

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3512/2008

1. Hindustani Education Society,
Ausa, Afsar Nagar, Near Power House
Ausa, Tq.Ausa, Dist.Latur, Through its Secretary.

2. The Ayurved College
& Hospital, Ausa, Tq.Ausa
Dist.Latur, through its Principal.

.. PETITIONERS

VERSUS

1. The Union of India
Through its Principal Secretary
Ministry of Health & Family Welfare Department of Ayurveda,
Yoga & Naturopathy, Unani, Sidha and Homeopathy (AYUSH),
(Education Policy Section), at Indian Red Cross Society, Annexe Building,
1-Red Cross Road, New Delhi-110 001.

2. The Director, Ministry of Health &
Family Welfare Department of Ayurveda, Yoga & Naturopathy,
Unani, Sidha and Homeopathy (AYUSH), (Education Policy
Section), at Indian Red Cross Society, Annexe Building,
1-Red Cross Road, New Delhi-110 001.

3. The Under Secretary,
Ministry of Health & Family Welfare Department of
Ayurveda, Yoga & Naturopathy, Unani, Sidha and Homeopathy,
(AYUSH), (Education Policy Section), at Indian Red Cross
Society, Annexe Building, 1-Red Cross Road,
New Delhi-110 001.

4. The Central Council of Indian Medicine
Institutional Area,
Janakipuri, New Delhi-110 001.

.. RESPONDENTS

Shri R.N.Dhorde, Adv. holding for
Shri R.L.Kute, Adv. for petitioners.
Shri Alok Sharma, Assistant Solicitor General, for respondent nos.1 to 4.

CORAM: SMT.NISHITA MHATRE &
B.R.GAVAI, JJ.

DATE: 09/01/2009

ORAL JUDGMENT [PER MHATRE,J.] :

1. Rule. Rule made returnable forthwith, by consent of parties.
2. The petitioners have filed the present petition being aggrieved by the cancellation of the Letter of Intent issued to them for starting an Ayurved College and Hospital at Ausa, Dist.Latur. The petitioners also have a grievance that a similarly situated college run by a Member of Parliament has been granted permission despite several deficiencies found by the Central Council for Indian Medicine (hereinafter referred to as CCIM for short).
3. The petitioner no.1 trust is registered under the Bombay Public Trust Act, 1950, is an education society. The petitioner no.1 society has been recognized as a minority institution by the Government on 31/3/2001. Since the petitioner trust desired to start an Ayurved College and Hospital at Ausa, it was necessary for it to obtain prior permission from the Central Government in accordance with the Indian Medicine Central Council Act, 1970 (hereinafter referred to as the Act of 1970). The petitioners applied in accordance with Section 13-A of the Act of 1970 for setting up the Ayurved College. The petitioners also submitted a demand draft of Rs.3.5 lakhs along with their application, as required under the Act and Regulations framed thereunder. The application, dated 26/4/2006 was submitted to respondent no.2 i.e. the Secretary to the Government of India, Department of Ayurved, Yoga, Naturopathy, Unani, Siddha and Homeopathy (Ayush). The Central Government issued a letter to the CCIM requesting it to inspect the new college and to convey to the petitioners the deficiencies, if any, for the petitioners to rectify the same before permission was granted to commence the college with an intake capacity of 50 students for the B.A.M.S. Course. On 27th April 2006, the Maharashtra University of Health Sciences consented to provisionally affiliate the college to the Health University for the proposed admission capacity of 50 students. At the same time, the Ministry of Health requested the CCIM, to inspect the college to ascertain whether the infrastructure available was in accordance with the Act and the Regulations framed thereunder. The Central Government directed the CCIM to include at least one member from the panel of experts provided by the Central Government in the visitation team.

4. Accordingly, the committee, visited the site to inspect the infrastructure available. The committee recommended to the Central Government that a Letter of Intent for the intake capacity of 50 students should be issued to the petitioners. The petitioners were informed on 12/10/2006 by the Central Government that the Letter of Intent was being issued to the petitioners subject to their fulfilment of the shortcomings which were listed in detail. The petitioners submitted their compliance report on 20/11/2006. Thereafter, on 18/1/2007, the CCIM informed the petitioners that they proposed to visit the site on 29/1/2007 to verify the compliance report. After verification, a meeting was held by the education Committee (Ayurveda) of the CCIM on 4/2/2007. The education committee decided to recommend to the Government of India that permission should be issued to the petitioners to start the college with an intake capacity of 50 students, taking into consideration the compliance report and the verification by the committee.

5. However, on 2/2/2007, even before the meeting of the CCIM, a letter was issued by the Central Government to the petitioners intimating them that the Letter of Intent issued on 12/10/2006 was cancelled. The reason given for cancellation of the Letter of Intent was that there was no fully functional 100 bed Ayurved Hospital as required by the CCIM Regulations. The Central Government also mentioned that there were several other shortcomings which had not been fulfilled by the proposed institution and therefore, it was found necessary to cancel the Letter of Intent.

6. The main grievance of the petitioners in this petition is that the cancellation of the Letter of Intent is based on a visit by a team of the Central Government in December 2006. It is also contended that this visit by the panel is contrary to the provisions of Act and the Regulations framed thereunder. The Indian Medicine Central Council Act, 1970 has been enacted to establish a Central Council which would evolve uniform standards of education and the registration of practitioners of the systems Indian Medicine & Homeopathy. The Indian Medicine systems have been defined to mean Astang Ayurveda, Siddha or Unani Tibb. The Act has been amended in 2002 with the insertion of Chapter II A. A Scheme for regulating permissions for setting up new medical institutions and introducing new courses of study has been enacted by this amendment. Section 13-A & B are contained in Chapter II-A.

7. Section 13-A of the Act, which is relevant for our purpose reads as under :

13-A. Permission for establishment of new medical institution, new course of study etc.-

(1) Notwithstanding anything contained in this Act or any other law for the time being in force -

(a) no person shall establish a medical institution; or

(b) no medical institution shall -

(i) open a new or higher course of study or training, including a post-graduate course of study or training, which would enable students of such course or training to qualify himself for the award of any recognized medical qualification; or

(ii) increase its admission capacity in any course of study or training including a post-graduate course of study or training, except with the previous permission of the Central Government obtained in accordance with the provisions of this Section.

EXPLANATION 1.- For the purposes of this section, "person" includes any University or a Trust, but does not include the Central Government.

EXPLANATION 2.- For the purposes of this section, "admission capacity", in relation to any course of study or training, including post-graduate course of study or training, in a medical institution, means the maximum number of students as may be fixed by the Central Council from time to time for being admitted to such course or training.

(2) Every person or medical institution shall, for the purposes of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of sub-section (3) and the Central Government shall refer the scheme to the Central Council for its recommendations.

(3) The scheme referred sub-section(2), shall be in such form and contain such particulars and be preferred in such manner and accompanied with such fees, as may be prescribed.

(4) On receipt of a scheme from the Central Government under sub-section (2), the Central Council may obtain such other particulars as may be considered necessary by it from the person or the medical institution concerned, and thereafter, it may, --

(a) if the scheme is defective and does not contain necessary particulars, give a reasonable opportunity to the person or medical institution concerned for making a written representation and it shall be open to such person or medical institution to rectify the defects, if any, specified by the Central Council ;

(b) consider the scheme, having regard to the factors referred to in sub-section (8) and submit it to the Central Government together with its recommendations thereon within a period not exceeding six months from the date of receipt of the reference from the Central Government.

(5) The Central Government may, after considering the scheme and recommendations of the Central Council under sub-section (4) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or institution concerned and having regard to the factors referred to in sub-section (8), either approve the scheme with such conditions, if any, as it may consider necessary or disapprove the scheme and any such approval shall constitute as a permission under sub-section(1) :

. Provided that no scheme shall be disapproved by the Central Government except after giving the person or medical institution concerned, a reasonable opportunity of being heard;

. Provided that nothing sub-section shall prevent any person or medical institution whose scheme has not been approved by the Central Government to submit a fresh scheme and the provision of this section shall apply to such scheme, as if such scheme had been submitted for the first time under sub-section (2)."

7. In computing the time-limit specified in sub-section (6), the time taken by the person or medical institution concerned submitting the scheme, in furnishing any particulars called for by the Central Council, or by the Central Government shall be excluded.

8. The Central Council while making its recommendations under clause(b) of sub-section (4) and the Central Government while passing an order, either approving or disapproving the scheme under sub-section(5), shall have due regard to the following factors, namely :-

(a) whether the proposed institution or the existing medical institution seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Central Council under Section 22;

(b) whether the person seeking establish a medical institution or the existing medical institution seeking to open a new or higher course of study or training or to increase its admission capacity hasadequate financial recourses;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training, hospital or other facilities to ensure proper functioning of the medical institution or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical institution or course of study or training or the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical institution or the course of study or training by persons having recognised medical qualifications;

(f) the requirement of manpower in the field or practice of Indian medicine in the institution ;

(g) any other factors as may prescribed.

9. Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or medical institution concerned."

8. Section 13-A makes it clear that the Central Government after considering the recommendation of the CCIM, can either approve a scheme or disapprove it. The section also stipulates that the scheme cannot be disapproved by the Central Government without giving a reasonable opportunity of being heard to the medical college concerned. The scheme of Section 13-A therefore, envisages that an institution may be permitted to establish and commence a medical college, provided it has the previous permission of the Central Government. Any such medical college is expected to submit its scheme to the Central Government which then refers the scheme to the CCIM for its recommendations. On receipt of the scheme from the Central Government, the CCIM may obtain such particulars as are necessary from the institution or college concerned in the event the scheme is found to be defective. A reasonable opportunity must be afforded to the institution or medical college for making a representation. Thereafter, the institution/medical college may rectify the defects, if any, specified by the CCIM. Once the scheme is considered by the CCIM and the deficiencies are removed, a report is to be submitted by the CCIM to the Central Government alongwith its recommendations within a period of 6 months from the date of the receipt of the reference from the Central Government. The Central Government is not expected, under Section 13-A of the Act, to send its own team to assess for itself whether the institution/college complies with the requirements. That task is to be performed by the CCIM and the Central Government can only approve or disapprove such scheme. The question of sending their own team for assessing whether a particular institution or college has

the infrastructure as required under Section 13-A of the Act, does not arise. While accepting or rejecting the recommendations of the CCIM, the Central Government must consider the factors enumerated in sub-section 8. It is only when these conditions, which are mentioned in sub-section 8 are fulfilled that, the recommendations issued by the CCIM may be accepted by the Central Government. As already stated, there is no provision at all for the Central Government, to send its own team. In fact it is for this reason that one of the panel members of the team, which visited the petitioners to assess the infrastructure, was from the panel of experts nominated by the Central Government. Therefore, in our opinion, the procedure adopted by the Central Government in sending its own team, is not in consonance with the provisions of the Act.

9. An affidavit has been filed by the Central Government wherein, it is averred that the recommendations of the CCIM were not acceptable as the team sent by the Central Government on a later date did not find that the recommendations of the CCIM were correct. Significantly, the CCIM had found that the shortcomings in the proposal had been rectified by the petitioners. Despite this, the Central Government cancelled the Letter of Intent on the basis of the inspection carried out by its team on 21/12/2006. The affidavit further states that it was because the Central Government was suspicious of the accuracy of the inspection conducted by the CCIM, that it was found necessary to send its own team for conducting a survey. This procedure adopted by the Central Government is contrary to the provisions of Section 13-A. Assuming the Central Government did not accept the recommendations of the CCIM it could have only disapproved the Scheme.

Apart from this, no predecisional hearing was afforded to the petitioners. Proviso to Sub-section 5 of Section 13-A stipulates that no scheme can be disapproved by the Central Government without giving a reasonable opportunity of being heard to the person/college concerned.

10. In the present case the respondents, in order to cover up their errors, have granted a post decisional hearing to the petitioners. This is not envisaged by the provisions of the Act. In any event it cannot be a substitute for a predecisional hearing. Our view is fortified by the decision of the Apex Court in the case of H.L.Trehan and others V/s Union of India and others reported in

AIR 1989 S.C.568. The Supreme Court has held that a postdecisional opportunity of hearing does not subserve the rules of natural justice. The Court has observed that the authority which embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. The Apex Court has observed that where a pre-decisional hearing is conceived and is not afforded, the defect cannot be cured by a post-decisional hearing.

11. The learned Assistant Solicitor General has submitted before us that the CCIM is only a recommendatory body and it is the Central Government which takes the ultimate decision in the matter. He has submitted that the powers of the Central Government have been delegated to the CCIM and therefore, the delegator can always perform the same functions as the delegatee.

12. The Supreme Court in the case of State of Tamilnadu and another V/s Adhiyaman Educational & Research Institute and others reported in (1995) 4 Supreme Court Cases 104, while considering provisions of All India Council for Technical Education Act, 1987 has held that duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country. It has also been held that the Council is required to ensure that all institutions in the country are in a position to properly maintain the norms and standards. The CCIM which is constituted under The Indian Medicine Central Council Act, 1970 has to perform the same functions in so far as the establishment of Ayurved, Homeopathy, Unani medical colleges are concerned. The said body possesses the requisite expertise to find out as to whether the institution which is seeking permission, answers the requisite norms and standards set up by it. In the present case, the CCIM has found that the petitioners possess the necessary infrastructure as to norms and standards as required by it. The respondent Central Government could not have lightly brushed away the recommendations of the CCIM and that too without giving any valid reasons.

13. The Indian Medicine Central Council Act, 1970, has been enacted to establish certain standards which are required to be achieved by an institution for establishing a Medical College. The Council constituted under the Act i.e. the CCIM is therefore, the ultimate authority for

setting norms for establishing a Medical College. It is the Council which must evaluate whether a new college meets the exacting standards stipulated. The Government has to act on its recommendations. The power that the Central Government can exercise under Section 13-A is to either approve or disapprove the recommendations. If it refuses to accept the recommendations, a hearing must be afforded, which as already noticed has not been done in the present case.

14. One more issue which is required to be considered by us, is whether the respondents 1 to 3 have discriminated against the petitioners, by granting permission to a Member of Parliament, to set up a college, although there were several deficiencies in the proposal submitted by her. The petitioners have annexed the letter issued by the Central Government to the Member of Parliament as the Chairperson of the Mahila Utkarsha Pratishthan, Risod, Dist.Washim, Maharashtra, in respect of the application submitted by the Pratishthan for permission to start a new Ayurved College, Hospital and Research Centre at Degaon, Tq.Risod, Dist.Washim. This letter issued on 10/4/07, indicates that on the recommendations of the CCIM permission was granted by the Central Government to the Pratishthan to commence an Ayurveda College at Degaon with an annual intake capacity of 50 seats in Ayurvedacharya (B.A.M.S.) course from the session 2007-2008 under the provisions of Section 15-A of the Act of 1970. However, this permission was granted subject to the fulfilment of the shortcomings observed by the CCIM within 80 days. The shortcomings listed by the Central Government included completion of the building, planting more sapplings in the Herbal Gardan, starting a Pharmacy, two performance bank guarantees; one of Rs.1.50 crores for 100 bed Hospital and another of Rs.1.00 crore for the College for 50 seats. The permission was valid till such time as the first batch of students admitted against the course appeared for the first final examination of the course. The letter stipulates that the college authorities could then take up the matter for recognition of the qualifications under Section 14(2) of the Act of 1970, at that point in time. Several allegations have been made by the petitioners in paragraphs 24 to 32 in respect of granting permission to the Pratishthan only because its President was a Member of Parliament. Instead of specifically denying these allegations or explaining its stand, the CCIM through its affidavit, has merely stated that the contents of those paragraphs where the allegations are levelled are a matter of record. The Central Government in its affidavit has stated that the contents are incorrect and therefore, not acceptable. However, there is no specific denial of the allegations made in respect

of the permission granted for the college set up by the Pratishtan, of which a Member of Parliament was the Chairperson.

15. This conduct of the Central Government smacks of malafides and is obviously discriminatory. To grant permission for commencing a college without completion of the building or other infrastructural necessities indicates the unholy haste with which the decision was taken by the Central Government.

16. The Petition is therefore, allowed.

i] The letter dated 2nd February 2007 issued (by respondent no.3) and the order dated 9th April 2008, passed by respondent no.2, are quashed and set aside.

ii] The respondent no.1 shall afford a personal hearing to the petitioners in accordance with proviso to Sub-section 5 of Section 13-A of the Indian Medicine Central Council Act, 1970, within a period of four weeks from today.

iii] The respondent no.4 i.e. the Central Council of Indian Medicine may inspect the infrastructure available with the petitioners for running the Ayurved College and Hospital at AUSA once again, if necessary. The respondents after hearing the petitioners, shall decide the representation of the petitioners for starting the college by 31st March 2009 and shall communicate the order immediately to the petitioners. The petitioners will be heard by an officer who was neither involved in passing the impugned letter/order nor was a member of the team which visited the college on an earlier occasion before communicating the impugned letter/order.

iv] The decision, which will be passed by 31st March 2009, shall be taken uninfluenced by the impugned decision of the Union of India.

v] The Writ Petition is allowed with costs quantified at Rs.25,000/- (Rupees Twenty Five Thousand only).

vi] The learned counsel appearing for the petitioners states that when the aforesaid amount is received from the respondents, the petitioners will hand it over to the Library of the High Court Bar Association at this Bench.

17. Rule is made absolute in the above terms.

[B.R.GAVAI]
JUDGE

[SMT.NISHITA MHATRE]
JUDGE

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