

Bhartiya Homoeopathy College, Bharatpur

Vs

Students' Council of Homoeopathy Medical College, Jaipur and Others

Civil Appeals No. 16040 of 1996 with Nos. 16041 of 1996

(Sujata V. Manohar, D. P. Wadhwa JJ)

03.02.1998

JUDGMENT

SMT. SUJATA V. MANOHAR, J. –

1. Delay condoned.

2. Leave granted.

3. Appeals Nos. 16040 and 16041 of 1996 arise from a common judgment of the Division Bench of the High Court of Rajasthan at Jaipur dated 11-10-1996 in DB Civil Special Appeal (Writ) No. 15 of 1996 against the order dated 13-12-1995 of the learned Single Judge in Civil Writ Petition No. 4882 of 1995. Civil Appeal No. 16040 of 1996 has been filed by Bhartiya Homoeopathy College, Bharatpur while Civil Appeal No. 16041 of 1996 is filed by Yuvraj Pratap Senior Memorial Homoeopathy College, Alwar. For the sake of convenience we are setting out the facts in Civil Appeal No. 16041 of 1996. Both the appeal along with appeal arising from SLP (C) No. 2991 of 1998 (CC No. 9141 of 1997) and Writ Petition No. 81 of 1997 have been heard together because they raise common questions and arise from the same judgment of the Division Bench of the Rajasthan High Court.

4. In 1969 the Legislature of the State of Rajasthan enacted the Rajasthan Homoeopathic Medicine Act, 1969 (Act 1 of 1970). Section 3 of the Act provides for the establishment of the Rajasthan Board of Homoeopathic Medicine. Section 40(i) of the said Act prescribes that the said Board shall have the power to recognise homoeopathic educational or instructional institutions for the purpose of affiliation. Section 40(iii) empowers the said Board to hold examinations and to grant degrees/diplomas to persons who shall have pursued a course of study in an educational institution affiliated to the Board. Accordingly the Rajasthan Board of Homoeopathic Medicine was set up under the said Act. It conducted examinations for the grant of B.H.M.S. Degree as well as examinations for a Diploma in Homoeopathy. The two appellant colleges at Alwar and Bharatpur were, at the material time, affiliated to the Rajasthan Board of Homoeopathic Medicine. Their students appeared for the B.H.M.S. examination conducted by the Rajasthan Board of Homoeopathic Medicine until about 1994.

5. In 1973 the Central Government enacted the Homoeopathy Central Council Act, 1973 (Act 59 of 1973). Section 13 of the Homoeopathy Central Council Act, 1973 provides for recognition of medical qualifications in homoeopathy granted by any university, board or medical institution in India. The recognised institutions and qualifications are listed in the Second Schedule of the Act. In the Second Schedule, under the head "State of Rajasthan", the Rajasthan Board of Homoeopathic

Medicine is recognised from 1979 onwards for a Diploma in Homoeopathic Medicine & Surgery (D.H.M.S). The University of Rajasthan is recognised for the degree of B.H.M.S. from 1990. The Rajasthan Board of Homoeopathic Medicine is not recognised for the degree of B.H.M.S. under the Second Schedule to the Homoeopathy Central Council Act, 1973. The Rajasthan Board of Homoeopathic Medicine, however, continued to hold examinations for the degree of B.H.M.S. The Rajasthan University also conducted a degree course in homoeopathy for the degree of B.H.M.S. The Homoeopathy Medical College at Jaipur was affiliated to the Rajasthan University for the B.H.M.S. Degree course.

6. On 31-3-1987 the State Government, Medical and Health Department, wrote to the Registrar of the University of Rajasthan stating that after consultation with the Rajasthan Board of Homoeopathic Medicine and the Board of Indian Medicine, Rajasthan, the State Government considered it desirable that examination, inter alia, in respect of all the classes of B.H.M.S. should be conducted through the University of Rajasthan in respect of students studying in the colleges which should get themselves affiliated to the University. The letter mentioned three colleges which were conducting courses leading to B.H.M.S. These were the two appellant colleges (one at Bharatpur and the other at Alwar, and the Homoeopathic Medical College at Jaipur. The State conveyed to the University that it would be better if the University agrees to conduct all the examinations of B.H.M.S./B.U.M.S. Degree courses in respect of all the years right away so that the respective Boards may wind up their examination work and the State would be in a position to reshape or dissolve these Boards for the registration work of Chikitsaks etc. This proposal was considered at a meeting of the Academic Council of the University of Rajasthan at its meeting of 13-6-1987. In the minutes of the meeting it is recorded that in respect of homoeopathy, the said three colleges had sought affiliation from 1987-88 session. It was decided to recommend acceptance of the State Government's proposal subject to certain conditions which are recorded there. There does not seem to have been any further progress regarding affiliation of the appellant colleges to the University of Rajasthan for the B.H.M.S. course. For the academic session 1988-89, the State of Rajasthan, Medical and Public Health Department, by its letter dated 21-7-1988 advised the two appellant colleges that until a final decision on the applications of these colleges for affiliation is taken by the University, status quo may be maintained and the affiliation of the two appellant colleges may be continued with the Rajasthan Homoeopathic Medicine Board. The State Government also advised the Board that it will not be proper to stop admissions till the matter regarding affiliation is finally decided by the University. In the meanwhile, for the purpose of affiliation to the Rajasthan University inspections were carried out by the University of Rajasthan and we are informed that the inspection reports were satisfactory.

7. In the year 1993 the judgment of this Court in *Unni Krishnan, J. P. v. State of A. P.* ((1993) 1 SCC 645) was pronounced. As a result, the Central Council of Homoeopathy, by its letter dated 18-8-1993 addressed to the Secretary, Government of Rajasthan, Department of Health and Family Welfare, Jaipur, as well as to the Registrar, Rajasthan Board of Homoeopathic Medicine, stated that this Court, in the judgment in the above case, had held that by virtue of the provisions of the University Grants Commission Act, no educational institution in this country except a university is entitled to award degrees. The Central Council, therefore, requested the State of Rajasthan that the State Board of Homoeopathic Medicine should be asked not to award a degree qualification in homoeopathy henceforth.

8. In the meanwhile, the Central Council recognised the appellant college at Alwar for the year 1993-94 and this recognition has been extended subsequently for the years 1994-95, 1995-96 and 1996-97.

9. Pursuant to the application for affiliation made by the appellant college at Alwar to the University of Rajasthan for B.H.M.S. Degree course, the University, by its letter dated 23-1-1994, granted a provisional affiliation for B.H.M.S. Degree course to the appellant college at Alwar for the session 1993-94 in preparation for its first B.H.M.S. examination 1994, second B.H.M.S. examination 1995, third B.H.M.S. examination 1996 and fourth B.H.M.S. examination 1997 subject to the fulfilment of conditions laid down in that letter. The students of this college who were admitted to the 1st year B.H.M.S. course in 1993-94 thus became entitled to appear in the examinations of the Rajasthan University leading to the Degree of B.H.M.S. Subsequently, on 6-4-1995 the University of Rajasthan granted provisional affiliation to the appellant college at Alwar for the academic session 1994-95 in similar terms and by a letter of 2-4-1996 it again granted provisional affiliation to the said college for the academic session 1995-96 also. This affiliation, however, did not cover students of the appellant college who had taken admission prior to 1993-94 in the said college and who were required to appear in different years of B.H.M.S. examinations in 1993-94 and thereafter. However, in view of the provisional affiliation granted to the appellant colleges by the University of Rajasthan in January 1994 the State of Rajasthan issued an order dated 20-6-1994 directing the Rajasthan Board of Homoeopathic Medicine not to conduct B.H.M.S. examinations.

10. This order was challenged in a writ petition filed before the High Court of Rajasthan. We are, however, not concerned with those proceedings here. Thereafter the State Government addressed a letter dated 16-8-1994 to the Registrar, University of Rajasthan with regard to the B.H.M.S. examinations which were, up to then, conducted by the Rajasthan Homoeopathic Medicine Board. The letter referred to the Central Council for Homoeopathy's letter of 18-8-1993 and the decision of this Court in *Unni Krishnan v. State of A. P.* ((1993) 1 SCC 645). It is also referred to the opinion of the Law Department that the Rajasthan Homoeopathic Medicine Board cannot issue degrees in homoeopathic medicine. The letter recorded that keeping in view the above position, the State Government suspended the examination for B.H.M.S. Degree course being conducted by the Rajasthan Homoeopathic Medical Board and had also directed that no admissions will be made by the appellant colleges for the B.H.M.S. Degree course of the Rajasthan Homoeopathic Medicine Board. The letter went on to say,

"As the examination for degree course cannot be conducted through the Rajasthan Homoeopathic Medical Board, therefore, now this question is under active consideration before the State Government that the students who had taken admission for degree course in Alwar College and Bharatpur College and who are in the Second, third and final years of the degree course how their future may be saved and through whom their examinations shall be conducted.

It was discussed on the above reference with the Committee and Vice-Chancellor of the University of Rajasthan on 24-6-1994 During the period of discussion, this proposal was also discussed that the examination of students of Bharatpur and Alwar Homoeopathic Colleges should be got conducted through the University of Rajasthan. For this purpose, the students of Bharatpur and Alwar should be migrated to Rajasthan Homoeopathic College, Jaipur which is affiliated to the University of Rajasthan."

The letter concluded by saying that the students of Bharatpur and Alwar Homoeopathic Colleges in second, third and final years of B.H.M.S. course shall migrate to the Rajasthan Homoeopathic College, Jaipur which is affiliated to the University of Rajasthan and their examination shall be got conducted by the University of Rajasthan. It seems that pursuant to this decision, some of the

students of the appellant colleges were allowed to migrate to the said college at Jaipur. However, a large number of students in this category continued with the two appellant colleges.

11. Looking to the unforeseen situation in which these students were placed on account of the Rajasthan Homoeopathic Medicine Board not being in a position to conduct the B.H.M.S. Degree examination, the Vice-Chancellor of the University of Rajasthan passed an order dated 13-5-1995 which is the subject-matter of challenge in these proceedings. The order of 13-5-1995 has been passed pursuant to the recommendation made by the Board of Inspection of the University of Rajasthan as per Resolution No. 16 passed at its meeting held on 12-12-1994 and 18-12-1994. The Vice-Chancellor by the order of 13-5-1995, has ordered that

"the examinations of second, third and final-year B.H.M.S. students admitted in the Homoeopathic College, Bharatpur and Homoeopathic College, Alwar be conducted by the University, without granting affiliation for these examinations, as per the existing syllabus of the University prescribed for these examinations in order to avoid hardship to the students and also keeping in view the fact that the Rajasthan Homoeopathy Board which was conducting examinations of these two colleges has now been rendered ineligible for conducting examinations and awarding degrees."

12. The recommendations of the Board of Inspection and Vice-Chancellor's order of 13-5-1995 were ratified by the Syndicate at its meeting held on 20-5-1995/21-5-1995.

13. The Students' Council of the Homoeopathic College at Jaipur filed a public interest litigation challenging the order of the Vice-Chancellor permitting the students in second, third and final-year B.H.M.S. classes of the appellant colleges to appear at the examinations being conducted by the University of Rajasthan. The petition was dismissed by a learned Single Judge of the Rajasthan High Court holding that the Student's Council of the Jaipur College had no locus standi to file a public interest litigation. In appeal, however, the Division Bench of the High Court has set aside the order of the Vice-Chancellor and has upheld the locus standi of the Students' Council of the Jaipur College to file such a petition. The present appeals before us are from this judgment and order of the Division Bench of the Rajasthan High Court at Jaipur.

14. From the above narration of facts, it is clear that the order of the Vice-Chancellor was issued after extensive consultations with the State Government and after the Board of Inspection of the Rajasthan University approved of the students belonging to the two appellant colleges appearing for the B.H.M.S. examinations concerned. The students who had taken admission in the two appellant colleges for the B.H.M.S. course had done so under a bona fide belief that the B.H.M.S. examination conducted by the Rajasthan Board of Homoeopathic Medicine was an examination which was conducted by the Board in accordance with law and that the two appellant colleges who were affiliated to the Rajasthan Board of Homoeopathic Medicine were entitled to send their students for the B.H.M.S. examinations conducted by the Rajasthan Board of Homoeopathic Medicine. It was on account of the judgment of this Court in the case of Unni Krishnan, J. P. v. State of A. P. ((1993) 1 SCC 645) and the correct legal position being pointed by the Central Council of Homoeopathy in its light, that the State Government had to take a decision to close down the B.H.M.S. Degree examinations conducted by the Rajasthan Board of Homoeopathic Medicine. The State itself recognised that the sudden closing down of the degree examination of the Rajasthan Board would lead to a complete disruption of the studies of the students who had already taken admission for the B.H.M.S. Degree course in the two appellant colleges, though no fault of theirs. In order to see that the future of these students was not jeopardised, the State Government had

requested the University of Rajasthan to accommodate these students and permit them to appear for the B.H.M.S. examinations for different years being conducted by the University of Rajasthan. The University had satisfied itself through the Board of Inspection that the two appellant colleges were imparting education in homoeopathy in a satisfactory manner. The University also took into account the fact that students of the second, third and final-year B.H.M.S. courses in the two appellant colleges were left without any remedy because of the sudden scrapping of the examinations of the Rajasthan Board of Homoeopathic Medicine. Therefore, in view of the emergency which had arisen, the Vice-Chancellor permitted the students of second, third and final-year degree courses in the two appellant colleges to appear for the University examinations for the second, third and final years of the B.H.M.S. course without granting affiliation to these two colleges for the previous relevant years concerned.

15. It is necessary to note that the University had granted affiliation to both these colleges provisionally from the academic year 1993-94 onwards. As a special case, the Vice-Chancellor permitted the students of these colleges who had taken admission prior to 1993-94 in the B.H.M.S. Degree course also to appear for the examinations as set out in the order of the Vice-Chancellor. This order has been ratified by the Syndicate also. The only narrow question which we have to consider is whether the Vice-Chancellor had the power to do so under the University of Rajasthan Act, 1946.

16. The relevant provisions of Section 4 of the University of Rajasthan Act, 1946 which deals with the powers of the University are as follows :

"4. The University shall have the following powers, namely :

#(1) * * *(1-A) * * *(1-B) * * *##

(2) to hold examinations and to confer degrees and other academic distinctions upon
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(a) persons who have pursued a course of study in the University or its affiliated colleges or approved institutions and appear at and pass the examinations of the University, under conditions laid down in the Ordinances and Regulations;

(b) persons who have not pursued a course of study in the University or its affiliated colleges or approved institutions but appear at and pass the examinations of the University as non-collegiate students under such conditions as may be prescribed by the University from time to time :

Provided that such students have been residing within the State of Rajasthan for such period as may be prescribed by the University in the Ordinances and Regulations."

Under sub-section (4), the University can confer degrees, diplomas and other academic distinctions on and provide teaching, instruction and training for external students, in the manner prescribed by the statutes, ordinances and regulations. Under sub-section (4-A), the powers of the University include the power to admit colleges and institutions to the privileges of the University and to withdraw such privileges. Under sub-section (7), the University can inspect affiliated colleges and approved institutions and take measures to ensure that proper standards of teaching, instruction and training are maintained in them.

17. Under Section 4 sub-section (2), therefore, the power to hold examinations and to confer degrees, is given not merely in respect of persons who have pursued a course of study in the University or its affiliated colleges or approved institutions, but also in respect of persons who have not pursued a course of study in the University or its affiliated colleges or approved institutions but who pass the examinations of the University. Under Section 4 sub-section (15), the University has the power to do all such other acts, whether incidental to the powers aforesaid or not, as may be requisite in order to further the objects of the University as an educational body, and to cultivate and promote the arts, science and other branches of learning.

18. The powers of the Vice-Chancellor are laid down in Section 13. Under Section 13(1), the Vice-Chancellor shall be the principal executive and academic officer of the University. Under sub-section (2), it shall be the duty of the Vice-Chancellor to see that this Act, the statutes and the ordinances are faithfully observed and he shall have all powers necessary for this purpose. Under sub-section (4) it is provided as follows :

"13.(4)(a) He may take action in any emergency, which, in his opinion, calls for immediate action. He shall, in such a case, and as soon as may be thereafter, report his action, to the officer, authority or other body who or which would ordinary have dealt with the matter."

19. The powers and functions of the Syndicate are laid down in Section 22. Under Section 22(i), the Syndicate, subject to the statutes, has to inspect and affiliate, recognise or approve colleges and hostels or institutions, and to withdraw affiliation, recognition or approval from them. Under sub-section (j), it has to arrange for the holding of examinations and publishing results thereof. Under sub-section (k), it has to maintain proper standards of teaching and examination in consultation with the Academic Council. The power, therefore, to hold examinations and publish results as also the power to inspect, affiliate or approve colleges and institutions is with the Syndicate. The Vice-Chancellor, however, has in an emergency the power to take action immediately in respect of any of these matters but the action so taken has to be placed before the authority concerned, that is to say the Syndicate.

20. Statute 37 of the University of Rajasthan deals with inspection and recognition of a college. Under statute 37(1), a college applying for affiliation, whether for the first time or for extension in the period of temporary/provisional affiliation, or in additional subjects, or for additional courses of study, or for permanent affiliation, shall make a written application to the Registrar for the purpose in the manner provided in the statute and the Syndicate shall have the power to recognise or withdraw recognition. Under Statute 37-A, a Board of Inspection is required to be constituted for the inspection of colleges as set out in that statute.

21. In the present case, the students of the two appellant colleges who had joined the course of studies offered by the two colleges leading to a B.H.M.S. Degree of the Rajasthan Board prior to the appellant colleges being affiliated with the University of Rajasthan for the B.H.M.S. course, were permitted by the Vice-Chancellor by the impugned order to take the examinations for the B.H.M.S. course of the University of Rajasthan. Looking to the situation where the examinations of B.H.M.S. conducted by the Rajasthan Board were suddenly required to be stopped, the students who were left stranded were thus, as a special case, allowed by the Vice-Chancellor to appear for the B.H.M.S. examination of the year concerned of the University. This was in clear exercise of the emergency power of the Vice-Chancellor. But he had taken this action on the recommendations of the Board of Inspectors. The decisions of the Vice-Chancellor was placed before the Syndicate as required under

Section 13(4) and the Syndicate had also approved of the action of the Vice-Chancellor as also the recommendations of the Board of Inspectors.

22. It is, however, contended that only the students of an affiliated college can appear for the University examination. In this connection, the respondents have emphasised Section 4(2) of the University of Rajasthan Act which empowers the University to hold examination and to confer degrees on persons who have studied in the University or its affiliated colleges or approved institutions. It is submitted that unless the students have studied in an affiliated college, the University or the Vice-Chancellor or the Syndicate has no power to permit such students to appear for its examinations. This submission ignores clause (b) of sub-section (2) of Section 4 which permits the University to allow even persons who had not pursued a course of studies in the University or its affiliated colleges or approved institutions to appear and pass the examinations as non-collegiate students. The power of the University, therefore, is not confined to only permitting students from its affiliated colleges to appear for an examination. In a given case, the University may permit even persons not belonging to affiliated colleges to appear for the examination. The power to grant approval for institutions also is wide. The approval can be for a limited purpose such as permitting appearance in an examination over a limited period just as affiliation can be provisional or permanent or restricted. The University has also very wide powers under sub-section (15) of Section 4 to do all such other acts whether incidental to the specified powers or otherwise as may be required to further the objects of the University as an educational body. These powers are exercised, inter alia, through the Vice-Chancellor, the Syndicate and the Board of Inspection. The Vice-Chancellor was, therefore, within his rights in passing the impugned order of 13-5-1995 and the Syndicate has, in exercise of its powers, ratified the action of the Vice-Chancellor and the recommendations made by the Board of Inspection. The High Court, in our view, was not right in coming to the conclusion that the Vice-Chancellor had no power to pass such an order.

23. This is also not a case where the two colleges were found to be sub-standard. In fact the Central Council recognised the appellant colleges for the academic year 1994-95 in May 1994 and thereafter it has recognised the college for the academic years 1994-95, 1995-96 and 1996-97 also. Both the colleges are now affiliated to the University of Rajasthan. The Board of Inspection also approved the two colleges. The order of the Vice-Chancellor merely takes care of those students who joined these two colleges for the degree of the Board prior to their affiliation to the University.

24. The learned Single Judge who originally dismissed the writ petition had reason to doubt the locus standi of the Students' Council of the Jaipur College to file this so-called public interest litigation. These students are studying for the same B.H.M.S. course of the University of Rajasthan. There can be some doubt about their bona fides in challenging the order permitting other students of other colleges to appear for the same examination. What is more relevant, there is no basis for alleging any harm to public interest in allowing the students of the two appellant colleges to appear for the B.H.M.S. examinations of the University of Rajasthan. The university which had inspected these two appellant colleges and considered the course of studies which they offered, was in a far better position to decide whether the students who had studied for the earlier course were fit enough to be allowed to appear for the examinations of the University of Rajasthan. The decision which was taken by the University was a bona fide decision after taking into account the standard of teaching offered by the two appellant colleges. The action was also supported by the State Government. The Central Council of Homoeopathy has also recognised these two colleges. The public interest was not in any manner adversely affected by the impugned decision.

25. The student's Council has now filed an affidavit disclosing its status and its constitution. It does

not disclose whether the Council was authorised to file the present litigation, and if so, by whom, whether it has the funds to indulge in this litigation and whether it had the backing of a majority of its members for this litigation. Since on merits also we find that the action must fail, we are not examining these questions any further except for the purpose of indicating that such organisations, without disclosing any material regarding their nature and functions and funding, should not be allowed lightly to undertake litigation in the name of public interest which can cause a lot of damage to others.

26. In the present case, because of the litigation the students have not been able to complete their B.H.M.S. course for a number of years. Pursuant to the interim order these students have been permitted to appear for examinations conducted in December 1996 and the results have also been declared. We direct that in accordance with the results so declared the students may be allowed to continue/complete the B.H.M.S. course with the University of Rajasthan in accordance with law and those who have qualified for the B.H.M.S. Degree as per these results be granted the degree by the University of Rajasthan.

27. Civil Appeals Nos. 16040 and 16041 of 1996 are, therefore, allowed. The impugned judgment and order of the High Court is set aside and the original writ petition filed before the High Court is dismissed with costs.

28. The appeal arising from SLP(C) No. 2991 of 1998 (CC No. 9141 of 1997) and Writ Petition No. 81 of 1997 are also disposed of accordingly.