IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3934 OF 2019

Shikshan Prakash Mandal's
Lt. Sunil Ramsinh Chunawale Ayurved
Mahavidyalaya, Chikhli
having address at
Deendayal Nagar, Chikhli, Tal.: Chikhli,
Dist. Buldhana, 443201
Through its Principal
Dr. Shrikant Bhaurao Darokar,
Age : 45 years. .... **PETITIONER**

---- **VERSUS** ----

1) Union of India
Through its Secretary,
Ministry of AYUSH, AYUSH Bhavan,
"B" Block, GPO Complex, INA,
New Delhi – 110023.

2) Central Council of Indian Medicine
A Statutory Body, Constituted under
Section 3 of the Indian Medicine Central
Council Act 1970 having its Office at 61-65
Institutional Area, Opposite D-Block
Janakpuri, New Delhi – 110058
Through its Secretary.

3) State of Maharashtra,
Through its Secretary,
Department of Medical Education & Drugs,
Mantralaya, Mumbai – 400001.

4) Admission Regulatory Authority
8th Floor, New Excelsior Building,
A. K. Nayak Marg, Fort, Mumbai- 400 001.

5) The Maharashtra University of Health
Science, Nashik, Office of Dindori Road,
Mhasrul, Nashik 422 004, through its
Registrar.
(Added respondent No.5 vide Court
Order Dated 02.03.2020.) .... **RESPONDENTS**

Mr. Anand Jaiswal, Senior Advocate with Mr. S. D. Chopde, Advocate for Petitioners.
Mr. N. Deshpande, D.S.G.I. for Respondent No.1.
Mr. N. C. Phadnis, Advocate for Respondent No.2.
Mr. A. A. Madiwale, Assistant Government Pleader for Respondent No.3/State.
Mr. N. S. Khubalkar, Advocate for Respondent No.4.
Mr. Abhijit Deshpande, Advocate for Respondent No.5.

CORAM : SUNIL B. SHUKRE AND
MRS.VRUSHALI V. JOSHI, JJ.

DATED : 09.02.2023

ORAL JUDGMENT : (Per Sunil B. Shukre, J.)

1. Heard.

2. **Rule**. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The impugned order of the withdrawal of permission already granted to the petitioner to run BAMS course for the year 2018-19 is based upon the report of the Inspectors appointed by the Central Government and not by the Central Council of Indian Medicine. Under Sections 19 and 20 of the Indian Medicine Central Council Act, 1970 (for short "the Act of 1970"), however, it is only the Central Council and not the Central Government which shall appoint the Medical Inspectors to inspect any Medical College, Hospital or other Institution or which shall appoint such number of Visitors as it may deem requisite to inspect any college, Hospital or other Institution where education in Indian Medicine is given. Under Section 21 of the Act of 1970, the Central Council can take a suitable action on the basis

of the report submitted by the Inspectors or the Visitors and such action can be of withdrawal of recognition.

4. In the instant case, no Inspectors were appointed by the Central Council nor any Visitors were appointed by the Central Council and as such there was no report submitted by either the Inspectors or either the Visitors to enable the Central Council to exercise its power under Section 21 of the Act of 1970. As such, the impugned order cannot be sustained in the eye of the law.

5. In a similar case, dealing with Homeopathic College, the Hon'ble Apex Court in the case of ***Temple of Hahnemann Homoeopathic Medical College And Hospital Vs. Union of India and Others*** reported in ***(2018) 17 SCC 753***, has held that no power of withdrawal of recognition or permission can be exercised based upon a report submitted by the Inspectors appointed by the Central Government. This decision of the Hon'ble Apex Court came after it considered similar provisions made in Sections 17, 18 and 19 of the Homoeopathy Central Council Act, 1973 (for short "the said Act"). It is not in dispute that the provisions made in Sections 17, 18 and 19 of the said Act are in *pari materia* with those made in Sections 19, 20 and 21 of the Act of 1970 and, therefore, the facts of the case, it can be safely said, are squarely covered by the ratio of the case of ***Temple of Hahnemann*** (*supra*).

6. In the result, the impugned order cannot be upheld, as it is bad in law and it deserves to be quashed and set aside.

7. The petition is allowed in terms of prayer clause (a) and (b), which read as under.

> "*(a) call for the relevant records and papers from the office of the Respondent authorities and after going into the legality of the same quash and set aside the order dated 15.11.2018 by R-1 and for that purpose issue appropriate writ and/or order. (Annx – H)*
>
> *(b) direct the Respondent-Admission Regulatory Authority not to cancel and/or transfer the students admitted to BAMS course at the Petitioner College in the Academic year 2018-19."*

8. Rule is made absolute in the aforesaid terms. No costs.

(MRS.VRUSHALI V. JOSHI, JJ., J.) **(SUNIL B. SHUKRE J.)**

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