

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 8540/2008

AYURVED MEDICAL COLLEGE and HOSPITAL,
GAYA and ANR Petitioner

Through: Mr. Prakash Sinha, Advocate.

versus

UNION OF INDIA and ANR. Respondent

Through: Mr. Rajeev Mehra, Advocate for respondent no. 1.
Mr. T.K. Joseph, Advocate for respondent no. 2.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R
16.12.2008

C.M. No. 16415/2008

Allowed, subject to all just exceptions.

C.M. No. 16414/2008

The parties have been heard at length on the aspect of grant of interim relief. The petitioner claims to have been established in the year 1972 for imparting education in indigenous medicine (Ayurveda). In the year 1974, the petitioner college claims to have been affiliated to Kameshwar Singh Sanskrit University, Darbhanga, Bihar. It is stated that till the year 1998-99, the petitioner was being permitted to admit 40 students in each year for the undergraduate course in BAMS. Each year, the students were appearing in the exams conducted by the aforesaid university. On 14.02.2005 the State of Bihar refused to grant permission to the petitioner college to admit students. This action of the State of Bihar was challenged by the petitioner by filing CWJC No. 5422 before the High Court of judicature of Patna. The petitioner states that it placed reliance on the earlier positive recommendation of the CCIM. It is stated that the High Court quashed the order of the State Government and directed that in the next session i.e. 2004-05, the petitioner may admit 40 students. Thereafter, the petitioner continued to admit students in each successive academic sessions. The Indian Medicine Central Council Act, 1970 has been framed by the Parliament to provide for the Constitution of a Central Council of Indian Medicine and the maintenance of a Central Register of Indian Medicine and other connected matters. Ayurvedic, Unani and Siddha (ASU) Medical Education in India is governed by Indian Medicine Central Council Act, 1970 (IMCC Act). The IMCC Act was amended on 30.12.2003. The amendment was deemed to have come into force on 07.11.2003. By the said amendment, Chapter II A was introduced in the IMCC Act. Section 13-A, as introduced, provided for the requirement of permission from the Central Government to establish a new medical college, new course of study, or for increase in the admission capacity to any course of study or training including postgraduate courses of study or training. Section 13-C provided that a medical college which has been established before the commencement of the IMCC (Amendment) Act 2003, would be required to seek the permission from

the Central Government within a period of three years from the commencement of the Amendment Act, i.e. by 06.11.2006, in accordance with provisions of Section 13-A. Section 13-B provides that any medical qualification granted to any student by medical college, which has not obtained previous permission from the Central Government shall not be deemed to have acquired a recognized medical qualification for the purpose of the Act. Section 13-C (2) makes the provisions of Section 13-B applicable in respect of existing medical colleges, which do not obtain the permission of the Central Government in terms of Section 13-C (1). The Central Government framed regulations called the 'Indian Medicine Central Council (Permission to Existing Medical Colleges) Regulations 2006' for the purpose of implementing the scheme envisaged by Section 13-A to Section 13-C of the aforesaid Amended Act. Looking to the fact that the existing medical colleges were in a state of disarray, and earlier there was no strict regulation being implemented with regard to the meeting of minimum standards by such institutions, the regulations relaxed the norms regarding the eligibility criteria for making the application under Section 13-C. Regulation 5 (1) (e) and (f) provided as follows:

'5. Eligibility for making an application:-

(1) A person or an existing medical college shall be eligible for making an application under Regulation 3 if-

(a) the medical college and its attached hospital are suitably located preferably in a single plot, but which may consist of two plots reasonably close to each other on land which is owned by the applicant or has been taken on lease for a period of at least thirty years;

(b) xxxxxxxx

(c) xxxxxxxx

(d) the applicant owns and manages a fully functional hospital in the system of Indian Medicine concerned with a minimum of one hundred beds for under-graduate courses and one hundred and fifty beds for post-graduate courses which conforms to the norms relating to minimum bed strength and bed occupancy for In-patients and to the number of Out-patients;

(e) the medical college has appointed at least eighty percent of the teaching and non-teaching staff as may be specified by the Central Council and these staff are in position on a regular basis;

(f) the college undertakes to reduce the deficiency of teaching and non-teaching staff within a period of two years in two equal steps; and

(g) xxxxxxxx

In terms of the aforesaid regulations the petitioner's institution was inspected by respondent no. 2 on 11.03.2008. The inspection report has been placed on record. From the said report it is seen that the petitioner failed to meet inter alia, the aforesaid norms contained in Regulation 5 (1) (d), (e) and (f). The report apart, from various other deficiencies that were noticed by the inspection team, also takes note of the fact that out of 28 teachers only 22 were Ayurvedic teachers, and at the time of visit only 18 teachers were found present. The total number of Ayurvedic teachers that the petitioner institution, admittedly, should have is 35 as per the existing norms. 80% of the said figure comes to 28. However as noticed by the inspection team, only 18 were present out of the 28 names given by the petitioner, and only 22 were Ayurvedic teachers. There is no explanation given as to where the remaining 10 teachers were at the time of inspection out of 28 teachers as only 18 were found to be present. The names and identities of the said teachers, proof of their employment such as their salary slip, date of employment etc. are also not on record. With regard to the outdoor patient department (OPD) and indoor patient

department (IPD), it is observed by the inspection team that no proper systematic records are made available. There are only about 20-30 patients visiting the OPD in a day. The OPD is not functioning department wise. Only male and female OPDs are being maintained. On the basis of the aforesaid report, a show cause notice was issued to the petitioner on 09.07.2008. The show cause notice specifically made reference to the deficient number of teachers, i.e. even below the 80% of the full compliment. The petitioner submitted his reply on 22.07.2008. Contrary to what was represented before the inspection team and noted by the inspection team, in its reply the petitioner stated that there are 21 teachers working in the college. Therefore, admittedly, the petitioner did not meet the minimum requirement of 80% of the teaching staff in terms of Regulation 5 (1) (e) of the aforesaid regulations. In respect of the OPD and IPD established by the petitioner, the figures noted in the Inspection Report were not contravened. It was merely noted that 'the OPD and IPD have been established in accordance with the department. The Centralized OPD in accordance with the department is in the process of being established.'

The respondent no. 1 has, in these circumstances, passed the impugned order refusing to grant permission to the petitioner to admit students in the current academic session i.e. 2008-09. Mr. Mehra points out that since the petitioner is an old institution and has already admitted students in the earlier years, it has been permitted to continue the courses in respect of the earlier batches. The only effect of the impugned order is that henceforth, the petitioner would not be in a position to admit students till such time as the petitioner complies with the minimum requirements in terms of aforesaid regulations.

It is also pointed out by Mr. Mehra that the academic session for the first year under the 'Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) (Amendments) Regulations 1989' amended by the 'Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) (Amendments) Regulations 2005' with effect from 27.01.2006, in Regulation 8.1 provides that the first professional period shall start from 1st day of July and end on 31st December next year. For the academic session 2008-09, the academic session, therefore, started on 1st July, 2008. The cut-off date for grant of admission to the first year has been fixed by the Central Council of Indian Medicine as 31st October in each academic session in compliance with the decision of the Supreme Court in 'Medical Council of India Vs. Madhu Singh' AIR 2002 SC 3230. An office order to this effect was issued on 23.10.2003. A copy of the same has been tendered in Court and taken on record. It is pointed out that the petitioner cannot seek to rely on either the interim order granted by the Punjab and Haryana High Court in C.W. (P) No. 15249/2008 in the matter of 'Dayanand Ayurvedic College and Anrs. Vs. UOI' or on the order passed by the Division Bench of this Court in LPA NO. 645/2008 titled as 'Nitishwar Ayurved Medical College and Hospital and Anr. Vs. UOI' dated 23.10.2008 for the reason that both these orders were passed prior to the cut-off date of 31.10.2008, after which the admissions have been be closed. The impugned order in the present case was passed as early as on 18.08.2008. The petitioner did not seek to challenge the same before the cut-off date of 31.10.2008. Reliance is placed on Madhu Singh (supra) wherein the Supreme Court has held that the time schedule for grant of admissions is fixed by taking into consideration the capacity of the student to study and the appropriate spacing of classes. The students also need rest and the continuous taking classes with the object of fulfilling requisite number of days would be harmful to the students' physical and mental capacity to study. There

is, however, a necessity for specifically providing the time schedule for the course and fixing the period during which admissions can take place, making it clear that no admission can be granted after the scheduled date which essentially should be the date of commencement of the course.

Counsel for the petitioner submits that the cut-off date fixed by the aforesaid order dated 23.10.2003 is not sacrosanct in, as much, as no regulation has been framed in this respect. In my view, this argument of the petitioner does not advance the petitioner's case. If the office order dated 23.10.2003 were to be disregarded, then there would be no scope for grant of any admission after 1st of July in each academic year. In fact, by the administrative decision dated 23.10.2003, provision has been made for grant of admissions even after start of the session in July of the academic year, up to 31st October. The aforesaid decision in Madhu Singh (supra) has been followed recently by the Supreme Court in Civil Appeal No. 6026/2008 and Civil Appeal 6027/2008 decided on 01.10.2008 in the case titled as 'State of Maharashtra Vs. Sneha Satyanarayan Agarwal and Ors' reported as 2008 (13) SCALE 102. Having considered the aforesaid aspects I am not inclined to grant any interim relief to the petitioner. C.M. stands dismissed.

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Counter affidavit may be filed within two weeks. Rejoinder before the next date. List on 19.01.2009. Dasti.

VIPIN SANGHI,J
DECEMBER 16, 2008

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