

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 WRIT PETITION NO.14429 OF 2023

- 1) Late Haribai Warpudkar Gramin Mahila
Sevabhavi Sanstha, Nakshatra, Vishnunagar,
Vasmat Road, Parbhani, Tq. & Dist. Parbhani
Through its President,
Shri. Samsher s/o Sureshrao Warpudkar,
Age 42 years, Occ. Business,
R/o. Nakshatra, Vishnunagar,
Vasmat Road, Parbhani, Tq. & Dist. Parbhani.
- 2) Prerna Homeopathy Institute and Hospital
Gat No. 104, Opp. Water Filter Plant,
Basmat Road, Parbhani Tq. & Dist. Parbhani
Through its Principal
Dr. Shrigopal s/o Kishanlal Darak,
Age 50 years, Occ. Service,
R/o. Gat No. 104, Opp. Water Filter Plant,
Basmat Road, Parbhani Tq. & Dist. Parbhani

... **Petitioners**

VERSUS

- 1) The Union of India,
Through the Secretary to Government of India
Ministry of Ayurveda, Yoga and Naturopathy
Unani, Siddha and Homeopathy "AYUSH Bhavan"
'B' Block, GPO Complex, INA, New Delhi.
- 2) The Medical Assessment and Rating Board for
National Commission for Homeopathy, 61-65
Institutional Area, Opp. 'D' Block, Janakpuri
Delhi- 110023
Through its Chairperson/Secretary.
- 3) The Medical Assessment and Rating Board for
National Commission for Homeopathy, 61-65
Institutional Area, Opp. 'D' Block, Janakpuri
Delhi- 110058
Through its President.
- 4) The State of Maharashtra,
Through its Principal Secretary,

Public Health and Family Welfare
Government of Maharashtra, 10th floor,
B-Wing, GT Hospital Complex Building,
Mumbai-400001.

... Respondents

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Advocate for Petitioners : Mr. Y.B. Bolkar h/f Mr.Deshmukh Mahesh S.

AGP for Respondent No. 4 : Mr. K.N. Lokhande

Advocate for Respondent Nos. 1 to 3 : Mr. A.G. Talhar, DSGI

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

DATE : **07.12.2023**

PER COURT :

Heard both the sides and perused the record.

2. The petitioners are intending to start a new homeopathy medical college under the provisions of the National Commission for Homeopathy Act, 2020 (hereinafter 'the Act') and the regulations framed thereunder. The board has refused permission. The first appeal under Section 29(5) has been dismissed as also the second appeal preferred under Section 29(6) of the Act.

3. The learned advocate for the petitioners submits that though regular inspection was conducted in the month of April 2023, independently a surprise inspection was undertaken at the first appellate stage. In spite of its request, a copy of that report was not provided and the first appeal as also the second appeal was decided in a lopsided manner without extending the opportunity to rectify the shortcomings as is provided by the proviso to sub Section 3 of Section 29. Since it is not an adversarial matter, irrespective of the sustainability of the orders, the petitioners may be extended a fair opportunity to remove the shortcomings and a fresh decision can be taken on its own merits by the first appellate authority.

4. The learned DSGI Mr. Talhar, on instructions, submits that no fault can be found in the decisions taken in the first appeal as also in the second appeal. The issue regarding failure to observe principles of natural justice and absence of service of the report of the surprise inspection were never agitated before the appellate fora. For the first time this stand is being taken by the petitioner.

5. Having heard both the sides and having perused the record it is quite apparent that there is a scheme provided under the Act for decision by the board as also mechanism for redressal of the grievances as indicated in the preface to the Act. These are not the matters to be looked upon as adversarial litigation. The petitioners intend to start a homeopathy medical college. If at all there are certain shortcomings, as laid down by the proviso to sub Section 3 of Section 29, an opportunity deserves to be extended to fulfill the shortcomings. Again, even if there is no specific provision contained in the Act, since it is a matter of statutory appeals, any decision in the appeal should invariably be preceded by principles of natural justice which include opportunity of being heard. The orders passed by the authorities do not indicate about any opportunity of being heard having been extended.

6. This apart, there is no demur about the fact that the report of the surprise inspection was also not made available to the petitioners.

7. It is further necessary to note that the first appeal was decided in the month of June 2023 and obviously it has referred to the regulation of 2013 and 2019 which were then prevalent. However, admittedly, the regulations of 2013 have been superseded by the regulations framed under Section 55 in September 2023, whereas the second appeal was decided on 08.11.2023. The order does not seem to have been passed bearing in mind and with reference to the regulations of 2023 which by then had come into effect.

8. Taking into account the aforementioned facts and circumstances, in our considered view, it would be appropriate that the matter is relegated back to the stage of first appeal so that the direction can be issued to make available a copy of the surprise inspection report to the petitioners and to extend opportunity to it to rectify the shortcomings and also of being heard, before any decision is taken.

9. We allow the writ petition partly. The order in the first appeal and the second appeal are quashed and set aside. The matter is remitted back to the stage of first appeal. The commission in the first appeal shall provide a copy of the surprise inspection report to the petitioner. It shall also extend an opportunity to the petitioners to fulfill the shortcomings. It may have another inspection if it thinks fit and then shall pass appropriate order after hearing the petitioners, on its own merits.

10. The first appellate authority shall decide the first appeal as expeditiously as possible.

11. The petitioners shall appear before the first appellate authority/Commission on 11.12.2023.

12. Parties to act on the authenticated copy of this order.

(NEERAJ P. DHOTE, J.)

(MANGESH S. PATIL, J.)

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