

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2013

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN

W.P.No.12662 of 2013
& M.P.Nos.2 & 3 of 2013

Lord Balaji Educational and Charitable Trust
Rep. by its Chairman
Dr.S. Rajamenickam
Shri Shellappa Hospital Campus
231, Rajaram Nagar
Near Gandhi Stadium
Salem-636 007.

... Petitioner

versus

1. The Government of India
Rep. by its Secretary
Ministry of Health and Family Welfare
Department of Ayurveda, Yoga and
Naturopathy
Unani, Siddha & Homeopathy (AYUSH)
IRCS Annex Building
1, Red Cross Road
New Delhi-110 001.
2. The Central Council of Homeopathy (CCH)
Rep. by its Secretary
Jawaharlala Nehru Bhartiya Chikitsa Avum
Homeopathy Anusandhan Bhawan
No.61-65, Institutional Area, Opp. to "D" Block
Jankpuri
Chennai-110 058.
3. The Commissioner
Directorate of Indian Medicine & Homeopathy
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 for a Writ of Certiorari to call for the records relating to the order passed by the 1st respondent in his Proc. F.No. R.17014/05/ 2012-EP(H) dated 14.12.2012 and the Order passed by the 4th respondent in Order No.Affln.I.(3)/41431/2012 dated 17.11.2012 (Reducing the intake from 100 to 75 and the order No.Affln. I.(3)/41431/2012 dated 17.11.2012 (To discharge the students already admitted) and Order No.Affln. I.(3)/41431/2012 dated 14.2.2013 (Reducing the intake from 75 to 50)and the order No.Affln. I.(3)/41431/2012 dated 14.2.2013 (To discharge the students already admitted) and quash the same.

For petitioner : Mr.G. Rajagopalan
Senior Counsel
for Mr.A. Thirumurthy

For Respondents : Mr.S. Haja Mohideen Gisthi
SCGSC for RR 1 and 2

Mr.M.S.Ramesh
AGP for R.3

ORDER

This writ petition is directed against the order dated 14 February 2013, whereby and whereunder, the Tamil Nadu Dr.M.G.R. Medical University was pleased to pass an order reducing the intake from 100 to 75 and the consequent order directing the petitioner to discharge the students admitted in excess of the permitted intake on account of the instructions given by the Ministry of Health and Family Welfare Department, Government of India.

Brief Facts:

2. The writ petitioner is an Educational and Charitable Trust. The petitioner established a Homeopathy College under the name and style of "Dr. Hahnemann Homeopathy Medical College and Research Centre" at Koneripatty Panchayat, Rasipuram Taluk in the District of Namakkal. The College was granted approval by the Central Council of Homeopathy. The College was affiliated to Dr.M.G.R. Medical

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University. The College was initially given an intake of 50. Subsequently, the second respondent increased the intake from 50 to 100 with effect from the academic year 2002-2003 vide proceedings dated 30 September 2002 subject to the condition that the College should provide ten peripheral Homeopathic Out Patients Departments. The petitioner, pursuant to the permission granted by the Central Council of Homeopathy, submitted an application before the University to admit 100 students. The university passed an order on 29 September 2012 granting permission to increase the intake from 50 to 100 seats with effect from the academic year 2012-2013. The petitioner admitted the students under Single Window System.

3. While the matters stood thus, the fourth respondent passed an order on 17 November 2012 withdrawing the permission granted for increase in intake from 50 to 100 and the petitioner was directed to discharge the excess students. The University thereafter passed another order on 14 February 2013 stating that the permission granted to increase the intake capacity from 50 to 75 was in violation of Sub-Section (3) of Section 12-B of Homeopathy Central Council Act, 2002. The petitioner was directed to discharge the students admitted over and above 50, failing which it was stated that the excess students admitted under management quota would not be given registration by the University. Those two orders passed by the University are challenged in this writ petition.

4. The first respondent filed a counter affidavit contending that the petitioner was given permission to increase the intake capacity from 50 to 100 with effect from the academic year 2002-2003 subject to the condition that the college provides ten peripheral Homeopathy Out Patients Departments. The petitioner failed to meet the condition imposed by the Central Council of Homeopathy in its letter of permission dated 30 September 2002. Subsequently, the Homeopathy Central Council Act, 2002 was amended. Section 12A of the Homeopathy Central Council (Amendment) Act, 2002 (hereinafter referred to as "Act 51 of 2002") provides that the Central Government alone is entitled to grant approval for establishing a medical college or to increase the intake. Since permission was not granted by the Central Government, the University was perfectly justified in reducing the intake.

Submissions:

5. The learned Senior Counsel for the petitioner contended that the petitioner was given increase in intake prior to the amendment introduced by Act 51 of 2002. The subsequent amendment would not apply to the petitioner. According to the learned Senior Counsel the first respondent has come up with a case for the first time that the approval was a conditional one and failure to comply with the condition alone prompted the Central Government to direct the University to reduce the additional intake. According to the learned Senior Counsel, there was no such statement made earlier and the

withdrawal of additional intake was solely on the ground that after the amendment, the Central Government alone has got the power to grant permission to establish Homeopathy College or to increase the intake.

6. The learned Senior Central Government Standing Counsel appearing for the respondents justified the impugned order passed by the University. According to the learned counsel, the petitioner was given a conditional approval and the mandatory condition was not complied with. The University having appraised of the fact that the Central Government alone can increase the intake after the amendment made in the year 2002 rightly reduced the intake from 100 to 50.

Factual Analysis

7. The petitioner was granted approval to establish a Homeopathy College by the Central Council of Homeopathy. There is no dispute that the Central Council of Homeopathy was the authority originally to grant approval either to start a Homeopathy College or to increase the intake. The said position continued upto 18 December 2002. The parliament amended the Homeopathy Central Council Act. After the amendment the Central Government was given power to grant approval to establish Homeopathy College and increase of intake. Section 12A of Chapter II-A clearly provides that no person shall establish a Homeopathic Medical College or open a new or higher course of study or training or increase its admission capacity except with the previous permission of the Central Government.

8. The core question that arises for consideration in this writ petition is whether the first respondent was correct in informing the University that the petitioner failed to obtain permission from the Central Government and as such the increase in intake granted earlier requires to be recalled.

9. The Central Council of Homeopathy granted permission to the petitioner for increase in intake capacity from 50 to 100 with effect from the academic year 2002-2003. The permission was granted on 30 September 2002. Thereafter the University passed an order for increase in intake from 50 to 100 on 29 September 2012. The increase in intake took place with effect from the academic year 2012-2013. The Central Act 51 of 2002 clearly shows that the amended Act was enacted only on 18 December 2002. The Central Council of Homeopathy alone was entitled to give permission for increase in intake prior to the amendment Act. It was only from 18 September 2002, the Central Government was given power to grant approval or to increase the intake.

10. The University passed the impugned order on account of the direction given by the first respondent. The University very clearly stated that the first respondent in its letter dated 14 December 2012 stated that the action of the University in granting permission to

the petitioner to increase the intake capacity without the approval of the Ayush is a clear violation of Section 12B of Act 51 of 2002. Therefore it is clear that it was only on account of the absence of permission given by the Central Government, the earlier order increasing the intake was recalled.

11. The first respondent has now come up with a contention that the approval was a conditional one and the petitioner was directed to provide ten peripheral Homeopathic Out Patients Departments. The said contention was taken up for the first time in the counter affidavit filed in this writ petition. The contention now taken goes contrary to the communication sent by the first respondent to the University. The first respondent called upon the University to recall the earlier order only on the ground that prior approval of the Central Government was not obtained by the petitioner. Therefore, it is clear that only on the ground of absence of prior approval given by the Central Government, the increase in intake was recalled by the University.

12. When it is made out that the Central Council of Homeopathy was the competent authority as on the date on which the increase in intake was given (academic year 2012-2013), it cannot be said that the order was not valid in law in view of the subsequent amendment. The amendment was not given retrospective effect. The amendment was only prospective. The amendment was not applicable to the approval already given either for establishing Homeopathy Medical College or for increase in intake. The University appears to have followed the directions given by the first respondent in its letter and spirit and without even giving an opportunity to the petitioner, the earlier order was recalled.

13. The petitioner validly obtained an order of approval from the Central Council of Homeopathy, which was the appropriate authority to grant such approval at that point of time. There was no requirement to obtain prior permission from the Central Government as on the date on which the Central Council of Homeopathy granted approval to the petitioner. The University also granted the necessary approval even before the commencement of Amendment Act 51 of 2002. Such being the case, the University was not justified in recalling the order granting increase in intake from 50 to 100.

Result:

14. In the result, the impugned orders are quashed. The University is directed to pass a consequential order restoring the original intake of 100 students with effect from the academic year 2002-2003.

15. The writ petition is allowed as indicated above. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Tr/
To

1. The Secretary to the
The Government of India
Ministry of Health and Family Welfare
Department of Ayurveda, Yoga and
Natruroopathy
Unani, Siddha & Homeopathy (AYUSH)
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Tamil Nadu Dr.M.G.R. Medical University
69, Anna Salai
Guindy
Chennai-600 032.
- +1 cc to Mr.A.Thirumurthy, Advocate sr.37619
+1 cc to Mr.S. Haja Mohideen gisthi sr.37725

J. Prabhakar
Superintendent
Copyist Department
12/1/16

ng (co)
aa 25/07/2013

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IN THE HIGH COURT OF
JUDICATURE AT MADRAS

C. D. No. 415 20.16.
Application made ... 7.1.16 20.16.
Application returned 20
Application represented
Stamps called for .. 1.2.16 20.16.
Stamps deposited ... 12.1.20.16.
Addl. Stamps called for 20
Addl. Stamps deposited 20
Copy ready ... 1.2.16 20.16
Copy delivered ... 18/11/20.16


Superintendent