

Ladda(PS).

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8917 of 2011.
ALONG WITH
CIVIL APPLICATION No. 127 of 2017.

Ms. Shinde Vijaya Khanderao ..Petitioner.
Age :Minor, Occup.student,
through : her natural guardian
and father Mr. Khanderao
Raghunath Shinde,
both residing at Warana Nagar
Taluka Panhala, District Kolhapur.

Vs

- (1) Maharashtra University of Health
Sciences having office at Vani Road,
Mhasrul, Nashik-422004,
through the Registrar.
- (2) Central Council of Indian Medicine,
61-65, Institutional Area,
Janakpuri, New Delhi-110058,
through its Secretary.
- (3) J.J.Magdum Ayurvedic Medical
College, having office at City Survey
No. 295, Shirolwadi Road. ..Respondents.

Mr. Uday P. Warunjikar a/with Mr. Siddesh Pilankar Advocate
for the petitioner.
Mr. Shirish V. Pitre, Advocate for Respondent No.1.

CORAM : ANOOP V. MOHTA &
SMT. BHARATI H.DANGRE, JJ.

Closed for order on : 11th September, 2017
Order pronounced on : 28th September, 2017.

JUDGMENT:-(Per Smt. Bharati H.Dangre, J)

1) The petitioner student has approached this Court seeking a direction to the Central Council of Indian Medicine to complete the procedure of approval of amendment in the Indian Medicine (Minimum Standards of Education in Indian Medicine) (Amendment) Regulation, 1989 in view of the decision taken by the Council in its meeting dated 24/25th November, 2010. Further the petitioner has sought direction to respondent No.1 University to grant provisional eligibility to the petitioner and to accept her examination form for the First Year of BAMS and allow her to appear for the said examination. The said petition was filed in the year 2011 when the petitioner sought admission to the BAMS Course and she was issued with a letter that her admission cannot be confirmed as she is under age and for admission to the first BAMS course, minimum age is 17 years. According to the petitioner, she was borne on 5th October, 1992, however, in the School Leaving Certificate due to inadvertent mistake her date of birth was shown as 5th October, 1993.

2) By an order dated 24th October, 2011 a Division Bench

of this Court permitted the petitioner to appear in the First Year B.A.M.S. Examination Scheduled in May,2011 subject to further orders of this Court. On 12th April,2012 this Court directed the respondent to declare the result of the petitioner for the first year BAMS and accordingly her result was declared. Further by an order dated 22nd April, 2014 since the petitioner had already appeared in III Year Examination, the respondents were directed to declare the result subject to the outcome of the petition. The petitioner has thus reached the final year of the course and has passed the same.

The Petitioner filed Civil Application No. 127 of 2017 in the present writ petition stating that though she had passed the final year of the Examination of BAMS Course and undergone her internship, her original degree certificate and other documents are lying with the respondents and she is not able to obtain the final registration from respondent No.2. She therefore sought directions to the respondent to return the original documents. The said application is opposed by Respondent No. 1 and 2 on the ground that in terms of Section 22 (1) of the Indian Medical Council Act, the Central Council prescribes the minimum standard of education in Indian Medicine and accordingly the Indian Medicines Central Council has framed the Indian Medical Central Council (Minimum

Standards of Education in Indian Medicine) Regulations, 1989 which provides that the minimum age for admission to Ayurved Course would be 17 years as on 1st October in the year of admission. According to the respondent, since the petitioner did not fulfill the said condition and she was under age, her admission cannot be confirmed. Our attention is invited to an order passed by this Court in Writ Petition No. 8745 of 2010 Aniket Shrikant Patil Vs. Directorate of Medical Education & Ors dated 22nd December, 2010, wherein it was pointed out that the Central Council of Indian Medicine has amended the Regulations for (Minimum Standards of Education in Indian Medicine) Regulations, 1986 by passing a resolution and thereby prescribing that the candidate shall complete age of 17 years on or before 31st December of the year of admission to the MBBS Course. It is, therefore, prayed that the writ petition deserves to be dismissed.

We have heard the learned counsel for the respective parties.

3) It is no doubt true that the petitioner was under age at the time of her admission to the first year BAMS Course and we have also noted that this Court had permitted the petitioner to appear for the examination from time to time and issued direction to declare the result. Further, on 28th February, 2012 this Court observed that the petitioner may request to the School Authorities

to correct her date of birth in the school record and if the same is corrected, the corrected copy of the same may be produced before this Court. However, it appears that no steps have been taken by the petitioner for complying with the said direction. But it is equally true that under the order of this Court the petitioner was permitted to complete her BAMS Course and she has undergone her Internship also. The interim orders passed by this Court from time to time were made subject to final orders of this Court.

4) We are conscious of the fact that the interim orders were passed from time to time to protect the petitioner at the relevant time whenever she approached this Court by filing Civil Applications as the contingency arose. We are also conscious of the fact that relaxation of the eligibility criteria is not within province of this Court and this Court in exercise of its writ jurisdiction would be slow in interfering with the same. However, here, we are dealing with the case of the student who has completed her BAMS Course and Internship and is awaiting decision from this Court about her eligibility criteria relating back to 2011 when she was found to be under age at the time of admission to her first year course. This Court while exercising the powers under Article 226 of the Constitution of India is also expected to balance the equities and we are guided by the principle of law 'Actus Curiae neminem gravabit' (an act of court shall prejudice no man). Since we had passed

interim orders and permitted her to complete her BAMS Course, it would not be in the interest of justice to turn the clock back to the year 2011 and declare her unfit for admission on the ground of being under age. It is not the case of the respondent further there is any deception or fraud played by the petitioner when she secured such admission.

Equity demands that the petitioner be declared as passed BAMS Course and she be handed over a Degree Certificate in view of the fact that her fruitful years have been spent in prosecuting her studies for professional course of BAMS and at this stage though the learned Counsel for the respondents have vehemently opposed the petitioner, we are inclined to allow the writ petition. However, we make it clear that the order passed by us will not be treated as precedent and we make it clear that we are passing the said order of confirming BAMS Degree and granting final registration from Respondent No.2 only as an exceptional case in an attempt to balance the equities in favour of the petitioner. This will result into no prejudice to the respondents.

5) In the aforesaid circumstances, we allow the writ petition and direct the respondents to return the original documents to the petitioner which are in their custody and declare that the petitioner has successfully completed her BAMS Course and she be awarded the original degree certificate and other

documents pursuant to the passing of the said course within a period of two weeks from today. No order as to costs.

6) In view of disposal of the main writ petition, the Civil Application is disposed of.

(SMT. BHARATI H.DANGRE,J) (ANOOP V. MOHTA,J)