

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5194 OF 2011

1. Shri Abhayraj s/o Dhanraj Jain,
Age 51 years, Occ. Secretary of
Prabhat Education Society,
P.D. Jain H.M.C. Vakil Colony,
Parbhani
 2. Dr. Vijay Vasantao Dabhade,
Age 52 years, Occ. Principal,
P.D. Jain H.M.C. Vakil Colony
Parbhani, Dist. Parbhani
- ...Petitioners

versus

1. The Union of India
Ministry of Health and
Family Welfare,
Through its Secretary
Department of Ayurveda,
Yoga, Naturopathy and
Homeopathy (AYUSH),
Indian Red Cross Society,
Annex Building,
New Delhi 100 001
2. The Central Council of Homeopathy
Through its Secretary
Ministry of Health and Family Welfare
Jawaharlal Nehru Bhartiya Chikitsa
Evam Homeopathy, Anusandhan Bhavan,
No. 61-65, Institutional Area,
Opp. 'D', Block, Janakpuri,
New Delhi – 110 058
3. The Competent Authority
Association Management of Homeopathic
Medical Colleges in Maharashtra
Mezzanine floor, Shivaji House,
75, Mint Road Fort,
Mumbai 400 001
4. The Director of Medical Education
and Research, Maharashtra State

St. George Hospital, 2nd floor
Govt. Dental College Building
Near CSTM, Mumbai 01.

5. The Registrar
Maharashtra University of Health
Sciences, Mhasrool, Dindori Road,
Nashik, District Nashik ...Respondents

AND
WRIT PETITION NO. 4254 OF 2016

1. Shri Abhayraj s/o Dhanraj Jain,
Age 51 years, Occ. Secretary of
Prabhat Education Society,
Vakil Colony, Parbhani
R/o. P.D Jain Homeopathic Medical
College, Vakil Colony, Parbhani
District Parbhani
2. P. D Jain Homeopathic Medical
College, Vakil Colony, Parbhani
Through its Principal
Dr. Vijay Vasantao Dabhade,
Age 52 years, Occ. Service,
R/o. P.D. Jain Homeopathic Medical
College Vakil Colony
Parbhani, Dist. Parbhani ...Petitioners

versus

1. The Union of India
Ministry of Health and
Family Welfare,
Through its Secretary
New Delhi
2. The Secretary
Government of India
Department of Ayurveda, Yoga
Naturopathy and Homeopathy (AYUSH)
AYUSH Bhavan, B-Block,
GPO Complex, INA
New Delhi 110 023
3. The Central Council of Homeopathy
Through its Secretary

Ministry of Health and Family Welfare
Jawaharlal Nehru Bhartiya Chikitsa
Evam Homeopathy Anusansadhan Bhavan,
No. 61-65, Institutional Area,
Opp. 'D', Block, Janakpuri,
New Delhi – 110 058

4. The Competent Authority
Association Management of Homeopathy,
Medical Colleges in Maharashtra
Mezzanine floor, Shivaji House,
75, Mint Road Fort,
Mumbai 400 001
5. The Director of Medical Education
and Research, Maharashtra State
St. George Hospital, 2nd floor
Govt. Dental College Building
Near CSTM, Mumbai.
6. Maharashtra University of Health
Sciences, Mhasrul, Dindori Road,
Nashik, District Nashik
Through its Registrar

...Respondents

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Advocate for Petitioners : Shri R.S. Deshmukh, senior counsel a/w
Mr. Jay Veer and H.U. Dhage i/b Mr. R. R. Kale
DSGI for respondent No. 1 in WP No. 5194 of 2011 and for R. Nos.1
and 2 in WP 4254 of 2016 : Mr. A.G. Talhar
Advocate for Respondent Nos. 2 & 3 in WP No. 5194 of 2011 and for
R. No.3 & 4 in WP 4254 of 2016 : Mr. S. B. Bhosale
AGP for Respondent Nos. 4 in WP No. 5194 of 2011 and for R. No.5
in WP 4254 of 2016: Mr. S. P. Tiwari
Advocate for Respondent Nos. 5 in WP No. 5194 of 2011 and for R.
No.6 in WP 4254 of 2016 : Mr. S. P. Brahme
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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 5th APRIL, 2023.**

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.) :-

1. Time to carry out substitution in both the matters is extended. Substitution be carried out forthwith.

2. The earlier writ petition, bearing No. 5194 of 2011, has been admitted. The second petition, bearing No. 4254 of 2016, in which the interim relief has been granted, by order dated 12.4.2016, is yet to be admitted. Hence, RULE. Rule made returnable forthwith by the consent of the parties.

3. Both these petitions are taken up for final hearing by consent of the parties, considering the subsequent events.

4. Having considered the submissions of the learned advocates, we find that this Court [Coram: B.R. Gavai (as His Lordship then was) and M.T. Joshi, JJ.], has passed a detailed order on 14.9.2011, thereby admitting the petition and granting interim relief to the petitioner management, which reads as under:-

“1. Rule.

2. Heard learned counsel for the parties and learned Assistant Solicitor General, in respect of grant of interim relief.

3. The Division Bench of this Court in Writ Petition No. 3512/2008, after considering the provisions of Section 13A of the Indian Medicine Central Council Act, 1970 (for short, "the IMCC Act"), which is para-materia with the provisions of Section 12A of the Homeopathy Central Council Act, 1973 (for short, "the HCC Act"), has taken a

view that the Central Government under Section 13A of the IMCC Act, cannot send its own team to assess for itself whether the Institution/College complies with the requirements. It has been held that, that task is to be performed by the CCIM and the Central Government can only approve or disapprove such scheme. It is, in unequivocal terms, held that the question of sending their own team for assessing whether a particular Institution or College has the infrastructure as required under Section 13A of the Act, does not arise.

4. The perusal of the provisions of Section 13 A of the IMCC Act and that of Section 12A of the HCC Act would reveal that the provisions in both these sections are almost para-materia. Under section 13A of the IMCC Act, the task which is vested with the Central Government is only to approve or disapprove the Scheme after considering the recommendations of the CCIM. In the present case, admittedly, the report of the Central Council is favourable to the petitioners. After that report was received, the limited role before the Central Government was either to give its approval or disapprove the Scheme. The anxiety on the part of the Central Government in sending its own team, at least prima facie, is not permissible under the provisions of Section 12A of the HCC Act, in the light of judgment of this Court in Writ Petition No. 3512/2008.

5. Apart from that, the perusal of subsection (5) of Section 12A of the HCC Act would reveal that if within a period of one year from the date of submission of the Scheme to the Central Government no order is communicated to the Institution concerned, the Scheme shall be deemed to have been approved by the Central Government. Admittedly, the submission of the Scheme, in the present case, was on 29th April, 2009, the show cause

notice was issued on 6th December, 2010 and the order impugned is of 15th June, 2011. As such, it can clearly be seen that not only the order impugned, but even the show cause notice is beyond the period of one year from the date of submission of the Scheme.

6. The learned Assistant Solicitor General has strongly urged to go into the aspect regarding the justification for delay caused in taking the decision. Prima facie, the provisions of Subsection (5) of Section 12A of the HCC Act are self operative. In case of non receipt of communication within a period of one year, the Scheme is deemed to be accepted. It is settled principle of law that when the Statute requires that a particular thing needs to be done in a particular manner, it has to be done in that manner alone or not at all. A reference to the decision of the Apex Court in the matter of "Dhananjay Reddy Vs. State of Karnataka", reported in 2001 (4) S.C.C. 9", would be relevant in that respect.

7. The learned Assistant Solicitor General has not been in a position to point out any view taken by the Apex Court contrary to the said legal position of law. In that view of the matter, there is a case in the present petition to grant interim relief.

8. Hence, the impugned order is stayed and also there shall be interim relief in terms of prayer clause (E).

9. Learned Assistant Solicitor General waives service for respondent No. 1. Learned advocate Mr. S.B. Bhosale waives service for respondent Nos. 2 and 3 and Mr. K.D. Bade Patil, learned advocate, waives service for respondent No. 5."

5. By the judgment delivered by this Court (Coram: S.V. Gangapurwala and V.K. Jadhav, JJ.) dated 24.12.2014, in writ petition No. 7401 of 2011 (***Shri Guru Ganesh Jain Shikshan Samiti vs. Union of India and others***), this Court has settled the controversy as regards the effect of Section 12A of the Homeopathy Central Council Act, 1973 which has provided for deemed permission engrafted in sub-section (5) of Section 12A of the Act of 1973. It is, thus, concluded that Section 12A (5) can be read with Section 12A(2) (6) of the Act of 1973. The conclusions drawn by this Court in ***Shri Guru Ganesh Jain Shikshan Samiti (supra)***, in paragraph Nos. 9 to 15, read as under:-

“9. We have considered the submissions canvassed by learned counsel for respective parties. Sec. 12A (5) of the Act of 1973 cannot be read in isolation. The said provision will have to be read along with sub Section (6) and sub Section (2) of Sec. 12A of the Act of 1973. Sub Section (5) in its first place would apply if the proposal/scheme submitted is complete in itself and is free from all deficiencies and is in conformity with the requirements as laid down by the Homeopathy Regulations and the Homeopathy Central Council Act. No doubt, the proposal was submitted for starting two additional post graduation courses on 28.04.2010. However, the C.C.H., which conducted the inspection on 14.09.2010 found deficiencies in the proposal submitted. The minimum hospital staff required was 50, however, the petitioners possessed only 32 hospital staff. The compliance report is subsequently submitted. The compliance report Exhibit - I

is submitted on 15.12.2010. The order of rejection is dated 28.06.2011. Reading sub section (6) of Sec. 12 of the Act of 1973 with sub section (5) of Section 12A of the Act of 1973, it is manifest that, the benefit of Section 12A Sub-Section (5) of the Act of 1973 would not be available to the petitioners inter alia, the petitioners are not entitled for the benefit of deemed permission.

10. It is a fact that, on the date, when the petitioners submitted the proposal for start of two additional post graduation courses i. e. in the subject of pharmacy and psychiatry, The petitioners did not possess the sufficient number of hospital staff and the equipments as has been found by the C.C.H. in its inspection report. It appears that, thereafter compliance report has been submitted much prior to the date of hearing. The said compliance report has not been considered on the ground that, the proposal filed is to be considered and not what is submitted subsequently. In fact, even as per the say of the respondent No. 1, the respondent No. 1 had asked C.C.H. to furnish the information with regard to the additional information sought by the respondent No. 1 and after four months i. e. on 23.03.2011, the same was submitted by the C.C.H. The C.C.H. in its letter dated 23.03.2011 submitted the details of the number of patients in the Central O.P.D., the college also submitted the details of the information of the teaching staff that is 56 in number on the date of hearing. The observation is made by the hearing committee, wherein it is stated that, the list of 56 hospital staff is given.

11. Vide the interim order passed by this Court, the respondent No. 1 was directed to arrange to inspect within four weeks. The respondent No. 1 sent its team. However, the team was prevented from carrying out inspection.

Though as per the provisions of Statute, it is the CCH which has to carry out the inspection and not the respondent No. 1 still the petitioners in all fairness ought to have allowed the inspection by the said team sent by the respondent No. 1. We do not accept the contention that, as the said team was not authorized as per the provisions of the Central Homeopathy Act and they were biased, the inspection was not allowed to be carried. The petitioners could have raised objection after the report is submitted. However, there was no impediment for allowing the said team sent by the respondent No. 1 to inspect the petitioner/college.

12. It would appear that, thrice inspection has been made by the C.C.H. Even on 03.02.2014 inspection is made by the C.C.H. Of course, we would be concerned more with the inspection made pursuant to the proposal submitted and the deficiencies claimed. The respondent No. 1 ought to have considered the compliance report submitted by the petitioner. This Court vide interim order allowed the students in these two post graduation courses to take admission and prosecute further studies. They were admitted for the year 2011-2012 and 2012-2013. The respondents ought to have considered the fact of clearance of deficiencies as cleared by petitioners. The learned counsel for the respondent No. 2 has argued that, even today the petitioner/institution has got necessary infrastructure for running these two courses and stated that, considering the report, it recommended the Central Government to grant permission for starting post graduation course of intake capacity of six students in each course for the subject of pharmacy and psychiatry.

13. The narration of the aforesaid facts makes it abundantly clear that, the deficiencies which were pointed out in the proposal were complied. The respondent No. 1

had asked the C.C.H. to furnish the information with regard to the additional facts as submitted by the petitioner and sought by the respondent No. 1. Thereafter, after about four months on 23.03.2011 after scrutinizing and verifying about the compliance report submitted by the petitioner, the C.C.H. vide its letter dated 23.03.2011 gave the details stating that all compliances have been made. The C.C.H. recommended the said proposal. The respondent No. 1 has not disputed the compliances made and as verified and recommended by the C.C.H.. However, only on the ground that subsequent compliances made though before the date of hearing is not to be considered and the proposal as it is, is only to be considered has rejected the proposal. The said approach in our opinion is improper. When the compliance report is submitted, the same is verified and scrutinized by the C.C.H. and on verification of the same has recommended, then unless the respondent No. 1 comes to contrary conclusion could not have rejected the proposal.

14. In the light of the fact that, the compliance has been made, it has been verified and recommended by the C.C.H., even the respondent No. 1 has not held that, the said compliances as are required for starting two additional post graduation courses are not made ought not have rejected the proposal. The petitioner is already running five post graduation courses as well as under graduate course in homeopathy. It has raised the necessary infrastructure much prior to the hearing, wherein even C.C.H. had the opportunity to verify the compliances made and the C.C.H. got itself satisfied about the compliances being made, the respondent No. 1 ought not have rejected the proposal.

15. In the light of the above, the respondent No. 1 shall sanction the proposal dated 28.04.2010 submitted by the petitioner for start of two new post graduation courses in

the subject of psychiatry and pharmacy. As the last cut off date for admitting students for this year is over, the petitioners would be entitled to admit the students only from the academic year 2015-2016 in respect of post graduation courses of psychiatry and pharmacy as per the intake capacity recommended. The writ petition accordingly disposed of with aforesaid observations and directions. No costs."

6. Considering the above and the interim order passed by this court on 14.9.2011, reproduced above, it is obvious that in both these matters, the Homeopathy Central Council did not act with promptitude and consequentially these petitioners would stand to gain the benefit of the deeming provisions, in the light of the judgment of this Court in ***Shri Guru Ganesh Jain Shikshan Samiti (supra)***.

7. It is beyond debate that the Central Council of Homeopathy is empowered to inspect the colleges once in each year in order to ensure that the norms, which are applicable for granting permission to start the college and recognition by the Health University, are continuously and scrupulously adhered. Any deviations or deficiencies, if noticed in any annual inspection, would be sufficient for the nodal authority to initiate appropriate steps to compel the management to remove the deficiencies. As such, once the permission and the recognition by the University is granted, the college would not be at liberty to let any deficiencies to creep in. The continuous monitoring of the CCH, as well as the University, is an

accepted norm.

8. In view of the above, the first Writ petition No. 5194 of 2011, is allowed in terms of the interim order, keeping in view the law laid down in ***Shri Guru Ganesh Jain Shikshan Samiti (supra)***. The second Writ petition bearing No. 4254 of 2016, is also allowed in the light of the law crystallized in ***Shri Guru Ganesh Jain Shikshan Samiti (supra)***.

9. Needless to state, considering the passage of time since grant of interim reliefs in these matters, the CCH as well as the University, will be at liberty to cause inspection of these colleges and in the event any deficiencies are noticed, the management would be called upon to remove the deficiencies within the time frame, as may be directed by the Nodal authorities. This would also apply in the case of annual inspection to be carried by the University in connection with the annual renewal of their affiliations.

10. Considering the recommendation of the Health University dated 7.10.2022, addressed to the Secretary, National Commission of Homeopathy, to include the P.D. Jain Homeopathic Medical College, Parbhani, which is pending, the learned D.S.G.I. submits that the said pending proposal would be dealt with and the decision would be announced within 60 days. The said statement is recorded.

11. Rule is made partly absolute in the above terms, in both these petitions.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

rlj/