

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30th November, 2010.

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W.P.(C) No.7634/2010

ACHARYA GYAN AYURVED COLLEGE PETITIONER

Through: Mr. Ambar Qamaruddin, Advocate

Versus

DEPARTMENT OF AYUSH & ORS. RESPONDENTS

Through: Mr. Virender Sood & Mr. Anshuman
Sood, Advocates for R-1.
Mr. T.K. Joseph, Advocate for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petitioner, an Ayurvedic Medical College, claims to have been granted permission in the year 2002 for imparting education in Bachelor of Ayurvedic Medicine and Surgery (BAMS) Course. The permissions in favour of the petitioner to admit students were granted from year to year till the year 2009. The petitioner, as required applied for permission to admit students in the current academic year 2010-11 also and the College and attached Hospital of the petitioner was inspected by the respondent No.2 Central Council of Indian Medicine (CCIM) constituted under the provisions

of The Indian Medicine Central Council Act, 1970. Pursuant to the said inspection, a deficiency / show cause notice dated 6th August, 2010 was given by the respondent No.1 to the petitioner. The only deficiency pointed out in the said notice was of shortage of two faculty members. The petitioner submitted a reply to the said show cause notice and was also given a hearing. After the hearing, the respondent No.1 conducted inspection on 30th August, 2010 of the petitioner's College and attached Hospital and thereafter made an order dated 20th September, 2010 refusing permission to the petitioner to admit students in the current academic year. In the order dated 20th September, 2010, besides the ground of shortage of faculty, several other grounds on the basis of inspection on 30th August, 2010 were also stated for denying the permission.

2. The petitioner filed WP(C) No.7424/2010 in this Court challenging the order dated 20th September, 2010. Finding that no show cause notice / deficiency notice with respect to the deficiencies noticed in the inspection on 30th August, 2010 had been given and the petitioner had had no opportunity of hearing with respect thereto, the said writ petition was allowed vide order dated 1st November, 2010 and the writ petition was directed to be considered as a representation of the petitioner to the respondent No.1 and the respondent No.1 was directed to pass a fresh order after giving a hearing to the petitioner.

3. The respondent No.1 thereafter passed order dated 10th November, 2010 (impugned in this writ petition) again denying permission to admit students in the current academic year to the petitioner.

4. The respondent No.1 in the order dated 10th November, 2010 has concluded that the College has a full complement of required faculties. However, the permission has been denied to the petitioner on the grounds:

- (i) That in the surprise inspection on 30th August, 2010, it was found that there were no medicines or any signs of regular use of wards; most of the wards were locked; some of the wards were opened in front of the visiting team; all the wards had lot of dust on the floor, no bed sheets on mattresses, no blanket etc. clearly suggesting that the wards were not in use since long.
- (ii) There was no hospital staff namely nursing staff, Panchakarma attendant, ward boy etc. in the Panchakarma section.
- (iii) There was no record room, hospital superintendent room, matron room, medicine store, hospital office, hospital canteen, laundry etc.

- (iv) That the petitioner has been unable to substantiate its claim during the hearing of having a genuinely fully functional Ayurvedic Hospital.
- (v) That the records of IPD patients produced by the petitioner were doubtful and could not be backed by records of X-ray, Pathological and Clinical investigation done in the Hospital.
- (vi) Serious inconsistencies were found in the IPD registers produced by the petitioner and it was not found to indicate when the individual patient was admitted and when he was discharged and whether he was referred to any other Hospital or not.
- (vii) The petitioner could not produce any document related to the case sheet of the IPD patients and which case sheet is supposed to be the basic document required to be prepared by the Hospital.
- (viii) There was not a single nursing staff in the Hospital.

The respondent No.1 thus concluded that the petitioner did not meet the minimum eligibility conditions stipulated in Regulation 5(1)(d) of the

Indian Medicine Central Council (Permission to Existing Medical Colleges) Regulations, 2006.

5. The petition came up before this Court on 15th November, 2010 when this Court was of the opinion that the petitioner had not placed before this Court any material to show that the reasons given in the impugned order were incorrect. The petitioner sought time to file an additional affidavit. However, considering that the admissions for the current year were underway, by way of abundant caution, notice was also issued and the respondent directed to file counter affidavit, both to the petition as well as the additional affidavit to be filed by the petitioner. The petitioner has since filed an additional affidavit and the respondent has filed a counter affidavit. Since it was told that today is the last date for admission as per the prescribed schedule, arguments have been heard.

6. The counsel for the petitioner at the outset has drawn attention to Section 13-C of the Indian Medicine Central Council Act, 1970 which makes the procedure laid down in Section 13-A applicable for permission to admit students by Medical Colleges established before the commencement of the Indian Medicine Central Council (Amendment) Act, 2003. Thereafter attention is invited to Section 13-A(5) of the Act which is as under:-

“(5) The Central Government may, after considering the Scheme and recommendations of the Central Council under sub-section (4) and after obtaining, where necessary,

such other particulars as may be considered necessary by it from the person or medical college concerned and having regard to the factors referred to in sub-section (8), either approve the Scheme with such conditions, if any, as it may consider necessary or disapprove the Scheme and any such approval shall constitute as a permission under sub-section (1):

Provided that no Scheme shall be disapproved by the Central government except after giving the person or medical college concerned a reasonable opportunity of being heard.”

7. On the basis of the aforesaid, it is argued that the inspection dated 30th August, 2010 conducted by the respondent No.1 itself and on the basis of which the impugned order is based was illegal and the only Body empowered to inspect and submit a report is the respondent No.2 CCIM and the respondent No.1 is to thereafter only act on the basis of report of the respondent No.2 CCIM. It is contended that the report of the respondent No.2 CCIM does not contain the deficiencies as found by the respondent no.1 in the inspection on 30th August, 2010. The respondent No.2 CCIM in the report of its inspections on 27th/28th January, 2010 had against the Columns “Hospital OPD” and “Hospital IPD” recorded “Satisfactory. Intake capacity should be increased”. Similarly against the Column “Hospital in General”, it was written “Satisfactory”.

8. The counsel for the petitioner relies on the judgment dated 9th January, 2009 of a Division Bench of the High Court of Bombay in W.P.(C) No.3512/2008 titled *Hindustani Education Society Vs. Union of India &*

Ors. laying down that the Central Government (respondent No.1 herein) after considering the report of the CCIM can either approve a Scheme or disapprove it and that the Central Government is not expected to send its own team to assess for itself whether the Institution / College complies with the requirements. It was held that that task is to be performed by the CCIM and the Central Government can only approve or disapprove the Scheme and the question of sending their own team for assessing whether a particular Institution / College has the infrastructure as required under Section 13-A of the Act does not arise. It was thus held that the procedure adopted by the Central Government of sending its own team was not in consonance with the provisions of the Act.

9. In the present case the inspection by the Central Government was prior to the first order dated 20th September, 2010 of refusal which was challenged in the earlier writ petition aforesaid. The petitioner at the time of disposal of the earlier writ petition did not contend that the findings on the basis of the inspection by the Central Government were not to be considered or that the said inspection was illegal. The petitioner was rather satisfied that an opportunity of being heard was given with respect to the findings based on the inspection by the Central Government's team. In my view, the petitioner in this second round of litigation, after availing of the hearing with respect to the said inspection is not entitled to contend that the said inspection itself was illegal. No such right was reserved by the petitioner to

itself at the time of disposal of the earlier writ petition. Besides the aforesaid, as per the Act and the Regulations, the decision to grant the permission or to not grant the permission is to be of the Central Government. Section 13-A(5) (supra) does not require the Central Government to take a decision only by considering the recommendations of the CCIM; the same expressly permits the Central Government to take the decision “after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or Medical College concerned and having regard to the factors referred to in Sub-section (8)”. In my opinion, obtaining of “particulars as may be considered necessary” would include obtaining such particulars by carrying out its own inspection. The said words cannot be given a narrow interpretation so as to confine the scope thereof to obtaining information only in writing from the College. Moreover, by reference to Sub-section (8) which lays down the parameters to which the CCIM is to have regard, the Central Government has been empowered to consider the matter qua each and every parameter. The Central Government cannot be said to be a slave to the inspection by the CCIM. CCIM under the Act is merely a recommendatory body and a recommendatory body can never be deemed to deprive the authority vested with the power to take decision from exercising such power to the hilt. There is nothing whatsoever in the Act to show that the Central Government in which the power to take the decision is vested is deprived from making any

enquiry or investigation as it may deem necessary for the purpose of taking the said decision.

10. The Division Bench of this Court in ***Dr. Ashok K. Mittal v. University of Delhi*** ILR (1996) 2 Del 489 held that where the Governing Body of the college was the appointing and the deciding authority, no error could be found in its decision while considering the report of the Selection Committee, to re-advertise the post. The Supreme Court in ***M.P. Rural Agriculture Extension Officers Association v. State of M.P.*** (2004) 4 SCC 646 also held that the Pay Commission even though an expert body, it was still open to the State to accept or not to accept its recommendations. A Single Judge of this Court in ***Union of India v. Telecom Regulatory Authority of India*** 74 (1998) DLT 282 in relation to the Telecom Regulatory Authority of India Act, 1997 held that to hold the recommendations of the Regulatory Authority to be binding on the licensing authority i.e. the Government would amount to changing the basic structure of the Telegraph Act and to putting the Government under the control of the Regulatory Authority thereby curtailing, restricting and circumscribing the power of the Government. The Division Bench in other petitions relating to TRAI, in ***MTNL v. TRAI*** 84(2000) DLT 70 did not differ therefrom. In relation to UPSC also, in ***Dr. H. Mukherjee v. UOI*** AIR 1994 SC 495, it was held that Government as appointing authority has absolute power to approve or disapprove list of recommendations. It was further held that the Government can take into consideration the developments subsequent to the

selection made by the UPSC and to hold otherwise would not be in public interest and may lead to serious complications if the Government is enjoined to act notwithstanding serious matters having come to its notice subsequent to the recommendation made by the UPSC. Another Division Bench of this Court in *Sethi Auto Service Station v. DDA* 129 (2006) DLT 139 also held that if the recommendatory body is not the final authority to take the decision, merely because some favourable recommendations are made at some level of decision making process, that will not bind the superior or higher authority. Recently in *Lakhwinder Singh v. UOI* (2008) 7 SCC 648 also, assessment of the Selection Board was held to be purely recommendatory in character and the power of the appointing authority to accept or vary the recommendation of the Selection Board was held to be implicit. Even the recommendations of the High Court for appointment of District Judges were in *State of Kerala v. A. Lakshmikutty* (1986) 4 SCC 632 held to be not binding though the circumstances in which the State could differ were laid down.

11. I am therefore, with respect, unable to agree with the judgment (supra) of the Bombay High Court. The counsel for the respondent no.1 also informs that notice in the SLP preferred thereagainst has been issued.

12. The next question which arises is whether else there is any other error capable of interference with the order impugned. The lacunas attributed to

the petitioner are serious. In the face thereof, the petitioner cannot be said to be equipped to train future doctors. A hospital is a necessary appendage to a Medical College and without a Hospital with the sufficient number of patients, no expertise can be gained by the students of the Medical College. I had during the hearing enquired from the counsel for the respondent No.1 whether any photographs of the inspection on 30th August, 2010 were taken. The counsel under instructions has handed over the file of the respondent No.1 relating to the petitioner and which contains the CD of the photographs of inspection. From a perusal of the said photographs, it cannot be said that the findings in the impugned order are without any basis whatsoever. The counsel for the petitioner of course from the documents filed with the additional affidavit has sought to argue that the respondent No.1 has misconstrued the records of the petitioner. However, this Court in writ jurisdiction cannot launch into an enquiry as the petitioner would want this Court to undertake. This Court is not to sit in appeal over the decision of the Government. Moreover, this Court would not substitute its opinion over that of the experts in the respondent no.1 who have taken the decision.

13. The Supreme Court in *The Dental Council of India v. Subharti K.K.B. Charitable Trust* (2001) 5 SCC 486 held that it is the function of the Central Government under Section 10A of the Dentists Act, 1948 to accord approval for establishing Dental College and the jurisdiction of the Court to interfere with discretion exercised by expert bodies is limited. The Division

Bench of this Court in ***Dental Council of India Vs. Integrated Education Development Organization*** (2000) 56 DRJ 283 also held that the question whether or not a technical College should be granted permission to admit students and to start classes has to be left to the concerned authority constituted for such purpose and the High Court sitting in extraordinary jurisdiction under Article 226 of the Constitution normally ought not to interfere as such a matter does not lie in the province of the Court; the power to interfere exists only when the decision suffers from *mala fide* and arbitrariness and is unjust, unfair or unreasonable. No such case is made out in the present case. Reliance in this regard can also be placed on the recent judgment in ***Dr. Basavaiah Vs. Dr. HL Ramesh*** 2010 (7) SCALE 529 reiterating that the Courts have a very limited role particularly when no malafide has been alleged against the experts and that it would normally be prudent, wholesome and safe for the Courts to leave the decisions to the experts. It was further held that as a matter of principle the Courts should never make an endeavour to sit in appeal over the decision of the experts.

14. The counsel for the petitioner in the hearing on 15th November, 2010 had also contended that the very fact that the petitioner had been granted permission for the last so many years showed that the petitioner had a functional hospital and ward and the finding of the respondent no.1 of petitioner not having functional hospital is obviously erroneous. No merit was found in the said argument also. The legislature having provided for

yearly permission, the enquiry for each year is independent and no fault can be found with such enquiry on the basis of permission in earlier years.

15. No case for interference is made out. The petition is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

30th November, 2010
'gsr'..