

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.14278 OF 2023

Muhammad Wahed Homeopathy College
and Research Centre, Anwa Pada
Post. Anwa, Tq. Bhokardan,
Dist. Jalna through its Principal
Mr. Dr. Mohammad Furqan Mohammad Yusuf

... **PETITIONER**

VERSUS

1. Union of India
Ministry of Ayush
through its Secretary
GPO Complex, Ayush Bhawan
B Block, Ina, New Delhi,
Delhi 110023
2. National Commission of Homeopathy
through its Secretary
61-65, Institutional Area, Opp. 'D' Block
Janak Puri, New Delhi – 110058
3. Medical Assessment and Rating Board for
Homeopathy, National Commission for
Homeopathy, through its President
61-65, Institutional Area, Opp. 'D' Block
Janak Puri, New Delhi – 110058
4. State Common Entrance Test Cell,
Government of Maharashtra
through Commission
8th Floor New Excelsior Building
A.K. Nayak Marg, Fort near CSMT,
Mumbai – 400 001
5. Admissions Regulating Authority Government
of Maharashtra thr. It's Secretary
9th Floor New Excelsior Building
A.K. Nayak Marg, Fort near CSMT,
Mumbai – 400 001 Maharashtra, India
6. Maharashtra University of Health Sciences
through it's Registrar Mhasrul,
Vani Dindori Road Nashik - 422004

... **RESPONDENTS**

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Advocate for Petitioner : Mr. D.S. Bagul h/f. Mr. Girase Amarjitsing B.
 Standing counsel for Respondent Nos.1 to 3 : Mr. R.R. Bangar
 Advocate for respondent Nos.4 and 5 : Mr. M.D. Narwadkar

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CORAM : **MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

DATE : **10.11.2023**

PER COURT :

The learned advocate for the respondent Nos.1 to 3 tenders across the bar a copy of the reply, since he received only a soft copy and has taken out a print out.

2. At the joint request of the parties we have heard them finally at the stage of admission.

3. The petitioner institute is aggrieved by refusal of the respondent No.3 - Medical Assessment and Rating Board for Homeopathy, to grant permission to start Homeopathy Medical College. The appeal preferred by the petitioner under Section 29(5) of the National Commission for Homeopathy Act, 2020 has been dismissed by the respondent No.2 - Commission and even the second appeal has been dismissed by the respondent No.1.

4. Having heard both the sides, it transpires that in fact, pursuant to the petitioners application, the respondent No.3 - Board had conducted the hearing on 27.06.2023 and objectively considered the short falls that were notified to the petitioner for its response. By the

communication dated 04.07.2023 the respondent No.3 again pointed out the deficiencies in respect of various items like OPD, IPD, Hospital functioning and Teaching faculty etc. and expressly mentioned therein that a period of one month was granted from 27.06.2023 to rectify the short falls, however, final decision was taken by the board and its proposal was rejected.

5. One wonders as to why the board, in spite of having extended time to rectify the short falls by a month with effect from 27.06.2023, could pass final order soon thereafter on 04.07.2023 without waiting for the requisite period of one month.

6. Conspicuously, the order in the appeals do not specifically touch this aspect as to which circumstances compelled the board to take a final decision in spite of having granted a month's time to rectify the short falls.

7. It is to be borne in mind that it is not an adversarial matter. The petitioner was merely seeking to start a new homeopathy medical college and was seeking permission. As usual even if there are certain short comings, the board was competent enough to insist for the compliances as was done in the present matter. However, without waiting for the period extended by it, for the reasons best known to the Board, a final decision was taken to turn down the proposal. The appellate authorities also have not dealt with this aspect and have apparently merely considered objectively as to whether the objections still

subsisted and has considered the petitioners request on that line.

8. Even the affidavit-in-reply filed on behalf of the respondent Nos.2 and 3 does not seek to explain and disclose the reasons why in spite of having granted time of one month to rectify the short comings final decision was taken by the board.

9. As has been cursorily observed herein above, since it is not a matter of adversarial nature, it would be appropriate in the fitness of things, to remand the matter to the Board and directed to allow the petitioner to rectify the short falls and then to take decision.

10. Learned advocate for the petitioner submits that already all the short falls notified to it have been rectified and a request that the board may now pass final order, if necessary by carrying out objective scrutiny of compliance or otherwise of the short falls.

11. The writ petition is partly allowed. All the orders passed by the respondent Nos.1 to 3 are quashed and set aside. The respondent No.3 - Board shall grant some breathing time to the petitioner at least of three weeks from today to comply with the short falls and shall pass appropriate final order within three weeks if necessary by undertaking verification herein etc.

(NEERAJ P. DHOTE, J.)

(MANGESH S. PATIL, J.)