

\$~5 (2020 Cause List)

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

Date of Decision 6th July, 2021

+ W.P.(C) 9368/2020

TAPASYA SHIKSHA SAMITI

..... Petitioner

Through: Mr. Jasbir Singh Malik,
Advocate.

versus

UNION OF INDIA AND ORS

..... Respondent

Through: Mr. Asheesh Jain, CGSC with
Mr. Adarsh Kumar Gupta,
Advocate and Mr. Santosh
Kumar Pandey, G.P.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through video conferencing.

CM APPLs. 30200-30201/2020 (for exemptions)

Exemptions allowed, subject to all just exceptions.

These applications stand disposed of.

W.P.(C) 9368/2020 and CM APPL. 30199/2020 (for interim relief)

1. By way of this petition under Article 226 of the Constitution, the petitioner assails an order of the respondent No. 1-Union of India

["UOI"] dated 05.10.2020, by which the petitioner's application for permission to establish a new Ayurveda medical college in the academic year 2021-22 was rejected and returned by the UOI.

2. The contention of the petitioner is that it had obtained a No Objection Certificate ["NOC"] from the Government of Madhya Pradesh on 26.04.2017, for setting up of new Ayurveda college in Bhopal with an intake of 100 students in the undergraduate BAMS course. The petitioner's applications for permission to establish the college in the years 2018-19, 2019-20 and 2020-21 were rejected for various reasons. According to the petitioner, for each of the aforesaid three academic years, it had submitted valid consents of affiliation from the Madhya Pradesh Medical Science University, Jabalpur ["the University"].

3. As far as the year 2021-22 is concerned, the UOI extended the last date for submission of applications from the normally prescribed last date of 31.08.2020 to 30.09.2020 in view of the COVID-19 pandemic. The petitioner submitted its application on 29.08.2020.

4. At the stage of submission of the application, the petitioner annexed a certificate obtained from the University dated 28.08.2020, to the effect that the petitioner had applied for valid consent of affiliation for opening of the college for the session 2021-22. It was further certified that an inspection had been conducted by the local inquiry committee and that the consent of affiliation of the petitioner-college would be communicated after the meeting of Executive Council of the University, which was to be held in the month of September 2020.

5. The UOI, however, rejected the petitioner's application vide the impugned communication dated 05.10.2020 for want of a valid consent of affiliation from the University for the academic year 2021-22.

6. Mr. Jasbir Singh Malik, learned counsel for the petitioner, submits that this rejection was unwarranted in the circumstances of the case as the petitioner had, in fact, obtained the consent of affiliation of the University on 25.09.2020, prior to the last date of 30.09.2020. A copy of the consent of affiliation dated 25.09.2020, has also been annexed to the writ petition. Mr. Malik further submits that the aforesaid document was sent directly by the University to the UOI. In support thereof, he has produced an extract from the despatch register maintained by the University administration [Annexure P-15 to the writ petition].

7. Mr. Asheesh Jain, learned counsel for the UOI, however, submits that the consent of affiliation was neither submitted by the petitioner alongwith its application nor received by the UOI in time, i.e. prior to the last date of 30.09.2020. He submits that the aforesaid despatch register and a communication of the University dated 21.10.2020 (Annexure P-14 to the writ petition) disclose that the consent of affiliation was, in fact, despatched by the University only on 25.09.2020, and that too, by ordinary post. Mr. Jain submits that in the absence of the consent of affiliation, the petitioner was ineligible for grant of the permission sought, and in fact, the UOI was not required to forward its application to the Central Council of Indian Medicine ["CCIM"] for inspection and recommendation. In this

connection, Mr. Jain cites Regulations 6(1)(d) and 7 of the *Establishment of New Medical College, Opening of New of Higher Course of Study or Training and Increase of Admission Capacity by a Medical College Regulations, 2019* [“the Regulations”], which provide as follows:-

“6. Eligibility for making an application.-(1)For making an application under sub-regulation (1) of regulation 4, a person shall be eligible if, -

xxxx xxxx xxxx

(d) has obtained a ‘Consent of Affiliation’ in Form- 5 for establishing a new medical college from a University established under any Central or State statute;

7. Recommendation of Central Council.-(1) The Central Government, after receipt of the applications shall scrutinize the application on the basic of eligibility criteria like Application Fee, No Objection Certificate of the State Government and Consent of Affiliation of the University etc. and the Central Government shall forward only eligible applications to the Central Council of Indian Medicine for further consideration and the ineligible and incomplete applications shall be rejected and returned to the applicants by the Central Government.

(2) The Central Council of Indian Medicine shall inspect colleges and issue Letter of Intent at their level in Form-6, if the college is found eligible as specified in the regulations 6 and the Central Council of Indian Medicine shall again inspect or verify the compliance of requirement of minimum standards as specified in concerned regulations and other conditions of Letter of Intent and send the recommendations only once for denial or issuing Letter of Permission as the case may be in Form-7, by the 31st March for approval of the Central Government.”

8. Having heard learned counsel for the parties, I am of the view that the actions of the UOI in the present case cannot be characterised as illegal or unreasonable. The last date for submission of applications for the year 2021-22, complete in all respects, was 30.09.2020. Regulation 6(1)(d) of the Regulations require all applicants to obtain the consent of affiliation in Form-5 for establishing a new medical college from a university established by any Central or State statute. Regulation 7 requires the Central Government to forward applications to the CCIM only after scrutiny with regard to basic eligibility criteria, including *inter alia* the consent of affiliation.

9. In the facts of this case, the petitioner has shown a complete lack of diligence to ensure that its application was complete within the time specified. It is the admitted position that, alongwith the application submitted by the petitioner, it only enclosed a certificate to the effect that the University would consider its application for consent of affiliation at a forthcoming meeting of the Executive Council. That consent was ultimately given on 25.09.2020, five days before the last date for filing of documents. Even at this stage, the petitioner did not obtain a copy of the consent of affiliation in order to ensure that it is submitted to the UOI in time, but relied upon the indication that the University had itself marked a copy to the Ministry.

10. Thereafter also, there is no indication that the petitioner took any steps to ensure that the documents had, in fact, reached the UOI within the required time. In fact, it appears that only after the rejection of the application by the impugned order, did the petitioner seek to make inquiries with the University. It filed an application under the

Right to Information Act, 2005 seeking information about the despatch of the aforesaid letter. The query submitted by the petitioner dated 20.10.2020 seeks information on the following two aspects:-

“1) Whether the Form-5 issued by you has been sent to Ministry of AYUSH? If yes, give attested photocopy of the same.

2) With which medium (e-mail/ post/speed post or other medium) Form-5 had been sent to the Ministry of AYUSH give attested copy of in and out of dispatch, It is requested that attested photocopies of above-said information be made available.”

It is in response to these queries that the University informed the petitioner that it had despatched the document on 25.09.2020 by ordinary post.

11. The aforementioned factual position is inadequate to dislodge the case made out by the UOI that it had not received the consent of affiliation prior to the last date of 30.09.2020. The petitioner's conduct displays a reckless indifference towards the requirements of the Regulations with regard to submission of the consent of affiliation. Mere reliance on the University's despatch of the document by ordinary post, five days prior to the last date, is insufficient to establish that the document was, in fact, received by the UOI within time.

12. Therefore, the petitioner has failed to make out a case for interference under Article 226 of the Constitution. However, as stated in the counter affidavit filed by the UOI, it will be open to the petitioner to submit a complete application, in accordance with law, for establishment of its college for the academic session 2022-23.

13. For the reasons aforesaid, the writ petition, alongwith the pending applications, is dismissed. No order as to costs.

PRATEEK JALAN, J.

JULY 6, 2021

'vp'

