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W.P.No.42263 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.42263 of 2016
and
W.M.P.No.36156 of 2016

Hahnemann Homoeopathic Medical Trust,
Rep. by its Managing Trustee,
A.Sivasubramani, B.E.,
Managing Trustee,
6/177-A, Mount Poonamallee Road,
Karambakka, Porur, Chennai – 600 116.

... Petitioner

VS.

- 1.The Government of India
Rep. By its Secretary,
Ministry of Ayurveda, Yoga & Naturopathy
Unani, Siddha & Homoeopathy (AYUSH)
AYUSH Bhawan, 'B' Block, GPO Complex,
INA, New Delhi - 110 023.
- 2.The Central Council of Homoeopathy (CCH)
Rep. By its Secretary,
Jawaharlal Nehru Bhartiya Chikitsa Avum,
Homoeopathy Anusandhan Bhawan,
No.61-65, Institutional Area,
Opp to “D” Block, Janakpuri, New Delhi 110 058.



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3.The Commissioner,
Directorate of Indian Medicines & Homoeopathy
Aurmbakkam, Chennai 600 106.

4.Tamil Nadu Dr.M.G.R.Medical University,
Rep. by its Registrar, 69, Anna Salai, Guindy,
Chennai 600 032.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned order of the 1st respondent Ministry of AYUSH in F.No.R-17014/159/2013 – EP(H), dated 28.11.2016 and quash the same.

For Petitioner : Mr.G.Masilamani, Senior Counsel
for Mr.D.Prabhu Mukunth Arunkumar

For Respondents : Mr.N.Ramesh, Senior Panel Counsel
for RR 1& 2

Mr.P.Anandakumar, Govt. Advocate for R3

Mr.P.Elayarajkumar
for M/s.Ramalingam & Associates, for R4



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ORDER

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2. The petitioner Trust started the Homoeopathy Medical College in the year 1999 and permission was granted by G.O.Ms.No.172 dated 03.05.1999. Originally the sanctioned strength was 50 students per year and on 03.10.2002, the Homoeopathy Central Council which was invested with the powers under Homoeopathy Central Council Act, 1973 had permitted the increase in intake to 100 students.

3. Subsequently, the Act was amended incorporating Section 12A, thereby investing the powers of the Homoeopathy Central Council with the Ministry of AYUSH. The Ministry originally issued circulars in the year 2004 clarifying that the amendment will be only prospective and will not apply to or affect the rights of the Colleges which were established before



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the amendment and the approved intake granted prior to the enactment of Section 12A which came into effect from 28.01.2003.

4. However, during the year 2014, the Ministry issued a communication stating that the Colleges which were established prior to the amendment or introduction of Section 12A will also have to seek approval of the Ministry. This communication was challenged by the petitioner Trust in W.P.No.2749 of 2014 and the said writ petition came to be allowed by this Court on 30.04.2014. An appeal filed as against the said order in W.A.No.660 of 2017 also came to be dismissed by the Division Bench of this Court on 17.08.2017.

5. The Ministry of AYUSH had granted approval for petitioner's College on 26.10.2016 with intake of 100 seats. However, by the letter impugned dated 28.11.2016, the corrigendum was issued by which the word '100 seats' was required to be read as '50 seats'. It is this corrigendum which is under challenge in this writ petition.



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6. As observed earlier this Court had held that Section 12A is only prospective. It cannot be applied retrospectively and it will not affect the rights of the Colleges which have already been established with a sanctioned intake. The said judgment has been affirmed in the writ appeal in W.A.No:660 of 2017. It is not in dispute that the judgment in the writ appeal has become final. Therefore, the Ministry has no power to interfere with the intake of students in the petitioner's Medical College.

7. In view of the same, the corrigendum issued will have to necessarily be quashed and the same is quashed. The writ petition stands **allowed**. No costs. Consequently, the connected writ miscellaneous petition is closed.

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dsa
Index: No
Internet: Yes
Speaking order



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To

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Ministry Ayurveda, Yoga & Naturopathy
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R.SUBRAMANIAN, J.

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