

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5416 OF 2019**

Deshmukh Satre Charitable Medical Research Center Trust, Islampur, & Anr	...Petitioners
<i>Versus</i>	
Union of India through its Ministry of AYUSH & Anr	...Respondents

Mr Vijay Thorat, with A Seth, i/b MV Thorat, for the Petitioners.
Mr Mandar Limaye, for Respondent No.1.
Mr Neel Helekar, for Respondent No.2 (CCIM).

**CORAM: S. C. DHARMADHIKARI &
G.S. PATEL, JJ**
DATED: 13th August 2019

PC:-

1. The Petitioner has in this Writ Petition under Article 226 of the Constitution of India prayed to this Court to call for the records and proceedings pertaining to an order dated 5th November 2018 passed by the Union of India rejecting permission to commence teaching and training in Bachelor of Ayurvedic Medical Sciences Course with 100 intake capacity to the Petitioner Trust.

2. The Petitioner by prayer (b) claims a direction by a Writ of Mandamus directing issuance of a letter of permission to it for

commencement of above course with 100 intake capacity for the academic year 2019-20.

3. After hearing both sides we indicated to Mr Thorat, learned Counsel appearing for the Petitioner, that it is not for this Court to issue a Writ of Mandamus directing that permission with this intake capacity should or must be granted. If there is an academic expert body in charge of issuing such letter of permission, it is entirely within its discretion whether or not to issue such permission. That function cannot be taken over by us nor can the Writ Court direct the academic expert body to chart a particular course or to issue a particular order or direction. Mr Thorat fairly states that at this stage he is not seeking such a direction or Writ.

4. On 5th November 2018 the Petitioner was communicated that the application made by the Chairman was forwarded to the Central Council of Indian Medicine (“CCIM”) on 25th May 2017 for further examination and necessary action as per the provisions of Indian Medicine Central Council Act and the regulations framed thereunder. The CCIM was also requested to submit the recommendations and report to the Central Government based on the inspection of the college within the prescribed time schedule for further action. The CCIM carried out an inspection on 21st July 2017 and forwarded its recommendation and report dated 11th August 2017 to the Central Government. That recommendation was

of disapproval and particularly not to issue a letter of intent to establish new Ayurvedic Medical College in the name of Anandarao Deshmukh Ayurvedic Medical College, Peth Islampur, Taluka Walwa, District Sangli, Maharashtra, with 100 seats in BAMS undergraduate course due to a non-functional hospital and college.

5. We have perused the regulations framed by the CCIM. The Government of India says that there are deficiencies noted and an opportunity is given to correct the deficiencies. That opportunity together with the show cause notice resulted in the college making a representation by appearing before a Hearing Committee. It appeared on 13th March 2018 and forwarded the written submissions. After that the Ministry felt that the recommendations and visitation report being adverse the permission should be refused.

6. It is this order which is challenged in this Writ Petition on several grounds.

7. The essential argument is that the shortcomings and deficiencies noted are not in tune with the requirements prescribed for commencing the subject course. Our attention has been invited to the detailed pleadings in that regard. It is stated that the essential deficiency appears to be the lack of patients taking treatment. In that regard, the argument is that the outpatient department and its

functioning has not been adversely commented upon. It is the indoor patient ratio which according to Mr Thorat which is not properly represented.

8. It is argued that there is an office order of 21st February 2019, a copy of which is at page 30 of the paper book. The whole emphasis is that the Petitioner having furnished the information now it should have been considered by the Authority whether these compliances are indeed made or there is something more required to be done.

9. On such arguments canvassed before us we had permitted the 1st Respondent to file an Affidavit. If an Affidavit had to be filed it ought to have been filed before today's hearing. Since it was not filed, Mr Limaye did not seek further time but produced before us a copy of the inspection report. When questioned, Mr Limaye said that this inspection committee was established by the Ministry of Ayurveda, Yoga & Naturopathy, Unani Siddha and Homoeopathy ("AYUSH") Government of India. The inspection team, comprising of two members, Dr AS Baghel and Dr. Kamlesh Bhogayata, visited this college on 6th and 7th August 2018. The committee found inter alia the deficiencies noted in the observation column particularly at Sr. No.4, 5, 6, 10 and 14.

10. After perusing this document, we are surprised at this inspection said to have been carried out on 6th and 7th August 2018.

The order impugned in this Writ Petition is dated 5th November 2018. In the order that is impugned in this Writ Petition there is a reference made to the inspection carried out by the CCIM and its recommendations. The recommendations were contained in the letter of CCIM dated 11th August 2017. The order that is communicated to the Petitioners only says that in view of a VIP reference and as per approval of Competent Authority this college was revisited by the inspection committee on 6th and 7th August 2018. The visitation report was submitted to the Ministry. The analysis of this report is that the college is not having genuinely functional Ayurveda Hospital as per RMS 2016. Thus there is a serious doubt as to whether there is a genuinely functional Ayurveda Hospital.

11. We do not wish to enter into this controversy particularly after Mr Thorat states on instructions that the Petitioners are not averse to a fresh inspection being carried out and possibly by both the Ministry of AYUSH and the CCIM.

12. If these are his instructions, then this Writ Petition can be disposed of with a direction that the Petitioners will have to submit itself to an inspection afresh by the above Authorities and should that inspection result in a satisfaction being arrived at by them that all deficiencies are removed, and that there is indeed a functional Ayurvedic Hospital, then necessarily the consequences may follow.

Should that inspection result in a adverse report about the existence and functioning of an Ayurvedic college at site, or for any other reason, then too the Petitioners may take all the consequences subject of course to their legal rights. We do not think that we should allow another round of inspection and thereafter a fresh challenge by way of a Writ Petition in this Court. We think that the Petitioners would be well advised in accepting the findings and modify their requirement of permission accordingly. The Writ Petition is disposed of in the above terms. No costs.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)