

CWP No.29036 of 2017

[1]

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

**CWP No.29036 of 2017
Date of decision:10.01.2018**

Al-Falah University and another

...Petitioners

Versus

Union of India and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Akshay Bhan, Senior Advocate, with
Mr. Alok Mittal, Advocate, for the petitioners.

Mr. Aseem Aggarwal, Advocate,
for respondent no.1-UOI.

Mr. M.S.Longia, Advocate,
for respondent no.2-MCI.

Rakesh Kumar Jain, J. (Oral)

The petitioner no.1 sought the permission under Section 10A of the Indian Medical Council Act, 1956 (hereinafter referred to as the "Act") for establishment of a new medical college at Faridabad by the name of Al-Falah School of Medical Sciences and Research Centre. The scheme so submitted by the petitioners was referred by the Central Government to the Medical Council of India (hereinafter referred to as the "MCI") on 12.07.2017 for making appropriate recommendations. Vide order dated 22.11.2017, uploaded on the website of the MCI on 15.12.2017, the petitioners came to know that the MCI has not recommended their scheme. The text of the order of rejection passed by the MCI reads as under:-

"In view of above, it was decided to reiterate the earlier decision to return the application for establishment of new medical college at Faridabad, Haryana (Al-Falah School of Medical Sciences & Research Centre, Village Dhauj, Tikri Kheda,

Fatehpur, Taga Road, Faridabad, Haryana) by Al-Falah University sponsored by Al-Falah Charitable Trust, Haryana recommending disapproval of the scheme u/s 10A of the India Medical Council Act, 1956 or the Regulations framed therein to keep the application pending in the Council office for the next academic year.”

Counsel for the petitioners has submitted that as per Section 10A(4) of the Act, if the scheme is referred back with its disapproval by the MCI to the Central Government, it has to either accept the recommendations of disapproval or reject the same but before that, it is required to give an opportunity of personal hearing to the person who had applied under Section 10A of the Act. Section 10A(4) of the Act is also reproduced as under:-

“10A. **Permission for establishment of new medical college, new course of study etc.**

1. to 3. xxx xxx xxx xxx

4. The Central Govt. may after considering the Scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the Scheme, and any such approval shall be a permission under sub-section (1):

Provided that no Scheme shall be disapproved by the Central Government except after giving the person or 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 has been submitted for the first time under sub-section (1).

 xxx xxx xxx xxx”

It is further submitted that since the petitioners have not heard anything from the Central Government in regard to opportunity of hearing in

terms of first proviso to Section 10A(4) of the Act, therefore, he has prayed that an appropriate direction may be issued to respondent no.1, who has apparently seized of the matter of the petitioners, to take a decision on it either-way but after affording an opportunity of hearing.

Counsel for respondent no.1 prays for an adjournment in order to seek instructions in this regard, which is strongly opposed by counsel for the petitioners on the ground that the matter is being delayed to the detriment of the interest of the petitioners, therefore, he has prayed that appropriate directions may be issued by this Court to respondent no.1 to comply with the provisions of Section 10A of the Act, in accordance with law.

After hearing learned counsel for the parties and keeping in view the aforesaid facts and circumstances, the present petition is hereby disposed of with a direction to respondent no.1 to take decision in respect of the recommendations made by the MCI on 22.11.2017, either-way, in terms of the provisions of Section 10A(4) of the Act but by following the provisions of the first proviso to Section 10A(4) of the Act, i.e. after affording an opportunity of hearing to the petitioners. Respondent no.1 is directed to do the needful within a period of 10 days from the date of receipt of certified copy of this order and it is needless to mention that the petitioners would also be given an opportunity of hearing before any decision is taken in this regard.

A copy of this order be given to the counsel for the parties under signatures of the Special Secretary attached to this Bench, for compliance.

January 10, 2018
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No