

The Manager Vs. Union of India

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Court : Kerala

Decided On : Nov-01-2013

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : The Manager

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN FRIDAY, THE 1ST DAY OF NOVEMBER 2013 10TH KARTHIKA, 1935 WP(C).No. 18818 of 2013 (B)

----- PETITIONER: ----- THE MANAGER, VAIDYARATNAM AYURVEDA COLLEGE, OLLUR, TRICHUR. BY SRI.KURIAN GEORGE KANNANTHANAM, SENIOR ADVOCATE. ADV. SRI.M.B.PRAJITH. RESPONDENTS: ----- 1. THE UNION OF INDIA, REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY OF HEALTH & FAMILY WELFARE DEPARTMENT, NEW DELHI-110 001.

2. THE CENTRAL COUNCIL OF INDIAN MEDICINE, REPRESENTED BY ITS SECRETARY, 61-65, INSTITUTIONAL AREA, JANAKAPURI, N. DELHI-110 058.

3. THE COMMISSIONER FOR ENTRANCE EXAMINATIONS, GOVERNMENT OF KERALA, TRIVANDRUM-695 001. R1 BY ADVS. SRI.P.PARAMESWARAN NAIR, ASG OF INDIA. SRI.T.SANJAY, CGC. R2 BY ADV. SRI.K.T.THOMAS. R3

BY SR. GOVT. PLEADER MR.P.M. SANEER. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/11/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: rs. WP(C).No. 18818 of 2013 (B) APPENDIX PETITIONER'S EXHIBITS:- . EXHIBIT P1: TRUE COPY OF THE

ORDER

DATED 06/05/1985 OF THE HEALTH (D) DEPARTMENT. EXHIBIT P2: TRUE COPY OF THE LETTER DATED 24/06/2009 FROM THE 3D RESPONDENT. EXHIBIT P3: TRUE COPY OF THE LETTER DATED 08/03/2012 ISSUED BY THE DIRECTOR OF AYURVEDA MEDICAL EDUCATION. EXHIBIT P4: TRUE COPY OF THE LETTER DATED 27/04/2012 ISSUED FROM THE PRINCIPAL SECRETARY TO GOVERNMENT. EXHIBIT P5: TRUE COPY OF THE CONSENT OF AFFILIATION DATED 16/11/2011 ISSUED FROM THE KERALA UNIVERSITY OF HEALTH SCIENCES. EXHIBIT P6: TRUE COPY OF THE LETTER DATED 29/04/2013 ISSUED FROM THE 1T RESPONDENT. EXHIBIT P7: TRUE COPY OF THE REPRESENTATION DATED 17/06/2013 ISSUED FROM THE PETITIONER TO THE 1T RESPONDENT. EXHIBIT P8: TRUE COPY OF THE REQUEST DATED 21/02/2012 ISSUED FROM THE PETITIONER. EXHIBIT P9: TRUE COPY OF THE APPLICATION FOR PERMISSION TO INCREASE THE ADMISSION CAPACITY. EXHIBIT P10: TRUE COPY OF THE LETTER NO.R1701192/2013-EP (IM-1) DATED 26/09/2013. RESPONDENT'S EXHIBITS:- NIL. //TRUE COPY// P.A. TO JUDGE rs. K. VINOD CHANDRAN, J - - - - -
- - - - - W.P(C) No. 18818 of 2013 B - - - - -
- - - - - Dated this the 1st day of November, 2013

JUDGMENT

The petitioner is an aided Ayurveda College which has been imparting courses in Ayurveda right from 1976 in the private sector and from the year 1985 in the aided sector. The petitioner now affiliated to the Kerala University of Health Sciences; had applied for increased intake of students from 40 to 60 for the academic year 2013-14. It is not in dispute that the application for increased intake was made within the prescribed time and that the same was forwarded to the 2nd respondent-the Central Council of Indian Medicine, who in turn conducted an

inspection of the College and forwarded their recommendations. On consideration of the application as also the recommendations of the 2nd respondent by Ext.P6 the 1st respondent decided to permit the petitioner to increase the admission capacity in the undergraduate course from 40 to 50 for the academic session 2013-14 in accordance with the policy decision of Government of India for the year 2013-14. WPC.18818/2013 :

2. :

2. The petitioner is aggrieved by the restriction of additional intake to 10 students as against the 20 students sought for and challenges the same on the ground that the regulation prescribed by the Central Council notified on 18.7.2012 took into account an intake of either 60 students or between 61 to 100. The said document has been produced by the Central Council as Document No. 2 along with a memo dated 9.9.2013 and the same is termed the Indian Medicine Central Council (Minimum Standard Requirements of Ayurveda Colleges and attached Hospitals) Regulation 2012. The said regulations, according to the learned Senior Counsel appearing for the petitioner, makes it clear that the restriction of seats to 50 students made in the case of the petitioner was not permissible since the minimum students permissible as per the Regulation is 60.

3. The learned Senior Counsel would point out that, in fact, no deficiency was noticed by the Central Council nor is any deficiency projected in Ext.P6. Ext.P6 only speaks of the policy of the Government, which, according to the officer who passed Ext.P6, permitted only undergraduate students of 50 to WPC.18818/2013 :

3. : be taken in the academic year 2013-14.

4. I have heard the learned Assistant Solicitor General for the 1st respondent and the Standing Counsel for the 2nd respondent. The learned Standing Counsel appearing for the Central Council would contend on the basis of the document produced as Document No1, that the Minimum Standards Required for the Ayurveda Colleges and Attached Hospitals which came into force in the year 2003, is applicable in the instant case. When the application was made by the petitioner the said Regulations were in force and the inspection was conducted on

the basis of the said Regulations. Regulation of 2012, in fact, came into force only from 18.7.2012 by which time the process for consideration of applications by the Ayurveda Colleges had commenced and had been continued to a certain extent. In such circumstances, it was the Regulation of 2003 that was applied in consideration of the petitioners application. The learned Assistant Solicitor General would seek to support Ext. P6 on the ground of the declared policy of the Government.

5. It is to be specifically noticed that there is no declared WPC.18818/2013 :

4. : policy of the Government placed on record; which would restrict the admission of the students in the undergraduate course of Ayurveda to 50. On the other hand the Regulation of 2012 would indicate that the Central Council by this Regulation, provided for an intake of minimum of 60 students in the undergraduate courses of Ayurveda. Even going by Regulation of 2003 produced as document No.1 which provided for intake of various number of students starting from 50 the stipulation was with respect to additional faculty members in the case of larger number of students admitted to the undergraduate course. Even if, the regulation of 2003 is relied on, a teaching faculty of 43 was required for permission of intake up to 60 students. It is agreed by both sides that 90% of the requirement only need be satisfied by the Colleges for grant of additional intake of students. On this count, there is a dispute insofar as, while the petitioner insists that they have 39 teaching faculty (the specified 90% as required in Regulation of 2003), the Assistant Solicitor General relies on their statement and asserts that there are only 35 teaching faculty members in that College as per the WPC.18818/2013 :

5. : inspection report.

6. It is pointed out by the Senior Counsel appearing for the petitioners that such a deficiency was never informed to the College. This Court, under Article 226 cannot go into factual disputes raised by the parties. However, considering the fact that the petitioner insists on having 39 faculty members and also the fact that the 3rd respondent has shifted the last date of admission to 30.11.2013, the Central Council could look into the matter and take an appropriate decision as to whether the petitioner could be granted an additional intake of 20 students itself as sought

for. In such circumstance, there shall be a direction to the 1st respondent to reconsider the application made by the petitioner dated 18.2.2012 after affording an opportunity to the petitioner to produce relevant documents to evidence the actual number of faculty members. The 1st respondent shall take a decision at any rate within a period of two weeks from the date of production of relevant documents. Considering the time constraints, it is directed that the petitioner's representatives shall appear before the authority under Government of India, WPC.18818/2013 :

6. : Ministry of Health on 11.11.2013 with necessary materials and documents to prove the claim of the sufficiency of faculty members being available in the College as per the Regulations. Writ petition is disposed of. No costs. Sd/- (K. VINOD CHANDRAN, JUDGE) jma //true copy// P.A to Judge

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