
(16) The post of a Reader in a University is a fairly senior position. Persons with proven merit alone can be appointed. In the present case, it appears that respondent No. 5 did not fulfill the prescribed requirement of experience. In fact, the qualifications as noticed above require that the research experience has to be assessed on the basis of "quality of publications, contribution to educational renovation, design of new courses and curricula." There is not even a suggestion that the quality of publications, if any, was ever assessed or that the respondent had contributed to educational renovation or designed any new courses etc.

(17) Another fact which deserves mention is that even though, it has been provided that a person having eight years experience "of teaching and/or research...." is eligible, yet the fact remains that a Reader has to teach. The prescribed qualifications specifically lay down that "five years experience of teaching Post Graduate Classes will be considered desirable." It appears necessary that the candidate should have some experience of teaching. In the present case, the petitioner's suggestion that respondent No. 5 did not have even one day's teaching experience is not shown to be false. In this situation, the answer to the second question has to be in favour of the petitioner.

(18) In view of the above, the writ petition is allowed. The appointment of respondent No. 5 is quashed. The respondents are directed to consider the petitioner's claim for appointment to the post of Reader in Environmental Science and Engineering. The needful shall be done within one month from the date of receipt of a copy of this order. The petitioner shall also be entitled to his costs which are assessed at Rs. 5,000.

R.N.R.

*Before K. Sreedharan, C.J. N.K. Sodhi and
Swatanter Kumar, J.J.*

VARINDER SINGH AND OTHERS,— *Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,— *Respondents*

C.W.P. 10526 of 97

4th September, 1997

Homoeopathy Central Council Act, 1973—Ss. 19, 20 and 33—Homoeopathy (Graded Degree Course) B.H.M.S. Regulations, 1983—Homoeopathy (Degree Course) B.H.M.S. Regulations, 1983—Homoeopathy (Diploma Course) D.H.M.S. Regulations, 1983—Homoeopathy (Minimum Standards of Education) Regulations, 1983—The Punjab Homoeopathic Practitioners Act, 1965— Ss. 20, 21 and 21-A— The Punjab Homoeopathic Practitioners (General) Rules, 1973—The Punjab Homoeopathic Practitioners (Recognition of Institutions) Regulations, 1974—Constitution of India, 1950—Arts. 226 and 254 List I, 7th Schedule Entry 66, List III 7th Schedule Entry 25—Homeopathic Medical College, Abohar issuing advertisement inviting applications for admission to 1st Professional Diploma in Homoeopathic Medicine and Surgery (D.H.M.S.), a four year course—Advertisement mentioning that diploma course likely to be converted into degree course subject to approval from Central and State Council for upgrading from the Session 1996-97—Admitted students relying on terms of prospectus/brochure/advertisement seeking directions to the authorities for conversion—Process of 'conversion' not envisaged under any law or rules framed by the State or Central Council—Central Council approval limited to upgradation of College for starting degree course from academic session 1996-97 and no approval accorded for upgrading the existing diploma course—Stand of college in the advertisement amounting to partial misrepresentation—Court after noticing stand of all authorities concerned issuing directions to prevent recurrence of unfortunate state of affairs, however, keeping the larger interest of public and students, Court moulding the relief on principles of equity by directing the authorities to permit admitted students to complete an additional 1750 hours of studies for completion of degree course and also such additional expenses towards fee etc. required to be paid by the students ordered to be borne by college, State and Central Council in the ratio of 40:30:30; with liberty to the State and Central Council to recover the amount from delinquent officials irrespective of their status and position.

Held, that though apparently there appears to be overlapping jurisdiction in the functions and powers vested under these statutes in both the Councils, but when examined and given a closer scrutiny they clearly define a separate area of operation of functioning for the respective Councils. The object of the Central Council is more tilted towards prescription and maintenance of uniform standards of professional education on the one hand, and recognition of medical qualification on the one hand, and recognition of medical qualifications and control over grant of such qualifications by the universities, Boards or institutions in India on the other. The State Council is more concerned with the day-to-day inspections and functioning of institutions, providing recognition to the said

institutions for the purposes stated in paragraph 2 of Schedule I of the said Act and holding of entrance or other examinations in accordance with prescribed standards.

(Para 27)

Further held, that the Central legislation does not indicate or vests the Central Council with any power or authority to regulate or provide for admission to the courses. The various sections of the Central Act amply make it clear that powers of the Central Council are to regulate much larger issues and to impose a discipline of wider magnitude to maintain the education standards and to prescribe the minimum standards of education in homoeopathy. Once the scheme of the Act does not specifically empowers the Council in this regard, the Council cannot be permitted to derive such a power by an inference. Absence of legislative power cannot be provided by administrative acts. In this regard the power of the State Council is more specific, definite and is of a larger scope.

(Para 31)

Further held, that the College had no justification to publish the said note in the brochure because attempt appears to be to attract the students to seek admission in the Diploma course, but part of the note was even factually correct. Once the Council had objected to the said note the College was obliged and was under a moral duty to bring it to the notice of the students before they were given admission to the said Course and before accepting their fees, about the objection raised by Central Council.

(Para 35)

Further held, that another basic lacuna in the stand of the College as well as of the State Council is that the Central Council at no point of time had ever permitted conversion of the Course from D.H.M.S. to B.H.M.S. Permission to commence a Degree or a Graded Degree Course cannot be construed or read as permission to convert a Diploma Course into a Degree Course. The stand of the Central Council in this regard is supported by documentation. Neither the State nor the Central Acts spell out any provision in regard to such conversion of courses. Various regulations afore-stated also do not postulates any such situation. In view of the definite stand taken by the Central Council that such conversion is not permissible in view of the specific law and regulations and academically both courses are entirely distinct and different, the Court would not substitute its view to hold that such conversion is permissible. The Court has no expertise available with it to determine this question in these proceedings and would be well within its jurisdiction to rely and accept the point of view put

forward by an expert body like Central Council, though there is some dispute between the two Councils even on this score. Thus, the College has certainly acted irresponsibly and has misled the students by publishing a note in the brochure, but in any case the College had no justification, whatsoever, in claiming that it could incorporate the permissions granted to it by the two Councils prior to July, 1997 as permissions for conversion of the Diploma Course to the degree Course. Not only that such conversion was propounded and propagated by the college, but it also directed the students to represent in the same direction. We are unable to appreciate this stand of the College and we find that the College is certainly at fault to a great extent.

(Para 36)

Further held, that (i) all the admissions to the Homeopathy Degree Course shall be strictly in accordance with the merit of a candidate in entrance test held by the concerned bodies as per the law laid down by the Supreme Court;

- (i) The Central Council and the State Council are directed to conduct inspections of the respondent-College within a period of three months from today and to submit the inspection reports to the concerned authorities/Government immediately thereupon;
- (ii) Upon submission of such reports both the Councils in consonance with the provisions of the Act and sphere of their jurisdiction as indicated above, would pass appropriate orders granting, refusing to grant recognition or granting further time for making up with the deficiency pointed out by the inspection teams, within a period of 15 days from the date of submission of such reports and communicate the same to the Council;
- (iii) In the event the Council(s) come to the conclusion on the basis of the reports(s) that the College should be given some time to make up certain deficiencies pointed out by the inspecting team, in that event, another inspection will be conducted at least one month before the expiry of the period granted by the Council. After considering the report upon re-inspection of the College, the Council(s) would pass appropriate orders in accordance with law. Every effort would be made by all concerned to define the clear status of the College well in advance to the commencement of the next academic session 1998-99.
- (iv) We also hereby issue general directions to the State

and Central Councils that they should hold a joint meeting of their committees, identify the fields of their functioning in view of the afore-stated observations of this court and to fix regular schedule of inspection of all the Colleges in the States of Punjab, Haryana and U.T. Chandigarh, if such colleges are working under temporary recognition or approval of the authorities concerned. The Councils and the Governments concerned shall ensure that inspection of all the Colleges and medical institutions should be conducted and appropriate orders passed granting/refusing permanent recognition at a point of time which is well in advance to the holding of the entrance tests/interviews/admissions to the degree courses in the very colleges and medical institutions in the State of Punjab, Haryana and U.T. Chandigarh;

- (v) Endeavor to give permanent recognition even before the College commences its course should be encouraged by the Councils;
- (vi) Where-ever the concerned Council is of the opinion that approval, affiliation or recognition of a Homeopathy College or Institution should be withdrawn or revoked in accordance with law or where the College fails to make up the deficiencies pointed out by the experts body within the time granted by the Council(s), shall direct closure of such College and would not permit the College to impart professional education in homeopathy. In that event the Council(s) whole on the one hand shall ensure implementation of its orders, then on the other hand, before ordering closure, it shall take adequate steps in coordination with the Government concerned to allocate the students pursuing their studies at the relevant time, to such other homeopathic colleges, institutions, or the board, as the case may be, and in the manner it is considered possible and prudent by the concerned authorities;
- (vii) The Council shall prohibit the said College or Institutions from granting fresh admissions to the students till it provides for the infra-structure required and making up the deficiencies as pointed out by the Councils concerned to their satisfaction. The period granted to the Colleges for this purpose should be specified with definiteness and schedule of inspections strictly adhered to.

Further held, that the expectation of the students prima facie does not appear to be unreasonable. The claim of the petitioners is not one which can be rejected out-rightly by the Court in view of the settled principles of "reasonable expectancy". We have to really cogitate keeping in view the peculiar montage of this case in mind as to the relief which can be granted to the petitioners by balancing the principles of justice on the one hand and the demand of equity on the other. We are certain at the same time, that the petitioners cannot be granted relief which would be in violation to the specific provisions of Statutes. Equity does not make law but primarily assists law. The relief granted in equity normally should be in adherence to the provisions of law. The jurisdiction under Article 226 of the Constitution of India is not only a wide jurisdiction vested in the Court but includes power to grant relief in equity as well. It is settled principle of law that equity is never the hand-maid to strife where equity can give a remedy. As such the petitioners would be able to take assistance from the basic doctrine of equity '*Aequum et bonum est lex legum*'.

(Para 53)

Further held, that the petitioners would not be entitled to conversion of the course as prayed, we direct that all the petitioners would be given 1750 hours of Degree Course study by the College. Upon completion of this 1750 hours of study, which include the time spent on practicals, would upon passing of the examination, ensure the promotion of the petitioners to the second year of the Degree Course. We direct the State Council in whose jurisdiction this matter squarely fails to consider this aspect of the matter that if it is possible to reduce this period of 1750 hours of study keeping in view the facts that the students have already undergone one year complete study in the Diploma Course. The Council shall take decision in this regard within 15 days from today and would communicate its decision to the College in writing.

(Para 55)

Further held, that the afore-stated relief is consented by all the parties before us and we also feel that this is the only just and fair order which could be passed by the Court in the facts and circumstances of the present case. We are not inclined to direct the students to undertake the Graded Degree Course for three reasons, firstly, this would have the effect of extending the academic course of the petitioners by two years for no fault of the students; secondly, for this additional period of two years the students would have to deposit admission fees of Rs. 50,000 for seeking admission to the Graded Degree Course in addition to the expenditure which the students have to incur for this period for pursuing the course

and, thirdly, it is the common case of the College and the Central and State Councils that there is a policy decision taken on all India level that steps should be taken to discontinue the Diploma Course and introduce Degree Course in all the Homeopathic Colleges and Institution.

(Para 58)

Further held, that it would be just, fair and equitable to direct that the expenditure to be incurred on these students for pursuing their Degree Course (excessive period of six months, constituting part of 1750 hours) shall be borne by the college. State Council and the Central Council in the ratio of 40:30:30: respectively. The amount so paid by the State and Central Councils to the College. shall be recovered in accordance with law from all the concerned officers/officials of these councils irrespective of their status and position. Such recoveries would be effected within a period of six months from today from the erring persons. The enquiry shall be conducted by an officer not below the rank of Secretary/Addl. Secretary in the corresponding Governments as both the Councils are subject to control of the State and Central Government.

(Para 61)

Further held, that all the students including the petitioners would study for the additional period of six months (the first professional of the Degree course being of 18 months while the students will have to study for additional 1750 hours (which is approximately more than a year) in addition to the one year of the Diploma Course which the students have already completed as per prescribed standards) and they would not be liable to any tuition fee or other charges payable to the College for this additional period of six months.

(Para 62)

K.S. Dadwal, Advocate with:

Rakesh Bhatia and Balram Singh
Advocates, for the petitioners

B.S. Guliani, Advocate for Respondents Nos. 5 and 6.

Sandeep Khunger, Advocate for No. 4.

V.K. Jindal, Advocate for No. 3.

Arun Nehra, Advocate with:

S.M.S. Pasricha, Advocate and

G.K. Chatrath, Sr. Advocate with

Anu Chatrath, Advocate for the interveners.

Hemant Gupta, Addl. A.G. with
Gurveen Kaur, AAG, for *State of Punjab*.

JUDGEMENT

Swatanter Kumar, J.

(1) The caricious attitude and temerity in the action of the luminous bodies like the central council of Homoeopathy, Council of Homoeopathic system of Medicine, Punjab, has resulted in disarray and lead to the institution of the present writ petition. Lack of harmoneous working, co-operation and co-ordination between the State and Central statutory bodies controlling the education and granting degrees in Homoeopathy and misrepresentation by the Homoeopathic Medical college, Abohar, has caused serious prejudice to the students including the petitioners herein. Attitude of indifference coupled with lack of zeal to do commonweal for the students of homoeopathy and consequently for the public at large has exposed a serious threat to the entire academic career of the students.

(2) Commensurate to the expected standards of functioning of statutory authorities, controlling the standards, professional ethics and maintenance of education standards, academic curriculum and admission to courses in the field of homoeopathy, have not only been ignored but to a great extent have been violated by such bodies in the present case. Breach of its duties and obligations by these authorities could be of far reaching consequences is a fact which is demonstrably exhibited by the facts of this case. In spite of the fact that the Central and State legislations regulating such profession and academic courses, clearly spell out a distinct and different sphere of jurisdiction for respective bodies, but in practice they have a common field and sphere to operate being delicately aware of their respective duties and obligations.

(3) In 'The Tribune' dated 20th August, 1996 Homoeopathic Medical College, Abohar, published an advertisement inviting applications for admission to 1st professional Diploma in Homoeopathic Medicine and Surgery, hereinafter referred to for the purposes of brevity as D.H.M.S., of duration of four years. The note given in the said advertisement which is of immense consequences in the present case reads as under:—

“ADMISSION NOTICE (1996-97)

HOMOEOPATHIC MEDICAL COLLEGE, ABOHAR
(Established-1975) (Recognized by Central and State
Homoeopathic Councils), Hanumangarh Road, Near
Bye-Pass, Abohar.

Applications are invited for admission to 1st Prof. D.H.M.S.
(Diploma in Homoeopathic Medicine and Surgery of four
years duration inclusive six months internship.
Essential qualification:—

10+2 (Medical) or its equivalent. Last date submission
of Application form : 24th August 1996. Interview
on 26th August, 1996 at 10 A.M. at college campus.
Prospectus : 100/- on counter, 115/- by post. Salient
features: College complex on 19 Acre land.

* 50 Bedded Hospital equipped with X-ray plant

* girls Hostel available.

*Note: D.H.M.S. course in our institution is likely to be
converted into Degree (D.H.M.S) course subject to
approval from the C.H.S.M. Punjab State
Government Central Council of Homoeopathy, New
Delhi has given approval for upgrading the
Diploma into Degree (B.H.M.S.) from this Session
vide letter No. 12-16/91-CCM (Pt.-III)/1236 issued
on dated 14th May, 1996. Phones : 01634-20868,
61293, 61268. Principal.”*

(4) The 43 petitioners amongst large number of other student
in response to the above advertisement and the note which was
also incorporated in the brochure, and in accordance with the rules
submitted applications for admission. The last date for submission
of such applications was 24th August, 1996 and the interview in
this regard was held on 26th August, 1996. The fees for getting the
prospectus was fixed Rs. 100. It is the case of the petitioners that
more attracted from the note given in the advertisement and duly
printed in the brochure and specially in view of the fact that Central
Council of Homoeopathy had given its approval for upgradation of
the Diploma Course,—vide letter dated 14th May, 1996, the
students took admission to the Diploma Course and paid the heavy
fees required to be deposited in terms of the brochure. Thereafter
the petitioners pressed for conversion of the ongoing Diploma
Course into one for Degree. This was also recommended by the
authorities and approved in May, 1997. The case of the petitioners

is that all the diploma-holder candidates have a preferential claim over the seats of the Degree college. The petitioners had moved application in this regard and even the representation filed on behalf of the petitioners to the concerned Minister was duly forwarded while recommending the petitioners on 27th May, 1997, but the respondents did not permit the conversion. Therefore, the petitioners were left with no alternative but to approach this Court with the prayer for issuance of appropriate writ, direction or order for quashing Annexure P/5, which is an admission notice issued for the Degree Course in Homoeopathy by the Homoeopathic Medical College, Abohar, hereinafter referred to as the College, and further for a direction to the respondents to abide by the terms and conditions of the prospectus/brochure and to convert the Diploma Course in which the petitioners are studying to the Degree Course and to restrain the respondents from giving admission to the fresh candidates in the Degree Course.

(5) In response to this case of the petitioners, the Central Council of Homoeopathy, New Delhi, hereinafter referred to as the Central Council for the purposes of brevity, and the Council of Homoeopathic System of Medicine, Punjab, Chandigarh, hereinafter, referred to, in short, the State Council, as well as the State of Punjab have filed separate replies. In order to appreciate the respective contentions raised by the parties before us, it will be appropriate to state the case of each of the respondents as they have gone on record to take not only defences which are variable, but which are directly inconsistent to each other.

(6) Because of non-cooperative attitude adopted by both the councils and the attitude of the unconcern adopted by the State that compelled this Court to direct the Chairperson/Secretaries of both the Councils and responsible officers of the State Government to be present in Court and it is after some persuasion that requisite affidavits have been filed on record. We had heard the learned counsel for the parties and even permitted the experts to address and assist the Court in arriving at a proper decision, which may be equitable and still in consonance with the provisions of both the State and Central Acts.

STAND OF THE CENTRAL COUNCIL

(7) It is not disputed before us that the respondent-College is imparting education in D.H.M.S. for more than 20 years now and during this period the College was inspected by the teams of the experts constituted by the Central as well as State Councils for

this purpose. The College had moved the State Council and on the recommendation of the State Council in August, 1994, the inspecting team of the Central Council had inspected the College and submitted its inspection report. Copy of which has been placed on record as Annexure R/4. Concluding paragraph of the said report reads as follows :

“The inspection team has been of the firm opinion, that this institution deserves permission to start the graduate course (BHMS and Graded BHMS), for the following reasons :

- (a) The institution has a vast land of its own at the outskirts of the town and they can develop rural Homoeopathic Course with 100 bedded hospital.
- (b) The institution has already fulfilled running Hospital of 50 beds in the heart of the town which is quite popular and has the minimum investigational facilities that are essential.
- (c) The Principal and the members of the teaching faculty are enthusiastic and are capable of discharging their duties, of providing higher education in Homoeopathy.
- (d) The management is resourceful, financially sound dynamic and sincere in developing the institution to that standard, provided the State and Central Council, gives them necessary encouragement.
- (e) The college has gas connection, both in physiology and Pathology department. Besides this it has its own auditorium, amphitheatre and college harborium.

We are impressed by the clinical material available in their hospital at present.” The Central council claimed that it had informed the State Council to offer its comments with regard to the insufficiencies pointed out in the report. Thereafter the Central Council,—*vide* its letter dated 10th May, 1996 Annexure R/2 to the reply, on the basis of the recommendations of the executive committee, permitted the respondent college to start B.H.M.S. Degree Course and Graded Degree Course from 1996-97 Session for two years subject to the conditions stated therein. The relevant portion of this letter which appears to us to be of serious consequences in the facts and circumstances of the present case reads as under :—

“To

The Registrar,
Council of Homoeopathic
System of Medicine, Punjab
S.C.O. No. 3027-28 Sector 22-D,
CHANDIGARH—160 022.

Sub : Recognition of Homoeopathic Medical College.

Sir,

With reference to your letter No. CHSM-Pb/203, dated 18th January, 1996 I am directed to say that the Central Council considered the matter and it agreed with the recommendations of its Executive Committee for allowing upgradation of Homoeopathic Medical College at : Abohar and Chandigarh for starting B.H.M.S. Degree and Graded Degree Courses from 1996-97 session for *two years* subject to the following conditions

—

- (1) Homoeopathic Medical College, Chandigarh shall restrict the admissions to 50 (fifty) students in Direct Degree Course and 30 students only in Graded Degree Course;
- (2) Homoeopathic Medical College, Abohar shall restrict the admissions to 70 (seventy) students only in Direct Degree Course and 30 students in Graded Degree Course;
- (3) Authorities of both the colleges shall appoint the teaching staff including the Principal possessing the requisite qualifications and teaching experience laid-down in Homoeopathy (Minimum Standards of Education) Regulations, 1983. It shall be ensured by the college authorities that the teaching staff appointed on the basis of Homoeopathic qualification possess the prescribed medical qualifications which are recognised as per the provisions of Homoeopathy Central Council Act, 1973;
- (4) The college shall maintain in their attached hospitals 1:1 students bed ratio as laid down in Homoeopathy (Minimum Standards of Education) Regulations, 1983;

- (5) Both the colleges shall strengthen the deptts. and OPD and IPD in the attached hospitals in terms of teaching and hospital staff, equipment and other necessary material;
- (6) Both the colleges shall strengthen the number of books in the library by adding the latest editions;
- (7) Authorities of both the colleges shall ensure that admission in Graded Degree Course be given to candidates possessing a diploma qualification of not less than a 4 years duration and the same is included in the Second Schedule of Homoeopathy Central Council Act, 1973; (Degree Courses) Regulations, 1983 and Homoeopathy (Graded Degree Course) Regulations, 1983.

xx xx xx xx

It is, therefore, requested not to allow admission of students in Guru Nanak Dev Homoeopathic Medical College, Ludhiana and Kalyan Medical College, Taran Tarn for the session 1996-97.

Sd/..,

Dr. Lalit Verma, Secretary.

(8) The Central Council,—*vide* its letter dated 19th August, 1996 issued recognition to the respondent-college. *Vide* this letter the title of which stated “List of recognised Homoeopathic Medical Colleges in Punjab and Chandigarh (U.T.)” Homoeopathic Medical College and Hospital, Chandigarh and Homoeopathic Medical College, Hanumangarh Road, Abohar were given recognition. As a result of recognition and acceptance by both the Central and the State Councils the name of the college was included in the list of the recognised colleges maintained by the Central Council as informed to the college,—*vide* their letter dated 16th May, 1997. The case of the Council is that inspite of the issuance of the above documents and the permissions granted by the State Council they had never permitted the College to convert the Diploma Course into a Degree Course. The term ‘conversion’ according to the council does not find mention in any of the rules framed by the Council nor such a course of action is permissible under the provisions of the Homoeopathy Central Council Act, 1973, hereinafter referred to as the Central Act.

(9) After the note given by the College had appeared in the Tribune dated 20th August, 1996 the Council issued a letter to the College objecting to the note and the relevant part of this letter reads as under :—

“This office,—*vide* its letter of even number dated 10th May, 1996 has communicated the decision of Central Council for allowing upgradation of Homoeopathic Medical College, Abohar for starting B.H.M.S. degree course and at no time approval for upgrading the diploma into degree has been allowed to your college by this Council.”

In the affidavit filed on behalf of the council by Dr. S.R. Islam, Medical Inspector, who was also present in the court it has been stated that the academic scope of a Diploma and Degree Course are totally different. The Degree Course has to be of five years and six months and the first professional being of 18 months, while the Diploma Course is of four years, the first professional of which is of 12 months. In paragraph 4 of the additional affidavit filed by this officer dated 20th August, 1997, specific differentiation has been described between a Degree Course and a Diploma Course. During the course of arguments we were informed that the students who are doing the Diploma Course cannot be prepared adequately for taking the first professional examination of the Degree Course primarily for the reason that scope of study right from the very beginning are not similar or identical to each other. The students of the Degree Course study all the subjects in greater depth and their study is of a wider scope and practical knowledge imparted to them is of a higher degree. The scope of the medicines taught to them is much larger. As Diploma students study only 20 medicines while the Degree Course students are taught nearly 70 medicines. The total hours of study for the Degree Course are 1750 hours, while in the Diploma Course they are stated to be 1280 hours. For these reasons the Council is opposed to the relief prayed for by the petitioners before the court for conversion of Diploma Course into a Degree Course and by *giving them only further education for additional period of six months*. However, the experts of the Council appearing before the Court specifically conceded that the Council possibly cannot have any objection if the students of the Diploma Course are prepared to undertake the Degree Course study proximately for the same period, which is otherwise meant for completion of the first professional of the Degree Course.

STAND OF THE COLLEGE

(10) The College, as already noticed, has filed detailed reply. The stand of the College is that the College was established somewhere in the year 1974-75 and since then it has been imparting education in Diploma in Homoeopathy. The College claims to have complete infrastructure and satisfies all the requirements of the regulations in this regard. It is averred by the principal that after their College was inspected by different teams in furtherance to their application to the State Council on 12th April, 1995, they were granted approval by the Central Council,—*vide* their letter dated 10th May, 1996. The approval of the Central Council was unambiguous and it had permitted the College to start the Degree Course. It, by necessary implication meant, that they could convert the ongoing Diploma Course into the Degree Course. It is stated that both the Councils had decided to stop Diploma Course as a matter of policy all over the State. In furtherance to the afore-stated permission approval of the Central Council dated 10th May, 1996 the State Council had issued a letter dated 13th/14th June, 1997 granting permission to the College for running a Degree/Graded Degree Course for the academic session. The relevant part of the said letter, copy of which is annexed R.2/1, reads as follows:—

“Your institution is hereby granted permission for running Degree/Graded Degree course from academic session 1997-98. This approval has been granted in view of the recommendations of the Central Council of Homoeopathy, New Delhi and approval of State Government. The detailed terms and conditions will be made after due discussion with you as per guidelines issued by the Central Council of Homoeopathy/State Government.

3. You are requested to attend the office on 21st June, 1997 at 10 am to finalise other modalities of introduction of the course.”

(11) It is also averred that the State Council had placed agenda No. 32 on 21st July, 1997 in its meeting to permit the conversion of the D.H.M.S. Course into B.H.M.S. Course. The Agenda and Resolution on the said item read as under:—

“AGENDA No. 32

The students who got admission in D.H.M.S. last year in the Session 1996-97 want conversion into degree course,

so in this respect, the matter was discussed with the concerned Secretary Health by the Registrar and the Principal of Homoeopathic Medical College, Chandigarh has been directed to submit a complete report on the subject upto 31st July. On receipt of the same the decision which will be taken by the Chairperson and the Government shall be implemented.

RESOLUTION No. 32

The student who got admission in 1996-97 may be principally allowed to be converted into degree course if there is no complication and effort should be made to get the D.H.M.S. discontinued and the students who will opt for the conversion they will pay the fees to the college according to the revised fee."

Even the State Government, in furtherance to the permissions granted by the Central and State Councils,—*vide* their letter dated 13th June, 1996 had granted permission to the College, wherein it specifically stated that the Central Council has decided to up-grade the following two colleges (name of the respondent-College was stated at sr. no. 1) and further that the Colleges indicated in the letter have been given recognition to start Degree Course for the year 1996-97. This letter was sent by the Joint Secretary, Department of Health and Family Welfare, Government of Punjab, Chandigarh. The approval granted by the State Government and the State Council even for conversion was sent to the Central Council, who,—*vide* their letter dated 24th July, 1997 stated as under:—

"Sub: Condensed course for the students admitted in D.H.M.S. in the previous years.

Sir,

With reference to your letter No. CHSM-Pb/97/2136, dated 23rd July, 1997, I am to say that permission granted by the Government of Punjab for upgrading the Diploma Course into Degree Course in Homoeopathy is with effect from the year 1997-98, as such it is not understood how the State Council has approved in its meeting held on 21st July, 1997 (as reported by you), the demands of the students of Diploma Course admitted in past for conversion to degree course.

However, neither the copy of the minutes of the said meeting of Punjab Council has been sent by you nor the copy of letter of State Government permitting upgradation of Diploma to degree course. Even the State Council has not sent the details of colleges affiliated to it, for B.H.M.S. Direct and graded Degree Courses.”

(12) According to the Principal the State Council has wrongly directed itself in reviving the matter after the final approval had been granted by the Central Council,—*vide* their letter dated 10th May, 1996. According to the College they were fully justified in incorporating the note in question and they have rightly understood that they were entitled to convert the Diploma Course into the Degree Course. It is stated by the College that because of inaction and/or delayed act on the part of the Council that they not able to give any admission in the Degree Course for the year 1996-97 and they had admitted the students only to the Diploma Course. It is further clarified to us that they have not admitted any students in the academic year 1997-98 in the College for Degree Course and they have only planned to convert the Diploma Course into Degree Course as afore-stated. In short, the contention is that declaration of note is a bonafide act and the same having been permitted by the concerned authorities, no fault can be found with the College. It is further averred that all concerned authorities had favourably recommended the case of the College, thus, there is no misrepresentation on the part of the College.

STAND OF THE STATE COUNCIL

(13) In the affidavit filed on behalf of the State Council it is stated that conversion was not allowed. The issuance of the aforesaid letters by the State Council are not disputed and it is also not disputed that the State Government had granted the recommendation as afore-indicated. It is also admitted that the Council in its meeting dated 31st July, 1997 had decided that conversion of the course to B.H.M.S. from D.H.M.S. be permitted,—*vide* Resolution No. 32. Copy of this was sent on 23rd July, 1997 to the Central Council and the State Council raised further queries and did not approve the resolution. As such there was no permission of conversion from D.H.M.S. Course to B.H.M.S. Course as pleaded by the Council. In the entire counter affidavit it has not been averred that the College has committed violations of any conditions or has abused the permission granted. It is admitted that the Degree Course could not be started as the matter was under consideration

with the respondents and it is only in June, 1997 that up-gradation of the Course was permitted and permission to start Degree Course from the Sessions 1997-98 was granted.

(14) We must mention here that the experts of this Council, who were even present in Court, have specifically stated that the students who were even present in Court, have specifically stated that the students who are undertaking the Diploma Course can easily be coached to pass the Degree Course, provided they are directed to study for a period of six months more i.e. they should complete 18 months of academic course which is the requirement for the Degree Course. In this regard both the Councils have taken contradictory and inconsistent stands.

(15) The Principal has filed additional affidavit to bring on record the present building infrastructure, library and position of the laboratory in the College. It is also contended that a 50 bedded hospital is connected to the College.

(16) The State Government has filed a very short reply on record and they have stated that the State Government had accorded the approval for introduction of Degree and Graded Degree Courses with Homoeopathic Medical College on 13th June, 1996.

(17) In order to consider the stand taken by various authorities in its correct perspective we consider it appropriate to refer to certain statutory provisions of the Central and State Acts. The Homoeopathy Central Council Act, 1973 was enacted for setting up of a composite Central Council for Indian System of medicines and Homoeopathy. Further for the proper growth and development of all the four systems this enactment was recommended by the joint committee of the Parliament constituted for this purpose, and separate Council for homoeopathy system was recommended. Under the Act Central Council for Homoeopathy is to be constituted with its main function being to evolve uniform standards of education in Homoeopathy, and registration of practitioners of Homeopathy.

(18) The expression 'Board' in the Central Act would mean a Board, Council, Examining Body or Faculty of Homoeopathy (by whatever name called) constituted by the State Government under law for the time being in force regulating the award of medical qualifications in, and registration of practitioners of Homoeopathy. The Act, upon constitution of Central Council, defines its functions under Chapter-III of the Act. Under Section 13 of this Central Act, recognition is to be granted to medical qualifications which will be awarded by any University, Board or other Medical Institution, which, upon such recognition, would be included in the schedule to

the Act. Under Section 16 of the Central Act every Board, University or medical institution in India which grants a recognized medical qualification, shall furnish information to the Central Council, which may be required by the Central Council as to the course of study and examination to be undergone in order to obtain such qualification. Under Section 17 of the Act, the Central Council has to appoint medical inspectors to inspect any medical college, university or other institution where education in homoeopathy is being imparted or to attend any examination held by such body for the purpose of recommending to the Central Government recognition of medical qualification granted by such body. Under Section 18, the Central Council may appoint such number of visitors as it may deem requisite to inspect any medical college, hospital or other institution where education in Homoeopathy is given or to attend any examination for the purpose of granting recognised medical qualification.

(19) Important feature of sections 16 to 18 is that the jurisdiction of the central council is restricted by sub section (2) of section 17 and sub-section (3) of Section 18, where such inspectors or visitors *appointed by the central council are not to interfere* with the conduct of any training or examination, but have to only report on the adequacy of the standards of education including the staff, equipment, accommodation and other facilities etc.

(20) Section 20 of this Act *vests the central council with the authority that it may prescribe minimum standards of education in Homoeopathy, required for granting recognised medical qualifications by the Universities, Boards or medical institutions in India.* The scheme of Section 20 is that council has to provide uniform standards of education in homoeopathy for the purposes of granting recognised medical qualifications by various bodies. Thus, the control of the Central Council is primarily over the bodies which are to award such recognised medical qualifications/degrees. The provisions of Section 20 must be read *ejus dem generis* to the other provisions falling under chapter-III while keeping in view the statement of objects and reasons stated for this enactment.

(21) Section 19 of the Act empowers the Central Council to recommend to the Central Government that particular Board, Medical Institution or University do not conform to the standard prescribed by the Central Council for the purposes of course of study and examination to be undergone by the student and does not have the staff, equipment and other facilities for withdrawal of the recognition and for appropriate entry in the second Schedule. The Central Government after taking comments of the State

Government and the institution concerned and upon following the procedure prescribed under Section 9 has the power to withdraw the recognition in accordance with law.

(22) Under Section 33 of the Act, the Central Council may, with the previous sanction of the Central Government, make regulations, amongst others, in regard to :—

- “(1) the courses and period of study of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in any University, Board or medical institution for grant of recognised medical qualification;
- (j) the standards of staff, equipment, accommodation, training and other facilities for education in Homoeopathy.”

(23) The Central Council on account of the power vested in it under the provisions of the Central Act, has framed Homoeopathy (Graded Degree Course) B.H.M.S. Regulations, 1983; Homoeopathy (Degree Course) B.H.M.S. Regulations, 1983; Homoeopathy (Diploma Course) D.H.M.S. Regulations, 1983 and Homoeopathy (Minimum Standards of Education) Regulations, 1983.

(24) As is clear from the above, different regulations have been framed with a different field of operation and all these regulations must and have to be implemented to achieve the object of the Act. Their scope and application, thus, must be construed within the limitation imposed under the principal Act i.e. Central Act.

(25) The State of Punjab enacted (The Punjab) Homoeopathic Practitioners Act, 1965, under which the State Council has been constituted. Some of the provisions of this Act clearly define and demarcate the area where the State Council must discharge its obligations and perform the duties as postulated under the State Act Under Section 20 of the State Act, the Council is obliged to appoint such number of inspectors to inspect the institutions and their examinations. The inspectors, in accordance with any general or special direction of the council given from time to time have to inspect the institutions *established by or affiliated to the Council* and report to the Council in regard to the courses of study pursued and training imparted at every institution which they inspect or any other matters with regard to which Council may seek report from the inspectors. At this juncture we may refer to the relevant provisions of Sections 21 and 21-A of this Act, as under :—

“21. Qualifying examinations—(1) The council shall by regulations—

(a) recognise institutions as required under paragraph (2) of Schedule 1;

(b) prescribe the course of training and qualifying examinations including the examinations prior to qualifying examinations;

provided that instruction and examinations shall as far as possible be given or held in the languages specified in the regulations.

(2) A qualifying examination shall be an examination in the Homoeopathy System held for the purpose of granting a diploma, degree or certificate conferring the right of registration under this Act by (the Council or by) any of the Institutions which on the recommendations of the Council may be specified by the State Government by notification as being authorised to hold a qualifying examination.

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21-A. Powers and Functions of Council—Subject to the provisions of this Act, the powers and functions of the Council shall be:—

(a) to hold qualifying examinations and other examinations, to appoint examiner and other staff to assist them, to fix their fees, remunerations and allowances and to declare the results of the examinations;

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In addition to the above powers the State Council under sub-section (3) of Section 21 has the duty to secure maintenance of an adequate standard of proficiency for the practice of Homoeopathic System and require the governing bodies or authorities, to furnish such details or do such acts as the Council may deem fit and proper.

(26) Section 22 vests the Council with a power to remove the name of the institution so authorised to hold qualifying examination under the provisions of the Act. If the Council is satisfied that the examinations prescribed by the institution are not such as to secure maintenance of an adequate standard of proficiency for the practice of homoeopathic system, the State Government has the power to direct that the said institution be removed from the notification. However, such steps have to be taken in accordance with the

procedure under Section 22 of the Act. The State Government exercises a definite but limited control over the Council under Section 27 of the Act. In exercise of its powers under Section 53 of the Act the State Council in consultation and prior sanction of the Government has framed the The Punjab Homoeopathic Practitioners (General) Rules, 1973 and under Section 54 read with Section 21 of the Act The Punjab Homoeopathic Practitioners (Recognition of Institutions) Regulations, 1974. Again, the provisions of these Rules are to achieve the object of the Act and are more procedural in their substance.

(27) The above pertinent provisions of both the State and Central Legislations show a common object that prescribed standards of homoeopathic education and system should be adhered to. Both the Councils have been constituted for creating a uniform education system in this regard and to provide uniform standards which will regulate the various Medical Institutions, Universities and Boards, which are imparting professional education in homoeopathy.

Though apparently there appears to be over-lapping jurisdiction in the functions and powers vested under these statutes in both the Councils, but when examined and given a closer scrutiny they clearly define a separate area of operation of functioning for the respective Councils. *The object of the Central Council is more tilted towards prescription and maintenance of uniform standards of professional education on the one hand, and recognition of medical qualifications and control over grant of such qualifications by the Universities, Boards or institutions in India on the other. The State Council is more concerned with the day-to-day inspections and functioning of institutions, providing recognition to the said institutions for the purposes stated in paragraph 2 of Schedule-I of the said Act and holding of entrance or other examinations in accordance with prescribed standards.*

(28) The power of removal of recognition or approval so granted by the respective Councils is vested in the Central or State Government, as the case may be. Under List-I of Seventh Schedule under Entry 66, it gives power to the Union to legislate with regard to "co-ordination and determination of standards in institutions of higher education, research and scientific and technical institutions", while the power of the State Government to legislate in this regard finds its origin or springs from the provisions of entry 25 of List-III under the same Schedule. The State has the power to legislate in regard to education, including technical education, medical education and universities subject to the provisions of Entry

63, 64, 65 and 66 of List-I vocational and technical training of labour as well. Under Entry 26 the State has power to legislate free of restriction in regard to legal, medical and other professions.

(29) The functions of the Central Council as spelled out in the above legislative expressions are harmonisation of the professional education in homoeopathy with a view to forge a uniform pattern for a concerted action according to certain designed scheme or plan of development. It would, therefore, include action not only for removal of disparities in such standards and also for preventing the occurrence of such disparities.

(30) Under the mandate of Article 254 of the Constitution of India the law made by the Union gets supermacy and shall prevail in preference to law made by a Legislature of a State in so far as its provisions are repugnant to the law enacted by the Parliament. This legislative conflict appears only where the Central and the State legislation has over-laping provisions to each other, but where the State Legislature limits its jurisdiction to prescription of qualifications higher than the ones which are provided in the Central legislation or regulates the entrance tests or the manner and procedure in which the seats are to be filled, the State does not encroaches upon the authority to legislate of the Union. In this regard reference can be made to the case of *State of Tamil Nadu and another v. Adhiyaman Educational and Research Institute and others*, (1).

(31) The Central legislation does not indicate or vests the Central Council with any power or authority to regulate or provide for admission to the courses. The various sections of the Central Act amply make it clear that powers of the Central Council are to regulate much larger issues and to impose a discipline of wider magnitude to maintain the education standards and to prescribe the minimum standards of education in homoeopathy. Once the scheme of the Act does not specifically empowers the Council in this regard, the Council cannot be permitted to derive such a power by an inference. Absence of legislative power cannot be provided by administrative acts. In this regard the power of the State Council is more specific, definite and is of a larger scope.

(32) As already noticed, under Section 21-A the Legislature has vested in the State Council specific powers to hold qualifying examinations and other examinations connected thereto. Recognition of institution is specifically vested in the Council under Section 21(1) (a) of the said Act. The observations of the Central

Council would have to be construed more in the advisory sense rather than mandatory directions. Recognition of medical qualifications and recognition of the institution, university or the Board who is to issue such medical qualifications primarily falls within the domain of Central Council under Sections 13 and 14 of the Central Act, and withdrawal of such recognition of the qualifications and medical institution, university and board, also vests in the Central Government upon recommendation of the Central Council, but the power to hold the examination, nature of qualifications, qualifying examination, and day-to-day inspection and control of an institution, primarily falls in the domain of State Council. Thus, when the State acts or passes directions or legislates within this limited field, it neither violates the constitutional primacy attached to the law of the Union or the direction issued by the Central Council. The views expressed by the Central Council would have to be taken as advisory. Such a view would be in confirmity with the law laid down by the Hon'ble Supreme Court of India in the case of *Ajay Kumar Singh and others v. State of Bihar and others*, (2). Where the Court was primarily concerned with regard to reservation of seats in a post-graduate medical course and scope of Article 15(4) of the Constitution of India, but the power of the Indian Medical Council constituted under the Indian Medical Council Act, 1956, which set-up is identical to the set-up of the present case, while commenting upon its powers, held as under :—

“It speaks of the courses and period of study and the practical training to be undergone by the students, the subjects of examination which they must pass and the standards of proficiency they must attain to obtain the recognised medical qualifications but it does not speak of admission to such course of study. Indeed, none of the sections afore-mentioned empower the council to regulate or prescribe qualifications or conditions for admission to such courses of study. No other provision in the Act does. It is thus clear that the act does not purport to deal with, regulate or provide for admission to graduate or post-graduate medical courses. Indeed in so far as post-graduate courses are concerned, the power of the Indian Medical Council to ‘prescribe the minimum standards of medical education’ is only advisory in nature and not of a binding character.”

(33) Reverting back to the facts of the present case, we have no doubt in our mind that both the State and the Central Council

have failed to take appropriate steps for timely inspections of the institutions for the purposes of recognition and holding of examination, entrance tests and passing other appropriate orders and directions in consonance with the provisions of the statute under which they operate. In spite of the fact that there is a clear demarcation of the sphere in which the respective Councils are required to function, the lack of requisite discipline in discharge of their duties and obligations and attitude of unconcern adopted towards the welfare of the students is writ large in the facts of this case and avoidable conflict between the stand of the two Councils has resulted in embarrassing the academic future of large number of students.

(34) The stand of the Central Council that the letter of consent issued by them on 10th May, 1996 was intended as a permission to start the course only after fulfilling the conditions stated in the said letter is *ex-facie* incorrect on the bare reading of the letter. The Council had specifically given two years time to comply with the terms and conditions imposed in the said letter. The Inspection report which has been made the foundation of issuance of the letter dated 10th May, 1996 had recommended starting of the degree course immediately. A letter issued in May, 1996 giving permission to start the Degree and Graded Degree Courses from academic year 1996-97 means the course which was to start from July, 1996. We fail to understand how can the Council justify its stand that the College was required to comply with the conditions before commencement of the course or that the compliance to the terms and conditions stated in the letter was a condition precedent to the starting of the course. Even if we assume that it was so, neither the State Council nor the Central Council conducted any inspection before the commencement of academic year 1996-97. In furtherance to this letter the State Government had issued a letter of recognition and permission to commence the Degree Course. The State Council also granted recognition and permission for starting of the courses as indicated in the letter dated 10th May, 1997. The College claims to have acted upon these documents and published the note in the advertisement and the brochure. After all this and after the note had duly come to the notice of the State Council and the Central Council, though the Central Council objected to the said note as afore indicated, but the State Council went a step ahead and passed the resolution No. 32 to permit conversion. The Central Council objected to the said resolution, but only asked for details from the State Council without informing the College of its intention not to permit such conversion. In the meanwhile the students had paid their fees, were selected to the course and had acted even to their

prejudice on the basis of the note issued by the College. The recommendation of the State Government and the State Council in regard to conversion of Diploma Course into Degree Course and continuation of the students of the Diploma Course in the Degree Course was not accepted, though there is nothing on record to show that any competent authority even rejected that request, has forced the students to approach the Court.

(35) We are of the view that the College had no justification to publish the said note in the brochure because attempt appears to be to attract the students to seek admission in the Diploma Course, but part of the note was even factually correct. Once the Council had objected to the said note the College was obliged and was under a moral duty to bring it to the notice of the students before they were given admission to the said Course and before accepting their fees, about the objection raised by Central Council.

(36) Another basic lacuna in the stand of the College as well as of the State Council is that the Central Council at no point of time had ever permitted conversion of the Course from D.H.M.S. to B.H.M.S. Permission to commence a Degree or a Graded Degree Course cannot be construed or read as permission to convert a Diploma Course into a Degree Course. The stand of the Central Council in this regard is supported by documentation. Neither the State nor the Central Acts spell out any provision in regard to such conversion of courses. Various regulations afore-stated also do not postulates any such situation. In view of the definite stand taken by the Central Council that such conversion is not permissible in view of the specific law and regulations and academically both courses are entirely distinct and different, the Court would not substitute its view to hold that such conversion is permissible. The Court has no expertise available with it to determine this question in these proceedings and would be well within its jurisdiction to rely and accept the point of view put forward by an expert body like Central Council, though there is some dispute between the two Councils even on this score. Thus, the College has certainly acted irresponsibly and has misled the students by publishing a note in the brochure, but in any case the College had no justification, whatsoever, in claiming that it could incorporate the permissions granted to it by the two Councils prior to July, 1997 as permissions for conversion of the Diploma Course to the Degree Course. Not only that such conversion was propounded and propagated by the College, but it also directed the students to represent in the same direction. We are unable to appreciate this stand of the College and we find that the College is certainly at fault to a great extent.

(37) One of the arguments put forward by the College and the petitioners, as their stand to a great extent is common is that such conversion was permitted by the Central Council in regard to Nehru Homoeopathic Hospital, New Delhi. It may be pertinent to note here that Delhi Administration had specifically made a regulation for giving admission to the students of the Diploma Course into Degree Course which is mentioned by the petitioners themselves in the petition. This fact was not disputed on behalf of the respondents but it was made clear that the said conversion was permitted by the Central Government prior to the constitution of the Central Council in the year 1982-83. After its constitution the Council has never permitted any such conversion. On the contrary the stand is that such conversions are not permissible under the Acts, Rules and Regulations. The provisions of both the Acts clearly show that there is no such provision which permits conversion directly or on the principle of necessary implication.

(38) It appears that the Central Government in the case of Nehru Homoeopathic Hospital, New Delhi had specifically passed a regulation for that purpose and once a rule permits such conversion then the Councils are bound by such piece of legislation and are to obey the directive. Once there is a specific legislation in the scheme of the Act, the conversion would be permissible and Diploma holders can be treated eligible for registration to the Degree Course. This view was accepted by the Hon'ble Supreme Court of India in the case of *Dr. Hari har Parsad Singh and others v. Principal, M.L.N. Medical College, Allahabad*, (3).

(39) The learned counsel appearing for the petitioners argued that the authorities concerned including the College are bound by the note published in the brochure. In order to substantiate this argument the learned counsel has propounded three propositions: (a) All concerned are bound by the terms and conditions of the brochure, (b) Having declared by way of advertisement and publication of brochure, the authorities concerned including the College cannot act contrary to such terms and conditions or change the same, in any manner, whatsoever, and (c) The petitioners having acted upon the such declaration and having altered their position, the authorities are estopped from changing the conditions of the brochure to the disadvantage of the petitioners.

(40) All these three contentions can be dealt with together. In view of the Full Bench decisions of this Court in the cases of *Raj Singh v. The Maharshi Dayanand University*, (4) and *Amardeep*

3. J.T. 1990(3) S.C. 670

4. 1994(2) S.C.T. 766

Singh Sahota v. The State of Punjab etc. (5) and a judgment of the Division Bench of this Court in the case of *Ravdeep Kaur v. The State of Punjab and others* (6), there is merit in the contention of the counsel for the petitioners. All the parties concerned are bound by the terms and conditions of the brochure and they must adhere to them and make admissions on such basis. The authorities also have no right to alter the terms and conditions of the brochure unless and until such power was specifically reserved while making such declarations and that too it does not infringe the vested rights and is not arbitrary in its implementation.

(41) But, in the present case that is not the end of the matter. May be the College was justified in giving a mention of the permission granted by the Central Council, but it could not give a guarantee to the students by any stretch of imagination that Diploma Course would be converted to Degree Course. The permission granted by the Councils and the State Government, was for starting a Degree Course from the academic year 1996-97. Conversion and commencement are two distinct and different terms and cannot specific meaning in the facts and circumstances of the present case. A Division Bench of this Court in the case of *Harish Goel v. Punjab State Board of Technical Education and Industrial Training Chandigarh* (7), held that in the academic questions not much role can be played by the Courts and if the experts technical body do not recognise the particular course as equivalent to the prescribed qualification the candidates would have to be held ineligible for admission to the higher course.

(42) In the case of *Nehru Institute of Pharmacy and Technology v. Union of India and others*, (8) a Division Bench of Delhi High Court while examining the functioning of the State and Central bodies and pointing out a differentiation between affiliation and recognition of these bodies specifically identified the fact that approval with regard to course of study and standards of education has to be provided by the Pharmacy Council of India. Speaking for the Bench, while dismissing the petition and prohibiting the institute from making any admission without such approval, Hon'ble Mr. Justice B.N. Kirpal (as His Lordship then was) held as under:—

“A distinction has to be made between the approval, which is granted by the Pharmacy Council of India to the

5. (1993-2) P.L.R. 212

6. 1985(1) I.L.R. Pb. & Hr. 343

7. 1996 (1) S.C.T. 455

8. 42 (1990) Delhi Law Times 544

educational institution, and the affiliation which is granted by an examining authority to that institution. The approval is with regard to the course of study and the standard of education which is provided and that approval has to be granted by the technical body, namely, Pharmacy Council of India and the affiliating authority, like respondent No. 2, grants affiliation according to its own regulations.”

(43) Still in another case of *The Council of Homoeopathic System of Medicine, Punjab and others v. Suchintan and others* (9), the Hon'ble Supreme Court of India directed strict adherence to the rules and regulations of these Councils. While incorporating Regulations 9 to 11 and adherence to these regulations, their Lordships were of the view that there must be a gap of one year between the passing of first year examination and appearing in the second year examination and the student should have attended the course. Declining to dilute the spirit of these regulations and reversing the judgement of this Court in appeal, the Hon'ble Apex Court directed the State Council to consider the case of the petitioners in the following language:—

“We think that their cases may perhaps have to be examined from the point of these equities by the Council of Homoeopathic System of Medicine. The candidates who, as on today, have attended all the courses and have passed all the examinations might make an appropriate representation to the Council of Homoeopathic System of Medicines (the appellant) to consider their cases. The representation shall be filed within a period of four weeks from today. The Council of Homoeopathic System of Medicines (the appellant) will take appropriate decision within one month the reafter.”

(44) In view of the above decisions and the statutory provisions contained in both the statutes, certain limitations are obviously placed in the manner in which the Courts are expected to exercise their jurisdiction under Article 226/227 of the Constitution of India in the cases of the present Kind. Another pertinent point that needs to be high-lighted is that irrespective of their independent sphere of jurisdiction provided under the Acts and Regulations governing the respective Councils still they have a common sphere of functioning Both Councils must act harmoniously to each other and achieve the real objects and principles underlying these rules and regulations. The functions to be discharged by these authorities

can have far reaching consequences as the doctors who are given the recognised medical qualifications by the Central Council and the standard and manner of examinations conducted by the State Councils would declare these doctors in Homoeopathy to be qualified to treat the masses at large. To some extent, of course to a very limited one, their functions are meddlesome to each other. Any disfunctional of these Councils in implementing the scheme of the Act is likely to bring disastrous results. The powers, functions, obligations and the activities of these Councils are pervasive in their scope and implementation. We do hope that both the State Central Councils would function harmoniously without actually transgressing their own jurisdiction and encroaching upon the jurisdiction of the other to avoid any kind of detriment to all or any of the concerned.

(45) The rule of estoppel does not operate against the Statutes. If the rule do not postulates any such conversion, a mere declaration by the College of its intention to convert Diploma Course into Degree Course would not bind the authorities concerned specially when no such document had been issued by any of the authorities prior to the publication of the advertisement in the brochure. One fact of which the Court cannot lose sight of is that the College is in existence for more than 22 years now. It has been imparting professional education of the Diploma Course for all this period under the recognition of the State and the Central Council, is not disputed. It has a hospital, and other infrastructure for imparting education of such courses and even for starting the Degree Course is also not disputed.

(46) The Central Council issued the letter dated 10th May, 1996 on the basis of the inspection report dated 1st August, 1994. After 1994, admittedly, no inspection was conducted by the Central Council. The State Council conducted the inspection of the College last on 27th June, 1992. Thus, none of the Councils have ever attempted to discharge their obligation in any manner, whatsoever, after 1994, while the law places specific duty upon them. This attitude of the Councils in sitting silent for all this period, then issuing permission favourable to the College on which the College acted, and after the students have taken admission, take a somersault in their stand to adversely affect the academic career of the students, to us appears to be very unfair and unjust action of these statutory bodies. The conflict between the stand of these Councils is further apparent from the fact that resolution No. 32 was passed by the State Council but was not specifically accepted by the Central Council nor its unambiguous rejection was ever

conveyed to the State Council or to the College. The request of the State Council to furnish the copy of the inspection report of 1994 was declined by the Central Council stating that the document is a confidential one.

(47) We consider it appropriate to mention here that an order passed by the Division Bench of this Court in C.W.P. No. 10255 of 1997 titled as Ravneet Kaur and others *versus* State of Punjab and others, was brought to our notice. In this case the Bench after noticing the no objection on behalf of the State Council to the conversion of the course by the College issued following directions:—

“The Council will immediately write a letter to the different colleges for obtaining the consent of the management/ the students of the DHMS Course 1996-97 and if the consent of all the managements and of all the students come for conversion for DHMS Course to BHMS Course, the Council will have no objection in passing the order accordingly.

Let the Council write letter to the managements of the affiliated colleges within one week asking for their consent, with a further request to the managements to ask each student of DHMS Course of 1996-97 to give his option within one week of the asking, as to whether he opts that the DHMS Course be converted into BHMS course on certain conditions like payment of additional fee etc.

After the receipt of the options from the management and the students, the Council shall decide the matter within one week thereafter. In case the management of an institution affiliated with the Colleges makes a request that despite the other institutions or all the students of the other institutions not having opted for conversion of the DHMS Course to BHMS Course, the Council would consider the request. The writ petition stands disposed of in the above terms. Copy of this order be given *dasti* to the learned counsel for the parties under the signatures of the Court Secretary.”

(48) The Division Bench hearing the present writ petition considered it proper to refer the matter to a Full Bench for the following reasons:—

- (a) The Bench hearing this writ petition could not reconcile itself and concur with the directions issued by the other Division Bench in the case of Ravneet Kaur (*supra*)

Primarily for the law laid down by the Hon'ble Supreme Court of India and the stringent provisions of law governing the subject.

- (b) The Central Council for Homoeopathy was not impleaded as a party in C.W.P. No. 10255 of 1997.
- (c) The stand taken by the Central Council in the present case was not brought to the notice of the Division Bench hearing Ravneet Kaur's case.

As such the present writ petition has been placed before and heard by a Full Bench of this Court.

(49) Before we advert ourselves to the discussion on the question of relief which the petitioners may be entitled to in the present writ petition, we feel that it is imparative for us in the facts and circumstances of the case to issue certain general directions, with the hope that the concerned Councils, State Government and the Central Government shall implement these directions in their true spirit and substance. The issuance of these directions has become necessary in the larger interest of all concerned and more particularly the students who are going to become Homoeopathy Doctors on the completion of their Course and the large number of patients who will be treated by them, and lastly in order to prevent recurrence of such unfortunate incidents.

- (i) We direct that all the admissions to the Homoeopathy Degree Course shall be strictly in accordance with the merit of a candidate in entrance test held by the concerned bodies as per the law laid down by the Supreme Court.
- (i-a) The Central Council and the State Council are directed to conduct inspections of the respondent College within a period of three months from today and to submit the inspection reports to the concerned authorities/ Government immediately thereupon.
- (ii) Upon submission of such reports both the Councils in consonance with the provisions of the Act and sphere of their jurisdiction as indicated above, would pass appropriate orders granting, refusing to grant recognition or granting further time for making up with the deficiency pointed out by the inspection teams, within a period of 15 days from the date of submission of such reports and communicate the same to the Council.
- (iii) In the event the Council(s) come to the conclusion on

the basis of the report(s) that the College should be given some time to make up certain deficiencies pointed out by the inspecting team, in that event, another inspection will be conducted at least one month before the expiry of the period granted by the Council. After considering the report upon re-inspection of the College, the Council(s) would pass appropriate orders in accordance with law. Every effort would be made by all concerned to define the clear status of the College well in advance to the commencement of the next academic session 1998-99.

- (vi) We also hereby issue general directions to the State and Central Councils that they should hold a joint meeting of their committees, identify the fields of their functioning in view of the afore-stated observations of the Court and to fix regular schedule of inspection of all the Colleges in the States of Punjab, Haryana and U.T. Chandigarh, if such Colleges are working under temporary recognition or approval of the authorities concerned. The Councils and the Governments concerned shall ensure that inspection of all the colleges and medical institutions should be conducted and appropriate orders passed granting/refusing permanent recognition at a point of time which is well in advance to the holding of the entrance tests/ interviews/admissions to the degree courses in the very colleges and medical institutions in the State of Punjab, Haryana and U.T., Chandigarh.
- (v) Endeavour to give permanent recognition even before the College commences its course should be encouraged by the Councils.
- (vi) Where-ever the concerned Council is of the opinion that approval, affiliation or recognition of a Homoeopathy College or Institution should be withdrawn or revoked in accordance with law or where the College fails to make up the deficiencies pointed out by the experts body within the time granted by the Council(s), the Council(s) shall direct closure of such College and would not permit the College to impart professional education in homoeopathy. In that event the Council(s) while on the one hand shall ensure implementation of its orders, then on the other hand, before ordering closure, it shall take adequate steps in coordination with the Government concerned to allocate the

students pursuing their studies at the relevant time, to such other homoeopathic colleges, institutions or the board, as the case may be, and in the manner it is considered possible and prudent by the concerned authorities.

- (vii) The Council shall prohibit the said College or Institution from granting fresh admissions to the students till it provides for the infrastructure required and making up the deficiencies as pointed out by the Councils concerned to their satisfaction. The period granted to the Colleges for this purpose should be specified with definiteness and schedule of inspections strictly adhered to.

(50) It was also brought to out notice that homoeopathic Councils are permitting commencement of such degree courses even in houses and where no such infrastructure and basic facilities for imparting such education exist. We are certain that the Councils shall take steps forthwith and would prevent mushroom growth of such Colleges/Institutions. We are of the considered view that it is better to have few colleges who are capable of imparting education of prescribed standards rather than to have large number of such Colleges or institutions which only run as commercial propositions without basic and proper infrastructure.

(51) Coming back to the relief that the petitioners would be entitled to. There is no doubt that the students have undergone complete one year of professional study in the Diploma Course in the hope that they would be continuing their studies by conversion to the Degree Course.

(52) It has been conceded before the Court by the Counsel and the experts on behalf of the Central Council that the Council cannot concede to conversion but will have no objection if the students undergo the Degree Course proximately for the prescribed hours of study again. While the State Council conceded that the students could adequately study the remaining Degree Course upon conversion for the remaining prescribed period of six months. The Central Council has also not disputed that the College has adequate infrastructure and teaching staff and other facilities to commence the Degree Course. The College has not made any admissions for the academic year 1996-97 because the permissions were granted late and this year again they have only prayed for conversion.

(53) The expectation of the students *prima facie* does not appear to be unreasonable. The claim of the petitioners is not one

which can be rejected out-rightly by the Court in view of the settled principles of "reasonable expectancy". We have to really cogitate keeping in view the peculiar montage of this case in mind as to the relief which can be granted to the petitioners by balancing the principles of justice on the one hand and the demand of equity on the other. We are certain, at the same time, that the petitioners cannot be granted relief which would be in violation to the specific provisions of Statutes. Equity does not make law but primarily assists law. The relief granted in equity normally should be in adherence to the provisions of law. The jurisdiction under Article 226 of the Constitution of India is not only a wide jurisdiction vested in the Court but includes power to grant relief in equity as well. It is settled principle of law that equity is never the hand-maid to strife where equity can give a remedy. As such the petitioners would be able to take assistance from the basic doctrine of equity '*Aequum et bonum est lex legum*'.

(54) There is a definite confusion created by the authorities and the Government in the present case. Such confusion when brought before the Court and where it has resulted in serious prejudice to the academic career of the students, the Court is obliged to clear the confusion and settle a chaos in the tangled web of human affairs based on the doctrine of '*de facto doctrine*', which is a doctrine of necessity and public policy refer *Gokaraju Rangaraju v. State of A.P.* (10). We are equally convinced that the petitioners are entitled to some relief as some relief is due to these petitioners, of justice. What is due to them, they must receive at the hands of the Court.

(55) The principle of estoppel demand that it must tilt in favour of equity when equity demands refer *M/s Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh and others* (11), while tilting the equities, in favour of the petitioners, as career of large number of students is at stake who have been admitted on their own merit and have acted *bona fide*, we must also respect the point of view expressed by the highest expert body.

Therefore, while holding that the petitioners would not be entitled to conversion of the course as prayed, we direct that all the petitioners would be given 1750 hours of Degree Course study by the College. Upon completion of this 1750 hours of study, which include the time spent on practicals, would upon passing of the examination, ensure the promotion of the petitioners to the second year of the Degree Course. We direct the State Council in whose

10. AIR 1981 S.C. 1172

11. AIR 1979 S.C. 621

jurisdiction this matter squarely falls to consider this aspect of the matter that if it is possible to reduce this period of 1750 hours of study keeping in view the facts that the students have already undergone one year complete study in the Diploma Course. The Council shall take decision in this regard within 15 days from today and would communicate its decision to the College in writing.

(56) The State Council and the College are directed not to hold Diploma Examination of these students and start their education in the Degree Course forthwith for the prescribed period. The students would be liable to pay such fee as directed by the Council and College (Being the difference of the fees payable for a Diploma and a Degree Course) within the period of 15 days.

(57) All concerned respondents are directed to hold the examination of these petitioners and all such other eligible students after the completion of the requisite period so defined and conveyed by the State Council. Thereafter all the petitioners and other alike students would be treated to be the students of the regular Degree Course of the second professional in accordance with rules. They would complete their Degree Course as if they were students of the Degree Course right from inception.

(58) The afore-stated relief is consented by all the parties before us and we also feel that this is the only just and fair order which could be passed by the Court in the facts and circumstances of the present case. We are not inclined to direct the students to undertake the Graded Degree Course for three reasons, firstly, this would have the effect of extending the academic course of the petitioners by two years for no fault of the students; secondly, for this additional period of two years the students would have to deposit admission fees of Rs. 50,000 for seeking admission to the Graded Degree Course in addition to the expenditure which the students have to incur for this period for pursuing the course and, thirdly, it is the common case of the college, and the Central and State Councils, that there is a policy decision taken on all India level that steps should be taken to discontinue the Diploma Course and introduce Degree Course in all the Homoeopathic Colleges and Institutions.

(59) Even while granting the above relief to the petitioners the Court cannot prevent the consequence that students would have to spend additional six months in completing their first professional of the Degree Course for no fault of their own. This is primarily for the reason that the College made partial misrepresentation to the students. The Councils gave permissions without giving clarification. The Councils failed to discharge their duties and

obligations as postulated under the provisions of the relevant Acts. State Council having consented, the Central Council declined to accept the proposal, thus, affecting adversely the academic career of the innocent students. The students are not expected to go into the minute intricacies and legal implications of the obligations, duties, powers and actions of these Councils. They are not to be adversely affected because of some inaction of these authorities which is at their back and contradictory and conflicting stands of one Council against the other. A Division Bench of this Court in the case of *Saroj Rani and others v. State of Haryana and others* (12), held as under:

“The stand of the College, as already discussed, is unsustainable and frivolous. In these circumstances, we direct that respondent No. 4 college shall return the entire fee of Rs. 8,000 to each appellant with compensation of Rs. 15,000 i.e. to say that respondent No. 4 shall be liable to pay a sum of Rs. 23,000 to each appellant. One of the reasons for awarding such compensation is to prevent the repetition of such admissions in colleges and we do not expect that this will act as deterrent in future against such acts of the college.”

(60) As already noticed, the Councils, the Government and the College are responsible for creating this confusion. There is no justification with the College for making a misrepresentation to the students. Equally, there is no justification on record as to why the Councils fail to take any steps in accordance with law after their inspection in the year 1994. What steps were taken by the Councils even after they had come to know of the misleading note incorporated in the advertisement and brochure of the College. There is also no explanation on the record as to why the stand of two Councils in regard to Resolution No. 32 afore-indicated is contradictory and not reconcilable. The Councils also failed to take any steps even after the filing of the present writ petition. These are some of the doubts in the mind of the Court in addition to the afore-stated discussion which is the foundation of our view that all these bodies and authorities are directly responsible for creating this dilemma and unstable situation adverse to the interests of all concerned.

(61) Following the principles enunciated in the cases of *Saroj Rani*, *Gokaraju Rangaraju* and *Sunchintan* (*supra*). We feel that it

would be just, fair and equitable to direct that the expenditure to be incurred on these students for pursuing their Degree Course (excessive period of six months, constituting part of 1750 hours) shall be borne by the College, State Council and the Central Council in the ratio of 40:30:30 respectively. The amount so paid by the State and Central Councils to the College, shall be recovered in accordance with law from all the concerned officers/officials of these Councils irrespective of their status and position. Such recoveries would be effected within a period of six months from today from the erring persons. The enquiry shall be conducted by an officer not below the rank of Secretary/Addl. Secretary in the corresponding Governments as both the Councils are subject to control of the State and Central Government.

(62) In other words, all the students including the petitioners would study for the additional period of six months [the first professional of the Degree Course being of 18 months while the students will have to study for additional 1750 hours (which is approximately more than an year) in addition to the one year of the Diploma Course which the students have already completed as per prescribed standards] and they would not be liable to any tuition fee or other charges payable to the College for this additional period of six months. We had permitted Mr. Nehra, Mr. Chatrath and other Advocates who were counsel in C.W.P. No. 10255 of 1997 to assist us in the present case. We had heard them at great length. We are aware of the fact that we are not to comment upon the relief granted to the petitioners by the Hon'ble Division Bench in that writ petition. Having differed on the principle of law, we grant leave to the parties concerned to approach the Hon'ble Division Benches for appropriate directions in the light of the law settled by us in this case.

(63) We allow the writ petition while granting limited relief to the petitioners as afore-stated. The respondents shall carry out the directions issued by the Court without any delay.

R.N.R.