

# The High Court Of Madhya Pradesh

WP-3091-2021

(R.N.KAPOOR MEMORIAL HOMOEOPATHIC HOSPITAL Vs UNION OF INDIA AND OTHERS)

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Indore, Dated : 12-02-2021

**Heard through Video Conferencing.**

Shri Sumit Nema, learned Senior counsel with Shri Piyush Parashar, learned counsel for the petitioner.

Shri Himanshu Joshi, learned Additional Solicitor General for the respondent/State.

Learned counsel for the respondent/State prays for weeks time to file reply.

Learned senior counsel for the petitioner pressed his application for interim relief and submits that interim relief granted in WP No.16918/2019 (Annexure P/16) may be granted to the petitioner.

Shri Sumit Nema, learned Senior counsel for the petitioner submits that the Homeopathy Central Council (Amendment) Act, 2018 became part of statue book on its publication in the official gazette with effect from 18/05/2018. Section 12-C was inserted by way of said amendment. In furtherance of requirement of section 12-C, the statutory/prescribed format is prescribed by way of regulations of 2019, which were brought into force with effect from 29.04.2009. By taking this Court to the "Form-1", learned Senior counsel for the petitioner submits that the necessary and statutory details which were required to be furnished by the college were sent with accuracy and precision. This includes details of faculties (teaching staff) UG and PG. This "Form-1" does not include the information to be furnished regarding experience obtained by the teaching staff.

In furtherance of the said amendment, the colleges were required to furnish such informations. Since during Corona period, the information could not be furnished, the respondent by communication dated 10.07.2020 (Annexure P/6) directed the petitioner to furnish the information. In turn, the

petitioner furnished the information. Dissatisfied with said information, certain deficiencies were communicated to the petitioner by respondent vide letter dated 28.10.2020 (Annexure P/10). The petitioner sent the letter dated 04.11.2020 and gave his response about the said deficiencies.

Learned Senior counsel for the petitioner submits that the impugned order dated 27.01.2021 came as a bolt from blue to the petitioner, whereby, despite curing the deficiencies pointed out, a drastic action was taken to deny the permission for taking admission in the BHMS Course with intake capacity of 100 UG seats for academic session 2020-2021.

Criticizing the impugned order, learned Senior counsel for the petitioner submits that if the deficiencies pointed out and cured by the petitioner are examined in juxtaposition with the operative reason, which became foundation of the impugned order dated 27.01.2021, it will be clear that the deficiencies pointed out were different than the reasons on which the impugned order was passed. Putting it different, the deficiencies on the strength of which the impugned order is passed were not the deficiencies pointed out earlier. Still the petitioner by communication dated 29.01.2021, fulfilled the said requirement. All such deficiencies were curable and cured. The impugned order is bad in law.

Learned counsel for the respondent supported the impugned order by contending that if the petitioner is running Homeopathy college, he must know what are the requirement of qualifications, eligibility, experience etc. If necessary details were not made available and furnished by the petitioner, no fault can be found in the impugned order.

While exercising the writ jurisdiction, we are basically concerned with the decision making process adopted by the respondent. *Prima facie*, we find substance in the arguments of learned Senior counsel for the petitioner that the deficiencies pointed out were different than the deficiencies on which the final order is passed. For those deficiencies which became operative reason for passing the impugned order, the petitioner was not put to notice.

Considering the aforesaid, as an interim measure, it is directed that the petitioner/college shall be permitted to participate in the process of counseling. The students can be allocated to the petitioner/college. However, the petitioner/college shall not accept the fee from the students and no admission will create any right in favour of such student/college.

The entire exercise will remain subject to final outcome of this petition.

List the matter when reply is filed.

**(SUJOY PAUL)**  
**JUDGE**

**(SHAIENDRA SHUKLA)**  
**JUDGE**

Sourabh

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