
(2019) 04 CAL CK 0099

In the Calcutta High Court

Case No : Tender Of Md Appl (MAT) No. 1553 Of 2018 With Civil Application No. 9977 Of 2018

Raghunath Ayurved Mahavidyalaya & Hospital & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 30-04-2019

Acts Referred:

Indian Medicine Central Council Act, 1970 — Section 13(A), 13C
Constitution Of India, 1950 — Article 226

Citation : (2019) 04 CAL CK 0099

Hon'ble Judges : Dr. Sambuddha Chakrabarti, J;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Joydeep Kar, Billawadal Bhattacharyya, Anish Kumar Mukherjee, Bhudeb Chatterjee, Tapan Bhanja, D. Ghosh, Indrani Chakraborty, Sarda Sha, Papiya Banerjee Bihani

Final Decision : Disposed Off

Judgement

Hiranmay Bhattacharyya, J

The instant appeal has been preferred by Raghunath Ayurveda and Hospital and its Principal challenging the order dated November 13, 2018 passed by the Learned Single Judge in WP No. 2233 (W) of 2018 whereby the writ petition was dismissed.

The case made out by the writ petitioners/appellant is that the appellant is an institution of Ayurvedic Education and the West Bengal University of Health Sciences Kolkata, after inspection has been recommended its support for an establishment of a degree college (BAMS Course) as per the specification of Central Council of Indian Medicine (hereinafter referred to as "CCIM" for short). It was further stated that on the basis of an application seeking permission of the Central Government under Section 13(A) of the Indian Medicine Central Council Act, 1970 to start new college under graduate course with 50 seats, the Secretary to the Government of India Ministry of Health and Family Welfare,

Ayush, granted permission to establish new Raghunath Ayurveda Mahavidyalaya and hospital vide Memo dated October 29, 2013 with effect from the session 2013-2014. It was further stated that permission was also granted for the session 2014-2015 and 2016-2017.

The Under Secretary to the Government of India Ministry of Ayush by a letter dated August 9, 2018 forwarded the recommendations and inspection report of the CCIM on May 31, 2018 to reassess the available facilities of teaching and practical training as well as to verify the compliance report submitted by the college. The writ petitioners/ appellant herein by a letter dated August 14, 2018, informed the Under Secretary, Government of India, Ministry of Ayush that they have complied with the short-comings as indicated in the inspection report and submitted the compliance reports along with the said letters. Thereafter, the Under Secretary to the Government of India, Ministry of Ayush passed an order dated September 26, 2018 whereby the writ petitioners/appellant was denied permission for taking admission to BAMS course for the academic session 2018-219.

The order dated September 26, 2018 passed by the Ministry of Ayush was challenged by the writ petitioners/ appellants herein in the instant writ petition. The learned Single Judge by an order dated November 30, 2018 was pleased to dismiss the said writ petition.

Mr. Joydeep Kar, the learned Senior Advocate appearing on behalf of the appellants submitted that the appellants herein complied with the observations as indicated in the show cause letter dated August 9, 2018 and filed the compliance report on 14.8.2018 i.e. within a span of five days from the issuance of the said show cause notice. He further submitted that conditional permission was granted for the academic sessions 2014-2015 onwards by the Government of India, Ministry of Health and Family Welfare, Department of Ayush and all such permissions were granted during the period of July to October in respect of the academic sessions commencing in the said year. By placing the documents annexed to the stay application, Mr. Kar, learned Senior Counsel submitted that conditional permission was granted for the academic session 2014-2015 on July 17, 2014 and in paragraph 4 to the said letter it was specifically stated that the said permission is subject to fulfilment of the requirements as indicated in the said letter by December 31, 2014, which shall be verified for granting permission for the academic session 2015-2016. He further referred to the letters dated September, 2016 and August 4, 2017 wherein conditional permission were granted for the academic sessions 2016-2017 and 2017-2018. He further submitted that the order dated September 26, 2018 is illegal and arbitrary one in-as-much as the same was passed without taking into consideration the fact that the writ petitioners/appellants herein have duly complied with the shortcomings as indicated in the show cause notice and prayed for an order granting permission to the college to admit students for the academic session 2018-2019.

Mr. Kar, learned Senior Advocate submitted that the respondent authority sat

tight over the matter for a long period of time and suddenly issued a show cause notice on August 9, 2018 indicating the short comings. He further submitted that the High Court exercising a jurisdiction under Article 226 of the Constitution of India has the power to pass necessary direction where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute. In support of his said submission Mr. Kar placed reliance on a judgement reported at AIR 1987 SC 537 (Comptroller and Auditor general of India Gian Prakash, New Delhi and Another appellants -vs.-K.S. Jagannathan and Another respondents)

Mr. Bhudev Chatterjee, Learned Advocate appearing on behalf of the respondent No. 1, by placing reliance on the explanation in the form of an affidavit affirmed on February 8, 2019, submitted that CCIM framed regulations to regulate the requirement of colleges for admission in Ayurvedic system of medicine vide Gazette Notification No. 28-15/2016-Ay(NSR) dated November 7, 2016. According to Paragraph 3 (1) (a) of the said Regulation, the Ayurvedic colleges established under Section 13A and existing colleges under Section 13C of the said Act and their attached hospitals shall fulfil the requirement of minimum standard for infrastructure and teaching and training facilities referred to in Regulation 4 to 11 up to 31st December of every year for consideration for grant of permissions for undertaking admission in the coming academic session. He submitted that for the academic year 2018-2019 the college has to fulfil the requirements of minimum standards by December 31, 2017. Mr. Bhudev Chatterjee, Learned Advocate further refers to the letter dated August 4, 2017 regarding grant of conditional permission for the academic session 2017-2018 and laid emphasis on paragraph 4 of the said letter wherein it has been clearly mentioned that the college shall fulfil the requirements by December 31, 2017 which will be verified for granting permission from the academic session 2018-2019 onwards. He also submitted that the authorities have taken the same stand consistently for granting permission for the academic session 2015-2016, 2016-2017, 2017-2018 and also 2018-2019. He further submitted that since the appellants have failed to remove the shortcomings by December 31, 2017, the Under Secretary to the Government of India was perfectly justified by passing an order dated September 26, 2018 thereby denying permission to the appellants for taking admission to the BAMS course for the academic session 2018-2019.

Mr. Bhudev Chatterjee, Learned Advocate appearing for the respondent No. 1 refers to a judgement reported at [(2013) 16 SCC 96 (Ayurved Shastra Seva Mandal and Another -vs- Union of India and Others)] in support of his argument that it is for the experts only to judge as to whether a particular Institution has fulfilled the necessary criteria for grant of permission.

Heard the learned advocates appearing on behalf of the respective parties and have perused the materials available in the records.

It appears from the letter dated August 4, 2017, issued by the Under Secretary to the Government of India that conditional permission was granted to the

Raghunath Ayurveda and Hospital at Contai, District Purba Medinipur, West Bengal with 50 seats in BAMS (UG Course) for the academic session 2017-2018 under Section 13C/13A of the INCC Act, 1970 subject to the condition that the college shall fulfil the following requirements by December 31, 2017 which will be verified for granting permission from the academic session 2018-2019 onwards.

i. All the Requirements of Minimum Standard of infrastructure and teaching & training facilities as specified in Regulation 3 of the "Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016 by 31st December 2017 to get conditional permission of permission for a period of five years.

ii. All the requirements of the Indian medicine Central Council (Minimum Standards of Education in Indian medicine) Amendment regulations, 2016 (for Ayurveds); and

iii. All the requirements under the provisions of the IMCC Act, 1970 and relevant regulations made there under should be fulfilled in toto.

In paragraph 5 of the said letter it was stated that upon fulfilment of the conditions attached to the permission made within the time period specified, a compliance report should be submitted to the Ministry of Ayush endorsing a copy to the CCIM also. The CCIM will verify that the conditions have been fulfilled by means of an inspection and submit a report to the Ministry of Ayush for considering the permission matter from the academic session 2018-2019.

The CCIM visited the college on 30-31.05.2018 to reassess the available facilities of teaching and practical training and submitted a report. The Under Secretary to the Government of India, Ministry of Ayush, issued a letter to the Principal of the appellant no. 1 indicating that the college has not fulfilled the following requirements.:

1. There are no higher faculty available in the department of Rasa Shastra Avum Bhaishajya Kalpana, Agad Tantra Vidhi Vidyaka and Prasuti & Stri roga against the minimum requirement of 01 in each.

2. There is 01 higher faculty available in the department of Kayachikitsa against the minimum requirement of 02.

3. Web based computerised central registration system is not available.

4. X-Ray, ECG and USG is not available as per RMS.

5. Aadhaar based Geo location enabled attendance system is not functional for teaching staff, non-teaching staff, hospital staff and PG students as per decision dated 31.01.2018 and policy decision dated 15.06.2018 in place of Biometric Attendance as per sub-regulation (3) of regulation 9 of MSR.

After indicating the aforesaid deficiencies, the appellants were given an opportunity of hearing on August 17, 2018 before the Hearing Mandal and

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Committee in the Ministry of Ayush to clarify the position and to show cause as to why permission to take admission in UG Course for the year 2018-2019 should not be denied to the college. From the reply to the show cause letter it appears that the college authorities have submitted certain documents to show that the appellants have complied with the shortcomings indicated in the show cause letter dated 09.8.2018. From the documents annexed to the reply to the show cause it is evident that the writ petitioners/appellants did not comply with the shortcomings on or before December 31, 2017 and have rather admitted that they have complied with the shortcomings after receipt of the show cause notice dated August 9, 2018.

There is however, no quarrel with the proposition of law as laid down by the Hon'ble Supreme Court of India in the decision reported at [AIR 1987 (SC) 537 (Comptroller and Auditor General of India Gian Prakash, New Delhi and Another appellants -vs- K.S. Jagannathan and Another respondents)] cited by the learned Advocates of the appellants. However, in the facts of the instant case it appears that the appellants herein have failed and neglected to comply with the requirements within the stipulated time limit. The respondent authorities had directed the appellant to comply with the requirements by December 31, 2017 for grant of permission for the academic session 2018-2019. Thus, the respondent authorities were well within their authority to deny permission to the appellants herein to admit students to UG Course for the academic sessions 2018-2019.

The decision reported at [(2013) 16 SCC 96 (Ayurved Shashtra Seva cited by the learned advocate for the respondent No.1 is squarely applicable to the facts of the instant case. In the case in hand, the respondent authorities after conducting inspection were of the opinion that the college has not fulfilled the requirements for grant of permission to admit students in UG Course for the academic session 2018-2019. The appellants in the reply to the show cause notice have rather admitted that they have complied with the requirements after receipt of the show cause notice. Since the respondent authorities being the experts to judge as to whether the college has fulfilled the criteria for grant of permission is of the opinion that permission for the academic session 2018-2019 cannot be granted, it is not for this court to set aside the said order denying permission as there is nothing to show that the respondent authorities have failed to exercise or has wrongly exercised the discretion conferred upon it by the statute. The appellants have failed to show that the decision of the respondent authority is a mala fide one or is based on irrelevant considerations or that relevant materials have been ignored by it while passing the order denying permission to admit the students for the academic session 2018-2019.

The appellants have failed and neglected to fulfil the requirements as indicated in sub-paragraphs (i), (ii) and (iii), of paragraph 4 of the letter dated August 4, 2017, on or before December 31, 2017. As such the appellants are not entitled

to admit students to BAMS Course for the academic session 2018-2019. Thus, the respondent authority was justified in denying permission to the appellants for taking admission to the said course for the academic session 2018-2019.

In view of the observations made hereinabove, the instant appeal is dismissed.

In view of the dismissal of the appeal the application being CAN No. 9977 of 2018 has become infructuous and the same is disposed of accordingly.

There shall be however no order as to costs.

This order however, will not stand in the way of the appellants herein in approaching the respondent authorities for permission for the next academic session i.e. 2019-2020 subject to the satisfaction of the said authorities regarding compliance of all requirements for granting such permission.

Photostat certified copy of this order, if applied for, be supplied to the applicant expeditiously, subject to compliance of all the required formalities.