

203 (7 cases)

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

Date of Decision : 10.07.2017

1) CWP No.20476 of 2015 (O&M)

Dayanand Ayurvedic College, Jalandhar Petitioner

Versus

The Union of India and others Respondents

2) CWP No.21944 of 2015 (O&M)

Sri Satya Sai Murlidhar Ayurvedic College and Hospital Petitioner

Versus

The Union of India and others Respondents

3) CWP No.24092 of 2015 (O&M)

Shri Dhanwantry Ayurvedic College and Dabur Dhanwantry Hospital
..... Petitioner

Versus

The Union of India and others Respondents

4) CWP No.24462 of 2015 (O&M)

Saint Sahara Ayurvedic Medical College & Hospital Petitioner

Versus

The Union of India and others Respondents

5) CWP No.21551 of 2016 (O&M)

Dayanand Ayurvedic College, Jalandhar

..... Petitioner

Versus

The Union of India and others

..... Respondents

6) CWP No.23555 of 2016 (O&M)

Shri Dhanwantry Ayurvedic College and Dabur Dhanwantry Hospital

..... Petitioner

Versus

The Union of India and others

..... Respondents

7) CWP No.27438 of 2016 (O&M)

Shree Lakshmi Narayan Ayurvedic College

..... Petitioner

Versus

The Union of India and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Aman Chaudhary, Advocate
for the petitioner(s) (CWP Nos.20476 of 2016 & 21551 of 2016).

Mr. Arjun Partap Atma Ram, Advocate
for the petitioner(s) (CWP Nos.21944 of 2015 & 27438 of 2016).

Mr. Pranav Chadha, Advocate
for the petitioner (CWP No.24092 of 2015).

Mr. G.S. Attariwala, Advocate
for the petitioner (CWP No.24462 of 2015)

Mr. Sanjiv Kumar Aggarwal, Advocate
for the petitioner (CWP No.23555 of 2016)

Mr. Puneet Gupta, Advocate
for the respondent No.1 – UOI.

Mr. Sunil Kumar Sharma, Sr. Panel Counsel
for the CCIM – respondent No.2.

Mr. T.S. Chauhan, Advocate
and Mr. Satnam, Advocate
for the respondent No.3- University.

AJAY TEWARI, J. (Oral)

This group of petitions are decided by the common order since the issues raised are identical. For the sake of convenience the facts are being taken from CWP No.20476 of 2015.

The petitioner-College was set up prior to the year 2012 and at that time it had applied for and was permitted to have a student intake of 50 seats. In the year 2012 new Minimum Standard Guidelines were issued by the respondent No.2-Central Council of Indian Medicine as per which the Ayurvedic Colleges were divided into two classes, those which could admit upto 60 students and those which could admit upto 100 students. These new guidelines mandated that for the first category of colleges it would be necessary to maintain one standard (regardless of whether the number of students was 40 or 60) and likewise for the other category of colleges one higher standard was mandated (regardless of whether the students were 70 or 100). One writ petition bearing CWP No.15766 of 2014 was filed titled as Ch. Devi Lal College of Ayurveda and others vs. The Union of India and others, in which it was claimed that those petitioners had admittedly fulfilled the requirements mandated by 2012 notification for 60 students and once this fact was certified by the respondents they had to be permitted to

admit 60 students each. The matter was contested but by judgment and order dated 06.10.2014 the writ petition was allowed wherein the Ld. Single Judge held as follows:-

4. In this case, the point that would really fall for consideration is the effect of the notification issued on 18.7.2012 and the changes that have been brought about as regards the admission capacity. The notification contemplates the minimum admission capacity in Clause (6) that reads as under:-

“6. Admission Capacity.- The annual intake capacity in undergraduate course will be in the slabs of sixty and hundred. If any college has the intake capacity of less than sixty or within sixty one and hundred seats, it has to comply with the requirements of sixty or hundred seats respectively as mentioned in the Schedules-I to Schedule-VII”

It would be evident that if any college has an intake capacity of less than 60, it has to comply with the requirement for 60. In other words, infrastructural norms shall be taken to be commensurate with the intake capacity of 60, no matter that the Institutes decides to go with admission of less number of seats. The norms for 60 shall be the irreducible minimum. The annual inspection which CCIM makes and the Central Government sanctions shall, after the notification dated 18.7.2012 be to satisfy the requirement as set out in Schedule I to VII are followed. This minimum intake of 60 comes for the first time in 2012 and, therefore, the College which had a sanction for 50 students earlier and which had secured its admission to such number had to scale up its own norms after inspection to conform to an intake of 60. Consequently, when the policy had changed and when the College was seeking for permission for the subsequent academic sessions, there was an imperative for every College to have the norms for 60 seats as regards every requirement spelt out in Schedule I to VII of of the Central Government notification. I cannot see the strength

in the argument as canvassed by the learned counsel appearing on behalf of the respondent that the permission granted for 2014-2015 was done only by consideration of the size of the building and the number of teachers and that they could not have taken into account what the medical council was bound to examine as regards the other requirements such as laboratory facilities etc. Lab facilities are one among the other requirements spelt out in the schedule and the inspection is bound to be composite for addressing all the norms spelt out in all the schedules. It is not as if the College which has been granted permission for 50 students was asking for increase for consideration of higher intake because, it was scaling up its requirement by seeking to increase the infrastructure facilities and seeking for a new consideration. The Supreme Court judgment in Medical Council of India (supra) that sounded a warning against interim direction for admission without reference to Central Government, is a point well taken that the courts will not do what specialized technical council are required to do and what the Central Government is empowered to do. In a case where a College applies for increase in intake where it had the infrastructure for lesser intake and later it was scaling up its intake capacity, the Government and the Council will definitely required a fresh appraisal to be made and the courts will not supplant the decision making power of authorities by its own order. In this case when permission was granted for 2014-2015, such permission has been granted only after an inspection by the CCIM. That inspection ought to relate to examination of the norms in the light of the amended notification that required the infrastructure to be commensurate with their intake of 60 seats. I have seen through the order dated 3.7.2014 granting conditional permission and it accompanies an inspection done in January 2014. By that time the amended notification was already in force and the permission granted for 2014 must have been only

after satisfaction of the fulfillment of all the norms, as per the amended notification. It is indeed so recorded in the assessment for the year 2014-2015. The report bears out all the details of the total constructed portion of the College, the garden etc. conforms to the proposed minimum standard as per notification dated 19.7.2012. This is so applicable for each one of the other requirements as well, for the number of teachers, for existence of lab facilities etc.

5. By seeking for a mandamus in the manner contained in the writ petition, the petitioners seek for no acceleration of the schedule which the regulations stipulate. This would happened typically in a situation if there had been no minimum norms of 60 for a College and if it was possible for a College to have an admission capacity of less than 60 and it was seeking for increasing the capacity for the first time without upgrading the infrastructure. In this case, upgradation of norms has become a statutory mandate brought through the regulations. In the same instance, again, if the College was going for upgradation from 60 to 100 and it had attempted to show that it had additional facility of infrastructure, the requirement of having to conform to the schedule of providing for one full year for inspection and grant of sanction by the Medical Council and the Central Government would have become necessary. This shall not be necessary in a situation where the existence of the minimum norms for 60 students are assured through regulations and the necessary inspection having already been made, the grant of additional intake conforms to what the regulations stipulate as the minimum. The mandates of what the petitioners seek for is, therefore, to seek for formal approval for what they are entitled to as per the amended regulations.”

The respondent No.1-UOI challenged that by way of filing LPA No.1798 of 2014 and the same was dismissed on 15.01.21015 holding as follows:-

“Since additional intake has been accorded by learned Single Judge keeping in view the notification dated 18.07.2012 issued by the Central Council of Indian Medicine (CCIM) and the respondent-Institutions have been found possessing the requisite facilities and infrastructure for 60 seats, it does not appear to be a fit case to interfere with the order passed by learned Single Judge.

Dismissed”

It is the contention of the learned counsel appearing for the petitioner(s) that these two judgments now cover the field and are binding on this Court and consequently it is prayed this group of writ petitions be allowed.

On the other hand, learned counsel for the respondent No.1-UOI has strongly urged me to revisit the judgment of the Ld. Single Judge. He has argued that the Ld. Single Judge erred in interpreting the inter-play between the Minimum Standard Regulations and Section 13A of the Indian Medicine Central Council Act, 1970 and the Admission Regulations.

In my opinion, it would not be open to this Court to revisit the judgment of the Ld. Single Judge for the simple reason that it has been affirmed on merits by the Larger Bench as quoted above. It is not disputed that the decision of the Division Bench was allowed to become final by the Union of India. I find that the two judgments mentioned above cover the subject and it is not open to this Court to review the same.

Consequently, the petitions are allowed and the provisional

admission of students (upto 60) which was allowed by this Court is made absolute. Learned counsel for the petitioner(s) further state that the next set of examinations is scheduled to be started on 20.07.2017 and it is, therefore, imperative that the result of the students provisionally admitted and allowed to take the examination be declared. I find this to be a fair submission. In the circumstances, the respondent No.3-University is directed to declare the result of these students forthwith.

Copy of this order be given to the learned counsel for the parties under the signatures of the Bench Secretary so that on the one hand the result of the students can be declared and, on the other hand the Union of India or any party can file the appeal against this judgment expeditiously, if so advised.

Since the main cases have been decided, the pending Civil Misc. Application, if any, also stands disposed of.

July 10, 2017
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No