

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.03.2021

Coram

The HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.Nos.4176 and 3577 of 2021
and WMP Nos.4067, 4068 & 4767 of 2021

Sivaraj Siddha Medical College
represented by its Principal,
Siddhar Kovil Road,
Thubathulipatty,
Salem

.... Petitioner in W.P.No.4176 of 2021

Nandha Ayurveda Medical College and Hospital
represented by its Principal,
Pitchchandampalayam Post,
Erode 638052

.... Petitioner in W.P.No.3577 of 2021

vs

- 1.The Government of India,
represented by its Under Secretary,
Ministry of Ayurveda, Yoga & Naturopathy,
Unani, Siddha and Homeopathy,
Ayush Bhavan, B-Block, GPO Complex,
INA, New Delhi 110 023.
2. Central Council of Indian Medicine
represented by its Secretary,
61-65, Institutional Area,
Janakpuri D-Block,
New Delhi 110058.
- 3.The Government of Tamil Nadu,
represented by its Principal Secretary,
Health and Family Welfare (IM-2)Department,
Fort St.Geroge, Chennai - 600 009.
- 4.The Tamilnadu Dr.M.G.R Medical University,
represented by its Registrar,
69, Anna Salai, Guindy,
Chennai 600 032.

5.The Commissioner of Indian Medicine and Homeopathy,
Arumbakkam, Chennai 600 106.

6.The Selection Committee represented
by its Secretary, Directorate of Indian
Medicine and Homeopathy, Arignar Anna
Government Hospital Campus,
Arumbakkam, Chennai 600 106.

.... Respondents in both the writ petitions

Prayer

Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the Respondents ending with the order of the 1st respondent in F.Nos.P.14014/12/2020-EP(1) dated 21.12.2020 and F.No.L-14014/253/2020-EP-1 dated 12.02.2021 and quash the same and directing the Respondents to grant permission to the petitioner institution to admit students to BSMS and BAMS Courses for the academic session 2020-2021.

For Petitioner in both ... Mr.Kandhan Duraisami
writ petitions

For Respondent 1 ... Mr.Rabu Manohar
Senior Panel Counsel

***For Respondent 2 ... M/s.V.K.Raj Law Chambers,
Mr.Vellayaraj**

For Respondents 3,5 &6 ... Mr.V.Kathirvel
Spl.Govt.Pleader

For Respondent No.4 ... Mr.D.Ravichandran
Standing Counsel

C O M M O N O R D E R

These writ petitions are filed as against the orders of the 1st respondent dated 21.12.2020 and 12.02.2012 respectively, in and by which, the respondents denied permission to the petitioners' Institution to admit the students to BAMS Course for the academic year 2020-2021.

2. The petitioner in W.P.No.3577 of 2021 has filed an affidavit of undertaking stating that all the deficiencies which have been pointed out by the 1st respondent has been complied with and fulfilled and they have also taken a specific stand

that in view of the pandemic situation, the entire verification process was conducted by the respondent only through online and thus, due to some connectivity problem, the petitioner could not establish the availability of the requirement before the respondent.

3. When the matter is taken up for hearing Mr.Kandhan Duraisami, learned counsel for the petitioners has produced a copy of the order passed by the High Court of Delhi in W.P.(C). No.2110 of 2021 etc. batch dated 01.03.2021, wherein the Additional Solicitor General appearing on behalf of the first respondent therein have taken a specific stand that in view of the pandemic situation this year, they are withdrawing the show cause notice on certain terms which reads as follows:

4. Pursuant to these orders, the learned Additional Solicitor General has today submitted a "Status Note". He states that the show cause notices and denial orders assailed in these petitions would be withdrawn, and fresh show cause notices would be issued to the petitioner institutions. A copy of the aforesaid Status Note is taken on record, and the contents thereof are reproduced hereinbelow:

"1. That, at the outset, the Respondent-Union of India humbly submits that AYUSH education is medical education and, as such, the Respondent is acutely concerned about the standard of AYUSH education that is imparted to students across the country. To that end, the Respondent-Union of India is making every effort to ensure that the quality of AYUSH education is not compromised due to the Covid -19 pandemic.

2. That, however, considering the unprecedented circumstances created due to the Covid-19 pandemic, the AYUSH Ministry/CCIM has introduced certain special measures as a one-time exception to deal with institutions offering programs in the academic year 2020 - 2021, namely:

a. The AYUSH Ministry has granted a 10% relaxation in the teacher requirement stipulated in the Regulations of 2016 vide O.M. dated 02.03.2020 (copy annexed as ANNEXURE - I herein).

b. The AYUSH Ministry has also afforded institutions an opportunity to obtain approval for a reduced number of seats, along with the aforesaid relaxed norms, vide O.M. dated 15.04.2020 (copy annexed as ANNEXURE - II herein).

3. That, in addition, to obviate further difficulties/ complexities as a result of the Covid-19 pandemic and to allay any/ all

reservations (without prejudice to the AYUSH Ministry/CCIM's stand before this Hon'ble Court), the Respondent-Union of India now proposes the following onetime measures by treating the academic year 2020 - 2021 as an exceptional/unprecedented year:

a. The AYUSH Ministry will grant a conditional approval/permission for the academic year 2020-21 to those institutions which have continuously received permission from Ministry of AYUSH for the preceding 5 academic years, on the basis of the affidavits/ documents already submitted by them. The existing show cause notices and any consequent orders issued against such institutions will stand withdrawn, and no fresh show cause notices will be issued to such institutions.

b. The remaining aggrieved institutions would be issued a fresh show cause notice categorically pointing out the deficiencies in detail, along with the documents required for scrutiny and the date of hearing. It is made clear that no new deficiencies would be identified by the AYUSH Ministry/ CCIM, other than those which have been identified in the previous show cause notices/consequent orders of denial of approval and which remain unaddressed. i. Since

regular teaching faculty is the most important requirement or element of an educational institution, such fresh show cause notices will now only require the institution to establish that their faculty members have complied with the requirement of Regulation 26 of the Practitioners of Indian Medicine (Standards of Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982. (copy of extract of the Regulation 26 is annexed as ANNEXURE - III herein)

ii. Such compliance requirement, albeit reduced, will be necessary because the AYUSH sector is dealing with a significant problem of fake teachers in AYUSH colleges who exist only on paper in various colleges because they are actually practicing or doing other business far away from the colleges where they are being claimed as teachers. CCIM had therefore conducted a due diligence exercise and thereafter debarred / not certified such teachers as regular faculty members in the intent of AYUSH education and

Public Health since they adversely affect the quality of AYUSH education.

c. Since the Ministry of AYUSH has already extended the last date/ cut off date for admission upto 15th March for academic year 2020 - 2021, vide order no. F.No. L11011/1/2021-EP-1 (Part-1) dated 23.02.2021, and will further extend the last date of admission by 05 days, the following steps will be taken by the Union of India with corresponding deadlines:

i. Service of fresh show cause notices (by email) upon the aggrieved institutions: 02.03.2021 to 08.03.2021

ii. Conduct of online hearing: 05.03.2021 to 12.03.2021

iii. Issue of final orders u/s 13A/ 13C of the IMCC Act: 10.03.2021 to 15.03.2021

iv. Last date of admission: 20.03.2021

d. The AYUSH Ministry will also constitute a Grievance Redressal Committee/ Appellate Body as special one-time measure for the academic year 2020 - 2021 to address any grievances arising out of a denial of permission following the issue of fresh show cause notices as described above. The GRC will consist of representatives of the AYUSH Ministry (preferably, an Additional Secretary and Dr. Shashi Ranjan Vidyarthi, Director) and Chairperson, BoG, CCIM and Chairperson, BoG, CCH.
e. Since all States deal with counselling according to their local requirements and State Govt. rules, the Union of India will request all States concerned to suitably reschedule their counselling in light of the Ministry of AYUSH's decision to extend the last date/ cutoff date for admission upto 20th March for academic year 2020 -2021 to ensure that the session is not delayed much. However, for increase in seats or grant of fresh permission to colleges, counselling will be conducted.

4. This Hon'ble Court may be pleased to consider the aforesaid proposals as special one-time measures that are not to be treated as precedent in light of the Covid- 19 pandemic and, as such, none of the aforesaid concessions/ relaxations and nothing stated herein will affect any case pending before any other Hon'ble High Court, nor should such proposals/ measures be binding upon the AYUSH Ministry/ CCIM in future

academic years. Ministry of AYUSH reiterates its commitment to maintain and improve

5. The learned Additional Solicitor General has clarified that in the cases where partial permission has been granted (i.e., the institutions have been permitted part of the intake they had applied for), the fresh show cause notices, if any, will be confined to the disputed intake, and will not disturb the number of seats for which the institutions have been granted permission.

6. The learned Additional Solicitor General also confirms that the relaxations for grant of conditional permission, as provided in the applicable Regulations with regard to the faculty and infrastructure available, will be taken into account by the CCIM/ CCH and the Union. This may be done both at the stage of considering whether to issue show cause notices in particular cases, and at the stage of making a final decision. The institutions concerned will be entitled to take the benefit of relaxation in case a show cause notice is at the stage of making a final decision issued to them.

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...

12. In view of the fact that the impugned show cause notices and denial orders stand withdrawn in terms of the submissions of the learned Additional Solicitor General and the Status Note reproduced above, the present writ petitions are disposed of by this order, with liberty to the petitioners to seek legal redress in the event the orders ultimately passed are adverse to them. Pending applications, if any, also stand disposed of.

13. As noted hereinabove, several other petitions on the same issue are pending before this Court, which are scheduled to be listed on 07.04.2021. Learned counsel for the petitioners herein also represent the petitioners in several of those petitions. They submit that those petitioners may also be covered by the order passed today. I find that learned counsel for the petitioners in most of those matters are present today. The Union, the CCIM and the CCH are also represented. Learned counsel are directed to give a list of similar matters pending in this Court to the Court Master by 02.03.2021, and those petitions will be listed for directions on 04.03.2021. Ms. Dave and Mr. Sunil Narula, learned counsel for the CCH, are also requested to inform any other counsel appearing on behalf of the petitioners in those matters that their petitions will be listed on 04.03.2021.

14. The Court records its appreciation for the assistance rendered by the learned Additional Solicitor General, Mr. Apoorv Kurup who assisted him on behalf of the Union, Ms. Dave, learned counsel for the CCIM, as well as several learned Senior Counsel and counsel for the petitioners who have rendered valuable assistance to resolve the matters in issue in the present proceedings.

4. The above order passed by the High Court of Delhi is squarely applicable to the issue involved in these writ petitions also.

5. Mr. Rabu Manohar, learned Senior Panel Counsel appearing for the 1st respondent would submit that considering the pandemic situation this year, the 1st respondent, Ministry of AYUSH, has taken a specific stand that for those Institutions which are in existence for more than 5 years, they are permitting the Institutions to continue the courses and for the remaining, they are issuing fresh show cause notice and providing one more opportunity to the concerned Institutions to comply with the requirements of the Ministry of AYUSH.

6. The above said submissions of the learned Senior Panel Counsel appearing for the 1st respondents is recorded. These Writ Petitions are disposed of in terms of the order passed by the High Court of Delhi in W.P.(C).No.2110/2021 dated 01.03.2021. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

***Corrected order as per letter
dated 05.07.2021 given by the
counsel for the 2nd Respondent
-s/d-**

**Assistant Registrar(CS IX)
dt 08/07/2021**

//True Copy//

Sub Assistant Registrar

vsi
To

1. The Under Secretary,
Government of India,
Ministry of Ayurveda,
Yoga & Naturopathy,
Unani, Siddha and Homeopathy,
Ayush Bhavan, B-Block, GPO Complex,
INA, New Delhi 110 023.

**To be substituted
For the order already
despatched on 04.05.2021**

2. The Secretary,
Central Council of Indian Medicine
61-65, Institutional Area,
Janakpuri D-Block,
New Delhi 110058.
3. Principal Secretary,
The Government of Tamil Nadu,
Health and Family Welfare (IM-2) Department,
Fort St. George, Chennai - 600 009.
4. The Registrar,
The Tamilnadu Dr.M.G.R Medical University,
69, Anna Salai, Guindy,
Chennai 600 032.
5. The Commissioner of Indian Medicine and Homeopathy,
Arumbakkam, Chennai 600 106.
6. The Secretary,
Selection Committee,
Directorate of Indian
Medicine and Homeopathy, Arignar Anna
Government Hospital Campus,
Arumbakkam, Chennai 600 106.

+1 cc to Mr.S.Wilson, Advocate Sr No. 19094
+2 cc to Mr.B.Rabu Manohar, Advocate Sr Nos.18705 & 18704
+2 cc to M/s.Muthu Mani Doraisami, Advocate Sr Nos.19204 & 19205
+2 cc to M/S.V.K.Raj Law Chambers, Advocate Sr Nos.19017 & 19016

W.P.Nos.4176 and 3577 of 2021

PL(CO)
RG.21.04.2021(8P/14C)
A.SK(09.07.2021)