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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3112 OF 2021

Shri Balasaheb Mane Shikshan Prasarak ...Petitioner
Mandal Through its Trustee
Shri Govardhan Kulkarni

Versus

Ministry of Ayurveda, Yoga and ...Respondents
Naturopathy, Unani, Siddha and
Homeopathy and Ors.

Mr. A.V. Anturkar, Senior Advocate i/b. Mr Yatin Malvankar, for
the Petitioner.

Mr. R.V. Govilkar with Mr. Ashutosh Gole for Respondent Nos.1
and 2 – Union of India.

Mr. S.R. Ganbavale for Respondent No.3.

CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.

DATE : 31 AUGUST, 2021

ORDER :

1. Rule.

2. Mr. Govilkar, learned Counsel for the Respondent
Nos.1 and 2 waives services. Mr. Ganbavle, learned Counsel for

Respondent No.3 waives service.

3. Heard finally at the stage of admission by consent of parties.

4. By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioner is praying for quashing and setting aside the order dated 2nd June, 2021 passed by the Ministry of Ayurveda, Yoga and the Naturopathy Unani Siddha, and Homeopathy and also directing that the Letter of Intent be issued to the Petitioner.

5. On 28th April, 2017, the Petitioner had made an application to the Respondent No.1 seeking grant of permission to establish new Ayurvedic Medical College under Section 13A of the Indian Medicine Central Council Act, 1970 (“the IMCC Act, 1970”). On 24th April, 2018, the Respondent No.1 refused to grant permission by pointing out 21 deficiencies. Being aggrieved by the said order, the Petitioner filed Writ Petition (St.) No.31717 of 2018 in this Court on 31st October, 2018. Vide order dated 12th November, 2018, Vacation Bench of this Court

directed the Petitioner to make representation to the Respondent No.1 pointing out that the deficiencies found by the Respondent No.1 are duly rectified and the same to be considered on its own merits. The Petitioner made representation on 12th November, 2018.

6. It is the case of the Petitioner that on 26th November, 2018 after the inspection was carried out by Respondent No.1, the Respondent No.1 once again refused to grant LoI in favour of the Petitioner. Being aggrieved by the said inspection on 26th November, 2018, the Petitioner filed a Writ Petition No.10314 of 2019 on 26th August, 2019 before this Court.

7. By order dated 27th January, 2021, this Court disposed of the said Writ Petition and directed the Respondent No.1 to submit a formal proposal to the Respondent No.2 within two weeks and directed the Respondent No.2 to conduct an inspection of the Ayurvedic Medical College of the Petitioner so as to verify whether they have cured or complied with the deficiencies by the Ministry.

8. It is the case of the Petitioner that on 18th March, 2021, the Respondent No.1 visited the College of the Petitioner for inspection and furnished its report dated 26th March, 2021 to the Respondent No.2 pointing out nine deficiencies.

9. On 9th April, 2021, the Petitioner was rendered hearing by the Designated Hearing Committee in the Ministry of Ayush asking the Petitioner to show cause as to why the Application dated 28th April, 2017 should not be rejected. The Petitioner appeared before the said Committee and made oral as well as written representation on 9th April, 2021. On 2nd June, 2021, the Respondent No.1 passed fresh order once again rejecting the application of the Petitioner and refusing Letter of Intent in favour of the Petitioner. Being aggrieved by this order, the Petitioner filed the present Writ Petition.

10. Mr. Anturkar, learned Senior Counsel for the Petitioner invited our attention to the impugned order dated 2nd June, 2021 and more particularly paragraph 7 and submits that the application made by the Petitioner is rejected on four grounds i.e. (i) valid NOC of the State Government, (ii) Consent of Affiliation of the University, (iii) required area of

land in the name of college and (iv) required application fee for the establishment of new ayurveda college for establishment of new medical college is not made.

11. In so far as the reasons recorded in the impugned order with regard to payment of application fee is concerned, it is stated by the learned Senior Counsel that the Petitioner has no objection to pay the requisite fees for establishment new medical college payable as on date without going into the validity of the said conditions imposed in the said order. Statement is accepted.

12. In so far as the ground that valid NOC of the State Government is not submitted is concerned, the learned Senior Counsel for the Petitioner invited our attention to the Government Resolution dated 27th August, 2020 and would submit that under the said GR, it was clearly provided that NOC is already issued earlier and whose validity has been come to an end after date 15th June, 2018, the validity of such certificate would be valid for two years for the educational year 2020-21 and the year 2021-22. He also invited our attention to condition 2 herein which provides that the institutions whose

validity expires after date 15th June, 2018 have to obtain valid NOC for next two academic years.

13. It is submitted by learned Senior Counsel for the Petitioner that the NOC issued by the State Government was already filed by the Petitioner along with the original Application filed in the year 2017. He further submits that in view of the said Government Resolution dated 27th August, 2020, the said NOC which had expired after 15th June, 2018 was already extended for a period of two years i.e. for the academic year 2020-21 and 2021-22. He invited our attention to letter dated 9th April, 2021 addressed by the Petitioner to the authority stating that formal application for extension is already made and the reply was awaited.

14. It is submitted that there is no dispute that on 2nd July, 2021, in the University's letter reference was made to the earlier NOC. He submits that submission of the said NOC from the State Government is nothing but a ministerial act and on that ground the Application filed by the Petitioner could not be rejected.

15. In so far as ground with regard to NOC of the University not submitted by the Petitioner is concerned, learned Senior Counsel invited our attention to the letter dated 2nd July, 2021 from Maharashtra University of Health Sciences, Nashik granting consent of validity for the academic year 2021-22 for 60 intake capacity of B.A.M.S. course. He submits that the said certificate was in continuation of the earlier such consent of validity already issued by the said University on 30th May, 2017. He further submits that the Respondent No.2 could not have rejected the said application filed by the Petitioner on this ground.

16. In so far as the rejection of the application on the ground that required area of land in the name of the college was not in accordance with the requirement under the State Government NOC is concerned, it is submitted by learned Senior Counsel for the Petitioner that, the Petitioner has though applied for permission to start medical college with 100 seats, the University vide validity of consent letter dated 30th May, 2017 had granted said permission only for 60 intake capacity. He submits that the Petitioner had made it clear that for 100 intake capacity though the requirement was of five

acres of land, in the consent granted by the University was for 60 intake capacity for which three acres of land was required. He states that on that ground Respondent No.1 had rejected the proposal.

17. Learned Senior Counsel for the Petitioner invited our attention to the letter dated 9th April, 2021 addressed by the Petitioner to the hearing committee and more particularly paragraph 4 responding to the query raised by the committee stating that although the Petitioner applied for 100 intake of UG seats but the NOC from the State Government and Consent of Affiliation from Maharashtra University of Health Sciences issued was for 60 UG Seats, for which only 3 acres of land was required as per MSR 2016 and 2019.

18. Learned Senior Counsel for the Petitioner invited our attention to the order passed by the Respondent No.1 on 26th November, 2018 and more particularly paragraphs 5 and 14 and would submit that when the application of the Petitioner was considered for second time, it was rejected even for 60 seats after considering the letter from University. He further invited our attention to the order dated

27th January, 2021 passed by this Court in Writ Petition No.10314 of 2019 and would submit that the second order passed by the Hearing Committee was impugned in the said Writ Petition. Considering the said order rejecting the proposal for intake capacity of 60 UG seats, this Court had directed the Respondent No.2 to conduct the inspection of the medical college of the Petitioner and to verify whether they have cured or complied with the deficiencies reported by the Ministry or not.

19. Mr. Govilkar, learned Counsel for the Respondent Nos.1 and 2 on the other hand would strongly contend that the application made by the Petitioner was for 100 intake capacity for which admittedly the requirement of the land was five acres. The said condition imposed in the notification was mandatory and cannot be relaxed by any of the Respondents or by this Court.

20. Learned Counsel for the Respondent Nos.1 and 2 invited our attention to the Government Resolution dated 27th August, 2020 and would submit that though the earlier NOC which came to an end after 15th June, 2018, though the

NOC of such institutions valid for two years for the education year 2020-21 and the year 2021-22, the Petitioner was required to obtain valid NOC for the two academic years and ought to have submitted such extended NOC along with application. He submits that the extended NOC annexed to the Petition by the Petitioner is admittedly obtained after the date of the impugned order and thus was of no significance.

21. In so far as ground (ii) the consent of the University not submitted is concerned, the learned Counsel for the Respondent Nos.1 and 2 invited our attention to page 96 of the Writ Petition and submitted that the said consent is also obtained on 2nd July, 2021 i.e. much after passing of the impugned order and thus is of no significance.

22. Mr. Ganbavale, learned Counsel for Respondent No.3 adopted the submissions made by the learned Counsel for the Respondent Nos. 1 and 2 and led emphasis on the notification dated 11th July, 2019 and more particularly condition 6(b) (ii) (c) and (d) and would submit that none of these conditions were complied with by the Petitioner. He submits that neither the Petitioner had six acres of land

required for the purpose of capacity of 61 to 100 seats nor the Petitioner had obtained no objection in Form - 4 for establishing the new medical college at the proposed site on the date of application.

23. It is further submitted by learned Counsel for Respondent No.3 that throughout the claim of the Petitioner was for permission for 100 intake seats and not for 60 seats. He invited our attention to the averments made by the Petitioner in paragraphs 10 and 11 of the Writ Petition. He submits that there is no provision of switching the application for 100 intake capacity to 60 intake capacity.

24. Mr. Anturkar, learned Senior Counsel for the Petitioner in his rejoinder argument invited our attention to the NOC issued by the University and would submit that the said NOC dated 2nd July, 2021 was in continuity with earlier NOC dated 30th May, 2017 which was for 60 seats. He submits that in the order passed by the Respondent No.1 rejecting the application for second time, the authority had considered the said NOC issued by University for 60 intake capacity. This Court after considering such fact directed the Respondent No.2 to

conduct an inspection of the Petitioners' Ayurvedic Medical College so as to verify whether they had cured or complied with the deficiencies reported by the Ministry.

25. It is reiterated by the learned Senior Counsel for the Petitioner that the submission of the NOC from the State Government and also of the University were ministerial act and were of no significance.

26. A perusal of order indicates that Respondent Nos.1 and 2 rejected the application made by the Petitioner on four grounds already referred aforesaid.

27. It is not in dispute that the Petitioner had made an application for 100 intake capacity on 28th April, 2017. The Petitioner had annexed various documents in compliance with the notification issued by Respondent Nos.1 and 2. However, due to pandemic situation, NOCs obtained by the Petitioner from the State Government as well as from the University came to an end.

28. A perusal of the Government Resolution dated 27th August, 2020 indicates that the NOC obtained from the State Government which expired after 15th June, 2018 were valid for two years for educational year 2020-21 for the year 2021-22. A formal application was required to be made for obtaining valid NOC for next academic years. In so far as the reliance placed by the learned Counsel for the Respondents on condition 6(c) is concerned, it is clear that a person can be eligible if, he would have filed a NOC in Form - 4 from the concerned State Government for establishing a new medical college at the proposed site. This is not a case of fresh application made by the Petitioner. The Petitioner had already made an application for seeking such permission as far back on 28th April, 2017. The State Government took cognizance of the pandemic and granted two years extension of time under the said Government Resolution dated 27th August, 2020 for educational years 2020-21 and year 2021-22.

29. The NOC granted in favour of the Petitioner by the State Government thus got extended for another period upto 2021-22. On the date of hearing before the hearing committee, the Petitioner had made it clear that the NOC

granted by the State Government was already extended for the period of two years. However, the formal application made in that regard was pending before the State Government. In our view there is no substance in the submission made by the learned Counsel for Respondents that such extended valid certificate ought to have been along with the application and more particularly when no fresh application was made by the Petitioner. Be that as it may, by virtue of Government Resolution, the extension was already granted for two years. The application made by the Petitioner for seeking extension of said NOC and having obtained the other certificate after passing of the impugned order is nothing but a ministerial act.

30. In so far as the reason recorded by the Respondent Nos.1 and 2 in the impugned order, that the Consent of Affiliation of University was obtained for 60 intake capacity, whereas the application made by the Petitioner was for 100 intake capacity and thus on that ground itself, the Respondent Nos.1 and 2 had rightly rejected the said application is concerned, it is not in dispute that the Petitioner had applied for permission to start the medical college with 100 intake capacity. It is also not in dispute when the Petitioner had

applied for such permission, the University had granted Consent of Affiliation for 60 intake capacity. This fact was noticed by the Respondent Nos.1 and 2 in the order passed by the Respondent Nos.1 and 2 for the second time. The said order was impugned in the Writ Petition No.10314 of 2019. This Court by an order dated 27th January, 2021 in the said Writ Petition had directed the Respondent No.2 to take inspection of the medical college run by the Petitioner, so as to verify whether they had cured or complied with the deficiencies reported by the Ministry. In view of the said order dated 27th January, 2021 passed by this Court, the Respondents cannot be permitted to canvass that the original application made by the Petitioner being for 100 intake capacity, the Petitioner could not have reduced the claim for 60 intake capacity.

31. Learned Counsel for the Respondents do not dispute that the requirement of land holding under condition 6(b) (1) was not less than three acres for intake capacity upto 60 Seats. The Petitioner thus had complied with the said requirement for intake capacity of 60 seats by holding land of more than three acres. This fact was brought on record in the letter dated 9th April, 2021 by the Petitioner and more

particularly in paragraph 4 which was filed before the Hearing Committee.

32. In our view, the impugned order passed by the Respondent Nos.1 and 2 rejecting application filed by the Petitioner is contrary to the documents placed by the Petitioner on record and also contrary to the Government Resolution dated 27th August, 2020. In so far as rejecting the Petitioner's application on the ground of payment of fees, the learned Senior Counsel upon instructions has made a statement that Petitioner is ready and willing to pay requisite fees applicable as on date. Statement is accepted.

33. Hence we pass the following order:-

(i) The impugned order dated 2nd June, 2021 is quashed and set aside.

(ii) The application made by the Petitioner dated 28th April, 2017 for seeking necessary Letter of Intent under Section 13A of the IMCC Act, 1970 is allowed however to the extent of 60 intake capacity.

(iii) The Petitioner is directed to pay requisite fees for grant of such permission within two weeks from today.

(iv) The Respondent Nos.1 and 2 shall issue Letter of Intent in favour of the Petitioner pursuant to said application dated 28th April, 2017 for 60 intake capacity within two days from today for the current academic year.

(v) The Respondent Nos.1 and 2 shall conduct an inspection of the Petitioners' Ayurvedic Medical College so as to verify whether they have cured or complied with the deficiencies reported by the Ministry before issuing final permission. Said inspection shall be carried out within 48 hours from the date of issuance of Letter of Intent.

(vi) Writ Petition is disposed of accordingly.

(vii) Rule is made absolute accordingly.

(viii) No order as to costs.

[R.I. CHAGLA J.]

[R.D. DHANUKA, J.]