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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2313/2021**
REHBAR AYURVEDIC AND UNANI
TIBBI MEDICAL COLLEGE HOSPITAL
AND RESERACH CENTRE Petitioner

versus

UNION OF INDIA & ORS. Respondents

+ **W.P.(C) 2316/2021**
BHAGWANT AYURVEDIC
COLLEGE AND BHAGWANT HOSPITAL Petitioner

versus

UNION OF INDIA AND OTHERS Respondents

+ **W.P.(C) 2350/2021**
PARASHAR AYURVEDIC MEDICAL
COLLEGE & HOSPITAL Petitioner

versus

UNION OF INDIA AND ANR. Respondents

Present:

For Petitioners:-

Mr. Siddharth Mittal, Ms. Shilpa G. Mittal & Mr. Prabhat Kumar,
Advocates in Item No. 43.

Mr. A. Mariarputham, Senior Advocate with Ms. Anuradha Arputham &
Mr. Avneesh Arputham, Advocates in Item No. 44.

Mr. Jasbir Singh Malik, Advocate in Item No. 58.

For Respondents:-

Mr. Virender Pratap Singh Charak, SPC with Mr. Abhishek Khanna, GP
with Ms. Shubhra Parashar, Advocates for R-1/UOI in Item No. 43.

Ms. Nidhi Raman, CGSC for R-1/UOI in Item No. 44.

Ms. Archana Pathak Dave, Ms. Vanya Gupta & Mr. Parmod Kumar
Vishnoi, Advocates for Respondent No. 2/CCIM in Item Nos. 43, 44 &

58.

Mr. Sudhanshu Kaushesh, Advocate for R-3 in Item No. 58.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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19.02.2021

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

CM APPL. 6715/2021 (exemption) in W.P.(C) 2313/2021

CM APPL. 6719/2021 (exemption) in W.P.(C) 2316/2021

CM APPL. 6872/2021(exemption) in W.P.(C) 2350/2021

Exemption allowed, subject to all just exceptions.

The applications stand disposed of.

W.P.(C) 2313/2021 & CM APPL. 6714/2021(for interim relief)

W.P.(C) 2316/2021 & CM APPL. 6718/2021(for interim relief)

W.P.(C) 2350/2021 & CM APPL. 6871/2021(for interim relief)

1. Issue notice. Mr. Virender Pratap Singh Charak, Senior Panel Counsel, accepts notice for R-1/UOI in W.P.(C) 2313/2021. Ms. Nidhi Raman, CGSC, accepts notice for R-1/UOI in W.P.(C) 2316/2021. Ms. Archana Pathak Dave, learned counsel, accepts notice for R-2/CCIM in all these petitions. Mr. Sudhanshu Kaushesh, learned counsel, accepts notice for respondent no. 3 in W.P.(C) 2350/2021. Notice to the remaining respondents be served through all permissible modes, *dasti* in addition.

2. These three petitions are filed by Ayurvedic and Unani colleges, challenging the orders of the Union of India [hereinafter, "the Union"], rejecting their applications for permission to admit students in the

academic year 2020-2021. 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:

Writ Petition No.	Date of CCIM recommendation	Date of show cause notice	Date of hearing	Date of final order
W.P.(C) 2313/2021	25.11.2020	20.01.2021	22.01.2021	12.02.2021
W.P.(C) 2316/2021	25.11.2020	07.01.2021	14.01.2021	10.02.2021
W.P.(C) 2350/2021	12.01.2021	19.01.2021	21.01.2021	11.02.2021

3. Learned counsel for the petitioners submit that the principal issues raised in these petitions are covered in their favour by interim orders granted by this Court in favour of other similarly placed institutions, including the following orders:

(a) 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.

(b) 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.

(c) Order dated 15.02.2021 in W.P.(C) 1958/2021 [*Dr Anar Singh Ayurvedic Medical College and Hospital vs. Union of India and Ors.*] and connected matters.

(d) Order dated 17.02.2021 in W.P.(C) 2215/2021 [*Shri Laxmi Narayan Ayurvedic College vs. Union of India and Ors.*] and connected

matters.

4. In the aforesaid writ petitions, the Court was concerned with challenges to similar denial orders passed against other institutions. Following the approach indicated by the order of the Division Bench dated 04.02.2021 in LPA 49/2021 [*Shivang Homeopathic College vs. Union of India & Ors.*], in respect of a homeopathic college, I had granted interim relief on the finding that the petitioners had made out a *prima facie* case in their challenge to the impugned orders. By the aforesaid order dated 04.02.2021, the Division Bench had held that the questions of balance of convenience and irreparable harm were in favour of the appellant-institution, and stayed the order of this Court dated 01.02.2021 in W.P.(C) 1265/2021 to the contrary.

5. Following the same approach, I proceed to examine the question of *prima facie* case in the three petitions listed today:

(a) The principal ground upon which the petitioners' applications have been rejected in all these cases is that various members of the petitioners' faculty have been considered to be "ineligible" or "on paper" or "unrecognised" due to registration with a State Council other than the State where the college is located, by the CCIM. By the aforesaid interim orders, I have found that the show cause notices issued to the petitioners did not indicate the identity of particular faculty members or the nature of the objection of the respondents to their inclusion. On this basis, I had recorded a *prima facie* finding in favour of the petitioners therein. The impugned orders in the present cases are not distinguishable from the orders impugned in those petitions. The issue of *prima facie* case, on this aspect, is therefore decided in favour of the petitioners.

(b) In some of the cases, the respondents have disregarded members of the faculty and staff of the petitioner-institutions, who were appointed after 31.12.2019, being the cut-off date for the purposes of recognition for the academic year 2020-2021. At the same time, the respondents have also disregarded those faculty who were in the employment of the petitioner-institutions as on 31.12.2019, but have been found ineligible or unrecognised by the CCIM in December, 2020 and January, 2021. I have held in the aforesaid interim orders that this displays a lack of parity in the treatment of faculty members who had been appointed after the cut-off date and those who had been rendered ineligible after the cut-off date. The selective application of the cut-off date is, in my *prima facie* view, unreasonable, as is the denial of recognition on the basis of directions of the CCIM in December, 2020 and January, 2021, without giving the institutions sufficient time to employ replacement faculty.

(c) A further common issue relates to deficiency in the documents supplied by the petitioner to the Hearing Committee. Although voluminous documentation was submitted by the representatives of the petitioners, the Union, relying upon the observations of the Hearing Committee, has pointed to the petitioner's omission to submit various documents which it considered relevant. In the facts and circumstances of the present cases, I have taken the *prima facie* view in the aforementioned interim orders that any deficiency or inadequacy in the documentation submitted by the petitioners ought to have been communicated to them, so that they could remedy the defects. It may be noted that in all these cases, the hearing notices prescribed a relatively short period (between two and seven days) for the materials to be submitted, whereas the orders

were passed after the lapse of a relatively long period, during which the petitioners could have been asked to supply the missing documents.

(d) In some of the cases, defects have been found with regard to the availability, adequacy of the information and the updation of the websites of the petitioner-institutions. In the aforesaid interim orders, I have considered this issue also, and have come to the conclusion that this is a remediable defect, and denial of recognition on the basis of this defect is a disproportionate consequence.

(e) In W.P.(C) 2313/2021, wherein the petitioner-institute had sought permission for the UG BUMS course, an additional ground is taken regarding the number of plant species available in the herbal garden of the petitioner-institution. It is recorded in the impugned order dated 12.02.2021 that the petitioner-institution had 160 plant species. The show cause notice dated 20.01.2021 alleged that the petitioner-institution had only 160 species as against the requirement of 250 species under the Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Unani Colleges and attached Hospitals) Regulations, 2016. Note (2) to Schedule III of the said Regulations however provides that conditional permission may be granted on the availability of 150 species. As the petitioner-institution admittedly has 150 species, a *prima facie* case is made out in its favour.

(f) In W.P. (C) 2316/2021, an additional ground is taken that only 170 plant species are available in the herbal garden of the petitioner. In this regard, the petitioner has submitted that it has purchased 99 more plants after the cut-off date of 31.12.2019, and has also filed the bill and proof of advance payment in this regard. The impugned order appears to have

failed to consider that Note (2) to Schedule III of the Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016, conditional permission can be granted even if the institution has 150 species of medicinal plants. The petitioner has therefore made out a *prima facie* case in its favour on this count.

(g) In W.P.(C) 2350/2021, an additional ground is taken regarding the non-availability of biometrics. The petitioner has submitted that although it has biometrics (and supported this assertion with photographic evidence), it had stopped using biometrics in order to avoid the spread of contact infection in the wake of the COVID-19 pandemic. The respondents have disbelieved the aforesaid contention on the basis that the petitioner has not produced the bill of machine and the attendance of 2019. In my view, for the reasons stated above, the petitioner ought to have been given an opportunity to produce the aforesaid documents. Neither in the show cause notice, nor at any other stage, has a specific requirement been made with regard to the submission of these particular documents.

6. In view of the aforesaid, I find that the petitioners in these three cases have made out a good *prima facie* case for grant of an interim order. Following the observations of the Division Bench and its order dated 04.02.2021 passed in LPA 49/2021, the petitioners are hereby permitted to participate in the ongoing counselling process.

7. This being an *interim* order, it is naturally subject to the result 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 19, 2021

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