

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9968/2019 & CM APPLs. 41272/2019, 43284/2019**

Date of Decision: 05.04.2023

IN THE MATTER OF:

L.N. AYURVED COLLEGE & HOSPITAL,
BHOPAL, J.K. TOWN,
SARVADHARAM, C-SECTOR, KOLAR ROAD,
BHOPAL-462042, MADHYA
PRADESH PETITIONER

Through: Mr. Jasbir Singh Malik, Advocate

Versus

UNION OF INDIA
THROUGH MINISTRY OF AYURVEDA, YOGA &
NATUROPATHY,
UNANI, SIDDHA AND HOMEOPATHY (AYUSH)
B- BLOCK, GPO COMPLEX, I.N.A. NEW DELHI-110023
THROUGH ITS SECRETARY RESPONDENT NO. 1

CENTRAL COUNCIL OF INDIAN MEDICINE
D1/14, SEWA MARG, POCKET D1, JANAKPURI, NEW DELHI,
DELHI-110058
THROUGH ITS SECRETARY RESPONDENT NO. 2

GOVT. OF MADHYA PRADESH
DEPARTMENT OF AYUSH
MANTRALYA, VALLABH BHAWAN BHOPAL
DISTRICT-BHOPAL (M.P.)
THROUGH ITS PRINCIPAL SECRETARY
..... RESPONDENT NO. 3

Through: Ms. Archana Pathak Dave, Standing
Counsel alongwith Mr. Parmod Kumar Vishnoi,
Advocate for respondent No. 2

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**J U D G M E N T****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The present petition has been filed under Articles 226/227 of the Constitution of India assailing the impugned order dated 30.08.2019 (*Annexure P-11*), whereby the Central Government denied the permission to the petitioner-institution for taking admission in UG (BAMS) course with 100 seats under Section 13A/13C of the Indian Medicine Central Council Act, 1970 (IMCC Act) for the Academic Session 2019-20.

2. Learned counsel appearing on behalf of the petitioner submits that for the Academic Session 2018-19, the petitioner-institution was granted permission in terms of order dated 10.10.2018 by the Central Government. However, on account of certain alleged deficiencies, the permission to admit the students for the Academic Session 2019-20 has been rejected. He further submits that the reasons for rejection of the permission for the Academic Session 2019-20 are non-existent and if the entire matter is considered in right perspective, it would be seen that the concerned authority has not considered the relevant aspects of the matter. He also submits that this court in terms of order dated 17.09.2019 considered the matter in detail and passed the interim order, allowing the petitioner-institution to participate in the counselling. He also submits that on 26.09.2019, the petitioner-institution was further granted permission to participate in the mop up round counselling and accordingly, the students were allowed to be admitted in the petitioner-institution. He, therefore, submits that for the Academic Session

2019-20, the students were allocated by the State Government as per the counselling programme and the students admitted in the Academic Session 2019-20 are at the verge of the completion of their course. He further submits that for the subsequent Academic Sessions i.e. 2020-21 and 2021-22 onwards, the petitioner-institution has been granted permission to admit the students by the Central Government itself. He, therefore, while placing reliance on a decision dated 15.03.2023 passed by this court in the petition being W.P.(C) 10959/2018 and other connected matters submits that in the interest of justice, the interim order passed by this court be confirmed, and the students admitted as per the interim order be allowed to complete their course.

3. Learned counsel appearing on behalf of respondent No. 2 opposes the prayer. He submits that since the Central Government did not grant the permission to admit the students and the permission granted by this court was conditional, therefore, the matter requires to be adjudicated on merit and the students admitted by the petitioner-institution be not allowed to complete their course.

4. I have considered the submissions made by learned counsel for the parties and perused the record.

5. The order dated 17.09.2019 passed by this court deals with the nature of deficiencies pointed out by the Central Government in the impugned order. This court, having considered the submissions and the material available on record, found that no deficiencies *qua* the petitioner-institution were existing in the inspection report carried out between 22nd-23rd March, 2019. While recording so, the petitioner-institution was allowed to

participate in the counselling. The order dated 17.09.2019 passed by this court reads as under:-

“CM No.41273/2019

1. Allowed, subject to just exceptions.

W.P.(C) 9968/2019 & CM No.41272/2019

2. On the previous date i.e. 16.09.2019, I had indicated to learned counsel for respondent no.2 i.e. CCIM as to whether a fresh inspection could be conducted qua petitioner's college. The reason I had passed such a direction was in the context of the following brief facts and assertions made by learned counsel for the petitioner.

3. It is not in dispute that an inspection of the petitioner-institute was carried out on 22nd – 23rd March 2019. It is also not in dispute that this was a surprise inspection. However, what is admitted and qua which there is no dispute that CCIM in this inspection, found no deficiency in respect of the petitioner-institute.

3.1 In a report generated by CCIM vis-à-vis the March 2019 inspection, it inter alia observed that the necessary teaching staff as per RMS, 2016 for the under-graduate course was available. For this purpose, that is, on the date of inspection, the teaching staff was physically accounted for and the attendance register was also checked.

4. It appears that thereafter another surprise inspection was conducted by CCIM, albeit, on 27th – 28th May 2019. Pursuant to this inspection, a report was also generated in which several deficiencies were adverted to including the deficiency concerning the engagement of eligible teaching staff. This report is dated 20.06.2019.

4.1 Thus based on the report dated 20.06.2019, the impugned order came to be passed by respondent no.1 i.e. Union of India via Ministry of Ayush.

4.2 The result was that the petitioner's request for being granted permission to admit students against 100 seats qua undergraduate (BAMS) course for the academic session 2019-20 stood rejected.

5. Mr. Sunil Gupta, learned senior counsel, who appears on behalf of the petitioner, says that there are several flaws in the impugned order dated 30.08.2019. It is Mr. Gupta's submission that the second inspection was conducted on a day when the petitioner-institute was closed for summer vacations. Therefore, according to Mr. Gupta, out of 33 faculty members around 17 faculty members were only available.

5.1 Insofar as the other deficiencies which are said to have been noted in the report dated 20.06.2019 are concerned, Mr. Gupta says that the petitioner has necessary answers available with it. According to Mr. Gupta, the respondent no.1 – Union of India has not independently applied its mind to the contents of the report dated 20.06.2019 submitted by CCIM. It is learned senior counsel's submission that based on the observations which are in the nature of a charge, the respondent no.1 – Union of India has reached its conclusion.

5.2 In other words, Mr. Gupta says that there are no reasons furnished as to why respondent No.1 - Union of India agrees with the observations and/or recommendation of the CCIM. Besides this, Mr. Gupta has also argued that the observations of "Hearing Committee" which have been placed in court today by CCIM's counsel in the form of a report were not furnished to the petitioner.

5.3 Besides this, Mr. Gupta submits that there has been a breach of principles of natural justice on many counts including on the ground that the hearing was granted by one set of persons while the impugned order dated 30.08.2019 has been passed by another person i.e. the Under Secretary to the Government of India.

6. On the other hand, Ms. Archana Pathak Dave, Advocate, who appears on behalf of the CCIM and Mr. Sidharth Khatana,

Advocate, who appears on behalf of respondent no.1 –Union of India, have sought to defend their position by relying upon the impugned order dated 30.08.2019.

6.1 Ms. Dave, in addition, as indicated above sought to rely upon a compilation which contained in the observations of the “Hearing Committee”.

7. Having heard learned counsel for the parties for quite some time, I am of the view that given the fact that the report generated pursuant to the inspection carried out between 22nd – 23 rd March 2019 found no deficiencies qua the petitioner-institute, (a position which suffered a reversal only in June 2019), it appears to be appropriate, in this case, to order a fresh inspection to get clarity in the matter.

7.1 Accordingly CCIM is directed to conduct a fresh inspection on the date and time of its own choosing. The report, which will be generated in that behalf will be shared both with the petitioner as well as with this court.

7.2 Since the dates for counselling are available, I am told, only today and tomorrow, the petitioner institute is permitted to conduct the counselling subject to the outcome of the writ petition.

7.3 The petitioner will, however, not claim any equity on account of the aforementioned direction being issued since it is a protem arrangement to enable the petitioner to conduct the counselling.

7.4 In the meanwhile, the respondents will also file their counter affidavits. The same will be placed on record within four weeks from today. Rejoinder thereto, if any, be filed before the next date of hearing.

7.5 It is made clear that the petitioner will not grant any admission till further orders of this court.

8. Renotify the matter on 25.11.2019”.

6. Further on 26.09.2019, the petitioner-institution was also allowed to participate in mop up round. The order dated 26.09.2019 is reproduced as under:-

“CM APPL. 43284/2019 (for direction)”

1. *Learned counsel for the petitioner says that the petitioner college was allowed to participate in the counselling pursuant to the order dated 17.09.2019 but no students were allocated to it for admission.*
2. *Ms. Dave, on the other hand, who appears on advance notice for respondent no. 2 i.e. CCIM says that the order dated 17.09.2019 was complied with fully as per the directions issued by this Court.*
3. *Insofar as inspection is concerned, Ms. Dave says that the inspection was not carried out as requisite fee was not deposited by the petitioner college.*
4. *To my mind, while the petitioner college should have taken steps to deposit the requisite inspection fee without waiting for a Court order, no such contention was raised by Ms. Dave on 17.09.2019.*
5. *The direction to inspect the petitioner college was given in the circumstances indicated in the order dated 17.09.2019.*
6. *Since it was a direction of the Court, in my opinion, CCIM ought not to have waited for the deposit of the inspection fee.*
7. *That being said, petitioner college will deposit the inspection fee within two days from today.*
8. *Thereafter CCIM will carry out the inspection on the date and time of its own choosing.*

9. I must also indicate that counsel for the petitioner college has adverted to orders passed by various High Courts which have allowed provisional admission.

10. It is the submission of the counsel for the petitioner college that none of these orders have been taken in appeal by the respondents.

11. Ms. Dave will clarify this aspect of the matter on the next date of hearing.

12. Renotify the captioned application on 11.10.2019.

13. In case petitioner college were to participate in the mop-up counselling, the result of this application and the writ petition will be subject to final orders of this Court.

14. The petitioner college will be at liberty to inform the students that the matter is pending consideration before this Court.

15. Dasti”.

7. This court in batch of cases relating to same course, i.e., UG (BAMS) with respect to Academic Session 2018-19 has considered almost similar submission in the petition being W.P.(C) 10959/2018. On the basis of interim orders passed in respective writ petitions, further directions were issued to respondent-competent authorities to ensure that the students admitted pursuant to interim order, be allowed to complete their respective course. Paragraph Nos. 4 to 7 of the order dated 15.03.2023 passed in the petition being W.P.(C) 10959/2018 read as under:-

“4. It is to be noted that while perusing the interim order, deficiencies were not found to be so inherent to doubt the student's basic eligibility for admissions.

5. Learned counsel appearing on behalf of the respondents do not dispute the said position that for each institution, the recognition after 2018-2019 were granted by the competent authority.

6. In view of the aforesaid, since interim orders was operating in favour of each institution, and as of now, the students are at the verge of completion of their respective course, this court finds it appropriate to make the interim order absolute and to set aside the impugned order in each petition with further directions to the respondent competent authority to take appropriate action if so necessitated on the basis of prevailing circumstances.

7. The petitions are therefore, disposed of in the aforesaid terms”.

8. In view of the fact that for all subsequent Academic Sessions, the petitioner-institution has been granted permission by the Central Government and the students have been admitted by the petitioner-institution for the Academic Session 2019-20 pursuant to the directions given by this court, there is no reason as to why the students admitted should not be allowed to complete their course.

9. Accordingly, the interim orders passed by this court on 17.09.2019 and 26.09.2019 are made absolute. The students admitted in the Academic Session 2019-20 pursuant to counselling conducted by the respective Government are allowed to complete their course.

10. The petition stands disposed of along with pending applications in the aforesaid terms.

PURUSHAINDR KUMAR KAURAV, J

APRIL 05, 2023

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