

Union Of India vs Career Convent Educational And ... on 23 March, 2022

Author: Vipin Sanghi

Bench: Navin Chawla, Vipin Sanghi

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IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 120/2022 & CM Nos. 8188-8191/2022

UNION OF INDIA

..... Appellant

Through: Ms. Monika Arora and Mr. Yogesh
Panwar, Advocates.

versus

CAREER CONVENT EDUCATIONAL

AND CHARITABLE TRUST AND ANR

..... Respondents

Through: Mr. Abhijit Mittal and Ms. Swati
Bansal, Adv. for R-1.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 23.03.2022

1. The present appeal is directed against the judgment dated 03.08.2021 rendered by the learned Single Judge, inter alia, in writ petition being W.P.(C) 1846 of 2021. The respondent no. 1 herein was the writ petitioner.

2. By the impugned judgment, the learned Single Judge has allowed the said writ petition and set aside the decision of the appellant in rejecting and returning the writ petitioner's application for permission to establish a new Ayurvedic Medical College under Section 13A of the Indian Medicine Central Council Act, 1970 (hereinafter referred to as „the Act) on the ground that the same was deficient. The appellant has been directed to forward the application of the writ petitioner to the Central Council of Indian Medicine (in short, „CCIM)/respondent no. 2 for further consideration in accordance with law. It has, however, been clarified that the appellant and the respondent no. 2 were entitled to proceed in accordance with the „Establishment of New Medical College, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity by a Medical College Regulations, 2019 (hereinafter referred to as the "Regulations"), and the decision as to whether the writ petitioner is ultimately entitled to permission, or not, is left to be taken by them.

3. The brief background of facts in which the controversy arose is that the respondent no. 1/writ petitioner made an application seeking permission to establish a new Ayurvedic Medical College under Section 13A of the Act. Section 13A of the Act deals with permission for the establishment of a new medical college or a new course of study. It stipulates that the previous permission of the Central Government should be obtained to establish a new college or course. Upon receipt of the applications under Section 13A of the Act, all such applications are referred to the respondent no. 2 for their recommendations. The respondent no. 2 may approve or disapprove the applications.

4. The establishment of a new medical college, the opening of a new or higher course of study or training, and the increase in admission capacity by a Medical College is regulated by the Regulations. These have been framed in exercise of the regulation-making power conferred under Section 36 of the Act. Regulations 6(1)(c), 6(1)(d) and 7(1) are relevant, and have been reproduced in the impugned judgment. We may also reproduce the same hereunder:-

"6. Eligibility for making an application.-(1)For making an application under sub-regulation (1) of regulation 4, a person shall be eligible if, -

XXXXX XXXX XXXX

(c) has obtained 'No Objection Certificate' in Form- 4 from the concerned State Government for establishing a new medical college at the proposed site;

(d) has obtained a 'Consent of Affiliation' in Form- 5 for establishing a new medical college from a University established under any Central or State statute;

XXXXX XXXX XXXX

7. Recommendation of Central Council. - (1) The Central Government, after receipt of the applications shall scrutinized the application on the basic of eligibility criteria like Application Fee, No Objection Certificate of the State Government and Consent of Affiliation of the University etc. and the Central Government shall forward only eligible applications to the Central Council of Indian Medicine for further consideration and the ineligible and incomplete applications shall be rejected and returned to the applicants by the Central Government." (emphasis supplied)

5. The respondent no. 1/writ petitioner, in terms of Regulation 6(1)(d), was obliged to obtain the „Consent of Affiliation' Form from an affiliating university. The respondent no. 1 obtained the „Consent of Affiliation' Form dated 12.07.2018 from the Lucknow University, which reads as follows:-

"L . No . AF-16009/NOC/2015 Dated : 12/07/2018 From, Registrar Lucknow University Lucknow-226007 To, Manager Career Ayurvedic Medical College & Research Centre I.I.M, Road, Ghaila Lkhnow Sub:- REGARDING ISSUE NO OBJECTION CERTIFICATE OF GIVING CONSENT OF ASSOCIATION FOR

CONDUCTING BAMS (AYURVEDA) SYLLABUS.

Sir, Above subjected, kindly take the reference of your letter dated 26.06.2018, through which request has made to issue consent of association in B.A.M.S. Syllabus.

I have been directed to say in this regard that in the background of your proposal dated 26.06.2018 and site inspection dated 25.06.2018 consent of association has been given under self-financing project in BAMS syllabus at Graduate level to Career Ayurvedic Medical College & Research Centre, Lucknow, UP under following terms and conditions as:-

1. This consent letter shall be valid for application to CCIM, New Delhi in the sequence of no objection issued by UP Govt., AYUSH Department for operating B.A.M.S. Syllabus in prescribed Career Ayurvedic Medical College & Research Centre Lucknow.
2. The referenced medical college shall allow of admission in BAMS Syllabus only when the AYUSH Department/Medical Central Council allows the number of seats for the given year.
3. The reference medical college shall allow admission of the students in BAMS Syllabus by Referenced Medical College shall allow only when, college shall provide consent of above syllabus after inspection of the spot through prescribed procedure also by the Lucknow University after the permission of Medicine Department / Indian Medical Central Govt. of India.
4. Guidelines to be given timely by Uttar Pradesh, Lucknow College and Indian Medical Central Council, New Delhi should comply.
5. Admission of student shall be done through the candidate selected after entrance examination organized by the organization authorized by State Govt. or CPMT Truly
Sd/-

(Dr. Bhavna Mishra) Registrar"

6. The validity of the above „Consent of Affiliation' had been extended by the Lucknow University vide its letter dated 18.08.2020, which is reproduced hereinbelow:

"L . No . AF-12499/NOC/2015 Dated : 18.08.20 From, Registrar Lucknow University Lucknow-226007 To, Manager Carrier Ayurvedic Medical College & Research Institute I.I.M, Road, Ghaula, Lukhnow Sub:- REGARDING ISSUE CONSENT OF ASSOCIATION FOR CONDUCTING B.A.M.S. SYLLABUS.

Sir, Above subjected, kindly take the reference of your letter dated 23.03.2020, through which request has made to increase duration of consent of association issued by university in B.A.M.S. Syllabus.

In this regard it is informed that in the perusal of your proposal dated 26.06.2018 and recommendation of Inspection Report dated 25.06.2018 Consent of Association / No objection had issued in Carrier Ayurveda Medical College & Research Center, Lukhnow, UP at graduate level under self-financing scheme through the letter of university vide no. AF-16009/NOC/2015 dated 12.07.2018.

It is mentioned in respect of validity of above Consent Letter issued by Lukhnow University that the validity of Consent Letter shall applicable from the date of issue dated 12.07.2018 to 10.05.2021 (According to validity decided by UP Govt. for three years from 11.05.2018).

Rest condition of letter dated 12.07.2018 of university shall remain same.

Truly Sd/-

(V P Kaushal) Addl. Registrar (Affl.) For Registrar."

7. The respondent no. 1 submitted its original application to the Central Government on 25.08.2020 along with the above „Consent of Affiliation Form, the cut-off date prescribed for submission of such application being 30.09.2020.

8. The case of the respondent no. 1/writ petitioner was that the appellant no. 1 returned the application on the ground that the „Consent of Affiliation Form was not in accordance with the prescribed Form-5 in the Regulations. However, the respondent no.1 received the intimation of return of the application only on 01.10.2020, i.e. after the expiry of the cut-off date, which was 30.09.2020. With a view to remove the technical objection raised, the respondent no.1 approached the concerned university and obtained the „Consent of Affiliation in Form-5 and re-submitted the application on 12.10.2020. The said application was, however, again rejected by the respondent no. 1 on the ground that it was initially submitted with an incorrect Form-5 and was thereafter re-submitted after the cut-off date, i.e. 30.09.2020.

9. It is in this background that the respondent no. 1 preferred the aforesaid writ petition.

10. The Form-5 stipulated in the Regulations reads as follows:-

"FORM-5 [See regulation 6] CONSENT OF AFFILIATION No
..... . University

Place Dated

On the basis of the report of the Local Inquiry Committee, the University of
. has agreed in principle, to affiliate the proposed Ayurved or Siddha or
Unani Tibb or Sowa Rigpa College with admission capacity of seats to be
established at by the (name of the applicant) increase in
admission capacity from-----to-----seats of ----- course/starting
----- course. Subject to grant of permission by the Government of India,
Ministry of AYUSH, New Delhi under section 13A of the Indian Medicine Central
Council Act, 1970 (48 of 1970) REGISTRAR."

11. The learned Single Judge observed that the purpose of obtaining the consent of an affiliating university was only to ensure that the institution had not made the application without actually obtaining the consent of the affiliating university which would be willing to provide its affiliation upon the institution fulfilling all the statutory norms for either the commencement of a new course, or the addition of another course.

12. The discussion found in the impugned judgment reads as follows:-

"23. The question which arises for consideration is whether the documents submitted by the petitioners were substantially compliant with the requirement of the Regulations, so as to render the impugned rejection orders unreasonable. The doctrine of substantial compliance has been elucidated in the Constitution Bench judgment in Hari Chand Shri Gopal (2011) 1 SCC 236 in the following terms: -

" Doctrine of substantial compli
and "intended use"

32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it. but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met.

Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance.

Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective · of the statute· " and the Court should determine whether -the statute_ has been followed sufficiently so as to carry out· the intent o(the statute and accomplish the reasonable objectives for which it was passed ."

(emphasis supplied)

24. In Dr Jagat Narain, (2017) 16 SCC 666 the Court applied this principle to an application for permission to establish a medical college under the Indian Medical Council Act, 1956. In that case also, the deficiency pertained to non-supply of information in the prescribed form [information regarding land ownership]. The Court held inter alia as follows:-

"14. In addition, the petitioners have rightly pointed out that the information regarding ownership of land as was furnished by them was dependent on the communication issued by the DM being Annexure P-5 in Writ Petition (Civil) No. 513 of 2017, which contains all the requisite details as were required for the purpose of Form 5. Thus, there has been substantial compliance with the said requirement by the petitioners. Assuming that the Notification dated 16-10-2015 applied even to the proposal of the petitioners, suffice it to observe that failure to furnish information in the prescribed Form 5 cannot be held against the petitioners. In any case, that is not a deficiency relating to infrastructure or academic matters as such, which may require a different approach. Accordingly, even this aspect does not detain us from concluding that the impugned decision of the competent authority suffers from the vice of non- application of mind, if not perverse" (emphasis supplied)

25. Whether this principle is applicable to the facts of the present cases turns on a reading of the documents submitted by the petitioners, in the context of the requirements of Form-

26. The format required by Form-5 of the Regulations is as under:-

"FORM-5 [See regulation 6] CONSENT OF AFFILIATION No
..... University

Place Dated On the basis of the report of the Local Inquiry Committee, the University of has agreed in principle, to affiliate the proposed Ayurved or Siddha or Unani Tibb or Sowa Rigpa College with admission capacity of seats to be established at by the (name of the applicant) increase in admission capacity from-----to-----seats of ----- course/starting ----- course. Subject to grant of permission by the Government of India, Ministry of AYUSH, New Delhi under section 13A of the Indian Medicine Central Council Act, 1970 (48 of 1970) REGISTRAR."

27. Upon a perusal of the documents issued by the University and submitted by the petitioners to the UOI prior to 30.09.2020, I find that the University signified its consent to the association of the proposed college, and referenced the NOC to be obtained from the State Government. It was also stated that the consent letter would be valid for application to the CCIM and would be subject to the terms and conditions stated therein. This information was provided in the documents submitted alongwith the applications. Form-5 does not require any other substantive information to be

provided. The purpose of Regulation 6(1)(c) is to ensure that the proposed college would be in a position to confer degrees under the aegis of its affiliating university and would have to abide by the standards prescribed by the university. These purposes were met by the University's communications and the petitioners are, therefore, entitled to the benefit of the equitable doctrine of substantial compliance."

13. The submission of Ms. Arora, the learned counsel for the appellant, is that since the respondent no.1 had not submitted the statutory Form-5 within time, its application could not be considered. She submits that the said Form is mandatory and, therefore, no relaxation in that regard could be granted by the learned Single Judge. She submits that Regulation 7 prescribes that incomplete applications are liable to be rejected.

14. Having heard the submissions of learned counsels and perused the impugned decision, we find no merit in the present appeal. It is not denied by the appellant that the „Consent of Affiliation Form, as submitted by the respondent no. 1 along with its application, though not in the prescribed form, but it contained all required information as was to be provided in Form-5, prescribed in the Regulations. The respondent was, in any event, not responsible for this lapse. As rightly observed by the learned Single Judge, there was substantial compliance of the Regulations by the respondent no. 1. After all, the Form cannot gain prominence over substance. We also find from a reading of the Regulations that, in fact, the purpose of Form-5 is the information that it must contain, and not the mere form in which it should be submitted; it has to contain the concurrence that has been obtained from the University established under any Central or State Statute. This is evident from Regulation 6(1)(d), 6(2)(b), and 6(3)(b) reproduced herein below:-

"6. Eligibility for making an application.- (1)For making an application under sub-regulation (1) of regulation 4, a person shall be eligible if, - xxxx

(d) has obtained a 'Consent of Affiliation' in Form- 5 for establishing a new medical college from a University established under any Central or State statute;

xxxx (2) For making an application under sub-regulation (2) of regulation 4, a medical college shall be eligible if,-

xxxx

(b) has obtained the concurrence of the University established under any Central or State Statute (Form-

5);

xxxx (3) For making an application under sub-regulation (3) of regulation 4, a medical college shall be eligible if, xxxx

(b) has obtained the concurrence of the University established under any Central or State Statute (Form-

5);"

15. As stated above, there was therefore, substantive compliance of the Regulations by the respondent no. 1.

16. It is also important to note that the appellant did not convey the deficiency, even if one presumes the same to be there, to the respondent no. 1 till after the last date of submission of the application. The respondent no.1 immediately rectified this deficiency.

17. In view of the above, we find no infirmity in the impugned judgment. However, we are informed that since the appellant did not comply with the impugned judgment dated 03.08.2021 and did not forward the application of the respondent no. 1 / writ petitioner to the respondent no. 2, now National Commission for Indian System of Medicine, the process of scrutiny of the respondent no. 1 / writ petitioner with respect to the courses that it wishes to teach has not been undertaken. Due to the COVID-19 Pandemic, the Academic Session 2021-22 has not commenced, as the NEET Examination, on the basis of which the admissions to the institutes are granted, was also delayed. The result is that the process of counselling for grant of admissions is underway now in respect of the institutions which were granted permission to teach the courses.

18. Unfortunately, on account of non-compliance of the impugned judgment passed by the learned Single Judge, and the respondent no. 1 not taking any steps to get the said judgment implemented, the result is that the respondent no. 1, in any event, would not be in a position to participate in the ongoing counselling since the institute has not been scrutinized for the aforesaid Academic Year.

19. The learned counsel for the respondent no. 1 submits that in the light of the direction issued by the learned Single Judge, the said respondent has not yet moved a fresh application for the Academic Session 2022-23.

20. In view of the above peculiar facts, we mould the relief, permitting the respondent no. 1 to file a fresh application in respect of the Academic Session 2022-23 within 10 days. If the said application is so filed, the appellant shall scrutinize the same and forward the same to the National Commission for Indian System of Medicine for appropriate action. We make it clear that the application shall not be turned down only on the ground of delay in filing the same. In this regard, we draw support from the course adopted by the Supreme Court in D.Y. Patil Medical College vs. Medical Council of India & Anr., (2015) 10 SCC 51.

21. We are further informed that along with the earlier application, the respondent no. 1 had deposited a demand draft for the processing fee. As the same would not be valid for encashment today, the respondent no. 1 shall submit a fresh demand draft along with the application. The appellant shall, however, return the earlier demand draft submitted by the respondent no.1 within two weeks of this order.

22. The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, ACJ NAVIN CHAWLA, J MARCH 23, 2022 Kd/rv/AB