



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6688 OF 2024

1) Gurudas Shikshan Sanstha, having office at Jupiter High School and Junior Science College, Sawarkar Nagar, Khamla Road, Nagpur, through its Secretary.

2) Jupiter Ayurved Medical College and Tarini Ayurved Hospital, Shankarpur, Nagpur-44108, through its Principal.

.... **PETITIONERS**

// VERSUS //

1) The Union of India, through Principal Secretary, Ministry of AYUSH, AYUSH Bhawan, B Block, GPO Complex, INA, New Delhi-110023.
Email: secy-ayush@nic.in

2) National Commission for Indian System of Medicine, T-19, Block-IV, Dhanwantari Bhawan, Road No:66, Punjabi Bagh (West), New Delhi - 110026, through its Secretary.
E-mail: secretary@ncism.org

3) Medical Assessment and Rating Board for Indian System of Medicine, NCISM, through its President, 61-65, Institutional Area, opposite 'D' Block, Janakpuri, New Delhi-110058.

4) Maharashtra University of Health Sciences, Mhasrul, Dindori Road, Nashik, through its Registrar, Vani - Dindori Road, Mhasrul Gaon, Nashik, Mah. 422004.

5) State Common Entrance Test Cell, 8th Floor New Excelsior Building, A.K. Naik Road, Fort, Mumbai, through Commissioner and Competent Authority.

.... **RESPONDENTS**

Shri F.T.Mirza, Sr. Advocate a/b. Ms. Shaad Mirza, Advocate for petitioners.
Shri N.S.Deshpande, D.S.G.I. for respondent nos. 1 and 4.
Shri N.C.Phadnis, Advocate for respondent nos. 2 & 3.
Shri Viren Joshi, Advocate h/f. Shri N.A.Gaikwad, Advocate for respondent no. 5.

CORAM : SMT. M.S. JAWALKAR & PRAVIN S. PATIL, JJ.

DATE OF RESERVING THE JUDGMENT : 16/06/2025
DATE OF PRONOUNCING THE JUDGMENT: 15/07/2025

JUDGMENT (PER: SMT. M.S. JAWALKAR, J.)

Heard learned counsel for both the parties.

2. The Petitioners being aggrieved by orders dated 14.08.2024, 06.09.2024 and 14.10.2024 denying permission to increase the intake capacity from 40 to 60 students and further reducing the intake capacity to 35 students, have approached before this Court.

3. The brief facts of the case are as under:-

Petitioner No. 1 is a Society and Public Trust. Petitioner No. 2 is the College established by Petitioner no.1 - Society and is funded entirely by Petitioner Society. Petitioner College is imparting education in Ayurveda for over two decades.

4. On 22.02.2000, Petitioner No.1 Society was granted 'No Objection Certificate' by Govt. of Maharashtra to start a new Jupiter Ayurvedic Medical College. On 06.02.2001, Petitioner No. 2 - College received permission for taking admission of 40 students in Ayurvedacharya Course for academic session of 2001-2002 from the then existing Central Council of Indian Medicine. On March 2002 - Petitioner College received affiliation from Respondent No. 4 University. Henceforth, for every academic year the permission for taking admissions and affiliation has been renewed by the respondents.

5. On 08.05.2022, Respondent No. 3 - Board invited applications from Aryurveda Colleges for increase in intake capacity in UG and PG Courses for the academic session of 2024-

2025. On 28.08.2022, Petitioner College submitted an application to increase the intake capacity of students from 40 to 60 for Bachelor of Ayurvedic Medicine and Surgery (BAMS) for academic session of 2024-2025. On 04.01.2024, Respondent No. 3 issued a Letter of Intent (LoI) to Petitioner No. 2 College for increasing seats from 40 to 60 in the BAMS Course. On 29.02.2024 & 01.03.2024, two visitations were conducted by Respondent No. 3 of Petitioner College. On 26.07.2024, Petitioner received a 'hearing notice' issued by Respondent No. 3 Board regarding certain shortcomings noticed by the visitation team.

6. On 30.07.2024, hearing was conducted and Petitioner College appeared before Respondent No. 3 giving detailed submissions that the alleged shortcomings do not exist and the requirements of the Regulations under the National Commission for Indian System of Medicine Act, 2020 (for short, "NCISM Act") have been fulfilled. Furthermore, the shortcomings are not mentioned in any regulations under NCISM Act. On 14.08.2024, Respondent No.3 rejected the submissions on hyper-technical grounds and erroneously denied permission for increasing intake

capacity from 40 to 60 students. Respondent No. 3 also reduced the existing intake capacity from 40 students to 35.

7. On 23.09.2024, Petitioner preferred an appeal before Respondent No. 2 – Commission. On 21.09.2024, hearing in the appeal was conducted on 21.09.2024. On 14.10.2024, although Respondent No. 2 accepted submissions of Petitioner College regarding certain shortcomings, but passed an order maintaining permission for only 35 intake capacity. On 26.10.2024, Petitioner College preferred a second appeal before Respondent No. 1 as mandated under NCISM Act. On 29.10.2024, during the pendency of the second appeal, Respondent No.5 issued a notice outlining schedule of 'Online Stray Vacancy Round' to fill vacant seats of BAMS Courses with the process of admission for academic session 2024-2025. Last date of admissions was on 25.11.2024. Respondent No. 1 through order dated 29.11.2024 dismissed the second appeal dated 26.10.2024 preferred by the Petitioners and denied permission to increase intake capacity from 40 to 60 students.

8. The petitioners further contended that, the requirement as per Regulations of 2016 is that the available teaching staff should be 90% of the total strength for college with 60 intake capacity. Petitioner College is already fulfilling this requirement. It is the ratio of 2 patients per 1 student as laid in the Regulations of 2016, the Petitioner College is exceeding the required limits as the total required number is 24000 patients whereas 33349 patients visited OPD in hospital attached to Petitioner College. Petitioner College had for over two decades been continuously granted permission for intake of 40 students, and decreasing the intake capacity would severely cause prejudice to the Petitioners.

9. Furthermore, the petitioners contended that Respondent No.1 erred in not considering the submissions of the Petitioners and has mechanically passed the order of dismissal of second appeal.

10. The learned counsel for the petitioners relied on the following citation:-

M. Sudakar V/s. V. Manoharan and ors. [(2011) 1 SCC 484.

11. On the contrary, the Respondent nos. 2 and 3 submitted that, Respondent is a statutory body constituted under the provisions of NCISM Act passed by the Parliament to provide for the minimum standards for admission, duration of courses of training, details of curriculum and syllabus of studies and the title of the degree or diploma, to grant permission/denial to run the Ayurveda / Siddha / Sowa Rigpa / Unani colleges.

12. The Respondent nos. 2 and 3 further contended that the Respondent No.3/Medical Assessment and Rating Board (hereinafter referred to as “MARB”) is an expert autonomous Board working under supervision of the Respondent no. 2-Commission.

13. The Respondent nos. 2 and 3 mentioned that the petitioners have filed the present writ petition to direct the respondent authorities to give permission to petitioner college to increase intake capacity from 40 to 60 students in the BAMS course for the academic year 2024-25. However, the last cut of

date for admission for academic year 2024-25 was 13.01.2025 and no admission can be made after such date for academic year 2024-25 and the academic session has already commenced from November 2024 for academic session 2024-25.

14. The Petitioners are trying to bypass the procedure established by law as mentioned under NCISM Act, which states that, in the event of denial of permission from the statutory body, any medical institution desirous to increase intake capacity has to apply afresh by submitting application along with relevant documents and requisite fee to Medical Assessment & Rating Board for Indian System of Medicine.

15. Respondent nos. 2 and 3 further submitted that the Petitioner college applied to increase intake capacity from 40 to 60 seats in march 2023 for academic year 2024-25. However, during the visitation it was found that the college was not even maintaining the minimum criteria for 40 seats, hence, the seats were reduced from 40 to 35 seats, therefore, the college was deficient in infrastructure and was not fulfilling the criteria for 60

seats, hence, Respondent No. 3 denied permission for increase of 40 to 60 seats and granted permission only for 35 instead of 40 seats after reducing the intake capacity.

16. As per section 29 of the NCISM Act, the Parliament of India has clearly codified as under:-

“29. (1) No person shall establish a new medical institution or start any postgraduate course or increase number of seats without obtaining prior permission of the Medical Assessment and Rating Board for Indian System of Medicine. Explanation -- For the purpose of this sub-section, the term "person" includes any University, trust or any other body, but does not include the Central Government.

(2) For the purpose of obtaining permission under sub-section (1), a person may submit a scheme to the Medical Assessment and Rating Board for Indian System of Medicine in such form, containing such particulars, accompanied by such fee, and in such manner, as may be specified by regulations.”

17. The Medical Assessment & Rating Board for Indian System of Medicine vide its letter dated 21.03.2025 informed to any person/trust/institution willing to submit an application to start new Ayurveda college or intend to increase intake capacity for academic year 2026-27 may submit their application till 31.07.2025. Henceforth, the Respondent nos. 2 and 3 affirmed

that the Petitioner college if desires to increase intake capacity, may submit its application alongwith relevant documents to the Medical Assessment and Rating Board before the last date of application i.e. 31.07.2025 for academic year 2026-27.

18. I have heard both the parties. Perused the impugned orders & documents and considered the citation relied on by the learned counsel for the petitioners.

19. The inspection of the Institution was conducted on 18/03/2024 and 19/03/2024. The petitioners received a hearing notice dated 26/07/2024 issued by respondent no. 3 - Board regarding certain shortcomings noticed by the visitation team. The shortcomings mentioned in the notice as per petitioner were thus:-

“i. Available teaching staff is 86.66% (90% is required for 60 students)

ii. Average of patients in OPD per day is 111.16 (120 is required for 60 students)

iii. No deliveries were conducted in 2023 (no such requirement is mentioned in any regulations under NCISM Act, 2020)

iv. Central registration is not web based.

v. Hospital IPD infrastructure is lacking.

vi. No attached toilet in Prasuti and Stri Roga OPD.

vii. Manufacturing date/expiry date on medicines not mentioned (no such requirement mentioned in any regulations)

viii. Principal office of Tarini Pharmacy College is on ground floor of academic block.

xi. Pollution Control and Fire NOC is not provided (No such requirement in any regulations).

Respondent No. 3 informed Petitioner College that a hearing regarding the above-mentioned deficiencies will be conducted on 30.07.2024.”

20. In reply to deficiency in (i), the petitioner college informed to the Board that, the Assistant Professor (Kriya Sharir) was appointed on 30/12/2023 and the Assistant Professor (Rachna Sharir) was appointed on 01/06/2024. Thus, teaching staff is more than 90% as required by Regulations of 2016. Similarly, it was pointed out with regard to the shortcomings mentioned in (ii) that, average of OPD patients has steadily increase over the years and it is only 8.83% less than the average

required for 60 students. The petitioner college also gave explanation to all the shortcomings.

21. It is the contention of the petitioner that, although the petitioner complied with the conditions mentioned in a Letter of Intent (LoI) dated 04/01/2024, respondent no. 3 rejected the submissions on hyper technical grounds and erroneously denied permission for increasing intake capacity from 40 to 60. Furthermore, respondent no. 3 also reduced the existing the intake capacity from 40 to 35 vide impugned order dated 14/08/2024 for no legal and valid reason.

22. It appears that, the petitioner challenged this order by filing appeal before the respondent no. 2 – National Commission for Indian System of Medicine. The Commission although specifically observed that, the appointment dated 30/12/2023 of Assistant Professor can be considered implying that, the teaching staff is 90% as required under the Regulations of 2016, but the Commission did not consider the submissions with regard to other alleged shortcomings and rejected the appeal maintaining the

permission to reduce intake admission of 35 students vide its order dated 14/10/2024. The second appeal preferred before respondent no. 1 as per provisions of NCISM Act, which also came to be rejected. During the pendency of the petition, the petitioner by way of amendment brought this fact on record.

23. On perusal of order dated 14/08/2024 and detailed order dated 06/09/2024, it appears that, the contention with regard to the appointment of Shashank Choudhary as Assistant Professor in department of Kriya Sharir by that there was compliance of staff deficiency which was not considered and explanation came to be rejected on the ground that, at the time of hearing, the Committee has verified in OTMS and teacher was not updated in OTMS or linked with the college, hence, submission was rejected by respondent no. 3 through appointment order placed on record. However, in order dated 14/10/2024 in appeal, it appears that, by that time, the information about appointment was linked with the OTMS and therefore, it was observed by the National Commission for Indian System of Medicine – respondent

no. 2 that, the submission can be considered. However, on the other ground, the permission to increase the students was rejected. So also reduction of intake capacity from 40 to 35 was confirmed. The appellate authority, for no reason, reduced the intake capacity from 40 to 35, which since 2 decades was with the same infrastructure specifically after due compliance.

24. On perusal of order dated 06/09/2024, it appears that, in view of Section 28(1)(f) of NCISM Act, the decision of reduction to admit 40 seats to 35 was based on Section 28(1)(f) of NCISM Act. The rule prescribes that for each deficit of one teacher, there will be reduction of 10% of intake capacity and for deficit of 10% of attendance of patient of required attendance will reduce the intake capacity by 1 student. Accordingly, four seats are reduced on the grant of deficit of 1 teacher and reduced 1 seat on the ground that for every 10% deficiency in average attendance of patients in OPD per day of the required norms. Thus, on the ground that one post of teacher is vacant and therefore 10% of seats are reduced i.e. 4 seats and 1 seat is

reduced as required average attendance of patient is less than 10% of required attendance. On perusal of attendance of patients, it is 8.83% deficit which is less than 10%, therefore, there was no reason to reduce strength by 1 student.

Section 28(1)(f) of the NCISM Act is reproduced for the sake of convenience as under:-

“28. Powers and functions of Medical Assessment and Rating Board for Indian System of Medicine.-

(1)

(f) take such measures, including issuing warning, imposition of monetary penalty, reducing intake or stoppage of admissions and recommending to the Commission for withdrawal of recognition, against a medical institution for its failure to maintain the minimum essential standards specified by the Board of Ayurveda or, as the case may be, the Board of Unani, Siddha and Sowa-Rigpa, in accordance with the regulations made under this Act.”

25. Thus, as mentioned in the petition, the average of patients in OPD per day is 111.16 and required patients per day is 120 for 60 students. Thus, as mentioned above, the appellate authority came to the conclusion that, there is one professor

appointed though he was not linked OTMS portal, at the time of visitations, as factually was being linked with the OTMS. It is observed that, this submission could be considered by the appellate authority. Therefore, the deduction on both these grounds of 5 students apparently illegal and unjustified. Admittedly, as per requirement of patients in OPD, for 40 students are available. Therefore, there no reason for reducing the strength by the respondent(s) under Section 28(1)(f) of NCISM Act.

26. So far as other deficiencies are concerned, it needs fresh consideration. In Schedule-I in Clause 12 of the Indian Medical Central Council (Requirement of Minimum Standard for undergraduate Ayurvedic Colleges and Attached Hospitals) Regulations, 2016, the requirement of total constructed area of hospital buildings is given for each unit and section. However, Clause 12(3) of the same makes it clear that, the requirement of attached toilet with Out-Patient Department is applicable for the colleges established after 18/07/2012. Admittedly, the Institution is established long back in the year 2001. As such, whether this

requirement is necessary to the said Institution, is required to be considered afresh. As such, we are satisfied that the impugned order is liable to be quashed and set aside. It has not been considered all these aspects. The findings recorded by the learned appellate authority as well as the learned second appellate authority is perverse and illegal to the facts on record to the extent it reduces strength of intake capacity from 40 to 35. In fact, there is no reason in existence to reduce the intake capacity from 40 to 35. Accordingly, we proceed to pass the following order:-

ORDER

- i) The petition is **partly allowed**.
- ii) The impugned order dated 14/08/2024 and 06/09/2024 passed by respondent no. 3 as well as order dated 14/10/2024 passed by respondent no. 2 in Appeal and order, confirming the order passed by respondent no. 2 in Second Appeal on 29/11/2024 by respondent no. 1 is hereby quashed and set aside.

iii) Intake capacity of petitioner institution as of 40 students is maintained as it is.

iv) If the cut of date is expired, the petitioner to make a fresh application which shall be considered by respondent no. 3 for the academic session 2025-2026, afresh after due hearing to the petitioner institution.

v) Accordingly, the petition stands **disposed of** in above terms.

vi) Pending application(s) if any, stand(s) also **disposed of**.

(PRAVIN S. PATIL, J.)

(SMT. M.S. JAWALKAR, J.)