

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

CWP No.301 of 2019

Date of Decision : 01.04.2019

Sunrise Education Society

....Petitioner

Versus

Union of India and others

...Respondents

CORAM :HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE LALIT BATRA

Present : Mr.Anmol Rattan Sidhu, Sr. Advocate with
Mr.Manhar S.Saini, Advocate and
Mr.Raghav Gulati, Advocate
for the petitioner.

Mr.Anil Chawla, Advocate
for respondent No.1.

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

Mr.Suveer Sheokand, Addl.AG, Punjab.

Mr.Ranjit Singh Kalra, Advocate
for respondent No.4.

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MAHESH GROVER, J.(O)

In this petition the petitioner confines his prayer to the one
extracted herebelow :-

“For seeking issuance of Writ/Order or direction, specifically in
the nature of Mandamus, directing Respondent Nos.1 & 2 to
process the application/case of the Petitioner and give necessary
permissions to start new college for BAMS (UG) Course for the
Academic Year 2019-20 and issue consequential instructions for
the same, keeping in view the fact that the Petitioner possesses
all other requisite approvals viz. No Objection Certificate/

Essentiality Certificate issued by the State Government and Consent of Affiliation from the University, issued before the issuance of the Policy by respondent No.1, in the interest of justice.”

The grievance stems from the circular dated 15.06.2018, which is a communication issued by the Government of India, Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (AYUSH), New Delhi, the relevant part of which is extracted as under :-

“3. Therefore, the Ministry has decided not to receive fresh applications for starting new ASU & H colleges for A.Y.2019-20 and A.Y.2020-21. (As per the Guidelines issued by the Ministry, the period of receiving applications for starting new colleges is from 1st July to 31st August, 2018 for A.Y.2019-20 and 1st July to 31st August, 2019 for A.Y.2020-21). After two years, the Ministry shall review the decision.

4. In view of the above decision of the Ministry, the State Governments and Universities are requested to not issue fresh NOC and Consent of affiliation respectively for starting new ASU & H colleges during the above mentioned period. It may please be noted that no applications for starting new ASU & H colleges shall be entertained by the Ministry for A.Y.2019-20 and A.Y.2020-21.”

Evidently the application and subsequent consideration for starting ASU & H college was debarred which decision was to be reviewed after two years. Clear stipulation was incorporated requiring the State Governments and Universities not to issue fresh NOC and consent of affiliation respectively for starting new colleges. The

petitioner states that his process of affiliation etc. had started prior to the issuance of the circular dated 15.06.2018 and would not bind him. In this regard he has drawn our attention to a communication from Guru Ravidas Ayurved University, Punjab granting him consent of affiliation for opening new Ayurvedic College pursuant to his request/application dated 09.03.2018 and 16.04.2018. The consent of affiliation was granted on the basis of report of the Inspection Committee. On the very same day the University agreed in principle to affiliate the proposed Mai Bhago Ayurvedic Medical College & Hospital for Women at Village Pidli, District Tarn Taran but subject to grant of permission by the Government of India under Section 13 A of the Indian Medicine Central Council Act, 1970. This essentiality certificate/No Objection Certificate was extended by one year subject to certain conditions incorporated in the communication dated 04.05.2018.

The petitioner contends that since the process of affiliation etc. had commenced prior to the communication dated 15.06.2018 restricting the process for starting fresh colleges and prohibiting fresh applications would not bind him. Reliance has been placed on a decision rendered by the High Court of Bombay and Karnataka High Court where in similar circumstances the claim of the petitioners therein was accepted.

The respondents justified their stand by stating that there was absolutely no application made by the petitioner to which the petitioner has asserted that he possibly could not have, looking

at the prohibitory content of circular dated 15.06.2018.

After hearing the learned counsel for the parties, we are of the opinion that the High Court of Bombay has expressed its views, the relevant of which we may extract herebelow :-

“4] Insofar as Writ Petition No.8333 of 2018 is concerned, the respondent University has already addressed a communication to the State Government recommending the case of the petitioner. In this regard, it is submitted at the bar that, though the State Government has conducted inspection for grant of No Objection Certificate, further process in the matter has been stalled on account of impugned communication.

5] Karnataka High Court in W.P.No.104165 of 2018 and W.P.No.104203 of 2018 had an occasion to consider prima facie the validity of the circular dated 15th June 2018 which is also impugned in the present petitions. The Karnataka High Court, after elaborate discussion has granted stay to the impugned communication dated 15th June 2018.

6] Though the view taken by Karnataka High Court is not binding on us, we are also of the view that since the process for starting the colleges of the petitioners has commenced prior to the issuance of communication and not only that in some of the cases, the State Government and University has accorded consent and NOC in favour of petitioners, the said communication will not apply retrospectively.

7] In that view of the matter, we direct that during the pendency and final disposal of the petition, the processing of application of the petitioners for starting new Ayurvedic and

Homeopathy colleges should not be stalled on account of the communication dated 15th June 2016.

8] Needless to state that the interim protection granted by us would require respondents, i.e. Union of India, State of Maharashtra through Department of Health and Medical Education, Directorate of AYUSH, Maharashtra University of Health Science, Nashik and Central Council of Homeopathy to process the applications of the petitioners without the impugned communication causing as an impediment in that regard.”

We would concur with the views expressed above and dispose of the present petition with a direction to the respondents to process the application of the petitioner unfettered by the communication dated 15.06.2018. We make it clear that the only relief that the petitioner can get at present is for consideration since the decision making would certainly vest with the respondents.

Disposed of.

Copy Dasti.

(MAHESH GROVER)
JUDGE

01.04.2019
dss

(LALIT BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No