

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5385 OF 2008

1. ~~Dr. Pavan S/o Vasant Hingne,~~ } Deleted names of Petitioner Nos.1,
~~Aged 24 years, Occ. Student.~~ } 10, 13 and 17 as per Court's order
dated 19 March 2009.
2. Dr. Amol S/o Abhiram Deore,
Aged 25 years, Occ. Student.
3. Dr. Dnyanesh S/o Sudhakar Rao Joshi,
Aged 25 years, Occ. Student.
4. Dr. Prafulla S/o Suresh Rao Fadanvis,
Aged 24 years, Occ. Student.
5. Dr. Imran S/o Jabbar Shaikh,
Aged 25 years, Occ. Student.
6. Dr. Sandeep S/o Ashok Jadhav,
Aged 23 years, Occ. Student.
7. Dr. Ravishankar S/o Gulabrao Pawar,
Aged 24 years, Occ. Student.
8. Dr. Pranaykumar S/o Dinkarrao Utane,
Aged 25 years, Occ. Student.
9. Dr. Yogesh S/o Bhagwanrao Shinde,
Aged 25 years, Occ. Student.

10. ~~Dr. Sandeep S/o Marotirao Jondhale,~~
~~Aged 25 years, Occ. Student.~~
11. Dr. Deepak S/o Sudam Thorat,
Aged 24 years, Occ. Student.
12. Dr. Takdeer S/o Innus Mujawar,
Aged 23 years, Occ. Student.
13. ~~Dr. Minal D/o Purushottam Mavale,~~
~~Aged 26 years, Occ. Student.~~
14. Dr. Leena D/o Ramraoji Zade,
Aged 25 years, Occ. Student.
15. Dr. Ashwini D/o Udaykumar Kulkarni,
Aged 25 years, Occ. Student.
16. Dr. Jasmine D/o Nainuddin Shaikh,
Aged 23 years, Occ. Student.
17. ~~Dr. Surekha D/o Pandharinath Abhale,~~
~~Aged 24 years, Occ. Student.~~
18. Dr. Vrushali D/o Vasant Thote,
Aged 23 years, Occ. Student.

All above Petitioners' First Year Students of
M.D./ M.S. Ayurved, Shri Ayurved College,
Dhanwantari Marg, Hanuman Nagar, **Nagpur.**

PETITIONERS

- Versus -

1. The State of Maharashtra,
Through its Secretary,

Department of Medical Education and Drugs,
Mantralaya, Mumbai – 32.

2. The Director of Ayurved,
State of Maharashtra,
2nd Floor, Khanna Construction House,
Dr. R.G. Thadani Marg, Worli,
Mumbai – 400018.
3. Bhartiya Vaidyak Samanvaya Samiti,
Through its Secretary, Dhanwantari Marg,
Hanuman Nagar, Nagpur.
4. Shri Ayurveda Mahavidyalaya,
through its Principal, Dhanwantari Marg,
Hanuman Nagar, Nagpur.
5. Government of India,
Ministry of health and Family Welfare,
Department of Ayurveda, Yoga and
Naturopathy, Unani,
Siddha and Homoeopathy (A.Y.U.S.H.),
(Education Policy Section)
Indian Red Cross Society,
Annexe Building, 1-Red Cross Road,
New Delhi – 110 001.
6. Central Council of Indian Medicine,
Through its Secretary, 61-65,
Institutional Area, Janakpuri,
New Delhi – 110 058.
7. Maharashtra University of Health Sciences,
through its Registrar, Dindori Road,
Mhasrul, Nashik.

RESPONDENTS

Mr. B.G. Kulkarni, Advocate for the Petitioners.
Mr. A.A. Madiwale, A.G.P. for Respondent Nos. 1 and 2.
Mr. N.S. Deshpande, A.S.G.I. for Respondent No.5.
Mr. R.S. Sundaram, Advocate for Respondent No.6.
Mr. J.B. Jaiswal, Advocate for Respondent No.7.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 11 APRIL 2022.

ORAL JUDGMENT (PER NITIN JAMDAR, J.) :

Heard learned Counsel for the parties.

2. This petition is filed by 18 Petitioners in the year 2008, who were at that time first year students of Respondent No.4 - Ayurveda College run by Respondent No.3 – Trust. The Petitioners were admitted in the academic year 2008-09. Respondent No.5 – Government of India, Ministry of Health and Family Welfare (AYUSH) had communicated approval to the Post Graduate Seats of Respondent No.4 – College by communication dated 16 June 2008. The Petitioners had completed their B.A.M.S. examinations in Ayurved. Thereafter, they completed internship and appeared for M.D./ M.S. entrance examination. They were included in the merit list and qualified for admission. All the students were admitted to the course on 23 July 2008; they paid their fees accordingly. Thereafter, on 31 August 2008,

Respondent No.5 – Government of India, Department of AYUSH reduced the number of seats, thereby the Petitioners were in danger of losing their seats, and thus approached this Court.

3. The petition first came up on board on 9 April 2009. Rule was issued there. Thereafter, on 18 May 2011, Civil Application was taken out in this petition, wherein the following order was passed :

“Heard learned counsel for the parties.

Perused earlier orders passed by this Court and order dated 5th May, 2011 in Writ Petition No.3578 of 2011.

The applicants have passed First Year of M.D./ M.S. (Ayurved) and next examination is due on 2nd June, 2011.

The applicants in the present application (petitioners No.3,4,5,7,8,9,11,14 and 18) have sought orders directing the authorities to cancel the order of withdrawal of 47 P.G. Seats. It is noted that due to withdrawal of 47 P.G. Seats by the Central Council for Indian Medicine admission of the applicants to the college in which they are studying has become without approval of the said institute.

It is already stated that the applicants have passed First Year examination and next examination is due on 2nd June, 2011. Due to withdrawal of 47 P.G. seats they are apprehending that their applications might not be accepted by the University

and they might be deprived of their right to appear in the examination.

In the circumstances, the following order will serve the ends of justice :

i) Respondent No.7 University shall accept the application forms of the applicants for Final Year Examination, to be held on 2nd June, 2011 and shall also permit the applicants to appear in the said examination.

ii) The result of the applicants shall not be declared without the leave of this Court.

iii) It follows that this order will not create any equity in favour of the petitioners.

iv) It further follows that the result will be subject to final decision in the present petition.

The application stands disposed of accordingly.

Steno copy of this order be furnished to the parties as per rules.”

4. On 13 October 2011, the following order was passed, and an interim relief was granted to declare the results of the Petitioners' examination of Post Graduate Course.

“Rule.

We find that the material facts and circumstances of the present petition are similar to the facts and circumstances in Writ Petition Nos.1416/2011 and 3578/2011 where Division Benches of this Court have passed detailed interim orders. We see no reason why the same interim order

should not be passed in the present petition. Accordingly we direct that there shall be interim relief directing respondent no.7 - the Maharashtra University of Health Sciences, Nashik to forthwith declare the results of the examination of Post Graduate Course where the petitioners appeared in June 2011 and if the petitioners are declared to have passed the final examination, it shall issue the Degree Certificate in favour of the petitioners.

Needless to state that the above directions will be subject to the final order in the petition.

The previous interim order dated 18/5/2011 stands modified.”

5. It is an admitted position that as of today, the Petitioners have completed their course and they have been given Marksheets and Degree Certificates, and they are all now practising Doctors. The only thing that now remains is that while issuing the Marksheets and Degree Certificates, the Respondents have placed an endorsement that it is subject to the outcome of the present petition. Therefore, when the petition came up on board for hearing in March – 2022, it was adjourned from time to time to ascertain whether there is any opposition for deletion of this endorsement.

6. On 15 March 2022, the following order was passed :

“The learned Counsel appears for Respondent No.6 and states that instructions would be taken so that the position can be clarified on the next date.

2. Add the petition to the weekly board commencing from 28 March 2022.

3. To be listed under the caption ‘for directions’ on the weekly board.”

7. Thereafter, a detailed order was passed on 28 March 2022 as under, and the matter is taken up today :

“Petitioners who are 18 in number had taken admission to MD/ MS Ayurveda Course in Respondent No.4 College on 23 July 2008 through Centralized Admission Process. Respondent No.5 Ministry of Health and Family Welfare (AYUSH), withdrew the recognition of all Post Graduate Ayurved Seats in Respondent No.4 College for the academic year 2008-09. Making a grievance that all these seats were approved seats by Respondent No.5 by letter dated 16 June 2008, and when after due admission process the Petitioners were admitted, arbitrarily recognition was withdrawn. This petition was moved immediately and an order was passed wherein permitting Petitioners to participate in the final year examination and later while issuing Rule, direction was issued to Respondent No.7 University to declare the results of examination of Post Graduate Course and if Petitioners have passed, to final issue degree certificate.

2. The learned Counsel for Petitioners states that after the impugned action was taken and under

interim order Petitioners have continued, even from the academic year 2009-10 onwards the approval have been granted to PG seats in Respondent No.4 College. The very position continued till the Petitioners passed out their final year examination.

3. According to the learned Counsel for Petitioners, by subsequent restoration of seats the objections for the year 2008-09 deemed to have waived and at this stage Petitioners' Degree should not be and cannot be withdrawn.

4. Respondent No.2 will place on record developments as to whether in the subsequent academic years the seats were approved and also the stand of the State on this count. We note that inspite of specific interim order permitting Petitioners to continue, reply affidavit has been filed only on behalf of Respondent No.2 that too in June 2009 and no reply is filed subsequent to the interim order. We have to take note of this fact that for almost 13 years none of the Respondents have by filing reply contested this petition.

5. To enable Respondent No.2 to place this factual position on record, stand over to 11 April 2022 under the caption 'for direction', and if no reply is filed, the Court will presume that none of the Respondents are opposing the relief sought for in the petition and they are put to notice as to why interim order granted in this petition should not be confirmed."

8. Post the order dated 13 October 2011, no reply affidavit on behalf of the Respondents has been filed. Only one

affidavit is on record, which is of Respondent No.2 – State that too of 8 June 2009.

9. Learned Assistant Government Pleader states that he has no instructions to oppose the petition per se. Taking note of this fact, we had put it to the State Government that if no reply is filed, we will proceed on the basis that the claim of the Petitioners for deletion of the endorsement is not being opposed. The petition has been substantially worked out by the interim order itself. The Petitioners have now settled in life, and therefore, we do not intend to adjourn the petition any further. Since, in spite of detailed order dated 28 March 2022 no reply is filed, we direct Respondent No.7 to issue fresh Marksheets and Degree Certificates to the Petitioners. Hence, the following order :

ORDER

i. The Petitioners will return their original Marksheets and Degree Certificates to Respondent No.7 – University.

ii. Upon returning the same, Respondent No.7 – University will issue fresh Marksheets and Degree Certificates without containing the endorsement that it is subject to the result of the present petition (because the same is being disposed of).

iii. Upon returning all the Marksheets and Degree Certificates as above, the Respondent - University will issue fresh Marksheets and Degree Certificates within a period of eight weeks from the submission.

12. Rule is made absolute in the above terms. No costs.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)

Sumit