

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

+ **W.P.(C) 1580/2023 and CM APPL. 5970/2023**

Date of Decision: 17.02.2023

IN THE MATTER OF:

**G.D. MEMORIAL HOMOEOPATHIC
MEDICAL COLLEGE & HOSPITAL**

THROUGH ITS PRINCIPAL SHRI VISHWAMITRA OJHA
AT EAST RAM KRISHNA NAGAR,
PATNA, BIHAR-800027

..... PETITIONER

Through: Mr. Kundan Kumar Mishra & Mr.
Shashwat, Advocates

Versus

1. UNION OF INDIA

THROUGH MINISTRY OF AYURVEDA, YOGA,
NATUROPATHY, UNANI, SIDDHA AND HOMOEOPATHY
(AYUSH) B BLOCK, GPO COMPLEX,
I.N.A. NEW DELHI- 110023

2. NATIONAL COMMISSION FOR HOMOEOPATHY

THROUGH ITS SECRETARY
JAWAHAR LAL NEHRU BHARTIYA CHIKITSA AVUM
HOMOEOPATHY ANUSANDHAN BHAWAN
NO. 6 I -65, INSTITUTIONAL AREA
OPPOSITE 'D' BLOCK NEW DELHI-110058

**3. MEDICAL ASSESSMENT AND RATING BOARD FOR
HOMOEOPATHY (MA& RBH),**

THROUGH ITS PRESIDENT, AUTONOMOUS BODY UNDER
NATIONAL COMMISSION FOR HOMEOPATHY 61-65,
INSTITUTIONAL AREA OPP. D' " BLOCK, JANAKPURI,
NEW DELHI - 110058

4. THE CHAIRPERSON

NATIONAL COMMISSION FOR HOMEOPATHY 61-65,



INSTITUTIONAL AREA
OPP. D"" BLOCK, JANAKPURI

5. DIRECTOR,
MINISTRY OF AYUSH, AYUSH BHAWAN
B' BLOCK, GPO COMPLEX, INA,
NEW DELHI-110023.

....RESPONDENTS

Through: Mr. Ripudaman Bhardwaj, CGSC
alongwith Mr. Sahaj Garg, Advocate for
Respondent No. 1
Mr. Sunil Narula & Ms. Isha Thakur,
Advocates for Respondent Nos. 2 & 3

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. This petition seeks to challenge the order dated 25.01.2023 passed by the respondent No.1-Ministry of AYUSH, upholding the order dated 22.12.2022 passed by the First Appellate Authority-respondent No.2 i.e., National Commission of Homeopathy (hereinafter referred to as 'the Commission'), wherein, the order of declining permission to the petitioner-institution for undertaking admission in the first year of the Undergraduate Bachelor of Homeopathy Medicine and Surgery [hereinafter referred to as 'BHMS Course'] for the academic year 2022-2023 on the full sanctioned/approved intake capacity of 100 seats has been passed and the permission for undertaking admission in the 42 approved/sanctioned seats in the Post Graduate Course MD (Hom) has been declined.

2. The brief facts for disposal of the instant petition are that the petitioner-institution is an ongoing institution running the UG 'BHMS' Course with a 100 intake capacity since 2001 and with a 42 intake capacity of PG courses since 2002. According to the petitioner-institution, it fulfills all the requisite criteria as stipulated in the applicable Rules and Regulations and the petitioner-institution has never been denied the renewal of permission to operate the concerned courses right from 2001 and 2002 for UG and PG Courses respectively. The petitioner-institution, however, submits that for the purpose of renewal of the approved intake capacity of 100 UG and 42 PG seats, some inspection appears to have been conducted by the respondent No.2 i.e. the Commission. On the basis of the inspection, a decision was taken in terms of the order dated 02.12.2022, wherein it was decided that the intake capacity of the petitioner-institution be reduced from 100 to 50 for UG Courses and the petitioner-institution should not be granted any approval for PG seats for the academic year 2022-23.

3. The petitioner-institution challenged the order dated 02.12.2022 before the First Appellate Authority. The First Appellate Authority declined to grant permission for operating PG Courses for the academic year 2022-2023. However, before the First Appellate Authority, the petitioner-institution has succeeded to the extent of getting the permission to run UG course with intake capacity only upto 50. With respect to PG course the First Appellate Authority did not interfere into the order passed by the Board.

4. The petitioner-institution, therefore, preferred the second appeal, and the second Appellate Authority, in terms of order dated 25.01.2023 affirmed the order passed by the First Appellate Authority.

5. Learned counsel for the petitioner-institution submits that the petitioner-institution fulfils all criteria stipulated in the National Commission for Homeopathy Act, 2020 and Homeopathy Minimum Standards of Education Regulations, 2013. He further submits that the order in original dated 02.12.2022 was passed without considering the explanation submitted by the petitioner-institution. According to him, no inspection report was given to the petitioner-institution despite it had explained the circumstances which has resulted in creating impression that the petitioner-institution was not fulfilling the required criteria. He further submits that when the petitioner-institution preferred the first appeal before the First Appellate Authority, although it accepted the appeal in part, to the extent of allowing 50 intake capacity for UG Course but has also not given it any opportunity of hearing to explain its case. He further submits that even the Second Appellate Authority has also not heard the petitioner-institution before passing the impugned decision.

6. Learned counsel while taking this court through the observations made by the Second Appellate Authority in the impugned order states the overall observations recorded therein are not based on any material. He further explains that had the petitioner-institution been given proper opportunity to explain the overall observations, the petitioner-institution would have satisfied, the said authority with relevant documents. He further submits that even in its appeal, the petitioner-institution has dealt with each observation and has furnished relevant material to satisfy that the petitioner-institution strictly complied with the relevant regulations, but according to him there does not seem to be any proper consideration to those aspects.

7. Learned counsel appearing on behalf of the respondent No.1-Ministry of AYUSH and respondent No.2-the Commission opposed the submissions and they submit that the petitioner-institution does not fulfil the relevant regulations. They submit that various observations have been made in the order in original and also in subsequent orders passed by the First Appellate Authority and the Second Appellate Authority. They state that there was no satisfactory compliance by the petitioner-institution and therefore, this court should not interfere into the order passed by the three authorities.

8. I have heard learned counsel appearing for the parties and perused the record.

9. If the order dated 25.01.2023 is perused, the same clearly indicates that the first deficiency noted in the First Appellate order dated 22.12.2022 was with respect to the observation of the Commission regarding the biometric attendance of the staff (hospital, teaching and non-teaching). According to the observations, the biometric attendance was recorded without I.D. of the teaching, hospital and non-teaching staff. The time of arrival and departure etc., was not properly matching. The designation of staff was not given in the manual register and, therefore, the same was not considered for verification. It was also noted that the biometric attendance of hospital staff/PG students provided by the petitioner-institution was *prima-facie* not found to be genuine as the same was not disclosing any weekly off and accordingly, it was noted that the same appears to have been forged. Hence, the regular attendance of staff was not ascertainable due to lack of documents, therefore, such observations were recorded.

10. The resubmission of the petitioner-institution is noted in the order of the First Appellate Authority. Various explanations have been given by the petitioner-institution in its appeal. The observations of the Second Appellate Authority indicate that certain discrepancies were found in the manual attendance of the hospital staff register and the biometric attendance record. Few instances have been noted with respect to one Mr. Kanchan Kumar Singh and it was further noted that the petitioner-institution does not have a biometric attendance system and is only maintaining a manual register.

11. Similarly, with respect to the acquaintance register, the observations have been recorded that the acquaintance register of teaching staff, non-teaching staff and hospital staff from January, 2022 to September, 2022 does not reflect if the salary was being paid for the full academic year.

12. With respect to the next deficiency, i.e. dispensing register, it is noted that the same is not properly maintained with details such as patients name etc. The deficiency with respect to intake has also been dealt with and it was found that the Institution was not able to give a proper explanation for the said deficiency. The order of the said appellate authority further considers the aspect of Logbook, case diary, seminar presentations and clinical meeting etc. and it noted that the said deficiency also persisted.

13. I have carefully perused the overall observations which have been made in paragraph No. 4 of the impugned order dated 25.01.2023, the same reads as under:-

“i Regular attendance of Teaching, Non-teaching and Hospital staff are not maintained properly. Hence, genuine presence of Teaching, Non-teaching and Hospital staff are doubtful.

ii. Acquaintance register not maintained properly.

iii. Dispensing register is not maintained properly. Hence, functionality of hospital cannot be established

iv. No interns were present in hospital during Inspection.

v. No proper functionality of Post Graduate Department”.

14. If the overall observations of the Second Appellate Authority are carefully perused, the same indicate that the observations relate to regular attendance of staff, payment thereto, functionality of the hospital, availability of in turn and functionality of PG Department.

15. It is not disputed that the petitioner-institution is in operation since 2001. It is also not disputed that the petitioner-institution was not furnished with the inspection report. No record has been produced before this court to indicate that petitioner-institution was extended opportunity of hearing before deciding either the first appeal or the second appeal. The original decision was taken on the basis of the material produced by the petitioner-institution without providing the petitioner-institution, the report of inspection. The appeals have also been decided on the basis of averments made in the appeal. It is not the case of the respondent No.2-the Commission that there exists no teaching and non-teaching staff. It is also not their case that the hospital itself is not in existence. When a particular Institution is in operation for more than 20 years, it was incumbent upon the respondent No.2-the Commission before taking any adverse decision of withdrawal of the permissible intake to provide the inspection report and to call proper explanation thereto.

16. Under the facts of the present case, this court finds that had there been a proper opportunity of hearing provided to the petitioner-institution, the same possibly would have resulted in taking a different view. Not providing the inspection report at the first stage and

opportunity of hearing at first and second appellate stage, has substantially prejudiced the rights of the petitioner-institution.

17. Clause (g) of sub-Section (1) of Section 10 of the National Commission for Homeopathy Act, 2020 (in short 'Act of 2020') empowers the Commission to exercise appellate jurisdiction with respect to decisions of the Board. The second appeal to the Central Government is provided under Section 29 (6) of the Act of 2020. Thus, the remedy of appeals are Statutory in nature. The Statutory appeals are required to be decided only after providing proper opportunity of hearing to the appellants. The same has not been done in this case.

18. Taking into consideration the overall view into the matter, this court finds it appropriate to remit the matter back to the original authority, i.e. Medical Assessment Rating Board-respondent No.3 to provide the copy of the inspection report and grant proper opportunity of hearing to the petitioner-institution to satisfy that there exist no deficiency. It is further directed that the explanation and the material which the petitioner-institution would provide to respondent No. 3, the same would be considered in accordance with law. In addition, the petitioner-institution be also given opportunity of personal hearing. Accordingly, the orders dated 02.12.2022, 22.12.2022 & 25.01.2023 are set aside to the extent of denying the permission for 50 UG seats and 42 PG seats, with the following directions:-

- (i) The respondent No. 3-Board is directed to furnish the inspection report and the list of deficiency by 20.02.2023.
- (ii) The petitioner-institution would submit its explanation by 23.02.2023. Thereafter, depending upon the submissions to be made by the petitioner-institution, if the respondent No. 3 feels that the same is

not properly explained, the petitioner-institution shall be given further opportunity of hearing by 27.02.2023.

(iii) The entire exercise be completed and the order regarding grant or non-grant of approval be passed by 02.03.2023.

(iv) If in case the petitioner-institution is not satisfied with the order to be passed by respondent No.3, the petitioner-institution would be entitled to take appropriate recourse in accordance with law.

19. These directions are being passed keeping in mind, the fact that the petitioner-institution is in operation since 2001 and was running with a 100 intake capacity for UG courses and with a 42 intake capacity for PG courses. It is only in the year 2022-23 that the PG seats have been reduced to Nil and the UG seats have been reduced to 50 and the last date for counselling as has been extended, is expiring on 04.03.2023.

20. Needless to state that the petitioner-institution since has already been granted permission to run 50 UG seats is not disturbed. However, till the final decision is taken by respondent No.3, the petitioner-institution shall also not be entitled to admit the students beyond the permissible intake capacity i.e. 50 UG seats.

21. With the aforesaid directions, the petition stands disposed of alongwith pending application.

22. *Dasti.*

PURUSHAINDR KUMAR KAURAV, J

FEBRUARY 17, 2023

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