was entitled to be heard before the CCH forward its report/recommendation to Respondent No.1, is rejected.

24. In *Rishiraj Singh Memorial Homeopathic Hospital and Medical College (supra)*, the premises of the petitioner college in that case were inspected by the CCH and, on the basis of the inspection report, the recommendation for non-issuance of LOI was forwarded by the CCH to the Ministry. The Ministry, based on legal opinion obtained, directed the CCH to carry out a fresh inspection. To my mind, and based on the record, the said opinion was not in accordance with the law; however, it is not necessary for me to express any opinion thereon. Suffice it to state that, pursuant to the said direction,

a fresh inspection was conducted, by the CCH, of the petitioner college in that case. Having conducted such fresh inspection, however, no decision, as to whether LOI ought, or ought not, to be issued, was taken by the CCH; nor was any recommendation, in that regards, forwarded to the Central Government. It was at that stage that the interim application in *Rishiraj Singh Memorial Homeopathic Hospital and Medical College (supra)* came up for consideration before this court. A statement was made, by learned counsel appearing for the CCH in that case, to the effect that he would instruct the CCH to take a decision on the question of issuance of LOI to the petitioner-College (in that case), on the basis of the inspection report of the CCH.

25. In the present case, that stage stands crossed, inasmuch as the recommendation, for non-issuance of LOI, has already been forwarded by the CCH to the Respondent No.1 on 8th September, 2017. No purpose would, be served by directing the CCH to reconsider the question of grant of LOI; neither would such a direction be in accordance with the law or the provisions of the HCC Act or the 2018 Regulations.

26. In the circumstances, I am of the view that the interest of justice would be subserved if the present writ petition is disposed of with a direction to Respondent No.1 to consider, afresh, the question of issuance of LOI to the petitioner, pursuant to the recommendation dated 8th September, 2017 of the CCH, after hearing the petitioner in

that regards – following law as enunciated in *Swami Devi Dayal Hospital (supra)*.

27. Accordingly, this writ petition is disposed of in the following terms :

(i) The impugned order, dated 25th October, 2018, passed by Respondent No.1 is quashed and set aside.

(ii) The Central Government is directed to take a fresh decision on the petitioner's application, dated 27th April, 2017, for permission to start a new Homeopathy medical college, starting from the stage of issuance of LOI. Needless to say, the Central Government would, for the said purpose, take into account the recommendation and inspection report dated 8th September, 2017 of the CCH. However, Respondent No.1 would also extend an opportunity of hearing to the petitioner, on which occasion the petitioner would be entitled to question the correctness of the said report dated 8th September, 2017. Any objection(s) raised by the petitioner in that regard would be examined by Respondent No.1 on its/their own merits.

(iii) Respondent No.1 is directed to, limit its consideration to the deficiencies pointed out by the CCH in its inspection report dated 8th September, 2017.

(iv) Respondent No.1 is at liberty, however, should it so choose, to visit the petitioner's premises in order to verify the existence of the deficiencies pointed out by the CCH in its report/recommendation dated 8th September, 2017. It shall not, however, take into account any deficiencies other than those to which the inspection report dated 8th September, 2017 of the CCH refers.

(v) Following the above, Respondent No.1 is directed to pass a fresh order, on the petitioner's application dated 27th April, 2017.

(vi) The above exercise shall be conducted with reference to the academic session 2019-2020.

28. Respondent No.1 is also directed to conduct the above exercise as expeditiously as possible, and endeavour to pass a final order within a period of three weeks from today.

29. The writ petition is disposed of in the above terms, with no orders as to costs.

C. HARI SHANKAR, J

JUNE 01, 2019/kr