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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR.JUSTICE P.KRISHNA BHAT

WRIT PETITION NO.3503/2022 (EDN-RES)

BETWEEN:

SHANTI DHAMA COLLEGE
OF PHYSIOTHERAPY,
MANAGED BY: SHREE GANGADHARESHWARA
EDUCATIONAL TRUST (R),
NO.199, SHANTHI DHAMA SCHOOL ROAD,
MAGADI MAIN ROAD,SUNKADAKATTE,
BENGALURU – 560 091.
REPRESENTED BY ITS VICE PRESIDENT
MR.DHANANJAY.

... PETITIONER

(BY SRI.N.SHIVAKUMAR, ADVOCATE)

AND

1. THE PRINCIPAL SECRETARY,
GOVERNMENT OF KARNATAKA,
DEPARTMENT OF HEALTH AND
FAMILY WELFARE,
(MEDICAL EDUCATION), 1ST FLOOR,
ROOM NO.113, VIKAS SOUDHA,
DR.AMBEDKAR STREET,
BENGALURU – 560 001.
2. RAJIV GANDHI UNIVERSITY OF
HIGHER STUDIES,

4TH 'T' BLOCK, JAYANAGAR,
BENGALURU – 560 041.
REPRESENTED BY ITS REGISTRAR.

...RESPONDENTS

(BY SRI.B.V.KRISHNA, AGA FOR R1;
SRI.N.K.RAMESH, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-1 TO CONSIDER THE PETITIONERS REPRESENTATION DATED 18.10.2021 VIDE ANNEXURE – G AND TO MODIFY PORTION OF R-1 ORDER PASSED IN DATED 08.11.2019 AS DIRECT THEM TO PERMIT THE PETITIONER TO TAKE 40 STUDENTS INTAKE IN THE PETITIONER COLLEGE FROM THE ACADEMIC YEAR 2021-22 VIDE ANNEXURE – A AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is seeking the following relief:

"Issue a writ of mandamus or any appropriate writ order direction in the nature to direct the 1st respondent to consider the petitioner's representation dated 18/10/2021 vide Annexure-G and modify portion of 1st respondent's order passed in Order No. MED 623 MMC 2019 dated 08/11/2019 and direct them to permit the petitioner to take 40 students intake

in the petitioner college from the academic year 2021-2022 vide Annexure-A etc.”

2. The grievance of the petitioner is that, even though the petitioner is running a Bachelor of Physiotherapy course with the permitted intake of 20 students and has been making repeated applications for increasing intake to 40 students (that is increase of students strength by 20), neither the University nor the Government has been considering the same in terms of Section 45 of The Rajiv Gandhi University of Health Sciences Act, 1994 (for short hereinafter referred to as 'the Act').

3. For the facility of better understanding, a reference is being made to Section 45 of the Act, which reads as follows:

"Section-45. Affiliation of colleges - (1) Colleges within the University Area may, on satisfying the conditions specified in this section, be affiliated to the University as affiliated

colleges by the University on the recommendations made by the State Government.

(2) A college applying for affiliation to the University shall send an application to the Registrar within the time limit fixed by Ordinances and shall satisfy the Syndicate and the Academic Council,-

(a) that it will supply a need in the locality, having regard to the type of education intended to be provided by the college, the existing provision in the neighbourhood and the suitability of the locality where the college is to be established;

(b) that it is to be under the management of a regularly constituted governing body;

(c) that the strength and qualifications of the teaching staff and the conditions governing their tenure of office are such as to make due provision for the courses of instruction, teaching or training to be undertaken by the college;

(d) that the building in which the college is to be located are suitable and that provision will be made in conformity with the Ordinances for the residence in the college or in lodging approved by the college, for students not residing with their parents or guardians and for the supervision and welfare of students;

(e) that due provision has been made or will be made for a library;

(f) where affiliation is sought in any branch of experimental science, that arrangements have been or will be made in conformity with the Statutes, Ordinances and Rules for imparting instruction in the branch of science in a properly equipped laboratory or museum;

(g) that due provision will, as far as circumstances may permit, be made for the residence of the Principal and members of the teaching staff in or near the college or the place provided for the residence of students;

(h) that the financial resources of the college are such as to make due provision for its continued maintenance and efficient working; and

(i) that rules fixing the fees, if any, to be paid by the students have been framed or will be framed.

(3) The application shall further contain an assurance that after the college is affiliated, any transference of management and all changes in the teaching staff and all other changes which result in any of the aforesaid requirements, not being fulfilled or continued to be fulfilled, shall be forthwith reported to the Syndicate and to the State Government or such authority as the Government may specify.

(4) On receipt of a letter of application under sub-section (2), the Syndicate shall,-

(a) direct a local inquiry to be made by a competent person or persons authorised by the Syndicate in this behalf in respect of such matters as may be deemed necessary and relevant;

(b) make such further inquiry as may appear to it to be necessary; and

(c) record its opinion after consulting the Academic Council on the question whether the application should be granted or refused, either in whole or in part, stating the result of any inquiry under clauses (a) and (b).

(5) The Registrar shall within such time as the Government may from time to time specify submit application and all proceedings, if any, of the Academic Council and of the Syndicate relating thereto to the Government which, after such inquiry as may appear to it to be necessary, shall make their recommendations for the grant of the application or any part thereof or refuse the application or any part thereof and the University shall issue orders accordingly.

(6) Where the application or any part thereof is granted, the order of the University shall specify the courses of instruction in respect of which and the period for which the college is affiliated, and where the application or any part thereof is refused by the Government or the University, the grounds of such refusal shall be stated; Provided that on the recommendation of the Government, permanent affiliation may be granted to a college which was affiliated continuously for a period not less than five years and fulfill all the conditions of

affiliation and attained the academic and administrative standards prescribed by the University from time to time.

(7) As soon as possible after the Government or the University makes its order, the Registrar shall submit to the Senate a full report regarding the application, the action taken thereon under sub-sections (4) and (6) and of all proceedings connected therewith.

(8) An application under sub-section (1) may be withdrawn at any time before an order is made under sub-section (5).

(9) Where a college desires to add to the courses of instruction in respect of which it is affiliated, the procedure prescribed by sub-sections (2) to (8) shall, so far as may be, followed.

(10) (a) No admission of students shall be made by any new college seeking affiliation to the University or by an existing college seeking affiliation to a new course of study to such course, unless, as the case may be, affiliation has been granted to such new college or to the existing college in respect of such courses of study.

(b) The maximum number of students to be admitted to a course of study shall not exceed the intake fixed by the University or the Government, as the case may be, and any admission made in excess of the intake shall be invalid;

(c) No student whose admission has become invalid under clause (b) shall be eligible to appear nor shall be presented by the college to appear at any examination conducted by the University."

4. An Institution desirous of starting any course shall make an application to the University in the prescribed format seeking affiliation. On receipt of such application, the officers of the University are

required to place the same before the Syndicate with the application and annexures and once such application is placed before the Syndicate, the Syndicate shall appoint a local enquiry committee for the purpose of holding local inspection and submitting its report. The local enquiry committee is required to visit the institution before submitting report to the Syndicate. The report of the L.I.C. should, among others, deal with the aspects mentioned in sub-section (2)(a) to (i) of Section 45 of the Act. After such report is submitted, it is open to the Syndicate to make such further enquiry as may appear it to be necessary for satisfying itself on the merits of the application seeking affiliation. Thereafter, Syndicate is required to place the entire materials before the Academic Council and in consultation with the Academic Council take a decision on the merits of the applications by passing appropriate resolution. After

such resolution is passed by the Syndicate in consultation with the Academic Council in terms of sub-Section (4)(c) of Section 45, the University is required to forward the same to the Government with the entire records.

5. The procedure for examination of such resolution of the Syndicate of the University with regard to the grant of affiliation by the State Government is contained in sub Section 5 of Section 45 of the Act. As per the same, during the course of consideration of the application of the institution, it is open to the Government to accept the resolution of the Syndicate passed in consultation with the Academic Council as forwarded to it or it can hold such enquiry as may appear it to be necessary and thereafter, it is required to make recommendation for the grant of application or part thereof or refusal of

affiliation. On receipt of such recommendation from the Government, University shall issue orders accordingly.

6. Needless to say, it is incumbent upon the Government to recommend to grant or refusal of affiliation for reasons recorded in writing¹. It is also necessary to remind the authorities concerned, in view of the large number of litigations arising in this field, that the authorities involved in the process of deciding whether affiliation is required to be granted or not should do so within a reasonable time. It is trite that authorities vested with public powers are required to exercise it in a reasonable manner and it is therefore implicit that such decisions are taken within a reasonable time. It is high time that the authorities concerned realise that they are accountable for the manner of exercise of such powers not only with

¹ Krante Associates Private Limited and Another vs. Masood Ahmed Khan and Another (2010) 9 SCC 496 para 47

reference to the integrity / probity of the process but also to the timeframe within which power is exercised. The applications seeking affiliation / recognition etc are made for specified academic year and once such applications are made, the process of consideration by various authorities should take place with clock work precision and final order granting or refusal of affiliation should be issued well before the commencement of that academic year. The filing of application seeking affiliation entail payment of considerably high fees. If decisions on such applications are not taken within a timeframe, they become irrelevant or infructuous due to efflux of time and thereby applicants suffer irreparable hardship.

7. Insofar as the present case is concerned, no relief in the manner sought for by the petitioner

can be granted as the Academic year has ended long ago.

8. Realizing this difficulty, learned counsel for the petitioner submits that he would advise the petitioner to make a fresh application in accordance with law within a period of one week from today seeking affiliation for enhancing intake of another 20 students for the Bachelor of Physiotherapy Training Course. If such an application is made, the University and the State Government shall conclude the entire proceedings on such applications and take a decision and communicate to the present petitioner within four weeks from the date of such application, without fail.

9. Needless to say that both the University as well as the State Government shall record proper reasons within the frame work of Section 45 of the Act for either accepting the application seeking affiliation

for increasing intake of 20 students or rejecting the same.

10. The writ petition is disposed of accordingly.

Send a copy of this order to the Registrar of respondent No.2 and Principal Secretary of the Government of Karnataka, Department of Health and Family Welfare (Medical Education), forthwith, for compliance.

**Sd/-
JUDGE**

MKM