



W.P.No.4413 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 19.03.2024

Order delivered on 03.06.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.4413 of 2021

and

W.M.P.Nos.26389 of 2023, 4969 of 2022

and

5015 & 5016 of 2021

Dharma Medical Research & Charitable Trust,
No.48, Grand west Trunk Road,
Sriperumbudur - 602 105
Kancheepuram District,
Tamil Nadu,
rep. by its Trustee

.... Petitioner

Vs

1. The Union of India
Rep. by the Secretary to Government,
Ministry of AYUSH,
AYUSH Bhawan, B Block,
GPO Complex, INA,
New Delhi - 110 023
2. The Under Secretary to Government
of India, Ministry of AYUSH,
AYUSH Bhawan, B Block, GPO Complex,



W.P.No.4413 of 2021

INA,
New Delhi - 110 023.

3. Central Council of Indian Medicine,
61-65, Institutional Area,
Janakpuri, New Delhi - 110 058
Rep. by its Secretary.
4. The Government of Tamilnadu,
Rep. by the Secretary to Government,
Health & Family Welfare Department,
Fort St.George,
Chennai - 9.
5. The Director of Indian Medicine & Homeopathy,
Directorate of Indian Medicine & Homeopathy,
Anna Hospital Campus, Arumbakkam,
Chennai - 106.
6. The Registrar,
The Tamil Nadu Dr.MGR Medical University,
P.B.No.1200, No.69, Anna Salai,
Guindy,
Chennai - 600 032.
7. The Controller of Examination,
The Tamil Nadu Dr.MGR Medical University,
P.B.No.1200, No.69, Anna Salai,
Guindy,
Chennai - 600 032.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 2nd respondent vide proceedings in F.No.R-



W.P.No.4413 of 2021

17011/188/2018-EP dated 27.01.2020 and quash the same and direct the respondents 1 and 2 to approve the admission of (1) Divya.S, (2) Gopika.M, (3) Kadambaree V.M.,(4) Karthika.C, (5) Pavithra.G., (6) Srikanth S.V., (7) Akshya.P., (8) Anushree, (9) Dinesh,S.R., (10) Joseph Job, (11) Keerthana.S, (12) Malar Vizhi.S. (13) Oddashetty Gowri.T., (14) Prakruthy Raj, (15) Vipin G..Nair, admitted to BAMS degree Course in the Dharma Ayurveda Medical College & Hospital, Sriperumbudur during the academic year 2018-2019.

For Petitioner	: Mr.D.Jaysingh
For Respondents	: Mr.S.Janarthanam, Senior Panel Central Govt.Counsel for R1 & R2 Mr.K.Vellayaraj for M/s.V.K.Raj Law Chambers for R3 Mr.E.Sundaram, Government Advocate for R4 & R5 Mr.A.Mohamed Gouse for R6 & R7

ORDER

This Writ Petition has been filed challenging the order of the 2nd respondent dated 27.01.2020, denying permission to take admission for the academic year 2018-2019 and to direct the respondents 1 and 2 to approve the admission of (1) Divya.S, (2) Gopika.M, (3) Kadambaree V.M.,(4)



W.P.No.4413 of 2021

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Karthika.C, (5) Pavithra.G., (6) Srikanth S.V., (7) Akshya.P., (8) Anushree, (9) Dinesh,S.R., (10) Joseph Job, (11) Keerthana.S, (12) Malar Vizhi.S. (13) Oddashetty Gowri.T., (14) Prakruthy Raj, (15) Vipin G..Nair, admitted to BAMS degree Course in the Dharma Ayurveda Medical College & Hospital, Sriperumbudur during the academic year 2018-2019.

2. The case of the petitioner is that the petitioner is the educational Trust running Dharma Ayurveda Medical College & Hospital. The College is affiliated to the Tamil Nadu Dr.MGR Medical University. The college is offering BAMS degree course from the academic year 1997-98. The College is denied permission for the academic year 2018-19 on the basis of a surprise check conducted on 23.12.2019. The Tamil Nadu Government had declared that all the Educational Institutions shall be closed from 21.12.2019 to 01.01.2020 and the college could be re-opened only on 02.01.2020 for the local body election, the petitioner College has again been granted continuous permission from the academic years 2019-2020. The petitioner is aggrieved by impugned order dated 27.01.2020, denying permission for taking admission in UG (BAMS) course for the academic session 2018-19. Hence, the present writ petition.



W.P.No.4413 of 2021

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3. (i) Learned counsel for the petitioner would submit that the College is affiliated to Dr.MGR Medical University. Apart from annual inspection by the Central Council of Indian Medicine, every year inspection is made by the affiliating University also. The Ministry of AYUSH, Government of India grants permission for offering BAMS degree Course. The Central Council of Indian Medicine is the authority to inspect the College and to send recommendation to the Ministry of AYUSH. Based upon the recommendation of the Central Council, Ministry of AYUSH grants permission.

(ii) Learned counsel for the petitioner would state that the present writ petition relates to permission for admission of students for the academic year 2018-2019. The subject is governed by Indian Medicine Central Council Act, 1970 and the Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurveda colleges and attached Hospitals) Regulations, 2016. On 12.07.2018, the Central Council sent a communication to the Ministry of AYUSH and recommended for grant of conditional permission for admission with 40 seats in UG (BAMS Course) 2018-2019.



W.P.No.4413 of 2021

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(iii) Learned counsel for the petitioner would further state that on 13.08.2018, the Ministry of AYUSH sent a letter to the Principal of the College stating that the College was not fulfilling five requirements. On 21.08.2018 a detailed representation was submitted to the Ministry of AYUSH pointing out that the notice was not based on true factual position. By order dated 27.09.2018, the Ministry of AYUSH denied permission for admission of students. Challenging the said order W.P.No.26902 of 2018 was filed by the petitioner. On 05.11.2019, the Writ Petition was ordered with the direction to the 2nd respondent to send a visiting team to the petitioner Institute to assess the availability of infrastructure facilities required for the compliance of the Regulation 2016. If the petitioner Institute has fulfilled all the requirements, the admission of 40 students for the academic year 2018-2019 shall be ratified and if not, their admission by virtue of interim order shall not be ratified.

(iv) Learned counsel would further state that on account of local body elections, the Government declared compulsory holidays for all educational Institutions from 21.12.2019 to 01.01.2020. The impugned order dated 27.01.2020 came to be passed on the basis of surprise inspection said to have



W.P.No.4413 of 2021

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been conducted on 23.12.2019. The petitioner College, on 23.12.2019 sent a letter to the 3rd respondent stating that conducting an inspection on a date when the College was compulsorily closed on account of an order passed by the State Government was not valid. A copy of the letter was also sent to Ministry of AYUSH. In spite of the same, the impugned order has been passed. BAMS degree course is a 5 years course. Now, students admitted during the previous academic years and the subsequent academic years, except the academic year 2018-2019, could continue and pursue the course of study for II, III, IV Years and compulsory internship. Out of 15 students admitted during 2018-2019, 13 students are now eligible to go for compulsory internship.

(v) Learned counsel for the petitioner would further submit that by order dated 11.02.2021 permission for admission with 30 seats in UG course for the academic session 2020-21 was granted by the Government of India. he would further state that the impugned order suffers from basic infirmities. The Central Council for Indian Medicine is the authority to inspect the College and sent recommendation and permission is granted by the Government of India. Contrary to the recommendation of the Central Council



W.P.No.4413 of 2021

for Indian Medicine, the Government of India denied permission for the year 2018-2019. This Court, by order dated 05.11.2019 made in W.P.No.26902 of 2018 specifically ordered that a fresh inspection should be conducted by the Government of India. But the inspection was not carried out in accordance with the order passed by this Court. When the College was closed on account of compulsory holiday, inspection was carried out. The inspection report is contrary to the order passed by this court and the order passed by the Government of Tamilnadu declaring public holiday. Subsequently, by order dated 11.02.2021, the Government of India granted permission for the academic year 2020-2021. In view of the same, the writ petition may be allowed and the students may be permitted to complete the course.

4. (i) Per contra, learned Senior Panel Central Government Counsel appearing for the 1st and 2nd respondents would state that the 1st respondent, by its order dated 03.11.2019 granted conditional permission to the College run by the petitioner Trust for the academic year 2016-2017 on the basis of the recommendation of the 3rd respondent council following the inspection of the college held on 02.05.2016 and 03.05.2016. The said permission was granted subject to the condition that they shall fulfill certain requirements by



W.P.No.4413 of 2021

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31.12.2014 for consideration of the grant of permission for the academic year 2017-2018. The conditional permission was granted in terms of the Regulation, then in force i.e., IMCC Regulation 2012 and amended provision of the Act. Though certain deficiencies were appointed out in the order dated 04.08.2017, the college was directed to set right those deficiencies by 31.12.2017 for consideration of permission for the academic session 2018-2019.

(ii) Learned counsel would further state that the 1st respondent vide its show cause notice dated 13.08.2018, pointed out certain deficiencies based on the report of the inspection team conducted on 20.05.2018 and 26.05.2018 and called upon the College to clarify about those deficiencies before a Hearing Committee to be held on 23.08.2018 at New Delhi. The date of hearing was preponed on 22.08.2018 due to declaration of General Holiday. The petitioner College was intimated through email dated 14.08.2018. The petitioner College sent its explanation dated 21.08.2018. The 1st respondent, after all the formalities of hearing was over and not satisfied with the explanation offered by the petitioner college, passed the impugned order dated 27.09.2018. However, the college was given an opportunity upto 31.12.2018



W.P.No.4413 of 2021

to set right the shortcomings, for consideration of grant of permission for the academic year 2019-2020 as permission was denied to the college for taking admission of students to BAMS course for the academic year 2018-2019.

(iii) Learned Senior Panel counsel for the 1st and 2nd respondents would further state that the petitioner college, instead of setting right the deficiencies pointed out by the respondents was running the college and the College filed a writ petition challenging the order dated 27.09.2018 before this Court as if there is no deficiency of infrastructure in the College. Considering the observations of the visiting team and the other materials taken on record during the inspection of the college, the respondents have arrived at the conclusion to deny permission to the college of the petitioner Trust for taking admission in UG (BAMS) Course with intake of 40 seats for the academic year 2018-2019. Learned counsel would further state that permission granted for the subsequent academic year 2020-2021 cannot be the basis for deemed permission for the previous year 2018-2019 as per the decision of the Hon'ble Supreme Court made in Civil Appeal No.2092 of 2022 (CCIM vs. Karnataka Ayurveda Medical College & Ors.). Therefore, he would pray to dismiss the writ petition.



W.P.No.4413 of 2021

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5 (i) Learned counsel appearing for the 3rd respondent would state that the 2nd respondent is a statutory body under the provisions of Indian Medical Central Council Act, 1970, passed by the Parliament to provide for the minimum standards for admission, duration of courses of training, details of curricula and syllabi of studies and the title of the degree or diploma etc. The 3rd respondent is empowered under Section 13A and 13C of the IMCC Act, 1970 to conduct inspection of the new and existing medical colleges, prepare inspection reports and thereafter forward the same to the Central Government under Section 13(4) of the IMCC Act, 1970 and as such, the 3rd respondent is a fact finding expert body whose function is limited to conduct inspection of the colleges and thereafter forward the report of the inspection to Ministry of AYUSH, which is empowered to pass a final order regarding permission either approving or disapproving the scheme submitted by the respective colleges. The 3rd respondent is only a recommendatory and regulatory body and the final decision for granting the permission or for increasing the intake capacity of students is that of the 1st respondent depending upon the analysis of the visitation/inspection report of the 3rd respondent.



W.P.No.4413 of 2021

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(ii) Learned counsel would further state that inspection of the college was conducted on 23.12.2019 by the expert appointed by erstwhile CCIM and it was observed that the petitioner Trust is not fulfilling the basic eligibility criteria for establishing New Ayurveda College with 60 seats in BAMS course. Therefore, the council recommends to the Central Government for not issuing the Letter of Intent to establish a New Ayurveda College due to some shortcoming. The 1st respondent denied the permission to the petitioner for granting admission to UG (BAMS) course with 40 seats for the academic session 2018-2019 vide letter dated 27.01.2020.

(iii) Learned counsel would further state that if such colleges of Indian Medicine which have not been granted permission by the Government of India due to infrastructure or allied shortcomings are allowed admission of students, it will be a travesty of justice and detrimental not only in regard to maintaining minimum standard of education and endangering public interest but the same will also jeopardize the future of students so admitted since each student would then be denied registration under the State Board of Indian Medicine for life since they would have undergone studies from a non-recognised Institution. He would further state that students of unrecognized



W.P.No.4413 of 2021

Institution cannot be legally entitled to appear in any examinations conducted by any Government University or Board. Hence, he would pray to dismiss the writ petition.

6. Heard the learned counsel for the petitioner, the learned counsel appearing for the respondents and perused the materials available on record.

7. The writ petition relates to permission for admission of students for the academic year 2018-2019. It is seen from the records that the Central Council of Indian Medicine sent a communication on 12.07.2018 to the Ministry of AYUSH and recommended for grant of conditional permission for admission with 40 seats in UG (BAMS course) 2018-2019. On 13.08.2018, the Ministry of AYUSH sent a letter to the Principal of College stating that the College was not fulfilling five requirement viz., (i) Functional Operation Theatre is not available as per RMS. (ii) Deliveries have not been conducted from 1st January, 2017 to 21st December, 2017, (ii) Web based computerized central registration system is not available as per RMS, 2016, (iv) Availability/ functionality of X-Ray, ECG and USG not available, (v) Aadhaar based Geo location enabled attendance system for teaching staff,



W.P.No.4413 of 2021

non-teaching staff and hospital staff is not available, as stated in the said communication. By order dated 27.09.2018, the Ministry of AYUSH denied permission for admission of students.

8. Challenging the order of denial of permission of admission of students, the petitioner preferred W.P.No.26902 of 2018. On 05.11.2019, the said writ petition was ordered with a direction, directing the 2nd respondent/Ministry of AYUSH to send a visiting team to the petitioner Institute to assess the availability of infrastructure facilities required for the compliance of the Regulation 2016. If the petitioner Institution has fulfilled all the requirements, the admission of the students for the academic year 2018-2019 shall be ratified and if not, their admission by virtue of interim order shall not be ratified.

9. The impugned order dated 27.01.2020 was passed based on the surprise inspection conducted on 23.12.2019, the date on which the Government declared compulsory holidays for all educational Institutions from 21.12.2019 to 01.01.2020. The petitioner Institution was granted recognition for the academic year 2017-2018. Subsequently, the petitioner



W.P.No.4413 of 2021

Institution was granted recognition for the academic year 2019-2020 based on the inspection conducted on 18.03.2019 and 19.03.2019. For the academic year 2020-2021, permission was granted by the Government of India by order dated 10.02.2021.

10. BAMS Degree Course is a 5 years course and the students admitted during the previous academic years, the subsequent academic years could continue and pursue the course study for II, III, IV Years and there is compulsory internship. However, the petitioner Institution was not granted permission for admission of students for the academic year 2018-2019

11. It is seen from the records that the students admitted in the year 2018-2019 were permitted to write I year examination by an interim order passed by this Court, which was followed by an order dated 04.03.2022, when they were permitted to appear for the II year examination and subsequently, by order dated 08.06.2022 passed by this Court, the students were permitted to write III year examination also. The results were also published to enable them to write the arrears exams, if any.



W.P.No.4413 of 2021

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12. Further, the petitioner college has been granted continuous permission for the academic years 2019-2020 and 2020-2021. The College had permission for the preceding academic years also. The University also grants affiliation for the students studying in the College based upon the permission granted by the Central Government. The Central Council of Indian Medicine visited the college for inspection when the State Government declared compulsory holidays for all educational Institutions and found that certain requirements were not fulfilled in the petitioner Institution. Even though there were shortcomings found for admission during the academic year 2018-2019, the students who were admitted and wrote the examinations and the results were also published lawfully and they being not at fault, cannot be made to suffer and their admission could not be withheld.

13. The denial of permission for the academic year 2018-2019 by the respondents would adversely affect the career of students. Already the students would have undergone mental agony for not permitting to write the examination and after great struggle, by approaching this Court and filing the writ petition, they were permitted to write the examinations. If the permission is not granted, no purpose would be served in permitting the



W.P.No.4413 of 2021

students to write the examination. Therefore, irrespective of the merits of the matter, this Court is of the opinion that the impugned order passed by the 2nd respondent is liable to be quashed and the admission of the students for the academic year 2018-2019 has to be approved.

14. In view of the above reasons, the order dated 27.01.2020 passed by 2nd respondent is hereby set aside. The 1st and 2nd respondents are directed to approve the admission of the aforesaid 15 students admitted to BAMS Degree Court in the Dharma Ayurveda Medical College & Hospital, Sriperumbudur during the academic year 2018-2019. Accordingly, the Writ Petition is allowed. No costs. Consequently connected miscellaneous petitions are closed.

03.06.2024

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Index : Yes / No

Internet : Yes / No



W.P.No.4413 of 2021

To
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1. The Secretary to Government,
Union of India,
Ministry of AYUSH,
AYUSH Bhawan, B Block,
GPO Complex, INA,
New Delhi - 110 023
2. The Under Secretary to Government
of India, Ministry of AYUSH,
AYUSH Bhawan, B Block, GPO Complex,
INA, New Delhi - 110 023.
3. The Secretary,
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61-65, Institutional Area,
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W.P.No.4413 of 2021

J. NISHA BANU, J.

vsi

Pre-delivery order in
W.P.No.4413 of 2021

03.06. 2024