

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 13230 OF 2023

Late Mrs. Housabai Homeopathic
Medical College & Hospital

... Petitioner

V/s.

The Union of India and Ors.

... Respondents

Mr. Atul Damle, Senior Advocate i/b. Suryajeet P. Chavan for the
Petitioner

Mr. Onkar Chandurkar, Addl. Govt. Pleader for Respondent No.5

Mr. R.V. Govilkar with Ms. Carina Xavier for Respondent No.1

Ms. Purnima Awasthi for Respondent Nos. 2 and 3

***CORAM : NITIN JAMDAR &
MANJUSHA DESHPANDE, JJ.***

DATE : 26 OCTOBER 2023

P.C. :-

Heard the learned Counsel for the parties.

2. The Petitioner – a Homeopathic Medical College challenging the order passed by the National Commission for Homeopathy (NCH) and the order passed in Appeal and also the conditional permission letter issued by the Medical Assessment and Rating Board for Homeopathy.

3. The Petitioner – College started in the year 2019-20, and the admission for 100 seats was permitted for the academic session for the First Year BHMS Course. Thereafter, for the next year, there was an objection by the National Homeopathy Council, and permission was granted for only 60 seats. The Petitioner had challenged this action of the Ministry of Ayush in this Court which refused to interfere and dismissed the Writ Petition. Thereafter, the Hon'ble Supreme Court, by order dated 23 February 2021, permitted the intake of 100 seats for the academic year 2020-21 as the Hon'ble Supreme Court found that the Petitioner had complied with all the necessary requirements, including a full-time teaching facility.

4. Under the National Commission for Homeopathy Act 2020, Regulations, titled *the National Commission for Homeopathy (Minimum standards requirements for Homeopathic Colleges and attached hospitals), Regulations – 2022* (the Regulations) were promulgated. These Regulations lay down minimum standards which are required to be observed for sanctioning intake capacity.

5. Thereafter, the application of the Petitioner for 100 seats for 2023-24 came up for consideration by the National Commission for Homeopathy. The same was disapproved by order dated 31 July 2023, and conditional permission was issued with an intake capacity

of 60 seats. The Medical Assessment and Rating Board for Homeopathy inspected the College and reported deficiencies. The conditional permission was granted by Respondent No.3 - Medical Assessment and Rating Board for Homeopathy for 60 seats. The Appeal was filed by the Petitioner before the National Commission for Homeopathy on 7 August 2023. The same was dismissed by order dated 6 September 2023. The Petitioner filed a Second Appeal under Section 29 (6) of the National Commission for Homeopathy Act 2020, which was dismissed. Thereafter, the Petitioner is before us for a direction that the Petitioner be permitted to fill in an additional 40 seats in the third round of counselling.

6. The Petition was filed on 19 October 2023 and taken for urgent circulation stating that Round -III starts on 20 October 2023 and the list would be published on 26 October 2023.

7. The Petitioner sought an interim order that the Petitioner be permitted to fill in 40 seats in the third round of counselling. As regards the interim order of such a nature, the position of law is settled. In the decision of the Hon'ble Supreme Court in the case of *Medical Council of India v/s. N.C. Medical College & Hospital and Ors.*¹, the Hon'ble Supreme Court disapproved grant of such interim orders which would put the future of the students admitted by interim order to uncertainty and

¹ (2019) 17 SCC 655

emphasized that such interim orders should not be issued. The observations reads thus :-

“ 12. In the face of repeated failures on part of the respondent College to remove the deficiencies, no permission to make admissions for the current academic session could have been granted unless and until on physical verification everything was found to be in order. A condition such as making students aware about the pendency of the matter and stating that their admissions would be subject to the result of pending litigation, is not a sufficient insulation. We have repeatedly seen cases where after making such provisional admissions the colleges have been denied permission upon physical verification. Questions then come up as to what is the status of such students and how best their interest can be protected. Theoretically, in terms of conditions of Essentiality Certificate the State Government concerned is obliged to take care of interest of such students. But the harsh reality is such students cannot be accommodated because in normal circumstances all the seats in every medical college are filled up. It then becomes a case of impossibility of accommodating such students in any existing college. The entire exercise may thus result in great hardship and wastage of academic years of the students concerned. It is for this reason that while granting any interim relief very cautious approach needs to be adopted. It may be possible to expedite the process of physical verification in a given case but to allow provisional admissions and make them subject to the result of the petition may entail tremendous adverse consequences and prejudice to students.

13. At this juncture, we may advert to certain decisions of this Court where the issues regarding

propriety and correctness of similar such interim order were put in question:

13.1. In Medical Council of India v. Rajiv Gandhi University of Health Sciences [Medical Council of India v. Rajiv Gandhi University of Health Sciences, [(2004) 6 SCC 76 : 2 SCEC 562], it was observed : (SCC p. 84, para 14)

“14. In the normal circumstances, the High Court ought not to issue an interim order when for the earlier year itself permission had not been granted by the Council. Indeed, by grant of such interim orders students who have been admitted in such institutions would be put to serious jeopardy, apart from the fact whether such institutions could run the medical college without following the law. Therefore, we make it clear that the High Court ought not to grant such interim orders in any of the cases where the Council has not granted permission in terms of Section 10-A of the Medical Council Act. If interim orders are granted to those institutions which have been established without fulfilling the prescribed conditions to admit students, it will lead to serious jeopardy to the students admitted in these institutions.”

13.2. In Medical Council of India v. JSS Medical College [Medical Council of India v. JSS Medical College, [(2012) 5 SCC 628 : 4 SCEC 414], this Court stated : (SCC pp. 631-32, paras 12-13)

“12. Without adverting to the aforesaid issues and many other issues which may arise for

determination, the High Court, in our opinion, erred in permitting increase in seats by an interim order. In normal circumstances the High Court should not issue interim order granting permission for increase of the seats. The High Court ought to realise that granting such permission by an interim order has a cascading effect. By virtue of such order students are admitted as in the present case and though many of them had taken the risk knowingly but few may be ignorant. In most of such cases when finally the issue is decided against the College the welfare and plight of the students are ultimately projected to arouse sympathy of the Court. It results in a very awkward and difficult situation. If on ultimate analysis it is found that the College's claim for increase of seats is untenable, in such an event the admission of students with reference to the increased seats shall be illegal. We cannot imagine anything more destructive of the rule of law than a direction by the Court to allow continuance of such students, whose admissions is found illegal in the ultimate analysis.

13. This Court is entrusted with the task to administer law and uphold its majesty. Courts cannot by its fiat increase the seats, a task entrusted to the Board of Governors and that too by interim order.”

13.3. The observations in *Medical Council of India v. Kalinga Institute of Medical Sciences* (2016) 11 SCC 530 : 8 SCEC 176], were : (SCC p. 541, paras 27-28)

“27. That apart, we are of the opinion that the High Court ought to have been more circumspect in directing the admission of students by its order dated 25-9-2015 [Kalinga Institute of Medical Science v. Union of India, 2015 SCC OnLine Ori 609]. There was no need for the High Court to rush into an area that MCI feared to tread. 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. First of all the career of a student is involved—what would a student do if his admission is found to be illegal or is quashed? Is it not a huge waste of time for him or her? Is it enough to say that the student will not claim any equity in his or her favour? Is it enough for student to be told that his or her admission is subject to the outcome of a pending litigation? These are all questions that arise and for which there is no easy answer. Generally speaking, it is better to err on the side of caution and deny admission to a student rather than have the sword of Damocles hanging over him or her. There would at least be some certainty.

28. Whichever way the matter is looked at, we find no justification for the orders passed by the High Court, particularly the order dated 25-9-2015 [Kalinga Institute of Medical Science v. Union of India, 2015 SCC OnLine Ori 609] and the order dated 4-3-2016 [Kalinga Institute of Medical Sciences v. Union of India, 2016 SCC OnLine Ori 134].”

13.4. Further, in *Dental Council of India v. Dr Hedgewar Smruti Rugna Seva Mandal* [*Dental Council of India v. Dr Hedgewar Smruti Rugna Seva Mandal*, [(2017) 13 SCC 115 : 8 SCEC 485] , it was observed : (SCC pp. 124-25, paras 22-23)

*“22. From the aforesaid authorities, it is perspicuous that the court should not pass such interim orders in the matters of admission, more so, when the institution had not been accorded approval. Such kind of interim orders are likely to cause chaos, anarchy and uncertainty. And, there is no reason for creating such situations. There is no justification or requirement. The High Court may feel that while exercising power under Article 226 of the Constitution, it can pass such orders with certain qualifiers as has been done by the impugned order [*Dr Hedgewar Smruti Rugna Seva Mandal v. Union of India*, 2016 SCC OnLine Bom 13166], but it really does not save the situation. It is because an institution which has not been given approval for the course, gets a premium. That apart, by virtue of interim order, the Court grants approval in a way which is the subject-matter of final adjudication before it. The anxiety of the students to get admission reigns supreme as they feel that the institution is granting admission on the basis of an order passed by the High Court. The institution might be directed to inform the students that the matter is sub judice, but the career oriented students get into the college with the hope and aspiration that in the ultimate eventuate*

everything shall be correct for them and they will be saved. It can be thought of from another perspective, that is, the students had deliberately got into such a situation. But it is seemly to note that it is the institution that had approached the High Court and sought a relief of the present nature. By saying that the institution may give admission at its own risk invites further chaotic and unfortunate situations.

23. The High Court has to realise the nature of the lis or the controversy. It is quite different. It is not a construction which is built at the risk of a plaintiff or the defendant which can be demolished or redeemed by grant of compensation. It is a situation where the order has the potentiality to play with the career and life of young peoples. One may say, "... life is a foreign language; all mispronounce it", but it has to be borne in mind that artificial or contrived accident is not the goal of life."

14. In the backdrop of the law laid down by this Court, the High Court was not justified in passing interim directions and permitting the respondent College to go ahead with provisional admissions for the academic session 2018-2019. We, therefore, allow this appeal and set aside the order dated 29-5-2018 [N.C. Medical College & Hospital v. Union of India, 2018 SCC OnLine P&H 907] passed by the High Court".

(emphasis supplied)

The learned Counsel for the Petitioner submitted that since the last

date is tomorrow, the Petition should be taken up for disposal today itself. In these circumstances, we have proceeded to examine the Petition even if there is no reply. The orders passed by the Respondent – Commission in First and Second Appeals are detailed orders considering all aspects.

8. Under the Regulations, one of the requirements is for the salary of teaching and non-teaching staff to be regularly paid. There are other requirements regarding the hospital to be maintained. The Petitioner was put to notice that teaching staff in the Petitioner – college was not getting their regular salary. Not all teachers were found at the time of payroll of any particular month. The hospital record maintained by the Petitioner showed 241 patients a day, but only eight patients were found on the date of inspection till 11 a.m. closing number was 230 cases at 5.00 p.m. There were duplications of the numbers, indicating manipulation. The medicines did not have proper labelling, i.e., manufacturing date, and the batch number could not be seen. Also, the case records were not well maintained. Considering this shortfall and the facilities available, the Respondent decided to grant conditional permission for 60 seats instead of 100 seats.

9. The Petitioner submitted its response in the First Appeal. The Responses were considered, and a detailed order came

to be passed rejecting the Appeal. Thereafter, a Second Appeal was filed by the Petitioner, giving particulars, and this Second Appeal also came to be dismissed by a detailed order. Therefore, the factual position as to the shortfalls was considered by two authorities in two appeals and held against the Petitioner; it is not possible for us to adjudicate disputed questions of fact exercising power akin to a third appeal.

10. As far as the salaries of the teaching staff are concerned, the Petitioner responded that the bank account statement would show that they were regularly paying salaries to the teachers, though in between for a few months, there were some irregularities and all teachers were paid. The teachers are aware of the financial position. Regulation E.3(c) of the Regulations of 2022 provides that salary shall be credited to the salary account through bank transfer from the dedicated account, and income tax deduction certificates such as Form 16 shall be issued by the college to the teachers as per the norms. Therefore, whether the salary is being paid regularly would be seen from the issuance of Form 16 under the Income-tax Act. Once this mode of proof was prescribed under the Regulations of 2022, that would have been the Petitioner's answer regarding regular payment to the teachers. Admittedly, no such Form 16 was submitted, and therefore, if the authorities concluded that every staff is not being paid regularly, it does not warrant interference.

11. As regards the Petitioner's shortfall in the OPD Register that genuine functionality and authenticity of the cases could not be verified, the Petitioner sought to provide the documents regarding the OPD/IPD medicine dispensing register. The Appellate Authority held that it is only during the Second Appeal, OPD case sheets for 19 July 2023 and 20 July 2023, that a few case sheets and other documents were sought to be produced. The Appellate Authority observed that separate departments are not available in the hospital. No information is submitted as to which department the patient was treated and admitted to, and in random examination, many discrepancies were found, which have been highlighted in the appeal order in detail. Therefore, the Appellate Authority concluded that the deficiency was not removed. Thirdly, as regards the ground that the medicine bottles were without numbers and names, the Petitioner sought to explain that they had been manually labelling the medicine bottles because there were rare medicines and new medicines were being purchased. The Appellate Authority observed that the Petitioner was using medicines purchased at the time of the establishment, which shows poor functionality; handwritten labels are pasted on medicine bottles with no batch number and no manufacturing date visible. There is no reason why the stock register was not submitted to verify whether new medicine purchase bills submitted during the Second Appeal could be verified.

12. From this, if the Appellate Authority has drawn a conclusion that there are shortfalls in the Petitioner – institution, then no error can be found in the view taken by the Authority. The standards in the medical college cannot be compromised and must be maintained. There is no satisfactory reason as to why such deficiencies should have existed. Two authorities after giving full opportunity with detailed reasoning, have recorded these findings. We find no case to interfere.

13. The Writ Petition is accordingly rejected.

MANJUSHA DESHPANDE, J.

NITIN JAMDAR, J.

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