

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.12514 OF 2018**

Swami Vivekanand Education and Rural
Development Charitable Trust, Shrigonda's
Swami Vivekanand Ayurved Medical Colleges
and Research Centre. ..PETITIONER

VERSUS

The Union of India and Ors. ..RESPONDENTS

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Mr. P. D. Bachate, Advocates for the Petitioner.

Mr. S. B. Deshpande, A.G.P. with S. S. Deve,
Standing Counsel for Respondent No.1.

Mr. Alok Sharma, Advocate for Respondent Nos.2 and
5.

Mr. M. D. Narwadkar, Advocate for Respondent No.4.

Mrs. G. L. Deshpande, A.G.P. for Respondent-State.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

Closed for Orders on : 14.02.2019.

Order Pronounced on : 26.04.2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The petitioner challenges the order dated 11.10.2018 passed by respondent no.1 thereby refusing to grant letter of permission to the petitioner-college for the Academic Year 2018-2019.

2. Mr. Bachate, learned counsel for the petitioner submits that respondent no.1 permitted petitioner-college to admit 60 students to UG (BAMS) court. The same was on the recommendations of the CCIM. On or about 06.02.2018 inspection was conducted by the competent authority. Certain deficiencies were pointed in the inspection report.

The proposal of the petitioner is recommended by the Central Council of Indian Medicine (CCIM). On or about 09.08.2018 the show cause notice is received by the petitioner calling for hearing on the deficiencies pointed out in the inspection report. On 18.08.2018 hearing took place. The written submissions were made by the petitioner. It was clarified by the petitioner that the deficiencies do not exist.

3. The learned counsel submits that on 30/31.05.2018 re-inspection was conducted by the respondents. The inspection team pointed out some deficiencies which were not pointed out earlier. The inspection report was not served upon the petitioner. According to the learned counsel, without conducting any hearing, respondent no.1 refused to issue letter of intent to the petitioner. The last date for admission of the students was 15.11.2018. However, the same was extended under the orders of the Apex Court.

4. The learned counsel submits that respondent no.1 has acted arbitrarily. The respondent no.1 has granted permission to other institutions on the condition of removing the deficiencies by 31.12.2018. However, the petitioner is not given the same treatment and straightway respondent no.1 refused to issue letter of intent and letter of permission. The respondent no.1 does not have any authority to carry out any inspection. It is for the Central Council of

Indian Medicine that has to carry out the inspection and submit its report. The written submission given by the petitioner are not considered by respondent no.1. Each and every deficiency pointed out in the report has been clarified by the petitioner. The list of the members of the teaching staff, consultants alongwith their appointment orders were placed. The respondent no.1 ought to have got themselves satisfied with the reply of the petitioner about the non-existence of deficiencies and/or removal of the same.

5. The learned counsel relies on the proviso to Section 10(A) of the Indian Medical Council Act and submits that respondent no.1 has exercised its powers in a mechanical manner without application of mind and again recommendation from CCIM to issue letter of intent. At the time of inspection by the CCIM and/or AYUSH deficiencies did not exist. The hearing committee was provided with every material and documents evidencing that required infrastructure is available with it. The impugned order is colorable exercise of power. According to the learned counsel inspection done by the team of respondent no.1 is no inspection in the eyes of law. The order dated 11.10.2018 and the deficiencies pointed out on such visitation report are without any foundation and/or law. Before passing impugned order no opportunity of hearing was given. The impugned order also suffers from non-adherence to the principles of natural justice.

6. Mr. Deshpande, learned ASG submits that the Indian Medicine Central Council (Requirements of Minimum Standard for Under-graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016 are in force. As per the Regulation 3(1)(g) of Regulations, 2016 the position prevailing on the date of visit to assess the fulfillment of requirements as specified in these regulations except sub-regulation (2) of Regulation 7 shall be taken into consideration for grant of conditional permission or permission for a period of five years to the colleges. Admittedly, the deficiencies existed at the time of inspection. In view of that, respondent no.1 has rightly passed the order.

7. The learned A.S.G. submits that the scope of judicial review in such matters is minimal. The defects pointed out are fundamental and as such rightly the decision has been taken. The Central Council issued notice to the applicant-college and after hearing the order was passed. While deciding the applications, the authorities are not acting in quasi judicial manner but only as an administrative authority.

8. We have considered the submissions canvassed by the learned counsel for the respective parties.

9. It appears that 6 deficiencies were pointed out after the inspection. The notice was given to the petitioner on 09.08.2018 to present the case of the petitioner on 18.08.2018, so also

show cause notice was given to the petitioner as to why the application of the petitioner to establish new Ayurvedic College with admission capacity of 60 students in UG (BAMS) course for academic year 2018-2019 under Section 13(A) of the I.M.C.C. Act should not be rejected. From the order it appears that, the representative of the petitioner appeared before the hearing committee on 18.08.2018 and made their written submissions, so also oral submissions. The respondent no.1 came to conclusion that the applicant-Trust could not produce sufficient documents to substantiate its claim of not having required number of higher faculties up to 2nd Professional as per Regulation 10(b)(ii), Regulation 8 and Schedule – V of RMS, 2016, not having required number of books in Library up to 2nd professional as per Regulation 10(b)(v) of RMS, 2016, not having required number of Lecture halls as per Regulation 10(b)(v) of RMS, 2016 and not having functional USG in the hospital as per sub regulation (7) of regulation 7 of RMS 2016 and approved SOPs, not having functional Aadhaar based Geo location enabled attendance system for teaching staff, non-teaching staff and hospital staff as per RMS, 2016 and approved SOPs/policies issued from time to time.

10. In the order it has been observed that Respondent no.1 has sent team for re-inspection on 30/31.05.2018 and the visitation report was submitted. Again almost 6 deficiencies were

pointed out. Upon considering the re-inspection report and deficiencies pointed out, the respondent no.1 came to the following conclusion:

"Whereas, in view of the observation of the Hearing Committee based on submissions made by the college representative during hearing and the recommendations and visitation report of the CCIM referred in para 3 above, it can be understood that as per the notified and approved norms of 2018-2019 session as mentioned in para 4 above, the representatives of the college could not produce sufficient document/evidence to substantiate their claim. Hence, Swami Vivekanand Ayurved Medical College and Research Center, Pargaon, Sudrik, Shrigonda, Ahmednagar-413702, Maharashtra, is not fulfilling the basic minimum requirements even for grant of conditional permission for the academic session 2018-2019 not having required number of higher faculties up to 2nd Professional as per Regulation 10(b)(ii), Regulation 8 and Schedule – V of RMS, 2016, not having required number of books in Library up to 2nd professional as per Regulation 10(b)(v) of RMS, 2016, not having required number of Lecture halls as per Regulation 10(b)(v) of RMS, 2016 and not having functional USG in the hospital as per sub regulation (7) of regulation 7 of RMS 2016 and approved SOPs, not having functional Aadhaar based Geo location enabled attendance system for teaching staff, non-teaching staff and hospital staff as per RMS, 2016 and approved SOPs/policies issued from time to time"

11. In light of the above, respondent no.1 passed the impugned order.

12. It is trite that, it is not for the Court to judge as to whether a particular institution fulfilled the necessary criteria for being eligible to conduct classes in the concerned discipline.

That is for the experts to judge. The High Court is not expected to examine the report as an appellate body. This Court would not sit as an appellate authority over the report of the inspection.

13. The last date for admitting students was 15.11.2018, however the date it appeared was extended under order and it is submitted that last date was 15.02.2019. Though, we are not interfering with the order passed by respondent no.1, one thing required to be noted is that the order does not discuss the submissions of the petitioner made in written as well as oral. The order whether it is administrative or quasi judicial has to be a reasoned order. The explanation given by the parties is required to be dealt with in the order. Perusal of the order it does not transpire that, respondent no.1 has taken into consideration the say filed by the petitioner. Henceforth it would be appropriate for respondent no.1 to pass the order dealing with submissions of the parties on merits.

14. Writ petition accordingly stands disposed of. No costs.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE