

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.W.P. No.26723 of 2018 (O&M)
DATE OF DECISION : 29.10.2018

National College of Ayurveda

PETITIONER

VERSUS

The Union of India and others

RESPONDENTS

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE AMIT RAWAL

Present:- Shri Rajiv Atma Ram, Senior Advocate with
Shri Arjun Partap Atma Ram, Advocate for the petitioner.

Shri Arjun Gosain, Advocate for respondents No.1 and 3.

Shri R.Kartikeya, Advocate for respondent No.2.

Shri Ranbir Sood, Advocate.

Shri Samarath Sagar, Additional A.G. Haryana.

MAHESH GROVER, J.

C.M. No.16322 of 2018

Allowed as prayed for.

C.M. No.16323 of 2018

Allowed as prayed. The additional affidavit is taken on record.

MAIN CASE

This petition has been filed with a prayer for the issuance of a writ in

the nature of certiorari quashing the order dated 29.9.2018 and the recommendations of the Central Council of Indian Medicine (hereinafter referred to as the CCIM) conveyed to the petitioner vide communication dated 25/26.7.2018. The petitioner also seeks interim relief of permission to go ahead with admissions to the Ist Year of B.A.M.S. Course for the session 2018-19. It is pleaded that the College has been in existence since 2016 and imparting education in the course in question. But now, permission to the College has been declined on the ground that the College is deficient in regulatory compliance which of course, the petitioner denies.

The deficiencies pointed out to the petitioner need to be set out here below :-

“National College of Ayurved Dhani Garan Road, Barwala, Hissar, Haryana is not fulfilling the basic minimum requirements even for grant of conditional permission for the academic session 2018-19 like Web based computerized central registration system, Aadhaar based Geo location enabled attendance system, Quality testing laboratory as per RMS and approved SOPs/policies issued from time to time.”

It has been pleaded by the counsel for the petitioner that the aforesaid deficiencies do not fall within the requirements of minimum standards for conditional permission of one year and he refers to Regulation 3(3) which is extracted here below :-

(3) Requirements of Minimum Standard to grant of conditional permission of one year :-

- (a) The conditional permission of one year for particular academic session shall be granted only to those colleges which are fulfilling following requirements on the basis

of the inspection by the Central Council between the 31st December to the 31st March for the succeeding academic session :-

- (i) the requirement of teachers as specified in the Schedule-V ;
 - (ii) the requirement of teaching hospital as specified under sub-regulation (2) of regulation 7 ;
 - (iii) availability of minimum seventy-five percent of required equipment as specified in the Schedule-VII ;
 - (iv) availability of herbal garden as specified in the Schedule-III ;
 - (v) availability of hospital staff as specified in the Schedule-IV ;
 - (vi) availability of technical and other staff as specified in the Schedule-VI ;
 - (vii) availability of college council as specified in sub-regulation (1) of regulation 9 ;
 - (viii) availability of college website as specified in sub-regulation (2) of regulation 9 ;
 - (ix) availability of biometric attendance as specified in sub-regulation (3) of regulation 9 ; and
 - (x) availability of minimum constructed area of college and hospital as specified in regulation 5.
- (b) the colleges, which have been granted conditional permission or which have been denied permission for the academic session 2015-16 shall be required to fulfill the requirements as specified above in clause (a)

to obtain the conditional permission of one year for particular academic session or for a period of five years as specified in the regulations 4 to 11.”

He also refers to Regulation 10(b)(ix) which is also set out here below :-

“... ..
(ix) it is mandatory to have web based and CRC (Central Registration Certificate issued by the Central Council) linked computerized biometric attendance system for teaching staff and web based computerized biometric attendance system for non-teaching staff and hospital staff.”

This of course, is countered by the respondents who have filed the reply with reference to the requirements mentioned in Regulations 7(3)(i) and 9(2) which are extracted here below :-

“7(3) Maintenance of record of attendance of Out-Patient Department and In-Patient Department patients :

- (i) The College and hospital shall maintain the web based computerized central registration system for maintaining the records of patients in Out-Patient Department and In-Patient Department. The College shall also maintain the Department-wise Out-Patient Department and In-Patient Department records, case papers of Out-Patient Department and In-Patient Department patients, laboratory and radiological investigation reports, medicines dispensing register,

diet register for In-Patient Department patients, duty roster of hospital staff, birth and death certificates etc. so as to substantiate the claim of genuine functional Ayurveda hospital fulfilling the norms as specified in the sub-regulation (2) of regulation 7.

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xxx

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9. **Miscellaneous requirement.-**

(1) **College Council :**

- (a) Every medical college or medical institution shall have a College Council comprising of the Head of departments as members and Principal or dean as Chairperson ;
- (b) the College Council shall meet minimum for times in a year to draw up the details of curriculum and training programme, enforcement of discipline and other academic matters ; and
- (c) the College Council shall also organise interdepartmental meetings like grand rounds, statistical meetings and clinical meetings including periodical research review in the Institution regularly.

(2) **College Website :** Each and every college or institute shall have its own website wherein the following details updated in the first week of every month shall be provided.”

Learned counsel for the petitioner contends that a completely

arbitrary approach has been adopted by the Council as also the Union of India by permitting certain colleges to go ahead with the admissions for the current year despite the deficiencies, by granting them time upto 31.12.2018 to address the shortcomings, whereas in several colleges like the petitioner, a similar prayer has been declined for no ostensible reasons.

Apart from that, all the Government Colleges have been permitted to go ahead with the admission even though they are drastically deficient. To press upon the point, our attention has been invited to Annexure P-17 placed on record by way of a miscellaneous application highlighting the decision of the Central Council as adopted by the Screening Committee permitting all the Government Colleges to go ahead with the admissions subject, however, to their furnishing an undertaking of compliance within three months. The same is extracted here below :-

As per directions of President, CCIM Meeting of Screening Committee consisting of following member was held on 26/27.6.2018 :-

Present
Dr.Salma Bano (CCIM Member)
Dr.M.A.Qasmi (attended on 27.6.2018) (CCIM Member)
The Screening Committee thoroughly examined the visitation reports alongwith all the annexures and relevant documents in view of regulations in force.

Further, the Screening Committee considered the visitation reports of Govt., Govt. Aided and University Constituent Colleges in view of the decision of 263rd EC held on 12.6.2018 wherein, it **has been decided to recommend all the government Ayurveda/Siddha/Unani Colleges (including Govt. aided and constituent colleges of state universities) with the existing admission capacity along with the LOP (u/s 13A of IMCC Act, 1970) if any, subject to the submission of an undertaking from the Higher Authorities of the State Government with an assurance that they will comply with the shortcoming within 03 months."**

In view of above the observations of committee in respect of Govt., Govt. Aided and University Constituent Colleges are as under :-

Sr.No.	Category	College name	Shortcomings
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Medical College,
Dr.Siddhiah Purnaik
Road,Basaveshwarnagar
Bengaluru-560079,
Karnataka
**(Review and LOP
visit to increase intake
capacity of BUMS
from 50 to 60 seats).**

- (a) Munafeul Aza department is vacant.
- (b) There is shortage of 01 higher faculty in ilmu Saidia department.
- (c) There is shortage of 01 lower faculty in each of the department of Mahiyatul Amraz, Tashreeful Badan and ilmu Atfal.

2. Non-Teaching Staff :

- (a) There no Lab technician in Kuliyat, Mnuafeul Aza, Ilmu Advia and Mahiyatul Amraz department.
- (b) There is no Museum Keeper in Tashreehul badan, Manuafeul Aza and Ilmu Advia department.
- (c) There is no Dawasaz/Pharmacy Attendant in Saidla department.
- (d) There is shortage of 01 Multipurpose worker in Herbal Garden against the requirement of 02.

3. Hospital Staff :

- (a) There is no Assistant Matron against the requirement of 02.
- (b) There is shortage of 01 Staff Nurses for in Patient department against the requirement of 10.
- (c) There is shortage of 01 Office Staff (for registration, record maintenance, data entry etc.) against the requirement of 02.
- (d) There is no Pathologist and X-Ray

We have already extracted the shortcomings of the petitioner/College as conveyed to it by the respondents and we now proceed to notice the shortcomings mentioned in the Government Colleges who have been permitted to go ahead with the admission with a window of three months subject to an undertaking. A detailed Chart in this regard has been appended as Annexure P-16 with the miscellaneous application and appended to our present order as Annexure A.

When confronted with the fact situation which has not been met with any effective counter-reply, learned counsel for the C.C.I.M. as also the Union of India would offer no justification.

Learned counsel for the C.C.I.M., has however, put forward a lame explanation to show that the deficiencies of a Government Institute are readily verifiable, which is not the case in the private institutes.

We reject such a contention outrightly, as a regulatory body like the C.C.I.M. cannot possibly afford such an argument except at the cost of inviting ridicule.

On due consideration, we are of the opinion that the stand of the respondents is highly arbitrary and discriminatory. No worthwhile explanation has been given as to why certain colleges have been treated differently and why the government colleges have been treated benevolently.

If a window of three months had to be provided to the government colleges subject to an undertaking, then it could have been applied uniformly particularly, when we notice at least in the present case that the deficiencies pointed out to the petitioner are far more insignificant than the ones existing in the government colleges, evident from the Annexure A to our order.

We, therefore, would afford a similar opportunity to the petitioner to clear the deficiencies by 31.12.2018 and become compliant in all respects and extend the decision of the C.C.I.M. as also the Union of India in the matter of admissions qua the government colleges to the petitioner as well.

We do not intend to rest the matter here because we feel that C.C.I.M. has acted arbitrarily and would consequently seek the report of an officer responsible for the affairs of C.C.I.M. to file its response on the afore-extracted issues which have persuaded us to record that the decision of the C.C.I.M. and Union of India is arbitrary and discriminatory and we make it clear that in case the explanation is found to be unsatisfactory, we would not hesitate to comment upon the conduct of the Council and its members. We are strongly of the opinion that such a conduct as the one displayed by the Council clearly acts detrimentally not only to the institution imparting education in all important courses, but also affects the career of the students as it lends uncertainty to the admission process, flooding the courts with unwarranted litigation of issues which are at best to be decided by the regulatory bodies provided they have a commitment to ensure the purpose for which they have been created.

To carry out the orders, the University will include the petitioner/college in the list of institutes to enable them to make admissions in the

current session subject, however, to what has been stated above i.e. an undertaking that they will be compliant.

With these observatins, we dispose of the present petition.

The office is directed to list the matter on 30.1.2019 only for the purpose of submission of report by the respondents.

(MAHESH GROVER)
JUDGE

October 29, 2018
GD

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No