

(2019) 08 DEL CK 0427

In the Delhi High Court

Case No : Civil Writ Petition No. 8094, 33533, 35202 Of 2019

Katyan Shikshan Samiti

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g)

Indian Medicine Central Council (IMCC) Act, 1970 — Section 13A, 13A(5), 13(c), 17

Citation : (2019) 08 DEL CK 0427

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : Arjun Garg, Sana Kamra, Rahul Gupta, Nikhil Goel, Ridhima Gaur, Archana Pathak Dave, Aditya Ranjan

Judgement

'''

Anu Malhotra, J",,,,

1. The petitioner, Katyan Shikshan Samiti, situated at Bhopal, Madhya Pradesh, seeks the setting aside of the impugned order dated 19.7.2019 issued",,,,

by the respondent No.1, Government of India, Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy, i.e. AYUSH declining the",,,,

grant of issuance of the letter of permission to the petitioner institute to start a new Ayurveda College in the name of Dr.Shankar Dayal Sharma",,,,

Ayurvedic College & Hospital, Bhopal, Madhya Pradesh with 60 seats in the BAMS/ UG course from the academic year 2019-20 under Section 13A",,,,

of the Indian Medicine Central Council (IMCC) Act, 1970 and vide which letter of intent issued vide letter dated 11.4.2019 as issued to the petitioner",,,,

was also withdrawn. The petitioner also seeks direction to the respondent No.1 to issue the letter of permission in favour of the petitioner for starting",,,,

the said new college for the academic session 2019-20 submitting that all requirements of RMS-2016 have been complied with and the petitioner also,,,

seeks directions to the respondent No.1 and 2 to conduct the fresh inspection of the college of the petitioner.,,,

2. The respondents arrayed to the present petition are the Union of India through its Director, Ministry of AYUSH, as respondent No.1 , the Central",,,

Council of Indian Medicine as the respondent No.2, the State of Madhya Pradesh as the respondent No.3 and Dr. Shankar Dayal Sharma Ayurvedic",,,

College & Hospital, Bhopal, Madhya Pradesh as the respondent No.4",,,

3. It has been submitted on behalf of the petitioner that pursuant to the application dated 28.8.2018 filed by it to the respondent No.1 for obtaining,,,

permission under the IMCC Act, 1970 for starting a new Ayurvedic College & Hospital in the name & style of Dr.Shankar Dayal Sharma Ayurvedic",,,

College & Hospital, i.e., (the respondent No.4) from the academic year 2019-20, the respondent No.2 had conducted the inspection on 12.6.2019 and",,,

13.6.2019 to assess the available facilities of teaching and practical training and to furnish a report of recommendation to the Central Government and,,,

that on 25.6.2019, the respondent No.1, the Union of India, issued a show cause notice to the petitioner as to why the letter of permission to establish a",,,

new Ayurvedic college under Section 13A of the IMCC Act, 1970, from the academic year 2019-20 be not denied to the petitioner and the petitioner",,,

was informed of an opportunity of hearing in terms of the first proviso to Sub-section (5) of Section 13A of the IMCC Act, 1970, on 1.7.2019 before",,,

the designated Hearing Committee in the Ministry of Aayush.,,,

4. The petitioner submits that on 1.7.2019 the representative of the college appeared before the Designated Hearing Committee and explained in detail,,,

with oral as well as the documentary evidence that the deficiencies or shortcomings raised in the hearing notice had been rectified.,,,

5. The petitioner submits that the hearing before the Designated Hearing Committee ought to have taken place only on the basis of the shortcomings,,,

or deficiencies raised in the inspection report pursuant to the inspection carried on 12-13.6.2019 by the team of Inspectors of the respondent No.2 but,,,

to the shock and surprise of the petitioner, the Hearing Committee asked for the documents that had no relation whatsoever with the deficiencies",,,

mentioned in the Hearing Notice. The petitioner has thus submitted that the

procedure carried out in the hearing in the manner of fresh inspection is,,,
erroneous and arbitrary.,,,

6. The impugned order dated 19.7.2019 of the respondent no.1 is as under:,,,

S. No.,Alleged Deficiencies as stated in Impugned order,Submissions,

1,"In OPD and IPD data, cash receipts for OPD charges

and IPD charges in the hospital are not available.", "The hospital provides
treatment free

of cost and the expenses of the

hospital are borne by the petitioner

society and not by the college and

therefore, the cash receipts are not

available with the college. Bank

statements of the petitioner society

reflecting payments for expenses of

the hospital (ANN.)",

2,"Functional Operation Theatre (OT) is not available as per

RMS, 2016 (In the inspection report it was pointed out

that the total number of operations done from 1st Jan,

2019- 31st Dec. 2019 are nil.)", "Respondent No. 1 & 2 did not

consider that it was due to a clerical

error at the time of filing ""Part- 1

i.e. the Online Application that the

said entry was filled in as ""nil"".

Documentary evidence such as OT

Register, proof of 81 operations

done. Equipment Receipt, and

photos of a functional OT clearly

show that the petitioner has a

functional OT.",

3,"0 1 Sanskrit teacher in Samhita & Siddhant is not

available for first professional as per RMS, 2016.", "The documents produced before

respondent no. 2 on the day of inspection as well as the documents produced before respondent no.1 at the time of hearing clearly show that Dr. Deepika Singh Chandel was already appointed as Sanskrit teacher vide appointment letter dated 08.05.2019 and she was even present on the day of inspection which can be seen from the photographs of the day of inspection. (ANN.)",

4, "Functional Labour Room is not available as per RMS, 2016", "Contradictory observations by Respondent no. 1. Page 2 of the 10, it has been stated that the hospital has a functional Labour room and on the other hand, at page 6 the respondent no. 1 has held that a functional labour room is not available as per RMS, 2016. The functionality of the hospital as completed in the RMS, 2016 is not determined by the number of operations/ deliveries conducted but from availability of the equipment and necessary infrastructure as required under the RMS, 2016.",

5, "Biometric attendance system for teaching, non-teaching and hospital staff is not available as per RMS, 2016", "The Biometric System that as installed in the college and as even checked by the visitation team of respondent no. 2. Furthermore, when the photographs of the inspection day which evidently show the Biometric Device installed on the wall of the college, the same was not accepted by respondent no. 1. Furthermore, the invoice issued in favour of the Petitioner for purchase of the Biometric Device and the system generated 'Monthly Status Report (Basic Work Duration)' have also not been accepted by respondent no. 1.",

6, "01 multipurpose worker in Herbal Garden is not available as per RMS, 2016.", "Petitioner vide letter dated 03.06.2019 transferred Mrs. Savita Bai who was previously' working under ""Others"" category to the Herbal Garden as a multipurpose worker. The college was fulfilling the requirement of having minimum of 2 multipurpose workers in the Herbal Garden as per the requirements of RMS, 2016. The letter dated 03.06.2019

substantiates the claim of the petitioner that the alleged deficiency did not even exist at the time of inspection.",

7, "Updated college website is not available as per RMS, 2016. (The date of joining and registration number of the Principal is not updated on the website)", "The same has now been rectified.

The screenshot of the updated website showing the date of joining and registration number (ANN.)",

8, "College Council is not available as per RMS, 2016", "The respondent no. 2 completely

disregarded the Office order dated 02.05.2018 and the minutes of the first meeting of the College Council held under the chairmanship of the Principal whereby the College Council comprising of Dr. V.S. (Principal) as Chairman of the Council and three members.

namely. Dr. S.K. Mehar (HOD, Samhita Siddhanta), Dr. Prativa Samal (HOD, Anatomy) and Dr. Abijeet Babaso (HOD, Physiology) was constituted as per the requirements of RMS, 2016 and as directed by respondent no. 2. The minutes of the said meeting were duly recorded in the college records. The office Order dated

02.05.2019 and the minutes of the first meeting of the College Council marked as annexures to the present Petition. Respondent no. 1 & 2 did not even give any reason for not considering the documents so produced before them.",

J. that the respondent no. 1 & 2 had wrongly pointed out the deficiency of non-availability of Bio-metric attendance system as the photographs of the,,
inspection day showed the Biometric Device installed on the wall of the college.,,,

K. that the respondent nos. 1 & 2 failed to consider the letter dated 03.06.2019 which substantiated the claim of the petitioner that vide letter dated,,,

03.06.2019 Mrs. Savita Bai who was previously working under ""Others"" category was transferred to the Herbal Garden as a multipurpose worker.",,,

L. that the respondent no. 2 completely had disregarded the Office order dated 02.05.2018 and the minutes of the first meeting of the College Council,,
whereby the College Council was constituted as per the requirements of RMS, 2016 and as directed by respondent no. 2;,",,

M. that the respondent no. 1 had failed to perform its duty as provided by RMS, 2016 as well as the provisions under the IMCC Act, 1970 and that it",,,

ought to have applied its mind and given its reasons as to why the petitioner ought or ought not to be given the permission and that the respondent No.,,,

1 had copied the deficiencies pointed out Respondent no. 2 without adhering to the Principles of Natural Justice;,,,

N. that the Order dated 19.07.2019 passed by respondent no. 1 was in breach of principles of natural justice and reliance was placed by the petitioner,,,

on the verdict of the Hon'ble Supreme Court in State of W.B. v. Alpana Roy, (2005) 8 SCC 296, wherein the following observations were made:",,,

8. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union [(1971) 1 All ER 1148 : (1971) 2 QB 175 :,",,

(1971) 2 WLR 742 (CA)] (All ER p. 1154h) observed: "The giving of reasons is one of the fundamentals of good administration."" In Alexander",,,

Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120 (NIRC)] it was observed: "Failure to give reasons amounts to denial of justice. Reasons are live,,,

links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." "Reasons substitute subjectivity by",,,

objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually",,,

impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to",,,

reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court.",,,

Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is",,,

spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or",,,

quasi-judicial performance",,,

O. Likewise, the petitioner placed reliance on the observations in para 14 of the verdict of the Hon'ble Supreme Court in Anand Brothers Private",,,

Limited v. Union of India, (2014) 9 SCC 212: -",,,

14. .. Application of mind is best demonstrated by disclosure of the mind; mind in turn is best disclosed by recording reasons. That is the soul of",,,

every adjudicatory process which affects the rights of the parties. This is true also in the case of a finding of fact where too the process of reasoning",,,

must be disclosed."",,,

P. that the respondents had acted in arbitrary manner by not considering the documents produced by the college representatives to show compliance",,,

of the RMS, 2016;",,,

Q. that in Beehive Ayurved Medical College And Hospital V. Union of India W.P. (C) 10959/2018 & CM No. 42690/2018 wherein the permission to",,,

the petitioner was denied without considering the proof of deficiencies having been rectified by the petitioner, the Court had issued notice to the",,,

Respondent and as interim relief, permitted the petitioners to proceed with admissions;",,,

R. that in Parashar Ayurvedic Medical College and Hospital v. Union of India and Anr. W.P. (C) 11517/2018 this Court vide order dated 11.10.2018",,,

directed the respondent therein to upload on their respective websites the name of the petitioner college amongst the names of colleges who had",,,

received recognition/ permission;",,,

S. that in a batch of Writ Petitions the lead matter being Doon Institute of Medical Sciences and Anr. v. Union of India and Anr. W.P.(C) 11458/2018,",,

this Court had permitted the petitioners therein to proceed with admissions and directed the respondents to upload/include the name of the petitioners,,,

in the list of colleges reflected on their respective web portals;,,,

T. that the RMS, 2016 provides for grant of conditional approval in case of minor deficiencies.",,,

10. Inter alia reliance has been placed on behalf of the petitioner on the verdict of the Honâ??ble Supreme Court in Temple of Hanemann,,,

Homoeopathic Medical College and Hospital v. Union of India and Ors.: 2018 SCC Online SC 818 wherein the provisions of the Homoeopathy Centre,,,

Council Act, 1973 which were under consideration which the petitioner submits are in pari materia with the IMCC Act, 1970, it was held by the",,,,

Honâ??ble Supreme Court that the role of the Central Government is a supervisory one and not investigatory and reliance has been placed on behalf,,,

of the petitioner on the observations in paragraph 20 of the said verdict which reads to the effect:,,,

â??20 A bare reading of the provisions contained under Section 17 makes it clear that as per statutory provision, duty has been enjoined upon the",,,,

CCH to appoint a team of Inspectors. Such a power has been specifically conferred on such Expert Bodies under various enactments also. It is the,,,

function of the expert bodies in the field and they are supposed to appoint a team of Inspectors and it is for expert bodies to make the,,,

recommendations to the Central Government. The role of the Central Government is a supervisory one and not to start an investigation by making the,,,

appointment of a team of Inspectors, as that is not envisaged under the Act of 1973 itself.â??",,,,

11. The petitioner has further placed reliance on the verdict in R.N.Kapoor Memorial Homoeopathic Hospital and Medical College v. Union of India;,,,

2019 SCC Online Del 8907, to contend that the scope of powers of the Central Government as envisaged in the Homoeopathy Central Council Act,",,,

1973 which are pari materia with the IMCC Act, 1970, is limited to the deficiencies pointed out by the Central Council of Homeopathy and that the",,,,

respondent No.1 ought to have limited its consideration to the deficiencies that have been pointed out by the CCH in its inspection report.,,,,

12. Though no counter affidavit was filed on behalf of the respondent, submissions have been made on behalf of either side by the learned counsel.",,,

13. Whereas, on behalf of the petitioner it was sought to be submitted that there are no deficiencies as have been pointed out in the show cause notice",,,,

by the CCIM pursuant to its inspection on 12.6.2019 and 13.6.2019, the Hearing Committee of the respondent No.2 had put forth different",,,,

requirements other than those mentioned in the show cause notice.,,,,

14. In relation to this aspect it is essential to observe that the discrepancies and short comings that have been pointed out by the Hearing Committee,,,

through the impugned order are significant and major and cannot be overlooked.,,,,

15. The requirement of Minimum Standards to grant the permission as prescribed through the notification dated 7.11.2016 issued by the respondent,,,

Intake capacity per year,"Minimum number of beds

in In-Patient Department

on the 1:1 student:bed ratio","Minimum per day average

number of patients in

In-Patient department

during last one calendar

year (365 days) (40% bed

occupancy)","Minimum per day average

number of patients in

Out-Patient department

during last one calendar

year (300 days) (1:2

student:patient ratio)

Up to sixty students,60 beds,24,120

Sixtyone to hundred

students",100 beds,40,200

In-Patient Departments,Distribution,60 beds,100 beds

Kaychikitsa

(Panchakarma, Rasyan

and Mana Rog etc.)",50% beds,30,50

S ha Iya Tantra and

Shalakya Tantra",25% beds,15,25

Prasuti evam Stiroga and

Kaumarabhritya",25% beds,15,25

20. It is essential to observe that the Regulation 7 (2) (i) of the notification dated 7.11.2016 issued by the respondent No.2 with the sanction of the,,,

respondent No.1 makes it apparent that the teaching hospital shall fulfill all the statutory requirements of the concerned State or Union territory or,,,

local authority to establish and run the hospital and shall submit the updated certified copies of such permission(s) or clearance (5) to the Central,,,

Government and the Central Council. The concerned State Government or Union territory shall issue the No Objection Certificate to such applicant,,,

colleges after verifying the availability of such permission(s) or clearance(s),,,

21. As regards the bio-metric attendance system for teaching and non-teaching and hospital staff sought to have been put into place by the petitioner,",,

the same is indicated to have been put in place only pursuant to an invoice dated 29.4.2019 and thus it was not in place on the date 31.12.2018.,,,

22. It is apparent thus on a bare consideration of the submissions that have been made on behalf of the petitioner that even if it is sought to be,,,

contended on behalf of the petitioner that the requirements requisite in the terms of RMS 2016 had been complied with substantially, they have not",,,

been complied with by the date 31.12.2018 and the parameters essential for granting of permission for undertaking admissions in the academic session,,,

2019-20 had not been put in place by the date 31.1.2018 by the petitioner.,,,

23. As regards the submissions made on behalf of the petitioner that the RMC, 2016 provides for grant of conditional approval in minor deficiencies, as",,,

observed elsewhere herein above, the deficiencies pointed out by the Hearing Committee are significant and major and thus cannot be overlooked as",,,

also observed by this Court in WP(C) 7934/2019 titled Shivalik Institute of Ayurved And Research & Anr. V. Union of India & Anr.,,,

24. Reliance thus placed on behalf of the respondent No.2 on the verdict of the Honâ??ble Supreme Court in Civil Appeal No(s). 10372/2018 titled,,,

Medical Council of India v. The Chairman, S.R. Educational and Charitable Trust &

Anr., Civil Appeal No(s). 10373/2018 titled Medical Council of",,,

India v. The Chairman, Al-Azhar Medical College and Super Speciality Hospital & Ors., Civil Appeal No(s). 10374/2018 titled Medical Council of",,,

India v. B. M. Education & Research Foundation & Ors. and Civil Appeal No(s). 10375/2018 titled Medical Council of India v. Dr. P. Krishna Kumar,,,

& Ors., though the said verdicts relate to the MCI regulations, nevertheless the ratio laid down therein is wholly applicable to the facts of the instant",,,

case, whereby it has been observed that the conditional permission to admit students should not be granted and that for efficacious medical education,",,

it would not be appropriate to permit any unequipped college to impart training without proper infrastructure, faculty and patients, which serve the",,,

object of teaching.,,,

25. In the circumstances, the petition and the accompanying applications seeking relief for the academic year 2019-20 are declined.",,,

A copy of the judgment be given dasti under the signatures of the Court Master, as prayed by the petitioner.",,,