

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 2537 of 2019

Mohsine Millat Unani Medical College run by Mohsine Millat Unani Tibb Education Society Through the Secretary, Mohsine Millat Tib Education Society Mahbobiya Chwok, Baijanathpara Raipur-492001

---Petitioner(s)

Versus

- 1.** Union of India Through The Secretary, Ministry of Ayurveda, Yoga and Naturopathy, Unani Siddha And Homeopathy (Ayush) B- Block, G.P. O. Complex I.N.A. New Delhi, Police Station New Delhi.
- 2.** Central Council of Indian Medicine Through The Secretary Central Council of Indian Medicine 61-65, Institutional Area, Opp. D Block Janakpuri Delhi.
- 3.** State of Chhattisgarh Through the Secretary to the Govt. of Chhattisgarh Department of Health and family Welfare Mahanadi Bhawan, Mantralaya Atal Nagar, New Raipur Chhattisgarh.
- 4.** The Director Department of Ayurveda, Yoga and Naturopathy, Unani Siddha and Homeopathy (Ayush) Old Mantralaya Campus, DKS Bhawan, Raipur, Police Station Moudahapara District Raipur Chhattisgarh.

---Respondents

For Petitioner	:	Shri Anurag Dayal Shrivastava, Advocate.
For State	:	Shri Shubham Verma, Panel Lawyer.
For Union of India	:	Ms. Jyoti Singh on behalf of Shri B. Gopa Kumar, Asst. Solicitor General.

Hon'ble Shri Justice P. Sam Koshy

Judgment

Reserved on 16.03.2020

Delivered on 02.06.2020

1. Aggrieved by the decision of the government of India P1, dated 01- 07- 2019 whereby the Ministry of AYUSH has denied permission to the petitioner College for taking admission to BUMS course with 40 seats in UG (BUMS) course under section 13A/13C of the IMCC Act 1970 for the academic session 2019–20, the present writ petition has been filed.
2. The brief facts relevant for the adjudication and disposal of the present writ petition is that, the petitioner is a minority educational institution imparting education in the field of "Bachelor of Unani, Medicine and Surgery" (in short, BUMS. The recognition to conduct the said course has been granted to the

petitioner institution with the intake capacity of 40 seats. As per the prevailing procedure yearly academic session wise recognition is required for the conducting of the course.

3. The provisions governing the field of granting recognition is the Indian medicine Central Council act 1970 (in short, IMCC Act 1970) and the regulations framed under the said Act which is called the Indian medicine Central Council (Minimum Standard Requirements of Unani College and attached Hospital) regulations 2016 (in short, the Regulations 2016). It is said that the team from the Central Council of Indian medicine visited the petitioner establishment in April 9, 2019 to assess the availability of the infrastructure and facilities as is required under the regulations of 2016 for grant of recognition for the academic session 2019–2020. The inspection team, in the course of inspection, pointed out certain shortcomings and a notice in this regard was issued on 18 -05- 2019. Immediately thereafter the petitioners had submitted their explanation and submissions pointing out that there was no deficiencies as such existing in the establishment in terms of the regulations 2016. That the respondents on considering the justification and explanation that the petitioners had submitted, not being satisfied by the same, issued the impugned order on 01-07-2019 denying permission to the petitioner for taking admission to BUMS course for the academic session 2019–20. It is this order which is under challenge in the present writ petition.

4. According to the petitioner the impugned order per se is illegal for the reason that the findings given by the inspection team is contrary to the norms laid down under the regulations 2016 and therefore the same deserves to be set aside/quashed.

5. According to the petitioner, when the inspection team visited the College on April 2019 they had pointed out only two deficiencies: – (i) in respect of no

lower faculty in Ilmul Advia Department against the requirement of one, (ii) shortcoming in tracking attendance of teaching, hospital and non-teaching staff through a AGBAS. However when the notice Annexure- P2, dated 18.05.2019 was issued it reflected five deficiencies which itself would show that the act on the part of the respondents Seems to be without proper application of mind and without proper scrutiny of the Inspection Note and also without keeping in mind the provisions of the regulations 2016 which lays down the norms very clearly.

6. According to the petitioner, the moment they received the show cause notice they had clearly given their justification and explanation to each of the alleged deficiencies. It was also the contention of the petitioner that in the reply to the show cause itself, the petitioners had specifically referred to the norms laid down by the government under the IMCC Act 1970 and the Regulations made there in of 2016. According to the petitioner, the genuine deficiencies had been cured and the other so-called deficiencies were well within permissible limits under the the Regulations of 2016.

7. It was further the contention of the petitioner that while passing the impugned order the government has not taken into consideration any of these explanation that the petitioner had provided and the same has been passed in a mechanical manner which appears to have been done with predetermined and preconceived notion. According to the the petitioner, the impugned order is also bad in law for the reason that though the petitioner had given an elaborate reply to the show cause notice, the respondent authorities except for the fact that they have reproduced the deficiencies in the impugned order have not discussed anything in respect of the justification given by the petitioner to the show cause notice. This according to the petitioner would clearly depict the impugned order to be a non-speaking order in as much as there is no

discussion whatsoever so far as the the explanation given by the petitioner nor does the impugned order discuss deficiencies against the relevant norms laid down under the Regulations of 2016 with which it could be easily determined as to the requirement under the regulations and the extent of deficiencies found in the institution at the time of the inspection.

8. In view of the submissions made by the petitioner, before dealing further with issues and contentions raised it would be relevant at this juncture to reproduce the reply which the petitioner had submitted to the show cause notice dated 18.05.2019. For ready reference the reply in the form of a chart prepared by the petitioner to the show cause notice is reproduced here in under : –

Shortcomings		Submissions	
1	Bio-Metric attendance for tracking attendance of the teaching, non teaching, hospital staff, is not available as per RMS, 2016.	1	As per RMS, 2016 it is stated that the College must have CRC base Bio Metric attendance for teaching staff and for non teaching staff and for hospital staff there is a requirement of web based computarized Bio Metric attendance system. In this regard it is submitted that central registration certificate has till date not been issued by the CCIM. Hence, it was not possible to link the teaching staff through CRC system. In the mean time college had installed Aadhar based attendance system but due to some technical issue on the part of CCIM it is not working. At present6 college has requested for the quotation to buy biometric machine and it is assured it will be installed soon. (Encl: Copy attached, Page No. 01-03)
2.	There are only 152 species of plants are available against the requirement of 250 as per RMS, 2016.	2.	Due to hash climatic conditions we are not able to maintain 250 medical species but at present we have more than 184 species and as per RMS 2016, there should be 150 species and plants for the conditional permission. (Encl: Copy attached, Page No. 4-16).
3.	There is no lower faculty in Ilmul Advia Department against the requirement of 01 as per RMS, 2016.	3.	Advertisement for the 01 lower4 faculty of Ilmul Advia Department has been given and the process is going. I hope appointment will be very soon. (Encl: Advertisement copy of news

			paper attached, Page No. 17.)
4.	Quality Testing Lab is not available as per RMS, 2016.	4.	Quality testing lab was available previously but due to the negligence of one staff some machines are not working properly. The request to set machine in proper order was given to the engineer on 01.04.2019. The copy of the work order some is enclosed. Other proof for the availability of the some is enclosed (photographs) (Encl: Copy attached, Page No. 18-20)
5.	Printers are not available in the Department of Kulliyat, Tashreehul, Badan, Munaedul Aza, Ilmul Advia, Moalijat, Tahaffuzi wa Samaji Tib, Iiaj bit Tadbeer, Jarahat, Niswan wa Qabalat, Amraze Atfal, Amraze Ain, Uzn, Anf wa Halaq, Amraze Jild wa Tazeeniyat as per RMS, 2016.	5.	Printers for the Department of Kulliyat, Tashreehul, Badan, Munaedul Aza, Ilmul Advia, Moalijat, Tahaffuzi wa Samaji Tib, Iiaj bit Tadbeer, Jarahat, Niswan wa Qabalat, Amraze Atfal, Amraze Ain, Uzn, Anf wa Halaq, Amraze Jild wa Tazeeniyat have been purchased. I am submitting the bills for buying printers. (Encl: Copy attached, Page No.21.)

9. On going through the aforesaid reply that the petitioner have given to the show cause notice, it appears that so far as deficiency number one is concerned the same is to be rectified at the CCIM end and the College has also taken steps to install biometric machines for marking the attendance. So far as the other defaults are concerned, the petitioner has given specific reply stating that it is well within the permissible limits of the regulations 2016 and the one which were to be cured, the petitioner has already got the same cured or have taken steps for curing the same which in due course of time is presumed to have been cured.

10. Hence the respondents ought not have passed the impugned order considering these facts and if at all required, the respondents could have conducted a fresh inspection at the cost of the petitioner and thereafter should have taken a decision whether the petitioner was to be granted permission or not for taking admission to the BUMS course with the intake capacity of 40 for the Academy session 2019–20.

11. Another vital aspect which needs consideration at this juncture is that the impugned order was confined for the academic session 2019–20. By efflux of time and in the course of litigation the entire academic session of 2019–20 has crossed over. Even if the writ petition now is allowed it would not be in any manner beneficial to the petitioner as the academic session cannot be restored back. The only recourse now available for the petitioner is to try and get permission for the grant of admissions for the said course for the next academic session that is the current session which is year 2020–2021.

12. As has been discussed in the preceding paragraphs, from the plain reading of the impugned order it is evidently clear that the respondents have not anywhere discussed about the explanation and justifications provided by the petitioner, neither have the respondents dealt with any of these explanations and justifications while passing the impugned order. Even if for a moment if the same is ignored, what really now needs consideration is as to whether in the light of the explanation provided by the petitioner the deficiencies detected in the establishment of the petitioners does still exist or not. These can be verified or determined only by the authorities under the respondents that too only after proper verification of the submissions and if required also by conducting a fresh inspection of the institution. Given the said fact, this court is of the firm view that there is no point as of now to determine as to whether the impugned order dated 01-07-2019 is proper legal and justified or not, as it would only be a futile exercise and would also be of only an academic interest now left for.

13. Given the said facts and circumstances of the case and also taking into consideration the pertinent aspect, of the academic session 2019–20 getting crossed over, this court is of the view that ends of justice would meet if the respondent particularly the Central Council of Indian Medicine, New Delhi to

consider the case of the petitioner for grant of admission for the BUMS course for the academic session 2020 – 21 afresh.

14. Accordingly, the writ petition stands disposed off, and the respondents particularly the respondent No. 2 are directed to consider the case of the petitioner for grant of admissions to the BUMS course for the academic session 2020–21 as directed above. While considering the same it is expected that the respondent authorities, before taking a decision, shall conduct a fresh inspection of the petitioner institution and shall also bear in mind while considering the facilities, the norms and minimum standard that are otherwise laid down under Regulation 2016.

Sd/-
(P. Sam Koshy)
Judge

inder