

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 15549 of 2019**

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BACHUBHAI GOVINDBHAI GARAIYA AYURVED COLLEGE

Versus

UNION OF INDIA

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Appearance:

MR DHAVAL DAVE, SENIOR COUNSEL WITH MR UDAYAN P VYAS(1302)
for the Petitioner(s) No. 1MR SIDDHARTH DAVE, WITH 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 : 27/09/2019****ORAL ORDER**

1. Draft amendment granted.
2. The petitioner is an Ayurvedic College which was established in the year 2017-18. Permission was granted by letter dated 18.09.2017. When for the year 2018-19, extension was not granted, the petitioner was constrained to approach this Court by filing Special Civil Application No. 15568 of 2018. This Court granted interim relief on 02.11.2018 pursuant to which the petitioner is carrying out academic session for the year 2018-19.
3. For the academic year 2019-20, extension was prayed for in the Standard Information Format. In December 2018/January 2019, two inspections were carried out on 08.03.2019/09.03.2019 and 27.05.2019/28.05.2019. Inspection report was prepared on 06/08.08.2019. A notice

for hearing was issued on 25.06.2019. The Hearing Committee heard the petitioner on 01.07.2019. By the impugned order dated 12.09.2019, permission for extension of academic session 2019-20 has been rejected essentially on eight counts, which is apparent from the perusal of the impugned order.

4. The first ground on which the permission for the academic session 2019-20 is rejected is that there is no higher faculty available in the department of Swasthavritta and Kaumarbhritya against the minimum requirement of 01 each as per RMS, 2016. To this, Mr. Dhaval Dave, learned Senior Counsel appearing with Mr. Udayan Vyas, learned advocate for the petitioner has drawn my attention to the column in which the minutes of the representation have been recorded. He has pointed out from the minutes of the representation that though it is admitted fact that there is no higher faculty, faculty in the department two in the lower faculty of Kaumarbhritya exist. Attention is drawn to Schedule 5 of the representation particularly note 3 thereof to submit that as far as they do not go under 10% deficiency, it is not a fatal defect which would warrant no extension. Merely because it is admitted that there is no higher faculty, it is wrongly taken as disqualification.

5. So far as the issue regarding against the minimum requirement of one in the lower faculty in the department of Agad Tantra and Kaumarbhritya, no faculty being available is concerned, Mr. Dave has invited my attention to the representation to suggest that one Dr. Sucheta Shirodkar for Agad Tantra and Dr. Sagar Bhut for Kaumarbhritya were

available. He submitted that the staff was seen in the photograph for the first session and since there was a summer vacation during the second inspection, they were not present. He submitted that rejection on the ground that since staff cannot be authorized is nothing but non-application of mind.

6. Similar deficiencies have been recorded with regard to Yoga Teacher and non-teaching staff, only four non teaching staff out of 32 on record, that there was no functional OT and no functional clinical laboratory which have been addressed to in the representation. I have been taken by Mr. Dave through the minutes of the representation which have been laid out in the tabular form of the impugned order. As far as Yoga teacher is concerned, it is specifically the case of the petitioner that one Mr. Pradip Bhill was appointed on 31.12.2018. An appointment letter was provided by the college. Certificates and the attendance registers for the months of March, April, May and June 2018 was given. However, that has been disregarded on the ground that no bank salary statements or documents have been given so as to authorise the presence of the Yoga teacher.

7. As far as the presence of only four non-teaching staff present on the day of visit, reading of the representation would indicate that as there was summer vacation, 28 non teaching staff were not present. Mr. Dave has invited my attention to page 116 of the petition which vindicates the stand of the petitioner and therefore the absence of 28 non teaching staff is prima facie justified.

8. As far as functionality of OTs and hospitals are

concerned, it is evident from the inspection report at page 101 of the petition that Central Laboratory Details would indicate that all the parameters and the instruments and equipments required were available. In fact even the report at page 99 which is certification by visitation team also categorically indicates that the college hospital is genuinely functional and the report prima facie appears to be acceptable.

9. Mr. Siddharth Dave, learned counsel appearing for Union of India would reiterate the stand taken by the authorities by taking me through the details of the impugned order. The essential submission of Mr. Siddharth Dave was that if Section 16 regulations provide for certain stipulations and if the expert body like CCIM pursuant to such inspection records certain deficiencies, the Court should not sit in appeal over such deficiencies. Unless such minimum deficiencies are rectified, the Court should not grant permission by way of interim order so that college can run in the academic session 2019-20. He has justified the stand of the authorities by reiterating the deficiencies so made out in the impugned order. Mr. Nikhil Kariel for the CCIM would also submit that in view of deficiencies no permission deserves to be granted.

10. Reading of the impugned order would indicate that against the table of deficiencies so pointed out in the impugned order, representation and inspection report when seen in context of these deficiencies would prima facie indicate that the petitioner institution did have the requisite necessary equipments/infrastructure and staff. For instance, if one deficiency is picked up to suggest that the order

impugned is a non-speaking order, when the deficiency that no lower faculty was available for Agad Tantra and Kaumarbhritya, the representation categorically named two members of the staff who were present. It appears that the photographs which were taken at the first inspection recorded their presence. Their absence in the second visit was obvious because of the summer vacation in the Ayurved University which is apparent by way of page 116. The other essential defect appears to be a minor one regarding biometric attendance of the staff. Material has been provided in terms of salary registers, Form No. 16 etc. to suggest that the staff was present in addition to photograph as aforesaid. Therefore, prima facie it appears that the impugned order is without application of mind.

11. Under the circumstances as above, I deem it fit to admit the matter and grant interim relief.

Hence, **Rule.** Interim relief in terms of paragraph no. 20(C) & 20(CC) is granted. 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. The admission committee shall act and strictly comply with the interim order passed by this Court. It is also clarified that the students of the petitioner college shall not claim any equity on the basis of the interim order so passed. Direct service is permitted today.

DIVYA

(BIREN VAISHNAV, J)

