



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.04.2022

CORAM

THE HONOURABLE THIRU JUSTICE B.PUGALENDHI

W.P.Nos.28593 of 2019 & 1170 of 2021

&

W.M.P.Nos.28338, 28339, 28342 of 2019 & 1312, 1314, 1318 of 2021

S.V.S. Educational and Social Trust,
Rep. by its Chairman,
Dr.Vasuki

... Petitioner in both WPs

Vs.

1.The Under Secretary to Government of India,
Ministry of Ayurveda,
Yoga and Naturopathy, Unani, Siddha and
Homeopathy (AYUSH),
B.Block, G.P.O.Complex,
I.N.A. New Delhi - 110 023.

2.The Secretary,
Central Council of Homeopathy,
No.61-65, Institutional Area,
Opp. 'D' Block, Janakpuri,
New Delhi - 110 058.

3.The Tamil Nadu Dr.MGR Medical University,
Rep. by its Registrar,
No.69, Anna Salai, Guindy,
Chennai - 600 032.

4.The Special Commissioner cum Secretary,
Selection Committee,
Director of Indian Medicine and Homeopathy,
Aringnar Anna Hospital Complex,
Arumbakkam,
Chennai - 600 106.

... Respondents in WP.28593/2019

1.The Director,
Ministry of Ayurvedha, Yoga, Naturopathy, Unani,
Siddha and Homeopathy (AYUSH),
Ayush Bhawan, B Block, G.P.O. Complex,
New Delhi - 110 023.

2.The Registrar,
The Tamil Nadu Dr.MGR Medical University,
No.69, Anna Salai, Guindy,
Chennai - 600 032.



3.The Secretary,
Selection Committee,
Director of Indian Medicine and Homeopathy,
Arumbakkam,
Chennai - 106.

... Respondents in WP.1170/2021

PRAYER in WP.No.28593/2019:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in F.No.R-14014/204/2019-EP(II) dated 14.07.2019, received only on 24.09.2019 quash the same and consequently direct the respondents 1 to 3 to issue permission to the petitioner for taking admission of students in I BHMS course to the SVS College of Homeopathy and Research Institute, Kallakurichi and grant affiliation to the petitioner's Homeopathy College, respectively for the academic year 2019-2020.

PRAYER in WP.No.1170/2021:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in Reference No.File No.R-14014/214-2020-EP (II), dated Nil and consequential order passed by the second respondent in Lr.RC.No.AFFLN.VII(2)/34115/2020, dated 07.01.2021 and quash the same and consequently directing the respondents to permit the petitioner college to admit the students for the degree course of BHMS for the academic year 2020-21.

For Petitioner : Mr.C.Prabhakaran,
Senior Counsel
for Mr.K.Balakrishnan in WP.No.28593/2019
for Mr.C.Prakasam in WP.No.1170/2021

For Respondents : Mr.D.Simon,
Central Government Standing Counsel
in WP.No.28593/2019
for R1 in WP.No.1170/2021

Mr.D.Ravichandran,
Standing Counsel
for R3 in WP.No.28593/2019
for R2 in WP.No.1170/2021

Mr.V.Kathirvelu
Special Government Pleader
for R4 in WP.No.28593/2019
for R3 in WP.No.1170/2021



COMMON ORDER

The petitioner / Trust, which is running a Homeopathic Medical College and Hospital, in the name, SVS Medical College of Homeopathy and Research Institute at Kallakurichi, Villupuram, District, has filed these writ petitions challenging the order of the Ministry of AYUSH denying permission for taking admission in BHMS course for the academic years 2019-2020 & 2020-2021. They are having a chequered history and these are the seventh and eighth round of litigations between the petitioner and the very same official respondents.

2.As per Section 12C(1) of Homeopathy Central Council Act, 1973, all Homeopathy Medical Colleges shall seek permission of the Central Government within one year from the date of promulgation of Homeopathic Central Council (Amendment) Ordinance, 2018. On the application of the petitioner, the Board of Governors to CCH inspected the college premises and gave their report. The first respondent / Ministry of AYUSH denied the permission to the petitioner, on the recommendations of the Central Council of Homeopathy, which is impugned in these writ petitions. The writ petition in WP.No.1170 of 2021 pertains to the Academic Year 2020-21 and the writ petition in WP.No.28593 of 2019 pertains to the Academic Year 2019-20.

3.Initially, the writ petition in WP.No.1170 of 2021 was listed before this Court and the case was argued in length. The CCH has examined the proforma of the college and recommended vide letter dated 02.11.2020 not to allow admissions. The reasons for such recommendation are recorded in the impugned order and the same is extracted as under:-

"1.College website :
<https://www.sysmedicalcollege.org> is not functioning and salary is being paid through cash.

2.Only 04 Part Time teachers of Modern Medicine available against the requirement of 09.

3.College has provided a list of only 18 teachers, out of which 12 teachers found eligible and 06 teachers considered ineligible. Details of ineligible teachers are as under:-

a.Dr.P A Anju, BHMS (2009) - has joined as Lecturer in Pathology on 4/1/13 and promoted to Reader on 5/1/2019. As her 10 years of experience as Lecturer not completed so not considered eligible as Reader.

b.Affidavit of Reader (Anatomy & Materia Medica) and Lecturer cadre (Physiology, Pharmacy & Surgery) not provided.

4.Required number of Ward boys not available in Hospital.

5.Teaching Department:

a.Anatomy act applied for Department of Anatomy.

b.License for procuring alcohol not available,



as applied presently."

4. Learned Senior Counsel for the petitioner submitted that the verification process was conducted through online and due to some connectivity problems, they could not effectively place their case. He further submitted that in the impugned order itself, it has been observed that "due to weather conditions prevailing in Chennai on the day of hearing, there was a lot of connectivity problem. The observations were made from the documents as submitted by the college."

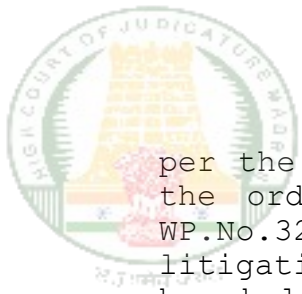
5. He further submitted that in the committee's report, it has mentioned that the college website <https://www.sysmedicalcollege.org> is not working properly. The website of the college is <https://www.svsmedicalcollege.org>. The committee has verified a wrong website and in fact, the college is having all the requirements as per the guidelines of the Ministry of AYUSH. Since the verification process was conducted online, they could not place the materials before the Committee and therefore, learned Senior Counsel prayed for granting permission.

6. In response, it has been submitted by the respondents that the affiliation for the petitioner's college was considered in the year 2019 and after a physical verification, the request was rejected. The documents which were now relied upon by the petitioner, ie., for the AY 2020-21, were already relied upon during the physical inspection conducted in the year 2019, for the AY 2019-20. After considering all the materials, the Committee has rejected the request. As against the same, the petitioner has filed the writ petition in WP.No.28593 of 2019. In view of the said submission, the writ petition in WP.No.28593 of 2019 was directed to be listed along with WP.No.1170 of 2021 and both of them were heard together.

7. In respect of WP.No.28593 of 2019, the Board of Governors to CCH has conducted physical inspection on 30.04.2019 and made a recommendation as follows:-

"Not recommended for allowing admission in I-BHMS Course for the session 2019-20 due to severe shortfall of full time teaching faculty, unavailability of higher faculty in any subject, large overlap between teaching and Hospital staff, no lecturer in Pharmacy / Practice of medicine / Obs & Gyn / Repertory, no guest faculty, no supporting documents of qualification and date of appointment of teachers, no details of hospital staff, IPD & OPD, no details of non-teaching and supporting staff, no details of requirements in teaching departments and other shortfalls as per inspection report."

8. Learned Senior Counsel for the petitioner, of course, disputed the discrepancies noted in the report for the AY 2019-20 and submitted that the college is having all the requirements, as



per the guidelines of Ministry of AYUSH. He has also relied upon the order passed by a learned Single Judge of this Court in WP.No.32047 of 2013, dated 09.10.2014, in an earlier round of litigation filed by the very same petitioner, wherein, this Court has held that permission cannot be denied on the basis of non-existent deficiencies.

9. In the earlier round of litigation in WP.No.32047 of 2013, the inspection report of the Committee stood in favour of the petitioner, which is not the case herein. Therefore, the petitioner cannot take advantage of the earlier order. Be that as it may, it is a settled position that whether a particular institution fulfil the necessary criteria regarding the eligibility to conduct classes in the concerned discipline falls within the realm of experts. They have decided that the petitioner college failed to meet the requirements, which, of course, is disputed by the petitioner.

10. The fact remains that in respect of AY 2020-21, the inspection was conducted through online and the Committee themselves have recorded in their proceedings, which was reproduced in the impugned order, that due to bad weather condition prevailed in Chennai on the date of inspection, there was a lot of connectivity problem and only based on the materials produced, the decision was taken. The website of the college also appears not to have been verified properly, ie., <https://www.sysmedicalcollege.org> was verified, instead of <https://www.svsmedicalcollege.org>. Much water have now flown under the bridge and the petitioner claims that the college is having all the requirements, as per the guidelines of the Ministry.

11. Under such circumstances, these writ petitions are disposed of, with a direction to the first respondent to make an inspection of the petitioner's college, afresh, after giving due notice. The petitioner is directed to render the fullest co-operation and produce all the materials, which they are in possession of. The first respondent, after the physical inspection and after considering the materials to be placed by the petitioner, shall take a decision, in accordance with law. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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<https://hcservices.ecourts.gov.in/hcservices/>



To,

1.The Under Secretary to Government of India,
Ministry of Ayurveda,
Yoga and Naturopathy, Unani, Siddha and
Homeopathy (AYUSH),
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SJ(CO)
A.SK(26/05/2022)