



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

S.B. Civil Writ Petition No.3779/2022

Mahatma Jyotiba Fule Ayurveda Mahavidyalaya, Harota, Chomu, Jaipur, Raj. through its Director, Vivekanand Tanwar S/o Late Shri Suwa Lal Saini R/o Reengus Road Chomu, Raj.

----Petitioner

Versus

1. The Union of India, through the Secretary, Ministry Of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH), B-Block, GPO Complex, INA, New Delhi 110023.
2. The State of Rajasthan, through the Principal Secretary, Department of Ayurved and Indian Medicine, Government of Rajasthan, Secretariat, Jaipur.
3. The UG AYUSH Counselling Board, Rajasthan, 112-113, 1St Floor, Administrative Building, Dr. Sarvapalli Radha Krishnan Rajasthan Ayurved University, Nagaur Road, Jodhpur through its Chairman.
4. Dr. Sarvapalli Radha Krishnan Rajasthan Ayurved University, Nagaur Road, Jodhpur through its Registrar.
5. National Commission for Indian System Of Medicine, Ministry of Ayush, Govt. Of India, 61-65, Institutional Area, Janakpuri, D-Block, New Delhi-110058 through its Chairperson.
6. Medical Assessment and Rating Board for the Indian System of Medicine (NCISM), 61-65, Institutional Area, Janakpuri, D-Block, New Delhi-110058 through its President.

----Respondents

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For Petitioner(s) : Mr.R.N. Mathur, Senior Advocate (Through VC) assisted by Mr.Nikhil Saini, Adv. & Mr.Shovit Jhajharia, Adv.

For Respondent(s) : Ms.Sonia Shandilya, Adv. with Mr.Arn timer Singh, Adv. for Nos.5 & 6.

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**HON'BLE MR. JUSTICE ASHOK KUMAR GAUR**

**Order**

**05/03/2022**



Learned Senior Counsel for the petitioner-Institution submitted that by impugned order dated 11.01.2022, the respondents have imposed penalty of Rs.25 Lakh per Teacher on the allegation of two Teachers, not found physically present in the Institution.

Learned Senior Counsel submitted that the petitioner-Institution preferred appeal against the penalty order and the Appellate Authority, vide order dated 25.02.2022, has rejected the appeal.

Learned Senior Counsel submitted that the reasons assigned in rejecting the appeal of the petitioner-Institution are not relevant considerations for considering the absence/presence of Teachers and the relevant factors, which were placed before the Appellate Authority have not been taken into account and only on *ipse dixit* allegation, the impugned order has been passed.

Learned Senior Counsel submitted that though an appeal has been preferred before the Central Government as per sub-Section (6) of Section 9 of the National Commission for Indian System of Medicine Act, 2020 (hereafter 'the Act of 2020'), however, the Appellate Authority does not have any power to grant interim relief and moreover, there is no timeline provided under the Act of 2020, to decide the appeal.

Learned Senior Counsel further submitted that the respondents have issued the notice for making admissions in BAMS/BHMS/BUMS/BNYS Courses by way of counselling and registration of first round of State Quota has started from 25.02.2022 and now, the Choice Filling and Locking by the candidates, will commence from 06.03.2022 to 10.03.2022.



Learned Senior Counsel submitted that in case this Court will not consider the interim relief, the petitioner-Institution will suffer irreparable loss.

Learned Senior Counsel for the petitioner submitted that the petitioner-Institution is running since 2014-15 and it has always made compliance of orders issued by the Authorities, from time to time and it confirms to the requirement of running the Institution, as per the provisions of the Act of 2020.

Learned Senior Counsel submitted that the Delhi High Court has also considered the similar issue, as raised in the present writ petition and interim order has also been passed by the Court in **Writ Petition (C) No.2783/2022** titled as ***Shri Dhanwantri Ayurvedic Medical College and Research Centre Vs. Union of India & Ors.*** on 14.02.2022 and another interim order dated 23.02.2022 was passed in **WP (C) No.2254/2022** titled as ***Shri Krishna Ayurvedic Medical College and Hospital Vs. Union of India & Ors.***

Learned Senior Counsel submitted that the interim relief for permitting the petitioner-Institution in counselling is the need of the hour, otherwise the petitioner-Institution will be deprived to admit students.

Learned counsel Ms.Sonia Shandilya has put in appearance as caveator on behalf of respondent Nos.5 & 6.

Learned counsel for the respondents Ms.Sonia Shandilya submitted that appeal filed by the petitioner-Institution is a statutory appeal and same is pending for the consideration before the Appellate Authority and as such, this Court may not even entertain the present writ petition.



Learned counsel further submitted that the Authorities have passed the penalty order as well as appellate order, after considering all the pleas raised by the petitioner-Institution and the fact relating to absence of Teachers has duly been proved by taking into account the relevant material and as such, the petitioner-Institution has rightly been imposed with the penalty of Rs.50 Lakh for absence of two Teachers.

Learned counsel for the respondents further submitted that the averments made in the writ petition by the petitioner-Institution as well as in the impugned order, that they comply with all the norms and they have also kept the required faculty for imparting the courses, still need to be verified by the Authorities and as such, this Court may not consider the prayer for grant of interim relief.

I have heard learned counsel for the parties and perused the material available on record.

This Court *prima facie* finds that the appeal which has been filed by the petitioner-Institution as per sub-Section (6) of Section 9, is still pending and perusal of said provision reveals that the Appellate Authority does not have any power to grant interim relief and further, there is no timeline provided for deciding the appeal.

This Court *prima facie* finds that the petitioner-Institution is running since 2014-15 and if the dispute is with regard to absence/presence of Teachers, the same will be decided by the Competent Authority after considering pleas raised by all the parties.

This Court has also considered the interim orders passed by the Delhi High Court in above referred cases.





Issue notice of the writ petition as well as stay application to the respondent Nos.1 to 4 only as learned counsel Ms.Sonia Shandilya is appearing on behalf of respondent Nos.5 & 6. Rule is made returnable on 21.03.2022. Notices be given 'dasti', if prayed.

This Court, as an interim measure, directs that the petitioner-Institution will be permitted in the counselling process, however, the students if allotted in the petitioner-Institution will not be given final admission without prior permission of this Court.

However, it is made clear that the present order will not create any equity in favour of the petitioner-Institution.

Learned counsel Ms.Sonia Shandilya may file reply to the writ petition.

List on 21.03.2022.

Learned counsel for the respondents will also be free to file application under Article 226(3) of the Constitution of India, if so advised.

**(ASHOK KUMAR GAUR), J**

Himanshu Soni/27

सत्यमेव जयते