

Court No. - 10

Case :- WRIT - C No. - 28058 of 2023

Petitioner :- Dr B.S. Kushwah Institute Of Medical Sciences And Another

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Pranjal Singh, Santosh Kumar Pandey

Counsel for Respondent :- A.S.G.I., C.S.C., Vivek Kumar Singh

Hon'ble Kshitij Shailendra, J.

1. Heard Shri H.N. Singh, learned Senior Advocate assisted by Shri Pranjal Singh, learned counsel for the petitioners and Shri Vivek Kumar Singh, learned counsel for respondent No. 2.

2. The petitioners wanted to establish a Medical College to run M.B.B.S. Course and, for that purpose, they applied before the respondent No. 2 for recognition. The petitioners' claim has been rejected under the first order impugned dated 24.05.2023 by pointing out certain shortcomings in consonance with the provisions of sections 28 and 29 of National Medical Commission Act, 2019. The Statutory First and Second Appeals against the aforesaid order have also been dismissed.

3. Shri H.N. Singh, learned Senior Advocate has argued that the orders impugned are based upon the assessment reports and though there are no shortcomings on the part of the petitioners, contrary observations have been recorded.

4. I have perused the entire record and I find that successively the Authorities have recorded shortcomings regarding teaching faculty and residents doctors. These observations are based upon the enquiry conducted by the Authorities and I am of the opinion that

in the event of inviting response from the respondents that would be certainly in consonance with the assessment/enquiry reports, the writ petition would remain pending for a considerable period of time and would serve no purpose.

5. I have perused the provisions of the Act of 2019, particularly sections 28 and 29 whereof, which read as follows:

"28. Permission for establishment of new medical college.

(1) No person shall establish a new medical college or start any postgraduate course or increase number of seats without obtaining prior permission of the Medical Assessment and Rating Board.

(2) For the purposes of obtaining permission under sub-section (1), a person may submit a scheme to the Medical Assessment and Rating Board in such form, containing such particulars, accompanied by such fee, and in such manner, as may be specified by the regulations.

(3) The Medical Assessment and Rating Board shall, having due regard to the criteria specified in section 29, consider the scheme received under sub-section (2) and either approve or disapprove such scheme within a period of six months from the date of such receipt:

Provided that before disapproving such scheme, an opportunity to rectify the defects, if any, shall be given to the person concerned.

(4) Where a scheme is approved under sub-section (3), such approval shall be the permission under sub-section (1) to

establish new medical college.

(5) Where a scheme is disapproved under sub-section (3), or where no decision is taken within six months of submitting a scheme under sub-section (1), the person concerned may prefer an appeal to the Commission for approval of the scheme within fifteen days of such disapproval or, as the case may be, lapse of six months, in such manner as may be specified by the regulations.

(6) The Commission shall decide the appeal received under sub-section (5) within a period of forty-five days from the date of receipt of the appeal and in case the Commission approves the scheme, such approval shall be the permission under sub-section (1) to establish a new medical college and in case the Commission disapproves the scheme, or fails to give its decision within the specified period, the person concerned may prefer a second appeal to the Central Government within thirty days of communication of such disapproval or, as the case may be, lapse of specified period.

(7) The Medical Assessment and Rating Board may conduct evaluation and assessment of any medical institution at any time, either directly or through any other expert having integrity and experience of medical profession and without any prior notice and assess and evaluate the performance, standards and benchmarks of such medical institution.

29. Criteria for approving or disapproving scheme.

While approving or disapproving a scheme under section

28, the Medical Assessment and Rating Board, or the Commission, as the case may be, shall take into consideration the following criteria, namely:--

(a) adequacy of financial resources;

(b) whether adequate academic faculty and other necessary facilities have been provided to ensure proper functioning of medical college or would be provided within the time-limit specified in the scheme;

(c) whether adequate hospital facilities have been provided or would be provided within the time-limit specified in the scheme;

(d) such other factors as may be prescribed:

Provided that, subject to the previous approval of the Central Government, the criteria may be relaxed for the medical colleges which are set up in such areas as may be specified by the regulations."

6. A bare perusal of aforesaid provisions reveals that the Institution has to submit a scheme before the respondent No. 2 for the purposes of obtaining permission and the respondents are competent to consider the scheme and after providing opportunity to rectify the defects pointed out by the respondents, they can take a decision either way.

7. There is nothing in the aforesaid provisions to assume that any exercise conducted under the aforesaid provisions in relation to scheme offered by the concerned Institution would be a one time exercise. Rather the provisions are to facilitate opportunity to the

Institution to rectify the defects. Even otherwise, it cannot be the interpretation of any law relating to the grant of recognition that if a scheme is rejected on the basis of certain shortcomings based upon the statutory mandate, the claim would come to an end for all times to come even when, the defects established are rectified by the concerned Institution.

8. While finding no infirmity in the orders impugned, which record the factual position based upon the assessment as a consequence of physical verification, this writ petition is **disposed of** permitting the petitioners to rectify the shortcomings pointed out under the orders impugned within a period of **three months** from today.

9. As soon as the petitioners rectify the shortcomings, they may again approach the respondent No. 2 with appropriate application and if such an application is filed, the same shall be considered on its own merits, the removal of rectification of the defects shall be verified by the concerned Authorities and appropriate orders shall be passed within a period of **two months** from the date when the petitioners submit a fresh application. The Authorities shall also look into other necessary factors and components while examining the fresh application.

Order Date :- 27.10.2023

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