

Vivek College Of Ayurvedic Science And ... vs Union Of India And Others on 26 March, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~38, 40, 41, 55 to 58, 60 to 63, 69, 71 to 81
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 4033/2021

VIVEK COLLEGE OF
AYURVEDIC SCIENCE AND HOSPITAL

..... Peti

versus

UNION OF INDIA AND OTHERS

..... Respond

+ W.P.(C) 4044/2021

HMS UNANI MEDICAL
COLLEGE AND HOSPITAL AND OTHERS

..... Petit

versus

UNION OF INDIA AND OTHERS

..... Respond

+ W.P.(C) 4053/2021

VIJAYSHREE AYURVEDIC
MEDICAL AND HOSPITAL

..... Peti

versus

UNION OF INDIA AND ORS

..... Respond

+ W.P.(C) 3771/2021

SKS AYURVEDIC MEDICAL COLLEGE
AND HOSPITAL THROUGH ITS SECRETARY

..... Peti

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versus

UNION OF INDIA, MINISTRY OF
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versus

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BABA HIRA DAS JI AYURVEDIC
MEDICAL COLLEGE AND HOSPITAL

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versus

UNION OF INDIA THROUGH
THE MINISTRY OF AYUSH
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..... Respond

+ W.P.(C) 3804/2021

SCPM AYURVEDIC MEDICAL
COLLEGE AND HOSPITAL

..... Peti

versus

UNION OF INDIA & ORS.

..... Respond

+ W.P.(C) 3832/2021

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GLOCAL COLLEGE OF AYURVEDIC MEDICAL
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versus
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+ W.P.(C) 4064/2021
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UTTRANCHAL UNANI MEDICAL COLLEGE AND
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..... Petitioner

versus

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R.B. AYURVEDIC MEDICAL COLLEGE AND HOSPITAL
Petitioner

versus

UNION OF INDIA THROUGH THE MINISTRY OF AYUSH
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..... Respondent

+ W.P.(C) 4123/2021

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UNION OF INDIA AND OTHERS.

..... Respond

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..... Petitioner

versus

UNION OF INDIA AND OTHERS.

..... Respond

+

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DESH BHAGAT AYURVEDIC COLLEGE AND HOSPITAL
Petitioner

versus

UNION OF INDIA THROUGH THE MINISTRY OF AYUSH

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GOVERNMENT OF INDIA.

..... Respon

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BHARTI AYURVED MEDICAL COLLEGE AND HOSPITAL
..... Petitioner

versus

UNION OF INDIA AND ORS.

..... Respond

+

W.P.(C) 4130/2021

OM AYURVEDIC MEDICAL COLLEGE HOSPITAL AND
RESEARCH CENTRE Petitioner

versus

UNION OF INDIA AND OTHERS.

..... Respond

+

W.P.(C) 4132/2021

JAMMU INSTITUTE OF AYURVEDA AND RESEARCH
Petitioner

versus

UNION OF INDIA MINISTRY OF AYUSH & ORS.

.....
Respondents

+ W.P.(C) 4133/2021

DR. KRISHNA GOPAL DWIVEDI AYURVEDIC MEDICAL
COLLEGE AND HOSPITAL Petitioner

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versus

UNION OF INDIA AND OTHERS.

..... Res

Appearances:-

For Petitioners:-

Mr. A. Mariarputham, Senior Advocate with Mr. Avneesh Arputham
Advocates in item Nos. 38, 57, 63, 71-74, 76, 77, 79, 81.

Mr. Akhil Sibal, Senior Advocate with Mr. Avneesh Arputham and
Shatanu Parashar, Advocates for item No. 56.

Mr. A. Mariarputham, Senior Advocate with Mr. Akhil Sibal, Mr.
Avneesh Arputham and Mr. Shantanu Parashar, Advocates in item
40.

Mr. Jasbir Singh Malik, Advocate in item nos. 41 & 78

Mr. Uddyam Mukherjee and Ms. Madhurika Ray, Advocates in item
55.

Mr. Vivek Tankha, Senior Advocate and Mr. Mrigank Prabhakar,
Advocates in item No. 60.

Mr. Vivek Singh, Advocate in item No. 62.

Mr. Siddharth Mittal, Mr. Prabhat Kumar and Ms. Shilpa G Mitta
Advocate in item No. 75.

For Respondents:-

Mr. Vijay Joshi and Mr. Amit Gupta, Advocates for R-1/UOI in i
No.38.

Mr. Shashank Bajpai, Senior Panel Counsel with Mr. Abhishek Kh
G.P., Ms. Shakun Sudha Shukla, Advocate for UOI in item No.40.

Mr. Vikrant N. Goyal with Mr. Suraj Kumar, Advocates for R-1/U
item No.41.

Mr. Ripu Daman Bhardwaj, CGSC with Mr. Himanshu Pathak for R-
1/UOI in item No. 55.

Mr. Chetan Sharma, ASG with Mr. Sushik Kumar Pandey and Mr. Ra
Mourya for UOI in item No. 58, 69.

Mr. Kavindra Gill, Advocate for UOI in Item No. 58.

Mr. Dev. P. Bhardwaj, CGSC for UOI with Mr. Jatin Teotia, Advo
item No. 63

Mr. Apoorv Kurup, Ms. Rupali Kapoor, Advocates for UOI in item
Nos.60, 80.

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W.P.(C)4033/2021 and connected matters

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Ms. Archana Pathak Dave, Mr. Kumar Prashant, Ms. Vanya Gupta,
Pramod Kumar Vishnoi, Advocates for CCIM.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 26.03.2021 The proceedings in the matter have been conducted through hybrid system (physical and virtual hearing).

CM APPL. 12195/2021(exemption) in W.P.(C) 4033/2021, CM APPL. 12212/2021 (exemption) in W.P.(C) 4044/2021, CM APPL. 12262/2021 (exemption) in W.P.(C) 4053/2021, CM APPL. 11345/2021 (exemption) in W.P.(C) 3771/2021, CM APPL. 11556/2021 (exemption) in W.P.(C) 3832/2021, CM APPL. 11558/2021 (exemption) in W.P.(C) 3833/2021, CM APPL. 12175/2021 (exemption) in W.P.(C) 4027/2021, CM APPL. 12281/2021 (exemption) in W.P.(C) 4064/2021, CM APPL. 12527/2021 (exemption) in W.P.(C) 4113/2021, CM APPL. 12538/2021 (exemption) in W.P.(C) 4118/2021, CM APPL. 12540/2021 (exemption) in W.P.(C) 4119/2021, CM APPL. 12547/2021 (exemption) in W.P.(C) 4122/2021, CM APPL. 12549/2021 (exemption) in W.P.(C) 4123/2021, CM APPL. 12553/2021 (exemption) in W.P.(C) 4124/2021, CM APPL. 12557/2021 (exemption) in W.P.(C) 4126/2021, CM APPL. 12559/2021 (exemption) in W.P.(C) 4127/2021, CM APPL. 12563/2021 (exemption) in W.P.(C) 4129/2021, CM APPL. 12565/2021 (exemption) in W.P.(C) 4130/2021, CM APPL. 12569/2021 (exemption) in W.P.(C) 4132/2021, CM APPL. 12571/2021 (exemption) in W.P.(C) 4133/2021.

Exemptions allowed, subject to all just exceptions. These applications stand disposed of.

W.P.(C) 4033/2021 & CM APPL. 12194/2021, W.P.(C) 4044/2021 & CM APPL. 12211/2021, W.P.(C) 4053/2021 & CM APPL.

12260/2021, W.P.(C) 3771/2021 & CM APPL. 11343/2021 & 11344/2021, W.P.(C) 3789/2021 & CM APPL. 11390/2021, W.P.(C) 3798/2021 & CM APPL. 11431/2021, W.P.(C) 3804/2021 & CM APPL. 11449/2021, W.P.(C) 3832/2021 & CM APPL. 11555/2021, W.P.(C) 3833/2021 & CM APPL. 11557/2021, W.P.(C) 4027/2021 & CM APPL. 12174/2021, W.P.(C) 4064/2021 & CM APPL.

12280/2021, W.P.(C) 4113/2021 & CM APPL. 12526/2021, W.P.(C) 4118/2021 & CM APPL. 12537/2021, W.P.(C) 4119/2021 & CM APPL. 12539/2021, W.P.(C) 4122/2021 & CM APPL. 12546/2021, W.P.(C) 4123/2021 & CM APPL. 12548/2021, W.P.(C) 4124/2021 & CM APPL. 12552/2021, W.P.(C) 4126/2021 & CM APPL.

12556/2021, W.P.(C) 4127/2021 & CM APPL. 12558/2021, W.P.(C) 4129/2021 & CM APPL. 12562/2021, W.P.(C) 4130/2021 & CM APPL. 12564/2021, W.P.(C) 4132/2021 & CM APPL.

12568/2021, W.P.(C) 4133/2021 & CM APPL. 12570/2021

1. Issue notice in W.P.(C)4033/2021, W.P.(C)4044/2021, W.P.(C)4053/2021, W.P.(C)4113/2021, W.P.(C)4118/2021, W.P.(C)4119/2021, W.P.(C)4122/2021, W.P.(C)4123/2021, W.P.(C)4124/2021, W.P.(C)4126/2021, W.P.(C)4127/2021, W.P.(C)4129/2021, W.P.(C)4130/2021, W.P.(C)4132/2021 and W.P.(C)4133/2021. Mr. Apoorv Kurup, Mr. Vikrant N. Goyal, Mr. Ripu Daman Bhardwaj, Mr. Sushil Kumar Pandey, Mr. Vijay Joshi, Mr. Shashank Bajpai, Mr. Kavindra Gill, and Mr. Dev. P. Bhardwaj, learned counsel, accept notice on behalf of the Union of India, and Ms. Archana Pathak Dave, learned counsel, accepts notice on behalf of the Central Council of Indian Medicine ["CCIM"] in the above writ petitions.

2. These petitions concern admissions to Ayurveda, Homeopathy and Unani ["AYUSH"] colleges for the year 2020-21. In most of the writ petitions, the challenge is to orders of the Union of India ["the Union"], by which the petitioner-institutions have been denied (either partially or fully) their applications for permission to admit students for the present academic year.

3. An earlier round of litigation against show cause notices/denial orders passed by the Union culminated in orders dated 01.03.2021 and 04.03.2021 in W.P.(C) 2110/2021 [Glocal College of Unani Medical Science Hospital and Research Centre vs. Union of India & Ors.] and connected matters and W.P.(C)514/2021 [Pt. Shivshakti Lal Sharma Ayurved Medical College and Hospital vs. Union of India & Ors.] and connected matters, respectively.

4. During the proceedings in the earlier round of litigation, as the petitioner-institutions had challenged denial orders raising similar issues, I had requested the assistance of Mr. Chetan Sharma, learned Additional Solicitor General, to try and resolve the grievances of the institutions. After substantial deliberations, during which the suggestions of the learned counsel for the petitioners were also taken into account, learned ASG submitted a „Status Note , which is reproduced in the order dated 01.03.2021. The fundamental premise of the Status Note was that the Union would withdraw the show cause notices and denial orders which had been challenged in those petitions, and issue detailed show cause notices afresh, in terms of the stipulations contained in the Status Note.

5. The challenge is now to the orders passed pursuant to the show cause notices issued by the Union thereafter.

6. In W.P.(C) 4044/2021, the issue raised is slightly different. The petitioners contend that, particularly in the present academic year, AYUSH colleges are facing a dearth of eligible candidates in Unani colleges due to the eligibility conditions which have been imposed by the CCIM. According to the petitioners, the eligibility conditions have been relaxed for the year 2020-21 for the Bachelor of Dental Surgery course, in the wake of the Covid-19 pandemic. Although some relaxation has also been granted in favour of candidates for colleges, according to the petitioners, the relaxation is inadequate.

7. In the challenges to the denial orders, learned counsel for the petitioners have placed their arguments on the merits of the case, and pressed for ad interim orders, permitting the institutions to participate in counselling during the pendency of the writ petitions. They contend that, by virtue of the instructions given by the Ministry of AYUSH, counselling has been scheduled by various State Governments, and admissions are to be completed by 31.03.2021. Learned counsel submit that in the absence of an ad interim order, if admissions to the institutions are closed, the petitioners will not be able to avail of any effective relief even if they succeed in the writ petitions.

8. In response, Mr. Chetan Sharma, the learned Additional Solicitor General, appearing for the Union, cites the judgments of the Supreme Court in *Medical Council of India vs. Rajiv Gandhi University of Health Sciences & Ors.* (2004) 6 SCC 76, *State of U.P. & Ors. Vs. Ram Sukhi Devi* (2005) 9 SCC 733 (paragraph 8), and *Dental Council of India vs. Dr. Hedgewar Smruti Rugna Seva Mandal Hingoli & Ors.* (2017) 13 SCC 115 (paragraph 12) to submit that ad interim orders ought not to be passed in the present case. He contends that the expert regulator has come to the conclusion that the institutions do not meet the required standards for admission of students. Learned ASG emphasises that admission of students, even subject to the result of the writ petition, would cause uncertainty and confusion, which is ultimately to the detriment of the students, particularly in the event the petitioners are unsuccessful.

9. In order to allay the apprehension of the petitioners that the petitions would be rendered infructuous in the absence of interim relief, however, learned ASG states, upon instructions, that in the event the petitioners are successful in the writ petitions, the Union will facilitate an additional round of counselling at that stage, to enable prospective students to take admissions in the institutions concerned.

10. The aforesaid submission of the learned ASG is taken on record. In view thereof, I am of the view that the interest of the petitioner- institutions is substantially protected. I, therefore, propose to give the respondents an opportunity to file affidavits, and to hear the petitions finally, binding the Union to the statement made above.

11. However, to protect the interests of all parties in the meanwhile, the following additional directions are required to be passed:

- a. The proposal of the Union to facilitate an additional round of counselling in the event the petitioner succeeds in the writ petitions should be communicated by the Ministry of AYUSH, Government of India and the CCIM to the concerned departments of all State Governments and Union Territory administrations, as expeditiously as possible, and definitely within two days from today, in order to enable the State Governments and Union Territory administrations to decide the further course of counselling in their respective jurisdictions.
- b. The Union and the CCIM will also consider the issues raised by the petitioners in W.P.(C) 4044/2021, and place their stand on record.
- c. In several of the petitioner-institutions, students have already been admitted pursuant to the interim orders granted in earlier rounds of litigation, following an order of the Division Bench of this Court dated 04.02.2021

in LPA No. 49/2021 (Shivang Homeopathic College vs. Union of India & Ors.). It was also directed by the order dated 04.03.2021 (in W.P.(C) 514/2021 and connected matters) that the students already admitted would not be disturbed during the pendency of the petitioners' applications before the Union. Similar interim orders have been passed in some of these petitions, as well. In order to preserve the status quo with regard to the students so admitted, it is made clear that students who have already been admitted pursuant to the orders of this Court, will not be disturbed during the pendency of these petitions.

d. It is also brought to my attention that several applications for permission remain pending with the Union, as of today. The Union proposes to dispose of those applications also, expeditiously. Keeping in mind that the Court is closed next week, Dr. S. R. K. Vidyarthi, Director, Ministry of AYUSH, Government of India, who is present in the video conference hearing, states that if any denial orders are passed in the meantime, students who have already been admitted to any institution pursuant to interim or final orders of this Court will not be disturbed for a period of two weeks after the order is passed.

e. The Grievance Redressal Committee ["GRC"], constituted in terms of the aforesaid Status Note is also in seisin of the representations of several institutions, including some of the petitioner-institutions herein. It is made clear that the pendency of these petitions will not stand in the way of orders being passed by the GRC. However, in the event the orders of the GRC are adverse to the petitioner-institutions, the admission already granted to students will not be disturbed without further orders of the Court.

f. In W.P.(C) 4027/2021, Mr. Vivek Singh, learned counsel for the petitioner, contends that even if ineligibility of faculty members as pointed out by the Union in the impugned order is taken into account, the institution has sufficient faculty to warrant permission for admission of 30 students, as against 100 students applied for. Mr. Singh relies upon the relaxation policy dated 04.02.2021 issued by the Ministry of AYUSH, which is also referred to in the Status Note. The petitioner has also approached the GRC raising this grievance. The GRC is directed to consider the petitioner's representation, including the aspect as to whether it is entitled to admission of 30 students, and render its decision by 30.03.2021. The decision be communicated both to the petitioner and to Mr. Vivek Singh, learned counsel for the petitioner. g. In W.P.(C) 4113/2021, Mr. Animesh Kumar, learned counsel for the petitioner, submits that the decision of the Union based upon non-compliance of Regulation 26 of the Practitioners of Indian Medicine (Standards of Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982, fails to take into consideration that all members of the faculty had, in fact, complied with Regulation 26. The petitioner's representation is pending before the GRC. The GRC is directed to render its decision on this issue also by 30.03.2021.

h. In W.P.(C) 4129/2021, Mr. Jasbir Singh Malik, learned counsel for the petitioner, submits that the teachers who have been regarded as ineligible by the Union are, in fact, protected by an interim order of the Chhattisgarh High Court dated 11.02.2021 in W.P.(C) 741/2021 (Annexure P-4 to the writ petition). The GRC will consider the petitioner's submissions in this regard as well.

i. In W.P.(C) 4132/2021, Mr. Animesh Kumar, learned counsel for the petitioner, submits that the institution had permission to admit students for the five preceding academic years and is, therefore, entitled to exemption from issuance of a fresh show cause notice under Clause 3(a) of the aforesaid Status Note. The GRC will render its decision on the eligibility of the petitioner under clause 3(a) of the status note.

12. Counter affidavits to the writ petitions be filed positively by 09.04.2021. The petitioners may file rejoinder affidavits by 14.04.2021.

13. List on 15.04.2021.

PRATEEK JALAN, J MARCH 26, 2021 'vp'