

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12990 OF 2018

Khatoon Minority Women's Social	}	
Welfare and Educational Society	}	Petitioner
versus		
Union of India and Ors.	}	Respondents

Mr.Vijay M.Thorat with Mr.Anukul Seth
I/b. Mr.M.V.Thorat for the petitioner.

Mr.Mandar Limaye for respondent no. 1.

Mr.Neel Helekar for respondent no. 2.

Mr.S.S.Panchpor-AGP for respondent nos.
3 and 4.

**CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.
DATE :- FEBRUARY 5, 2019**

P.C. :-

1. In this writ petition under Article 226 of the Constitution of India, which challenges an order dated 9th November, 2018 of the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH), the argument is that the order is passed on a notice to show cause, but, prior thereto, certain applications were considered. It is apparent from the order dated 9th November, 2018, which we have perused with the assistance of Mr.Thorat, Mr.Limaye and Mr.Helekar, that there was an application made on 28th April, 2017 by the Secretary of the petitioner. This application was made to the Central Council of

Indian Medicine-respondent no.2. By that, a request was made to grant a letter of permission to establish new Unani college with 60 under-graduate seats in the Bachelor of Unani Medical Science for the academic year 2018-19 under section 13A of the Indian Medicine Central Council Act, 1970 (for short “the IMCC Act”)

2. The Council carried out an inspection on 24th July, 2017 and forwarded its recommendations and report to the Central Government for issuing a letter of intent to establish this college in village Sayne Khurd, Malegaon, District Nashik. The inspection was carried out to find out whether such a recommendation, as is sought, can be made. The recommendation, according to the petitioner, was to be based on a policy. However, it is very clear that after the inspection of 24th July, 2017, a letter was indeed issued on 1st September, 2017. That was a conditional permission. For issuance of a letter of permission for that academic year, these conditions are to be fulfilled. The requirement, *inter alia*, was of infrastructure for teaching and training facilities as specified in the Regulations 3 and 10 of the Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Unani Colleges and attached Hospitals) Regulations, 2016. Then, another minimum standard regulation, which is known as Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine)

Amendment Regulations, 2016 has to be complied with. Then, there is a set of regulations, which are regulations styled as Establishment of New Medical College, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity by a Medical College Regulations, 2003. The other condition was to fulfill the relevant provisions under the IMCC Act.

3. A *suo moto* visit by the CCIM on 25-26th May, 2018 resulted in the shortcomings being noted and the recommendation, which was negative in nature. That recommendation dated 24th July, 2018 has been relied upon to refuse the letter of permission.

4. The shortcomings have been listed in the impugned order. It is then observed in the impugned order that the deficiencies noted in para 6 of the impugned order were pointed out to the petitioner and an opportunity of hearing was given to them by relying upon the first proviso to sub-section (5) of section 13A of the IMCC Act. That hearing was held on 27th August, 2018. That resulted in an another notice dated 18th August, 2018 being issued calling upon the petitioner to show cause as to why the application made on 28th April, 2017 should not be rejected.

5. The impugned order says that the deficiencies still exist and continue at site. Para 10 of the impugned order reads as under:-

“10. **NOW, THEREFORE**, in view of the above shortcomings in respect of required number of teachers, **required number**

of clinical teachers, functional USG facility in Hospital, non-availability of Aadhaar based Geo location enabled attendance system for teaching staff, non-teaching staff and hospital staff, which are essential pre-requisites to establish a new Unani college in terms of the provisions of the IMCC Act and relevant Regulations; which violate the provisions of the IMCC Act, 1970 and the relevant Regulations and are of such a serious and fundamental in nature that they adversely affect the ability of the college to provide quality medical education in terms of the Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Unani Colleges and attached Hospitals) Regulations, 2016. Therefore, **it has been decided by Central Government for not to issue Letter of Permission (LOP) & withdrawal of Letter of Intent (LOI) dated 01.02.2018 as applied for by the Secretary, Khatoon Minority Women's Social Welfare and Educational Society, 534, MHB Colony, Malegaon-423203, Distt. Nashik, Maharashtra to establish a new Unani college in the name of Al-Ameen Unani Medical College and Hospital, Sayne Khurd, Malegaon, Distt. Nashik, Maharashtra with 60 seats UG (BUMS) course from the academic session 2018-19 under section 13A of the IMCC Act, 1970."**

6. Mr.Thorat argued that the impugned order relies upon the shortcomings, which are referred in the letter of 24th July, 2018, but, though the impugned order recites that these shortcomings were pointed out during the course of the personal hearing to the petitioner, what the petitioner's had before it was a letter of 18th August, 2018 and styled as a show cause notice. Now, in addition to the deficiencies noted in the communication, the hearing notice of 18th August, 2018 is kept aside and another communication dated 24th July, 2018 with the shortcomings therein is relied upon.

7. Thus, the show cause notice contains a reference to certain deficiencies, but the impugned order travels beyond the same and relies upon another report enlisting the deficiencies existing on that date and refusing it the permission.

8. On such an argument being canvassed and though the impugned order is justified by the Council as also in the affidavit filed by the Union of India, Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy, what we have is an affidavit in rejoinder and in the rejoinder affidavit, the petitioner relies upon the visitation report. That is the visitation report pertaining to the petitioner's institution and there is also an assessment report. Mr.Thorat has highlighted a number of aspects covered by the assessment and visitation report and says that the college and the hospital are in the same premises along with herbal garden. All the outstation departments are found functional on the day of visitation, but all the consultants were plain BUMS except one general. Hospital facilities are available for both, boys and girls. Three teaching staff has been rejected due to non availability of teacher code, but they have already applied for teacher code. The college has two well furnished class rooms and well equipped laboratories and museum. The college library has required sitting capacity with required number of

books. Mr.Thorat, therefore, argued that there is a mismatch and though the visitation report is, by no means, carrying a negative recommendation, still, the AYUSH has passed the impugned order. Hence, the other ground, on which the order is vitiated is total non application of mind.

9. On hearing both sides and perusing the writ petition with all its annexures, including the affidavit placed on record, we are of the firm view that the matter must go back to the competent authority. If what the competent authority has to decide is to grant or refuse a letter of permission, then, it is evident that the AYUSH applies its mind to not only the materials relied upon by the petitioner, but its own inspection/visitation reports and the recommendations therein. In the event there are deficiencies pointed out and pertaining to teaching and non-teaching staff/hospital staff, then, what is the faculty demand for such course, whether that teaching faculty is in place, whether the teaching faculty in place is competent and qualified are all matters which must be determined by the CCIM. Further, what infrastructural facilities are required and if they are lacking, then, in what terms they can be said to be lacking are also to be indicated with clarity. For instance, it is stated by Mr.Thorat that in such institutions and imparting education in Unani medicine, an Ultra Surgical machine, ECG machine are not required. These

are alternate courses of medicine. These are not to be equated with Allopathy system of medicine and which requires all the machineries. This is not a case where the students cannot be taught the utility of homeopathy and other medicines available as a gift of nature with the assistance of the above facilities. If at all the above facilities are required, the students can be given training in relation thereto by taking assistance of some other institution in the vicinity.

10. We are not the authority to comment upon such academic issues and matters. All that we are bringing to the notice of the respondents is that they cannot intimate the deficiencies and in a piecemeal manner. Secondly, they cannot refer to certain facilities or aspects found missing and lacking, but without their reference and to their nexus to this course of medicine. They cannot rely upon certain tests and factors evolved in relation to some other faculty of medicine. In these circumstances, what the petitioner is requesting is to establish a Unani college. What facilities and what infrastructure is required for setting up such a college should now be indicated with clarity and precision. That is lacking and that is why a grievance is made that there is a non application of mind.

11. On such a suggestion being given to the respondents, both, Mr.Helekar and Mr.Limaye have taken instructions. It is stated by Mr.Limaye that the first respondent is not averse to taking a fresh call and pass an order on the above noted aspects. In other terms, a fresh order can be passed after a recent visit and inspection by the CCIM.

12. We enquired from Mr.Helekar and on taking instructions, he says that the CCIM requires at least 25 days to carry out an inspection and make recommendations based thereon, which will be forwarded to the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy. Mr.Limaye says that on receipt of such recommendations, a fresh date of hearing will be notified and on that date, the petitioner can remain present with the authorised representative and with all relevant records in its possession. He can also take inspection of the records maintained by the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy. After all this, a note will be taken of the submissions/objections or explanation to the objections, the show cause notice or communications from the Ministry and a reasoned order will be passed. That order will be passed within a period of four weeks after the CCIM recommendations are received, a hearing is scheduled and at the conclusion of the same.

13. In view of these statements made, which are accepted as undertakings given to this court, we direct that a fresh order shall be passed and uninfluenced by the earlier order by the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy, Government of India within a period of 10 weeks from the conclusion of the inquiry. It shall be passed after the recommendations of the CCIM are received and which recommendations shall be forwarded to the Ministry within a period of 25 days from the date of communication of this order. After the recommendations are received and a notice of hearing is given or issued and a fresh hearing is held, the order will be passed by the Ministry/respondent no. 1. For no reason, the time shall be extended by this court. The time would start running after the recommendations are received and the exercise of the personal hearing is carried out.

14. We clarify that we have not expressed any opinion on the rival contentions.

15. With the aforesaid directions, the writ petition is disposed of.

16. The parties to act upon an authenticated copy of this order.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)