

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 2803 of 2021**

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**SWARNIM STARTUP AND INNOVATION UNIVERSITY****Versus  
UNION OF INDIA**

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Appearance:

MR DHAVAL DAVE, SR COUNSEL with MR JIGARM PATEL(3841) for the Petitioner(s) No. 1  
MR SIDDHARTH DAVE, ADVOCATE for MR DEVANG VYAS(2794) for the Respondent(s) No.  
1,2  
MR. KMANTANI(6547) for the Respondent(s) No. 3

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**CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV****Date: 20/02/2021****CAVORDER**

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing and setting aside the order dated 2.2.2021 by which the college namely; Arihant Homeopathic Medical College and Research Institute has been denied extension of permission for the academic year 2020-21.

2. The facts in brief are as under:

\* The Petitioner is a private university. It *inter alia* runs a college in the name of Arihant Homeopathic Medical College & Research Institute ("College" for short). The College is engaged in imparting education in the discipline of Homeopathy at the level of graduation leading to the qualification of B.H.M.S. The College was

established in the academic year 2017-18 with the intake capacity of 100 seats.

- \* The College submitted the requisite details in the manner and within the time frame prescribed by the Respondent Nos. 1 & 2 for extension of permission for the academic year 2020-21. This is not in dispute.
- \* Thereafter, the College received from Respondent No. 1 the hearing notice dated 11<sup>th</sup> November, 2020. Vide this notice the College was called upon to render its explanation in writing in respect of the deficiencies alleged therein against the College and avail the opportunity of hearing before the Designated Hearing Committee of Respondent No.1 on the date stipulated therein.
- \* The College, thereupon, submitted its written submission supported by the documents dealing with the deficiencies alleged against it and also made oral submissions before the Designated Hearing Committee of Respondent No.1.
- \* Thereafter, the College was served with the impugned order dated 2<sup>nd</sup> February, 2021 passed by Respondent No.1. Vide this order the College was denied extension of permission for the academic year 2020-21.

3. Mr. Dhaval Dave, learned senior counsel appearing with Mr. Jigar Patel states that the impugned order passed by Respondent No.1 is wholly unsustainable. He submits as under:

a. The impugned order is signed by the Director of Respondent No.1. It is recorded therein that it was passed with the approval of the Competent Authority. However, neither of them was part of the Designated Hearing Committee. This assumes significance as the impugned order is based upon findings independently recorded by Respondent No.1. Needless to mention that if the observations of the Designated Hearing Committee along with the written submissions the College were to be sent back to the Central Council of Homeopathy (CCH) for its recommendations and thereupon, if the recommendations of CCH were to be accepted for passing the impugned order by someone in the set up Respondent No.1 who was not part of the Designated Hearing Committee, the hearing accorded to the College became an empty formality. This completely vitiates the impugned order. (***Parul University V/s Union of India & Anr. 2017 SCC Online Guj 77 – Paragraphs 30 & 31, SLP (C) 1390-1391 preferred against the same rejected vide order dated 5<sup>th</sup> February, 2018***)

- b. Further to the aforesaid, if the observations of the Designated Hearing Committee along with the written submissions of the College were to be sent back to the CCH for its recommendations thereon, the College was required to be accorded further opportunity of hearing by Respondent No.1 before taking any decision on such recommendations of CCH. Thus, the impugned order is in true sense without according hearing to the College.
- c. The impugned order is a non-speaking order in true sense. Because no reasons are assigned in the impugned order in support thereof.
- d. Realizing the aforesaid fatal lacuna in the impugned order, Respondent No. 1 attempted to supply reasons to the impugned order by filing an affidavit in reply (Page: 150 – relevant pages 155). However, it is impermissible to supply reasons to the order for sustaining the order. *(Hindustan Petroleum Corporation V/s Darus Shapur Chenai & Ors. (2005) 7 SCC 627 – Paragraphs 24 to 27.)*
- e. Without prejudice to the aforesaid, even if the deficiencies which are referred to in

the affidavit-in-reply of Respondent No. 1 as the reasons to support the impugned order are read as part of the impugned order, it is not possible to sustain the impugned order. This is evident from the following.

- f. The first deficiency alleged against the College is with regard to in all twelve teachers who were found to be ineligible as their signature was allegedly found to be mismatching in various documents referable to their appointment in the College and their affidavit for allotment of Teacher Code. However, all these twelve teachers filed their affidavit before the Designated Hearing Committee confirming their signature on all the documents in question. In fact, said teachers remained present before the Designated Hearing Committee confirming their signature on all the documents in question. (Page 18 read with 52). Needless to mention that once the person whose signature is doubted confirms the same, the doubt has to end. Further, the signature matching demands expertise to reach any conclusion thereon. ***(Thiruvengadam Pillai V/s Navaneethammal & Anr. (2008) 4 SCC 530 – Paragraph 16)***

- g. Further, in all eight teachers from

aforesaid twelve teachers were with the College in the previous academic year 2019-20. Accordingly, during the inspection for the academic year 2019-20 they were confirmed as teachers working in the College.

- h. The second deficiency alleged against the College is with regard to ineligibility of Dr. Gokuldas Sarada as teacher on the ground that he is over-aged. However, before the Designated Hearing Committee, it was pointed out that Dr. Gokuldas reached the age of 65 years on 26<sup>th</sup> September, 2020 and in his place Dr. Prabhakar was appointed. Dr. Gokuldas was working as only the advisor since then. (Page 20 read with 55).
- i. The third deficiency alleged against the College is with regard to the appointment of Dr. Arti Raj. The objection against Dr. Arti Raj as teacher (Lecturer) was on the ground that her post graduate degree (M.D.) in Homeopathy was not included in the second Schedule of the Homeopathy Central Council Act, 1973 (HCC Act). However, the upgradation of second Schedule to the HCC Act is not within the control of either the College or the said faculty. However, this apart, later on vide notification dated 3<sup>rd</sup> December, 2020, the second Schedule to HCC

Act was upgraded to include the name of the concerned college from where Dr. Arti Raj obtained her post graduation. (Page 22 read with 57 and 147).

- j. The fourth deficiency alleged against the College is with regard to lack of adequate teaching experience of Dr. Madhuri Bhatt (Professor) and Dr. Yashodhan Wadekar (reader). Before the Designated Hearing Committee, the requisite the documentary evidence was placed evidencing the factum of the requisite teaching experience in respect of both faculties. (Page 19 and 21 read with 126 to 142)
- k. The fifth deficiency alleged against the College is with regard to non-availability of faculty in the department of Pathology. Before the Designated Hearing Committee it was pointed out that in department of Pathology Dr. Niraj Gupta and Dr. Nidhi Bhavsar are working as reader and lecturer since 31<sup>st</sup> July, 2018 and 1<sup>st</sup> May, 2018 respectively. (Page 52). Besides this, they were considered as teachers in the earlier academic years.
- l. Without prejudice to the aforesaid, even if the impugned order was warranted, the impugned order would fail to hold the field

for not following the procedure mandated by section 19 of the Homeopathy Central Council Act, 1973.

- m. As such, while dealing with the orders more or less identical to the impugned order, the Honorable Delhi High Court passed interim orders dated 4<sup>th</sup> February, 2021 (LPA 49/2021), 8<sup>th</sup> February, 2021 (W.P. (C) 1539/2021 & others) and 10<sup>th</sup> February, 2021 (W.P.(C) 1794/2021) in batch of matters granting extension of permissions to the concerned Colleges for the academic year 2020-21. Even Honourable Bombay High Court has also passed similar interim order dated 27<sup>th</sup> January, 2021 (W.P. (Stamp) 1760/2021).
- n. Further, the grant of extension (renewal) of permission to an existing college stands on a different footing as compared to the grant of new permission to start the college. In case of former, even if some deficiencies are noticed, time needs to be granted to rectify rather than denying extension of permission. Hence, the alleged deficiencies, though not in existence as aforesaid, even if presumed to be there, warranted time to the College to rectify rather than the impugned order. (**Royal Medical Trust V/s Union of India (2015) 10 SCC 19 – Paragraph 29**).



- o. The impugned order, if viewed in totality, is cryptic, mechanical, without considering the submissions of the College and suffering from the vice of total non-application of mind warranting interception in the present petition. (***Jagat Narain Subharti Charitable Trust & Anr. V/s Union of India & Ors. (2017) 16 SCC 666*** – ***Paragraph 16 & Kanachur Islamic Education Trust V/s. Union of India (2017) 15 SCC 702*** – ***Paragraphs 18 to 20***)
- p. The judgments relied upon by Respondent No.1 in its affidavit-in-reply are in respect of the cases where multiple deficiencies of grave and non-rectifiable nature were noticed to which the concerned colleges were having no cogent answer in defence. Hence, the same have no application to the impugned order. Here, it deserves to be mentioned that the said judgments can never be construed as laying down an absolute proposition of law that, regardless of the nature of order, no interference is possible once the permission is denied to the college. Needless to mention that the proposition sought to be propounded by Respondent No.1 in this regard, if accepted, would mean immunizing the impugned order from the

purview of judicial review under Article 226 of the Constitution of India.

- q. In the last, the contention of Respondent No.1 that grant of interim relief in the present petition is as good as final relief has no potential to deny interim relief to the Petitioner. When the facts are such that non-grant of interim relief would tantamount to dismissal of the petition, the interim relief, though akin to final relief, needs to be granted. (***Deoraj V/s State of Maharashtra (2004) 4 SCC 697 – Paragraph 12***)
- r. Even Honourable Delhi High Court has recorded in the aforesaid orders that, apart from strong *prima facie* case, the balance of convenience also leaned in favour of colleges warranting interim orders.

4. Mr.Siddharth Dave appeared for Mr.Devang Vyas learned Additional Solicitor General for the respondent nos.1 and 2 made the following submissions:

- \* Mr.Siddharth Dave would submit that the order impugned in the petition is just and proper. He would invite the attention of the Court to the regulations i.e. MSR,

2013. He would submit that Regulation 3(1) requires the college to fulfill the minimum standards in context of teaching facilities referred to in Regulations No.4 to 13. Regulation No.7 prescribes requirement of teaching hospital. Regulation no.9 provides for requirements of college which prescribes that there shall be a minimum teaching faculty as per Schedule-IV for the course. He would invite the attention of the Court to schedule-IV and V of the Regulations together with Regulation No.12 to submit that for intake upto 100 requires the requisite teaching staff. Only full time faculty is required at all levels.

- \* He would rely on the amended regulations of 2019 to submit that it was incumbent upon an existing college to make an application in Form-I which was mandatory providing details which the college had not provided which was prerequisite for getting affiliation. He would counter the submission of Shri Dhaval Dave in context of Section 19 of the Homeopathy Central Council Act and submit that the impugned order is not in context of withdrawal of recognition, but is in compliance of Section 12C of the Act, by which, permission for certain existing medical college is to be made. He would invite the

attention of the Court to the impugned order and submit that the deficiencies listed therein were material enough and ought to have been complied with. It was a mandatory requirement under the Rules. Nothing was produced by the institution on record to show that in the previous years there was compliance. There was no prejudice inasmuch to the show cause notice listing out shortcomings the petitioner was invited to respond and the authority found them to be insufficient compliance. The order therefore cannot be said to be an unreasoned order.

\* With regard to the submissions cited by Shri Dhaval Dave in case of **Kanachur** (supra), Shri Siddharth Dave relied on the decision in case of **Kalinga Mining Corporation v. Union of India and others** reported in [(2013) 5 SCC 252] and submitted that the order was not bad as institutional hearing is a recognized principle. He would also rely on the decision of the Delhi High Court in the case of **Buddhi Vidhatajan Kalyan Samiti v. Union of India and Anr.** reported in **LAW (DLH) 2016 12 182**, particularly para 26 thereof. He would submit that the decision of **Parul University v. Union of India** reported in **2017 SCC OnLine Guj 77**, was not

applicable. He would reiterate that Kanachur (supra) was considered in **Royal Medical Trust and Another v. Union of India and Another** reported in [(2017) 16 SCC 605], where it was held that the judgment applies in the facts of the case. He would rely on paras 26 to 33 thereof. Mr.Dave would rely on the decision in the case of **J&K Housing Board and another v. Kunwar Sanjay Krishan Kaul and others** reported in (2011) 10 SCC 714 to submit that things have to be done in a particular manner. Reliance was also placed on the decision in case of **Manoharlal Sharma v. Medical Council of India and others** reported in (2013) 10 SCC 60. Reliance was also placed on the decision in case of **Karpagam Faculty of Medical Sciences and Research v. Union of India and others** reported in (2017) 16 SCC 568, particularly para 17 to 22 to submit that compliance with the regulations was a prerequisite and therefore the order impugned in the petition would not suffer from any effect of either non application of mind and/or being a non-speaking order.

5. Having considered the submissions made by the learned advocates for the respective parties, perusal of the impugned order would indicate the

following deficiencies:

**Deficiencies referred to in the impugned order dated 2<sup>nd</sup> February, 2021 as recommended by Central Council of Homeopathy and stated to have weighed with Respondent No. 1 for passing the impugned order:**

“With reference to Ministry’s letter dated 05.01.2021, I am directed to inform you that documents have been examined with available documents at Council for its authenticity, applicability and eligibility of the concerned teachers.

The decision of Executive Committee of this Council was based on the documents submitted by the college in Part 1 information and documents available for teacher code. On examining the documents submitted at the time of hearing, it is observed that the submitted documents are not satisfactory and no justification has been given for mismatch of signature for 12 teachers.

Moreover, four teachers cannot be considered as Dr. Gokuldas Shankarlalji Sarda has crossed superannuation age, Dr. Arti Raj Lecturer in Practice of Medicine not eligible as her Master Degree does not

come under 2<sup>nd</sup> schedule of HCC Act and Dr. Madhuri n. Bhatt, Professor in Practice of Medicine and Dr. Yashodhan P. Wadekar Reader in Pharmacy has deficient total teaching experience.

Further, on examination it is observed that Dr. Kanupriya, Lecturer can be considered as available in the Department of Organon of Medicine however no faculty is available in the Department of Pathology.

Council therefore reiterate their decisions conveyed vide letter no. 15-8/2020-CCH (visitation matter) / 3506 dated 04.11.2020, as status of the college remains same as not meeting the MSR."

6. As far as the first deficiency is concerned from perusal of the impugned order would indicate that discrepancies were found in the documents of teachers inasmuch as, there was a mismatch of signatures. Perusal of the memo of the petition together with the submissions made before the designated hearing committee would indicate that the college had pointed out that details were given that there were three eligible teachers in the department of organom and two eligible teachers in the department of pathology. These details were submitted in part I on 29.7.2020. These teachers were also present during the

inspection carried out by the inspectors for the academic year 2019-20, when they were considered eligible. As far as objection to Dr. Tanuja Boardia, it was specifically pointed out that in place of Dr. Tanuja who was relieved they had appointed one Dr. Amit Banerjee on 2.11.2020. Even Dr. Niraj Sohanlal Gupta and Dr. Nidhi Bhavsar were wrongly considered ineligible. In fact, 12 teachers had filed their affidavit before the designated hearing committee. Reliance on the decision in the case of **Thiruvengadam Pillai (Supra)** is rightly applicable.

- \* With regard to the second deficiency regarding the ineligibility of Dr. Sharda being over age, it was categorically pointed out that she had been replaced by one Dr. Prabhakar.
- \* 3rd deficiency was in context of Dr. Aarti Raj. The objection was that her name was not included in the second schedule of the Act. As rightly pointed out by Shri Dhaval Dave, learned Sr. Counsel that it was not within the control that either the college or the faculty for upgradation of the second schedule.
- \* Regarding the 4th deficiency regarding lack of adequate teaching experience of Dr. Madhuri Bhatt and Dr. Yashodhan Vadekar requisite details of teaching experience was placed before



the hearing committee. It was pointed out that Dr. Vadekar had 7 years experience.

- \* Regarding the 5th deficiency pertaining to non availability of faculty in the department of pathology. It was pointed out that Dr. Niraj Bhatia and Dr. Nidhi Bhavsar were working as lecturers and readers since 2018.
7. All these deficiencies therefore aptly dealt with and, therefore, in the opinion of this Court there was no reason why by the impugned order denial of extension was not granted.
8. Accordingly, the petition is **allowed** in terms of prayers in terms of paragraph No.7(A) and with a direction to consider Arihant Homeopathic Medical College and Research Institute, a constituent college of the petitioner University as eligible to grant admissions to students in BHMS Course with intake capacity of 100 students for academic year 2020-21 through Admission Committee for Professional Undergraduate Medical Education Courses - Respondent No.3.
9. The **Registry** to communicate this order through email.

(BIRENVAISHNAV,J)

\*\*\*VATSAL