

(2019) 08 DEL CK 0395

In the Delhi High Court

Case No : Letters Patent Appeal No. 554 Of 2019, Civil Miscellaneous Application No. 38815, 38817 Of 2019

Katyan Shikshan Samiti

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 30-08-2019

Acts Referred:

Indian Medicine Central Council Act, 1970 — Section 13A, 13A(5), 13C
Indian Medicine Central Council (Requirements Of Minimum Standard For Under-Graduate Ayurveda Colleges And Attached Hospitals) Regulations, 2016 — Regulation 3, 3(1)(a), 3(1)(g), 4, 5, 6, 7, 7(2)(i), 8, 9, 10, 11

Citation : (2019) 08 DEL CK 0395

Hon'ble Judges : Hima Kohli, J;Sanjeev Narula , J

Bench : Division Bench

Advocate : Mohit Mathur, Abhinav Shrivastava, Arjun Garg, Sana Kamra, Saurabh Sharma, Dushyant Sarna, Archana Pathak Dave, Aditya Ranjan, Sachin Kumar Sharma

Final Decision : Dismissed

Judgement

1. The present appeal assails the judgment dated 21.08.2019, passed by the learned Single Judge dismissing W.P.(C) 8094/2019, filed by the appellant/petitioner, impugning the order dated 19.07.2019, passed by the respondent No.1/Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy i.e. [AYUSH] whereby it has been declined permission to start a new Ayurveda College at Bhopal, M.P.

2. A glance at the relevant facts is necessary. The appellant had filed an application dated 28.08.2018, with the respondent No. 1 for obtaining permission under the Indian Medicine Central Council Act, 1970 (in short "IMCC Act") to start a new Ayurvedic College and Hospital by the name of "Dr. Shankar Dayal Sharma Ayurvedic College and Hospital" at Bhopal, M.P. with 60 seats in the BAMS/UG course, for the academic year 2019-20. Pursuant thereto, the respondent No.2/Central Council of Indian Medicine (CCIM) had conducted an

inspection of the College on 22.05.2019 and 23.05.2019 to assess the available facilities of teaching and practical training and furnish a report of recommendation to the respondent No.1/Central Government. Thereafter, the respondent No.1 issued a Show Cause Notice dated 25.06.2019, calling upon the appellant to state as to why should permission to establish a new Ayurveda College be not denied. The appellant was also granted an opportunity of hearing in terms of the first proviso to sub-section (5) of Section 13A of the IMCC Act. In response thereto, authorized representatives of the college had appeared before the designated Hearing Committee and produced the documentary evidence and explained their stand on the deficiencies/short comings raised in the hearing notice and stated that the same had been duly rectified. However, by a detailed order dated 19.07.2019, the respondent No.1/UOI conveyed its decision not to issue a Letter of Permission (LoP) in favour of the appellant.

3. The appellant assailed the rejection order dated 19.07.2019, by filing a writ petition and raised several grounds therein. After considering all the pleas taken by the appellant, the learned Single Judge held that the discrepancies pointed out by the Hearing Committee were significant and cannot be overlooked. Further, referring to Regulation 7(2)(i) of the Notification dated 07.11.2016, issued by the respondent No.2, the learned Single Judge held that the statutory requirements as prescribed, had not been fulfilled by the appellant. Consequently, the writ petition was dismissed.

Aggrieved by the said judgment, the present appeal has been filed.

4. Mr. Mohit Mathur, learned Senior Advocate appearing for the appellant assails the impugned judgment on the ground that the findings returned by the learned Single Judge are erroneous. He argues that the learned Single Judge has misinterpreted the provisions of Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016 (in short, "the RMS, 2016") and while applying Regulation 3(1)(a), has ignored Regulation 3 (1)(g) of the RMS, 2016 that provides the cut off date for examining as to whether the college fulfils the minimum standards for grant of permission, as existing on the date of the visit. Claiming that the respondent No.2/CCIM has been approbating and reprobating at the same time, he alludes to the minutes of the 285th meeting of Executive Committee held on 20.06.2019, wherein it was decided to recommend to the respondent No.1 that a LoP be issued in favour of the appellant for the academic session 2019-20 but later on, the respondent No.2 did a volte face and questioned the appellant's eligibility for grant of the LoP. It is also contended that the respondent No.1 has changed the goal post inasmuch as the deficiencies enumerated in the Show Cause Notice, do not form the basis of the ultimate rejection order. He goes on to submit that if the authenticity of the OPD register, IPD register and ledger account was doubtful, then the Court could have obtained an expert opinion, instead of agreeing with the submissions made by learned counsel for the respondent No.2. It is the appellant's stand that as on

the dates of inspection, i.e., on 22.05.2019 and 23.05.2019, most of the deficiencies had been rectified, as can be seen from the fact that the teaching faculty was complete, attendance registers for teaching, non-teaching and hospital staff were being maintained, record of attendance of Out-Patient Department and In-Patient Department was being maintained and multipurpose worker in the herbal garden was available.

5. Per contra, learned counsel for the respondents No.1/UOI and respondent No.2/CCIM contend that the learned Single Judge has given due consideration to all the submissions made on behalf of the appellant and has rightly concluded that the deficiencies pointed out were serious in nature and cannot be countenanced. It is submitted that the appellant failed to produce the relevant documents that could convincingly demonstrate that the deficiencies pointed out by the respondent No.2, had been rectified. The attention of this Court has also been drawn to the minutes of the meeting dated 01.07.2019, of the Hearing Committee before whom the Principal and the Administrative Officer of the college had appeared to make their submissions, to urge that point-by-point deficiencies noticed during the inspection of the college were brought up and the submissions that were made on behalf of the college, make it abundantly clear that the appellant had itself conceded that certain mandatory requirements, had remained unfulfilled on its part.

6. We have perused the impugned judgment and the record and given our thoughtful consideration to the arguments advanced by learned counsel for the parties.

7. In the first instance, it is considered necessary to examine the relevant Regulations of RMS, 2016, that was notified by the respondent No.2 on 07.11.2016, with the previous sanction of the respondent No.1. RMS 2016 lays down the requirements of minimum standards for under-graduate Ayurveda Colleges and attached Hospitals established under Sections 13A and 13C of the IMCC Act. The said minimum standards are prescribed in respect of availability of infrastructure, teaching and training facilities, as laid down in Regulations 3 to 11 of RMS, 2016. Regulation 3 prescribes that conditional permission of one year for a particular academic session shall be granted only to those colleges that fulfil the requirements of minimum standards on the basis of the inspection carried out by the respondent No.2/CCIM between 31st December to 31st March of the succeeding academic year.

8. Regulations 3(1)(a) and 3(1)(g) have been specifically cited by learned counsel for the appellant to urge that the learned Single Judge has erred in relying solely on Regulation 3(1)(a) and holding that the requirement of minimum standards has to be fulfilled by 31st December of each year for consideration for grant of permission for undertaking admissions in the coming academic session, while overlooking Regulation 3(1)(g). For examining the said submission, it is considered apposite to reproduce Regulations 3(1)(a) and 3(1)(g) hereinbelow:-

"3. Requirements of Minimum Standard to grant of permission-

(1) (a) The Ayurveda colleges established under section 13A and existing under section 13C of the Act and their attached hospitals shall fulfill the requirements of minimum standard for infrastructure and teaching and training facilities referred to in the regulations 4 to 11 upto the 31st December of every year for consideration of grant of permissions for undertaking admissions in the coming academic session;

xxx xxx xxx

(g) the position prevailed on the date of visit to assess the fulfilment of requirements as specified in these regulations except sub-regulation (2) of regulation 7 shall be taken into consideration for grant of conditional permission or permission for a period of five years to the colleges."

9. On perusing the aforesaid Regulation, we are inclined to accept the submission made by learned counsel for the appellant that for grant of conditional permission or permission for a period of five years to colleges to undertake admissions of students, the position prevailing on the date of the visit conducted to assess the fulfilment of requirements specified in the Regulations, [except for Regulation 7 (2)] shall be taken into consideration. In the instant case, the inspection of the college was conducted on two dates, i.e., on 22.05.2019 and 23.05.2019 by which dates, it would have been expected that all the deficiencies pointed out in the Show Cause Notice dated 25.06.2019, would have been rectified by the appellant.

10. To test the submission made on behalf of the appellant that the college had indeed rectified most of the deficiencies by the date the inspection was conducted, we may refer to the minutes of the Hearing Committee dated 01.07.2019, which enumerates the following 12 requirements that the college had not fulfilled in terms of the IMCC Act, RMS, 2016 and the relevant Regulations:-

"(i) College website is not available as updated details of Director/Dean/Principal/Medical Superintendent not available in the website as per RMS, 2016.

(ii) Bio-metric attendance system for teaching, non teaching and hospital staff is not available as per RMS, 2016.

(iii) College council has not been constituted as per RMS, 2016.

(iv) Sanskrit teacher is not available in Ayurveda Samhita department against the minimum requirement of 01 as per RMS, 2016.

(v) There is 01 Multipurpose worker available in the garden against the minimum requirement of 02 as per RMS, 2016.

(vi) There is no Nurse available in Operation theatre against the minimum requirement of 01 as per RMS, 2016. (Ms. Prabhavati Yadav has not been

considered due to Unauthorized absence).

(vii) Dr. Mahavir Mahadev Aldar (Consultant in hospital staff) has not been considered due to unauthorized absence).

(viii) There is no medical Specialist, Surgical specialist, obstetrician & Gynecologist, Pathologist, Anaesthesiologist, Ophthalmologist, Paediatrician, radiologist and Dentist available in Modern Medical staff against the minimum requirement of 01 each as per RMS, 2016.

(ix) Total number of deliveries conducted from 1st Jan. 2019-31st Dec. 2019 are nil.

(x) Functional Operation Theatre is not available as per RMS, 2016 (Total number of operations done from (sic) 1st Jan. 2019-31st Dec. 2019 are nil)

(xi) In central Laboratory, Procedures are not carried out for Sputum examination and Instruments/equipment are not available as per RMS, 2016.

(xii) In OPD and IPD data, cash receipts for OPD charges and IPD charges are not available as per RMS, 2016."

11. On being confronted with the aforesaid deficiencies, the submissions made on behalf of the college in respect of each deficiency were separately recorded by the Hearing Committee. One of the deficiencies pointed out at serial No.(v) above was that a Sanskrit teacher was not available in the Ayurveda Samhita Department against the minimum requirement of one teacher as per RMS, 2016. In reply thereto, the college had claimed that it had appointed Mrs. Deepika Singh Chandel as a Sanskrit teacher on 08.05.2019 and the college had applied to the respondent No.2/CCIM for issuance of a teacher's code in her favour, which had yet to be received. The documents submitted by the college to substantiate the said submission included appointment letter, joining report, photographs, attendance etc. However, the learned Single Judge has disregarded the same, not finding them to be authentic. Even if the appellant could have made good the deficiency by filling up one post of Sanskrit teacher in the Department in question, prior to the inspection of the college, in our opinion, the documents produced by the college before the Hearing Committee were self-serving in nature. No independent material has been placed on record to show that a Sanskrit teacher had indeed been appointed by the appellant by the date of the inspection, which could have been easily done by producing the letter purportedly addressed to the respondent No.2/CCIM for issuance of a teacher's code in favour of the Sanskrit teacher or the date on which the code was assigned to her. Both the said documents being above suspicion, would have thrown adequate light on the above aspect, but the appellant failed to produce them.

12. Coming next to the non-availability of cash receipts for the OPD and IPD charges referred to at serial No. (xii), the explanation offered on behalf of the appellant is that since no fee is taken from the patients in the hospital and all

expenses towards the medicines, hospital and procedure are borne from the Society income, the said data was not maintained. Assuming that the Society was bearing the expenses for the medicines, hospital and other procedures, it would still not absolve the college from maintaining the OPD and IPD data. At best, the said explanation would have cut ice for explaining the absence of data relating to cash receipts for the OPD and IPD charges. We are therefore in agreement with the view expressed in paras 18 and 19 of the impugned judgment that are reproduced hereinbelow for ready reference:-

"18. Another contention that had been raised during the hearing was that as per the observations of the Hearing Committee in the OPD and the IPD data, cash receipts for OPD charges and IPD charges in the hospital were not available, which the CCIM and the respondent No.1 contend are critical parameters to assess the genuine functionality of the hospital which was required to provide quality medical education and training to the student and proper medical/surgical care to the patients qua which it was submitted on behalf of the petitioner on 31.7.2019 that the receipts in relation to the OPD/IPD data were not maintained in as much as all patients were treated free. On behalf of the respondent No.1 it had been submitted to the effect that the requirements of OPD and IPD was for the purpose of ascertaining the number of patients that had been treated. In view of the submissions that have been made on behalf of the petitioner the affidavit of the authorized representative of the petitioner specifying the names and addresses of patients that had been treated with the ID numbers during the year 2018-19 were directed to be placed on record an affidavit has been filed on behalf of the petitioner qua CM No. 35202/2019 of the Secretary of the Petitioner. Through the submissions that have been placed on the record on behalf of the petitioner thereby placing reliance on the certificate issued by the petitioner to contend that it had certified that the hospital expenses are borne by the society and the hospital and that they provide the services free of cost and that entries have been made in the OPD register and in the IPD register as well as in the ledger account of the hospital society with invoices issued by the suppliers in favour of the society as well as the bank statement of the society evidencing payment for the hospital expenses, to thus contend on behalf of the petitioner that the requisite records had been maintained as was submitted through CM No. 35202/2019.

19. Qua the same, apparently as rightly sought to be contended on behalf of the respondent No.2 the said OPD register, IPD register and ledger account appear to be filled in single handwritings by the departments concerned and that the authenticity of the same is not free from doubt in the circumstances of their not having been maintained in accordance with the requisite regulations in the form of the web based computerized central registration system."

13. Another deficiency was with regard to shortage of one multipurpose worker in the garden against the minimum requirement of two workers, as per RMS, 2016, as cited at serial No.(v) above. While the college representatives had

conceded before the Hearing Committee that there was only one multipurpose worker available in the garden against the minimum requirement of two at the time of the inspection, it was sought to be urged that the college had transferred an existing worker as multipurpose worker in the garden, who was earlier working under "Others" category. To substantiate the said claim, documents of her appointment, ID card etc. were produced before the Hearing Committee but when it was inquired from the college representatives as to whether they were in possession of any joining letter or transfer letter of the other worker purportedly posted to the garden, the reply was in the negative. It is noteworthy that the college admitted that the salary records do not bear the signatures of the said worker.

14. Furthermore, in response to the deficiency regarding failure to carry out procedures for sputum examination and absence of instruments/equipments in the Central Laboratory, flagged at serial No.(xi) above, the appellant had conceded that there is no procedure for carrying out sputum examination in the Central Laboratory and the patients requiring sputum examination are referred to the Government run DOTS Centre. The appellant also admitted to the fact admitted that the college website had not been updated with the relevant details of its Director/Dean/Principal/Medical Superintendent, as pointed out at serial No. (i) above.

15. Further, the appellant admitted that zero deliveries were conducted in the hospital from 01.01.2019 to 31.12.2019, as highlighted at serial No. (ix) above and stated before the Hearing Committee that they propose to start conducting deliveries from July, 2019. Regarding non-availability of a functional operation theatre and nil operations conducted from 01.01.2019 to 31.12.2019, as specified at serial No. (x) above, while admitting to the said position, the appellant described the same as a mistake and claimed that the total number of operations conducted from 1.1.2018 to 31.12.2018, were erroneously filled as Zero in Part I form.

16. Given the above position, even if it is accepted that the date of inspection of the college ought to be treated as the cut-off date for fulfilment of requirements of minimum standards in the college, we are of the opinion that the impugned judgment does not deserve any interference as several deficiencies continued to exist even as on the date of the inspection.

17. Even if the case of the appellant is tested on the anvil of Regulation 3(1)(g) of RMS, 2016, there are serious deficiencies relating to the OPD and IPD data; non-availability cash receipts for OPD charges and IPD charges in the hospital; non-availability of a functional Operation Theatre (OT); non-functional labour room; non-functional operation room; non-availability of a Sanskrit teacher in a Department; non-availability of a multipurpose worker in the garden; non-availability of procedures for sputum examination in the central Laboratory etc. continued to exist in the college as on the date of the inspection conducted by the respondent No.2/CCIM.

18. Given the nature of the deficiencies referred to hereinabove, the appellant cannot be permitted to assert that it had substantially complied with the terms of the RMS, 2016 by the date the inspection of the college was conducted and that it was fully geared up for undertaking admissions in the academic session 2019-2020.

19. The next contention of the learned counsel for the appellant is that the grounds taken for denying the LoP to the college by the impugned order dated 19.07.2019, did not find mention in the Show Cause Notice dated 25.06.2019. We may note that the Show Cause Notice had listed 33 deficiencies, as noticed in the college. Before the Hearing Committee, 12 deficiencies were highlighted and submissions were solicited from the college and made by its representatives were duly recorded. The impugned order has referred to the failure on the part of the college to fulfil at least 08 minimum requirements as per RMS, 2016 and we find on a perusal of the Show Cause Notice that most of the deficiencies listed there, have been enumerated in the impugned order.

20. As for the plea taken that the respondent No.2/CCIM has done a volte-face by first recommending the appellant's case for grant of a LoP and later on, changed its mind, we may note that the respondent No.2/CCIM is not the final authority. The duty of the respondent No.2/CCIM is to visit the concerned college and conduct an inspection to assess the available facilities of teaching and practical training for issuing/not issuing LoP to establish a new Ayurveda college and further to verify compliance of the shortcomings indicated by the CCIM to the college. However, the report of the respondent No.2/CCIM is only recommendatory in nature and it is for the respondent No.1 to apply its mind and take a final decision, which in the instant case, has gone against the appellant in view of significant and serious shortcomings and deficiencies and non-availability of minimum required standards for grant of permission to undertake admissions in the academic session 2019-2020.

21. In view of the aforesaid facts and circumstances, we are of the opinion that just and valid reasons have been furnished by the respondents for passing the impugned order dated 19.07.2019 and the impugned judgment does not warrant any interference

22. Accordingly, the present appeal is dismissed alongwith the pending applications.