

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 4709 of 2022****With****CIVIL APPLICATION (FOR MODIFICATION OF ORDER) NO. 2 of 2022****In R/SPECIAL CIVIL APPLICATION NO. 4709 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

SWARNIM STARTUP AND INNOVATION UNIVERSITY

Versus

THE UNION OF INDIA

Appearance:

MR D.C.DAVE, LD.SR.ADV WITH MR JIGAR M PATEL(3841) for the
Petitioner(s) No. 1

MR ANKIT SHAH(6371) for the Respondent(s) No. 1,2,3

NOTICE SERVED BY DS for the Respondent(s) No. 4

CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA**Date : 13/04/2022****ORAL JUDGMENT**

1. Heard learned Senior Advocate Mr.D.C.Dave with learned advocate Mr.Jigar M. Patel for the

petitioner and learned advocate Mr.Ankit Shah for the respondent Nos.1 to 3.

2. Learned Senior Advocate Mr.D.C.Dave has tendered a draft amendment dated 13.04.2022. The same is allowed in terms of the draft. To be carried out forthwith.

3. **Rule**, returnable forthwith. Learned advocate Mr.Ankit Shah waives service of notice or rule on behalf of the respondent Nos.1 to 3.

4. The petitioner has filed this petition under Article 226 of the Constitution of India for quashing and setting aside three orders dated 08.12.2021 passed by the Medical Assessment and Rating Board for Homeopathy reducing the intake capacity to 60 seats from 100 seats for Under Graduate (BHMS) Course for the Academic Year 2021-2022, the order dated 3rd February, 2022 passed by the Secretary of National Commission for Homeopathy confirming the order dated 08.12.2021 and order dated 29th March, 2022 passed by the Director of Ministry of Ayush confirming the orders passed by the Board as well as the Commission.

5. The brief facts of the case are as under :

5.1. The petitioner is a private University running the College in the name of Arihant

Homeopathic Medical College and Research Institute (for short 'the College'). The College is engaged in imparting education in discipline of Homeopathy at the level of Graduation leading to the qualification of BHMS. The College was established in the Academic Year 2017-2018 with the intake capacity of 100 seats.

5.2. The permission granted to the College came to be extended for the subsequent years and the last extension of permission was granted vide order 02.05.2019 with intake capacity of 100 seats for Academic Year 2019-2020.

5.3. The College was denied renewal of permission for Academic Year 2020-2021 and therefore, the petitioner preferred Special Civil Application No.2803 of 2021. This Court vide order dated 20th February, 2021 allowed the Writ Petition directing the respondents to issue letter of permission to the College for Academic Year 2020-2021 with intake capacity of 100 seats.

5.4. The College submitted Standard Information Form (Part-I) on the designated portal of the erstwhile Central Council of Homeopathy on 15th June, 2021 for the renewal of permission for the Academic Year 2021-2022.

5.5. On 05.11.2021, the Medical Assessment and Rating Board for Homeopathy and National

Commission for Homeopathy (for short 'the Board') issued the show-cause notice dated 05.11.2021 calling upon the College to attend the hearing through video conference on 09.11.2021 before hearing committee of the Board to represent its case for grant of renewal of permission with intake capacity of 100 seats of the College for Academic Year 2021-2022.

5.6. The show-cause notice issued to the petitioner contained various deficiencies which were explained by the College.

5.7. The show-cause notice dated 05.11.2021 was received by the College on 08.11.2021 and request was made through Email for differing the hearing to another date which was granted and the hearing fixed, was extended to 15.11.2021.

5.8. On 15.11.2021, the petitioner filed detailed written submissions explaining that no deficiency as noted in the show-cause notice existed in the set up of the College. The reply and written statements were also accompanied with the supporting documents.

5.9. The Board granted renewal permission to the College by order dated 08.12.2021 reducing intake capacity to 60 seats from 100 seats.

5.10. The petitioner therefore being aggrieved and dis-satisfied by order dated 08.12.2021

preferred an Appeal under Section 24(3) of the National Commission for Homeopathy Act, 2020 (for short 'the Act, 2020') before the National Commission for Homeopathy (for short 'the Commission').

5.11. The Commission passed an order dated 3rd February, 2022, rejecting the Appeal filed by the petitioner without giving an opportunity of hearing and confirmed the order dated 08.12.2021 passed by the Board.

5.12. The petitioner therefore being aggrieved and dis-satisfied vide order dated 3rd February, 2022, preferred Second Appeal before the Ministry of Ayush, Central Government as provided under Section 9(6) of the Act, 2020 through Email on 9th February, 2022 and hard copy was submitted on 11th February, 2022.

5.13. According to the petitioner, however, the Second Appeal was not heard in spite of the fact that the admission process for Academic Year 2021-2022 has started, and therefore the petitioner preferred this petition.

5.14. On 8th March, 2022, this Court passed the following order :

"Heard learned Senior Advocate Mr.Dhaval Dave assisted by learned advocate Mr.Jigar M. Patel for the petitioner.

It was submitted by learned Senior Advocate Mr.Dave that the Second Appeal filed by the petitioner is pending before the respondent No.1 Ministry of Ayurveda, Yoga and Naturopathy since 9th February, 2022 and the second round of admission is over.

Considering the above submissions, issue Notice returnable on 11th March, 2022.

Learned advocate Mr.Patel is permitted to serve advance copy to the Office of the learned Additional Solicitor General Mr.Devang Vyas so as to assist the Court on the next date of hearing.

Direct service today is permitted."

5.15. Thereafter, on 11th March, 2022, learned advocate Mr.Siddharth Dave appearing for the respondents, under instructions, submitted that the Appeal filed the petitioner would be heard by the Authority within ten days.

5.16. However, the Appeal was not heard and therefore, following order was passed on 22nd March, 2022 :

"Heard learned Senior Advocate Mr.Dhaval Dave assisted by learned advocate Mr.Jigar Patel for the petitioner and learned advocate Mr.Ankit Shah for the respondent No.1.

This Court passed the following order on 11th March, 2022 :

"Heard learned Senior Advocate Mr.Dhaval C. Dave for learned advocate Mr.Jigar M. Patel for the petitioner and learned advocate Mr.Siddharth Dave for the respondents.

Learned advocate Mr.Siddharth Dave, under instructions, submitted that the Appeal filed by the petitioner shall be decided by the respondent-Authority after giving an opportunity of hearing to the petitioner within a period of ten days from today.

Stand over to 22nd March, 2022."

In spite of aforesaid order, neither the opportunity of hearing is given nor the order is passed by the respondent No.1 - Secretary (AYUSHA). In such circumstances, the Secretary (AYUSHA) is directed to remain present before this Court on 23rd March, 2022 at 11:00 AM.

Learned advocate Mr.Anikit Shah, who appears for the respondent No.1 is directed to communicate this order forthwith to the Secretary (AYUSHA) so as to enable him to make arrangement to appear before this Court.

Stand over to 23rd March, 2022. Direct service is permitted, today through E-mail."

5.17. On 23rd March, 2022, considering the application filed by the respondent Nos.1 to 3, following order was passed :

"Heard learned Additional Solicitor General Mr.Devang Vyas with learned advocate Mr.Ankit Shah for the applicants-original respondent Nos.1 to 3 and learned Senior Advocate Mr.D.C.Dave with learned advocate Mr.Jigar M. Patel for the opponent-original petitioner No.2.

1. This application is filed with the following prayers :

"a) This Hon'ble Court be pleased to admit and/or allow this application;

b) This Hon'ble Court be please to extent the time limit as stated by the applicant vide order dated 11.03.2022 to further one week from 24.03.2022;

c) This Hon'ble Court may graciously be please to dispense with the Personal presence of the Secretary (AYUSHA) as directed by order dated 22.03.2022, in the interest of justice;

d) This Hon'ble Court may also dispense with the affidavit of the applicant as the applicant is made overnight and no additional facts are brought on record.

e) This Hon'ble Court be pleased to grant such other and further relief as this Hon'ble Court may deem just, fit and expedient, in the interest of justice."

2. This Court passed the following order on 22nd March, 2022 :

"Heard learned Senior Advocate Mr.Dhaval Dave assisted by learned advocate Mr.Jigar Patel for the petitioner and learned advocate Mr.Ankit Shah for the respondent No.1.

This Court passed the following order on 11th March, 2022 :

"Heard learned Senior Advocate Mr.Dhaval C. Dave for learned advocate Mr.Jigar M. Patel for the petitioner and learned advocate Mr.Siddharth Dave for the respondents.

Learned advocate Mr.Siddharth Dave, under instructions, submitted that the Appeal filed by the petitioner shall be decided by the respondent-Authority after giving an opportunity of hearing to the petitioner within a period of ten days from today.

Stand over to 22nd March, 2022."

In spite of aforesaid order, neither the opportunity of hearing is given nor the order is passed by the respondent No.1 - Secretary (AYUSHA). In such circumstances, the Secretary (AYUSHA) is directed to remain present before this Court on 23rd March, 2022 at 11:00 AM.

Learned advocate Mr.Anikit Shah, who appears for the respondent No.1 is directed to communicate this order forthwith to the Secretary (AYUSHA) so as to enable him to make arrangement to appear before this Court.

Stand over to 23rd March, 2022. Direct service is permitted, today through E-mail. "

3.1. Learned Additional Solicitor General Mr.Vyas submitted that by this Application, the applicant No.1 has tendered an unconditional apology for not complying with the orders passed by this Court on 11th March, 2022. It was submitted that there was no intention on part of the applicant No.1 to disregard the order passed by this Court. Learned Additional Solicitor General Mr.Vyas pointed out that personal hearing is granted to the original petitioner on 24th March, 2022 at 10:30 AM and the order shall be passed by the applicant No.1 on or before 30th March, 2022.

3.2. It was therefore, prayed that the presence of the applicant No.1 may kindly be dispensed with in view of the averments made in the application. It was also pointed out by learned Additional Solicitor General that the responsible Officer of the applicant No.1 is present before the Court.

4. Considering the above submissions, the time limit, as stated in the order dated 11.03.2022, is extended up to 30th March, 2022 and the personal presence of the Secretary, AYUSH, as directed by order dated 22nd March, 2022, is dispensed with.

5. The application is accordingly disposed of. Registry to list the Special Civil Application

No.4709 of 2022 on 31st March, 2022."

5.18. As per the order dated 23rd March, 2022, the order dated 29th March, 2022 was passed by the Ministry of Ayush confirming the order passed by the Board as well as the Commission which is also challenged by way of amendment in the petition.

5.19. On 1st April, 2022, when the matter was taken up for hearing, the following order was passed :

"Heard learned Senior Advocate Mr.D.C.Dave with learned advocate Mr.Jigar M. Patel for the petitioner and learned advocate Mr.Ankit Shah for the respondents.

Learned advocate Mr.Ankit Shah, under instructions, submitted that the date for admission is extended up to 23rd April, 2022. It was further submitted that the fresh inspection of the petitioner-Institution shall be carried out by the respondent-Authority within a period of ten days from today.

*Stand over to **12th April, 2022."***

5.20. Learned advocate Mr.Ankit Shah for the respondent Nos.1 to 3 has preferred a Civil Application No.2 of 2022 with the following prayers :

"A) Your Lordships may be pleased to admit and allow this application.

8) Your Lordships may be pleased to modify the order dated 01/04/2022 passed by this Hon'ble Court in SCA No.4709/ 2022.

C) Such other and further orders as this Hon'ble Court may deem just, fit and expedient be passed in favour of the applicants."

5.21. In the aforesaid Civil Application, following averments are made :

"3 and 4 That in the meantime, this Hon'ble Court vide order dated 01.04.2022 has directed the Applicants to conduct the inspection of the Opponent No.1 College. A copy of the said order dated 01.04.2022 passed in SCA No.4709/2022 is hereto annexed and marked as ANNEXURE.-A.

4. That this Hon'ble Court has passed the impugned order dated 01.04.2022 only because the cut-off date for taking admission in UG course is 23.04.2022. The present Applicants feels duty bound to bring such aspects to the notice of the Hon'ble Court by way of present application seeking review of the order dated 01.04.2022 passed by this Hon'ble Court in SCA No.4709 of 2022 on the following main amongst other grounds that may be urged at the time fo hearing.

GROUNDS

A. That this Hon'ble Court vide impugned order dated 01.04.2022 has essentially directed the Respondent authorities to conduct the physical inspection. It is respectfully submitted before this Hon'ble Court that all the required process for the Academic Year 2021-2022 has already been completed and process for granting permission for the Academic Year 2022-2023 has already been started. Furthermore, several opportunities have already been granted through the hearings given by the MARBH, NCH and the Union of India to the Respondent No.1 College. It is further to be submitted that as per the Regulation, the normal time limit for fulfilling the minimum requirement for the Academic Year 2021-2022 was 31.12.2020, however, considering the COVID-19 pandemic situation, the said requirement was extended till June 2021 and therefore, the Respondent No.1 College had submitted the Standard Information Form

on 15.06.2021 which was also considered by the NCH. Thus relaxation of approx. 06 months has already been provided by the NCH. No further relaxation is permissible as per Act/Regulations at this stage for the Academic Year 2021-2022. Therefore, inspection conducted at this stage shall only be considered for the Academic Year 2022-2023. It is respectfully submitted that there are more than 700 Ayurveda and Homeopathic Colleges and assessing and granting of permission of the Colleges is a regulatory exercise which is required to be done in time bound manner. Therefore, for every process, there are prescribed time schedules in order to complete the exercise in a time bound manner.

B. That this Hon'ble Court may appreciate that the Respondent No.1 College has already been examined properly by the MARBH and NCH on the basis of the Standard Information Form. When the MARBH examined the SIF submitted by the Respondent No.1 College, it has observed various deficiencies and therefore, hearing opportunity was granted. However, the Respondent No.1 College has failed to substantiate its claim of fulfilling the minimum standard requirements for getting permission with intake capacity of 100 seats. Therefore, at this juncture, the Respondent No. 1 College has got the first chance to present their chance and to satisfy the MARBH that they were eligible to get permission for 100 seats. However, the Respondent No.1 College has severely failed in satisfying the NCH. Thereafter the case of the Respondent No.1 College was again examined by the NCH whereby the NCH has observed that the Respondent No.1 College has failed to fulfil the eligibility conditions for getting permission for 100 seats for the Academic Year 2021-2022.

C. Because this Hon'ble Court may appreciate that in compliance of the order dated 11.03.2022 passed by this Hon'ble Court, the Respondent No.1 College has again got the hearing opportunity by the Appellant Ministry where the Appellant Ministry has properly examined the case of the Respondent No.1 College. While examining the case of the Respondent No.1 College, the Appellant Ministry came to the conclusion that Respondent No.1 College has failed to fulfill the minimum standard requirements for getting

permission with intake capacity of 100 seats and therefore, the Appellant Ministry has dismissed the second appeal.

D. Because this Hon'ble Court may appreciate that the Respondent No.1 College has been properly heard and has already got the various chances to rectify the defects which the Respondent No.1 College has failed to do. Therefore, physical inspection at this stage when the admission is already going on shall make the entire exercise futile and shall simultaneously open the Pandora box and other colleges may also claim for physical inspection.

E. Because this Hon'ble Court may appreciate that appreciate that the standards fixed are the bare minimum and have to be strictly complied with to ensure the maintenance of basic minimum standards of medical education. Any lenience shown by this Court in providing an opportunity to such Institutions to rectify the defects will have a cascading effect in the succeeding years and would result in Colleges continuing to function with deficiencies as well as producing half-baked and poor quality doctors.

F. That this Hon'ble Court has failed to appreciate that the deficiencies were found by the expert body consisting of independent persons of repute and therefore, there is no reason to doubt the same. The Hon'ble Supreme Court of India has held in various precedents that the High Court ought not sit in appeal over report prepared by the expert body.

G. Because the Hon'ble Apex Court in Medical Council of India vs. Vedantaa Institute of Academic Excellence Pvt. Ltd. & Ors. Civil Appeal No.5805 of 2018 wherein the Hon'ble Apex Court held that "medical colleges need not be given a second chance to rectify their defects if they do not bother even to follow the "basic minimum standards of medical education".

H. That this Hon'ble Court passed an order recording statement of the Ld. Advocate with regards to the date of admission being extended to 23rd April, 2022. That this Ld. Court passed an order recording statement of the undersigned that inspection will also be done

within 10 days, though same was suggested by the other side and undersigned had given no instruction to the Ld. Advocate to carry out the same. That Ld. Advocate and undersigned both give unconditional apologies but no such instruction was given for inspection and hence may be permitted same to be withdrawn."

5.22. However, today, when the matter was argued at length by the learned advocates for both the sides, learned advocate Mr. Shah has sought instructions from the respondents to withdraw this application. Upon receipt of such instructions, if any, in writing, appropriate order shall be passed in the Civil Application by this Court.

6.1. Learned Senior Advocate Mr. Dave submitted that the Board has passed the impugned order dated 08.12.2021 without assigning any reason to reduce the intake capacity to 60 instead of 100 for the Academic Year 2021-2022. It was submitted that the Commission also passed the order dated 3rd February, 2022 without giving any opportunity of hearing to the petitioner confirming the order passed by the Board on the same reasoning.

6.2. Learned Senior Advocate Mr. Dave invited the attention of the Court to the observations made by the Board in the order dated 08.12.2021 after recording the observations of the hearing committee and remarks of the Board and pointed out that the remarks of the Board are contrary to the observations made by the hearing committee

which is apparent from the impugned order dated 08.12.2022 as per the details given in the tabular form in paragraph No.4 thereof. It was submitted that after recording the observations of the hearing committee and remarks of the Board, without assigning any reason in paragraph No.4 of the impugned order, intake capacity is ordered to be reduced to 60 seats from 100 seats.

6.3. It was further submitted that the Second Appeal, preferred before the Ministry of Ayush, was not heard for considerable long time though the petitioner filed the Second Appeal on 9th February, 2022 and after the petitioner approached to this Court and the respondent-Authority was summoned by this Court for not adhering to the statement made before this Court, the impugned order dated 29th March, 2022 was passed and meanwhile, the admission process is almost completed as the third round is completed on 4th April, 2022 and the fourth round is to be completed on 14th April, 2022.

6.4. Learned Senior Advocate Mr.Dave thereafter referred to the each of the deficiencies which are considered by the respondents apparently to reduce the intake capacity to 60 seats from 100 seats.

6.5. With regard to the deficiency of non availability of Anesthetist-Dr.Vinay Jagdishbhai,

X-ray Technician-Mr.Jaimin M. Valand and Dietitian Ms.Mita Joshi, it was submitted that all the three persons are attached to the College and the details and documents are produced before the Board as well as before the Ministry of Ayush in the Second Appeal, however, without considering the same, the deficiency is alleged upon the College.

6.6. It was further submitted that both the Lab Technicians are replaced by the College after the deficiency being pointed out by the order dated 08.12.2021 which was also communicated in the First Appeal as well as in the Second Appeal proceedings. Learned Senior Advocate Mr.Dave pointed out that so far as deficiency of X-Ray and USG not being done in Homeopathy College is concerned, as per the Minimum Standard Requirement (MSR), MOU is permissible and in spite of such rule, the deficiency is considered by the the Second Appellate Authority.

6.7. With regard to the deficiency of proof of salary transfer to Bank Account or proof of not deducting the EPF/ESI and non issuance of Form-16 to the teaching staff is concerned, it was submitted that such deficiencies cannot be considered for reducing the intake of the seats as they are not forming part of Schedule-IV of the Homeopathy Central Council (Minimum Standards Requirements of Homeopathy College and Attached

Hospitals) Regulations 2013 (for shot 'MSR 2013').

7.1. On the other hand learned advocate Mr. Ankit Shah appearing for the respondents submitted that when the order dated 08.12.2021 was passed by the Board, the deficiencies with regard to the qualification of the Lab Technicians Mr. Hetan Patel and Ms. Dhruthi Rathod was in existence as admitted by the College and therefore, subsequent rectification thereof cannot be considered for increasing the intake capacity by the Appellate Authority and such rectification or removal of deficiency can be considered for the next Academic Year 2022-2023 as observed in paragraph No.8 of the impugned order of the Board.

7.2. It was further submitted that so far as the other deficiencies are concerned, the observations made by the Board as well as the Ministry of Ayush are in accordance with the MSR 2013 and therefore, the impugned orders do not require any interference while exercising extraordinary jurisdiction under Article 227 of the Constitution of India.

7.3. It was further submitted that this Court should not examine the impugned orders as an Appellate Authority as the respondent-Authorities, after considering the documentary evidence and record in its wisdom reduced the

intake capacity to 60 seats from 100 seats and therefore, no interference may be made in the impugned orders and as the petitioner has removed the deficiencies, the same would be considered by the Board for the next Academic Year 2022-2023.

7.4. It was further submitted that the Regulation 3(1) of the MSR 2013 requires the College to fulfill the minimum standards in context of teaching facilities referred to in Regulations 4 to 13. It was submitted that Regulation No.7 prescribes requirements for Teaching Hospitals and Regulation 9 provides for requirement of College which prescribes that there shall be minimum teaching facility as per Schedule-IV for the course and attention of the Court was invited to the Schedule IV and V of the MSR 2013 read with Regulation 12 to submit that the intake up to 100 seats requires the requisite teaching staff and only full time faculty is required at all levels. It was therefore submitted by learned advocate Mr. Shah that the deficiencies pointed out by the Board and which was further considered by the Appellate Authorities clearly shows that the College has not fulfilled the requisite requirement as per the MSR 2013. It was further submitted that compliance with the regulations was a prerequisite and therefore the impugned orders would not suffer from any defect of either non-application of mind or being non speaking order as sufficient reasons are given for reducing the intake to 60 seats from 100 seats by

the respondent-authorities.

8. Considering the submissions made by the learned advocates for both the sides, it appears that the respondent No.3-Board by the impugned order dated 08.12.2021 has without considering the provisions of the MSR 2013 read with Schedule-IV has reduced the intake capacity from 100 seats to 60 seats. It would therefore be germane to refer to the Schedule-IV as per Sub-regulation (7) of Regulation 3, Sub-regulations (1) and (2) of Regulation 9, Sub-regulation 1 of Regulation 11 and proviso to Regulation 12 of the MSR 2013, which read as under :

"3. Fulfillment of minimum standard requirements :

(7) The conditional permission shall be granted only to those colleges which are fulfilling at least the requirement of teachers as specified in Schedule-IV, the requirement of functional hospital as specified at sub-regulation (2) of regulation 7 and availability of equipment as specified in schedule-III for each academic year 2013-14 and 2014-15 on the basis of the separate inspections to be carried out by the Central Council of Homeopathy after the 15th May, 2013 for the Academic year 2013-14 and after the 31st December, 2013 for the academic year 2014-15.

9- Requirement of College :

(1) Teaching Staff: There shall be minimum teaching faculty as per Schedule-IV for B.H.M.S., degree Course (including for conducting granted degree Course) and for Post Graduate degree course additional as per Schedule-V.

(2) Teachers of consultants of modern medicine: Teachers or Consultants of modern medicine like Pathologist, Radiologist, Anesthetist, Gynecologist,

Physician, Surgeon, Ophthalmologist, Pediatrician, Dentist, etc. may be appointed on contract basis or part time or on call basis, and these teachers or consultants shall be in addition to the teaching faculty as prescribed in Schedule-IV.

11. Phase wise specific requirement of new college :-

(1) A medical college or institution seeking permission for starting Bachelor staff, laboratory facility for concerned subjects as specified in the Schedule-IB, Schedule-III, Schedule-IV, Schedule-V, and Schedule-Vi at the time of inspection for granting permission.

12. Qualification of head of the institute or college, hospital and teaching departments and teachers:- The Director or Principal, Medical Superintendent, Professors, Readers, and Lecturers of college and hospital shall have the qualification and experience prescribed in these regulations, and the qualification of teaching staff and hospital staff shall be as laid down in Schedule-VII:

Provided that the teaching experience in the concerned subject of persons appointed as regular teaching staff in the colleges, prior to notification of these amended regulations, fulfilling the prescribed requirements of Homeopathy (Minimum Standards of Education) Regulations, 1983 shall be counted for appointment of teaching staff as per Schedule-IV to these regulations:

Provided further that the teaching faculty appointed on the basis of the Homeopathy (Minimum Standards of Education) Regulations, 1983 will be covered under these regulations for all cadres.

Explanation:- for the purposes of this regulation, teaching experience of a Teacher in a subject shall be the teaching experience counted for that subject only:

Provided also that these regulations shall not be applicable on teaching faculty appointed an prescribed post before this notification.

Schedule-IV :

(See sub-regulation (7) of regulation 3, sub-regulation(1) and (2) of regulation 9 , sub-regulation (1) of regulation 11 and proviso to regulation 12)

Name of the Department	Upto 60 Admissions			From 61 to 100 admission		
	Professor	Associate Professor/Reader	Assistant Professor/Lecturer	Professor	Associate Professor / Reader	Assistant Professor / Lecturer
Anatomy	1 or 1		1	1 or 1		1
Physiology including Biochemistry	1 or 1		1	1 or 1		1
Organon of Medicine	1 or 1		1	1	1	1
Homeopathic Pharmacy	1 or 1		1	1 or 1		1
Homeopathic Materia Medica	1 or 1		1	1	1	1
Pathology & Microbiology	1 or 1		1	1 or 1		1
Forensic Medicine & Toxicology	1 or 1		1	1 or 1		1
Practice of Medicine	1 or 1		1	1	1	1
Surgery	1 or 1		1	1 or 1		1
Obstetrician & Gynecology	1 or 1		1	1 or 1		1
Community Medicine	1 or 1		1	1 or 1		1
Repertory	1 or 1		1	1	1	1
Total	24			28		

Only full-time faculty at all level.

N.B.:(1) There shall be 24 Full Time Teaching Faculty and 8 Guest Faculty for admission upto 60 admissions.

(2) There shall be 28 Full Time Teaching Faculty and 12 Guest Faculty for admission from 61 to 100 admission.

(3) Guest Faculty:- The Professor or Associate Professor or Reader not appointed on full time basis shall be

deputed as guest faculty for three hours a week.

(4) Principal shall be one of the Professors of any department on full time basis and the Principal may be the Medical Superintendent, if there is no separate Medical Superintendent for such hospital.

(5) The deficiency of teachers shall not exceed more than 10 percent of total requirement with availability of at least one teacher in each department for seeking conditional permission to undertake admission."

9. On perusal of the above Schedule-IV which provides that there shall be 28 full time teaching faculty and 12 guest faculty for admission from 61 to 100 admissions, the deficiencies pointed out by the Board in the show-cause notice as well as considered in the the impugned order are as under, as enumerated in tabular form in para 4 of the impugned order dated 08.12.2021 as considered by the Board along with the observations of the hearing committee :

"Sr.No.	Deficiency conveyed to college	Reply/ Annexures provided by Aarihant HMC, Gujarat	Observations by Hearing Committee	Remarks of MARBH
A	Name and documents of Anesthetist and Radiologist, x-ray technician/ radiographer, dietitian, x-ray attendant not available against 01 each 'on call' as required	Each mentioned person is available, required documents submitted (Annexure B)	Anesthetist (On Call)- DrVinay Jagdishbhai Solanki Documents submitted- Appointment Letter dt. 07/01/2016, joining Letter dt.07/01/2016 Qualification-	Appointment, joining qualification of Anaesthetist (DR.Vinay Solanki), Radiologist (Dr.Anil Kumar Rathod), Dark Room attendant

			<p>Doctor of Medicine (Anaesthesiology) in 2008, Gujarat University.</p> <p>Radiologist (on Call)- DrAmit Kumar Rathod Documents submitted- Appointment Letter dt.26/03/2021 Joining Letter dt.03/04/2021 Qualification- Diploma in Radiodiagnosis in 2020, Gujarat University.</p> <p>Dark Room Attendant-Mr Vishal Sikhwal Documents submitted- Appointment Letter dt.01/04/2021 Joining Letter dt.05/04/2021 Qualification-B.A Part 1, Exam2017, Maharshil Dayanand Saraswati University, Ajmer</p> <p>X-ray Technician (On Call)- Mr.Jaimin M. Valand Documents submitted- Appointment Letter</p>	<p>(Vishal Sikhwal), X-ray Technician (Jaimin Valand) and Dietician (Mita Joshi) provided.</p> <p>However attendance and acquittance roll of above staffs not provided.</p> <p>As per the attendance and acquittance roll provided in part-1 till march 2021 it is observed.</p> <p>Anaesthetist (Dr.Vinay Jagdishbhai joined on 7.1.2016, x-ray technician (Mr..Jaimin M Valand) joined on 2.2.2016, Dietician (Mita Joshi) name not found. So Genuine presence could not be ascertained.</p>
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			<p>dt.02/02/2016 Qualification-CT Scan Technician (2015-16), Certificate Course, Bharat SewakSaman, National Development Agency, Promoted by GOI.</p> <p>Dietician (Full Time)-Mita Joshi Documents submitted Appointment Letter dt.01/01/2020 Joining Letter dt.03/01/2020 Qualification- Certificate Course in Hospital Nutrition and Dietetics (UGC & Gujarat University Approved)2011- 12 DNHE (IGNOU)-2012</p>	
	<p>c. Mr.Hetan Patel, Lab Technician, B.Sc, MLT Certificate of MLT not Provided.</p>	<p>Certificate provided (Annexure C)</p>	<p>Lab Technician- Mr.Hetan Patel B.Sc.MLT Certificate not provided instead a One Year Medical Laboratory Technology Certificate from sir Chinubhai Madhavlal Baronet Hospital & Research Centre, Ahmedabad 280002.</p>	<p>Mr.Hetan Patel, Lab Technician- appointment, joining provided. For qualification Medical Laboratory Technology Certificate provided. However as per MSR 2013 for Lab Technician Diploma in</p>

				MLT is required. So not considered.
B.	<p>Hospital Facility X-ray, USG, Operation Theater, Post-operative rooms & Labor Room facilities are through MoU with Khushi Hospital, Sabarmati, Ahmedabad MoU for teaching and training purpose not provided.</p>	<p>Provided (Annexure E)</p>	<p>MOU for teaching and training dated 09-11-2021 provided.</p> <p>III BHMS& IV BHMS Students posting batch wise time table list is also submitted</p>	
C.	<p>Dr.Amit Banerjee, MD (Hom), professor, Organon-joined as Professor on 5.9.2002 at age of 39 years 2 months i.e. more than 35 years as per MSE, No experience of demonstrator / lecture./ reader provided in affidavit</p>	<p>All the mentioned documents provided (Annexure I)</p> <p>Additional Staff is recruited Dr.Nadaf Shahala Babusahed.</p> <p>Dr.NitinNitw are mentioned as a reader in the department of Organon is also eligible for Professor.</p>	<p>Dr.Amit Banerjee Mismatch of name in Degree and Post Graduate certificate-it is stated Dr.Amit Bandy padhyay</p>	<p>Dr.Amit Banerjee-appointment and joining dated 2.11.20 submitted, Previous experience from 5.9.02 till 29.9.20. It is observed name mentioned experience certificate of Netai Charan homoeopathy College in BHMS and MD(H) degree is Amit Bandyopadhy ay whereas in other documents is Amit Banerjee.</p>

				Mismatch of name found and no documents for name change provided.
D.	Teaching Department Mr.Bhavin VasantryB Bhimani (M.Pharm), Mr.Jaiminbikhhal al Patel (12 th Pass), Mr.Vipul Sadava B.Sc., Ms.Hemali Kachadiya M.Sc.Lab technician are not having requisite qualification	In the department of Physiology and Pathology, Lab technicians having MLT degree available (Annexure M)	DruthiRathod-Lab Tech in Dept of Pathology Appointment Letter dt 30-10-21 Qualification- State Trade Certificate in Trade of MLT Assistant provided No Degree in BSC MLT.	Druthi Rathod-lab technician in department of pathology appointment and joining provided however no degree of BSc. MLT available so not eligible. -
E.	Miscellaneous a) Salary bank statement-Bank statement provided, proof for salary transfer through bank not provided. b) ESI not deducted, mentioned as all educational and medical Institutes are exempted in Gujarat from its purview, EPF not deducted, provided undertaking of staff for not opting PF/EPF benefit. c)Form-16 of	Proof for salary transfer through our HDFC Bank & Undertaking from Principal Submitted (Annexure N, O, P)	a) Salary bank statement Bank statement dated 15-11-2021 of amount 2,168,896.00 provided, along with a list from Aarihant College of 79 employees. b) EPF not deducted, Provided undertaking of staff for not opting PF/EPF benefit. C) Form 16 of only 04 (Four) Employees submitted. Form-16 of teaching, non-teaching staff & hospital staff-Not	(a) Proof of salary transfer of individual staff not available. (b) EPF/ESI is not deducted. (C) Form-16 of only 4 staffs provided.

	teachers, non-teaching staff & hospital staff-Not Provided from TRACES portal.		Provided from TRACES portal.”	
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10. On perusal of above deficiencies, none of the above deficiencies refers to the teaching staff as required by Schedule-IV which provides for intake capacity that 28 full time teaching faculties and 12 guest faculties for admission from 61 to 100 admissions.

11. The above deficiencies refers to the non-availability of the Anesthetist, X-Ray Technician, Dietitian, Lab-Assistant, non providing of salary in details, non deduction of PF/EPF and non providing of Form No.16 which neither appears in the aforesaid schedules and the rules for reducing the intake capacity from 100 to 60.

12. In view of the above Rules and Schedule-IV which is not considered by the respondent-Authorities, the impugned orders passed by the Authorities are contrary to the Rules apart from the fact that all the deficiencies are explained and removed by the petitioner-College and as per the decision of the Apex Court in case of **Royal Medical Trust and Another V/s. Union of India and Another¹**, the Apex Court has observed as under in

¹ (2015) 10 Supreme Court Cases 19

paragraph No.29 :

"5. As regards cases of renewal, it was laid down in **Priyadarshini Dental College and Hospital v. Union of India, (2011) 4 SCC 623: 4 SCEC 127** that the process of decision making for grant of fresh or initial permission for establishment of a new college is exhaustive and elaborate when compared to such decision making in regard to grant of renewal of permission for the four subsequent years. It was further stated that before grant of initial permission the aspects whether the institution would be in a position to offer the minimum standards of education in conformity with the Act and Regulations and whether the institution has adequate resources and whether the institution has provided or will be able to provide within the time limit specified in the Scheme all the required facilities and faculty are required to be considered and scrutinized very closely. On the other hand for the purposes of grant of renewal what is required to be considered is whether the prescribed faculty and infrastructure is available. Considering renewal cases on a parameter distinct and different from that relating to establishment of a new college for the first time, it was observed that the entire process of verification and inspection relating to renewal ought to be done well in time so that the existing colleges have adequate and reasonable time to set right the deficiencies or offer explanation to the deficiencies."

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13. Considering the above legal position, the respondent authorities ought to have granted adequate and reasonable time to the College which was in existence to set right the deficiencies after considering the explanation tendered by the petitioner-College before the respondents.

14. In view of the foregoing reasons, the petition is allowed without going into the deficiencies or rectification thereof, as such deficiencies are not required to be looked into by the respondents for reducing the intake capacity from 100 to 60 and more particularly, when the petitioner-College has explained in detail with regard to each of the deficiencies before the respondent-Authorities, the impugned orders are hereby, quashed and set aside and the respondents are directed to issue the renewal permission to the petitioner-College for Academic Year 2021-2022 with intake capacity of 100 seats. Such exercise shall be completed within a period of one week from today.

15. In view of the aforesaid order, learned Assistant Government Pleader Mr. Jayswal, who is present in the Court is directed to inform learned advocate Mr. Antani who appears for the Admission Committee to communicate this order forthwith, so as to include the name of the petitioner-College in the admission list for the fourth round which is to be over on 14th April, 2022.

16. It goes without saying that the Admission Committee will include the name of the petitioner-College for the remaining intake of 40 seats for the Academic Year 2021-2022. Rule is made absolute to the aforesaid extent.

17. In view of the letter dated 13th April, 2022 issued by the Ministry of Ayush addressed to the learned advocate Mr. Shah, learned advocate Mr. Shah seeks permission to withdraw the Civil Application and accordingly, the Civil Application is disposed of as withdrawn.

(BHARGAV D. KARIA, J)

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