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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 5506/2012

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Judgment dated 09.10.2012

DHANWANTRI AYURVEDIC MEDICAL COLLEGE AND
RESEARCH CENTRE AND ANR Petitioner
Through: Mr.S.P. Sinha, Advocate.

Versus

UNION OF INDIA AND ANR Respondent
Through: Mr. Anuj Aggarwal, Advocate for
respondent No.1.
Mr. T.K. Joseph, Advocate, for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Rule.
2. Pleadings are complete in the matter. With the consent of the parties the writ petition is set down for final hearing and disposal.
3. By the present writ petition, the petitioner seeks a writ order or direction to quash the order dated 27th August, 2012 passed by the respondent No.1 declining permission to the petitioner No.1 college for undertaking admissions to the Under Graduate Course (BAMS) for the academic session 2012-13. It is the case of the petitioner that the aforesaid order is not in accordance with Section 13-A of the Indian Medicine Central Council Act, 1970.
4. The necessary facts to be noticed for disposal of this petition are that the petitioner-college was granted conditional permission to start the BAMS Course with an intake capacity of 50 students on 27th August, 2009. The permission qua the said batch was irrevocable till the completion of the course. As per Regulation 4 of Indian Medicine Central Council

(Minimum Standards of Education in Indian Medicine) Regulations, 1986, the duration of a degree course is for 5 ½ years, each divided in three professional terms of eighteen months each, as well as one year internship. As per the Rules a student can appear in the second professional examination only after eighteen months of appearing in the first professional examination.

5. For the academic session 2010-11 and 2011-12 permission to the petitioner-college to admit students was declined due to lack of teaching staff and other facilities. Accordingly, the students of the batch of the academic session 2009-2010, were to be transferred to other colleges. Despite willingness given by petitioner to effect transfer of students to other colleges, the respondents failed to pursue the transfer of students from the petitioner college to other colleges. It is not in dispute that the first and only batch of students have completed their first professional term, which is a 1 ½ year course. This was completed in November, 2011 (whereas ordinarily the said term would have come to an end in December, 2010). The said students are now in the second professional term, which commenced in January, 2012 and which is likely to come to an end only in June 2013.
6. The request of the petitioner has been declined for admission of students to the academic session 2012-13 only on the ground that the petitioner does not have the full complement of the faculty required for third professional term. As per the shortcomings pointed out to the petitioner, there are only 19 teachers in the college against minimum requirement of total of 32 eligible teachers, 7 eligible higher faculties in the college against minimum requirement of total of 10 higher faculties and 6 departments viz. Prasuti and Stri Roga, Kaumarghritya, Kayachikits, Shalya, Shalakya and Panchkarma, which do not have atleast one eligible

teacher in the college. It is on the basis of these observations that the request has been declined.

7. Learned counsel for the petitioner does not dispute the observations of the Committee as far as the number of teachers is concerned. It is also not in dispute between the parties that the faculty, which is available, fulfils the requirement upto the second professional term and there is no faculty available for the third professional term.
8. It is the case of the petitioner that the faculty would only be required for the third professional term in the month of June, 2013 and as per the Regulations, the faculty should be available prior to the inspection, which is normally held between January and March of each year.
9. Counsel for the petitioner submits that the petitioner is willing to give an undertaking to the respondents that the faculty for the third professional term shall be put in place prior to the inspection and in case, there is no faculty for the third professional term, the right of the petitioner to admit students may be closed. Counsel for the petitioner submits that the Act and the Regulations also provide that the infrastructure and the teaching staff is to be provided in a phased manner.
10. It is also the case of the petitioner that in terms of the policy dated 06.04.2009 formulated by Respondent no. 2 vide minutes of 151st Adjourned Meeting of Executive Committee, new colleges were required to appoint teaching faculty in a graded manner. For instance, since a newly opened medical college will only have one batch of students in first professional year, whereas the requirement is only eight teachers if the intake capacity is up to 50 students. In the second professional year the requirement of teaching staff would increase for both batches that is to 18 and the full complement of 35 teachers would only be required when third professional term progresses.

11. Attention of the Court is also drawn by the petitioner to the observations made by the Supreme Court in the case of *Priyadarshini Dental College and Hospital Vs. Union of India and Others* reported at (2011) 4 Supreme Court Cases 623, particularly para 25, which reads as under:-

“25. The need for renewal of permission emanates from the fact that a newly established college is not required to have in place, full complement of the teaching faculty and complete infrastructure in the first year itself. This is because, during the first year, the college will be catering only to a limited number of first year students. During the second, third and fourth and fifth years, the student strength will increase. If the permitted intake is 100, usually there will be 100 students in the first year, 200 students in the second year, 300 students in the third year, 400 students in the fourth year and 500 students in the fifth year. Thereafter, the strength may remain constant. As the strength increases gradually every year, correspondingly the infrastructure and faculty will have to be increased.

12. Learned counsel for respondent No.1 submits that the respondents have been following a uniform policy by not granting permission to the medical colleges to admit students, in case the teaching faculty is not available for all the three years. Criteria for increase of faculty is based on the year when the college was established and not on the basis of examination conducted as in the present case.
13. Counsel for respondent No.2 submits that respondent No.2 has verified the fact that the first professional term, which was to come to an end in December, 2010 was delayed on account of the orders passed by respondent No.1 for transfer of students to some other college, whereas, such transfer actually did not take place and subsequently the University

permitted the petitioner to conduct the examinations belatedly. Consequently, the examinations were held in May, 2011 and the result was declared in November, 2011. Counsel further submits that there is no doubt that the respondents permit the increase in faculty in a phased manner and have calculated the number of teachers required on the basis of the year when the college was established.

14. I have heard learned counsel for the parties and given my thoughtful consideration to the matter. The undisputed facts of this case are that the petitioner college was established and granted permission to start BAMS Course with an intake capacity of 50 students on 27.8.2009. The permission qua the said batch is irrevocable till the course is complete. Admittedly, permission for the sessions 2010-2011 and 2011-2012 was declined. An order was passed by which it was directed that the students be transferred to other institutions, however, the order of transfer was not pursued by the respondents and the students continued with the petitioner institute. On account of the order with regard to transfer of students the examination for the students could not be conducted after a period of one and a half years on the scheduled date, which fact is also not in dispute. The examinations for the first professional term, which were ordinarily be conducted in December, 2010, were held in May, 2011 and the results were declared in November, 2011. Accordingly the examinations for the second professional term would be held in June, 2013.
15. In the light of the aforesaid facts, the short question, which comes up for consideration before this Court, is that whether the petitioner can be declined permission for the intake of students for the academic session 2012-2013 having regard to the deficiencies, which have been pointed out, which relate to the requirements for the third professional term whereas the petitioner has at present only one batch of students in the

second professional term, which is likely to be completed in June, 2013.

16. Learned counsel for respondent no.1 has submitted that as per the policy requirement faculty is to be considered based on the year the college was established. I am of the view that the policy cannot be applied without taking into consideration the fact that in case the examination of the first professional term was conducted on time the said batch would have been ready for the third professional term and, thus, the requirement of the faculty was mandatory. Since the students are still in the second professional term the request for admission of students cannot be declined as the institute does not fulfill the requirement for the third professional term when admittedly the only and first batch has not reached at such a stage.
17. The aim and object of the policy is to ensure that the institute is equipped with the recommended number of teachers before the commencement of the session. No doubt if a college has been established in 2009 ordinarily the students would have reached the third professional term. However, in this case the student shall reach the third professional semester only in June, 2013. Thus, it cannot be said that in case permission is granted the students admitted would suffer on account of lack of proper faculty. On the contrary in case the fresh batch of students is not admitted the college is likely to lose interest in the present batch of students as there would be little stake left in the college.
18. In the case of *Priyadarshini Dental College and Hospital* (supra) the Apex Court has recognized the fact that a newly established college is not required to have in place full complement of teaching faculty and complete infrastructure in the first year itself. Although, this may not be the first year of this particular college yet practically speaking only one batch has been admitted to this college in the year 2009-2010, no students

were admitted in the years 2010-2011 and 2011-2012. The college is thus only catering to the limited number of students who were admitted in the first batch and the stage of the third professional term will only come in June, 2013.

19. Accordingly, the order of rejection is quashed. Ordinarily, it would have been appropriate for this Court to remand the matter back to respondent no.1 to consider the request of the petitioner but since the last date for admitting students is fast approaching, which is 31.10.2012, it is deemed appropriate to meet the ends of justice to issue a direction to respondent no.1 to grant permission to the petitioner to admit students for the academic session 2012-2013 subject to the undertaking being furnished within four days from the date of receipt of this order by the petitioner that they will provide necessary faculty for the third professional term prior to the inspection, which is normally held between January to March of each year. It is made clear that this order has been passed in the facts of this case and will not be treated as a precedent.
20. Dasti under the signature of Court Master.

G.S.SISTANI, J

OCTOBER 09, 2012

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