

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23399 of 2019

Swami Raghwendracharya Tridandi Ayurved Mahavidyalaya Evam Chikitsalaya Karjara, Gaya, through its Principal Dr. Bashisth Pandey, aged about 66 years, Male, Son of Late Ram Pravesh Pandey, R/o Jeevak Bhawan, Dandi Bagh, P.S. Chandchoura Vishnupad, District- Gaya.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Ayurved, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH), Ayush Bhawan, B Block, GPO Complex, INA, New Delhi.
2. The Under Secretary, Ministry of Ayurved, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH), Ayush Bhawan, B Block, GPO Complex, INA, New Delhi.
3. The Central Council of Indian Medicine through its Secretary, 61-65 Industrial Area, opp. D Block Janakpuri, New Delhi.
4. The President, Central Council of Indian Medicine, 61-65 Industrial Area, opp. D Block Janakpuri, New Delhi.
5. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna.
6. The Special Secretary, Health Department, Govt. of Bihar, Patna.
7. The Bihar Combined Entrance Competitive Examination Board (BCECEB), IAS Association Building, Near Patna Airport through its Secretary.
8. The Officer on Special Duty, Bihar Combined Entrance Competitive Examination Board (BCECEB), IAS Association Building, Near Patna Airport, Patna.
9. B.R.A Bihar University, Muzaffarpur through the Registrar.
10. The Registrar, B.R.A Bihar University, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate. Mr. Ranjeet Kumar Pandey, Advocate
For the State	:	Mr. Ramadhar Singh, G.P. 25
For the Union of India	:	Mr. S.D. Sanjay, Additional Solicitor General Mr. Satyavrat Verma, Advocate.
For the University	:	Mr. Zaki Haider, Advocate.
For BCECEB	:	Mr. Prasoon Sinha, Advocate.
For the Respondent/s3 & 4:	:	Mr. Janardan Pd. Singh, Sr. Advocate. Mr. Dipak Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 18-12-2019



Heard learned counsel for the parties.

2. This writ application has been heard on priority basis keeping in mind the urgency which the controversy involved in the writ application, deserved. The matter has been taken up today at 4:00 p.m. because of exceptional situation which has occurred, admittedly, for no fault or laches on the part of the petitioner.

3. The facts of the case which are not at all in dispute are being taken note of first before coming to the reliefs which the petitioner is seeking. This writ application has been filed by the Swami Raghwendracharya Tridandi Ayurved Mahavidyalaya Evam Chikitsalaya, Karjara, Gaya, through its Principal.

4. The college has been granted conditional permission to admit students against 40 seats in under graduate Bachelor of Ayurvedic Medicine and Surgery [hereinafter referred to as UG (BAMS)] Course for the academic Session 2019-20 under Section 13A/13C of the Indian Medicines Central Council Act, 1970, vide letter dated 23.07.2019, issued by the Ministry of AYUSH, Government of India. This is an undisputed fact that an intimation to the effect was made by the College to the State of Bihar and Bihar Combined Entrance Competitive Examination Board (hereinafter referred to as "BCECEB"). It is noted at this stage itself that BCECEB is a Board which conducts counseling on



behalf of the State of Bihar for admission to the course in question in various Colleges in the State of Bihar i.e. Colleges managed and maintained by the State Government and privately managed Colleges. The College in question is privately managed institution.

5. It appears that the State Government of Bihar had asked BCECEB to conduct counseling for admission to the course in question but no such request was made in respect of two of the privately managed Colleges including the petitioner-College.

6. This is to be noted that the Ministry of AYUSH, Government of India, had fixed 15.10.2019 as the last date/cut-off date for admission in P.G. and UG Courses in ASU & H College through a communication dated 30.09.2019 and sent the same to the State Governments. It was because the name of the petitioner was not communicated by the State Government to the BCECEB for counseling, no counseling was held for admission against the aforesaid 40 seats, despite conditional permission granted by the Union of India in favour of the College in question. The last/cut-off date of 15.10.2019 thus expired. The petitioner, it must be noticed, did approach the Special Secretary/Director, Health Department, Government of Bihar, for conducting counseling for admission in the course, in question, in the College. It is also the petitioner's case that in July, 2019 a request was made to the



Special Secretary, Health Department, Government of Bihar, for holding counseling. It transpires that the Health Department, Government of Bihar, through letter dated 18.10.2019 addressed to the Officer on Special Duty, BCECEB had made a request for holding counseling for admission in the course in question in two Colleges namely, the present College and one Dayanand Ayurvedic Medical College and Hospital, Siwan. It appears that the State Government subsequently realized that the cut-off date for admission as prescribed by the Ministry of AYUSH, Government of India, had already crossed and, therefore, by letter dated 28.10.2019 addressed to the Ministry of AYUSH, Government of India, made a request for extension of time for counseling/admission. Admittedly, no action was taken on the request. Since the College could not admit students because of apparent mistake/delay on the part of the respondents and also that the authorities were not taking any final decision, this writ application came to be filed on 26.11.2019.

7. Considering again the urgency of the matter, this application was taken up by this Court on 28.11.2018 and was directed to be listed on 12.12.2019 for the respondents to file counter affidavit for expeditious disposal of the case. The order dated 28.11.2018 reads thus:

“Heard learned counsel for the parties.



2. List this case under the heading “To Be Mentioned” on 12.12.2019 for the respondents to file counter affidavit and this Court to consider expeditious disposal of the case, keeping in mind the urgency of the matter, as it relates to admission to a course.”

8. The matter was subsequently taken up on 13.12.2019 when the Court passed following order:-

“The matter is urgent as it relates to admission in a professional course. For admission to the course in question (BAMS) in the College, a counseling was required to be conducted by the Bihar Combined Entrance Competitive Examination Board (BCECEB).

It is the petitioner’s case that the institution in question has the permission from the Government of India to admit students, which fact is within the knowledge of the State of Bihar. It has transpired from the submission advanced on behalf of the BCECEB that counseling for admission to the institution in question could not be held by the BCECEB because it was not having the name of this institution, in the list of institutions furnished by the State Government of Bihar, for the purpose of counseling.

If what has been stated in the writ application is treated to be correct and the submission advanced on behalf of the BCECEB is to be accepted, apparently, it was because of the failure on the part of the State of Bihar that the desired counseling for admission could not be held. In the meanwhile, last date for admission in said professional course, i.e., 15.10.2019, has expired. It has been argued on behalf of the petitioner that in past the Central Government has extended the last date of



admission in appropriate cases till 31st December of the respective year. It also appears that now the State of Bihar has written to the Central Government for extension of date of admission. Reference may be made in this regard to Annexure-8 of the writ application, whereby State of Bihar, in the facts and circumstances of the present case, has requested the Government of India to extend the last date of admission. Since, till date, the last date of admission has not been extended despite a request made by the Health Department, Government of Bihar; the BCECEB is not able to hold the counseling and the institution is not in a position to allow admission to the said professional course despite permission for admission, as statutorily prescribed under the Act/Regulation, is available in favour of the petitioner.

List this case on 16.12.2019 under the same heading, by which date, counter affidavits must be filed on behalf of the State of Bihar and the BCECEB. The Court would expect the learned Additional Solicitor General for India also to seek instructions in the meanwhile from the Ministry concerned as the Court has formed a, prima facie, opinion that for no laches on the part of the petitioner institution, the institution is being made to suffer.

List this case on 16.12.2019 under the same heading, to be taken up at 10:30 AM”.

9. The counter affidavit was filed on behalf of the BCECEB on 16.12.2019. Since it was becoming impossible for this Court to effectively decide the matter in the absence of any



counter affidavit on behalf of the Ministry of AYUSH, and since according to the State of Bihar they were not getting any response from the Union of India, the Court had required personal presence of the Special Secretary, Health Department, Government of Bihar. Keeping in mind the fact that the controversy related to admission to a professional course for which a cut-off date has been prescribed and not being extended by the Ministry of AYUSH, despite request made by the State of Bihar, the Court asked the Special Secretary, Health, Government of Bihar, to inform the Court, after obtaining necessary information from the Ministry of AYUSH, Government of India, as to whether any decision has been taken or likely to be taken for extension of the cut-off date for admission.

10. When the matter was taken up at 4:00 p.m. on 17.12.2019, the Special Secretary, Health Department, Government of Bihar, informed this Court about receipt of a communication through email dated 17.12.2019 received at 2:32 p.m. A copy of the said communication was furnished by the Secretary to this Court, the contents of which, are as follows:-

“Dear Sir,

*Swami Raghawendracharya Tridandi
Ayurvedic Mahavidyalaya Evum Chikitsalaya Gaya Bihar
was granted permission for taking admission in BAMS
Course for session 2019-20 on 24.07.2019.*



Cut off date for admission for session 2019-20 was extended upto 15.10.2019. There was sufficient time available to conduct counseling and take admission.

The admission in most of the States has been completed and further extension of date will affect and cause delay in the ongoing session. Accordingly the Ministry is not in a position to further extend the cut off date of admission.

Regards”.

11. As can be easily noticed, the Government of India, through said communication dated 17.12.2019 informed the State Government that the Ministry was not in a position to further extend the cut-off date of admission.

12. Today a counter affidavit has been filed on behalf of the Union of India, in which, reliance has been placed on Supreme Court decisions to justify the decision of the Ministry of AYUSH for declining the State Government's request to extend the cut-off date. It has been stated in the counter affidavit that since the University could not fill in the vacant seats by NEET qualified students even after the extension of cut off date, there is no point in extending it date any further. It has also been stated that fixation of cut-off date by the Ministry is a policy decision that any deviation for any State would generate law of litigation in different States, as various State institutions are demanding extension of



date. In such circumstance, it was not even visible by the Ministry of AYUSH to make any change/deviation in its policy decision by extending date of counseling/admission.

“That it is submitted that since the universities could not fill in the vacant seats by NEET qualified students even after the extension of cut-off date, there is no point in extending the cut-off date any further”.

13. It further appears that 15.10.2012 which was the cut-off date fixed, was not the extended cut-off date, and the cut-off date at no point of time was extended for admission to UG(BAMS).

14. It would be apt to take note of the supplementary affidavit filed on behalf of the State of Bihar on 17.12.2019 along with which Annexure-D, has been brought on record, which is a communication dated 25.11.2019, addressed to the Ministry of AYUSH, Government of India, again making a request to extend the date of counseling because the State of Bihar had to suffer a lot because of unprecedented floods.

15. In the counter affidavit filed on behalf of the BCECEB, it has been stated that letters dated 13.10.2019 and 22.10.2019 were sent to the Department of Health, Government of Bihar, mentioning therein inter alia that counseling for admission in BAMS and BUMS could not be done within the period



stipulated by the Ministry of AYUSH, Government of India as neither the list of private institutions of Ayurvedic and Unani courses were furnished nor list of allotment of seats to the institutions was made available to the BCECEB by the Health Department, Government of Bihar. The BCECEB had also made a request to the Health Department, Government of Bihar, to get the date of counseling extended by the Ministry of AYUSH, Union of India, as the private institutions, who were allotted seats for their institutions by the Ministry of AYUSH, Government of India have been approaching the BCECEB for conducting the counseling for admission of the candidates against the seats allotted to the private institutions. The subsequent developments relating to request made by the State Government to the Government of India have already been taken note of.

16. Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioner has submitted that the Ministry of AYUSH has extended cut-off date for admission on various occasions and recently, the cut-off date has been extended for admission in case of Dr. R.B. Singh Gaya Homeopathic Medical College and Hospital, Amwan, Bodh Gaya, through letter dated 02.12.2019, a copy of which, has been brought on record by way of Annexure-11 to a supplementary affidavit filed on behalf of the petitioner. He



has also drawn my attention to earlier decisions of the Ministry of AYUSH where the cut-off dates for admission were extended up to 31st December of the concerned year. He has submitted that the College, if allowed to admit students, will make extra efforts to overcome the shortfall of training/education to the students caused by their delayed admission.

17. Mr. S.D. Sanjay, learned Additional Solicitor General for India assisted by Mr. Satyavrat Verma, learned Central Government Counsel, has submitted, reiterating the stand taken in the counter affidavit that uniform cut-off date has been prescribed for admission throughout the country and, therefore, in order to avoid chaos which might have been created if the cut-off date was to be extended, the Ministry of AYUSH has decided not to extend the said date.

18. Mr. Prasoon Sinha, learned counsel for the BCECEB has submitted that the BCECEB was unable to hold counseling of the Colleges in question because of the lack of information, which not at all in dispute. He has contended that there has been no laches on the parts of BCECEB in holding counseling for the admission in course in Private Colleges.

19. Learned counsel appearing on behalf of the State of Bihar has very fairly submitted that it was out of sheer mistake



possibly because the State Administration was facing a situation of turmoil because of flood situation in the State of Bihar due to which necessary communications could not be made to BCECEB for holding counseling for admission in the two Private Colleges in the State of Bihar. He has submitted that the State of Bihar shall abide by any direction which may be issued by this Court in the present matter.

20. After having noticed the facts which are not at all in dispute as has been mentioned hereinabove, I do not have any hesitation in reaching a definite conclusion that there has been no fault or laches on the part of the petitioner-institution, because of which, the counseling could not be held for admission in the College against 40 seats, conditional permission in respect of which, was granted by the Ministry of AYUSH. It appears, the State Government of Bihar, realized its mistake but only after the cut-off date of 15.10.2019 was over. After having realized the mistake, the State Government of Bihar, approached rather beseeched the Government of India to extend the cut-off date in peculiar and exceptional circumstance of the case. The request which was being made by the State of Bihar to the Ministry of AYUSH through the communication dated 28.11.2019 for extension of date of admission was not an ordinary request but a



request of one constitutional body that is State of Bihar to the Government of India, to correct a conference of mistake by the State Government Department. The Ministry of AYUSH treated the request too lightly by just completely ignoring it, unmindful of the nuances of federal structure of our system. There has been abject failure on the part of Ministry of AYUSH in giving due response to the communication made by the State Government which they deserved either by asking the Government of Bihar to wait or refusing to extend the cut-off date of admission by clear communication. I have no hesitation in recording my definite opinion that it was only after the Special Secretary, Government of Bihar, was forced by this Court to communicate with the Ministry of AYUSH, Government of India, and seek information as to whether the Government of India was intending to extend the cut-off date or not, the Government of India, through email dated 17.12.2019 intimated to the Special Secretary, Government of India, that the said cut-off date could not be extended.

21. The Court does not approve the way, the Ministry of AYUSH has refused to respond to the request of the State Government of Bihar, to consider the request for date of extension of cut-off date made in special facts and circumstances existing in



the State of Bihar and particularly, in the present case. There was not fault at all on the part of the petitioner-college.

22. There is no denial that the Ministry of AYUSH has extended dates for admission to professional courses, particularly, ASU & H P.G. Courses regulated by Indian Medical Council Act, 1970, as has been noticed, in case of Dr. R.B. Singh Gaya of Homeopathic Medical College & Hospital, the Ministry of AYUSH has extended the cut-off date by 02.12.2019 and has allowed admission after extending the cut-off date.

23. The Supreme Court decisions in case of *Medical Council of India Vrs. Madhu Singh & Ors.*, reported in (2002) 7 SCC 258, *Muskan Dogra & Ors. Vrs. State of Punjab & Ors.*, reported in (2005) 9 SCC 186 and *Arvind Kankane Vrs. State of U.P. & Ors.*, reported in (2001) 8 SCC 355, will have no application as those cases relate to admission in MBBS/BDS Courses under Indian Medical Council Act, 1956. I have already noted hereinabove, which is not in dispute, that cut off date prescribed for admission in the course does not have statutory character. Here is not a case where the institution wants extension of cut off date to fill up seats, some of which, remained unfilled after counseling. Here is a case where the College, despite having



infrastructure and statutory permission to admit students was not made a part of the process of counseling.

24. Mr. S.D. Sanjay, learned Solicitor General, has pointed out that the extension through the said letter dated 02.12.2019 has been allowed under the judicial order of Delhi High Court.

25. It has been pointed out by Mr. Prasoon Sinha, learned counsel for the BCECEB that cut-off date prescribed by the Ministry of AYUSH for admission does not have statutory character.

26. In the peculiar facts and circumstances of the case as noted above, the Court directs the Ministry of AYUSH to extend the cut-off date for admission in privately managed Colleges in the State of Bihar up to 31st of December, 2019. The order has been passed in the presence of learned Additional Solicitor General for India assisted by Mr. Satyavarat Verma, learned Central Government Counsel. The State Government of Bihar will make necessary arrangements with the BCECEB to ensure that the process of counseling is undertaken for private Colleges in the State of Bihar for admission to the Course in question. It is reiterated that this order is confined to admission to Courses in



private Colleges in the State of Bihar, which could not be held because of admitted fault/laches on the part of the respondents.

27. This application is allowed with the observation and direction as stated above.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	19/12/2019
Transmission Date	N.A.

