

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

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**CWP No.12732 of 2019
Date of Decision : 30.05.2019**

Sunrise Education Society.

....Petitioner

V/S

Union of India & others.

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Dr. Anmol Rattan Sidhu, Senior Advocate assisted by
 Mr. Raghav Gulati, Advocate for the petitioner.

Mr. Anil Chawla, Senior Panel Counsel for respondent
Nos.1 & 2.

B.S. Walia, J. (Oral)

[1] Prayer in the writ petition is for the issuance of a writ of Certiorari to quash Order Annexure P-17 dated 10.04.2019, passed by respondent No.1, declining the application of the petitioner for starting a new Ayurveda Medical College with 60 seats for BAMS (UG) Course for the academic year 2019-20, for the issuance of a writ of Mandamus, directing respondent Nos.1 & 2 to allow the petitioner to start a new Ayurveda Medical College with 60 seats for BAMS (UG) Course for the academic year 2019-20 as also for the issuance of a writ of Certiorari to quash Policy Annexure P-13 dated 15.06.2018 vide which Universities across the country were directed not to issue fresh NOC

and Consent of Affiliation for starting new ASU & H Colleges during the academic years 2019-20 and 2020-2021.

[2] Learned Sr. Counsel for the petitioner contends that the petitioner had filed CWP No.301 of 2019 for the issuance of a writ of Mandamus, directing respondent Nos.1 & 2 to process the application of the petitioner and to give necessary permission to start a new college for BAMS (UG) Course for the academic year 2019-20 in view of possessing the requisite approvals viz. Essentiality Certificates/No Objection Certificate issued by the State Government besides Consent of Affiliation from the University before the issuance of Policy Annexure P-13 dated 15.06.2018. Learned Sr. Counsel further contends that Annexure P-13 i.e. policy directive 15.06.2018 was not to the knowledge of the petitioner, the same being an internal departmental communication as it was never published or circulated in the public domain and it was only on learning about the same that the petitioner immediately filed CWP No. 301 of 2019 which was disposed of by directing the respondents to process the application of the petitioner for starting a new college for the academic year 2019-20 unfettered by communication Annexure P-13 dated 15.06.2018, while making it clear that the only relief being granted was consideration of claim of the petitioner for grant of permission.

[3] Pursuant to directions dated 01.04.2019 by this court in CWP No.301 of 2019, order Annexure P-17, dated 10.04.2019 was passed by respondent No.1 rejecting the application of the petitioner for permission to start a new college in the academic year 2019-20 on the ground that the application submitted by the petitioner was beyond the timeline stipulated for grant/renewal of permission of ASU&H colleges issued by the Ministry of

AYUSH vide F.No.R-11011/03/2011-EP(H)Part dated 01.09.2017 i.e. 1st July to 31st August (both days inclusive) of any year.

[4] Learned Counsel for the petitioner contends that in view of the directions of Hon'ble the Division Bench, the application of the petitioner could not have been rejected. Learned Counsel appearing on behalf of respondent No.1 on the other hand vehemently opposes the plea on the ground that the directions of Hon'ble the Division Bench were only to process the application and not that the application had been allowed or that it could not be rejected even if the same did not comply with the requisite conditions and norms stipulated. Learned Sr. Counsel contends that as per the directions of Hon'ble the Division Bench, the answering respondent had to process the petitioners application, in other words to consider whether the petitioner fulfilled the requisite conditions and norms stipulated and since the impugned order had been passed strictly in accordance with the requisite conditions and norms stipulated, after taking into account that the application for permission was beyond the time line stipulated in Annexure P-9 for submission of application, besides, no challenge had been made to the time line for submission of application i.e. 1st July to 31st August (both days inclusive), the impugned order was immune from challenge. Learned Sr. Counsel further contends that the challenge to policy directive Annexure P-13 dated 15.06.2018 was misconceived since the claim of the petitioner had not been rejected on said ground rather the claim had been processed as per directions in CWP No. 301 of 2019 by ignoring the directive contained in Annexure P-13 dated 15.06.2018.

[5] I have considered the submissions of learned counsel for the

[6] Initially, claim of the petitioner for starting of a new college for the academic year 2017-18 was not accepted vide order Annexure P-8 dated 08.09.2016. However, order Annexure P-8 dated 08.09.2016 was not challenged. Later, the petitioner submitted application dated 18.08.2018 for permission to start a new college for the academic year 2018-19 followed by application Annexure P-14 (Colly) dated 25.08.2018 stating that it would pay the requisite fee of ₹ 3.5 lacs if called for as the amount was lying deposited with the ministry in lieu of the earlier application. Thereafter on 17.09.2018 another letter was forwarded by the petitioner without mentioning any academic session along with the draft for the requisite fee of ₹ 3.5 lacs. However, the claim was rejected vide order Annexure P-15 dated 18.03.2019, by observing that the time line for opening of ASU&H Colleges for the academic year 2018-19 was already over for as per Regulation 5 of the Establishment of New Medical Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity by a Medical College Regulations, 2003, application for the academic year 2018-19 had to be submitted between 01st April to 30th April, 2017, whereas application dated 17.09.2018 had been submitted later on without mentioning the academic year. Reference in this context was made to policy directive dated 15.06.2018 mentioning decision of the Ministry not to receive applications for the academic years 2019-20 & 2020-21 as also that in view thereof the petitioner's application dated 17.09.2018 could not be considered even for the academic year 2019-2020.

[7] Prayer in CWP No.301 of 2019 was restricted to seeking a Mandamus for processing the petitioners application for starting a new college

formalities for starting the same for the academic year 2019-20 had already been complied with before the issuance of policy directive dated 15.06.2018. The same was disposed of by Hon'ble the Division Bench by directing processing of the claim of the petitioner for the academic year 2019-20 unmindful of the directive contained in Policy directive Annexure P-13 dated 15.06.2018.

[8] Counsel for the parties are in agreement that the time line for submitting application for starting a new Ayurvedic College is 1st July to 31st August of any year, preceding the year in which the new college is proposed to be started in terms of Annexure P-9 dated 01.09.2017.

[9] A perusal of the application (Annexure P-14) containing reference No.104/SESA/18 dated 17.09.2018 reveals that it does not mention the year with effect from which the new college was proposed to be started. However, learned Sr. Counsel for the petitioner contends that the same was in fact for the year 2019-20 and the same was also understood as such by the respondents as the impugned order mentions that pursuant to the directions in CWP No. 301 of 2019, representation Annexure P-14 dated 17.09.2018 had been considered for the academic year 2019-2020 and rejected for having been submitted beyond the stipulated timeline.

[10] In the aforementioned background, the question which arises for consideration is whether application for permission Annexure P-14 dated 17.09.2018 directed to be processed by Hon'ble the Division Bench vide orders dated 01.04.2019 in CWP No. 301 of 2019, unmindful of directive contained in Annexure P-13 was liable to be processed unmindful not only of the directive contained in Annexure P-13 dated 15.06.2018 but also unmindful of

subject matter of consideration before Hon'ble the Division Bench as no claim qua the same was made in said writ petition nor any finding returned qua the same. Admittedly, Annexure P-9 dated 01.09.2017 stipulates that application for permission for starting a new college was required to be submitted within the period 01st July to 31st August (both days inclusive) of any year, prior to the year in which the new college was to be started. Admittedly, the application was submitted on 17.09.2018 whereas application for permission for the academic year 2019-20, was required to be submitted by 31.08.2018.

[11] Learned Sr. Counsel for the petitioner contends that submission of the petitioner that it could not have applied for processing of application for the academic year 2019-20 within the time line prescribed in view of the prohibitory circular dated 15.06.2018 finds mention in the order of Hon'ble the Division Bench dated 01.04.2019(Annexure P-16), therefore the petitioners application could not have been rejected on the ground that it was not submitted within the timeline. Admittedly, the Division Bench issued directions for consideration of the application of the petitioner for the academic year 2019-20 but only unfettered by communication Annexure P-13 dated 15.06.2018. Neither was there any challenge in CWP No. 301/2019 to the timeline stipulated in Annexure P-9 dated 01.09.2017 nor was there any direction by Hon'ble the Division Bench that adherence to time line stipulated in Annexure P-9 could be ignored or be ignored. Application for permission to open a new college was to be processed subject to fulfillment of the conditions and norms stipulated in respect thereto, unmindful only of the directive contained in Annexure P-13 dated 15.06.2018. Admittedly, the application as had been submitted was clearly beyond the timeline specified in Annexure P-9

[12] No doubt, as per Notification, Annexure P-13 dated 15.06.2018, the Ministry had decided not to receive fresh applications for starting new ASU&H Colleges for the academic years 2019-20 and 2020-21. Consequentially, Policy Directive Annexure P-13 dated 15.06.2018 was likely to have resulted in the application of the petitioner not being entertained. Therefore, at first blush, submission of learned Sr. Counsel for the petitioner that no useful purpose would have been served by submitting application within the timeline appears attractive but is not acceptable for on the one hand it is claimed that the petitioner gained knowledge of the policy directive dated 15.06.2018 in January 2019 while on the other hand the petitioner contends that the application could not have been filed within the timeline, in view of the prohibitory policy directive dated 15.06.2018. The aforementioned pleas are contradictory. In case the petitioner was not aware of policy directive Annexure P-13, then there is no explanation for not having submitted the application within the stipulated timeline i.e. up to 31.08.2018, but if the stand of the petitioner is that it did not make an application as the same would not have been entertained due to policy directive Annexure P-13 dated 15.06.2018, then in that situation there is no explanation for not having challenged policy directive Annexure P-13 dated 15.06.2018 at the earliest and in any case before the cut off date for applying i.e. 31.08.2018 whereas prayer for the issuance of a writ of Certiorari to quash policy directive Annexure P-13 dated 15.06.2018 has been made for the first time in the instant writ petition only i.e. on 07.05.2019.

[13] The plea that the application even if submitted within the timeline, would not have been entertained in view of policy directive dated 15.06.2018,

accepted for another reason also i.e. policy directive Annexure P-13 dated 15.06.2018 which was ordered to be ignored by Hon'ble the Division Bench is distinct from the time line stipulated in Annexure P-9 dated 01.09.2017 and the two operate in separate fields. However, the aforementioned plea pales into insignificance as no challenge has been made to the timeline stipulated in Annexure P-9 even in the instant writ petition. In the absence of a challenge to the timeline (Annexure P-9), the writ is not maintainable as such.

[14] It would have been a different position altogether had the petitioner submitted the application within the stipulated timeline as per Annexure P-9 or challenged Policy Directive Annexure P-13 dated 15.06.2018 at the earliest and in any case before the expiry of the cut of date for submission of application for starting a new college with effect from the academic year 2019-20 i.e. before 31.08.2018. However, the same was not done. Instead the petitioner chose to maintain a stoic silence to the policy directive dated 15.06.2018 and filed application Annexure P-14 for grant of permission to start new college only on 17.09.2018. Thereafter, the petitioner filed CWP No.301 of 2019 in January, 2019, claiming processing of its application for starting a new Ayurvedic College for the academic year 2019-20 without making a challenge to the timeline stipulated in Annexure P-9 or seeking any relaxation from the timeline stipulated therein. The orders of Hon'ble the Division Bench were merely for processing of the application of the petitioner for the academic year 2019-20. The application was accordingly processed but rejected by respondent No.1 on the ground of the same not having been submitted within the time line specified for submission of application as contemplated in Annexure P-9 dated 01.09.2017. Neither there

cut off date i.e. 1st July 2018 to 31st July 2018 for permission to start a new college w.e.f. the academic year 2019-20 was bad or was not required to be adhered to. Besides, challenge to and prayer for quashing policy directive Annexure P-13 dated 15.06.2018 has been made only in the instant writ petition.

[15] The timeline for submission of application for permission to start a new college within the period 1st July to 31st August of the year preceding the year w.e.f. which the college was to be started was stipulated so as to enable inspection of infrastructure, consideration of claim of the applicant that it fulfilled the norms and conditions stipulated by the Ministry for grant of permission for the setting up of a new college to ensure that the standard of education to be imparted in the college proposed to be started meets the requisite standards for permitting the college to impart education in order to ensure that students admitted therein get proper education and are fully trained as doctors at the time of passing out from the college. Assessment of the claim for permission therefore requires time. Consequentially, stipulating cut of date for submission of applications has a rationale with the object sought to be achieved and cannot be said to be without any basis. The sanctity of the time line specified in Annexure P-9 for receipt of applications for grant of permission to start a new Ayurvedic college has to be respected in order to ensure assessment of maintenance of standards of the institute by conducting appropriate inspection to satisfy the competent authority that the institute applying for permission fulfills the norms and conditions stipulated, besides has the requisite infrastructure and resources for starting the new college.

Application for permission to start new college for the academic year 2019-20

not having been filed within the stipulated timeline of 1st July to 31st August 2018, was rightly rejected vide order Annexure P-17.

[16] In the light of the position as noted above, I do not find any infirmity with the impugned order. The writ petition is devoid of merit and is accordingly dismissed.

May 30, 2019
'Rajneesh'

(B.S. WALIA)
JUDGE

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