

IN THE HIGH COURT OF KARNATAKA

GULBARGA BENCH

DATED THIS THE 31ST DAY OF JULY, 2014

BEFORE

THE HON'BLE MR.JUSTICE B.S.PATIL

W.P.Nos.104207, 104208, 104224 & 104225/2013 (EDN-RES)

In W.P.No.104207/2013

BETWEEN:

Harender Singh,
S/o Ramesh Chand,
Age 20 years,
Occ – I Phase,
BAMS Student,
R/o R.K.M.Boys Hostel,
Karpurmath Campus,
100 feet Road,
K.C.Nagar, Bijapur.

..PETITIONER

(By Sri Manjunath M.Chidalli, Adv.)

In W.P.No.104208/2013

BETWEEN:

Manoj Kumar,
S/o Samay Singh,
Age 20 years,
Occ – I Phase,
BAMS Student,
R/o R.K.M.Boys Hostel,
Karpurmath Campus,
100 feet Road,
K.C.Nagar, Bijapur.

(By Sri Manjunath M.Chidalli, Adv.)

In W.P.No.104224/2013**BETWEEN:**

Rahul Dev Gehlaut,
 S/o Yogendar,
 Age 20 years,
 Occ – I Phase,
 BAMS Student,
 R/o R.K.M.Boys Hostel,
 Karpurmath Campus,
 100 feet Road,
 K.C.Nagar, Bijapur.

(By Sri Manjunath M.Chidalli, Adv.)

In W.P.No.104225/2013**BETWEEN:**

Ramawatar,
 S/o Ram Narayan,
 Age 20 years,
 Occ – I Phase,
 BAMS Student,
 R/o R.K.M.Boys Hostel,
 Karpurmath Campus,
 100 feet Road,
 K.C.Nagar, Bijapur.

... PETITIONERS

(By Sri Manjunath M.Chidalli, Adv.)

AND:

1. Union of India,
 Rep. by its Secretary to Govt.,
 Ministry of Health and Family Welfare,
 Department of Ayurvedic,
 Yoga and Naturopathy,
 Unani, Siddha and Homeopathy,
 (AYUSH), IRCS Building,
 New Delhi – 110 001.

2. The State of Karnataka,
By its Secretary to Government,
Medical Education,
Department of Health and Family
Welfare Education, M.S. Building,
Bangalore – 560 001.
3. Rajiv Gandhi University of
Health Sciences,
Rep. by its Registrar,
4th 'T' Block, Jayanagar,
Bangalore – 560 041.
4. The C.C.I.M.,
New Delhi – 110 006,
By its Secretary.
5. Mallikarjun Vidya Vardhak
Sangha's Rajeshwar Karpurmath
Memorial Ayurvedic Medical
College, Bijapur,
By its Principal.

**... RESPONDENTS
(common)**

**(Sri R.S. Sidhapurkar, Adv. for R1;
Sri Shivakumar Tengli, Addl. Govt. Adv. for R2;
Sri R.V. Nadagouda, Adv. for R3;
Sri Sanganagouda V. Biradar, Adv. for R5)**

These Writ Petitions are filed under Articles 226 & 227 of the Constitution of India, praying to issue a writ of mandamus, directing the 3rd respondent to transfer the petitioners from the 5th respondent college to any other college offering B.A.M.S. course recognized by the 1st and 3rd respondents to prosecute their studies in 1st year B.A.M.S. Ayurvedic course and etc.

ORDER

1. In these writ petitions, petitioners have sought for a direction to the 3rd respondent-Rajiv Gandhi University of Health Sciences, to transfer them from the 5th respondent-College to any other College offering B.A.M.S. course recognized

by respondents 1 & 3 to prosecute their studies in the first year B.A.M.S. Ayurvedic course. They have also sought for a direction to the 5th respondent-College to return all the documents which they have furnished at the time of admission without collecting any further fees.

2. Though these batch of writ petitions had been filed by nine persons, the other students viz., 2nd petitioner-Harendhar Singh, 3rd petitioner-Manoj Kumar, 7th petitioner-Rahul Dev and 8th petitioner-Ramawatar, have already withdrawn the petition. Therefore, the grievance made by the remaining petitioners is only considered.

3. The facts stated in the petitions would reveal that petitioners are admitted to the 5th respondent-College to prosecute their studies in the B.A.M.S. course for the academic year 2011-12. According to the petitioners, they bona fide believed that 5th respondent was duly recognized to admit the students and impart training and education in the course for the academic year 2011-12. It is alleged by them that examinations due to be held in December 2012 for the first year course were not held in the college and therefore the petitioners made inquiry with the management. They were informed that

there was some problem with the admissions and that once the problem was solved, examinations will be held. It is contended by them that they took supplementary examinations for the first year B.A.M.S. course in June 2013, but the results of the same were not announced. Thus, they contend that they have been pushed into total darkness regarding their future career. They have appeared for the supplementary examination in June 2013 based on the interim order passed by this Court in W.P.No.21061-100/2013. The interim order passed in the said writ petition makes it clear that results of students shall not be declared until further orders. These writ petitions were filed on 17.12.2013 when the examinations for first year B.A.M.S. course was to commence on 19.12.2013, making a grievance that their results of the first year had not been announced nor they were aware of their requirement to appear for the subjects of the first year B.A.M.S. course, if they had failed therein. They sought for an interim order to announce the results of the first year B.A.M.S. course and consequently to direct the 3rd respondent-University to permit the petitioners to appear for supplementary examinations in the failed subjects of first year B.A.M.S. course.

4. On 12.06.2014, when this matter was listed, this Court passed the following order:-

1. Learned counsel for the petitioners files a memo dated 09.06.2014 in W.P.Nos.104209/2013, 104223/2013 and 104226/2013 and a memo dated 10.06.2014 in W.P.Nos.104206/2013 and 104210/2013 seeking permission to withdraw the writ petitions.

2. Placing the memos on record, these writ petitions are dismissed as withdrawn.

3. Learned counsel for the petitioners shall make a note of withdrawal of these writ petitions by the respective petitioners in the cause title.

5. On 17.06.2014 another interim order was passed in the following terms:-

“Heard the learned counsel for the parties.

Pursuant to the order passed by this Court on 12.06.2014, the 5th respondent – College has filed statement of objections supported by the affidavit of the Vice-Principal of College one Dr. A.A.Khazi stating that the College did have permission from respondent No.1 for the academic years 2007-08,

2008-09 and 2009-10. Thereafter, the permission was not granted. However, the matter is under consideration by the 1st respondent. He further points out that for the academic year 2013-14, permission has been granted, as the deficiency pointed out has been complied with. He places reliance on the order passed by this Court in W.P.No.65996/2011 (EDN/REG-P) disposed of on 09.01.2013 following the judgment of the Division Bench that permission granted for the subsequent year would be efficacious for the previous year also.

Learned counsel for the petitioners-students seek permission to appear for the examination with arrangements made to take up the examinations in any College other than the respondent-College. They are apprehending that the respondent-College may subject them for harassment in view of the writ petition filed and the allegations made therein.

It is not in dispute that the petitioners are required to appear for the examinations scheduled to be held with effect from 19.06.2014 for the respective courses.

It is also not in dispute that the respondent-College has been permitted to make admissions for the academic year 2013-14 upon being found that it had the required infrastructure. The question

whether the same will enure to the benefit for the previous year will be examined subsequently.

Suffice to observe that petitioners shall be permitted to take the examinations commencing from 19.06.2014, the respondent-College shall not cause any inconvenience to the petitioners-students or harass them in any manner. If there is any harassment, the petitioners are at liberty to bring to the notice of the Court.”

6. It now transpires that petitioners could not take any examination on 19.06.2014, as no examination was conducted in the College particularly for the second year. According to the petitioners, though supplementary examinations were held for the first year, petitioners were not permitted to take the examinations. This assertion is denied by the College. It is also contended by the petitioners that petitioner-students are not interested to prosecute their studies in the respondent-College as they are apprehending that they are likely to be handed down raw deal. They have also contended that they were mislead to get the admission to College although it had no recognition for the relevant academic year 2011-12.

7. Learned Counsel appearing for the respondent-College brings to the notice of the Court the order passed in W.P.Nos.51099/2012 & 51184-222/2012 disposed of on 15.02.2013 produced at Annexure-R5 along with statement of objections. He contends that rejection of recognition for the academic year 2011-12 has been quashed and the matter was remitted for consideration before the Central Council of Indian Medicine (for short 'CCIM'). He also points out that the said order in the writ petitions was passed by following a Division Bench judgment dated 17.01.2013 passed in W.P.No.42503/2011 and connected cases, wherein this Court in similar circumstances while dealing with the rejection of recognition on the ground of deficiency in the infrastructure, has held in paragraphs 2 to 4 as under:-

2. 'After hearing the learned counsel for the petitioners and the respondents at length, it discloses that petitioner-Colleges were established prior to incorporation of Chapter-II-A by amendment to Indian Medical Central Council Act, 1970. (in short the 'IMCC Act'). The provision in Sec.13C insists that Ayurvedic Medical Colleges which are established prior to the amendment should seek permission within three years. The petitioner-Colleges did apply and got

permission for the years 2006-07, 2007-08, 2008-09, 2009-10. The permission has been granted to allow the students by virtue of the Court order. The application to admit students for the period 2011-12 is rejected.

3. It is the contention of the first respondent that the Colleges do not have requisite infrastructure to accord permission and they also rely upon the report of the Director of Department of AYUSH, Government of Karnataka. The said report was submitted in WP Nos.7746-85/2012 wherein it is observed that petitioner-Colleges do not have the staff strength and other infrastructure. The Regulations under the Act have been formulated and Gazetted. The Colleges have been granted time till 31.12.2014 to fulfill the minimum standards required for the permission. The said Regulation does grant further extension of time to comply with the requirements to seek permission.

4. Sri B. V.Acharya, learned Sr. Counsel for the petitioners submitted that the order of rejection for the academic year 2011-12 be set aside and the matter be remanded to the first respondent for fresh consideration. The counsel for respondents oppose the said request. We do not find any justification to reject the request of the petitioners in view of the new regulations which have been brought into force'.

8. Therefore, it is submitted by the Counsel for the respondent-College that there is no impediment for the students to continue to study in the College and that the matter having been seized by the CCIM, they will await the order to be passed by the Commission.

9. I have heard the learned Counsel for both parties.

10. It is clear that the College has got recognition for the period of 2007-08 and 2008-09. It has also got recognition for the subsequent years i.e., 2013-14 and 2014-15. During the interregnum from 2010-11, 2011-12 and 2012-13, the College does not have recognition. The request of the College for recognition for the said period is pending consideration by virtue of the orders passed by this Court in different writ petitions. Therefore, based on the order to be passed by the Commission, the students will be in a position to know where they stand. However, the fact remains that their fate at present hangs in balance. It is in this background, these students coupled with the apprehension regarding the harassment handed down to them, want to discontinue their studies and they have made a request to transfer them to other institutions which are duly recognized. This request cannot, in my view be

granted for the present because students admitted for the course not duly recognized cannot claim as of right, transfer to another college as against a duly recognized seat. Such permission cannot be granted.

11. Learned Counsel Mr. P.K.Rai, and Mr. Manoj Kumar Dwivedi, appearing for four petitioners-students who are present before the Court, on instructions from the students, submit that the College be directed to return the fees along with expenses, so that petitioners may pursue their career elsewhere. They have filed a statement before the Court mentioning the amount of fees paid by them and the expenses incurred in the course of their studies.

12. This is objected by the Counsel for the respondent-College who has filed another statement stating the amount which has been collected by each of the four students. The statement given by the College is as under:

Name of the students	Total Fees paid
Harendar Singh	₹3,42,000/-
Manoj Kumar	₹2,30,000/-
Rahul Dev	₹1,65,667/-
Ramawatar	₹85,000/-

13. Though petitioners have claimed exorbitant amount as amount collected from them towards fees etc., and have also sought for compensation, in this proceeding, this Court will not be justify in entertaining into the same. However, the fact remains that petitioner-students have spent their valuable years and have been made to pay substantial amount towards fees and expenses against different heads and therefore they are entitled for refund of the amount paid by them along with reasonable expenses. Therefore, while directing the College to refund the amount collected from the students as reflected in the statement filed by the College, the College is directed that an additional sum of ₹1,00,000/- for each student shall be paid immediately so as to enable the students to pursue their career elsewhere. Petitioners shall be given all the documents that they were furnished to the College at the time of admission along with no due certificate. This order shall be complied with within two weeks. Accordingly, writ petitions are disposed of.

14. This order is passed after deliberations that have taken place between the students and the management with the help of respective Counsels appearing for them, only so as to put an

end to the problems faced by the students. This order shall not be treated as precedent in respect of other students. The amount shall be paid by way of demand draft. However, it will be open to the petitioner-students to make appropriate representation in this regard before the competent authorities including the respondent-college.

**Sd/-
JUDGE**

*MSR**