

\$~8 (2021 Cause List)

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

*Date of Decision 15<sup>th</sup> July, 2021*

+ W.P.(C) 5556/2021 with CM APPL. 17222/2021

RIMT UNIVERSITY

..... Petitioner

Through: Mr. Nalin Kohli, Advocate with  
Ms. Vidula Mehrotra, Mr.  
Utsav Saxena, Mr. Ankit Roy  
and Ms. Nimisha Menon,  
Advocates.

versus

UNION OF INDIA THROUGH  
THE MINISTRY OF AYUSH & ANR.

..... Respondents

Through: Ms. Nidhi Raman, CGSC, with  
Ms. Nidhi Mohan Parashar GP,  
Mr. Zubin Singh, Advocate for  
UOI  
Ms. Archana Pathak Dave,  
Advocate for 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. By way of this petition under Article 226 of the Constitution, the petitioner challenges communications dated 18.09.2020 and 05.05.2021, by which the Union of India ["UOI"] has rejected and returned its application for permission to establish a new Ayurveda

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medical college.

**Facts**

2. The petitioner is a University constituted under an Act enacted by the Legislative Assembly of the State of Punjab, namely, the RIMT University Act, 2015 [“the State Act”]. It made an application to the UOI on 28.08.2020 under Section 13A of the Indian Medicine Central Council Act, 1970 for permission to establish a new Ayurveda college in the academic session 2021-22. The last date for submission of applications was 30.09.2020.

3. The petitioner’s application was rejected and returned by the impugned communication dated 18.09.2020, for want of the No Objection Certificate [“NOC”] of the State Government in Form-4, as required by Regulation 6(1)(c) 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”] made by the Central Council of Indian Medicine [“CCIM”].

4. The petitioner responded to this communication by a letter dated 23.09.2020, contending that it was not required to obtain an NOC from the State Government in view of Section 5 of the State Act, which exempts the petitioner from the requirement of submitting such NOCs.

5. The UOI, however, by a letter dated 19.11.2020, reiterated the position it had taken in the earlier communication.

6. On 11.12.2020, the petitioner addressed a further communication to the UOI stating *inter alia* that it was under the

impression that it did not need an NOC from the State Government, but that it had since applied for the issuance of the NOC. The UOI on 19.01.2021, informed the petitioner that its application could not be considered as it had failed to provide the required NOC within time.

7. Subsequently, the State of Punjab did, in fact, issue an NOC in favour of the petitioner in Form-4 on 05.03.2021, which has been submitted by the petitioner to the UOI on 08.03.2021, alongwith a request to reconsider its application.

8. By the second impugned communication of 05.05.2021 [wrongly dated 05.05.2020], the UOI has taken the view that the NOC was not submitted within the last date of 30.09.2020, and that the application of the petitioner can therefore not be considered for the academic year 2021-22. The application has once again been rejected and returned under cover of the aforesaid letter.

**Submissions of counsel**

9. Mr. Nalin Kohli, learned counsel for the petitioner submits that the petitioner has established an Ayurveda hospital in the year 2018, and has extended considerable amount of money and time in setting up the infrastructure for the medical college. It was under a *bonafide* belief that, in view of the provisions of Section 5 of the State Act, it was exempted from submission of the NOC. He further contends that the NOC having been obtained and submitted in the required format, albeit belatedly, this is a fit case for the UOI to be directed to forward the petitioner's application to the CCIM for further processing in terms of the Regulation 7 of the Regulations. He submits that the non-submission of the NOC in Form-4 in these circumstances was a

remediable irregularity, which has subsequently been remedied by the petitioner. Mr. Kohli relies upon an interim order dated 25.05.2021 passed by this Court in W.P.(C)5486/2021 [*Apex Institute of Ayurveda Sciences, Apex University vs. Union of India & Anr.*], wherein this Court had, in similar circumstances, directed the UOI to accept the application of a University established under a State Act of the State of Rajasthan, subject to the result of the writ petition.

10. Ms. Nidhi Raman, learned counsel for the UOI, relied upon Regulations 6(1)(c) and 7 of the Regulations, in support of her contention that the NOC is a non-derogable and mandatory requirement, without which an applicant is ineligible for further processing of its application, and inspection of a new Ayurveda institution. She has drawn my attention to the contents of Form-4 of the Regulations to submit that the requirements of the NOC are substantial in nature, and Section 5 of the State Act cannot substitute for compliance thereof. Ms. Raman also relies upon Section 29 (2) of the State Act to submit that the petitioner, even under its constituting legislation, is required to comply with all regulatory provisions in respect of any institution set up by it.

11. Ms. Archana Pathak Dave, learned counsel for the CCIM supports the submissions made by Ms. Raman in this regard.

### **Analysis**

12. At the outset, it is necessary to appreciate the relevant clauses of Regulations 6 and 7 of the Regulations, which are set out below:

*“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 scrutinize the application on the basis 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.”* (Emphasis supplied.)

13. Regulation 6(1)(c) refers to Form-4 of the Regulations. As the present case turns on the contents of the NOC required thereunder, 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 :**

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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.

(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

14. The provisions of Section 5 of the State Act, relied upon by Mr. Kohli, are set out below:-

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*“5. The University shall have the following powers and functions to be exercised and performed by it or through its officers and authorities, namely :-*

*xxxx                      xxx                      xxx*

*(xxiv) to do self-certification, which shall be exempted from obtaining any permission, approval, license, certificate, no objection certificate or authorization from the State Government or any other body, set up by the State Government;”*

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.

18. Section 29(2) of the State Act, to which Ms. Raman has drawn my attention, is also of some significance:-

*“29. (1) The University shall be prohibited from conferring any degrees, not recognized by the University Grants Commission or its equivalent body constituted by the Central Government.*

*(2) It shall be mandatory for the University to follow the University Grants Commission (Establishment and Maintenance of Standards in Private Universities) Regulations, 2003, or any other regulations made for Private Universities by the University Grants Commission or other Regulatory Bodies.”*

It is evident therefrom that the State Act itself recognises the obligation of the University to follow the regulations prescribed by regulatory bodies – in this case, the CCIM. The Regulations of the CCIM would thus be squarely applicable and the University is not exempted from compliance therewith.

19. In the facts of the present case, it is undisputed that the petitioner-University did not in fact provide the NOC either at the time of making its application on 28.08.2020, or at any time prior to the last date of 30.09.2020. This was the position, despite knowledge of the stand of the UOI in its communication dated 18.09.2020. The petitioner’s initial belief that it was not required to submit an NOC at all may have been *bonafide*, but once the UOI had responded by its communication dated 18.09.2020, the petitioner was well aware that the UOI took a different position. The NOC was, in fact, obtained by the petitioner only on 05.03.2021, more than five months after the last date had elapsed. That the petitioner chose to submit the NOC on

08.03.2021, resulting in the second impugned order dated 05.05.2021, cannot be of any relevance in adjudging its compliance with the Regulations at the relevant time.

20. Mr. Kohli's reliance on the interim order granted by this Court in W.P.(C) 5486/2021 also takes the petitioner only so far. The writ petition remains pending and the order was made expressly subject to the final decision taken in the writ petition. It has no binding effect in the present case where pleadings have been completed and the petition has been heard finally.

21. For the reasons aforesaid, I am not persuaded by the contentions advanced on behalf of the petitioner. Needless to say, it will be open to the petitioner to apply for permission to establish the institution in a subsequent year, which will be decided on its own merits in terms of the Regulations.

**Conclusion**

22. The writ petition is, therefore, dismissed. There will be no order as to costs.

**PRATEEK JALAN, J**

**JULY 15, 2021**

*j'*