

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18628 of 2019

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B.N.M. Homeopathic Medical College and Hospital, Saharsa (Bihar), through its Chairman Dr. Upendra Prasad Yadav, aged about 65 years, Male, son of Gulaten Prasad Yadav, Resident of Nandlali, Ward No. 2, Police Station-Saharsa, District-Saharsa

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of Ayush, Ayush Bhawan, B-Block, G.P.O. Complex, INA, New Delhi-23.
2. The Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Shddha and Homoeopathy, Ayush Bhawan, B-Block, G.P.O. Complex, INA, New Delhi-110023
3. The Under Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Shddha and Homoeopathy, Ayush Bhawan, B-Block, G.P.O. Complex, INA, New Delhi-110023
4. The State of Bihar through its Principal Secretary, Department (Health and FW), Department of Health, Vikas Bhawan, New Secretariat, Patna
5. The Director, Desi Chikitsa, Health Department, Govt. of Bihar, Patna
6. The Secretary, Central Council of Homoeopathy, 61-65, Institutional Area, Opp. D Block, Janakpuri, Delhi-20058

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Adv. Ms. Smriti Singh, Adv. Mr. Vipin Kumar Singh, Adv.
For the Respondent/s	:	Mr. Ramadhar Singh (GP25)
For the Union of India	:	Mr. S.D. Sanjay, Addl. S.G. Mrs. Punam Kumari Singh, C.G.C.
For the C.C.H.	:	Mr. Rajesh Kumar Verma, A.S.G.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

10 03-02-2020 Heard Mr. Bindhyachal Singh, learned counsel for the petitioner, Mr. S.D. Sanjay, learned senior counsel for the Union of India, learned counsel for the State of Bihar and the learned counsel for the Central Council of Homoeopathy.

The petitioner in this writ petition seeks following



reliefs:

(i) For issuance of a writ in the nature of certiorari to quash/set aside the letter issued by the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (hereinafter referred to as “Ministry of Ayush”) vide its letter no.R.14014/24/2019-EP-II dated 10.07.2019, whereby and whereunder the respondent authority has refused to grant permission for BHMS course with 50 seats for the academic Sessions 2019-20 to the petitioner college in a most arbitrary and malafide manner without considering the case of the petitioner in proper perspective.

(ii) For issuance of a writ in the nature of writ of mandamus, directing the respondent authorities to grant permission for BHMS course with 50 seats for the academic Sessions 2019-20 as the petitioner college fulfills all the terms and conditions as stated in Homeopathy Central Council(Minimum Standards Requirement of Homeopathic Colleges and Attached Hospitals) Regulations, 2013(hereinafter referred to as “HCC(MSR)2013”) and without any sufficient cause and for no apparent fault on the part of the petitioner, the petitioner college is being penalised without any legal basis.

(iii) For a direction to the respondent authorities to furnish a copy of the recommendation of the Executive Committee of the Board of Governors of Central Council of Homeopathy(hereinafter referred to as “CCH”) and thereby quashing the said



recommendation as the same being without any basis and in contravention to the inspection done on 21.05.2019 and the HCC(MSR)2013).

(iv) For issuance of writ in the nature of mandamus for a direction to the respondent authorities to produce a copy of the list of all the Homeopathic Medical Colleges which have been granted permission for taking admission in the BHMS course for the academic Session 2019-20.

(v) For issuance of a writ in the nature of mandamus, directing the respondent authorities to extend the cut off date till 31.12.2019 for admission for the academic Sessions 2019-20.

(vi) For issuance of any other writ, order and/or direction which your Lordships may deem fit in the facts and circumstances of the case.

Mr. Bindhyachal Singh, learned counsel for the petitioner made two fold arguments and submitted that Ministry of Ayush has travelled beyond jurisdiction to pass impugned order refusing to grant permission for taking admission in B.H.M.S. course in Session 2019-20. Ministry of Ayush has got no power to accord permission or refuse to grant permission for admission under Section 12(c) of the Amended Act. It is further submitted that petitioner had earlier moved this Court in C.W.J.C. No.16589 of 2017 and this Court by order dated 12.12.2017 held that the Ministry of Ayush has no jurisdiction



independently to make an inspection and refuse to grant recognition or permission to undertake admission on the basis of such inspection report recommending for taking admission but on perusal of the judgment rendered by this Court in C.W.J.C. No.16589 of 2017, I find that in the aforesaid case, different provisions of Homeopathy Central Council Act, 1973 (hereinafter referred to as “HCC” Act) and Homoeopathy Central Council (Minimum Standards Requirement of Homeopathy Colleges and Attached Hospitals) Regulations, 2013(hereinafter referred to as “HCC” Regulations, 2013 for the sake of brevity) was considered and it was held that under the H.C.C. Regulations, which is statutory, the C.C.H. is required to make inspection and submit report on such, the Central Government may take action granting recognition or permission to undertake admission or refusing to grant recognition for establishment of new colleges and to refuse permission to undertake admission in any session in consonance with the reports of the inspecting team with regard to non-fulfillment of minimum standards and quality of the Homeopathy college. In the present case, by Annexure-11, Central Council of Homeopathy made inspection of the petitioner-college on 21.05.2019 and the C.C.H. submitted inspection report to the



Ministry of Ayush. The inspecting team of C.C.H. in its report recommended not to grant permission to the college for undertaking admission and on such report after hearing the petitioner, the Ministry of Ayush passed order on 10.07.2019(Annexure-14) refusing to grant permission to undertake admission in B.H.M.S. course for academic Session 2019-20. Therefore, the order cannot be said to be without jurisdiction.

Mr. Bindhyachal Singh, learned counsel for the petitioner further submits that C.C.H. made inspection of the petitioner-college on 21.05.2019 and submitted report to the Ministry of Ayush. Having received the inspection report of C.C.H., the Ministry of Ayush by letter dated 18.06.2019(Annexure-11) issued notice to the petitioner-college. Petitioner appeared and filed detailed petition mentioning the fulfillment of deficiencies pointed out by the visitors of C.C.H. before Hearing Committee on 22.06.2019 but the Hearing Committee did not submit report and on the basis of such report, the Ministry of Ayush passed order on 10.07.2019(Annexure-14). Learned counsel for the petitioner further submits that the Ministry of Ayush has passed the order on the basis of report of the Hearing Committee after hearing the petitioner but the



report of the Hearing Committee prepared after hearing the petitioner has not been served upon the petitioner so that the petitioner could have been able to point out the non-consideration of the reply submitted by the petitioner before the Hearing Committee and thus, the order is passed in violation of principle of natural justice. It is submitted that if the competent authority is to take any decision adverse to the interest of the petitioner, the competent authority, in order to comply the principle of natural justice, is obliged under the law and the competent authority ought to have served the report of the Hearing Committee providing opportunity to the petitioner to satisfy the competent authority that the findings recorded by the Hearing Committee is not factually correct. It is further submitted that even in the year 2018-19, the petitioner-college was not permitted to take admission in B.H.M.S. course. It is further submitted that C.C.H. issued notice to the petitioner on 02.07.2019 to submit reply within one month but before lapse of that period, the Hearing Committee concluded the hearing and submitted report on the basis of which Ministry of Ayush passed the impugned order on 10.07.2019 itself and this fact shows that the sufficient opportunity was not given to the petitioner.

Mr. S.D.Sanjay, learned Additional Solicitor General and



the learned counsel for the C.C.H. submit that sufficient opportunity was given to the petitioner after submission of report of the inspectors. The inspection was made on 21.05.2019. The C.C.H. submitted report before the Ministry of Ayush and thereupon the Ministry of Ayush by letter dated 18.06.2019(Annexure-11) gave notice to the petitioner-college describing in details about the deficiencies found in the report of the inspecting team and the recommendation of the inspecting team that the petitioner-college does not fulfill the required standards in many respects such as infrastructure, teaching and training facilities and recommended not to grant permission to the college to undertake admission in the B.H.M.S. course for the academic Session 2019-20. In pursuance of the aforesaid notice, the petitioner filed written reply(Annexure-12) on 22.06.2019. The petitioner also appeared before the Hearing Committee on 25.06.2019. The Hearing Committee in its report considered the reply of the petitioner and found the reply unsatisfactory in comparison with the reports and non-fulfillment of the requirement essential for maintaining minimum standards required for running the college. It is further submitted that now the academic Session 2019-20 is at the fag end and at the stage of fag end of Session, the college cannot be



allowed to take admission. The order as contained in Annexure-14 itself incorporates the comparative chart of the reply and the findings of the Hearing Committee. The Ministry of Ayush in para 10 directed the college and provided the period upto 31.12.2019 to fulfill the shortcomings observed in the year so that the C.C.H. may again carry out inspection of the college for consideration of matter for grant of permission for taking admission in B.H.M.S. course in the academic Session 2020-21. The Standards Requirement of Homeopathy Colleges and Attached Hospitals Regulations, 2013 has been framed by the Central Council of Homeopathy with the previous sanction of Central Government in exercise of power conferred by clause (j) of sub-section (1) of Section 33 of Homeopathy Central Council Act, 1973. According to the Regulation 3 of Regulations, 2013 which required that the college and attached hospitals shall fulfill the minimum standard requirement for infrastructure, teaching and training facilities referred to in Regulations 4 to 13 of the Regulations. Sub-regulation (4) of Regulation 3 deals with such existing colleges, which are not able to achieve full compliance of requirement as specified in these Regulations by 31.12.2014 and mandates that such colleges shall be denied permission from academic year 2015-16 onward and action as



envisaged under Section 19 of the Act shall be initiated against all such colleges apart from the rejection of their applications under Section 12A of the Act.

Admittedly, in the present case, in view of the Regulations 2013, the inspecting team of C.C.H. inspected the college of the petitioner for academic Session 2019-20 on 21.05.2019. It is also pertinent to note that for academic session 2018-19, the permission for undertaking admission to the college was refused. The inspecting team of the C.C.H. submitted report and from perusal of Annexure-11, it appears that the Ministry of Ayush issued notice to the Principal of the college on 18.06.2019 to appear before the Hearing Committee on 25.06.2019. The designated Hearing Committee has been constituted only to provide full opportunity to the college in order to point out the non-fulfillment of requirement in infrastructure, teaching and training facilities with full details and documents. The petitioner filed written reply before the Hearing Committee on 22.06.2019(Annexure-12) and also participated in the hearing on 25.06.2019. Thereafter, the Hearing Committee submitted report and found that the shortcomings pointed out by the inspecting team are still existing and, therefore, the permission to undertake admission in



the academic Session 2019-20 cannot be granted. The Ministry of Ayush by order dated 10.07.2019 after having considered the report of the Hearing Committee passed the order refusing to grant permission to the petitioner-college for taking admission in academic Session 2019-20. The order dated 10.07.2019(Annexure-14) contains the comparative chart showing the shortcomings still existing even after considering the reply submitted by the petitioner. On the basis of many other shortcomings, prevailing in the college of the petitioner, petitioner-college was refused to take admission even in the year 2018-19.

Mr. Singh did not point out from the impugned order that these shortcomings have been fulfilled as claimed by the petitioner-college in the reply. The C.C.H. after submission of inspection report is not supposed to give any hearing to the petitioner-college. Once the report is submitted the designated Hearing Committee is to hear the reply of the petitioner and thus, I find that the petitioner was given full opportunity to hear and point out the fulfillment of shortcomings found by the inspecting team in its report which was served on him in the notice dated 18.06.2019. Thus, I find no illegality in the order. The petitioner has already been provided opportunity by the



impugned order itself that if the petitioner-college fulfills all the requirement and shortcomings in order to maintain the standards in infrastructure, teaching and training facilities of the college upto 31.12.2019, the inspecting team of C.C.H. may inspect and submit report for grant of permission to the college to undertake admission for academic Session 2020-21.

Having considered the facts aforesaid, I do not find any merit in this writ petition. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

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