

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

WRIT PETITIO NO.10140 OF 2019

1. Umer Bin Khattab Welfare Trust, ... **Petitioners**
A Registered Public Trust,
Through its President,
Mr Faruk Ishak Randera,
Age 45 years, Occu: President
R/o Post Box-3, Kunjkheda,
Tq. Kannad, District Aurangabad.
2. Yunus Fazlani Unani Medical
College and Al Fazlani Unani
Hospital, Kunjkheda, Wadali,
Kannad, Tq. Kannad Dist.
Aurangabad, Through Its Principal,
Age 50 years, Occu: Service
R/o Kunjkheda, Wadali, Kannad, Tq.
Kannad Dist. Aurangabad

VERSUS

1. The Union of India,
Through Under Secretary to
Government of India,
Ministry of Ayurveda, Yoga and
Naturopathy, Unani Siddha and
Homeopathy, "AYUSH Bhavan", 'B'
Block, GPO Complex, INA,
New Delhi 1100 023
2. The Central Council of Indian ... **Respondents**
Medicine, Through its Secretary
61-65, Institutional Area, Opp.'D'
Block, Janakpuri, Delhi 100 058
3. State Common Entrance Test Cell,
Maharashtra State, Mumbai
Through its Commissioner
4. The Secretary,
Medical Education and Drugs
Department, Government of
Maharashtra, Mantralaya Vistar
Bhavan, Mumbai 400 032

Mr. D. S. Bagul h/for Mr. Y. B. Bolkar, Advocate for the petitioners.

Mr. S.B. Deshpande, A.S.G.for respondent No.1

Mr. Alok Sharma, Advocate for respondent No.2

Mr. P.G. Borade, A.G.P. for the respondents-State

**CORAM : S. V. GANGAPURWALA &
ANIL S. KILOR, JJ.**

RESERVED ON : 13th September, 2019

PRONOUNED ON : 21st September, 2019.

JUDGMENT (Per Anil S. Kilor, J.)

1. Rule. Rule made returnable forthwith. By consent of the parties, the petition is taken up for for final disposal.

2. By the present petition, the petitioners are questioning the legality and correctness of the order dated 06.07.2019 issued by the Under Secretary, Government of India, Ministry of Ayurveda, Yoga and Naturopathy, Unani Siddha and Homeopathy, whereby, in view of the shortcomings and deficiencies noticed by the said Ministry, particularly about non availability of teaching staff and lower faculty in the department of Iimul Saidla, Amraze Jild was Tazeeniyat, Jaraht and Ain-uzn-Anf-wa-Halaq-wa-Asnan, non-availability of Hospital Staff i.e. Matron/Nursing Superintendent and Microbiologist as per RMS, 2016, denied permission to petitioner no.2 College for taking admission to 50 seats in UG (BUMS)

Course under section 13A/13C of the Indian Medicine Central Council Act, 1970 (for sort 'IMCC Act) for the academic session 2019-20.

3. Heard Mr. D. S. Bagul h/for Mr. Y. B. Bolkar, Advocate for the petitioners, Mr. S.B. Deshpande, learned A.S.G. for respondent No.1, Mr. Alok Sharma, Advocate for respondent No.2 and Mr. P.G. Borade, learned A.G.P. for the respondents-State.

4. It is the case of the petitioners that petitioner No.1 Trust is a minority institution, running petitioner No.2 college for BUMS course from the year 2009. On 24.06.2009, for the first time, permission was granted to petitioner No.2 College to conduct Unani BUMS course for 50 seats. Accordingly, the Maharashtra University of Health Science, Nashik had accorded first time affiliation under section 65(4) of the Maharashtra University of Health Science Act and the same was continued from time to time. The Maharashtra University of Health Science, on 5th September, 2018, granted extension of the affiliation for the academic year 2018-19.

5. Petitioner No.2 College was having approval for the academic year 2018-19, granted by respondent No.1 vide

order dated 14.09.2018 for UG (BUMS) course with intake capacity of 50 seats. Accordingly, in pursuance of the said order, the petitioners submitted compliance report on 31st December, 2018 as required as per Indian Medicine Central Council (Requirement of Minimum Standard for under-graduate Unani Colleges and attached Hospitals) Regulations, 2016, pointing out thereby that the petitioner College does possess requisite number of reader/ professor and also complies of other aspects.

6. Per contra, it is the case of respondent No.1 that petitioner No.2 college was granted conditional permission under section 13C/13A of the IMCC Act, 1970 to take admission with 50 seats for UG (BUMS) course for the academic year 2018-19 vide letter dated 14.09.2018.

The learned A.S.G. has submitted that the Central Council of Indian Medicine had suo moto visited the petitioner college on 28-29.03.2019 to reassess the available facilities of teaching and practical training as well as to verify the compliance report submitted by the college and furnished its report and recommendation to the Central Government vide letter dated 21.05.2019, thereby the Council has recommended to the Government of

India for not granting conditional permission for admission in UG (BUMS) course for the academic session 2019-20 in view of the shortcomings noticed during the inspection.

7. The shortcomings noticed in the inspection on 28-29.03.2019 were relating to Teaching staff, Non-teaching staff and Hospital staff. The learned A.S.G. specifically pointed out the following shortcomings noticed by the Council:

1. **Teaching Staff:** Total availability of Teaching staff is 86.06 against the minimum requirement of 90% for conditional permission

a) There is no Lower Faculty in department of Iimul Saidla, Amraze Jild was Tazeeniyat, Jaraht and Ain-uzn-Anf-wa-Halaq-wa-Asnan against the requirement of 01.

2. **Non Teaching Staff:**

a) There is only 01 attendant available in each of department of Moalajat, Niswa wa Quabalat, Ain-Iiaj bit Tadbeer against the requirement of 02.

3. **Hospital Staff:**

a) There is no Matron/Nursing Superintendent available against the requirement of 01.

b) There is no Microbiologist in Clinical Lab. against the requirement of 01."

Learned ASG further pointed out that considering the above deficiencies, the petitioner College was given an opportunity of hearing vide notice dated 29.05.2019 in terms of first proviso to Sub-section (5) of Section 13A of the IMCC Act, 1970 to appear on 07.06.2019 before the designated Hearing Committee in the Ministry of AYUSH to present its case and to show cause as to why the permission to take admission to UG (BUMS) Course for the academic year 2019-20 should not be denied to petitioner college. The college was also instructed to make oral as well as written submissions in respect of the case.

8. Learned ASG pointed out that the petitioner college submitted oral as well as written submissions through its representative, against the deficiency conveyed to the college.

9. The Hearing Committee, after considering the oral as well as written submissions of the petitioner college, came to the conclusion that petitioner College is not fulfilling the basic minimum requirement for grant of permission for the academic session 2019-20. Thus, in view of the shortcomings and deficiencies, particularly about non-availability of teaching staff, non-availability

of lower faculty, respondent No.1 denied permission to petitioner No.2 college for taking admission to 50 seats in UG (BUMS) Course for the academic session 2019-20.

10. Learned counsel for the petitioners made unsuccessful attempt to persuade this Court to point out that in May, 2019, 90.33% staff was available as against the requirement of 90% teaching staff. The learned counsel, for the said purpose, relied upon the letter dated 16.07.2019 submitted, after the impugned order was passed, by the petitioner college. The said letter does not show that on the date of inspection, the petitioner college was fulfilling the pre-requisites for permission as per Regulations, 2016 or there is no any other evidence available on on record to substantiate the same.

11. The relevant provisions of Regulations of 2016 are therefore relevant to refer for the purpose of considering the present controversy, more particularly, Regulation 3(1)(a) and Regulation 3(1)(g), which read thus:

"3. Requirements of Minimum Standard to Grant permission:- (1)(a) The Unani colleges established under section 13A and existing under section 13C of the Act and their attached hospitals shall fulfill the requirements of minimum standard for

infrastructure and teaching and training facilities referred to in the regulations 4 to 11 up to the 31st December of every year for consideration of grant of permissions for undertaking admissions in the coming academic session;

(g) The position prevailed on the date of visit to assess the fulfillment of requirements as specified in these regulations except sub-regulation(2) of regulation 7 shall be taken into consideration for grant of conditional permission or permission for a period of five years to the college."

Schedule V of the said Regulations relates to details of teaching staff in Unani College, which mandates to have total staff of 30 in teaching department including Professor, Associate Professor and Assistant professor for up to 60 students. Thus, in view of 50 intake capacity of the petitioner college, it is mandatory to have 30 teaching staff. However, in the said Schedule V, there is Note (iii), which permits deficiency up to 10% of total requirement with availability of minimum one teacher in each of 14 departments.

12. Thus, from the above Regulations, it is crystal clear that the position prevailed on the date of visit to assess fulfillment of requirement as specified in the Regulations shall be taken into consideration for grant of

conditional permission for admission in UG (BUMS) Course. And deficiency up to 10% of total requirement of teaching staff is permissible.

13. In the present matter, the inspection was carried out on 28-29.03.2019 and on the dates of Inspection, the deficiency was noticed in relation to non availability of sufficient teaching staff and Hospital staff as per the requirement. Contrary to Schedule V, Note (iii) of the Regulation, availability of teaching staff with the college was below 90% on the date of inspection, which is the relevant date to be taken into consideration for grant of the conditional permission.

14. In light of above discussion, this Court finds that on the date of inspection, the petitioner College was not fulfilling the necessary requirement as per Regulation, 2016. It is not for the Court to judge as to whether a particular institution fulfills the necessary criteria for being eligible for grant of permission for a particular course. It is for the expert to judge the same. This Court is not expected to examine report of the Council as an Appellate Body or would not sit as an appellate authority over the report of inspection. Thus,

we do not find any merit in the present petition.

15. Before parting with the judgment, we do not find need to give any directions to consider the case of the petitioners for next academic session i.e. 2020-21. While denying permission for admission for the academic year 2019-20, it has been observed by respondent No.1 in the impugned order that the petitioner College is being provided a period up to 31.12.2019 to fulfill the shortcomings observed during this year and requirements mentioned therein so that the CCIM may carry out inspection of the college for consideration of matter for grant of permission for taking admission in UG (BUMS) course from the academic year, 2020-21.

16. Writ petition is dismissed. Rule is accordingly discharged. No order as to costs.

(ANIL S. KILOR, J.)

(S.V.GANGAPURWALA, J.)

JPC