

In the Matter of Vs. Uoi and anr

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Court : Delhi

Decided On : Dec-12-2011

Appellant : In the Matter of

Respondent : Uoi and anr

Advocate for Def. : Mr. Himanshu Bajaj, Mr. T.K. Joseph

Advocate for Pet/Ap. : Mr. Sudhir Nandrajog, Mr. Yeeshu Jain

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on : 12.12.2011 + W.P.(C) 8351/2011 and C.Ms. No.18882-83/2011 IN THE MATTER OF DHANWANTRI AYURVEDIC MEDICAL COLLEGE AND HOSPITAL and ANR. Petitioners Through : Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Yeeshu Jain, Adv. versus UOI AND ANR Respondents Through : Mr. Himanshu Bajaj, Adv. for R-1. Mr. T.K. Joseph, Adv. for R-2. CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J. (ORAL).

1. The present petition is filed by the petitioners praying inter alia for quashing of the order dated 25.10.2011 passed by respondent No.1/UOI denying grant of permission to the petitioner/Institution for admitting students to the 50 seats in the BAMS (UG) Course for the academic year 2011-12, along with the inspection report dated 28/29.9.2011 prepared by the Central team appointed by respondent No.1/UOI based on which, the petitioner/Institution was denied permission..

2. When this matter came up for admission on 28.11.2011, at the request of counsel for respondent No.1/UOI, the case was adjourned to 7.12.2011, on which date also at the request of counsel for the petitioners, the matter was adjourned and renotified for today. W.P.(C) No.8351/2011 Page 1 of 6.

3. Today, learned Senior Advocate appearing for the petitioners states that a perusal of the impugned order dated 25.10.2011 passed by respondent No.1/UOI shows that the Hearing Committee, that had heard the petitioner and had been constituted by respondent No.1/UOI, comprised of experts from the stream of Unani medicine, whereas the course in question relates to the stream of Ayurveda. It is submitted that Section 9 of the Indian Medicine Central Council Act, 1970 (in short 'the Act') requires that the Central Council should constitute separate committees for the streams of Ayurveda, Siddha and Unani, and as the course in question is related to the stream of Ayurveda, a committee with experts from the Unani stream could not have been called upon to give a hearing to the petitioner..

4. In response to the aforesaid objection, learned counsel for respondent No.1/UOI submits that the expert team that had visited the petitioner/institution and conducted the inspection therein had comprised of members/experts from the Ayurveda system of medicine and it was they who had noted the irregularities in the petitioner/institution, which is why there is no reason that a hearing could not have been granted to the petitioner by experts from the Unani stream of medicines as they only had to see if the explanations furnished by the petitioner/institution for the alleged shortcomings, were satisfactory. W.P.(C) No.8351/2011 Page 2 of 6.

5. It is submitted by the counsel for respondent No.2/Central Council of Indian Medicine (CCIM) that the provisions of Section 13A Chapter II A of the Act under the heading 'Permission for establishment of new medical college, new course of study etc.', require the CCIM to undertake an inspection of the concerned medical college and submit its report to the Central Government, together with the expert's recommendations, and only thereafter is a decision taken in that regard. He submits that in the present case, though respondent No.2/CCIM had declined to visit the petitioner/Institution on account of its past deficiencies which had not been made good by the petitioner for the year 2010-11, respondent No.1/UOI had gone

ahead and got an inspection of the petitioner/Institution conducted on its own, which is not permissible under the Act. In support of the aforesaid submission, he relies on a judgment of a Division Bench of the Bombay High Court passed in WP(C)No.3512/2008 entitled 'Hindustani Education Society, AUSA and Anr. vs. UOI and Ors.', upheld by the Supreme Court by an order dated 25.2.2011 passed in Special Leave to Appeal (Civil) No.16162/2009 entitled 'UOI and Ors. vs. Hindustani Education Society AUSA and Anr.'..

6. In view of the aforesaid position, learned Senior Advocate for the petitioner states that the petitioner is not averse to an inspection, which may be directed to be conducted by respondent No.2/CCIM for it to, in turn make recommendations to respondent No.1/UOI, based on which a W.P.(C) No.8351/2011 *Page 3 of 6* decision may be taken by respondent No.1/UOI. The aforesaid suggestion made by the learned Senior Advocate for the petitioners seems to be reasonable, particularly, in view of the fact that the request of respondent No.1/UOI addressed to respondent No.2/CCIM to inspect the premises of the petitioner for the academic year 2011-12 had been turned down by respondent No.2/CCIM vide letter dated 23.08.2011, which fact was never brought to the knowledge of the petitioner/institution..

7. In view of the aforesaid position, the impugned order dated 25.10.2011 is quashed, and with the consent of the counsels for the parties, the present petition is disposed of with the following directions :- i). Respondent No.2/CCIM shall constitute a committee under Section 9 of the Act and as per its rules and regulations to visit and inspect the petitioner/institution and make recommendations to respondent No.1/UOI thereafter. ii). Respondent No.2/CCIM shall ensure that an inspection of the petitioner/institution is conducted on or before 31.12.2011. iii). Recommendations made by respondent No.2/CCIM shall be forwarded to respondent No.1/UOI within one week from the date of receiving comments from the expert committee. iv). On the basis of the aforesaid recommendations, respondent No.1/UOI shall take a decision within a period of two weeks W.P.(C) No.8351/2011 *Page 4 of 6* from the date of receipt thereof, for grant of permission to the petitioner in respect of BAMS (UG) Course, and intimate the decision taken to the petitioner within one week from the date of taking such a

decision..

8. In case the petitioner is aggrieved by the order that may be passed by the respondents, it shall be entitled to seek its remedies in law. Learned Senior Advocate appearing for the petitioner submits that if the order passed by the respondent No.1/UOI is favourable to the petitioner/Institution, then it should be permitted to induct students for the BAMS (UG) Course for the Academic Year 2011-12. Learned counsel for respondent No.1/UOI opposes such a plea and while stating that no such indulgence can be granted to the petitioner, he relies on an order dated 20.12.2011 passed in LPA No.899/2010 entitled 'Acharya Gyan Ayurved College vs. Department of Ayush and Ors.', to submit that in similar circumstances, having regard to the directions of the Supreme Court that the cut-off date for admission of students is 30th October, 2011, which was extended to 30th November, 2011 for the year in question in exceptional circumstances, no such permission as sought, was granted to the appellant therein. It is clarified that the petitioner shall await the order to be passed by respondent No.1/UOI and in the event the petitioner initiates proceedings to challenge such a decision or to seek consequential relief, then its claim to induct students for the BAMS (UG) W.P.(C) No.8351/2011 *Page 5 of 6* Course for the academic year 2011-12, shall be a subject matter of consideration in the said proceedings..

9. The petition is disposed of with the aforesaid order, along with the pending applications, while leaving parties to bear their own costs. (HIMA KOHLI)
DECEMBER 12, 2011 JUDGE sk W.P.(C) No.8351/2011 *Page 6 of 6*

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