

(2016) 12 DEL CK 0065

In the Delhi High Court

Case No : W.P.(C) Nos. 10099, 10129 of 2016 and CM Nos. 39983, 40121 of 2016

Buddhi Vidhatajan Kalyan Samiti

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 236 DLT 15

Hon'ble Judges : Mr. V. Kameswar Rao, J.

Bench : Single Bench

Advocate : Mr. Kundan Kr. Mishra, Mr. Ajay Kumar and Mr. Ashutosh Mishra, Advocates, for the Respondent No. 2; Mr. Rajesh Gogna, CGSC with Ms. L. Gangmei, Advocate, for the Respondent No.1/UOI; Mr. Joginder Sukhija and Mr. Nikunj Saluja, Advocates, for the Petitione

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J. - As the issues involved in both these writ petitions being identical, the same are being decided of by this common order.

Facts in Writ Petition(Civil) No. 10099/2016:-

2. The present petition has been filed by the petitioner seeking the following reliefs:-

"It is, therefore, most humbly prayed that this Hon"ble Court may kindly be pleased to issue an appropriate writ/Directions/Orders in the nature of certiorari or otherwise thereby quashing the Order dated 28.9.2016 passed by the respondent No.1, whereby which proposal of the petitioner to start bachelor of homeopathic medicine and surgery (BHMS) course in the academic year 2016-17 in a new college under the name and style of B.V. Homeopathic medical college and hospital with intake capacity of 100 students per year has been disapproved.

This Hon"ble Court may kindly be pleased to issue an appropriate writ/Directions/

Orders in the nature of mandamus or otherwise thereby directing Respondents to grant permission to the petitioner to start Bachelor of Homeopathic Medicine and Surgery (BHMS) Course in the academic year 2016-17 in a new college under the name and style of B.V. Homeopathic Medical College and Hospital with intake capacity of 100 students per year."

3. It is averred in the writ petition that the petitioner is a Society registered under the Societies Registration Act. After its incorporation, in order to start a new Homeopathic college, the petitioner society had established a Homeopathic hospital in the name and style of Budhi Vidhata Homeopathic Hospital, Chattarpur, Madhya Pradesh. The said hospital is a 25 bedded hospital and has got 18 doctors and 5 departments. It is averred, on an average 1107 patients avail the said hospital's facilities in OPD per month and on an average 1107 patients in IPD. On December 23, 2014, after establishing the hospital facilities for the OPD and IPD patients, the petitioner Society approached Government of Madhya Pradesh for grant of No Objection Certificate to start a Homeopathic College in the District of Chattarpur. On June 4, 2015, the Government of Madhya Pradesh granted No Objection Certificate to the petitioner to establish a new Homeopathic College in the name of B.V. Homeopathic Medical College and Hospital, village Khabndora, Devpur Tiraha NH-75 Chattarpur, Madhya Pradesh. Accordingly, the petitioner on June 6, 2015 approached the Madhya Pradesh Medical Sciences University seeking grant of affiliation, in order to start the said Homeopathy College.

4. According to the petitioner, the College was inspected by the University on June 30, 2015 and No Objection Certificate was issued to the petitioner by the University on July 14, 2015. After seeking No Objection Certificate, the petitioner Society on April 29, 2015 applied to respondent No.1 for permission to start a new Homeopathy College in the name and style of B.V. Homeopathic College and Hospital. It is the case of the petitioner, the respondent No.2 inspected the infrastructure and facilities of the said college on September 18, 2015. The respondent No.1 issued a Letter of Intent dated December 18, 2015 in favour of the petitioner thereby intimating that it is willing to grant permission for 100 seats Homeopathy College. It is the case of the petitioner that petitioner was intimated to comply with seven queries raised in the letter of intent dated December 18, 2015. The petitioner Society after complying with the queries raised in the letter of intent submitted relevant records with the respondent No.2. It is the case of the petitioner, that at the stage of letter of permission the respondent No.2 again inspected the College on March 28, 2016 and after being fully satisfied, it recommended respondent No.1 to permit the petitioner to run a new Homeopathy College and Hospital for 100 seats. Despite recommendation of the respondent No.2, the respondent No.1 delayed granting permission to the petitioner and in utter disregard to the rights of the petitioner again inspected the college on July 12, 2016. After inspection, on August 16, 2016 the respondent No.1 issued a notice of hearing to the said college, thereby asking the said college to appear before the designated Hearing Committee on August

30, 2016 to present its case with respect to the shortcomings pointed out in its inspection report.

5. It is the case of the petitioner that it submitted a detailed reply on August 29, 2016 along with relevant documents to the respondent No.1. It is stated that the representative of the petitioner appeared before the Hearing Committee on August 30, 2016 and relied upon the contents of the documents submitted vide letter dated August 29, 2016. It is the case of the petitioner that the representative of the petitioner gave satisfactory answer to all the queries raised by the Hearing Committee thereby establishing that the said college fulfils all the norms as per Homeopathy Central Council (Minimum Standards requirements of Homeopathy College and attached Hospital) Regulations, 2013 (for short Regulations of 2013). Despite fulfilling the norms by the said college, the respondent No.1 passed impugned order dated September 28, 2016 whereby the proposal of the petitioner to start a Homeopathic Medical College, Chattarpur, Madhya Pradesh with 100 seats was disapproved.

6. The respondents 1 and 2 have filed their separate counter-affidavit(s). The case of the respondent No.1, in its counter-affidavit is that the Central Council of Homeopathy (Central Council in short) has been constituted by the Government of India under the provision of Homeopathy Central Council Act, 1973 (Act of 1973 for short) for maintaining the Central Register of Homeopathy and the matters connected therewith. The Central Council has been vested with the powers under Section 20 of the Act of 1973 for prescribing minimum standards of education in Homeopathy, required for granting recognised medical qualification by University, Board or Medical Institution in India. Under the provision of Section 33 of the Act of 1973, the Central Council has been authorised to make Regulations with previous sanction of the Central Government to carry out the purpose of the Act and the Central Council with the previous sanction of the Central Government has framed many regulations including 1) The Homeopathy (Minimum Standard of Education) Regulations, 1983 (as amended up to 2002) 2) Homeopathy Central Council (Minimum Standards Requirement of Homeopathic Colleges and attached Hospitals) Regulations, 2013 (for short Regulations of 2013. In terms of the Regulations of 1983, the Central Council has laid down minimum requirement norms and standards in terms of teaching and hospital staff, accommodation, equipment's and training hospital and other facilities with the previous sanction of the Central Government. The 2013 Regulations are in supersession of the 1983 Regulations.

7. It is the case of the respondent No.1 that it received proposal dated April 30, 2015 from the petitioner to start a new B.V. Homeopathic Medical College with 100 seats in BHMS course under Section 12A of the Act of 1973. The same was considered in the Ministry and was forwarded to Central Council on May 28, 2015 for conducting inspection of the college and making their recommendation/report with regard to availability of infrastructure and the staffing position in accordance with the provision of the Act of 1973 and Regulations made there under. The

Central Council inspected the petitioner's Institution on September 18, 2015 and forwarded the Inspection Report to the respondent No.1 on November 3, 2015. The Executive Committee of the Central Council in its meeting held on November 5, 2016 considered the report of the inspection and recommended to allow admission of 100 students in BHMS course for the session 2016-17. After careful consideration of the scheme and taking into consideration of the visitation report, the recommendation of the Central Council, the Ministry issued a Letter of Intent dated December 18, 2015 to the petitioner's College with subject to rectification of following conditions before visitation by Central Council for consideration of the matter for issuing Letter of Permission for the academic session 2016-17:-

(i) That the applicant shall fulfil all the relevant requirements of infrastructure for teaching and training facilities as specified in the Homeopathic Central Council (Minimum Standard Requirement of Homeopathic Colleges and attached Hospitals) Regulations, 2013.

(ii) That before inspection by CCH regarding the matter for consideration of permission for academic year 2016-17 for the proposed new college, the college shall appoint all the teachers (Lecture/Reader/Professor) in the relevant Departments.

(iii) That applicant shall fulfil all the relevant provisions under the HCC Act, 1973.

(iv) The applicant shall fulfil all the relevant provisions of Regulations namely ? Establishment of New Medical College, opening of new Higher course of study or training and increase of admission capacity by a medical college Regulations 2011.

(v) The College has also to submit the requisite performance bank guarantee of Rs.2 Crore as specified under the Section 6(1)(g) of notified Regulation 2011, failing which the letter of Intent may be withdrawn.

(vi) That the applicant shall provide OPD data from October 2014 to September 2015.?

8. It is averred that the Central Council inspected the petitioner College at Letter of Permission (LoP) stage on March 28, 2016. The Executive Committee of the Central Council in its meeting held in April, 2016 wherein the Executive Committee considered the report of inspection of the College and Hospital and recommended for issue of LoP for 100 intake capacity in BHMS degree course. The respondent No.1, the Ministry vide order dated June 3, 2016 made a surprise visit to the College and Hospital on July 12, 2016 and submitted the report on July 18, 2016. The inspection report submitted by the Central Council and the inspection report of the visitation team of the respondent No.1 i.e Ministry was examined and observed that the petitioner is not fulfilling all the criteria as per the Regulations of 2013 as the college does not have the required hospital staff, non teaching staff, bed occupancy, IPD, clinical laboratory, equipment in college, library, Central Registration Section, Operation Theatre and

Minimum per day average number of patients in OPD during last one calendar year as per provisions sub-Regulations (2) Regulation 7 of the Regulations of 2013. According to the respondent No.1, the aforesaid deficiencies contradicts the report of the Central Council. The Council has been asked to furnish justification and to take action on the Inspectors who had reported dubiously.

9. It is the case of the respondent No.1 that an opportunity of hearing was given to the petitioner on August 30, 2016 and the deficiencies were communicated to the College. The submissions were made by the College at the time of hearing by the Hearing Committee and the Committee examined all the submissions and documents of the college in terms of the Act of 1973 and the Regulations of 2013. The observation note prepared by the Hearing Committee was submitted to the Competent Authority, who disapproved the permission for starting a new Homeopathic Medical College by the petitioner. The decision of the Competent Authority was communicated to the petitioner on June 10, 2016.

10. The respondent No.2 filed its short reply wherein, they have narrated the facts, which have already been noted above.

Facts in Writ Petition(Civil) No. 10129/2016:-

11. The present petition has been filed by the petitioner seeking the following reliefs:-

"It is, therefore, most humbly prayed that this Hon"ble Court may kindly be pleased to issue an appropriate writ/Directions/Orders in the nature of certiorari or otherwise thereby quashing the Order dated 17.10.2016 passed by the respondent No.1, whereby which proposal of the petitioner to start bachelor of homeopathic medicine and surgery (BHMS) course in the academic year 2016-17 in a new college under the name and style of Maa Trimukha Homeopathic medical college with intake capacity of 60 students per year has been disapproved.

This Hon"ble Court may kindly be pleased to issue an appropriate writ/Directions/Orders in the nature of mandamus or otherwise thereby directing Respondents to grant permission to the petitioner to start Bachelor of Homeopathic Medicine and Surgery (BHMS) Court in the academic year 2016-17 in a new college under the name and style of Maa Trimukha Homeopathic Medical College with intake capacity of 60 students per year."

12. It is the case of the petitioner that on April 29, 2015 it approached the Government of Madhya Pradesh for grant of No Objection Certificate to start a Homeopathic College in the District of Chattarpur under the name and style of Maa Trimukha Homeopathic Medical College. During the same time, the petitioner applied to the respondent No.1 for permission to start a new Homeopathic College. On May 24, 2015 the petitioner entered into a Memorandum of Understanding/Agreement with the Poorna Nursing Home Gwalior Road, Bhind so as to run the Homeopathic Medical College. On June 06,

2015 the Government of Madhya Pradesh granted No Objection Certificate to the petitioner to establish a new Homeopathic College. On July 14, 2015 the said College was inspected by the Madhya Pradesh University of Medical Sciences, Jabalpur and No Objection Certificate to the petitioner was issued by the University. It is the case of the petitioner that the College and the Hospital are equipped with requisite infrastructure, facilities and instruments. The respondent No.2 inspected the infrastructure and facilities of the said college on February 5, 2016. Pursuant to inspection, the respondent No.1 issued a Letter of Intent dated March 17, 2016 in favour of the petitioner thereby intimating that it is willing to grant permission for 60 seats Homeopathy college.

13. It is the case of the petitioner that on July 14, 2016 the respondent No.1 inspected the said college and prepared a report and the same was not provided to the petitioner. On September 23, 2016, the respondent No.1 issued a notice of hearing to the said college thereby asking the said college to appear before the designated Hearing Committee on October 3, 2016 to present its case with respect to the shortcomings pointed out in its inspection report. It is the case of the petitioner that it submitted a detailed reply dated October 3, 2016 along with the relevant documents to the respondent No.1. The representative of the petitioner appeared before the Hearing Committee on October 3, 2016 and relied upon all the contents and documents submitted vide letter dated October 3, 2016. It is the case of the petitioner that the representative of the petitioner gave satisfactory answers to all the queries raised by the Hearing Committee thereby establishing that the said college fulfils all the norms as per the Regulations of 2013. The petitioner's case is despite fulfilling all the norms by the said college, the respondent No.1 passed the impugned order dated October 17, 2016 whereby the proposal of the petitioner to start the Homeopathic Medical College with 60 seats was disapproved.

14. The respondent No.1 filed a counter-affidavit wherein apart from the legal submissions, as already recorded above, it is the case of the respondent No.1 that it received proposal dated April 29, 2015 from the petitioner to start a new Homeopathy College, Hospital and Research Centre with 60 seats in BHMS course under Section 12A of the Act of 1973. The said application was listed in the Ministry and was forwarded to the Central Council on May 28, 2015 for conducting inspection of the College and making their recommendation/report with regard to the availability of the infrastructure. The Central Council inspected the applicant Institution on February 5, 2016 and forwarded the inspection report to the respondent No.1 on February 24, 2016. It is stated that the Executive Committee of the Central Council in its meeting held on February 10, 2016 considered the report of inspection and recommended to allow admission of 60 students for the session 2016-17. In the meantime, Ministry has taken a policy decision dated February 17, 2016 for processing the cases for issuance of Letter of Intent to the Homeopathic Colleges in respect to the applications received under Section 12A for the establishment of new colleges, opening of new or higher courses of study or training and increase of admission capacity by existing

Homeopathic Colleges as under:-

"i. The applications received under Section 12A of the Act, only basic eligibility criteria specified in the Regulation 6 of the Establishment of New Medical College, Opening of new or higher course of study or training and increase of admission capacity by existing Homeopathic colleges.

ii. Compliance with HCC (MSR) Regulations, 2013 shall be examined at the time of considering the matter for issuance of letter of permission (LoP).?"

15. After careful examination of the proposal and taking into consideration the policy, the respondent No.1, Ministry issued LOI dated March 17, 2016 with subject to rectification of following conditions before visitation by Central Council for consideration of the matter for issuing LoP for the academic session 2016-17:-

(i) That the applicant shall fulfil all the relevant requirements of infrastructure for teaching and training facilities as specified in the Homeopathic Central Council (Minimum Standard Requirement of Homeopathic Colleges and attached Hospitals) Regulations, 2013.

(ii) That before inspection by CCH regarding the matter for consideration of permission for academic year 2016-17 for the proposed new college, the college shall appoint all the teachers (Lecture/Reader/Professor) in the relevant Departments.

(iii) That applicant shall fulfil all the relevant provisions under the HCC Act, 1973.

(iv) The applicant shall fulfil all the relevant provisions of Regulations namely "Establishment of New Medical College, opening of new Higher course of study or training and increase of admission capacity by a medical college Regulations 2011.

(v) The College has also to submit the requisite performance bank guarantee of Rs.1.2 Crore as specified under the Section 6(1)(g) of notified Regulation 2011, failing which the letter of Intent may be withdrawn.

(vi) That the college shall rectify the bed occupancy which is 11 per day against the requirement of 30%."

16. Thereafter, the respondent No.1 Ministry of Ayush made a surprise visit to petitioner College on July 12, 2016 and submitted the report on July 20, 2016. The inspection report submitted by the Central Council and the inspection report of the visitation team was examined and observed that the College was not fulfilling all the criteria as per the Regulations of 2013 as the College does not have the teaching staff, non-teaching staff, hospital staff, OPD, IPD, bed occupancy, Central registration section, functional operation theater and functional clinical laboratory of the Regulations of 2013. Pursuant thereto, after giving an opportunity of hearing on October 3, 2016, the deficiencies were communicated to the college. The submissions were made by the College at the time of the hearing and after considering the same, the impugned order was

issued to the petitioner.

17. Respondent No.2 has filed its counter-affidavit wherein they have narrated the facts, which have already been reflected above.

18. Mr. Joginder Sukhija, learned counsel for the petitioner would make three broad submissions. The first submission being that the impugned order issued by the respondents is unreasoned, non-speaking one, inasmuch as, the impugned communications except giving general reasons, does not disclose in what manner, the College/Hospital does not fulfil the requirement of the Regulations of 2013. That apart, it is his submission that the respondent No.1, Ministry of Ayush has no power under Section 12A of the Act of 1973 to cause inspection of the College/Hospital. That apart, it is his submission that the final decision of the respondent No.1 being a quasi-judicial in nature, the hearing should have been caused by the competent authority, who had ultimately taken a decision in the case. In other words, it is his submission that the hearing has been effected by two persons, based on whose note, the competent authority has taken a decision, which is not tenable. Mr. Sukhija would rely upon the following judgments:-

(i) Homeopathy Education Society v. Union of India W.P.(C) No. 6264/2015, Bombay High Court;

(ii) AIR 1959 SC 308 Gullapali Nageswara Rao v. Andhra Pradesh;

(iii) AIR 2014 SC 22-42 Union of India v. Shiv Raj & Ors (and connected appeals);

(iv) AIR 1971 SC 862 M/s. Travancore Rayons Ltd. v. Union of India;

(v) Narendar Prakash Kohli v. Union of India, W.P.(C) No. 2968/2014 decided on May 8, 2015 [2015 (220) DLT 165];

(vi) Malla Reddy Institute of Medical Sciences and anr. v. Union of India, W.P.(C) No. 7106/2015 and connected writ petition decided on September 29, 2015;

(vii) K. Raj Arora v. State Bank of India W.P.(C) No. 154/2000 decided on September 8, 2006 [2015 (10) AD (Delhi) 565];

(viii) Samir Sharma and another v. Union of India W.P© No. 6109/2015 decided on July 27, 2016;

(ix) Hindustan Education Society & Anr. v. UOI & Ors W.P. 3512/2008 decided by Bombay High Court (Aurangabad Bench) on January 9, 2009.

19. On the other hand, Mr. Rajesh Gogna, learned counsel for the respondent no.1 would justify the impugned orders dated September 28, 2016 and October 17, 2016 stating that the impugned orders do reflect the deficiencies, which were found to be existing on inspection. That apart, it is his case, even the show cause notice issued to the petitioners calling upon them for a hearing also reflect the deficiencies. So, it is not a case where the petitioners were not aware of the deficiencies, which were in existence for which a show-cause notice was given.

That apart, he would state that the impugned orders are administrative in nature and the competent authority was within its right to rely on a note prepared by the officers, who had given a hearing to the petitioners while passing the impugned orders. That apart, it is his submission that the respondent No.1 being the final authority to grant permission to an institution under Section 12A (4) of the Act was within its right to cause an inspection of the College/Hospital to satisfy itself that the College/Hospital satisfies the requirement of the provisions of sub-Section (7) of Section 12A of the Act and the Regulations of 2013. He would rely upon the following judgments in support of his contention:-

- (i) 2006 (10) SCC 1 Reliance Airport Developers Pvt. Ltd. v. Airports Authority of India and ors;
- (ii) 2002 (5) SCC 685 Indian National Congress (I) v. Institute of Social Welfare;
- (iii) 2012 (10) SCC 353 State of Gujarat v. Gujarat Revenue Tribunal Bar Association;
- (iv) 2011 (2) SCC 258 Automotive Tyres Manufacturers Association v. Designated Authority and ors.;
- (v) 2010 (2) SCC (Cr.) 1201 Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota v. Shukla Brothers;
- (vi) 2015 (8) SCC 519 M/s. Dharampal Satyapal Ltd v. Deputy Commissioner of Central Excise, Gauhati and ors;
- (vii) 2013 (10) SCC 60 Manohar Lal Sharma v. MCI;
- (viii) 2013 (5) SCC 252 Kalinga Mining Corporation v. Union of India;
- (ix) 1989 (4) SCC 264 Ossein and Gelatine Manufacturers' Association of India v. Modi Alkalies and Chemicals Limited and another;

20. Having heard the learned counsel for the parties, insofar as the plea of Mr. Joginder Sukhija that the impugned orders are non-speaking is concerned, no doubt that in the impugned orders, the respondent No.1 has broadly mentioned the Colleges/Hospitals in the writ petitions were lacking in certain requirements. In what manner, the petitioners were lacking in those requirements have not been mentioned or spelt out in the impugned orders; but merely because the impugned orders does not specify so, would not make the impugned orders bad, inasmuch as the impugned orders preceded by a show cause notice dated August 16, 2016 (W.P.(C) No.10099/2016) and September 23, 2016 (W.P.(C) No. 10129/2016) wherein the respondent No.1 had pointed out the deficiencies, which were found on inspection of the College/Hospital. Against those show cause notices, both the petitioners had submitted their reply and have tried to clarify the deficiencies, which have been pointed out by the respondent No.1. The show cause notice was followed by a hearing given by the respondent No.1. It is thereafter that the impugned orders were passed. Mr. Sukhija may be right that in the absence of the reasons in the impugned orders, the petitioners could not

justify/clarify the deficiencies in the writ petitions. But I note, in its counter-affidavit, the respondent No.1 has, in detail, given its remarks against the deficiencies/submissions of the petitioners and the observation of the Hearing Committee in the following manner:-

Writ Petition (Civil) No. 10099/2016

Deficiency conveyed to the applicant Submission of the applicant Observation of the hearing committee Remarks of the Ministry

1. The college does not have the required Hospital staffs and Non-teaching staffs. The representative of the college submitted that the college fulfils all the requirements of the hospital and non-teaching staffs in accordance with MSR ? 2013. Further to substantiate the above the attested copies of appointment letters, attendance registers and salary records have been submitted. The Hearing Committee examined the Appointment and Joining letters of the Hospital staff and it was found that there are 06 doctors and 05 other staff i.e. 11 regular and 09 on call doctors/staff. The Joining letter of the Principal was not found in the records and two joining letters of the doctors and two joining letters of other staff were without signature. For Non-teaching staff, the college has appointed only one Laboratory attendant and one Librarian, whereas 07 non-teaching staff is required. As per the observations of the hearing committee does not fulfil the criteria HCC (MSR), 2013

The college is not fulfilling the criteria as per MSR regarding the Hospital and non-teaching staff.

2. The College does not have the bed occupancy as per HCC (MSR), 2013. The college representative submitted that the hospital has been functional since 1.4.2015 and the bed occupancy average of last year from 01.04.2015 to 05.08.2016 is total number of patient in IPD admitted 3858 and carry forward patient is 4694 and is in accordance with the MSR, 2013. Further to substantiate the above clarification, attested copies of IPD records have been submitted. The Hearing Committee examined the IPD register (June 2015 onwards) where the manual entries are made for the admission of the patients in the hospital. The register related to April 2015 and May 2015 was not produced during hearing with the plea that the register got ruined in the rains. Further, the number of patients admitted in IPD as per the register is not tallying with the information given in Annexure 2. Moreover, they had no computerized registration for IPD patients and have installed and started using the software from 29.8.2016. (Photocopy of computer generated IPD card and Discharge Summary is attached ? Page 1-2). As per the observations of the hearing committee and inspection report of Central visitation team the college is unable to substantiate the claim of fulfilling bed occupancy.

The hospital is functioning from 1 April 2015 onwards, thus considering the duration from 1 April 2015 ? 31 December 2015 (09 months), the bed occupancy calculated (Total no. Of beds occupied x 100)/(Total number of beds x no. Of

days in 09 months) i.e. $(2168 \times 100)/(25 \times 275) = 31.53$. Hence, does not fulfil the criteria as per HCC (MSR), 2013.

As the actual number of patients admitted in IPD during April-May 2015 is not available, the percentage of bed occupancy calculated above may not be correct. Thus, the bed occupancy as per MSR norms remains doubtful.

3. The College does not have a genuinely functional IPD. The college representative submitted that the hospital has been functional since 1 April, 2015 and the bed occupancy average of last year from 01.04.2015 to 05.08.2016 is total number of patient in IPD admitted 3858 and carry forward patient is 4694 and is in accordance with the MSR, 2013. Further to substantiate the above clarification, attested copies of IPD records have been submitted. The Hearing Committee has found the discrepancy in the number of entries in the IPD register and Annexure 2. The case records of few IPD patients were checked and it was found that Date of admission, date of discharge, name of doctor under whom the patient has been admitted, diagnosis, signature of doctor, laboratory investigations etc. are missing. (Photocopy of few pages of IPD register and case sheet of Ajay Mishra, 5yrs/M and Shuma Soni 20 yrs/F are attached ?Page 3-15). Same as remark given in 2.

For Shuma Soni ? medicine prescribed as per the computer generated OPD record is Silicea 200 and it has not been mentioned that patient has been referred to IPD. Further, as per IPD case record Alumina 1M has been prescribed. Thus, the genuine functioning of the IPD is doubtful.

4. The College does not have a genuinely functional Clinical laboratory The college representative submitted that the college Laboratory is genuinely functioning from the starting of the hospital. Further to substantiate the above clarification, attested copies of Register of investigation of patients have been submitted. The Hearing Committee examined the pathology investigation register which shows the name, age, sex and investigation done for the patients. Proper form for advising investigations by the doctors and the reports were not available with the college representatives. Same as remark given in 1.

In Annexure 3 and also in the original register, it was also noted that blood sugar investigation was done for patients aged 9,10, 14, 18 years. On asking the college representatives (both doctors), the reason for this investigation done at this young age remained unanswered.

Thus, the Hearing Committee is of the view that there is no functional clinical Laboratory in the college/hospital.

5. The college does not have a genuinely functional operation theatre. The college representative submitted that the college has genuinely functioning Operation Theatre with all required equipments. Further to substantiate the above clarification, attested copy of O.T register and consent forms have been submitted. The Hearing Committee examined the Operation Theatre register. In

no case record the procedure of operation, an aesthesia given, etc. are mentioned. In Annexure 4, Authorization for Medical and/or surgical treatment given by Shyam Lal Yadav is enclosed but the next page regarding the details of the patient and investigations is totally blank. In the IPD case record of this patient, the name of the surgeon and date of surgery is not mentioned. For another patient named, Mrs. Pratibha Trivedi, she has been operated for boils in axilla and the name of surgeon mentioned in the OT register is Dr. Prem Lata Kohli whereas in IPD case record, the name of Surgeon mentioned is Dr. Sudheer Khare. (Photocopy of the OT register and IPD case record attached). Same as given in remark 1.

6. The college does not have minimum per day average number of patients in OPD during last one calendar year. The college representative submitted that the college Hospital has required per day average number of patients in the OPD is 204 per day but since the hospital was started on 01.04.2015, thereby per day average number of patients has been recorded from 01.04.2015 to 05.08.2016 is 86469 which is in accordance with MSR, 2013. At the date of surprise inspection, due to floods the number of patients was lesser than the other days for obvious reasons. Further to substantiate the above clarification, attested copies of registration records and Dispensing Records have been submitted. The Hearing Committee checked the computer generated data for the OPD patients. The computerised data from April 2015 ? August 2015 was not found in the written submission by the college representatives but the number of male, female and child seen in the OPD during these months is mentioned on page 47 of Annexure 5. On enquiring about the same, the representatives told that the entries were made in register manually which got destroyed in the rains. Considering the total number of OPD mentioned, the average number of patients attending the OPD is found to be 221 per day.

As the register to check the actual number of patients in OPD during April-August 2015 is not available and the computer generated data also shows entries on few holidays, the average number of patients attending OPD may not be correct.

7. Functionality of Library & Central registration section are also doubtful. The college representative submitted that the Library is functional in the college but since the course is not running in the college at present, the library is only accessed by the teachers and the hospital staff. Further, two persons are appointment in the college. There are 540 book in the library. And the Central registration Section is also functional on a computerized platform. Further substantiate the above clarification, copy of library register, attested copy of employee's appointment letter have been submitted from page no.61-73 and the hard and soft copies of Central Registration Section are submitted The Accession register of Library was checked by the Hearing Committee and there are entries of 539 books and not 540 as claimed by the College authorities in their verbal and written submissions at Annexure 6. Book issuing register has names of 10 doctors and they have been issued books from March 2016 onwards. (Page

61-62 and Annexure 6). On enquiring about the staff appointed for the Library, the college authorities claimed that they have appointed two persons for the library and the Librarian has been appointed from 1.8.2016 but could not produce the appointment letter for them. In written submission also they have mentioned that the attested copy of the employee's appointment letter is annexed at Annexure 6 but the same has not been found by the Committee. The claim of the college authorities they are having central registration section functional on the computerized platform (Annexure 7) is also false as there is handwritten Accession register. Thus, the genuine functional of the Library is doubtful. Same as remark given in 2.

8. Equipments in college also not as per HCC (MSR), 2013 for 100 students. The college representative submitted that the college has all required equipments for 100 students in accordance with MSR, 2013. Further to substantiate the above clarification, copy of Stock Register and bills have been submitted. The Hearing Committee examined the Stock register but it was found that the entries are not complete for all the equipments wrt name of the company from where it has been purchased, the quantity etc. It was not possible to calculate the total number of equipments purchased from the Bills and Vouchers attached at Annexure 8. The college representatives also informed that the equipments are kept in boxes and not placed in respective rooms as the college is not running at present. Same as given in remark 1.

Writ Petition (Civil) No. 10129/2016

S.No. Deficiency conveyed to the applicant Submission of the applicant Observation of the hearing committee Remarks of the Ministry

1 The college does not have sufficient no. of Non-teaching staff to handle the 60 students capacity College as per HCC (MSR) 2013. It is submitted that, on the Muster roll of college there are 17 Non-Teaching staff who were joined in the college since June 2016. None of them were present in the morning when the inspection was going on. However, they were available in the afternoon. At present the college is not running and these staffs are related to teaching departments. The Hearing Committee also showed the variation in the signatures of some of the Non-Teaching staff of the college as per their joining letter and as per their Attendance Register. Hearing Committee also asked about the bio-metric attendance document of all staff. In this regard, it is mentioned that these are not available with the hospital/college. The college Representative submitted that, on the Muster roll of the college, there are 17 Non-Teaching staff who were joined in the college since June 2016. None of them were present in the morning when the inspection was going on. However, they were available in the afternoon. At present the college is not running and these staffs are related to teaching departments. The Hearing Committee also showed the variation in the signatures of some of the Non-Teaching staff of the college as per their joining letter and as per their Attendance Register. Hearing Committee also asked about the bio-metric attendance document of all staff. In this regard, the College

representatives mentioned that these are not available with the hospital/college. From these observations it may be seen that at present the college is not having sufficient non-teaching staff. As per the observations of the hearing committee does not fulfil the criteria HCC (MSR), 2013

2 The college does not have sufficient no. of teaching staff to handle the 60 students capacity College as per HCC (MSR) 2013 It is submitted that the college is having 13 regular teaching staff and 2 Guest Faculty for the teaching purpose in 5 departments required for the 1st year. However, none of them were present during the inspection as the college is yet to start functioning. The College representatives submitted that the college is having 13 regular teaching staff and 2 Guest Faculty for the teaching purpose in 5 departments required for the 1st year. However, none of them were present during the inspection as the college is yet to start functioning. As per the observations of the hearing committee and inspection report of Central visitation team the college is unable to substantiate the claim of fulfilling bed occupancy.

In this regard it is submitted that Form 16 is not issued to these teachers. Again Hearing Committee mentioned that 03 of the teachers have no continuous experience and one reader in Anatomy is not having MD in concerned subject. Although he is guest faculty. In this regard the Hearing Committee asked the documents related to qualifications, experience, appointment order, joining report, attendance register, Acquaintance Roll, Form 16 in respect of these teachers. In this regard the Hearing Committee asked the documents related to qualifications, experience, appointment order, joining report, attendance register, Acquaintance Roll, Form 16 in respect of these teachers. In this regard the College representatives submitted that Form 16 is not issued to these teachers. Hearing Committee noticed that 04 of the teachers i.e. Dr. Chetan Shukla, Proff. (Dept. of Anatomy), Dr. Viswanath Rastogi, Proff. (Dept. of Physiology), Dr. Amar Nath Pathak, Proff. (Dept. of Organon of Medicine) and Dr. Virendra Tripathi, Proff. (Dept. of Materia Medica) are not having continuous teaching experience. In case of Dr. Virendra Tripathi two teaching experiences furnished by Shri Ramnath Singh Medical College claims he was working as Lecturer and demonstrator simultaneously for same time period. Further, the Principal has shown the teaching experience of Sofia Homeopathic medical college as a professor in Pharmacy from 1.3.2013 to 25.4.2015. At the same time he was also joined in the proposed college on 8.7.2014 as principal. Thus there is duplicity of this teacher. One reader in the Department of Anatomy is not having M/D. in concerned subject. Further the college representative failed to produce experience certificate in case of reader in Homeopathic Pharmacy Department and the experience certificate of reader in Materia Medica department has a long gap of 7 years. Further, one Lecturer in Anatomy Department Dr. Abhishek Dubey was also found to be shown as Lecturer in the Department of Anatomy of K.S. Homoeopathic Medical College, Gwalior. Thus the hearing committee finds only 6 teachers as eligible. Hence, does not fulfil the criteria as per HCC (MSR), 2013.

3 The college does not have sufficient number of Hospital staff to handle the 60 students capacity college as per HCC (MSR) 2013. The team has requested to produce the attendance register of the hospital staffs. The team has also requested to call all the Hospital staffs to put their signature in front of the Central team. Then the team observed that only 10 Hospital staffs were actually present, which may be seen. However, as per Attendance Register, only 2 doctors put their signature. However, Medical Superintendent, senior Medical officer, RMO, Surgeon, Anaesthetist, Obstretician/Gynaecologist, Radiologist) pathologist, House physician, Dispenser, Lab technician, X-ray technician. It is agreed that only 10 Hospital staff were available on the day of inspection dated 14.7.2016 at 11.30 am. It is further submitted that since there was an unprecedented rain continuously for the last 2 days many of the hospital staff could not reach the hospital. Further, some of the staffs were also supposed to attend the duty in 2nd shift which was starting from 1.00 pm onwards. The College Representatives agreed that only 10 hospital staff were available on the day of inspection dated 14.7.2016 at 11.30 am. The College representatives further submitted that since there was an unprecedented rain continuously for the last 2 days many of the hospital staff could not reach the hospital. Further, some of the staffs were also supposed to attend the duty in 2nd shift which was starting from 1.00 pm onwards. As per the observations of the hearing committee and inspection report of Central visitation team the college is unable to substantiate the claim of fulfilling bed occupancy.

Therefore, at the time of inspection only 10 hospital staff were present. Further, the hearing committee asked the reason for unavailability of many of the hospital staff including required number of Staff Nurse, Ward boys, dispenser, Medical Officers, Lab technician, X-Ray Technician and X-Ray Attendant etc, since these staff are essential for running the hospital in the morning hours also. The Hearing Committee also asked for the individual leave letters of those who were stated to be on leave on the particular day. In this regard, no individual leave letters brought today for verification for those hospital staffs. Therefore, at the time of inspection only 10 hospital staff were present. On this, the hearing committee asked the reason for unavailability of many of the hospital staff including required number of staff nurse, ward boys, dispenser, Medical Officers, Lab technician, X-Ray Technician and X-Ray Attendant etc, since these staff are essential for running the hospital in the morning hours also. The Hearing Committee also asked for the individual leave letters of those who were stated to be on leave on the particular day. In this regard, it was mentioned that no individual leave letters brought today for verification for those hospital staffs. Hence, does not fulfil the criteria as per HCC (MSR), 2013.

In this regard, as per the Duty Rosters of Medical Officers, Nursing and technical staff furnished now by the college representatives, the hearing committee mentioned that on the day of inspection 05 Medical Officers and 20 Nursing & Technical Staff were supposed to be present in the morning section and most of them found to be signed on the attendance register now produced before the

Hearing Committee. As per the Duty Rosters of Medical Officers, Nursing and technical staff furnished now by the college representatives, the hearing committee mentioned that on the day of inspection 05 Medical Officers and 20 Nursing & Technical Staff were supposed to be present in the morning session and most of them found to be signed on the attendance register now produced before the Hearing Committee.

However, except 02 Medical officers and 08 hospital and technical staff were found in the morning session as certified by the college representatives. However, except 02 Medical officers and 08 hospital and technical staff were found in the morning session as certified by the college representatives.

This is a disparity. In this regard, it is submitted that these staff were present in the afternoon, even though they were assigned duties in the morning session. This is a disparity. In this regard, the College representatives submitted that these staff were present in the afternoon, even though they were assigned duties in the morning session. Further the college has submitted a list of hospital staff in which Dr. Kusum Thomar, shown as M.O. (page No. 258/submitted document) was also seen present on 16.9.2016 in proposed K.S. Homoeopathic Medical College, during the visit conducted by one of the hearing committee member. On asking the college representative mentioned that they have removed this M.O. from proposed Thrimukha Homoeopathic medical college. However, the attendance register shows that the said M.O. is still working in this college. The functionality of the hospital is very much depended upon the presence of essential hospital staff. In this regard, the absence of the required hospital staff as observed by the inspection team and inability of the college representatives to justify their absence with valid documentary proof such as leave letters and duplicity of the staff in different institutions indicate that the hospital is not having the required number of hospital staff.

4 The College does not have the OPD as per HCC (MSR) 2013. The OPDs were found locked. There was no name plate indicating OPD unit of the hospital found while the team entered the hospital. There were 03 small cubicles in the OPD. The name plates of different departments of OPK like Paediatrics, Medicine, Obs and Gyn were affixed by Dr. Jadaon himself and his staff. Initially there were no doctors / Staffs in the OPD area Later on, 02 persons claimed to be Medical Officer were found in the OPD rooms at around 10.45 am. They were not in aprons. There were no OPD attendants available in the OPD. They were found writing the Prescriptions in the OPD slips without maintaining any registers. In the Prescription slips the Central Registration number and departmental registration number was not mentioned. After writing the prescription, the doctor had to dispense the medicine themselves as there was no pharmacist present till that time. The examination tables were covered without dusts without having any foot rests. The team did not find any patient in the Campus while entered into the Hospital premise. Later on, the team observed sudden visits of some patients in the OPD within a short span of time. As per record there were 12 OPD

patients till 12.30 pm. During conversations, Dr. Jadaon admitted that on an average 25-30 patients come to OPD. However, keeping in view the non-existence of any record maintained in OPD Registers, it is hard to believe that too. It is submitted that during the time of inspection of Central team it is seen that name plates of various OPD units of the Hospital were not fixed and they were replaced after cleaning the same since there was heavy rain during the last few days. The Hearing Committee also mentioned that the removal of the name plates is not understood since there was no rain inside the hospital. The Hearing Committee had shown the video clipping in which one staff was found writing the prescription in the OPD slips without making any documentation in any register. In this regard, it is submitted that these OPD case register will be recorded later from the dispensing register. The Hearing Committee also asked about the observation of the Central Team on the statement of Dr. Jadaon, Chairman of the Society that on an average of 25-30 patients comes daily to OPD. In this regard, it is submitted that the actual figures of OPD is not known to him. The Hearing Committee also shown the blank register of Central OPD from 9.7.2016 which indicated no patients reported for these period. To this, it is submitted that, from July 2016 onwards we are maintaining the computerized OPD data. The Hearing Committee also asked why this was not shown to the inspection team. It is mentioned that, they were in a hurry so that the computerized data could not be shown to them. It is further informed that, many of the hospital staff, who was supposed to come in the morning, came in evening only. The College representative submitted that during the time of inspection of Central team it is seen that name plates of various OPD Units of the Hospital were not fixed and they were replaced after cleaning the same since there was heavy rain during the last few days. The Hearing Committee also mentioned that the removal of the name plates is not understood since there was no rain inside the hospital. The Hearing Committee had shown the video clipping in which one staff was found writing the prescription in the OPD slips without making any documentation in any register. In this regard, the College representatives submitted that these OPD case register will be recorded later from the dispensing register. The Hearing Committee also asked about the observation of the Central Team on the statement of Dr. Jadaon, Chairman of the Society that on an average of 25-30 patients comes daily to OPD. In this regard, the College representatives submitted that the actual figures of OPD are not known to him. The Hearing Committee also shown the blank register of Central OPD from 9.7.2016 which indicated no patients reported for these periods. To this, the College representatives submitted that, from July 2016 onwards they are maintaining the computerized OPD data. The Hearing Committee also asked why this was not shown to the inspection team. The College representatives mentioned that, they were in a hurry so that the computerized data could not be shown to them. The College representatives further informed that, many of the hospital staff, who was supposed to come in the morning, came in evening only. ON examination of the computerized OPD data it is observed that in many places the registration numbers were written as 0 and 1 and in many places there is registration

numbers but no names indicative of manipulated data. As per the observations of the hearing committee does not fulfil the criteria HCC(MSR), 2013

5 The college does not have the IPD as per HCC (MSR) 2013. The team observed that there is no sign board indicating IPD wards. The hospital authorities affixed different name plates of the hospital in front of the team. The wards are not functional at all. The IPD wards were locked and opened in front of the team. There was no patient in the IPD of the Hospital. All the beds were lying covered with dusts and cob webs without having any mattresses, bed sheets, necessary instruments, I.V. drip stands and other required paraphernalia. Further, the team has observed that the IPD registers were not maintained properly and entries were made till 28/06/2016. There was no hospital staff available on the day of inspection in the IPD. The team could not find any specific room meant for SMO, store room doctor's duty room, obstetrician / assistant etc. There is no ambulance in the hospital. During conversations, Dr. Jadaon admitted that the IPD is not functional since long time. Hence, the team is of the opinion that the IPD is not functional. It is submitted that, at the time of inspection it is agreed that there was no sign board indicating in the IPD Wards. There were no patients in many of the wards and the entire mattress, bed sheets were folded and kept aside. The patients admitted in the previous days were discharged before the reporting of the Central team. The hearing committee also brought to our notice that many of the patients were shown as discharged on the same day in the Central IPD register. Further some of the Clinical Case Sheets are without the signature of treating physician and even in cases of fever, temperature chart is not attached. The Lab Test reports are not attached where it was advised to do so. The College representative's submitted that, at the time of inspection it is agreed that there was no sign board indicating in the IPD Wards. There were no patients in many of the wards and the entire mattress, bed sheets were folded and kept aside. The patients admitted in the previous days were discharged before the reporting of the Central team. The hearing Committee also brought to the notice of college representatives that many of the patients were shown as discharged on same day in the Central IPD register. Further some of the Clinical Case Sheets are without the signature of treating physician and even in cases of fever, temperature chart is not attached. The Lab Test reports are not attached where it was advised to do so. Further, even in the computerized IPD register, it is observed that in many places the registration numbers were written as 0 and 1 and in few there is no mentioning of date of discharge. All these are indicative of manipulated data of IPD. As per the observations of the hearing committee does not fulfil the criteria HCC (MSR), 2013

6 The college does not have the Bed occupancy as per HCC (MSR) 2013. The IPD wards were locked and opened in front of the team. There was no patient in the IPD of the Hospital. All the beds were lying covered with dusts and cob webs without having any mattresses, bed sheets, necessary instruments, I.V. drip stands and other required paraphernalia. Further, the team has observed that the

IPD registers were not maintained properly and entries were made till 28/06/2016. It is also accepted that the IPD entries were made till 28.06. 2016 in the Central IPD Register. However we are now producing the computerized IPD figures of the said period. The hearing committee also asked to show the original records of the IPD duty rosters of doctors, IPD Medicine Dispensing Register and Diet Register. In this regard, it is mentioned that we are not maintaining the Diet Register. It was also accepted by the college representatives that the IPD entries were made till 28.06.2016 in the Central IPD Register. However, they have produced the computerized IPD figures of the said period. The hearing committee also asked to show the original records of IPD duty rosters of doctors, IPD Medicine Dispensing Register and Diet Register. In this regard, it is mentioned that we are not maintaining the Diet Register. In this regard, on examination of the Central IPD records, even cases of date of admission as 21.07.2016 and discharge of 18.07.2016 was found. The IPD record also indicate 11 patients were shown as admitted in 14.07.2016, while the inspection team could see none of the patients and all the wards were found locked. The patients admitted on 13.07.2016 and shown as discharged on 14.07.2016 were also not found by the inspection team. All these indicate the submitted documents on bed occupancy are fake. As per the observations of the hearing committee does not fulfil the criteria HCC (MSR), 2013.

7 The college does not have a genuinely functional Operation Theatre. One room was shown as meant for OT, for which name plate was affixed in the presence of the team. The single iron bed kept in that room was found in very bad state with a chair kept on it. The bed is found without any mattress, bed cover etc. There were no requisite instruments found in that room. It is confirmed that the said room is not in use. It is submitted that the OT space with equipments are available in the hospital. However, it is accepted that the same is not functional. It college representatives submitted that the OT space with equipments are available in the hospital. However, they have accepted that the same is not functional. As per the observations of the hearing committee and inspection report of Central visitation team the college unable to substantiate the claim of fulfilling bed occupancy. Hence, does not fulfil the criteria as per HCC (MSR), 2013.

8 X-ray, USG, ECG these instruments were not present in the hospital. The College authorities could not able to produce investigation reports / relevant registers to verify. It is accepted that these instruments are not available in the hospital even though separate space provision has been made. Further MOU for undertaking training of students in another hospital has been made. The college representatives accepted that these instruments are not available in the hospital even though separate space provision has been made. As per the observations of the hearing committee does not fulfil the criteria HCC (MSR), 2013.

9 The College does not have the functional Clinical Laboratory as per HCC (MSR), 2013. There is no pathological laboratory, Lab technician, Lab attendant

in the hospital. It is submitted that the college possesses a clinical laboratory having the facility of different lab investigations. In this regard photocopy of list of equipments and lab records. It is submitted that the college possesses a clinical laboratory having the facility of different lab investigations. In this regard they have submitted the photocopy of list of equipments and lab records. However, in the absence of actual patients the Laboratory records appears to be irrelevant. As per the observations of the hearing committee does not fulfil the criteria HCC (MSR), 2013.

10 The College does not have the Central Registration section as per HCC (MSR), 2013. One person was found making entries of the patient details in the OPD slips without entering in any Central Registers. Then the team asked him to show the Central OPD register and it was observed that the register was not maintained since 09.07.2016 and kept blank with only date and serial number was written. It is also found that even some serial number of in between entries made on earlier days were kept blank, against which nobody could provide any justification. Hence, fabrication of data cannot be ruled out. As mentioned in response to point NO. (iv), it is submitted that these OPD case sheet will be recorded later from the dispensing register. Further since 1.7.2016 entries are being maintained in the form of soft copy on computer and after taking print out from computer, entries were made in central IPD register. Therefore some blanks were shown in central OPD register at the time of inspection. The college representatives submitted that this OPD case sheet will be recorded later from the dispensing register. Further since 1.7.2016 entries are being maintained in the form of soft copy on computer and after taking print out from computer, entries were made in central IPD register. Therefore some blanks were shown in central OPD register at the time of inspection. As observed against, point no. iv, the OPD figures appears to be manipulated. As per the observations of the hearing committee does not fulfil the criteria HCC (MSR), 2013.

21. The petitioners have not made any attempt in their rejoinder-affidavits filed before this Court to clarify/contradict the remarks of the respondent No.1 against each deficiency. In the absence of any denial to the remarks given by the Ministry against each of the deficiency, it must be held that the petitioners College/Hospital had not met the requirement of the provisions of the Act of 1973/Regulations of 2013. In fact, the petitioners had only filed in the writ petitions their reply to the show cause notices without Annexures. Even, Mr. Sukhija did not make any strong / vociferous arguments, to contest, the conclusion of the respondent no. 1 on deficiencies. This plea of Mr. Sukhija in this regard needs to be rejected.

22. Insofar as the submission of Mr. Sukhija that the respondent No.1 did not have the power to inspect the College/Hospital at the Letter of Permission stage in view of Section 12A of the Act is concerned, Section 12A of the Act reads as under:-

12A. 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 Homoeopathic Medical College; or

(b) no Homoeopathic Medical College shall -

(i) open a new or higher course of study or training (including post-graduate course of study or training) which would enable students of each course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training (including the post-graduate 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. - For the purposes of this section, "person" includes any University or a trust, but does not include the Central Government.

Explanation 2. - For the purposes of this section, "admission capacity", in relation to any course of study or training (including post-graduate course of study or training) in a medical institution, means the maximum number of students as may be decided by the Central Council from time to time for being admitted to such course or training.

(2) (a) Every person or medical institution shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Central Council for its recommendations.

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme from the Central Government under sub-section (2), the Central Council may obtain such other particulars as may be considered necessary by it from the person or the medical institution concerned, and thereafter, it may,-

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or medical institution concerned for making a written representation and it shall be open to such person or medical institution to rectify the defects, if any, specified by the Central Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit it to the Central Government together with its recommendations thereon within a period not exceeding six months from the date of receipt of the reference from the Central Government.

(4) The Central Government may, after considering the scheme and the recommendations of the Central Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or medical institution concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall constitute as a permission under sub-section (1) :

Provided that no scheme shall be disapproved by the Central Government except after giving the person or medical institution concerned a reasonable opportunity of being heard :

Provided further that nothing in this sub-section shall prevent any person or medical institution whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme had been submitted for the first time under sub-section (2).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order is communicated by the Central Government to the person or medical institution submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it was submitted, and, accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

(6) In computing the time-limit specified in sub-section (5), the time taken by the person or medical institution concerned in submitting the scheme, in furnishing any particulars called for by the Central Council, or by the Central Government, shall be excluded.

(7) The Central Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely: -

(a) whether the proposed medical institution or the existing medical institution seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Central Council under section 20;

(b) whether the person seeking to establish a medical institution or the existing medical institution seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training, hospital and other facilities to ensure proper functioning of the medical institution or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided

within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical institution or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical institution or the course of study or training by the persons having the recognised medical qualifications;

(f) the requirement of manpower in the field of practise of homoeopathic medicine in the medical institution; and

(g) any other factors as may be prescribed. (8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or medical institution concerned.?

23. From the perusal of Sub-Sections 2, 3 and 4 of Section 12A of the Act of 1973, it is noted that an application for obtaining permission is initially filed with the respondent No.1 Central Government, which in turn, shall refer the scheme to the Central Council, who may obtain such other particulars as may be considered necessary by it from the person or the medical institution concerned and the Central Government after considering the scheme and the recommendations of the Central Council and after obtaining "where necessary" such other particulars as may be considered necessary by it from the person or medical institution concerned and having regard to the factors referred to in sub-Section (7) either approve or disapprove the scheme. On the perusal of the aforesaid provisions it is revealed that Sub-Sections 3 and 4, are similarly worded "may obtain such other particulars as may be considered necessary by it from the person or the medical institution concerned" except that under Sub-Section 3 it is the Central Council and under Sub-Section 4 it is the Central Government. The petitioners do not dispute the power of the Central Council to effect inspection, even though there is no express stipulation in Sub-Section 3. In other words, inspection is read into Section 3. If that be so, similar being the provision, i.e., Sub-Section 4, the Inspection by the Central Government must be read into it. The Inspection of a College is one of the process for obtaining such other particulars as may be necessary from the medical institution concerned. The power of the Central Government to cause inspection is also clear as Sub-Section 4 of Section 12A, does not limit the power of the Central Government only to the Scheme and recommendations of the Central Council, the words "after considering the Scheme and the recommendations of the Central Council Under Sub-Section 3" are followed by the words "after obtaining where necessary such other particulars as may be considered necessary by it from the person or medical institution concerned". The latter words suggest that the Central Government shall not only consider the scheme and the

recommendations of the Central Council, it may obtain "where necessary" such other particulars as may be considered necessary from the person or medical institution. The words "where necessary" has also relevance inasmuch as in a given case if the particulars given in the scheme / recommendations of the Central Council are sketchy / contradictory / amiss / dubious / not reliable etc, the Central Government shall be within its right to itself cause an inspection and obtain particulars to satisfy itself on the competency of the college to undertake the course. This power of the Central Government to inspect college must not be in every case and on routine basis. It is only in a given case, if the aforesaid parameters are met. Otherwise, the bona fide of the Central Council to cause inspection shall be undermined. That apart under Section 12A, the Central Government is the permission granting authority for running a Homeopathy College. An authority, which grants permission, surely shall have the power to inspect the College for good and valid reasons. In the case in hand, there must be reasons which actuated the respondent no.1 to carry out the inspection. In fact, a stand has been taken by respondent no.1 in its counter-affidavit that the visitation conducted by the team of the respondent no.1 contradicts the observations made by the Central Council Inspection Team in respect of the petitioners College. It is also the stand of the respondent no. 1 that the Central Council has been asked to furnish justification and also undertake action on the Inspectors who had reported dubiously. So, there is justification to cause inspection by the Central Government. I note that the petitioners have not stated in their writ petitions that there is no contradiction in the report of the Central Council and the one submitted by the Team sent by the respondent no.1. That apart, it is noted from the replies filed by the petitioners that they have not challenged the power / competency of the Central Government to cause inspection / make a visit to the Institution. In the absence of any challenge, the petitioners are precluded from agitating the issue now. That apart, there is nothing on record to show that such power was challenged during the hearing granted to the petitioners. This submission of Mr. Sukhija is liable to be rejected.

24. The reliance placed by Mr. Sukhija on the judgment of the Bombay High Court in Hindustani Education Society (supra), was primarily with regard to the provisions of the Central Council of Indian Medicine Act and the Regulations made there under, and no attempt has been made by Mr. Sukhija to show similarity in the provisions of the two statute / regulations. The Judgment shall not be applicable.

25. Insofar as the third submission of Mr. Sukhija that the Competent Authority has not given a hearing, instead two others officers have given a hearing, on whose note, the Competent Authority who was discharging the quasi-judicial function has passed the impugned orders by relying upon the judgment of the Supreme Court in the case of Gullapali Nageswara Rao (supra) is concerned, before I deal with the submission made by Mr. Sukhija, it is relevant to refer and consider the judgment as relied upon by Mr. Sukhija. In the said case, the facts as noted are that the petitioners have been carrying on motor transport business

in Krishna District for several years by obtaining permits under the Motor Vehicles Act, 1939 in respect of various routes. The amending Act of 1956 inserted a new Chapter, Chapter IV-A in the Act providing for the State Transport Undertaking running the business to the exclusion, complete or partial, of all other persons doing business in the State. Chapter IV-A provided for a machinery called the State Transport Undertaking, defined under Section 68-A(b) as an undertaking providing road transport service, to run the transport business in the State. In exercise of the powers conferred by Section 68-C of the Act, one Shri Guru Pershad, styled as the General Manager of the State Transport Undertaking of the Andhra Pradesh Road Transport, published a scheme for the purpose of providing an efficient, adequate, economical and properly coordinated transport service in public interest to operate the transport service mentioned therein with effect from the date notified by the State Government. Objections were invited within 30 days from the date of the publication of the proposal in the Official Gazette, viz., November 14, 1957. 138 objections were received. Individual notices were issued by the State Government by registered post to all the objectors. On December 26, 1957, the Secretary to Government, Home Department, in charge of transport, heard the objections. 88 of the objectors represented their cases through their advocates; three of them represented their cases personally and the rest were not present at the time of hearing. After considering all the objections and after giving an opportunity to the objectors, their representatives and the representatives of the State Transport Undertaking, the State Government found that the objections to the scheme were devoid of substance. On that finding, the State Government approved the scheme and the same was published in the Andhra Pradesh Gazette dated January 9, 1958. The scheme was ordered to come into force with effect from January 10, 1958. The Government of Andhra Pradesh also established a Road Transport Corporation under the Road Transport Corporations Act, 1950 called the Andhra Pradesh Road Transport Corporation, with effect from January 11, 1958, and by its order dated January 11, 1958, the said Corporation was empowered to take over the management of the erstwhile Road Transport Department. The said Transport Corporation is now implementing the scheme of nationalization of bus transport under a phased programme. The petitioners, who are plying their buses on various routes in Krishna District, apprehending that their routes would be taken over by the Corporation pursuant to the aforesaid scheme, sought the aid of the Supreme Court to protect their fundamental right to carry on their business against the action of the State Government on various grounds. One of the contention before the Supreme Court was that the State Government approving the scheme was discharging a quasi-judicial act and therefore the Government should have given a personal hearing to the objectors instead of entrusting that duty to its Secretary. Secondly, it is stated that a judicial hearing implies that the same-person hears and gives the decision. But in this case the hearing is given by the Secretary and the decision by the Chief Minister. Thirdly, it is contended on the same hypothesis, that even if the hearing given by the Secretary be deemed to be a hearing given by the State Government, the hearing is vitiated

by the fact that the Secretary who gave the hearing is the Secretary in charge of the Transport Department. The Transport Department, it is stated, in effect was made the judge of its own cause, and this offends one of the fundamental principles of judicial procedure. The Supreme Court went into the aspect whether the State Government acts quasi-judicially in discharging the functions under Section 68(C) of the Act. The Court held that the Government order under Section 68(D) is a quasi-judicial act. I may only point out here that in subsequent decisions, more particularly in the Indian National Congress-I, the Supreme Court has culled out the following attributes for a quasi-judicial act:-

- (a) a statutory authority empowered under a statute to do any act;
- (b) which would prejudicially affect the subject;
- (c) although there is no lis or two contending parties and the contest is between the authority and the subject; and
- (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

26. Coming to the question, which also arose in that case whether the Secretary could have given a hearing when the order was passed by the Chief Minister, the Supreme Court held as under:-

"31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party-appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

27. In a recent judgment in the case of Kalinga Mining Corporation (supra), on which reliance was placed by Mr. Gogna, wherein the Supreme Court had considered the judgment in the case of Gullapali Nageswara Rao (supra), the Supreme Court has in para 48 held as under, wherein a similar question arise.

"48. We are of the considered opinion that the conclusions reached by the High Court cannot be said to be contrary to the established principles and parameters for exercise of the power of judicial review by the courts. At this stage, we may also make a reference to a submission made by Mr. Krishnan that the High Court did not give due consideration to the grievance of the appellant raised in the writ petition with respect to the merits because it assumed that the appellant had attempted to bye-pass the alternative remedy of revision available to it under

Section 30 of MMDR Act read with Rules 54 and 55 of the Rules. We are of the considered opinion that the aforesaid submission of the learned counsel is wholly misplaced. The High Court merely noticed that the matter had been referred back to the Central Government on a limited issue. Therefore, it was not open to the Central Government to re-open the entire controversy. It has been observed by the High Court that such a power would only be available to the Central Government in exercise of its Revisional Powers under Section 30 read with Rules 54 and 55 of the Rules. We also do not find much substance in the submission made by Mr. Krishnan that the order dated 27th September, 2001 is vitiated as it has been passed by an officer who did not give a hearing to the parties. This is clearly a case of an institutional hearing. The direction has been issued by the High Court for a hearing to be given by the Central Government. There was no direction that any particular officer or an authority was to give a hearing. In such circumstances, the orders are generally passed in the relevant files and may often be communicated by an officer other than the officer who gave the hearing. The legality of institutional hearing has been accepted in England since the case of *Local Government Board v. Arlidge* (supra). The aforesaid judgment was quoted with approval by this Court in *Pradyat Kumar Bose* (supra). This Court approved the following passage from the speech of Lord Chancellor in the aforesaid case:

"My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its enquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff."

In view of the aforesaid settled position of law, it is difficult to accept the submissions of Mr. Krishnan that the order dated 27th September, 2001 suffers from any legal or procedural infirmity. In our opinion, the conclusions reached by the High Court are in accordance with the settled principles of law. Although a large number of cases have been cited by the learned counsel for the parties on either side, but it is not necessary to consider all of them individually as the principles with regard to observance of natural justice are well entrenched in our jurisprudence. Undoubtedly, any decision, even if it is administrative in nature, which causes adverse civil consequences must be passed upon hearing the

concerned parties. In our opinion, the Central Government has fully complied with the aforesaid principle in passing the order dated 27th September, 2001."

28. From the above, it is clear that in the present case, Section 12A contemplates a decision to be taken by the Central Government with regard to the application for grant of permission to establish a Homeopathic Medical College and in case the scheme is disapproved by the Central Government, it necessarily has to give a reasonable opportunity of being heard and in this case under the relevant Rules, the Minister, In-charge being the Competent Authority, even though he has decided to disapprove the Letter of Permission on the basis of a note given by two officers, who have given a hearing, would not vitiate such a decision. Moreover, I note that the petitioners have subjected themselves to the jurisdiction of the two officers. No objection with regard to the competency of such officers to give a hearing has been taken or objected to by the representative of the petitioners. In view of the above, this submission needs to be rejected.

29. In view of my discussion above with regard to the three broad submissions made by Mr. Sukhija, I do not see any merit in the writ petitions. Same are dismissed.