

(2014) 09 AHC CK 0239
In the Allahabad High Court
Case No : Misc. Single No. 4433 of 2014

Rajkiya Homoeopathic Medicine Board U.P.	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 4 UPLBEC 2962

Hon'ble Judges : Sudhir Kumar Saxena, J

Bench : Single Bench

Advocate : Dinesh Kumar Singh, D.K.S. and L.P. Misra, Advocate for the Appellant; Pawan Kumar Trivedi, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Kumar Saxena, J.—This writ petition has been filed u/s 226 of the Constitution of India by State Homeopathic Medicine Board (hereinafter referred to as Board) through its Chairman Sri Amanatullah seeking direction in the nature of certiorari for quashment of order dated 28.7.2014 passed by State Government directing the Board to hold examination of 2-year Diploma Course in Homeopathic Pharmacy in the light of direction issued in the matter of Institute of Para-medical Lucknow.

2. I have heard Sri D.K. Singh, learned counsel for petitioners, Dr. L.P. Misra for private respondent no. 3 Institute of Para-medical, Lucknow and Sri Sameer Kalia, Additional Chief Standing Counsel for State.

3. Briefly stated petitioners' case is that admission of 2-year diploma course in Homeopathic Pharmacy Course (DHP) is held after inviting applications by a wide publication. Selection is to be made strictly on the basis of merit for which written examination is held by the Board. Selected candidates are sent to the Institute to report to the Head of the Institutions as per direction of the Board. Selected candidates found medically fit are admitted to the concerned institution

and they have to enroll themselves with the Board on depositing the form and fee etc. prescribed by the Board. Minimum qualification for admission to the DHP Course was modified as Intermediate in place of High School. A resolution was passed by Board on 15.6.2011 giving permission to the two recognized institutions, namely, Acharya Chanayak Mahavidyalaya, Semri, Sultanpur and Ram Adhar Gramin Mahavidyalaya, Tanda, Ambedkar Nagar to take admission in DHP Course on their own by means of Entrance Test by the month of July and August, 2011. Resolution of the Board was sent to State Government but no approval was forthcoming. Matter was also taken by a Division Bench in Writ Petition No. 1320 of 2011 (S/B) in which the Court held that admissions to the course can be made only by following the Regulations. Petitioner's further case is that Regulations do not permit any college either aided or unaided to take admission on their own. Respondent Institute was given permission to run 2-year DHP Course with intake of hundred students. Registrar of the Board requested the State Government on 5.1.2012 to approve the resolution dated 15.6.2011 whereby Joint Entrance Test for two Institutes was proposed. State Government on 19th September, 2011 informed the Board that despite resolution dated 15.6.2011, non-government college of Sultanpur and Ambedkar Nagar cannot be permitted to take admission on their own.

4. State Government vide order dated 9th October, 2013 informed the Registrar of the Board that respondent Institute will be deemed to be affiliated for DHP Course. It is also mentioned in para 4 of the Government Order that hundred students admitted in session 2011-12 be allowed to appear in the examination and hundred students for session 2012-13 be allowed to pursue course. So far as Session 2013-14 is concerned, admission will be made in accordance with the Government Order dated 25.9.2013. Board disagreeing with the above Govt. Order requested the State Government to cancel the approval for conducting DHP course given vide G.O. dated 27.6.2011 as respondent Institute had taken admission without obtaining permission from the Government and the Board. State Government vide G.O. dated 30th October, 2013 reiterated its stand of directing the Board to hold examination as directed earlier.

5. It appears that Chairman of the Board wrote a letter to the Chief Minister on 6.11.2013 questioning the decision of the State Government permitting the respondent Institute to take direct admission. State Government did not pass any order.

6. In the meantime, a writ petition was filed by one student Ms. Maya Kushwaha. This writ petition was disposed of finally by Hon"ble S.N. Shukla, J. on 15.5.2013. Hon"ble Court felt that " there was no hurdle in conducting petitioner's examination but because of misunderstanding of the two Government authorities till date the examination has not been conducted." Consequently, this Court referred the matter to the Principal Secretary (Medical Education) to look into the matter and take necessary action in the matter and if necessary he may take some penal action against the erring officials. Again

matter came before this Court vide Writ Petition No. 3474 of 2014 (M/S) filed by one Satya Prakash Maurya. This Court on 4.7.2014 directed the Principal Secretary (Medical Education), Govt. of U.P. to look into the matter and take necessary action within two weeks.

7. In pursuance of above two orders State Government passed, impugned order dated 28.7.2014 and came to conclusion that respondent Institute was given approval to run D.H.P. vide order dated 27.6.2011 and permission was granted to admit hundred students for session 2011-12. Since Board did not act promptly for admission in the above Institute, hundred students were admitted on the basis of permission granted by State Government. Students admitted would be deemed to have been approved by State Government, hence depriving those students from appearing in the examination is not justified as they have pursued course and it is unfortunate that despite the order passed by State Government Board is not conducting the examination. State Government directed the Board to notify the schedule within three days. This very order dated 28.7.2014 has been impugned in this writ petition.

8. Submission of Sri D.K. Singh, learned counsel, is that under the regulations and resolution dated 15.6.2011, admission can be taken only through a joint entrance examination strictly in accordance with the merit. Respondent Institute admitted the students directly as such those students have not been admitted in accordance with law. Consequently, neither they have been enrolled with the Board nor they have any right to appear in the examination. As such, directive of the State Government to hold examination is contrary to law. He has referred to syllabus for diploma course. Para 4 whereof describes mode of selection which is reproduced below:-

"Mode of Section

a. Application for selection:

Application for selection for admission in the said course, shall be invited by the homoeopathic medicine board, U.P., Lucknow through daily newspapers. Notice may also be pasted on the notice board of the Homoeopathic medicine board, U.P., Lucknow. The application will be invited every year well in time, as may be decided."

9. Para 8 of the syllabus describes the need of enrolment with the Board after admission where after students will be able to appear in the examination. His further submission is that two other Institutes have not been allowed to take direct admission. Moreover, Division Bench of this Court has categorically given a finding that admission can be made only on the basis of entrance examination, as such students who have been admitted in violation of Regulations cannot be allowed to appear in the examination.

10. Dr. L.P. Mishra in reply contended that Regulations have not been notified by the State Government, as such they are not binding in the eyes of law. Division

Bench has not passed any order in respect of respondent Institute. Petitioner Board is an instrumentality created under the State Act, as such it has no right to challenge the decision of State Government. Lastly, State Government has a right to issue direction to the Board u/s 53-A of the Act which are binding upon the Board etc. 11. It is not in dispute that respondent Institute has not taken admission through entrance test held by the Board. It is also not in dispute that these students have not been enrolled with the Board. Undisputedly, respondent Institute has been given approval to run to 2-year DHP Course with intake of hundred students, and it has been treated to be affiliated with the Board, by the State Government. State Government has all through been supporting respondent Institute and issued consequential direction to treat the students as validly admitted students entitled to appear in the examination. State's case is that students have been admitted in pursuance of its directive, as such they have a right to appear in the examination.

12. Earlier, DHP Course was available in two Government Medical Colleges situated at Allahabad and Lucknow. Thereafter two other colleges namely Acharya Chankya Mahavidyalaya, Sultanpur and Ram Adhar Gramin Mahavidyalaya, Tanda, Ambedkar Nagar came in existence and they were authorised to conduct the aforesaid course. Vide Govt. Order dated 27.6.2011, Respondent Institute has been given approval to conduct DHP course and admit hundred students. Vide resolution dated 15.6.2011, Board has resolved for amendment in the course of study enabling Mahavidyalaya, Sultanpur and Ambedkar Nagar to hold their own entrance test. This resolution was not approved by the State Government and permission to hold own entrance test to the above private institutes was not given in view of the course of study.

13. Contention of learned counsel Sri D.K. Singh is that stand of State Government about the above two colleges not permitting direct admission and now taking a stand in respect of respondent Institute permitting it to take admission directly are self contradictory.

14. State Government vide order dated 9th October, 2013 has informed the Registrar that policy for admission in private colleges have been communicated through Govt. Order dated 25.9.2013 to regulate the admission in respondent Institute for the sessions 2013-14. For the previous years, students admitted directly were treated to be validly admitted students. Therefore, stand of State Govt. is apparently in favour of students who have been admitted in the respondent Institute for the sessions 2011-12 and 2012-13. From sessions 2013-14, even respondent institute has been directed to take admission in accordance with the policy of the State Government applicable to all the Institutes. It is, thus, apparent that an exception has been made in favour of the respondent Institute. Institute has been given approval to take hundred students for session 2011-12 vide order dated 27.6.2011, it took a decision to safeguard the future of the students who have taken admission and pursued 2-year course. Maybe the admission of students was not in accordance with the course of

studies which has been insisted for two other private colleges but once student having been admitted and pursued 2-year course, Govt. taking into consideration the welfare of the students has taken a decision to permit them to appear in the examination which authority has to be conceded to the State Government which is in a best position to take care of its subject.

15. So far as Regulations are concerned, it is an admitted case that they have not been published in the gazette as required u/s 55 of U.P. Homeopathic Medicine Act, 1951 (hereinafter referred to as Act). In the absence of duly notified Regulations insistence on compliance or their enforcement cannot be insisted upon.

Section 57(2) of Act says- "No regulations made by the Board under this Act shall have effect until they are confirmed by the State Government and published in the gazette." As such Regulations cannot be pleaded to assail impugned order.

16. So far as objection of Sri Misra that society cannot file writ petition, needless to say that Board itself has been empowered u/s 3 of the Act to sue so it can sue subject to the limitation prescribed under the Act. Board being an autonomous body can challenge the decision of the State Government, if decision appears to be in violation of the Constitution of India or the Act. Direction can be issued only to attain objective contemplated under the Act, as such any direction which goes against the purpose and object of the Act can be assailed in the court of law by the Board. Moreover, no restriction can be placed upon a society, a juristic person to approach High Court under Article 226 of the Constitution of India, which is a basic feature.

17. Section 53-A of the Act empowers the State Government to issue direction to the Board. Said provision is being reproduced below:-

"[53-A. Power of State Government to issue direction, etc.- (1) The State Government shall have power to communicate its views in writing to the Board in respect of anything done or purporting to be done by the Board or any other such matter as may concern the Board and to advise the Board regarding the action to be taken.

(2) The Board shall communicate to the Government the action, if any, taken or proposed to be taken on such advice.

(3) Whether the board fails to take necessary action to the satisfaction of the State Government within a reasonable time the State government may, after considering any explanation furnished or representation made by the Board, issue such directions consistent with the provisions of this Act, as it may think fit and the Board shall comply with such directions.

(4) Where in the opinion of the State Government immediate action is required to be taken for proper functioning of the Board in respect of any matter concerning the Board, the State Government may suo motu and without prior consultation with the Board take such action consistent with the provisions of this

Act as may be necessary and the same shall be communicated to the Board."

18. Above provisions would show that State Government has been given power to communicate its decision in regard to any thing done or action proposed to be taken on such advice, by Board.

19. Sub-section 3 of 53-A authorises the State Government to consider the explanation submitted by the Board and issue such directions consistent with the provisions of the Act which will be binding upon the Board.

20. In view of the above, it cannot be contended that State Government was not empowered to issue directive for holding examination. Enactment reflects the wishes of the people and in absence of any specific bar in the Act, State Government's action taken in the interest of students is wholly justifiable u/s 53-A of the Act which does not prohibit any such direction i.e. impugned in the present writ petition. Moreover above direction has been issued after giving opportunity of hearing to petitioner.

21. Section 53-B of the Act further permits the State Government to authorise Agra University and Kanpur University to hold examination and grant diploma in Homeopathy, Section 53-B(1) of the Act is being reproduced below:-

"53-B. Additional power of the State Government.-(1) the State Government may, by notification, authorise any of the following Universities namely the University of Agra and the Kanpur University, to hold examination for, and grant diploma in, Homoeopathy."

22. Section 49 provides for an appeal to State Government from every decision of the Board.

23. A joint reading of these provisions shows that Legislature was conscious of the situation where there may be difficulty in holding examination and in order to meet such eventuality and safeguard the future of the students, Legislature has empowered the State Government to confer the function of holding the examination upon Kanpur and Agra University. A joint reading further shows that State Government's directive to hold examination is in furtherance of the Act and does not militate against it.

24. So far as order of Division Bench regarding admission after 24.8.2011 is concerned, a brief reference to the writ petition is necessary.

Writ Petition No. 1320 of 2011 (S/B) was filed by Dr. Anil Kumar Misra claiming to be the Registrar, Homoeopathic Medicine Board (though he was given additional charge) challenging his removal by the State Government and appointment of another person on the post of Registrar. In this writ petition at the stage of admission, Division Bench on 24.8.2011 had made following observations:-

" These regulations do not permit any recognized college either aided or unaided to take admission on their own. We are, thus, prima facie, satisfied that because

of the political influence exercised by the concerned persons, the said resolution was passed by the Board, we, therefore, direct that these two institutions shall not take any admission in pursuance to the resolution aforesaid till further orders of the Court."

25. Submission of Sri D.K. Singh is that while interpreting the Regulation, Division Bench has held that "These Regulations do not permit any recognized college either aided or unaided to take admission on their own."

26. Suffice is to say that this observation was made while hearing the writ petition at the admission stage. It has been held that Regulations have not been notified as required under the Act, as such have no binding force. Moreover, direction given by Division Bench was only in respect of two institutions and not in respect of respondent Institute. Observations of Division Bench are as under:-

"We, therefore, direct that the two institutions shall not take admission in pursuance of the resolution" Institutions mentioned in the order were Acharya Chanakya Mahavidyalaya and Ramadhar Gramin Mahavidyalaya, Ambedkar Nagar.

27. Moreover above writ petition in which Regulations were not required to be interpreted was dismissed on 6.2.2014 by Division Bench of this Court on merits, as such petitioners cannot take advantage of the observation made above.

28. Sri D.K. Singh has placed reliance on a decision of the Apex Court reported in Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others, Relevant paragraphs 87 (xvi) and (xviii) are reproduced below:-

"87(xvi) The students admitted by the recognised Institutions otherwise than through the entrance/eligibility test conducted in accordance with the admission procedure contained in Para 3.3 of Appendix 1 to the Regulations are also not entitled to appear in the examination conducted by the examining body or any other authorised agency.

(xviii) In future, the High Courts shall not entertain prayer for interim relief by unrecognised institutions and the institutions which have not been granted affiliation by the examining body and/or the students admitted by such institutions for permission to appear in the examination or for declaration of the result of examination. This would also apply to the recognised institutions if they admit students otherwise than in accordance with the procedure contained in Appendix 1 of the Regulations."

29. Above judgment was given while interpreting on National Council for Teacher Education Act, 1993 (NCTE). This Act had Section 17-A which prohibits admission in recognized institution. Section 17-A is quoted below:-

"17-A. No admission without recognition.- No institution shall admit any student to a course or training in teacher education, unless the institution concerned has obtained recognition u/s 14 or permission u/s 15, as the case may be."

30. Petitioners do not get any assistance from the above judgment as State

Government has passed impugned order in exercise of Section 53-A and 53-B of the Act and there is no provision like 17-A of the Act 1993 in the Homeopathic Act.

31. This Court is not examining the submission made by Dr. L.P. Misra that present writ petition has been filed by Chairman of the Board out of extraneous reasons. State Government has taken into consideration the future of students studying in respondent Institute. Act of the State Government is justified in the interest of students and in the absence of any other material alleging extraneous circumstances or motive, Court does not find any error in the order of the State Government.

32. From the above, it is manifest that there is no regulation which prohibits direct admission. There is nothing under the Act making any such proscription. State Government was fully competent and justified in directing the petitioner's Board to hold examination of the students of respondent Institute. As mentioned above, this arrangement has been made only for session 2011-12 to 2012-13, in extraordinary circumstances, as such no exception can be taken to the mode adopted by the State Government. Order of State Government is perfect and is fully justified and same does not require any interference by this Court.

33. Writ petition being devoid of merit is dismissed.