

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST.) NO. 2518 OF 2021

Devibai Narayandas Chhabada Rural Education
Society, Satara and ors.Petitioners

v/s.

Maharashtra University Health Sciences,
Nashik and ors. Respondents

Mr. Yuvraj Narvankar a/w. Mr. Adwait Agashe for the Petitioners.
Mr. Rajshekhar V. Govilkar for Respondent No.1.
Mr. Aadesh J. Sawant for Respondent No.2.
Ms. P.N. Diwan, AGP for Respondent No.3.
Mr. Rui Rodrigues i/b. Mr. Ashutosh R. Gole for Respondent No.5.

**CORAM: S.C. GUPTA &
SURENDRA P. TAVADE, JJ.**

DATED : 11th FEBRUARY, 2021.

P. C. :-

1. This writ petition, filed by a Public Trust and a Homeopathy Medical College run by it, challenges orders passed by Respondent No.5 – Ministry of AYUSH on 16/01/2021 and 29/01/2021. By these orders, after pointing out deficiencies on the part of the Petitioner's College, their proposal for conducting their 1st year degree course of BHMS was rejected by Respondent No.5.

2. When this matter appeared before us on the last date, i.e. 03/02/2021, we issued notice to the Respondents and made it

returnable today, making it clear that since mop up admission round, which is practically the last admission round, would be completed by then, in case we find *prima facie* merit in the Petitioner's case, we may consider asking Respondent No.2 – CET Cell to conduct a special admission round for the petitioner's college at today's hearing. On that basis, we have heard learned counsel for the parties today.

3. The petitioners have been running their Homeopathy College since the academic year 2017-18. For seeking permission to conduct 1st year degree course for the academic year 2020-21, the petitioners submitted an application, including Statement in Part I, an undertaking / affidavit and a bond in online mode to Respondent No.5. On this application, various discrepancies were pointed out by Respondent No.5 – Ministry, particularly in connection with staff strength and certain equipments and details. The petitioners, thereafter, submitted a communication explaining / complying with the deficiencies. Based on this submission, a hearing took place before the Hearing Committee appointed by respondent no.5 – Ministry. Despite the hearing committee making positive observations concerning the Petitioner's compliance, respondent no.5, vide decision dated 16/01/2021, once again pointed out what according to the petitioners were minor deficiencies. It was the

petitioners' case that even these deficiencies were explained / complied with by the petitioners and a fresh representation was made by them to the Ministry on 19/01/2021. In the light of this material submitted to respondent no.5 and considering that this fresh representation was not considered by the Ministry, the petitioners moved a writ petition before this Court, being Writ Petition (St.) No.836/2021. At the hearing of that petition, this Court on 22/01/2021, directed respondent no.5 to consider the fresh representation and material produced therewith by the petitioners on 19/01/2021 and take an appropriate decision within a period of one week, and disposed of the petition accordingly.

4. It is now the grievance of the Petitioners that respondent no.5 has since taken a final decision on their fresh representation and material produced on 19/01/2021 in pursuance of this Court's order dated 22/01/2021, reiterating the earlier rejection order. That decision, taken by respondent no.5 on 29/01/2021, is the subject matter of challenge in the present petition.

5. The petitioner has produced a Summary Chart of the outstanding deficiencies pointed out to the petitioners, the action taken by the petitioners' college on those deficiencies, observations

of the hearing committee based on the submission of the petitioners, further action taken by the petitioners and final impugned remarks of the Ministry in its order of 29/01/2021. The chart, which is culled out from the material taken from the averments made in the petition and material produced therewith, demonstrates the following position :-

(i) In the 1st place, each and every deficiency pointed out by the Ministry appears to us to be just a minor or insignificant deficiency.

(ii) The Ministry has pointed out deficiencies concerning the teaching staff. The age of one Dr. Yashwant Randive, who works as a Professor for the petitioners' college, was claimed to have exceeded 65 years. In response, the petitioners promoted one Dr. Shivprasad Mane, who was originally working as a reader, to the post of Professor, in place of Dr. Yashwant Randive. While hearing their submission, the hearing committee observed that as a result of this promotion, there would be deficiency in the number of lower faculty. In response, the petitioners claimed to have appointed one Dr. Tanvi Diwani as a lower faculty, i.e. Lecturer-Physiology, on

01/04/2020. In its final impugned remarks, the Ministry has claimed that this appointment was doubtful as the whole country was in a nationwide lockdown due to COVID-19 pandemic at that time. It has also raised an objection on the ground that this faculty was not mentioned at the time of filling of Part I. The Ministry has also raised an objection that as per the applicable Regulations, only staff existing by 31/12/2019 can be taken into account for academic year 2020-21. The Ministry has, accordingly, observed that there was a deficiency of staff in the Department of Physiology.

6. The so called out doubt expressed by the Ministry, concerning genuineness of the appointment is nothing but a matter of speculation pure and simple. As for non-disclosure of the faculty (Dr. Tanvi Diwani) in Original Part I, the objection, clearly, is devoid of any merit. Part I is after all the initial submission, based on which deficiencies are pointed out and colleges are allowed to either explain or supply those deficiencies. If, as a result of any deficiency, additional staff is appointed by the College, surely it cannot invite an objection that the particular member of staff was not disclosed in Original Part I. By the very nature of things, considering that due to

peculiar circumstances arising as a result of COVID-19 pandemic, admissions for academic year 2020-21 were being delayed up to today's date, there is nothing sacrosanct about the cut off date of 31/12/2019 for reckoning the strength of staff. The whole objection, which was the most significant of the ones raised by the Ministry, thus, has no merit.

7. The other objections may be briefly stated thus :-

- (a) Non-submission of affidavit of one Dr. Priyanjali Shrinivas ;
- (b) Signature of one Dr.Ajay Shedge not matching with his specimen signature ;
- (c) Inadequate number of ENT sets ; and
- (d) certain details not being reflected in Original Part I.

8. These are, as is very apparent, mere deficiencies of form. Besides, the hearing committee has accepted the engagement of Dr. Saurabh Khire, who was appointed in the place of Dr. Priyanjali, which was also reflected in Part I. The hearing committee has also accepted that the signature of Dr. Ajay Shetge after all did match with his specimen signature. As regards the availability of ENT sets, there was a mere discrepancy in the date of the bills, which was a clerical

mistake, and which has since been corrected ; the only real objection of the Ministry was that the correct date did not form part of the Original Part I.

9. As for the two remaining objections, namely, details of IPD/OPD not being updated on the college website, and non-compliance with the Employee's Provident Funds & Miscellaneous Provident Act, 1952 and ESI Act, 1948, these were evidently sorted out before the hearing committee, who has observed its acceptance at the hearing.

10. The foregoing narration makes it clear that the petitioners not only have a fair *prima facie* case for permission to conduct 1st year degree course of BHMS for academic year 2020-21, they have an overwhelming case to do so.

11. Based on the material submitted before us, we would have disposed of this petition finally but for the fact that the respondent's advocates (advocates for respondent no.5 – Ministry) have not had an opportunity to put in their reply to the petition, though material emanating from respondent no.5 – Ministry alone has been considered in the above narration.

12. On these facts, we deem it appropriate to issue Rule and grant interim relief to the petitioners. In the premises, the following order is passed :-

(a) Rule.

(b) Pending hearing and final disposal of the petition, we permit the petitioners to participate in a fresh admission round. Considering that ordinary admission rounds for the academic year 2020-21 are already over, we direct respondent no.2 – State Common Entrance Test Cell, Mumbai to hold a special round of admission for 1st year BHMS degree course seats in petitioner no.2 – college.

(c) We make it clear that any admission given in petitioner no.2 – college in pursuance of this order shall be provisional and shall abide by further orders that may be passed in the present petition.

(d) We accordingly direct the petitioners to include a statement to the above effect i.e., the provisional nature of admissions granted to students, in admission forms issued to the students.

(e) Based on the decision of this petition, it will be open to the respondent no.1 – University to pass appropriate orders regarding affiliation to Petitioner No.2 – College for academic year 2020-21 (for 1st year degree course of BHMS).

(f) Respondent No.5 – Ministry to file its reply to the petition within a period of two weeks from today.

(g) The petition to come up for final hearing on **09/03/2021** at 2:30 p.m.

(SURENDRA P. TAVADE, J.)

(S.C. GUPTE, J.)