

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 11169/2018 & CM APPLs. 43398/2018, 43399/2018,**
34488/2018

Date of Decision: 24.03.2023

IN THE MATTER OF:

DAYALBAGH EDUCATIONAL INSTITUTE
DEEMED UNIVERSITY
DAYALBAGH, AGRA
THROUGH REGISTRAR, DAYALBAGH EDUCATIONAL
INSTITUTE, DAYALBAGH, AGRA- 282005

..... PETITIONER

Through: Mr. Sanat Kumar, Senior Advocate
alongwith Ms. Nidhi Jaswal, Advocate

Versus

UNION OF INDIA,
THROUGH ITS SECRETARY,
MINISTRY OF AYURVEDA, YOGA AND NATUROPATHY,
UNANI SIDHA AND HOMOEOPATHY (AYUSH)
AYUSH BHAWAN
'B' BLOCK, GPO COMPLEX, INA
NEW DELHI- 110023

..... RESPONDENT

Through: Mr. Bhagwan Swarup Shukla, CGSC
alongwith Mr. Sarvan Kumar, G.P. and Ms. Sunita
Shukla, Advocate for UOI

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 Article 226 of the
Constitution of India seeking following reliefs:-

“I. Issue a Writ in the nature of Certiorari or any other appropriate Writ, order or direction to quash the order dated 25.09.2018 purportedly passed by the Government of India /respondent herein under the statutory powers under section 12 A (4) of the HCC Act 1973 and

II. to issue appropriate Writ order or directions in the nature of mandamus directing the Government of India/respondent to acknowledge deemed permission and/or to grant permission to the petitioner to establish new Medical Institution of Homoeopathy for B.H.M.S course;

III. to pass such other or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case”

2. On 19.04.2017, the petitioner applied under the provisions of Homeopathic Central Council Act, 1973 (hereinafter referred to as ‘HCC Act, 1973’) for opening of a new college and intending to operate B.H.M.S. Course. On 12.10.2017, an inspection was conducted by the Central Council of Homeopathy (hereinafter referred to as ‘CCH’). The Letter of Intent (hereinafter referred to as ‘LOI’) was issued on 29.11.2017. On 31.03.2018, the deadline to issue Letter of Permission (hereinafter referred to as ‘LOP’) by Central Government expired by virtue of Regulations of 2011 of HCC Act, 1973. Thereafter, on 30.04.2018, the petitioner-college availed the right under Section 12A (5) and (6) of HCC Act, 1973 for ‘deemed permission’. However, after third inspection, on 20.08.2018, a notice was served to petitioner-college pointing out the shortcomings and the LOP was not issued. On 25.09.2019, the respondent-UOI denied the permission to the petitioner-college to establish a new Homeopathy College. Hence, the present petition.
3. This court in terms of the interim order dated 14.11.2018 permitted the petitioner-college to participate in the counselling and the respondent was

also directed to upload/include the name of the petitioner-college in the list of colleges reflected on their respective web portal. Needless to state, the said interim order remains in operation till date.

4. Learned senior counsel appearing on behalf of the petitioner-college submits that in terms of the interim order, the students to the approved intake were admitted by the petitioner-college for the Academic Year 2018-19 and they are at the verge of completing their course. He also submits that after 2018-19, the petitioner-college was not accorded the recognition, therefore, no further admissions could take place. He, therefore, confines his relief only to the extent that the batch admitted in the year 2018-19 be allowed to complete the course and at this stage, the students may not be put to a situation where their entire education will go in waste. Learned senior counsel appearing on behalf of the petitioner-college has also placed reliance on a decision of this court in the case of ***Beehive Ayurvedic Medical College and Hospital and Anr. v. Union of India and Anr.*** in W.P.(C) 10959/2018 dated 15.03.2023.

5. Learned CGSC appearing on behalf of the respondent-UOI fairly submits that there is no dispute with respect to the fact that the controversy involved in the present case is similar to the one which has been dealt with by this court in W.P.(C) 10959/2018. However, according to him, this court may consider to impose some cost against the petitioner-institution who admitted the students without creating adequate infrastructure.

6. I have heard learned counsel for the parties and perused the record.

7. This court in terms of interim order dated 14.11.2018 recorded as under:-

1. The order impugned in all these matters denies the concerned petitioners' colleges permission to grant admission to students of the BAMS and BHMS (UG) Course for the academic session 2018 – 2019. The petitioners in these cases have relied on orders passed by various High Courts, including orders passed by this Court. One such order was passed, on 11th October, 2018, in WP(C) 10959/2018 **Beehive Ayurvedic Medical College And Hospital v. Union of India**, which reads thus:

“W.P.(C) 10959/2018 & CM No.42690/2018 (for stay)

3. This petition, though not on the Roster of this Bench has been received at about 1215 hours in terms of General Direction dated 9th October, 2018 of Hon'ble the Chief Justice, owing to the Roster Bench Judge being on leave.

4. The senior counsel for the petitioners has been heard.

5. It is the contention of the senior counsel for the petitioners that vide the impugned communication dated 29th September, 2018, permission to the petitioners to make admissions to BAMS course for the academic year 2018-2019 has been denied on the ground of deficiencies allegedly found during the inspection carried out. It is argued, that pursuant to said inspection an opportunity was given and in which hearing the petitioners, as recorded in the minutes of hearing at page 143 of the paper book, had furnished proof of deficiencies pointed out not existing/having been made up. It is further argued, that permission has been denied without considering the same as well as the minutes of hearing. Attention is also drawn to the order of the Rajasthan High Court at page 156 of the paper book and to the public notice issued by the respondent No. 1 of 15th September, 2018, permitting the Colleges who had approached the High Court of Allahabad, to make

admissions subject to final orders in the writ petitions.

6. On enquiry, it is informed that the last date for admission is 31st October, 2018, but prior thereto several steps have to be taken.

7. The counsel for the respondent no. 1 appearing on advance notice states that he has no instructions and seeks time till Monday i.e. 15th October, 2018.

8. None appears for respondent No. 2 Central Council of Indian Medicine, in spite of advance copy stated to have been given.

9. The counsel for the respondent No. 1, on enquiry states that he will take instructions qua appearing for the respondent No.2 as well.

10. Issue notice.

11. Notice is accepted by the counsel for the respondent No.1.

12. The petitioners to serve the respondent No.2 electronically on the letter head of the counsel for the petitioners himself, along with the copy of the paper book.

13. List before the Roster Bench on 15th October, 2018.

14. Till further orders, the petitioners may proceed with the admissions in terms of the public notice dated 15th September, 2018 aforesaid.

A copy of this order be given dasti under the signatures of the Court Master.”

*2. Following the said order, I have also passed orders in writ petitions involving identical issues, including WP(C) 12100/2018 **Haridwar Ayurvedic Medical College & Research Centre & Anr. v. Union of India & Ors.** In these cases, following the order passed*

by this Court in **Beehive Ayurvedic Medical College And Hospital v. Union of India**, while issuing notice on the writ petitions, interim orders have been passed, permitting the petitioners to proceed with admissions in terms of the public notice dated 15th September, 2018/27th September, 2018, subject to the outcome of the writ petitions.

3. Following the said order, the petitioners in these writ petitions are also permitted to proceed with admissions in terms of the public notice dated 15th September, 2018/27th September, 2018, subject to the outcome of these writ petitions. The respondents are also directed to upload/include the name of the petitioners' colleges in the list of colleges reflected on their respective web portals. It is also made clear that in case, in respect of any of the petitioners' college is reflected, on the web site of the respondents, as being a college for whom permission has been denied, pending disposal of these writ petitions, the said entry would be corrected accordingly.

4. The respondents are also permitted to file their response to the on-site reports/reports of the local commissioners who had been appointed in these cases, to inspect the colleges in question within a period of two weeks".

8. In the petition being W.P.(C) 10959/2018 and other connected matters, this court vide order dated 15.03.2023 has allowed the students to complete their course from the institution who were not granted recognition by the regulatory authority for the Academic Year 2018-19. Paragraph No.6 of the said order reads as under:-

"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".

9. The only distinction in the cases decided by this court on 15.03.2023 with the present case is that in those cases the concerned regulatory agency granted the recognition after the Academic Year 2018-19. However, in the present case, no recognition was granted by the regulatory agency after the Academic Year 2018-19. However, the aforesaid distinction will not debar the petitioner from claiming parity with the order dated 15.03.2023 as the reason for which the directions were issued on 15.03.2023 are the same as are prevalent in the present case.

10. In view of the aforesaid, the interim order passed by this court dated 14.11.2018 is made absolute. The students who were admitted in the Academic Year 2018-19 are permitted to complete their course.

11. With aforesaid directions, the petition stands disposed of alongwith pending applications.

PURUSHAINDRA KUMAR KAURAV, J

MARCH 24, 2023

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