

(2000) 09 BOM CK 0078

In the Bombay High Court

Case No : Writ Petition No's. 4960 of 1998 and 2305 of 1999

Pradeep S. Melkunde and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 29-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2001 Bom 96 : (2001) 3 MhLj 394

Hon'ble Judges : A.P. Shah, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : Asif I.I. Patel and P.K. Mendadkar, for the Appellant; V.M. Parshurami and Jyot Pawar, (for Nos. 1, 2 and 4), C.M. Jha, (for No. 7), S.V. Palsuledesai, (for Nos. 4, 5 and 6), Sunilkumar Sharma, (for No. 3) and K.A. Rodrigues, for the Respondent

Judgement

A.M. Khanwilkar, J.—Both these writ petitions have been filed by the students who were admitted in the Homeopathy Medical College (Respondent No. 6), at Dugaphata, Taluka Bhiwandi, District Thane, run by Jan Seva Mandal, a public charitable trust (Respondent No. 5),

2. The Jan Sewa Mandal, intended to start a Homeopathy Medical College at Dugaphata, Taluka Bhiwandi, District Thane, hence made an application to the concerned authorities for according permission. Respondent No. 3, the Central Council of Homeopathy (hereinafter referred to as CCH for the sake of brevity), which is the competent authority decided to accord such permission, vide letter dated Sept. 7, 1994, on certain conditions. For proper appreciation of the issues involved in the present proceedings, it would be apposite to reproduce the said letter in verbatim, so as to high light the conditions on which the decision to grant permission in favour of the respondent Nos. 5 and 6 to start the Homeopathy Medical College was granted, which reads thus :

With reference to your letter No. MED-193/CR 187/93/EDU/MED-4-A dated 28-4-1993 on the subject cited above, I am directed to say that the above

mentioned college was inspected by the Central Council on 18-6-1994 and the report of inspection has been considered by the Executive Committee of the Central Council in its meeting held on 5-8-1994 and it decided to grant permission to similar similibus Curentur Janseva Mandal's Homeopathic Medical College, Dugadphata. Tal, Bhiwandi 421, 302 Dist. Thane to start B.H.M.S. Direct Degree Course for two years from the date the concerned University grants affiliation to it subject to the conditions namely :--

- (a) the admission in I MHMS shall be restricted to 50 students only
- (b) admission to I BHMS shall be made only after getting affiliation from the university; and
- (c) the college shall make up the insufficient as pointed out by Central Council and shall provide the minimum requirements, norms and standards in terms of accommodation, equipment, teaching as well as hospital staff and attached training hospital as per Homeopathy (Minimum Standards of Education) Regulations, 1983.

It is therefore, requested that the State Govt. may ensure that the college fulfills the above conditions and the extent to which the college has made the progress may please be informed to this Council within three months from receipt of this letter. The insufficiencies observed during inspection and being intimated separately, matter regarding further recognition of the college will be considered by this Council after receipt of a fresh request from the college through State Govt. or the University,"

3. It is not in dispute that, although CCH decided to accord permission to start the college of homeopathy medical college as aforesaid, however, Jan Seva Mandal did not start the college for the academic year 1995-96. The college was in fact started in the academic year 1996-97, in which year about 31 students were admitted. The above said permission granted by CCH was only for the academic years 1995-96 and 1996-97. Admittedly no further permission was granted either by CCH by Mumbai University or the State Government to run the Homeopathy College. In the circumstances, Jan Sewa Mandal had no option but to close the homeopathy medical college from the academic year 1997-98, however, filed writ petition before this Court hearing Writ Petition No. 3473 of 1997. The order passed by this Court on 13-1-1998 in the said writ petition No. 3473 of 1997 is reproduced thus :

"CORAM : ASHOK AGARWAL AND S.D. GUNDEWAR, JJ.

Under in terms of the Minutes of the order signed by Advocates and initialled by us by way of identification.

The petition is disposed of. No order as to costs.

MINUTES OF ORDER

1. Rule, Rule made returnable forthwith. Respondents waive service.

2. The petitioners shall within a period of eight weeks from today take steps to meet all the deficiencies which have been pointed out by the respondent No. 4 in his letter dated 5th August, 1997.

3. The respondent No. 4 shall therefore, be at liberty to depute its representative to the petitioner No. 2 College for verifying compliance in this regard.

4. The first respondent shall at the present stage grant only provisional admissions to the students desirous of pursuing their studies in petitioner No. 2 College for First Year B.H.M.S. Degree Course. Students shall be specifically informed while granting provisional submission about the present orders passed by the the High Court and that their admissions shall be subject to the petitioner No. 2 College rectifying the deficiencies pointed out by the respondent No. 1.

5. Liberty to apply.

6. Writ petition stands disposed of in the aforesaid terms with no orders as to costs.

7. Issuance of certified copy is expedited."

4. From the aforesaid order it would be seen that the management persuaded this Court to permit them to continue to operate the college and admit students for the next academic year i.e. 1997-98 by giving solemn assurance that all the deficiencies shall be removed within eight weeks therefrom. Similarly, in view of the abovesaid order, the State Government referred students in the respondent college who were admitted by the respondent to First Year BHMS course in academic year 1997-98. The students so admitted became subservient due to the piquant situation in which they were placed. Naturally, if the student had refused to join the respondent College because of condition No. 4 of the order, in that situation some other student would have replaced him. The students, admitted in respondent College, in any case, became victim of circumstances and little did he realise or comprehend that the respondent College was not serious about removing the deficiencies within the stipulated time in spite of the assurance given to this Hon"ble Court later on, the Management filed another writ petition before this Hon"ble Court being Writ Petition No. 4438 of 1998. This Court on 21-8-1998 passed the following order on the said writ petition No. 4438 of 1998, which is reproduced thus :--

"CORAM : "Mr. AGGARWAL AND Mr. NIJJAR, JJ.

Dated 21stAugust, 1998. MINUTES OF ORDER

1. Heard the Advocates for the petitioners and the advocate for the respondents.

2. Rule, Rule made returnable forthwith, Respondents waive service.

3. The respondent No, 4 shall inspect the petitioners College within 8 weeks from today.

4. The respondent. No. 4 shall inform the petitioners the deficiencies, if any, in

the petitioners" College within 4 weeks from the date of inspection,

5. Petitioners shall take steps to remove all the deficiencies pointed out by the respondent No. 4 within 8 weeks thereafter and the petitioners shall send compliance report to the respondent. No. 4.

6. The respondent. No. 4 shall thereafter be at liberty to depute its representatives to the petitioners College for verifying compliance in this regard.

7. The first respondent shall at the present stage grant only provisional admission to the students desirous of pursuing their studies in petitioner No. 2 College for first year B.H.M.S. Degree Course. Students shall be specifically informed while granting provisional admission about the present orders passed by the High Court and that their admission shall be subject to the petitioner No. 2 College rectifying the deficiencies pointed out by the respondent No. 4.

8. Liberty to apply.

9. Writ petition stands disposed of in the aforesaid terms with no orders as to costs. The respondents shall act on the copy of this order duly authenticated by the Officer of this Court"

5. As aforesaid, admittedly, no permission was granted in favour of the respondent college to run the Homeopathy medical college either by the CCH, the Mumbai University or the State Government from academic year 1997-98 and onwards. Notwithstanding this the respondent college admitted 27 students for the academic year 1997-98 and 38 students for the academic year 1998-99, albeit pursuant to the supposed liberty granted by this Court in the above said order. Even for the academic year 1999-2000 the respondent college has admitted students for the first year BHMS Course. It is however relevant to point out, that, unlike A.Y. 1997-98 and 1998-99, there was no Court order permitting the respondent College to admit students. Nonetheless the State Government seems to have forwarded students for being admitted in the respondent College in the First Year BHMS course for A.Y. 1999-2000. Naturally- therefore, the authorities did not permit the students admitted by the respondent college during the academic year 1997-98 and onwards to appear for the examination. It is in these circumstances that the present writ petitions came to be filed by the students, obviously at the behest of the respondent college, inter alia, directions against the respondent to permit them to appear for the first year BHMS examination. Writ Petition No. 4960 of 1998 has been filed by the students praying for directions against the management to forthwith comply with the deficiencies pointed out by CCH. In its instructions report and to send compliance report, and also to maintain minimum standard of education as contemplated under the provisions of Homeopathy Minimum Standard of Regulations 1983. While entertaining this writ petition No. 4960 of 1998, on 15-10-1998, the bench consisting of Ashok Agarwal and Dr. Pratibha Upasani, JJ. observed thus :

"Leave to amend the petition is granted.

By an earlier order passed on 21st August, 1998 in writ petition No. 4438 of 1998, a direction was issued to 3rd respondent herein, to inspect within 8 days of the order, 6th respondent College and inform the deficiency, if any, in the college within 4 weeks from the date of inspection 5th respondent herein, who were the petitioner in the said petition, were directed to remove all deficiencies pointed out by respondent No. 3 within eight weeks thereafter and respondent No. 5 was directed to send compliance to respondent No. 3. Respondent No. 3 was given liberty to depute its representatives to respondent No. 6 College for verifying compliance in this regard, 6th respondent college was given liberty to grant provisional admissions to students desirous of pursuing their studies in the 6th respondent College for 1st year B.H.M.S. Course. A direction was issued to intimate the said orders passed by the Court and inform them that their admission shall be subject to respondent No. 6 rectifying the efficiencies pointed out by respondent No. 3, Present petition is filed by the students complaining serious irregularities. An affidavit in reply has been filed by respondent No. 3 confirming the allegations that the deficiencies have not been rectified .

In the circumstances, we are of the prima facie view that this is a fit case where directions should be issued to close down respondent No. 6 College. Present petitions, however stood over to 9th Nov. 1998 in order to enable the learned AGP to find out whether there are vacancies in other homeopathic Medical Colleges where present students including the petitioners can be accommodated."

6. In response to the said order the authorities submitted a proposal before this Court for accommodating the students of the respondent college in some other colleges on payment seats. The said assurance was recorded in the order passed by this Court on 21-12-1998, which reads thus :--

"By order dated 21-8-1998 in W.P. No. 4438 of 1998 respondent No. 6 college was asked to remove certain deficiencies.

Respondent No. 4 failed to do so in the above order it was made clear that respondent No. 6 would give provisional admission and that the petitioner were made known about the fact that their admission shall be subject to risk if college fails to remove the deficiencies.

In this matter the respondent State is prepared to absorb the students in other college in payment seats.

Petitioner are directed to represent to respondent No. 2 within 2 weeks indicating that they wish to be absorbed in any other college against payment seats on keeping the representation respondent. No. 2 will give direction to the respected college(s) to absorb the petitioners against payment seats within two weeks from the date of representation.

Respondent No. 6 college is directed to issue the college leaving certificate forthwith in case the petitioners decide to opt for other college against payment seats.

In the meantime several students are being admitted by respondent No. 6 although two have failed to remove the deficiencies. Hence we direct the Registrar to issue show cause notice to respondent No. 6 college to show cause why the said college should not be shut down. The notice should be made returnable on 18-1-1999 before the Appropriate Court.

For the above purpose, S.O. to 18-1-1999 before the appropriate Court."

7. As aforesaid since the authorities did not permit the students of the respondent college to appear in the examination which was conducted on 12-5-1999, the students filed writ petition No. 2305 of 1999 before this Court. While issuing notices before admission on the said writ petition, this Court, on 22-4-1999, bench consisting of Ashok Agarwal and D.K. Deshmukh JJ, directed the authority to accept the examination forms of the petitioners for BHMS first year examination to be conducted from 12-5-1999. On 7-5-1999 the said Bench issued further directions to permit the petitioner to appear in the examination for the first year BHMS commencing from 12-5-1999, however, their results were not to be declared till further orders passed by this Court. This writ petition No. 2305 of 1999 later on came up for further consideration before this Court on May 4, 2000, before the bench to which one of us (Mr. A.P. Shah, J.) was party, when the following order was passed :

The petitioners were admitted to the pharmacy course for the academic year 1997-98 in respondent No. 6 college. The respondent No. 6 college was started without obtaining prior permission of the Central Council of Homeopathy (CCH), it seems that the students were permitted to appear for the examination pursuant to the interim orders passed by this Court. The respondent No. 6 is not recognised even as of this date. The committee of CCH inspected the college on 5-2-1999 and found several deficiencies and informed about the same to respondent No. 6, Those deficiencies have not been removed nor any compliance report has been submitted to the CCH. The respondent No. 6 has also admitted students for the academic year 1998-99 and 1999-2000. without obtaining prior permission from the CCH. Under the interim orders passed in Writ Petition No. 3473 of 1997 and Writ Petition No. 4438 of 1998, respondent No. 6 was allowed to admit students only for the academic year 1997-98. In the interim order it was made . clear that the Court that the students shall be specifically informed while granting provisional admission that the grant of provisional admission is subject to rectification of the deficiencies and recognition by the CCH. It seems that respondent No. 6 has admitted, the students for the academic year 1998-99 and 1999-2000 without complying with the requirements laid down by the CCH. The respondent No. 6 should not be allowed to conduct the college without the necessary recognition from the CCH. We direct respondent No. 6 not to start the college or admit students for the academic year 2000-1 without obtaining prior permission from the CCH. The State Government and the University are directed to ascertain whether the existing students in respondent No. 6 college can be accommodated in any other recognized colleges. We also issue notice to

respondent Nos. 5 and 6 to show cause as to why respondent No. 5 and 6 should not be directed to pay compensation to the concerned students, in the meantime, the University is directed to declare the results of the petitioners. It is made clear that the declaration of results shall be subject to the final outcome of the petition.

Petition to be posted for further directions on 8-6-2000.

All concerned to act on the ordinary copy of this order duly authenticated by the Sheristadar of this Court."

8. Another relevant order that has been passed by this Court in Writ Petition No. 2305 of 2000 is dated 28-8-2001 which reads thus :--

"We have heard the learned counsel appearing for the parties. We have also perused the report submitted by the C.C.H. At least, prima facie, we are inclined to direct closure of respondent No. 6 institute in view of the serious deficiencies and short comings in the infrastructure. As far as students are concerned, we are inclined to issue direction against the management of respondent No. 6 college to refund the fees to the students together with interest and/or damages to be decided on the next date of hearing. In the meantime the State Government is directed to take instructions whether students who are admitted in the above college can be accommodated in any other college either in the next year or in phase wise manner.

Mr. Pinge states that Mr. Manudhane. learned counsel for respondent No. 6 is ill and, therefore, respondent No. 6 needs time to make alternative arrangement. We. therefore, adjourn the matter to 13-9-2000. Mr. Pinge undertakes to communicate this order to respondent No. 6.

Petition to come up on 13-9-2000 along with connected writ petition Nos. 4438 of 1998, 4960/1998, 4072/1998 and 34 73/ 1977. To be placed high on board."

9. From the aforesaid events it would appear that the students were admitted by the respondent college in absence of any permission to run Homeopathy College for the academic year 1997-98 and onwards. Nevertheless the students were allowed to appear in the examination and their results have been declared, but made subject to the final outcome of this writ petition. We are really not concerned with the students who were admitted for academic year 1996-97 because for the said academic year the respondent college was granted permission by the appropriate authorities ,except that even those students will have to be adjusted in some other college if already not done. We are therefore, mainly left with the issue of those students who were admitted by the respondent college on and from the academic year 1997-98 and onwards, without obtaining prior permission of the concerned authorities.

10. The counsel appearing for the students made fervent appeal to this Court. Obviously, the management was using those students as shield to cover up its misdeeds and the illegalities committed in admitting the students and running

the college without obtaining prior permission. It is too late in the day to entertain such a plea, for the apex Court has consistently deprecated the practice of the managements admitting students without obtaining prior permission. It is therefore, not possible to entertain the submission advanced on behalf of either the students or the management but to hold that the process of admitting the students by the Respondent college from the academic year 1997-98 is totally without authority of law and void ab initio.

11. It is relevant to point out that pursuant to the directions issued by this Court on July 24, 2000 CCH has conducted inspection. The said inspection report would indicate serious deficiencies and infirmities exist even now. It is therefore not possible to permit the college to continue to run the said college any more. Any other view will be opposed to the catena of decisions of the apex Court including the recent one reported in AIR 2000 SC 1573 Union of India v. Era Educational Trust. This Court, on more than one occasion in the past, has observed that this was a fit case where closure of the college should be ordered. It is evident from the record that the management was not only totally disinterested in covering the defects but was absolutely insensitive and indifferent in spite of the serious deficiencies pointed out by the Council in the past. The deficiencies highlighted by the Council in respect of the respondent college can be summarised thus :--

The following deficiencies can be seen from the Report of Inspection of the abovenamed College undertaken on 9-8-2000 :

- a) The student bed ratio of 1 : 1 in the attached hospital is not maintained ;
- b) The teaching staff appointed on full time basis is 14 and part time is 8 against the required teaching staff of 62, Amount incurred on library books -- information not supplied;
- c) The IPD bed strength is 32 with occupancy on average 0-2;
- d) The OPD average attendance is 25-30 per day.
- e) The medicine in Stores has been inadequate, Diet not provided.
- f) Hospital Staff is equal to 9;
- g) The accommodation provided to set up the IPD is insufficient and unhygienic .no proper toilet facilities provided to male and female patients. College has deployed only one junior doctor to look after OPD as well as IPD
- h) No separate medicine stock maintained in IPD
- i) The library books are issued on an average 3-5 per day. In Library no separate reading room for boys and girls and teachers. Cataloging system yet to be maintained. No addition of books made in the Library after the last inspection.
- j) Library needs extensions in respect of more books, journals, periodicals, etc.

k) in Anatomy, dissection card have yet to be maintained and the department is an old building. There is no facility for storing the dissected parts and cadavers have to be procured.

l) Record of practical and animal experimentation in the department of Psychology not known.

m) in the department of pharmacy, record of practical done by the students not shown.

n) Students are required to visit the large manufacturing units in one academic year in Pharmacy.

o) in Department of Pathology, no separate room provided to different teaching cadres and in this department seven microscopes were working and 5 microscopes were not working.

p) in SPM concept of immunisation in Homeopathy not adapted;

q) More food samples are to be procured;

r) Record of Campus, if arranged, has to be maintained.

s) Departments of practice of Medicines, Surgery, Obstetrics and Gynecology and Repertory not yet established;

t) in Forensic Medicine only one book in the name of the Departmental Library

u) Record for Post Mortem examination not maintained.

v) No facility for ante/Post Mortem examination.

w) More samples/specimens of poisons/ instruments are needed.

x) in Materia Medica department should possess samples of medicinal plants, animals and more chart and drugs substance should be displayed.

y) in Organ on Officine departmental Clinical Records by the Students and interns not shown;

z) No scientific seminars and group discussions organised.

aa) The teaching staff is inadequate as per Central Council of Homeopathy norms, they should be made permanent by paying the emoluments throughout the year and the grades recommended by the Central Council of Homeopathy should be adopted.

ab) Time Tables of all classes was not supplied to the Inspection team, the supplied time table does not reflect the name of the teachers for any class."

12. The learned Counsel appearing for the management no doubt made unsuccessful attempt in persuading this Court that the management was not at fault and had taken all possible measures and remedial steps in removing the

deficiencies. We are not impressed with the said argument, for it is not possible for us to sit over the opinion expressed by the expert body, namely, the Council. The inspection report , submitted pursuant to the order of this Court, reveals the latest situation prevailing in the respondent college as on 9 -8-2000. In this circumstances we are not inclined to entertain the explanation offered by the learned Counsel for the respondent management.

13. As observed above the respondent college has failed to honour its commitment which was given to this Court from time to time in the previous proceedings that the management-would take remedial steps in removing all the deficiencies . It is only on the basis of said assurances this Court permitted the respondent college to admit students for the first year BHMS Course albeit subject to the final orders to be passed in this petitions.

14. From the deficiencies pointed out by the Council, as summarised above, it is not possible to comprehend that the students who have undertaken studies with the respondent college can be said to have achieved the required standard of knowledge benefitting the medical course. The management has not only unauthorisedly established a medical college without obtaining permission from the concerned authorities, but has not shown any seriousness or sensitivity in overcoming the deficiencies which were pointed out by the Council from time to time although it was obliged to do so in law as a pre condition to start or run a medical college. Merely because this Court permitted the respondent college to admit the students, would not be a concomitant of such students having achieved the required academic standards. On the other hand, the respondent college has been invariably found to be ill housed, ill staffed and ill equipped to run the homeopathy college. We are, therefore, unable to accede to the submission that the students claiming to have undergone training in such institute, who were admitted pursuant to the order passed by this Court, be allowed to continue the course and appear in the examination. If, by a fiat of the Court, we direct the authorities to permit such students to appear at the examination, we will be practically encouraging and condoning the establishment of unauthorised institute. Such students if allowed to appear for the examination, without proper practical training, they would be dealing with the health of others; and we, therefore, cannot let loose such prospective doctors, who have not received proper and adequate training. Such a course would be against the public interest. It is true that these students would pass the examination, but they may not be enough. Training for a certain minimum period in a properly organised and equipped Training Institute is the hallmark before a full fledged doctors may be duly launched. In the circumstances, it is not possible to permit the students admitted by the respondent college to continue their further studies or for being entitled to be declared as having passed the examination as it would tantamount to perpetrating the illegality and awarding premium on the illegality committed by the respondent college. We are therefore, inclined to declare that all the admissions granted by the respondent college for the first year BHMS academic year 1997-98, 1998-99 or 1999-2000 are illegal, without authority of

law and void ab initio.

15. The next question is as to how the students admitted during this academic year, who have become victim of circumstances, can be compensated . Needless to mention that the students have already wasted the prime period of their career and they will have to rejoin some other college to undergo the course afresh. Besides wasting of time and energy the students have obviously suffered even financially and to a greater extent untold hardships and mental trauma .We think that it would be appropriate to direct the respondent college to refund the entire fees collected from such students within a period of 2 months from the date of this order. Besides refund of the fees collected by the respondent college, we are also inclined to award damages or compensation to the students for the loss or injury suffered by them in the shape of waste of prime period, energy and also for having suffered mental trauma. The damages/compensation are being quantified at Rs. 30,000/- per student of A.Y. 1997-98, Rs. 20,000/- per student of A.Y. 1998-99 and Rs. 15,000/-per student of A.Y. 1999-2000. We are conscious of the fact that the amount quantified as above is very conservative, for being symbolic, and cannot compensate the actual loss caused to the students. Therefore, we make it clear that it will be open to the students to adopt such appropriate proceedings, as may be advised to claim further damages compensation from the respondents in addition to what has been awarded by this Court in the present proceedings. But. In the meantime the abovesaid amount would be paid to each of the affected students in lien of compensation/damages by the respondents in the following manner. The respondent Nos. 5 and 6 shall be liable to pay the amount referred to above to the students of A.Y. 1997-98 and 1998-99. This is because the respondents 5 and 6 invited this Court to permit it to admit students on the basis of solemn assurance that it shall remove all the deficiencies pointed out by the C.C.H. However, the said commitment was not adhered to by the said respondent 5 and 6 and as such the present situation has been brought about sheerly because of the apathy and indifference shown by the said respondents. If the respondents 5 and 6 had taken some efforts, the career of the students would have been saved. For the said A.Y. 1997-98 and 1998-99 the State Government cannot be possibly blamed as it was obliged to send the students because of the order passed by this Court although the admissions were purely on provisional basis. We are not inclined to accept the plea that the students were aware about their provisional admission, inasmuch, as, the students had no choice as their names were forwarded to this college. Moreover, the students cannot be made to suffer because they had legitimate expectation that the Respondents 5 and 6 will remove all the deficiencies as per the undertaking given to this Court. However, in our view, the State Government is definitely liable to contribute towards the damages/compensation to the students of A.Y. 1999-2000, since we find that although the respondent No. 6 college was not recognised by the appropriate authority nor any direction/order was passed by this Court, unlike for the previous years, yet college was provided with the students, under CFT scheme for the academic year

1999-2000. In that sense the State Government has contributed in perpetrating the illegality which has been committed by the respondent college. We are not impressed by the plea of the State Government that the State Government had given admission on provisional basis. Reliance placed on the Notification dated August, 24, 1998 issued by the Secretary to the Government is of no avail. In our view, the State Government has clearly misread and misinterpreted the orders passed by this Court. In fact no order was passed by this Court in respect of A.Y. 1999-2000. In the process the State Government, which was supposed to safe guard the interest of the students and ensure that no unauthorised college is allowed to continue or go scot free, exposed the students to such an unpalatable situation. We are therefore, of the view that even the State Government should be saddled with damages/compensation quantified at Rs. 5000/- per student to be paid to the students of A.Y. 1999-2000 only, who have become victims of circumstances. We have additionally saddled the respondent Nos. 5 and 6 with compensation/damages quantified at Rs. 10,000/-per students for the A.Y. 1999-2000 having regard to the fact that the respondent college was been primarily responsible for the present situation which has ruined the careers of so many students. We have extensively discussed about the role played by the respondent college that it was failed to remove the deficiencies pointed out by the Council in spite of the assurances given before this Court. We think it appropriate to take recourse to such extreme action of imposing damages/compensation, for we are satisfied that this would act as a deterrence for the management as well as the State Government in future who have played havoc in the life and careers of innocent and unwary students. The management of respondent college was fully aware that there was no permission from any competent authority to run the homeopathy medical college and in spite of that admitted students to undergo BAMS course in its college. In our view it is, therefore, not open for the respondent college to contend that admissions of the said students were provisional and subject to the outcome of the present petition. It is seen that, the minutes, which have been filed before this Court, in the previous proceedings, the management clearly gave an assurance that the deficiencies pointed out by the Council shall be removed with promptitude. Because of the said assurances, this Court was persuaded to permit the respondent college to admit students to the new first year BHMS course. But for that, this Court would not have permitted the respondent college to admit students for the first year BHMS for the academic year 1997-98. Respondent college, therefore, cannot be permitted to approbate and reprobate. In our view it is therefore essential that respondent college be saddled with damages/compensation in respect of students who have suffered immense prejudice and irreparable loss.

16. The next question that was seriously bothering this Court was as to what would happen to the students admitted to the respondent college. The State Government has favourably responded to the said problem and placed on record that all the affected students will be accommodated in Virar Homeopathy College

which is a recognised college and/or any other Homeopathy medical college in the nearby vicinity in the same university. We appreciate the sensitivity and concern shown by the State Government to save the career of the students who have become victims of circumstances. The statement made by the learned Counsel for the State Government is accepted.

17. In the circumstances we propose to pass the following order :--

a) We declare that all admissions granted in the respondent No. 6 college for the first year BHMS course for the academic year 1997-98, 1998-99 and 1999-2000 are illegal, without authority of law and void ab initio;

b) Respondent Nos. 5 and 6 are directed to refund the entire fees and/or deposits and/or any other amount collected from the students whose admissions have been declared illegal as above, within a period of 2 months from this order;

c) The students admitted in the respondent No. 6 college in the aforesaid academic years, besides refund of the fees etc., are also entitled for compensation/damages which is quantified at Rs. 30,000/- per student of A. Y. 1997-98; Rs. 20,000/- per student of A. Y. 1998-99; and Rs. 15,000/- per student of A.Y. 1999-2000. Respondent Nos. 5 and 6 shall pay abovesaid amounts to students of A.Y. 1977-98 and A. Y. 1998-99. But the State Government and the respondent Nos. 5 and 6 shall jointly pay amount of Rs. 5,000/- and Rs. 10,000/- respectively (total Rs. 15,000/-) per student of A. Y. 1999-2000. The amount shall be paid to each of the affected student within 2 months from the date of this order;

d) The respondent Nos. 5 and 6 are directed to forthwith close the Homeopathy medical college and/or are restrained from admitting any new student so long as necessary permission are not obtained from all the concerned authorities in that behalf;

e) The State Government is directed to accommodate all the affected students of A.Y. 1997-98, 1998-99 and 1999-2000 of the respondent No. 6 college in Homeopathy college at Virar or any other recognised Homeopathy medical college in the same University in the new academic year 2000-2001. for first year BHMS course and students of A.Y. 1996-97 to the Second Year BHMS course provided they have passed the First Year BHMS examination or entitled to keep terms in accordance with the extent rules.

18. For the aforesaid reasons we dispose of both these writ petitions in the above terms with no order as to costs.

Parties to act on the copy of this order duly authenticated by the Sheristadar of this Court.