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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 12.09.2019

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W.P.(C) 8885/2019 & C.M. No.36655/2019

BEEHIVE AYURVEDIC MEDICAL

COLLEGE AND HOSPITAL AND ANR.

..... Petitioners

Through Mr. Saket Sikri, Mr. Vivek Singh,
Ms. K. Gayatri and Mr. Abhinav
Garg, Advs.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through Mr. Amit Anand, Adv for R-1.
Ms. Archana Pathak Dave, Adv for
R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

JUSTICE RAJIV SHAKDHER (ORAL):

1 Via this writ petition, the challenge is laid to the order dated 30.07.2019 passed by respondent No.1 i.e. Union of India (in short 'UOI').

1.1 The petitioner had applied for permission to admit a third batch of students in the Bachelor of Ayurvedic Medicine & Surgery Under Graduate Course (in short 'BAMS UG Course') for academic sessions 2019-2020.

1.2 The petitioner was desirous of admitting 60 students for the aforementioned course.

1.3 Accordingly, an application in that behalf was filed with the concerned Ministry i.e. Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (in short 'Ministry of AYUSH'). The petitioner's

application was, however, rejected by the Ministry of AYUSH on 05.06.2019.

2 Being aggrieved, the petitioner moved this Court by way of a writ petition under Article 226 of the Constitution. This petition was numbered as W.P.(C) 7035/2019.

2.1 Pending the adjudication of the writ petition, the Central Council of Indian Medicine (in short 'CCIM') furnished a report on 24.07.2019 pursuant to an inspection of the Institute run under the aegis of the Petitioner.

2.2 In this writ petition i.e. W.P.(C) 7035/2019, an application was moved which was propelled by the conclusion reached by the CCIM in its report dated 24.7.2019. This application was disposed of by the Court on 29.07.2019. The learned Judge, in passing the order dated 29.07.2019, largely relied upon CCIM's report and, in particular, on certain pertinent observations made therein.

2.3 It would be relevant, therefore, to quote the operative part of the order dated 29.07.2019 which reads as under:

"...Inter alia the prayer made by the petitioner is to the effect that the present petition be allowed to be treated as a representation made to the respondent no.1 qua which learned counsel for the respondent no.1 submits that there is no scope for any further hearing and to similar effect is the submission made on behalf of the respondent no.2.

In as much as, it has been submitted on behalf of the respondent no.1 that the last date of according recognition to the institute for running the BAMS course is 31.07.2019 for the present academic year, in as much as the inspection report which has been placed on the record by the petitioner now with the

present application, puts forth the assessment at paragraph 8.1 with the observations by the visitors to the effect:-

“The college has good infrastructure. There are four lecture halls available in college Department of Sharir Rachna and Sharir Kriya and Maulik Sidhhanta are in developed stage. Sharir kriya lab is equipped with equipments and reagents. Concerned charts are displayed in the department. Department of Dravyaguna and Rog Nidan needs improvement. More specimens need to be added in the department of Rasa shastra. Department of Prasuti tantra and stri roga, Swasthvrita, kaumarbhritya and Agadtantra are in developing stage. Yoga halls exists and is functional. Teaching pharmacy and Drug testing lab are also in existence but needs improvement. Seating capacity in the library is adequate and the number of books is sufficient. Internet facility is available. Herbal garden is spread in a large area and there are sufficient number of placards which are displayed indicating name of herbs. Boys and girls hostel are available. Total number of teachers is 21 as per the attendance records, out of which one teacher AYURS0397 is on maternity leave. Three teachers have not been linked with the institution for this visitation by CCIM. College has applied for Teacher Code of Rahul Magar however his Teacher code has not been generated yet by CCIM. Teacher Code AYURS1174 is rejected by visitation team as he is transferred to another department and code for the other department AYUPS1317 is issued to him. One Teacher AYURB0792 has been relieved from the institution on 28 Feb 2018 after the TMS Request is closed. Infra structure of hospital: Emergency ward is in running condition. Pathology lab is functional. Operation theatre is equipped seems functional. X-Ray unit is in working condition. Labour room is there but no deliveries are performed. Panchkarma department is in running condition. Duty roaster (sic) chart is available. Adequate hospital staff is available. In overall the college and hospital is functional.”

inter alia indicating that it had been stated therein that adequate hospital staff is available and in overall, the college and hospital is functional.

Despite the objections raised on behalf of the respondent nos. 1 & 2, it is considered appropriate that the respondent no.1 gives the hearing to the petitioner to put forth its contentions in relation to the aspect that there are no deficiencies for running the institute. The said hearing is directed to be given to the petitioner by the respondent no.1 on 30.07.2019 and the present petition which is directed to be treated as a representation be disposed of by the respondent no.1 by the date 30.07.2019 itself. The impugned order dated 05.06.2019 is thus set aside.

The present directions are in the peculiar facts and circumstances of the instant case in view of assessment order of the visitors observing that in overall, the college and hospital is functional.

The petition is thus disposed of.

Copy of the order be given Dasti under the signatures of the Court Master."

(emphasis is mine)

3 As would be evident from the aforementioned extract of the order dated 29.07.2019, the learned Judge directed UOI to grant a hearing to the petitioner to consider its stand that there was no deficiency obtaining in its Institute and, therefore, it ought to be granted the permission to admit the third batch of students for the BAMS UG Course.

4 It is pursuant to this direction that the impugned order dated 30.07.2019 came to be passed. In the impugned order, the UOI has set out a table wherein it records the purported deficiencies, submissions made on

behalf of the petitioner, and the observations of the Committee constituted by UOI for the purpose of hearing the representative(s) of the petitioner.

5 For the sake of brevity, the contents table is not extracted herein, however, based on the same, Mr. Amit Anand, learned counsel for UOI, has urged that the impugned order needs to be sustained. In this behalf, Mr. Anand has focused on the absence of quality testing laboratory, the absence of proof of employment of requisite number of attendants, the absence of details on the URL of the petitioner's website as mandated under Regulation 9(2) of RMS, 2016, the absence of a functional clinical laboratory as required under the provisions of RMS, 2016, the absence of an operation theatre as required under RMS, 2016, and the absence of a functional labour room in accordance with the provisions of RMS, 2016.

5.1 Insofar as the absence of a quality laboratory is concerned, Mr. Anand says that as per RMS, 2016, it required to have specified area allocated to it and, therefore, certified building plans were sought which were not produced. Furthermore, Mr. Anand says that purchase bills for certain equipment such as TLC Plate and TLC Chamber were not submitted.

5.2 As regards the deficiency qua availability of attendants in the clinical laboratory was concerned, Mr. Anand contended that while the minimum requirement was to have two (2) attendants, the petitioner had in place only one (1) attendant.

5.3 Insofar as non-availability of requisite information with regard to Regulation 9 (2) of RMS, 2016 was concerned, Mr. Anand submitted that the petitioner's website did not show a month-wise analysis of the attendance of teaching and non-teaching staff as also students and patient inflow in the OPD and the IPD.

5.4 To emphasize the fact that the clinical laboratory was non-functional, the absence of stock registers was highlighted. Mr. Anand stressed the fact that copies of the laboratory registers produced had several pages which were neither signed nor verified. Reference was also made to the discrepancies found in the purchase bills and the stock registers.

5.5 Insofar as the functionality of the operation theatre and labour room was concerned, according to Mr. Anand, no registers were produced to establish that the operation theatre and the labour room were functional.

6. On the other hand, Ms. Archana Pathak Dave, who, appears for CCIM, submitted that upon having conducted an inspection of the petitioner's Institute, though, CCIM had found some shortcomings, it had recommended to the UOI that the petitioner's Institute should be granted conditional permission to admit requisite number of students to the BAMS UG Course for the academic session 2019-2020. Learned counsel, for this purpose, drew my attention to CCIM's report dated 24.04.2019.

7. Mr. Sikri, on the other hand, submitted that the petitioner's Institute was established as far back as in 2017. Via the subject application, permission was sought to allow admission qua the third batch. It was contended that at the stage of establishing the institution, the infrastructure available was thoroughly examined and only, thereafter, permission was given to run the Institute.

7.1 Mr. Sikri drew my attention to the relevant provisions of RMS, 2016 and to the contents of the CCIM's report to buttress his argument that not only was the requisite staff (as per the minimum requirements) in place but also the minimum required equipment was in position.

7.2 In particular, Mr. Sikri submitted that the observations of the Committee that the building plans of the laboratory were not produced is red-herring for the reason that the laboratory has been in place since the concerned Institute was established. According to the learned counsel, no permission could have been given to establish an Institute if the requisite specified area was not made available for the purpose of the laboratory.

7.3 As far as non-production of purchase bill vis-à-vis laboratory equipment was concerned, Mr. Sikri contended that the relevant documents are available with the petitioner and that observations by the Committee in this behalf were not put to the petitioner and hence its representative were off the cuff and caught off-guard.

7.4 Insofar as the information with regard to staff, both teaching and non-teaching, students and patients is concerned, Mr. Sikri drew my attention to screenshots appended to the petition to establish that requirements of Regulation 9 (2) of RMS, 2016 were met. In this context, reference was made to pages 232 to 264 of the paper book.

7.5 As regards the allegation that the clinical laboratory was non-functional, Mr. Sikri drew my attention to the fact that photographs of the clinical laboratory in the presence of Inspector(s) were taken on 11.03.2019 which were placed on record and, therefore, the objection taken by the Committee ought not to be sustained. Qua the charge that the operation theatre was non-functional, Mr. Sikri drew my attention to the CCIM's report which adverts to the fact that between January and December, 2018, five (5) surgeries had been performed at petitioner's institute. Likewise, with regard to the allegation that the labour room was non-functional, Mr. Sikri, once again, referred to the CCIM's report. Based on the report, Mr.

Sikri sought to establish that necessary equipment required for carrying out deliveries of new born babies was available. It was learned counsel's submission that merely because the petitioner's Institute was not approached for carrying out deliveries could not have been used as an excuse to deny the petitioner's request for grant of permission to admit third batch of students to BAMS UG Course.

8. I have heard the learned counsel for the parties at some length. I am of the view that the UOI ought to, ordinarily, rely upon CCIM's report, being an expert body, unless it has good reason to derogate from the same. As indicated hereinabove, CCIM's report dated 24.04.2019 has, in no uncertain terms, recommended to UOI that conditional permission should be granted to petitioner's Institute for admission of students in the BAMS UG Course for academic session 2019-2020, notwithstanding certain discrepancies which came to light during the course of inspection. CCIM, it appears, applied the de minimis rule. Thus, according to CCIM, the discrepancy could not come in the way of granting, in the very least, conditional permission. The object perhaps being that the discrepancies being such that they could be addressed in due course. Given the position, I would rely upon the observation made in the report of CCIM, which is an expert body with regard to the State of the facilities, infrastructure, equipment, staff and faculty available in petitioner's Institute, which concludes that the petitioner deserves to be granted conditional permission.

8.1 The UOI, however, via the impugned order has indicated its disapproval of the recommendation made by the CCIM. Having carefully perused the impugned order and material on record, I have not been persuaded to accept the observations contained therein for the reason that

nothing concrete has been stated as to why it disagrees with the CCIM's report. To cite an example, the UOI has said that the operation theatre is not functional. There cannot be any dispute that CCIM in its report has clearly stated that between January and December, 2018 five (5) surgeries were conducted. There can only be two possibilities, either the CCIM's conclusion in this behalf is based on no evidence or that the observations of the UOI have no basis.

8.2 In my view, given the fact that CCIM's Inspector(s) admittedly visited the petitioner's Institute, if one were to apply the test of preponderance of probability, one would have to go by observations made in CCIM's report, which is, that surgeries were conducted.

8.3 Similarly, insofar as the labour room is concerned, CCIM's report clearly adverts to the fact that the requisite equipment was available. The fact that there were no admissions made for delivering can be no reason to deny permission to admit students to the Institute for the following reasons:

- (i) Firstly, the Institute was established only in 2017. It takes time for Institutes such as the one run by the petitioner to establish its credentials.
- (ii) Secondly, the Institute, admittedly, is a functional hospital offering host of services to its patients.
- (ii) Lastly, it is common knowledge that people generally have not acquired confidence to approach Ayurveda hospitals for surgeries and deliveries. If the absence of deliveries could be one of the reasons to deny permission, surely, the CCIM, which is an expert body, would have brought this aspect to fore.

8.4 Insofar as the other aspects are concerned, i.e. lack of quality testing laboratory, I agree with Mr. Sikri that this aspect could not have been put to

the petitioner for the first time in a hearing on remand by the UOI. As a matter of fact, this aspect i.e. lack of quality testing laboratory and functional clinical laboratory are not aspects, which CCIM adverted to in its report.

8.5 It is important to note that objection taken by UOI, with regard to the absence of information as required to be displayed on the petitioner's website as per the provisions of Regulation 9 (2) of RMS, 2016 is also an aspect which finds no reference in CCIM's report.

8.6 The other issue with regard to deficiency in putting in place requisite numbers of attendants, I, once again, tend to agree with Mr. Sikri that as per the RMS, 2016 as long as 80% of the staff is available, the minimum requirement as per RMS, 2016 is met. It is not the UOI's case that the petitioner does not meet the minimum requirement qua attendants as required under RMS, 2016. As a matter of fact, in the impugned order it is noticed that the petitioner had only one attendant in place and that the deficiency was liquated *albeit* after the inspection was carried out as the petitioner had employed another attendant in May, 2019.

9. Therefore, on the whole, in my view, the impugned order passed by the UOI lacks robustness and does not inspire confidence.

10. I had put to Mr. Sikri as to whether the petitioner could admit students for the academic sessions 2019-2020, given the fact that 31.3.2019 being the cut-off date had been crossed. Mr. Sikri, in response, placed before me a download from the website of Uttarakhand Ayurved University, to which, the petitioner, I am told, is affiliated. This download is dated 06.08.2019. Mr. Sikri says that the "mop-up round counselling" is to commence on 19.09.2019 and will end on 20.09.2019.

11. Therefore, having regard to the foregoing discussion, the impugned order dated 30.07.2019 is set aside. The UOI will revisit the issue of grant of permission qua the aforementioned course and in that context and seek every record and information that it requires keeping in mind the provisions of RMS, 2016 and CCIM's report.

11.1 Queries, if any, will be put in advance to the petitioner so that it is not caught unawares. Documents required would also be sought in advance so that the originals can be produced on the date of the hearing.

11.2 A communication in that behalf will be served on the petitioner by the UOI on or before 16.09.2019 and a hearing will be held at the designated venue and time on 17.09.2019.

11.3 A fresh order will be passed by the concerned Committee constituted in that behalf by the UOI after affording due opportunity which would include an oral hearing to the authorized representative(s) of the petitioner on 17.09.2019.

12. The petition is disposed of in the aforesaid terms. Pending application shall stand closed.

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

RAJIV SHAKDHER, J

SEPTEMBER 12, 2019

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