

(2005) 01 KAR CK 0058

In the Karnataka High Court

Case No : Writ Petition No's. 19180 to 19214, 19286 to 19325, 19444 to 19463, 32737 and 33842 of 2004

Angadi Shanthanandkumar and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 18-01-2005

Acts Referred:

Indian Medicine Central Council Act, 1970 — Section 13 A, 13 B, 13 C, 18, 19

Citation : (2005) 2 KarLJ 133

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : K.N. Phanindra, in W.P. Nos. 19180 to 19214 and 19444 to 19463 of 2004, Sumangala A. Swamy, in W.P. Nos. 19286 to 19325 of 2004 and Praveen Kumar Raikote, in W.P. Nos. 32737 and 33842 of 2004, for the Appellant; Praveen Kumar Raikote, for Respondent-3 in W.P. Nos. 19180 to 19214 and 19444 to 19463 of 2004, B. Manohar, Government Advocate for Respondent-1 in W.P. Nos. 19180 to 19214 and 32737 of 2004 for Respondent-2 in W.P. Nos. 19286 to 19325 and 19444 to 19463 of 2004 and for Respondent-4 in W.P. No. 33842 of 2004, R. Sridhar Hiremath, for Respondent-1 in W.P. Nos. 19286 to 19325 and 19444 to 19463 of 2004 and for Respondent-2 in W.P. Nos. 19180 to 19214 of 2004, Devadas, Central Government Standing Counsel for Respondent-1 in W.P. No. 33842 of 2004, for Respondent-3 in W.P. No. 32737 of 2004 and for Respondents in W.P. Nos. 19180 to 19214 and 19444 to 19463 of 2004, Mahesh R. Uppin, for Respondent-2 in W.P. No. 33842 of 2004, for Respondent-4 in W.P. Nos. 19286 to 19325 and 32737 of 2004 and for Respondent-5 in W.P. Nos. 19180 to 19214 and 19444 to 19463 of 2004, N.K. Ramesh, for Respondent-2 in W.P. No. 32737 of 2004, Latha Prasad, for Respondent-3 in W.P. Nos. 19286 to 19325 of 2004, D. Gangadhar, Additional Central Government Standing Counsel for Respondents-1 and 2 in W.P. No. 33842 of 2004 and Arvind Kumar, for Respondent-5 in W.P. Nos. 19286 to 19325 of 2004, for the Respondent

Final Decision : Allowed

Judgement

Brief Facts in W.P. Nos. 19180 to 19214 of 2004

1. Angadi Shanthanandkumar and others have filed Writ Petition Nos. 19180 to 19214 of 2004 seeking for a direction directing the second respondent to regularise their admissions and to treat them as regular recognised students studying under third respondent-College.

2. Petitioners were eligible to be admitted to the BAMS course. In furtherance of starting of the College by the third respondent, petitioners made applications along with others to be selected for the first year BAMS course. Third respondent conducted entrance test for all applicants and ultimately admitted the petitioners according to merit. They were admitted for the academic year 2002-2003. Second respondent fixed the last date for admissions with fine as 15-1-2003. All petitioners are prosecuting their studies from the date of their admission and it has been 1st year course of the first year. Third respondent forwarded the list of admitted students along with the requisite fee to the second respondent. Third respondent has got affiliated to the second respondent for starting of its College. Second respondent is aware of the total number of students along with their names and particulars.

3. First respondent permitted the third respondent to start a College with an intake of 40 students by an order dated 27-8-2002. Second respondent consented for affiliation by its order dated 22-11-2002. Third respondent admitted 35 petitioners as against 40 sanctioned seats by the first respondent. Part of the course has been completed by the petitioners. Second respondent has not sent the examination forms to the third respondent. Third respondent informed the petitioners that second respondent is not sending the forms on the ground that the consent of the Central Council of Indian Medicine is not obtained by the third respondent and that the second respondent is not granting examination forms. Third respondent informed the petitioner that they have filed a writ petition before this Court in W.P. No. 6836 of 2004 seeking a direction in the matter. Third respondent is promising that he would get the orders from this Court for the students to appear for the examinations. No permission is obtained. Petitioners students in these circumstances are before me.

Brief facts in Writ Petition Nos. 19444 to 19463 of 2004

4. These petitions are filed by Shilji Devassy and others with the same or similar prayers. Facts in these cases are same or similar as in the earlier case.

Brief facts in W.P. Nos. 19286 to 19325 of 2004

5. These petitions are filed by Shrenik Annasab Shambhushete and others seeking for a direction to grant recognition to the third respondent for the academic year 2002-03 to facilitate the petitioners to complete their first year BAMS course. Facts and prayers are same or similar in the earlier cases.

Brief facts in W.P. No. 32737 of 2004

6. This petition is filed by Mallikarjuna Vidya Vardhaka Sangha. It is stated in the petition that the petitioner is running several Educational Institutions at Bijapur

and there was a demand for establishing an Ayurvedic Medical College at Bijapur and that the petitioner took a decision to start the same in the name of late Smt. Rajeshwari Karpurmath Memorial Ayurvedic Memorial College Hospital Research Centre at Bijapur and arrangements were made for so establishing the College. Proposal was sent to the second respondent for recommendation. Local Inspection Committee was appointed, and after receiving the report, the Committee sent it to the first respondent stating that it was feasible for establishment of the said College at Bijapur. An order was passed by the first respondent at Annexure-A. Second respondent granted affiliation in terms of Annexure-B. The College was started from 20-9-2002. A notification was published inviting students to the said College. Several students have obtained admissions in the matter. Respondents have stated at Annexure-A and Annexure-B that the petitioners are to get approval from the Central Council of Indian Medicine. No such permission is necessary, according to the petitioner. It is also referred to the provisions to say that such permission is unnecessary in the matter. Petitioner also says that it has sent the prescribed fee as well as the inspection fee for grant of affiliation. Essentiality Certificate and the consent of the Council were also sent to the respondents. Petitioner with these facts is before me seeking declaration that the application of the petitioner-management for affiliation is deemed to have been granted under the provisions of Section 13-A of the said CCIM Act, 1970. They have also sought for certiorari to quash the impugned order at Annexure-A insofar as Condition No. 1 is concerned.

Brief facts in W.P. No. 33842 of 2004

7. This petition is filed by Shri Chhatrapati Shivaji Education Society, Dharwad. Facts and the prayer in this petition is same or similar as that in the earlier petitions.

8. The Medical Council has filed objection statements in all these cases. Medical Council refers to various provisions of the Act and thereafter it states that in terms of these provisions permission is necessary. The Medical Council also refers to the definition in terms of Section 2(ea) of the Amendment Act of 2003 in support of their submission. In the affidavit, it is further stated that the Central Council has prescribed three courses at undergraduate level of 5? years duration each, namely (1) Ayurvedacharya - Bachelor of Ayurvedic Medicine and Surgery (BAMS), (2) Kamil-e-tib-o-Jarahat - Bachelor of Unani Medicine and Surgery (BUMS), and (3) Siddha Maruthuva Arignar - Bachelor of Siddha Medicine and Surgery (BSMS). Central Council also prescribes three post-graduate courses of three-years duration each, which are (1) Ayurveda Vachaspati [MD (Ay.)], (2) Mahir-e-tib [MD (Unani)], and (3) Siddha Maruthuva Arignar [MD (Siddha)]. The Central Council has been constituted by the Government of India to prescribe minimum standards of education in Indian Medicine and to regulate and maintain uniformity in the Indian Systems of Medicine. The Council also has laid down the curriculum courses of study containing the study of Rachana, Sharir, Kriya Sharir, pre-clinical, clinical subjects and practical trainings, minimum requirements,

norms and standards in terms of teaching as well as hospital staff, accommodation, etc.

9. Statement of Objections is also filed by the University. The University refers to the visit of the Central Council and also the notification issued by the Registrar. The University says that the second respondent is following the directions of the Central Council and it is bound by such directions.

10. Government supports the objections raised by the University and the Council in all these cases.

11. All these petitions were placed earlier before the Division Bench and the Division Bench has subsequently ordered for posting of these cases before the Single Judge. A learned Single Judge of this Court has passed a detailed order in all these cases permitting the petitioners to appear for the examination held in the month of May 2004.

12. All these petitions are listed for final hearing before me.

13. Sri D.L.N. Rao, learned Counsel for the students essentially took me through the material on record to say that the material facts of the case do not require any permission as on today from the Council. He says that Colleges have time of three years in terms of the Indian Medicine Central Council (Amendment) Act, 2003 and till then there cannot be any prohibition as such in the matter of admission or in the matter of taking examination. Learned Counsel says that the students are prepared to take risk of a decision after three years. He is, in particular, places strong reliance on Section 13-C of the Amendment Act, 2003. Sri Praveen Kumar Raikote, learned Counsel for the Institution in W.P. Nos. 19180 to 19214 of 2004 adopts the arguments of Sri D.L.N. Rao and says that the Inspection Committee has inspected the institution and thereafter Colleges are running as per Government Order. The other Counsel for students also adopts the arguments of Sri D.L.N. Rao.

14. Sri Mahesh Uppin, learned Counsel for the Council took me through the Indian Medicine Central Council Act, 1970, in particular Sections 18, 19 and 20 to contend that prior permission is necessary. He also took me through Sections 13-A, 13-B and 13-C of the Act to say that approval is a must in these cases. He strongly relies on a judgment of the Patna High Court in Nitishwar Prasad Singh v. State of Bihar and Ors., AIR 2000 Pat. 169. He farther relies on a decision of the Supreme Court in Dr. A.K. Sabhapathy Vs. State of Kerala and others, and on a judgment in ERA Educational Trust v. Union of India AIR 2000 SC 1753.

15. Sri Manohar, learned Government Advocate invites my attention specifically to Sections 19 and 20 of the Act to say that the inspection is a must in such matters. He says that in the given circumstances it cannot be said the no prior permission is necessary as argued by the learned Counsel for the petitioners. They say that Ayurvedic medical education being serious, an expert body's approval has to be there to maintain quality of education in Colleges.

16. After hearing, I have carefully perused the material on record.

17. According to me, the lone issue for consideration is whether prior permission is necessary in these cases in terms of the statutory provisions.

18. The Indian Medicine Central Council Act, 1970 is a Central Act. The object of the Act is to provide for the constitution of the Central Council of Indian Medicine and the maintenance of a Central Register of Indian Medicine and for matters connected therewith. Definitions are provided under Chapter I. Chapter II provides for the constitution of Central Council and its Committees. Central Council may constitute from amongst its members committees for Ayurveda, Siddha and for Unani. Chapter III provides for recognition of medical qualification. Section 14 provides for recognition of medical qualifications granted by certain institutions in India. Section 15 provides for recognition of medical qualification granted by certain medical institutions whose qualifications are not included in the Second Schedule. Section 16 refers to the recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity. Section 17 provides for rights of persons possessing qualifications included in Second, Third and Fourth Schedules to be enrolled. Every University which grants a recognised medical qualification shall furnish such information as the Central Council may, from time to time, require in terms of Section 18. Section 19 of the Act provides for Inspectors at Examinations. The Central Council shall appoint such member of medical inspectors as it may deem requisite to inspect any Medical College, hospital or other institution where education in Indian medicine is given, or to attend any examination held by any University for the purpose of recommending to the Central Government recognition of medical qualifications granted by that University. Requisite number of Visitors at Examinations may be appointed by the Central Council to inspect any medical College, hospital or other institutions where education in Indian medicine is given or to attend any examination for the purpose of granting recognised medical qualifications in terms of Section 20(1). Section 21 provides for withdrawal of recognition. Chapter IV provides for the Central Register of Indian Medicine. Chapter V provides for the miscellany including the power to refer the particulars of a complaint to a Commission of Inquiry and the power to make rules and regulations. Section 36 provides for making regulations in the matter.

19. I have to notice the subsequent developments in these cases. The Central Government in its wisdom has amended the Act by Amendment Act No. 51 of 2002. Section 13-A has been introduced providing for permission for new medical institution, course, etc. Section 13-B has been introduced with regard to recognition of medical qualifications in certain cases. The Act is further amended by the Amendment Act No. 58 of 2003, by which Section 13-A was slightly amended and so also Section 13-B. Section 13-C was introduced providing for time for seeking permission for certain existing medical Colleges. Pursuant to amendment, it is seen that permission is made compulsory in terms of Section

13-A. It however provides for a new medical institution. Section 13-B provides for adverse orders in the event of establishing without permission in terms of Section 13-A in the matter. In the event of no prior permission, the Act provides for re- recognition.

20. A reading of the entire Act and its Amendments would show that there is no specific provision as such providing for prior approval in the matter of starting a College. It was only for the first time in 2002 that the Amended Act would provide application and for approval for new medical institution. The Act was silent with regard to the existing Colleges. In the meanwhile, the Colleges have already been established as in the present case. Noticing the same, the Government in its wisdom has introduced Section 13-C providing for three years period from the commencement of the Indian Medicine Central Council (Amendment) Act, 2003. A careful reading of the entire provision in the light of the amended Act, 2002, particularly Section 13-C, would make it clear that prior to 2002 there was no prior permission available to start an Ayurvedic Medical Institution. With regard to the existing institution, a specific concession is made in terms of Section 13-C of the Act. As on today, law is that no Ayurvedic College can be started without prior permission in terms of Section 13-A. Existing institution has to seek time for getting permission within a period of three years from the commencement of Amendment Act of 2003. Therefore, the argument of the respondent-University that prior permission is necessary in terms of the Act is statutorily not tenable, particularly in the light of introduction of Section 13-C.

21. In these circumstances, I have to accept the arguments advanced by Sri Rao. However, the respondents' Counsel invited my attentions to the norms for starting of a College of Indian Medicine. The norms introduced is different from the legal compulsions. In these cases in terms of the norms, the State Government and the University has issued Annexure-A and B show which would show that it was a conditional approval for the establishment of the Colleges. What cannot be forgotten is that these conditions are challenged in these cases. In the light of Section 13-C, prior permission is unnecessary at the relevant point of time. Therefore, Condition No. 1 in Annexure-A and B are declared as unnecessary and unenforceable in law. But, however, Colleges are bound by Section 13-C and they have to obtain permission within the time prescribed therein, and any admission, any examination, or any activity is subject to Section 13-C of the Act.

22. At this stage, I must also notice the arguments with regard to Sections 18, 19 and 20 advanced by the learned Counsel for the respondent. It is no doubt true that Section 18 provides for power to require information as to courses of study and examination and Sections 19 and 20 provide for overall provisions in the matter of examination for better education in the field. These two sections are placed under Chapter "Recognition of Medical Qualification". Recognition is different from establishment of Colleges. Authorities have the necessary power even now to de-recognize in the event of any adverse conditions in terms of the

law governing the matter. Those provisions cannot be taken as an aid for the purpose of approval. Approval is different from recognition. It is not the case of any one of the respondents that these Colleges are de-recognized for want of any facility and that therefore respondents cannot seek aid of pre-permission insofar as these cases are concerned.

23. Sri Uppin, learned Counsel relies on three judgments. This Court is fully aware of the importance of quality in such education system. There cannot be any two opinions with regard to quality requiring to be maintained for the betterment of the society as a whole or for the betterment of the system itself. It is for this purpose, Recognition Chapter has been introduced and the recognition can be withdrawn at any point of time in the event of any shortcomings in terms of the Act. Nitishwar Prasad Singh's case, is with regard to recognition and affiliation. As I mentioned earlier, recognition, affiliation, pre-permission, approval, etc., stand on a different footing. Each circumstance is for different purpose in terms of the Act. In the circumstances, the judgment of Nitishwar Prasad Singh's case dealing with affiliation cannot be pressed into service for the permission or pre-permission. Dr. A.K. Sabhapathy's case also would show that it was rendered in terms of Travancore-Cochin Medical Practitioners' Act. A reading of the judgment would show that the Apex Court was considering the State Act and the All India Medicine Central Council Act. That was not the case of pre-permission as in the present case. Similarly, the judgment in ERA Educational Trust, was rendered under different circumstances which is not the case of the present writ petitions. None of the judgments are helpful to the respondents particularly in the light of Section 13-C of the Act.

24. Before concluding, it is made clear that in the given circumstances if the Colleges are running risk of fate of students in the event of adverse orders in terms of Section 13-C of the Act. If permission is refused, students alone are to be blamed and nobody else. To my repeated questions, learned Counsel for the petitioners would say that they are prepared to run the risk in the given circumstances.

25. In the circumstances, a direction is issued to the respondents to announce the results and permit the students to continue the courses subject to Section 13-C of the Act.

26. In the result, these petitions are allowed:

(1) Student petitioners are permitted to continue their education in their respective Colleges subject to Section 13-C of the Act.

(2) Respondent-Authorities are to permit the students in these petitions to take their examination, and they are directed to announce the results subject to Section 13-C of the Act.

(3) Clause (1) under Annexure-A and B issued in the case on hand by the Government are quashed.

(4) Further direction is issued to the managements to obtain permission in terms of Section 13-C of the Act in accordance with law.

(5) Parties are to bear their own costs.

It is made clear that these findings in these cases are referable only to prior permission and not for any other purposes.