

\$~ 29, 31, 33, 35, 37 & 39

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

29

+ **W.P.(C) 2215/2021 & CM APPL. 6448/2021**

SHRI LAXMI NARAYAN AYURVEDIC
COLLEGE

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

31

+ **W.P.(C) 2223/2021 & CM APPL. 6461/2021**

BABA HIRA DAS JI AYURVEDIC MEDICAL
COLLEGE AND HOSPITAL

..... Petitioner

versus

UNION OF INDIA AND OTHERS

..... Respondents

33

+ **W.P.(C) 2245/2021 & CM APPL. 6505/2021**

DOON AYURVEDA MEDICAL COLLEGE
AND HOSPITAL

..... Petitioner

versus

UNION OF INDIA AND OTHERS

..... Respondents

35

+ **W.P.(C) 2264/2021 & CM APPL. 6585/2021**

OM AYURVEDIC MEDICAL COLLEGE,
HOSPITAL AND RESEARCH CENTRE

..... Petitioner

versus

UNION OF INDIA AND OTHERS

..... Respondents

37

+ **W.P.(C) 2270/2021 & CM APPL. 6596/2021**

KHALSA AYURVEDIC MEDICAL
COLLEGE AND HOSPITAL

..... Petitioner

versus

39 UNION OF INDIA & ORS. Respondents
+ W.P.(C) 2274/2021 & CM APPL. 6603/2021
KV AYURVEDIC MEDICAL COLLEGE AND
DEV HOSPITAL Petitioner
versus
UNION OF INDIA AND OTHERS Respondents

Present:

For Petitioners

Mr. Akshay Bansal & Mr. Vivek Singh, Advocates in Item nos. 29 & 37.
Mr. A Mariarputham, Senior Advocate with Mr. Avneesh Arputham and
Ms. Anuradha Arputham, Advocates in Item nos. 31, 33, 35 & 39.

For Respondents:-

Ms. Nidhi Raman, CGSC for R-1/UOI in Item no. 29.
Mr. Jaswant Rai Aggarwal, Advocate for R-1/UOI in Item no. 31.
Mr. T.P. Singh, Advocate for R-1/UOI in Item no. 33.
Ms. Suman Chauhan, Advocate for R-1/UOI in Item no. 35.
Mr. Vivek B. Saharya, Advocate for R-1/UOI in Item no. 37.
Mr. Jitesh Vikram Srivastava, Senior Panel Counsel alongwith Mr.Amit
Gupta, Govt. Pleader for R-1/UOI in Item no. 39.
Ms. Archana Pathak Dave, Mr.Kumar Prashant & Ms.Vanya Gupta,
Advocates for R-2/CCIM in Item nos. 29, 31, 33, 35, 37 & 39.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
% **18.02.2021**

The proceedings in the matter have been conducted through video conferencing.

CM APPL. 6449/2021 (exemption) in W.P.(C) 2215/2021
CM APPL. 6462/2021 (exemption) in W.P.(C) 2223/2021
CM APPL. 6506/2021 (exemption) in W.P.(C) 2245/2021
CM APPL. 6586/2021 (exemption) in W.P.(C) 2264/2021

CM APPL. 6597/2021(exemption) in W.P.(C) 2270/2021
CM APPL. 6604/2021 (exemption) in W.P.(C) 2274/2021

Exemption allowed, subject to all just exceptions.

The applications stand disposed of.

W.P.(C) 2215/2021 & CM APPL. 6448/2021 (interim relief)
W.P.(C) 2223/2021 & CM APPL. 6461/2021 (interim relief)
W.P.(C) 2245/2021 & CM APPL. 6505/2021 (interim relief)
W.P.(C) 2264/2021 & CM APPL. 6585/2021 (interim relief)
W.P.(C) 2270/2021 & CM APPL. 6596/2021(interim relief)
W.P.(C) 2274/2021 & CM APPL. 6603/2021(interim relief)

1. Issue notice. Ms. Nidhi Raman, learned CGSC for R-1/UOI in W.P.(C) 2215/2021; Mr. Jaswant Rai Aggarwal, learned counsel for R-1/UOI in W.P.(C) 2223/2021; Mr. T.P. Singh, learned counsel for R-1/UOI in W.P. (C) 2245/2021; Ms. Suman Chauhan, learned counsel for R-1/UOI in W.P. (C) 2264/2021; Mr. Vivek B. Saharya, learned counsel for R-1/UOI in W.P.(C) 2270/2021; Mr. Jitesh Vikram Srivastava, learned Senior Panel Counsel for R-1/UOI in W.P.(C) 2274/2021 and Ms. Archana Pathak Dave, learned counsel for R-2/Central Council of Indian Medicine [hereinafter, “the CCIM”], in all the writ petitions, accept notice. Notice to the remaining respondents be served through all permissible modes, *dasti* in addition.

2. These six petitions are filed by Ayurvedic colleges, challenging the orders of the Union of India [hereinafter, “the Union”], rejecting their applications for permission to admit students in the academic year 2020-2021. The impugned orders have been passed pursuant to recommendations received by the Union from the CCIM, and after giving

show cause notices to the petitioner institutions. The petitioners submitted written representations in answer to the show cause notices, and also participated in the hearings convened by the Union. The relevant dates will be evident from the following table:

Writ Petition No.	Date of CCIM recommendation	Date of show cause notice	Date of hearing	Date of final order
W.P.(C) 2215/2021	24.11.2020	05.01.2021	11.01.2021	04.02.2021
W.P.(C) 2223/2021	04.12.2020	05.01.2021	09.01.2021	03.02.2021
W.P.(C) 2245/2021	25.11.2020	11.01.2021	15.01.2021	15.02.2021
W.P.(C) 2264/2021	04.12.2020	05.01.2021	11.01.2021	15.02.2021
W.P.(C) 2270/2021	12.01.2021	15.01.2021	18.01.2021	11.02.2021
W.P.(C) 2274/2021	15.01.2021	19.01.2021	22.01.2021	06.02.2021

3. Learned counsel for the petitioners submit that the principal issues raised in these petitions are covered in their favour by interim orders granted by this Court in favour of other similarly placed institutions, including the following orders:

(a) Order dated 08.02.2021 in W.P.(C) 1539/2021 [*SKS Ayurvedic Medical College and Hospital through its Secretary vs. Union of India, Ministry of Ayush through Secretary & Anr.*] and connected matters.

(b) Order dated 12.02.2021 in W.P.(C) 1854/2021 [*RB Ayurvedic Medical College and Hospital vs. Union of India and Ors.*] and connected matters.

(c) Order dated 15.02.2021 in W.P.(C) 1958/2021 [*Dr Anar Singh Ayurvedic Medical College and Hospital vs. Union of India & Ors.*] and connected matters.

4. In the aforesaid writ petitions, the Court was concerned with challenges to similar denial orders passed against other institutions.

Following the approach indicated by the order of the Division Bench dated 04.02.2021 in LPA 49/2021 [*Shivang Homeopathic College vs. Union of India & Ors.*], in respect of a homeopathic college, I had granted interim relief on the finding that the petitioners had made out a *prima facie* case in their challenge to the impugned orders. By the aforesaid order dated 04.02.2021, the Division Bench had held that the questions of balance of convenience and irreparable harm were in favour of the appellant-institution, and stayed the order of this Court dated 01.02.2021 in W.P.(C) 1265/2021 to the contrary.

5. Following the same approach, I proceed to examine the question of *prima facie* case in the six petitions listed today:

(a) The principal ground upon which the petitioners' applications have been rejected is that various members of the petitioners' faculty have been considered to be "ineligible" or "on paper" or "unrecognised" due to registration with a State Council other than the State where the college is located, by the CCIM. By the aforesaid interim orders, I have found that the show cause notices issued to the petitioners did not indicate the identity of particular faculty members or the nature of the objection of the respondents to their inclusion. On this basis, I had recorded a *prima facie* finding in favour of the petitioners therein. The impugned orders in the present cases are not distinguishable from the orders impugned in those petitions. The issue of *prima facie* case, on this aspect, is therefore decided in favour of the petitioners.

(b) In some of the cases, the respondents have disregarded members of the faculty and staff of the petitioner-institutions, who were appointed after 31.12.2019, being the cut-off date for the purposes of recognition for

the academic year 2020-2021. At the same time, the respondents have also disregarded those faculty who were in the employment of the petitioner-institutions as on 31.12.2019, but have been found ineligible or unrecognised by the CCIM in December, 2020 & January, 2021. I have held in the aforesaid interim orders that this displays a lack of parity in the treatment of faculty members who had been appointed after the cut-off date and those who had been rendered ineligible after the cut-off date. The selective application of the cut-off date is, in my *prima facie* view, unreasonable, as is the denial of recognition on the basis of directions of the CCIM in December, 2020 and January, 2021, without giving the institutions sufficient time to employ replacement faculty.

(c) In some of the cases, defects have been found with regard to the availability, adequacy of the information and the updation of the websites of the petitioner-institutions. In the aforesaid interim orders, I have considered this issue also, and have come to the conclusion that this is a remediable defect, and denial of recognition on the basis of this defect is a disproportionate consequence.

(d) In W.P. (C) 2215/2021, several deficiencies relate to the non-availability of the hospital staff, including the medical superintendent, modern medical staff, house officer or clinical registrar or senior resident (Ayurvedic), etc. The Hearing Committee, in each of these cases, has referred to the report of the CCIM with regard to the deficiencies (with reference to particular page numbers of the CCIM report which was neither communicated to the petitioner, nor extracted in the impugned order), and came to the conclusion that the Hearing Committee could not ascertain the availability of the required staff. The Hearing Committee

has recommended that the competent authority may verify the availability of staff, and therefore, endorsed the report of the CCIM. In the face of this material, the Union has only recorded that, as per the submissions made by the college's representative and the observations of the Hearing Committee, the criteria are not fulfilled. The conclusion of the Union bears little correlation with the opinion expressed by the Hearing Committee. The Hearing Committee's opinion is inconclusive, whereas the Union has rendered a conclusive finding ostensibly on the basis of the Hearing Committee's report.

(e) In W.P. (C) 2245/2021, the respondents have found not only a deficiency in the teaching staff but also in the hospital staff. The deficiency pointed out is shortage of atleast one specialist doctor or one clinical teacher in each of the 6 departments [dealt with under point 7 in the impugned order at page 62 of the writ petition]. However, as per the documents submitted by the petitioner, the designation and joining date of the hospital staff are quite clear in this regard, and there seems to be no deficiency on the said count. I am *prima facie* of the view that the observations of the Hearing Committee and the Union on this point are vague and unmerited. In this regard, Mr. A Mariarputham, learned Senior Counsel for the petitioner, also draws my attention to Note (5) to Schedule IV of the Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016 [hereinafter, "the Regulations"] which permits a 20% relaxation in the hospital staff for the purposes of grant of conditional permission.

(f) In W.P. (C) 2264/2021, an additional ground raised [in the

impugned order dated 15.02.2021] relates to deficiency in the documents supplied to the Hearing Committee. Various documents including appointment letter, joining letter, experience certificate, bank advise for salary, attendance register and qualification details had been submitted by the petitioner. The respondents, however, relying upon the observations of the Hearing Committee, have disregarded these documents and stated that the biometric attendance, Form 16, PF deduction details and bank transaction details of the teaching staff has not been supplied. On this basis, the Hearing Committee observed the required number of teaching staff is not available. I am *prima facie* of the view that the observations of the Hearing Committee are vague and generic in nature. No basis has been stated to disbelieve the various documents admittedly submitted by the petitioner. Additionally, as held in the aforementioned interim orders, any deficiency or inadequacy in the documentation submitted by the petitioner ought to have been communicated to it, so that the petitioner was given an opportunity to remedy the defects. In this case, the hearing was fixed on 11.01.2021, within a few days after the show cause notice was issued (on 05.01.2021). The petitioner did submit voluminous documentation, and ought to have been given an opportunity to supply any further documentation required by the respondents. It may be noted that the impugned order was passed more than one month after the date of hearing, which would have given sufficient time for this process to be completed.

(g) In W.P. (C) 2270/2021, the following additional points arise:

- (i) An objection is taken regarding the shortage in the number of plant species available in the herbal garden. Reference is made to

Schedule III of the Regulations which provides that 250 species are required in a college with 60 students. However, Note (2) to Schedule III of the Regulations requires a minimum of 150 species for grant of conditional permission. As against this, the allegation in the show cause notice was that the petitioner has 170 species in its herbal garden. While the petitioner, in reply to the show cause notice submitted that due to climatic conditions, the number of species had reduced to 112, it was also stated that the petitioner was making an attempt to augment the number of plant species. In my *prima facie* view, the denial of permission on this basis is not reasonable as the defects are of a remediable nature and due to natural conditions prevalent in the location.

- (ii) As far as deficiencies of hospital staff and technical staff are concerned, it has been recorded that 55 hospital staff are available out of 56 required and 24 technical staff are available out of 25 required. Both these deficiencies fall within the relaxation of 20% which is stipulated under Note (5) to Schedule IV and the Note to Schedule VI of the Regulations. This has not been considered in the impugned order.
- (h) In W.P. (C) 2274/2021, the following additional points arise:
 - (i) An additional ground is raised regarding the non-availability of the quality testing lab. Ms. Dave, learned counsel for the CCIM submits that this observation was based upon the physical inspection conducted by the CCIM representatives. However, in the impugned order, the Union has noted that the photographs of the lab have been submitted. However, further documentation has

been referred to and a conclusion has been drawn against the petitioner for non-submission of the map of the building, copy of the register containing details of the tests conducted and test results of the tested medicine of products. The petitioner was not specifically called upon at any stage to produce these documents in support of its contention. The very fact that the conclusion is based upon non-submission of these documents indicates that the Union has not proceeded only on the basis of the physical inspection report but sought to test the petitioner's submissions on the basis of further documentary evidence.

(ii) The only other ground concerns the availability of books and seating capacity in the college library. In this regard, Mr. A Mariarputham, learned Senior Advocate submitted that availability of books had been verified by the visiting committee in the year concerned as well as in the previous year. The accession register verified by the team was also submitted. The Hearing Committee has disregarded these documents on the basis that the purchase details of the books were not submitted and the assertion regarding seating capacity was not supported by documentary evidence. It is difficult to appreciate what evidence was required if the visiting team itself had verified the number of books in the college, which has not been countered by the Hearing Committee or the remarks of the Union.

6. In view of the aforesaid, I find that the petitioners in these six cases have made out a good *prima facie* case for grant of an interim order. Following the observations of the Division Bench and its order dated

04.02.2021 passed in LPA 49/2021, the petitioners are hereby permitted to participate in the ongoing counselling process.

7. This being an *interim* order, it is naturally subject to the result of the writ petitions, and the petitioners are directed to inform the prospective students accordingly.

8. Counter affidavits be filed within four weeks. Rejoinders thereto, if any, be filed within two weeks thereafter.

9. List on 07.04.2021.

PRATEEK JALAN, J

FEBRUARY 18, 2021

'pv'