
Before S.S. Nijjar & S.S. Grewal, JJ

HOMOEOPATHIC MEDICAL COLLEGE & HOSPITAL,
HANUMANGARH ROAD, ABOHAR,—*Petitioner*

versus

BABA FARID UNIVERSITY OF HEALTH SCIENCES
& OTHERS,—*Respondents*

C.W.P. NO. 8430 OF 2003

20th October, 2003

Constitution of India, 1950—Art. 226—University rejecting request of a recognised Homoeopathy College for increase in intake capacity of students for BHMS—Central Council of India already granting affiliation & allowing the College increase in intake capacity of students—College fulfilling all the norms & conditions for increased intake capacity—College is governed by the provisions of Central Act—Order of University rejecting request of College is without jurisdiction and liable to be quashed.

Held, that the Central Council of Homoeopathy has been established under a Central Act. The Central Council of Homoeopathy has rightly pleaded in its written statement that in the case of any repugnancy between the provisions of Punjab Homoeopathy Practitioners Act, 1965 and the provisions of Homoeopathy Central Council Act, 1973, the latter enactment shall prevail. The Central Council has framed the regulations with the previous sanction of the Central Government. Therefore, the Central regulations will have to prevail. Consequently, the University will have no jurisdiction to reduce the strength of students sanctioned by the Central Government. The Central Council has admitted that the sanctioned students strength of the College was increased from 50 to 70 in the Direct Degree Course and 30 in the Graded Degree Course, which is permitted to increase 50 from the Session 2000-2001. Central Council is the apex body to decide the seating capacity in any Homoeopathic Medical College. It has increased the seating capacity of the petitioner—College, after ascertaining that it fulfils the minimum norms and standards prescribed by the Central Council. Thus, the impugned order issued by the University is without jurisdiction.

(Paras 8 & 9)

Homoeopathic Medical College and Hospital, Hanumangarh 143
Road, Abohar v. Baba Farid University of Health
Sciences and others (S.S. Nijjar, J.)

V.K. Jindal, Advocate, for the petitioner.

Anupam Gupta, Advocate, for respondent No. 1.

H.S. Sran, Addl. A.G., Punjab for respondent No. 2.

JUDGMENT

S. S. NIJJAR, J.

(1) This writ petition under Articles 226/227 of the Constitution of India has been filed by the Homoeopathy Medical College and Hospital, Hanumangarh Road, Abohar, Punjab, for issuance of a writ in the nature of Mandamus/Certiorari quashing the decision of Baba Farid University of Health Sciences, Faridkot—respondent No. 1 dated 17th/20th April, 2003 (Annexure P-16) refusing to accept the increase in intake capacity from 50 students to 70 students for the BHMS (Direct Degree Course).

(2) The petitioner is a Society registered under the Societies Registration Act, 1860, having been registered on 20th March, 1975. It is a recognised Medical Institution for the grant of degrees or diplomas in Homoeopathy. The recognition of the petitioner—College has been extended to run BHMS (Direct and Graded Degree Courses) from time to time. The admission capacity of the students is to be determined by the Central Council of Homoeopathy, respondent No. 3. Earlier, the State of Punjab regulated the qualifications and registration of practitioners for the Homoeopathy System of Medicines in the State of Punjab under the Punjab Homoeopathic Practitioner Act, 1965 (hereinafter referred to as “The Punjab Act”). Under this Act, Council of Homoeopathy System of Medicines (hereinafter referred to as “the State Council”) was responsible for holding the qualifying examination and other examinations ; to appoint examiners and other staff to assist them to fix their fees, remunerations and allowances and to declare the result of the examinations ; to grant degrees, diplomas or certificates, to award stipends, scholarships, medals, prizes and other rewards etc. Complete safeguards were provided under the provisions of the Punjab Act, Subsequently, Homoeopathy Central Council Act, 1973 (hereinafter referred to as “the Central Act”) was enacted which provided for the constitution of the Central Council of Homoeopathy (hereinafter referred to as “The Central Council”). The aforesaid Council recognises the various medical qualifications under

the 2nd Schedule of the Act. A candidate possessing a recognised qualification can be enrolled on any State Register of Homoeopathy. Under the Central Act, the Central Council has full powers to prescribe the standards expected from the educational institutions. An institution not complying with the conditions prescribed for recognition can be de-recognised. The Central Council, therefore, exercises overall control over the quality of education in a fashion identical to the Medical Council of India which regulates the admission to MBBS and BDS Courses. On 11th May, 1983, the Central Council framed the following regulations :—

- “(i) Homoeopathy (Minimum Standards of Education) Regulations, 1983.
- (ii) Homoeopathy (Degree Course) B.H.M.S. regulations, 1983.
- (iii) Homoeopathy (Graded Degree Course) B.H.M.S. Regulations, 1983.
- (iv) Homoeopathy (Diploma Course) D.H.M.S. Regulations, 1983.”

(3) It is not disputed between the parties that Central Council is to give recognition to various universities and powers to conduct the examinations. Central Council is the only body which recognises medical qualifications granted by any University, Board or other medical institutions. As noticed earlier, the petitioner—institution is fully recognised under the Central Act since 1973.

(4) On 14th May, 1996, the Central Council issued an office memo on the subject of recognition of Homoeopathy Medical Colleges. The petitioner—College was informed that intake capacity was 70 students in the Direct degree Course and 30 students in the Graded Degree Course. This information was sent to the petitioner by letter dated 14th May, 1996. On 13th June, 1996, the petitioner—College was granted approval by the Punjab Government to conduct the Degree Course with effect from 1996-1997. On 21st September, 1998, the Central Council extended the recognition earlier granted to the petitioner for running BHMS (Direct and Graded Degree Courses) for another two academic Sessions i.e. 1998-1999 and 1999-2000. By letter dated 11th April, 2000, the Central Council granted permanent recognition to the petitioner-institution for admission of students in

Homoeopathic Medical College and Hospital, Hanumangarh 145
Road, Abohar v. Baba Farid University of Health
Sciences and others (S.S. Nijjar, J.)

BHMS (Direct and Graded Degree Courses) as per admission capacity conveyed earlier i.e. the petitioner-college was authorised to admit 70 students in the Direct Degree Course and 30 students in the Graded Degree Course. On 28th March, 2002; the Principals of the Homoeopathic Medical College in the country were asked by the Central Council to provide information regarding total number of DHMS/BHMS/MD in Homoeopathic Courses and whether the colleges got grant-in-aid and number of students from the Scheduled Castes/Scheduled Tribes Community etc. The petitioner-institution supplied the information by letter dated 24th April, 2002. It is clearly mentioned that the intake of both the courses has been in the ratio of 70:30 for the years, 1997-98, 1998-99 and 1999-2000. For the year 2000-2001, the intake was 70 Direct and 50 Graded Degree courses.

(5) Respondent No. 1-University was set up by Baba Farid University of Health Sciences Act, 1998 (Punjab Act No. 18 of 1998). On 20th July, 1998, the Governor of Punjab gave assent to the Act. According to the petitioner, no notification has been issued under Section 1 (3) to notify the date from which the Act came into force. Henceforth, the teaching institutions imparting education, training and research in Medicines and Indian Systems of Medicines are to be affiliated to this University. The objects of the University are to establish uniformity in standards of education, in all faculties of Health Sciences, including modern system of medicine, dental medicine and surgery, Indian Systems of Medicines, Homoeopathy and various paramedical and parodontal disciplines such as Nursing, Medical Laboratory Technology, Pharmacy, Physiotherapy and Speech Therapy Under Section 7 (2) of the Central Act, all Medical Colleges shall be deemed to be affiliated to respondent No. 1-University. As the petitioner-college was already affiliated with the Punjab Council, it is now deemed to be affiliated to respondent No. 1-University. Respondent No. 1 in its meeting held on 11th October, 2000 has granted provisional affiliation to the petitioner-college for the first year BHMS (Direct Degree Course) for the session 2001-2002 with the intake capacity of 50 students. The petitioner-College informed respondent No. 1 that the Central Council had already granted affiliation and allowed the intake capacity of 70 students in BHMS (Direct Degree Course) and 50 students in Graded Degree Course. Therefore, respondent No. 1 was requested to increase the intake capacity of the students for the petitioner-College. The petitioner was

informed by respondent No. 1 by letter dated 25th October, 2002 that the University may consider the increase from 50 to 70 seats, if a fresh sanction is obtained by the petitioner from the Central Council. Consequently, the petitioner-College wrote letter to the Central Council on 8th February, 2003. On 7th March, 2003, the Central Council of Homoeopathy informed the petitioner that if respondent No. 1 needs any further clarification, they can write to the Central Council direct. On 20th March, 2003, respondent No. 1 sought the necessary clarification. On 31st March, 2003, the Central Council informed respondent No. 1 that the intake capacity in the petitioner-College had been increased from 50 to 70 students by letter dated 10th May, 1996. In spite of the aforesaid clarification respondent No. 1 by the impugned letter dated 17th/20th April, 2003 (Annexure P-11) has informed the petitioner-College that the request of the petitioner-College for increase in the number of seats for BHMS (Direct Degree Course) from 50 to 70 students has not been accepted. Aggrieved against the aforesaid decision of respondent No. 1, the petitioner has filed the present writ petition.

(6) Respondent No. 3—Central Council has filed reply. Respondent No. 3, the Central Council has taken the plea that the intake capacity has to be fixed by the Central Council. Since the Central Council has been set up under the Central Act, the State Act cannot override the provisions of the Central Act. In fact the claim put forward by the petitioner has been fully supported by respondent No. 3. No written statement has been filed on behalf of respondent No. 2.

(7) We have heard the learned counsel for the parties. It is submitted by Mr. Jindal that the petitioner-College fulfils all the conditions prescribed for admission of 70 students in the Direct Degree Course (BHMS). The petitioner-College is governed by the provisions of the Central Act. Under Section 13, the Central Council is the only competent authority to give recognition of medical qualifications granted by the medical institutions in India. The degrees granted by the petitioner-institution are recognised by the Central Council. The Central Council is the supreme body. Respondent No. 1 cannot be permitted to reduce the strength of students already sanctioned by the Central Council. Learned counsel further submits that in the case of another College, namely, Sri Guru Nanak Dev Homoeopathic Medical

Homoeopathic Medical College and Hospital, Hanūmangarh 147
Road, Abohar v. Baba Farid University of Health
Sciences and others (S.S. Nijjar, J.)

College and Hospital, Ludhiana, respondent No. 1—University has even allowed admission to 100 students in BHMS (Direct Degree Course). The aforesaid College has been given differential treatment. Initially, the aforesaid College was also directed to admit only 50 students. Consequently, the aforesaid College filed CWP No. 17812 of 2002 before this Court. When the aforesaid writ petition came up for motion hearing on 1st November, 2002, this Court directed the respondents to select the students for the increased seats, but their admissions were directed not to be finalised till further orders. Subsequently, the matter came up for hearing on 19th December, 2002 and the following order was passed :—

“On joint request of learned counsel for the parties, the case is preponed for today.

Learned counsel for respondent No. 1 states that the entire controversy has been reconsidered in view of the fact that sanction of enhanced seats has been approved not only by the Central Council of India Medicine, but also by respondent No. 1, and that in view of the above, respondent No. 1 has no objection to regularise admissions made on 1st December, 2002 against the sanction enhanced seats. Thus viewed, the prayer of the petitioners in the instant writ petition has been answered in the affirmative by the University rendering this petition infructuous.

Admissions made on 1st December, 2002 are directed to be regularised.

Disposed of accordingly.

(8) A perusal of the aforesaid orders makes it abundantly clear that respondent No. 2 has accepted that the strength of students to be admitted is to be determined by the Central Council. Therefore, we are of the opinion that the impugned order (Annexure P-16) passed by respondent No. 1 is without jurisdiction. In the case of **Medical Council of India versus State of Karnataka and others (1)** the Supreme Court has laid down that it is the Medical Council/Dental Council of India which can prescribe the number of students to be admitted in Medical Courses/Dental Courses in a Medical College or Institution. It is the Medical Council of India which is the principal

(1) AIR 1998 S.C. 2423

body to lay down conditions for recognition of medical colleges which would include the fixing of the intake for admission to a Medical College. It has also been held that the Medical Council Act is relateable to Entry 66 in List I of Schedule 7 to the Constitution of India. It, therefore, prevails over any state enactment to the extent of repugnancy. As noticed earlier, the Central Council of Homoeopathy has been established under a Central Act containing identical provisions. Therefore, the law laid down with regard to the admission of students to MBBS/BDS would also be applicable to the Courses undertaken by the Homoeopathic and Ayurvedic Colleges. Respondent No. 3 has rightly pleaded in its written statement that in the case of any repugnancy between the provisions of Punjab Homoeopathy Practitioners Act, 1965 and the provisions of Homoeopathy Central Council Act, 1973, the latter enactment shall prevail. It has been held by the Supreme Court in the case of **State of Tamil Nadu and another versus Adhiyaman Education and Research Institute (2)** that "In case of conflict between Central and State Acts, only Central Act shall prevail". The Central Council has framed the regulations with the previous sanction of the Central Government. Therefore, the Central regulations will have to prevail. Consequently, respondent No. 1 will have no jurisdiction to reduce the strength of students sanctioned by the Central Government. In paragraph 12 of the written statement, it has been categorically admitted by respondent No. 3, the Central Council that the sanctioned students strength of the petitioner-College was increased from 50 to 70 in the Direct Degree Course and 30 in the Graded Degree Course, which is permitted to increase 50 from the Session 2000-2001. It is categorically stated by respondent No. 3 that the Central Council is the apex body to decide the seating capacity in any Homoeopathic Medical College. It has increased the seating capacity of the petitioner-College, after ascertaining that it fulfils the minimum norms and standards prescribed by the Central Council.

(9) Keeping in view the law laid down by the Supreme Court, it would appear that the impugned order (Annexure P-16) issued by respondent No. 1 is without jurisdiction.

(10) When this writ petition came up for motion hearing on 29th May, 2003, a direction was issued to respondent No. 1 to select students for admission to the College against the increased seats as

well. A direction was also issued to inform the students that their selection is subject to the final order passed in this writ petition. It was made clear that the College will not admit the select students against the increased seats till further orders.

(11) Having considered the entire matter, we are of the view that the selected students are now entitled to regular admission. Mr. Gupta has, however, relied on the observation of the Supreme Court made in the case of **Medical Council of India versus Madhu Singh and others, (3)** to submit that even in the peculiar facts and circumstances of the present case, no relief can now be granted to the students. We are unable to accept the aforesaid submission of Mr. Gupta. As noticed earlier, in CWP No. 17812 of 2002, this Court has already regularised the admissions in similar circumstances. In that case, the admission was made on 19th December, 2002. This apart, we are of the opinion that the petitioner cannot be denied the relief on the basis of the observation made by the Supreme Court in Madhu Singh's case (*supra*). The entire exercise for selection of the students has been completed. The requisite number of seats are available. The regularisation of admission of the students already selected would not cause any of the problems envisaged by the Supreme Court. There would be no mid-term admissions. There would be no increase in the number of seats. There would be no telescoping of the seats for the Session 2002-2003, with the subsequent Session. No rights of any other students are affected. The seats have already been sanctioned by the appropriate authority. This sanction was sought to be reduced/curtailed by respondent No. 1. Therefore, the ratio of law laid down by the Supreme Court in Madhu Singh's case (*supra*) would not be applicable in the facts and circumstances of the present case.

(12) In view of the above, the writ petition is allowed. Impugned order (Annexure P-16) is hereby quashed. The petitioner is permitted to admit the students on the basis of the selection already made against the sanctioned seats. No costs.

(13) Copy of this order be given *dasti*, on payment of necessary charges.

R.N.R.
