

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

+ **W.P.(C) 1605/2023 and CM APPL. 6100/2023 (for ad interim ex-parte stay)**

Date of Decision: 17.02.2023

IN THE MATTER OF:

**HOMEOPATHIC MEDICAL COLLEGE, ABOHAR
THROUGH ITS AUTHORIZED REPRESENTATIVE
HANUMANGARH ROAD
ABOHAR-152116**

..... PETITIONER

Through: Mr. Amitesh Kumar, Mr. Nishant
Kumar, Ms. Aprajita and Mr. Saurabh Singh,
Advocates.

versus

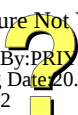
**UNION OF INDIA
MINISTRY OF AYUSH
THROUGH ITS SECRETARY
GPO COMPLEX, AYUSH BHAWAN,
B BLOCK, INA,
NEW DELHI, DELHI 110023**

.... RESPONDENT NO.1

**NATIONAL COMMISSION FOR HOMOEOPATHY
THROUGH ITS SECRETARY
61-65, INSTITUTIONAL AREA, OPP. 'D' BLOCK
JANAK PURI
NEW DELHI- 110058**

.... RESPONDENT NO. 2

**MEDICAL ASSESSMENT AND RATING BOARD FOR
HOMOEOPATHY, NATIONAL COMMISSION FOR**



HOMOEOPATHY
THROUGH ITS PRESIDENT
61-65, INSTITUTIONAL AREA, OPP. 'D' BLOCK
JANAK PURI
NEW DELHI- 110058

.... RESPONDENT NO.3

GURU RAVIDAS AYURVED UNIVERSITY
THROUGH ITS REGISTRAR
G23C+MVV, VPO.KHARKAN,
UNA RD, HOSHIARPUR,
PUNJAB 146001

.... RESPONDENT NO.4

Through: Ms. Monika Arora, CGSC with
Ms. Geetanjali Tyagi and Mr.
Yash Tyagi, Advocates for R-
1/UOI.
Mr. Santosh Kumar and Mr.
Prakhar Prakash, Advocates for R-
2.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

J U D G M E N T

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

1. This petition is directed against the order dated 25.01.2023 passed by the respondent No.1-Union of India, Ministry of Ayush (in short, UOI) in the second appeal filed against the order passed by the 1st Appellate Authority i.e., respondent No.2-National Commission for Homoeopathy (in short, NCH) dated 27.12.2022.
2. Learned counsel appearing on behalf of the petitioner submits that the petitioner-institution is an ongoing institution running a Bachelor of Homeopathic Medicine and Surgery course (in short, BHMS course) since 1976. There has not been any deficiency in meeting the criteria

stipulated in applicable regulations and the petitioner scrupulously adheres to all requirements, as per law. The petitioner states that on 17.11.2022, the NCH served the notice pointing out certain deficiencies with respect to the renewal of its 60 intake capacity in undergraduate courses for the academic year 2022-2023. He submits that the deficiencies as were pointed out therein were properly explained by the representation/reply dated 21.11.2022. According to the petitioner, without providing a copy of the inspection report, the NCH *vide* order dated 28.11.2022, denied the permission to the petitioner-institution for an undergraduate BHMS course with an intake capacity of 60 seats for the academic year 2022-23. The petitioner preferred the first appeal before respondent No.2-NCH with proper explanation and justification, however, the 1st Appellate Authority also, without providing any opportunity of hearing, rejected its appeal *vide* order dated 27.12.2022. The petitioner challenged both orders i.e., the order passed by the Authority in original and the order passed by the 1st Appellate Authority before the 2nd Appellate Authority i.e., respondent No.1, who also *vide* order dated 25.01.2023 rejected the second appeal.

3. He further submits that the petitioner-institution is an ongoing institution for more than 45 years. According to him, the petitioner is one of the oldest and most prestigious institution, which has produced a number of professionals in the field of Homeopathy. Respondent No.3-Board i.e. Authority in original without providing any sufficient opportunity of hearing or the inspection report has passed the order dated 28.11.2022. According to him, the 1st Appellate Authority has also not considered the submissions made by the petitioner and has not appreciated the fact that sufficient material was produced before the 1st

Appellate Authority to indicate that there exist no deficiency. He states that the 1st Appellate Authority simply noted the submissions and rejected them. There is no reason, whatsoever, as to why the explanation submitted by the petitioner is not acceptable. He further states that even the 2nd Appellate Authority has also not considered his case in the right perspective. According to him, both the Appellate Authorities have not extended any personal opportunity of hearing to justify the case of the petitioner. He states that the deficiencies that have been pointed out are technical in nature and if the petitioner is allowed to present his case, it can justify and explain that there exists no deficiency. Even otherwise also he states that if the entire material, as has already been produced before both the Authorities, is considered by this court, the petitioner would be able to satisfy against each deficiency that the reason for non-acceptance is based on no material. He further states that the entire exercise by the respondents is arbitrary and the same is not acceptable in the eyes of law.

4. Learned counsel appearing on behalf of respondent No.1 has filed its counter-affidavit and explained that there exists no institution at all. She states that the deficiencies, as have been noted, would lucidly reveal that it is not the running institution in the eyes of law. She states that there exists no teacher and no staff and if the petitioner is an institution existing for more than 45 years, there is no reason to explicitly mention the names of the faculties. She further states that the personal opportunity of hearing at the 1st Appellate stage and 2nd Appellate stage is not envisaged under any of the regulations. She further explains that the time for admission of the students has already expired; it is only the extension of the date which is also expiring on 04.03.2023. She states that in no

case, this court should intervene with the order passed by the Authorities which relate to academic discipline. According to her, the ultimate intent of respondent-Authorities is to ensure that the institution must fulfil the requisite rules and regulations so that only trained professionals may come out from the concerned colleges. She further states that there is no substance in the present petition and the same deserves to be dismissed.

5. I have heard the learned counsel appearing on behalf of the parties and perused the record.

6. The notice dated 17.11.2022 issued to the petitioner-institution would show that the deficiencies observed in the petitioner-institution relate to teaching staff, Dr. Vinod Kumar Mahipal. The miscellaneous deficiencies are with respect to Employees' Provident Fund (in short, EPF), acquittance not provided, salary bank statement of only 01 staff, Form- 16 not being made available and the website not functional with respect to the students' date and the result of one year was no updated as on 17.11.2022. Another deficiency which has been pointed out relates to patients' availability in IPD; therefore, the functioning of IPD was found to be in doubt. It was also observed therein that certain corrective measures were to be taken by the concerned hospital, as were observed in the inspector's observations.

Extract of notice dated 17.11.2022 is reproduced as under:

Deficiencies observed in Homeopathic Medical College, Hanumangarh Road, Near Bye Pass, Opposite BS Campus, Abohar - 152116, Punjab are as follows:

A. Teaching Staff: Dr. Vinod Kumar Mahipal (Guest Reader, Practice of Medicine): Previous full-time experience not provided.

B. Miscellaneous:

a) EPF - e-challan of only 15 members provided.

b) Acquittance not provided - Salary sheet provided but signature of concerned staff not provided.

c) Salary bank statement of only 01 staff provided.

d) Form-16 not available.

e) Website functional but Students' data and last 01-year result not updated as checked on 17.11.2022.

C. Video recording of Physical Inspection is showing no patients in admitted in IPD. Therefore functioning of IPD is doubtful.

D. Inspector's Observations:

a) IPD needs to change the following - Discharge sheets should be improved, IPD case record, diet charts, OPD case records and medical record room should be improved.

b) Physical verification of all teachers could not be done due to exam duty as per College Principal. No document submitted on absence of teachers who attended exam duty.

c) On physical verification, hospital was not found functioning and only limited staff was available.

7. The petitioner explained the aforesaid deficiencies by way of representation dated 21.11.2022. He has specifically pointed out against each noted point, its explanations and it was submitted that the hospital was functional and required member of staff was also available. According to the petitioner, various documents were also submitted with respect to the past five years including ledger and bill etc. It is seen that respondent No.2-NCH in terms of order dated 28.11.2022 has noted the submissions made by the college and in the hearing observations/remarks column, it was found that various deficiencies were persisting. In general observation, it was noted that the Principal of the college was absent for the virtual hearing instead the hearing was attended by a representative of the management of the college from Chandigarh.

8. It was found that the representative was from a faraway place from the college campus. A total of 10 points were forwarded for the virtual hearing and the general impression of the hearing committee was found to be that the deficiency persists for 70% of inspection points. It was noted that the college authorities properly clarified the position with respect to Dr. Vinod Kumar Mahipal and his experience certificate etc. Therefore, the said deficiency was found to be non-existent.

9. The Authority in original, however, found that in view of the adverse report from the inspection and hearing conducted by the Board on 01.11.2022, and on 28.11.2022, the functionality of the collegiate hospital was in doubt. Many shortfalls were found to be persisting and considering those shortfalls, it was found that the same was in violation of the National Commission of Homeopathy Act, 2020 and the HCC (Amendment) Act, 2018 and accordingly, the Authority in original denied the permission for undergraduate BHMS course with intake capacity of 60 seats for the academic year 2022-23.

10. When the order in original was challenged before the 1st Appellate Authority, the said Authority in terms of the order dated 27.12.2022 made the following overall observations:

Overall observation:

1. *Based on the submission made by Principal, Abohar Homeopathic Medical College & Hospital, Abohar, Punjab on 29.11.2022, the documents have been carefully examined as per the provisions of the Homeopathy Central Council (minimum Standards Requirement of Homeopathic Colleges and attached Hospitals) regulations, 2013 and the relevant regulations made there under and on the basis of observation (s.no. 1-5) college is not complying to the MSR 2013 regulation.*
2. *Now, THEREFORE, the Commission has decided to reiterate the decision of MARBH vide letter dated*

28.11.2022, as denial of permission for continuation of 1st BHMS course with intake capacity of 60 seats by Homeopathic Medical College by Abohar Homeopathic Medical College & Hospital, Abohar, Punjab for the academic session 2022-23.

3. *Accordingly, your representation dated 29.11.2022 to Commission against order of MARBH vide letter dated 28.11.2022 stands disposed of.*
4. *If aggrieved by the decision communicated the applicant may further make a second appeal to the Central Government within 7 days of issue of this decision as per NCH Act 2020 sub-section (6) of Section 29.*

11. The 2nd Appellate Authority in terms of the impugned order has made the following overall observations:

Overall Observations:

1. *The College is not deducting EPF/ESI for 34 Medical, Paramedical & Non-teaching staff as per documents submitted along with inspection report.*
2. *Acquittance roll and account transfer document not provided.*
3. *College has not provided any documents to justify hospital functioning.*
4. *IPD case record, diet charts, OPD case records-related documents not submitted to justify their claim.*
5. *Shortcoming observed during Inspection regarding doubt of actual presence of staff and genuine functioning of hospital cannot be denied, hence, genuine functionality of Hospital could not be established.*

Therefore, in view of the above, it is observed that the deficiency that the hospital is NOT genuinely functional and it is still persisting as mentioned above.

12. It is to be noted that the inspection report, in the instant case, was not provided. It is also to be seen that when the Authority in original passes an order, the hearing committee observations/remarks column only records that the deficiency persists. The submissions of the college

have been noted and there is no corresponding reason as to why the said submission is not acceptable. If the deficiency with respect to the EPF e-challan with respect to certain members is examined, the same would indicate that the college specifically pointed out that as per the Government rules regarding EPF, only 15 staff members are eligible for EPF. The reason for non-acceptance of the petitioner's explanation, as can be seen from the order dated 28.11.2022, would indicate that the copy of the relevant regulations was not provided by the petitioner-institution. The petitioner, however, has filed a copy of the relevant regulations in the first appeal and in the second appeal. The 1st Appellate Authority and the 2nd Appellate Authority have not extended any personal hearing to the petitioner-institution.

13. This court in W.P.(C) 1580/2023, while taking into consideration almost similar facts and circumstances that the inspection report was not provided in the first place and the personal opportunity of hearing was not made available by any of the Appellate Authorities, has taken the view to remand the matter to the Authority in original.

14. Under the facts of the present case, this court finds that the case of the petitioner also deserves to be remitted back to the Authority in original for the reason recorded in the preceding paragraphs and also for the same reasons as have been mentioned in the order dated 17.02.2023 in W.P.(C) 1580/2023.

15. In view of the aforesaid, the order passed by the Authority in original dated 28.11.2022 (P-12) and orders dated 27.12.2022 and 25.01.2023 passed by the 1st Appellate Authority and the 2nd Appellate Authority, respectively are hereby quashed. The matter is remitted back to the Authority in original i.e. respondent No.3-Medical Assessment and

Rating Board for Homoeopathy for fresh consideration 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-Board feels that the same is not properly explained, the petitioner-institution will 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-Board, the petitioner-institution would be entitled to take appropriate recourse in accordance with law.
19. It is made clear that unless the petitioner-institution is granted permission for the academic year 2022-2023 by all statutory authorities, it shall not be entitled to admit the students.
20. The petition is disposed of along with pending application.

PURUSHAINDR KUMAR KAURAV, J.

FEBRUARY 17, 2023

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