

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Misc. No.908 of 2016 in/and
Civil Writ Petition No.27160 of 2015
Date of decision: 14.7.2016

Vardaan Medic Mission (Regd.)

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Mr. Sameer Sachdeva, Advocate for the petitioner.

Ms. Lavanya Paul, Assistant Advocate General, Punjab.

G.S.SANDHAWALIA, J. (Oral)

Civil Misc. No.908 of 2016

Prayer made in the present Civil Misc. Application for placing on record true typed/translated/photocopies of documents as Annexures P/9 and P/10 by granting exemption from filing certified copies thereof is allowed.

Annexures P/9 and P/10 are taken on record.

The Civil Misc. Application stands disposed of accordingly.

Civil Writ Petition No.27160 of 2015

The petitioner is aggrieved against the non extension of NOC which was initially issued to him on 10.10.2008 (Annexure P/1) for starting B.Sc. Nursing Course with an intake of 60 seats.

It is not disputed that two extensions were granted to the petitioner on 28.12.2010 (Annexure P/9) till 9.10.2011 and thereafter on 17.10.2013 (Annexure P/10) from 10.10.2011 till academic session 2013-14 on the same terms and conditions.

Counsel for the petitioner has stressed that on account of

rejection by the Indian Nursing Council (INC), the petitioner could not start the nursing course. It is pointed out that the petitioner had filed **Civil Writ Petition No.23603 of 2013** which was decided on 6.5.2014 (Annexure P/2) whereby fresh decision was ordered to be taken by 30.6.2014. On account of another rejection, petitioner filed **Civil Writ Petition No.16087 of 2014** which was decided on 8.12.2014 (Annexure P/3) in favour of the petitioner and direction was issued that recognition and approval be granted along with costs of ₹ 10,000/- which was upheld in **LPA No.179 of 2015** decided on 8.4.2015 (Annexure P/4). Thereafter, permission was granted with an intake of 40 seats on 28.7.2015 (Annexure P/5).

During the pendency of litigation, the petitioner had applied for extension on 18.11.2014 (Annexure P/6) and thereafter on 12.5.2015 (Annexure P/7) whereby extension of essentiality certificate/NOC was sought for. Thus, it is apparent that the petitioner though now has got necessary permission from the INC but on account of lack of validity of the NOC it has not been able to proceed further with the admission process.

The State in its reply has been stressed that on account of 5 years period having expired extension cannot be granted as various factors are to be kept in mind for granting of NOC. Accordingly, the plea is taken for re-inspection.

A perusal of the terms of NOC would go on to show that the petitioner institute was to get affiliation from the concerned University and admissions were not to be made without prior approval of Punjab Government. The reservation of the seats were to be done as per Punjab Government instructions and various conditions regarding the pay scales and the inspection was to be done on yearly basis. The admission was also

to be done as per criteria fixed by the Punjab Government and the project was to be implemented as per the approved project report within prescribed time. The Government had right to withdraw NOC if the conditions were not fulfilled and construction was to be completed within one year and the admission was to be made within two years.

The reason for declining the extension is solely on the ground that five years have expired and the institute has not started the relevant course and can apply for grant of fresh NOC.

The factual aspect has already been noticed in detail above. The petitioner could not get admission going on account of lack of permission which has now been granted on 28.7.2016 (Annexure P/5). The essentiality certificate from the State was one of the condition which was required for purpose of starting the course and for affiliation. The petitioner institute has to comply with the various conditions of the terms of NOC and Government has right to withdraw the NOC if any of the condition is not fulfilled. The petitioner has a valid ground on account of which it could not comply with the term and conditions of starting the institute within a period of two years as noticed above. In such circumstances, decision of the Government as such not to grant extension is based on non application of mind as in the application dated 18.11.2014 (Annexure P/6) the factor of pendency of litigation was also pointed out. Vide letter dated 12.5.2015 (Annexure P/7) the judgment of the Division Bench passed in LPA No.179 of 2015 was also appended to show that the matter has been decided in favour of the petitioner.

In such circumstances, the decision of the Government as such not to grant extension on the ground that the petitioner had failed to comply

with the term and condition of starting institute within a period of two years is not justified. Therefore the impugned order dated 9.9.2015 (Annexure P/8) is liable to be quashed on this ground alone.

As per Clause 2 (viii) of the terms and conditions for the NOC, the Government has a right to withdraw NOC if any condition was not fulfilled but necessary show cause notice is required to be issued. However, reasonable and sufficient cause is available with the petitioner for not getting the institute started within prescribed time on account of litigation and therefore, rejection of grant of extension of NOC is totally extraneous and cannot be justified. In such circumstances, the impugned order dated 9.9.2015 (Annexure P/8) is quashed.

Accordingly, the present writ petition is allowed with a direction to the respondent to extend the NOC within a period of four weeks from today. It is, however, made clear that it will be open to the respondent to issue show cause notice in case in future if there is any violation as such after following the due procedure.

July 14, 2016
Pka

(G.S.SANDHAWALIA)
Judge