

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 17011 of 2016****With****SPECIAL CIVIL APPLICATION NO. 17587 of 2016****TO****SPECIAL CIVIL APPLICATION NO. 17588 of 2016****With****SPECIAL CIVIL APPLICATION NO. 19159 of 2016****With****SPECIAL CIVIL APPLICATION NO. 19413 of 2016****TO****SPECIAL CIVIL APPLICATION NO. 19414 of 2016**

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PARUL UNIVERSITY....Petitioner(s)

Versus

UNION OF INDIA & 1....Respondent(s)

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Appearance:

MR DC DAVE, LD. SR. ADVOCATE WITH MR UDAYAN P VYAS, ADVOCATE
for the Petitioner(s) No. 1

MR HARSH N PAREKH, ADVOCATE for the Respondent(s) No. 2

MR NIKUNT K RAVAL, ADVOCATE for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE N.V.ANJARIA**Date : 25/11/2016****COMMON ORAL ORDER**

All the captioned petitions which involve similar facts and common issue, were considered for admission as well as for interim relief, by hearing at length learned senior counsel Mr.Dhaval Dave with learned advocate Mr.Udayan Vyas for the petitioners, learned advocate Mr.Nikunt Raval for the first respondent-Union of India, Ministry of AYUSH and

learned advocate Mr.Harsh Parekh for the Central Council of Homeopathy-the second respondent.

2. Each of the petitioner/petitioner college has been running the Homeopathy Course to impart the education in that discipline leading to the Graduate or Post Graduate, as the case may be, Degree of BHMS. Their common grievance is that the approval to the extension of course is denied by the first respondent, on the alleged ground that the college is non-compliant with the requisite norms and standards, even though the second respondent-Homeopathy Council after inspection has opined favourably that there is a fulfillment of norms.

2.1 The petitioner of first petition No.17011 of 2016 runs the Jawaharlal Nehru Homeopathy College with capacity of 100 seats. In this petition as well as in 17587 of 2016 and 17588 of 2016, the petitioners have prayed for commanding the respondents to grant extension of approval to the Homeopathy Graduation Course for the Academic Year 2016-17. In Special Civil Application No.19159 of 2016, 19413 of 2016 and 19414 of 2016, the petitioner concerned has prayed for setting aside and staying the orders of the first respondent-Ministry of AYUSH whereby the college concerned is intimated about refusal of approval.

3. Taking out the relevant facts from the first Special Civil Application No.17011 of 2016, the petitioner runs Homeopathy College in the name of Jawaharlal Nehru Homeopathy Medical College which was

established in the year 2002-03. It has intake capacity of 100 seats. The new Regulations called Homeopathy Central Council (Minimum Standards Requirement of Homeopathy Colleges and attached Hospital) Regulations, 2013 came into force with effect from 08th March, 2013, replacing the previously prevalent Homeopathy Regulations, 1983. The Regulations of 2013 prescribed fresh norms and standards to be observed by the colleges imparting the homeopathy education. In the wake of coming into force of the new Regulations, the Central Council of Homeopathy carried out inspection to all the colleges from 15th May, 2013 onwards.

3.1 The colleges needed breathing time to be compliant with the newly introduced norms and standards. In that view, the Government of India and the Central Council of Homeopathy exchanged correspondences. By communications dated 26th August, 2013, 27th May, 2014 and 29th May, 2015 from the first respondent, a kind of moratorium was allowed to the Homeopathy Colleges in the enforcement of the requirements prescribed in the new Regulations of 2013. The colleges were given exemption from compliance thereof for the Academic Years 2013-14, 2011-15 and 2015-16. It is from the Academic Year 2016-17 that the Regulations-2013 are being enforced. This brought about a situation which is reflected in the controversy involved.

3.2 In case of petitioner of Special Civil Application No.17011 of 2016, the Council for

Homeopathy carried out inspection on 02nd July, 2016. For other petitioners, such inspection was carried out on different dates. The reports of inspection were favourable and indicated that there the requirements of new Regulations were fulfilled. The inspection report of the Central Council of Homeopathy in respect of the college of the petitioner of the first petition, which came to be obtained under the Right to Information Act, states with remark that "sufficient facilities. Recommended for admission for 2016-17.". On behalf of the Central Council of Homeopathy, affidavit is filed in which said inspection report and its recommendations have been confirmed. Since the inspection report was not on record, learned advocate for the Council was requested to get copy of the report which was received by him by e-mode. On going through the report, the Council also stated that it was favourable to the petitioner college.

3.3 However it appears that subsequently the first respondent-Ministry of AYUSH conducted an inspection. It was done on 03rd August, 2016 and on different dates for different petitioners. On the basis of the inspection, the first respondent has been refusing to accord extension of approval to the course of Graduation/ Post Graduation in the petitioner colleges.

3.4 The controversy surrounds whether the first respondent-Ministry of AYUSH, Government of India, has powers to refuse the extension of approval to the existing Homeopathy Colleges to continue to run the

course, even as in the inspection carried out by the Central Council of Homeopathy, these colleges are found to be fulfilling the norms and standards as per the Regulations of 2013.

3.5 The first respondent has taken a stand that it is the authority who is empowered to grant permission under Section 12A of the Homeopathy Central Council Act. In the affidavit-in-reply filed by the Under Secretary to Government of India, Ministry of AYUSH-the first respondent herein evinces such stand. It has contended that all colleges were inspected to assess the minimum standards and the requirements of infrastructure for teaching facilities as per the new regulations, that the principal of the petitioner college was informed about the inspection to be carried out. It appears that the inspection was carried out on 03rd August, 2016. The say of the first respondent is that the applicant college is not fulfilling the criteria as per the Regulations to be eligible to be granted the permission of extension or for starting new course.

3.6 It is contended by the first respondent that "the Respondent No.1 is the authority under Section 12A of the Homeopathy Central Council Act, 1973 empowered to grant permission for establishment of any new college in the discipline of Homeopathy as also for commencement of any new course of programme in an existing Homeopathy College as also increase in intake of an existing Homeopathy college". This claim and the contention of the first respondent is the theme of the

controversy herein.

4. At this stage, the provisions of Section 12A of the Homeopathy Central Council Act, 1973 may be glanced at. Falling in Chapter II-A, Section 12A provides for permission for establishment of new medical institution, new course or study, etc. The Section insofar as relevant, reads as under.

"12-A. Permission for establishment of new medical institution, new course of study, etc.-(1) Notwithstanding anything contained in this Act or any other law for the time being in force,-

(a) No person shall establish a Homeopathic Medical College; or

(b) No Homeopathic Medical College shall-

(i) Open a new or higher course of study or training (including postgraduate course of study or training) which would enable students of each course or training to qualify himself for the award of any recognized medical qualification; or

(ii) increase its admission capacity in any course of study or training (including the postgraduate course of study or training),

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1.-

Explanation 2.-

Sub-section (2) to sub-section (7)"

4.1 The contention of learned senior counsel for the petitioners is that the Section 12A is applicable in limited contingencies and the question of prior approval of the Central Government would arise only in those contingencies. It was submitted that the powers under the said section do not extend to or apply to the grant of extension of approval to the existing

college. It was submitted that the petitioner college which is already functional in the impartation of homeopathy education, is entitled to be granted the extension of approval to run the course for the current academic year.

4.2 Learned counsel for the petitioners relied on interim orders of different High Courts in support of the contention to submit that the issue similar to one involved in these petitions was considered by other High Courts and the petitions have been admitted. These are (i) order dated 26th October, 2016 passed by High Court of Judicature at Bombay, Nagpur Bench in Writ Petition No.6264 of 2016 in Homeopathic Education through its Secretary Vs the Union of India, (ii) order dated 09th January, 2009 passed by High Court of Judicature of Bombay, Aurangabad Bench in Writ Petition No.3512 of 2008 in Hindustan Education Society Vs Union of India (iii) Ayurved Shastra Seva Mandal Vs Union of India [2013(3) Scale 213] and (iv) order dated 14th September, 2011 passed by High Court of Judicature at Bombay, Aurangabad Bench in Writ Petition No.5194 of 2011 in Dhanraj Hiralal Jain Vs Union of India.

4.3 On the other hand, learned advocate for the first respondent harped on 2013 Regulations, in particular Regulation No.3(4), which provides that "The existing colleges and their attached hospitals established under Section 12A of the Act and those colleges and their hospitals established prior to the 28th January, 2003 and recognized by the Central

Council of Homeopathy shall fulfill the minimum standards requirements of infrastructure teaching and training facilities referred to in these regulations by the 31st December, 2014 for consideration of grant of permission for undertaking admissions in the coming academic years." Regulations 3(6) and 3(9) were also relied on which provide that the Central Council will visit the college and the college will have to fulfill the requirements before the specified date. Learned advocate for the first respondent sought to rely on decision of the Supreme Court in **Ayurveda Shastra Seva Mandal Vs Union of India [JT 2013 (4) SC 64]** in support of his submissions. However, it may be noted at this stage itself that the said decision was in the context of the provisions of Indian Medical Council Act, 1970 and based on the facts of that case.

4.4 Learned advocate for the first respondent further argued, as if was searching in vain, a convincing contention on merits, that the Secretary of the second respondent-Council was reported with caught in the anti-corruption case and therefore, little value should be attached to the inspection report of the Council guided by such office bearers. Not only that this submission was entirely extraneous, it was wholly besides the record and unsupported by any material in that regard.

4.5 In addition to all the aforesaid aspects, yet another development was pointed out which deserves a reference. Bill called The Homeopathy Central Council (Amendment) Bill, 2015 has been under

consideration to be made law. The Bill was introduced in Rajyasabha on 06th May, 2016 and appears to have been referred to the Department related Parliamentary Standing Committee on Health and Family Welfare on 08th May, 2016. This is seen from the contents of the 86th Report on the aforesaid Bill, a xerox copy of which was made available by learned counsel for the petitioner to the Court. The statement of objects and reasons of the said proposed law states as under.

"The Homeopathy Central Council Act, 1973 was amended in the year 2002, to check growth of sub-standard colleges, increase in admission capacity and starting of new courses in such colleges. The permission of the Central Government is mandatory for establishing new colleges or starting new courses of study. The existing provision in the Homeopathy Central Council Act is, however, not enabling the Central Government to stop admissions in colleges, which are not conforming to standards specified in the regulations made under the said Act. Due to this, quality of Homeopathy education is being compromised."

4.6 The 2015 Bill seeks to amend the Homeopathy Central Council Act, 1973 so as to (i) making provision for obtaining prior permission of the Central Government by Homeopathy Medical Colleges for admission of new batches and students in any course of study and (ii) to provide permission by the Central Council for five years. From the contents of the said Report, learned counsel referred to and relied on to the Note dated 28th March, 2012 put up by the Attorney General of India stating that, *"there is no provision under which permission can be granted or denied to undertake admissions in the forthcoming year. Section 12A of the Act deals with establishment of new medical institutions and new course of study. It does not*

contemplate grant of permission to make admissions year after year". Further, the Law Ministry also in its opinion rendered vide note dated 5.6.2012, was of view that, "on the question of putting a restriction on the admission is concerned, as there is no enabling provision in the Parent Act, as such, if the department, so desires, the enabling provisions for putting a restriction on the admissions may be got incorporated in the Parent Act by way of an amendment in the Parent Act."

4.7 The aforesaid development and the aspects emerging therefrom buttresses the construction sought to be put up by learned counsel on the scope of application of Section 12A of the Act that the Bill to amend the law on the aforesaid lines is mooted, is a greatly bearing, if not clinching, aspect on the subject matter.

5. A reading of Section 12A go to show that it primarily relates to as the title itself suggest, (a) establishment of new medical institution, (b) establishment of new course of study. It contemplates that except without previous permission of the Central Government to be obtained in accordance with the provisions of the Section, a person, which would include university or a trust (but not the Central Government) and no Homeopathic Medical College (i) shall not open a new course, (ii) shall not open a higher course of study, and (iii) shall not increase its admission capacity. For the purpose of opening of new or higher course for increasing admission intake,

the other provisions of the Section provide for submission of scheme to the Central Government for its recommendations and further action. The question involved in this batch of petitions is about extension of approval to the existing college. All the petitioner institutions/colleges have been running since long and at present imparting the education. There is no new course to be opened. No opening of higher standards or studies are applied for. It is not the case of increasing the capacity. Therefore it was not possible to brush aside lightly the contention that the provision of Section 12A, and therefore the claim of power flowing for the first respondent thereunder to refuse the extension of approval to the existing course, may not be available to the first respondent-Ministry of AYUSH, Government of India.

5.1 On the basis of the aforesaid discussion, following prima facie aspects emerged strong-(i) in each case the Central Council of Homeopathy carried out the inspection and the report was favourable recommending the extension of approval to the Homeopathy Course being currently run by the petitioner/petitioner college concerned, (ii) for asserting his powers, the first respondent-Ministry of AYUSH carried out inspection on his own though there was already an inspection done by the Central Council of Homeopathy in the context of Regulations of 2013. The report of the Council was overlooked, (iii) the petitioner/petitioner college have been imparting the education in the faculty of Homeopathy since years and they are denied the extension to run the course on the

aforesaid controversy where the inspection report of the first and second respondents are at variance, (iv) on a prima facie interpretation of Section 12A under which the first respondent seeks to derive powers, in its ambit does not cover the aspect of extension of approval to the existing course. The other High Courts have taken view favouring the contention of the petitioner and the petitions are admitted with grant of interim relief, to which this Court on a consideration of the matter at this stage, endorses to. In any view, the controversy needs a final consideration after hearing the parties and going into the issues at length, (v) a prima facie case for continuance of course stands good in favour of the petitioner, though the petitioner may be put to certain conditions.

6. For all the aforesaid considerations cumulatively taken, a strong prima facie case is made out for admission as well as interim relief.

6.1 Therefore, there shall be Rule in each of the petition, returnable on 23rd March, 2017.

7. By way of interim relief, following directions are issued.

(i) The petitioners/colleges shall be allowed to admit students in the graduation course/post-graduation course, as the case may be, in the faculty of Homeopathy for the Year 2016-17 to the extent of their existing intake capacity already approved during the previous Academic Year;

(ii) The first respondent-Government of India, Ministry of AYUSH shall forward within 15 days from the date of receipt of this order, a letter of No-objection intimating the respective college that it is permitted to admit students as above. This No-objection shall remain provisional and shall be subject to the final orders which may be passed in the petitions;

(iii) Presently the deadline of 30th November, 2016 is provided for completion of admission process. Having regard to the impeding time factor, each of the petitioners/colleges are allowed to undertake admission process upto 05th December, 2016 and shall complete the same by the said date;

(iv) The students who may be admitted to the graduation/post-graduation course, as the case may be, shall be specifically intimated that their admission is treated as being subject to the final orders which may be passed in the Special Civil Application concerned. This is to make the students know about the factum of currency of controversy and the pendency of petitions;

(v) During the pendency of the petition, the first respondent-Ministry of AYUSH may carry out fresh inspection by directing the second respondent-Central Council of Homeopathy to revisit and verify the availability of the infrastructure for teaching and other facilities at the respective colleges to make them in accordance with the Regulations of 2013, if

found to be wanting. If deficiencies are noticed, the respective college may be permitted to make good the requirements in tune with the norms and standards under the 2013 Regulations;

(vi) In the first captioned petition, no formal order has been issued by the first respondent denying extension of approval for the current Academic Year. The aforesaid directions shall govern and the first respondent shall obey the same;

(vii) However, in Special Civil Application Nos.19159 of 2016, 19413 of 2016, 19414 of 2014 the first respondent-Ministry has passed express prohibitory orders dated 26th October, 2016, 26th October, 2016, 04th November, 2016, 16th November, 2016 and 16th November, 2016 respectively. The said orders shall remain stayed and the case of the petitioners be governed by the directions hereinabove.

Direct service is permitted.

(N.V.ANJARIA, J.)

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