

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1632 of 2014
Decided on : 29.11.2016

Gaur Brahman Ayurvedic College & Hospital, Rohtak
.... Petitioner

Versus

Union of India & others
.... Respondents

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

Present: Mr.R.K.Malik, Sr.Advocate
with Mr.Kuldeep Sheoran, Advocate, for the petitioner.

Mr.Anil Rana, Advocate, for
Mr.Puneet Gupta, Advocate, for respondent No.1.

Mr.Ashok Tyagi, Advocate, for respondent No.2.

None for respondent No.3.

Mr.Gaurav Jindal, Addl.A.G., Haryana, for respondent No.4.

G.S. Sandhawalia, J. (Oral)

Petitioner seeks quashing of the order dated 22.11.2013 (Annexure P9) vide which, the permission for effecting admission/regularization of the BAMS course of 70 seats under Section 13C of the Indian Medicine Central Council Act, 1970, for the academic session 2011-12, was declined by respondent No.1. The reasoning given in the order is that the functionality of the hospital from July, 2010 to June 2011 was doubtful and the college did not have the genuinely functional Ayurvedic Hospital, having a genuine patient load of 100 patients per day in OPD and 40% IPD bed occupancy, during the said assessment period.

It is not disputed that on an earlier occasion, on 23.06.2011 (Annexure P2), by way of show cause notice, two deficiencies had been

pointed out which pertained to the fact that there were 42 eligible teachers against the requirement of 45 and that the average attendance was only 97.36 in OPD against the approved norm of minimum 100 patients per day.

Relevant portion reads as under:

“i. There are only 42 eligible teachers against the minimum requirement of total number of 45 eligible teachers i.e., 90% of the total requirement of 35 eligible teachers as per the approved relaxed norm for the session 2011-12. the college has submitted a list of 46 teachers but 4 teachers is found to be ineligible by the CCIM. The copy of evaluation of teachers mentioning the reason of ineligibility is annexed at annexure 1.

ii. Daily average attendance in all sections of OPD's during 1st January, 2010 to 31st December, 2010 (considering 300 working days) is only 97.36 against the approved norm of minimum 100 patients per day for the session 2011-12.”

Resultantly, vide order dated 25.08.2011, permission was declined for the academic session 2011-12. The petitioners, thereafter, challenged the said decision by filing CWP-18961-2011, which was heard with a bunch of cases, the lead case of which was CWP-17757-2011 titled *Mai Bhago Ayurvedic College & Hospital Vs. Union of India & others* (Annexure P3). It is pertinent to mention that while issuing notice of motion, in CWP-18961 of 2011 on 05.10.2011, the college had been permitted to participate in the counselling, subject to the condition that the students who will opt for the petitioner's college, shall be required to give an affidavit to the effect that in the event of failure of the writ petition, they shall not claim any equitable right nor shall seek their transfer to another recognized college. Counsel for the petitioner submits that the said students have already passed out the said course also, which is of 4 ½

years' duration.

Accordingly vide order dated 01.11.2013 (Annexure P-3) keeping in view the fact that the minimum standards for granting permission for the Ayurvedic, Siddhi and Unani colleges for the academic session 2011-12 had been revised vide circular dated 18.03.2011 and there was less time for the colleges to comply with the same, it was directed that fresh inspection be carried out, as per the minimum standards, which had been revised vide circular dated 18.03.2011. It was further noticed that necessary permission was to be accorded for the said session.

The second inspection, thus, was done on 11.06.2013 (Annexure P4). As per the report of the said Committee, submitted on 23.08.2013, the approved teachers were 49 on 30.06.2011, one day prior to the commencement of session 2011-12 and it was not recommended for 2011-2012 on the ground that a genuinely functional hospital was not in place. The relevant part of the certification by the visitation team reads as under:

“Certification by the visitation team:

IX. Above listed documents and registers are examined thoroughly in relation to list of available number of teachers submitted by the college. On examining all the above documents, the names of teachers mentioned in the list are correlating with other documents listed above. On the basis of all the above documents, it is certified that college was having 49 teachers on June 30th, 2011, i.e., one day prior to the date of commencement of academic session 2011-12.”

xxxxxxx

Whether the college meets the requirements as per Policy for the year 2011-12	Yes/No	Not recommended
	If No, the reason of shortfall	1. There is no genuinely functional hospital
		2.
		3.

Thereafter, show cause notice dated 05.07.2013 was also issued (Annexure R1) that the college did not meet the criteria for getting the permission for the session 2011-12, as per the visitation team's report. As per the report, the average attendance of the patients in the OPD was 114 per day and the total number of patients who attended the OPD for the session in question was 34400. Against the total number of beds of 150, admission was of 3109 and the total number of beds occupied was 34588 and the percentage of calculation came to 63.17% and as per the visitor, 59.22%. Resultantly, show cause notice dated 02.08.2013 (Annexure P5) was issued, to bring the record and for hearing by respondent No.1. Resultantly, the impugned order dated 22.11.2013 (Annexure P9) had been passed on the reasoning, mentioned above.

The said order had been stayed vide interim order dated 29.01.2014, while noticing that for the subsequent academic session 2012-13, the inspection had been done on 13/14.02.2012 and it had been found that the college was fulfilling the approved criteria. It was also noticed that for the subsequent academic session 2013-14, inspection had been carried out on 03/04.07.2013 and approval had been given and additional permission had been granted to take admission to the 70 undergraduate seats.

As noticed, prior to the inspection conducted on 11.06.2013, an earlier inspection had already been conducted on 13/14.02.2012 and it had been found that the college fulfills the approved criteria. Relevant portion of the order dated 19.07.2012 (Annexure P10) reads as under:

“It is found that the college is fulfilling the approved criteria as follows:

(i) Teachers

- a. For UG course: 90% eligible teachers, 50% Higher Faculty (Professor + Reader) and at least one teacher in each Department,
- b. For PG course(s): In addition to the UG course, 1 Higher Faculty + 1 Lecturer in the concerned PG department, fulfillment of teacher-student ratio (1:3 for Professor, 1:2 for Reader and 1:1 for Lecturer),

(ii) Beds in hospital:

- a. Minimum 100 beds in hospitals of Ayurveda Colleges up to 50 intake capacity + 1:2 student bed ratio for 51-100 students intake capacity.
- b. Minimum 100 bedded hospital for PG Colleges of Ayurveda + 1:4 student-bed ratio for each PG clinical seat over the total requirement of beds for UG students' intake capacity,

(iii) Daily average of 100 patients per day in OPDs of the hospital during last year,

(iv) 40% bed occupancy for UG courses and 50% bed occupancy for PG courses in IPDs of the hospital, and

(v) Fulfillment of provisions including staff requirement under relevant PG Education Regulations.”

This aspect has not, at all, been appreciated by respondent No.1, while passing the impugned order whereby it has come to the conclusion that there was doubt, as such, regarding the functionality of the institution for the check period. It is to be noticed that the inspection team also on 11.06.2013, had specifically mentioned that there were 114 patients

against the 100 patients per day and the bed occupancy was over and above 40% being 59.22%. The said factor has also not been taken into consideration while passing the impugned order, declining the permission for making admission for the relevant year. Once respondent No.1 had already granted the permission for the subsequent years on an earlier occasion on 19.07.2012, after coming to the conclusion that the college had the infrastructure in place, as per the inspection report dated 13/14.02.2012, the subsequent order declining the permission for an earlier period, for which, inspection was carried out later, cannot be held to be justified, in any manner. It is also to be noticed that the earlier show cause notice dated 23.06.2011, as reproduced above, was on a different basis, regarding shortage of staff and having less average attendance, which is not the case now. The OPD average attendance level had also gone up from 97.36% to 100 patients per day, as would be clear from the order dated 19.07.2012, granting recognition for 2012-13.

Accordingly, the present writ petition is allowed, the impugned order dated 22.11.2013 (Annexure P9) is quashed and accordingly, the admissions granted, as per the interim directions issued in CWP-18961-2011, are regularized. The college and the concerned authorities shall issue necessary certificates to the students for the said course.

NOVEMBER 29th, 2016
saillesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable:	Yes/No
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