

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10136 OF 2018

Rani Jankibaisaheb Vaidyakiya Sanstha and Ors. ... Petitioners

Vs.

Maharashtra University of Health Sciences
through its Registrar and Ors. ... Respondents

Mr.Susheel Mahadeshwar i/b Ranjana Todankar for the Petitioners.

Mrs.S.D.Vyas, "B" Panel Counsel for State-Respondent No.3.

Mr.R.V. Govilkar for Respondent No.1.

Mr.Ajinkya J. Jaibhave for Union of India-Respondent No.2

**CORAM : S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

THURSDAY, 29TH NOVEMBER, 2018

P.C. :

1 By this Writ Petition, the petitioners are seeking to quash and set aside a communication, copy of which is at Exhibit P to the Writ Petition.

2 It is necessary to set out the facts so as to appreciate the contentions of the contesting respondent No.1 canvassed by Mr.Govilkar.

3 Petitioner No.1 is a Public Trust running and managing petitioner No.2-College and petitioner No.3 claims to be a student.

4 There is an undergraduate course in Ayurveda Science, which leads to a degree known as Bachelor of Ayurveda Medicine and Surgery (B.A.M.S.). That is to be conferred in terms of the Statute in the field and under that Statute, it is the Central Government through the Department of Ayurvedic Medicines, Yoga and Naturopathy, Unani and other Medical Sciences such as Homeopathy, which consolidates the matters of grant of permission to institution like petitioner No.2, to admit the students and one of the conditions is that if the students are seeking admission to the college like petitioner No.2, it must be affiliated to the first respondent-University.

5 Petitioner No.3 was admitted to the second petitioner-College for this Bachelor course for the Academic year 2009-2010 and he passed the final examination for this course in March, 2017.

6 The second respondent is the Union of India and it grants the permission for admitting students.

7 On 10th August, 2009, the second respondent refused permission to petitioner No.2-College for admitting the students to this Degree Course for the Academic Year 2009-2010. Thereupon, petitioner Nos.1 and 2 challenged this order by filing Civil Writ Petition No.7903 of 2009 in this Court. On that Writ Petition, the following order came to be passed:-

“1. *Heard. Rule.*

2. *The affidavit of the Respondent No.2 discloses that the norms have already been relaxed. Considering the case of the Petitioners in the light of the relaxed norms and the earlier reports of inspections which have been done by the Respondent No.2 and taking into consideration the fact that the Petitioners are running the college since 1984, we find that the petitioners are entitled to get interim relief in terms of prayer clause (c) which is as under :-*

“Pending the hearing and final disposal of this petition, the Hon'ble Court may be pleased to stay the impugned order dated 10.08.2009 and direct the Respondents to permit the Petitioner No.2 to admit students for the B.A.M.S. Course in the academic year 2009-2010.”

Shri S B Shetye the learned counsel appearing for the Respondent No.1 waives service on behalf of the said Respondent. Shri Ajay Basudkar, the learned counsel appearing of the Respondent No.2 waives service on behalf of the said Respondent so also, Shri A B Vagyani, the learned AGP appearing for the Respondent No.4 waives service on behalf of the said Respondent.”

8 After that order was passed, the Management continued with the 40 students. It is but natural that during the pendency of that Petition, on clearing the examination, the students advanced to the

second, third and eventually to final year of this Bachelor Degree Course. It is true that one of the beneficiary student was petitioner No.3. All the students and as admitted by the second petitioner, by virtue of this interim order, were allowed to join classes, appear at the examinations and obtain degrees so also related documents.

9 It is evident that barring the petitioner No.3 in this Petition, all other students admitted for that Academic Year 2009-2010, completed their five and half years course, including one year of compulsory internship in May 2015. The university granted to them all the certificates, including the Passing Certificate and Internship Completion Certificate. The University also issued to the students, the Degree Certificates.

10 The petitioner No.2-College addressed a letter dated 25th May, 2015 to the University requesting the University to return the original certificates of the students as the same were necessary to secure admission to post graduate courses. The University then took a stand that since final orders are not passed in the Civil Writ Petition No.7903 of 2009 and the admissions are not treated as regular or legal and authorised, it will not be possible to return the original certificates.

11 The Management took up the cause of such students and filed Writ Petition No.8424 of 2015 and this Court passed the following order on 4th September, 2015 in that Writ Petition, copy of which is at Exhibit F.

“ This Court while admitting Writ Petition No.7903 of 2009 stayed the impugned order dated 10 August 2009 and directed the Respondents to permit Petitioner No.2 to admit the students for the B.A.M.S. Course for the academic year 2009-10.

2. The Petitioners have filed the present Petition for restricted reliefs, as the Respondents though issued the Degree of B.A.M.S. to the respective students on 22 May 2015, but not yet returned the original certificates of the students (Exh.B). Therefore, in the interest of justice and in view of the averments so made in the Petition and specifically in para 15, we see a case is made out by the Petitioners for the interim relief in terms of prayer clause (b). We are inclined to grant this prayer clause also for the reason that the students should not suffer because of pendency of this Petition and as some of them wants to seek admission for Post Graduate Courses. The University having conferred a Degree in question, in our view, ought not to have retained those documents which are necessary for the future career of the students.

3. It is made clear that this order is subject to further order of this Court. Respondents waive service. Respondent No.2 to file Affidavit within four weeks.

4. Stand over to 1 October 2015 for final disposal. To be heard with Writ Petition No.7903 of 2009.

Parties to act on an ordinary copy of this order duly authenticated by the Registry.”

It is pursuant to this order that the University returned the original certificates.

12 In this present Writ Petition, the third petitioner, who passed the final examination of the Degree Course in the year December 2016, was issued the Mark Sheet and Final Passing Certificate on 2nd March, 2017. He was also issued the Provisional Registration Certificate on 9th March, 2017 by the Maharashtra Council of Indian Medicine.

13 Petitioner No.3 thereafter completed his one year Internship and placed the completion proof before the University and requested, through the Management, to issue the Internship Completion Certificate.

14 By the impugned communication, copy of which is at Exhibit P, the University informed the second petitioner as under :-

MAHARASHTRA UNIVERSITY OF HEALTH SCIENCES, NASHIK
Dindori Road, Mhasrul, Nashik – 422004
Tel : (0253) 2539237-38

.....
Dr.Kalidas D. Chavan
M.B.B.S.M.D. (Forensic Medicine) Registrar
.....

No.MUSH/L & G/wp-7903-09-8424-15/231/2018 Date 12 July, 2018
To,
The Principal
R.J.V. Bhaisaheb Sawant Ayurved Mahavidyalaya,
Sutikargriha Parisar, Khaskiwada,
Sawantwadi, Sindhudurg – 416 510

Subject : WP No.7903/2009 & WP No.8424/2015 filed by Rani Janibaisaheb Vaidyakiya Sanstha & Anr.

Reference : 1) Interim order dated 06/10/2009 passed in WP No.7903/2009
2) Interim order dated 04/09/2015 passed in WP No.8424/2015
3) Final Joint order dated 14/11/2017 passed in WP No.7903/2009 & 8424/2015

Sir,

- 1) With reference to the above mentioned subject and context, this is to inform you that, your college had not been granted necessary permission by the GOI (AYUSH) for admission of students in the AY 2009-10 due to certain discrepancies as communicated by them vide letter dated 10/08/2009.*
- 2) The impugned order was challenged by you vide WP No.7909/2009 and based on the interim order passed on 06/09/2009 the students were admitted subject to final disposal of the WP later a new WP (8424/2015) was filed by you for releasing of original documents of the students which were deposited alongwith the eligibility registration proposal. The Hon'ble Court had passed interim order dated 04/09/2015 granting relief as per you prayer clause (b) made in the said WP subject to final disposal of the WP.*
- 3) Finally, on submission of your plea through your counsel regarding rendering of the said WPs as infructuous the Hon'ble Court had disposed it of vide order dated 06/11/2017.*
- 4) In view of the disposal of both the WPs being infructuous the interim order passed in these WPs automatically vacate since in final order your WPs have not been allowed in your favour by the Hon'ble Court on merits. However, later during the pendency of the said WPs if the GOI (AYUSH) has granted necessary permission to your college for the AY 2009-10 then only the sanctity of the admission and prosecution of studies done by the concerned students enjoying the interim relief granted as above remains intact.*

5) *Therefore, you are requested to forward you
reply/clarification in this regard at the earliest.”*

Yours,

*(Dr.Kalidas D. Chavan)
Registrar”*

15 Thereupon, this third Writ Petition, jointly by the
Management and the petitioner No.3.

16 The only contention raised before us by Mr.Govilkar
appearing on behalf of the first respondent is that the University
throughout abided by the orders and directions of this Court, may be
interim in nature. However, the University was advised to issue the
impugned communication and that was issued, not because the
University holds anything against the petitioner No.3, much less it is
biased and prejudiced, but on its understanding of the legal position.
The legal position is that the Civil Writ Petition No.7903 of 2009 as also
the subsequent Civil Writ Petition No.8424 of 2015 came to be disposed
of as infructuous. Relying upon that order of this Court, copy of which
is at Exhibit Q, page 38 of the paper-book, Mr.Govilkar would submit
that there is no adjudication till date on the controversy as to whether
the petitioner No.3 was admitted together with others to the First Year

of this Degree Course legally and in an authorised manner. That, the objections of the Central Government and particularly, the Ministry raised through Department in-charge of Ayurvedic Medicine have been complied with or do not survive is not adjudicated, much less finally decided by this Court. In that event, the University assumes that if interim orders came to an end on disposal of the Writ Petitions as infructuous. Thereupon, they do not survive. Once they do not survive, the Internship Completion Certificate cannot be demanded as a matter of right, either by the Management or by the student.

17 On the other hand, Shri Mahadeshwar appearing on behalf of the petitioners would submit that the petitioners are challenging the communication dated 10th August, 2009. That communication has not been upheld by this Court nor is it set aside. Yet, the subsequent developments denote that the Central Government and the University accepted and assumed that the admissions are regular and legal. That, for the second year, no objection was raised and that is how the students were allowed to complete the Degree Course, obtain their Mark Sheets, Passing Certificates and Degree Certificates, then, on this understanding of the Management and the students being brought to

the notice of the Court, this Court dismissed the Writ Petitions as infructuous or disposed them of in that manner. This does not mean that the University can derive any benefit nor can it prevent the students from obtaining the Internship Completion Certificate in law. The Management also cannot be prevented from seeking such a certificate on behalf of the student. Hence, we should not take countenance the objections raised by Shri Govilkar.

18 We have, with the assistance of both advocates, carefully perused the Writ Petition and all the annexures thereto. The impugned communication, copy of which is at Exhibit P, clearly follows what the University has been throughout maintaining and that it cannot presume that the admissions were regular and authorised for they have not heard anything from the Central Government in that behalf. It is the Central Government, which is the competent authority to permit the admissions of the students and that has not withdrawn its earlier communication dated 10th August, 2009. The University could not have presumed that because the Central Government allowed the second year examination to be taken, that it has given up its insistence in terms of the communication dated 10th August, 2009. The University was

placed in a peculiar position and, on legal advice, allowed the students to obtain the Certificates and particularly, because the Writ Petition No.7903 of 2009 was pending in this Court. Once that and the subsequent Writ Petition No.8424 of 2015 has been disposed of as infructuous, it is evident that the University presumed that the interim orders do not survive any longer. Therefore, the benefit thereof should not be extended to the students and the Management. That is how on 12th July, 2018, it issued this Communication.

19 Now, even if the Petitions are disposed of as infructuous by this Court by an order of 6th November, 2017, copy of which is at page 38 of the paper-book, will not alter the settled legal position. The settled legal position being that an interim order is in the aid of the final relief. It is but an assistance to obtain the final relief and to which, the litigant may be *prima facie* entitled, that such interim orders are granted. They are passed on tentative and *prima facie* opinion and observations, coupled with other considerations such as balance of convenience and irreparable loss and injury. The litigant runs a risk if he either voluntary withdraws the Writ Petition or allows the Court to dispose of the litigation and in this case the Civil Writ Petitions, without

adjudication on merits. Then, he cannot turn around and blame the statutory authorities for they have proceeded on the above legal understanding. In the event, the interim order is to survive the disposal of the main matter, then, the order disposing of the main matter should specifically say so. This position is not akin to a Writ Petition being disposed of for want of prosecution or dismissed in default. Then, the subsequent revival would revive the interim order unless directed otherwise, but in cases of the present nature, once the adjudication on merits is either prevented by the petitioners or is not sought, then, they must entirely blame themselves. Once we have this settled position on record, we cannot fault the University for its understanding of the position emerging from the disposal of both the Writ Petitions as infructuous.

20 However, we find that all the students, except petitioner No.3 and admitted in terms of the order passed by this Court have cleared their examinations, obtained the Mark Sheets and Degree Certificates. Some of them have also obtained Internship Completion Certificate from the University. Now the University cannot withhold such a certificate only to the petitioner No.3. Merely because petitioner

No.3 joined hands with the Management or filed a joint Petition earlier should not visit him with such drastic consequences, much less amounting to holding that he acted in collusion or that he was party to the fraud allegedly committed. We have no such material on record presently. Hence, we dispose of this Writ Petition, but subject to the following conditions :-

- a) Internship Completion Certificate and the Degree Certificate shall be returned to petitioner No.3 through petitioner No.2-Management;
- b) This direction is issued subject to the revival of Civil Writ Petition Nos.8424 of 2015 and 7903 of 2009 and their restoration to the file of this Court and subject to the final outcome of the proceedings in the event they are revived;
- c) In the event, such proceedings are not revived, then, all consequences in law should follow and no equities can be claimed by the students who have been admitted for the Academic Year 2009-2010 and merely because they have been allowed to continue their studies, take examination and have

cleared them;

d) In the event, there is any statute in the field enabling recalling or setting aside their admissions, then, the statutory provision can be invoked by the competent authorities and in the event the Civil Writ Petitions are not restored, such invocation can be initiated and the proceedings in that behalf be concluded on their own merits and in accordance with law;

e) In the event, the proceedings are revived to the file of this Court, then, this order shall abide by the final outcome of those Civil Writ Petitions;

f) Let the Internship Completion Certificate as also the Degree Certificate in terms of these directions be issued on or before 3rd December, 2018.

[SMT. BHARATI H. DANGRE]

[S.C. DHARMADHIKARI, J.]