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

+ W.P.(C) 8206/2011

% *Judgment dated 9th May, 2013.*

ALIGARH UNANI MEDICAL COLLEGE AND
ACN HOSPITAL AND ANR

..... Petitioners

Through : Mr.Amit Khemka, Mr.Rishi Sehgal and
Ms.Sanorita D. Bharali, Advs.

versus

UOI AND ORS

..... Respondents

Through : Ms.Alka Sharma, Adv. for R-1.
Mr.T.K. Joseph, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Pleadings in this matter are complete. With the consent of counsel for the parties writ petition is set down for final hearing and disposal.
2. The petitioner no.2 society has been running a Unani Medical College and ACM Hospital since the year 1993. Permission was granted by the respondents for the session 2008-09 for imparting a BUMS degree with 40 seats. Conditional permission was also granted for the academic year 2010-2011 and after thorough investigation done by the inspection team of respondent no.2 wherein it was observed that there were no shortcomings except two vague observations. On 28.12.2010 a compliance report was submitted by the petitioner no.1 with regard to the shortcomings mentioned in the letter dated 23.7.2010.

3. It is the case of the petitioners that the inspection team did not find any records to be deficient in the petitioner no.1 college and hospital. A surprise inspection was carried out by a joint team of Central Bureau of Investigation and respondent no.1 on 2.8.2010. It is pointed that no major short shortcoming was found except a Drug Dispensing Register was found to be not maintained by the petitioners at that point of time.
4. It is submitted by counsel for the petitioner that the earlier inspection team did not point out any deficiency nor it was pointed out in the letter dated 23.7.2010. It is also pointed out that the minimum standards have been put up on the website of respondent no.2 and it does not prescribe for maintaining any such Drug Dispensing Register. Another inspection was carried out by the team of inspectors of respondent no.2 on 29.3.2011 and 30.3.2011 for granting permission for the academic session 2011-2013.
5. It is the case of the petitioner that the report of the inspection was placed before the Screening Committee of respondent no.2, which consists of two senior most Professors in the field of Unani Medicine in the country. The Screening Committee of respondent no.2 in its meeting dated 12.5.2011 to 14.5.2011 after considering the report of the Inspectors made a recommendation to respondent no.2 to grant permission to petitioner no.1.
6. It is contended by learned counsel for the petitioners that although the Screening Committee had made an unconditional recommendation the Executive Committee of respondent no.2 in its meeting held on 16.5.2011 and 17.5.2011 decided not to recommend the case of petitioner no.1. This decision was communicated to petitioner no.1 on 18.5.2011 pursuant to which a show cause notice was issued to the petitioners on 7.6.2011. As per the said show cause notice the college was visited by the joint team of CBI and Department of AYUSH on 2.8.2010 when it was observed that

the Drug Dispensing Register of OPD/IPD and Hospital Duty Register were not maintained. A reply to the show cause notice was sent on 13.6.2011 wherein it was pointed out that the Drug Dispensing Register although was not available but was introduced from 2.8.2010 onwards i.e. from the date of inspection of the CBI and respondent no.1.

7. It is also the case of the petitioners that representatives of petitioner no.1 appeared before the Hearing Committee on 14.6.2011 along with all the records and the only issue dealt with by the Hearing Committee was with regard to the Drug Dispensing Register. The petitioners were shocked to receive an order dated 5.8.2011 on 18.8.2011 not granting permission for the academic year 2011-2012 containing new grounds for not granting permission. It is, thus, the case of the petitioners that none of the grounds were mentioned in the report of the inspection held on 29.3.2011 and 30.3.2011 in the recommendation of the Screening Committee, the recommendations of the Executive Committee of respondent no.2, the show cause notice or the minutes of the proceedings of the Hearing Committee.
8. Mr.Khemka, learned counsel for the petitioners, submits that the observations in the order could not form part of the order when the petitioners were never called upon to show cause in respect of the same. It is, thus, contended that the impugned orders are totally without any application of mind, against the principles of natural justice, based on extraneous considerations, without any material and devoid of any merit.
9. It is however pointed out that a show cause notice was issued to the petitioners on 7.6.2011. Relevant para reads as under:

“(i) The college was visited by the joint team of CBI and Department of AYUSH, on 02.08.2010 and observed that drug dispensing register of OPD/IPD, hospital duty register are not maintained whereas before the inspection team of the CCIM the

college reported that the aforesaid record is maintained properly which does not seem to be genuine. Such documentation appear to have been prepared as a after though (sic. an afterthought) and this indicate that college does not have genuine functional Unani Hospital having requisite OPD/IPD patients and clinical material.”

10. As per the above show cause notice the petitioners were directed to attend the hearing and they were also informed that in case they do not attend the hearing at the stipulated time and date it would be presumed that they have nothing further to say in the matter. The petitioners replied to the show cause notice wherein the petitioners agreed that the Drug Dispensing Registers of OPD/IPD were not maintained on 2.8.2010, however, from that date onwards the petitioners are maintaining the same, which was earlier shown to the CCIM inspection team. Dissatisfied with the reply to the show cause notice and after hearing the petitioners, the impugned order was passed by the respondents on 5.8.2013.
11. Learned counsel for respondent no.2 submits that primarily the only deficiency, on the basis of which permission was declined to the petitioners, was the number of beds and some other discrepancies which were not critical but having regard to the calculation error the petitioners have met the criteria with regard to the IPD beds.
12. Learned counsel for respondent no.1, however, submits that in view of other deficiencies, which are detailed in the order, the permission was rightly declined to the petitioner.
13. I have heard learned counsel for the parties and given my thoughtful consideration to the matter. The basic facts of this case are not in dispute which have been detailed above with regard to the inspection carried out and the deficiencies pointed out. The CCIM recommended for not granting permission to the college for the year 2011-2012 on the basis of non-fulfilling the criteria of 40% in the IPD. The observation on the

assessment of the visitation report reads as under:

“Observations on Assessment of Visitation Report:

Whether the college meets the requirements as per Policy for the year 2011-12	Yes / No.	No
	If No, the reason of shortfall	IPD is only 39.55% whereas as per decided policy, it should be at least 40%.

Note :- Shows the decided policy.

14. The calculation in this regard reads as under:

Total number of patients attended OPD from 1 st Jan to 31 Dec. 2010		39236
# Average attendance of patient in OPD [Total No. Of Patients attended OPD./Total No. Of working days (300)]		130 Per day
# Total number of Beds		100
Total number of patients admitted from 1 st Jan to 31 Dec. 2010		1833
Total number of Bed days occupied from 1 st Jan to 31 Dec. 2010		14437
Bed Occupancy	Number of bed days occupied x 100	39.55%
	Total Number of Beds* x 365 (* Note : IPD is calculated on 50 beds)	

15. The original record, which has been produced by counsel for respondent no.2, shows that in fact the observation made with regard to the IPD was on account of a bona fide error as the respondents had taken into consideration the parameters of Ayurveda, which is 100 days and with regard to the petitioners college, which is a Unani College, the criteria is

50 beds. It is further submitted that this error was also noticed by the Central Government, which is evident from the original file, which has been produced and, thus, this cannot be a ground for non grant of permission to the petitioners for the year 2011-2012.

16. A show cause notice was issued to the petitioner on 7.6.2011. The deficiency pointed out in the show cause notice has been extracted above in para 9 whereas in the impugned order dated 5.8.2013, the submission made by the college with regard to the deficiencies pointed out in the show cause notice was accepted and the following observations have been made by the Hearing Committee:

“Since the college representative has accepted the fact that the drug dispensing register of OPD/IPD were not maintained on 2.8.2010 from then onwards they are maintaining and the same was shown to the members of the inspection team of CCIM.

The hearing team examined all the Registers of IPD, OPD, Case Sheet of the patients, Duty Register of the Doctors & Nurses, Pathology Register, Drug dispensing registers, and cross checked of IPD, OPD registers with Drug & Diet given to the patients and found that they have started maintaining the records of the hospital in a proper way since it was pointed out in the visit of joint investigation team of CBI and AYUSH on 02.08.2010.”

17. After making the aforesaid observations further shortcomings have been noticed, which read as under:

Observations made by the Hearing Committee
Still then some shortcomings have been noticed while verifying the records and the observation are briefed as follows: • In the case investigation format signature of concerned physician are not mentioned following which it becomes difficult to identify the genuineness of treatment extended to the patients as advised by the physicians.

- In the follow up of IPD case sheets no observation of the admitted patients have been mentioned by the physicians on duty. This indicates that the hospital authority is reluctant to take on the responsibilities of the patients as far as their health is concerned, which they cannot neglect.
- The laboratory/radiological investigations conducted before admitting the patients in the IPD are not being done again during the course of treatment in the I.P.D. or at the conclusion of treatment, following which the status of the patients after treatment could not be ascertained and no conclusion of treatment could be done for each case.
- In all the case sheets no signature of concerned radiologist/pathologist are mentioned although a register is maintained for that.
- In most of the case sheets provisional diagnosis have not been mentioned following which the clinical efficacy of the System of Medicine could not be determined.
- Many cases who are admitted in the I.P.D. are left out from the hospital (LAMA) without the knowledge of concerned persons and without taking discharge card/referral slip/or taking treatment details from the hospital which raises doubts about the genuineness of patients actually came for treatment.
- Although no cash receipts for IPD/OPD admitted patients were available with the college authority during the verification of records, however the cash details for pathological/radiological examinations conducted in the hospital are mentioned in a register. In the O.P.D. slip all kinds of treatment facilities are being extended to the patients at the cost of Rs.10/- per slip which includes a few medicines also, which are available in the stock of the hospital.

18. The short question, which comes up for consideration before this Court is as to whether a final order declining permission to the petitioner could have been passed on the grounds mentioned in the final order for which no show cause notice was issued to the petitioner.

19. In the case of *Tarlochan Dev Sharma v. State of Punjab*, reported at (2001) 6 Supreme Court Cases 260, the Supreme Court of India has held

that there is a clear violation of the principles of natural justice where the impugned order was founded on the grounds which were at variance from the one in the show cause notice. Para 13 of the judgment reads as under:

“13. The show-cause notice alleged only this much that the Municipal Council had purchased a fogging machine of which payment was to be made but the appellant (as President of the Municipality) instructed the Executive Officer not to make the payment and this resulted in the working of the Municipal Council having been obstructed. The finding arrived at in the impugned order dated 1.10.1999 is different. There is no finding arrived at that the working of the Municipal Council was in any manner obstructed by the appellant having instructed the Executive Officer not to make the payment. The specific stand taken by the appellant in his reply was that the machine had certain inherent defects and was not working properly and hence it was on the advice of the Municipal Council that the appellant had desired the payment not to be made. The finding as to abuse of power is based mainly on the fact that the Executive Officer had prepared a cheque and signed the same on 20.11.1998 and yet the cheque was not presented to the bank resulting in delayed payment to the supplier of the fogging machine. The impugned order also states that the cheque was kept by the appellant in his custody for over two months. These events are subsequent to the date of the show cause notice, i.e. 19.8.1998 as also to the date of appellants reply i.e. 8.9.1998. Thus, briefly stated, the content of abuse of power, as stated in the notice dated 19.8.1998 was-asking the Executive Officer not to make payment while the order dated 1.10.1999 is founded on a subsequent event that in spite of the Executive Officer having prepared and signed the cheque on 20.11.1998, the appellant detained the cheque in his custody for about two months resulting payment being delayed and this amounted to abuse of power. There is no finding recorded in the impugned order that the explanation furnished by the appellant was factually incorrect. A President is supposed to act in the best interests of the Municipality which he is heading. In spite of fogging machine worth lakhs having been found by the Executive

Officer to be okay in its trial run, if the President was informed of the machine having certain inherent defects, there was nothing wrong in his asking the Executive Officer not to make the payment unless he was satisfied that the machine was fit for the purpose for which it was being purchased, all the more, when the funds for purchasing the machine were made available to the Municipality by the District Planning Board. Even accepting the allegations made against the appellant, as contained in the show cause notice, to be correct, his decision to withhold the payment may be said to be an erroneous or unjust decision. For this reason alone the appellant cannot be said to be guilty of an abuse of his powers. If any one suffered by delay in payment it was the supplier and not the Municipality. There is nothing in the show cause notice or the ultimate order to hold how the act of appellant had obstructed the working of Municipal Council or was against the interest of council. We are, therefore, clearly of the opinion that not only the principles of natural justice were violated by the factum of the impugned order having been founded on grounds at variance from the one in the show cause notice, of which the appellant was not even made aware of let alone provided an opportunity to offer his explanation, the allegations made against the appellant did not even prima facie make out a case of abuse of powers of the President. The High Court was not right in forming an opinion that the appellant was persuading the High Court to judicially review like an appellate court the finding arrived at by the competent authority. The present one is a case where the impugned order is vitiated by perversity. A conclusion of abuse of powers has been drawn from such facts wherefrom such conclusion does not even prima facie flow. The impugned order is based on non-existent grounds. It is vitiated by colourable exercise of power and hence liable to be struck down within the well settled parameters of judicial review of administrative action.”

20. Further in the case of *Saci Allied Products Ltd. U.P. V. Commissioner of Central Excise, Meerut*, reported at (2005) 7 Supreme Court Cases 159, The Apex Court has held in paras 16 an 17 as under:

“16. Thus according to the appellate Tribunal, since the dealers in Uttar Pradesh who purchased the goods from Syndet, and independent dealers in other parts of the country to whom the appellants directly sold the goods are different class of buyers, the appellants' price to the independent dealers cannot be taken as the basis for assessing the appellants' sales to Syndet in Uttar Pradesh. This finding of the appellate Tribunal is based on first proviso to Section 4(1)(a) of the Act. While the show cause notice and the order of the Collector proceeded on the basis of the invocation of third proviso to Section 4(1)(a) of the Act, the appellate Tribunal for the first time in the impugned order has sustained the proceedings on the basis of first proviso to Section 4(1)(a) of the Act. It was argued that the first proviso to Section 4(1)(a) of the Act was never invoked by the Department either in the show cause notice or in the impugned order and it was for the first time that the appellate Tribunal in the impugned order has sought to sustain the impugned order by invoking the first proviso to Section 4(1)(a) of the Act. It is thus seen that the Tribunal has gone totally beyond the show cause notice and the order of the Collector, which is impermissible. The appellate Tribunal cannot sustain the case of the Revenue against the appellants on a ground not raised by the Revenue either in the show cause notice or in the order.

17. In this context, we may usefully refer to the judgment of this Court in the case of *Reckitt & Colman of India Ltd. vs. CCE*, 1996 (88) ELT 641(SC). This Court held that it is beyond the competence of the Tribunal to make out in favour of the Revenue a case which the Revenue had never canvassed and which the appellants had never been required to meet.”

21. Learned counsel for respondent no.1, however, has failed to show as to whether any show cause notice was issued to the petitioner with regard to the other deficiencies and whether an opportunity of hearing was granted to the petitioner with regard to the deficiency as mentioned in the order. In the absence of any show cause notice the petitioner could not have been condemned unheard.

22. It has repeatedly been held by the Apex Court that fulfilment of natural justice is a mandatory requirement under Article 14 of the Constitution of India, for, natural justice is the antithesis of arbitrariness. In the present case, when the respondents found that the petitioner had not fulfilled certain other criteria, they should have issued a show cause notice to the petitioner with regard to other deficiencies, to enable the petitioner to rectify the same.
23. In my considered opinion, declining the permission to the petitioner without affording an opportunity of hearing and without issuing a show cause notice, amounts to arbitrariness on the part of the respondents and the same is violative of Article 14 of the Constitution of India.
24. Accordingly the present writ petition is allowed. The impugned order dated 5.8.2011 is set aside and the same will be treated a show cause notice to the petitioners. Learned counsel for the petitioners submits that reply to the show cause notice will be filed within three days from today without waiting for a copy of this order. The petitioners will be granted a personal hearing and thereafter a final order will be passed within four weeks from the date of receipt of this order.
25. The matter is remanded back to the Department of AYUSH, Government of India. The Government of India while passing a final order will take into consideration that the petitioners were granted permission for the years 2008-2009, 2009-2010, declined in the year 2011-2012, and thereafter a conditional permission was granted in the year 2012-2013, which has not been withdrawn. The Government of India will also take into consideration that since the permission was granted to the petitioners in the year 2012-2013, it is deemed that by this time the petitioners would have cured all the deficiencies and would be running the institute as per the guidelines laid down by the Indian

Medical Central Council Act, 1970. While passing the final order the Government will take into consideration the fact that the students have already been admitted and their future will also be considered by the respondent. The petitioners will be entitled to make a request to appropriate authority/University so that the students may be permitted to appear in the examination which are scheduled to commence from 16.5.2013 subject to petitioners and all the students filing an express undertaking that the result of the students will be kept in a sealed cover, no special equities will flow in their favour and subject to final order which may be passed by the Government of India. It is hoped that the request will be considered by the appropriate authority by 14.5.2013.

26. With these observations writ petition is disposed of.
27. Let a copy of this order be given DASTI to counsel for the parties under the signature of Court Master.

G.S.SISTANI, J

MAY 09, 2013

msr