



RAJASTHAN HIGH COURT  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

**S.B. Civil Writ Petition No. 14864/2024**

1. Jayoti Vidyapeeth Women's University, Vedaant Gyan Valley, Village Jharna, Mahala Jobner Link Road, Nh-8, Jaipur-Ajmer Express Way, Jaipur (Raj.) Through Its Registrar Dr. Hema Bafila, D/o Sh. Bhagwan Singh Bafila, Aged About 33 Years.
2. Faculty Of Ayurvedic Science, Constituent College Of Jayoti Vidyapeeth Women's University, Vedaant Gyan Valley, Village Jharna, Mahala Jobner Link Road, Nh-8. Jaipur Ajmer Express Way, Jaipur (Raj.) Through Its Authorised Signatory Dr. Hema Bafila, D/o Sh. Bhagwan Singh Bafila, Aged About 33 Years

----Petitioners

Versus

1. Union Of India, Through The Secretary, Ministry Of Ayush, Government Of India, Ayush Bhawan, B-Block, Gpo Complex, Ina, New Delhi-110023
2. National Commission For Indian System Of Medicine, Ministry Of Ayush, Government Of India, Plot No. T- 19, 1St And 2Nd Floor, Block-Iv Dhanwantari Bhawan, Road No. 66, Punjabi Bagh (West), New Delhi-110026.
3. The President, Medical Assessment And Rating Board For Indian System Of Medicine (Marbism), Plot No. T- 19, 1St And 2Nd Floor, Block-Iv, Dhanwantari Bhawan, Road No. 66, Punjabi Bagh (West), New Delhi-110026.
4. Rajasthan Ayush Ug-Pg Counseling Board, Through Its Chairman, Ayush Bhawan, Pratap Nagar, Jaipur (Raj.)

----Respondents

**Connected With**

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4. Rajasthan Ayush Ug-Pg Counseling Board, Through Its Chairman, Ayush Bhawan, Pratap Nagar, Jaipur (Raj.)

-----Respondents

For Petitioner(s) : Mr. P.P. Chaudhary Sr. Adv. asst. by  
Mr. Sanjeet Purohit through V.C.  
Ms. Pratyushi Mehta

For Respondent(s) : Ms. Manjeet Kaur for NP No.1  
Ms. Sonia Shandilya &  
Mr. Akshat Sharma for NP Nos. 2 & 3  
Ms. Harshita Sharma for  
Dr. Mahesh Sharma for NP No.4

**HON'BLE MR. JUSTICE SUDESH BANSAL**

**Order**

**22/10/2024**

1. Respondents No.2 & 3 have filed reply to the writ petitions. Respondent No.1-Union of India may file reply to the writ petitions, if so desire. Respondent No.4 is the Counseling Board, formal party.
2. Heard learned counsel for both the parties on the interim relief.
3. Petitioner No.1 is a university established under the Jayoti Vidyapeeth Women's University, Jaipur, Act 2008 and petitioner No.2 is a constituent college of petitioner No.1- University. The Ministry of Ayush, vide communication dated 15.07.2015 granted permission to petitioner-University to establish a college (petitioner No.2 herein) for running course of Bachelor Ayurvedic





Medical Science (hereinafter for short "BAMS" course) with intake capacity of 60 seats.

4. It has been contended that as per the provisions contained in Indian Medicine Central Council (Requirement of Minimum Standard for Undergraduate Ayurved College and Attached Hospitals) Regulations, 2016, the College is required to maintain minimum 30 faculties against the intake capacity of 60 seats in BAMS course, however, as per Regulation 8 of the Regulations of 2016, 10% relaxation is available to the college.

5. Learned counsel for petitioners contends that earlier the Central Government enacted Indian Medicine Central Council Act 1970 (hereinafter for short "the Act of 1970") to regulate the Indian Medicine System, but same has been repealed by the promulgation of the National Commission for Indian System of Medicine Act, 2020 (hereinafter for short "the NCISM Act, 2020"), and under this NCISM Act, 2020, new regulations i.e. National Commission for Indian System of Medicine (Minimum Standards) Regulations, 2024, have been issued w.e.f. 01.05.2024. Prior thereto Regulations, 2016 were in force.

6. It has been contended that Regulations, 2016 as well as new Regulations, 2024 prescribe method for maintaining attendance of faculty members in the colleges through bio-metric procedure, however, respondents No.2 & 3 adopted an alien method of procuring CCTV footage and Google timeline, ignoring the method of bio-metric, to verify the attendance of faculty members. Further, respondents issued a communication dated 31.08.2021 and SOP dated 17.08.2022, prescribing a penalty of Rs.25 lakhs



upon the colleges, for deficiency of one faculty, whereas no such provision of law is available neither in the Act of 1970 nor in the Regulations-2016 nor in the NCISM Act, 2020, although the new Regulations 2024, came in force w.e.f. 01.05.2024, envisage a provision under Regulation 71(3) for imposing maximum penalty not exceeding Rs. one crore. Hence, the communication dated 31.08.2021 and SOP dated 17.08.2022 are arbitrary, without having any force of law as much as have been issued without any authority of law.

7. The relevant facts in brief which emanate from the record and whereunder petitioners have to file instant writ petitions, are that pursuant to an inquiry commenced against the petitioner No.2-College in the month of February 2024 through hybrid mode, in respect of allegations of faculties of college not being present physically and present only on papers, seven faculty members in petitioner-College were held physically absent and finally vide order dated 21.06.2024, penalty of Rs.1.75 crore was imposed upon the petitioners (Rs. 25 lakhs for absence of one faculty member). Simultaneously, it was observed in the order dated 21.06.2024 that until remittance of the penalty amount to respondent No.2, permission for admission in BAMS Course for Session 2024-25 shall be withheld. Later on, vide order dated 07.08.2024, the penalty amount has been reduced to Rs.1.50 crore, since one female faculty was found on maternity leave. Now, it has been apprised by the learned counsel for petitioners that vide subsequent order dated 10.10.2024, penalty has been



further revised to the tune of Rs.1 Crore only, to bring the same in conformity to the Regulation 71(3) of the new Regulations-2024.

8. SB Civil Writ Petition No.14864/2024 has been filed by petitioners, challenging the orders dated 21.06.2024 & 07.08.2024, imposing penalty amounting to Rs.1.50 Crore upon petitioner No.2 and it has been argued that firstly, holding the six faculty members absent, merely on the basis of method of CCTV Footage and Google Time-Line, instead of following the method of examining their bio-metric attendance, itself is arbitrary, illegal and violative to Regulation 9(3) of Regulations 2016; and secondly, imposition of the penalty of Rs.25 lakhs for per absentee teacher, merely on the basis of communication dated 31.08.2021 and SOP dated 17.08.2022 too is ex-facie illegal and without jurisdiction.

As far as revising of penalty to the tune of Rs.1 crore, following Regulation 71(3) of Regulations 2024 vide order dated 10.10.2024 is concerned, it has been argued that same is also an arbitrary order, since the new Regulations-2024 came in force w.e.f. 01.05.2024, which cannot be held applicable retrospectively, in respect of the inquiry commenced in the month of February, 2024 on the basis of hybrid inspection on 19.02.2024 and 20.02.2024. Hence, it has been prayed that levying of penalty from the petitioners is liable to be stayed, so that non-remittance of the penalty by petitioner No.2 may not lead to depriving the petitioner-College for grant of permission in the Academic Session 2024-25 or in 2025-26, as indicated in the orders dated 21.06.2024, 07.08.2024 and 10.10.2024. A copy of the order



dated 10.10.2024, revising penalty issued by respondent Nos.2 & 3, has been placed on record and same is permitted to be taken on record, being an undisputed & genuine document.

9. SB Civil Writ Petition No. 15064/2024 has been filed by the petitioners, challenging the order dated 23.08.2024 passed by respondent No.2, whereby in furtherance to the similar inquiry commenced against the petitioner-College in the month of February, 2024, the prayer of petitioners for grant of conditional permission to admit candidates in UG-BAMS Course for Academic Session 2024-25 against the intake capacity with 60 seats has been denied.

It has been argued by the learned counsel for petitioners that order dated 23.08.2024 has been passed in haste, contrary to record and same is wholly perverse. Deficiency of 13 faculties, non-functionality of OPD and IPD in the hospital, non-functionality of Panchkarma & Ksharasutra blocks, indicated in the order itself, are incorrect facts and do not find corroboration from the inspection reports. At the time of inspection, patients in OPD and IPD were found and Panchkarma & Ksharasutra blocks were also functioning, which stands established by perusal of inspection reports duly signed by the two members of inspection team. The reply of petitioners, pointing out the availability of 28 full time faculty members in the petitioner-College; providing geo-tagged pictures to show functionality of OPD and IPD as well as Panchkarma & Ksharasutra blocks, have not been taken into consideration by the respondents at all.



In addition, it has been pointed out that otherwise also in view of the communication dated 09.01.2017, issued by the Central Council of Indian Medicine, a statutory body under the Ministry of Ayush, a period of 90 days from the date of accrual of vacancy or before 31<sup>st</sup> December of every calendar year, whichever is earlier, is available for the Institution to fill up the deficiency of any faculty member, meaning thereby that the deficiency of faculty, if any, is a curable deficiency. Hence, it has been prayed that operation of order dated 23.08.2024 be stayed and since the counseling is underway, petitioner-College be permitted to participate in the counseling to admit the students in the UG-BAMS Course for Session 2024-25 against the intake capacity of 60 seats.

10. Per contra, counsel appearing on behalf of respondent Nos.2 and 3 has opposed the interim relief prayed for by the learned counsel for petitioners and has urged that petitioners have alternative remedy of statutory appeal against the impugned orders, by virtue of Section 24(3) of the NCISM Act 2020 before the Commission of Central Government as also further appeal against the decision of Commission before the Central Government under Section 9. As far as challenge to communication dated 31.08.2021 and SOP dated 17.08.2022 are concerned, the same is highly belated and since penalty imposed upon petitioner-College was not deposited as much as other deficiencies as indicated in the order dated 23.08.2024 were also observed, hence permission to petitioner-College has rightly been denied. As far as revising the penalty to the tune of Rs.1 crore



vide order dated 10.10.2024 is concerned, it has been urged that remittance of same pertains to the next Academic Session of 2025-26, thus in that view, the prayer for interim relief has been opposed.

11. In rebuttal, learned counsel for petitioners argued that the communication dated 31.08.2021 and SOP dated 17.08.2022 are not sacrosanct documents for imposition of penalty only, but there is scope of issuance of warning alternatively. The respondent Nos.2 and 3 have adopted an arbitrary and discriminatory practice, as in respect of other Colleges, even after noticing deficiencies of the requisite faculties, only warning was issued and no penalty was imposed, whereas against the petitioners, huge penalty has been imposed. In this respect, attention of this Court has been drawn to an order dated 22.09.2023, whereunder only warning was given to one other college on similar nature of deficiency.

Nevertheless, learned counsel for petitioners, having instructions from the petitioners, states at Bar that without affecting the rights of the petitioners on merit to challenge the impugned orders, passed in respect of imposing penalty, petitioners are ready to furnish a bank guarantee of Rs.50 lakhs i.e. 50% of the revised penalty amount of Rs.1 crore, before respondent Nos.2 & 3 as security to honour the penalty, in case, the Court finally sustain or modify the penalty amount. As far as deficiency of any faculty member is concerned, firstly, same is perverse, moreover, has been rectified, however if still persist, permission for Session 2024-25 may be accorded, subject to



furnishing an undertaking by the petitioners to ensure the availability of required faculties as per Regulations for intake capacity with 60 seats.

12. Having gone through the prayers made by the petitioners in both the writ petitions and considering rival contentions of counsel for both the parties, this Court is prima facie of the view that the availability of alternative remedy of appeal to the petitioners may not be held to be an efficacious remedy to deal with the entire prayers made by the petitioners, particularly the prayer for seeking to set aside the communication dated 31.08.2021 and SOP dated 17.08.2022. It further prima facie appears that Regulations 2016 or the NCISM Act, 2020 do not prescribe any provision of law for imposition of penalty and in the new Regulations 2024, the amount of penalty although has been quantified not exceeding Rs.1 crore, but new Regulations- 2024 has come in force w.e.f. 01.05.2024, whereas the impugned penalty upon the petitioners, has been imposed pursuant to the inquiry commenced prior thereto in the month of February, 2024. Moreover, to record the attendance of faculties, the method of biometric as envisaged in the Regulations of 2016 so also of 2024, has not been followed, rather an alien procedure to verify attendance of teachers through CCTV footage and Google Timeline, has been adopted. However, it is noteworthy that the deficiency of faculty, if any, is subject to fulfillment by securing fresh appointment, within scope of communication dated 09.01.2017 issued by the Central Council of Indian Medicine within a period of 90 days from the date of accrual of vacancy or before



31<sup>st</sup> December, 2024, whichever is earlier. As far as, other deficiencies as indicated in the impugned order dated 23.08.2024, other than the deficiency of faculty, are concerned, prima facie such other deficiencies do not find corroboration with the inspection reports available on record, rather on the contrary, record prima facie show that OPD, IPD and Panchkarma & Ksharasutra blocks in hospital, were found operational even during the course of inspection.

13. Thus, in such facts and circumstances, depriving the petitioner-College to participate in the counseling for admitting students against the intake capacity with 60 seats in UG-BAMS Course for Academic Session 2024-25, prima facie may not be held to be justified and same would be violative to the legal rights of the petitioners. Further, petitioners would suffer irreparable loss, if permission is not granted. The balance of convenience also tilts in favour of the petitioners, for grant of interim relief, subject to final outcome of the writ petitions.

14. Therefore, in order to maintain balance of interest and equity between the parties, as an interim measure, this Court deems it just and proper to stay the requirement of remittance of penalty amount by the petitioners, pursuant to the orders dated dated 21.06.2024 & 07.08.2024 (Annex.7 & 8 in SBCWP No.14864/2024) and revised penalty dated 10.10.2024. The operation of the impugned order dated 23.08.2024 (Annex.16 in SBCWP No.15064/2024) is also stayed and respondents are directed to permit the petitioner-College to participate in the ongoing counseling for intake capacity with 60 seats in UG-BAMS Course



for Academic Session 2024-25. However, such participation shall remain subject to; (i) furnishing a bank guarantee of Rs. 50 lakhs of any Nationalized Bank, by the petitioners before the respondent No.2, within a period of 15 days, and (ii) furnishing a written undertaking to fulfill the deficiency of faculties, if any, in proportionate to the intake capacity of petitioners as per requirement of Regulations, within the period as permissible under the communication dated 09.01.2017 issued by the Central Council of Indian Medicine.

It is made clear that any of the observation made hereinabove in this Order, shall not affect the case of either party on merits of the writ petitions.

15. In view of the above, stay applications filed in both the writ petitions, stand disposed of.

16. Let present matters be listed on 10<sup>th</sup> December 2024.

**(SUDESH BANSAL),J**

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