

**Court No. - 19**

**Case :-** MISC. SINGLE No. - 28712 of 2018

**Petitioner :-** Institute Of Ayush Medical Sciences Thru.Principal Pramod Ma

**Respondent :-** U.O.I.Ministry Of Ayurveda Yoga Naturopathy&Homeopathy & Ors

**Counsel for Petitioner :-** Laltaprasad Misra,Badrish Kumar Tripathi

**Counsel for Respondent :-** C.S.C.,A.S.G.,Sharad Nandan Ojha

**Hon'ble Vivek Chaudhary,J.**

Heard Dr. L.P. Misra, learned counsel assisted by Sri Badrish Kumar Tripathi learned counsel for petitioner; Sri Savitra Vardhan Singh, learned counsel for respondent No.1 and 2, Union of India; Sri Sharad Nandan Ojha, learned counsel for respondent No.6, Central Council of India Medicine, New Delhi and the learned standing counsel for respondent No.3, 4 and 5.

The petitioner an Ayurvedic College, filed present writ petition challenging the order dated 25.9.2018 passed by the respondent No.2 refusing to grant of approval under Section 13-A/13-C of Indian Medical Central Council Act, 1970 (Act of 1970) for academic session 2018-2019.

The petitioner institution, Institute of Ayush Medical Sciences, was granted permission for 100 BAMS seats for academic year 2016-2017 and 2017-2018. It appears that for the academic session 2018-2019, an inspection was made by CCIM. Learned counsel for petitioner submits that under Section 13-A (4) of the Act, visitor's report was required to be provided to the petitioner institution. Learned counsel for petitioner further submits that any deficiency if pointed out in such a report, could be corrected by the petitioner institution. However, no such report was given to petitioner institution. It appears that on the basis of the said report, the CCIM made negative recommendation to Central Government. After issuing notice, the recognition was refused by the Central Government to the petitioner institution by order dated 25.9.2018.

Submission of learned counsel for petitioner is that procedure adopted is in violation of Section 13-A (4) as without giving a opportunity to correct the deficiency, the impugned order has been passed. He further submits that in fact there is no deficiency in the institution and, in reply to the show cause notice, each and every document was provided showing that there is no deficiency in the institution. The equipments which were shown in the report as not available in the institution the bills of purchase as well as photographs were provided showing the equipments installed in the institution. Therefore, the impugned order is arbitrary.

Sri Savitra Vardhan Singh and Sri Sharad Nandan Ojha, learned counsels for the respondents on the basis of written instructions argued that a proper inspection was conducted and proper opportunity was given to the petitioner institution as provided under Section 13-A (4) of the Act at the time of scheme.

Learned counsel for petitioners also relied upon the judgment dated 24.9.2018 of Madras High Court in W.P. No.24967 of 2018 and W.M.P. Nos.29011 and 29012 of 2018. The said order reads as follows:-

"Mr.T.V.Krishnamachari, learned Senior Panel Counsel takes notice for the respondents 1 and 2, Mr.M.T.Arunan, learned counsel takes notice for the third respondent, Mrs.V.Annalakshmi, learned Government Advocate takes notice for the fourth respondent and Mr.D.Ravichandu, learned Standing Counsel takes notice for the fifth respondent.

2. The learned Senior Panel Counsel appearing for the respondents 1 & 2 has serious objection for granting interim order.

3.The learned Senior Counsel appearing for the petitioner states that the Central Council of Homeopathy has not recommended for denying permission for taking admission to BHMS Course in the petitioner's Institution, pursuant to the inspection conducted on 13.06.2018. The respondents have pointed out only few deficiencies as against full compliance in respect of major requirements. There is no recommendation by the Central Council either for restricting the number of students or for taking action in terms of Section 19 of the Act.

4. However, the Central Government by the impugned order dated 12.09.2018 has denied permission for taking admission to BHMS Degree Course for the academic year 2018-19. It is to be seen that by previous orders of this Court, the petitioner's Institution is admitting 100 students every academic year, pursuant to the permission that was obtained from the Central Council in 2002.

5. The Hon'ble Supreme Court, in a recent decision has upheld the judgment of the Patna High Court, wherein the power of the Central Government has been considered. The Supreme Court has observed that the Central Government has to pass order only on the recommendation made by the Central Council. The legal position as settled by Hon'ble Supreme Court indicates that the Central Government has no independent power to pass the impugned order. In the absence of any recommendation of Central Council, the impugned order cannot stand. Hence, this Court is of the view that the petitioner is entitled to get an interim order. Hence, there shall be an order of stay as prayed for for a period of eight weeks.

6. It is not in dispute that the first respondent-Government of India, has passed order in favour of the petitioner for continuing BHMS Degree Course for 100 seats for every academic year from 2014. It is also stated by the petitioner that the fifth respondent University has passed orders acknowledging the petitioner's eligibility for provisional affiliation to 100 seats.

7. In view of the various orders of this Court, this Court is also convinced that the petitioner is entitled to admit 100 students for first year BHMS Degree Course for the academic year 2018-19. Hence, there shall be an interim direction to the respondents 4 and 5 to allow the petitioner's Institution to admit 100 students for the first year BHMS Degree Course for the academic year 2018-19."

Submission of learned counsel for petitioner is that since CCIM's report is itself defective as the same is submitted to the Central Government without giving opportunity to the petitioner institution, the same could not have been relied and the Central Government could not have proceeded to reject the case of petitioner institution, at least without verifying the claim of petitioner that the deficiencies do not exist and equipments are installed.

Learned counsel for petitioner placed reliance upon an order dated 29.9.2018 passed by the Under Secretary, Central Government itself where in case of colleges of Prakash Institute of Ayurvedic Medical Sciences and Research, the Under Secretary has granted conditional permission requiring institution to remove defect by 3.12.2018. Submission is that there is no reason why the similar conditional permission could not be granted to petitioner institution also. Moreso, when all the deficiencies stand removed and could be verified by the respondents on any date whatsoever.

Sri Savitra Vardhan Singh and Sri Sharad Nandan Ojha, learned counsel for respondents have raised serious objection to the prayer of petitioner institution for interim relief.

In view thereof, let respondents file their counter affidavit within three weeks from today. Thereafter, petitioner may file rejoinder affidavit within a week.

List thereafter.

Meanwhile, since the counselling for allotment of seats is to start from tomorrow on 10.10.2018, it is provided that the respondent No.3 and 4 shall include the petitioner institution in the counselling for allotment of 100 seats to the students of UG (BAMS) Course for academic session 2018-2019. Respondent No.3 and 4 shall register the petitioner institution for the same.

The learned standing counsel for respondent No.3 and 4, shall ensure that the order is communicated to the respondent No.3 and 4 today.

It shall be open to respondents Central Government/Under Secretary to further proceed in the matter, by another inspection if found required, or in accordance with law and getting any deficiencies, if found, to be removed without delay. Petitioner shall fully cooperate and comply with such orders.

**Order Date :- 9.10.2018**

Rajneesh DR-PS)

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Section Officer

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**(Vivek Chaudhary, J.)**