
(2003) 05 AHC CK 0170
In the Allahabad High Court
Case No : C.M.W.P. No. 24265 of 2002

Bharat Tibbiya College

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 AWC 2887 : (2003) 3 UPLBEC 2358

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Deepak Kaushik, for the Appellant;

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—This writ petition was heard and dismissed by me vide order dated 1st May, 2003, for the reasons to be recorded later on. Now here are the reasons for dismissing the aforesaid writ petition.

2. The petitioner, Bharat Tibbiya College, Saharanpur through its Principal filed this writ petition for the following reliefs :

(i) issue a writ, order or direction in nature of mandamus commanding the respondents particularly to the respondent No. 1 to fix the norm for admission for diploma course namely (D.U.M.) and to issue permission for the same in compliance of the order dated 26.9.2001, issued by the State Government.

(ii) Issue a writ, order or direction in nature of mandamus commanding the respondents to permit the petitioner to admit the students in the institution till the fixation of norms by the respondents as the admissions were made earlier.

(iii) Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case exist in the present case.

(iv) Award the cost of this writ petition in favour of the petitioner.

3. The petitioner approached this Court in the back-drop of the following facts :

The petitioner is an institution imparting education in Unani system of medicine and awards diploma to the successful candidates. It is also asserted that the petitioner is minority institution and the State Government by enacting the Act No. 18 of 1982 imposes restriction on opening of Medical Institutions by the private person or society. The aforesaid enactment further imposes restriction on admission by existing colleges. However, there is an exemption with regard to the institution controlled and managed by the minority. In other words, the person or the society belonging to minority were permitted to open an institution and to take, admission therein. The petitioner's institution is running since last more than 20 years and successful candidates were provided registration properly by the respondent No. 3, i.e., the Registrar, Board of Indian Medicine, U. P., Lucknow. However, in the year 1992, the respondent No. 3 raised an objection in connection with registration of the successful candidates and the petitioner filed writ petition before this Court being Civil Misc. Writ Petition No. 21995 of 1992 and this Court vide its order dated 8.6.1992, directed the respondents to provide registration to the successful students. The United Provinces Indian Medicines Act, 1981, which was amended from time to time, provides for constitution of a Board known as Board of Indian Medicine, U. P. The aforesaid Act put a restriction that no institution can be allowed to continue unless the same is registered by the Board after the amendment of the United Provinces Indian Medicines Act. The petitioner further relied upon the decision of this Court passed in Civil Misc. Writ Petition No. 46835 of 1993, Deoband Unani Medical College v. State and Ors. This petition, it is asserted, has been finally decided by this Court vide its order dated 7th January, 1994. The petitioner asserts that in view of the aforesaid decision, the petitioner filed writ petition before this Court being Civil Misc. Writ Petition No. 42846 of 1993. Bharat Tibbiya College v. State of U. P. and Ors. and this Court on 4th November, 1993, passed the followed order :

"The respondent No. 1 is directed to make registration of the successful candidates for current academic session and it shall go on making registration of successful candidates in future also, until this order is varied, modified or rescinded."

4. With the aforesaid interim order, the petitioner asserts that it approached the respondents or registration of the candidates in the successive year but on refusal of the respondents, he has approached this Court by means of present writ petition under Article 226 of the Constitution of India seeking a writ of mandamus, as stated above.

5. Learned counsel for the petitioner has argued that in view of the law declared in reported in 1994 (1) UPLBEC 483 and in view of the interim order passed in Civil Misc. Writ Petition No. 42846 of 1993, the respondents have failed to perform their statutory duty of registering the candidates declared successful by the petitioner's college.

6. In my opinion, if the petitioner relies upon the order passed in the earlier writ petition and alleges breach or violation of the interim order, the remedy of the petitioner lies with filing of contempt petition before this Court in contempt jurisdiction and not by means of this writ petition. There is yet another reason for rejecting the argument that the interim order is not precedent much less binding precedent. So far as the decision relied upon by the learned counsel for the petitioner reported in 1994 (1) UPLBEC 483 is concerned, even according to the petitioner's own admission the controversy is pending for decision before this Court in earlier writ petition filed by the petitioner himself.

7. In this view of the matter, this writ petition filed by the petitioner is not maintainable as the petitioner could and should have filed an application in the pending writ petition.

8. Learned counsel for the petitioner has failed to demonstrate any statutory provision under which the respondents are under legal obligation to register a student declared successful from the petitioner's institution which controversy is still pending before this Court and being not supported by any statutory provisions, in my opinion, the petitioner is not entitled for any writ of mandamus as prayed for by the petitioner.

9. There is yet another reason that, in the recent decision of the Hon'ble Supreme Court and which has been followed by a learned single Judge of this Court, no institution imparting medical education is entitled to admit a student unless the course is approved by the statutory provision and the Medical Council or statutory authority concerned. In the present case, it is a Board constituted under the provisions of the United Provinces Indian Medicines Act. Admittedly, the petitioner has enrolled the students without approval of the Board, which is a statutory body created under the provisions of United Provinces Medicines Act, as amended in 1982 and the subsequent amendments. For this reason also, this writ petition deserves to be dismissed.

10. There is yet another reason that the petitioner's college must have been established by or under a Society registered under the provisions of the Societies Registration Act and/ or under any other statutory provisions. The college through its Principal cannot be said to be aggrieved by the order passed by the respondents in refusing to register a student because the aggrieved person is the Society. Even assuming that the college is to be an aggrieved party, the college cannot approach through Principal. The Principal should not have come before this Court unless authorised by the committee, which is not the case. The college should have approached through the Secretary or Manager or Society, which manages the institution. This writ petition, therefore, on behalf of the college through the Principal is not maintainable and deserves to be dismissed.

11. For the reasons stated above, this writ petition fails and it is accordingly dismissed. The interim order, if any, stands vacated. There will be no order as to costs.