

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.101

1.

CWP-26787-2023 (O&M)

Date of decision : 01.04.2024

Guru Hargobind Charitable Medical Educational Society

..... Petitioner

Versus

National Commission for Indian System of Medicine and others

..... Respondents

2.

CWP-27603-2023 (O&M)

Guru Hargobind Charitable Medical Educational Society

..... Petitioner

Versus

National Commission for Indian System of Medicine and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
 HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Mr.R.S.Kalra, Advocate, for the petitioner.

Mr.R.Kartikeya, Advocate, for respondents No.1, 2 and 4.

Ms.Swati Arora, Senior Panel Counsel, for respondent No.3-UOI.

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DEEPAK SIBAL, J. (Oral)

1. This order disposes of two connected petitions between the same parties.

For the sake of convenience, facts are being taken from CWP-26787-2023.

2. Through a public notice dated 31.01.2022 the National Commission for Indian System of Medicine (for short, the Commission) invited applications for establishment of new medical colleges. In response to the said public notice the petitioner submitted an application dated 28.10.2022 through which it sought the Commission's approval to establish a new Ayurvedic College with an intake capacity of 60 seats in the Bachelor of Ayurvedic Medicine and Surgery Course (for short, BAMS Course). Alongwith its application the petitioner submitted a no objection certificate dated 21.10.2022 by the State of Punjab and consent from the affiliating university. The petitioner's application was assessed by the Commission's Medical

Assessment and Rating Board (for short, the Board). Through letter dated 24.04.2023, the Board granted an opportunity to the petitioner to rectify 12 defects. Through letter dated 01.05.2023 the petitioner brought to the notice of the Board that all the 12 defects pointed out by the Board had been cured. However, through letter dated 25.05.2023 the Board again wrote to the petitioner granting it another opportunity to rectify defects which now had reduced from 12 to 09. Through its response dated 29.05.2023 the petitioner asserted that all the 09 defects stood cured. The petitioner then received from the Board a communication dated 13.09.2023 through which the petitioner was to be afforded an opportunity of hearing on 18.09.2023 on 06 defects which according to the Board were still there in the petitioner's application. The petitioner filed a detailed rebuttal to the said communication. On 18.09.2023 i.e. the date of personal hearing, a supplementary reply was also submitted by the petitioner stating therein that all the 06 defects pointed out by the Board no longer existed. In the morning of 18.09.2023 the Board granted hearing to the petitioner through virtual mode and on its asking the petitioner was permitted by the Board to file supplementary documents but only by 2 p.m. on the same day. These documents were with regard to the deficiencies which according to the Board still existed in the petitioner's application. The said documents were filed by the petitioner by 2:30 p.m. on 18.09.2023. Order dated 27.09.2023 of the Board was then conveyed to the petitioner rejecting the petitioner's application on 05 counts. The petitioner appealed against the rejection of its application before the Commission which was dismissed through order of the Commission dated 30.10.2023. As noticed earlier, the Board had found as many as 05 deficiencies in the petitioner's application. In appeal the Commission accepted the petitioner's explanation qua 03 of those defects but rejected the petitioner's appeal on 02 counts. On 17.11.2023 the petitioner filed a second appeal before the Government of India. The last date for admitting students for the academic

session 2023-24 was 30.11.2023 but since by that time the Government of India had not decided the petitioner's second appeal the petitioner approached this Court through CWP-26787-2023 which petition came up for hearing before a Co-ordinate Bench on 29.11.2023 on which date this Court issued notice to the respondents and in the meanwhile, permitted the petitioner to provisionally make admissions. In pursuance to the interim order dated 29.11.2023, through Centralized Counseling Process conducted by respondent No.4-University, only one student was admitted by the petitioner but since the respondent-Commission denied to acknowledge even such admission by not giving access to the petitioner to upload the details of the student admitted by the petitioner, an application was filed before this Court by the petitioner in which interim directions were issued in the petitioner's favour on 11.01.2024. Through Special Leave to Appeal(C) No(s).4060-4161 of 2024 the orders of the Co-ordinate Bench dated 29.11.2023 and 11.01.2024 were challenged by the Commission before the Supreme Court which was disposed of on 19.02.2024. The Supreme Court was of the view that the interim order(s) passed by the Co-ordinate Bench of this Court should have not been passed but since the main petition(s) were still pending before this Court, the Supreme Court did not set aside the interim orders but requested this Court to prepone the date of hearing of the main case and finally decide the matter. In the meanwhile, the second appeal preferred by the petitioner was rejected by the Government of India on 01.12.2023 only on the ground that the appeal had been filed beyond the prescribed period of seven days from the date of communication of the order appealed against. The petitioner challenged the rejection of the order of the Government of India dated 01.12.2023 through a subsequent petition being CWP-27603-2023 in which petition, through order dated 07.12.2023, a co-ordinate Bench of this Court issued notice and granted interim protection in terms of the earlier orders passed by the Co-ordinate Bench on 29.11.2023 and 11.01.2024 in CWP-26787-2023.

Through Special Leave to Appeal (C) No(s).4376/2024 the Commission challenged the interim order of the Co-ordinate Bench dated 07.12.2023 before the Supreme Court which SLP was disposed of on 23.02.2024. In this matter also the Supreme Court was of the view that that interim order passed by the Co-ordinate Bench should have not been passed but since the main petition(s) were pending before this Court the Supreme Court did not set aside the interim order but requested this Court to prepone the date of hearing of the main case and finally decide the matter.

3. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

4. In the petitioner's application to establish a new Ayurvedic Medical College with an intake capacity of 60 students in the BAMS Course initially the Board set up by the Commission pointed out several defects but after considering the petitioner's responses, both in writing and through the personal hearing granted to it by the Board, through its order dated 27.09.2023 the Board rejected the petitioner's application for the following reasons: -

“The representative of the proposed college was again asked to submit individual salary statement as directed by the hearing Committee till 2.00 pm on 18.09.2023, but after hearing no individual salary statement was submitted **in the stipulated time period of existing & relieved hospital staff** as directed by the Hearing committee and the proposed college could not provide the complete documents/evidences to fulfill and comply with the shortcoming related to the individual salary statement for substantiating the fully functional hospital prior two years.

As, the proposed college has not submitted the required documents as instructed in the given time and therefore genuinity of the submitted documents cannot be ascertained as individual salary paid statement for the period from December, 2020 to November, 2022 is not verified by the submitted bank statement of college. Therefore, submission of the proposed college is not considered and shortcoming persists in the matter.

ii. Bio-Medical Waste Management agreement and Pollution Control Certificate is not submitted.

In response of the same proposed college submitted the sought documents but after verification it is observed that the proposed College submitted the biomedical waste management agreement which is not issued in the name of the college and have submitted the bio medical waste management agreement certificate which is issued on 31.07.2023 and not submitted for the required period from November 2020 to December 2022 to substantiate the claim for genuine functionality of hospital **and no pollution control certificate is submitted for the period from November, 2020 to December,**

2022 to substantiate the claim for genuine functionality of hospital.

The representative of the proposed college was again asked to submit required documents as directed by the hearing Committee till 2.00 pm on 18.09.2023, but after hearing no documents were submitted **in the stipulated time period** as directed by the Hearing committee and the proposed college could not provide the complete documents/evidences to fulfill and comply with the shortcoming related to the **Bio-Medical Waste Management agreement and Pollution Control Certificate** for substantiating the fully functional hospital prior two years before submission of application.

As, proposed college has not submitted the sought documents to substantiate the claims to prove the existence of a fully functional hospital before submission of application as mentioned in the regulation 10(a) (i) MSR-2016. Therefore, shortcoming persists and in view of lack of any other supporting documents, the genuine functionality of the hospital cannot be ascertained.

iii. The submitted Tax paid receipt is for the session 2007-08 and not for the last 2 years.

In this regard the proposed college was asked to submit the hospital tax paid receipt for the last 2 years before submission of application to substantiate the claim for genuine functionality of hospital.

In response of the same, the proposed college informed that no tax is to be paid to the Government authority as the hospital and college building is outside the town planning area. The representative of the proposed college was again asked to submit supporting document in support of their submission till 2.00 pm on 18.09.2023, but after hearing no documents were submitted in the stipulated time period as directed by the Hearing committee and the proposed college could not provide the complete documents/evidences to fulfill and comply with the shortcoming for substantiating the fully functional hospital prior two years before submission of application. **Therefore, shortcoming persists in the matter.**

iv. The details of providing EPF and ESI facilities to the hospital staff of the Colleges/Hospitals and regularly paying fee same as per the provisions of Employees' Provident Funds and Miscellaneous Provident Act, 1952 & ESI Act, 1948 and relevant Rules and Regulations is not submitted.

In this regard the proposed college was asked to submit the details of providing EPF and ESI facilities to the hospital staff of the Colleges/Hospitals as per the provisions of Employees' Provident Funds and Miscellaneous Provident Act, 1952 & ESI Act, 1948 and relevant Rules and Regulations.

In response of the same the proposed college submitted a document issued by the EPF office explaining the EPF scheme and representative of the college said verbally that total only 6 staff have been enrolled in EPF scheme and total only 04 staff have been covered under ESIC.

Hearing Committee asked the proposed college to submit all the documents for having enrolled staff in EPF and ESIC alongwith monthly account statements but no Post Hearing Submission was submitted. Hence, shortcoming persists and in view of lack of any other supporting documents, the genuine functionality of the hospital is doubtful.”

5. Against the aforesaid order of the Board dated 27.09.2023, the petitioner availed of its statutory remedy by filing an appeal before the Commission. On 18.10.2023 the Commission granted the petitioner opportunity of hearing (through virtual mode) and thereafter through its order dated 30.10.2023 rejected the

petitioner’s application. The operative part of the said order of the Commission reads as under: -

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Shortcoming	Clarification of the college	Observation of the Hearing Committee
1. Individual salary paid bank statement of all the hospital staff for 24 months starting from Dec-2020 to Nov-2022 in hierarchical and chronological order and according to the format enclosed with the letter.	College submitted the documents regarding individual salary bank statements of some staff.	College did not submit individual salary paid bank statement of all staff for December-2020 to November-2022. Submission cannot be considered. Shortcoming Persists
2. Boi-Medical Waste Management agreement is issued for BANSAL CHARITABLE HOSPITAL and not for the GURU HARGOBIND AYURVEDIC MEDICAL COLLEGE AND BANSAL HOSPITAL and Pollution Control Certificate is not submitted.	College has submitted Extended Bio-Medical waste certificate and Pollution Control Certificate.	Committee Verified the same. Submission may be considered.
3. The submitted Tax paid receipt is for the session 2007-08 and not for the last 2 years.	College submitted the Certificate given by village panchayat, Gondwal.	Committee Verified the same. Submission can be considered.
4. The details of providing EPF and ESI facilities to the hospital staff of the Colleges/ Hospitals and regularly paying fee same as per the provisions	College submitted documents of EPF and ESIC.	Committee verified the documents and EPF and ESIC in the documents the establishment and employers name is CHE Medical Educational Society. College did not submitted EPF and ESIC of all eligible staff from December-2020 to November-2022. Submission cannot be considered. Shortcoming Persists. College submitted Bank statement of

of Employees' Provident Funds and Miscellaneous Provident Act, 1952 & ESI Act, 1948 and relevant Rules and Regulations is not submitted.		salary disbursed account HDFC Bank Account No.13841450000049 in the name of M/s Guru Hargobind Medical Educational Society in which statements entries of salary transitory account Rajkot number 50200023070722 is found. College did not provide details of this transitory account Rajkot, Salary disbursed in the month of February on 19.02.2021 from HDFC Account number- 50100052492034 which is account of Nursing College in the month of January-2022 and January-2023 salary is disbursed from the same account of the Nursing college, College stated that in the Axis Bank on 24.02.2023 in the name of CHG Ayurvedic Medical College, Account No.-923010009428631 is open and salary from February-2023 is disbursed from this account.
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6. A perusal of the afore quoted portion of the order reveals that the petitioner’s application to set up a new Ayurvedic Medical College was rejected by the Commission on the ground that though the petitioner had supplied the bank details of the transfer of salary from its bank account to the bank accounts of its employees but it had not submitted the corresponding bank statements of some of its employees. The other ground was that details with regard to the deposit of EPF and ESIC of its staff had not been furnished. Thus, the Commission was not convinced with regard to the staff which the petitioner claimed to have employed as per the requisite norms.

7. Learned counsel for the Commission does not dispute that the petitioner had satisfactorily explained the transfer of salary from the petitioner’s bank account to the bank accounts of the staff which the petitioner claimed to have employed but submits that the Commission was still not convinced that the staff claimed to be employed by the petitioner was actually on its rolls since corresponding bank records of some of its employees had not been produced by the petitioner which would have conclusively shown receipt of the salary by the employees.

8. In rebuttal, learned counsel for the petitioner draws the attention of this

Court to Form-I filed by the petitioner under the Payment of Wages Act, 1936 (for short, the 1936 Act) and which had also been produced by the petitioner before the Commission which clearly proves the actual transfer of salary by the petitioner into the bank accounts of its staff.

9. On being confronted by the afore documents learned counsel for the Commission fairly stated that these documents seem to have been inadvertently overlooked by both the Board and the Commission and that had these documents been considered in the right perspective there was no reason for the Board or the Commission to doubt the genuineness of the staff being claimed by the petitioner to be on its rolls.

10. Even otherwise, once the transfer of funds from the petitioner's bank account to the bank accounts of its staff claimed to be on its rolls has been accepted by the respondents there was no reason for the Commission to continue to doubt the genuineness of the petitioner's claim qua its employed staff.

11. Similarly, the issue raised by the respondents with regard to non-filing of EPF/ESIC by the petitioner with respect to its employees qua whom the 1936 Act applies is also inconsequential as admittedly this objection was also raised only to probe the veracity of the petitioner's claim qua the genuineness of its employed staff.

12. In the light of the fair stand taken by the learned counsel for the Commission, as above and for the reason that in its order dated 27.09.2023 the Board had accepted that the bank records produced by the petitioner showing transfer of salary from the petitioner's bank account to the bank accounts of its staff, we find that the reason given by the Commission to reject the petitioner's application to be unsustainable. Resultantly, orders dated 27.09.2023 and 30.10.2023 passed by the Board and the Commission respectively, are set aside. Since the foundational orders against which the appeal was rejected by the Government of India through its order

dated 01.12.2023 only on the ground of limitation and without any discussion on merits have been set aside, the order of the Government of India dated 01.12.2023 shall also have no legs to stand.

13. The petitions are allowed in the above terms.

[DEEPAK SIBAL]
JUDGE

01.04.2024
shamsher

[DEEPAK MANCHANDA]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / N