

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.25929 of 2017 & W.M.P.Nos.27477 & 27478 of 2017

R.V.S.Medical Trust, rep. by its
Chairman, K.V.Kuppuswamy,
Kumaran Kottam Campus,
Trichy Road, Kannampalayam,
Sullur, Coimbatore-641 402. Petitioner

Vs.

1. The Secretary,
Ministry of Ayush,
'B' - Block, G.P.O.Complex,
INA, New Delhi-110 023.
2. The Under Secretary,
Ministry of Ayush,
'B' - Block, G.P.O.Complex,
INA, New Delhi-110 023.
3. Central Council of Indian Medicine,
61-65, Institutional area,
Janakpuri 'D' - Block,
New Delhi-110 058. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned orders F.No.R.12011/82/2017-EP(IM-1), Ministry of Ayush, "AYUSH BHAWAN", 'B' Block, GPO Complex, INA, New Delhi-110 023, dated 28.07.2017 and F.No.R.12011/82/2017-EP(IM-1), Ministry of Ayush, "AYUSH BHAWAN", 'B' Block, GPO Complex, INA, New Delhi-110 023, dated 30.08.2017 issued by the second respondent herein and quash the same with a consequential direction to the respondents to consider the petitioner application dated 29.06.2017 on merits and in accordance with law after resubmission of the same by the petitioner Trust and grant permission to the petitioner for the admission of 60 students in the Academic Session 2018-19 by establishing a new Ayurveda College in the name of "RVS Ayurveda Medical College, Kumarankottam Campus, Kanaampalayam, Coimbatore-641 402."

For Petitioner : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.C.V.Vijayakumar

For Respondents: Mr.N.Rajan, CGSC
for RR1 & 2

Mr.Kanagaraj, for R3

O R D E R

The petitioner, which is a Trust, and also running a Siddha Medical College sought for establishment of an Ayurveda College. Earlier, the petitioner applied for approval/permission to the first respondent/Central Government by its application dated 12.10.2009. After inspection by the third respondent/the Central Council of Indian Medicine, the petitioner's application was rejected on 18.02.2010, pointing out certain deficiencies. Thereafter, the petitioner is said to have rectified the deficiencies and re-submitted the application for approval on 23.03.2017, which was rejected on 09.05.2017, stating that there is no provision under the Indian Medicine Central Council Act, 1970 (in short "IMCC" Act), to re-submit their application, where it has been disapproved. Thereafter, the petitioner made a fresh application on 29.06.2017, along with the required Demand Draft for an amount of Rs.3,50,000/- drawn in favour of the Central Council of Indian Medicine, seeking permission of the Central Government under Section 13-A of the IMCC Act, to establish a new Ayurveda College for the academic year 2017-18, with a capacity of 60 seats in B.A.M.S.(UG). The said application was rejected by order dated 30.08.2017, on the ground that the application has been filed beyond the limitation. The said order has been challenged before this Court.

2.Mr.T.R.Rajagopalan, learned counsel appearing for the petitioner, would submit that the Trust is already running a Siddha College and in 2010 itself, the petitioner has made application for establishment of Ayurveda College and an inspection was made. Based on the deficiencies pointed out in the inspection report, the petitioner's application was rejected. Thereafter, the petitioner re-submitted the application on 23.03.2017, and the same was also rejected on 09.05.2017, stating that there is no provision for re-submission and the petitioner has to apply afresh. Even the fresh application was rejected. He submits that time limit prescribed under the Act, is only a procedural one and it is not mandatory and therefore, no prejudice will be caused to the respondents.

Secondly, he would submit that since the petitioner's application was already rejected and when it was re-presented, it should be treated as a continuation of the earlier one. Moreover, there is not much applications pending either before the Council or before the Government and therefore, by directing the respondents to consider the application, no prejudice would be caused to the respondent, on the other hand, the petitioner would be benefited.

3.Mr.Rajan, learned counsel appearing for respondents 1 and 2 would submit that there is no provision for re-presenting the application, which was rejected on 18.02.2010. Therefore, under Section 13-A(5) of the IMCC Act, the parties have to submit a fresh scheme. Therefore, rightly the respondent has rejected the petitioner's application. Further, he would submit that as per the schedule under Regulation 5, for receipt and process of the application, time has been earmarked from 1st April to 30th April, whereas, the petitioner made application only on 20.06.2017. Therefore, it was rightly rejected.

4.Heard Mr.Kanagaraj, learned counsel appearing for the third respondent, who has supported the respondent Council.

5.Heard the parties and perused the materials placed on record.

6.A perusal of the records would show that the petitioner has already submitted his application for approval under Section 13-A of the Act as early as on 12.10.2009. Based on the application, inspection was made. However, the application was rejected on 18.02.2010, pointing out certain deficiencies. According to the petitioner, after rectifying all the mistakes, which have been pointed out in the inspection report based on the petitioner's earlier application dated 12.10.2009, the petitioner re-submitted the application on 23.03.2017, that was rejected on 09.05.2017.

7.As rightly pointed out by Mr.Rajan, learned counsel appearing for respondents 1 and 2, Section 13-A(5) speaks about approval and disapproval of scheme and submitting a fresh scheme for approval. Section 13-A(5) of the IMCC Act, reads as under:

"The Central Government may, after considering the scheme and recommendations of the Central Council under sub-section (4) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or medical college

concerned and having regard to the factors referred to in sub-section (8), either approve the scheme with such conditions, if any, as it may consider necessary or disapprove the scheme and any such approval shall constitute as a permission under sub-section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or medical college concerned a reasonable opportunity of being heard:

Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme as if such scheme had been submitted for the first time under sub-section (2)."

8. From the above, it is clear that once an application has been rejected, only a fresh application has to be given. In view of the above provision, the petitioner cannot re-present once a rejection order was passed on 18.02.2010, rejecting the petitioner's application for approval dated 12.10.2009, and the same cannot be revival by way of re-presenting the said application on 23.03.2017. That is the reason why by letter dated 09.05.2017, the respondents rightly rejected the petitioner's re-presented application.

9. After the order passed on 09.05.2017 only, the petitioner has filed a fresh application on 29.06.2017. The said application was rejected on 30.08.2017, stating that time to submit an application for establishing the new Ayurveda College is from 1st April to 30th April of any calendar year, as per the procedure prescribed under 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". Admittedly, the petitioner filed the fresh application dated 29.06.2017, which is beyond 30th April of 2017, and therefore, the application was rightly rejected beyond the period of limitation and the impugned order has been passed.

10. Though it may look simple, if an application is received belatedly and if a direction is given to accept the application

belatedly, it will give a wrong signal to others and many persons would in violation of prescribed rules and regulations belatedly file and seek approval. Once a statutory obligation has been framed and procedure has been prescribed especially under Regulation 5, the schedule has to be complied with, by the party, who is seeking the benefit of approval and there is no escape from that. If the schedule as per the regulation is violated, it would amount to having no regulation at all. Therefore, the impugned order is sustained and the writ petition is dismissed. However, it is open to the petitioner to file a fresh application within the time limit viz., 1st April to 30th April, 2018, for the academic year 2019-2020. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

abr

To

1. The Secretary,
Ministry of Ayush,
'B' - Block, G.P.O.Complex,
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3. Central Council of Indian Medicine,
61-65, Institutional area,
Janakpuri 'D' - Block,
New Delhi-110 058.

+1 CC to Mr.N. Rajan, sr 77014.
+1 CC to Mr.C.V. Vijayakumar, Advocate sr 77316.
+1 cC to Ms.C. Kanagaraj Associates sr 77405.

W.P.No.25929 of 2017

SP(05/12/2017)