

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10149 of 2022

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J.P. Institute of Ayurveda and Medical Science Sattar Panchmuhani, Sattar (Sarai), P.O.- Sarai, P.S. - Maner, Dist.- Patna, Bihar - 801113 through its Director Kumar Vivek, male, aged about 30 years, S/o Jitendra Prasad Singh, R/O Main Road, Machhua Toli, Thana More, Danapur Cantt, Babakkarpur, Patna, Bihar - 801503.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Health Department, Bihar, Patna.
3. The Special Secretary, Health Department, Bihar, Patna.
4. The Joint Secretary, Health Department, Bihar, Patna.
5. The OSD, Health Department, Bihar, Patna.
6. The Secretary to Government of India, Ministry of AYUSH, Ayush Bhawan, B Block, A.P.O. Complex, INA, New Delhi- 110023.
7. The President, Medical Assessment and Rating Board for Indian System of Medicine, New Delhi - 110058.
8. The Secretary, National Commission for Indian System of Medicine, 61- 65, Institutional Area - Janakpuri, D Block, New Delhi - 110058.

... .. Respondent/s

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Appearance :

For the Petitioner/s :	Mr.Suman Kumar
For Respondent Nos.2-5 :	Mr. Aditya Nath Jha, AC to SC 18
For Respondent Nos.6-8 :	Mr. Janardan Prasad Singh, Sr. Adv.
	Mr. Dipak Kumar

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER
ORAL

Date : 27-03-2023

The petitioner, a newly established Ayurvedic College, being represented through its Director, Kumar Vivek, has filed the present writ application for grant of No Objection Certificate by the State Health Department to enable the petitioner to start a new



Ayurvedic College for the academic session 2023-2024 in the name of J. P. Institute of Ayurveda and Medical Sciences.

2. According to the petitioner, necessary infrastructure for establishment of the College has been created and accordingly it submitted the application before the State authority on 30.09.2021 in the required proforma for grant of 'No Objection Certificate' for the purpose of opening the Ayurvedic College and Hospital.

3. Learned Counsel for the petitioner submits that the writ application was filed on 07.07.2022 for a direction to the State authorities to grant No Objection Certificate. As per the Schedule for receipt and processing of the applications under Regulation 5 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 (hereinafter referred to as 'Regulations, 2019'), the date for receipt of the application by the Central Government for grant of recognition of Ayurvedic College has been fixed. The date for receipt of applications by the Central Government has been fixed between 1st July to 31st August of any year. The date of forwarding of applications by Central Government to Central Council of Indian Medicine for technical scrutiny has been fixed as 30th September.



The date of recommendation of Central Council of Indian Medicine to Central Government for issuing letter of permission/denial order is 31st March of the following year and the date of issuance of letter of permission by the Central Government has been fixed by 31st May of the following year. He, thus submits that the Ayurvedic College starts after grant of permission/recognition by the Central Government, which shall be after 31st May, 2023.

4. Since the request of the petitioner for grant of No Objection Certificate was pending before the State Health Department, accordingly, this Court, vide order, dated 30.11.2022, granted permission to the petitioner to submit his application before the Central Government holding that the last date fixed for accepting the application would not come in the way of the petitioner and the same would be subject to the orders passed in the present case.

5. Learned Counsel, however, submits that the last date for submission of application form, as per Schedule, was extended by the National Council for Indian System of Medicine (in short, the 'NCISM'), by its letter, dated 31.10.2022, i.e. up to 30.11.2022. The petitioner has applied in the requisite form for grant of recognition on 30.11.2022, without the copy of the No



Objection Certificate granted by the State Government, since the same was not available to the petitioner at that point of time.

6. The NCISM, vide its letter, dated 25.01.2023, informed the petitioner that the matter of grant of recognition to the petitioner College was discussed by the Medical Assessment and Rating Board, in its 27th meeting, held on 03.01.2023, and the application of the petitioner was rejected by the Medical Assessment and Rating Board on the ground of non-availability of the No Objection Certificate from the concerned State Government to start a new Ayurvedic College.

7. The petitioner has challenged the letter, dated 25.01.2023, by filing I. A. No. 01 of 2023.

8. The submission of learned Counsel for the petitioner is that the proposal of the petitioner for opening a new Ayurvedic College has arbitrarily been rejected by the Medical Assessment and Rating Board on the ground that the proposal/application form of the petitioner was not accompanied with the No Objection Certificate. He, however, submits that this Court has granted him protection, vide order, dated 30.11.2022, that the last date fixed for accepting the application would not come in the way of the petitioner, as such, the rejection of the proposal/application form of the petitioner on the ground that the No Objection Certificate



was not submitted by the petitioner along with the proposal/application form is contumacious. He further submits that the last date of receipt of the application fixed in the Schedule, as per Regulation 5 of the Regulations, 2019, has been extended by the NCISM from 31st August to 30th November, 2022. Since the petitioner was not at fault and the issue of No Objection Certificate was subjudice before this Court, as such, the rejection of the proposal/application form of the petitioner on the ground of non-submission of the No Objection Certificate, along with the application form, is palpably unreasonable and smacks of colourable exercise of power.

9. Learned Senior Counsel appearing on behalf of the NCISM submits that the No Objection Certificate was not available with the petitioner as such the copy of the same was not filed along with the proposal/application form before the assessment done by the Medical Assessment and Rating Board on 03.01.2023. Accordingly, the proposal/application form of the petitioner was rejected by the Medical Assessment and Rating Board in its 27th Meeting. He next submits that the No Objection Certificate was granted by the State Government to the petitioner on 14.02.2023, i.e. after the 27th Meeting of the Medical Assessment and Rating Board held on 03.01.2023. Accordingly,



his submission is that the action of the respondent authorities is not arbitrary inasmuch as along with the application form, the No Objection Certificate granted by the concerned State Government ought to have been filed. He further submits that if the proposal/application form is disapproved by the Medical Assessment and Rating Board of the NCISM, the aggrieved person can prefer an appeal before the NCISM within fifteen days of the disapproval or as the case may be, after lapse of three months, in such manner as may be specified by regulations in view of the provision mentioned in Section 29 (5) of the NCISM Act, 2020. He also submits that as per Section 29 (6) of the 2020 Act, the provision of second appeal is also there.

10. I have heard learned Counsel for the parties concerned.

11. It appears that last date of receipt of the application form/proposal, as per Schedule for receipt and processing of their applications, was extended by the NCISM from 31st August to 30th November, 2022. The issue regarding grant of the No Objection Certificate by the concerned State Government was subjudice before this Court, and this Court, vide its order, dated 30.11.2022, directed that the last date fixed for accepting the application would



not come in the way of the petitioner and the same would be subject to the orders passed in the present case.

12. This Court has been given to understand that the academic sessions starts, as per the Schedule, after 31st May. Admittedly, the No Objection Certificate was granted by the State Government to the petitioner during the pendency of this writ application, on 14.02.2023, i.e. after the meeting of the Medical Assessment and Rating Board held on 03.01.2023.

13. Taking into consideration the totality of the fact and the fact that the academic session has not yet commenced and is likely to be started after 31st May, accordingly, the proposal of the petitioner for grant of recognition along with the No Objection Certificate granted by the State Government be remitted back to the Medical Assessment and Rating Board of the NCISM for its fresh consideration in accordance with law.

14. It has been informed by learned Senior Counsel for the NCISM that the application form of the petitioner has been returned to him and the petitioner may be directed to produce the same before the NCISM. The petitioner is accordingly directed to produce the application form/proposal, along with the No objection Certificate granted by the State Government, before the NCISM positively within a period of ten days from today.



15. Accordingly, the order, dated 25.01.2023, is set aside and the Medical Assessment and Rating Board of the NCISM is directed to reconsider the proposal/application form of the petitioner within a period of thirty days from the date of submission/ production of the proposal/application form by the petitioner.

16. In the result, this application is allowed.

17. I. A. No. 01 of 2023 also stands disposed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	28-03-2023
Transmission Date	N/A

