

Glocal College Of Unani Medical Science ... vs Union Of India & Ors on 1 March, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~30 to 48, 59 & 60

* IN THE HIGH COURT OF DELHI AT NEW DELHI

30

CM APPL. 7197/2021 in W.P.(C) 2110/2021

+

GLOCAL COLLEGE OF UNANI MEDICAL
SCIENCE HOSPITAL AND RESEARCH CENTRE Petitioner

versus

UNION OF INDIA & ORS. Respondents

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W.P.(C) 2179/2021 & CM APPL. 6347/2021

GURU NANAK AYURVEDIC MEDICAL
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..... Pet

versus

UNION OF INDIA AND OTHERS

..... Respon

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..... Pet

versus

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UNION OF INDIA & ORS.

..... Respon

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W.P.(C) 2110/2021 & connected matters

Present:

For the Petitioners

Mr. Neeraj Jain, Advocate with Mr. Anupam Mishra, Advocate for
petitioners in item nos. 30 and 44.

Mr. Sandeep Sethi, Sr. Advocate, with Mr. Rishi Agrawala, Ms.N
Kohli, Mr.ratham Vir Agarwal Mr. Avneesh Arputham, Ms. Anuradh
Arputham & Ms. Manvi Agarwal, Advocates for Petitioners in ite
31, 32, 33, 38 & 39

Mr. A. Mariarputham, Sr. Advocate with Mr. Avneesh Arputham, M
Anuradha Arputham, Advocates for petitioner in item nos.33, 35
38 & 40.

Mr. Animesh Kumar, Mr. Nishant Kumar, Mr. Ambuj Dixit &
Ms. Utkarsha Sharma, Advocates for Petitioner in item nos. 34,
48,

Mr. Akshay Bansal, Mr. Vivek Singh & Mr. Manoj Kumar, Advocate
for the petitioner in item no 37.

Mr. Jasbir Singh Malik, Advocate for the Petitioner in item no
Mr. Vivek Tankha, Sr. Advocate with Mr. Mrigank Prabhakar, Adv
for Petitioner in item nos. 42.

Mr. Nidhesh Gupta, Sr. Advocate with Mr. Mrigank Prabhakar, Ad
for petitioner in item no. 43.

Mr. Kundan Kumar Mishra & Mr. Arpit Srivastava, Advocates for
Petitioner in item no. 60.

For the Respondents

Mr. Chetan Sharma, ASG with Mr. Apoorv Kurup, CGSC, Mr. Amit
Gupta, GP with Ms. Nidhi Mittal, Mr. Amit Gupta, Mr. Vinay Yad

Mr. Akshay Gadeock, Mr. Sahaj Garg, Mr. Shoumendu Mukherji
Advocates for R-1/UOI in item nos. 30-48 & 59-60.
Mr. Anil Soni, CGSC, Adv. Sahaj Garg (GP), Adv. Devesh Dubey f
Respondent/UOI in item no. 31.
Mr. Shubhra Parashar, Advocate with Mr. Pushpender Singh Chara
Kapil Gaur, Mr. Vaishnav Kirti Singh, Mr. Shubham Ahuja, Mr. R
Singh Tomar, Mr. Sanjay Singh Chauhan, Mr. Satinder Tiwari, Mr
Gyanwardhan Singh, Mr. Ruchir Mishra, Advocates for R-1/UOI in
no. 31.
Mr. Mahender Kumar Bhardwaj & Mr. Saurabh Kumar, Advocates for

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W.P.(C) 2110/2021 & connected matters

1 & 6 in item no. 32.
Dr. L. C. Singhi, Senior Panel Counsel with Mr. Akshat Singh,
1 in item no. 33.
Mr. Bhagvan Swarup Shukla, CGSC with Mr. Sarvan Kumar, Advocat
for UOI in item no. 34.
Mr. Dev P. Bhardwaj, CGSC for R/ UOI in item no. 35.
Mr. Anil Dabas, Advocate with Mr. Samir & Mr. Praveen Kumar,
Advocates for R-1 & 6 in item no. 38.
Mr. Vivekanand Mishra, Advocate & Mr. Aniruddh Shukla, GP for
in item no. 41.
Mr. Siddharth Khatana & Mr. Himanshu Pathak, Advocates for R1
item no. 42.
Mr. Pratyush Miglani, Advocate for R-1 in item no. 43.
Mr. Neeraj, Mr. Sahaj Garg, Mr. Piyush Beriwal & Mr. Rudra Pal
Advocates for R-1 in item no. 44.
Mr. Vijay Joshi & Mr. Abhishek Khanna, Advocates R-1 in item n
Ms. Sunieta Ojha, Advocate for Union of India in item no.46.
Ms. Archana Pathak Dave, Advocate for Respondent No.2-CCIM in
nos. 30-46.
Mr. Sunil Narula for R-2 in item-48 & 60.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 01.03.2021 The proceedings in the matter have been conducted through video conferencing.

1. This batch of matters has been filed by colleges in the field of Ayurveda, Unani and Homeopathic ["AYUSH"] medicine. They have challenged orders of Union of India ["the Union"] by which their applications for permission to admit students for the 2020-21 academic year have been rejected, either partially or fully. In W.P.(C) 2385/2021, a show cause notice has been issued and a personal hearing has been given to the petitioner, but no final order has been passed.

2. Since several cases concerning admission to AYUSH colleges had been filed before this Court, by orders dated 17.02.2021 and 18.02.2021, I requested Mr. Chetan Sharma, learned Additional Solicitor General, to take instructions as to whether a comprehensive resolution of these matters is possible. The aforesaid course was adopted keeping in mind that I had reached a prima facie finding in several cases that the impugned orders were in excess of the show cause notices issued to the petitioners, or suffered from some other defect. Following an order of the Division Bench dated 04.02.2021 in LPA 49/2021 [Shivang Homeopathic College vs. Union of India & Ors.], I has therefore granted interim orders in several petitions, permitting the institutions to participate in the ongoing counselling process in various states, subject to the result of the writ petitions. Having regard to the nature of the impugned orders and the fact that this situation potentially creates uncertainty for students, the learned Additional Solicitor General was requested to take instructions on this aspect.

3. Certain tentative proposals were placed before the Court on 25.02.2021, and the views of the counsel for the petitioners were also heard extensively. The counsel for the petitioners were thereafter also given liberty to forward their suggestions to the learned counsel appearing for the Union and the Central Council for Indian Medicine ["CCIM"] to assist in the formulation of comprehensive modalities for resolution of these issues.

4. Pursuant to these orders, the learned Additional Solicitor General has today submitted a "Status Note". He states that the show cause notices and denial orders assailed in these petitions would be withdrawn, and fresh show cause notices would be issued to the petitioner- institutions. A copy of the aforesaid Status Note is taken on record, and the contents thereof are reproduced hereinbelow:

"1. That, at the outset, the Respondent- Union of India humbly submits that AYUSH education is medical education and, as such, the Respondent is acutely concerned about the standard of AYUSH education that is imparted to students across the country. To that end, the Respondent-Union of India is making every effort to ensure that the quality of AYUSH education is not compromised due to the Covid -19 pandemic.

2. That, however, considering the unprecedented circumstances created due to the Covid-19 pandemic, the AYUSH Ministry/CCIM has introduced certain special measures as a one-time exception to deal with institutions offering programs in the academic year 2020 - 2021, namely:

a. The AYUSH Ministry has granted a 10% relaxation in the teacher requirement stipulated in the Regulations of 2016 vide O.M. dated 02.03.2020 (copy annexed as ANNEXURE

- I herein).

b. The AYUSH Ministry has also afforded institutions an opportunity to obtain approval for a reduced number of seats, along with the aforesaid relaxed norms, vide

O.M. dated 15.04.2020 (copy annexed as ANNEXURE - II herein).

3. That, in addition, to obviate further difficulties/ complexities as a result of the Covid-19 pandemic and to allay any/ all reservations (without prejudice to the AYUSH Ministry/CCIM's stand before this Hon'ble Court), the Respondent-Union of India now proposes the following one-

time measures by treating the academic year 2020 - 2021 as an exceptional/unprecedented year:

a. The AYUSH Ministry will grant a conditional approval/permission for the academic year 2020-21 to those institutions which have continuously received permission from Ministry of AYUSH for the preceding 5 academic years, on the basis of the affidavits/ documents already submitted by them. The existing show cause notices and any consequent orders issued against such institutions will stand withdrawn, and no fresh show cause notices will be issued to such institutions.

b. The remaining aggrieved institutions would be issued a fresh show cause notice categorically pointing out the deficiencies in detail, along with the documents required for scrutiny and the date of hearing. It is made clear that no new deficiencies would be identified by the AYUSH Ministry/ CCIM, other than those which have been identified in the previous show cause notices/consequent orders of denial of approval and which remain unaddressed.

i. Since regular teaching faculty is the most important requirement or element of an educational institution, such fresh show cause notices will now only require the institution to establish that their faculty members have complied with the requirement of Regulation 26 of the Practitioners of Indian Medicine (Standards of Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982. (copy of extract of the Regulation 26 is annexed as ANNEXURE - III herein) ii. Such compliance requirement, albeit reduced, will be necessary because the AYUSH sector is dealing with a significant problem of fake teachers in AYUSH colleges who exist only on paper in various colleges because they are actually practicing or doing other business far away from the colleges where they are being claimed as teachers. CCIM had therefore conducted a due diligence exercise and thereafter debarred / not certified such teachers as regular faculty members in the intent of AYUSH education and Public Health since they adversely affect the quality of AYUSH education.

c. Since the Ministry of AYUSH has already extended the last date/ cut off date for admission upto 15th March for academic year 2020 - 2021, vide order no. F.No. L-11011/1/2021-EP-1 (Part-1) dated 23.02.2021, and will further extend the last date of admission by 05 days, the following steps will be taken by the Union of India with corresponding deadlines:

i. Service of fresh show cause notices (by email) upon the aggrieved institutions: 02.03.2021 to 08.03.2021 ii. Conduct of online hearing: 05.03.2021 to 12.03.2021 iii. Issue of final orders u/s 13A/ 13C of the IMCC Act: 10.03.2021 to 15.03.2021 iv. Last date of admission: 20.03.2021 d. The AYUSH Ministry will also constitute a Grievance Redressal Committee/ Appellate Body as special one-time measure for the academic year 2020 - 2021 to address any grievances arising out of a denial of permission following the issue of fresh show cause notices as described above. The GRC will consist of representatives of the AYUSH Ministry (preferably, an Additional Secretary and Dr. Shashi Ranjan Vidyarthi, Director) and Chairperson, BoG, CCIM and Chairperson, BoG, CCH.

e. Since all States deal with counselling according to their local requirements and State Govt. rules, the Union of India will request all States concerned to suitably reschedule their counselling in light of the Ministry of AYUSH's decision to extend the last date/ cutoff date for admission upto 20th March for academic year 2020 -2021 to ensure that the session is not delayed much. However, for increase in seats or grant of fresh permission to colleges, counselling will be conducted.

4. This Hon'ble Court may be pleased to consider the aforesaid proposals as special one-time measures that are not to be treated as precedent in light of the Covid- 19 pandemic and, as such, none of the aforesaid concessions/ relaxations and nothing stated herein will affect any case pending before any other Hon'ble High Court, nor should such proposals/ measures be binding upon the AYUSH Ministiy/ CCIM in future academic years. Ministry of AYUSH reiterates its commitment to maintain and improve quality and standards of AYUSH education."

5. The learned Additional Solicitor General has clarified that in the cases where partial permission has been granted (i.e., the institutions have been permitted part of the intake they had applied for), the fresh show cause notices, if any, will be confined to the disputed intake, and will not disturb the number of seats for which the institutions have been granted permission.

6. The learned Additional Solicitor General also confirms that the relaxations for grant of conditional permission, as provided in the applicable Regulations with regard to the faculty and infrastructure available, will be taken into account by the CCIM/ CCH and the Union.

This may be done both at the stage of considering whether to issue show cause notices in particular cases, and at the stage of making a final decision. The institutions concerned will be entitled to take the benefit of relaxation in case a show cause notice is at the stage of making a final decision issued to them.

7. I have heard all the learned counsel appearing for the petitioners in this batch of petitions. They express their acceptance of the modalities proposed by the Union, subject to their right to seek legal

redress if the orders ultimately passed are adverse to them.

8. However, an apprehension has been expressed by counsel for some of the petitioners with regard to the contents of paragraph 3(b)(i) of the Status Note, insofar as it seeks to place sole reliance upon compliance of Regulation 26 of the Practitioners of Indian Medicine (Standards of Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982, ["the PIM Regulations, 1982"] for the purpose of determining whether a particular faculty member of an institution concerned is in fact a regular teacher at the said institution or not. They submit that in the absence of a physical inspection in this particular year owing to the COVID-19 pandemic, the availability of the teachers at their respective colleges has not been physically verified. Their further contention is that strict compliance of Regulation 26 of the PIM Regulations, 1982 has never been insisted upon in the past, and that pursuant to notices/orders of the regulatory bodies, the institutions and the members of their faculties have made detailed representations and submitted detailed documentation to establish the fact that the members of the faculty are regularly teaching at the respective colleges, as claimed. Learned counsel for the petitioners also submit that in several cases, the faculty members have made applications for registration in the Central Register, or filed intimations of change of address from one State to another, or made applications for registration in another State, which have not been considered by the Union or by the concerned regulator, being the CCIM or the Central Council of Homeopathy ["CCH"].

9. The submission of Ms. Archana Pathak Dave, learned counsel for the CCIM, however, is that there has been a significant problem of registered practitioners claiming to be teaching at a particular institution while also declaring that they are in fact practising in another State. Ms. Dave submits that in such a situation, the CCIM has come to the conclusion that the teachers could not be regularly teaching at the colleges where they have claimed to be teaching.

10. Rather than pre-empting the fresh consideration of the issues pursuant to the submissions made by the Union today, suffice it to say in this regard that the Union, the CCIM and the CCH have proposed a one- time solution, keeping in mind the peculiar circumstances arising out of the COVID-19 pandemic. It is expected that their decisions on the question of whether an institution has the requisite number of faculty, and the status of faculty members, will also be made in the same spirit, cognisant of the peculiar circumstances obtaining in this year. While leaving the matter to them, the Court commends a pragmatic approach which would ensure adherence to the required standards of AYUSH education, without visiting procedural lapses with disproportionate consequences.

11. In paragraph 3(a) of the Status Note, it has been noted that institutions which have had permission for the last five academic years will be granted permission for the year 2020-21 as well, and no show cause notices will be issued to them. The institutions which fall within this category may be issued the letters of permission expeditiously.

12. In view of the fact that the impugned show cause notices and denial orders stand withdrawn in terms of the submissions of the learned Additional Solicitor General and the Status Note reproduced above, the present writ petitions are disposed of by this order, with liberty to the petitioners to seek

legal redress in the event the orders ultimately passed are adverse to them. Pending applications, if any, also stand disposed of.

13. As noted hereinabove, several other petitions on the same issue are pending before this Court, which are scheduled to be listed on 07.04.2021. Learned counsel for the petitioners herein also represent the petitioners in several of those petitions. They submit that those petitioners may also be covered by the order passed today. I find that learned counsel for the petitioners in most of those matters are present today. The Union, the CCIM and the CCH are also represented. Learned counsel are directed to give a list of similar matters pending in this Court to the Court Master by 02.03.2021, and those petitions will be listed for directions on 04.03.2021. Ms. Dave and Mr. Sunil Narula, learned counsel for the CCH, are also requested to inform any other counsel appearing on behalf of the petitioners in those matters that their petitions will be listed on 04.03.2021.

14. The Court records its appreciation for the assistance rendered by the learned Additional Solicitor General, Mr. Apoorv Kurup who assisted him on behalf of the Union, Ms. Dave, learned counsel for the CCIM, as well as several learned Senior Counsel and counsel for the petitioners who have rendered valuable assistance to resolve the matters in issue in the present proceedings.

PRATEEK JALAN, J MARCH 1, 2021 'j'