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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :02.02.2022

DELIVERED ON:08.03.2022

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.24967 of 2018

and

W.M.P.Nos.29011 & 29012 of 2018

Hahnemann Homoeopathic Medical Trust,
Rep. By its Managing Trustee,
Mr.A.Sivasubramani,
Managing Trustee,
6/177-A, Mount Poonamallee Road,
Karambakkam, Porur,
Chennai - 600 116.
Established and Administering
(Venkateswara Homoeopathic Medical
College & Hospital)

...Petitioner

Versus

1. The Government of India,
Rep. by its Secretary to the Government of India,
Ministry Ayurveda, Yoga & Naturopathy,
Unani, Siddha & Homoeopathy (AYUSH),
AYUSH Bhawan, 'B' Block, GPO Complex, INA,
New Delhi - 110 023.
2. Under Secretary to Government of India,
Ministry Ayurveda, Yoga & Naturopathy,
Unani, Siddha & Homoeopathy (AYUSH),
AYUSH Bhawan, 'B' Block, GPO Complex, INA,
New Delhi - 110 023.
3. 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.



4. The Commissioner,
Directorate of India Medicines & Homoeopathy,
Arumbakkam, Chennai - 600 106.

5. 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, for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in F.No.R.17014/159/2013/2018-EP(H) dated 12.09.2018 communicated through the 2nd respondent received on 13.09.2018 denying permission for admission to BHMS Degree Course for the academic year 2018-19 to the Petitioner College (Venkateswara Homoeopathic Medical College & Hospital at No.4/11, Samayapuram Main Road, Karambakkam, Porur, Chennai - 600 116) quash the same and direct the 1st respondent to pass orders granting permission to the petitioner College for admission for 100 seats to BHMS Degree Course for the academic year 2018-19.

For Petitioner :	Mr.G.Masilamani, Senior Counsel for Mr.D.Prabhu Mukunth Arunkumar
For R1 & 2 :	Mr.T.V.Krishnamachari Senior Panel Counsel
For R3 :	Mr.R.Rajesh Vivekanantham Additional Solicitor General
For R4 :	Mr.D.Ravichander Special Government Pleader
For R5 :	Mr.R.Imayavarman for M/s.Ramalingam Associates

O R D E R

This Writ Petition has been filed by the petitioner, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in F.No.R.17014/159/2013/2018-EP(H) dated 12.09.2018 communicated through the 2nd respondent received on 13.09.2018 denying permission for admission to BHMS Degree Course for the academic year 2018-19 to the Petitioner College (Venkateswara Homoeopathic Medical College & Hospital at No.4/11, Samayapuram



Main Road, Karambakkam, Porur, Chennai - 600 116), quash the same and direct the 1st respondent to pass orders granting permission to the petitioner College for admission for 100 seats to BHMS Degree Course for the academic year 2018-19.

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2. The petitioner is running a Homeopathy College affiliated to Dr.M.G.R.Medical University and recognized by the Central Council of Homeopathy (hereinafter referred to as 'CCH')/3rd respondent herein and also approved by the Tamil Nadu Homeopathy Medical Council, Chennai. The petitioner college was initially started in the year 2000 with annual intake of 50 seats in respect of Bachelor of Homeopathy Medicine and Surgery (BHMS) course. Thereafter, the petitioner college was accorded permission by CCH vide proceedings dated 03.10.2002 allowing increase in admission capacity from 50 to 100 seats from the academic year 2002-2003. But the petitioner college did not avail the same till the academic year 2012-13 as there was no demand for the course. Later, since there was considerable demand for the course, the petitioner college made a representation dated 05.11.2012 to the 5th respondent for increase in seats for the academic year 2013-14 from 50 to 100 seats as per the approval already granted by the CCH. Since there was no response, the petitioner college approached this Court for every academic year and by virtue of orders/directions issued by this Court from time to time in the Writ Petitions moved by the petitioner, the petitioner college made admissions for 100 seats to BHMS course. While so, for the academic year 2018-19, the petitioner college applied for grant of continuance of provisional affiliation for BHMS degree for 100 seats. The 5th respondent University, vide proceedings dated 19.07.2018 appointed an Inspection Commission to carry out inspection for the purpose of grant of approval. On 13.06.2018, the 3rd respondent conducted a surprise inspection to the petitioner college on behalf of the 1st respondent on 13.06.2018 and thereafter, by proceedings dated 12.09.2018, the 1st respondent has put the petitioner college on no admission for 50 seats. Challenging the same, the petitioner has come forward with the present Writ Petition.

3. According to the 1st respondent, as per the provisions of Section 12C(1) of Homeopathy Central Council (Amendment) Ordinance, 2018, all Homeopathy Medical Colleges shall seek permission of the Central Government within one year from the said commencement in accordance with the provisions specified in the Regulations made by the Central Council. Further, as per the provisions of Homeopathy Central Council (Minimum Standards Requirement of Homeopathic Colleges and attached Hospitals) Regulations 2013 (in short, 'MSR'), the colleges have to meet the complete norms of MSR by 31.12.2014 for obtaining 5 years permissions, else the colleges would be succumbed for action



under Section 19 of the Act including stopping of admissions and there is no provision for granting conditional permission in the MSR after the year 2014. While observing so, the 1st respondent by virtue of the impugned order, dated 12.09.2018, has pointed out the following five deficiencies :-

1. In hospital, Nil House Physician (Resident) available required 02.
2. Operation Theatre is not functioning.
3. In Department of Anatomy, mummified bodies are not available.
4. In Department of Medicine, there are Nil specimens.
5. In Department of Homoeopathic Pharmacy, there are Nil models. License for procuring Alcohol/Spirit is not available.

4. Out of the five deficiencies, the petitioner was supposed to fulfill the basic eligibility condition to get permission for taking admission of 100 seats for the AY 2018-19. Though initially, there were five deficiencies pointed out, which later, restricted to the following three main deficiencies, viz.,

1. In hospital, Nil House Physician (Resident) available against required 02.
2. Operation Theatre is not functioning.
3. In Department of Medicine, there are Nil specimens.

5. Therefore, by pointing out the above deficiencies, the 1st respondent observed that the petitioner college did not fulfill the eligibility conditions and hence, the case does not appear fit to consider for granting conditional permission for UG (BHMS) course with 50 seats for the AY 2018-19 and accordingly, by virtue of the impugned order, the petitioner college has been denied permission for taking admission to BHMS course with 50 UG seats as per the provision of HCC (MSR) 2013 for the AY 2018-19.

6. Challenging the impugned order, Mr. G. Masilamani, learned Senior Counsel for the petitioner contended that the deficiencies pointed out by the 1st respondent are minor in nature, which will not render the 1st respondent to deny the permission to the petitioner college for taking admission of 100 seats to BHMS course for the AY 2018-19.

7. As far as, the first deficiency, i.e., "in hospital- Nil House Physician (Resident) available against required 02" is concerned, the learned Senior Counsel submitted that since the petitioner is only undertaking the Under Graduate courses, no



House Physician (Resident) is required and only in the event of conducting the Post Graduate courses, House Physician is required. In this regard, the learned Senior Counsel referred to MSR notification dated 08.03.2013 issued by the Central Council of Homeopathy, notifying the Homeopathy Central Council (Minimum Standard for Education) Regulations, 1983 and relied upon Schedule-II and also Note to Schedule-II. By referring to these, the learned Senior Counsel would submit that for Post Graduate level colleges, M.D.Hom. students shall work as House Physician in Hospital attached to their college. Therefore, he submitted that as per MSR Regulations, there is no requirement to have House Physician (Resident) as contained in Schedule-II of the MSR Regulations, but it is applicable only for the Post Graduate level Colleges, whereas, admittedly, the petitioner college is only an Under Graduate level college, therefore, the requirement to have the House Physician (Resident) does not arise.

8. Further, the learned Senior Counsel referred to the inspection report and submitted that even at page No.5 of the inspection report in Column No.10, it is stated that the requirement of having 2 House Physician (Resident) was not complied with by the petitioner, but the petitioner College has clearly mentioned as N.A. i.e. 'Not Applicable'. Therefore, the learned Senior Counsel would submit that the deficiency pointed out that the petitioner college does not have 2 House Physician (Resident) does not have any merit.

9. As regards the second deficiency, i.e., "the Operation Theatre is not functioning" is concerned, the learned Senior Counsel for the petitioner submitted that insofar as the Homeopathy College is concerned, requirement of Operation Theatre does not arise, since no operation should be performed as per the Homeopathy Practitioner Professional Conduct Etiquette and Code of Ethics Regulations, 1982. Further, he referred to Clause No.3(2) of the MSR and submitted that only for the purpose of providing exposure to the students in the clinical field and to understand the depth of operative surgery and operative Gynaecology or Obstetrics as well as the management in critical illness, a college shall have a Memorandum of Understanding with a reputed nearby located super-speciality hospital (of modern) with all required facilities of operation theatre, labour room, Intensive Care Unit and other required facilities for the management of critical patients, the petitioner college tied-up with the Kedar Medical Hospital, which is situated near to the petitioner college and the students are periodically taken to the Kedar Medical Hospital and providing exposure than that could be given in operation theatre. Hence, the learned Senior counsel would submit that this deficiency also does not have any merit.



10.As regards the third deficiency, i.e. "in Department of Medicine, there are Nil specimens" is concerned, according to the learned Senior Counsel, there is no requirement for having the same in terms of the MSR Regulations 2013, but the petitioner college has specimen based upon the Pro-forma for inspection year to year and further the Department of Medicine in the petitioner college has 10 specimens in the museum.

11.Therefore, he submits that the petitioner college does not have any deficiency and in fact, fulfilled all basic eligibility conditions as per the provisions of MSR Regulations, 2013 and there is absolutely no impediment for the 1st respondent to grant admission of 100 students for the AY 2018-19. He would also submit that in the notice, it was mentioned that the sanction of seats is only 50, which was incorrect and it should have been mentioned as 100. He would refer to the order passed by this Court in W.P.No.2749 of 2014, dated 30.04.2014, wherein, while quashing the impugned proceedings of the 1st respondent directing the petitioner to apply afresh under Section 12-A of the Act, has upheld that the petitioner college has been given approval to increase the intake of students from 50 to 100 students and the said order was subsequently, also came to be confirmed vide judgment dated 17.08.2017 in W.A.No.660 of 2017.

12.The learned Senior counsel therefore, submitted that the so-called deficiencies pointed out by the 1st respondent for denying the permission for taking admissions in respect of 100 seats in UG (BHMS) for the AY 2019-2020 are minor in nature and those deficiencies would no way affect the training or teaching imparting by the petitioner college. However, the 1st respondent in the impugned order, has observed that the petitioner college has not fulfilled the basic eligibility conditions and pointed out above said deficiencies and invoked Section 19 of the Homeopathy Central Council Act, 1973 (hereinafter referred to as 'HCC Act') by construing the said deficiencies as serious in nature and thereby denied the permission to the petitioner College for admission of 100 seats for the AY 2019-2020, which cannot be sustained. In this regard, the learned Senior Counsel relied upon a decision of the Hon'ble Supreme Court reported in (1996) 8 SCC 330 (AL-Karim Educational Trust and another versus State of Bihar and others)" wherein, it has been held that minor deficiencies not such as to permit withholding the affiliation. Relevant portion is extracted as under:

"12. In the totality of the circumstances disclosed in the case and having regard to the fact that at each stage new deficiencies are being pointed out, the latest being the report dated 28.6.95 (explained by the subsequent affidavit of the appellants dated 4.9.95), we are satisfied beyond any manner of doubt, that the



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deficiencies have been substantially complied with and minor deficiencies pointed out in the last mentioned report of 28.6.95 are not such as to permit withholding of the affiliation to which the appellants' institution is entitled, From the manner in which the deficiencies have been pointed out from time to time, each time the old deficiencies are shown to have been removed, new deficiencies are shown, gives the impression that the affiliation is unnecessarily delayed. For the removal, of the minor deficiencies pointed out in the report of 28.6.95, a compliance affidavit dated 4.9.1995 is filed. Once the institution feels secure on the question of affiliation, we have no doubt that these minor deficiencies, if they exist, shall be taken care of by those in charge of the institutions taking such further steps, the grant of affiliation need not wait. We make this position clear. The steps for the grant of affiliation to the appellants' institution may now be expedited and we direct the respondents to issue the necessary orders without loss of time. The appeal is disposed of accordingly. In the facts and circumstances of the case, we make no order as to costs."

13. Further, the learned Senior Counsel contended that the Ministry of Ayush has no jurisdiction to put any college on no admission on the ground of non-compliance of any of the deficiencies, but as per the Homeopathy Central Council Act, 1973, the Central Council of Homeopathy (CCH) is the competent authority to conduct inspections of the Colleges and to recommend to the Central Government, which in exercise of powers under the HCC Act, will take a decision based upon the recommendation, regarding grant of permission for admission of students. Therefore, the impugned order passed by the 1st respondent (Ministry of Ayush) dated 12.09.2018 communicated through the 2nd respondent vide proceedings received on 13.09.2018, is not in consonance with the provisions of the HCC Act. In this regard, the learned Senior Counsel relied upon a decision of the Patna High Court in CWJ.Nos.16589, 16554, etc., of 2017, wherein, it has been held as under:

"39. It is clear, thus, that whether a Medical Institution conforms to the standards prescribed by the CCH or not will have to be decided by the CCH alone at the first instance under the scheme of the HCC Act. Only when the CCH is satisfied that a recognized University, Board or Medical Institution does not conform to the standard prescribed by the CCH, the question of withdrawal of recognition or



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refusal to grant permission to undertake admission will arise. There is no provision under the HCC Act to suggest that even if the CCH is of the opinion that a College or Medical Institution conforms to the minimum standards of education, yet the Central Government exercising powers under the HCC Act may take a different view. I form this opinion in view of the procedure which has been laid down under Section 19 of the HCC Act, which deals with withdrawal of recognition. If there is a negative representation made by the CCH under sub-Section (1) of Section 19 of the HCC Act made to the Central Government, the Central Government is required to proceed in the manner as prescribed under the Act."

14. The learned Senior Counsel would submit that first of all the Central Council of Homeopathy (CCH) has to recommend for such a cancellation to the Central Government, which in turn, will take a decision. But in the present case, it is not in dispute that the Central Government has partially approved the recommendation of the CCH, dated 11.07.2018, stating that 'recommended for allowing admission in I-BHMS course for the session 2018-19 with intake capacity allowed earlier subject to the removal of deficiencies reflected in the report of the inspection before 31.12.2018. Therefore, he pointed out that nowhere CCH has recommended the petitioner to be put on no admission, but on the other hand, recommended for admission, subject to clearance of deficiencies, which, deficiencies, being minor and that too not applicable to the case of the petitioner college and hence, the learned Senior Counsel prays this Court to set aside the impugned order passed by the 1st respondent and direct the respondents to grant permission to the petitioner college for the admission of 100 seats to BHMS Degree Courts for the AY 2018-19.

15. On the other hand, Mr. T.V. Krishnamachari, learned Senior Panel Counsel for Central Government, appearing for respondents 1 and 2, would contend that the CCH has power under Section 17 of the Act, to appoint medical inspectors as it may deem requisite to inspect any medical college, hospital or other institution where education in Homeopathy is given and based on the report of the Team of Inspection, send its recommendation to the Ministry of Ayush for final decision. Therefore, the Central Government is the permission granting authority for running a Homeopathy College subject to satisfaction that the college meets the standards. As per Regulation 3(4) of the MSR Regulations, 2013, the existing college has to fulfill the minimum standard requirement of infrastructure, teaching and training facilities. Therefore, the learned Senior Panel counsel would submit that as per Sections 17 and 18 of the Act, CCH is



only empowered to appoint Medical Inspectors to cause inspection of the Colleges and the Central Government cannot appoint a team of inspectors as this power has not been conferred upon the Central Government, but only can take final decision based upon the recommendation made by the CCH.

16. He would submit that the Inspection Commission appointed by the CCH, inspected the petitioner college on 13.06.2018 and found 5 deficiencies, which later, restricted to 3 deficiencies, viz., a) in hospital, Nil House Physician (Resident) available against required 02; b) Operation Theatre is not functioning and c) in Department of Medicine, there are Nil specimens. He pointed out that as per Schedule II of the MSR Regulations, 2013, the petitioner college shall have a well equipped and functioning Operation Theatre for day to day working and it is mandatory, which was not fulfilled by the petitioner college. As per Schedule III of the MSR Regulations, 2013, the petitioner college has to mandatorily comply with Regulations 3(7), 11(1) and 13, but the petitioner college does not have House Physician, functional OT and specimens and as such, having considered the same, the Central Government has partially approved the recommendation of the CCH dated 11.07.2018. However he would submit that the Central Government should act only based on the report of the CCH and since the deficiencies noted were mandatory to give permission, which were not fulfilled by the petitioner and hence, the petitioner is not entitled to the relief as sought for in the Writ Petition.

17. Mr. R. Rajesh Vivekananthan, learned Additional Solicitor General, appearing for the 3rd respondent would contend that the Homeopathy Central Council Act, 1973 was amended, which came into force with effect from 28.1.2003, wherein, Section 12A has been introduced as per which, Establishment of New Homeopathy Medical College (Opening of New or Higher Course of Study or Training and increase of Admission Capacity by a Medical College) Regulations 2011 is governed by the above said provisions of HCC Act. He submitted that the petitioner college was inspected on 13.06.2018 and inspection report was received by the 3rd respondent on 15.06.2018. Subsequently, the Executive Committee of Board of Governors considered the said inspection report in its meeting held on 06.07.2018 and recommended for allowing admission in 1st year BHMS Course for the session 2018-19 with the intake capacity allowed earlier subject to the removal of deficiencies reflected in the report of inspection on or before 31.12.2018. Thereafter, pursuant to the inspection carried out and recommendation by the CCH, the first respondent after providing hearing and on consideration of oral and written submissions made by the petitioner, the 1st respondent has rightly passed the impugned order, dated 12.09.2018, which requires no interference.



18. Having heard the learned Senior Counsel for the petitioner college and the learned Senior Panel Counsel for the respondents 1 and 2 and learned Additional Solicitor General for the respondent 3 and other learned counsel and having perused the entire materials placed on record, this Court crops up the following issue for consideration, i.e. whether the impugned order dated 12.09.2018 passed by the 1st respondent, is liable to be set aside and the petitioner college is entitled to the relief as sought for?

19. At the outset, it is not in dispute that the petitioner College was established with intake capacity of 50 students and later in the year 2002, the 3rd respondent has increased the intake capacity of the petitioner in BHMS course on 3.10.2002 from 50 to 100 for the academic year 2002-2003 vide proceedings No.16-13/99-CCH/4859. However, as there was no demand for the said course, the petitioner college has not approached the 5th respondent university for affiliation for increase of admission capacity. While so, in the year 2003, Homeopathy Central Council Act, 1973 was amended, which came into force with effect from 28.01.2003, wherein, Section 12A has been introduced and Section 12 A(1)(b)(ii) of the Act clearly states that no homoeopathic medical college shall increase its admission capacity in any course of study or training except with the previous permission of the Central Government. By virtue of this, from 28.1.2003 onwards, any action on the part of the petitioner college, either 3rd respondent/CCH or the 5th respondent university, is deemed to be null and void and as such, the 3rd respondent has no authority to take a decision to grant permission to any Homeopathic Medical College.

20. Accordingly, by proceedings, dated 07.01.2014, the 1st respondent directed the petitioner to apply afresh for increase of intake of seats under Section 12A of the HCC Act, 1973. This was challenged by the petitioner in W.P.No.2749 of 2014, which came to be allowed by this Court vide order dated 30.4.2014, with the following observation:

The impugned communication of the first respondent, requesting the petitioner to apply afresh under Section 12-A of the Act cannot be sustained inasmuch as the petitioner was given approval to increase the intake of students from 50 to 100 for the academic year 2002-2003 on 03.10.2002. However, for admission of the students for the present academic year 2013-2014 is concerned, provisional affiliation was granted to the petitioner to admit only 50 students. As far as admission of the students is concerned, the last date for admitting the student is 30th November as per the cut off date imposed by the



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Government of India, Ministry of Health and Family Welfare and any admission beyond 30th November cannot be recognised. Therefore, due to efflux of time or expiry of the cut off date granted by the Government of India, at this stage, this Court is unable to grant the consequential relief sought for by the petitioner to admit the students for the academic year 2013-2014. If at all, the petitioner can utilise the intake granted to them only for the next academic year viz., 2014-2015 by admitting the students before 30th November. Therefore, while holding that the impugned communication of the first respondent is unsustainable, this Court reject the consequential relief sought for by the petitioner."

21. After this order, the first respondent Government of India, has passed order in favour of the petitioner for continuing BHMS Degree Course for 100 seats for every academic year from 2014. It is also stated by the petitioner that the 5th respondent University has passed orders acknowledging the petitioner's eligibility for provisional affiliation to 100 seats.

22. While so, for the academic year 2018-19, the petitioner college applied for grant of continuance of provisional affiliation for BHMS degree for 100 seats. The 5th respondent University, vide proceedings dated 19.07.2018 appointed an Inspection Commission to carry out inspection for the purpose of grant of approval. On 13.06.2018, the 3rd respondent conducted a surprise inspection to the petitioner college on behalf of the 1st respondent on 13.06.2018 and thereafter, by proceedings dated 12.09.2018 impugned in the Writ Petition, the 1st respondent has put the petitioner college on no admission for 50 seats.

23. While admitting the Writ Petition, this Court, on 24.09.2018, passed the following interim order:

"7. In view of the various orders of this Court, this Court is also convinced that the petitioner is entitled to admit 100 students for first year BHMS Degree Course for the academic year 2018-19. Hence, there shall be an interim direction to the respondents 4 and 5 to allow the petitioner's institution to admit 100 students for the first year BHMS Degree course for the academic year 2018-19."

24. By virtue of the above interim order, the petitioner college continuing with intake of 100 students for first year BHMS Degree Course for the academic year 2018-2019.



25. The main reasons assigned in the impugned order dated 12.09.2018 by the first respondent for denying the permission for taking admission to BHMS course with 50 UG seats are that during the inspection, the following deficiencies were found, viz.,

1. In hospital, Nil House Physician (Resident) available against required 02.
2. Operation Theatre is not functioning.
3. In Department of Medicine, there are Nil specimens.

and since the above deficiencies violated the provisions of the HCC Act, 1973 and the relevant regulations made thereunder and are of such a serious and fundamental in nature which would adversely affect the ability of the college to provide quality medical education in terms of the provisions of the HCC Act, 1973.

26. However, on a perusal of the above deficiencies, this Court is of the view that the same are minor in nature and the Central Government, without dealing with the relevant provisions of the MSR Regulations and without considering the reply made by the petitioner in a proper perspective, has come to the conclusion that as if the petitioner has not rectified the three deficiencies.

27. As far as the first deficiency is concerned, i.e. 'in hospital, Nil House Physician (Resident) available against required 02, this Court perused the MSR Regulations 2013, wherein, Schedule-II, insists upon the requirement of 2 House Physicians, in case of the hospital attached to the College does have capacity of 20 beds and further on a perusal of Note to Schedule-II, it reveals that for Post Graduate level colleges, M.D.Hom. students shall work as House Physician in Hospital attached to their college. Therefore, as rightly submitted by the learned Senior Counsel that as per MSR Regulations, there is no requirement to have House Physician (Resident) as contained in Schedule-II of the MSR Regulations since admittedly, the petitioner college is only an Under Graduate level college, but it is applicable only for the Post Graduate level Colleges. Therefore, this Court is of the view that the deficiency insisting upon the requirement to have the House Physician (Resident) does not arise.

28. This Court also perused the inspection report of the 3rd respondent, dated 12.09.2018, wherein, under the caption 'Hospital Staff (Annexure-13), at Column 10 refers to 'House Physician (Resident)', it has been clearly stated that the same is 'not applicable'. Therefore, in the inspection report, it has been clearly stated that the requirement of House Physician (Resident) will not apply for the petitioner College. When such



being the case, how this deficiency was noted as a deficiency by the Inspection team and subsequently, by the respondents even after the receipt of the detailed reply from the petitioner college. Therefore, as far as this deficiency is concerned, this Court is of the view that the same cannot be taken as basis by the 1st respondent for denying the permission to the petitioner college in the matter of intake of 100 seats for 1st year BHMS course.

29.As far as the second deficiency is concerned, i.e. the Operation Theatre is not functioning", admittedly, the petitioner college is a Homeopathy College conducting Under Graduate Course and according to the petitioner, they have the Operation Theatre and even in the inspection report, it has been mentioned as not functioning. The requirement of functional Operation Theatre does not arise in the present, since no operation should be performed as per the Homeopathy Practitioner Professional Conduct Etiquette and Code of Ethics Regulations, 1982. It is pertinent to note that Clause No.3(2) of the MSR Regulations, 2013 denotes that only for the purpose of providing exposure to the students in the clinical field and to understand the depth of operative surgery and operative Gynaecology or Obstetrics as well as the management in critical illness, a college shall have a Memorandum of Understanding with a reputed nearby located super-speciality hospital (of modern) with all required facilities of operation theatre, labour room, Intensive Care Unit and other required facilities for the management of critical patients. In order to fulfill this, the petitioner college tied-up with the Kedar Medical Hospital, which is situated near to the petitioner college and taking the students periodically to the said Kedar Medical Hospital, which is a Super Speciality Hospital and providing exposure to the students than that could be given in operation theatre. When such being the case, it is totally unfortunate that the 1st respondent cited this deficiency as a basis for rejection of the permission to the petitioner college, which cannot be sustained. In fact, in the event, operation theatre in the homoeopathy hospitals is functioning, it would be a ground for rejection because the Homeopathy doctors are not supposed to perform the operations, which is against the regulations of the Medical Council of India. Therefore, the second deficiency cannot be considered as a ground for rejection.

30.As far as the third deficiency is concerned, i.e."in Department of Medicine, there are Nil specimens" is concerned, as rightly contended by the learned Senior Counsel that there is no requirement for having the same in terms of the MSR Regulations 2013, but the petitioner college has specimen based upon the Pro-forma for inspection year to year and further the Department of Medicine in the petitioner college has 10



specimens in the museum. Further, even though such requirement has not been prescribed in the MSR Regulations, 2013, in the Inspection Report at page No.7 under the caption of 'Department of Anatomy', it has been mentioned at Sl.No.3 No.of Cadavers available-02. Therefore, the learned Senior Counsel for the petitioner college would submit that these Cadavers were kept for the Students and as such, by no stretch of imagination, the 1st respondent can form a basis by considering that there are Nil Specimens, for rejection of the claim of the petitioner college.

31.In the light of the above discussion, this Court is of the view that the so-called three deficiencies based on which, the 1st respondent denied the permission to the petitioner college for admission of 100 seats to BHMS Degree course for the academic year 2018-19 cannot be sustained and consequently, the impugned order passed by the 1st respondent dated 12.09.2018 is liable to be set aside.

32.As regards the issue with regard to the power of the Ministry of AYUSH, as per Sections 17 and 18 of the Act, CCH, the 3rd respondent is only empowered to appoint Medical Inspectors to cause inspection of the Colleges and the Central Government cannot appoint a team of inspectors as this power has not been conferred upon the Central Government, but only can take final decision based upon the recommendation made by the CCH after causing inspection. The said recommendation is binding on the Central Government and based upon the same, the Central Government has to act upon and take a final decision. Therefore, the Central Government has no power to directly put the erring Colleges on no admission on its own. In this regard, the Patna High Court also has held the same in CWJ.Nos.16589, 16554, 16838, 14864, 16371 and 14372 of 2017, dated 28.06.2017 and the same was upheld by the Supreme Court in Civil Appeal No.6734 of 2018 vide order dated 17.07.2018. The relevant portion of the said order reads as follows:

"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.

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

A bare reading of the provisions contained under



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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.

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.

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.

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



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the central Government under Regulation 3(5).

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."

33. But in the present case, it is not in dispute that the Central Government has partially approved the recommendation of the CCH, dated 11.07.2018, stating that 'recommended for allowing admission in I-BHMS course for the session 2018-19 with intake capacity allowed earlier subject to the removal of deficiencies reflected in the report of the inspection on or before 31.12.2018. Therefore, as rightly contended by the learned Senior counsel that in the Inspection Report, nowhere the CCH has recommended the petitioner to be put on no admission, but on the other hand, recommended for admission, subject to clearance of deficiencies, which deficiencies in fact, as discussed supra, found not sustainable. Therefore, the impugned order passed by the 1st respondent is liable to be set aside.

34. In view of the above discussion, this Court is of the considered view that the petitioner is entitled to admit 100 students for first year BHMS Degree Course for the academic year 2018-19.

35. In the result, the Writ Petition is allowed. The impugned order passed by the 1st respondent in F.No.R.17014/159/2013/2018-EP(H) dated 12.09.2018 is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

suk/sp



To

1. The Secretary,
Government of India,
Ministry Ayurveda, Yoga & Naturopathy,
Unani, Siddha & Homoeopathy (AYUSH),
AYUSH Bhawan, 'B' Block, GPO Complex, INA,
New Delhi - 110 023.
2. The Under Secretary,
Government of India,
Ministry Ayurveda, Yoga & Naturopathy,
Unani, Siddha & Homoeopathy (AYUSH),
AYUSH Bhawan, 'B' Block, GPO Complex, INA,
New Delhi - 110 023.
3. The Secretary,
Central Council of Homoeopathy (CCH),
Jawaharlal Nehru Bharthiya Chikitsa Avum,
Homoeopathy Anusandhan Bhawan,
No.61-65, Institutional Area, Opp to "D" Block,
Janakpuri, New Delhi - 110 058.
4. The Commissioner,
Directorate of India Medicines & Homoeopathy,
Arumbakkam, Chennai - 600 106.
5. The Registrar,
Tamil Nadu Dr.M.G.R.Medical University,
69, Anna Salai, Guindy,
Chennai - 600 032.

+1cc to M/s.D.Prabhu Mukunth Arunkumar, Advocate, S.R.No.15352

+2cc to Mr.T.V.Krishnamachari, Advocate, S.R.No.15164

W.P.No.24967 of 2018

NMI (CO)
RGA (16/03/2022)