

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 642 OF 2021

1. Antar Bharti Ashram, a registered public Trust bearing No. E-101 (N) through its Director, Dabha, Nagpur-440023.
2. Antar Bharti Homeopathic Medical College and Hospital, Dabha, Nagpur through its Offg. Principal Dr. Meena Sumbha.

.... Petitioners

// VERSUS //

1. Union of India, through Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Siddha and Homeopathy (AYUSH), Ayush Bhawan, B-Block GPO Complex, INA, New Delhi-23.
2. Central Council of Homeopathy, through its Secretary, 61-65 Institutional Area, Opposite D-block, Janakpuri, New Delhi-58.
3. State of Maharashtra, through its Secretary, Medical Education and Drugs Department, Mantralaya, Mumbai-32.
4. Maharashtra University of Health Sciences, Nashik, Dindori Road, Mhasrul, Nashik-04.

5. The Director of Medical Education and Research, St. George Hospital Campus, Near CST, Mumbai. ... Respondents

Shri Anand Parchure, Advocate for Petitioners.

Shri U.M. Aurangabadkar, ASGI for Respondent Nos.1 and 2.

Shri A.M. Deshpande, Addl. G.P. for Respondent Nos.3 and 5.

Shri V.P. Panpalia, Advocate for Respondent No.4.

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 24 FEBRUARY, 2021.

JUDGMENT: [PER:Anil S. Kilor, J.]

Rule. Rule made returnable forthwith. The matter is heard finally with the consent of the learned counsel for the parties.

2. A denial of permission to the Petitioner No.2- Homoeopathic Medical College and Hospital by the Respondent No.1, for taking admission in the First BHMS course with intake capacity of 50 UG seats for the academic session 2020-21 gave rise to this petition.

3. We have heard the respective learned Counsel for both the parties.

4. Brief facts, which are relevant to decide the controversy involved in the present Petition, are as under:

4.1 The Petitioner No. 1 is a Public Trust managing the Petitioner No.2- Homoeopathic Medical College and Hospital, which has been imparting diploma course since the year 1975-1976 and subsequently it has been upgraded to run degree course.

4.2. The respondent No. 1 is the Union of India through Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Siddha and Homoeopathy (AYUSH). As per the provisions of section 12C (1) of Homoeopathy Central Council Act 1973 (the Act 1973) all Homoeopathy Medical Colleges needs to seek permission of the Union of India within one year from the date of promulgation of Homoeopathy Central Council (Amendment) ordinance 2018 (the Ordinance 2018).

4.3. Accordingly, the Respondent No.2-Central Council of Homoeopathy which is the regulator for homoeopathy education, has examined the proforma of the Petitioner college submitted by the petitioner college and conducted inspection on 24 July 2020. Whereupon the Respondent No. 2 recommended to the Respondent No. 1 for not allowing admission for session 2020-21 due to deficiencies of Hospital equipment, discrepancies in teaching faculty and other discrepancies in the Petitioner college.

4.4. Resultantly, the Respondent No.1 issued a show cause notice/hearing notice dated 16.10.2020 to the Principal of the Petitioner College, calling upon the Petitioner College to present its case and to show cause as to why the admission should not be stopped in the First BHMS course for the academic year 2020-2021.

4.5. The Petitioner No.2-College in reply furnished the compliances of the deficiencies/shortcomings as pointed out in the show cause notice dated 16.10.2020, issued by Respondent No.1.

4.6. Thereupon, the Respondent No.1 has considered the say of the Petitioner college and issued the impugned order dated 28.01.2021 denying permission to the Petitioner College for taking admission in the First BHMS course for the Academic Session 2020-21, in view of the shortcomings and the deficiencies. The legality and correctness of the same has been questioned in the present matter.

5. Shri Anand Parchure, learned Counsel for the Petitioners submits that in last academic year the recognition of the Petitioner-College was discontinued vide order dated 28 May 2019, which was assailed in Writ Petition No. 4164 of 2019 and the same is pending for consideration. However, in view of interim order passed therein on 17 June 2019 the admissions were made.

6. He submits that the deficiencies of Hospital's equipments, discrepancies in teaching faculties and other deficiencies mentioned in the show cause notice dated 16.10.2020 were not there in the order dated 28 May 2019, discontinuing the recognition in last academic year and therefore, the impugned order is arbitrary.

7. It is submitted that after the inspection was carried out on 24 July 2020 and on receiving show cause notice the Petitioner-College has furnished the compliances on the deficiencies/shortcomings pointed out in the show cause notice. And as such, no deficiencies or shortcomings are remained to be rectified or removed. Thus, he submits that the impugned order is illegal and not sustainable in the eyes of law.

8. Per contra, Shri U.M. Aurangabadkar, learned Assistant Solicitor General of India for Respondent Nos.1 and 2 submits that as per the provisions of the Act of 1973 and relevant ordinances, the relevant date for compliances and to fulfill the prescribed norms is 31 December preceding the commencement of an academic year for which the permission is sought.

9. It is thus, submitted that in the present matter the relevant date for removal of the deficiencies/discrepancies was before 31 December 2019 as the permission sought is for the academic year 2020-21. It is submitted that in the present matter the deficiencies were in existence even on the date of inspection, which was carried out on 24 July 2020 i.e. much after 31 December 2019. Thus, he submits that the Respondent No.1 has rightly denied the permission to the Petitioner-College to admit the students. By arguing so, he prays for dismissal of the Petition.

10. To consider the rival contentions of the parties, we have perused the record. Thereupon it is revealed that the Respondent No.1-Ministry issued a show cause notice on 16 October 2020, *inter-alia* pointing out the deficiencies of hospital equipments, discrepancies in teaching faculties and other discrepancies as follows:

"I. College did not provide the original affidavit and undertaking/indemnity bond dated July 24, 2020.

II. College has not complied with the provisions of Employees Provident Funds and Miscellaneous Provident Act, 1952 & ESI Act, 1948 and relevant Rules and Regulations.

III. College has provided a list of 29 teachers, but 05 teachers considered ineligible due to the absence of required document and discrepancies. Details of ineligible teachers are as under :

a. Dr. Girish L. Khachane, BHMS (joined on 03.04.2006 as lecturer, pharmacy): at present pursuing MD from MUHS, Nashik as per affidavit, but college has not provided any other supporting documents.

b. Dr. Shafi Ahamad Ashraf Khan, BHMS (joining date as Reader, Pathology): at present pursuing MD from MUHS, Nashik as per affidavit, but college has not provided any other supporting documents.

c. Dr. Ashish Nareshrao Tajne, BHMS (joined on 03.04.2006 as Reader, POM): at present pursuing MD from MUHS, Nashik as per affidavit, but college has not provided any other supporting documents.

d. Dr. Yashwant S. Deshpande, MBBS, MS (joined on 12.03.2017 as Professor, Surgery): as per affidavit and other documents provided by the college, previous experience of lecturer and reader not available.

e. Dr. Arti N. Lavhe, BHMS (joined on 23.04.2006 as lecturer, OBG): at present pursuing MD from MUHS, Nashik as per affidavit, but college has not provided any other supporting documents.

IV. Required number of stretchers with trolley, Artery forceps (small and big), oxygen cylinder with stand, diagnostic set (ENT) not available in Hospital.”

11. Before going further, at this juncture it is necessary to note that the show cause notice was served on the Petitioner in order to provide an opportunity to the Petitioner to present its case and to show cause as to why the admission should not be stopped in BHMS course for the academic year 2020-21 and not for removal of deficiency and submit compliance report.

12. However, on receiving the show cause notice dated 16 October 2020, the Petitioner-College furnished the compliances, vide letter dated

21.10.2020. The relevant portion of the same is reproduced hereunder, which reads thus:

S.No	DEFICIENCIES/SHORTCOMINGS	COMPLIANCE
01	<i>College did not provide the original affidavit and undertaking/indemnity bond dated July, 24,2020.</i>	<i>With beg apology this is for kind information that, there was an inadvertent mistake done to put the original affidavit and indemnity bond in the envelop before sending through speed post. But thereafter on 27th July, 2020 the original indemnity bond was despatched by speed post with a forwarding letter bearing no. AHMC/2171/2020 dated 24/07/2020.</i> <i>Copies of the said letter with documents of Speed posts & copy of Tracking Consignment are enclosed in bunch VIDE ANNEXURE-1 (From page No. 01 to Page No. 12).</i> <i>However, this institution has been submitting a fresh affidavit and indemnity bond in current date 20/10/2020 VIDE ANNEXURE-2 (From page No. 01 to Page No. 10).</i>
2.	<i>College has not complied with the provisions of Employees provident Funds and Miscellaneous provident Act, 1952 & ESI Act, 1948 and relevant rules & regulations.</i>	<i>The college has been provided with Employees provident Fund since long time. The documents for deducting EPF have been enclosed. VIDE ANNEXURE-3 (From page No. 01 to Page No. 15).</i> <i>However, I am submitting a Notarial Affidavit in respect to EPF and other act.</i>

03 College has provided a list 29 teachers, but 05 teachers considered intelligible due to absence of required documents and discrepancies. Details of intelligible teachers are under. a) Dr. Girish Khachane, BHMS (joined on 03.04.2006 as lecturer Pharmacy), at present pursuing MD from MUHS, Nashik, as per affidavit, but college has not provided any other supporting documents. b) Dr. Shafi Ahmed Ashraf Khan, BHMS (joining date as Reeder), at present pursuing MD from MUHS, Nashik, as per affidavit, but college has not provided any other supporting documents. c) Dr. Ashish Nareshrao Tajne, BHMS (joined on 03.04.2006 date as Reader), at present pursuing MD from MUHS, Nashik, as per affidavit, but college has not provided any other supporting documents. d) Dr. Yeshwant Deshpande, MBBS, MS (joined on 12.12.03 as Professor, Surgery) as per the affidavit and other documents provided by the college,	a) All other supporting documents in respect of Dr. Girish Khachane, BHMS, pursuing MD course, have been provided herewith in bunch, VIDE ANNEXURE-4 (From Page No. 01 to Page No. 08). b) All other supporting documents in respect of Dr. Shafi Ahmed Ashraf Khan, BHMS, pursuing MD course, have been provided herewith in bunch. VIDE ANNEXURE-5 (From Page No. 01 to Page No. 03). c) All other supporting documents in respect of Dr. Ashish Nareshrao Tajne, BHMS, pursuing MD course, have been provided herewith in bunch. VIDE ANNEXURE-6 (From Page No. 01 to Page No. 06). d) The relevant documents of experience as lecturer/Professor in his previous College, namely, Nagpur Biochemic and Homoeopathic Medical College & Hospital, suddenly closed since last few year, VIDE ANNEXURE-7 (From Page No. 01 to Page No. 04).
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	<i>previous experience of lecturer and Reader not available.</i> <i>e) Dr. Arti Lavhe, alias Arti Raut, BHMS (joined on as lecturer OBG), at present pursuing MD from MUHS, Nashik, as per affidavit, but college has not provided any other supporting documents.</i>	<i>e) All other supporting documents in respect of Dr. Arti Lavhe, alias Arti Raut, BHMS, pursuing MD course, have been provided herewith in bunch. VIDE ANNEXURE-8 (From Page No. 01 to Page No. 11).</i>
04	<i>Require numbers of stretchers with trolley, artery forceps, (Small & Big), oxygen cylinder with stand set (ENT) not available in Hospital.</i>	<i>Required numbers are now available in Hospital.</i> <i>Now total Stretchers with trolley-4 Total-(Old-1, New Purchased-3)</i> <i>Artery forceps, (Small & Big),-24 Total-(Old-24 New-0)</i> <i>Oxygen cylinder with stand-04 Total- (Old-01 New Purchased-03)</i> <i>(ENT) Sets-04 Total-(Old-04 New Purchased-0)</i> <i>VIDE ANNEXURE-09 in bunch. (From Page No. 01 to Page No. 13)</i>

13. The Hon'ble Supreme Court of India in *Manohar Lal Sharma v. Medical Council of India*¹, has observed that MCI and the College authorities have to bear in mind, what is prescribed is the minimum, if MCI dilutes the minimum standards, they will be doing violence to the statutory requirements. MCI is duty-bound to cancel the request if fundamental and minimum requirements are not satisfied or else the College will be producing half-baked and poor quality doctors and they would do more harm to the society than service.

¹ (2013) 10 SCC 60
C.L.Dhakate

14. In *Krishna Priya Ganguly Vs. University of Lucknow*² for granting interim order, the Hon'ble Supreme Court of India cautioned in the words that whenever a writ petition is filed provisional admission should not be given as a matter of course on the petition being admitted unless the court is fully satisfied that the petitioner has a cast-iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible. The Court further observed that unless the institutions can provide complete and full facilities for the training of each candidate who is admitted in the various disciplines, the medical education will be incomplete and the universities would be turning out doctors not fully qualified which would adversely affect the health of the people in general.

15. In the present case the first deficiency was that the Petitioner-College did not provide the original affidavit, undertakings and indemnity bond.

16. The response of the Petitioner college to the said deficiency was that, because of inadvertent mistake the original affidavit and indemnity bond were not submitted along with envelop sent through speed post. However, subsequently on 27 July 2020, the original indemnity bond was dispatched. This response shows that, the Petitioner has admitted its mistake.

17. As regards, deficiency relating to non-compliance with the provision of Employees Provident Fund and Miscellaneous provident Fund Act, 1952. It is the case of the Petitioner that they have registered

² AIR 1984 SC 186
C.L.Dhakate

70% of their employees with the provident fund authorities and the registration of remaining staff is in process. Thus, the Petitioner-College admits that only 70% employees are registered with the provident fund authorities.

18. As regards, five teachers who were found to be ineligible in absence of supply of required documents relating to them. It is clear from the record that, the Petitioner submitted affidavits and not the relevant supporting documents to show and establish eligibility of these five teachers, along with proforma submitted by the Petitioner college for permission.

19. However, subsequently while submitting say to the show cause notice, the said deficiency was tried to remove by submitting the relevant supporting documents along with letter dated 21 October 2020. Thus, admittedly necessary and relevant documents showing eligibility of the aforesaid five teachers were not submitted by the Petitioner to the Respondent No. 2, before 31 December 2019 or even before the date of inspection i.e. 24 July 2020.

20. As regards, the last deficiency relating to required number of stretchers with trolley, Artery forceps (small and big), oxygen cylinder with stand, diagnostic set (ENT). In the letter dated 21 October 2020, the Petitioner-College stated that “required numbers are now available in hospital”. The word “now” shows that the required number of stretchers with trolley, Artery forceps (small and big), oxygen cylinder with stand, diagnostic set (ENT), were not available in hospital on 31 December

2019 and it was made available after receipt of the show cause notice dated 16 October 2020.

21. Having considered each deficiency and response submitted to it by the Petitioner, we have no hesitation to observe that no material has been produced by the Petitioner either before the Respondent No. 1 or even before this Court to show that there was no deficiency in the Petitioner college on 31 December 2019. Furthermore, there are no pleadings made in the Petition that the alleged deficiencies were not in existence on 31 December 2019 or on the date of inspection.

22. As observed by the Apex Court in Krishna Priya Ganguly (supra) that unless the institutions can provide complete and full facilities for the training of each candidate who is admitted, the medical education will be incomplete. In the case in hand in absence of any material available on record, showing compliance of the norms set out for maintenance of standard, absence of which it adversely affected the medical education, we do not find any error committed by the Respondent No.1 in denying permission to the Petitioner to admit students for the 1-BHMS course for the academic year 2020-21. Hence, we pass the following order:

ORDER

- i. The Writ Petition No. 642 of 2021 is dismissed.
- ii. No order as to costs.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]