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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 27.04.2022

+ W.P.(C) 6335/2022 & CM APPL. 19115/2022 (interim relief) &
CM APPL. 20258/2022 (additional documents)

**C.L.CHOUKSEY HOMEOPATHY MEDICAL COLLEGE AND
HOSPITAL** Petitioner

Through: Mr.Animesh Kumar, Mr.Nishant
Kumar, Mr.Rishabh Gupta &
Ms.Rushali Agarwal, Advs.

Versus

UNION OF INDIA & ORS. Respondents

Through: Ms.Monika Arora, Mr.Yogesh
Panwar, Advs. & Mr.Abhishek
Khanna, GP.
Mr.Sunil Narula & Ms.Isha
Thakur, Advs. for R-2
Ms.Pratiksha Tripathi &
Mr.Sushant Chaterjee, Advs. for
R-4

**CORAM:
HON'BLE MS. JUSTICE REKHA PALLI**

REKHA PALLI, J (ORAL)

1. The petitioner has approached this Court assailing the order dated 13.04.2022 passed by respondent no.1, vide which its second appeal against the denial order dated 07.12.2021 for grant of



admission for 100 seats in the UG BHMS course, has been rejected.

2. On the last date, this Court, in light of the submissions made by learned counsel for the petitioner that some of the observations in the impugned order were wholly contrary to the record, had granted time to the learned counsel for the respondent to obtain instructions and file a counter affidavit. Today, Ms. Monika Arora submits that she has received the instructions only last night and therefore she could not file any counter affidavit. She, however, seeks to handover a copy of the written comments received by her from the department. This Court is not inclined to take on record, these comments which are accordingly returned to learned counsel for the respondent no.1
3. Learned counsel for the petitioner submits that if the writ petition is not decided today, the same is likely to become infructuous as the counselling for the remaining rounds is likely to end soon.
4. Keeping in view the urgency involved in the matter, the writ petition is taken up for disposal today itself.
5. Learned counsel for the petitioner vehemently submits that the impugned order has been passed without any application of mind as the findings qua some of the purported deficiencies noted therein are belied by the record available with the respondent no.1 itself. He submits that, as per the Homeopathy Central Council Regulations, 2013, the Principal is authorized to discharge the functions of the Hospital Superintendent and therefore, once the respondent did not find any deficiency in the appointment of the



Principal of the petitioner college, the respondent could not have held that there was no Hospital Superintendent in the petitioner college.

6. By further drawing my attention to deficiency no. 3 as noted in the impugned order, he submits that while the denial order and the first appellate order record that Dr. Jyotsna Bindra could not be included as a faculty member as proof of her educational qualification had not been provided, the impugned order notes that though proof of her educational qualifications was available on the record, no documents regarding her attendance and salary had been placed on record by the petitioner. He submits that these errors have crept in as the impugned order has been passed by respondent no.1 without granting any opportunity of hearing or atleast giving the petitioner, any opportunity to explain its stand. He therefore prays that the impugned order be set aside and the matter be remanded back to respondent no.1 for reconsideration.
7. Per Contra, Ms. Arora, while not seriously disputing the aforesaid submissions of the petitioner, opposes the petition by contending that there were various deficiencies in the petitioner institute and therefore its appeal was rightly rejected. She further submits that the impugned order was passed after perusal of the record and once the petitioner had been granted an opportunity of hearing by respondent no.2 at the time of passing the denial order and the first appellate order, there was no requirement of granting any further opportunity of hearing to the petitioner.
8. Having considered the submissions of the parties and perused the



record, I find that even though the respondent no.1 is justified in urging that as per the regulations, there was no requirement of granting any opportunity of hearing to the petitioner, the fact remains that respondent no.1 is discharging a very important statutory duty of deciding the second appeal of a college like the petitioner which has been running for the last almost 20 years. Having perused the impugned order, it is evident that the respondent no.1 has simply rejected the appeal without even properly appreciating the explanation given by the petitioner which has led to findings being given by the respondent no.1 in respect of issues which were not even raised at the time of passing of the denial order or of the first appellate order. I therefore find merit in the petitioner's plea that the impugned order is perverse and has been passed without due application of mind and is, therefore, not sustainable.

9. In the light of the aforesaid, this Court has no other option but to set aside the impugned order and remand the matter back to the respondent no.1 for taking a fresh decision on the petitioner's second appeal after taking into account all the documents filed by the petitioner alongwith its second appeal.
10. Even though, granting of an opportunity of hearing during the course of the second appeal is not mandatory as per the regulations, it is expected that in case respondent no.1 finds any new deficiencies or aspects other than those noted in the denial order or in the first appellate order, it will grant an opportunity of hearing to the petitioner.



11. At this stage, learned counsel for the petitioner prays that the petitioner may be permitted to participate in the forthcoming counselling during the pendency of its second appeal before the respondent no.1. Having given my thoughtful consideration to this aspect, I am of the view that taking into account the fact that the petitioner institute has been running for the last more than 20 years, grave and irreparable prejudice would be caused not only to the petitioner but also to the students if it is not allowed to participate in the ongoing counselling during the pendency of its second appeal.
12. The writ petition is, accordingly, allowed by quashing the impugned order dated 13.04.2022 and remanding the matter back to respondent no.1 for a fresh consideration of the petitioner's second appeal. It is further directed that till the disposal of its second appeal by respondent no.1, the petitioner will be allowed to participate in the counselling for 100 seats in the UG BHMS course and therefore, the respondent nos.4 and 5 will pass appropriate orders to ensure that the petitioner is permitted to participate in the counselling for the aforesaid course.
13. It is however made clear that this permission being granted to the petitioner to participate in the counselling would be subject to outcome of its second appeal which is now being remanded back to the respondent no.1. The petitioner will, therefore, publish a notice on its web portal clearly informing the general public that this permission being granted to it would be subject to outcome of its second appeal. It is further made clear that no special equities



in favour of the petitioner will be made on account of this permission being granted to it.

14. Needless to state that in case the petitioner is aggrieved by any order passed by respondent no.1, it will be open for the petitioner to seek legal recourse as permissible in law.

APRIL 27, 2022

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**(REKHA PALLI)
JUDGE**