

HIGH COURT OF JUDICATURE AT ALLAHABAD

ORDER SHEET

Court No.39

Civil Misc. Writ Petition No.42511 of 2009

Central Council of Indian Medicine

vs.

State of U.P. and others

Hon'ble Vikram Nath, J

This petition has been filed by the Central Council of Indian Medicine, which is a body constituted under Section 3 of The Indian Medicine Central Council Act, 1970 (Act No.48 of 1970) (hereinafter referred to as the Act). The Central Council of Indian Medicine (hereinafter referred to as the Council) is the body responsible for maintaining minimum standard of education relating to the Indian Medicines. Initially when the Act came into force, the Council was empowered to give recognition to the degrees of various universities and institutes and the same was to be listed in Schedule-II of the Act. There was no provision for granting permission for the establishment of medical colleges and courses etc., akin to the provisions contained in the Medical Council of India Act, 1956 and the Dental Council of India Act, 1970. In the year 2003 an amendment was made in the Act and Chapter II-A was inserted by which Sections 13-A, 13-B and 13-C were added relating to the grant of permission for establishment of new medical colleges, courses etc. Section 13-A dealt with the permission for establishment of new medical colleges, new courses of study etc. Section 13-B dealt with non-recognition of medical qualifications in certain cases and Section 13-C provided a time limit for existing medical colleges to seek permission. Under the scheme of Chapter II-A, for establishment of a new medical college, previous permission of the Central Government obtained in accordance with the provisions of Section 13-A was necessary, as no college could be established or a new course could be introduced without the previous permission of the Central Government. Section 13-B specifically provided that where any medical college was established without previous permission of the Central Government as required under Section 13-A of the Act, the medical qualification granted to any student of such medical college shall not be deemed to be a recognized medical qualification for the purpose of the Act. Similar provisions were made with regard to obtaining of a new or higher courses of study without prior approval of the Central Government and similar consequence would follow when such study or training would not be deemed to be a recognized medical qualification for the purpose of this Act. However, with regard to the existing medical colleges of Indian Medicines, established

before the commencement of the Amendment Act, 2003, it was provided under Sub-section (1) of Section 13-C of the Act that such colleges shall seek within a period of three years from the commencement of the Amendment Act, 2003 permission of the Central Government in accordance with the provisions contained in Section 13-A of the Act. Sub-section (2) of Section 13-C of the Act provided that if any person or the medical college, as the case may be, fails to seek permission under Sub-section (1), the provisions of Section 13-B shall apply as if the permission of the Central Government under Section 13-A stands refused.

Now in the backdrop of the above legal position, the Central Council of Indian Medicine has filed this petition seeking a writ of certiorari to the extent that the order dated 18.7.2009 issued by the respondent No.2 i.e. Director General, Medical Education and Training allowing counselling and admission to 8 medical colleges, arrayed as respondent nos.5 to 12, as these colleges had not taken any permission of the Central Government as required under Section 13-C of the Act. Further prayer for issuing a writ of mandamus was sought to restrain the respondents from continuing with the counselling and admission to the Ayurved and Unani Medical Colleges, arrayed as respondent nos.5 to 12 in the absence of any permission from the Central Government for the Academic Year 2009-2010. Further mandamus was also sought to the respondents to reassign the students, who had been provisionally counselled and admitted in the colleges arrayed as respondent nos.5 to 12, to other colleges awarding similar degrees, which had obtained due permission from the Central Government for the Academic Session 2009-2010.

Heard Sri Amarjit Singh, learned counsel for the petitioner, Sri Zafar Nayer, learned Additional Advocate General assisted by Sri J.S. Tomar, learned Standing Counsel for the respondents. Supplementary affidavit dated 7.9.2009 filed by the learned counsel for the petitioner today as also the counter affidavits filed by the respondent nos.6, 7 and 8 and the supplementary affidavit on behalf of the respondent no.1 filed by Sri J.S. Tomar, learned standing counsel today are also taken on record.

Sri Amarjit Singh, learned counsel for the petitioner has submitted that the 8 colleges, arrayed as the respondent nos.5 to 12, did not possess the basic teaching faculty, infrastructure and buildings as required under the provisions of the Act and further they had no permission from the Central Government and therefore they were not fit to impart standard/quality education to the students, who may be admitted in these colleges by the State. He has referred to certain documents annexed with the writ petition wherein the correspondence between the Council and the Central Government indicates that the Council had already recommended that the application filed by the State be disapproved. According to Sri Amarjit Singh, learned counsel for the petitioner the State by giving admission to the students in these 8 colleges is actually playing with their career as ultimately after four years they would come out with a degree which would have no

recognition in law in view of the conditions contained in the provisions of Sections 13-C and 13-B of the Act.

The learned Additional Advocate General has strongly pointed out that the State Government for last one year has been making serious efforts, not only to get the vacancies of the teaching staff filled up but also of the non-teaching and other paramedical staff being filled up in all the 8 institutions. It has also been pointed out by him that the U.P. State Public Service Commission, which is the body competent to make the selections and recommendation to the State Government for appointments of the lecturers, readers and professors of these 8 colleges, had made a recommendation for appointment of 141 teaching staff, to whom appointment letters were issued from time to time, ranging from October, 2008 till September, 2009 and till date about 85 teachers have already joined. It is further submitted by him that the process for making appointments on the remaining vacancies is also in progress and is likely to be filled up shortly. It is further stated by him that the Government has also sanctioned huge amount of funds for the construction of the required hospitals and the other departments, pointed out by the Council to be in deficit and the construction work is in progress.

Along with the counter affidavit is annexed the sanction letter of the State Government sanctioning Rs.17.50 Crores for such constructions in these 8 colleges and certain photographs have also been annexed showing the progress of the present status of the constructions. Apparently from the photographs it appears that only the super structure is under construction and the completion of the buildings will at least take a period of not less than 6 months or may be a year.

Whatever may be the status the fact remains that the State Government has seriously taken up the issue for removing the various deficiencies not only in the teaching faculty, non-teaching faculty and paramedical staff etc. but also for the construction of the required hospitals and other departments. In these circumstances the learned Additional Advocate General has submitted that this Court may not interfere at this stage in the admissions already made by the State in its Indian Medicine Colleges but time may be granted to the State to obtain the necessary approval from the Central Government after getting a fresh inspection carried out by the Council as the Central Government is to take a decision on the recommendation of the Council only.

The Court has no hesitation in granting time to the State Government to remove all the deficiencies and obtain an approval from the Central Government, in accordance with the provisions of Chapter II-A of the Act but at the same time the Court cannot overlook the fate of the students, who have been granted admission to these 8 colleges arrayed as respondent nos.5 to 12, with regard to whom there is admittedly no approval of the Central Government as required under the provisions contained in Sections 13-A, 13-B and 13-C of Chapter II-A of the Act. Keeping in mind the career of the students, who had been given

admission, out of their own ignorance and lack of necessary information, it would be expedient in their interest that they should be adjusted into some other college having due recognition and approval from the Central Government under the provisions of the Act.

At this stage Sri Nayer, Additional Advocate General has referred to a letter issued by the Principal Secretary, Medical Education dated 12.10.2009 addressed to the Under Secretary, Medical Health and Family Welfare, Central Government requesting for granting permission to 8 colleges to give admission for the Academic Session 2009-2010 in the B.A.M.S. and B.U.M.S. Courses. Till date no such approval has been granted by the Central Government.

The learned counsel for the petitioner-Council has submitted that under the directions of the Apex Court, 31.10.2009 is the last date by which all admissions have to be closed in medical colleges and no fresh admission or adjustment can be made after the said date irrespective of the fact whether all vacancies have been filled up or some of them are lying vacant. Therefore, according to him whatever adjustment of the students from these colleges, arrayed as respondent nos.5 to 12 is to be made, should be carried out by the said date i.e. before 31.10.2009. He has further informed the Court that there are 7 Ayurved Colleges, which are privately managed and in which vacancies exist, where such students can be accommodated. Further in the supplementary counter affidavit the State has pointed out that at present there are only 9+3 vacancies in the two Ayurved Colleges other than the respondent nos.5 to 12 whereas according to the learned counsel for the petitioner there are at least 165 seats available with the 7 private colleges imparting Ayurved Courses out of total 330 seats of these 7 private colleges being 50% of the total intake capacity as the remaining 50% is to be filled up under the Management Quota. .

Taking overall consideration of the arguments advanced by the learned counsel for the parties and the facts narrated above, the Court issues the following directions:

1.It will be open to the State-respondents to obtain provisional approval from the Central Government as required under Chapter II-A of the Act on or before 31.10.2009 for the Academic Year 2009-2010 and in the event approval is granted the admissions given to the students in respondent nos.5 to 12 colleges shall remain intact and they shall pursue their course study. The State respondent in such an eventuality may make alternate arrangements for the students to carry out their clinical study from the district hospitals if necessary under the course-curricula.

2.In the event the Central Government does not grant any approval as contemplated in direction (1) above, the State shall ensure that all the students admitted to the colleges arrayed as respondent nos.5 to 12 are adjusted in other colleges where vacancies are available. Process for preparing such list of adjustment shall be started by the State forthwith.

3. Although the Central Government has not been arrayed as a party to this petition but in the peculiar facts and circumstances of this case the Secretary, Medical, Health and Family Welfare, Government of India is requested to take an early decision on the request of the State regarding grant of approval to the colleges, arrayed as respondent nos.5 to 12 so that the fate and career of the students who have already been given admission is not jeopardised.

4. The State shall continue on its endeavour to remove all the deficiencies as have been pointed out by the Council and upon removal of the same shall approach the Central Government for a fresh consideration of its application for permanent approval.

5. The petitioner-Council is also directed to submit any fresh report at the earliest to the Central Government with regard to the application of the State-respondents for grant of provisional / permanent approval to the colleges arrayed as respondent nos.5 to 12. The Council is expected to take a reasonable and fair time and if it feels that sufficient teaching and non-teaching faculties and paramedical staff have been appointed and further that the construction of the buildings is in progress, it may consider recommending for the provisional approval of the courses subject to the standards laid down by it.

List this case in the additional cause list on 9.11.2009 for consideration of the developments that may have taken place and for further orders.

28.10.2009

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