Permission letter

भारत सरकार/ Government of India
आयुर्वेद, योग व प्राकृतिक चिकित्सा, यूनानी,सिद्ध एवं होम्योपैथी (आयुष) मंत्रालय
Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy (AYUSH)
"आयुष भवन""AYUSH BHAWAN"
बी" ब्लाक, जी.पी.ओ. कॉम्प्लेक्स आई .एन .ए.,नई दिल्ली- 110023"
'B' Block, GPO Complex, INA, New Delhi - 110023

To

The Principal,
Shree Swaminarayan Vishwa Mangal Gurukul Trust's
Shree Swaminarayan Homoeopathy College,
Nr. Ahmedabad-Mehsana National Highway,
At & Po-Saij, Kalol, Dist. Gandhinagar, Gujarat 382721
Email Id: - sshckalol@gmail.com, drsunilsingh30@gmail.com

Subject: Grant of Conditional Permission to Shree Swaminarayan Vishwa Mangal Gurukul Trust's Shree Swaminarayan Homoeopathy College, Nr. Ahmedabad-Mehsana National Highway, At & Po-Saij, Kalol, Dist. Gandhinagar-382721 Gujarat for admission in UG (BHMS) course with 60 seats for the academic session 2020-21-reg.

Sir/Madam,

I am directed to refer to the provisions prescribed under Section 12C of the Homoeopathy Central Council Act, 1973 and regulations made thereunder and Ministry's policy for the academic year 2020-21, In order to verify the compliance of availability of standards by the College, the Board of Governors to CCH has examined the Part-1 of the proforma of inspection of college submitted by the Shree Swaminarayan Vishwa Mangal Gurukul Trust's Shree Swaminarayan Homoeopathy College, Nr. Ahmedabad-Mehsana National Highway, At & Po-Saij, Kalol, Dist. Gandhinagar-382721 Gujarat and furnished the recommendation vide CCH's letter No.15-8/2020-CCH (Visitation matter) 3458 dated 02.11.2020 as under:

"***Recommended for allowing admissions for the session 2020-21 with the intake capacity of only 60 seats in existing UG (BHMS) course*** *due to shortage of teaching staffs (deficiency of 12.5%) as 07 teachers considered ineligible due to discrepancies in their documents.*

The Committee also recommended to apprise the Ministry about ineligible teachers, that the college website is not updated and the college has not complied with the provisions of Employee's Provident Funds & Miscellaneous Provident Act 1952 & ESI Act, 1948 and relevant Rules and Regulations. Details of ineligible teachers are as under:

1. *Dr Kantilal Mohanbhai Parmar (Reader, Anatomy) qualification Bsc & Msc Anatomy –Not eligible as he is not having required qualification as per MSR.*
2. *2. Dr Padmakar M Anpat (Reader, Pharmacy)-not eligible as he is having clinic in Chinchwad Pune with overlapping timings of clinic (Morning 9:30-1pm, Evening 5:00-9:30pm) & college hour, thus seems to be on paper.*
3. *Dr Puja J Rana (Lecturer, FMT)- signature in joining letter and documents for teacher's code, mismatches with the sign in affidavit.*

4. *Dr Smita M Deshpande (Prof. Practice of Medicine)- signature in joining letter and documents for teacher's code, mismatches with the sign in affidavit.*
5. *Dr Nakul N Sulegaon (Lecturer, Surgery)- signature in joining letter and documents for teacher's code, mismatches with the sign in affidavit.*
6. *Dr Diana G Bhatti (Reader, OBG)- signature in joining letter and documents for teacher's code, mismatches with the sign in affidavit.*
7. *Dr Ritesh V Soni (Lecturer, Community Medicine)- signature in joining letter and documents for teacher's code, mismatches with the sign in affidavit."*

2 Accordingly, vide this Ministry's letter of even number dated 11.11.2020 an opportunity of Hearing through video conferencing was given on 24.11.2020 before the designated hearing Committee to represent the case. The college representative made their submission to the Hearing Committee. During the Hearing, College representative could not substantiate the availability against the deficiencies conveyed.

3. After considering the provisions of section 12C (1) of Homoeopathy Central Council Act, 1973 and HCC (MSR) Regulations, 2013, recommendations of the Board of Governors to CCH and observation of the Hearing Committee, conditional **permission of the Central Government is hereby granted to Shree Swaminarayan Vishwa Mangal Gurukul Trust's Shree Swaminarayan Homoeopathy College, Nr. Ahmedabad-Mehsana National Highway, At & Po-Saij, Kalol, Dist. Gandhinagar-382721 Gujarat for continuing admissions in BHMS course during the academic year 2020-21 with intake capacity of 60 seats.**

4. It is further informed that, minimum 15% of undergraduate seats (wherever applicable) of the permitted intake capacity of BHMS course shall be treated as All India quota. The counselling for seats under All India quota shall be conducted by respective counselling Authority of State / UT Government as designated by the Central Government vide letter F. No. L. 11011/02/2020-E- (1) dated 26.10.2020 for A.Y. 2020-21 and counselling for the remaining 85% seats or as the case may be, shall be conducted by the concerned counselling Authority of that State / UT. **The permission of the college stands withdrawn if the college fails to comply with the aforesaid direction of the Central Government for All India quota or the students admitted thereunder.**

5. Admissions made in violation of the above conditions will be treated as invalid and action will be initiated under HCC Act & Regulations made thereunder. Discrepancies, if any, may be immediately brought to the notice of CCH and the Central Government.

6. The College shall comply with the provision for providing EPF and ESI facilities to the teaching, Non-teaching staff of the College/Hospitals and regularly paying the same as per the provisions of Employees' Provident Funds and Miscellaneous Provident Act, 1952 & ESI Act, 1948 and relevant Rules and Regulations.

7. Further, the College shall submit comply with the procedure to get permanent registration of the Teachers,/ Hospital Clinical Staff/ Consultant in

concerned State Boards/ Council where the college/ hospital is located or Central Registration of CCH by 31st December, 2020 as per the decision conveyed vide CCH's letter no. 15-1/2018-CCH(3)/18510-18768, dated 16th January, 2019 and decided by the High Court of Delhi in W.P. No. 2369 of 2019, which will be verified by the Council during next visitation while considering the matter for grant of permission for the A.Y. 2021-22.

8. The College has to comply with the full requirements of HCC (MSR) Regulations, 2013 by 31st December, 2020 for continuing admissions during the subsequent year. A copy of the compliance report shall be submitted by the college to CCH under intimation to this Ministry. Subsequently, CCH shall verify the compliance well in time for considering the admissions during the Academic Year 2021-22 and furnish the recommendation to the Central Government.

9. Please acknowledge the receipt of this letter.

This issued with the approval of Competent Authority.

Yours faithfully,

Digitally signed by SHRUBY RANJAN VIDYARTHI
Date:Thu Jan 07 11:48:36 IST 2021
Reason:Approved

(Dr S R K Vidyarthi)
Director

Copy to:-

i. The Secretary, CCH, 61-65 Institutional Area, Opp. 'D' Block, Janakpuri, New Delhi-110058 for taking necessary action.

ii. Principal Secretary, Health & Family Welfare Department, Government of Gujarat, 7th Floor, Block 7, Sardar Patel Bhavan, Sachivalaya, Gandhinagar, Gujarat, Email- sechfwd@gujarat.gov.in

ii. The Registrar, Gujarat University, Navarangpura Ahmedabad-380009 Gujarat, Email- registrar@gujaratuniversity.ac.in

-----Sd-----
(Dr S R K Vidyarthi)
Director

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1035 of 2021

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SHRI SWAMINARAYAN VISHWAMANGAL GURUKUL TRUST, KALOL THROUGH SWAMI PRESWARUPDASJI

Versus

UNION OF INDIA

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Appearance:
MR DHAVAL DAVE, SENIOR COUNSEL WITH MR UDIT N VYAS(9255) for the Petitioner(s) No. 1
MR SIDDHARTH DAVE FOR MR DEVANG VYAS(2794) for the Respondent(s) No. 1,2
NOTICE SERVED(4) for the Respondent(s) No. 3

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CORAM: **HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 20/02/2021

CAV ORDER

1. In this petition under Article 226 of the Constitution of India, the prayer of the petitioner is to quash and set aside the order dated 07.01.2021 by which the intake capacity of the institute was reduced from 100 to 60 seats in context of Shree Swaminarayan Homeopathy College and for a direction that the institute be permitted to continue imparting education in BHMS with the intake of 100 seats for the academic year 2020-21.

2. Facts in brief are as under:

2.1 The Petitioner is a public trust. It *inter alia* runs a college in the name of Shri Swaminarayan Homoeopathy College ("College"

for short). The College is engaged in imparting education in the discipline of Homoeopathy at the level of graduation leading to the qualification of B.H.M.S. The College was established in the academic year 2017-18 with the intake capacity of 100 seats.

2.2 The College submitted the requisite details in the manner and within the time frame prescribed by the Respondent Nos. 1 & 2 for extension of permission for the academic year 2020-21. This is not in dispute. Thereafter, the College received from Respondent No. 1 the hearing notice dated 11th November, 2020. Vide this notice the College was called upon to render its explanation in writing in respect of the deficiencies alleged therein against the College and avail the opportunity of hearing before the Designated Hearing Committee of Respondent No. 1 on the date stipulated therein.

2.3 The College, thereupon, submitted its written submission supported by the documents dealing with the deficiencies alleged against it and also made oral submissions before the Designated Hearing Committee of Respondent No. 1. Thereafter, the College was served with the impugned order dated 7th January, 2021 passed by Respondent No. 1. Vide this order the intake of the College for the academic year 2020-21 was reduced to 60 seats from 100 seats.

3. Mr. Dhaval Dave, learned Senior Counsel appearing with Mr. Udit Vyas, learned advocate for the petitioner made the following submissions:

a. The impugned order is a non-speaking order. No reasons are

assigned for reducing the intake of the College from 100 seats to 60 seats.

b. Realizing the aforesaid fatal lacuna in the impugned order, Respondent No. 1 attempted to supply reasons to the impugned order by filing an affidavit in reply. However, it is impermissible to supply reasons to the order for sustaining the order.

c. Without prejudice to the aforesaid, even if the deficiencies which are referred to in the affidavit-in-reply of Respondent No. 1 as the reasons to support the impugned order are read as part of the impugned order, it is not possible to sustain the impugned order. This is evident from the following.

(i) The first deficiency alleged against the College is with regard to the non-compliance of Employees Provident Funds and Miscellaneous Provisions Act, 1952 and ESI Act, 1942. However, the former Act is applicable provided there are employees having salary less than Rs. 15,000/-. The College has no such employee. The later Act is not applicable in Gujarat to the educational institutions. Besides this, the concerned authorities under both the Acts have never found the College in breach. This apart, this deficiency, even if exists, is of rectifiable nature. The College also undertook to comply with the said Acts, if applicable, hence, does not warrant denial of extension of permission partially by way of reduction of intake.

(ii) The second deficiency alleged against the College is with

regard to in all five teachers who were found to be ineligible as their signature was allegedly found to be mismatching in various documents referable to their appointment in the College and their affidavit for allotment of Teacher Code. However, out of these five Teachers in all four teachers remained present before the Designated Hearing Committee confirming their signature on all the documents in question. In addition, their affidavits in support thereof were also filed before the Designated Hearing Committee. The fifth teacher who could remain present during hearing as her expired also submitted her affidavit confirming her signature on the concerned documents. Needless to mention that once the person whose signature is doubted confirms the same, the doubt has to end. Further, the signature matching demands expertise to reach any conclusion thereon. In support of this submission, he has relied on the decision of the Apex Court in the case of **Thiruvengadam Pillai V/s Navaneethammal & Anr. (2008) 4 SCC 530 – Paragraph 16.**

(iii) The third deficiency alleged against the College is with regard to the inadequate qualification of Dr. Kantilal Parmar for being appointed as Teacher (Reader) in Anatomy department. However, before the Designated Hearing Committee it was pointed out that said teacher had resigned on 30th June, 2020 and in his place another teacher (Reader) was appointed with requisite qualification. Hence, this deficiency no longer survives.

(iv) The fourth deficiency alleged against the College is with regard to the ineligibility of Dr. Padmakar M. Anpat on the premise that he had his clinic in Pune and hence, could not be said to be a

full time teacher in the College. In response thereto it was pointed out before the Designated Hearing Committee that this teacher stays in the campus and was also allotted examination duty by the University. The clinic which he has at Pune was operated by him only during lockdown when he went to his native place Pune. However, during this period also he had undertaken online classes.

(d) Without prejudice to the aforesaid, even if the impugned order was warranted, the impugned order would fail to hold the field for not following the procedure mandated by section 19 of the Homoeopathy Central Council Act, 1973.

(e) The grant of extension (renewal) of permission to an existing college stands on a different footing as compared to the grant of new permission to start the college. In case of former, even if some deficiencies are noticed, time needs to be granted to rectify rather than denying extension of permission. Hence, the alleged deficiencies, though not in existence as aforesaid, even if presumed to be there, warranted time to the College to rectify rather than the impugned order. In support of this submission, he has relied on the decision of the Apex Court in the case of **Royal Medical Trust V/s Union of India (2015) 10 SCC 19 – Paragraph 29)**

(f) The impugned order, if viewed in totality, is cryptic, mechanical, without considering the submissions of the College and suffering from the vice of total non-application of mind warranting interception in the present petition. He has relied on the decisions in the cases of **Jagat Narain Subharti Charitable Trust & Anr. V/s Union of India & Ors. (2017) 16 SCC 666) –**

Paragraph 16 & Kanachur Islamic Education Trust V/s. Union of India (2017) 15 SCC 702 – Paragraphs 18 to 20)

(g) The judgments relied upon by Respondent No.1 in its affidavit-in-reply are in respect of the cases where multiple deficiencies of grave and non-rectifiable nature were noticed to which the concerned colleges were having no cogent answer in defence. Hence, the same have no application to the impugned order. Here, it deserves to be mentioned that the said judgments can never be construed as laying down an absolute proposition of law that, regardless of the nature of order, no interference is possible once the permission is denied to the college. Needless to mention that the proposition sought to be propounded by Respondent No.1 in this regard, if accepted, would mean immunizing the impugned order from the purview of judicial review under Article 226 of the Constitution of India.

4. Mr. Siddharth Dave, learned advocate appeared for Mr. Devang Vyas, learned ASG for the respondents and made the following submissions:

4.1 Inviting the attention of the court to the impugned order, he submitted that the restricted intake of 60 seats was justified as there was a staff deficiency of 12.5% as 7 teachers were considered ineligible due to discrepancies in their documents. He would invite the attention of the Court to the regulations i.e. MSR, 2013. He would submit that Regulation 3(1) requires the college to fulfill the minimum standards in context of teaching facilities referred to in Regulations No.4 to 13. Regulation No.7 prescribes requirement of teaching hospital. Regulation

no.9 provides for requirements of college which prescribes that there shall be a minimum teaching faculty as per Schedule-IV for the course. He would submit that the contention of Shri Dhaval Dave that the memorandum of understanding would save the college from the deficit is misconceived as the memorandum of understanding viz. for purposes other than teaching. He would invite the attention of the Court to schedule-IV and V of the Regulations together with Regulation No.12 to submit that for intake upto 60, the minimum teaching staff required for the degree course is 24. Only full time faculty is required at all levels.

4.2 Mr. Dave would rely on the amended regulations of 2019 to submit that it was incumbent upon an existing college to make an application in Form-I which was mandatory providing details which the college had not provided which was prerequisite for getting affiliation. He would counter the submission of Shri Dhaval Dave in context of Section 19 of the Homeopathy Central Council Act and submit that the impugned order is not in context of withdrawal of recognition, but is in compliance of Section 12C of the Act, by which, permission for certain existing medical college is to be made. He would invite the attention of the Court to the impugned order and submit that the deficiencies listed therein were material enough and ought to have been complied with. It was a mandatory requirement under the Rules. Nothing was produced by the institution on record to show that in the previous years there was compliance. There was no prejudice inasmuch to the show cause notice listing out shortcomings as the petitioner was invited to respond and the authority found them to be insufficient compliance. The order therefore cannot be said to be an unreasoned order.

4.3 With regard to the submissions cited by Shri Dhaval Dave in case

of ***Kanachur*** (supra), Shri Siddharth Dave relied on the decision in case of ***Kalinga Mining Corporation v. Union of India and others*** reported in ***[(2013) 5 SCC 252***] and submitted that the order was not bad as institutional hearing is a recognized principle. He would also rely on the decision of the Delhi High Court in the case of ***Buddhi Vidhatajan Kalyan Samiti v. Union of India and Anr.*** reported in ***LAWS (DLH) 2016 12 182***, particularly para 26 thereof. He would submit that the decision of ***Parul University v. Union of India*** reported in ***2017 SCC OnLine Guj 77***, was not applicable. He would reiterate that Kanachur (supra) was considered in ***Royal Medical Trust and Another v. Union of India and Another*** reported in ***[(2017) 16 SCC 605]***, where it was held that the judgment applies in the facts of the case. He would rely on paras 26 to 33 thereof. Mr.Dave would rely on the decision in the case of ***J&K Housing Board and another v. Kunwar Sanjay Krishan Kaul and others*** reported in ***(2011) 10 SCC 714*** to submit that things have to be done in a particular manner. Reliance was also placed on the decision in case of ***Manoharlal Sharma v. Medical Council of India and others*** reported in ***(2013) 10 SCC 60***. Reliance was also placed on the decision in case of ***Karpagam Faculty of Medical Sciences and Research v. Union of India and others*** reported in ***(2017) 16 SCC 568***, particularly para 17 to 22 to submit that compliance with the regulations was a prerequisite and therefore the order impugned in the petition would not suffer from any effect of either non application of mind and/or being a non-speaking order.

5. Having considered the submissions of the respective advocates, perusal of the impugned order dated 7th January, 2021 would indicate the following deficiencies as recommended by Central Council of Homeopathy which has weighed with respondent no. 1 for passing the

impugned order:

> "Recommended for allowing admissions for the session 2020-21 with the intake capacity of only 60 seats in existing UG (BHMS) course, due to shortage of teaching staffs (deficiency of 12.5 %) as 07 teachers considered ineligible due to discrepancies in their documents.
>
> The Committee also recommended to apprise the Ministry about ineligible teachers, that the college website is not updated and the college has not complied with the provisions of the Employee's Provident Funds & Miscellaneous Provident Act, 1952 & ESI Act, 1948 and relevant Rules and Regulations. Details of ineligible teachers are as under:
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> 1. Dr. Kantilal Mohanbhai Parmar (Reader, Anatomy) qualification Bsc & Msc Anatomy - Not eligible as he is not having required qualification as per MSR.
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> 3. Dr. Puja J Rana (Lecturer, FMT)- signature in joining letter and documents for teacher's code, mismatches with the sign in affidavit.
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> 7. Dr. Ritesh V Soni (Lecturer, Community Medicine)- signature in joining letter and documents for teacher's code, mismatches with the sign in affidavit."

6. As far as the first deficiency is concerned, it has been rightly pointed out that the college does not come under the compulsory EPF criteria at all as the employees draw salary much above Rs.15,000/-. As far as ESI Act is concerned, the Act is not applicable to educational institutions in Gujarat. Even it is not the case of the authorities that the institution has been held liable by the competent authorities under the Act for a breach thereof.

6.1 Regarding the second deficiency wherein it is the contention of the authority that the five teachers named in the deficiencies were found to be ineligible due to the discrepancies in the documents. Perusal of the justification granted by the institution would indicate that they were declared ineligible due to discrepancies in their signatures in the joining letter and the affidavit submitted for allotment of teachers' score. Except one Dr. Puja Rana, the remaining four remained present before the Hearing Committee confirming their signatures on all the documents in question. The 5th teacher Dr. Rana could not remain present as her father had expired but she submitted her affidavit confirming her signature. In view of this categorical assertions made by the signatories before the designated Hearing Committee, it was not open for the authority to sit over and doubt their signatures. In this context, the decision cited by Mr. Dhaval Dave in the case of **Thiruvengadam Pillai (supra)**, para 16 thereof, squarely applies.

6.2 With regard to the 3rd deficiency, in context of the teacher and his inadequate qualification, it was specifically pointed out that Shri Parmar had resigned and a qualified teacher Dr. Niraj Jain was appointed as an Associate Professor on June 11, 2020. Due to the closure of the portal such information could not be supplied in the Standard Information Form.

The teacher's code could not be allotted to Dr. Jain. This was a deficiency which cannot therefore be counted as a breach of the regulation.

6.3 With regard to the 4th deficiency, with regard to the ineligibility of Dr. Padmakar Anpat that he had his clinic in Pune, it was pointed out that the teacher was at the campus and it was only during lockdown that he went to Pune. An affidavit in support of such explanation was also provided which ought to have satisfied the authorities.

7. Having found therefore that the deficiencies are not serious enough to warrant restrictions of intake, the petition is allowed. Prayer in terms of para 32(a) is granted. Direct service is permitted.

(BIREN VAISHNAV, J)

Divya