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

+ W.P.(C) 1794/2021

SANJEEVANI AYURVEDIC
MEDICAL COLLEGE

..... Petitioner

Through: Mr. Sandeep Sethi, Senior
Advocate, with Ms. Anuradha
Arputham and Mr. Avneesh
Arputham, Advocates

versus

UNION OF INDIA AND OTHERS

..... Respondents

Through: Ms. Richa Dhawan and Ms. Rupali
Kapoor, Advocates for R-1.
Ms. Archana Pathak Dave,
Advocate with Mr. Kumar
Prashant, Advocate for R-2/CCIM.

+ W.P.(C) 1819/2021

DR. KRISHNA GOPAL DWIVEDI AYURVEDIC
MEDICAL COLLEGE AND HOSPITAL

..... Petitioner

Through: Mr. A. Mariarputham, Senior
Advocate, with Ms. Anuradha
Arputham and Mr. Avneesh
Arputham, Advocates

versus

UNION OF INDIA AND OTHERS

..... Respondents

Through: Ms. Richa Dhawan and Ms. Rupali
Kapoor, Advocates for R-1.
Ms. Archana Pathak Dave,
Advocate with Mr. Kumar
Prashant, Advocate for R-2/CCIM.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **10.02.2021**

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

CM APPLs. 5140/2021 and 5239/2021 (for exemption)

Exemption allowed, subject to all just exceptions.

These applications stand disposed of.

W.P.(C) 1794/2021, W.P.(C) 1819/2021 with CM APPLs . 5139/2021 , 5238/2021(for interim relief)

1. Issue notice. Ms. Dhawan accepts notice on behalf of respondent Nos. 1 and 6. Ms. Archana Pathak Dave accepts notice on behalf of respondent Nos. 2 and 3. Notice be issued to respondent Nos. 4 and 5, *dasti* in addition.

2. The petitioners challenge orders passed by the Union of India [“the Union”] dated 04.02.2021 (in the case of W.P.(C) No. 1794/2021) and 03.02.2021 (in the case of W.P.(C) No. 1819/2021), by which their applications for permission to admit students in their UG (BAMS) courses for the academic year 2020-21 were declined. As the facts and grounds of challenge are substantially similar, both petitions have been taken up for hearing together.

3. The facts are noted from W.P. (C) 1794/2021. Prior to the impugned order dated 04.02.2021 being passed, a show cause notice dated 08.01.2021 was issued to the petitioner in which the following deficiencies were pointed out:-

“On examining the same in terms of the Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016, provisions under the IMCC Act, 1970, relevant regulations made there under, it appears that, the college is not fulfilling following requirements:

1) Total 11 eligible teachers are available against the requirement of 45 eligible teachers for grant of permission as per RMS, 2016. Total percentage of teaching staffs available is only 24.44% against the minimum essential requirement of 90% for conditional permission.

2) 02 HF is not available in each department of Rachana Sharir, Kriya Sharir, Dravyagun, Vigyan, Rasa Shastra & Bhaishajya Kalpana, Rog Nidan avum Vikriti Vigyan, Swasthavritta & Yoga, Kaumarbhritya —Bala Roga, Kayachikitsa, Pancharma, Shalyatantra and Shalakyatantra against the minimum requirement of 02

3) 01HF is not available in each Department of Ayurved Samhita & Siddhant, Agad Tantraavum Vidhi Vaidyaka and Prasuti and Stri Roga against the minimum requirement of 02

4) 02 lower faculty is not available in Department of Kayachikitsa against the minimum requirement of 02

5) 01 lower faculty is not available in each Department of Ayurved Samhita & Siddhant, Rachana Sharir, Rasa Shastra & Bhaishajya Kalpana, Rog Nidan avum Vikriti Vigyan, Swasthavritta & Yoga, Prasuti & Stri Roga, and Kaumarbhritya against the minimum requirement of 01

6) 01 Obstetrician & gynaecologist and 01 pathologist is not available against the minimum requirement of 01

7) College website is not updated as per subregulation 2 (e), (f), (g), (h), (k), (l), and (n) of regulation 9 of RMS 2016”.

The petitioner was accorded a hearing on 14.01.2021 and also gave a

detailed written reply on the same date. These have been considered in the impugned order dated 04.02.2021. In W.P.(C) No. 1819/2021, the show cause notice dated 08.01.2021 issued to the petitioner is on similar lines, with an additional deficiency regarding shortage of books in its library.

5. Mr. Sethi and Mr. Mariarputham, learned senior counsel for the petitioners in these two cases, submit that the facts of the present cases are substantially similar to the facts of a batch of writ petitions in which I had passed an *ad interim* order on 08.02.2021, being W.P.(C) 1539/2021 [*SKS Ayurvedic Medical College and Hospital, through its Secretary and Ors. vs. Union of India and Ors.*] and connected matters. In the order dated 08.02.2021, following an interim order dated 04.02.2021 passed by the Division Bench in LPA 49/2021 [*Shivang Homeopathic College Vs. Union of India & Ors.*], I had permitted the ten petitioner institutions to participate in the ongoing counselling. By the order in *Shivang Homeopathic College*, the Division Bench stayed an order dated 01.02.2021 declining interim relief to the concerned institution in circumstances similar to these cases, and granted such permission to the appellant therein.

6. I notice from the impugned orders dated 04.02.2021 and 03.02.2021 that, as in the case of the institutions covered by the aforesaid order dated 08.02.2021, the Union has considered the petitioners' response to the show cause notices in the light of the recommendations of the Central Council of Indian Medicine ["CCIM"] regarding the status of various members of the faculty claimed to be employed by the

petitioners. For example, in the impugned order dated 04.02.2021 in W.P. (C) 1794/2021, the remarks under the heading “Observation of the Hearing Committee” show that several faculty members claimed by the petitioner have been disregarded by the respondents on the ground that they are “not currently linked with this college” or “not considered as regular faculty by the CCIM/BoG” (BoG being the Board of Governors of the CCIM).

7. In contrast to these specific findings in the impugned orders, it is clear from the show cause notices that the petitioners were asked to show cause with regard to various shortages in the number of faculty in different departments. Generic allegations in this regard were made, but no specific allegation or contention was brought to the petitioners’ notice regarding the status or eligibility of any particular member of their faculty. The grounds upon which the impugned orders have been passed are, to this extent, grounds which the petitioners had no opportunity to meet at the hearings given to them. To this extent, these cases are similar to those covered by the *ad interim* order dated 08.02.2021 in W.P.(C) 1539/2021 and connected matters.

8. Ms. Dave, learned counsel for the CCIM, submits that an additional factor has been taken into account in the present cases, which was not present in the cases considered on 08.02.2021. She submits that under Regulation 3(1)(a) of the Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016, an institution is required to have the necessary infrastructure, faculty, and facilities in place by 31st December of the year preceding the academic session for

which recognition is sought. In the present cases, as recognition is sought for the academic session 2020-21, the petitioners were required to have the infrastructure and faculty in place by 31.12.2019, whereas the submissions of the petitioners themselves show that several members of the faculty were appointed during the year 2020. Ms. Dave contends that the said members of the faculty have therefore not been taken into account while determining the petitioners' compliance with the Regulations.

9. I am of the *prima facie* view that this contention is not reasonable. It is evident from paragraph 4 of the impugned order dated 04.02.2021 in W.P.(C) No. 1794/2021 that the Union has taken into account "revised teachers status in respect of withdrawal of teacher's code dated 05.01.2021", i.e. the ineligibility of teachers as recorded in the impugned order, is based upon the status of their teachers as on 05.01.2021. Similarly, in paragraph 4 of the impugned order dated 03.02.2021 in W.P. (C) 1819/2021, the Union has considered "revised teachers status in respect of withdrawal of teacher's code dated 04.01.2021", i.e. the ineligibility of teachers as recorded in the impugned order, is based upon the status of their teachers as on 04.01.2021.

10. Ms. Dave submits that in the year 2020 due to the COVID-19 pandemic, CCIM was unable to conduct physical inspection of the institutions and was unable to adhere to the regular schedule of appraisal of institutions for the purpose of recognition. In such circumstances, the withdrawal of the teachers' codes took place in January, 2021, and has been considered in the impugned orders.

11. Be that as it may, I am of the view that it is *prima facie*

unreasonable for the respondents to ignore the appointments made by the petitioner institutions at various points after 31.12.2019, while simultaneously disregarding the faculty members who were employed by the petitioners as on 31.12.2019, on the basis of the subsequent withdrawal of their teachers' codes by CCIM, which occurred in January, 2021. Quite apart from the fact that this situation was also not specifically put to the petitioners in the show cause notices, the lack of parity in the application of the cut-off date is *prima facie* unacceptable.

12. With regard to the third objection taken in the impugned orders regarding the failure to update the petitioners' websites, I have held in the interim order dated 08.01.2021, that this discrepancy is capable of being remedied, and is insufficient to draw the drastic remedy of withdrawal of recognition.

13. In W.P. (C) 1819/2021, Ms. Dave asserts an additional ground of denial, *viz.* that the petitioner did not have sufficient number of books in its library as on 31.12.2019. Mr. Mariarputham, learned senior counsel for the petitioner, submits that the books were purchased in November, 2020 and the requisite vouchers etc. have been submitted to the respondents.

14. It appears from the impugned order (the relevant observation being at page 60 of the writ petition) that the Union has failed to consider the subsequent purchase of books on the ground that no physical verification has taken place this year and that the books have been purchased after the cut-off date of 31.12.2019. As the fact of purchase of books has not been disputed by the respondents, I am of the view that merely because they were unable to carry out physical verification, the shortage of books

cannot be held against the petitioner. Further, for reasons stated above, I am also of the view that the respondents cannot entirely ignore the fact that books have been purchased after 31.12.2019. In these circumstances, the petitioner has made out a good *prima facie* case on this ground as well.

15. For the reasons aforesaid, the petitioners have made out a case for grant of interim relief. Following the order of the Division Bench dated 04.02.2021, the petitioners are permitted by way of this interim direction to participate in the current ongoing counselling process. Given that this order is an *ad interim* order, it is made clear that the order is subject to the final outcome of the writ petition. The petitioners are directed to inform their prospective students accordingly.

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

17. List on 07.04.2021.

PRATEEK JALAN, J

FEBRUARY 10, 2021

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