

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 13878 of 2019**

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SHRI P. J. MANGROLIA CHARITABLE TRUST

Versus

UNION OF INDIA

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Appearance:

MR D.C. DAVE, SR. COUNSEL with MR UDIT N VYAS(9255) for the  
Petitioner(s) No. 1MR SIDDHARTH DAVE, ADVOCATE with MR DEVANG VYAS(2794)  
for the Respondent(s) No. 1

MR NIKHIL S KARIEL(2315) for the Respondent(s) No. 2

MS MANISHA LAVKUMAR SHAH, SR. COUNSEL with MR. K.M.  
ANTANI (6547) for the Respondent(s) No. 3

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**CORAM: HONOURABLE MR.JUSTICE BIREN VAISHNAV****Date : 19/09/2019****ORAL ORDER**

1. In this petition, under Article 226 of the Constitution of India, the petitioner which runs an Educational Institution in the discipline of Ayurveda has challenged the order dated 13.7.2019 passed by the Union of India – respondent No.1 by which extension of permission for the academic session 2019-20 for running the Course of Undergraduate (BAMS) has not been approved.

2. The facts in brief are as under:

2.1. It is the case of the petitioner that the petitioner was desirous to run undergraduate course in BAMS for 60 seats in the year 2017-18. By a communication dated 31.8.2017, permission was granted to run such course in the year 2017-18.

2.2. It is undisputed by either parties that for the subsequent year, extension of approval in the form of Standard Inspection Form was applied for by the petitioner's college on 22.1.2018 for the academic session 2018-19. By a communication dated 25.9.2018, the application was rejected. Aggrieved by this rejection, the petitioner institution approached this Court by filing Special Civil Application No.15553 of 2018 wherein interim relief was granted in terms of paragraph No.31(B).

Pursuant to the interim relief so granted, the institution was permitted to run 2018-19 batch for BAMS course for 60 students. When the chance came for extension of renewal permission for the academic session 2019-20, which is the year for which the present petition is filed, it appears that a circular dated 15.1.2019 was issued by the Central Council of Indian Medicine (hereinafter referred to as 'CCIM' for short) inviting applications for renewal of permission from all existing colleges and requesting the institution to fill up the visitation proforma online.

2.3. It is not in dispute that within the time limit, the petitioner – college has filled up such form and submitted it to the CCIM. Pursuant to such an application made, inspection was carried out on 4.4.2019 and 5.4.2019. On 29.5.2019, the CCIM forwarded a report to the Ministry.

2.4. The reading of the report would indicate that the CCIM was of the opinion that the Government of India be recommended for granting the petitioner institution conditional permission for admission in undergraduate (BAMS) Course with 60 seats with the shortcoming listed therein.

2.5. On the report being so forwarded, it appears that on 11.6.2019, the Ministry issued a show cause notice to the petitioner – college listing certain deficiencies – nine in number and asking the institution to show cause. A response was filed thereto. Minutes of the hearing are placed on record at page No.71. Thereafter by the impugned order dated 13.7.2019, permission for extension of the academic session 2019-2020 was rejected on account of inability of the petitioner to produce sufficient document / evidence to substantiate

its claim for all the deficiencies.

3. Mr.Dhaval Dave, learned Senior Counsel appearing with Mr.Udit N. Vyas, learned advocate for the petitioner would submit that the benefit of extension is bad on several counts.

3.1 He has taken me to the report of the CCIM dated 29.5.2019 to suggest that despite of the shortcomings listed in the report, the CCIM recommended granting of conditional permission for admission.

3.2. According to Mr.Dhaval Dave, learned Senior Counsel appearing for the petitioner, once the CCIM recommends such extension despite the shortcoming listed therein, the Union of India through the Ministry could not have ignored and rejected the permission.

3.3. Mr.Dhaval Dave, learned Senior Counsel appearing for the petitioner has also invited my attention to the minutes of the meeting at page No.71 with the impugned order dated 13.6.2019 to suggest that there was total non-application of mind by the authorities while considering and rejecting the application for permission. This contradiction will be dealt with in the later part of this order.

3.4. Mr.Dhaval Dave, learned Senior Counsel appearing for the petitioner has also invited my attention to the fact that the inspection report was not supplied to the petitioner. Therefore, there was violation of principles of natural justice. That report was available subsequently on 24.7.2019 through RTI and he has taken me through the report to suggest that whatever discrepancies the impugned order would record, in fact did not

exist.

4. As against that, Mr.Siddharth Dave, learned advocate appearing with Mr.Devang Vyas, learned advocate for respondent No.1 – Union of India would contend that the scheme of the Act namely; Indian Medical Central Council Act, 1970, (For short `IMCC Act') particularly, Section 13(A) when read namely in terms of Section 13(A)(4)(5) and (8) would reveal that the Central Government may after considering recommendations of the Central Government disapprove the scheme and, therefore, the submission of Mr.Dave that the report of the CCIM is binding, is not correct. Drawing my attention to the IMCC Act qua requirements of minimum standard for undergraduate, Ayurveda colleges and attached hospital particularly regulation 16 and regulation 3, Mr.Siddharth Dave, would contend that the institution is required to fulfill minimum

standard which it did not and, therefore, no fault can be found in rejection by the impugned order.

4.1. Drawing my attention to Section 13(A) of the IMCC Act, Mr.Dave would also contend that the report being confidential could not have been supplied and, therefore, there was no right on the part of the petitioner to demand a copy and non-supply thereof will not violate the principles of natural justice.

4.2. He would further submit that in view of regulation 31(g) the deficiencies which were existent on the date of notice by the authorities, would be relevant and subsequently curing of such defects will not make the case better.

4.3. Mr.Siddharth Dave, learned advocate for respondent No.1 – Union of India would further rely on the observations of the hearing



Committee and contend that these are the deficiencies which have been actually finally arrived at by the authorities and the minutes at page No.71 do not really reflect of a transparent hearing.

5. Ms.Manisha Lavkumar Shah, learned advocate appearing for the respondent Committee supported the stand of the respondent Committee and submitted that the procedure followed by the authorities is just and proper and in accordance with law. She has relied on the decision of the Apex Court in the case of **Medical Council of India vs. Jaipur National University Institute For Medical Sciences reported in AIR 2018 SC 3114** and submitted that interim directions of the nature granted in the present petition should not be granted. She also relied on the decision of a Co-ordinate Bench of this Court passed on **09.09.2019 in Special Civil Application No.**

**13830 of 2019** by which it was submitted that even if the directions are required to be issued they be issued to the Central Government to implement the order.

6. Considering the above submissions on behalf of the respective counsels, what needs to be seen is that the chronology of factual details hereinabove would suggest that:

(I) When extension was sought for by the petitioner institution for the academic session 2018-19, the same was not granted by order dated 25.9.2018 and the petitioner was constrained to approach this Court by filing Special Civil Application No.15553 of 2018. Though the order was passed without any contest, the Court granted the interim relief for the year 2018 and the Court has specifically recorded in paragraph No.4 of the order that the investigating team could record

Videography and place a report on record.

(II) For the year 2019-20, recommendations were made by the CCIM. The relevant portion of the same would read as under: -

*“The entire visitation process is digitized and the assessment report generated has been scrutinized in view of enforced regulations. The Executive Committee in its 284<sup>th</sup> meeting held on 28.05.2019 considered the visitation report alongwith all the annextures and decided to recommend to Government of India for granting conditional permission for admission in UG (BAMS) Course with 60 seats for the academic sessions 2019-20 without following shortcomings-*

**1. Teaching Staff:**

*(i) there is no Yoga teacher available*

*against the minimum requirement of 01.*

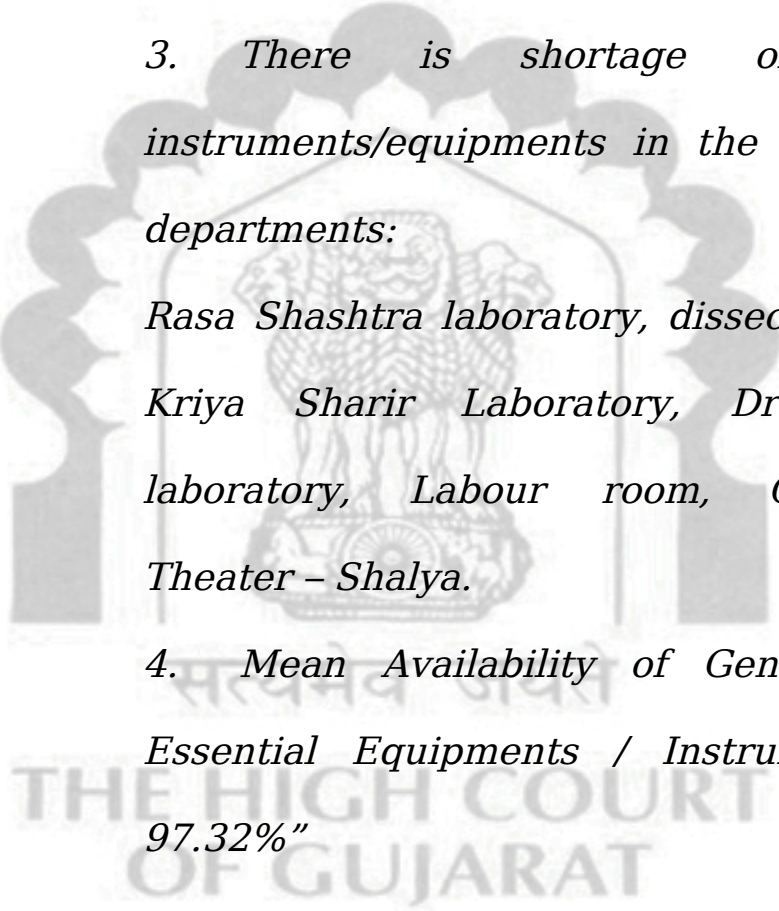
**2. Non Teaching Staff:**

*(i) There is 01 Attendant available in Clinical Department against the minimum requirement of 02.*

*3. There is shortage of some instruments/equipments in the following departments:*

*Rasa Shashtra laboratory, dissection hall; Kriya Sharir Laboratory, Dravyaguna laboratory, Labour room, Operation Theater – Shalya.*

*4. Mean Availability of General and Essential Equipments / Instruments is 97.32%”*



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(III) Thus, the CCIM categorically was of the opinion that the institution deserves granting conditional permission for admission despite the shortcomings namely; (a) there was no yoga teacher available, (b) there was only one

attendant available for the Clinical Department against the minimum requirement of two, (c) there was shortage of some instruments etc. Be it noted that the CCIM despite the shortcomings had opined positively in favour of the institution.

7. It cannot be out of place to suggest that though it is not Mr.Dave's submission that the Government of India may not take a different stand, but from reading of the show cause notice dated 11.6.2019, in consonance with the minutes at page No.71 and the order dated 13.7.2019, what emerges, are as under:

- (a) The show cause notice as well the impugned order would point out that the institution had no Yoga teacher available against the minimum requirement of 01.

(b) The hearing committee meeting's minutes would suggest that the college specifically pointed out that it had a Yoga teacher namely; Mr.Ajay Yadav, who was working with the institution from September 1, 2018. Perusal of the compilation of the inspection report on page No.56 categorically supports the stand of the institution.

(c) Vis-a-vis, the shortage of an attendant, a bonafide defence has been raised by the institution that since they were having only three Clinical Departments, two attendants were not required and it was only a requirement when there were seven Clinical Departments. It was, however, pointed out that they have appointed one more attendant. Even Mr.Siddharth Dave does not dispute these two points.

(d) As far as the faculty in Kayachikitsa Department is concerned, the impugned order and the show cause notice record that they were no teachers available. Minutes of the meeting when perused would indicate that one Assistant Professor Dr.Tushar Kumar was appointed and was working since 27.6.2018. In fact, the Videography on the date of visitation was submitted to suggest his presence. Even the inspection report would support the stand. As far as the functionality of the hospital is concerned, perusal of the parameters at page No.13 of the inspection report would suggest that the hospital satisfies the functionality to the optimum.

8. What has been recorded hereinabove would categorically support the submission of

Mr.Dhaval Dave, learned Senior Counsel that when the CCIM report dated 25.9.2019, the minutes of the hearing, the show cause notice dated 11.6.2019 and the impugned order dated 13.6.2019 are compared, it is evident that the so called deficiencies pointed out by the authorities are in-fact non-existent. Even if the submissions of Mr.Siddharth Dave, learned advocate for the Union of India as well as submission of Mr.Nikhil S. Kariel, learned advocate for the Central Council of Indian Medicine that these were the deficiencies which would hamper bringing out the best quality of graduates, is presumably accepted, the CCIM would not have, at all recommended even granting conditional / provisional extension. The submission of the CCIM and Union of India, therefore, do not merit consideration.



9. Mr.Siddharth Dave, learned advocate for the Union of India has extensively relied upon few judgments of this Court on the aspect of violation of principles of natural justice as far as non-supply of inspection report, with regard to the binding effect of the recommendations of the CCIM and on the time frame within which the decision on the application is to be taken. Be that as it may, these are the aspects which can be taken care at the time of final hearing of the matter.

10. So far as the submissions of Ms. Shah are concerned, I am of the view that considering the facts of the present case, since prima facie I am of the view that the impugned order passed by the Union of India is without application of mind which has warranted grant of interim relief.

11. The respondent No.1 is directed to give

provisional permission to grant admission to intake of 60 students in the petitioner institute for academic year 2019-20, subject to the outcome of the petition. The petitioner shall inform such students about the pendency of the petition and their admission shall be subject to the outcome of the petition.

12. For the reasons as stated above, I deem it fit to grant interim relief to the petitioner in terms of paragraph No.33(B) subject to the outcome of the petition. Order accordingly.

Direct Service is permitted.

**(BIREN VAISHNAV, J)**

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