
(2020) 02 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18352 Of 2019 (O&M)

Swati And Others

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 14-02-2020

Acts Referred:

Citation : (2020) 02 P&H CK 0110

Hon'ble Judges : Sudhir Mittal, J

Bench : Single Bench

Advocate : Sunil K. Nehra, Manish Dadwal, Pawan Kumar Longia, Jagbir Singh, Parveen Gupta

Final Decision : Dismissed

Judgement

Sudhir Mittal, J

The writ petitioners, 13 in number, have filed this petition seeking directions to the State of Haryana to adjust the petitioners in some other college

affiliated to respondent No.5-University as examinations are due to be held on 02.08.2019 and to take into consideration the fee already paid to

respondent No.6-college as well as the classes attended therein, to enable the petitioners to take the examination.

2. Respondent No.6-college was set up pursuant to a no objection certificate dated 08.09.2014 issued by the State of Haryana.

Before it could made admissions, it was necessary to obtain approval from the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and

Homeopathy (AYUSH), Government of India. After receipt of approval, it had to get itself affiliated with an university, in this case respondent No.5.

However, the Ministry aforementioned refused approval vide order dated

10.08.2017, which was challenged by respondent No.6-college through WP(C) No.7954 of 2017 filed in the Delhi High Court, which was, however, dismissed vide judgment dated 17.12.2018. During the pendency of the writ petition, the Delhi High Court passed an interim order dated 30.10.2018 permitting respondent No.6-college to make admissions. It was, however, clarified that the interim order would not create any equities in favour of the writ petitioner-respondent No.6. Accordingly, seventeen students were admitted, however, with a rider that their admissions were subject to the final decision of the writ petition. After dismissal of the writ petition, a review was sought in which notice was issued vide order dated 21.12.2018 and status quo was ordered to be maintained so far as the students were concerned. During the pendency of the review application, an application was filed seeking permission for registration of students for the forthcoming examination. This application was, however, withdrawn on 23.05.2019. The writ petitioners also filed an application for being impleaded as party-respondents and for modification of the order of status quo. The said applications were however dismissed vide order dated 20.09.2019. Meanwhile, the present writ petition was filed and the same was entertained vide order dated 09.07.2019. Subsequently, vide interim order dated 01.08.2019, the petitioners were permitted to take the examination for the first year of the BAMS course, subject, however, to the own risk and responsibility of the petitioners and on a provisional basis. Thus, the examination due to be held w.e.f. 02.08.2019 has been taken by the writ petitioners.

3. A short reply on behalf of the State of Haryana as well as the Director, AYUSH, Haryana has been filed, according to which, the party required to take action is respondent No.5-University whose detailed reply is on record.

4. Counter affidavit on behalf of respondent No.2-Union of India states that respondent No.6-college had made an application dated 28.04.2016 to start a new college which was forwarded to the Central Council for Indian Medicine (CCIM) for carrying out inspection. Inspection was conducted on 21/22.09.2016 which found various shortcomings in the college and thus, a recommendation was made to reject the application dated 28.04.2016.

After grant of opportunity of hearing on 05.05.2017, order dated 10.08.2017 was passed refusing the issuance of letter of intent. A writ petition against the said order having been dismissed, there is no approval granted by the Union

of India, thus, it has no responsibility for the students admitted under interim orders.

5. A detailed written statement has been filed on behalf of respondent No.5-University in which it has been submitted that on production of the interim order dated 30.10.2018 of the Delhi High Court, respondent No.6-college was asked to supply necessary information for grant of affiliation for the academic session 2018-2019 but it failed to heed the demand made. A total of 17 students were provisionally admitted in the mop up round held on 15.11.2018. But their admission was subject to the final outcome of the writ petition. This was also communicated to the public at large vide counseling notice dated 08.11.2018 and thus, the writ petitioners were aware that their admission is subject to the final outcome of the pending writ petition before the Delhi High Court. Thereafter, vide communication dated 19.11.2018, the Principal of respondent No.6-college was informed that the provisional admission of 17 students made pursuant to interim orders of the Delhi High Court had been kept on hold till the final outcome of the writ petition and also because there is no letter of permission granted by the concerned Ministry, apart from the fact that the college is not affiliated to respondent No.5-University. It was further directed that this information be conveyed to the concerned students. The admission of these 17 students was not cancelled in view of the order of status quo of the Delhi High Court. Registration fee for the examination submitted by respondent No.6-college was rejected. Thus, the writ petitioners have no right to appear in the forthcoming examination nor can they claim any direction for issuance of roll numbers.

6. During the course of arguments on 07.02.2020, an undated short reply by way of affidavit of Additional Chief Secretary to Government of Haryana, Medical Education and Research Department was filed in Court. This affidavit has been filed pursuant to order dated 21.01.2020 passed by this Court. In this affidavit, the vacancy position in the private colleges affiliated to respondent No.5-University as well as in private colleges affiliated to all the private universities in the State of Haryana has been given.

7. In support of his prayer, learned counsel for the petitioners has placed reliance upon policy of the year 2016 framed by the State of Haryana for issuance of NOC/EC for establishment of new Ayurvedic Colleges. According to

this policy, an institution seeking issuance of NOC/EC must submit a bank guarantee in favour of the Director, Medical Education Haryana for a period of five years. Apart from that it must have with it bank deposits/fixed deposits worth ` 3 crores at the time of the application. In case, the institution is not able to sustain itself, the NOC is liable to be cancelled and the amount of the fixed deposit receipt would be encashed to continue the studies of the enrolled students and payment of salary of the staff and other running expenses of the institution and in case, the amount of the fixed deposit receipt is insufficient, recourse will be taken to other resources of the applicant. Thus, the argument is that no objection certificate dated 08.09.2014 having been issued by the State of Haryana and respondent No.6-college having been unable to sustain itself, the State is liable to take on the responsibility of the students and to defray the expenses of their education by en-cashing the fixed deposit receipt. This responsibility includes the responsibility to transfer the petitioners to some other functional college. Reliance has been placed upon Komal Posal vs. Union of India and ors., 2016 (3) SCT 800.

8. Learned counsel for the Union of India and respondent No.5-University as well as the State of Haryana vehemently oppose the relief sought by the petitioners. They submit that the admission of the writ petitioners was made pursuant to interim orders passed by the Delhi High Court and the said interim orders made it abundantly clear that it would not confer any equities upon the students so admitted. This was conveyed to the public at large as well as to respondent No.6-college through the admission notice issued by respondent No.5-University and was also endorsed upon their respective admission letters. The petitioners took admission with their eyes wide open and thus, they cannot claim any equities or right in their favour. Their admission is illegal as respondent No.6-college does not possess the necessary approval or affiliation. The policy of the year 2016 referred to by counsel for the petitioners is not applicable in this case as respondent No.6-college failed to secure the necessary approval/affiliation on account of lack of infrastructure. Thus, for all intents and purposes, respondent No.6-college never came into existence and the question of sustainability would arise only after a college has come into existence.

9. From the aforementioned factual matrix as well as the submission of learned

counsel for the parties, it is clear that respondent No.6-college was not granted the necessary approval by the Union of India and consequently, it was unable to seek affiliation with respondent No.5-University. Grant of an NOC by the State of Haryana did not entitle the college to make admissions. The admissions of the writ petitioners were made pursuant to interim order dated 30.10.2018 and no rights can be conferred by virtue of interim orders. Moreover, the petitioners were fully aware of the status of their admission and accordingly, they cannot even seek any equities in their favour. Even the interim order dated 01.08.2019 passed by this Court permitting them to take the examination of the first year BAMS course does not confer any equities upon them. In fact, the said order specifically states that the petitioners would take the examination at their own risk and responsibility. The admission of the petitioners in respondent No.6-college was purely provisional. In fact, the college could not make any admissions legally as it was neither approved nor affiliated. The provision of the policy i.e. Clause 11 relied upon by the petitioners is not applicable to the facts of this case because the said clause pertains to exit policy-closure of institute. The said clause would only apply in the case of a running institution but in the present case, respondent No.6-college never came into being practically as it failed to secure the necessary approval/affiliation. It is not a case of closure of a running institution but of inability of an institution to secure the necessary approval. If the college improves its infrastructure, it can still secure approval for the next academic session. Thus, the State has no responsibility for the students admitted in the college. The judgment in Komal Poswal (supra) is not applicable to the facts of this case. The educational institution in the said case had failed to secure renewal of permission for admission of the 4th Batch of 100 MBBS students for the academic session 2014-2015. It was a running institution and the students were sought to be transferred to some other institution on account of its failure to secure renewal of approval in a particular academic session. Further, the issue was regarding adjustment of the students in Government colleges vis-à-vis private colleges as the claim of the students was that they need to be adjusted in other Government colleges as they had been admitted against the Government quota seats.

10. It may also be noted that all 17 students are not before this Court. Four of

them appear to have moved on but the remaining 13 are still persisting in the hope that their provisional admission would be somehow regularized by virtue of transfer to a recognized/affiliated college. No such relief is possible to be granted to them in view of the aforementioned findings.

11. The writ petition is without any merit and is accordingly dismissed.