



BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD)No.2708 of 2021

W.M.P. (MD) Nos.2228, 2229, 2230 and 2232 of 2021

(Through Video Conferencing)

WEB COPY

Maria Ayurvedic Medical College,
Rep. by its Principal
Dr.S.Jeyasree
Kulathadivilai
Thiruvattur, Attur,
Kanniyakumari District.

... Petitioner

Vs.

1.The Union of India

Rep. by its Ministry of Ayurveda, Yoga & Naturopathy
Unani, Siddha and Homeopathy (AYUSH Bhavan)
B Block, GPO Complex, INA
New Delhi 110 023.

2.The Central Council of Indian Medicine,

Rep. by its Secretary
No.61/6 Institutional Area, Janagapuri
New Delhi 110 058.

3.The Additional Chief Secretary cum

The Commissioner Indian Medicine & Homeopathy
Arumpakkam, Chennai.

4.The Tamilnadu Dr.MGR Medical University

No.69, Annasalai
Guindy,
Chennai 600 062

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in F.No.L.14014/295/2020-EP-1 of the 1st respondent dated 03.02.2021 and quash the same and consequently directing the respondents 1 and 2 herein to extend the approval of the petitioner's college for conducting BAMS course under the 4th respondent for the academic year 2020-21 and consequently permit the petitioner to participate in the counselling for admission conducted by the respondents 3 and 4 to have admissions for BAMS course in the petitioner's college for the academic year 2020-21 and to restore the teacher code of the professors of the petitioner college.



For Petitioner : Mr.Veera Kathiravan
Senior counsel
for M/s.Veera Associates
For Respondent : Mr.T.Thirupathy for R1
Mr.N.Dilipkumar for R2
Mr.R.Murugan for R3 & R4
Additional Government Pleader

WEB COPY

ORDER

This writ petition has been filed challenging the impugned proceedings of the first respondent dated 03.02.2021 and for a consequential direction to the first and second respondents to extend the approval of the petitioner College for the academic year 2020-21.

2. The first respondent, by proceedings dated 17.07.2015 granted approval to the petitioner college to establish an Ayurvedha Medical College with an intake capacity of 60 students in BAMS course from the academic year 2015-16. The affiliation was continued even during the subsequent years up to the academic year 2019-20.

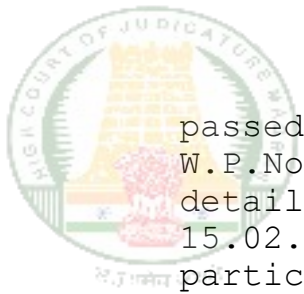
3. The first respondent through proceedings dated 05.01.2021 intimated the petitioner college the non fulfilment of nearly six requirements that were listed in the proceedings. The petitioner claims that on receipt of the intimation from the first respondent, a reply was given on 09.01.2021 along with all the relevant documents.

4. The first respondent, through the impugned order dated 03.02.2021 by pointing out to the shortcomings and deficiencies, denied permission to the petitioner college from making any admissions in the UG (BAMS) course for the academic year 2020-21. Aggrieved by the same, the present writ petition has been filed before this Court.

5. When the matter came up for admission, on 22.02.2021, this Court passed the following order:

"The matter is argued at length by Mr.Veera Kathiravan, learned senior counsel appearing for the petitioner institution and Mr.N.Dilip Kumar, learned counsel appearing for the 2nd respondent.

2.The learned counsel for the 2nd respondent would submit that no indulgence could be shown to the petitioner institution by granting interim orders for allowing them to participate in the counselling, which is scheduled to be held on 22.02.2021, 23.02.2021 and 24.02.2021. However, the learned Senior counsel for the petitioner institution has produced a copy of the interim orders



passed by the learned Single Judge of this Court in W.P.No.3577 of 2021, wherein, in similar circumstances, a detailed order has been passed by this Court on 15.02.2021, permitting the petitioner therein to participate in the first phase of counselling. According to the learned Senior Counsel, some objection has been raised against the petitioner institution therein, but the learned single Judge has followed the decision of the Hon'ble Division Bench of the Delhi High Court and granted interim order in favour of the petitioner institution therein.

3. According to the learned Senior Counsel, there are other High Courts in this country, which have passed interim order in similar circumstances. Although it was opposed by Mr.N.Dilipkumar, learned counsel for the 2nd respondent, that there are serious allegations against this petitioner institution, however, ultimately this Court has to weigh the balance of convenience in adjourning the matter for final hearing. In the opinion of this Court, the balance of convenience is entirely in favour of the petitioner institution and therefore, this Court has to necessarily follow as a matter of principle that when interim orders have been granted in similar circumstances by the learned single Judge of this Court, while sitting in the Principal Bench and also by other High Courts of this country, this Court cannot take a different view in regard to the interim orders to be passed in this writ petition, pending its finalization.

4. In regard to the objection as to the shortcoming in complying with the requirements, in fact, the learned single Judge in paragraph No.9 has imposed a condition and the same reads as follows:

"9.By referring the affidavit filed by the petitioner / institution before the first respondent, the learned Senior counsel submits that he is also willing to execute the same affidavit before this Court to ensure that they will be complying all the requirements of the first respondent and also indemnify the students with financially or any other kind of losses whatever agreed to the students due to withdrawal or permission for the academic year 2020-2021."

5.The same condition is also ipso facto to be made applicable to this case and such affidavit shall be executed by the petitioner institution.

6.In that view of the matter, there shall be an order of interim direction, permitting the petitioner institution to participate in the ongoing counselling to be held today, tomorrow and day after tomorrow, namely, 22.02.2021, 23.02.2021 and 24.02.2021 and the 3rd



respondent herein is also directed to permit the petitioner institution to participate in the ongoing counselling without prejudice to the rights of the petitioner institution. However, it is made clear that their participation in the counselling would not give them any leverage or right to the petitioner institution, if the final outcome of this writ petition would go against the interest of the petitioner institution.

7. Post the matter on 26.02.2021."

6. The matter was again taken up for hearing on 08.04.2021 and 16.04.2021 and this Court directed the petitioner to file an undertaking affidavit and specifically undertake that the deficiencies pointed out by the first respondent, which are yet to be complied with, will be rectified during this academic year. Accordingly, the additional affidavit has been filed by the petitioner. Paragraph No.11 of the additional affidavit, which contains the undertaking, is extracted hereunder:

"11.It is submitted that the petitioner college has fulfilled all the requirements as stated above. However, if the respondents find any deficiencies or shortcomings over the petitioner college, the petitioner college hereby undertakes to fulfill the same as per law. Hence this Hon'ble Court may accept this affidavit and pass orders."

7. Heard the learned senior counsel for the petitioner and the learned counsel appearing on behalf of the respondents 1 to 4.

8. This Court, on an earlier occasion, considered a similar issue in W.P.(MD) Nos.4176 and 3577/2021. This Court took into consideration the order passed by the Delhi High Court and the specific stand that was taken by the first respondent. Those writ petitions were disposed of by an order dated 23.03.2021 in terms of the order passed by the Delhi High Court in W.P.(C) No.2110/2021, dated 01.03.2021. In the present case, the learned senior counsel appearing on behalf of the petitioner submitted that for all those institutions, where permission has been granted by the Ministry of AYUSH for the preceding five academic years, it was undertaken that the consequent order issued against such institutions withdrawing the approval will be withdrawn by the Ministry and no fresh show cause notice will be issued to such institutions. For the purpose of substantiating this submission, the learned senior counsel brought to the notice of this Court the status note that was filed by the first respondent before the Delhi High Court.

9. The learned senior counsel further submitted that without prejudice to the said claim based on the status note, the petitioner institution also undertakes to rectify the defects, if any, based on the additional affidavit and therefore, the provisional affiliation



can be continued for the academic year 2020-21.

10. The learned standing counsel appearing on behalf of the Ministry of AYUSH submitted that the first respondent has already taken a stand in this regard and the petitioner has to necessarily rectify the deficiencies as per the undertaking given in the additional affidavit. The learned counsel further submitted that the first respondent had taken such a stand only after considering the Pandemic situation and in order to afford an opportunity to the institution to rectify the deficiencies.

11. For proper appreciation of the stand taken by the first respondent through the status note filed before the Delhi High Court, the same is extracted hereunder along with the directions issued by the Delhi High Court:

"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.

...

...

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."

12. The stand taken by the first respondent, based on which, the orders were passed by the Delhi High Court and relying upon the same by this Court, will also enure to the benefit of the petitioner. This is more so due to the fact that the petitioner has undertaken that the defects will be rectified.

13. In the result, this writ petition is disposed of in terms of the orders passed by the Delhi High Court in W.P.(C) No.2110/2021 dated 01.03.2021. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Ministry of Ayurveda, Yoga & Naturopathy
Unani, Siddha and Homeopathy (AYUSH Bhavan)
B Block, GPO Complex, INA
New Delhi 110 023.
- 2.The Secretary
Central Council of Indian Medicine,
No.61/6 Institutional Area, Janagapuri
New Delhi 110 058.
- 3.The Additional Chief Secretary cum
The Commissioner Indian Medicine & Homeopathy
Arumpakkam, Chennai.



4.The Tamilnadu Dr.MGR Medical University
No.69, Annasalai, Guindy, Chennai 600 062

- +1 CC to Mr.N.DILIPKUMAR, Advocate SR.No.17090
+1 CC to Mr.VEERA ASSO., Advocate SR.No. 17001
+1 CC to Mr. Special Government Pleader, SR.No. 17184

W.P. (MD)No.2708 of 2021

W.M.P. (MD) Nos.2228, 2229, 2230 and 2232 of 2021

21.04.2021

PM(CO)

TR(07.05.2021) 10P 8C