

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

Writ Petition No.6264/2016
(Homeopathic Education Society through its Secretary and another .vs. The Union of India and others.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. C.S. Kaptan, Senior Advocate with Mr. A.R. Deshpande,
Advocate for Petitioners.

Mrs. M.R. Chandurkar, Advocate for Respondent No.1.

Mr. N.H. Joshi, AGP for Respondent No.3.

CORAM : B.R. Gavai & V.M. Deshpande, JJ.

DATED : October 26, 2016.

Rule.

2. Heard the learned counsel appearing on behalf of the parties on the question of grant of interim relief.

3. Mr. Kaptan, the learned senior counsel submits that after the show cause notice was issued by respondent no.1 to the petitioner pointing out various deficiencies in the College run by the petitioner, a detailed reply is submitted on 4.9.2016 along with all the relevant documents. He submits that not only that but the document of respondent no.1 itself dated 6.9.2016, which is the minutes of the hearing, would also show that the details were given by the petitioner, as to how the deficiencies as

pointed out by respondent no.1, are on imaginary basis. He submits that without considering the same, the impugned order has been passed on 10.10.2016 thereby refusing the permission to the petitioners for taking admissions for the academic session 2016-2017.

4. The prayer is vehemently opposed by Mrs. Chandurkar, the learned counsel appearing on behalf of respondent no.1. She submits that the perusal of the observations of the hearing committee would reveal that the petitioners had failed to submit various documents in support of their contention and as such the permission was rightly rejected. The learned counsel relies on the judgment of the Apex Court in the case of **Ayurved Shastra Seva Mandal and another .vs. Union of India and others** reported in **2013 (3) SCALE 213**.

5. We are aware that the interim relief which is sought is in the nature of mandatory relief. We are equally aware that this Court should be slow in granting an interim relief which is mandatory in nature. However, when an exceptional case is made out, this Court would not be precluded from granting an interim relief which is mandatory in nature.

6. We are also equally aware that this Court

should be show in interfering in the matters which require adherence to academic standard. However, in view of the following discussion, we are of the considered view that the petitioners have made out an exceptional case.

7. Respondent no.1 had issued a show cause notice dated 23.08.2016 vide which five deficiencies have been pointed out to the petitioners. The petitioners immediately on 4.9.2016 addressed a reply pointing out therein as to how the various deficiencies as pointed out by respondent no.1 stand rectified. Not only that, but hearing was given by respondent no.1 to the petitioners on 6.9.2016. The petitioners were represented by its Principal Dr. Sanjay Kumar U. Tiwari and Secretary Dr. Jaiprakash M. Jaiswal. It will be relevant that respondent no.1 itself has minuted, as to what are the shortcomings/inconsistencies noticed by it and the submissions of the College. It will be relevant to refer to the following minutes of the hearing:-

Sr.No.	Shortcomings/inconsistencies	Submission of the College
a)	<p>Professors were not appointed in department of FMT and Surgery, Reader were not appointed in department of Organon of medicine, Pharmacy, Pathology, FMT, Practice of Medicine, Obs./Gyn. Community Medicine and Repertory.</p>	<p>In the Dept of FMT There is no professor or reader. However, as soon as we get on qualified staff, we will appoint him in the department. In the Dept. of Surgery, there is one reader. It is stated that as per the Schedule IV of CCH (MSR) 2013, clearly mentioned that there should be either professor or reader in the departments mentioned: Surgery, Organon of medicine, Pharmacy, Pathology, FMT, Practice of Medicine, Obs/Gyn, Community Medicine and Repertory. The documents such as appointment letter, joining letter, experience certificate are submitted.</p>
b)	<p>There is no Surgeon, Anesthetist, Obstetric/Gynecologist, Radiologist, X-ray Attendant, and Nursing Staff in Charge, Nursing Staff, Yoga Expert, Physiotherapist and Dietician appointed in the hospital</p>	<p>As regard Hospital staff as per CCH (MSR) 2013, a list of modern medicine teacher who are appointed as teaching faculty are also eligible to work as hospital staff (Schedule II of CCH). Thus the documents related to appointment, joining letter, of Surgeon, Anesthetist, Obsteric/Gynecologist, Radiologist, Yoga Expert, Physiotherapist are submitted. With regard to Nursing in charge staff or Nursing Staff, an MoU has been signed with Sahara Critical Care, who will be providing adequate staff. The MoU of the same has been submitted.</p>

c)	Average daily patients attendance in OPD is 112 against the required 120 for admission upto 60 students as per HCC (MSR) 2013.	It was only the day of inspection and till the time of inspection the number of patients was 112. However, the average number of patients in the college OPD goes above the required norm i.e. 120. The copy for the verification is submitted.
d)	The average bed occupancy is only 20% against the required 30% as per HCC (MSR), 2013.	As far as the IPD is concerned, the required bed occupancy of 30% is fulfilled which can be clearly indicated in the copy of the copy of the certified IPD register submitted.
e)	Dissection Table is not provided in Anatomy and Filter Pasteumchaberland completer set is not available in community medicine.	There are total 7 table in the department of Anatomy out of which one table as a marble top, 2 table-stainless steel, 2 table- iron and 2 half table with marble top for the verification of this the photograph of existent dissection table are attached as a evidence and the original stock register is along with for verification. The filter Pasteumchaberland complete set is now made available in department of community medicine. The attested copy of the bill and stock entry is submitted.

8. It could thus be seen that the petitioners have given a reply in detail as to how the deficiencies stand rectified. However, in the impugned order, nothing has been considered. No doubt that the learned counsel appearing on behalf of respondent no.1 relies on the observations of the

hearing committee. It appears that the hearing was given by Mr. Chandra Shekhar, Under Secretary and Dr. Roja Varanasi. It would further be clear that though the hearing was given by the aforesaid two officers, the impugned order is passed by another officer i.e. Mr. Anshumann Sharma, Deputy Secretary. It could thus be *prima facie* seen that the impugned order is also liable to be assailed on the ground, that the hearing was given by some other authority and the order is passed by some different authority.

9. Be that as it may. We will refer to the observations of the hearing committee on the basis of which the impugned order is passed by third person:-

"1). The college is having required teaching staff except for FMT. As per HCC (MSR), 2013, there is requirement of either one Professor or Reader for admission upto 60 students.

2) The college is having Surgeon, Anesthetist, Obsteric/Gynecologist, and Radiologist. However, the attendance sheet of above staff and information about X-ray Attendant was not produced.

3) The college is having required OPD of 120 for admission up to 60 students as per HCC (MSR), 2013. As per the central register produced, however, documents, like central

OPD register, Attendance Register of the Doctors and Hospital Staff, the Department of OPD registers, case sheet of OPD could not be produced by the Representatives. Further, as per HCC (MSR) 2013, the details of Nursing Staff in-charge and Nursing Staff were not produced.

4) It appears that the college is not having the average bed occupancy i.e. 30% as per HCC (MSR) 2013.

5) The college is having the dissection table in Dept. of Anatomy ad filter Pasteum chaberland completer set in Community Medicine as per the submitted evidence."

10. The perusal of the observations of the hearing committee itself would reveal that insofar as the first objection is concerned, the hearing committee itself is satisfied that the objection no more survives. Insofar as the second objection with regard to there being no Surgeon, Anesthetist, Obstetric/Gynaecologist, Radiologist, X-ray Attendant is concerned, the only observation is that the attendance sheet for the above information was not produced. However, the minutes of the hearing which could be found at Annexure D itself would reveal that the petitioner had submitted 109 documents along with its representation. The perusal of the said documents would reveal that the petitioners had submitted in detail all the documents

with regard to appointments, their acceptance by the teaching staff so also their joining letters. The same has not at all been considered by the committee which has given hearing or by the authority which has passed the order. Insofar as the nursing staff is concerned, the petitioners had placed on record a memorandum of understanding entered by with Sahara Life Care Hospital and Critical Care Centre, under which the said Centre has agreed to provide the nursing staff to the petitioner College. In this respect, it will be relevant to refer to sub-clause (1) and (2) of Clause 3 of the Homoeopathy Central Council (Minimum Standards of Requirement of Homoeopathic Colleges and Attached Hospitals), Regulations, 2013, (for short "Regulations") which reads thus:-

"3. Fulfillment of minimum standard requirements:-

(1) The college and attached hospital(s) shall fulfill the minimum standards requirements of infrastructure and teaching and training facilities referred to in the regulations 4 to 13.

(2) For exposure of the students in the clinical field and to understand the depth of operative surgery and operative Gynecology or Obstetrics as well as management in critical illnesses, a college shall have a Memorandum of Understanding with a reputed nearby located super-specialty hospital (of modern

medicine) with all required facilities of operation theatre, labor room, Intensive Care Unit and other required facilities for the management of critical patients."

If we read the memorandum of understanding which is at Annexure G, it will be clear that it is in tune with the sub-clauses (1) and (2) of Clause 3 of the said Regulations. Though this fact has been specifically brought to the notice of the respondent, neither the hearing committee nor the authority which has passed the impugned order has taken the same into consideration. As such we are of the considered view that the objection with regard to the this point is without substance.

11. Insofar as third objection is concerned, the same pertains to the average daily patients attendance in OPD being 112 as against the required 120. It could be seen that in the reply it is stated that on an average the number of patients in the college OPD goes above the required norm i.e. 120. However, on the date of inspection it was 112. The copy of the verification report was also submitted. However, the same has not been considered. The perusal of the impugned order itself would reveal that respondent no.1 has taken a policy decision to permit 10% deficiency in teaching staff. It could thus be seen that if a 10 % deficiencies is permitted,

then the figure of 10 % of 120 would come to 12. If 12 is deducted from 120, the permissible OPD would come to 108. Even according to respondent no.1 on the date of inspection the OPD was 112.

12. Insofar as the fourth objection is concerned, the hearing committee says that the College is not having the average bed occupancy of 30% as per the Regulations. In this respect, it will be appropriate to refer to the following part of the impugned order:-

"As there is no provisions for granting conditional permissions in the MSR after the year 2014, a Policy has been taken by this Ministry for granting conditional permission during 2016-17 and also to relax 10% of deficiency in teaching staff. Considering IPD Bed occupancy as 20% instead of 30% and to exempt USG facility if an alternative arrangement is shown by the college."

It could thus be seen that respondent no.1 itself has decided that IPD bed occupancy of 20% instead of 30% would be entitled to exemption. In any case the petitioners had placed on record a certified copy of the IPD which shows the occupancy to be more than 30%. The same has not been taken into consideration. It could thus be seen that the decision of respondent no.1 on point no.4 is contrary

to its own policy and without taking into consideration the factual matrix.

13. Insofar as fifth objection is concerned, the finding on the same is given in favour of the petitioners. In that view of the matter, we find that the impugned order suffers from total non-application of mind.

14. The least that was expected of the authorities was to reexamine the issue when the petitioners had placed entire material on record to substantiate that the deficiencies were rectified.

15. Apart from that an anomalous situation would arise, inasmuch as in the same College, respondent no.1 would be permitting the students to undertake the education from 2nd Year to 4 and 5th year whereas it will be preventing the admissions for the 1st Year and that too without taking into consideration the documentary evidence submitted on behalf of the petitioners.

16. Insofar as the judgment on which Mrs. Chandurkar relies is concerned, perusal of paragraph 6 of the said judgment would reveal that in the said case the institutions had failed to remove the deficiencies in their respective institutions and only after the notices were given to them to shut down

the institutions that they woke up from their deep slumber and approached the Court. Another ground on which Their Lordships declined to interfere was from a practical view point. It was observed by Their Lordships that since more than half of the term of the first year is over, an interference at that stage would not be in anybody's interest. It is pertinent to note that in the present case the course is yet to begin and we are at the stage of only admitting the students. The last date for admission is 31.10.2016.

17. It is pertinent to note that the petitioner institution is running the Homoeopathy College from 1954 and it is specifically averred by them that not on a single occasion, any adverse order was passed against them. It is submitted by Mr. Kaptan, the learned senior counsel for the petitioners that this is for the first time that such an action is being initiated against the petitioners.

18. In that view of the matter, we find that the petitioners have made out an exceptional case for grant of interim relief which is mandatory in nature. Interim relief in terms of prayer clause (C).

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

Writ Petition No.6823/2018

Homeopathic Education Society and another
Vs.
The Union of India and others.

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

Shri C.S.Kaptan, Sr. Advocate with Shri A.R.Deshpande, Advocate for
petitioners
Shri U.Aurangabadkar, ASGI for respondent no.1.
Shri Sumant Deopujari, GP for respondent no.3.

**CORAM : B.P.DHARMADHIKARI and
S.M.MODAK, JJ.**

DATE : 16.10.2018

Heard learned counsel for sometime. Perused the deficiencies pointed out in Annexure C We find substance in the contention of learned counsel that many of them have been recommended as deficiencies for the first time in this academic year. Out of total 29 deficiencies, 8 deficiencies appear to have been condoned.

2. In relation to other deficiencies, the basis for levelling the same as such is not maintaining the records/accounts/Form 16 under Income Tax Act. However, hearing Committee which has perused records has not recorded any categorical finding that staff who was paid "advance" has not actually worked. It has looked into his attendance also.

3. The similar situation cropped up for academic year 2016-17 and this Court has already admitted petition for final hearing and interim relief was granted and therefore, the petitioners could admit

students to first year BHMS Course.

4. This year again the petitioners are restrained to admit students to first year BHMS. The second year, third year and fourth year are permitted to continue. Taking overall view of the matter, we find that such action needs to be taken against the petitioners, if deficiencies are fatal or material.

5. As the students in second year, third year and fourth year are permitted and the college itself is not being closed down, we don't notice any such defect at-least for the present.

6. Learned counsel for petitioners on instructions states that efforts shall be made to comply with all deficiencies and next year, there will be no such deficiency. We direct the petitioners to place on record separate affidavits of all the Managing Committee Members, as also of Principal in support of this submission.

7. Subject to filing of such affidavits within **two weeks from today**, we permit the petitioners to admit the students for academic year 2018-19 in first year.

8. Respondent nos. 1 and 2 shall thereafter in the month of December/January arrange for an appropriate in-depth verification of all records and carry out proper inspection. The Inspection Committee shall during inspection record specific findings on each facet.

9. If during such inspection any lacunae is found to subsist or noticed, it will be open to respondents to proceed further in the matter as per law.

10. With these observations and directions, we allow writ petition and dispose of accordingly. No costs.

JUDGE

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

WRIT PETITION NO.5491 OF 2019

- PETITIONERS :- 1. Homeopathic Education Society,
Through its Secretary,
Dr.Jaiprakash Mohabirlal
Jaiswal, Rajendra Prasad Road, Akot
Road, Akola Tq. And District Akola.
2. Homeopathic Medical College,
Through its Principal
Dr.Sanjaykumar Uddaoprasad Tiwari
Rajendra Prasad Raod, Akot Road,Akola
Tq. And District Akola.

...VERSUS...

- RESPONDENTS :- 1. The Union of India,
Through its Secretary,
Ministry of AYUSH, B Block, GPO
Complex, INA,New Delhi-0110023
2. Central Council of Homeopathy,
Through its Secretary, 61-65,
Institutional Area, Opposite D Complex,
Janakpuri,New Delhi-110058.
3. State of Maharashtra, through its Secretary,
Medical Education and Drugs Department,
9th Floor, New Gokuldas Tejpal Hospital area,
Sankul Building, Lokmanya Tilak Road,
Mantralaya, Mumbai-400001
4. Maharashtra University of Health
Science, through its Registrar, Mhasrul
Naka,Dindori Road, Nashik-422 004.

Sr.Adv. Mr.C.S.Kaptan , assisted by Mr.A.R. Deshpande, counsel for the
petitioners.

Mrs.Mugdha Chandurkar, counsel for respondent nos.1 and 2.

Mr. Abhijeet Deshpande, counsel for respondent no.4.

**CORAM :R.K.DESHPANDE &
VINAY JOSHI, JJ.**

DATED : 18.09.2019.

O R A L J U D G M E N T (Per : R.K.DESHPANDE, J.)

1. **Rule.** Rule made returnable forthwith.

2. Learned counsels for the respective respondents waives service of notice.

3. Heard finally by consent of the learned counsels appearing for the parties.

4. The challenge in this petition is to the order dated 15.07.2019 passed by the respondent No.1 Ministry of AYUSH denying the permission to the petitioners to admit the students in the first year BHMS course for the academic sessions 2019-2020. The petition claims direction to the respondents to permit the

petitioners to admit the students.

5. On 05.08.2019, the matter was heard and the controversy was crystallized. Hence we reproduced the said order as under:

“Except three deficiencies, all other deficiencies are condoned. The three deficiencies are as under;

- (i) No submission, however, was given by college representatives with respect to deficiency of Secretarial staff.**
- (ii) The availability of Audio-visual Aids for animal experiments demonstration in the Department of Physiology and Biochemistry could not be confirmed in the absence of stock registers and original bills.**
- (iii) Availability of 04 ESR (Westergren/ Wintrobe) in the Department of Pathology and Microbiology could not be confirmed in the absence of stock registers and original bills.**

It is urged that the respondents can be satisfied in respect of the aforesaid three deficiencies, if the opportunity is provided again.

Issue notice for final disposal of the matter, returnable on 19.08.2019.

Respective learned counsel appearing for respondents waive service of notice.

By way of interim order, we direct the respondents to permit the petitioners to provisionally admit the students in B.H.M.S. Course in the academic sessions 2019-20, subject to the decision of this petition, which shall be made clear in the order of admission”.

6. In terms of the aforesaid order, the petitioners are permitted to provisionally admit the students to 1st year BHMS course during the academic sessions 2019-2020.

7. The first deficiency pointed out that no submission was given by the College Representatives with respect to deficiency of secretarial staff, our attention is invited to the hospital staff engaged, which is on page 47 of the petition. The requirement was that every homeopathic hospital shall engage adequate secretarial and accounts staff for running the hospital smoothly. There is absolutely nothing in the report to suggest as

to how secretarial staff engaged is found to be deficient. We are of the view therefore that the deficiency no.1 did not at all survive.

8. So far as the second and third deficiencies are concerned, in the reply filed by the respondent no.1, it is stated in paragraph no.13 as under:-

"It is pertinent to mention that hearing committee admitted the facts of submission of bills regarding Audio-visual aids and 4-ESR(Westergren/Wintrobe), however, same was not found to be sufficient in order to verify the availability of Audio-visual aids and 4-ESR(Westergren/Wintrobe), therefore, the Petitioners' College was required to produce the stock registers which the Petitioners' College failed to bring".

9. The objection seems to be that though the committee admitted the facts of submission of bills regarding Audio-visual aids and 4-ESR, however, the same was not found to be sufficient in order to verify its availability. It is not stated as to how and in what manner the sufficiency is required to be shown. The objections are totally vague and unspecific.

10. It is urged that all objections were required to be removed on or before 31.12.2018 so as to get continuation of recognition/ permission for the next academic session. Once we

find that none of the objections did actually exist, the question of removal of such objection after 31.12.2018 does not at all survive.

11. In the result, this writ petition is allowed. The order dated 15.07.2019 passed by the respondent no.1 is hereby quashed and set aside. The respondents are directed to permit the petitioners to admit the students in the first year BHMS course for the academic sessions 2019-2020. The admissions already made shall be regularised.

No order as to costs.

JUDGE

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3542/2021 & CM APPLs. 10711-10712/2021**
HOMOEOPATHIC MEDICAL COLLEGE,
AKOT ROAD, AKOLA Petitioner

versus

UNION OF INDIA & ORS. Respondents

+ **W.P.(C) 3594/2021 & CM APPL. 10905/2021**
ANTAR BHARTI HOMEOPATHIC MEDICAL
COLLEGE AND HOSPITAL Petitioner

versus

UNION OF INDIA & ORS. Respondents

Present:- Mr. Animesh Kumar, Mr.Nishant Kumar, Mr.Ambuj Dixit & Ms.Utkarsha Sharma, Advocates for Petitioner in W.P.(C) W.P.(C) 3542/2021 & W.P.(C) 3594/2021.
Mr. Vikrant N. Goyal, Ms.Akansha Choudhary & Mr.Suraj Kumar, Advocates for R-1/UOI in W.P.(C) 3542/2021.
Mr. Anurag Ahluwalia, CGSC with Mr.Abhigyan Siddhant, Advocate for R-1/UOI with Dr. S.K. Vidyarthi, Director, Ministry of AYUSH in W.P.(C) 3594/2021.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **22.03.2021**

The proceedings in the matter have been conducted through hybrid system [physical and virtual hearing].

CM APPL. 10712/2021(exemption)in W.P.(C) 3542/2021

This application has already been disposed of by an order dated 17.03.2021. The Registry is directed not to list this application any

further.

W.P.(C) 3542/2021 & CM APPL. 10711/2021*(ex-parte ad interim relief)*

W.P.(C) 3594/2021 & CM APPL. 10905/2021 *(ex-parte ad interim relief)*

1. Dr. S.K. Vidyarthi, Director, Ministry of AYUSH, is present in Court pursuant to the order dated 17.03.2021 in W.P.(C) 3542/2021.
2. It is stated by learned counsel for the parties that the Union of India has disposed of the applications of the petitioners, as directed by the orders dated 17.03.2021 [in W.P.(C) 3542/2021] and 18.03.2021 [in W.P.(C) 3594/2021]. Conditional permission has been granted to the institutions in both these cases.
3. Mr. Animesh Kumar, learned counsel for the petitioners, states that no further orders are required in these petitions.
4. The petitions are therefore disposed of alongwith pending applications.

PRATEEK JALAN, J

MARCH 22, 2021

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