



W.P. No.21959/2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

| Reserved on | Pronounced on |
|-------------|---------------|
| 03.04.2023  | 17.04.2023    |

**CORAM**

**THE HONOURABLE MR. JUSTICE M.DHANDAPANI**

**W.P. NO.21959 OF 2018  
AND  
W.M.P. NO.25749 OF 2018**

Lord Balaji Educational &  
Charitable Trust, rep. by its  
Chairman, Dr. S.Rajamanickam  
Shri Shellapha Hospital Campus  
231, Rajaram Nagar  
Near Gandhi Statium, Salem 636 007.

.. Petitioner

**- Vs -**

1. The Government of India  
Rep. by its Under Secretary to the  
Government of India  
Ministry of Ayurveda, Yoga and Naturopathy  
Unani, Siddha & Homoeopathy (AYUSH)  
Ayush Bhawan, 'B' Block, GPO Complex  
INA, New Delhi 110 023.

2. The Central Council of Homoeopathy (CCH)  
Rep. by its Secretary  
Jawaharlal Nehur Bhartiya Chikitsa Avum  
Homoeopathy Anusandhan Bhawan



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No.61-65, Institutional Area  
Opp to 'D' Block, Janakpuri  
New Delhi 110 058.

3. The Commissioner  
Directorate of Indian Medicines  
& Homoeopathy, Arumbakkam  
Chennai 600 106.

4. Tamil Nadu Dr. M.G.R., Medical University  
Rep. by its Registrar  
69. Anna Salai, Guindy  
Chennai 600 032.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order in F. No.R.17014/164/2013-2018-EP(H) dated 3.8.2018 passed by the 1<sup>st</sup> respondent insofar as reducing the seats as 50 for the petitioner college for admission to BHMS degree course for the academic session 2018-2019 quash the same and direct the 1<sup>st</sup> respondent to issue a corrigendum mentioning the number of seats as 100 seats instead of 50 seats for admission to BHMS degree course for the academic session 2018-2019 to the petitioner college.

For Petitioner : Mr. G.Masilamnni, SC, for  
Mr. A.Thirumurthy



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For Respondents : Mr. P.G.Santhosh Kumr, SPC for R-1  
Mr. R.Rajesh Vivekananthan,  
Dy. Solicitor General for RR-2 & 3  
Mr. Elayarajakumar for  
M/s.Ramalingam Associates for R-4

### **ORDER**

The present petition has been filed assailing the order passed by the 1<sup>st</sup> respondent in and by which the 1<sup>st</sup> respondent had reduced the intake capacity of the petitioner college from 100 seats to 50 seats for the academic year 2018-2019 and for a consequential direction to restore the intake capacity at 100 seats.

2. It is the case of the petitioner that the College and Research Centre was established in the year 2000 with recognition from Central Council of Homeopathy (for short 'CCH') and approval of Tamil Nadu Homeopathy Medical Council for the conduct of BHMS course with an intake of 50 students with affiliation to the 4<sup>th</sup> respondent University. It is the further averment of the petitioner that prior to the Homeopathy Central Council Amendment Act, 2002 w.e.f. 28.1.2003, CCH being the competent authority, accorded



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permission vide order dated 30.09.2002 for increase in seats from 50 to 100 from the academic year 2002-2003.

3. It is the further case of the petitioner that upon coming into force of the HCC Amendment Act, 2002, the Central Government was given permission for starting new Homeopathy Medical College and also for increasing the seats in the existing medical colleges. It is the further case of the petitioner that the permission already granted by CCH prior to the amendment for increase in intake was permitted to continue through communication of Department of Health & Family Affairs of AYUSH dated 27.12.2004, which was in turn reiterated to the respondent University vide communication dated 12.07.2005.

4. It is the further case of the petitioner that HCC Amendment Act, 2002 was only prospective, which is evident from the various orders passed by this Court. It is the further case of the petitioner that the petitioner college had been granted provisional affiliation from the academic year 2000-2011 to 2011-2012 and has been functioning regularly by admitting students.



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5. It is the further case of the petitioner that vide application dated 28.08.2012, the petitioner applied to the 4<sup>th</sup> respondent to permit the college to admit students upto 100 based on the permission granted by the 2<sup>nd</sup> respondent. Further to the inspection carried out by the 4<sup>th</sup> respondent University, vide communication dated 28.9.2012, permission was accorded for intake of 100 students with effect from the academic year 2012-2013.

6. It is the further case of the petitioner that vide the communication of the 4<sup>th</sup> respondent to the Selection Committee, Indian Medicine and Homeopathy, seat matrix for the 100 seats through Government counseling was fixed at 65 : 35 in which out of 65 seats of the Government, only 12 seats were filled, while out of the 35 seats of the management, 34 candidates were admitted before 30.09.2012, the last day for admission.

7. It is the further stand of the petitioner that without any prior notice to the petitioner, in the Governing Council Meeting of the 4<sup>th</sup> respondent on 9.10.2012, the increase in intake of the petitioner college was brought down



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to 75 from 100 for the academic year 2012-2013 and further communication dated 17.11.2012 was sent by the 4<sup>th</sup> respondent to the petitioner to discharge the students already admitted over and above the sanctioned strength of 75 for the year 2012-2013, which in turn resulted in the bringing down of the management seats as the ratio between the Government seats and Management seats was fixed in the ratio of 65 : 35, which would work out to 49 seats towards Government and 26 seats towards the Management. In such a backdrop, while there would be no disturbance insofar as Government seats is concerned, however, insofar as Management seats, as against the admission made at 34 seats, only 26 seats could be retained resultantly 8 candidates, who have been admitted have to be discharged.

8. It is the further case of the petitioner that the 4<sup>th</sup> respondent vide order dated 14.2.2013, on the basis of the communication of AYUSH under the Ministry of Health and Family Welfare dated 14.12.2012, reduced the sanctioned strength to 50 for the year 2012-2013, which would result in further fall of the Management seats to 17, thereby requiring discharge of 17 students already admitted. The said order was challenged by filing W.P.



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No.12662/2013, wherein this Court, vide order dated 23.7.2013, allowed the writ petition by directing the University to restore the original intake of 100 students with effect from the academic year 2002-2003, by rendering a finding that the HCC Amendment Act will only have prospective and not have retrospective application.

9. It is the further case of the petitioner that upon inspection by the CCH for the academic year 2016-2017, recommendation was made for admission of 100 students for the said academic year pursuant to which Ministry of AYUSH called upon the petitioner to attend an enquiry, in which the petitioner participated and submitted all the requisite materials. However, due to certain erroneous calculation in the IP bed ratio *qua* the seats allotted, permission for intake of 100 students was denied, which resulted in the petitioner filing W.P. No.38505/2016. This Court, after hearing the parties, on coming to a finding that on the basis of the IP bed occupancy, the petitioner was entitled to admit more than 100 students for the academic year 2016-2017, permitted the petitioner to admit 50 students for the academic year 2016-2017 subject to the result of the writ petition.



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10. It is the further case of the petitioner that the 4<sup>th</sup> respondent, without any rhyme or reason, vide order dated 23.5.2017, directed inspection of the petitioner for the academic year 2017-2018 for grant of continuance of provisional affiliation for 50 seats for the academic year 2017-2018 BHMS degree course though the sanctioned intake of the petitioner college was fixed at 100 seats long back by the CCH as also confirmed by the orders passed by this Court. Challenging the aforesaid act of the 4<sup>th</sup> respondent, the petitioner preferred W.P. No.15460 of 2017 in which this Court, vide order dated 27.6.2017, directed the 4<sup>th</sup> respondent to rectify the impugned order to show the sanctioned strength of intake at 100 instead of 50.

11. In spite of the directions of this Court in W.P. No.12662/2013 in which orders have been passed by this Court to continue the seat intake at 100 seats, against which writ appeal was filed with delay, which is pending, however, the petitioner college is harassed by the respondents repeatedly. It is the further case of the petitioner that the 2<sup>nd</sup> respondent made surprise inspection on 20.7.2017 on behalf of the 1<sup>st</sup> respondent with regard to intake



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of 100 seats for BHMS degree course and the report drawn in this regard did not point to any insufficiencies.

12. It is the further averment of the petitioner that in the prospectus for admission to BHMS course for the session 2017-2018 issued on 1.8.2017, the 3<sup>rd</sup> respondent had shown the seat matrix of the petitioner at 50 seats instead of 100 seats, which prompted the petitioner to move W.P. No.22069/17, which is pending adjudication. The 1<sup>st</sup> respondent passed order dated 31.08.2017 reducing the seats of the petitioner to 50 from 100 without any reason, which was challenged by the petitioner by filing W.P. No.24302/2017. This Court, vide order dated 12.10.2017, tagging the writ petitions in W.P. Nos.22069 and 24302 of 2017, passed orders quashing the impugned communication in and by which the intake was reduced to 50 seats and directed the 1<sup>st</sup> respondent to issue corrigendum mentioning the seats as 100 instead of 50 for admission to BHMS degree course for the academic year 2017-2018. Though the said order in the aforesaid writ petitions have been challenged in the writ appeals, albeit with delay, in which notice has been ordered, however, no orders have been passed in the writ appeal and the



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same is pending till date and there is no interim order in favour of the respondents.

13. It is the further averment of the petitioner that CCH inspected the petitioner college on 27.6.2018 for the academic year 2018-2019 and, thereafter, the 1<sup>st</sup> respondent passed the impugned order reducing the intake capacity for the petitioner for the academic year 2018-2019 to 50 seats, without any plausible reason. It is the further averment of the petitioner that though no deficiency has been pointed in the report of the CCH pertaining to its inspection in respect of the academic session 2018-2019, the 1<sup>st</sup> respondent has passed the order reducing the intake from 100 to 50 when all along, the petitioner has been permitted an intake of 100 seats, which have also found favour with this Court passing orders whenever the respondents reduced the intake of the petitioner. It is the further averment of the petitioner that the petitioner has been permitted to admit 100 students since 2002-2003 within a period of two years from its establishment in the year 2000. Such being the case, the order of the 1<sup>st</sup> respondent reducing the intake from 100 to 50 without any reason whatsoever is not only unjust, but illegal,



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arbitrary and perverse. Therefore, challenging the same the present petition has been filed.

14. Learned senior counsel appearing for the petitioner, while meticulously took this Court through the various orders in and by which the petitioner has been granted intake capacity of 100 seats right from the year 2002-2003, within a period of two years from the inception of the college, further submitted that since 2013 the 1<sup>st</sup> respondent has been reducing the intake to the petitioner college inspite of the fact that the inspection carried out by CCH did not point out any deficiency. In fact, CCH had recommended the intake to be maintained at 100, but without any proper reason, the 1<sup>st</sup> respondent sought to reduce the intake every academic year right from 2013, which necessitated the petitioner to come before this Court by filing multiple writ petitions.

15. It is the further submission of the learned senior counsel that every time the petitioner knocked on the doors of this Court, this Court, appreciating the *bona fide* nature of the claim of the petitioner, has come to



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its aid and directed increase in intake to 100, which clearly shows that the petitioner is running the college by adhering to all the provision and with all the requisite infrastructural facilities. That being the case, the present order of the 1<sup>st</sup> respondent decreasing the intake from 100 to 50 without providing any reason, is wholly arbitrary and perverse and the same cannot be sustained.

16. It is the further submission of the learned senior counsel that barring the year 2018-2019, not only for the previous years, but for the succeeding years, viz., 2019-2020 and 2020-2021, the petitioner had been permitted an intake of 100 seats, which clearly shows that the petitioner has been running the college without any deficiency and that the inspection conducted every year had been in favour of the petitioner. That being the case, the act of the 1<sup>st</sup> respondent in reducing the intake of the petitioner college for the year 2018-2019 is only on account of vindictiveness and not on the basis of any material, which necessitates reduction in intake. Accordingly, pointing out the above fallacies in the order of the 1<sup>st</sup> respondent,



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the learned senior counsel prayed for an affirmative direction to the 1<sup>st</sup> respondent to permit the intake at 100 seats.

17. Per contra, learned panel counsel appearing for the 1<sup>st</sup> respondent submitted that in the year 2003, only conditional permission was granted for the additional intake by increase from 50 to 100 seats for the academic session 2002-2003. However, on and from the coming into force of the HCC Amendment Act, 2002, though the 4<sup>th</sup> respondent had permitted increase of intake from 50 to 100 seats for the academic session 2012-2013, however, the Governing Council of the University rectified the action by permitting intake only to the extent of 75 seats from 50 seats on the ground that the institutions conducting AYUSH courses can be granted increase of seats from 50 to 100 only if the college had filled the entire sanctioned strength for three previous academic years. However, the petitioner, having not fulfilled the criteria, was rightly granted only intake of 75 seats.

18. It is the further submission of the learned panel counsel that the mandate of Section 12-C has not been complied with by the petitioner as the



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said provision mandates that any Homeopathy Medical College, which increased the admission capacity on or before the date of commencement of the Homeopathy Central Council (Amendment) Ordinance, 2018 shall seek within a period of one year from the said commencement permission of the Central Government. In the case on hand, the petitioner having not obtained the requisite permission within the prescribed period mandated u/s 12-C, the 1<sup>st</sup> respondent has rightly passed the impugned order, which cannot be found fault with.

19. It is the further submission of the learned panel counsel that the petitioner having fulfilled the conditions for getting permission with respect of intake capacity of 100 seats, the 1<sup>st</sup> respondent has granted permission for intake of 100 seats for the academic year 2019-2020 and 2020-2021, which clearly shows that the impugned order dated 3.8.2018 had been passed for the reason that the petitioner has not complied with the mandate u/s 12-C and the order being a reasoned order, no interference is warranted.





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22. It is equally not in dispute that for the year 2019-2020 and 2020-2021, the petitioner college had been permitted intake capacity at 100 seats. The reason cited by the 1<sup>st</sup> respondent for permitting intake at 100 seats for the academic years 2019-2020 and 2020-2021 is that the petitioner had complied with Section 12-C (1) of HCC Amendment Act by obtaining requisite permission from the Central Government.

23. In such a backdrop, barring the year 2018-2019, the petitioner had been granted with permission for an intake of 100 seats by the 1<sup>st</sup> respondent and the only reason, which is put forth by the 1<sup>st</sup> respondent for negating the intake of 100 seats for the academic year 2018-2019 is that the petitioner has not complied with Section 12-C (1).

24. In this backdrop, a perusal of Section 12-C (1) reveals that any Homeopathy Medical College established or has opened a new or higher course of study or training or increased the admission capacity on or before the date of commencement of the Homeopathy Central Council (Amendment) Ordinance, 2018, such person or Homeopathy Medical College, as the case



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may be, shall seek, within a period of one year from the said commencement, permission of the Central Government, in accordance with the provisions specified in the regulations made by the Central Council.

25. Therefore, the requisite criteria is that from the commencement of the aforesaid Ordinance, within one year, the College has to seek permission of the Central Government. In this backdrop, a perusal of the records reveal that the Ordinance came into effect from 18.5.2018 and, therefore, the Homeopathy Colleges, who seek increase in admission capacity, ought to obtain the permission of the Central Government within one year, i.e., on or before 17.5.2019. It is not in dispute that the petitioner had been granted permission for intake capacity of 100 seats for the academic year 2019-2020 and 2020-2021, which clearly shows that prior to 17.5.2019, the petitioner had obtained the requisite permission of the Central Government for increase in intake. However, curiously, the petitioner has not been granted permission for the intake for the academic session 2018-2019 citing the reason that no permission of the Central Government has been obtained.



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26. This Court is at a loss to understand as to how the 1<sup>st</sup> respondent could cite the reason as the reason for rejecting the claim of the petitioner for intake capacity to be maintained at 100 for the academic session 2018-2019. When the Act itself grants a period of one year from 18.5.2018 to the college to seek approval of the Central Government, on and before 17.5.2019, the petitioner college, if obtains the permission, would satisfy the requirement provided u/s 12-C (1). As aforesaid, for the academic session 2019-2020, the petitioner has been granted permission for intake capacity of 100 seats. That being the case, it stands to reason that for the academic session, the petitioner had obtained permission of the Central Government before the period of one year, i.e., before 17.5.2019, which clearly shows that the said permission would enure in favour of the petitioner even for the previous academic session, viz., 2018-2019, as the petitioner had a cushion of one year to obtain the said approval, which the petitioner has duly obtained. Therefore, the impugned order passed by the 1<sup>st</sup> respondent clearly reflects non-application of mind to the materials available before it.



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27. Even otherwise, it is to be pointed out that prudence and natural justice warrants the 1<sup>st</sup> respondent to take a pragmatic approach while granting permission for intake capacity. When the 1<sup>st</sup> respondent had, all along, since 2002-2003 till 2017-2018 granted permission to the petitioner for an intake capacity of 100 seats and also permitted the petitioner intake capacity of 100 seats for the academic sessions 2019-2020 and 2020-2021, this Court is at a loss to understand the act of the 1<sup>st</sup> respondent in not maintaining the intake capacity of the petitioner college at 100. Further, it is to be pointed out that this Court, in a series of orders, on merits, had held in favour of the petitioner and had given affirmative direction to permit the petitioner an intake of 100 seats, which had been duly complied with and even in respect of the orders which have been appealed against, no interim orders have been granted, the act of the 1<sup>st</sup> respondent in reducing the intake of the petitioner from 100 to 50 for the solitary year 2018-2019 is wholly arbitrary, perverse and illegal, more so when the said impugned order is wholly fallacious and reflects non-application of mind on the part of the authority. Necessarily, this Court has to quash the said impugned order for the reasons aforesaid with an affirmative direction in favour of the petitioner.



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28. For the reasons aforesaid, this writ petition is allowed and the impugned order passed by the 1<sup>st</sup> respondent is set aside. There shall be a further direction to the 1<sup>st</sup> respondent to permit the petitioner to maintain the intake capacity at 100 seats for the academic year 2018-2019 and necessary corrigendum in this regard shall be issued by the 1<sup>st</sup> respondent. The interim order passed by this Court in W.M.P. No.25749 of 2018 is made absolute. There shall be no order as to costs.

**17.04.2023**

Index : Yes / No

GLN



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To

1. The Under Secretary to Government  
Government of India  
Ministry of Ayurveda, Yoga and Naturopathy  
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**M.DHANDAPANI, J.**

**GLN**

**PRE-DELIVERY ORDER IN  
W.P. NO. 21959 OF 2018**

**Pronounced on  
17.04.2023**