IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1127/2023

1. Bhartiya Vaidyak Samanvaya Samiti,
Through its Secretary, Baidyanath Ayurved Bhawan
Pvt. Ltd., Great Nag Road, Nagpur.

2. Shri Ayurved Mahavidyalaya, Through its Principal,
Mohan S/o Bhaorao Yeole, Aged about 58 years,
Occ. - Service, C/o Dhanwantri Marg, Hanuman
Nagar, Nagpur – 440 009. **PETITIONERS**

.....VERSUS.....

1. The State of Maharashtra,
Medical Education and Drugs Department,
Through its Secretary, Mantralaya, Mumbai-32.

2. The State Common Entrance Test Cell,
Through its Secretary, Maharashtra State, 8th Floor,
New Excelsior Building, A.K. Nayak Marg,
Fort, Mumbai – 400 001.

3. Director of Ayurved, Directorate of AYUSH,
4th Floor, Government Dental and Hospital Building,
St. George Compound, D'mello Road, Mumbai-1.

4. Maharashtra University of Health Sciences,
3RH3+ C34, Mhasrul, Vani Dindori Road,
Nashik, Maharashtra – 422 004.

5. The Secretary, Admission Regulating Authority,
9th Floor, New Excelsior Building, A.K. Nayak
Marg, Fort, Mumbai – 400 001. **RESPONDENTS**

Shri Ashwin Deshpande, counsel for the petitioners.
Ms N.P. Mehta, Assistant Government Pleader for the respondent nos.1 and 3.
Shri N.A. Gaikwad, counsel for the respondent nos.2 and 5.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : OCTOBER 05, 2023
DATE ON WHICH JUDGMENT IS PRONOUNCED : NOVEMBER 04, 2023

JUDGMENT (PER : A.S. CHANDURKAR, J.)

In view of notice for final disposal issued earlier, we have heard the learned counsel for the parties by issuing **RULE** and making it returnable forthwith.

2. The petitioner no.1 is a Society registered under the provisions of the Societies Registration Act, 1860 and the Maharashtra Public Trusts Act, 1950. It is running the petitioner no.2-Institution that imparts under-graduation and post-graduation courses in Ayurved. The Institution is affiliated to the fourth respondent-Maharashtra University of Health Sciences and is duly recognized by the second respondent-Director of Ayurved. The undergraduate courses conducted by the Institution are run on grant-in-aid basis, such grant being received from the State Government. The post-graduation courses are however run on no-grant basis. The Institution seeks grant of 15% Institutional Quota insofar as its post-graduation courses are concerned.

3. Shri Ashwin Deshpande, learned counsel for the petitioners submits that as the post-graduation courses run by the Institution are on no-grant basis, the Institution is entitled to 15% Institutional Quota while granting admissions to the said courses. Referring to various provisions of the Maharashtra Un-aided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015 (for short, 'the Act of 2015') and especially Section 2(x) that defines un-aided institutions, it is submitted that in the light of the provisions of Sections 14 and 15, the Fees Regulating Authority is empowered to approve the fees of the post-graduate courses conducted by the Institution. Referring to the Maharashtra Un-aided Private Professional Educational Institutions (Regulation of Admission to the Full

Time Professional Post Graduate Medical and Dental Courses) Rules, 2016 (for short, 'the Rules of 2016') and the Schedule appended thereto it was submitted that the Authorities were not justified in depriving the Institution of the 15% Institutional Quota in the post-graduate courses. The stand taken by the Authorities by relying upon the Government Resolution dated 22.09.2017 of not providing grant-in-aid to the post-graduate courses was unjustified. Since the Act of 2015 and the Rules of 2016 framed thereunder were applicable and the post-graduate courses run by the Institution were not receiving any grant-in-aid, the Institution was entitled to 15% Institutional Quota. By referring to the rejoinder filed on behalf of the petitioners it was submitted that merely because certain staff members who were teaching under-graduate courses were receiving salary grant from the State Government could not be a reason to deprive the Institution of the 15% Institutional Quota. The under-graduate courses and the post-graduate courses were two distinct units. The post-graduate un-aided courses could be described as an "Un-aided Institution" within the meaning of Section 2(x) of the Act of 2015, thus being entitled to 15% Institutional Quota. It was thus prayed that the post-graduate courses run by the Institution be held entitled to 15% Institutional Quota as per Clause 4.7 of the Information Brochure published by the second respondent – State Common Entrance Test Cell.

4. Ms N.P. Mehta, learned Assistant Government Pleader for the respondent nos.1 and 3 opposed the aforesaid submissions. Relying upon the affidavit-in-reply filed on behalf of the said respondents it was submitted that the Institution as a whole was required to be considered for entitlement to 15% Institutional Quota. The Institution was running under-graduate and post-graduate courses as one unit. As the Institution was the same and its under-graduate courses were receiving grant-in-aid from the State Government there was no basis for the petitioners to claim 15% Institutional Quota on the ground that the post-graduate courses were not receiving grant-in-aid. Reliance in this regard was sought to be placed on the decision in *Modern Dental College and Research Centre and other unaided private medical and dental colleges Versus State of Madhya Pradesh* [**(2016) 7 SCC 353**] to contend that the claim as made by the petitioners was not tenable. It was pointed out that the under-graduate courses were fully aided and the Institution was using the services of about twenty six teachers imparting instructions in the under-graduate courses also as post-graduate teachers and guides. The infrastructure that was made available to the under-graduate courses was also being utilized in the post-graduate courses. The Principal of the college running both the courses was common. Even otherwise, it was submitted that the admissions to the post-graduate courses were being conducted through the State Common Entrance Test Cell and there was no scope for grant of any Institutional Quota to the petitioners. Attention was also invited to the schedule of fees determined by the Fees

Regulatory Authority for the post-graduate courses and it was submitted that there was a vast difference in the said fees when compared with the fees payable for the under-graduate courses. It was thus submitted that there was no basis whatsoever for the petitioners to seek 15% Institutional Quota.

Shri N.A. Gaikwad, learned counsel appearing for the second respondent-State Common Entrance Test Cell as well as the fifth respondent-Secretary, Admission Regulating Authority supported the stand of the State Government. He submitted that the said respondents merely implemented the policies of the State Government. The distribution of seats was undertaken as per the instructions of the State Government and the same were binding on it. Since the post-graduate course was attached to the College where the under-graduate courses were being conducted, the petitioners were not entitled for grant of 15% Institutional Quota.

5. Having heard the learned counsel for the parties and having perused the relevant material on record, we do not find that the Institution is entitled for 15% Institutional Quota at the post-graduate courses conducted by it. Perusal of the Scheme of the Act of 2015 indicates that a private professional educational institution as defined in Section 2(q) of the Act of 2015 is required to be taken as one entire institution notwithstanding the fact that it is running distinct professional course/

courses, some of which are admissible to grants and others are not. Section 2(r) of the Act of 2015 defines "Professional Education" and the same is inclusive of a course leading to the Award of an under-graduate or post-graduate degree, diploma by whatever name called and recognized by the Appropriate Authority. Section 2(l) of the Act of 2015 defines the term "Management" and it means the Managing Committee or the Governing Body by whatever name called that manages the affairs of the private professional educational institution. The emphasis in the Act of 2015 is on an Institution as a whole and not on distinct courses run by it, for example under-graduate or post-graduate courses.

6. It is not in dispute that the graduate courses run by the Institution receive grant-in-aid from the State Exchequer. It is a further admitted position on record that the Institution has engaged the services of seventy seven teaching and non-teaching staff. Of the aforesaid forty five are employed in the under-graduate department while thirty two staff members are employed in the post-graduate department. Twenty six teachers are receiving salary by virtue of grant-in-aid being provided by the State Government. In the affidavit-in-reply filed on behalf of the Medical Education and Drugs Department of the State Government it has been stated that the Institution has received an amount of Rupees Two Hundred and Forty Lakhs from the Central Government through its Ayush Department. It has also received an amount of Rupees Two Lakhs Twenty

One Thousand Nine Hundred under the schemes run by the Ayush Department. It thus becomes clear that the under-graduate courses run by the Institution are in receipt of grant-in-aid. The infrastructure being utilized for imparting instructions at the under-graduate courses is also utilized for providing instructions at the post-graduate courses. Such grant-in-aid is being received for the under-graduate courses from 01.01.2004 and in terms of the Government Resolution dated 10.08.2016 the employees appointed on the approved posts are entitled to the benefits of pension and gratuity scheme. It thus becomes clear that the Institution as a whole runs under-graduate as well as post-graduate courses and grant-in-aid is made admissible to the under-graduate courses.

7. In our view, merely because the post-graduate courses run by the Institution do not receive grant-in-aid, the Institution as a whole cannot be treated as "an Unaided Institution". At the cost of repetition it may be stated that Section 2(x) of the Act of 2015 refers to a private professional educational institution that does not receive aid or grant-in-aid from the Central Government, the State Government or any Local Authority. In the light of the admitted position that the Institution receives grant-in-aid from the Central Government and the State Government for its under-graduate courses, the same cannot be called an "Unaided Institution".

8. For aforesaid reasons, we do not find that the relief sought by the petitioners can be granted to them on the premise that the post-graduate courses conducted by the Institution do not receive any grant-in-aid. Since the under-graduate courses run by the same Institution receive grant-in-aid, there is no basis whatsoever to uphold the claim of the petitioners to 15% Institutional Quota. The writ petition therefore stands dismissed. Rule is discharged with no order as to costs.

(**MRS. VRUSHALI V. JOSHI, J.**) (**A.S. CHANDURKAR, J.**)

APTE