

(2021) 07 DEL CK 0037

In the Delhi High Court

Case No : Civil Writ Petition No. 9368 Of 2020

Tapasya Shiksha Samiti

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 06-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Establishment of New Medical College, Opening of New of Higher Course of Study or
Training and Increase of Admission Capacity by a Medical College Regulations, 2019 —
Regulation 6(1)(d), 7

Citation : (2021) 07 DEL CK 0037

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Jasbir Singh Malik, Asheesh Jain, Adarsh Kumar Gupta, Santosh
Kumar Pandey

Final Decision : Dismissed

Judgement

Prateek Jalan, J

The proceedings in the matter have been conducted through video conferencing.

CM APPLs. 30200-30201/2020 (for exemptions)

Exemptions allowed, subject to all just exceptions.

These applications stand disposed of.

W.P.(C) 9368/2020 and CM APPL. 30199/2020 (for interim relief)

1. By way of this petition under Article 226 of the Constitution, the petitioner assails an order of the respondent No. 1-Union of India [â??UOIâ?]

dated 05.10.2020, by which the petitionerâ??s application for permission to establish a new Ayurveda medical college in the academic year 2021-22

was rejected and returned by the UOI.

2. The contention of the petitioner is that it had obtained a No Objection Certificate [â??NOCâ?] from the Government of Madhya Pradesh on

26.04.2017, for setting up of new Ayurveda college in Bhopal with an intake of 100 students in the undergraduate BAMS course. The petitionerâ??s

applications for permission to establish the college in the years 2018-19, 2019-20 and 2020-21 were rejected for various reasons. According to the

petitioner, for each of the aforesaid three academic years, it had submitted valid consents of affiliation from the Madhya Pradesh Medical Science

University, Jabalpur [â??the Universityâ?].

3. As far as the year 2021-22 is concerned, the UOI extended the last date for submission of applications from the normally prescribed last date of

31.08.2020 to 30.09.2020 in view of the COVID-19 pandemic. The petitioner submitted its application on 29.08.2020.

4. At the stage of submission of the application, the petitioner annexed a certificate obtained from the University dated 28.08.2020, to the effect that

the petitioner had applied for valid consent of affiliation for opening of the college for the session 2021-22. It was further certified that an inspection

had been conducted by the local inquiry committee and that the consent of affiliation of the petitioner-college would be communicated after the

meeting of Executive Council of the University, which was to be held in the month of September 2020.

5. The UOI, however, rejected the petitionerâ??s application vide the impugned communication dated 05.10.2020 for want of a valid consent of

affiliation from the University for the academic year 2021-22.

6. Mr. Jasbir Singh Malik, learned counsel for the petitioner, submits that this rejection was unwarranted in the circumstances of the case as the

petitioner had, in fact, obtained the consent of affiliation of the University on 25.09.2020, prior to the last date of 30.09.2020. A copy of the consent of

affiliation dated 25.09.2020, has also been annexed to the writ petition. Mr. Malik further submits that the aforesaid document was sent directly by the

University to the UOI. In support thereof, he has produced an extract from the despatch register maintained by the University administration

[Annexure P-15 to the writ petition].

7. Mr. Asheesh Jain, learned counsel for the UOI, however, submits that the consent of affiliation was neither submitted by the petitioner alongwith its

application nor received by the UOI in time, i.e. prior to the last date of 30.09.2020. He submits that the aforesaid despatch register and a

communication of the University dated 21.10.2020 (Annexure P-14 to the writ petition) disclose that the consent of affiliation was, in fact, despatched

by the University only on 25.09.2020, and that too, by ordinary post. Mr. Jain submits that in the absence of the consent of affiliation, the petitioner

was ineligible for grant of the permission sought, and in fact, the UOI was not required to forward its application to the Central Council of Indian

Medicine [â??CCIMâ??] for inspection and recommendation. In this connection, Mr. Jain cites Regulations 6(1)(d) and 7 of the Establishment of New

Medical College, Opening of New of Higher Course of Study or Training and Increase of Admission Capacity by a Medical College Regulations, 2019

[â??the Regulationsâ??], which provide as follows:-

â??6. Eligibility for making an application.-(1)For making an application under sub-regulation (1) of regulation 4, a person shall be

eligible if, -

xxxx xxxx xxxx

(d) has obtained a â??Consent of Affiliation? in Form- 5 for establishing a new medical college from a University established under any

Central or State statute;

7. Recommendation of Central Council.-(1) The Central Government, after receipt of the applications shall scrutinize the application on the

basic of eligibility criteria like Application Fee, No Objection Certificate of the State Government and Consent of Affiliation of the

University etc. and the Central Government shall forward only eligible applications to the Central Council of Indian Medicine for further

consideration and the ineligible and incomplete applications shall be rejected and returned to the applicants by the Central Government.

(2) The Central Council of Indian Medicine shall inspect colleges and issue Letter of Intent at their level in Form-6, if the college is found

eligible as specified in the regulations 6 and the Central Council of Indian Medicine shall again inspect or verify the compliance of

requirement of minimum standards as specified in concerned regulations and other conditions of Letter of Intent and send the

recommendations only once for denial or issuing Letter of Permission as the case

may be in Form-7, by the 31st March for approval of the Central Government.â??

8. Having heard learned counsel for the parties, I am of the view that the actions of the UOI in the present case cannot be characterised as illegal or unreasonable. The last date for submission of applications for the year 2021-22, complete in all respects, was 30.09.2020. Regulation 6(1)(d) of the Regulations require all applicants to obtain the consent of affiliation in Form-5 for establishing a new medical college from a university established by any Central or State statute. Regulation 7 requires the Central Government to forward applications to the CCIM only after scrutiny with regard to basic eligibility criteria, including inter alia the consent of affiliation.

9. In the facts of this case, the petitioner has shown a complete lack of diligence to ensure that its application was complete within the time specified.

It is the admitted position that, alongwith the application submitted by the petitioner, it only enclosed a certificate to the effect that the University would consider its application for consent of affiliation at a forthcoming meeting of the Executive Council. That consent was ultimately given on 25.09.2020, five days before the last date for filing of documents. Even at this stage, the petitioner did not obtain a copy of the consent of affiliation in order to ensure that it is submitted to the UOI in time, but relied upon the indication that the University had itself marked a copy to the Ministry.

10. Thereafter also, there is no indication that the petitioner took any steps to ensure that the documents had, in fact, reached the UOI within the required time. In fact, it appears that only after the rejection of the application by the impugned order, did the petitioner seek to make inquiries with the University. It filed an application under the Right to Information Act, 2005 seeking information about the despatch of the aforesaid letter. The query submitted by the petitioner dated 20.10.2020 seeks information on the following two aspects:-

â??1) Whether the Form-5 issued by you has been sent to Ministry of AYUSH? If yes, give attested photocopy of the same.

2) With which medium (e-mail/ post/speed post or other medium) Form-5 had been sent to the Ministry of AYUSH give attested copy of in and out of dispatch, It is requested that attested photocopies of above-said information be made available.â??

It is in response to these queries that the University informed the petitioner that it had despatched the document on 25.09.2020

by ordinary post.

11. The aforementioned factual position is inadequate to dislodge the case made out by the UOI that it had not received the consent of affiliation prior

to the last date of 30.09.2020. The petitioner's conduct displays a reckless indifference towards the requirements of the Regulations with regard to

submission of the consent of affiliation. Mere reliance on the University's despatch of the document by ordinary post, five days prior to the last

date, is insufficient to establish that the document was, in fact, received by the UOI within time.

12. Therefore, the petitioner has failed to make out a case for interference under Article 226 of the Constitution. However, as stated in the counter

affidavit filed by the UOI, it will be open to the petitioner to submit a complete application, in accordance with law, for establishment of its college for

the academic session 2022-23.

13. For the reasons aforesaid, the writ petition, alongwith the pending applications, is dismissed. No order as to costs.