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

+ **W.P.(C) 1539/2021**

SKS AYURVEDIC MEDICAL COLLEGE AND
HOSPITAL THROUGH ITS SECRETARY Petitioner

versus

UNION OF INDIA, MINISTRY OF AYUSH
THROUGH SECRETARY & ANR. Respondents

51

+ **W.P.(C) 1543/2021**

PT. SHIVSHAKTILAL SHARMA AYURVED
MEDICAL COLLEGE AND HOSPITAL Petitioner

versus

UNION OF INDIA & ORS. Respondents

53

+ **W.P.(C) 1556/2021**

PRAKASH INSTITUTE OF AYURVEDIC MEDICAL
SCIENCES RESEARCH AND OTHERS Petitioners

versus

UNION OF INDIA AND OTHERS Respondents

76

+ **W.P.(C) 1616/2021**

SHREE SATYA AYURVEDIC
MEDICAL COLLEGE AND HOSPITAL Petitioner

versus

UNION OF INDIA AND OTHERS Respondents

77

+ **W.P.(C) 1619/2021**

WTM AYURVEDIC MEDICAL
COLLEGE AND HOSPITAL Petitioner

versus

UNION OF INDIA AND OTHERS Respondents

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+ **W.P.(C) 1620/2021**

BHARAT AYURVED MEDICAL COLLEGE
AND HOSPITAL AND RESEARCH CENTRE Petitioner

versus

UNION OF INDIA AND OTHERS Respondents

- 79
+ **W.P.(C) 1621/2021**
SHIVALIK AYURVEDIC MEDICAL
COLLEGE AND HOSPITAL Petitioner
versus
UNION OF INDIA AND OTHERS Respondents
- 80
+ **W.P.(C) 1622/2021**
PREM RAGHU AYURVEDIC MEDICAL
COLLEGE AND HOSPITAL Petitioner
versus
UNION OF INDIA AND OTHERS Respondents
- 87
+ **W.P.(C) 1644/2021**
M D AYURVEDIC COLLEGEA
HOSPITAL AND Petitioner
versus
UNION OF INDIA AND OTHERS & ORS. Respondents
- 88
+ **W.P.(C) 1649/2021**
MAHAVEER AYURVEDIC MEDICAL
COLLEGE AND HOSPITAL Petitioner
versus
UNION OF INDIA AND OTHERS Respondents

Present: Present: Mr Sandeep Sethi, Sr Adv. with Ms. Anuradha Arputham and Mr. Avneesh Arputham, Advocates for petitioners in item Nos. 50, 53, 76, 77, 78, 79, 80 and 88.
Mr.Animesh Kumar & Mr.Nishant Kumar, Advocates for the petitioner in item no. 51.
Ms.Aparajita Singh, Sr. Advocate with Ms.Mukti Chowdhary, Adv. for the petitioner in item no. 87.
Mr.Vikrant N Goyal, Adv. with Ms.Anirudh Shukla, Adv. for R1/UOI in item No. 50.
Mr.Vivekanand Mishra, Sr. Panel Counsel with Mr.Vinod Tiwari, GP for R-1/UOI in item no. 51.
Mr. Prakash Kumar Central Govt. Sr. Counsel for the Respondent No.1/UOI in item no.53.
Ms.Suman Chauhan & Mr.Lakshya Verma, Advs. for R-

1/IOI in Item no. 76.

Ms. Arti Bansal, Advocate for R- 1 /IOI in item no.78

Mr.Niraj Kumar, Sr. CGSC with Mr.Anshuman Singh, GP for R-1/IOI in item no. 79.

Mr. Virender Pratap Singh Charak, Advocate with Mr. Shubhra Parashar, Mr. Pushpender Singh Charak, Mr. Kapil Gaur, Mr. Vaishnav Kirti Singh, Mr.Virender Pratap Singh Charak, Mr.Shubra Prashar, Mr. Shubham Ahuja, Mr. Sanjay Singh, Advocates with Mr.Kavindra Gill, GP for R-1/IOI in item no. 80.

Mr.Siddharth Khatana with Mr.Himanshu Pathak, Advocates for R-1/IOI in item no. 87.

Mr. Sanjeev Sabharwal, Senior Govt. Counsel for IOI with Mr. Hem Kumar, Adv. for R-1/IOI in item no.88

Ms.Archana Pathak Dave, Ms.Vanya Gupta & Mr.Pramod Kumar Vishnoi, Advocates for R-2/CCIM in item nos. 50, 51, 53, 76-80, 87-88.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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08.02.2021

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

CM APPL. 4416-4417/2021 (exemptions) in W.P.(C) 1539/2021

CM APPL. 4422/2021 (exemption) in W.P.(C) 1543/2021

CM APPL. 4452/2021 (exemption) in W.P.(C) 1556/2021

CM APPL. 4653/2021 (exemption) in W.P.(C) 1616/2021

CM APPL. 4659/2021 (exemption) in W.P.(C) 1619/2021

CM APPL. 4661/2021 (exemption) in W.P.(C) 1620/2021

CM APPL. 4663/2021 (exemption) in W.P.(C) 1621/2021

CM APPL. 4665/2021 (exemption) in W.P.(C) 1622/2021

CM APPL. 4701/2021 (exemption) in W.P.(C) 1644/2021

CM APPL. 4715/2021 (exemption) in W.P.(C) 1649/2021

Exemptions allowed, subject to all just exceptions.

The applications are disposed of.

W.P.(C) 1539/2021 & CM APPL. 4415/2021 (ex parte ad interim stay)
W.P.(C) 1543/2021 with CM APPL. 4421/2021 (ex parte ad interim stay), CM APPL. 4449/2021 (to bring on record additional facts) & CM APPL. 4804/2021
W.P.(C) 1556/2021 & CM APPL. 4451/2021 (ex parte ad interim stay)
W.P.(C) 1616/2021 & CM APPL. 4652/2021 (ex parte ad interim stay)
W.P.(C) 1619/2021 & CM APPL. 4658/2021 (ex parte ad interim stay)
W.P.(C) 1620/2021 & CM APPL. 4660/2021 (ex parte ad interim stay)
W.P.(C) 1621/2021 & CM APPL. 4662/2021 (ex parte ad interim stay)
W.P.(C) 1622/2021 & CM APPL. 4664/2021 (ex parte ad interim stay)
W.P.(C) 1644/2021 & CM APPL. 4700/2021 (ex parte ad interim stay)
W.P.(C) 1649/2021 & CM APPL. 4714/2021 (ex parte ad interim stay)

1. Issue notice. Notice is accepted on behalf of the Union of India by Mr. Vikrant N. Goyal, learned counsel, in W.P.(C) 1539/2021, Mr. Vivekanand Mishra, learned counsel, in W.P.(C)1543/2021, Mr. Prakash Kumar, learned counsel, in W.P.(C) 1556/2021, Ms. Suman Chauhan, learned counsel, in W.P.(C) 1616/2021, Ms. Arti Bansal, learned counsel, in W.P.(C) 1620/2021, Mr. Niraj Kumar, learned counsel, in W.P.(C) 1621/2021, Mr. Virender Pratap Singh Charak, learned counsel, in W.P.(C) 1622/2021, Mr. Siddharth Khatana, learned counsel, in W.P.(C) 1644/2021, and Mr. Sanjeev Sabharwal, learned counsel, in W.P.(C) 1649/2021. Ms. Archana Pathak Dave, learned counsel, accepts notice on behalf of respondent no. 2/Central Council for Indian Medicine (“CCIM”) in all the petitions. Notice be served on unserved respondents by all permissible modes, *dasti*, in addition, returnable for 07.04.2021.

2. This Court has recently been faced with a spate of litigation regarding permission for conducting courses in Homeopathy and Ayurveda Colleges for the academic year 2020-2021. The petitions fall broadly into two categories - at the first stage, petitions have been filed

during the pendency of the institutions' applications for recognition with the Union of India [hereinafter, "the Union"], seeking permission to participate in counselling. The second category of petitions seeks to challenge denial of permission, after the Union has disposed of the petitioners' applications. The present batch of cases is of the second category.

3. In the first category of cases, the applications remained pending with the Union after it had issued notices to the institutions signifying certain deficiencies in the infrastructure and faculty, and requiring the institutions to appear for a personal hearing. The petitions were occasioned by the fact that several State governments had, in the meantime, commenced the process of counselling for admissions for the academic year 2020-21. The petitioners were excluded from the counselling for want of permission. During the pendency of the petitions, this Court passed time-bound directions for disposal of the applications by the Union, and granted limited interim relief permitting the petitioner institutions to participate in the ongoing counselling notified by various States. The Union was directed to dispose of the applications of the institutions before allocation of students to the concerned colleges would be made under the respective counselling schedules.

4. As far as the second category of cases is concerned – where the Union had already declined permission to conduct the courses in the year 2020-2021 – the first of these petitions to come up before this Court was W.P.(C) 1265/2021, which concerned a homeopathy college. This Court declined *ad interim* relief by an order dated 01.02.2021, the relevant portion whereof reads as follows:

“4. In my view, ad interim relief of this nature is not appropriate in the facts and circumstances of the case. The validity of the grounds given by the respondents in the impugned order cannot be decided without calling for their affidavits. Keeping in mind the interests of prospective students also, the balance of convenience is not in favour of such an order. If the petitioner is permitted to participate in counselling and offer admission to prospective candidates, it would be difficult to accommodate those students in the event the writ petition ultimately fails.

5. Mr. Gupta’s reliance upon the order dated 14.01.2021 is also misplaced. At that stage, the petitioner’s application for recognition was pending, and directions were also given for a time bound decision on the said application, so that students would not be finally admitted prior to the petitioner’s status becoming clear. In contrast, there is now an order denying recognition to the petitioner, and the counselling is also at an advanced stage.

6. For the reasons aforesaid, ad interim orders are declined.”

5. Against the aforesaid order, the petitioner therein approached the Division Bench in LPA 49/2021. By an *ad interim* order dated 04.02.2021, the Division Bench has stayed the order dated 01.02.2021, and granted interim relief. The relevant extracts of the order dated 04.02.2021, passed by the Division Bench, are as follows:

“6. We have perused the deficiencies/objections pointed out in the show cause notice dated 06.11.2021 as also the order dated 25.01.2021 passed by respondent No. 1, after granting hearing to the appellant.

7. Prima facie, we are of the opinion that there is a deviation in the grounds mentioned in the final order dated 25.01.2021 from the objections/deficiencies mentioned in the show cause notice dated 06.11.2020 and also that one of the grounds, namely, mismatch of signatures of three teachers,

mentioned in the final order was not even an allegation in the show cause notice and as rightly pointed out by learned senior counsel, the appellant did not even have the chance to meet the same.

8. *We also prima facie find merit in the contention of the petitioner that the respondents have in ignorance of the provisions of Regulation 9(2) of the Homeopathic Central Council (Minimum Standards Requirement of Homeopathic Colleges and attached Hospitals) Regulations, 2013 (hereinafter referred to as the Regulation 2013), which requires that teachers or consultants of modern medicines like Pathologist, Radiologist, Physician, Dentist etc. may be appointed on contract basis or part time or on call basis come to a conclusion that the appellant does not fulfil the requirement of the minimum faculty required proportionate to the strength of the students.*

9. *In view of the above, we are of the considered opinion that the appellant has made out a prima facie case in its favour for grant of interim relief. Balance of convenience is also in favour of the appellant. If the appellant is not permitted by way of interim relief to participate in the ongoing counselling, irreparable harm and injury shall be caused to the appellant.*

10. *We, therefore, stay the operation, implementation and execution of the order of the learned Single Judge dated 01.02.2021 passed in WP(C) No.1265/2021, till the next date of hearing.*

11. *We hereby direct that the appellant shall be permitted to participate in the counselling process which is ongoing in the State of Madhya Pradesh as pointed out by the learned senior counsel for the appellant.”*

6. It is evident from the above that the Division Bench has considered the *prima facie* case in favour of the appellant therein, and further held that the appellant had made out a case for grant of interim orders on the

grounds of balance of convenience and irreparable harm and injury as well. Following the approach laid down by the Division Bench, I proceed to examine the question of *prima facie* case in the present petitions.

7. All the cases in this batch concern challenges to the denial of permission for offering courses in Ayurveda in the academic year 2020-2021. The petitioners applied for renewal of permission, having been granted conditional permission in previous years. In each of the cases, the Union issued a show cause notice to the petitioners, relying upon a report of the CCIM, which pointed out certain deficiencies. The petitioners responded to the show cause notices, and appeared for hearings as directed by the Union. The relevant dates will be apparent 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)1539/2021	24.11.2020	08.01.2021	14.01.2021	02.02.2021
W.P.(C)1543/2021	15.12.2020	11.01.2021	18.01.2021	25.01.2021
W.P.(C)1556/2021	15.12.2020	06.01.2021	11.01.2021	02.02.2021
W.P.(C)1616/2021	15.12.2020	06.01.2021	12.01.2021	03.02.2021
W.P.(C)1619/2021	15.12.2020	08.01.2021	15.01.2021	04.02.2021
W.P.(C)1620/2021	04.12.2020	11.01.2021	18.01.2021	04.02.2021
W.P.(C)1621/2021	04.12.2020	06.01.2021	11.01.2021	02.02.2021
W.P.(C)1622/2021	24.11.2020	07.01.2021	13.01.2021	02.02.2021
W.P.(C)1644/2021	25.11.2020	13.01.2021	18.01.2021	03.02.2021
W.P.(C)1649/2021	25.11.2020	11.01.2021	18.01.2021	02.02.2021

8. Although there is some variation in the exact terms of the show cause notices and orders in each of the cases, the principal issue raised concerns shortage of faculty in the petitioner/institutions. In all the show cause notices, relying upon the respective recommendations of the CCIM,

the Union has identified the shortage of faculty in the institutions with respect to the requirements in the Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016 [hereinafter “the 2016 Regulations”]. In the final orders, the Union has noted the submissions of the institutions regarding the faculty employed by them in each discipline, but has come to a conclusion against the institution, again relying on the CCIM recommendations. It may be noted that, in several cases, the Union has relied upon the finding of the CCIM that the faculty is not actually in existence in the colleges, and is ‘on paper’ only. The Union has therefore denied permission to the institutions to take admissions in the academic year 2020-2021.

9. I have heard Mr. Sandeep Sethi, learned Senior Counsel, who appears for the petitioners in several of these petitions, Ms. Aparajita Singh, learned Senior Counsel for the petitioner in W.P.(C) 1644/2021, and Mr. Animesh Kumar, learned counsel for the petitioner in W.P.(C) 1543/2021. They assail the orders of the Union on the basis that findings have been returned with respect to the existence, presence and status of particular members of the faculty of the institutions, which were never put to the institutions in any manner whatsoever. It is submitted that the recommendations of the CCIM were not forwarded to the institutions, and that the orders of the Union do not reveal any independent consideration of the material. The show cause notices in question do not refer to non-certification of any of the faculty, but only to the lack of available faculty.

10. Ms. Archana Pathak Dave, learned counsel for the CCIM, submits

that the CCIM has been engaged in the process of verification of faculty in various Ayurveda colleges for over one year. Several notices have been issued to teachers in Ayurveda colleges as well as to the colleges themselves with regard to this process of verification. She submits that the CCIM has taken this action on the basis of complaints received from students that the faculty members being shown in various colleges were not actually present but were practicing elsewhere. Ms. Dave has taken me to the Practitioners of Indian Medicine (Standards of Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982 to submit that the individual members/practitioners of the faculty are required to update the State Board Register as well as update their contact details, current address, employment status, place of practice, etc. on the CCIM portal. According to her, the CCIM noticed large scale discrepancies in the information furnished by the practitioners in their respective entries and the location of the colleges where they claimed to be teaching. The CCIM, therefore, recommended to the Union, in the case of such colleges, to decline permission for the academic year 2020-2021.

11. Ms. Dave and Ms. Suman Chauhan, learned counsel for the Union in W.P.(C) 1616/2021, have also submitted that the permission having been declined to the colleges in question, this Court ought not to revisit the decisions of the expert regulator. It is further contended that *ad interim* orders ought not to be granted to enable admission in colleges for which recognition has not been granted. Learned counsel have cited the judgments of the Supreme Court in *Medical Council of India vs. Kalinga Institute of Medical Sciences (KIMS) & Ors.*, (2016) 11 SCC 530 (paragraphs 22, 23, 24 & 27), *Medical Council of India vs. Chairman,*

S.R. Educational and Charitable Trust 2018 (14) SCALE 614 [Civil Appeal No. 10372/2018, decided on 29.10.2018] (paragraphs 23, 25, 26 and 31), and *Tamil Nadu Dr. MGR Medical University vs. SVS Educational and Social Trust* (2019) 12 SCC 613 (paragraph 12), in support of these contentions. Relying upon the aforesaid judgments, learned counsel submit that the Supreme Court has cautioned against grant of interim orders which enable institutions to admit students despite denial of recognition.

12. Having heard learned counsel for the parties and perused the record, I find that, although the show cause notices and the final orders are not identical in all of these cases, the principal issue is undisputedly regarding the recognition/registration of the faculty members employed in the petitioner/institutions. Learned counsel for the petitioners have drawn my attention to the fact that the show cause notices in each of these cases indicated generic deficiencies in the numbers of faculty members in various departments, but did not point to any specific issue or objection with regard to any member of the petitioners' faculty.

13. The show cause notice dated 08.01.2021 in the case of SKS Ayurvedic Medical College and Hospital [the petitioner in W.P.(C) 1539/2021], may be taken as a case in point. In the said show cause notice, the deficiencies to which the institution was asked to respond were as follows: -

“2. On examining the same in terms of the Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurved 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:

- i. No faculty available in Shalaya Tantra against the Minimum requirement of 03 faculty (2HF +1LF) as per RMS, 2016.*
- ii. No Higher Faculty is available in Ayurveda Samhita & Siddhant, Rachana Sharir, Rog Nican evam Vikriti Vigyan, Swasthavritta & Yoga, Prasuti Tantra evam Stri Roga, Kaumarbharitya, Panchkarma, and Shalakyia Tantra against the minimum requirement of 02 as per RMS, 2016.*
- iii. 01 Higher Faculty is available in Kriya Sharir, Dravyaguna Vigyan, Rasa Shastra evam Bhaishajya Kalpana, and Kayachikitsa against the minimum requirement of 02 as per RMS, 2016.*
- iv. No Lower faculty is available in Dravyaguna Vigyan against the minimum requirement of 01 as per RMS, 2016.*
- v. College website is not available as specified in sub-regulation (2) of regulation 9 of RMS, 2016.”*

In the final order dated 02.02.2021, however, the Union has recorded in detail the submissions of the petitioner regarding the available faculty, and the observations of the CCIM Hearing Committee, and come to a conclusion against the petitioner. The Union has, in fact, accepted the CCIM’s recommendations by referring to specific faculty members, whose status was found to be ‘on paper’, or who were otherwise considered by CCIM to be ineligible.

14. It is not disputed that the cases of the other institutions are similar. In all cases, the show cause notices point to deficiencies in faculty in terms of shortage of numbers in various departments, whereas the final orders deal with specific cases of recognition/certification of faculty

members. In many of the cases, for example, it has been recorded in the final orders that the CCIM recommendation has considered these teachers ‘on paper’. On the basis of these recommendations and the observations of the Hearing Committee, the Union has observed that the required number of faculty is not available in the concerned discipline, and that the criteria specified in the 2016 Regulations therefore remains unfulfilled.

15. While the exact terminology used in the orders is not identical, what is common to all these cases is that none of the show cause notices issued to the petitioners specified the members of the faculty in respect of whom the CCIM or the Union objected to their status as active faculty in the institution. Learned counsel for the petitioners have specifically contended that prior to the passing of the final orders, the contention regarding non-certification of individual faculty members and the identification of the faculty members affected by such non-certification was not known to them during the process of recognition. Learned counsel for the respondents have not controverted this position in any of these cases. The Union has also proceeded in all these cases to rely upon the CCIM recommendation with regard to the status of the faculty. In the circumstances that the CCIM recommendation report was admittedly never communicated to the petitioners, it is evident that the petitioners did not have an opportunity to meet the allegations with regard to the named members of their faculty. The non-certification of particular members of the faculty was not a part of the show cause notice at all, but forms the foundation of the final orders declining permission.

16. While Ms. Dave may be right in submitting that this process has been going on for over a year and, according to her, the colleges can be

presumed to know the status of their faculty members, I am of the view that a drastic consequence of denial of recognition cannot be founded upon such a presumption, in the face of an incomplete or generic show cause notice of the sort served upon the petitioners in these cases.

17. In one of the writ petitions, i.e., W.P.(C) 1644/2021, Ms. Aprajita Singh, learned Senior Counsel, points out that an additional ground has been taken by the Union to decline permission, which is that the institution in the said case does not have any faculty in certain subjects which are part of the third year and fourth year courses in Ayurveda. On this point, Ms. Singh submits that the institution in question has given admission to only two batches so far, and only the first batch has yet taken the first year exam – that too, only in October, 2020. She states that, due to the delay in conduct of examinations by the affiliating university, the institution will not have any students in the third year, even in the year 2020-2021. She cites Regulation 10 of the 2016 Regulations, which provides year-wise requirement of faculty, and the judgment of a Coordinate Bench in *Dhanwantri Ayurvedic Medical College and Research Centre and Anr vs. Union of India and Anr.* 2012 SCC Online Del 5290 [W.P.(C) 5506/2012, decided on 09.10.2012] (paragraphs 15 & 16) to submit that, in such circumstances, the institution is not required to have the requisite faculty in place for teaching the third and fourth year courses. Having regard to the provisions of Regulation 10 of the 2016 Regulations, and the judgment cited by Ms. Singh, on this point also, the petitioner has made out a *prima facie* case for grant of interim relief.

18. Ms. Dave refers to an additional ground which appears in many of these orders, with regard to the websites of the petitioner/institutions not

being updated in terms of Regulation 9(2) of the 2016 Regulations. Regulation 9(2) requires monthly updating of the petitioners' websites with regard to various points of information, including faculty strength, names of the faculty, the monthly report regarding the students, etc. I am of the *prima facie* view that this is a remediable requirement and the denial of recognition to the petitioner/institutions on the ground of non-updating of their websites is a disproportionate consequence. The CCIM can certainly require all institutions to update their websites regularly, and prescribe certain consequences of default, but standing alone, the said deficiency appears *prima facie* to be insufficient to warrant denial of permission altogether.

19. The judgments cited by learned counsel for the respondents, with regard to deference to the wisdom of the regulatory bodies in the matters of this nature, are well taken. I do not intend to suggest at this stage that the recommendations of the CCIM were unfounded or wrong or unmerited. The question, however, is whether those recommendations were put to the institutions prior to denying them the recognition for which they had applied. On this point, I am of the view that the petitioners have made out a strong *prima facie* case for grant of an interim order.

20. On the question of balance of convenience, I am bound by the order of the Division Bench dated 04.02.2021 in LPA 49/2021, which clearly holds that balance of convenience in such a case is in favour of the petitioner/institution. There is practically no distinction between the position of the petitioner in that case, and the present petitioners. Upon a finding of a *prima facie* case in favour of the institutions concerned, an

interim order therefore ought to follow.

21. In view of the aforesaid, and following the order of the Division Bench dated 04.02.2021, the petitioner/institutions are, by way of this *ad interim order*, permitted to participate in the ongoing counselling process for the year 2020-2021.

22. As this is an *ad interim* order in favour of the petitioner/institutions, it is naturally subject to the result of the writ petitions, and the petitioners are directed to inform prospective candidates accordingly.

23. Ms. Suman Chauhan, appearing for the Union in W.P.(C)1616/2021, submits that the Union may be permitted to issue fresh show cause notices to the petitioners detailing the allegations in sufficient particulars. I am of the view that this does not require the Court to pass any order. If the Union wishes to take steps afresh, it is for the Union to consider the modalities for such an exercise in accordance with law. However, in view of the fact that counselling in various States is already under way, and that the Union itself has directed the counselling and admission process in Ayurveda colleges to be completed by 28.02.2021, it is not possible to defer these petitions to enable the Union to retrace its steps.

24. Counter affidavits be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

25. List on 07.04.2021.

PRATEEK JALAN, J

FEBRUARY 8, 2021/

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

+ W.P.(C) 1148/2021

PRAKASH INSTITUTE OF AYURVEDIC MEDICAL
SCIENCES AND RESEARCH AND ORS Petitioner

Through: Mr.Sandeep Sethi, Sr. Advocate
with Mr.Avneesh Arputham,
Ms.Anuradha Arputham &
Ms.Shravani Shekhar, Advocates

versus

UNION OF INDIA AND ORS Respondents

Through: Ms.Monika Arora, CGSC for R-1.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **29.01.2021**

CM APPL. 3243/2021 (exemption)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

W.P.(C) 1148/2021 & CM APPL. 3242/2021 (interim relief)

1. Issue notice. Ms. Monika Arora, Central Government Standing Counsel, accepts notice on behalf of respondent no. 1/Union of India. Notice to other respondents be served by all permissible modes, *dasti* in addition.
2. Counter affidavits be filed within three weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.
3. Mr. Sandeep Sethi, learned Senior Counsel for the petitioners,

states that the present petition has been filed by fourteen institutes which conduct courses in Ayurveda. Their applications for recognition for the academic year 2020-2021 are pending with the respondent-authorities. In the case of petitioner no.1, a copy of a deficiency notice dated 06.01.2021 has been placed on record. Pursuant to the said notice, petitioner no. 1 was granted hearing by respondent no. 1 on 11.01.2021, but no decision has been passed thereafter. Mr. Sethi categorically states that similar notices were issued in case of each of the petitioners, and hearings have been held during the first and second weeks of January, 2021 in each of those cases.

4. The present petition is occasioned by the fact that counselling for admissions in institutions for UG courses in Ayurveda in the State of Uttar Pradesh has commenced by virtue of a notification which is annexed as Annexure P-1 to the writ petition. The notification provides for a second round of counselling, in accordance with the following schedule:

<i>Second Counselling</i>	
<i>1. Online Registration and time for exercising options</i>	<i>25.01.2021 to 31.01.2021</i>
<i>2. Merit list and date for downloading letter for counselling.</i>	<i>02.02.2021</i>
<i>3. Online Verification of documents of the allotted candidates</i>	<i>05.02.2021 to 09.02.2021</i>
<i>4. Last date for institutions to send list of admitted student.</i>	<i>12.02.2021</i>

5. Mr. Sethi submits that in view of the fact that the counselling in the State of Uttar Pradesh is proceeding, the petitioners be permitted to participate, subject to the result of their applications for approval. He has also referred me to an interim order dated 14.01.2021 in W.P.(C) 514/2021 [*Pt. Shivshaktilal Sharma Ayurved Medical College And Hospital vs. Union of India & Ors.*], in which a similar order was passed in respect of an institution in the State of Madhya Pradesh.

6. Ms. Arora, appearing on advance notice, submits that in the case of the petitioners, the Union of India will pass final orders in these cases within one week. She further states that she has been instructed that the last date for admission in the Ayurveda colleges is 28.02.2021, and that the petitioner would thereafter be permitted to participate in the counselling as and when announced.

7. Be that as it may, in view of the fact that the State of Uttar Pradesh has already announced its counselling schedule, which is ongoing, I am of the view that the interest of justice would be protected by granting the petitioners some interim relief. As the final allotment of institutions to the colleges in question and admission of candidates pursuant to the second round of counselling is to take place only after 05.02.2021, respondent no. 1 is directed to take a final decision in the matter by 04.02.2021 and communicate the same forthwith to the petitioners/colleges.

8. In the meanwhile, the petitioners/colleges will be permitted to participate in the second round of counselling, subject to informing the prospective candidates clearly that their respective applications for approval remain pending. The prospective candidates will be at liberty to

opt for the petitioner-colleges, subject to the result of the petitioners' application for approval. It will be made clear by the petitioners to all prospective candidates that in the event the petitioners' application for approval do not succeed, the prospective candidates will not be admitted to the said institutions.

9. List on 07.04.2021.

JANUARY 29, 2021

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PRATEEK JALAN, J

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

+ W.P.(C) 1847/2021

SANTUSHTI AYURVEDIC MEDICAL
COLLEGE AND HOSPITAL

..... Petitioner

Through: Mr. Avneesh Arputham &
Ms. Anuradha Arputham,
Advocates.

versus

UNION OF INDIA AND OTHERS Respondents

Through: Ms. Aakanksha Kaul, Advocate for
R-1/UOI.
Ms. Archana Pathak Dave,
Mr. Kumar Prashant & Ms. Vanya
Gupta, Advocates for R-2 &
R-3/CCIM.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **11.02.2021**

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

CM APPL. 5351/2021(*exemption*)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 1847/2021 & CM APPL. 5350/2021(*for interim relief*)

1. Issue notice. Ms. Aakanksha Kaul, Advocate accepts notice on behalf of respondent no. 1. Ms. Archana Pathak Dave, Advocate accepts

notice for respondent nos. 2 and 3. Notice be issued to respondent nos. 4, 5 and 6 by all permissible modes through Standing Counsel as well, *dasti* in addition.

2. The petitioner is aggrieved by an order dated 03.02.2021 by which it has been denied permission to take students in the UG BAMS course for the academic year 2020-21. The only ground apparent from the impugned order dated 03.02.2021 concerns alleged deficiencies in the faculty.

3. The petitioner was served with a show cause notice dated 11.01.2021 [Annexure P-10 to the writ petition], to which it filed a detailed reply dated 16.01.2021 [Annexure P-11 to the writ petition]. The petitioner was also afforded a hearing by the respondent no. 1 on 16.01.2021.

4. The grounds upon which the impugned order dated 03.02.2021 has been passed are not apparent from a reading of the order. The impugned order contains a tabular statement of the shortcomings conveyed to the petitioner in the show cause notice and the submissions of the petitioner thereupon. Thereafter, with regard to several of the objections against the note, "Observations of the Hearing Committee", it appears that the submissions of the petitioner have been reproduced again. No adverse observations of the Hearing Committee have been referred to in the order. However, in the "Remarks" of the Union of India, the findings on each of the points are returned against the petitioner, apparently on the basis of the submissions made by the college and the observations of the Hearing Committee. The relevant observations of the Hearing Committee have neither been produced on record, nor were they supplied to the petitioner.

5. In the aforesaid circumstances, it is not possible to discern the grounds upon which the petitioner's representation has been disregarded. The only indication is in paragraph 5 of the impugned order, where it has been mentioned that 25 members of the faculty claimed by the petitioner, have been disregarded as not being certified by Central Council of Indian Medicine. In respect of non-certification, I find that the show cause notice dated 11.01.2021 did not put these specific allegations to the petitioner, but made general allegations regarding shortage in the faculty. In the absence of the specific objections with respect to particular members of faculty having been raised in the show cause notice, the petitioner had no opportunity to meet the case which has ultimately been made out against it.

6. By an interim order dated 08.02.2021 passed in a batch of 10 writ petitions [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], I have held in similar circumstances, that the petitioners are entitled to *ad interim* relief. By the said order, interim relief was granted following the observations of the Division Bench dated 04.02.2021 in LPA 49/2021 [*Shivang Homeopathic College vs. Union of India & Ors.*] to the effect that the questions of balance of convenience and irreparable injury, in similar circumstances, must be decided in favour of the petitioner institution.

7. For the reasons aforesaid, the petitioner has made out a case for grant of *ad interim* relief in this petition as well. The petitioner is therefore permitted to participate in the on-going counselling.

8. 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.

9. Counter affidavits be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks.

10. List on 07.04.2021.

PRATEEK JALAN, J

FEBRUARY 11, 2021

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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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