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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7811/2019 & CM APPL. 32453/2019

Date of decision: 23rd September 2019

DR. R.B. SINGH GAYA HOMOEOPATHIC MEDICAL

COLLEGE AND HOSPITAL

..... Petitioner

Through: Mr. Kundan Kr. Mishra with
Mr. Arpit Srivastava, Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Amit Anand, Advocate for
respondent no. 1.
Mr. Sunil Narula, Advocate for
respondent no. 2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

CM APPL. 40304/2019 (for early hearing)

1. This is an early hearing application moved on behalf of the petitioner college.
2. The petitioner college claims that the counselling for the academic session 2019-2020 will soon commence and therefore, the matter needs to be heard prior to the date already fixed in the matter.
3. To be noted, the matter as of now has been posted for hearing on 25.11.2019.
4. Counsel for the respondent says that he has no objection if the application is allowed and the writ petition is heard today.
5. Accordingly, the captioned application is allowed.
6. The writ petition is taken up for hearing today.

W.P.(C) 7811/2019

7. In the captioned petition, the following substantive prayers have been made:-

“1. Quash and set aside the order dated 08.07.2019 (Annexure-P9) passed by Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy (AYUSH) contained in File No. R.14014/11/2019 -EP-II passed under the signature of under Secretary to the Government of India whereby and where-under permission for taking admission to the Petitioner college in 1st year BHMS Courses (Bachelor of Homoeopathy Medicine and Surgery) with 50 seats for the academic year 2019-20 has been declined.

2. Direct the Respondent No. 1 to grant permission to the Petitioner for taking admissions in 1st year BHMS Course (Bachelor of Homoeopathy Medicine and Surgery) with 50 seats for the academic year 2019-20.”

8. As would be evident upon perusal of the prayers, the petitioner college is seeking permission for taking admission in 1st year BHMS Course (Bachelor of Homoeopathy Medicine and Surgery) for the academic session 2019-20.

9. The petitioner college wishes to admit 50 students in the aforementioned course.

10. Via the impugned order dated 08.07.2019, the Government of India, Ministry of AYUSH has declined the request made by the petitioner college. The petitioner college, however, has been provided leeway till 31.12.2019 to cure the deficiencies observed during the academic session 2019-2020 as mentioned in para 5 of the same order; the purpose being that once deficiencies are cured, the Central Council of Homoeopathy (CCH) would carry out the inspection, *albeit*, for the academic session 2020-2021.

11. Counsel for the petitioner college relies upon a second inspection report dated 16.05.2019 to contend that there are no deficiencies.

12. In this behalf, learned counsel for the petitioner college has drawn my

attention to para 5 of the impugned order wherein the deficiency found has been noted. The submissions of the petitioner college and the observations of the Hearing Committee have been set out in a tabular form.

13. Based on the observations of the “Hearing Committee”, which are contained in the impugned order, learned counsel submits that the three aspects qua which observations were made were:-

- (i) The eligibility of lecturers in the petitioner college.
- (ii) Availability of medical officers and
- (iii) Non- availability of cadaver in the Department of Anatomy.

14. It is the submission of the learned counsel for the petitioner college that even according to the Hearing Committee the first two deficiencies did not subsist. The only deficiency, if at all, which obtains, according to the Hearing Committee, concerns non-availability of cadavers in the Department of Anatomy.

15. It is the contention of the learned counsel for the petitioner college that there is no requirement under the MSR 2013 for the petitioner college to make cadaver available in the Department of Anatomy to secure permission to run the BHMS course .

16. It is however, contended that while every other facility is available in the Department of Anatomy for imparting knowledge to the students, a cadaver can only be made available by a medical college having an attached hospital.

17. That this is so is sought to be established by the counsel for the petitioner college by relying upon the letter addressed by the Under Secretary to the Government of Bihar to The Principal, Darbhanga Medical College, Darbhanga

17.1 This letter is dated 18.12.2018 and is appended at page 86 of the paper book.

17.2 For the sake of convenience, the relevant part of the letter is extracted

hereafter:-

“Regarding the above-mentioned subject, it is submitted that Dr. Yaduvir Sinha, Homoeopathic Medical College and Hospital, Darbhanga and Dr. Ram Balak Singh Gaya Homoeopathic Medical College and Hospital Bodh Gaya, have demanded a dead body for teaching work. Formerly, the concerned Civil Surgeon was forwarded a letter to provide an unclaimed dead body but the body could not be made available.

It is requested that in the event of availability, arrangements should be made according to the rules of providing unclaimed bodies to the concerned institutions for the education work.”

18. Mr. Amit Anand, who, appears on behalf of respondent no. 1 concedes that the only objection which emerges upon a perusal of the impugned order is the non-availability of cadavers in the Department of Anatomy.

19. It is the submission of the learned counsel for respondent no. 1 that permission cannot be granted unless cadavers are made available in the Department of Anatomy.

20. I may also point out that counsel for the petitioner college has also referred to the observations of the Hearing Committee which are suggestive of the fact that the Hearing Committee was made aware of the difficulty that cadavers can be made available only by a medical college and that the State Government would have to take necessary steps in that behalf.

21. This apart learned counsel for the petitioner college also drew my attention to page 16, 17 & 18 of the rejoinder to demonstrate that admissions have been permitted in certain colleges/institutes despite the fact that one of the deficiencies pointed out was that no cadaver was available. In particular, reference was made to the following institutes:-

(i) Dr Brij Kishore Homoeopathic Medical College and Hospital, Dist. Faizabad. UP.

(ii) L.B.S Homoeopathic Medical College and Hospital,

Allahabad, Uttar Pradesh.

(iii) K G K Homoeopathic Medical College & Hospital,
Moradabad, U.P.

22. Having heard learned counsel for the parties and perused the record, as indicated above, the only objection which survives *vis-a-vis* the petitioner college is non-availability of cadavers.

23. The submission of the learned counsel for the petitioner is that there is no requirement to obtain cadavers as according to him all that is required under MSR 2013 is to have in place the necessary facilities and/or equipments to teach the students Anatomy.

23.1 This submission of the counsel cannot be accepted as Anatomy cannot be taught to the students unless cadavers are made available. To my mind, the requirement of making available cadavers is implicitly included in the relevant provisions contained in MSR 2013¹.

23.2 However, that being said there is merit in the contention of the petitioner college that a cadaver had to be supplied by medical college and efforts in that behalf have to be made by the concerned State Government.

23.3 In this behalf, as noticed above, counsel for the petitioner has relied upon a letter dated 18.12.2018.

23.4 I have also extracted the relevant part of this letter. A perusal of the extract would show that there is reference to the petitioner in the said letter.

23.5 The State Government in this communication has indicated that cadavers are to be made available to the concerned institutes for teaching purpose according to the rules put in place *qua* unclaimed bodies.

¹ **SCHEDULE III**

The college shall provide the equipment specified below: -

1. Department of Anatomy

XXX XXX XXX

4 Storage tanks to hold cadavers - As required

23.6 Concededly, the act which would apply in this case is the Bihar Anatomy Act, 1961.

23.7 This apart it appears not only has the Hearing Committee appreciated the difficulty faced by the petitioner college in securing cadavers but also, in the past, permission has been given by the Government of India, Ministry of AYUSH to other institutes to admit students to BHMS course, even though one of the objections raised was that cadavers were not available.

23.8 I have already in the earlier part of my discussion, referred to this aspect of the matter.

24. Therefore, I am of the view that the respondent no. 1/ Government of India, Ministry of AYUSH needs to revisit the issue concerning grant of permission to admit students to the BHMS course.

24.1 Accordingly, the impugned order is set aside

24.2 The respondent no. 1 is directed to revisit the issue in context of what is stated hereinabove. Respondent no. 1 will also examine its own record and see whether permissions have been given to other institutes in the past even though one of the objections raised pertained to non-availability of cadavers.

24.3 This exercise will be carried out by the Government of India, Ministry of AYUSH at the earliest though not later than 10 days from the receipt of this order.

24.4 In case a favourable order is passed after the aforementioned exercise is over, then, if the counselling is still open in the State of Bihar, the petitioner college would be entitled to take necessary steps *qua* academic session 2019-20, *albeit*, as per law.

25. The petition is disposed of in the aforesaid terms.

26. The date already fixed in the matter i.e. 25.11.2019 shall stand cancelled.

27. *Dasti* under the signatures of the Court Master.

RAJIV SHAKDHER, J

SEPTEMBER 19, 2019

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