

ತಾ.ಶಿ.ಪ್ರ. ಮಂಡಳ
ಅಯುವೇದ ವೈದ್ಯಕೀಯ ಮಹಾವಿದ್ಯಾಲಯ ಮತ್ತು ಅಸ್ಪತ್ತೆ, ಸಿಂಡಗಿ

T.S.P. Mandali's

AYURVEDIC MEDICAL COLLEGE & HOSPITAL

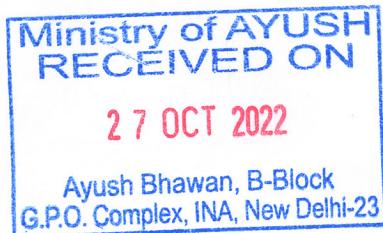
SINDAGI - 586128 Dist. : Vijayapur (Karnataka)

Office Phone & Fax : 08488 221527 Website : www.tspmandali.com E-mail : tspmamcsdg@ymail.com

Ref. No. TSPM/AMC/SDG/ 116 | 2022

Date :

To
The Secretary,
Ministry of Ayush
Ayush Bhawan
B-Block, GPO Complex, INA
New-Delhi-110023.



Sub: Submission of memorandum of appeal filed under section 9(6) of National Medical Commission (NMC) act 2019

Ref: 1)W.P.No.201337/2022 (Edn-res).

High Court of Karnataka Kalaburgi

Respected Sir,

This is to bring into your notice that we are submitting the memorandum related to appeal filed under section 9(6) of National Medical Commission (NMC) act 2019. That as per orders of High Court Kalaburgi in W.P.No.201337/2022 (Edn-res) the appeal is filed

Kindly consider this and grant the permission for admit the students for BAMS course for 40 students for the year 2021-2022

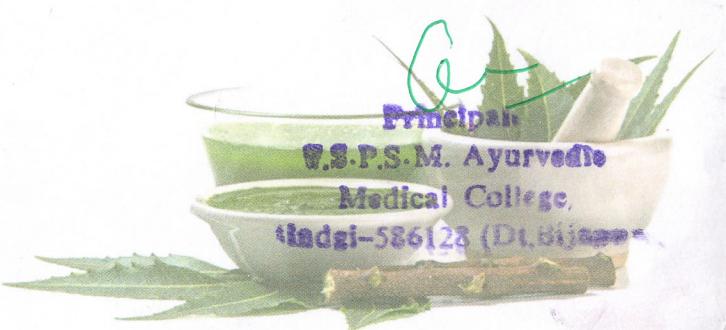
Requesting to consider for the well being of the Teaching staff and Students academic tenure in future and the same may kindly be consider at the earliest in compliance with court order

Thanking You

Date: -10-2022

Enclosed:-

1. Appeal memo with all Annexures



**BEFORE THE GOVERNMENT OF INDIA,
AYUSH DEPARTMENT**

The Secretary, To the Govt. of India, Ministry of Ayush, Ayush
Bhawan, B-Block GPO Complex, INA, New Delhi-110023

BETWEEN:

T.S.P. Mandall's Ayurvedic Medical
College & Hospital

....Appellant

And

The Chair person NCISM & Ors.,Respondents

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11)	Vakalath	NA

Place: New Delhi
Dt. .10.2022

c) Consider the representations and the compliance report submitted by the Appellant, in the interest of student community who are being trained in the rural area of North Karnataka.

Place: New Delhi

Date: .10.2022

APPELLANT

BEFORE THE GOVERNMENT OF INDIA,

AYUSH DEPARTMENT

The Secretary, To the Govt. of India, Ministry of Ayush, Ayush Bhawan, B-Block GPO Complex, INA, New Delhi-110023

BETWEEN:

T.S.P. Mandall's Ayurvedic Medical
College & Hospital

....Appellant

And

The Chair person NCISM & Ors.,Respondents

VERIFYING AFFIDAVIT

I, Dr. Chethana, aged about 42 years, Principal of T.S.P. Mandall's Ayurvedic Medical College & Hospital, Shahapur Road, Sindagi – 586 128, Vijayapur Dist., today at Kalburgi, do hereby solemnly affirm and state as follows;

1. I submit that I am the Principal of Appellant College and I know the facts and circumstances of the above case. Hence, I am swearing to this affidavit.
2. I submit that the statements made in paragraph 1 to 22 of the Appeal are true to the best of my knowledge, information and belief.
3. I further submit that the documents produced at ANNEXURE-A to J are true copies of the originals.

Place:

Dt. .10.2022

DEPONENT

Identified by me:

Advocate

No of corrections

**BEFORE THE GOVERNMENT OF INDIA,
AYUSH DEPARTMENT**

The Secretary, Ministry of Ayush, Ayush Bhawan, B-Block,
GPO Complex, INA, New Delhi-110023

BETWEEN:

1. T.S.P. Mandali's Ayurvedic Medical
College & Hospital
Shahapur Road,
Sindagi – 586 128
Vijayapur Dist.,
Represented by its Principal
Dr. ChethanaAppellant

And

- 1) The Chair person
NCISM, 61-65, Institutional area,
Opp.'D' block, Janakpuri,
Delhi-110 058.
- 2) The Principal Secretary(H&FW)
Department of health & family welfare
Govt of Karnataka Room No.104 IST FLOOR
Vikas Soudha,
Bangalore-560 001.
- 3) The Registrar
RGUHS, 4th T Block
Jayanagar,
Bangalore- 560 041.Respondents

**MEMORANDUM OF APPEAL FILED UNDER SECTION 9 (6) OF
NATIONAL MEDICAL COMMISSION (NMC) ACT, 2019**

The Appellant humbly submits:-

BRIEF FACTS OF THE CASE

- 1) The appellant has filed a W.P. No.201337/2022 (Edn-Res) before the Hon'ble High Court of Karnataka at Kalburgi Bench which came to be disposed of on 28.09.2022 directing the appellant to file an appeal U/s 9(6) of the NMC Act, 2019 within 4 weeks from that day the Hon'ble Court observed as;

"In view of the above, without expressing any opinion on the merits of the case, the petitioner is permitted to file an appeal before the appellate authority under Section 9(6) of the Act within 4 weeks from today. If such an appeal is filed within four weeks, the appellate authority is directed to decide the appeal in accordance with law within two months from the date of filing the appeal, without considering the aspect of delay in filing the appeal".

The copy of order passed in W.P. No.201337/2022 (Edn-Res) before the Hon'ble High Court of Karnataka at Kalburgi Bench dated 28.09.2022 is produced herewith and marked as **Annexure-A**.

- 2) The Appellant College has sought the permission of the affiliating authority State Govt and the Apex body for permission to start the Ayurvedic Medical College at Sindhagi, Vijayapura District, happened to be a backward area in the Northern Karnataka. The Appellant Management got permission from the State Govt on 23/12/1996 and since then

college is in existence the copy of the permission letter issued by the Govt of Karnataka is herewith produced and marked as **Annexure-B.**

3) It is submitted by the Appellant that the Appellant has got the permission from the Govt regarding enhancement of the seat from 25 seats to 40 seats vide order dated 30/09/2003. The copy of the order enhancing the seats is here with produced and marked as **Annexure-C.**

4) It is submitted by the Appellant that the RGUHS the 3rd respondent herein has granted affiliation every year and continued the affiliation of the college till academic year 2017-18, students so admitted to the college have passed out every year. A copy of the Affiliation Order issued by the RGUHS is herewith produced and marked as **Annexure-D.** The Appellant further submits that it has applied to the 1st respondent to accord permission to the Appellant college and the college was inspected by the respondent No. 1 and 2 and pointed out that three teaching faculty are less in the college.

5) It is submitted that the inspection by the National Commission for Indian System of Medicine (for short – NCISM) was conducted on 8th and 9th January 2021 observing few shortcomings in the running of the Appellant-Institution. Pursuant to the shortcomings, the Appellant has given its Compliance Report on 11.02.2021. Without considering any of the information given in the compliance report dated 11.02.2021, the order dated 05.03.2021 is passed

withdrawing the recognition for the present academic year. A perusal of the order impugned makes it unmistakably clear that the order was kept ready in the month of February 2021 as the order indicates overwriting of the month of February with that of March and the date being filled; therefore, compliance report has not even looked into by the respondents while passing the order.

6) It is further submitted by the Appellant had approached Hon'ble High Court of Karnataka at Kalburgi Bench by filing a Writ Petition No :200739 OF 2021 Regarding orders and on being spoken to ; on 29/03/2021

By order dated 26.03.2021 had granted an interim order of stay, staying the order dated 5.3.2021 who had not granted permission to the Institution to admit the students for the current academic year 2020-21 as is granted in identical cases in the petitions earlier filed. Therefore, Institution will be at liberty to admit the students subject to the result of the writ petition. However, the admission of the students to the Institution for the academic year shall be on the following terms and conditions: (i) Appellant filing an affidavit of undertaking that no equities would be claimed in the event of these writ petitions being dismissed; (ii) Appellant shall file the affidavit of the Principal of Appellant' College certifying that pendency of these writ petitions have been individually intimated to all the students who have been admitted and the acknowledgement obtained from each students shall be filed along with said affidavit. (iii) It is also made clear that students who are likely to be admitted are not parties to these proceedings, they would also not be entitled to claim any

equities or contend at a later stage that they would be entitled to be continued in the Course or their admission is to be regularized; (iv) Appellant shall web host in their website i.e., www.tspmandali.com pendency of these writ petitions and order dated 29.03.2021 passed today.”

The copy of the said orders passed by this Hon'ble Court are herewith produced herewith and marked as **Annexure-E**.

7) It is further submitted that as per the directions of the Hon'ble High Court the 1st Appellant has filed an undertaking as directed and also intimated the University and webhosted regarding the pendency of writ petition before the Hon'ble High Court of Karnataka at Kalburgi.

8) It is further submitted that after the Appellant submitting the compliance report to the respondent regarding the deficiency of teaching faculty as three teachers were less according to their report and the teachers were appointed and the 1st respondent has sent a letter to the Appellant college on 28/09/2021 stating that the virtual hearing could be held on 01/10/2021. The copy of the compliance report dated 30/09/2021 and Hearing Notice dated 28/09/2021 are herewith produced and marked as **Annexure-F & G** respectively. The appointment orders which was issued by the college appointing the faculty as was required to be submitted to the appellant authority herein and which was submitted online to the concerned authorities and uploaded on the portal of the appellate authority, which makes it ample clear that the deficiency in the faculty is taken care by appointing the required number in the higher faculty which is 12 and divided

into 11 Departments. The total staff required is 30 and we have the complete strength including Clinical & Non-Clinical Departments. The copies of the appointment orders which were uploaded on the online portal are herewith produced and marked as **Annexure-H series**.

9) It is submitted by the Appellant that, three Teachers were appointed and existing faculty was promoted to the post of Asst. Professor, making the total number of faculty to 26 in the lower faculty and 16 in the higher faculty which is in accordance with the norms of NCISM. The committee which heard in the virtual hearing and obtained the copies of the appointment order and promotion orders issued by the College has not accorded permission as the only set back in the inspection committee report that 2 numbers were less in the higher faculty. Now, on fulfillment of the requirement as desired by the NCISM the total strength of the college has increased and there is no deficiency of any sort in the college.

10) It is further submitted by the Appellant that during the Covid-19 pandemic period it was highly impossible to get any faculty to the college as the people were scared to attend the college and no college was functioning physically, as such there was a delay in making appointments, however as per the requirements of the respondents the strength of the faculty was fulfilled.

11) It is further submitted that the committee which heard in the virtual hearing as recommended to dismiss the appeal (this appeal was in the way of a compliance report submitted by

the Appellant). The respondent No.1 has not ifso-facto dismissed the appeal but has directed to fulfill the other requirements and apply afresh for academic year 2022-23.

- 12) It is further submitted that the 1st Respondent has sent a letter to the Appellant college stating that the approval for the academic year 2021-22 has not extended in spite of appointing required number of teachers as required under the provisions of the Act and as per their own letter dated 28/09/2021 Vide Annexure-G. The respondent is estopped from going back on the same footing of deficiencies in view of the pandemic Covid-19 and also the orders of the Hon'ble High Court of Karnataka at Kalburgi.
- 13) It is submitted by the Appellant that virtual hearing was extended to the Appellant to substantiate the claim of the Appellant College. The Appellant College appeared for the virtual hearing and appraised the respondent regarding the compliance report submitted and further clarified regarding strength of the college faculty and the relevant infrastructure as pointed out by the respondent. In spite of appraising all the relevant documents vis-à-vis the physical presence of the faculty in the college together with the infrastructural facilities. In spite of appraising everything regarding the college, in the virtual hearing the respondent assured that they are satisfied and will look in to the matter regarding permitting the college for the academic 2021-22 the copy of the order passed by the respondent dated 18.01.2022 in the appeal filed by the Appellant is here with produced and marked as **ANNEXURE-J**.

14) The Appellant, as directed by the Hon'ble High Court of Karnataka, Kalburgi Bench, is placing this Appeal before this Hon'ble Authority having no other alternative and efficacious Remedy, being aggrieved by the respondent's action in not considering the case of the Appellant is before this Authority by way of an appeal on the following grounds of appeal.

GROUNDS OF APPEAL

15) The Appellant being aggrieved by the inaction on the part of the respondent in not considering the case of the Appellant in spite of explaining the complete details regarding the compliance report submitted and making the respondent know about the reasons for the appointment of the faculty which is in excess to the requirement of the college. The impugned order passed by the 2nd respondent is to be set aside by this Hon'ble Authority.

16) The order passed by the 1st respondent is without application of mind and without their being any justification while passing the order. The virtual hearing which is extended by the respondent to clarify regarding the actual available faculty in the college was not considered, even the assurance made by the committee in the virtual hearing which was by way of a promise that would be looked into, is not physically looked into as such the impugned order passed by the 1st respondent deserves to be set aside at the hands of this Hon'ble Appellate Authority.

- 17) It is further submitted that the Appellant College was established in the year 1996 and many students have passed and completed the course in the college having the reputation in the rural area of Karnataka, striving to bring the rural flock to the main stream. The respondent ought to have considered the claim of the Appellant who were satisfied with the earlier compliance report have raised recurring deficiencies as was done in the past also.
- 18) The respondent having biased attitude towards the Appellant have time and again dodging the permission to the Appellant College on one pretext or the other there by depriving the very right of the Appellant to continue the program in Ayush Discipline (Ayurveda Medicine).
- 19) The respondent ought to have considered the case of the Appellant's college, as the Appellant College has submitted all the relevant documents by post for the consideration in the virtual hearing which is not at all looked into by the respondent. Not considering the same by the respondent is against the principles of natural justice.
- 20) The Appellant has spent crores of rupees in establishing the medical college in the backward area of Northern Karnataka to benefit the Rural People in making them to join the main stream of the society by way of their education which is not considered by the 1st respondent till date in spite of the directions issued by the Hon'ble High Court of Karnataka, at Kalburgi earlier.

21) The Appellant College has submitted complete details of the faculty who were appointed / promoted to the higher faculty to the Appellant College, as pointed out by the respondent and also appraised the respondent of the available resources with that of the infrastructural facilities in the Appellant College. The Appellant College had started in the year 1996 and respondents are not considering the case of the Appellant though the college has got all the infrastructural facilities such as laboratories, Hospital, Lab Facilities, Library and all such entertainment facilities like indoor and outdoor games. Having spent crores of rupees for the college is deprived of the permission which was to be continued /granted by the respondent. The Appellant would be put to great hardship mental agony despite huge financial loss which cannot be compensated by any means. Hence it becomes necessary that this Hon'ble Authority to take cognisance of the Appeal Memorandum in continuing the permission to the Appellant College.

22) It is humbly prayed by the appellant that;

- Call for records pertaining to Appellant College since 1996 and direct the 1st respondent to produce all such relevant documents which is submitted by the appellant college;
- Direct the respondent to consider the case of the Appellant for permitting BAMS Course for the academic year 2021-2022 as the faculties are appointed / promoted;