

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

+ **W.P.(C) 222/2023 & CM APPLs. 782/2023, 2817/2023**

Date of Decision: 24.01.2023

IN THE MATTER OF:

BABA HIRA DAS JI AYURVEDIC MEDICAL
COLLEGE AND HOSPITAL
THROUGH ITS DIRECTOR
VPO BADAL DISTRICT SRI MUKTSAR SAHIB
PUNJAB 152113

..... Petitioner

(Through: Mr. Avneesh Arputham, Advocate)

Versus

UNION OF INDIA THROUGH THE MINISTRY OF
AYUSH GOVERNMENT OF INDIA
AYUSH BHAWAN BLOCK B
GPO COMPLEX INA NEW DELHI 110023

..... Respondent No.1

NATIONAL COMMISSION FOR INDIAN
SYSTEM OF MEDICINE, THROUGH THE
CHAIRPERSON

ANUSANDHAN BHAWAN, 61-65,
INSTITUTIONAL AREA, JANAKPURI D BLOCK,
NEW DELHI 110058.

..... Respondent No.2

MEDICAL ASSESSMENT AND RATING BOARD,
NATIONAL COMMISSION FOR INDIAN
SYSTEM OF MEDICINE, THROUGH ITS
CHAIRPERSON

ANUSANDHAN BHAWAN, 61-65, INSTITUTIONAL
AREA, JANAKPURI D BLOCK, NEW DELHI
110058.

..... Respondent No.3

GURU RAVIDAS AYURVEDIC UNIVERSITY
THROUGH THE REGISTRAR

VPO KHARKAN UNA ROAD HOSHIARPUR
PUNJAB 146001

..... Respondent No.4

THE DIRECTORATE OF MEDICAL
EDUCATION & RESEARCH
MEDICAL EDUCATION BHAWAN SECTOR 69
SAHIBZADA AJIT SINGH NAGAR
PUNJAB 160062

..... Respondent No.5

(Through: *Mr.Akshay Amritanshu and Mr.Samyak Jain, Advocates for R- 1.*

Ms.Archana Pathak Dave, Mr.Parmod Kumar Vishnoi, Advocates for R-2/NCISM and Mr.Raghurama Bhatt, President MARB.)

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. This petition under Article 226 of the Constitution of India is directed against impugned order dated 19.12.2022 passed by respondent No.2/National Commission for Indian System of Medicine, (hereinafter referred to as 'NCISM') whereby, renewal permission to the petitioner-institution to admit 60 undergraduate students in Bachelor of Ayurvedic Medicine and Surgery (hereinafter referred to as 'BAMS') course for the academic session 2022-2023 has been denied.

2. Brief facts of the case are as under:-

(i) The petitioner-institution is imparting education in the field of Indian System of Medicine from the year 2016-2017 onwards. For the academic session 2022-2023 for BAMS course, the petitioner-institution was inspected through hybrid mode *i.e.*, video

conferencing and by physical inspection between 29.09.2022 to 30.09.2022 by respondent No.3.

- (ii) On 22.11.2022, show cause notice/hearing notice was issued to the petitioner- institution by respondent No.3 pointing out certain deficiencies in the college. Respondent No.3 fixed the date for hearing on 25.11.2022.
- (iii) Pursuant to show cause notice on 24.11.2022, the petitioner-institution submitted its reply along with the supporting documents before respondent No.3.
- (iv) On 05.12.2022, respondent No.3 denied conditional permission to the petitioner-institution.
- (v) On 15.12.2022, this court in W.P.(C) 17216/2022 against the order dated 05.12.2022 noted the submission that the first appeal preferred by the petitioner-institution would be decided within a couple of days and accordingly the matter was to be notified on 20.12.2022. On 19.12.2022, respondent No.2 passed an order, whereby, the appeal preferred by the petitioner-institution was rejected against the denial of renewal permission. On 20.12.2022, the petitioner-institution preferred a second appeal against the order to respondent No.1. Since the counseling was notified by the State of Punjab therefore, without awaiting the decision of the second appeal the petitioner-institution has preferred the instant writ petition.

3. Learned counsel appearing on behalf of the petitioner- institution submits that the entire approach of respondent No.3 is contrary to the applicable regulations known as **Indian Medicine Central Council**

(Requirements of Minimum Standard for Under-Graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016 (hereinafter referred to as 'MSR 2016'). He states that when the petitioner-institution is already in existence since 2016-2017, it was incumbent upon respondent No.3 to provide the petitioner-institution sufficient opportunity to rectify any deficiency if at all it exists. He states that the reason for non-grant of renewal permission is perverse and the petitioner-institution is already having more than the requisite number of faculties required as per MSR, 2016. According to him, the order passed by the appellate authority is a non-speaking order and on account of unfair consideration to his request, not only the petitioner-institution would suffer but large number of students, who want admission in the petitioner-institution, will also have to suffer irreparably. He further states that the concept of "excess faculty" is not defined either in the **National Commission for Indian System of Medicine Act, 2020** (hereinafter referred to as 'Act of 2020') or in MSR, 2016. While referring to Note (iii) Schedule V of the MSR, 2016, he states that the requirement is that the college having upto 60 intake capacity shall have a minimum faculty of 27 in totality, out of which a minimum of 12 Professors or Readers should cover not less than 11 departments. He explains that the scheme of the MSR, 2016 indicates that there should be a minimum of 12 Professors or Readers in 11 departments. According to him, in 11 departments, if there are 12 Professors, as a corollary, in one department one excess Professor is bound to exist. Various examples have been cited by learned counsel appearing on behalf of the petitioner-institution to indicate that the entire understanding of the MSR 2016, by the respondents, is hyper technical.

4. While placing on record the list of faculties, learned counsel states that between the dates of inspection i.e. 29.09.2022 to 30.09.2022, the college had a total of the 32 teaching faculty. According to him, out of 32 teaching faculty, 12 were higher faculty in 11 departments and 20 were lower faculty. According to him, the total faculty is above 90 per cent and the finding in the impugned order that it is below 90 per cent is incorrect. He explains that even if the appointment of Dr. Aruna Tiwari, who has joined as a lower faculty on 16.11.2022, is not considered in that case also, the petitioner-institution is in excess of the requisite number of faculty as required by MSR, 2016.

5. The submissions made by the petitioner-institution have been opposed by the learned counsel appearing on behalf of the respondents. respondent No.2 from its counter affidavit pointed out that on the basis of the deficiency which were noted by the visiting team on 29.09.2022 and 30.09.2022, the petitioner-institution was afforded an opportunity of hearing. The petitioner-institution failed to explain the deficiencies and therefore, denial order dated 15.12.2022, was passed. The petitioner-institution has had an availability of 87.50 per cent teaching staff and hence, it was found to be deficient of teaching staff. The first appeal preferred by the petitioner-institution was also considered and the observations of the hearing committee in appeal, clearly indicated that at the time of inspection the teaching staff was found to be 87.50 per cent against the mandatory requirement of 90 per cent. It is therefore, stated that the first appeal has already been decided and the second appeal is pending before the Ministry.

6. Learned counsel appearing on behalf of respondent No.2 also placed reliance on a decision of the Hon'ble Supreme Court in the case of *Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) and Others*¹, *Medical Council of India New Delhi v. State of HP and Ors.*², *Medical Council of India v. S.R. Educational & Charitable Trust*³, *Ayurved Shastra Seva Mandal and Another v. Union of India and Others*⁴ and it is stated that once the educational institution is found to be deficient in fulfilling the teaching staff requirement, writ court normally should not interfere in the decision so taken.

7. I have heard the learned counsel appearing on behalf of the parties and perused the record.

8. Before dealing with the matter, it is pertinent to mention that MSR, 2016 are framed with the previous sanction of the Central Government to regulate the requirement of colleges for education in Ayurveda System of Medicine. Clause 3 of MSR, 2016 deals with the requirement of minimum standard to grant permission. Clause 3(1)(a)(g) of MSR, 2016 states that the position prevailed on the date of visit to assess the requirement as specified in the regulations shall be taken into consideration for grant of conditional permission or permission for a period of five years to the colleges. Schedule V of MSR 2016 details about the teaching staff in an Ayurvedic College up to 60 and 61 to 100 intake capacity. In the present case, this court is concerned about the intake capacity of 60.

¹ (2016) 11 SCC 530

² (2005) SCC 63

³ (2020) 17 SCC 717

⁴ (2013) 16 SCC 696



9. This matter was taken up for hearing on 09.01.2023 and notices were accepted on behalf of the respondents. The respondents filed their reply and after hearing learned counsel appearing on behalf of the parties and without prejudice to their rights, it was directed that respondent No.2 should re-examine the explanation submitted by the petitioner-institution, before this court and before the first appellate committee. On the basis of the directions given by this court, respondent No.2 on 16.01.2023, again passed an order and it has been decided that the order earlier passed for denial of grant of conditional permission does not require any reconsideration. When this matter was taken up for hearing on 20.01.2023, the learned counsel appearing on behalf of the petitioner-institution, while placing reliance on a chart indicated that there were 30 faculty members working in the petitioner-institution as on the date of first appeal order i.e. 19.12.2022. While placing reliance on a chart showing the Department-wise availability of faculty, he tried to explain that the petitioner-institution is already in excess of faculty. According to him, against the requirement of 27 faculty, the petitioner-institution is having a faculty of 30 and therefore, the decision taken by respondent No.2 deserves reconsideration. Since, there was no clarity with respect to the excess faculty concept, the counter affidavit and supplementary affidavit did not specifically deal with the submission made by learned counsel appearing on behalf of the petitioner-institution, therefore, this court wanted respondent No.2 to explain the nature of deficiencies and the requirement under regulation and accordingly, presence of a responsible officer from the commission was directed.

10. In pursuance to the directions dated 20.01.2023, today Dr. Raghurama Bhatt, Senior Officer, appears along with Ms. Archana

Pathak Dave, learned counsel for Respondent Nos.2 and 3 and they presented a chart to indicate that the petitioner-institution is deficient of two higher faculties in accordance with MSR, 2016.

11. Schedule V of MSR, 2016 states that there are 14 teaching departments and against each department there is a requirement of having 15 higher faculty and 15 lower faculty. Note (iii) of Schedule V of MSR 2016 states that the deficiency of teachers up to 60 intake capacity shall not exceed more than 10 per cent of total requirement with the availability of a minimum of one teacher in each of the 14 departments. It further states that the total number of higher faculty shall not be less than 12 Professors or Readers distributed in a minimum of 11 departments. According to this clause, this relaxation is for seeking conditional permission to undertake admissions for a particular academic session.

12. Regulation 3(1)(a)(g) and Note (iii) of Schedule V of MSR, 2016 are being respectively reproduced as under:-

"3. Requirements of Minimum Standard to grant of permission-

(1) (a) The Ayurveda colleges established under section 13A and existing under section 13C of the Act and their attached hospitals shall fulfill the requirements of minimum standard for infrastructure and teaching and training facilities referred to in the regulations 4 to 11 upto the 31st December of every year for consideration of grant of permissions for undertaking admissions in the coming academic session;

(b) to (f).....

(g) the position prevailed on the date of visit to assess the fulfilment of requirements as specified in these regulations

except sub-regulation (2) of regulation 7 shall be taken into consideration for grant of conditional permission or permission for a period of five years to the colleges."

Note (iii) of Schedule V of MSR, 2016 :-

"The deficiency of teachers for up to sixty intake capacity shall not exceed more than ten per cent of total requirement with availability of minimum one teacher in each of fourteen Departments. The total number of Higher Faculty shall not be less than twelve Professors or Readers distributed in minimum eleven Departments. This relaxation is for seeking conditional permission to undertake admission for particular academic session. For example- the college having up to sixty intake capacity shall have minimum twenty-seven total faculties, out of which minimum twelve Professors or Readers covering not less than eleven Departments."

13. In the present case, if the deficiencies, as have been pointed out by respondent No.2, are to be seen, the same are with respect to the higher faculty in the Departments of *Rachna Sharir, Swasthavvritta, Kayachikitsa and Panchakarama*. It is seen that against the requirement of 30 teaching faculty, there are 25 teaching faculty excluding the excess. According to respondent No.2, the faculty being shown by the petitioner-institution to fulfill the requirement in a particular department in excess to the requirement are not to be considered to fulfill the requirement of a particular department. The respondents, therefore, state that the excess faculty in the respective department will have to be ignored for the purposes of MSR, 2016. Although, 10 per cent relaxation is considered in favour of the petitioner-institution, in that case also, against the requirement of 30 teaching faculty; the petitioner-institution should have 27 teaching faculty, whereas, the petitioner-institution admittedly has 25 faculty.

14. The total availability of higher faculty with the petitioner-institution is admittedly 11 whereas, Schedule V of MSR 2016, specifically mandates that the institution must have a minimum of 12 higher faculty spread over in 11 departments. In one Department *i.e.*, *Kayachikitsa* the regulation mandates that there has to be two higher faculty and therefore, against 11 departments, 12 minimum faculty is required in the concerned regulation.

15. Having considered the aforesaid submissions, it is seen that against requirement of 12 higher faculty, admittedly there are 11 higher faculty in the petitioner-institution. The only question that arises for consideration is whether, this court should allow the petitioner-institution to operate its college without fulfilling the statutory requirement. The answer to the aforesaid question is bound to be in negative. The expert bodies are well within their jurisdiction to decide the criteria for maintaining higher standard in education. The regulation requires a particular number of faculty to be in place if an institution wants to run a particular course.

16. Having perused the concerned regulation, this court finds that the regulations have been framed in order to ensure availability of adequate and high quality medical professionals in the Indian System of Medicine. They cannot be relaxed in exercise of powers under Article 226 of the Constitution of India. They have to be mandatorily followed and any interference to dilute the requirement under the relevant regulation would be highly detrimental to students undergoing relevant courses.

17. It is well settled in the law that normally the courts should be slow to interfere with the opinions expressed by the experts. It would normally

be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. [*See:- University of Mysore in C.D. Govinda Rao and Another*⁵]

18. The principles of law laid down in the case of *University of Mysore (supra)* is being constantly followed by the Hon'ble Supreme Court in all subsequent decisions. [*See:- M.C. Gupta (Dr.) v. Dr. Arun Kumar Gupta*⁶, *J.P. Kulshrestha (Dr.) v. Allahabad University*⁷, *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*⁸, *Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan*⁹, *Neelima Misra v. Harinder Kaur Paintal*¹⁰, *Bhushan Uttam Khare v. B. J. Medical College*¹¹, *Chancellor v. Dr. Bijayananda Kar*¹², *J&K State Board of Education v. Feyaz Ahmed Malik*¹³, *Dental Council of India v. Subharti K.K.B. Charitable Trust*¹⁴, *Medical Council of India v. Sarang*¹⁵, *Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University*¹⁶, *B.C. Mylarappa v. Dr. R. Venkatasubbaiah*¹⁷, *All India Council for Technical Education v. Surinder Kumar Dhawan*¹⁸]

⁵ AIR 1965 SC 491

⁶ (1979) 2 SCC 339

⁷ (1980) 3 SCC 418

⁸ (1984) 4 SCC 27

⁹ (1990) 1 SCC 305

¹⁰ (1990) 2 SCC 746

¹¹ (1992) 2 SCC 220

¹² (1994) 1 SCC 169

¹³ (2000) 3 SCC 59

¹⁴ (2001) 5 SCC 486

¹⁵ (2001) 8 SCC 427

¹⁶ (2008) 9 SCC 284

¹⁷ (2008) 14 SCC 306

¹⁸ (2009) 11 SCC 726

19. The decisions relied upon by the learned counsel appearing for the respondents also restate the same principle of law.

20. In view of the aforesaid, this court is not inclined to interfere with the decision taken by respondent No.2 and by the appellate committee. The decision cannot be said to be arbitrary, unreasonable or defective.

21. Accordingly, the petition stands dismissed, along with all pending applications.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 24, 2023/MJ

