

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 17th March, 2021.**

+ **LPA 84/2021 & CM No.7910/2021 (for stay)**

**ADITYA AYURVED COLLEGE AND
RESEARCH CENTRE LTD.**

..... Appellant

Through: Mr. Nidhesh Gupta, Sr. Advocate
with Mr. Ashok Panigrahi, Mr.
Suryadeep Singh and Ms. Radha R.
Tarkar, Advs.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Monika Arora, Adv. for R-1/UID
Ms. Archana Pathak Dave and Mr.
Kumar Prashant, Advs. for R-2/CCIM

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court Appeal impugns the order dated 22nd February, 2021 of dismissal of CM No.2632/2021 filed by the appellant/writ petitioner Aditya Ayurved College and Research Centre Ltd. (appellant College) in W.P.(C) No.13031/2019, also filed by the appellant College.

2. The appeal came up first before this Court on 26th February, 2021, when notice thereof was ordered to be issued. The appeal thereafter was listed on 12th March, 2021 but could not be taken up for hearing owing to the Division Bench having not assembled on that date and was adjourned to 15th March, 2021, when it was ordered to be listed before another Bench on 16th March, 2021. In the meantime, the appellant College filed SLP (C) Nos.4260-4261/2021 against the order dated 26th February, 2021 of the

Division Bench and vide order dated 9th March, 2021, Supreme Court requested this Court to take up the appeal immediately. The appeal came up before this Bench yesterday i.e on 16th March, 2021, the senior counsel for the appellant College was heard; though hearing of arguments of the counsels for the respondents also began yesterday, but remained inconclusive owing to instructions required by the counsels for respondents. We have further heard the counsels today.

3. The appellant College claims, to have been established in the year 2007, to impart education in Ayurveda System of Indian Medicine and further claims to be affiliated to the Maharashtra University of Health Sciences and, since the year 2007, admitting 50 students annually in Undergraduate Course in Bachelor of Ayurveda, Medical & Surgery (BAMS). It is the case of the appellant College, (i) that the appellant College, vide application dated 29th August, 2018 to the respondent No.1 Ministry of AYUSH, being the Nodal Ministry of the Central Government qua all matters pertaining to Indian Medicine, sought permission to increase the intake capacity in the Undergraduate Course of BAMS, from 50 to 100 students annually, from the Academic Session 2019-2020; (ii) that the respondent No. 1 Ministry of AYUSH, on 20th November, 2018, forwarded the said application of the appellant College to the respondent No.2 Central Council of Indian Medicine (CCIM), a regulatory body for institutions/colleges imparting education in various disciplines in Indian Medicines in India, for the purposes of inspection etc.; (iii) that a team from respondent No.2 CCIM visited the appellant College on 14th February, 2019 for inspection of the teaching and infrastructure facilities; (iv) that the respondent No.2 CCIM submitted its report dated 9th April, 2019 to the

respondent No. 1 Ministry of AYUSH, recommending denial of increase in admission capacity to the appellant College; (v) that the respondent No.1 Ministry of AYUSH issued a notice dated 3rd May, 2019 to the appellant College, to show cause why enhancement in admissions should not be denied, for the reasons set out in the said notice and to appear before the designated Hearing Committee on 8th May, 2019; (vi) that the appellant College participated in the hearing pursuant to the notice to show cause; (vii) that though the respondent No.1 Ministry of AYUSH ought to have given its decision on the proposal of the appellant College for enhancement of admission capacity from the Academic Session 2019-2020, on or before 31st May, 2019, but failed to do so; (viii) that the Central Government, on 11th July, 2019, notified the Establishment of New Medical College, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity by a Medical College Regulations, 2019, in supersession of the 2003 Regulations; (ix) that on 31st August, 2019, the time period for making applications to the Central Government/respondent No. 1 Ministry of AYUSH, for the Academic Session 2020-2021 expired; till then, no decision on the application dated 29th August, 2018 of the appellant College for enhancing the admission capacity of students from the Academic Session 2019-2020, had been given; (x) that had the respondents declined enhancement in admission capacity with effect from the Academic Year 2019-2020, prior to 31st August, 2019, the appellant College would have made an application before 31st August, 2019 for enhancement of admissions from the Academic Session 2020-2021 but owing to the respondents having not communicated any decision, the appellant College could not make a fresh application for the Academic Session 2020-2021

either; and, (xi) that the respondents, only on 3rd October, 2019 rejected the application dated 29th August, 2018 of the appellant College for enhancement of intake capacity from 50 to 100 seats from the Academic Session 2019-2020.

4. Impugning the denial of enhancement of admission capacity from the Academic Session 2019-2020, W.P.(C) No.13031/2019, from which this appeal arises, was filed by the appellant College.

5. The aforesaid writ petition was entertained and is still pending consideration before the Single Judge of this Court.

6. The appellant filed CM No.2632/2021 supra in the aforesaid writ petition, seeking an interim direction to the respondents to grant permission to the appellant College for admitting 100 students for the Undergraduate Course in BAMS from the Academic Session 2020-2021, pleading (a) that the application dated 29th August, 2018 of the appellant for enhancement of admission capacity from 50 to 100 seats, from the Academic Session 2019-2020, ought to have been decided by the respondents by 31st May, 2019; (b) that however the respondents failed to decide the same, not only by 31st May, 2019 but also by 31st August, 2019, being the last date for making an application for enhancement of admission capacity from the Academic Session 2020-2021; (c) that on 7th February, 2020, the appellant College filed CM No.5659/2020 in the aforesaid writ petition, seeking permission to allow the appellant College to apply for increase in admission capacity from 50 to 100 students, from the Academic Session 2020-2021, after the last date prescribed therefor of 31st August, 2019; notice of the said application was issued and the same was posted for hearing on 20th March, 2020; (d) that

however owing to the prevalent Covid-19 pandemic, neither the writ petition nor CM No.5659/2020 could be taken up for hearing; (e) that owing to the prevalent pandemic, the respondent No.2 CCIM sought an opinion from all the Ayurveda Colleges, whether physical visitation/inspection of Colleges for granting permission for Academic Session 2020-2021 would be feasible, and was informed by the majority that physical inspection was not desirable and permission for the Academic Session 2020-2021 be given on the basis of details of infrastructure/teaching/training facilities available with the Colleges; (f) that the appellant College also submitted its details online, for enhancement in admission capacity from 50 to 100 students, from the Academic Session 2020-2021; (g) that the appellant College fulfills the requisite criteria for admitting 100 students; (h) that however the application of the appellant College for enhancement of admission capacity from the Academic Session 2020-2021 had not been considered; and, (i) that the admission process for the Academic Session 2020-2021 was still underway and the respondents were still considering applications for inspection from Colleges which wanted to increase their intake capacity.

7. The Single Judge, vide the impugned order has dismissed the aforesaid application being CM No.2632/2021 filed by the appellant College, reasoning (i) that the appellant College did not make any application at all for increase of intake capacity of students from 50 to 100 from the Academic Session 2020-2021; (ii) that the reasoning given by the appellant College for having not been able to so apply, was not acceptable; (iii) that the delay on the part of the respondents in deciding the application of the appellant College for enhancement in admission capacity from the Academic Session 2019-2020 did not come in the way of the appellant

College applying for enhancement of seats from the Academic Session 2020-2021; (iv) that the counseling for admission to the Academic Session 2020-2021 was underway and was about to conclude; and, (v) that it was not possible for the inspection of the appellant College to be carried out in the short time.

8. The senior counsel for the appellant College before us, has argued, (a) that the Single Judge has erred in holding that the delay on the part of the respondents in deciding the application dated 29th August, 2018 did not affect the right of the appellant College to apply afresh for enhancement of admission capacity from the Academic Session 2020-2021; (b) that had the appellant College been granted permission for enhancement of admission capacity from 50 to 100 students from the Academic Session 2019-2020, the appellant College would not have been required to apply afresh therefor from the Academic Session 2020-2021; (c) that by the time the respondents rejected the aforesaid application of the appellant College on 3rd October, 2019, the time for applying for enhancement of admission capacity from the Academic Session 2020-2021 had already expired on 31st August, 2019; (d) that owing to the prevalent Covid-19 pandemic, the physical inspection of the premises has in any case been done away with and permissions are being granted on the basis of online application with requisite affidavits and undertakings of existence of the prescribed infrastructure for a particular admission capacity; (e) that all that the appellant College is seeking from this Court is, consideration of its online application in this regard and along wherewith the appellant College has filed all the documents prescribed to be filed for such online permission, under the 2019 Regulations aforesaid; and, (f) that when the infrastructure for imparting education to 100 students and

the faculty required to teach the 100 students is already in existence, denial of consideration even of the application is an injustice to the appellant College.

9. Per contra, the counsels for the respondents have reiterated, (I) that the appellant College, for the enhancement in the admission capacity from the Academic Session 2020-2021, was required to apply on or before 31st August, 2019 but did not apply and thus cannot, by way of an interim order in a writ petition challenging denial of enhancement of intake capacity from the Academic Session 2019-2020, get the relief for the Academic Session 2020-2021; (II) that the relief claimed in the appeal is beyond the relief claimed in the writ petition; (III) that the appellant, before the Single Judge did not even make out a case for online permission/inspection from the Academic Session 2020-2021 and cannot make a new case in this appeal; (IV) that for the aforesaid reasons, the reliefs claimed in this appeal are beyond the reliefs claimed in the writ petition; (V) that in any case, the online/deemed permission is not applicable and/or available for enhancement in admission capacity and is only for annual approval required for admitting students to the existing admission capacity also; (VI) that merely because the application dated 29th August, 2018 of the appellant College for enhancement of admission capacity from the Academic Session 2019-2020 was pending, was no reason for the appellant College to not, in any case, apply before the prescribed date for enhancement of admission capacity from the Academic Session 2020-2021 and which the appellant did not do; (VII) that the appellant College ought to have known from the notice to show cause dated 3rd May, 2019 issued by the respondent No. 1 Ministry of AYUSH to the appellant College to show cause why the application for

enhancement of admission capacity for the Academic Session 2019-2020 be not dismissed, of the deficiencies in the application of the appellant College; and, (VIII) that the appellant College, without even applying, cannot be granted permission for enhancement of seats from the Academic Session 2020-2021. The counsel for the respondents has referred to the order dated 30th August, 2019 of the Supreme Court in Civil Appeal No.6720/2019 titled ***Shri Krishna Ayush University Kurukshetra v. J.R.K. (Jage Ram Kissan) Homeopathic Medical College and Hospital***, though pertaining to Section 12A of the Homeopathy Central Council Act, 1973 but reasoning that since show cause notice to cancel the Letter of Intent issued thereunder, was issued, the High Court was not correct in holding that there was an accrual of deemed permission and setting aside the order of the High Court.

10. Per contra, the senior counsel for the appellant College has referred us to ***Royal Medical Trust Vs. Union of India*** (2015) 10 SCC 19, to contend that the result of outcome of the inspection is required to be communicated leaving sufficient time to report compliance. It is argued that on parity, the decision of rejection of enhancement in admission capacity should be made well before the prescribed time for making application for enhancement from the subsequent year.

11. The senior counsel for the appellant College has also drawn our attention to the consent order dated 1st March, 2021 in W.P.(C) No.2110/2021 titled ***Glocal College of Unani Medical Science Hospital and Research Centre Vs. Union of India & Ors.*** and other connected petitions. The senior counsel for the appellant College has also drawn our attention to CM No.5659/2020 filed by the appellant in the writ petition

from which this appeal arises, for permission to apply for increase in intake capacity from the Academic Session 2020-2021, beyond the prescribed time.

12. The senior counsel for the appellant College has yet further drawn our attention to the communication dated 12th January, 2021 of the respondent No.2 CCIM to the respondent No.1 Ministry of AYUSH to show that permissions for enhancement of admission capacity for the Academic Year 2020-2021 are still being considered. Attention is lastly also drawn to the judgment dated 21st January, 2021 in Review Petition No.474/2018 in W.P.(C) No.7954/2017 titled ***Shri Ram Krishan Parmhans Shiksha Parishad Vs. Union of India & Anr.*** of this Court where, finding that the application of the petitioner therein for approval submitted on 28th April, 2016 was not decided within one year, the petitioner was held entitled to the benefit of Section 13A(6) of the IMCC Act and approval was deemed to have been given.

13. As far as the last of the aforesaid contentions is concerned, the same is beyond the domain of this appeal. The writ petition, making a claim of deemed approval of enhancement of admission capacity from the Academic Session 2019-2020 onwards, is still pending and this appeal is concerned only with the denial of interim relief claimed vide CM No.2632/2021.

14. Ordinarily, once the appellant College has been declined permission for enhancement in admission capacity from the Academic Session 2019-2020, during the pendency of a challenge made thereto, permission to enhance the admission capacity, cannot be granted. It cannot be forgotten that, while in the event of denial of permission being held to be bad and the

writ petition being allowed, it would be the Medical College alone which would have suffered from denial of enhancement of admission capacity for one or more years, but when pending such challenge, admission capacity is permitted to be enhanced, students, not knowing of the said arrangement being interim, take the admission and in the event of the writ petition being ultimately dismissed, their careers suffer and they find themselves landed as *persona non grata* in a college which did not have the permission to admit them or to impart a degree to them. Careers of young ones, especially students, cannot be permitted to be played with in this fashion. For a case to be made out for grant of permission which has been denied, as an interim measure, the appellant College has to have more than a *prima facie* case and which is not so in the present case. It has been held in ***Medical Council of India v. Kalinga Institute of Medical Sciences*** (2016) 11 SCC 530 that granting admission to students in an educational institution when there is a serious doubt whether admission should at all be granted, is not a matter to be taken lightly; what would a student do if his admission is found to be illegal or is quashed; it is not enough for a student to be told that his or her admission is subject to outcome of pending litigation; that it is better for the Courts to err on the side of caution rather than have the sword of Damocles hang over the students' heads. Recently, in ***Medical Council of India Vs. N.C. Medical College and Hospital*** (2019) 17 SCC 655 also it has been held that making students aware about pendency of the matter and making their admissions subject to result of litigation is not sufficient insulation and results in great hardship and wastage of academic years of students concerned and prejudice to them.

15. Perhaps realising so, the senior counsel for the appellant College also has pegged his case on consideration of the online application for enhancement of admission capacity and which has been introduced/permitted owing to the prevalent Covid-19 pandemic.

16. We have however enquired from the senior counsel for the appellant College, whether the said online approval i.e. without physical verification and trusting the affidavits and undertakings filed by the Medical Colleges, is applicable only to annual permissions for existing capacity or also extends to enhancement in capacity and/or to setting up of new Medical Colleges and granting permission for admission thereto as well.

17. While the senior counsel for the appellant College answers in the affirmative, the counsels for the respondents, under instructions from the Officers present in Court, deny and state that the online method and grant of permission, believing the documents submitted by the Medical Colleges without physical inspection, is applicable only for existing strength and existing courses.

18. During the hearing, we have been informed that the last date for admission to the Academic Session 2020-2021 is of 20th March, 2021 i.e. barely three days away. The said short time does not permit us to call for replies on affidavits, to determine the aforesaid controversy i.e. whether though online method, without physical inspection, only existing seats and courses can be filled or enhancement of seats can also be ordered. Calling for reply would, in any case make this appeal infructuous and the senior counsel for the appellant College also agrees.

19. On a reading of the 2019 Regulations Notification, we are unable to hold that the online inspection method is applicable for establishment of new colleges, commencement of new courses and/or for enhancement in admission capacity. The same appears to be applicable only to annual approvals/permissions for admission to existing colleges in existing courses and on existing strength. It would be too grave a risk to, through the online method, without physical verification, permit colleges to enhance admission capacity. If ultimately what the Medical Colleges claimed in the documents is found to be untrue and it is found that the requisite infrastructure and faculty did not exist, the loss caused to the students so admitted, would be irreparable and mar the career and future of such students.

20. Thus, not only does the appellant College not have the *prima facie* case for the interim relief sought during the pendency of the petition but the elements of irreparable injury and balance of convenience are also not in favour of the appellant College.

21. There is no merit in the appeal.

22. Dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MARCH 17, 2021

‘bs’..