

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5238 OF 2018

Sai Homeopathic Medical College and
Nityanand Hospital and ors .. Petitioners
Versus
Admission Regulatory Authority
and others .. Respondents

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Ms. Pooja V. Thorat with Mr.Anukul B. Seth for the petitioners.
Mr.Sameer P. Khedekar for respondent no.1.
Mr.R.V.Govilkar with Mr.Mihir R.Govilkar for respondent no.2.
Mr.S.B. Kalel, AGP for the State.

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

DATED : 28th JUNE 2018

P.C:-

1 By this writ petition under Article 226 of the Constitution of India, the petitioners seek quashing and setting aside of the communications/orders dated 4th May 2017 and 22nd February 2018 and all decisions pursuant thereto. Prayer clauses (a), (b) and (c) at page 12 read as under :

- (a) call for the relevant records and proceeding from the office of the Respondent authorities and after going into the legality of the same quash and set aside the decisions dated 04.05.2017 and 22.02.2018 taken by the respondent no.1 and for that purpose issue appropriate writ and/or order.
- (b) direct the Respondent No.1 to forthwith grant approval to the admission of Petitioner Nos.2 to 8.
- (c) hold and declare that the Petitioners are entitled for similar relief and permission dated 23.12.2016 & 26.12.2016 as given to other 2 colleges for the purposes of filling vacancies at the college level.

2 The background facts are that the petitioner no.1 before us is an institution which is imparting education to students in courses of homeopathic medicine. It is thus a Homeopathic Medical college and has an attached hospital. The petitioner nos.2 to 8 are all adults and students who have been admitted by the petitioner no.1 to its institution/college. They are all Indian citizens. An admission Regulatory authority has been set up and that is respondent no.1. Respondent no.2 is the Maharashtra University of Health Sciences, Nasik and the third respondent is the Directorate of Ayurvedic Unani Siddh and Homeopathic Medicine, Maharashtra State. Then, there is

a State Common Entrance Test Cell and the 4th respondent is the Competent authority of the same.

3 Undisputedly, the first petitioner was established and as claimed, started in the year 2006-07 with intake capacity of 50 students. Out of this in-take capacity, 85% seats are carved out for being filled-in by the Government and 15% is the management quota. This is allowed to be filled-in at the college level. However, the petitioner themselves say that this petition does not concern the 15% management quota, but the 85% seats which are strictly to be filled in at the Government level. It is stated that yearly permission is required to be obtained by every college from Central Government and only then, the college is included in the centralized process for admission by the respective State. For the Academic year 2016-17, the first petitioner college was granted permission by the Central Government on 21st November 2016. Till then, the centralized process of admission with respect to other colleges had already commenced. At least two rounds of admission of other colleges were over. Despite the petitioner's delayed

permission, the first petitioner was included for admission in the process for filling up the first year Bachelors of Homeopathic Medicine course. Thus, the Homeopathic Medical Sciences Bachelors course could have been commenced by seeking admission to the first year of this college.

4 The rounds of admission concluded and the fourth respondent Common Entrance Test Cell allotted 42 students to the petitioner no.1 college. 40 out of them only reported. The absence of two students was reported to the State CET Cell by the petitioner no.1. Though 40 students reported to the college at initial stage, only 36 took actual admission by paying the fees. In all, six seats remained vacant. Though the time to report was extended till 24th December 2016, and which fact was reported to the authorities, still these seats remained vacant. One amongst the admitted students withdrew his admission later on, and therefore, 7 seats in all were vacant and for the first year of the concerned Bachelors Degree Course.

5 The petitioner may have sent communications, copies of which are annexed to the petition including Exhibit-B, but the fact remains that the first petitioner college was neither allotted any student by the Government or the Directorate nor the petitioners were allowed to admit students at the college level. The only argument of the petitioner was and even today is, that some two other colleges were allowed to admit students at their level and the admissions of such students were regularized. Though the first petitioner admitted the meritorious students and from the Common Admission process merit list, still, as far as their admissions were concerned, the first respondent communicated to them the impugned decision that these admissions cannot be regularized or held to be valid.

6 These communications are under challenge. Pertinently, it is not the grievance of the petitioners before us that the authorities in charge of approving these admissions or regularizing them did not comply with the principles of natural justice or did not take into account the version of the concerned college.

7 The only argument and very seriously canvassed is that some other colleges who admitted the students at their level against these vacant seats, were not proceeded against nor the students suffered. However, only in the case of petitioner no.1 college, the students have been singled out for an adverse treatment, meaning thereby their admissions have not been approved and regularized. Resultantly, they would suffer and even the college now is in danger of not being allowed to admit students for the current academic year. Such being the adverse or civil consequences, we must interfere and issue appropriate directions so that on par with other colleges, even the petitioner no.1 can have the admissions of petitioner nos.2 to 8 regularized. Thereafter, they can pursue their studies, appear at the examination and obtain the degree.

8 We are unable to agree with Ms. Thorat for more than one reason. With her assistance, we have perused the writ petition and all the annexures thereto. The petitioner is not disputing that the rules contemplate that no vacant seat can be

filled in unless permission of the Competent Authority and the Directorate is sought. At the college level, no admission can be made without such permission. Even if permissions are not obtained initially, later on, it is entirely for these authorities to grant the permission or approval to such admissions. In the case of petitioner no.1, the reasons assigned are the students have been admitted without permission of the Common Entrance Test Cell and the 3rd respondent "Directorate of Ayush". If that is so, the decisions of the Academic Body and taken by experts cannot be said to be either vitiated by non application of mind or perversity. It is challenged as being arbitrary and discriminatory. That is on the basis that in the case of some other colleges, though they proceeded to grant admission at their level and fill in the vacant seats, neither any punitive action was taken nor the approval was withheld. Being similarly placed, the petitioners could not have been therefore, subjected to a different treatment.

9 Even insofar as this argument is concerned, it is too well settled that the foundation for such an argument lies in the

basic tenet that every State action has to be fair, reasonable, just non-arbitrary and non-discriminatory. It must conform with the mandate of Article 14 of the Constitution of India. It is only when there is equality that this mandate is complied with is the argument. However, this argument as is canvassed before us, overlooks the fact that if a wrong is committed, then that cannot be perpetuated by seeking a writ from a constitutional court and exercising powers under Article 226 of the Constitution of India. Two wrongs do not make one right. That is not equality. Equality has a positive element in it. Equality is not perpetuation of a wrong or illegality. The reasons assigned in the impugned communication are very valid and relevant. If, at the last moment, these admissions had been approved, then, there are other institutions who would have suffered. Ms. Thorat would give instances of 2 – 3 colleges and say that they were favoured, but there other colleges and excluding these means they would have suffered immensely and therefore, the wrong was not allowed to be continued.

10 We do not think that the academic authorities acted perversely, much less arbitrarily or malafide in issuing the impugned communication. We do not find any merit in the petitioner's submission. Consequently, writ petition is dismissed. No costs.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)