

Naiminath Homeopathic Medical College ... vs Union Of India & Ors on 17 February, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~63

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2164/2021

NAIMINATH HOMEOPATHIC MEDICAL
COLLEGE HOSPITAL AND RESEARCH
CENTRE

..... Petitioner

Through: Mr. Animesh Kumar, Mr. Nishant
Kumar, Mr. Akash Chatterjee and
Ms. Utkarsha Sharma, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondent

Through: Mr. Harish Vaidyanathan Shankar,
Advocate for R-1 with Mr. Jitendra
Kumar Tripathi, GP.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 17.02.2021 The proceedings in the matter have been conducted through video conferencing.

CM APPL. 6287/2021 (for exemption) Exemption allowed, subject to all just exceptions. This application stands disposed of.

W.P.(C) 2164/2021 & CM APPL. 6286/2021 (for ex-parte ad-interim relief)

1. Issue notice. Mr. Harish Vaidyanathan Shankar, learned counsel, accepts notice for respondent No.1. Notice to respondent Nos. 2 and 3 be issued through all permissible modes, dasti in addition.

2. The petitioner assails an order dated 11.02.2021 (Annexure P-19 to the writ petition) by which the Union of India [hereinafter, "the Union"] has declined permission to it to admit students in its undergraduate and postgraduate programmes in homeopathy.

3. Some of the issues raised in the present petition have been decided by me in an interim order dated 12.02.2021, passed in the case of another homeopathy college in W.P.(C) 1941/2021 [Kisan Dnyanoday Mandal Ghudes Homeopathic Medical College and Hospital vs. Union of India & Ors.].

4. The petitioner sought recognition for intake of 100 students in the undergraduate course and 36 students in the postgraduate course. For this purpose, the Homeopathy Central Council (Minimum Standards Requirement of Homeopathic Colleges and attached Hospitals) Regulations, 2013 [hereinafter, "the Regulations"] require the petitioner to have 28 undergraduate faculty and 12 postgraduate faculty. The petitioner submitted a list of 37 undergraduate faculty (including 8 guest faculty) and 17 postgraduate faculty.

5. The impugned order reveals that the petitioner's application was first examined by the Central Council of Homeopathy [hereinafter, "CCH"], and 16 teachers were considered ineligible for the reasons enumerated in paragraph 2 of the impugned order. Upon the recommendations of the CCH, the petitioner was issued a show cause notice dated 11.11.2020, and submitted a detailed representation dated 20.11.2020 in response thereto. The petitioner also appeared for the personal hearing convened by the Union on 26.11.2020. It appears from paragraph 5 of the impugned order that the matter was thereafter referred by the Union back to the CCH, and the CCH reiterated its recommendations on 18.01.2021.

6. At the outset, it may be noted that the recommendations of the CCH dated 18.01.2021, extracted in paragraph 6 of the impugned order, does not reveal the reasons for which the petitioner's representation was rejected by the CCH. It is undisputed that the recommendations of the CCH or the reports submitted by the CCH to the Union were not communicated to the petitioner-institution. In these circumstances, it is clear that the grounds which prevailed with the CCH to reject the petitioner's response to the show cause notice, and which have been followed by the Union without recording any separate analysis or reasoning, were not communicated to the petitioner at any stage.

7. Be that as it may, Mr. Animesh Kumar, learned counsel for the petitioner, has taken me to the deficiencies enumerated in paragraph 3 of the impugned order, and attempted to make out a prima facie case that the grounds taken therein are untenable. Mr. Harish Vaidyanathan Shankar, learned counsel for the Union has also taken me to the list of deficiencies to submit that they are of a serious nature, and the petitioner is not entitled to interim relief.

8. Having heard learned counsel for the parties, I am of the view that the petitioner has made out a good prima facie case for the grant of an interim order for the following reasons:

(a) Out of the list of 37 undergraduate and 17 postgraduate faculty, submitted by the petitioner, the Union has not accepted its contention with regard to 11 undergraduate and four postgraduate faculty members.

The objection with regard to seven undergraduate and three postgraduate faculty members concerns mismatch of the signatures on the teacher's codes and the affidavits submitted alongwith the petitioner's application for recognition. Mr. Kumar has pointed out that the petitioner had submitted further affidavits of each of these ten teachers alongwith its representation dated 20.11.2020. In these affidavits, the teachers affirmed that the signatures on the teacher codes and the affidavits earlier submitted alongwith were their own. These affidavits were on record before the respondents, but do not appear to have received any consideration whatsoever in the impugned

order. I have recorded a prima facie finding in favour of the petitioner-institution on a similar ground in the order dated 12.02.2021 in W.P.(C) 1941/2021.

(b) With regard to Dr. Shobhan Bose, Reader in Physiology, the impugned order records that he is not eligible as his name has been submitted in support of the application of another institution as well. The petitioner's response, to the effect that Dr. Bose has filed an FIR against the other institution alleging that his name has been fraudulently forwarded by that institution, has also not been considered by the respondents.

(c) The objection with regard to one Dr. Vijay Kumar Yadav, Lecturer in the postgraduate department of Pharmacy, is that he was ineligible to be promoted to the post of Reader on 02.01.2020, as he had not completed 10 years as a Lecturer. However, Mr. Kumar points out that he should have been counted as a Lecturer, even if not as a Reader, which the respondents do not seem to have done.

(d) With regard to Dr. Satya Sharan Gupta, the objection of the respondents is that his age exceeded 40 years as on the date of appointment. In this regard, Mr. Kumar has drawn my attention to Regulation 6 of the Regulations, which provides that the maximum age may be relaxed by 5 years with the prior approval of the affiliating University. The petitioner had obtained the permission of the University in this regard, which was also submitted to the respondents alongwith the representation dated 20.11.2020 [annexed at page 292 of the writ petition]. The respondents have not considered this aspect either.

(e) With regard to objection taken in paragraph 3(p) regarding the availability of Surgeon (General Surgery) and Obstetrician/ Gynaecologist, Regulation 9(2) of the Regulations clearly requires these specialists in modern medicine to be available on call, part-time or on contract basis. The contrary finding in the impugned order prima facie does not appear to be correct. The Division Bench in its order dated 04.02.2021 in LPA 49/2021[Shivang Homeopathic College Vs. Union of India & Anr.] has held, in the case of another homeopathic college, that denial of permission on the basis of a deficiency in the availability of a modern medicine specialist demonstrates ignorance of Regulation 9(2).

(f) With regard to paragraph 3(q) of the impugned order, the petitioner had submitted details of the IPD/OPD [In-patient department/Out-patient department], available on the college's website alongwith its representation. These have also not been considered by the respondents.

(g) In paragraph 3(r), the final objection taken is with regard to non-compliance with the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Employees' State Insurance Act, 1948, and relevant Rules and Regulations. No specific allegation of non-compliance has been detailed. The vague assertion, to this effect, cannot be the basis of a denial of recognition.

(h) It may also be noted that the Regulations provide for a relaxation of 10% in the required faculty strength, upon which the petitioner may be granted conditional permission. The impugned order does not contain any analysis with regard to the total number of faculty available in the context of

the available relaxation.

9. In view of the aforesaid, I am of the view that the petitioner has made out a good prima facie case on all the grounds raised. The questions of balance of convenience and irreparable injury have, in the case of another homeopathic college, been decided in favour of the institution by the Division Bench vide order dated 04.02.2021 in LPA 49/2021 [Shivang Homeopathic College Vs. Union of India & Anr.]. Following the aforesaid order, the petitioner in the present case is also entitled to interim relief.

10. The petitioner is, therefore, hereby permitted to participate in the ongoing counselling.

11. This being an ad interim order, it is naturally subject to the results of the writ petition, and the petitioner is directed to inform prospective students accordingly.

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

13. List on 07.04.2021.

PRATEEK JALAN, J FEBRUARY 17, 2021/vp