
(1996) 07 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 4352 of 1995

Kalyan Dutta Gupta and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Assam Homeopathic Medicine Act, 1955 — Section 3, 9
Homeopathy (Minimum Standards of Education) Regulations, 1983 — Regulation 1

Citation : AIR 1997 Guw 48

Hon'ble Judges : M. Sharma, J

Bench : Single Bench

Advocate : G. Uzir MH Choudhury and L.N. Choudhury, for the Appellant;
C.G.S.C. for Union of India, for the Respondent

Judgement

M. Sharma, J.—This writ petition has been preferred against the direction issued by the Director of Medical Education, Assam whereby the examinations of the Homoeopathic Medical Colleges of Assam for the session 1993-95 was declared with effect from 30-10-1995.

2. The writ petitioners are closely associated with all the three Homoeopathic Medical Colleges in Assam. Petitioner No. 1 is an Ex Assistant Secretary General of Homoeopathic Association of India and Ex Member of the Court of Examiners under the Board of Homoeopathic System of Assam.

Petitioner No. 2 is the General Secretary of Swahid Jadav Nath Govt. Homoeopathic Medical College, Khanapara, petitioner No. 3 is the Advisor of All Assam Homoeopathic Medical College Students Union, petitioner No. 4 is the President of Swahid Jadav Nath Govt. Homoeopathic Medical College, petitioner No. 5 is a student of the said college, petitioner No. 6 is the General Secretary of All Assam Homoeopathic Medical College Students-Union and petitioner No. 7 is an Ex General Secretary of All Assam Homoeopathic Medical College Students Union.

3. Respondent No. 1 is in the overall charge of the Homoeopathic Medical Colleges; respondent Nos. 2 and 4 are responsible for upgradation and improvement of homoeopathic system. The proforma respondent No. 5 is the controlling authority over the Central Council of Homoeopathy; proforma respondent No. 6 is the recognising authority to the Homoeopathic Colleges. There are three Homoeopathic Medical Colleges in Assam, namely, Swahid Jadav Nath Homoeopathic Medical College " Hospital, Guwahati; Assam Homoeopathic College " Hospital, Nagaon and Dr. JK Saikia Homoeopathic Medical College & Hospital, Jorhat respectively. It is relevant to mention that Pragjyotishpur Homoeopathic Medical College which was established in 1976 and Guwahati Homoeopathic Medical College which was established in 1975 were amalgamated into one college in 1989 and the same was named as Swahid Jadav Nath Homoeopathic Medical College. All the colleges were taken over by the State Govt. in 1989. Further these colleges had been affiliated to the Board of Homoeopathic System of Medicine, Assam from 1977 to 1994 temporarily and this Board was constituted under the Assam Homoeopathic Medicine Act, 1955 (for short "The Act") which was enacted to provide for the development of Homoeopathic System of Medicine in the State of Assam and under the provisions of Medicine in the State of Assam and under the provisions of this Act the Board of Homoeopathic System of Medicine has been constituted.

4. In consistent with the Central Act, 1973 the Assam Act also keeps similar provisions to facilitate the development of Homoeopathic System of Medicine and its control. The Govt. of Assam enacted the Assam Homoeopathic Medicine Act, 1955 (for short "The Act, 1955") and framed rules, namely, Assam Homoeopathic Medicine Rules, 1958 u/s 24 and u/s 23 of the Act, 1955 made regulation, namely, the Assam Homoeopathy (Diploma Course) Regulation, 1982 (Assam Regulation, 1982).

5. u/s 3 of the Act a Board was constituted, namely, Assam Homoeopathic Medical Board and compulsory registration of a person practising Homoeopathy has been provided u/s 5. Further before getting registration manner standard have also been provided u/s 9 of the Act, namely, Class A and B. Section 9(iii) provides as follows:

"One who is a homoeopathic medical practitioner who has successfully gone through at least four years course in any Homoeopathic institution recognised by the State in which the institution is situated and holding a Diploma or a Certificate from the institution, subject to the condition that the standard of qualification is not lower than the standard that would be required for registration by the Assam Homoeopathic Medical Board."

From the reading of Section 9(iii) it is clear that to be a registered homoeopathic practitioner, one should complete a four year course holding diploma/certificate from a homoeopathic institution. Section 12 of the Assam Act, 1955 provides for penalty for practising Homoeopathy by unauthorised persons and Sections 13 and 14 provides for penalty for conferring, granting or issuing diploma, licence

by unauthorised persons or institutions.

6. Regulation 13 of the Assam Regulation, 1982 provides that at the time of making application for affiliation every college has to satisfy the Board that arrangements have been made for imparting medical teaching in accordance with Homoeopathy (Minimum Standards of Education) Regulation, 1980 and Homoeopathy (Diploma Course) Regulations, 1980. Further it is provided that on receipt of such application the Board may direct a person or persons to make an enquiry and give report.

7. The Homoeopathic Colleges are required to be affiliated by a Board or University and recognised by the Central Council of Homoeopathy as per provision of Regulation 2(v) of Homoeopathy (Minimum Standard of Education) Regulation, 1983. The regulations framed under the provisions of the Homoeopathy Central Council Act, 1973 are as follows:

- (1) Homoeopathy (Diploma Course) Regulation, 1982.
- (2) Homoeopathy (Degree Course) Regulation, 1983.
- (3) Homoeopathy (Graded Degree Course) Regulation, 1983.
- (4) Homoeopathy (Minimum Standards of Education) Regulations, 1983.

As per Regulation 2 of the above Regulations a "Homoeopathic College" means a Homoeopathic Medical College affiliated to a Board or University and recognised by the Central Council of Homoeopathy.

8. Under the provisions of Assam Regulation 1982 the diploma course in homoeopathy is a four years course approved by the Govt. of India under the Homoeopathy Central Council Act, 1973. All the examinations are required to be conducted by the Academic Council constituted under Regulation 5 of the Assam Regulation, 1982. Regulation 8 provides for fixing of dates for several examination of the Board by the Council appointed and the Heads of the recognised institutions are required to be intimated before two months of the examinations schedules to be held and also the Central Council of Homoeopathy should be given three month's prior information in this regard.

9. The grievance of the writ petitioners is that the three Homoeopathic Colleges in Assam were ceased to be recognised by the Central Council of Homoeopathy since 1987, but the diploma qualifications have been awarded by the State Board without extension of the recognition from the Central Council of Homoeopathy (CCH) under Schedule-11 of the Homoeopathy Central Council Act, 1973 as recognised medical qualification. The same has not been extended in no point of time and all the three Homoeopathic Colleges in Assam were running without any further recognition from the Central Council of Homoeopathy since 1987. These colleges were not given recognition for non fulfilment of "minimum standard" required for Homoeopathic Medical College and associated teaching hospital imparting diploma level education in these colleges under the provisions of the

Homoeopathic (Minimum Standard of Education) Regulation, 1983.

10. As discussed above the Board of Homoeopathic System of Medicine, Assam postponed provisional affiliation with effect from 1-4-1994 vide its resolution No. 4 dated 13-3-1995 in the Board's meeting (Annexure-B to the writ petition). For proper examination the resolution is quoted below.

"The Board discussed about the present condition of the three Govt. Homoeopathic Medical Colleges and decided to postpone temporarily its provisional affiliation with effect from 1-4-1994 till the recognition of DHMS Diploma awarded by this Board beyond June, 1987 included in the second Schedule of the CCH Act, 1973 & till the colleges fulfil the minimum standard required for the Homoeopathic Medical Colleges and associated teaching hospital imparting DHMS Diploma level education in Homoeopathy regulation 1983 of the Central Council of Homoeopathy and Homoeopathic Diploma Course Regulation, 1982 of the Board of Homoeopathic System of Medicine, Assam."

11. Mr. Uzir, counsel for the petitioners submitted that the three colleges have been presently running without having any due recognition from the Central Council of Homoeopathy and without having any affiliation of the Board of Homoeopathic System of Medicine, Assam. In this precarious condition the fate and future career of the students of these colleges are in dark. It is further submitted that the students Union of these three colleges placed their charter of demands to the Board of Homoeopathic System of Medicine, Govt. of Assam and Central Council of Homoeopathy from time to time for necessary action and the Central Council of Homoeopathy and the Govt of Assam assured that as soon as these colleges fulfil the conditions under the Regulations, the Central Council of Homoeopathy would give its recognition. It is relevant to mention that these minimum requirements like proper accommodation, teaching staff pattern, equipments, library books, curricular and co-curricular activities, clinical training facilities, existing infrastructure etc are necessary, as prescribed under Appendix-1 of the Regulation.

12. The abovementioned provisions of the Act, 1955 and Regulation have been referred with a view of examine the consequences which would effect the career of the students who have obtained diplomas and have been registered as medical practitioner under the provisions of the Act, 1955 after 1987, as it is seen after 1987 the three Homoeopathic Colleges of Assam ceased to get recognition from the Central Council of Homoeopathy, due to non fulfilment of the requirements for running of those colleges in Assam.

13. It is pertinent to examine the provisions of the Act, 1955 and Rules; 1958 and the Regulation. 1982 As regards power and function of the Boards and effect of non extension of the affiliation by the Central Council of Homoeopathy, as the fate and career of the students of the Homoeopathic Colleges of Assam are involved, particularly the career of the students who completed their course after 1987. But provisional Diplomas have been conferred to the students, by the

Board after 1987 without any confirmation from the Central Board pushing the fate and career of the students to a grave uncertain situation as there is no assurance from the Apex Body (Central Board) to regularise the conferment of provisional Dilomas.

Rules 3 to 15 of the Rule, 1958 provides for the procedure for constitution of the Board, Rule 16 of the Rule, 1958 empowers the State Govt. to have its final decision regarding the election etc to the Board. Rule 17 confers power to the State Govt. to take final decision on any question that may arise as to the intention, construction, or application of the Rules regarding election, construction etc of the Board, Rule 18, 19, 20 and 21 provide for filling up of vacancies. Rule 22 provides for procedure for holding meeting of the Board and Rule 22(3) relates to constitution of quorum of a Board's meeting.

14. Clause 11 of the Regulation, 1982 provides for the requirements to be fulfilled by a Homoeopathic College to get affiliation from the Board which is quoted below :

"11. The Board shall affiliate any Homoeopathic Institution in Assam on the conditions laid down below:--

(a) The privilege of affiliation can be conferred only by the Board and application shall be sent to the Registrar.

(b) Every College applying for affiliation shall satisfy the Board on the following matters.

(i) The College has a indoor hospital attached thereto with at least 25 beds, and an outdoor hospital.

(ii) That the College is a public institution managed by a Governing Body consisting of eleven Members. Out of eleven, members there including the Principal should be from the teaching staff of the College, the C.M.H.O. or the S.D.M.O.H. the D.C. or his representative, the Executive Engineer of the District and five representative of public having interest in Homoeopathy should from the Governing Body. The Principal of the College should be the Secretary to the Governing Body.

(iii) That the financial resources of the College are adequate for its continued maintenance.

15. For proper examination of the grievances of the petitioners some of the provisions of the Regulation, 1982 are quoted below:

"Reg. 12. That the College shall have its own land and building for running its various departments and the College grounds shall have sufficient form for further expansion.

Reg. 13. Every college at the time of making the application for affiliation shall satisfy the Board that arrangements have been made for imparting medical

teaching in accordance with Homoeopathy (Minimum Standards of Education) Regulation, 1980 and Homoeopathy (Diploma Course) Regulation, 1980 of the Central Council of Homoeopathy. On receipt of an application for affiliation the Board may direct a person or persons to make an enquiry and report thereon. The person in charge of the college shall give every facility to such persons while conducting the enquiry.

Reg. 14. When the Board has granted an application for affiliation the College shall pay to the Board a Minimum fee of Rs. 250/-on receipt of which the College shall be entered in the list of affiliated colleges.

Reg. 15. The Principals of affiliated Colleges shall send to the Registrar the name of every student of the College within one month of his/her admission with a fee of Rs. 5.00 per student for registration of the student with the Board."

16. Regulation 30 empowers the Board to appoint committees and sub committees to report upon any matter to the Board as referred by it.

17. Regulation 31 and 32 empowers the Board to constitute Academic Council for conducting examinations with incidental powers as provided under this Regulation. The power and function of this Academic Council has been provided clearly in this Regulation.

18. As stated above Regulation 13 provides that for affiliation/recognition the Board is required to be satisfied as regards infrastructure under Regulation 11 of the Regulation, 1982 which provides that the Board shall be satisfied about the statutory requirements in accordance with Homoeopathy (Minimum Standard of Education) Regulation and Homoeopathy (Diploma Course) Regulation of the Central Council of Homoeopathy.

19. The reasonable apprehension and grievances of the petitioners are that the three Homoeopathy-Colleges in Assam were, given recognition by the Central Council of Homoeopathy as evident from Annexure-A to the writ petition which is the recognition letter given under. 2nd Schedule of the Homoeopathy Central Council Act, 1973 and this shows that the diploma in Homoeopathy System of Medicine was given from 1983 to 1987 only. The copy of the resolution dated 13-3-1995 adopted in the Board's meeting (Annexure-B to the writ petition) also shows that it decided to postpone temporarily its provisional affiliation with effect from 1-4-1994 till the recognition of Diplom in Homoeopathy Medicine and Surgery (DHMS) awarded by the Board, beyond June, 1987 including in the 2nd Schedule of the Homoeopathy Central Council Act, 1973 and till the colleges fulfil the minimum standard required for the Homoeopathy Medical Colleges.

20. As none of the respondents has come forward to counter the writ petition and no representation has been made before this Court by official respondents the Court was not enlightened with the stand of the respondent State Govt. and no explanation was made how the State Board continued to give recognition without any affiliation from the Central Council of Homoeopathy as provided

under the Central Act, 1973 after 1987 till 31-3-1994, that is, prior to the adoption of the resolution (Annexure B to the writ

21. Further the portion of para 5 of the resolution (Annexure B) is quoted below for consideration:

"Para 5 --- The Board discussed and decided about the next DHMS examination to be postponed till the recognition of the previous DHMS examinations held uptill March-April, 1994 because of non recognition of DHMS qualification included in the Second Schedule of the CCH Act, 1973. Further the Board will request Central Council of Homoeopathy for special permission for holding next DHMS Examination."

22. The plight of the students of these three colleges gives a grave picture of the piquant situation as the Board in its said resolution stated that, "The Board was astonished to know how the Registrar, Dr. A.K. Samsuddin had printed and issued the Registration Certificate as Provisional Registration Certificate with many modifications of the original Form "D" (Rule 32) of the Assam Homoeopathic Rule, 1958 without necessary amendment by the State Assembly/ Ordinance in the Assam Homoeopathic Act, 1955 or CCH Act, 1973. In that view of the matter the actual position is that the Provisional Registration Certificate issued by the then Registrar has no sanction of law as those were issued in complete violation of the procedure with incidental consequences thereof. This only speaks volume of the uncontrolled management of the colleges which effected the future career of the students who completed their courses after 1987.

23. In this background of the situation the Board had taken the steps as indicated in the said resolution (Annexure B) as follows:

"Further Board decided to withdraw the Registration Certificate and stop further renewal of the licence from the candidates who have passed after June, 1987 from this Board till their qualification is included in the Second Schedule of CCH Act, 1973 as their obtained registration is not in accordance with Section 15(1) Chapter III of CCH Act, 1973 and not approved by the Court of Examiners, required as per Rule 49 of the Assam Homoeopathic Rules, 1958. The Board also decided to be strict on issuing Registration from now onwards and should follow the resolution No. 13 of the Board's minute of meeting held on 19-1-1994."

As it is seen, the last examination was held in March, 1994 and in view of the resolution (Annexure B) no provisional Diploma were issued to them.

24. From the above, it is seen that the Board decided to withdraw the registration certificate and stop further renewal of licence from candidates who have passed after June, 1987 from the Board till their qualification is included in the 2nd schedule of the CCH Act, 1973. As the Board is the controlling body constituted u/s 3 and 4 of the Act, 1955, which is a body corporate and empowered with authority under Regulation 11 of the Assam Regulation, 1982.

Therefore the Board has the jurisdiction to stop, cancel any affiliation/registration etc. for non fulfilment of the requirements found abrogating the provisions of the Regulation. Consequence of the resolution (Annexure-B) is that the entire students who completed and passed the course after 1987 are barred to practice homoeopathy until the regularisation of the process under the provisions of the Act and the Regulation. Mr. Uzir submitted that even after passing of the resolution the stalemate regarding the situation has not been removed and in spite of that the Board which was not constituted under the provisions of the Act has issued notice to hold examination on 13-3-1995 making the situation more complicated without ascertaining the steps for removal of the hurdles for conferment of regular Diploma/Certificates to the students whose provisional Diploma/Certificates have been cancelled vide the resolution (Annexure-B).

25. Mr. Uzir, counsel for the petitioners invited court's attention to the correspondences made between the State Govt. and the Central Council of Homoeopathy (CCH). The correspondences between the two authorities have been annexed as Annexures -- C to O to the writ petition which shows that repeated requests have been made by the CCH to the State Govt. to fill up the deficiencies pointed out by the report of the Board Inspector. It is alleged that the State Govt. has shown no seriousness in this respect, rather failed to reply to the direction to give assurance to fulfil the "minimum standard" required for running of the Homoeopathic Colleges under the provisions of Homoeopathy (Minimum Standard of Education) Regulation, 1983. Ultimately the respondent No. 3 the Joint Secretary, Health and Family Welfare Department by his letter dated 20-6-1995 (Annexure-N to the writ petition) has given undertaking to the CCH assuring fulfilment of the minimum requirement as per norms and standard in respect of teaching as well as hospital staff and their accommodation, equipments, etc. The grievance of the petitioners is that those assurances/undertakings were made without any compliance allowing the situation to be more deplorable.

26. The Board issued short notice on 28-6-1995 to the members of the Board intimating holding of Board's meeting to be held on 1-7-1995 and the same could not be held for lack of quorum. The Principals of the three respective colleges took decision on that date to hold examination of DHMS from 30-8-1995, though the meeting was convened to "discuss certain points on recognition and holding of DHMS examination." Terms of the Board which was going to expire on 3-7-1995 have been extended by notification dated 21-7-1995 for one year.

27. Respondent No. 4 Director of Medical Education, who was the Chairman of the Board of Homoeopathic System of Medicine, vide letter dated 16-9-1995 written to respondent No. 2 apprised the difficult situation caused due to the resolution of the meeting dated 13-3-1995 suggesting holding of the much delayed DHMS examination in view of the consequences of the five members' meeting including three Principals of the respective Homoeopathic Colleges.

28. Respondent No. 4 also had taken serious view of for non cooperation of Board's member in the meeting and suggested stern action against them for not attending three consecutive meetings under Rule 19 of the Assam Rules.

By another letter dated 25-9-1995 respondent No. 4 in continuation of his letter dated 16-9-1995 suggested constitution of a sub committee for holding examinations of the colleges which was postponed earlier.

29. The Governor of Assam vide its communication dated 28-9-1995, through the Joint Secretary (respondent No. 3) dissolved the Board and on the same date by another notification a sub committee was constituted. On 29-8-1995 a meeting was held under the Chairmanship of the Director of Medical Education. In this meeting the resolution dated 13-3-1995 had been reviewed and in the interest of the students decision was taken to hold the examination from 30-10-1995 and also decided to form an Academic Council with the eight members given in the list. On the same date an "Educational Notice" was issued directing the students to fill up the examination forms and deposit of fees accordingly.

30. The writ petitioners have challenged this notification dated 30-10-1995 alleging that the same has been issued violating the provisions of the Rules and Regulations and also issued in violation of the provisions of the Assam Act, 1958 and CCH Act, 1973.

31. As stated above except the standing counsel of Union of India none appeared before the court and neither affidavit nor records have been submitted. Only the counsel of Union of India submitted that the Union of India is only a formal party and therefore no affidavit is required. In this situation, this Court has to proceed to dispose of the petitions on the basis of the contention of the petitioners and documents annexed with the writ petition and the submissions of the counsel for the petitioners relying on the decision of the Apex Court in the case of Smt. Naseem Bano Vs. State of U.P. and others,

32. The sequences of the circumstances leads to the situation that the three colleges of Homoeopathic Medincine had been taken over by the State Govt. in the year 1975 and 1989 respectively and recognition was accorded by the Central Council of Homoeopathy. Under the provisions of the Assam Act, 1958 the State Govt. is in overall control of the three colleges. Under the provisions of the Act the Board is the Apex Administrative and controlling body. The Board being the Apex Body, the Act, 1955 confers powers and function to it as provided by various sections of the Act, Regulation and Rules.

33. From the reading of the provisions of the Act, Regulation and Rule it is seen that in a situation as in the instant case, the State Govt. has the power and jurisdiction to dissolve the Board and can exercise all or any of the powers and duties of the Board through any agency for such period as it thinks fit.

34. In the instant case, the Chairman of the Board respondent No. 4, in his letter

has apprised the Government of the situation he faced in convening Board's meetings. Apparently, as the documents annexed showed the stalemate in the functioning of the Board aggravating the situation for holding examination and remove the difficulties for issuing certificates etc. to the students to protect their interest. The documents annexed in the writ petition showed that the meetings could not be held due to lack of quorum and/or for objection/protest of some of the members of the Board. When the last meeting fulfilled the quorum under Rule 22(3) the decision was taken to hold examination. In that view of the matter, it cannot be held that process of holding pending examination was illegal for lack of quorum.

35. Regarding the question of constitution of the Sub Committee by order dated 28-9-1995 by the Govt. the State Govt. was empowered to do so under the provisions of the Section 20 and Rules 16 to 19 of the Act and Rules and therefore the challenge of the counsel for the petitioner that constitution of the Committee has violated the provisions of the Act and Rule is not sustainable. Similarly the Academic Council constituted in the meeting of the said Sub Committee, meeting of which was held on 29-9-1995, fulfills the provisions of Section 20 of the Act, 1955 and Rules 16 and 19 of the Rules, 1958. As it is seen in this meeting decision was taken to hold examination from 30-10-1995 and accordingly notification was issued on the same date to hold DHMS examination from 30-10-1995. The crux of the question is whether holding of the examination as decided by the Sub Committee would be feasible in view of the situation as regards non recognition/affiliation by the CCH.

36. From the correspondence made between the respondents, and the CCH as discussed hereinabove, it is seen that though belatedly assurances have been given by the Govt. respondent to fulfil the minimum requirement for recognition of the diploma course in those medical colleges, nothing has been placed before this Court to show that in response to the assurance given by the respondent State the CCH has accepted the same and extended recognition of the diploma course and confirmation of eligibility certificates/licences.

37. In this backdrop the earnest attempt of the Chairman of the Board to solve the stalemate in these colleges deserve appreciation. This Court feels that if the restriction imposed is allowed to continue, the future of the students, whose regularisation of provisional diplomas remained undecided to pursue their profession as Homoeopathic practitioner for want of required recommendation of the CCH and the future of the students who were allowed to sit in examination would remain undecided. The apprehension and anxiety of the writ petitioners are genuine. An application filed by a former student Dr. George Samuel to the Chairman of National Human Right Commission, New Delhi (Annexure P) to the writ petition) speaks volume of the plight of the students who have completed the course of DHMS in 1992 from the Dr. J.K. Saikia (Govt.) Homoeopathic Medical College and Hospital, Jorhat, Assam. Dr. Samuel secured a provisional registration from the Board of Homoeopathic Studies, Assam (Regn. No. A 579).

He approached the Travancore (Kerala) Homoeopathic Medical Council for registration required for practice and the same was refused on the ground that the Assam Board from where he secured the diploma has been recognised by the CCH only upto June, 1987 vide circular dated 16-8-1993 under No. V-21021/10/92. This is only the tip of the ice berg. Hundreds of students after completing their course of DHMS have been facing the same situation and there is no assurance from the respondent Board to regularise the provisional certificate issued to them without any authority and the sword of damocles is hanging on their head. These serious anomalies not only affect the interest of such diploma holders but also the interest of the public.

38. In that view of the matter the Board which has proceeded to hold examination can-not proceed to do so keeping in view this serious aspect as holding of pending examination will not solve the problem unless those students' eligibility to enter profession with legal certificates is ascertained by the concerned authority. Responsibility of folding examinations and conferring legal status of diploma/certificate after completion of courses are vested on the respondents. Available documents placed before us in this writ petition fail to satisfy the court that no satisfactory and practical steps has been taken by the concerned authority to regularise those provisional diploma/certificates already issued by one of the officers, the Registrar, who apparently had no authority to issue such certificates. The prevalent situation in these Homoeopathic Colleges is due to lack of timely action on the part of the administration of the respondent State. Though these colleges were established long back and the State Govt. took over these colleges in 1989, no steps were taken to bring these colleges under the provisions of Homoeopathy (Minimum Standards of Education) Regulation, 1983 to restore the affiliation/recognition from the CCH which was discontinued in 1987. Apparently when the State Govt. undertook the management and control of these colleges, on that date there was no recognition from the CCH. Concerned authority did not apply its mind to this problem and no serious action was taken, rather allowed to hold the examinations year after year and conferred diplomas which cannot have any legal sanction to allow a diploma holder to practice Homoeopathy.

39. As it is seen, the earlier Board has been dissolved by order dated 25-9-1995 and the Academic Council was constituted on 30-10-1995 which is empowered to hold examination under Regulation 5 of the Board of Homoeopathic System of Medicine, Assam Educational Regulation, 1982.

40. However, as it appears, the Chairman of the Board, the Director of Medical Education had to resort to the drastic action to hold pending examinations by constituting Academic Council. In my view to evade the stalemate of the situation, the Chairman has resorted to this course of action. But the holding of examination to tackle this huge problem cannot be said to be a right decision on the part of the respondents, particularly the Director of Medical Education. This was not a proper step to stop the actual problem. Instead, simultaneous action is

required to be taken to regularise the provisional diploma to enable the diploma holders to practice homoeopathy and also to make clear the anomalies so that the fresh diploma holders get the actual certificate to do their practice.

41. In my above discussion I have mentioned about the anxieties of the petitioners and the piquent situation prevalent in the management of the studies of homoeopathic medicine in these colleges affecting the careers of the student and in that view of the matter I suggested the State Govt. to provide "the minimum infrastructure to run the colleges under the Homoeopathy (Minimum Standards of Education) Regulation, 1983 to restore the affiliation from the Central Council of Homoeopathy so that the provisional diploma/certificates can be regularised and legalised. I am constrained to hold that the State Govt. is responsible for not taking into consideration seriously the aspect of withdrawal of recognition by the CCH in 1987 when the Govt. undertook the management and control of the there Homoeopathic Colleges in 1989. Much anomalies could have been avoided by the State Govt. if at the initial stage of taking control of these colleges the Govt. could persuade the question of recognition with the CCH. A suggestion has been offered at the Bar that to alleviate the present piquent situation faced by these colleges Govt. could take up one college and equip it with the infrastructural facilities as provided in the Regulation, 1983 so that the college can get the affiliation/recognition from the CCH.

42. Many, suggestions have been offered at the Bar for revival of the proper functioning of these colleges. But in my view, it is not for this Court to suggest those proposal in the nature of a direction. But the Court is constrained to hold that the decision of holding the examination fixing 30-10-1995 was not a right decision in view of the unsolved question of recognition of the diploma course by the CCH and regularisation of the provisional diplomas issued to all the students who completed their courses after 1987 when admittedly those students have been practising homoeopathy without valid license.

The study of homoeopathic medicine has been gaining popularity and its international recognition has been accepted. Perhaps in the instant case respondent Govt. is not serious about the importance of homoeopathic system of medicine and its studies and has been taking a discriminatory attitude, as alleged by the petitioners. It is very deplorable that the respondent State Govt. has not taken any serious step to remove these long standing anomalies and have been allowing the students to appear in the examinations and practice homoeopathy with provisional diplomas who have completed a course which has not got any recognition from the CCH. The respondent State Govt. cannot disown its responsibility for such a situation.

43. The Government should examine the problem seriously, and constitute an Expert Committee to enquire into the problems and find out solution with suggestion to the Government. In view of the above discussion and considering the seriousness of the problems faced by these colleges, constitution of the Expert Committee shall be made within three months from receipt of this

judgment.

44. In view of the discussion made here-inabove, I direct the respondent State Govt. and the Board not to confer diploma/provisional diplomas to the students until the diploma course gets recognition from the CCH. The respondents are further directed to regularise the provisional diplomas already issued to the students by taking appropriate steps and the Board is directed not to hold any further examination untill all the anomalies found in these three colleges are removed under the provisions of the Homoeopathic Act, Rule and Regulations.

45. With the above direction to the respondents the writ petition is disposed of.