

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.42 OF 2024
IN
WRIT PETITION NO.8096 OF 2023**

- | | | |
|---------------------------------------|---|---------------------------|
| 1. Shree Chatrapati Shivaji Education |] | |
| Society, Dharwad (Karnataka) |] | |
| 2. Shree Chatrapati Shivaji Education |] | |
| Society's Rural Institute of Ayurveda |] | |
| Research Centre and Hospital, Satara |] | .. Applicants-Petitioners |

Versus

- | | | |
|--|---|----------------|
| 1. National Commission for Indian |] | |
| System of Medicine, New Delhi |] | |
| 2. State of Maharashtra, |] | |
| Through its Secretary |] | |
| 3. Union of India, |] | |
| Through Secretary of AYUSH, |] | |
| Ministry of Health & Family Welfare, |] | |
| New Delhi |] | |
| 4. Jaykumar Bhagwanrao Gore |] | |
| Claiming to be President |] | |
| of Shree Chhatrapati Shivaji Education |] | |
| Society, Kolhapur |] | |
| 5. Satish Balwant Patil, |] | |
| Claiming to be the Chairman of Shree |] | |
| Chatrapati Shivaji Education Society, |] | |
| Dharwad (Karnataka) |] | .. Respondents |

Mr. R.V. Pai, Senior Advocate, with Ms. Siddhi Bhosale, Mr. Akshay R. Pai and Mr. Pravin Dabade, i/by Mr. Ganesh Patil, for the Applicants-Original Petitioners.

Mr. S.P. Ganbavale, with Mr. Kush Lahankar, for Respondent No.1.

Mr. N.C. Walimbe, Addl. G.P, with Mr. N.K. Rajpurohit, AGP for Respondent No.2.

Mr. Rui Rodrigues, with Mr. Ashutosh Mishra, for Respondent No.3.

Mr. Vishal Kanade, i/by Mr. Vishwajeet Mohite and Mr. Siddharth Karpe, for Respondent No.4.

Mr. Surel S. Shah, i/by Mr. Vishwajeet Mohite, for Respondent No.5.

CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ

DATE : 30TH JANUARY, 2024.

PC. :

1. In Writ Petition No.8096 of 2023, the petitioners have sought a direction to be issued to the respondents and especially the respondent no.1-National Commission for Indian System of Medicine (*the Commission*) to accept and approve the payment of visitation / regulatory and digitization fees for the academic session 2023-24 from the petitioners pursuant to the notice dated 14th March 2023. The petitioners also seek a direction to be issued to the Commission to carry out inspection and thereafter grant requisite permission for admission of students in the said academic session. The inspection of the aforesaid college in the meanwhile was carried out on 23rd and 24th November 2023. By an order dated 30th November 2023, a co-ordinate Bench noted that there was a doubt created by the Commission as regard the eligibility of the petitioner no.2-College to be entitled to grant of requisite affiliation. For that reason and as 30th November 2023 was the last date for admitting students, this Court declined to permit the college from admitting students for the academic year 2023-24. On 15th December 2023, it was informed that the Commission had undertaken inspection of the college and had noted certain shortfalls therein. Since the college sought grant of conditional permission on the principle of parity, it was permitted to seek the same

from the concerned Authority. It was also observed that considering the litigations pending between the petitioners and respondent nos.4 and 5, an attempt could be made to resolve the same through mediation.

2. On 20th December 2023, this interim application has been filed seeking a direction to be issued to the Commission to grant conditional permission for academic year 2023-24 by extending the cut-off date for admitting 50 eligible students in the college. It is also prayed that the college be permitted to participate in Part-I of the process for annual visitation with regard to academic year 2024-25 in terms of the communication dated 15th December 2023. On 2nd January 2024, the Commission, through its Medical Assessment and Rating Board, informed the petitioners that there were various deficiencies that were noticed during the course of inspection. It was further stated that since the last date of counselling for admission in the Undergraduate Courses for academic session 2023-24 had concluded on 30th November 2023, it's application for grant of conditional permission was time-barred and thus infructuous. It was further directed that the college should resolve its disputes amicably and then apply for the process of issuance of conditional permission for academic year 2024-25. Since it was the case of the college that most of the shortfalls had been removed and the same had been communicated to the Commission on 24th December 2023 and 26th

December 2023, the Commission was directed to file an affidavit as to whether such shortfalls had been removed by the petitioners. In accordance with the directions issued on 3rd January 2024, an affidavit has been filed on behalf of the Commission.

3. In the light of the communication dated 2nd January 2024 issued by the Board holding that the petitioners' request for grant of conditional permission for academic session 2023-24 had become infructuous, the learned counsel for the Commission raised a preliminary objection by submitting that under Section 24(3) of the National Commission for Indian System of Medicine Act, 2020 (*for short "Act of 2020"*), a remedy of preferring an appeal to the Commission was available. He further submitted that against the decision taken by the Commission, a further appeal to the Central Government could be filed under Section 9(6) of the Act of 2020. It was, therefore, submitted that the petitioners ought to challenge the order dated 2nd January 2024 passed by the Board and subject to such outcome, the claim of the petitioners could be considered.

4. The learned Senior Advocate for the petitioners on the other hand submitted that since no measure had been taken by the Board in terms of Section 28(1)(f) of the Act of 2020, no appeal could be filed against the decision taken on 2nd January 2024. On the contrary, the Commission had

been granting conditional permission to other similarly situated institutions and the petitioners were seeking similar treatment. It was further submitted that though by the order dated 8th November 2023, the question as to whether there was any statutory provision for denying inspection on the ground of pending disputes had been kept open, by misconstruing the observations made in the order dated 15th December 2023, the Board had directed the petitioners to first resolve the disputes amicably and then apply for the process of seeking conditional permission. In absence of any such stipulation under the concerned Regulations, this direction by the Board was beyond its jurisdiction.

5. The preliminary objection to the maintainability of the challenge was also raised by the learned counsel appearing for respondent nos.4 and 5.

6. Having perused the documents on record as well as the relevant provisions of the Act of 2020, we find that under the provisions of Section 28(1)(c), it is the function of the Board to carry out inspection of medical institutions for assessing and rating such institutions in accordance with the Regulations made under the Act of 2020. It is in accordance with this power that such inspection was carried out by the Board on 23rd November 2023 and 24th November 2023. Various shortfalls during such assessment

were noted by the Visitors and the same have been indicated in the communication dated 2nd January 2024. It is on that basis that the petitioners have been informed that as the cut-off date of counselling for admission to the Undergraduate Courses had concluded on 30th November 2023, it's application seeking grant of conditional permission was time-barred and, therefore, infructuous. In our view, the grant of conditional permission to the petitioners stands denied and the same is the decision taken by the Board, which can be challenged by way of appeal under Section 24(3) of the Act of 2020. Since a statutory remedy is available to the petitioners, we are not inclined to go into the question as to whether such denial of conditional permission is not in accordance with the Act of 2020 and the Regulations framed thereunder. The petitioners are permitted to challenge the denial of conditional permission as informed on 2nd January 2024 by invoking the remedy under Section 24(3) of the Act of 2020.

7. It is, however, to be noted that the Board has misconstrued the observations of this Court in the order dated 15th December 2023 and has, therefore, directed the petitioners to first resolve the disputes amicably and then apply for grant of conditional permission. Paragraph 3 of the order dated 15th December 2023 reads as under :-

“3. The genesis of the controversy before us appears to be the objection raised by Respondent No.4 and 5. There

are other litigations pending between these parties as well. If that be the position, the parties should consider whether the dispute between them can be resolved amicably and if necessary, attempt can be made to resolve it through Mediation process. The learned counsel for the parties state that they will convey it to their respective clients.”

8. It is clear from the aforesaid order that this Court merely expected the parties to consider whether the disputes between them could be resolved amicably and if necessary, through the process of mediation. However, the Board has proceeded to direct the petitioners to first resolve the disputes and only then apply for the process of seeking conditional permission. It is necessary to clarify that this Court did not issue any direction to the parties to first resolve their disputes and only then take further steps. The Board appears to have misconstrued the aforesaid observation / expectation as a direction. It is, therefore, necessary to clarify that no such direction was issued by the Court on 15th December 2023. It is therefore necessary to quash the last paragraph of the communication dated 2nd January 2024 since this aspect cannot be urged before the Commission under Section 24(3) of the Act of 2020.

9. Accordingly, it is held that the decision of the Board dated 2nd January 2024 denying conditional permission to the college can be subjected to challenge under Section 24(3) of the Act of 2020. It is

clarified that the order dated 15th December 2023 passed in the present writ petition merely expects the parties to consider whether the disputes could be resolved amicably. No direction was issued to the parties to resolve the disputes as a pre-condition for seeking conditional permission. The last paragraph of the order dated 2nd January 2024 is set aside. The Board is free to independently consider the effect of pending disputes between the petitioners, respondent no.4 and respondent no.5 as well as the aspect as to whether the same could be made a separate ground for denying conditional permission, as sought.

10. With aforesaid clarification and with liberty to the petitioners to avail the statutory remedy, the interim application is disposed of keeping the points raised on merits open.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]