

Dr Anar Singh Ayurvedic Medical College ... vs Union Of India And Others on 15 February, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~22 to 26 & 28 to 30

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 1958/2021
DR ANAR SINGH AYURVEDIC
MEDICAL COLLEGE AND HOSPITAL Petitioner
versus
UNION OF INDIA AND OTHERS Respondent
23
+ W.P.(C) 1965/2021
KVS INSTITUTE OF AYURVEDIC MEDICAL
SCIENCE AND RESEARCH CENTRE Petitioner
versus
UNION OF INDIA AND OTHERS Respondent
24
+ W.P.(C) 1974/2021
FS AYURVEDIC MEDICAL COLLEGE
AND HOSPITAL Petitioner
versus
UNION OF INDIA AND OTHERS Respondent
25
+ W.P.(C) 1976/2021
DIVYA JYOTI AYURVEDIC
MEDICAL COLLEGE Petitioner
versus
UNION OF INDIA AND OTHERS Respondent
26
+ W.P.(C) 1978/2021
DHANVANTARI AYURVEDIC
MEDICAL COLLEGE AND HOSPITAL Petitioner
versus
UNION OF INDIA AND OTHERS Respondent
28
+ W.P.(C) 1988/2021
DR VIJAY AYURVEDIC MEDICAL COLLEGE
HOSPITAL AND RESEARCH CENTRE Petitioner
versus
UNION OF INDIA AND OTHERS Respondent

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+ W.P.(C) 1997/2021
SHIV SHAKTI AYURVEDIC
MEDICAL COLLEGE

....

versus

UNION OF INDIA & ORS.

..... Re

30

+ W.P.(C) 2007/2021
PRABUDHA AYURVEDIC MEDICAL COLLEGE
HOSPITAL AND RESEARCH CENTRE

..... Petitioner

versus

UNION OF INDIA AND OTHERS

..... Respondent

Present:

For the Petitioner

Mr.A.Mariarputham, Senior Advocate with Ms.Anuradha Arputham,
Mr.Avneesh Arputham, Advocates for Petitioners in item nos. 22
25, 26, 28 & 30.

Mr.Vivek Singh, Advocate for petitioner in item no. 29.

For the Respondents

Mr.Vinod Diwakar, CGSC with Mr.Aakash Meena, GP for R-1/UOI in
item no. 22.

Ms. Nidhi Raman, CGSC with Susheel Pandey & Jitendra Kumar
Tripathi for R-1 & R-6 in item no. 23.

Mr.Rishabh Sahu & Mr.Piyush, Adv. for R-1 & 6 in item no. 24.

Mr.Satya Ranjan Swain, Central Govt. Senior Panel Counsel with
Mr.Shoumendu Mukherjee, GP & Mr.Kautilya Birat, Advocate for R-
1/UOI in item no. 25.

Mr.Piyush Beriwal, Mr.Neeraj, Mr.Sahaj Garg, Mr.Ankit Raj &
Ms.Vandana Dewan, Adv. for R-1/UOI in item no. 26.

Mr. Apoorv Kurup & Ms. Nidhi Mittal, Adv. for R1 and R6 in item
28.

Ms.Shiva Lakshmi CGSC for R-1/UOI in item no. 29.

Mr.Virender Pratap Singh Charak, Sr.Panel Counsel with Mr.Abhi
Khanna, GP for R-1/UOI in item no. 30.

Ms. Archana Pathak Dave, Adv. For R-2/CCIM

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN
ORDER

% 15.02.2021 The proceedings in the matter have been conducted through hybrid mode (physical and virtual hearing).

CM APPL. 5717/2021 (exemption) in W.P.(C) 1958/2021 CM APPL. 5732/2021 (exemption) in W.P.(C) 1965/2021 CM APPL. 5771/2021 (exemption) in W.P.(C) 1974/2021 CM APPL. 5775/2021 (exemption) in W.P.(C) 1976/2021 CM APPL. 5779/2021 (exemption) in W.P.(C) 1978/2021 CM APPL. 5797/2021(exemption) in W.P.(C) 1988/2021 CM APPL. 5842/2021 (exemption) in W.P.(C) 1997/2021 CM APPL. 5868/2021 (exemption) in W.P.(C) 2007/2021 Exemptions allowed, subject to all just exceptions. The applications are disposed of.

W.P.(C) 1958/2021 & CM APPL. 5716/2021 (interim relief) W.P.(C) 1965/2021 & CM APPL. 5731/2021 (interim relief) W.P.(C) 1974/2021 & CM APPL. 5770/2021 (interim relief) W.P.(C) 1976/2021 & CM APPL. 5774/2021 (interim relief) W.P.(C) 1978/2021 & CM APPL. 5778/2021 (interim relief) W.P.(C) 1988/2021 & CM APPL. 5796/2021 (interim relief) W.P.(C) 1997/2021 & CM APPL. 5841/2021 (interim relief) W.P.(C) 2007/2021 & CM APPL. 5867/2021 (interim relief)

1. Issue notice. Mr. Vinod Diwakar, learned counsel for respondent no.1 in W.P.(C) 1958/2021, Ms. Nidhi Raman, learned counsel for respondent nos. 1 & 6 in W.P.(C) 1965/2021, Mr. Rishabh Sahu , learned counsel for respondent nos.1 & 6 in W.P.(C) 1974/2021, Mr. Satya Ranjan Swain, learned counsel for respondent no.1 in W.P.(C) 1976/2021, Mr. Piyush Beriwal, learned counsel for respondent no.1 in W.P.(C) 1978/2021, Ms. Shiva Lakshmi, learned counsel for respondent no.1 in W.P.(C) 1997/2021, and Mr. Virender Pratap Singh Charak, learned counsel for respondent no.1 in W.P.(C) 2007/2021, accept notice. Ms. Archana Pathak Dave, learned counsel, accepts notice on behalf of respondent no.2/Central Council of Indian Medicine ["CCIM"] in all the petitions. Notice to the remaining respondents be served through all permissible modes, dasti in addition.

2. The petitioners in all these writ petitions seek to challenge the orders of the Union of India [hereinafter, "the Union"], by which their applications for recognition to admit students in their Ayurveda college for the academic year 2020-2021, have been rejected. The impugned orders have been passed pursuant to recommendations received by the Union from the CCIM, and after giving show cause notices to the petitioner institutions. The petitioners submitted written representations in answer to the show cause notices, and also participated in the hearings convened by the Union. The relevant dates will be evident from the following table:

W.P.(C)	Date of CCIM	Date of show	Date of final	No. recommendation	cause
1958/2021	15.12.2020	05.01.2021	20.01.2021	04.02.2021	notice hearing order
1965/2021	15.01.2021	18.01.2021	20.01.2021	08.02.2021	1974/2021
1974/2021	15.12.2020	11.01.2021	16.01.2021	03.02.2021	1976/2021
1976/2021	15.12.2020	11.01.2021	16.01.2021	09.02.2021	1978/2021
1978/2021	25.11.2020	06.01.2021	11.01.2021	03.02.2021	1988/2021
1988/2021	12.01.2021	18.01.2021	20.01.2021	10.02.2021	1997/2021
1997/2021	04.12.2020	06.01.2021	13.01.2021	03.02.2021	2007/2021
2007/2021	04.12.2020	11.01.2021	15.01.2021	03.02.2021	

3. The principal issue which arises in the present petitions concerns the finding of the Union, premised upon the recommendation of CCIM, that certain members of the faculty of the

petitioner/institutions were not eligible for consideration or not recognised or "on paper". Other common issues concern certain inadequacies found in the documentation submitted by the petitioners, and deficiencies in the content and regular updation of their websites. These issues are amongst the issues considered by me in two interim orders dealing with other similarly placed institutions, including an order dated 08.02.2021 passed 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, which covered ten institutions, and an order dated 12.02.2021 in W.P.(C)1854/2021 [RB Ayurvedic Medical College And Hospital vs. Union of India And Ors.] and connected matters, which covered seven institutions. In those petitions, I have found that the petitioners have made out a good prima facie case on these points. The position of the present petitioners is virtually identical as far as these aspects are concerned.

4. The additional issues which arise in the present batch of petitions are considered below:

(a) In W.P.(C) 1965/2021, an additional issue arises with regard to the number of plant species available in the petitioner's herbal garden. The Hearing Committee observed that the petitioner had only submitted purchasing bills for nine herbs, and had not submitted the payment details. I have held prima facie in the order dated 12.02.2021 that, consistent with the rules of natural justice, any deficiencies in the documentation ought to have been put to the petitioner/institution, and an opportunity be given to make them good.

(b) Two additional issues have been raised in W.P.(C) 1988/2021, regarding availability of a testing laboratory and of pharmacists:

(i) With regard to the availability of the quality testing laboratory, the petitioner had submitted that the laboratory is available, and had produced photographs, copies of the stock register, and standardization report of prepared medicines. The only observation of the Hearing Committee and the Union is that "availability of quality testing lab could not be ascertained".

Ms. Dave, learned counsel appearing on behalf of CCIM, submits that, in this case, a physical visitation had actually been undertaken by the CCIM team prior to making its recommendation to the Union, and the shortcoming was conveyed on that basis. However, it is undisputed that the said recommendation of the CCIM was not communicated to the petitioner, and that the show cause notice was sent only thereafter. There is no consideration of the petitioner's reply to the show cause notice in the impugned order. Neither the Hearing Committee nor the Union has given any reason as to why the representation is disbelieved. In fact, they have not even returned a finding that the testing lab is unavailable, but only asserted vaguely that the availability of the testing lab could not be ascertained. Prima facie, I am of the view that this does not constitute sufficient ground for denial of permission.

(ii) With regard to the shortage of one pharmacist in the hospital, the institution had submitted that it had two pharmacists, both appointed in 2019 (Ms. Kiran Arya & Mr. Rishab Gupta) and that it

had recently appointed two more pharmacists (Mr.Koshlesh Shrivastav and Mr.Jayant Kumar Lal). In response, the observation of the Hearing Committee is only that there is a shortage of one pharmacist in the hospital staff. A table is provided below the aforesaid observation, giving the names and designations of certain officers of the Ministry of Ayush and the Central Council for Research in Ayurvedic Sciences. It is difficult to comprehend the correlation between the submissions of the petitioner and the observations in this regard. There is not even an attempt to consider or respond to the submission of the petitioner-institution, and a finding is returned relying on the report of the Hearing Committee.

(c) In W.P.(C) 1997/2021, the impugned order, in addition to shortages in the teaching faculty, indicates that there is a shortage of assistant matron and two pharmacists in the hospital staff required under Schedule IV to the Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016 [hereinafter, "the Regulations"]. In this regard, in the representation of the petitioners, they have relied upon the provision of Note (5) to Schedule IV of the Regulations, wherein a relaxation of 20% has been provided for grant of conditional permission. While noting the aforesaid submission, the Union has noted that 67 hospital staff are available as against 70 under the requirement of the Regulations. Despite the fact that this indicates that more than 80% of the required hospital staff was available, the Union has come to the conclusion that the concerned criterion has not been fulfilled. In addition, Mr. Vivek Singh, learned counsel for the petitioner in W.P.(C)1997/2021, also submits that the Union has failed to consider the submission that the petitioner had applied only for 60 seats, and that the hospital is a 60- bedded hospital, and not a 100-bedded hospital.

5. Other than the points noted above, all the other aspects on which the impugned orders are passed have been considered in the aforesaid interim orders dated 08.02.2021 and 12.02.2021, which apply squarely to the present case as well. In the said orders, having come to a prima facie conclusion in favour of the petitioners, I have followed the order of the Division Bench dated 04.02.2021, in LPA 49/2021 [Shivang Homeopathic College vs. Union of India & Ors.], whereby the Division Bench has granted interim relief in favour of an institution in similar circumstances. As noted in the aforesaid orders, the Division Bench has found in favour of the institution on the questions of balance of convenience, and stayed the contrary order of this Court dated 01.02.2021 in W.P.(C) 1265/2021.

6. In view of the above, the petitioners are hereby permitted to participate in the ongoing counselling.

7. This being an ad interim order, it is naturally subject to the results of the writ petitions, and the petitioners are directed to inform the prospective students accordingly.

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

9. List on 07.04.2021.

PRATEEK JALAN, J FEBRUARY 15, 2021/„hkaur