

**THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH,**  
**AT JABALPUR**

<b>Case No.</b>	<b>W.P. No.26353 of 2021</b>
<b>Parties Name</b>	<i>Oriental College Amarwada, Main Road, Amarwada</i> vs. <i>The State of Madhya Pradesh</i>
<b>Bench Constituted</b>	<u>Division Bench comprising of :-</u> Justice Sujoy Paul, Justice Arun Kumar Sharma
<b>Judgment delivered by</b>	<b>Justice Sujoy Paul</b>
<b>Whether approved for reporting</b>	YES
<b>Name of counsels for parties</b>	<b>For Petitioner:</b> Shri Sanjay K. Agrawal with Shri Amit Seth, Advocates. <b>For respondent/State:</b> Shri Piyush Dharmadhikari, Government Advocate. <b>For Respondent No.2:</b> Shri Piyush Kumar Tiwari, Advocate. <b>For Respondent No.3:</b> Shri Satish Verma, Advocate.
<b>Law laid down</b>	<i>The Madhya Pradesh Sah Chikitsiya Parishad Adhiniyam, 2000 and Madhya Pradesh Para Medical Education (Norms and Guidelines for Establishment of Para Medical Institutions) Rules, 2007 and M.P. Ayur Vigyan Vishwavidyalaya Act, 2011 'Vishwavidyalay Act' and Madhya Pradesh Ayurvigyan Vishwavidyalaya (Condition for Colleges/Institutions to admit the Privileges of the University and Withdrawal of such Privileges) Statute, 2013 ('Statute, 2013').</i>  (1) The running of an Institution depends on the recognition and affiliation by

	<p>different statutory bodies constituted under the said enactments and are required to act as per the procedure laid down in the statute/rules. The said bodies being "State" are bound to act in coordination and harmony.</p> <p>(2) <u>Lex non cogit ad impossibilia</u> – It is not expected from a litigant/person that he will perform something which is impossible to be performed.</p> <p>(3) <u>Nullus commodum capere potest de injuria sua propria</u> - No one can take benefit of its own wrong. The university issued the notification inviting online applications for affiliation on 04.03.2020 i.e. after the last date of admission of students i.e., 02.03.2020. Thus, the affiliation before the last date was not possible. The University cannot take advantage of its own wrong and issuance of notification contrary to the statute of 2013.</p> <p>(4) <u>The Doctrine of Negative Equality</u> - In the facts of this case, the notification inviting online application was filed on 04.03.2020. The applications of 40 colleges were entertained pursuant to this notification. The application of present petitioner was declined by stating that it runs contrary to the cut-off date prescribed in the statute. This amounts to a discriminatory and arbitrary action which cannot be supported on the basis of Doctrine of negative equality.</p> <p>(5) <u>Practise and Procedure</u> – The specific pleadings in the writ petition and rejoinder were not refuted in the additional return. The averments shall be treated to be admitted.</p>
<b>Significant paragraph numbers</b>	25, 26, 27, 28 and 29

**ORDER**  
**(06/01/2022)**

**Sujoy Paul, J. :**

In this petition filed under Article 226 of the Constitution of India, the petitioner-college has prayed for a direction to respondent No.3-University for issuance of formal order of affiliation on the basis of inspection conducted on 22.02.2021. It is further prayed that students admitted by petitioner-college in Bachelor in Medical Lab Technology (Degree Course) and Diploma in Medical Lab Technician be allowed to appear in the examinations for the academic session 2019-20. The petitioners have also assailed the order dated 17.12.2021 (Annexure R/3-2) passed by respondent No.3 by amending the petition whereby prayer for affiliation made by the petitioner was declined by the University.

2. Draped in brevity, the necessary facts for adjudication of this matter are that the petitioner-college was established to impart education in Para Medical Course at Amarwada, District Chhindwara. The petitioner-college got itself affiliated with Civil Hospital, Amarwada by order dated 24.07.2019 for imparting training to its pupil. The Civil Hospital, Chhindwada is a 100 bedded Hospital. The **Madhya Pradesh Sah Chikitsiya Parishad Adhiniyam, 2000** (hereinafter referred as 'Adhiniyam') governs the field and respondent No.2 is a statutory body constituted under this Adhiniyam. The respondent No.2 is competent to grant recognition to the institutions for running Para Medical Education

Courses in the State of Madhya Pradesh.

3. In exercise of powers under Section 45 of the said Adhiniyam, **Madhya Pradesh Para Medical Education (Norms and Guidelines for Establishment of Para Medical Institutions) Rules, 2007** were framed which provides criteria for grant of recognition for running Medical Education Courses. The petitioner-college preferred an application before respondent No.2 on 15.4.2019 (Annexure R-2/1) seeking the recognition. The application was submitted in prescribed format and requisite fees for grant of recognition for Degree and Diploma Courses was paid. In turn, respondent No.2 conducted spot inspection and verified the documents. The petitioner was found eligible and entitled for establishment of institutions for running said courses and accordingly by order dated 20.02.2020 (Annexure P/3), recognition was granted to the petitioner.

4. In terms of conditions stipulated in the recognition order dated 20.02.2020, the petitioner uploaded the particulars of students and it was also required to submit the security deposit of FDR of Rs.3,47,196/- with respondent No.2. The petitioner admitted 50 students in Bachelor Course and 05 students in Diploma Course and uploaded their particulars on the website of respondent No.2 before the last date i.e. 02.03.2020. The list of students and proof of FDR deposit are filed as Annexures P/4 and P/5 respectively.

5. As required, the petitioner intended to submit application for grant

of affiliation with the University as per **M.P. Ayur Vigyan Vishwavidyalaya Act, 2011** (hereinafter referred as ‘Vishwavidyalay Act’). Shri Sanjay K. Agrawal, learned counsel for the petitioner submits that the only mode of receiving application for affiliation was “Online Mode” and no offline application was entertained. The online application can be preferred only when Portal of the University is opened. For the first time, by notification dated 04.03.2020 (Annexure P/6), University opened the Portal and invited applications for affiliation. The petitioner submitted its application and paid requisite fees etc. per student. The online application dated 09.03.2020 is placed on record as Annexure P/7. The last date for submission of application for affiliation was extended upto 30.04.2020 by order dated 03.04.2020 (Annexure P/8). Thereafter, respondent No.3 issued notifications dated 24.8.2020, 26.9.2020 and 03.10.2020 for registration of students admitted in Para Medical Course in State of M.P. The fees so deposited by the petitioner for affiliation for the academic session 2019-20 was duly accepted by respondent No.3. Login User Name and Password in favour of petitioner during online registration were generated. It is further pointed out that students of petitioner’s college were duly registered by respondent No.3 which is evident by Annexure P/9.

**6.** As per averments of the petition, the inspection team of University conducted spot inspection of college on 22.02.2021 and they were fully

satisfied with the infrastructure and faculty of petitioner-college. The inspection report was not provided to the petitioner.

7. Shri Sanjay K. Agrawal, learned counsel for the petitioner submits that as per certain instructions mentioned in the recognition order dated 20.02.2020, the petitioner was required to fulfill certain formalities. However, the facts narrated hereinabove will show that said conditions were impossible to be translated into reality and for such impossibility, the institution and students cannot be made to suffer.

8. It is argued that a conjoint reading of condition No.1 and 8 of recognition order dated 20/02/2020 (Annexure P/3) makes it clear that last date of admission of students was fixed as 02/03/2020. Before admitting the students, institution was required to obtain affiliation from the university. In the event, admissions take place after 02/03/2020, the institution was required to pay late fee of Rs.1000/- per student.

9. Learned counsel for the petitioner strenuously contended that the online portal for receiving affiliation was opened by the university for the first time on 04/03/2020. The petitioner promptly submitted their application for affiliation on 09/03/2020. Petitioner had no option but to admit the students before 02/03/2020, the last date prescribed in the order dated 20/02/2020 failing which the petitioner had to bear the burden of late fees.

10. The respondent Nos. 2 & 3 acted in such a manner which created an element of impossibility for the petitioner. To elaborate, it is

contended that on the one hand, in the recognition order, it is mentioned that students must be admitted till 02/03/2020 and affiliation must be obtained from concerned university before admission of the students and, on the other hand, the university opened the portal after the said cut of date. Petitioner cannot be expected to perform something which was impossible, moreso, when such thing which was beyond the control of the petitioner.

**11.** It is pointed out that this Court vide order dated 02/12/2021 directed the university to explain as to how and under what circumstance and under which provision of law, the notification Annexure P/6 was issued inviting online applications for affiliation on 04/03/2020 for the Academic Sessions 2019-20 which got over by that time. In order to save their skin and with a vengeance, the university passed the impugned order dated 17/12/2021 (Annexure R/3-2) and rejected the application for affiliation.

**12.** Criticising this order, Shri Agrawal, learned counsel for the petitioner, urged that application was dismissed on technical grounds. No defects in infrastructure or faculty etc. were found. All the reasons assigned in the rejection order dated 17/12/2021 are bad in law. Respondent Nos. 2 and 3 are responsible for entire crises and grievance of the petitioner.

**13.** The stand of the petitioner is that the respondents have rejected the

prayer for affiliation in the teeth of its statute which permits affiliation upto 31<sup>st</sup> October of the preceding year. However, for 40 colleges, they consciously and calculatedly breached the said cut off date and granted them affiliation. The petitioner was given an arbitrary and discriminatory treatment. The specific averments in this regard were made in the rejoinder and a chart was prepared and filed for this purpose. Shri Agrawal, learned counsel for the petitioner submits that the specific averments made in this regard in the rejoinder have not been rebutted in the additional return of respondent No.3.

**14.** The ground taken in the additional return regarding non-deposit of fees cannot be a ground to reject the claim of the petitioner because this is not one of the reasons mentioned in the rejection order dated 17/12/2021 (Annexure R/3-2). The validity of an order must be seen on the basis of reasons assigned in the impugned order and not on the basis of return or additional return filed in the Court. Reliance is placed on the Constitutional Bench judgment of Supreme Court in the case of *Mohinder Singh Gill vs. Chief Election Commissioner, 1978 (1) SCC 405*.

**15.** The petitioner submits that when portal was opened by the University, as per **Madhya Pradesh Ayurvedigyan Vishwavidyalaya (Condition for Colleges/Institutions to admit the Privileges of the University and Withdrawal of such Privileges) Statute, 2013** (hereinafter referred as ‘Statute of 2013’), the last date for admission was



already over. Thus, with eyes opened, the university opened the portal and invited applications. The petitioner and other 40 colleges submitted their online applications for affiliation. Except petitioner, applications of other persons were entertained. When such a conscious decision was taken, the Principle of Negative Equality cannot be pressed into service. It is further argued that it is not expected from a person to comply something which is impossible to be complied with. Reliance is placed on **2005(1) SCC 191**, **1996(6) SCC 342** and judgment of this Court reported in **1997(1) MPLJ 208**.

**16.** Reference is made to the judgment of Supreme Court reported in **1979 (2) SCC 409 (Motilal Padampat Sugar Mills Co. Ltd. vs. State of U.P. & Ors.)** to bolster the submission that the petitioner altered his position pursuant to the opening of online portal for inviting applications for affiliation and, therefore, respondents are bound by the Principles of Promissory Estoppel. By no stretch of imagination, submits Shri Agrawal that the respondent No.3 can be permitted to take a U-turn after giving affiliation to 40 similarly situated institutions. Lastly, it is argued that university cannot be permitted to take advantage of its own wrong.

**17.** Shri Piyush Dharmadhikari, learned Government Advocate for the respondent/State submits that State is a formal party.

**18.** Shri Piyush Tiwari, learned counsel for respondent No.2, submits that the recognition was given with some delay because counsel was

waiting for the inspection report (Annexure R/2-7). The main contest in this case is between petitioner and respondent No.3.

**19.** Shri Satish Verma, learned counsel for the respondent no. 3 submits that affairs of the University were not conducted in a proper manner which compelled the Government to invoke relevant provision of the Vishwavidhyalaya Adhiniyam and appoint the Divisional Commissioner as Vice Chancellor. Before his appointment as Vice Chancellor w.e.f. August 2021, if any affiliation is given to any educational institution contrary to Statute of 2013, it will not create any right in favour of the petitioner-institution. The petitioner cannot claim benefit of negative equality. Reliance is placed on **2006 (13) SCC 673 (Sunil Oraon (minor) Through Guardian & Ors. vs. CBSE & Ors.)**, **2012 (2) SCC 425 (Adarsh Shiksha Mahavidyalaya & Ors. vs. Subhash Rahangdale & Ors.)**, **2013 (1) SCC 223 (National Council for Teacher Education & Ors. vs. Public Education Society & Ors. and 2016 (12) SCC 517 (Committee of Management Anuragi Devi Degree College & Anr. vs. State of U.P. & Anr.)**. Article 14 of the Constitution does not envisage negative equality submits Shri Verma and urged that examples cited by petitioner in his rejoinder cannot give him any benefit.

**20.** Shri Verma further submits that as per the terms and conditions mentioned in the recognition order dated 20<sup>th</sup> March 2020, it is clear that petitioner had to obtain affiliation before admission of the students.

Since such affiliation has not been obtained, the petitioner cannot claim affiliation or any other benefits attached thereto.

**21.** In rejoinder submission, Shri Sanjay K. Agrawal, learned counsel for the petitioner placed reliance on document dated 26.11.2021 filed with IA No. 13185/21 and urged that this notification for the academic sessions 2020-2022 is issued by the present Vice Chancellor (Divisional Commissioner). This notification is also issued after the cut off date of 31<sup>st</sup> of October mentioned in Clause 5(2) of Statute of 2013.

**22.** The parties confined their arguments to the extent indicated above. We have heard learned counsel for the parties at length and perused the record.

**23.** Before dealing with rival contentions, it is apposite to quote the terms and conditions of the recognition order dated 20.2.2020 :-

“आवश्यक निर्देश –

1. संस्था को म.प्र. सह-चिकित्सीय परिषद् के समस्त नियम-विनियम अनुसार प्रवेश तथा अन्य कार्यवाही संपन्न कर परिषद् द्वारा जारी पाठ्यक्रम अनुसार शिक्षण कश्चाना होगा। पैरामेडिकल पाठ्यक्रमों में संस्था द्वारा परिषद् द्वारा निर्धारित अंतिम तिथि 02 मार्च 2020 तक छात्रों के प्रवेश किये जा सकेंगे।
2. म.प्र. सह-चिकित्सीय परिषद् के नियम-विनियम अनुरूप निर्धारित संख्या द्वारा महाविद्यालय में उपयुक्त/योग्य शैक्षणिक स्टाफ की नियुक्ति सत्र प्रारंभ होने के पूर्व की जाना आवश्यक होगा तथा परिषद् को यथाशीघ्र सूचित किया जायेगा।
3. संस्था द्वारा म.प्र. सह-चिकित्सीय परिषद् द्वारा बनाये गये प्रवेश नियमों के अनुसार ही छात्रों के प्रवेश की कार्यवाही की जायेगी।
4. शासन/परिषद् की ओर से समय समय पर किये जाने वाले सामान्य एवं आकस्मिक निरीक्षण के दौरान संस्था को आवश्यक सहयोग प्रदान करना होगा एवं संस्था द्वारा ऑनलाईन आवेदन के

समय दी गई जानकारी जिसको कि शपथ पत्र के माध्यम सत्यापित किया गया है उसमें यदि असत्यता पाई जाती है तो संस्था की मान्यता निरस्तीकरण के संबंध में एक पक्षीय कार्यवाही की जायेगी।

5. संस्था को उपरोक्त समस्त सह-चिकित्सीय पाठ्यक्रमों में प्रवेशित छात्रों की विषयवार सत्यापित सूची (छात्र का नाम, पिता/पति का नाम, शैक्षणिक अर्हता, प्रवेशित पाठ्यक्रम का नाम, प्रवेश क्र. एवं दिनांक, जन्मतिथि निवास का पता, इत्यादि) निर्धारित तिथि तक म.प्र. चिकित्सीय परिषद् को दिनांक 02 मार्च 2020 तक अनिवार्य रूप से एक पी. ऑनलाईन के माध्यम से ऑनलाईन जमा करनी होगी। निर्धारित तिथि के पश्चात् नियमानुसार परिषद् प्रतिदिन प्रति छात्र एक हजार विलंब शुल्क प्राप्त कर सकेगी। जिसके लिये संस्था जिम्मेदार होगी।

6. मध्यप्रदेश सह-चिकित्सीय परिषद् द्वारा पैरामेडिकल पाठ्यक्रमों के लिये निर्धारित अधिकतम शिक्षण शुल्क के अनुसार ही संस्था को कार्यवाही करना आवश्यक होगा।

7. उपरोक्त आदेश जारी होंगे के पन्द्रह दिवस के भीतर संस्था को म.प्र.- सह - चिकित्सीय परिषद्, के पक्ष में सावधि जमा बैंक -सेन्ट्रल बैंक ऑफ इंडिया, जी.टी.व्ही. कॉम्प्लेक्स, न्यू मॉर्केट, भोपाल के खाता क्र. 3716746750 आई.एफ.सी. कोड नं. CBINO281013 में राशि रूपये तीन लाख की सावधि जमा F.D.R के रूप में कर बैंक द्वारा आवश्यक सत्यापन प्रमाण-पत्र प्रस्तुत करना आवश्यक होगा।

8. डिप्लोमा सह-चिकित्सीय पाठ्यक्रमों में छात्रों के प्रवेश के पूर्व संस्था को संबंधित विश्वविद्यालय से संबद्धता प्राप्त करना आवश्यक होगा।

9. म.प्र. सह-चिकित्सीय परिषद् अधिनियम 2000 (क्रमांक 1, सन् 2001) की धारा -44(1) एवं (2) में उल्लेखित प्रावधानों के परिपेक्ष्य में सह-चिकित्सीय पाठ्यक्रम उत्तीर्ण अभ्यर्थियों को परिषद् में नामांकन (पंजीयन) हेतु संस्था स्तर से समस्त कार्यवाही किया जाना सुनिश्चित किया जाये। इस प्रकार संस्था से उत्तीर्ण छात्रों को मध्यप्रदेश सह-चिकित्सीय नामांकन (पंजीयन) की संपूर्ण जवाबदारी संस्था की होगी।

10. म.प्र. सह-चिकित्सीय परिषद् बावत् दी गई अनुज्ञा/मान्यता किसी भी समय समाप्त की जा सकेगी।

11. निर्धारित समयावधि में सूक्ष्म निधि स्वरूप राशि जमा कराये जाने की सत्यापन प्रमाण-पत्र मध्यप्रदेश सह-चिकित्सीय परिषद् में प्रस्तुत नहीं करने पर संस्था द्वारा प्रवेशित छात्रों का ऑन लाईन प्रवेश फार्म स्वीकार नहीं किया जायेगा।”

**24.** A combined reading of conditions 1 and 8 of this order shows that the argument of Shri Agrawal, learned counsel for the petitioner has

substantial force. On the one hand, last date of admission is fixed as 2<sup>nd</sup> March 2020 and on the other hand it was expected that affiliation must be obtained before the said date. However, notification inviting online applications for affiliation was opened only on 4.3.2020, i.e. after the last date of admission of students, (2.3.2020). We also find force in the contention of Shri Agrawal that if petitioner would not have admitted the students before the last date, the petitioner would have been required to pay late fee for each student.

**25.** If running of an institution depends on recognition and affiliation, it is a legitimate expectation that the statutory bodies dealing with these aspects will act with coordination and harmony. It is difficult to appreciate and accept a situation where an institution is expected to perform an impossibility. Putting it differently, obtaining affiliation before the last date of admission (2.3.2020) was an impossible act because online portal was opened for affiliation by notification issued on 4.3.2020. Thus, no fault can be found in the action of the petitioner in this regard. We find substance in the argument of Shri Agrawal, which is supported by a legal maxim :

(1) '*Actus curiae neminem gravabit*' - (the act of the Court shall prejudice no man).

(2) '*Imponentia excusat legem*' - (Inability is an excuse in law).

**26.** This court in the case of **Punjab and National Bank**, (supra) has considered the impact of said maxims and opined that it can not be

expected from a litigant to perform an impossible task.

27. The sheet anchor of the argument of University is based on the doctrine of negative equality. The argument is based on Clause 5(2) of Statute (XXVI). No doubt, the said provision expects that application for yearly affiliation be made to Registrar on or before 31<sup>st</sup> October of the year, preceding the academic year for which affiliation is sought for. In the instant case, for the reason best known to the University, the portal was not opened before the relevant 31<sup>st</sup> of October of the particular year. On a specific query from the Bench, Shri Satish Verma, fairly admitted that the only mode and method available to the petitioner was to prefer an online application to the University for affiliation. Admittedly, the portal was opened by the University only on 4.3.2020. Thus, the University cannot be permitted to take advantage of its own wrong. In the case of **Ashok Kapil** (supra) the Supreme Court has considered this aspect and opined that a person/body cannot take advantage of its own wrong.

28. The University made herculean efforts to justify its action of not entertaining application for recognition on the ground that it was submitted after the cut off date prescribed in the statute not cut off date prescribed in the notification dated 4<sup>th</sup> of March 2020. The principle relating to negative equality is well established. However, the ugly head of discrimination and step motherly treatment cannot be permitted to

be raised *in a case of this nature*, where the University for the session 2019 -2020 issued the notification inviting online applications belatedly and this practice was even followed in the subsequent year, which is clear from the document dated 26.11.2021 filed with IA No.13185/20.

**29.** In para 16 of the rejoinder the petitioner categorically pleaded that there are 40 colleges which are exactly similarly situated like petitioner-institution. They sought affiliation for Academic Session 2019-20. They were also given recognition during same time petitioner got recognition. Their affiliation applications were also submitted after the cut off date as per the said statute. Yet respondents granted them affiliation, which is evident from a chart (Annexure R/J-5). By placing reliance on the chart, it was pointed out that affiliation was granted for Session 2019-20 to similarly situated institutions and petitioner was given a step motherly treatment. We find substance in this contention because categorical averments made in the petition and rejoinder in this regard have not been refuted in the return and in the additional return. The Apex Court in the case of **Naseem Bano Vs. State of U.P. and others** reported in **1993 Supp (4) 46** opined that if categorical averments/ pleadings are not denied, same shall be treated to be admitted. Thus, it is clear that petitioner-institution was picked up and chosen for discriminatory treatment by the respondents in the matter of considering the application for affiliation.

30. So far as the judgments cited by Shri Satish Verma are concerned, a plain reading of the judgments show that the element of impossibility on the part of the Institution/Students was not the subject matter in those cases. The said judgments are also not based on the principle that no one can take benefit of its own wrong. Thus, such judgments cannot be pressed into service in the factual backdrop of the present case. It is equally trite that a singular different fact may change the precedential value of a judgment as opined by the Apex Court in **(2003) 2 SCC 111** (*Bhavnagar University vs. Paltana Sugar Mill (P) Ltd. and Others*).

31. The impugned rejection order dated 17.12.2021 (Annexure R/3-2) is not passed on merits. Indeed, it was issued mainly on the ground that petitioner has not preferred the application within the stipulated time. We are unable to give stamp of approval to this order for the simple reason that University itself has opened the Portal after the cut off date on 4.3.2020. The 40 other colleges have been given benefit of affiliation after the cut off date which were similarly situated like petitioner. This is settled that validity of an order passed by a Statutory Authority has to be judged on the basis of the reasons mentioned therein {See the judgment of Supreme Court in the case of **Mohinder Singh Gill** (supra)}. In view of *ratio decidendi* of **Mohinder Singh Gill** (supra) since rejection order does not contain any reason of rejection based on late payment of fees, the said reason cannot become the basis for declining relief.

32. Thus, we deem it proper to set aside the order dated 17.12.2021



(Annexure R/3-2) and consequently, direct the respondent No.3 to consider and take a decision on the application for affiliation of the petitioner within 10 working days from the date of production of copy of this order so that, if affiliation is granted, the students can appear in the relevant examinations which will take place in near future. We thought it proper to give only 10 days time for yet another reason. Reason is that inspection by University for the purpose of affiliation of petitioner-institution has already taken place. The University is only required to take a decision regarding affiliation on the basis of inspection report already in possession of University.

**33.** The petition is **allowed**. No. cost.

**(SUJOY PAUL)**  
**JUDGE**

**(ARUN KUMAR SHARMA)**  
**JUDGE**

PK