

Kisan Dnyoday Mandal Ghudes ... vs Union Of India & Ors on 12 February, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1941/2021

KISAN DNYODAY MANDAL

GHUDES HOMEOPATHIC

MEDICAL COLLEGE AND HOSPITAL Petitioner

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

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Suman Chauhan, Advocate for
R1.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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

CM APPL. 5656/2021 (for exemption) Exemption allowed, subject to all just exceptions. This application stands disposed of.

W.P.(C) 1941/2021 with CM APPL. 5655/2021 (for seeking ex-parte ad-interim relief)

1. Issue notice. Ms. Suman Chauhan, learned counsel, accepts notice on behalf of respondent no.1. Notice be issued to respondent Nos. 2 and 3 through all permissible modes, dasti in addition.

2. The grievance of the petitioner is against an order dated 10.02.2021, by which its application for permission to offer admission in its BHMS course was declined by the Union of India ["the Union"] on the recommendation of the Central Council of Homeopathy ["CCH"].

3. In the impugned order, reference is made to a show cause notice dated 07.12.2020 issued to the petitioner, and to the hearing provided to it on 21.12.2020. On the basis of the aforementioned recommendation, and upon consideration of the materials provided by the petitioner, the Union has

come to the conclusion that the petitioner does not meet the requirements for conducting the aforesaid course.

4. Mr. Animesh Kumar, learned counsel for the petitioner, submits that, in an earlier writ petition filed by the petitioner being W.P.(C) 1390/2021, this Court has passed an order dated 04.02.2021, granting permission to the petitioner to participate in the counselling in the State of Maharashtra, during the pendency of its application with the Union. After the impugned order was passed by the Union, the said writ petition was withdrawn. In view of the fact that the allotment of students to various colleges pursuant to the aforesaid counselling is now imminent, Mr. Kumar presses for interim relief in this petition.

5. Mr. Kumar has taken me through the grounds of denial enumerated in the impugned order, and sought to demonstrate that the petitioner has a strong prima facie case for grant of ad interim relief. He cites the order of Division Bench dated 04.02.2021 in LPA 49/2021 [Shivang Homeopathic College vs. Union of India & Ors.], wherein the Division Bench has examined the prima facie case in circumstances similar to the present case, and recorded that the questions of balance of convenience and irreparable harm and injury are in favour of appellant therein. The Division Bench granted stay of an order dated 01.02.2021 passed by this Court in W.P.(C) 1265/2021, whereby this Court had declined interim relief after the order of the Union denying permission was passed

6. Ms. Chauhan, appearing for the Union, submits that the impugned order has dealt with various deficiencies identified in the petitioner/institution, and the expert opinion of the CCH ought to be granted considerable deference by this Court. She submits that the grant of an interim order, permitting the institution to admit students, would lead to uncertainty for the admitted students in the event the writ petition does not succeed.

7. I am of the view that the aforesaid contentions of Ms. Chauhan cannot be accepted. The order of the Division Bench indicates the approach to be followed in these cases, where the examination of a prima facie case in favour of the petitioner is required and, in the event the petitioner makes out a prima facie case, it is entitled to interim orders. In fact, I have also followed the aforesaid order of the Division Bench in an order dated 08.02.2021 in W.P.(C) 1539/2021 [SKS Ayurvedic Medical College And Hospital Through Its Secretary vs. Union of India, Ministry of Ayush Through Secretary & Anr.] and connected matters.

8. Having therefore heard learned counsel for the parties on the question of prima facie case in the present writ petition with regard to the deficiencies pointed out in the impugned order, I am of the view that the petitioner has made out a good prima facie case for the grant of ad interim relief for the following reasons: -

(a) With regard to Serial No. 1 in the list of deficiencies (at page 615-

617 of the writ petition), the Union has come to the conclusion that the website of the petitioner did have the details in respect of which the show cause notice was issued. However, it is noted in the impugned order that, on re-examination of the college website, certain other deficiencies have been

found. It is evident upon a reading of the order itself, that the deficiencies which form the basis of the impugned order are not the same deficiencies which were put to the petitioner in the show cause notice. The interim order granted by the Division Bench on 04.02.2021 in LPA 49/2021, makes reference to a similar situation in that case, and holds that a prima facie case is made out on that basis.

(b) With regard to the deficiency at Serial No. 2 pointed out in the impugned order, regarding the Provident Fund challans, the Ministry has noted that the challans were submitted by the petitioner, but has come to the conclusion that details of the contribution deposited towards the provident fund for employees had not been submitted by the petitioner. It is again evident from the deficiency pointed out in the show cause notice that no specific documents or details in this regard were called for at that stage. The show cause notice only contained a general allegation that the college had not complied with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Employees' State Insurance Act, 1948, and relevant rules and regulations. In these circumstances, I am of the prima facie view that the deficiencies in the documentation noticed by the respondents ought to have been put to the petitioner for compliance. Failure to do so results in a breach of the principles of natural justice.

(c) With regard to the deficiency at Serial No. 3, the show cause notice contained an allegation that 16 of the 34 teachers employed by the petitioner were considered ineligible due to discrepancies in their documents. In respect of 11 of those teachers, the discrepancies related to a mismatch in signature in the affidavit submitted by the teachers, with the signature on their teacher code and joining letter. It is evident from the impugned order that the petitioner provided affidavits of the 11 teachers concerned, to the effect that the signatures in the joining and teacher codes were their own signatures. However, the reason for which the CCH did not consider the said affidavits acceptable does not find mention in the impugned order. The Union has noted that the CCH has not recommended the said college, and recorded that the Union could not verify the authenticity of the submitted documents. In the absence of any reasons for which the affidavits of the aforesaid teachers were rejected by the CCH and the Union, the aforesaid reasoning does not appear prima facie to be acceptable.

(d) Mr. Kumar has also rightly pointed out that if the 11 teachers in question are taken into account, the petitioner would have 29 eligible teachers as against the minimum requirement of 28 teachers for grant of permission, as provided in Schedule - IV of the Homeopathy Central Council (Minimum Standards Requirement of Homeopathic Colleges and attached Hospitals) Regulations, 2013 ["the 2013 Regulations"].

(e) In Serial No.3(f) of the list of deficiencies, the Union has referred to various objections with regard to 12 other members of the petitioner's faculty, apart from the 16 dealt with in the show cause notice. The objections regarding these 12 members of the faculty were not included in the show cause notice and, to this extent, the impugned order appears to be in excess of the show cause notice.

(f) Serial No.4 of the list of deficiencies points to a shortage of guest faculty, the allegation being that the petitioner/institution has only 8 guest faculty available for undergraduate courses with 75 seats, as against the requirement of 12 guest faculty. Mr. Kumar has referred me to a communication dated 21.12.2016 issued by the CCH [at page 559 of the writ petition], wherein it has been clarified that the aforesaid requirement of 12 guest faculty for 100 admissions intake is a typographical error, and the number of guest faculty required is, in fact, 8. The aforesaid communication dated 21.12.2016 was also submitted by the petitioner alongwith its written representation, but does not appear to have been considered at all in the impugned order.

(g) The last deficiency pointed out in the impugned order concerns the availability of only 8 teachers of modern medicine, as against the requirement of 9 teachers. It may be noted that the Division Bench of this Court in the aforementioned order dated 04.02.2021 has held that under Regulation 9(2) of the 2013 Regulations, the consultants of modern medicine may be appointed on contract basis or part-time basis or on-call basis, and came to the conclusion that the findings in the denial order with regard to this requirement were in ignorance of the provisions of the 2013 Regulations. The present case is also covered by the said order of the Division Bench. In addition, Mr. Kumar submits that the deficiency of one consultant in modern medicine out of the requirement of 9 consultants was within the permissible relaxation of 10% under Note (5) below Schedule - IV to the 2013 Regulations, on the basis of which conditional permission could, in fact, be granted.

9. In view of the aforesaid position, and keeping in mind that the admissions process is ongoing in the State of Maharashtra, in accordance with the schedule of admissions prescribed by the Union itself, the petitioner is entitled to ad interim orders. Following the interim order dated 04.02.2021 granted by the Division Bench in LPA 49/2021, the petitioner is hereby permitted to participate in the ongoing counselling process in the State of Maharashtra.

10. 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 candidates accordingly.

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

12. List on 07.04.2021.

PRATEEK JALAN, J FEBRUARY 12, 2021 vp