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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5381/2022 & CM APPL. 17051/2022 -Stay.

SHREE DHANESHWARI MANAV VIKAS MANDAL
AURANGABAD & ANR. Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv. with
Ms. Shreya Sethi, Adv.

versus

UNION OF INDIA & ORS. Respondent

Through: Mr. Ajay Digpaul, CGSC with
Mr. K.R. Digpaul, Adv. for UOI.

Ms. Archana Pathak Dave, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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05.04.2022

1. The petitioners have approached this Court assailing the order dated 23.03.2022 passed by respondent no. 1, whereby its second appeal against the denial order passed by the respondent no.3, has been rejected. The petitioners also seek a direction to the respondents to allow it to participate in the counselling for 50 seats in UG (BAMS) and 12 seats in two PG courses for the academic year 2021-2022.
2. Learned senior counsel for the petitioners, at the outset submits that the impugned order has been passed on grounds which were not even mentioned in the show-cause notice issued by the respondents and is, therefore, liable to be set aside on this ground alone. He contends that in any event, the two grounds, i.e., the deficiency in the requisite number of faculty members and the non-functioning of the attached hospital, on which the impugned order is premised, clearly overlooks the fact that material that had been placed on record by the petitioners to show that it had been declared as a COVID-19 dedicated hospital

from 01.04.2020 till 30.11.2021 and therefore it could not be alleged that the attached hospital was not functional during this period. The respondent no.1 has, however, rejected the petitioners' appeal without either considering the documents furnished by it along with the second appeal or granting any opportunity to the petitioner to clarify these aspects.

3. Although respondent no.2 has already filed a counter affidavit, Mr. Digpaul, learned counsel for the respondent no.1 submits that the counter affidavit is ready and will be filed during the course of the day. Learned senior counsel for the petitioners, however, submits that the counselling for admission to BAMS courses is likely to end in the next two days and therefore prays that the petitioners, subject to the outcome of the present petition, be permitted to participate in the ongoing counselling.
4. Per contra, learned counsel for the respondents oppose the grant of any interim relief. While learned counsel for the respondent no.2 submits that the grounds referred to in the impugned order passed by the respondent no.1, even though not forming part of the show cause notice, were duly referred to in the denial order and, therefore, it is not as if the petitioners were taken by surprise, learned counsel for the respondent no.1 contends that while passing the impugned order, the respondent no.1 had duly called for the records and had only proceeded to pass the impugned order after perusing the said record. He, however, concedes to the fact that no opportunity of hearing was ever granted to the petitioners before rejecting its second appeal.
5. In my view, since pleadings in the matter are yet to be completed, this

aspect as to whether the impugned orders are sustainable can be considered in depth only after completion of pleadings. However, taking into consideration the fact that the petitioner is an institute running for the last 31 years, its application for interim relief is taken up for consideration today. In case the petitioner is not granted permission to participate in the ongoing counselling during the pendency of the present petition, irreparable loss will be caused not only to the petitioners, but also the students.

6. Having considered the submissions of learned counsel for the parties and perused the record, I am of the view that the petitioners have been able to make out a prima facie case for grant of permission to participate in the ongoing counselling. The petitioner is an institute running for the last 31 years and had been granted permissions on earlier occasions except for the academic year 2019-2020. None of the two grounds on which the impugned order has been passed relate to any lack of infrastructure. While passing the impugned order, the respondents have presumed that there is a shortage of faculty, which conclusion, the petitioners contends, is wholly perverse. It is the petitioner's case that all relevant documents including the copies of appointment letters to show that there was no shortage of faculty members were available on the record but only because the petitioners were not granted any opportunity of hearing to explain these documents, the same had not been taken into consideration by the respondents while passing the impugned order. Similarly, the ground of non functioning of the attached hospital appears to be prima facie unsustainable. In fact it appears, that while passing the impugned

order, the respondents have simply ignored the fact that the petitioners' institute was functioning as a COVID-19 dedicated hospital right from 01.04.2020 till 30.11.2021, when the entire world was reeling under the effects of COVID-19.

7. Therefore, I am of the considered opinion that before passing the impugned order, the respondents ought to have taken into consideration that for the last almost two years, the normal functioning of the petitioners' institute was curtailed due to it having been declared as a COVID-19 dedicated hospital. In my view, it would be highly unfair to refuse to grant permission to such colleges like the petitioners which have been running for the last 31 years and had come to the aid of the nation and citizens by working as a COVID-19 dedicated hospital.
8. In the light of the aforesaid, the petitioners are permitted to participate in the ongoing counselling for the academic year 2021-22. It is, however, made clear that this permission will be subject to the outcome of the present petition and no special equities will be created in favour of the petitioners on account of this interim order. The petitioners will also publish a notice on its web portal clearly stating that this permission granted to it will be subject to outcome of the present petition.
9. Upon the petitioners taking steps, issue notice to the respondent nos.4 to 8 through all permissible modes returnable on 25.07.2022.

10. Counter affidavit, if any, be filed within six weeks. Rejoinder thereto, if any, be filed within four weeks thereafter.

APRIL 5, 2022/sr

REKHA PALLI, J