

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3045 of 2018**

- Shri Jug Mahadev Education Society (A Society Registered Under The Chhattisgarh Societies Registrakaran Adhiniyam, 1973), Through Its Authorised Person Prabhjot Singh Bhuie, S/o Amarjeet Singh Bhuie, Aged About 36 Years. Pulgaon Chowk, P. S. Pulgaon, District Durg, Chhattisgarh.

---- Petitioner**Versus**

1. Union Of India Through The Secretary, Ministry Of Ayurved, Yoga And Naturopathy Unani, Siddha And Homeopathy (Ayush), Ayush Bhawan, B- Block, G. P. O. Complex, INA, New Delhi. 110023
2. Central Council Of Indian Medicine Through The Secretary, 61-65, Institutional Area, Opposite D, Block, Janakpuri, Delhi-110058
3. State Of Chhattisgarh Through The Secretary, Department Of Health And Family Welfare, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Chhattisgarh.
4. Ayush And Health Science University Through The Registrar, G. E. Road, Raipur, District Raipur, Chhattisgarh.

---- Respondent

For Petitioner : Shri Jitendra Pali, Advocate.
 For Respondent No. 1 : Shri B. Gopakumar, ASG.
 For Respondent/State : Smt. Astha Shukla, Panel Lawyer.
 For Respondent No.4 : Shri NK Vyas, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****14/11/2018 :**

1. The petitioner would assail the order dated 12.10.2018 passed by the Government of India, Ministry of Ayurveda, Yoga & Naturopathy,

Unani, Siddha and Homoeopathy (AYUSH) reducing intake capacity from 100 to 60 for admission to BAMS (UG) course in the petitioner College/Society.

2. Challenge is on the ground that reduction in intake capacity has been ordered without considering the fact that in addition to 27 available teachers, 5 more teachers were already offered appointment letters and have actually joined much before the issuance of show cause notice. It is submitted that by including the said 5 more teachers, there are 32 teachers in the college as against the requirement of 29 teachers.
3. Learned ASG would submit that as on the date of visit, the petitioner college did not have the required number of eligible teachers. Therefore, in view of regulation 3 (1)(g) of the Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016 (for short 'the Regulation'), the intake capacity has rightly been reduced in the petitioner college. According to him, subsequent appointment of teachers would not suffice the requirement of Regulation.
4. Having heard learned counsel for the parties, it appears, when the Central Council of Indian Medicines (for short 'CCIM') visited the petitioner-college for inspection for recommendation on 21-22 May, 2018, the following deficiencies were found for which the petitioner was noticed vide Annexure-P/13 dated 16.8.2018:-

“i. Required number of teacher i.e. 29 teachers are not available for granting conditional permission as per RMS, 2016.

ii. 13 Higher Faculty in 09 dept. are available against the minimum requirement of 14 higher faculties in 10 Depts. for granting conditional permission as per RMS, 2016.

iii. Minimum 1 P/R + 1 L are not available in Dept. of Swasthavritha & Yoga for granting conditional permission as per RMS, 2016.

iv. Web based Computerized Central Registration system is not available as per RMS, 2016.

v. Functional X-Ray, ECG and USG are not available.

vi. Aadhaar based Geo location enabled attendance system for teaching staff, non-teaching staff, hospital staff is not available as per decision dated 31.01.2018 and policy decision dated 15.06.2018 in place of Biometric Attendance as per sub-regulation (3) of regulation 9 of MSR.”

5. To satisfy the queries about the above mentioned deficiencies, the petitioner appeared before the concerned committee of the respondents proceedings of which have been recorded in the note sheet (Annexure-P/14). The petitioner informed the respondents that as on date of visitation on 21st May, 2018, 32 teachers were available including the teachers of final year. The visitation team verified all the 32 teachers except 3 teachers who were on leave. Proof thereof was duly submitted to the visitation team. The petitioner also submitted that 5 new teachers including one teacher of Shalyatantra (subject in 4th year) have recently joined. Out of 5 teachers, 4 teachers were offered appointment which they had accepted in April, 2018. Copy of the intimation mail in this regard along with their joining was submitted to the CCIM with application to link into the portal, certificates, registration, joining,

appointment, etc. In respect of availability of 13 higher faculty in 9 departments as against the minimum requirement of 14 higher faculties in 10 departments, the petitioner submitted that 4 new teachers, as mentioned above, shall also fulfill this requirement. The remaining deficiencies were also explained which appears to have been accepted by the respondents, as the same has not been cited as reason for reducing the intake capacity.

6. True it is that under regulation 3 (1)(g) of the Regulations, the relevant date for consideration for grant of conditional permission or permission for a period of 5 years to the colleges for fulfillment of requirement as specified in the Regulation is the date on which the college is visited by the visitation team appointed by the CCIM. However, in the case at hand, as on the date of visitation i.e. 21st and 22nd May, 2018, the petitioner college had 27 teachers and the proof in the form of offer of appointment along with the consent letters issued to 5 more teachers was also placed before the visitation team. It is not a case where on the date of visitation process of appointment had not at all begun. If the process of appointment along with offer letter of appointment had already been issued, their subsequent joining would relate back to the date of visitation as the proof thereof was duly produced before the visitation team.
7. In my considered opinion, the petitioner college already had 27 teachers on the date of visitation as against the required number of 29 teachers. Therefore, it is not a case where there was huge shortage of teachers in

the petitioner college. This is referred only to indicate that the petitioner college was bonafidely appointing teachers and the process for appointment of 5 more teachers was sincere exercise which eventually culminated into actual appointment, the teachers having already joined on the date show cause notice was issued to the petitioner college.

8. Since lack of teachers was the only substantial reason for denial of full intake capacity of 100 students, for the above stated reasons, the impugned order deserves to be and is hereby quashed. The petitioner college is permitted to join counseling for admitting 100 students in the BAMS (UG) course for the academic session 2018-19. The concerned State authorities shall allow the petitioner college/society to participate in the counseling which is scheduled to be held tomorrow i.e. 15.11.2018.

9. The Writ Petition is accordingly allowed.

CC today.

Sd/-
Judge
(Prashant Kumar Mishra)