

\$~13 (2021 Cause List)

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

Date of Decision 28th July, 2021

+ W.P.(C) 5486/2021 with CM APPL. 17006/2021

APEX INSTITUTE OF AYURVEDA
SCIENCES , APEX UNIVERSITY

..... Petitioner

Through: Mr. Sanjay Sharawat, Advocate

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Vikrant N Goyal, Advocate
for R-1/UOI.

Ms. Archana Pathak Dave,
Advocate with Mr. Kumar
Prashant, Ms. Vanya Gupta, Mr.
Parmod Kumar Vishnoi,
Advocates for R-2/CCIM

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (Oral)

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

1. The writ petitioner is a University constituted under an enactment of the State of Rajasthan entitled the Apex University, Jaipur Act, 2018 (Act No. 27 of 2018) ["the Act"]. It applied to the Union of India ["UOI"] on 27.08.2020 for permission to establish a new Ayurveda Medical College under Section 13A of the Indian Medicine Central Council Act, 1970. The petitioner's application was

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rejected and returned by the impugned communication of the UOI dated 10.10.2020. The ground of rejection was that the petitioner had not submitted a No-Objection Certificate [“NOC”] by the State Government in Form-4 of the Establishment of New Medical College, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity by a Medical College Regulations, 2019 [“the Regulations”].

2. Mr. Sanjay Sharawat, learned counsel for the petitioner, submits that a university constituted under a State legislation such as the petitioner, does not require an NOC to establish a new medical college. He submits that Section 4 of the Act enumerates the objects of the university, which include research and studies in the discipline specified in Schedule-II of the Act, which in turn, includes Indian and Unani Medicine. Mr. Sharawat further submits that the Government of Rajasthan by its communications dated 03.07.2020 and 26.02.2021 has confirmed that the petitioner does not require an NOC for starting a course in Ayurveda.

3. The issue in the present case is whether the requirements of Regulation 6(1)(c) read with Regulation 7(1) and Form-4 of the Regulations, have been satisfied by the petitioner. The aforesaid provisions are in the following terms:-

“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

(c) has obtained 'No Objection Certificate' in Form- 4 from the concerned State Government for establishing a new medical college at the proposed site;

xxxx

xxxx

xxxx

7. *Recommendation of Central Council. - (1) The Central Government, after receipt of the applications shall scrutinized 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."*

Form-4 is reproduced in full hereinbelow:-

FORM-4

[See regulation 6]

No Objection Certificate from the State Government

No.....

Government of -----

The Department of ISM/AYUSH,

To _____ Dated, the _____
(Name and address of applicant),

Subject : No Objection Certificate

Reference :

Sir,

The desired "No Objection Certificate" in respect of following facts is being issued:-

(1) Number of Medical and Ayurved or Siddha or Unani Tibb or Sowa Rigpa institutions already existing in the State.

(2) Number of seats available or number of Medical and Ayurved or Siddha or Unani Tibb or Sowa Rigpa practitioners being produced annually.

(3) Number of Ayurved or Siddha or Unani Tibb or Sowa Rigpa practitioners registered with the State Council/Board of Indian Systems of Medicine.

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- (4) Number of Ayurved or Siddha or Unani Tibb or Sowa Rigpa practitioners in State Government Service.
- (5) Number of vacant Government posts of Ayurved or Siddha or Unani Tibb or Sowa Rigpa doctors in the State, particularly in rural/difficult areas.
- (6) Number of Ayurved or Siddha or Unani Tibb or Sowa Rigpa doctors registered with the State Employment Exchanges.
- (7) Ayurved or Siddha or Unani Tibb or Sowa Rigpa Doctors-population ratio in the State.
- (8) How the establishment of the medical College/increase in admission capacity/starting-----
---- course would resolve the problem of deficiencies of qualified medical personnel in the State and improve the availability of such medical manpower in the State.
- (9) The restrictions imposed by the State Government, if any, on students who are not domiciled in the State from obtaining admissions in the State be specified.
- (10) Full justification for opening of the proposed medical College/increase in admission capacity/starting new or higher course.
- (11) Ayurved or Siddha or Unani Tibb or Sowa Rigpa Doctors-population ratio to be achieved. The (name of the person) _____ has applied for establishment of Ayurved or Siddha or Unani Tibb or Sowa Rigpa college at _____.
On careful consideration of the proposal, the Government of _____ has decided to issue 'No Objection Certificate' to the applicant for the establishment of an Ayurved or Siddha or Unani Tibb or Sowa Rigpa College with _____ (number) seats/increase in admission capacity from _____ to _____ seats/starting _____ course.
- It is certified that: -
- (a) the applicant owns and manages a _____ bedded hospital, which was established in the year _____,
- (b) it is desirable to establish an Ayurved or Siddha or Unani Tibb or Sowa Rigpa College in the public interest

/increase in admission capacity/starting_____ course
and

(c) establishment of Ayurved or Siddha or Unani Tibb
or Sowa Rigpa college /increase in admission
capacity/starting_____ course at
_____ by (the name of Trust) is feasible.

It is also certified that adequate clinical material as per norms of the Central Council of Indian Medicine is available with the proposed/existing Medical College. It is further certified that in case the applicant fails to create infrastructure for the Ayurved or Siddha or Unani Tibb or Sowa Rigpa College as per Central Council of Indian Medicine norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the students already admitted in the College with the permission of the Central Government.

Yours faithfully,

(Signature of the Competent Authority) Office Seal

4. I have had occasion to consider a similar argument in *RIMT University vs. Union of India & Anr.* [W.P.(C) 5556/2021, decided on 15.07.2021], with respect to a University established by a State legislation in Punjab. The contentions of the petitioner in that case were rejected upon the following reasoning:-

“15. It is evident from a perusal of Form-4 that the NOC required to be issued by the concerned State Government refers to various factual issues, including inter alia the number of medical and AYUSH institutions already existing in the State, the number of seats available therein, the number of registered practitioners in the State and in the service of the State Government, and the ratio of AYUSH doctors to the population. Form-4 also requires the State Government to give its views on the manner in which the establishment of the medical

college would resolve the problem of deficiency of qualified medical personnel in the State, whether any restrictions are imposed on non-domicile students from obtaining admission, and justify the proposal for opening of new medical college. After giving this information, the State Government is required to certify that the applicant owns and manages a hospital of the requisite number of beds, and that it is in the public interest and feasible to establish the said medical college. It is further required to certify that adequate clinical material is available with the proposed or existing medical college, and that in the event the applicant fails to create infrastructure for the proposed college, the State Government would take over the responsibility of the students already admitted in the college with the permission of the Central Government.

16. The requirement of the NOC in Form-4 is thus not limited to the question of whether or not the State Government has an objection to the setting up of the institution per se, but also requires the State Government to furnish information and justification which would enable the UOI and the CCIM to arrive at a fully informed and considered decision as to whether the application for establishment of a new college ought to be granted.

17. Relying upon Section 5 of the State Act, Mr. Kohli submits that the petitioner is entitled to self-certify and is exempted from obtaining any NOC from the State Government or any other body set up by the State Government for the purpose of establishing the proposed Ayurveda college. The aforesaid argument may have been merited if the requirement of the Regulation was only to establish that the State Government consented to the establishment of the college in question. But, the fact is that Form-4 goes much further than that. As noted above, it contains various heads of information and justification, which the State Government is required to provide. These are not evident from the Act itself. It is for this reason that the provisions of Section 5(xxiv) of the

State Act are inadequate to establish compliance with the Regulation 6(1)(c) of the Regulations. The matter is therefore not one of mere procedure or form in which the requisite material is made available to the decision-making authority, but a substantive requirement which is not met by reference to the provisions of the State Act alone.”

5. Mr. Sharawat submits that the facts of the present case are distinct as the State Government has in fact issued specific communications signifying that no NOC is required. He further submits that the provisions of Sections 41 to 44 of the Act in the present case, provide for the powers of the State Government in respect of the petitioner/University, including the right to liquidate the University and appoint an Administrator to administer its affairs in terms of Section 44(6) and 44(7) of the Act.

6. I am unable to accept Mr. Sharawat’s contention. The judgment in *RIMT University* proceeds on the reasoning that the provisions of the State Act were insufficient to satisfy the requirements of Form-4. Form-4, in addition to indicating that the State has no objection to the establishment of the Ayurveda medical college, requires other points of information to be supplied by the State, which would enable the UOI and the Central Council of Indian Medicine [“CCIM”] to reach an informed decision as upon the application. In the present case also, the Act does not contain such provisions as to answer the requirements of Form-4. It is evident from the form itself that the UOI seeks information as to the infrastructure available in the State for medical education and the requirement of the proposed medical college in the State. This information is neither available in the provisions of the Act

nor in the communications dated 03.07.2020 and 26.02.2021 referred to by Mr. Sharawat. Those two communications merely record the position of the State that the University is not required to obtain an NOC for establishing the college in question.

7. The State's undertaking required in Form-4, to the effect that if the applicant fails to create infrastructure as per CCIM norms and fresh admissions are stopped by the Central Government, the State Government would take over the responsibility of the students already admitted, also does not flow from the provisions of Sections 41 to 44 of the Act. Section 41 and 42 of the Act concern the powers of the State Government to inspect the University and to call for records. Section 43 empowers the sponsoring body to dissolve the University in the circumstances mentioned therein. Section 44 vests powers in the State Government in certain situations, and lays down the procedure for exercise of such power. After giving a notice and conducting an inquiry, the State Government is vested *inter alia* with the following powers:-

“44. Special powers of the State Government in certain circumstances.-

xxxx xxxx xxxx

(6) On receipt of the enquiry report from the officer or officers appointed under sub-section (3), if the State Government is satisfied that the University has contravened any of the provisions of this Act or the rules, Statutes or Ordinances made thereunder or has violated any of the directions issued by it under this Act or has ceased to carry out the undertakings given by it or a situation of financial mismanagement and mal-administration has arisen in the University which threatens the academic standard of the University, it shall

make orders for liquidation of the University and appoint an administrator and thereupon the authorities and officers of the University shall be subject to the order and direction of the administrator.

(7) The administrator appointed under sub-section (6) shall have all the powers and be subject to all the duties of the Board of Management under this Act and shall administer the affairs of the University until the last batch of the students of the regular courses have completed their courses and they have been awarded degrees, diplomas or awards, as the case may be."

8. Mr. Sharawat emphasises that the State Government is empowered to administer the affairs of the college until the last batch of students of the regular courses have completed their all courses and been awarded their degrees. This provision is also however not in terms of the undertaking required by Form-4. Section 44(6) and 44(7) vest the State Government with the power to take the action contemplated therein but do not cast an obligation upon it, as required by Form-4.

9. For the aforesaid reasons, I am of the view that the present case is covered by the judgment in *RIMT University*.

10. The writ petition is therefore dismissed, but with no orders as to costs.

PRATEEK JALAN, J

JULY 28, 2021

j'