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

+ **W.P.(C) 1714/2021**

ISHAN AYURVEDIC MEDICAL COLLEGE
AND RESEARCH CENTRE & ANR.

..... Petitioners

Through: Mr.Amit Khemka and Mr. Rishi
Sehgal, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Nirvikar Verma, Advocate
for R-1, 3 & 4.
Ms.Archana Pathak Dave,
Mr.Pramod Kumar Vishnoi &
Ms.Vanya Gupta, Advocates
for R-2/CCIM.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **15.02.2021**

The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

CM APPL. 4958/2021 (exemption)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

W.P.(C) 1714/2021 with CM APPL. 4957/2021 (interim relief)

1. Issue notice. Mr. Nirvikar Verma, learned counsel, accepts notice on behalf of respondent nos. 1, 3 and 4. Ms. Archana Pathak Dave, learned counsel, accepts notice on behalf of respondent no. 2/CCIM.

2. The petitioner challenges an order dated 01.02.2021, issued by the Union of India [hereinafter, “the Union”], whereby its application for conducting its UG BAMS Course in the academic session 2020-2021 was declined.

3. I have heard Mr. Amit Khemka, learned counsel for the petitioner, Mr. Nirvikar Verma, learned counsel for the Union, and Ms. Archana Pathak Dave, learned counsel for the Central Council of Indian Medicine [hereinafter, “CCIM”].

4. The present petition is one of several which have recently been filed in this Court by Ayurveda, Homeopathy and Unani colleges, challenging orders by which they have been declined permission to admit students in the academic year 2020-2021. I have passed orders granting interim reliefs in several of those petitions, including *inter alia* by an 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 & Arn.*] and connected matters, which covered ten institutions, and an order dated 12.02.2021 in W.P.(C) 1854/2021 [*RB Ayurvedic Medical College And Hospital vs. Union of India And Others*] and connected matters, which covered seven institutions. These interim orders have been passed following the approach indicated by the Division Bench in its order dated 04.02.2021 in LPA 49/2021 [*Shivang Homeopathic College vs. Union of India & Ors.*], whereby the Division Bench granted interim relief of permission to participate in the ongoing counselling process to a homeopathy college, after rendering a *prima facie* finding in favour of the appellant therein. The Division Bench

observed that balance of convenience in such cases is in favour of the institution and that the institution would be caused irreparable harm and injury in the event interim relief is not granted. Consequently, the Division Bench stayed the order of this Court dated 01.02.2021 in W.P.(C) 1265/2021 [*Shivang Homeopathic Medical College vs. Union of India, Ministry of Ayush & Ors.*], which was to the contrary. Many of the issues which arise in the present case have also been dealt with in the aforementioned interim orders dated 08.02.2021 and 12.02.2021.

5. In the present case, the petitioner-institution was first granted recognition in the year 2017 but could not admit any students in that year as the counselling process was already over. It was granted conditional permission in the year 2018-2019 and 2019-2020, but has been denied permission for the year 2020-2021. Pursuant to its application for this academic year, the CCIM made a recommendation dated 25.11.2020 to the Union, and the Union issued a hearing notice dated 09.01.2021 to the petitioner. The petitioner appeared at the hearing on 11.01.2021 and also filed a detailed response to the show cause notice on the same day.

6. In the show cause notice, the following deficiencies were enumerated:

“i. There is no Higher Faculty (P/R) available in 07 dept. namely Rachana Sharir, Kriya Sharir, Dravyaguna, Rasa Shastra, Rog Nidan, Sawasthvritta and Prasuti & Stri Roga against the requirement of minimum 01 (P/R) in each as specified in schedule V of RMS, 2016.

- ii. *There is no Lower Faculty available in the dept. of Rachana Sharir against the requirement of 01 as specified in schedule V of RMS, 2016.*
- iii. *There is no Medical Superintendent available in the Hospital against the requirement of 01 as specified in schedule IV of RMS, 2016.*
- iv. *There is 1 Pharmacist available in the Hospital against the requirement of 02 as specified in schedule IV of RMS, 2016.*
- v. *There is no Modern Medical Staff (08 Modern Medicine Specialist + Dentist + Physiotherapist) available in the Hospital against the requirement of 10 as specified in schedule IV of RMS, 2016.*
- vi. *There is no Clinical Registrar & Panchakarma Nurse available in the Panchakarma Therapy Section against the requirement of 01 each as specified in schedule IV of RMS, 2016.*
- vii. *There is no nurse available in the Operation Theatre and Ksharsutra Therapy Section against the requirement of 01 as specified in schedule IV of RMS, 2016.*
- viii. *There is no Analytical Chemist, Pharmacognosist and worker available in the Teaching Pharmacy against the requirement of 01 each as specified in schedule IV of RMS, 2016.*
- ix. *There is shortage of 01 Multi-purpose worker in Herbal Garden as specified in schedule VI of RMS, 2016.*
- x. *College website is not available/ not updated as specified in sub-regulation (2) of regulation 9 of RMS, 2016.”*

7. The Union having rendered its findings in the impugned order against the petitioner on each of the aforementioned points, I have heard learned counsel in detail on the merits of the allegations so as to arrive at a *prima facie* view. My conclusion on this aspect is in favour of the petitioner for the following reasons:

- (a) The principal ground of denial appears to be the deficiency noted at Sr. no. (i) and (ii) above, concerning shortage of faculty in various departments. While the show cause notice contained a general allegation to this effect, in the impugned order dated 01.02.2021, specific members of the petitioner's faculty have been considered as "on paper". The petitioner was asked to respond to a general allegation regarding shortage of faculty. It responded with the names and details of each of the teachers whom it claimed are working with it. The impugned order records that, based upon CCIM's recommendation with regard to some of the persons, they have been disregarded in computing the available faculty strength of the petitioner. However, neither were the recommendations communicated to the petitioner, nor was the petitioner informed in the show cause notice of the identity of those members of its faculty whom the respondents considered ineligible. To this extent, the petitioner was not given an opportunity to respond to the allegations which have subsequently been held against it. I may note that I have recorded a *prima facie* finding to this effect in the abovementioned orders dated 08.02.2021 and 12.02.2021 as well.
- (b) After recording the submissions of the petitioner, the Union has noted the observations of the Hearing Committee, which in turn reproduce the recommendations of the CCIM. The grounds upon which the representation of the petitioner was rejected are not apparent from the impugned order at all.

- (c) With regard to the deficiencies noted at Sr. no. (ii) and (iii) [at page 521 and 522 of the writ petition], the only observation of the Hearing Committee reproduced in the order is that “*the Hearing Committee stands with CCIM recommendation as mentioned in page 17/corr.*”. This, in turn, has been accepted by the Union without any further comment or analysis. It is quite evident that in the absence of quoting the referenced recommendation, or it being communicated to the petitioner, the impugned order is opaque as to the reasons which weighed with the Hearing Committee, or with the Union of India while passing the impugned order.
- (d) Against some of the deficiencies, the impugned order mentions certain inadequacies in the documents submitted by the petitioner in support of its representation. In this connection, it may be noted that the show cause notice was issued on 09.01.2021 and the hearing was fixed only two days thereafter, on 11.01.2021. The petitioner did submit voluminous documentation, running into about 340 pages in the annexures to the writ petition. In the event the Hearing Committee required any further documents on any aspect, I am of the view that the inadequacy ought to have been communicated to the petitioner and an opportunity given to supply the further documents. It may be noted that the impugned order was passed approximately three weeks after the hearing, which indicates that there was sufficient time to enable such an opportunity to have been afforded to the petitioner.

- (e) In the impugned order, the Union has disregarded those members of the faculty who were appointed after 31.12.2019, which is the last date for consideration of the infrastructure and faculty available for permission in 2020-2021 under Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016 [hereinafter, “2016 Regulations”]. However, while disregarding those who have been appointed after 31.12.2019, it is evident from paragraph 4 of the impugned order that the Union has also disregarded those teachers who have been rendered ineligible by virtue of a decision taken by the CCIM only on 04.01.2021. There is thus a lack of parity in treatment of faculty vis-a-vis the cut-off date of 31.12.2019. Additionally, this creates an untenable situation where faculty is rendered ineligible on 04.01.2021 and the permission is denied very soon thereafter, making it impossible for the institution to hire replacement faculty.
- (f) The 2016 Regulations specify the requirements for hospital staff, teaching staff and technical and other staff in Schedules 4, 5 and 6 respectively. Note (v) below Schedule 4 records that conditional permission may be accorded if the institution has minimum of 80% of the required hospital staff. Similarly, Notes (ii), (iii) and (iv) below Schedule 5 and the note below Schedule 6 also provide for some relaxation in the requirements upon which conditional permission may be granted. The impugned order, while coming to a conclusion regarding various

deficiencies in the faculty and staff position, does not adequately compare the availability of the petitioner's staff with the total requirement under each of these schedules. For example, in the finding recorded at paragraph 8(3) to 8(8) of the impugned order [at page 528 of the writ petition], the Union finds shortages against various heads which are referable to Schedule 4 of the Regulations. While noting that conditional permission can be granted upon fulfilment of 80% of requirements in Schedule 4, however, there is no analysis or finding that the petitioner does not meet this minimum threshold.

- (g) The impugned order finds that there is no modern medical staff attached to the petitioner's hospital. However, it may be noted that Schedule 4 of the Regulations require modern medical staff to be available only 'part-time' or 'on contract'. The Division Bench, in its order dated 04.02.2021, in LPA 49/2021, has referred to a similar provision regarding homeopathy colleges, and found that denial of permission on the basis of shortage of modern medical staff cannot be sustained.
- (h) The final deficiency recorded in the impugned order concerns the inadequacy of the petitioner's website against the requirements specified in Regulation 9(2) of the 2016 Regulations. In the aforesaid interim orders dated 08.02.2021 and 12.02.2021, I have taken the *prima facie* view that the inadequacy in the website can only be regarded as a remediable

deficiency and cannot form the basis of a denial of permission altogether.

8. For the foregoing reasons, I am of the view that the petitioner has made out a good *prima facie* case in the present petition. Following the order of the Division Bench dated 04.02.2021, passed in LPA 49/2021, the petitioner is hereby permitted to participate in the ongoing counselling.

9. As this is an *ad interim* order, it is naturally subject to the result of the writ petition and the petitioner is directed to inform prospective candidates accordingly.

10. Counter affidavit be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

11. List alongwith the connected matters on 07.04.2021.

PRATEEK JALAN, J

FEBRUARY 15, 2021

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