

Court No. - 19

Case :- MISC. SINGLE No. - 30291 of 2018

Petitioner :- Glocal College Ayurvedic Medical Science & Research Centre

Respondent :- U.O.I.Thru.Ministry Of Ayurveda (Ayush) & Ors.

Counsel for Petitioner :- Alok Mishra,Rajat Rajan Singh

Counsel for Respondent :- C.S.C.,A.S.G.,S.V.Singh,Sharad Nandan Ojha

Hon'ble Vivek Chaudhary,J.

Heard learned counsel for petitioner; Sri Savitra Vardhan Singh, learned counsel for respondent No.1 and 2, Union of India; Sri Sharad Nandan Ojha, learned counsel for respondent No.5, Central Council of India Medicine, New Delhi and the learned standing counsel for respondent No.3, 4.

Counsels for petitioner submits that the matter is squarely covered by the order dated 09.10.2018 passed in Writ Petition No.28712 (M/S) of 2018; 'Institute of Ayush Medical Sciences Vs. U.O.I. Ministry of Ayurveda Yoga and Ors.

Learned counsels for respondents could not dispute the said fact.

In view thereof, with the consent of parties, following order is passed:-

The petitioner an Ayurvedic College, filed present writ petition challenging the order dated 24.9.2018 passed by the respondent No.2 refusing to grant of approval under Section 13-A/13-C of Indian Medical Central Council Act, 1970 (Act of 1970) for academic session 2018-2019.

The petitioner institution was granted permission for 100 BAMS seats for academic year 2017-2018. It appears that for the academic session 2018-2019, an inspection was made by CCIM. Learned counsel for petitioner submits that under Section 13-A (4) of the Act, visitor's report was required to be provided to the petitioner institution. Learned counsel for petitioner further submits that any deficiency if pointed out in such a report, could be corrected by the petitioner institution. However, no such report was given to petitioner institution. It appears that on the basis of the said report, the CCIM made positive recommendation to Central Government. After issuing notice, the recognition was refused by the Central Government to the petitioner institution by order dated 24.9.2018.

Submission of learned counsel for petitioner is that procedure adopted is in violation of Section 13-A (4) as without giving a opportunity to correct the deficiency, the impugned order has been passed. He further submits that in fact there is no deficiency in the institution and, in reply to the show cause notice, each and every document was provided showing that there is no deficiency in the institution.

Sri Savitra Vardhan Singh and Sri Sharad Nandan Ojha, learned counsels for the respondents on the basis of written instructions argued that a proper inspection was conducted and proper opportunity was given to the petitioner institution as provided under Section 13-A (4) of the Act at the time of scheme.

Learned counsel for petitioners also relied upon the judgment dated 24.9.2018 of Madras High Court in W.P. No.24967 of 2018 and W.M.P. Nos.29011 and 29012 of 2018. The said order reads as follows:-

"Mr.T.V.Krishnamachari, learned Senior Panel Counsel takes notice for the respondents 1 and 2, Mr.M.T.Arunan, learned counsel takes notice for the third respondent, Mrs.V.Annalakshmi, learned Government Advocate takes notice for the fourth respondent and Mr.D.Ravichandu, learned Standing Counsel takes notice for the fifth respondent.

2. The learned Senior Panel Counsel appearing for the respondents 1 & 2 has serious objection for granting interim order.

3.The learned Senior Counsel appearing for the petitioner states that the Central Council of Homeopathy has not recommended for denying permission for taking admission to BHMS Course in the petitioner's Institution, pursuant to the inspection conducted on 13.06.2018. The respondents have pointed out only few deficiencies as against full compliance in respect of major requirements. There is no recommendation by the Central Council either for restricting the number of students or for taking action in terms of Section 19 of the Act.

4. However, the Central Government by the impugned order dated 12.09.2018 has denied permission for taking admission to BHMS Degree Course for the academic year 2018-19. It is to be seen that by previous orders of this Court, the petitioner's Institution is admitting 100 students every academic year, pursuant to the permission that was obtained from the Central Council in 2002.

5. The Hon'ble Supreme Court, in a recent decision has upheld the judgment of the Patna High Court, wherein the power of the Central Government has been considered. The Supreme Court has observed that the Central Government has to pass order only on the recommendation made by the Central Council. The legal position as settled by Hon'ble Supreme Court indicates that the Central Government has no independent power to pass the impugned order. In the absence of any recommendation of Central Council, the impugned order cannot stand. Hence, this Court is of the view that the petitioner is entitled to get an interim order. Hence, there shall be an order of stay as prayed for for a period of eight weeks.

6. It is not in dispute that the first respondent-Government of India, has passed order in favour of the petitioner for continuing BHMS Degree Course for 100 seats for every academic year from 2014. It is also stated by the petitioner that the fifth respondent University has passed orders acknowledging the petitioner's eligibility for provisional affiliation to 100 seats.

7. In view of the various orders of this Court, this Court is also convinced that the petitioner is entitled to admit 100 students for first year BHMS Degree Course for the academic year 2018-19. Hence, there shall be an interim direction to the respondents 4 and 5 to allow the petitioner's Institution to admit 100 students for the first year BHMS Degree Course for the academic year 2018-19."

Submission of learned counsel for petitioner is that since CCIM's report is itself positive as the same is submitted to the Central Government without giving opportunity to the petitioner institution, the same could not have been rejected and the Central Government could not have proceeded to reject the case of petitioner institution, at least without verifying the claim of petitioner that the deficiencies do not exist.

Learned counsel for petitioner placed reliance upon an order dated 29.9.2018 passed by the Under Secretary, Central Government itself where in case of colleges of Prakash Institute of Ayurvedic Medical Sciences and Research, the Under Secretary has granted conditional permission requiring institution to remove defect by 3.12.2018. Submission is that there is no reason why the similar conditional permission could not be granted to petitioner institution also. More so, when all the deficiencies stand removed and could be verified by the respondents on any date whatsoever.

Sri Savitra Vardhan Singh and Sri Sharad Nandan Ojha, learned counsel for respondents have raised serious objection to the prayer of petitioner institution for interim relief.

List this case on **20.12.2018**.

Meanwhile, since fresh admission process is to be initiated by the State Government under interim order of this Court dated 15.11.2018 passed in Writ Petition No.18464 (M/S) 2018, it is provided that the respondents shall include the petitioner institution also in the said admission process for allotment of 100 seats to the students of UG(BAMS) Course for academic session 2018-19.

The learned standing counsel for respondent No.3 and 4, shall ensure that the order is communicated to the respondent No.3 and 4 today.

It shall be open to respondents Central Government/Under Secretary to further proceed in the matter, by another inspection if found required, or in accordance with law and getting any deficiencies, if found, to be removed without delay. Petitioner shall fully cooperate and comply with such orders.

Order Date :- 28.11.2018

Arti/-

(Vivek Chaudhary,J.)