

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13549 of 2019****[On note for speaking to minutes of order dated 20/09/2019 in
R/SCA/13549/2019]**

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BHARGAVA AYURVEDA COLLEGE THROUGH PRINCIPAL SANSKRUTI
EDUCATIONAL AND CHARITABLE TRUST

Versus
UNION OF INDIA

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Appearance:

MR UDAYAN P VYAS(1302) for the Petitioner(s) No. 1
MR DEVANG VYAS(2794) for the Respondent(s) No. 1
MR NIKHIL S KARIEL(2315) for the Respondent(s) No. 2
MR. KM ANTANI(6547) for the Respondent(s) No. 3

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CORAM: HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 24/09/2019

ORAL ORDER

1 This Note for Speaking to Minutes is filed by the learned advocate for the petitioner with the following prayer:

"1.After words "....para. 19(B)..." in paragraph 8 of the Order, "para. 19(C) be also added."

2 It is found that due to inadvertence, mention of para 19(C) in para 8 was left out in the oral order dated 20.09.2019. The same is now added and hence para 8 of the oral order dated 20.09.2019 now read thus:

"8. I am conscious of the fact that in an interim order granting such a relief would amount to allowing the petition, however, looking to the fact that due to the time line provided i.e. the fact that the entire process

needed to be completed by May 2019 and in view of the fact that it was only in July 2019 that the order was passed and that too as observed without application of mind, I deem it fit to grant interim relief in terms of paragraph no. 19(B) & 19 (C) at this stage and respondent no. 1 is directed to give provisional permission to grant admission for intake of 60 students for the BAMS course in the petitioner institution for the academic year 2019-20, subject to the outcome of the petition. The petitioner shall inform the students about the pendency of such petitions and that their admission shall be subject to the outcome of the petition.

Direct service is permitted today.”

3 Note for Speaking to Minutes is allowed, accordingly. Registry to issue fresh writ of this order, accordingly. Direct service, today is permitted.

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(BIREN VAISHNAV, J)



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BHARGAVA AYURVEDA COLLEGE THROUGH PRINCIPAL SANSKRUTI
EDUCATIONAL AND CHARITABLE TRUST

Versus

UNION OF INDIA

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Appearance:

MR DHAVAL DAVE, SENIOR ADVOCATE WITH MR UDAYAN P
VYAS(1302) for the Petitioner(s) No. 1

MR SIDDHARTH DAVE, ADVOCATE FOR MR DEVANG VYAS(2794) for the
Respondent(s) No. 1

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

MS MANISHA L SHAH, SENIOR ADVOCATE WITH MR. KM ANTANI(6547)
for the Respondent(s) No. 3

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CORAM: HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 20/09/2019

ORAL ORDER

1. In this petition, under Article 226 of the Constitution of India, the order under challenge is dated 13.07.2019 passed by the Union of India refusing extension of permission for admission to petitioner for an intake of 60 seats in the discipline of Ayurveda (BAMS) for the academic year 2019-2020.

2. The facts are that in September 2017, permission was granted to the petitioner institution to establish a college with an intake of 60 seats from the academic year 2017-18. When the extension was declined for the year 2018-19, the petitioner filed a petition challenging such non-extension. By an interim order dated 12.10.2018, the Court permitted

admission for the academic year 2018-19 with a liberty reserved to the Union of India to conduct an inspection. It appears that no inspection was carried out. Since the admission had already been granted, Letters Patent Appeal was disposed of without going into the merits of the matter.

2.1 A Standard Inspection Form was submitted for extension of permission for academic year 2019-20 on 15.01.2019. Inspection was carried out on 13.03.2019 and 14.03.2019. A show cause notice was issued on 29.05.2019 and a report was given by respondent no. 2. A distinctive feature in the present case seems to be that there was no positive recommendation for starting the college. Deficiencies were noted which were almost 8 in number. A notice of hearing was given to the petitioner institution on 11.06.2019 pointing out such shortcomings. According to such show cause notice, the college was not fulfilling requirement as under:

- (I) Bio-metric attendance system for teaching, non-teaching and hospital staff is not available;
- (II) No teacher available against the requirement of 21 as per RMS, 2016;
- (III) There is no higher faculty available against the requirement of 10 Higher Faculty in 10 dept as per RMS, 2016;
- (IV) There is no Professor/Reader and Lecturer in 10 Departments and no lecturer is available in Sanskrit department as per RMS, 2016;
- (V) There is no Yoga teacher;
- (VI) There is no specialist doctor or no clinical teacher in certain departments;

- (VII) There is shortage of non-teaching staff with regard to non-availability of one laboratory technician and one multipurpose worker and no matron available;
- (VIII) The functionality of the hospital has also been doubted, more particularly in the videography maximum patients seem to be fake and admitted only for visitation purpose;

2.2 A response against the above was submitted and oral submissions were made controverting the same. However, the same were not taken into consideration by the respondents and permission was not granted for extension as stated hereinabove.

3. Mr. Dhaval Dave, learned Senior Counsel appearing for the petitioner institution would contend that comparing the show cause notice, oral submissions made by the petitioner institution during the course of hearing before the authorities and the impugned order dated 13.07.2019 would reveal that oral submissions made during the hearing were not considered and therefore impugned order is passed without application of mind.

4. Mr. Siddharth Dave, learned counsel appearing for the Union of India would submit that this is a case where the expert body's report has given a negative opinion and therefore the college ought not to have granted permission much less by an interim order the Court should not sit in appeal as an appellate authority over the decision of the expert body.

4.1 Reliance is placed on the decisions of the Apex Court by Mr. Siddharth Dave in the case of **Manohar Lal Sharma vs. Medical Council of India and Others reported in (2013) 10 SCC 60** and in the case of **Karpagam Faculty of Medical Sciences and Research vs. Union of India and others reported in (2017) 16 SCC 568**, particularly paragraphs no. 17 & 20 wherein emphasis has been laid by the learned counsel that it is not for the Court to sit in appeal over the decision of the expert body.

5. Mr. Nikhil Kariel, learned advocate appearing for the respondent no. 2 has also submitted that deficiencies have been noted by way of the impugned order and that respondent no. 2's report has specifically recorded deficiencies especially one where it is shown that the video shows fake patients are admitted only for visitation purpose and therefore in the event permission is granted to such a college it will only lead to bringing out *half baked doctors*.

6. Ms. Manisha Lavkumar Shah, Senior Advocate appearing with Mr. K.M. Antani, learned advocate for the respondent Committee has relied on the decision of the Apex Court in the case of **Dental Council of India vs. Dr. Hedgewar Smruti Rugna Seva Mandal, Hingoli and Others reported in (2017) 13 SCC 115** and drawn my attention to paragraphs no. 19 to 24 wherein the Apex Court has deprecated the practice of the High Courts in passing interim orders in such matters. She has also 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**.

7. Having considered the submissions of the learned advocates appearing for the respective parties, what is evident from reading the report of respondent no. 2 dated 29.05.2019 and comparing the same with the show cause notice dated 11.06.2019 as well as the impugned order and on going through the contents of the inspection report, what appears is that by the impugned order dated 13.07.2019, permission has been rejected on the ground that there is no teacher available against the minimum requirement of 21. A specific oral submission was made supported by extensive documents by the petitioner institution that there were in fact 21 teachers out of which 20 had a code allotted to by the respondent no. 2. Mr. Dave would invite my attention to the regulations that there is a permissible limit of deficiencies. Admittedly, reading the oral submissions would indicate that a case was made out by the institution that deficiencies were not there as far as staff of teachers is concerned. Other ground is that most of the teachers were from outside State of Gujarat. Perusal of the oral submission once again would indicate that an exception was made out to the effect that they were living in the quarters allotted to them and therefore they had the same address. As far as report of respondent no. 2 with regard to fake patients is concerned, though the reports were expressing negative opinion, perusal of the impugned order dated 13.07.2019 would indicate that in the grounds of rejection so made out it is not so the case of the Union of India. However, these are issues which need to be looked into at the stage of final hearing. These basic fallacies as pointed out prima facie indicate that the order is passed without application of mind.

8. I am conscious of the fact that in an interim order granting such a relief would amount to allowing the petition, however, looking to the fact that due to the time line provided i.e. the fact that the entire process needed to be completed by May 2019 and in view of the fact that it was only in July 2019 that the order was passed and that too as observed without application of mind, I deem it fit to grant interim relief in terms of paragraph no. 19(B) at this stage and respondent no. 1 is directed to give provisional permission to grant admission for intake of 60 students for the BAMS course in the petitioner institution for the academic year 2019-20, subject to the outcome of the petition. The petitioner shall inform the students about the pendency of such petitions and that their admission shall be subject to the outcome of the petition.

Direct service is permitted today.

(BIREN VAISHNAV, J)

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THE HIGH COURT
OF GUJARAT

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