

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12506 OF 2018

Rural Medical Foundations Trust ..PETITIONER

VERSUS

The Union of India and Ors. ..RESPONDENTS

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Mr. D. S. Bagul, 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 No.2.

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. DHAVAL, JJ.**

Closed for Orders on : 14.02.2019.

Order Pronounced on : 26.04.2019.

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

1. The respondent no.1 rejected the request of the petitioner for issuance of letter of intent to start Ayurvedic College at Parner, District Ahmednagar. The same is assailed in the present Writ Petition.

2. Mr. Bagul, learned counsel for the petitioner submits that the petitioner-Trust applied on or about 30.10.2015 to start the BAMS course with 60 intake capacity for the Academic year 2018-2019. On or about 10.11.2016 the State Government of Maharashtra granted no objection to the petitioner to start the college. Subsequently,

the term is extended till 31.12.2018. On or about 31.12.2016 the Maharashtra University of Health Sciences granted consent of affiliation to the petitioner. On 27.04.2017, the petitioner applied to Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (AYUSH), the department of Central Government for starting college. On or about 21.07.2017 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). The report is submitted to the AYUSH on 26.07.2017. On or about 12.03.2018 the show cause notice is received by the petitioner calling for hearing on the deficiencies pointed out in the inspection report. On 20.03.2018 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 07/08.05.2018 surprise 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 of 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 require infrastructure is available with it. The impugned order is colorable exercise of power. According to the learned counsel inspection done by the team of Central Council is no inspection in the eyes of law. The order dated 26.06.2018 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 19 deficiencies were pointed out after the inspection. The notice was given to the petitioner to present the case of the petitioner on 20.03.2018, 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 20.03.2018 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 having fully developed and genuinely functional Ayurvedic Hospital as per Regulation 6(1)(e), required number of hospital staff as per Schedule IV of RMS 2016, genuine functionality of

OPD/IPD as per Regulation-7(2), Central laboratory, Operation theatre, Panchakarma, Ksharsutra, and Labour room as per Schedule I of RMS 2016, availability of 50% paramedical staff as per Regulation-8(2), required number of Instruments and Equipment's in the hospital as mentioned in Schedule VII of RMS 2016, availability of eligibility documents of Sanskrit Lecturer and position to establish infrastructure and manpower in phased manner as per RMS 2016.

10. In the order it has been observed that the VIP intervened in the matter and on the intervention of the VIP, the Ministry decided to conduct re-inspection of the proposed college. Respondent no.1 has sent team for re-inspection on 7th and 8th May, 2018 and the visitation report was submitted. Again almost 26 deficiencies were pointed out. Upon considering the re-inspection report and deficiencies pointed out, the respondent no.1 came to the following conclusion:

"Whereas, from the above observations of inspection committee, it is found that applicant Trust not having fully developed and genuinely functional Ayurveda Hospital as per Regulation-6(1)(e), required hospital staff as per Schedule IV of RMS 2016, genuine functionality of OPD/IPD as per Regulation-7(2) functional Central laboratory, functional Operation theatre, functional Panchakarma, functional Ksharsutra, and functional Labour room as per Schedule I of RMS 2016, required Minimum Constructed area as per Regulation-5 and Schedule I, II of RMS 2016, Appointment of

eligible Teaching Staff and part time teaching staff as per Regulation-8, availability of internal infrastructure like construction of administrative block, departments for first professional with requisite museum, hospital building, lecture theatres, library and their sitting arrangement as per Schedule-II of RMS 2016, required Herbal garden as per Schedule III of RMS 2016, College website as per Regulation-9(2), College Council as per Regulation-9(2), Biometric Attendance per Regulation-9(3) of RMS 2016. Therefore, the applicant is not fulfilling the criteria in terms of sub-regulation (2) of regulation 9 of regulation namely "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 (Amendment) Regulation, 2013 and Requirements of Minimum Standard (RMS) Regulations, 2016 of having fully developed and genuinely functional Ayurveda Hospital, required hospital staff, genuine functionality of OPD/IP as per Regulation-7(2), functional Central laboratory, functional Operation theatre, functional Panchakarma, functional Ksharsutra, and functional Labour room, required Minimum Constructed area, Appointment of eligibility Teaching Staff and part time teaching staff, availability of internal infrastructure like construction of administrative block, departments of first professional with requisite museum, hospital building, lecture theatres, library and their sitting arrangement, required Herbal garden, college website, college Council, Biometric Attendance."

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. DHAVALA)

JUDGE

Devendra/April-19

(S. V. GANGAPURWALA)

JUDGE