

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13323 OF 2023

Ratnadeep Homeopathic Medical
College and Hospital (Previously known As
Jamkhed Homoeopathic Medical College),
Through its Authorised Representative
Ratnapur, Tq. Jamkhed,
Dist. Ahmednagar, Maharashtra

.. Petitioner

Versus

- 1] Union of India, Ministry of Ayush,
Through its Secretary,
GPO Complex, Ayush Bhawan,
B Block, Ina, New Delhi,
Delhi 110 023
- 2] National Commission for Homeopathy
Through its Secretary
61-65, Institutional Area, Opp. 'D' Block,
Janakpuri, New Delhi – 100 058.
- 3] Medical Assessment and Rating Board for
Homeopathy, National Commission for
Homeopathy, Through its President,
61-65, Institutional Area, Opp. 'D' Block
Janakpuri, New Delhi – 110 058
- 4] State Common Entrance Test Cell,
Government of Maharashtra
Through Commission,
8th Floor, New Excelsior Building,
A.K. Nayak Marg, Fort Near CSMT,
Mumbai – 400 001.
- 5] Admissions Regulating Authority
Government of Maharashtra,
Through its Secretary,
9th Floor New Excelsior Building,
A.K. Nayak Marg, Fort, Mumbai – 400 001
Maharashtra, India
- 6] Maharashtra University of Health Sciences,
Through its Registrar,
Mhasrul, Vani Dindori Road,
Nashik – 422 004

.. Respondents

...
Advocate for petitioner : Mr. Animesh Kumar i/b. Mr. D.S. Bagul
DSGI for the respondents no. 1 to 3 : Mr. A.G. Talhar
Advocate for respondents no. 4 and 5 : Mr. Sachin Kuptekar
Advocate for respondent no. 6 : Mr. Anandsingh S. Bayas
...

**CORAM : MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE : 6 NOVEMBER 2023

ORDER (MANGESH S. PATIL, J.) :

Heard learned advocate Mr. Animesh Kumar i/b. Mr. D.S. Bagul, Advocate for the petitioner, Mr. Talhar, learned DSGI for the respondents no. 1 to 3, Mr. Kuptekar for respondents no. 4 and 5 and Mr. Bayas for respondent no. 6.

2. The petitioner is an unaided private Homeopathy college, invoking the powers of this Court under Article 226 of the Constitution of India and has been seeking a writ of *certiorari*, aggrieved by the decision of the respondent no. 3 which is a Medical Assessment and Rating board constituted under the Homeopathy Central Council Act, 1973 and the Homeopathy Central Council (Minimum Standards requirement of Homeopathy Colleges and attached Hospitals) Regulation, 2013 amended in the year 2019, whereby the respondent no. 3 has refused to accord permission to undertake the first year BHMS course with 100 intake capacity for the Academic Session 2023-24. It is also challenging the order passed by the respondent no. 2 dismissing its first appeal preferred under section 24(3) of the

National Commission for Homeopathy Act, 2020 (hereinafter the NCH Act) dated 13-10-2023.

3. The learned advocate for the petitioner vehemently submits that the petitioner's College is being run after obtaining necessary permissions under the Act of 1973 and Regulation of 1983 with previous sanction of the Central government since last many years. However, during the current academic year when the matter was in the process, the permission has been refused by the respondent no. 3. The petitioner preferred a statutory appeal and pointed out as to how there was no substance in the objections raised by the respondent no. 3 further pointing out as to how the compliance wherever those were necessary, were made. Still, without affording any opportunity of being heard, the first appeal was dismissed. It is a case of failure of the respondent no. 2 to follow the principles of natural justice which alone is sufficient to request this Court for invoking its powers under Article 226 of the Constitution of India.

4. The learned advocate submits that pursuant to the notification issued by the respondent no. 2 inviting the applications from the Homeopathy Medical Colleges seeking permission for academic year 2023-24, necessary fees of Rs. 1 Lakh was also deposited. Undertaking, affidavit as well as indemnity bonds were submitted. Admissions from all India rounds of counseling was to start

from 01-09-2023 and the State round was to start from 08-09-2023 and the last date for admission is 20-11-2023. Petitioner's institution was inspected on 19-07-2023 and 20-07-2023 by Inspectors and without having any reason, the respondent no. 3 arbitrarily denied permission. Petitioner preferred appeal under section 24(3) and attempted to categorically explain as to how the deficiencies were incorrectly pointed out, however, without extending opportunity of being heard and without considering the compliances made to cure the deficiencies, the first appeal has been dismissed in arbitrary manner and the order is liable to be quashed and set aside.

5. Learned advocate for the petitioner would further submit that aggrieved by the decision in the first appeal, the petitioner has preferred a second appeal under section 29(6) on 16-10-2023. However, the second appeal is not being decided expeditiously and the petitioner is being wrongfully deprived of participation in the ongoing admission process.

6. In response to the query regarding the maintainability of the writ petition in the light of the availability of statutory remedy in the form of second appeal under section 29(6), the learned advocate would refer to the decision in the case of ***Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd. and others; AIR 2003 SC 2120***, particularly the following observations :-

“7. ... In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged.”

7. The learned advocate would, therefore, submit that the writ petition be allowed and the impugned order passed by the respondent no. 3 - board on 01-09-2023 and the one passed by the respondent no. 2 in first appeal on 13-10-2023, be quashed and set aside.

8. The learned advocate also sought to rely upon the decisions in the matter of ***Dr. Jagat Narain Subharti Charitable Trust and another Vs. Union of India and others; (2017) 16 SCC 666, Kanachur Islamic Education Trust (R) Vs. Union of India and another; (2017) 15 SCC 702*** and ***Shri Gangajali Education Society and another Vs. Union of India and others; (2017) 6 SCC 656***. The learned advocate also endeavoured to demonstrate as to how, in respect of each shortcomings or deficiency, there was compliance and submits that either the deficiencies have been removed or a satisfactory explanation has been extended and also points out as to how some of the objections were not sustainable being contrary to the regulation of 2013.

9. The learned DSGI, as expected, raised a preliminary objection regarding maintainability of the petition in the light of filing of the statutory second appeal under section 29(6) of that Act. He would submit that when the statute provides for a second appeal and it has been already filed even before filing this petition, this Court may not exercise the discretion and may not entertain the petition under Article 226. He would also place reliance upon i) ***Commissioner of Income Tax and others; Vs. Chhabil Dass Agarwal; 2014(1) SCC 603 and ii) Indian Institute of Technology Kharagpur and others Vs. Soutrik Sarangi and others; 2021 (11) Scale 638.***

10. The learned DSGI, on instructions, also submits that the petitioner's second appeal would be decided as expeditiously as possible and in any case within two weeks.

11. At the outset, it is necessary to note that the petitioner's conduct in simultaneously preferring the statutory second appeal and still approaching this Court under Article 226 of the Constitution itself is deplorable. Though in an appropriate case, the High Court can exercise the powers under Article 226 of the Constitution of India overlooking the availability of alternate remedy as has been observed, in peculiar circumstances, laid down in the matter of ***Harbanslal Sahnia*** (supra), the petitioner in spite of having already resorted to and having filed the second appeal has preferred this writ petition.

Admittedly, the second appeal was preferred on 16-10-2023 whereas petition has been filed on 23-10-2023 without disclosing in the petition as to why it could not persuade the respondent no. 1 to whom the second appeal has been preferred and seek its decision at the earliest. Even if it is assumed for the sake of arguments that the petitioner was not extended an opportunity of being heard by the respondent no.2 which dismissed its first appeal, one wonders why the second appellate authority – respondent no. 1 cannot consider this aspect. Independently, having preferred the second appeal which is a statutory remedy under the Act of 2020, pendency of this second appeal itself is sufficient, in our considered view, to refuse to exercise the powers under Article 226 of the Constitution.

12. Besides, as can be appreciated, it is a matter of grant of permission to participate in the admission process in respect of BHMS course. The very fact that as many as 38 deficiencies were pointed out in respect of teaching faculty, the functionality of the hospital, indoor patient department, other departments and in respect of other issues, in our considered view, it would be a matter of objectively scrutinizing sustainability of the shortcomings pointed out by the respondent no. 3. Pertinently, the respondent no. 2 in appeal has accepted the stand of the petitioner in respect of few of these objections and has either found it to be not sustainable or has found to have been complied with. The fact remains that there are several other deficiencies which would fall in

the category of factual disputes. In exercise of the powers under Article 226 of the Constitution, this Court at this stage cannot be expected to undertake the scrutiny of the objections raised by the authorities for refusing to accord permission and the reasons assigned by the first appellate authority. It would be a long drawn process requiring this Court to examine every aspect which cannot happen in exercise of the powers under Article 226 of the Constitution of India.

13. Again, since it is a matter touching the aspect of grant of permission to admit students for BHMS course, the respondent no. 3 board having the experts would be able to undertake objective scrutiny of every such proposal. We would not be in a position to assess the proposals by examining all the requisite aspects.

14. Anticipating this, the learned advocate for the petitioner seeks heavy reliance on the decisions of the Supreme Court in the matter of ***Dr. Jagat Narain Subharti Charitable Trust*** (supra) and ***Kanachur Islamic Education Trust*** (supra). In our considered view, the following observations of the Supreme Court in the matter of ***Dr. Jagat Narain Subharti Charitable Trust*** (supra) are sufficient enough to spell out the circumstances in which the Supreme Court had gone into and considered even the factual issues in respect of revocation of permission under the Indian Medical Council Act, 1956 read with Medical College Regulations, 1999, after referring to and narrating the previous orders, it observed :

“7. The principal grievance of the petitioners is that the Hearing Committee had once again committed manifest error in submitting negative recommendations against the petitioners and that the Ministry mechanically acted upon those recommendations without considering the relevant material placed on record by the petitioners with regard to the deficiencies noted in paragraph 17 of the impugned decision. It is contended by the petitioners that even on a liberal reading of paragraph 17, the deficiencies which had weighed with the competent authority in passing adverse order against the petitioners were in respect of faculty, residents, OPD and Bed Occupancy, which were already considered on the earlier occasion and the explanation given by the petitioners had found favour with the OC. In the impugned communication, there is no opinion much less any positive finding given by the Hearing Committee or the competent authority that the explanation offered by the petitioners for the deficiencies noticed during the inspection on 26/27.10.2016 was not plausible as it was done just prior to Diwali. It is submitted that the central issue held out against the petitioners was about not fulfilling the qualifying criteria regarding ownership of 20 acres of land. On this matter, however, the Hearing Committee was prima facie convinced but left it to the wisdom of the Ministry to decide appropriately. The Ministry, in turn, has not expressed any positive opinion in that behalf, even though the petitioners had produced official records which clearly indicated that the litigation before the Revenue Authority has concluded in favour of the petitioners and that the petitioners have been declared as owners of 20 acres of land. This aspect has been completely glossed over by the competent authority of the Government of India, for which reason the conclusion reached by the said authority suffers from non-application of mind and non-consideration of the relevant material placed before it. It is submitted that the other concern expressed by the Hearing Committee was about non-submission of information in Form-5 regarding land ownership. Even this concern of the Hearing Committee and the competent authority, contend the petitioners, is misplaced considering the fact that the requirement to submit information in Form-5 came into force w.e.f. 16.10.2015 consequent to the amendment notification issued by the MCI in that behalf. Whereas, the petitioners had submitted application for grant of permission to establish the medical college initially in 2013, then on 30.08.2014 and again on 31.08.2015. The application filed on 31.08.2015 was the basis for grant of conditional letter of permission, to start the medical course for the academic session 2016-17. The Hearing Committee as well as the competent authority has merely observed that the stand taken by the petitioners in this behalf was incorrect, without explaining anything further. It is, therefore, submitted that the impugned communication dated 14.08.2017 issued by the Ministry is illegal and deserves to be quashed and directions be issued to the respondents to allow the petitioners to admit students in the MBBS course for the academic session 2017-

18. *The petitioners also undertake to remove any other deficiency that may be brought to its notice in the future with promptitude.*

8. *The respondents, on the other hand, have justified their action on the basis of the material considered by the Hearing Committee and the competent authority of the Central Government. It is submitted that the qualifying criteria regarding ownership of 20 acres of land is inviolable. The petitioners having failed to fulfill the same, no fault can be found with the respondents for having issued the impugned communication dated 14.08.2017. According to them, it is a well considered decision. It is submitted that considering the nature of deficiencies noticed by the assessors during inspection and the explanation offered by the petitioners being insufficient, the proper course was to revoke the letter of permission as it was granted to the petitioners conditionally. It is submitted that the fact that the petitioners had filed an application before October 2015 would not extricate the petitioners from furnishing information as required in Form-5. In substance, the submission of the respondents is that the entire matter has been reconsidered by the Hearing Committee as also the competent authority and the reasons recorded by the competent authority are germane for revoking the letter of permission and debarring the college for two academic sessions and for encashing the Bank Guarantee of Rs.2 crores furnished by the petitioners.”*

15. In the backdrop of such state-of-affairs, the Supreme Court proceeded to consider the rival submissions and recorded observations in respect of the deficiencies which had weighed with the authorities in revoking the permission.

16. Similarly, in the matter of **Kanachur Islamic Education Trust** (supra), the circumstances were peculiar for which the Supreme Court entered into the factual arena. It was also a matter of permission under the Medical Council Act, 1956 and the Regulations thereunder, again, as was the case in the matter of **Dr. Jagat Narain Subharti Charitable Trust** (supra). Pursuant to the directions of the Supreme Court in earlier round, the Central Government had undertaken a

scrutiny and still had debarred the petitioner's college from admitting the students and had directed the Medical Council of India to encash the bank guarantee of Rs. 2 Crores.

17. It is, therefore, apparent that when the doors were closed for the institution, that the Supreme Court was approached as a last resort and it had gone into and considered factual disputes as well. The petitioners therein was held entitled to LOP.

18. Similar was the state-of-affairs even in the matter of ***Shri Gangajali Education Society and another*** (supra) , there were peculiar circumstances as discussed in the order for the Supreme Court to undertake a scrutiny and the plenary powers under Article 142 of the Constitution of India were invoked to do complete justice and in the larger public interest.

19. In the matter in hand, admittedly, the statutory second appeal preferred by the petitioner is pending with the respondent no. 1. All the aspects including the factual ones can be considered in that second appeal and even the learned DSGI, on instructions, submits that the second appeal would be decided within two weeks.

20. In the light of the above, in our considered view, the petition is liable to be dismissed. The respondent no. 1 shall decide the

second appeal as expeditiously as possible and in any case within two weeks.

21. The writ petition is dismissed.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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