

Shivang Homeopathic College vs Union Of India & Ors on 4 February, 2021

Author: Jyoti Singh

Bench: Chief Justice, Jyoti Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 49/2021 & CM No. 4214/2021 (Interim Relief)

SHIVANG HOMEOPATHIC COLLEGE

..... Appellan

Through Mr. Nidhesh Gupta, Senior Advoc

with Mr. Animesh Kumar ,Advocat

versus

UNION OF INDIA & ORS.

Through

None .

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% 04.02.2021 Proceedings in the matter have been conducted through video conferencing.

CM No. 4215/2021 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

LPA 49/2021 & CM No. 4214/2021 (Interim Relief)

1. Rule D.B.
2. Issue notice to the respondents, through ordinary process, returnable on 26.03.2021.
3. Learned Senior Counsel appearing for the appellant (original petitioner) prays for interim relief.
4. We have heard learned senior counsel for the appellant and looked into the facts and circumstances of the case. The challenge in the present appeal is to an order dated 01.02.2021 passed in WP(C) No. 1265/2021 by the learned Single Judge. Attention of the Court is drawn by learned senior counsel to an order dated 14.01.2021 passed in WP(C) No. 534/2021 by the learned Single Judge whereby permission had been granted to the petitioner to participate in the counselling as an interim measure for admission of 100 students in Under Graduate programmes pertaining to

homeopathic courses for the Academic Session 2020-2021. The learned Single Judge, however, in a subsequent writ petition being WP(C) No. 1265/2021 vide order dated 01.02.2021 declined the interim reliefs to participate in the ongoing counselling in the State of Madhya Pradesh and it is this order which is impugned in the present appeal.

5. Learned Senior counsel appearing for the appellant has taken this Court through the show cause notice issued by the respondent No. 1 on 06.11.2020 (Annexure P-14 to the memo of this appeal) as well as to the final order passed on 25.01.2021 and has argued that the final order goes beyond the show cause notice and the alleged deficiencies pointed out therein. It is also argued that the appellant has complied with all the requisite provisions and none of the deficiencies/objections are valid in the eyes of law.

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.

CHIEF JUSTICE JYOTI SINGH, 4 FEBRUARY 2021/aa