

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

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Date of decision: 9th November, 2012

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LPA No.719/2012

UNION OF INDIA

..... Appellant

Through: Mr. Rajeev Mehra, ASG with Mr.
Sumeet Pushkarna & Mr. Ashish
Virmani, Advs.

Versus

**DHANWANTRI AYURVEDIC MEDICAL
COLLEGE & HOSPITAL & ORS.**

..... Respondents

Through: Mr. S.P. Sinha, Adv. for R-1&2.
Mr. T.K. Joseph, Adv. for R-3.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the judgment dated 9th October, 2012 of the learned Single Judge of this Court allowing W.P.(C) No.5506/2012 preferred by the respondents no.1&2 by quashing the order dated 27th August, 2012 of the appellant refusing permission to the respondent no.1 College to admit students to the Bachelor of Ayurvedic Medical Sciences (BAMS) Course for the Academic Year 2012-13 and directing the appellant to grant such permission to the respondent no.1 College.

2. The counsels for the respondents i.e. for the respondents no.1&2 (writ petitioners) and the respondent no.3 (Central Council of Indian Medicine) (CCIM) appear on caveat/advance notice and considering the nature of the

controversy, arguments were finally heard at the admission stage itself on 31st October, 2012 and judgment reserved. Vide order of the said date, the direction to the appellant, contained in the judgment of the learned Single Judge, to grant permission to the respondent no.1 College to admit students for the Academic Session 2012-13, was also stayed till the pronouncement of judgment.

3. We may at the outset record that it was the plea of the counsel for the respondents no.1&2 during the hearing on 31st October, 2012 that the appeal had become infructuous since the respondent no.1 College, pursuant to the judgment of the learned Single Judge, had already admitted students for the current academic year for which the admissions were to close on 31st October, 2012. The said plea was contested by the learned ASG appearing for the appellant contending that the direction of the learned Single Judge to the appellant was to grant permission to the respondent no.1 College and which permission had not been granted till then; that without such permission the respondent no.1 College could not have admitted students. The counsel for the respondents no.1&2 further admits that admission was to be through the process of counseling to be held by the University. The counsel for the respondent no.1 College was not able to show any document in support of the respondent no.1 College having participated in counseling or any students having been allotted to it. We are even otherwise of the opinion that the respondent no.1 College cannot, by such tactics, be permitted to defeat the right of the appellant of appeal against the judgment of the learned Single Judge.

4. The facts, not in dispute are:-

- (i). that the respondent no.1 College, upon being established was first granted permission to start the BAMS Course with an intake capacity of 50 students for the Academic Year 2009-10;
- (ii). for the Academic Years 2010-11 and 2011-12 permission to admit students was declined to the respondent no.1 College for the reasons of deficiencies and no students were admitted in the respondent no.1 College during the said two years;
- (iii). that the respondent no.1 College again applied for permission to admit students in the current Academic Year 2012-13 but which was denied for the reason of the respondent no.1 College:-
 - (a) instead of the requisite 32 eligible teachers having only 19 eligible teachers;
 - (b). having only 07 eligible higher faculties against the minimum requirement of 10;
 - (c). having only 06 of the 14 Departments; and,
 - (d). not having even one eligible teacher against the minimum requirement of at least one eligible teacher in each Department.

5. The reasons aforesaid for denial of permission for current Academic Year are not controverted by the respondents no.1&2. The learned Single Judge however accepted the plea of the respondents no.1&2 that since the respondent no.1 College was having only one batch of students admitted in

the year 2009-2010 and which also, instead of being in the 3rd professional term had reached only the 2nd professional term, the teachers available in the respondent no.1 College were sufficient to teach the said students (in the 2nd term) as well as the students to be admitted in the current Academic Year 2012-13 and the prescribed contingent of teachers being immediately not required in the respondent no.1 College since there were no other students. Reliance in this regard was placed on *Priyadarshini Dental College and Hospital Vs. Union of India* (2011) 4 SCC 623.

6. The same argument, which was accepted by the learned Single Judge, has been put forth by the counsel for the respondents no.1&2 before us. However the learned ASG has contended that the said course of action could not have been adopted by the learned Single Judge.

7 Needless to state that this Court in exercise of powers under Article 226 of the Constitution of India cannot issue any mandamus directing a Authority to act in contravention of the Rules. Though the reasoning given by the learned Single Judge and to which there is no real challenge, appears attractive but we have asked the counsel for the respondents no.1&2 whether The Indian Medicine Central Council Act, 1970 or The Establishment of New Medical College, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity by a Medical College Regulations, 2003 framed thereunder permit a Medical College, if having lesser number of students, to have only the faculty required to teach the said students and not the faculty which is prescribed for the College as per its sanctioned strength. The counsel for the respondents no.1&2 has not been

able to show any such Rule. The counsel for the respondent no.3 CCIM, though confirms that there is no such Rule, states that such has been the policy of the respondent no.3 CCIM. Attention in this regard is invited to the minutes of the 151st adjourned meeting of the Executive Committee of the CCIM held on 13th -14th March, 2009, 27th -28th March, 2009 & 6th April, 2009 at New Delhi. We have perused the said minutes. Though the same stipulate the number of teachers, the Colleges established during the years 2004-05, 2005-06 and 2006-07 and the Colleges established in 2007-08 and 2008-09 were required to have but the counsel for the respondent no.3 CCIM himself admits that the language thereof is not clear enough to answer our query.

8. The learned Single Judge however having relied on *Priyadarshini Dental College and Hospital* supra in this regard, we adverted to the said judgment to decipher whether the same lays down that the Court can, finding a College to having a lesser than the sanctioned strength, waive the requirement of faculty etc. as provided in the Rules. We are however unable to find the said judgment as laying down so. The said judgment does not relate to The Indian Medicine Central Council Act but is in the context of The Dentist Act, 1948 and the Regulations framed thereunder. Finding that the Regulations themselves contemplated Dental Colleges being established and started with limited infrastructure and faculty and making provision for expansion of teaching staff and infrastructure facilities in a phased manner, the observations in paragraph 25 on which the learned Single Judge has relied came to be made. That is however not the position here. The

Regulations by which the respondent no.1 College is governed, require it to have the minimum contingent of faculty, which it admittedly does not have.

9. Not only can no mandamus directing an Authority to act in contravention of Rules be issued as reiterated in ***Union of India Vs. S.K. Saigal*** (2007) 14 SCC 556 but we are even otherwise of the opinion that the present is not a case where discretion ought to have been exercised in favour of the respondents no.1&2.

10. What emerges is that though the respondent no.1 College was granted conditional permission in the year 2009-10 to admit first batch of 50 students to the BAMS Course but the respondent no.1 College could not in the subsequent two years comply with the conditions subject to which permission for the Academic Year 2009-10 was granted i.e. it could not complete the contingent of teachers which it was to have in the next year. Owing to such failure of the respondents no.1&2, the career of the students admitted in 2009-10 is in lurch; rather the learned Single Judge seems to have been swayed by the plight of the said students. In the memorandum of appeal it is stated that the said students had filed W.P.(C) No.8243/2012 (EDN – RES) in the High Court of Karnataka, Circuit Bench at Gulbarga and in which vide order dated 20th July, 2012 the University has been directed to transfer the students from the respondent no.1 College to other Colleges in the State of Karnataka and the respondent no.1 College has been directed to issue NOC and to return the testimonials collected from the students at the time of admission. The counsel for the respondents no.1&2 of course contends that inspite of said direction, no provision has been made till now for transfer of the said students to the other Colleges. However once a

writ has been issued by the High Court of Karnataka, there is no reason for this Court to believe that the same shall not be abided by.

11. What further emerges is that the respondent no.1 College was also not able to hold the 1st professional examination of the students admitted in 2009-10 on time and which has led to their having been promoted to the 2nd term only in January, 2012 when they should have admittedly been in the 3rd professional term. Now that the said students have secured a writ for being transferred out of the respondent no.1 College, the question which arises is whether we should allow the respondent no.1 College to admit another batch of students when, inspite of more than three years having elapsed, its Medical College is still not fully equipped with the faculty. What the respondents no.1&2 have done to the students earlier admitted cannot be allowed to be done to a fresh batch of students. The counsel for the respondents no.1&2 of course states that they are willing to give an undertaking that they will increase the faculty strength as per the need from time to time and they should not be made to employ the faculty without there being any need therefor. Howsoever logical the said argument may appear, there being no Rule therefor and there being no challenge to the Rules as they exist, the same cannot be accepted. It cannot be further lost sight of that the respondents no.1&2 have already defaulted on the conditional permission granted to them in the year 2009-10. They were then also required to, by the following years, have the complete faculty. They however failed to do so. They do not deserve a second chance at the cost of the career of students. Moreover, we fail to see much prejudice to the respondent no.1 College in having the full prescribed contingent of faculty

even if there may be no immediate need therefor. Medical College is required to be attached to a hospital and the services of the faculty members are always required in the hospital.

12. Even otherwise the Courts have always been loath to interfere in educational matters. The legislature has vested the power to grant permission in the appellant. The Supreme Court in ***The Dental Council of India Vs. Subharti K.K.B Charitable Trust*** (2001) 5 SCC 486 has held that where it is the function of the Central Government to accord approval, the jurisdiction of the Court to interfere with the discretion exercised by expert bodies, is limited. Again, in ***Dr. Basavaiah Vs. Dr. H.L. Ramesh*** (2010) 8 SCC 372 it was reiterated that courts have a very limited role particularly when no *mala fide* has been alleged against the experts and that it would normally be prudent, wholesome and safe for the Courts to leave the decision to the experts. A Division Bench of this Court also in ***Dental Council of India Vs. Integrated Education Development Organization*** (2000) 56 DRJ 283 held that the question whether or not a technical college should be granted permission to admit students 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 and unreasonable.

13. Though the counsel for the respondent no.3 CCIM has propounded the policy, of a Medical College being required to have only that much of

faculty members as are for the time being required, but such policy even if can be said to be in existence, is not binding on the appellant. It has been held by one of us (R.S. Endlaw, J) in *Acharya Gyan Ayurved College Vs. Department of Ayush* MANU/DE/3346/2010 that the recommendations of the CCIM are not binding on the appellant. The appellant clearly has rejected the claim of the respondent no.1 College on the basis of the said purported policy. No error is found in the said decision of the appellant, especially considering the track record of the respondent no.1 College. Once the decision of the appellant is found to be based on reasons, the same cannot be interfered with by this Court merely because this Court may have formed another opinion.

14. We therefore allow this appeal and set aside the judgment dated 9th October, 2012 of the learned Single Judge and dismiss the writ petition filed by the respondents no.1&2. The respondents no.1&2 however, after complying with the minimum requirements, shall be entitled to apply afresh for permission to admit students.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

NOVEMBER 09, 2012

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