

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

CWP No.12902 of 2019 (O&M)

Date of decision: 30.05.2019

Om Welfare & Educational Trust

.....Petitioner

Versus

UOI and others

....Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

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

Mr. Arun Gosain, Sr. Panel counsel for respondent Nos.1 and 2-
Union of India.

B.S. Walai, J (Oral).

1. Challenge in the writ petition is to policy Annexure P-13 dated 15.06.2018 i.e. decision taken by the Ministry not to entertain any fresh application for starting new ASU&H Colleges during the academic years 2019-20 and 2020-21 as also to order Annexure P-15 dated 07.03.2019 vide which the application of the petitioner under Section 13-A of the Indian Medicine Central Council Act, 1970 for opening of a new Ayurveda Medical (ASU&H) College and issuance of “Letter of Intent” was rejected. Further prayer is for the issuance of a writ in the nature of Mandamus for directing respondent Nos.1 and 2 to process the petitioner’s application dated 29.08.2018 and to grant requisite permission to start a new College for BAMS (UG) Course for the academic year 2019-20.

2. Learned Sr. Counsel for the petitioner contends that the petitioner having obtained the requisite approvals for grant of permission to

start a new College for BAMS (UG) Course for the academic year 2019-20 submitted an application to respondent No.1 on 29.08.2018 but the same was rejected vide order Annexure P-15 dated 07.03.2019 on the ground that the application could not be processed in view of policy Annexure P-13 dated 15.06.2018 as per which the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy had taken a decision not to process fresh applications for starting new ASU&H Colleges for the academic years 2019-20 and 2020-21.

3. Learned Sr. Counsel contends that one Sunrise Education Society filed CWP No.301 of 2019 against the Union of India and others seeking the issuance of a writ of Mandamus for directing the official respondents to process it's application to give necessary permission to start a new College for BAMS(UG) Course for the academic year 2019-20 in view of it possessing all requisite approvals viz. NOC, Essentiality Certificate issued by the State Government besides Consent of Affiliation from the University, before the issuance of policy dated 15.06.2018.

4. Learned Sr. Counsel contends that the Essentiality Certificate/No Objection Certificate to start a new Ayurveda College was granted to the petitioner by the State of Haryana vide order Annexure P-3 dated 26.05.2017 subject to the terms and conditions contained therein and there is no time limit for the validity of the same. The aforementioned assertion is not disputed by learned Sr. Panel Counsel. Learned Sr. Counsel further contends that the petitioner was also granted Consent of Affiliation by respondent No.4- University vide Annexure P-4 dated 31.05.2017 to set up a new BAMS College from the session 2018-19 with the consent being valid for two academic sessions from the date of issuance and that in view of requisite

approvals having been obtained by the petitioner for the setting up of a new college prior to the issuance of policy directive dated 15.06.2018, therefore in view of the decision of the Hon'ble Division Bench of this Court in CWP No.301 of 2019, rejection the application of the petitioner for the setting up of a new Ayurveda College in view of instructions Annexure P-13 dated 15.06.2018 is unsustainable.

5. Learned Sr. Counsel contends that affiliation by respondent No.4-University was subject to grant of permission by the Govt. of India under Section 13-A of the Indian Medicine Central Council Act, 1970 accordingly, application was made by the petitioner to respondent No.1 for permission to start a new Ayurveda Medical College for the academic session 2019-20 on 29.08.2018 i.e. within the time limit stipulated for receipt of applications for starting of new Ayurveda College in the succeeding year i.e. 2019-20 after obtaining the requisite approvals for grant of permission prior to the issuance of policy directive Annexure P-13 dated 15.06.2018 and that Hon'ble the Division Bench in CWP No. 301 of 2019 in view of requisite approvals for grant of permission to start new College for BAMS (UG) Course having been obtained by the petitioner therein prior to issuance of policy directive Annexure P-13 dated 15.06.2018, ordered processing of the application of the petitioner for permission for setting up a new college for the academic year 2019-20 unhindered by the policy directive Annexure P-13 dated 15.06.2018.

6. Learned counsel for Union of India, on the other hand, by referring to paragraph Nos.15 and 17 of the written statement contends that the reasons for imposing moratorium to withhold grant of permission to the setting up of new Medical Colleges for the academic years 2019-20 and

2020-21 was by way of a stop-gap measure in larger public interest to enable improvement of education standards as also infrastructure conditions of existing Medical Colleges besides to enable identification of colleges imparting sub-standard education for taking corrective measures.

7. Learned Sr. Counsel for the petitioner, vehemently contends that processing of the application and grant of permission is subject to assessment being made by the competent Authority of the applicant fulfilling the norms stipulated for grant of permission for opening of a new college, therefore, the reasoning advanced for issuance of policy decision Annexure P-13 dated 15.6.2018 is flawed since it is not the claim of the petitioner that it should be granted permission to open a new College even if it does not fulfill the standards prescribed and the norms applicable as per the rules and regulations. Learned Sr. Counsel contends that the claim of the petitioner is for grant of permission to open a new college subject to the petitioner fulfilling the norms stipulated and the conditions specified as per the rules and regulations.

8. I have considered the submissions of learned counsel for the parties.

9. Admittedly, application for grant of permission to start a new college for the academic session 2019-20 was rejected by respondent No.1 vide Annexure P-15 dated 07.03.2019 solely in view of policy decision Annexure P-13 dated 15.06.2018 not to entertain applications for opening of new colleges for the academic years 2019-20 and 2020-21. The reasoning for the issuance of policy decision Annexure P-13 dated 15.06.2018 as advanced on behalf of respondent No.1 are as noted above. However, the petitioner claims to have the requisite approvals prior to the issuance of policy directive

Annexure P-13. Besides, it is not the claim of the petitioner that its application for grant of permission be processed de hors the rules and regulations applicable or that it be granted permission even if it does not fulfill the norms. Neither has such a claim been made nor could such a claim have been made. Claim of the petitioner is only for processing of its application for grant of permission. It goes without saying that on processing of the application, permission would be liable to be granted only in the eventuality of the applicant fulfilling the norms and conditions stipulated in the rules and regulations applicable for the consideration and grant of permission for opening of new college. Admittedly, decision in CWP No.301 of 2019 is dated 01.04.2019 i.e. a date subsequent to the date on which the application of the petitioner was rejected solely in view of policy decision Annexure P-13 dated 15.06.2018 not to entertain fresh applications for opening of new colleges for the academic years 2019-20 and 2020-21. However, as has been noted above, Hon'ble the Division Bench of this Court vide its order dated 01.04.2019 in CWP No.301 of 2019 allowed the claim of the petitioner therein by directing processing of the application for the setting up of a new college for the year 2019-20 unfettered by communication Annexure P-13 dated 15.06.2018 in view of the requisite approvals having been obtained prior to the issuance of policy directive Annexure P-13 dated 15.06.2018. It is not denied that the position in the instant case is the same. Accordingly, in view of the decision of Hon'ble the Division Bench in CWP No. 301 of 2019, the prayer of the petitioner for the issuance of a direction to respondent No. 1 to process its application dated 29.08.2018 unfettered by directive Annexure P-13 dated 15.06.2018 is liable to be issued.

10. Accordingly, in the light of the position as noted above, the writ petition is allowed to the extent of setting aside of impugned order Annexure P-15 dated 07.03.2019. As a consequence thereof, respondent No.1 shall process the petitioners application dated 29.08.2018 in accordance with the rules and regulations applicable unfettered by policy directive Annexure P-13 dated 15.06.2018 and take a decision with regard to the permission sought in accordance with law as expeditiously as possible. Needless to mention, the direction issued is only to process the application and to take a decision in respect thereto in accordance with law as was ordered in CWP No. 301/2019 unfettered by policy directive Annexure P-13 dated 15.06.2018.

May 30, 2019
ps

(B.S. WALIA)
JUDGE

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