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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 12th December, 2019

+ LPA 645/2019

SHUBHDEEP AYURVED MEDICAL COLLEGE & HOSPITAL

..... Appellant

Through: Mr. Siddharth R. Gupta & Mr. Harsh Mishra, Advs.

versus

UNION OF INDIA, MINISTRY OF AYUSH & ANR

..... Respondents

Through: Mr. Ashim Sood, CGSC with
Ms. Payal Chandra, Adv. for R-1
Ms. Archana Pathak Dave, Mr. Kumar Prashant &
Ms. Jayati Sharma, Advs. for R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

: **D.N. PATEL, Chief Justice (Oral)**

1. This Letters Patent Appeal has been preferred by the original petitioner whose W.P.(C) 6804/2019 was dismissed by the learned Single Judge *vide* judgment and order dated 26th August, 2019 (Annexure-A to the memo of this appeal) whereby the prayer of this appellant (original petitioner) for quashing of the order dated 28th May, 2018 passed by the respondents (Annexure P-1 to the memo of this appeal) for refusal of grant of Letter of Intent for increase in the intake capacity of Bachelor of Ayurvedic Medicine and Surgery (hereinafter referred to as 'BAMS') from

60 to 100 was not interfered with by the learned Single Judge. Thus, the order passed by the respondents refusing the grant of Letter of Intent for increase of intake from 60 to 100 in BAMS Course has now remained as it is which is at Annexure P-1. Being aggrieved and dissatisfied by the aforesaid judgment and order of the learned Single Judge, the original petitioner has preferred the present Letters Patent Appeal.

2. **FACTUAL MATRIX**

- This appellant is the original petitioner who is already running an Ayurveda Course – Bachelor of Ayurvedic Medicine and Surgery.
- They are already having intake capacity of 60 students permitted by the respondents.
- This appellant (original petitioner) applied for increase in the intake capacity from 60 to 100 students for the Academic Year 2019-2020 on 27th August, 2018.
- As per the provisions of the Indian Medicine Central Council Act, 1970 (hereinafter referred to as “the Act, 1970”) and the rules made thereunder, and as per the Office Memoranda inspection was carried out by the respondents of the institution of this appellant.
- On the basis of the two inspections dated 25th January, 2019 and 26th March, 2019, several deficiencies were pointed out by the respondents in accordance with the provisions of the Act, 1970 and the rules and the regulations made thereunder and the same was communicated to the appellant.
- There were as many as 11 deficiencies that were pointed out by the respondents in pursuance of a visit carried out by the respondents of this appellant institution. Thus, on the basis of the inspection of the

month of March, 2019, communication dated 28th May, 2019 (Annexure P-1 to the memo of this appeal) was issued, which was challenged in the writ petition preferred by this appellant being W.P.(C) 6804/2019.

- The learned Single Judge dismissed W.P.(C) 6804/2019 *vide* the judgment and order dated 26th August, 2019.
- Being aggrieved and dissatisfied by the aforesaid order, the present appeal has been preferred by the original petitioner.

3. **Arguments canvassed by the counsel for appellant (original petitioner)**

- Counsel appearing for the appellant (original petitioner) submitted that there is a vast difference between a Letter of Intent and Letter of Permission as per Regulation 9 of 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 (hereinafter referred to as “the Regulation, 2003”) enacted under the Indian Medicine Central Council Act, 1970. It has been submitted by the counsel for appellant that after the amendment to the Regulations in 2014 an intermediary stage has been incorporated i.e. Letter of Intent i.e. before grant of Letter of Permission, Letter of Intent is to be given by the respondents. This appellant (original petitioner) applied in time i.e. on 27th August, 2018 and the Letter of Intent was denied by the respondents on 28th May, 2019 (Annexure P-1 to the memo of this appeal). This denial of the Letter of Intent *de hors* the requirement of Regulation 9 (3) of the Regulations, 2003.
- Counsel appearing for the appellant (original petitioner) has taken this Court to the aforesaid Regulations and submitted that out of the 11

deficiencies pointed out by the respondents only 3 were the major deficiencies that were also highlighted by the respondents in their counter affidavit in the writ petition. It is also submitted that for an increase in the intake capacity from 60 to 100, the 3 deficiencies pointed out by the respondents were of such a nature that the same could be complied with only when a Letter of Intent was granted to increase the number of seats.

- Counsel appearing for the appellant (original petitioner) pointed out that this appellant cannot engage a staff in advance without there being any admission of the additional students. Thus, additional staff can be engaged only if a Letter of Intent for increase in the intake capacity is granted to this appellant. This aspect of the matter has not been properly appreciated by the learned Single Judge and hence the judgment and order dated 2^{6th} August, 2019 in W.P.(C) 6804/2019 passed by the learned Single Judge deserves to be quashed and set aside.
- It has been submitted by the learned counsel for appellant that out of the 11 deficiencies only 3 are to be kept in mind looking to the counter affidavit submitted by the respondents in the writ petition. This aspect of the matter has not been properly appreciated by the learned Single Judge and hence the judgment and order of the learned Single Judge deserves to be quashed and set aside.
- Counsel for the appellant has also submitted that after the inspection in May, 2019 the respondents permitted this appellant to continue its operations with the intake capacity of 60 with the same staff and other

infrastructure. Thus, if the Letter of Intent for increase in the intake capacity would have been granted to this appellant before the actual starting of the Academic Session, then the appellant could have complied with the 3 major requirements as highlighted in the counter affidavit filed by the respondents in the writ petition.

4. **Arguments canvassed by the counsel for respondents**

- Counsel for the respondents have submitted that no error has been committed by the learned Single Judge in dismissing the writ petition preferred by this appellant. On the contrary looking to paragraph 21 of the judgment and order passed by the learned Single Judge, the liberty was reserved with the original petitioner to prefer a fresh application for Academic Year 2020-21 for which the cut-off date is 31st August, 2019 and the same has not been availed by this appellant.
- It is further submitted by the counsel for respondents that looking to the prayer in the writ petition nothing survives in this appeal now because the cut-off date for preferring an application for Academic Year 2020-2021 i.e. 31st August, 2019 has already been passed. Furthermore, the prayer in the writ petition was pertaining to the year 2019-2020 which has also gone by now. The session pertaining to 2019-2020 has also been commenced.
- It is further submitted by the counsel for respondents that in pursuance to the application preferred by this appellant (original petitioner) for increase in the intake capacity for BAMS Course, the inspecting team appointed the respondents carried out the inspection at the appellant's premises in the months of January and March, 2019. Several

deficiencies were pointed out on the basis of the inspection conducted. These deficiencies were to be removed by this appellant so that the request for increase in the intake capacity can be appreciated by the respondents. These deficiencies are as many as 11 as per the communication by the respondents to this appellant. There were 11 deficiencies marked in toto, with the condition that with the passage of time, if any deficiencies were removed by this appellant, the appellant can always bring to the notice of the respondents so that the prayer for increase in the intake capacity can be appreciated by the respondents keeping in mind the cut-off date for the relevant Academic Year.

- It is further submitted by the counsel for respondents that the prayer in the writ petition was for the Academic Year 2019-2020. The deficiencies were pointed out by the respondents in the month of May, 2019. If any corrective measures were taken by this appellant keeping in mind the cut-off date i.e. 31st August, 2019, the same could have brought to the notice of the respondents. However, the deficiencies remained till the cut-off date for the Academic Year 2019-20 had already passed. Hence, now no relief as prayed for in the writ petition can be granted. Even for the next Academic Year i.e.2020-21, the cut-off date has already passed and no application has been preferred by this appellant (original petitioner) for an increase in intake capacity for BAMS Course, **despite there being observations in paragraph 21 of the order dated 26th August, 2019 in W.P.(C) 6804/2019 passed by the learned Single Judge.**

- It is further submitted by the counsel for respondents that denial to

issue a Letter of Intent *vide* communication dated 28th March, 2019 (Annexure P-1 to this appeal) is in consonance with the provisions of the Regulations, 2003 read with the provisions of the Act, 1970, especially Section 13A (8)(c) of the Act, 1970. These aspects of the matter have been properly appreciated by the learned Single Judge while dismissing the writ petition preferred by this appellant, hence, this matter cannot be entertained by this Court.

5. **REASONS**

Having heard the counsel for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this appeal mainly for the following facts and reasons:-

- (i) This appellant is the original petitioner who preferred W.P.(C) 6804/2019 challenging the order dated 28th May, 2019 passed by the respondents (Annexure P-1). By this the communication of the respondents to get a Letter of Intent to increase the intake capacity of BAMS Course from 60 to 100 was refused. Hence, a petition was preferred by this appellant bearing No.6804/2019 and the petition has been dismissed *vide* order dated 26th August, 2019. Thereafter, the original petitioner has preferred the present appeal.
- (ii) This appellant (original petitioner) is already running an Ayurveda College with the intake capacity of 60 students for BAMS Course.
- (iii) This appellant applied for an increase in the intake capacity from 60 to 100 on 27th August, 2018.
- (iv) In accordance with the provisions of the Indian Medicine Central

Council Act, 1970 read with 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, inspection of the appellant's institute was carried out by the respondents on 25th January, 2019 and on 26th March, 2019.

- (v) The communication order listing the deficiencies was in fact dated 8th May, 2019 and the final order passed by the respondents denying the issuance of the Letter of Intent was dated 28th May, 2019.
- (vi) On the basis of the aforesaid inspection, several deficiencies as pointed by the respondents were listed in the final order dated 28th May, 2019 which read as under:

- “i. 46 Teaching Staff is available against the requirement of 55 Teaching staff as per RMS, 2016.*
- ii. There is no Professor available in the department of Ayurved Samhita Siddhant required for PG as per PG Regulation, 2016.*
- iii. There are 02 higher Faculty available in the department of Rasa Shastra & Bhaishjya Kalpana, Rog Nidan Avum Vikriti Vigyan, Kayachikitsa and Panchkarma against the minimum requirement of 03 in each. (However college has-submitted the details of 14 consented teachers).*
- iv. There is 01 Laboratory Technician available in the dept. Of Rasa Shastra & Bhaishjya Kalpana against the minimum requirement of 02 as per RMS, 2016.*
- v. There is 02 Laboratory Technician available in the dept. of Rog Nidan against the minimum requirement of 03 as per RMS, 2016.*

- vi. *Few instruments/equipments are not available in following departments in Rasa Shastra & Bhaishjya Kalpana Laboratory and Physiology (Kriya Sharir) Laboratory as per RMS, 2016.*
- vii. *In IPD data department wise IPD records and IPD diet records are not available as per RMS, 2016.*
- viii. *Animal house is not available as per PG regulation, 2016.*
- ix. *In operation Theatre Anesthesia/consent records are not available as per RMS, 2016.*
- x. *In Panchkarna Details of intended materials records are not available as per RMS, 2016.*
- xi. *As per visitors observation documentation/record keeping is not maintained properly as per RMS, 2016.”*

(vii) Thus, the aforesaid deficiencies were initially pointed out by the order dated 8th May, 2019 issued by respondent No.1 and finally the Letter of Intent was refused *vide* order dated 28th May, 2019 issued by respondent No.1 (Annexure P-1 to the memo of this appeal) that was challenged in the writ petition.

(viii) Looking to the facts and circumstances of the case, the appellant submits that out of these 11 deficiencies as pointed by the respondents, 3 were major deficiencies and the same has been highlighted in the counter affidavit filed by the respondents in the writ petition, and is also discussed in the impugned judgment and order of the learned Single Judge. Nonetheless looking to the order dated 28th May, 2019 (Annexure P-1) paragraphs 8 and 9 thereof read as under:

“8. WHEREAS, the CCIM has also not recommended to the Govt. of India for issuing the Letter of intent to increase in intake capacity in existing UG (BAMS) course due to several deficiencies and the applicant is

also not fulfilling pre-requisites as mentioned in para 7 above;

9. *WHEREAS, in view of position explained in para 3 to 8 above, considering the recommendations of CCIM, submission of the representatives of the proposed college during Hearing and observations of Hearing Committee, the case does not appear fit to issue Letter of Intent to increase in intake capacity in existing BAMS (UG) course from 60 to 100 seats the academic session 2012-20;*

10. *NOW, THEREFORE, in view of the shortcomings and deficiencies particularly about the non-availability of having required no. of Teaching Staff, required no. of Professor in Samhita & Siddhant deptt., required no. of Higher faculties in Rasa Shastra & Bhaishjya Kalpana, Rog Nidan avum Vikriti Vigyan, Kayachikitsa and Panchkarma which are essential pre-requisites to make application and to establish a new Ayurveda college in terms of the provisions of the IMCC Act and the relevant Regulations; it has been decided by the Central Government not to issue Letter of Intent to the Principal, Shubhdeep Ayurved Medical College & Hospital, Village-Datoda, Khandwa road, Distt-Indore (MP) to increase in intake capacity in BAMS (UG) course from 60 100 seats in Shubhdeep Ayurved Medical College & Hospital, Village-Datoda, Khandwa Road, Distt-Indore (MP) from the academic session 2019-20 under Section 13A of the IMCC ACT, 1970. Hence, the application/scheme dated 27.08.2018 of the applicant for the above purpose is disapproved.”*

(emphasis supplied)

- (ix) The underscored recitals in the order passed by the respondents dated 28th May, 2019, make it apparent that it was not only on the basis of the 3 deficiencies that the Letter of Intent was denied. On the contrary, the Letter of Intent was denied after looking at the overall deficiencies as pointed out by the respondents.

- (x) For ready reference, Regulation 9 of 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 reads as under:

“9. Permission Order –

The order passed by the Central Government under sub-section (9) of section 13A shall clearly indicate the preliminary requirement about setting up of buildings, infrastructural facilities, medical and allied equipments, faculty and staff before admitting the first batch of students.”

- (xi) Thus, the Letter of Intent cannot be given mechanically by the respondents but as per the provisions of Section 13A(8)(c) of the Indian Medicine Central Council Act, 1970. For ready reference Section 13A(8)(c) of the Act, 1970 reads as under:-

“(c) whether necessary facilities in respect of staff, equipment, accommodation, training, hospital or other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;”

- (xii) Thus, merely because an application was preferred by this appellant in advance for the next academic year i.e. before 31st August, that does not mean that the respondents should issue the Letter of Intent mechanically even in the case of a running college or institution. There may be existing infrastructure, existing staff, existing equipments with the running institutions but looking to the provisions of Section 13A(8)(c) of the Act, 1970 read with Regulation 9 of the Regulations, 2003 the respondents have all the power, jurisdiction and

authority to deny the Letter of Intent, especially keeping in mind the deficiencies were already pointed out by the respondents much in advance (in the facts of the present case it is on 8th May, 2019 whereas the cut-off date is 31st August for the next Academic Session).

- (xiii) In the facts of the present case, the cut-off date i.e. 31st August, 2019 is already over for the Academic Year 2020-2021. The prayer in the present writ petition was made for the Academic Year is 2019-2020 and therefore, at present the cut-off date for that Academic Year is over as Academic Session has already started and this prayer as made in the writ petition, cannot be granted now. Even for the next Academic Year i.e. 2020-21, the cut-off of date 31st August, 2019 has already passed and no application for an increase of the intake capacity has been preferred by this appellant despite the observations in paragraph 21 of the impugned order. For ready reference paragraph 21 of the judgment and order of the learned Single Judge dated 26th August, 2019 in W.P.(C) 6804/2019 reads as under:

“21. The defence provided in paragraph 17 of the counter affidavit filed on behalf of the Central Government to justify its actions in the past where LOIs have been issued despite the fact that the faculty was not in place based on the logic that they were new institutions only goes to show that LOI can be issued even to existing institutions with a condition that the faculty is in place before the LOP is issued. Therefore, while I am not inclined to grant any relief in the petition for the current academic year, it would be open to the petitioner to approach the respondents for the succeeding academic year i.e. academic year 2020-2021 for increase in intake.”

- (xiv) Thus, no error has been committed by the respondents while denying

the Letter of Intent to this appellant looking to the overall deficiencies as pointed out by the respondents in their communication dated 8th May, 2019 which have been enumerated hereinabove from (i) to (xi). A few of them have been rectified by this appellant. The appellant can always apply for the next Academic Session keeping in mind the cut-off date of 31st August in the previous year.

- (xv) The aforesaid aspects of the matter have been properly appreciated by the learned Single Judge while deciding W.P.(C) 6804/2019 *vide* judgment and the order dated 26th August, 2019. We are in full agreement with the reasons given by the learned Single Judge and hence, there is no substance in this appeal and the same is hereby dismissed.

C.M. No. 43993/2019 (*Stay*)

6. In view of the final order passed in LPA 645/2019, this application stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

DECEMBER 12, 2019
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