

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**904 WRIT PETITION NO.10007 OF 2016
WITH CA/4234/2018 IN WP/10007/2016**

SHIVA TRUTS YASHWANTRAO CHAVAN AYURVEDIC MEDICAL
COLLEGE AND HOSPITAL THROUGH ITS CHAIRMAN

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. V. D. Hon, Senior Advocate h/f Mr. Ashwin Hon,
Advocate for the Petitioner.

Mr. S. B. Joshi, AGP for Respondent-State.

Mr. Mrigesh D. Narwadkar, Advocate for the
Respondent No.2.

...

**CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.**

DATED : 11th DECEMBER, 2018.

PER COURT:-

1. The petitioner assails the decision of the respondents imposing the penalty of Rs.50,000/- per student on the students admitted from MH-CET.

2. Mr. Hon, learned senior counsel submits that the petitioner was granted permission to open and run B.A.M.S. Course by the Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (AYUSH) on 16.09.2015. Thereafter, the resolution was issued by the Government of Maharashtra on 21.10.2015. The petitioner applied to the Maharashtra University of Health Sciences,

Nashik for affiliation and got the affiliation on 26.10.2015. The cut off date for admission to B.A.M.S. course was 31.10.2015. The petitioner admitted students on the basis of their performance in CET. The petitioner admitted 71 candidates from Associate CET and remaining candidates from MH-CET.

3. The learned counsel submits that abruptly the petitioner received the order from the respondent suggesting that those students admitted from the MH-CET could not have been admitted and is against the Rules and penalty of Rs.50,000/- per student was imposed. The same is without affording an opportunity to the petitioner. An unilateral decision has been taken. The learned senior counsel refers to the Regulation 9 of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015. According to the learned senior counsel the said order is too harsh. The petitioner-Institution is entitled to admit 15% students at the institution level. The said aspect is also not considered by the respondents.

4. Mr. Narwadkar, learned counsel for the respondent submits that the petitioner had accepted students from the Associate CET. They were required to fill in all the candidates from the Associate CET. However, the institution at its own level filled in the remaining posts from MH-CET.

The same is not permissible. The learned counsel submits that upon the information received from AYUSH, the enquiry is made and the penalty of Rs.50,000/- per student is rightly imposed. The learned counsel further submits that even at institution level the admissions have to be on the basis of merit in CET. The learned counsel refers to Section 4 of the Regulation.

5. It is not disputed that before imposing the penalty of Rs.50,000/- per student, the petitioner was not given any notice nor was heard. That 15% seats are to be filled in at institution level. The petitioner had filled in 71 seats on the basis of merits from amongst the candidates from Associate CET and remaining candidates were filled in from the students passing MH-CET. The petitioner was granted affiliation on 26.10.2015. The last date for admission was 31.10.2018. The first and second rounds were already over. There is absolutely nothing on record to suggest, as to any order passed by the Authority giving permission to the petitioner to fill in the seats either from Associate CET or MH-CET.

6. The petitioner could have explained about the manner the seats have been filled in. The seats are filled in of the students from Associate CET and MH-CET. According to the petitioner the students from Associate CET were exhausted and that

is why the remaining students from MH-CET were filled in. The said aspect is required to be gone into and considered by the authority as per Regulation 9 of the of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015.

7. As the petitioner was not afforded any opportunity of hearing, we direct the respondent to reconsider their decision after hearing the petitioner. The respondent no.2 shall communicate the date of hearing to the petitioner and thereafter, take decision on its own merits. While taking decision afresh, the impugned order would not be an impediment and the said decision be taken on its own merits. The respondent no.2 shall take decision afresh on or before three (03) months from today. The amount which is deposited by the petitioner shall remain in the fixed deposit and shall be returned to the parties commensurate with the decision taken by the respondent no.2.

8. Writ Petition accordingly disposed of. No costs.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE