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

% **Decided on: 11.10.2023**

+ **W.P.(C) 4239/2021 & CM APPLs. 12880/2021, 20166/2021**

NAIMINATH HOMEOPATHIC MEDICAL COLLEGE

HOSPITAL AND RESEARCH CENTRE

..... Petitioner

Versus

UNION OF INDIA & ORS.

..... Respondents

+ **W.P.(C) 4299/2021 & CM APPLs. 13096/2021, 46493/2021**

KISAN DNYANODAY MANDALS HOMEOPATHIC

MEDICAL COLLEGE AND HOSPITAL

..... Petitioner

Versus

UNION OF INDIA & ORS.

..... Respondents

+ **W.P.(C) 4323/2021 & CM APPL. 13210/2021**

SAYALI CHARITABLE TRUSTS

COLLEGE OF HOMEOPATHY

..... Petitioner

Versus

UNION OF INDIA MINISTRY

OF AYUSH & ORS.

..... Respondents

+ **W.P.(C) 4411/2021 & CM APPL. 13500/2021**

JAMKHED HOMEOPATHIC

MEDICAL COLLEGE

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Appearance:-

Mr. Animesh Kumar, Mr. Nishant Kumar & Ms.

Harshita Sinha, Advocates for Petitioners in Item Nos. 46 to 49.

Mr. Shashank Bajpai, Special Counsel for Ministry of Ayush with Mr. Shubhankar Singh, Advocate in Item Nos. 46 & 47.

Mr. Apoorv Kurup, CGSC with Mr. Akhil Hasija & Mr. Shivansu Dwivedi, Advocates for UOI in Item No. 48.

Mr. Anurag Ahluwalia, CGSC for R-1/UOI in Item No. 49.



CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN
PRATEEK JALAN, J. (ORAL)

1. The challenge in these writ petitions is to orders passed by the Union of India [hereinafter, "UOI"], by which the petitioners' applications for permission to admit students in their Homeopathic Colleges for the academic session 2020-2021, have been fully or partially declined.

Factual Background

2. This is the second round of litigation in each of these cases. After the first round of orders by UOI denying petitioners' applications for permission, a large batch of petitions was filed by various AYUSH Medical Colleges. Several petitions were disposed of by order dated 04.03.2021¹, on the basis of a "Status Note" dated 01.03.2021 [hereinafter, "the Status Note"], submitted by UOI. In the peculiar circumstances of the COVID-19 pandemic, the Status Note contemplated setting aside of the denial orders and fresh consideration on the basis of the conditions mentioned therein.

3. In the present batch of cases, the matters have been reconsidered by UOI pursuant to the Status Note, and the impugned denial orders have been passed.²

4. During the first round of litigation in this Court, following an order

¹ Order dated 04.03.2021 in WP(C) 514/2021 and connected [Pt. Shivshakti Lal Sharma Ayurved Medical College and Hospital vs UOI & Ors. and connected].

² In WP(C) 4239/2021, WP(C) 4299/2021 and WP(C) 4323/2021, the matters were reconsidered pursuant to orders passed by this Court. In W.P.(C) 4411/2021, UOI rejected the petitioner's application for 100 undergraduate seats. This was challenged before the Bombay High Court in Writ Petition No. 2296 of 2021. The High Court by an order dated 17.02.2021, permitted the petitioner to admit 30 students. The petitioner carried the matter to the Supreme Court in SLP(Civil) 3688/2021, which was disposed of on 08.03.2021, permitting the petitioner to file a representation with the UOI in terms of the Status Note/policy dated 01.03.2021.



dated 04.02.2021, passed by the Division Bench in LPA 49/2021³, this Court passed interim orders in favour of some of the medical colleges permitting them to participate in counselling and admit students subject to the result of the writ petitions. In the present batch of petitions, the petitioners in WP(C) 4239/2021, 4299/2021 and 4323/2021 are covered by such orders and have admitted students pursuant thereto. Similarly, the petitioner in WP(C) 4411/2021 has admitted students pursuant to order of the Bombay High Court dated 17.02.2021 in Writ Petition No. 2296 of 2021.

5. The factual situation is depicted in the following table:-

Writ Petition	Number of students for which the application was made	Date of original denial	Whether permission was partially granted, if so, for how many students	First writ petition filed	Interim order	No. of students admitted pursuant to the interim order	Date of disposal	Denial order pursuant to remand	Whether the denial was partial or full denial
WP(C) 4239/2021	100 seats (UG) 36 seats (PG)	11.02.2021	Full denial	WP(C) 2164/2021	17.02.2021	12 (PG)	04.03.2021	31.03.2021/ 01.04.2021	Granted 100 UG seats Denied 36 PG seats.
WP(C) 4299/2021	75 seats (UG)	10.02.2021	Full denial	WP(C) 1941/2021	12.02.2021	53	04.03.2021	26.03.2021	Denied for 75 seats
WP(C) 4323/2021	100 seats (UG)	03.12.2020	Permission was granted for 50 seats and 50 seats were denied	WP(C) 1700/2021	11.02.2021	91	04.03.2021	26.03.2021	Denied for 50 seats.
WP(C) 4411/2021	100 seats (UG)	12.02.2021	Full denial	Writ Petition No. 2296 of 2021- Bombay High Court	17.02.2021 - granted 30 seats	13	17.02.2021	31.03.2021	Full denial

³ Shivang Homeopathic College vs Union of India & Ors.



Analysis

A. W.P.(C) 4239/2021 and W.P.(C) 4299/2021

6. The principal ground urged by UOI in the denial orders is that the signatures of some of the faculty members in the affidavits submitted in support of the applications did not match with the signatures of the said faculty members in the Teachers Code Data, available with UOI. The contention of UOI is that, treating the said faculty members as ineligible, the petitioner-colleges lack the minimum number of faculty required for permission to be granted. The petitioners responded to the show cause notice issued by UOI and submitted further affidavits of the concerned faculty members acknowledging their signatures on the affidavits filed in support of the applications.

7. As far as this ground is concerned, Mr. Animesh Kumar, learned counsel for the petitioners, relies upon Section 12A(3) of the Homeopathy Central Council Act, 1973 [“the Act”], which held the field at the relevant time. The said provision reads as follows:-

“12A. Permission for establishment of new medical institution, new course of study, etc.-

(3) On receipt of a scheme from the Central Government under sub-section (2), the Central Council may obtain such other particulars as may be considered necessary by it from the person or the medical institution concerned, and thereafter, it may-

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or medical institution concerned for making a written representation and it shall be open to such person or medical institution to rectify the defects, if any, specified by the Central Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit it to the Central Government together with its



recommendations thereon within period not exceeding six months from the date of receipt of the reference from the Central Government.”

Mr. Kumar submits that the statutory scheme requires an opportunity to be given to the applicants for rectification of defects, which was not given in these cases.

8. In the alternative, Mr. Kumar submits that concerned teachers had, in fact, filed further affidavits accepting that the affidavits filed in support of the applications for permission were, in fact, their own affidavits. The said affidavits have not been considered by UOI. Mr. Kumar submits that, while noting the observations of the Hearing Committee, to the effect that the signatures could not be verified by it, UOI in the denial order has gone on a speculative basis that the concerned faculty are not regular in the college and some proxy has been signing on their behalf.

9. As far as this aspect of mismatch of signatures is concerned, I am of the view that the petitioners ought to have been granted an opportunity to rectify the defects in terms of Section 12A(3) of the Act. The teachers in question having filed further affidavits, stating that the earlier affidavits were, in fact, signed by them, the impugned orders have been passed without due regard to Section 12A(3) of the Act.

10. In these two petitions [W.P.(C) 4239/2021 and 4299/2021], if the disputed cases are taken in favour of the petitioners, it is undisputed that the petitioners would have adequate faculty for permission to be granted.

B. W.P.(C) 4323/2021

11. In this case, UOI found two teachers [Dr. Manisha Y. Joglekar and Dr. Ashwini R. Chavan] to be ineligible on the ground of being overage.



The concerned regulation⁴ requires an Assistant Professor or Lecturer to be not more than 40 years of age as on the last date of receipt of application for the post, which is relaxable by a maximum of 5 years, with prior approval of the affiliating university.

12. Mr. Kumar submits that, in case of Dr. Joglekar, the affiliating university granted approval by an order dated 18.02.2020, which was also submitted to the respondent. In case of Dr. Chavan, the contention of the petitioner is that his date of birth was wrongly mentioned as 12.06.1974 in the show cause notice and the impugned order. His date of birth, in fact, is 12.12.1987, as evident from various documents [including his Aadhar Card, transfer certificate, Pan Card etc.] submitted to the respondent.

13. The permission of the affiliating university having been obtained in the case of Dr. Joglekar, and the date of birth wrongly noted in the impugned order in case of Dr. Chavan being *ex facie* erroneous, as evident from the documents submitted to the respondent, the finding in respect of the aforesaid two teachers is unsustainable. Upon consideration of these teachers as eligible, it is the admitted position that the faculty strength of the petitioner was sufficient to grant conditional permission for 100 seats.

C. W.P.(C) 4411/2021

14. The petitioner's case, in this writ, is covered by the reasoning with regard to mismatch of signatures in paragraphs 6 to 10 above. Additionally, the order of the Bombay High Court⁵, granted the petitioner admission for 30 seats. The High Court observed that even while passing the impugned order, UOI was conscious of the fact that the petitioner-college had

⁴ Clause 6 of Schedule VII of Homeopathy Central Council (Minimum Standards Requirement of Homeopathic Colleges and attached Hospitals) Regulations 2013.



necessary infrastructure and faculty for 30 seats. This was not challenged by the respondent at all. It is on the petitioner's challenge that the Supreme Court remanded the matter to UOI in terms of the Status Note.⁶ The respondent's action of denying permission altogether is, therefore, unjustified. The petitioner has, in fact, admitted only 13 students and does not seek to admit any more at this stage.

Conclusion and relief

15. Having regard to the aforesaid factual and legal position in each of these cases, the writ petitions are allowed, and the impugned denial orders are set aside.

16. However, I am of the view that the appropriate course is to dispose of these writ petitions by moulding the relief, permitting the petitioners to continue with the number of students admitted pursuant to interim orders, and not to grant any further relief. The aforesaid relief is granted having regard to the fact that considerable time has lapsed during which the petitions have remained pending in this Court. The judgments of the Supreme Court *inter alia* in *Pasupuleti Venkateswarlu v. Motor and General Traders*⁷ and *Gaiv Dinshaw Irani v. Tehmtan Irani*⁸ require the Court to mould the relief in accordance with changed circumstances for shortening litigation and doing complete justice. The principles have been followed in the context of admission to educational institutions also *inter alia* in *Rajendra Prasad Mathur v. Karnataka University*⁹ and *State of Punjab v.*

⁵ Order dated 17.02.2021 in Writ Petition No. 2296 of 2021.

⁶ Order dated 08.03.2021 in SLP(C) 3688/2021.

⁷ (1975) 1 SCC 770.

⁸ (2014) 8 SCC 294.

⁹ 1986 Supp SCC 740.



*Anshika Goyal*¹⁰.

17. Having regard to the entire conceptus of fact, I am of the view that grant of any further relief to petitioners at this stage is impossible and Mr. Kumar rightly does not press for the same. Equally, it would be a travesty of justice to unseat the students who have already been admitted by virtue of interim orders, particularly when the denial orders are unsustainable for the reasons stated above.

18. The writ petitions, alongwith pending applications, are therefore disposed of by setting aside the denial orders for the year 2020-21 and permitting the petitioners to continue the admission of those students who were admitted pursuant to the interim orders granted in their favour, but not permitting any further admission at this stage for the said academic year.

19. This order is passed in view of the peculiar facts and circumstances of the cases, which arose during the COVID-19 pandemic, and the regulatory regime that prevailed in the given academic year.

PRATEEK JALAN, J

OCTOBER 11, 2023

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¹⁰ (2022) 3 SCC 633.