

Rb Ayurvedic Medical College And ... vs Union Of India And Others on 12 February, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~20, 24, 28, 31, 34, 44 & 45

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1854/2021
RB AYURVEDIC MEDICAL
COLLEGE AND HOSPITAL Petitioner
versus
UNION OF INDIA AND OTHERS Respondents

24

+ W.P.(C) 1878/2021
ALLAMA IQBAL UNANI MEDICAL COLLEGE Petitioner
versus
UNION OF INDIA AND OTHERS Respondents

28

+ W.P.(C) 1893/2021
KRISHAK MAHAVIDYALAYA SAMITI & ANR. Petitioners
versus
UNION OF INDIA THROUGH UNDER SECRETARY
MINISTRY OF AYURVEDA, YOGA AND
NATUROPATHY UNANI SIDDHA AND
HOMOEOPATHY AYUSH & ORS. Respondents

31

+ W.P.(C) 1900/2021
BHARTIYA AYURVEDIC MEDICAL COLLEGE Petitioner
versus
UNION OF INDIA AND OTHERS Respondents

34

+ W.P.(C) 1905/2021
HARIDWAR AYURVEDA MEDICAL
COLLEGE AND RESEARCH CENTRE Petitioner
versus
UNION OF INDIA AND OTHERS Respondents

44

+ W.P.(C) 1919/2021
SHRI BABU SINGH JAY SINGH AYURVEDIC
MEDICAL COLLEGE AND HOSPITAL Petitioner
versus
UNION OF INDIA AND OTHERS Respondents

45

+ W.P.(C) 1920/2021
VIJAYSHREE AYURVEDIC MEDICAL
COLLEGE AND HOSPITAL Petitioner
versus
UNION OF INDIA AND ORS Respondents

Present:

For the Petitioners:

Mr.A Mariarputham, Senior Advocate with Ms.Anuradha Arputham,
Mr.Avneesh Aprutham, Advocates for Petitioners in item nos. 20, 24, 34
& 44.

Mr.Sanjeet Singh & Ms.Devyani Ashra, Adv. for the petitioner in item
no. 28.

Mr. Sandeep Sethi, Senior Adv, Ms.Anuradha Arputham, Mr.Avneesh
Arputham, Adv. for the petitioner in item no. 31.

Mr.Jasbir Singh Malik, Adv. for Petitioner in item no. 45.

For the Respondents:

Mr.Alok Singh, Sr.Panel Counsel with Mr.Akshat Singh, GP &
Mr.Bhanu Gupta, Adv. for R-1/UOI in item no. 20.

Mr.Akshay Amritanshu, Sr. Panel Counsel with Ms.Dachhita Shahi, GP
for R-1/UOI in item no. 24.

Mr.Gigi C. George & Mr.Pathak, Adv. for R-1/UOI in item no. 28.

Mr.Sanjeev Baliyan, Sr. Panel Counsel with Mr.Anirudh Shukla, Adv. for
R-1 and 6/UOI in item no. 31.

Mr.Vishal Bakshi, Sr. Panel Counsel with Mr.Vinny Shangloo, GP for R-
1/UOI in item no. 34.

Mr.Thakur Prasad, SPC with Mr.Abhishek Khanna, GP for R-1 & 6/UOI
in item no. 40.

Mr.Anil Dabas, & Mr.Anshuman, Adv. for R-1 & 6/UOI in item no. 44.

Mr.Mrinalini Sen & Ms.Kritika Gupta, Adv. for R-1/UOI in item no. 45.

Ms.Archana Pathak Dave, Mr.Kumar Prashant & Ms.Vanya Gupta, Adv.
for R-2/CCIM in item nos. 20, 24, 28, 31, 44 & 45.

W.P.(C) 1854/2021 & connected matters

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 12.02.2021 The proceedings in the matter have been conducted through video conferencing.

CM APPL. 5365/2021 (exemption) in W.P.(C) 1854/2021 CM APPL. 5466/2021 (exemption) in
W.P.(C) 1878/2021 CM APPL. 5497/2021 (exemption) in W.P.(C) 1893/2021 CM APPL. 5507/2021
(exemption) in W.P.(C) 1900/2021 CM APPL. 5534/2021 (exemption) in W.P.(C) 1905/2021 CM
APPL. 5595/2021 (exemption) in W.P.(C) 1919/2021 CM APPL. 5597/2021 (exemption) & CM
APPL.5598/2021 (exemption) in W.P.(C) 1920/2021 Exemptions allowed, subject to all just

exceptions. The applications are disposed of.

W.P.(C) 1854/2021 & CM APPL. 5364/2021 (interim relief) W.P.(C) 1878/2021 & CM APPL. 5465/2021 (interim relief) W.P.(C) 1893/2021 & CM APPL. 5496/2021 (interim relief) W.P.(C) 1900/2021 & CM APPL. 5506/2021 (interim relief) W.P.(C) 1905/2021 & CM APPL. 5533/2021 (interim relief) W.P.(C) 1919/2021 & CM APPL. 5594/2021 (interim relief) W.P.(C) 1920/2021 & CM APPL. 5596/2021 (interim relief)

1. Issue notice. Notice is accepted on behalf of the Union of India [hereinafter, "the Union"] by Mr. Alok Singh, learned counsel, in W.P.(C) 1854/2021; Mr. Akshay Amritanshu, learned counsel, in W.P.(C) 1878/2021; Mr. Gigi C. George, learned counsel, in W.P.(C) 1893/2021; Mr. Sanjeev Baliyan, learned counsel, in W.P.(C) 1900/2021; Mr. Vishal Bakshi, learned counsel, in W.P.(C) 1905/2021; Mr. Thakur Prasad, learned counsel, in W.P.(C) 1913/2021; Mr. Anil Dabas, learned counsel, in W.P.(C) 1919/2021 and Ms. Mrinalini Sen, learned counsel, in W.P.(C) 1920/2021. Ms. Archana Pathak Dave, learned counsel, accepts notice on behalf of respondent no. 2/Central Council for Indian Medicine [hereinafter, "CCIM"] in all the writ petitions.

2. Notice to the unserved respondents be served through all permissible modes, dasti in addition.

3. These seven writ petitions have been filed by various Ayurveda and Unani colleges, challenging the orders of the Union denying permission for them to admit students in their courses for the academic year 2020-2021. As the petitions involve substantially similar issues, they have been taken up for hearing together, with the consent of learned counsel for the parties.

4. Several similar petitions were listed before me on 08.02.2021, wherein a detailed ad interim order had been passed. Learned counsel for the petitioners submit that the present cases are substantially similar to the petitions in which interim orders were passed on 08.02.2021.

5. Having heard learned counsel for the parties, it is evident that this batch of petitions is also governed by the order of the Division Bench dated 04.02.2021, passed in LPA 49/2021 [Shivang Homeopathic College vs. Union of India & Ors.], wherein the Division Bench had granted an interim order permitting a homeopathy college to participate in the counselling process, during the pendency of a writ petition challenging the denial of permission by the Union.

6. In the present batch of writ petitions, as in the cases decided on 08.02.2021, the Union has 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, both by filing written submissions and appearing for oral hearings, as directed. The relevant dates are stated in the following table:

Writ Petition No.	Date of CCIM recommenda tion	Date of show cause notice	Date of hearing	Date of final order
W.P. (C) 1854/2021	25.11.2020	04.01.2021	07.01.2021	04.02.2021
W.P. (C) 1878/2021	25.11.2020	19.01.2021	21.01.2021	04.01.2021
W.P. (C) 1893/2021	04.12.2020	11.01.2021	16.01.2021	04.02.2021

W.P. (C) 1900/2021	15.12.2020	05.01.2021	12.01.2021	02.02.2021
W.P. (C) 1905/2021	12.01.2021	15.01.2021	19.01.2021	03.02.2021
W.P. (C) 1919/2021	15.12.2020	12.01.2021	18.01.2021	04.02.2021
W.P. (C) 1920/2021	12.01.2021	18.01.2021	19.01.2021	10.02.2021

7. For the reasons discussed in the aforesaid order dated 08.02.2021, I am of the view that ad interim orders must be issued in these petitions if the petitioners make out a prima facie case against the impugned denial orders.

8. Although different grounds have been raised in each of the impugned orders, there are certain common issues which are discussed below:

(a) The principal issue raised in the impugned orders of denial, concerns the ineligibility of the faculty claimed by the petitioners, on the basis that the CCIM has held those faculty members to be ineligible for consideration while counting the faculty strength of the petitioner-

institutions. The Union has followed the recommendations of the CCIM to come to the conclusion that there is a shortage of faculty in the petitioner-institutions vis-a-vis the requirements of the Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurveda Colleges and attached Hospitals) [hereinafter, "the 2016 Regulations"]. In so holding, the respondents have employed different terminology characterising the faculty as being "on paper", "not regular", "not linked with the college", etc. Some of the orders also record that the basis upon which the members of the faculty were considered ineligible, is that they were registered in States other than the location of the college. The common factor is that the CCIM has, for one reason or the other, disregarded the faculty claimed by the petitioners, and communicated the same to the Union, which the Union has accepted. While the show cause notices in each of the cases contained general allegations of shortage of faculty, it is undisputed that the identification of the members of the faculty to whom the respondents had an objection and the grounds of objection were never communicated to the petitioner-institutions. The recommendations of the CCIM were also not forwarded to the petitioner- institutions at any stage. In these circumstances, I am of the prima facie view that the petitioners were not given an adequate or reasonable opportunity to respond to the specific allegations.

(b) In several cases, appointments made by the petitioner-institutions after the cut-off date of 31.12.2019 have not been taken into account. Learned counsel for the respondents have defended this position relying upon the stipulation in the Regulations that the minimum standards are to be met as on 31st December of the year preceding the academic year for which recognition is sought. However, I am of the prima facie view that this approach is negated by the impugned orders themselves, where the Union has taken into consideration the withdrawal of the recognition of the members of the faculty by CCIM in December, 2020 and January, 2021. It appears to me unreasonable to suggest that accretions to the institution s faculty after 31.12.2019 cannot be taken into account whereas faculty who have been rendered ineligible by the orders of the CCIM even in December, 2020 and January, 2021 can be disregarded. If indeed 31.12.2019 is to be taken as the

cut-off date, it is not reasonable to disregard those members of the faculty who were admittedly eligible as on that date by reason of the subsequent withdrawal of their teacher codes.

(c) Learned counsel for the petitioners have also drawn my attention to the fact that 2016 Regulations themselves (in the notes below Schedules IV and V) provide for some relaxation in the faculty or staff strength for grant of conditional permission. The analysis in the impugned orders in this regard is also missing or inadequate. In any event, the analysis proceeds on the basis that the faculty who have been rendered ineligible by the reason of the recent orders of the CCIM would not be considered even while calculating the faculty or staff strength for the purposes of conditional permission.

(d) There is a finding in several of the impugned orders regarding inadequate documentation being supplied by the petitioners. It is evident from the table set out in paragraph 6 hereinabove, that the time given to the petitioner-institutions to respond to the show cause notices was relatively short, ranging from one day to one week. The format of the show cause notices contain an extensive catalogue of the documentation required to be submitted. The institutions did also submit voluminous documentation in support of their cases. In such circumstances, for the denial order to proceed on inadequacy of documentation, I am of the prima facie view that the inadequacy should have been communicated to the petitioners and an opportunity given for them to make it good. It may also be noted that in most cases, the time between the hearing and the passing of the final order was sufficient for this opportunity to have been given to the petitioner-institutions.

(e) As far as the requirement of modern medical staff is concerned, which is an objection taken again in more than one of the impugned orders, it is to be noted that the modern medical staff may be „part-time , „on call or „on contract under the 2016 Regulations. While considering a similar provision in the Regulations applicable to homeopathy colleges, the Division Bench has taken the view that in such a situation, permission ought not to be denied on this basis.

(f) The final ground which is common to many of the petitions is of inadequacy in the information provided on their websites. I have held in the aforesaid interim order dated 08.02.2021, that this is a remediable defect and denial of permission on this basis alone, would be a disproportionate consequence.

9. The only remaining defect pointed out is in W.P.(C) 1920/2021, wherein the denial order dated 10.02.2021 refers to a shortage in the variety of plant species in the herbal garden of the petitioner-institution. It is recorded in the impugned order that although the number of plant species was 251 in March, 2020, on the date of visitation on 31.12.2020, there were 271 plant species in the herbal garden. The Hearing Committee has discounted this development on the basis that a physical verification would be required. The Union has come to the conclusion that this condition also remains unfulfilled. I am of the prima facie view that the aforesaid finding is also unreasonable as there is no determination of the factual position. The requirement of a physical verification, which the Hearing Committee was unable to undertake, cannot by itself be held against the petitioner. Further, in this particular case, a physical visit had been undertaken on 31.12.2020. The impugned order does not contravene the submission that 271 plant species were in fact found by the

visiting team on 31.12.2020.

10. In view of the aforesaid observations, the petitioners have made out a prima facie case for grant of ad interim relief. Following the order of the Division Bench dated 04.02.2021, in LPA 49/2021, the petitioners are hereby permitted to participate in the ongoing counselling process.

11. This being an ad interim order, it is naturally subject to the result of the writ petition and the petitioners are directed to inform the prospective candidates accordingly.

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

13. List alongwith connected matters on 07.04.2021.

PRATEEK JALAN, J FEBRUARY 12, 2021/'hkaur'