
(2019) 12 DEL CK 0008

In the Delhi High Court

Case No : CONT.CAS(C) No. 1042 Of 2019

Shree Vijay Shanti Suri Education Trust & Anr

APPELLANT

Vs

Arun Kumar Purohit & Ors

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Indian Medicine Central Council Act, 1970 — Section 13(A)

Citation : (2019) 12 DEL CK 0008

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Amit Sibal, Devyani Ashna, Kunal Gosain, Pallavi Mohan, Suman Chauhan, Suparna Srivastava, Sanjna Dua, Tushar Mathur, Archana Pathak Dave, Kumar Prashant, Ashish Kumar, Sangeeta Bharti

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

1. The captioned contempt petition is pivoted on the alleged breach and/or non-compliance of the order dated 23.10.2019 passed in W.P.(C) No. 10840/2019 and CM No. 44879/2019.

Background:-

2. For disposal of this contempt petition, the following broad facts are required to be noticed:

2.1. Petitioner No. 2 is an Ayurveda college. It is run under the aegis of petitioner No. 1 trust. Petitioner No. 2 College filed an application dated 31.05.2017 with the Central Government for establishing a new college.

2.2. The application, in effect, sought permission to offer qualification in BAMS-UG course. It was proposed by petitioner No. 2 College that it should be allowed an intake of sixty students. The application related to Academic Session 2018-19.

2.3. This application was rejected by the Central Government on 31.07.2017.

2.4. The said decision of the Central Government was challenged by the petitioners by way of a writ petition which was filed in the Rajasthan High Court. The writ petition was numbered as D.B. Spl. Appl. Writ No. 1335/2018. The Division Bench of the Rajasthan High Court vide order dated 28.08.2018 disposed of the writ petition with a direction for reconsideration of petitioner No. 2 college's application. By the very same order, directions were also issued to the effect that inspection of the petitioner No. 2 College should be held and recognition should be granted within two weeks of the applications so forwarded by the Central Government.

2.5. Accordingly, the Central Council of Indian Medicine (in short 'CCIM') on 12.10.2018 appointed visitors to undertake inspection of petitioner No. 2 College. The inspection was carried out on 13.10.2018.

2.6. In the inspection, deficiencies were noticed, which led the Central Government to issue a show cause notice dated 1.11.2018 (in short 'SCN'). Via the SCN, the petitioner No. 2 College was directed to appear before the Hearing Committee of the Central Government on 08.11.2018. It is the case of the petitioners that they gave a detailed response at the hearing held on 08.11.2018.

2.7. Evidently, the Central Government was not impressed with the response of the petitioners which led to the passing of the order dated 14.11.2018. In effect, via this order the Central Government declined issuance of a Letter of intent (LOI) and furthermore disapproved the scheme presented by petitioner No. 1 trust. This order, however, was not communicated to the petitioners.

2.8. Given this situation, the petitioners filed a writ petition in this Court being W.P. (C) No. 12398/2018 alleging inaction by the CCIM. A single Judge of this Court, accordingly, on 19.11.2018 passed the following order:-

"1. The Petitioner is an Ayurved College which applied, on 31st May, 2017, to the Central Council of Indian Medicine, being the competent authority in this regard, for recognition, under Section 13(A) of Indian Medicine Central Council Act, 1970, for 60 seats in the Under Graduate course in Bachelors of Medicine and Surgery (UG-BAMS).

2. The application was initially rejected, by Respondent No.2 on the ground of it's having been submitted after the prescribed cut-off date. However, vide order dated 28th August, 2018, in D.B. Spl Appl. Writ No.1335/2018, the High Court of Rajasthan, directed Respondent No.2 to consider the application of the Petitioner, hold an inspection and accord recognition within two weeks of receipt of the inspection report.

3. It is stated that inspection, by the representatives of Respondent No.2, of the petitioner College, took place on 13th October, 2018, resulting in the issuance, to the petitioner, of a show cause notice, dated 1st November, 2018, alleging certain deficiencies in the petitioner College, and calling upon the petitioner to

represent before Respondent No.2 in that regard on 8th November, 2018.

4. The petitioner, apparently, appeared before Respondent No.2 on 8th November, 2018, but no decision has been taken thereafter.

5. It is in these circumstances, that the petitioner has approached this Court.

6. It may be noted that several similar matters are pending before this Court, with the only difference being that, in those cases, recognition was denied, on the ground that deficiencies is existing.

7. The first of such cases, was W.P.10959/2018 (Beehive Ayurved Medical College and Hospital v. Union of India), in which the following order was passed, on 14th November, 2018:

"W.P.(C) 10959/2018 & CM No.42690/2018 (for stay)

3. This petition, though not on the Roster of this Bench has been received at about 1215 hours in terms of General Direction dated 9th October, 2018 of Hon'ble the Chief Justice, owing to the Roster Bench Judge being on leave.

4. The senior counsel for the petitioners has been heard.

5. It is the contention of the senior counsel for the petitioners that vide the impugned communication dated 29th September, 2018, permission to the petitioners to make admissions to BAMS course for the academic year 2018-2019 has been denied on the ground of deficiencies allegedly found during the inspection carried out. It is argued, that pursuant to said inspection an opportunity was given and in which hearing the petitioners, as recorded in the minutes of hearing at page 143 of the paper book, had furnished proof of deficiencies pointed out not existing/having been made up. It is further argued, that permission has been denied without considering the same as well as the minutes of hearing. Attention is also drawn to the order of the Rajasthan High Court at page 156 of the paper book and to the public notice issued by the respondent No. 1 of 15th September, 2018, permitting the Colleges who had approached the High Court of Allahabad, to make admissions subject to final orders in the writ petitions.

6. On enquiry, it is informed that the last date for admission is 31st October, 2018, but prior thereto several steps have to be taken.

7. The counsel for the respondent no. 1 appearing on advance notice states that he has no instructions and seeks time till Monday i.e. 15th October, 2018.

8. None appears for respondent No. 2 Central Council of Indian Medicine, in spite of advance copy stated to have been given.

9. The counsel for the respondent No. 1, on enquiry states that he will take instructions qua appearing for the respondent No.2 as well.

10. Issue notice.

11. Notice is accepted by the counsel for the respondent No.1.

12. The petitioners to serve the respondent No.2 electronically on the letter head of the counsel for the petitioners himself, along with the copy of the paper book.

13. List before the Roster Bench on 15th October, 2018.

14. Till further orders, the petitioners may proceed with the admissions in terms of the public notice dated 15th September, 2018 aforesaid.

A copy of this order be given dasti under the signatures of the Court Master."

8. The petitioner's case, if anything, is on a better footing than the case of Beehive Ayurved Medical College and Hospital (supra), as, in the case of the petitioner, there has been no final rejection of its request.

9. Learned counsel for the respondent points out that the last date for admission of students was 15th November, 2018.

10. In my view, this can hardly be a ground to deny relief to the petitioner, especially as Respondent No.2 has been sitting on the petitioner's application, without taking any decision thereon.

11. Mr. J. P. Cama, learned Senior counsel appearing for the Petitioner, has also drawn my attention to an order dated 15th November, 2018, passed by the High Court of Rajasthan in MangilalNirban Homoeopathic Medical College v. The State of Rajasthan, which, Mr. Cama would submit, also dealt with a situation in which the last date had expired.

12. The said order permits the College to issue advertisement regarding counselling for grant of admission in the PG Course in Homeopathy and hold counselling within three days thereof, subject, needless to say, to the outcome of the writ petition.

13. In view of the above, issue notice on the writ petition, as well as on the prayer for interim relief to the respondents to show cause as to why rule nisi be not issued, returnable on 14th February, 2019.

14. The petitioner is permitted to proceed with admissions and counselling for 66 seats of the BAMS Course in its institution, within a period of one week from today. The said counselling would, needless to say, abide by the outcome of the present proceedings.

15. Respondent Nos.2 and 3 are also directed to upload the name of the Petitioner on its web portal.

Copy of order be given dasti under the signatures of the Court Master."

(Emphasis is mine)

3. Importantly, at this stage, neither the Central Government nor the CCIM informed the Court that on 14.11.2018, petitioner No. 2 College's application

dated 31.05.2017 had already been rejected.

3.1. This led to institutions of two contempt petitions i.e. CONT.CAS(C) 905/2018 and CONT. CAS(C) 977/2018. While the contempt petitions were on, and therefore disposed of, the fact that the Central Government had passed the order dated 14.11.2018 was not brought to the notice of this Court.

3.2. In the meanwhile, W.P.(C) No. 12398/2018 proceeded further. This writ petition i.e. W.P.(C) No.12398/2018 was finally disposed of on 30.09.2019, when it was brought to the notice of the Court that qua academic session 2018-19 the Central Government had already passed an order of rejection on 14.11.2018. Taking note of this fact the petitioners were given liberty to assail the order dated 14.11.2018 if they were aggrieved by the outcome.

3.3. It is important to note that insofar as the academic session 2019-2020 is concerned, once again, the Central Government, vide order dated 30.09.2019 rejected the request of the petitioners to grant a LOI.

3.4. As a result of these developments, W.P. (C) No. 10912/2019 was filed to assail the order dated 30.09.2019. Insofar as the order dated 14.11.2018 was concerned, W.P. (C) No. 10840/2019 was filed to lay a challenge to the same.

3.5. When W.P. (C) No.10840/2019 came up for hearing for the first time on 11.10.2019, it was brought to the notice of the Court that because the order dated 14.11.2018 passed by the Central Government was not brought to the notice of the Court, the order dated 19.11.2018, passed in W.P. (C) 12398/2018, continued to hold the field, and resultantly 44 students were enrolled by petitioner No. 2 College in the BAMS-UG course.

3.6. The Court was also told that these 44 students were now on the verge of taking the first year exam. Accordingly, while issuing notice, the Central Government and the CCIM were asked to take instruction as to how the matter could be proceeded further insofar as these 44 students were concerned.

3.7. The matter was, thus, posted on 23.10.2019 when, the Court after hearing counsel for the parties and weighing the pros and cons, inter alia, issued the following order:-

"1. On the previous date i.e. 11.10.2019, I had asked Ms. Suparna Srivastava to take instructions as to how one is to proceed further insofar as 44 students who stand already enrolled pursuant to order dated 19.11.2018 passed by my predecessor.

2. The record shows that in the concerned academic session (i.e. 2018-2019), 44 students were enrolled pursuant to order dated 19.11.2018. However, it transpired much later that an order had been passed by respondent No.1/UOI on 14.11.2018, to the effect, that Letter of Intent (LOI) will not be issued to the petitioner. It is this order which is assailed in the captioned writ petition.

3. Insofar as the subsequent academic session (i.e. 2019-20) is concerned, Mr.

Sudhir Nandrajog, learned senior counsel, informs me that a fresh writ petition being W.P.(C) No.10912/2019 has been filed. Learned senior counsel submits that notice in the said writ petition was issued on 14.10.2019, which is made returnable on 30.1.2020.

4. Having heard the counsel for the parties, what is clear is that the counsel for respondent No.1/UOIdid not inform the Court on 19.11.2018 that an order had been passed against the petitioner on 14.11.2018. What made it worse is the fact that the order dated 19.11.2018 was allowed to operate and no application was moved for vacation or modification of the said order.

5. Ms. Srivastava submits that the petitioner who had also known about the order should have approached the Court. In response, Mr. Nandrajog says that the order dated 14.11.2018 was not received by the petitioner.

6. The fact remains that the Court is faced with an odd situation, which is that the concerned 44 students have progressed in their studies and are now ready to take the first year BAMS Course examination.

7. Therefore, for the moment, respondent No.4 University will hand over examination enrolment forms in respect of the concerned 44 students. Upon enrolment forms being filled up and requisite steps being taken, these students will be allowed to take the examination, which I am told, is slated for 1.11.2019. Needless to add, merely because the students are allowed to take examination, no equity will be claimed if the petitioners fail in the writ petition. The concerned students will be informed by the petitioners with respect to the pendency of the captioned writ petition and order passed by this Court. The petitioners will upload the order on their website as well.

8. Furthermore, the petitioners will carry out the correction with regard to the description of respondent No.4 University. The needful will be done within ten (10) days from today.

9. Mr. Nandrajog says in view of the directions passed hereinabove, CM No.44879/2019 can be disposed of. It is ordered accordingly.

10. The petitioners will be at liberty to file a rejoinder in the matter, albeit, before next date of hearing.

11. Renotify the matter on 28.4.2020.

12. Dasti under signatures of the Court Master."

(Emphasis is mine)

4. In the other writ petition i.e. W.P. (C) No.10912/2019, which came up for hearing for the first time on 14.10.2019, while issuing notice in the writ petition, for the reasons given in the order, interim relief was declined. The matter was, consequently, posted for hearing on 30.01.2020.

4.1. The petitioners being aggrieved by the rejection of their plea for grant of

interim relief carried the matter in appeal to the Division Bench. The appeal i.e. LPA 678/2019 was disposed of on 24.10.2019.

4.2. Resultantly, W.P. (C) No.10912/2019 was listed before the Court on 13.11.2019 pursuant to the order of the Division Bench dated 24.10.2019.

4.3. Since the directions issued by the Division Bench with regard to competition of pleadings were not complied with, a day's accommodation was granted to the respondents in that writ petition to file a counter-affidavit. This accommodation was given based on no objection of the counsel for the petitioners. The said writ petition was thus posted for hearing today. This writ petition, however, could not be taken up for disposal as it reached hearing only at 05:15 P.M. Accordingly, the writ petition has been posted for hearing on 21.01.2020.

4.4. For competition of the narration, it may be relevant to note that Dr. S.R. Rajasthan Ayurveda University, Jodhpur (in short "the University") has filed an interlocutory application for vacating the order dated 23.10.2019 passed in W.P. (C) 10840/2019.

5. The captioned contempt petition came up for hearing for the first time on 25.11.2019, when at the request of the counsel for the parties, it was adjourned to 26.11.2019. On 26.11.2019, the following order was passed:-

"C.M. No.50875/2019

1 Allowed, subject to just exceptions. CONT.CAS(C) 1042/2019

2 Ms. Suman Chauhan, who appears on behalf of respondent No. 1, who is the Registrar of Dr. S.R. Rajasthan Ayurveda University says that insofar as those 44 students are concerned, who are the subject matter of this Court's order dated 23.10.2019, it may be possible to have them admitted to colleges which are affiliated to the aforementioned University.

3 Ms. Suman Chauhan says that she will return with firm instructions on the next date of hearing.

4 Renotify the matter on 28.11.2019.

5 Dasti under signatures of the Court Master."

(Emphasis is mine)

5.1. The aforesaid suggestion was given by Ms. Chauhan having regard to the fact that petitioner No. 2 College's application for starting a new college stood rejected. Thereafter, the matter was taken up on 29.11.2019 as the Court did not convene on 28.11.2019, when the following order came to be passed:-

"1. Ms. Chauhan, who appears for respondent no.1 says, apart from anything else, the transfer of the students to colleges affiliated to respondent no.1 will need to have other respondents on board i.e. the Union of India and CCIM.

2. Ms. Srivastava, CGSC and Mr. Kumar, who appears for Union of India and CCIM respectively say that they will obtain instructions in the matter.

3. Ms. Chauhan also informs me that it is possible to hold exams, separately, on another day for the 44 students with whom the Court is presently concerned.

4. Renotify the matter on 2.12.2019.

5. Dasti."

(Emphasis is mine)

5.2. Today i.e. 02.12.2019 Ms. Srivastava, who appeared for the Central Government, submitted in a nutshell that the Central Government was not in a position to grant any permission for transferring 44 students to other colleges which were affiliated to the University.

5.3. Given the fact the Central Government was partl/y responsible in not brining to the notice of this Court that via order dated 14.11.2019, the petitioner No. 2 College's application had been rejected, this approach seemed rather befuddling.

5.4. On the other hand, Ms. Suman Chauhan, who appeared for the University, returned with wholesome instructions, which were, that the University would be in a position to conduct separate examination for 44 students in the second week of January 2020 and that the examination centre would be the Madan Mohan Malviya Rajkiya Ayurveda Mahavidyalaya, Udaipur.

5.5. Ms. Chauhan submitted that if the Court would permit adoption of such methodology, the interest of the students would stand protected irrespective of the fate of the aforementioned two writ petitions filed by the petitioners regarding rejection of their application for academic sessions 2018-2019 and 2019-2020.

6. Mr. Amit Sibal, learned senior counsel, who appears for the petitioners, on the other hand contended that if order dated 23.10.2019 is not given effect to, it would defer the exam; an eventuality which would not subserve the interest of the students as it would not only delay the exam but would also disrupt the ensuing session.

6.1. It was Mr. Sibal's submission that since no appeal had been preferred against order dated 23.10.2019, the contemnors have no choice but to comply with the same.

Conclusion: -

7. In my view, having regard to the entire conspectus of the matter, insofar as the 44 students are concerned, the best course forward would be the one which has been suggested by Ms. Chauhan on behalf of the University.

7.1. Since the University has undertaken that a separate exam would be held for the 44 students in Udaipur, there would be little or no dislocation and/or

disruption depending on where the concerned students reside.

7.2. Mr. Sibal's concern that holding exams in the second week of January 2020 would dovetail into the beginning of the succeeding session, in my opinion, this is an exaggerated concern which should not cause any botheration, at least, to the petitioners.

7.3. It appears that the petitioners are attempting to use the concerned 44 students as a raft to swim across difficulties that they may have encountered in having their application approved by the Central Government.

7.4. Even otherwise, I am not inclined to take any coercive action in the contempt petition in view of the fact that Ms. Chauhan has informed me that the University has already filed an application on 25.11.2019 for vacating the order dated 23.10.2019.

7.5. Although that application has not been listed for hearing before me as yet, no coercive measures can be taken against the contemnors till the application is disposed of as is sought to be suggested by the petitioners. [See: *Modern Food Industries (India) Ltd. v. Sachidanand Dass*, 1995 Supp (4) SCC 465].

8. More importantly having regard to the assurance given by Ms. Chauhan on behalf of the University, I am not inclined to proceed further with the contempt petition.

9. The contempt petition is accordingly closed. The University will abide by the assurances given to this Court with regard to the concerned 44 students.

10. Needless to add, the observations made hereinabove will not come in the way of disposal of W.P. (C) No.10840/2019 and W.P. (C) No. 10912/2019 on merits.