

06.09.19
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Court No.15

W.P. No. 12916 (W) of 2019

**Kharagpur Homeopathic Medical College
and Hospital and Anr.
- Versus -
Union of India & Ors.**

Mr. Bikash Ranjan Bhattacharya
Mrs. Nandini Mitra
Mrs. Sreyashi Chatterjee

For the Petitioners

Mr. Kaushik Chanda, Id. A.S.G.
Mr. Tapan Bhanja

For the Respondent nos. 1-3

Mr. Tapan Kumar Mukherjee
Mrs. Sushmita Chatterjee

For the State

Mr. Supratic Roy
Mr. Debaki Nandan Maiti

For the W.B.U.H.S.

The present writ petition has been preferred challenging *inter alia* an order dated 4th July, 2019 passed by the respondent no. 3.

Mr. Bhattacharya, learned senior advocate appearing for the petitioners, submits that Kharagpur Homeopathic Medical College & Hospital (in short, the said college) was granted permission by the Central Council of Homoeopathy (CCH) to conduct Bachelor of Homeopathic Medicine and Surgery (in short, BHMS) course with effect from the academic session 1998-1999. Every year such permission was renewed and the college was allowed to conduct the said course. Surprisingly, in respect of the academic session 2019-20 permission to admit students in BHMS course was denied by the memo dated 4th July, 2019 issued by the Under Secretary to the Government of India, Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy (in short, AYUSH). Prior thereto, by a memo dated 30th May, 2019 the petitioners were asked to show cause, to which the petitioners submitted a reply on 6th June, 2019 along with all relevant documents.

According to Mr. Bhattacharya, the impugned order is a cryptic one and the said college had been denied permission only on the basis of an observation that "the functionality of IPD is doubtful". From the overall observations of the Hearing Committee, it would be evident that the deficiencies are trivial in nature and the same can be immediately cured. The impugned order was issued on 4th July, 2019 and the schedule for pre-counselling and counselling of 2019 had also been published on 4th July, 2019.

He argues that recognition has been denied primarily on four grounds. The said grounds have been stated in paragraph 3 of the impugned memo, which runs as follows :

"3. WHEREAS, the inspection report and recommendation furnished by the executive committee to Board of Governors have been examined in light of HCC Act, 1973 and the relevant regulations made thereunder and it is observed that the Kharagpur Homeopathic Medical College & Hospital, W.B. is not fulfilling the basic eligibility condition as under:

- a) Availability and eligibility of all teachers in respect of educational qualification and teaching experience need to be verified.
- b) The inspectors observed that purchase of medicine is negligible in compare to number of Patients Record of OPD and IPD is not maintained properly. Hence genuine functionality of IPD and OPD needs to be verified.
- c) 01 Nursing staff available against required 02. Registration clerk is on call against required full time Auxiliary Staff-Lab attendant and dark room attendant not available.
- d) Website is not functional."

He argues that as regards the deficiency stated in clause (a), it was observed by the Hearing Committee that teachers had joined the college since beginning and had been provided appointment and joining in the same department on higher posts instead of providing promotion letter. Such deficiency is curable in nature. There is no finding that in the said college there is any scarcity of teachers.

As regards the deficiency stated in clause (b), Mr. Bhattacharya submits that the competent authority did not arrive at any finding that records have not been properly maintained in IPD. It had only been observed that "*functionality of IPD is doubtful*". Merely on the basis of a doubt the respondents could not have denied permission.

As regards the deficiency stated in clause (c), the Committee was satisfied that there was no deficiency of nursing staff, auxiliary staff, laboratory attendant and dark room attendant. The last deficiency under clause (d) had already been cured by the said college authorities and the *website is functional*.

He further argues that functionality of IPD has to be determined taking into consideration the entire period pertaining to which recognition was granted. Since 1998 till the date of issuance of the impugned memo, no objection was raised as regards functionality of the In Patient Department (in short, IPD).

Per contra, Mr. Chanda, learned Additional Solicitor General, assisted by Mr. Bhanja, learned advocate appearing for the respondent nos. 1-3 submits that the Writ Court cannot transpose itself as an appellate authority over the decision taken by the experts in the field. The petitioners have not been able to establish any arbitrariness or unreasonableness in the decision making process. The order impugned stands supported with appropriate reasons. The Expert Committee upon issuing a show cause and upon granting an opportunity of hearing had passed the order and the same does not suffer from any infirmity warranting interference of this Court. In support of such contention, he has placed reliance upon judgments delivered in the case of *Ayurved Shastra Seva Mandal and Another -vs- Union of India and Others*, reported in (2013) 16 SCC 696 and in the case of *Medical Council of India vs. Kalinga Institute of Medical Sciences (KIMS) & Ors.*, reported in (2016) 11 SCC 530 and in the case of an unreported judgment delivered by the Hon'ble Division Bench of this Court in

the case of *Raghunath Ayurved Mahavidyalaya & Hospital & Ors. Vs. Union of India & Ors* in MAT 1553 of 2018.

Drawing the attention of this Court to the averments made in the affidavit in opposition, Mr. Chanda submits that while granting recognition the competent authority has to ensure that the college and the hospital is well-equipped and has appropriate teaching facility. In the absence thereof the students admitted would be deprived of proper training.

He argues that to avail recognition the concerned institute/college has to fulfil the mandatory preconditions as detailed in the Homoeopathy Central Council (Minimum Standard Requirement of Homoeopathy Colloeges & attached Hospitals) Regulations, 2013. Regulation 3(1) mandates that the college and attached hospitals shall have to fulfil the minimum standard requirements and infrastructural and teaching and training facilities referred to in Regulations 4 to 13. Regulation 7(3) categorically provides towards maintenance of records of Out Patient Department (in short, OPD) and in IPD. Upon inspection and upon consideration of records it has been ascertained that the said college does not fulfil the minimum requirements.

Mr. Chanda submits that even in the event the deficiencies specified in clauses (a), (c) & (d) are construed to be curable, the deficiency which exists pertaining to IPD cannot be cured. Proper records have not been maintained by the said college and randomly selected documents, which were produced, were not sufficient to establish that there was no infirmity in the functioning of the IPD.

Mr. Mukherjee, learned Additional Government Pleader, appearing for the State respondents submits that the counselling process has already started and in the midst thereof issuance of any direction towards inclusion of the petitioner no.1 in the seat matrix

would disrupt the counseling process. Upon instruction, he submits that the second round of counselling is already over and in respect of the third round the period for online filing of application has been scheduled to be on and from 12 noon of 3rd September, 2019 till 5 pm of 10th September, 2019 and the date for physical verification of original documents of round three eligible candidates has been scheduled on 16th September, 2019. Answering a query of this Court, Mr. Mukherjee submits that there are still 60 vacancies in the State quota. The Central quota is 15% of the total seats and the State quota is 85%.

In reply, Mr. Bhattacharya submits that an interim order was refused by this Court on 15th July, 2019 observing *inter alia* that in the event admission of students is allowed then the newly admitted students would be the worst sufferers if ultimately the writ petition is dismissed. In an appeal preferred against the same, the Appeal Court did not interfere with the order passed by the learned Single Judge, however, certain observations have been made by the Appeal Court which needs to be taken into consideration at this stage of final hearing.

Drawing the attention of this Court to the order passed in appeal, Mr. Bhattacharya submits that the Appeal Court found substance in the submission of the appellants that until and unless a doubt is specifically spelt out, it is difficult for the college to fulfil the shortcomings and that the doubt, which has been expressed about the functionality of the IPD, is vague and non-specific manner depriving the appellants to rectify the defects, if any.

It appears from the argument advanced by Mr. Chanda that there is in fact no antagonistic controversy pertaining to the deficiencies specified in clauses (a), (b) & (d) of the impugned memo. The final observations made by the Committee are as follows:

“Overall observation of the Hearing Committee:

- i. The most of teachers have been joined in the same college since years and get the promotion from time to time but the college instead of providing the promotion letter

- had given appointment and joining to these teachers in the higher posts. So experience certificate of most of the staff is not available.
- ii. Medicines are being purchased as per the requirement in the hospital. Record of OPD is being maintained properly: However, the functionality of IPD is doubtful.
 - iii. 03 nursing staff are available : 01 registration clerk is available on full time. 01 Auxiliary staff –lab attendant and 01 dark room attendant is available.
 - iv. Website is functional”

From the said observations, it does not appear that there is any deficiency of teachers or staff. It has also been observed that there are adequate nursing staff available in the said college and the website has also been made functional.

In paragraph 8 of the affidavit-in-opposition, it has been submitted that in the list published by the Central Selection Committee (AYUSH, West Bengal) for AYUSH, UG NEET Counselling, 2019 the name of the said college appears at serial no.13 but with a mention that admission will be done subject to getting permission from the Ministry of AYUSH, Government of India.

The college had been granted recognition by the competent authority since the academic session 1998. Indisputably, at every stage of renewal of such admission pertaining to the successive academic sessions no doubt was raised about the maintenance of records and towards functioning of the IPD in the said college. It is for the first time in the present academic session (2019-20), a doubt has been raised about such functionality of the IPD. Merely on the basis of an observation that functionality of the IPD is doubtful, the claim of the college to avail recognition cannot be turned down. The observation pertaining to the said clause in the impugned order is tentative as the same was based on copies of randomly selected OPD register, IPD register and IPD case sheets.

It is definitely not a case that the petitioners have in any manner sought to establish their claim on the basis of any document of doubtful veracity. No fabricated documents have been produced and no false or wrong declaration has been made. The action on the part of the college authorities thus appears to be *bona fide*.

The rejection of the claim of the said college which is enjoying recognition since 1998 only on the basis of a doubt or suspicion, is not sustainable in law. The respondents have exercised discretion erroneously and based on irrelevant considerations.

It is well-settled that a decision is an authority for what it decides and not what can be deduced therefrom. A slight difference in fact or an additional fact may make a lot of difference in the decision making process. In the case of Ayurved Shastra Seva Mandal (supra) permission was refused on account of deficiencies relating to infrastructure and teaching staff. In the instant case no such deficiency is involved. In the case of Medical Council of India (supra) the order of the High Court was interfered with since the Court had gone into seriously disputed questions of fact. In the present case, however, there is no antagonistic controversy pertaining to clauses (a), (c) & (d) of the impugned memo and in view thereof the said judgment is also distinguishable. In the case of Raghunath Ayurved Mahavidyalaya & Hospital (supra) the deficiencies included scarcity of faculties. The petitioner no.1 does not suffer from any such deficiency.

For the reasons discussed above, I am of the opinion that the impugned order dated 4th July, 2019 is not sustainable in law and the same is, accordingly, set aside. The respondent nos. 1 to 4 are directed to grant formal recognition and permission to the said college to admit students in the academic session 2019-20. The respondent nos.1 to 4 are also directed to upload the present order in their website immediately so that all the

candidates who opt for the petitioner no.1 may avail information about the present proceedings.

Since the counselling process is being conducted by Central Selection Committee (AYUSH), Government of West Bengal, this Court directs the State as well as the West Bengal University of Health Sciences to upload the name of the petitioner no.1 in the concerned website so that in the third round of counseling, the candidates can opt for the said college upon submitting applications online.

The petitioners are also directed to upload the present order in the college website.

With the above observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs,

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Tapabrata Chakraborty, J.)