

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11390 OF 2017

ALONG WITH

INTERIM APPLICATION NO.858 OF 2021

Motiwala Homeopathic Medical College &
Hospital and F.G. Motiwala P.G. Institute
of Homeopathy & Research Centre,
Through its Dean, Dr.Faoq F. Motiwala .. Petitioner/Applicant

Versus

Union of India & Ors. .. Respondents

Mr.Mihir Desai, Senior Advocate a/w Mr.S.P. Sarnath i/by Ms.Yogita R.
Singh for the petitioner/applicant.

Mr.B.M. Chatterji, Special Counsel a/w Mr.R.V. Govilkar, Ms.Naveena
Kumai and Ms.Kavita Singh for the respondent no.1-UOI.

Ms.Surbhi Agrawal h/for Mr.Abhijit Desai for the respondent no.2.

Mr.S.B.Shetye a/w Ms.P.H. Chavan for the respondent no.3-MUHS.

Ms.Sushma S. Bhende, AGP for the respondent no.4.

CORAM : R.D. DHANUKA

ABHAY AHUJA, JJ.

DATE : 5th October 2021

P.C.:-

. Mr.Desai, learned senior counsel for the petitioner seeks
liberty to delete the names of the respondent nos.5 to 7 and the allegations
made against them in the petition.

2. Leave to amend is granted. Allegations made against the respondent nos.5 to 7 stand withdrawn. Amendment to be carried out forthwith. Re-verification is dispensed with.

3. Rule. Learned counsel for the respondents waive service. By consent of parties, petition is heard finally.

4. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 19th September 2017 passed by the respondent no.1 and seeking permission to admit the students in petitioner-College in the Undergraduate and Post Graduate Courses in the field of Homeopathy for the academic year 2017-18 and for other reliefs.

5. The petitioner-Motiwal Homeopathic Medical College & Hospital and F.G. Motiwala P.G. Institute of Homeopathy & Research Centre have been teaching Bachelors of Homeopathic Medicine & Studies since 28 years and Post Graduate Course since the academic year 2014-15. After taking inspection by the three Inspection Committee members, the said committee submitted a report on 2nd August 2017 and forwarded a copy thereof to the petitioner. After issuing show cause

notice by the committee and after rendering the hearing, on 4th September 2017, a recommendation came to be forwarded to the respondent no.1 by the committee against the petitioner. On 19th September 2017, the respondent no.1 forwarded a communication denying permission for admission. Being aggrieved by the said decision dated 19th September 2017, the petitioner filed this writ petition for various reliefs.

6. Mr.Desai, learned senior counsel for the petitioner invited our attention to the impugned order rejecting the permission applied by the petitioner for the academic year 2017-18 and would submit that the said order was based on an erroneous factual premise. He also invited our attention to the interim order passed by this Court on 11th October 2017 in terms of prayer clause (e) thereby staying the operation and effect of the impugned order dated 19th September 2017 and permitting the petitioner to admit the students in the Undergraduate and Post Graduate Courses in the field of Heomeopathy for the academic year 2017-18 and further directing the respondent no.1 to allot the students to the petitioner -Institute. He submits that pursuant to the said interim order, the respondent no.1 permitted the petitioner to admit the students for the academic year 2017-18 and to allot the number of students to the petitioner Institute.

7. Learned senior counsel for the petitioner invited our attention to the subsequent permission granted by the respondent no.1 on 10th August 2017 for the academic year 2018-19 and on 22nd May 2019 for the academic year 2019-20. He strongly placed reliance on the judgment delivered on 17th November 2017 by a Division Bench of Aurangabad Bench of this Court in Writ Petition No.11666 of 2016 filed by ***Kaka Saheb Mhaske Vs. Union of India & Others.*** He submits that in the similar facts at hand before the Aurangabad Bench, this Court was pleased to quash and set aside the impugned communication refusing to grant permission to the petitioner for the academic year 2016-17 in view of the respondent no.1 granting permission for the subsequent years.

8. Mr.Chatterji, learned Special Counsel for the respondent no.1, on the other hand, opposed this petition on the ground that for the academic year 2017-18, the respondent no.1, after taking inspection and after rendering hearing to the petitioner, rejected the permission applied by the petitioner by pointing out large number of deficiencies in the impugned order. He submits that even this Court while granting interim relief to the petitioner observed that the Apex Court in catena of the cases, starting from the judgment of the Constitutional Bench in State of ***T.N.***

and Anr. Vs. Adhiyaman Educational & Research Institute and Ors., (1994) 4 SCC 104 has clearly held that the Apex Body of the Experts in the field of Professional Education, will have a final word. He also placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Chintpurni Medical College & Hospital and Anr. Vs. Union of India & Anr., (2021) 3 SCC 374*** in support of the aforesaid submission.

9. We have heard the learned counsel for the parties at length finally and have perused the exhibits annexed to the petition including the impugned order.

10. A perusal of the impugned order dated 19th September 2017 at Exhibit 'A' passed by the respondent no.1 would indicate that certain alleged deficiencies were pointed out by the respondent no.1 in the said impugned order. The petitioner had disputed the alleged deficiencies in the writ petition. We have also perused the interim order passed by this Court on 11th October 2017 observing that the communication dated 10th August 2017 addressed by the Central Council of Homeopathy, which is the Apex Body in the matter of Professional Education in the field of homeopathy shows that it has recommended allowing admissions for the academic year 2017-18 subject to the Colleges fulfilling the discrepancies

reflected in the report of inspection before allowing admissions for the year 2018-19. After considering the submission of both the parties, this Court granted ad-interim relief in terms of prayer clause (e). It is not in dispute that the said ad-interim order granted by this Court has not been impugned by the respondent no.1.

11. Mr.Chatterji, learned Special Counsel for the respondent no.1 strongly placed reliance on the National Commission For Homeopathy Act, 2020 (for short “the said Act, 2020”) and would submit that in view of enactment of the said Act, the file of the petitioner would now be considered by the National Homeopathy Commission constituted under the said Act, 2020 and not the Ministry of Ayush. He tendered a copy of the communication sent by e-mail dated 27th September 2021 from Naveena Kumai, learned counsel for the Union of India to the learned special counsel for the respondent no.1.

12. We have perused the order dated 10th August 2017 passed by the Ministry of Ayush granting permission to the petitioner for continuing admissions for the academic year 2018-19 in BHMS course with intake capacity of 100 seats and PG Course in 5 subjects subject to condition that the existing college shall fulfill the requirements

mentioned in the said order dated 10th August 2018 which shall be verified for granting permission for the academic year 2019-20. He also invited our attention to the permission granted by the respondent no.1 on 22nd May 2019 subject to various conditions.

13. Learned special counsel for the respondent no.1 did not dispute that the respondent no.1 itself had granted permission in favour of the petitioner for the academic year 2018-19 and for the next academic year 2019-20 and had permitted the petitioner to admit the students with intake capacity of 100 seats in both these academic years. It is not the case of the respondent no.1 that the conditions set out in the order dated 10th August 2018 granting permission for the academic year 2018-19, had not been complied with the conditions set out on 22nd May 2019 granting permission for admitting the students for the academic year 2019-20. It is not the case of the respondent no.1 that after granting permission on 22nd May 2019 for the academic year 2019-20, the petitioner has not complied with the conditions set out in the said permission dated 22nd May 2019.

14. Learned special counsel for the respondent no.1 vehemently urged that permission was rightly rejected for the academic year 2017-18

in view of the large number of deficiencies pointed out in the impugned order. He submits that the interim order passed by this Court on 11th October 2017 was not final and thus unless the petitioner would have removed the deficiencies pointed out in the impugned order 10th August 2017, subsequent permission granted by the respondent no.1 for the academic year 2018-19 and 2019-20 would be of no significance.

15. There is no dispute that the respondent no.1 itself has granted permission for the subsequent two years. It is thus clear that whatever deficiencies alleged in the impugned order dated 10th August 2017 were waived by the respondent no.1 before granting subsequent permission.

16. Division Bench of this Court in the case of ***Kaka Saheb Mhaske Vs. Union of India & Others (supra)*** has considered the similar facts where the Central Government had rejected the permission for the academic year 2016-17 however, subsequently granted permission for admitting the students for the academic year 2017-18. This Court accordingly held that the petitioner had admitted the students pursuant to the interim order passed by this Court. Considering that all deficiencies have been removed and in fact even for the next academic year, the

petitioner has been granted permission, it would be appropriate for the respondent no.1 to grant permission to the petitioner for academic year 2016-17 also. In our view, the said judgment rendered by this Court in the case of ***Kaka Saheb Mhaske Vs. Union of India & Others (supra)*** squarely applies to the facts of this case.

17. If according to the respondent no.1, there were deficiencies for the academic year 2017-18, the respondent no.1 would not have granted permission for the next two academic years on different conditions. The subsequent orders would clearly indicate that in those two orders, it was not the condition prescribed by the respondent no.1 that the conditions or deficiencies pointed out in the impugned order dated 10th August 2017 also will have to be complied with by the petitioner for the academic years 2018-19 and 2019-2020. In our view, in view of the respondent no.1 having granted permission for the subsequent years thereby waiving deficiencies for the academic year 2017-18, the respondent no.1 cannot oppose this petition challenging the order for academic year.

18. In so far as the submission of the learned special counsel for the respondent no.1 that in view of the enactment of the said Act, 2020,

the Ministry of Ayush is substituted by the Central Council of Homeopathy and thus unless the said Central Council is impleaded as a party, no relief can be granted by this Court is concerned, in our view, since this Court is of the view that the impugned order passed by the respondent no.1 has become redundant in view of the subsequent permission granted by the respondent nos.1 and 2 and condoning the alleged deficiencies pointed out in the impugned communication dated 10th August 2017, impleadment of National Homeopathy Commission at this stage is unwarranted. Be that as it may, since this Court is not proposing to remand the matter to the said Central Council of Homeopathy, this Court does not require the presence of the said Council in this petition. The objection raised by the learned special counsel for the respondent no.1 is accordingly rejected.

19. In so far as the submission of the learned special counsel that the respondent no.1 being a Body of the Experts will have a final word is concerned, there is no dispute about this proposition of law. The said judgment however, does not indicate that the decision of the Body of Experts cannot be impugned under Article 226 of the Constitution of India in any circumstances.

20. In so far as the judgment of the Hon'ble Supreme Court in case of ***Chintpurni Medical College & Hospital and Anr. Vs. Union of India & Anr. (supra)*** relied upon by the learned special counsel for the respondent no.1 is concerned, we have perused the facts before the Hon'ble Supreme Court in the said judgment. A perusal of the said judgment clearly indicates that the said judgment would not apply to the facts of this case even remotely. Reliance placed on the said judgment is totally misplaced.

21. In view of the petitioner having withdrawn the allegations made against the respondent nos.5 to 7 in the petition, it is not necessary for us to go into those allegations.

22. We accordingly pass the following order :-

- (i) Rule is made absolute in terms of prayer clauses (a) and (b).
- (ii) Writ petition is allowed in aforesaid terms.
- (iii) In view of disposal of the writ petition, interim application does not survive and is accordingly disposed of.
- (iv) There shall be no order as to costs.
- (v) Parties to act on the authenticated copy of this order.

ABHAY AHUJA, J.

R.D. DHANUKA, J.