SUPREME COURT OF INDIA

Ayurved Shastra Seva Mandal

Vs.

Union of India

(Altamas Kabir CJI., Anil R. Dave and Vikramajit Sen JJ.)

06.03.2013

JUDGMENT

ALTAMAS KABIR, CJI.

1. These Special Leave Petitions have been filed against orders passed by the Aurangabad Bench and the Nagpur Bench of the Bombay High Court involving common issues. The matters relating to the Aurangabad Bench arise out of a common order dated 4th October, 2012, in regard to admissions to the various institutions teaching the Indian form of medicines such as Ayurvedic, Unani, Siddha, etc. for the academic year 2011-12.

> Special Leave Petition (C) No. 35051 of 2012 has been filed by the Umar Bin Khattab Welfare Trust against the judgment of the Aurangabad Bench of the Bombay High Court against an order dated 29th December, 2010, regarding admissions for the self-same period. The other Special Leave Petitions relate to the common orders dated 13th July, 2012 and 2nd August, 2012 passed by the Nagpur Bench of the Bombay High Court regarding admissions for the year 2011-12. Yet, another Special Leave Petition regarding admissions for the year 2012-13, has been filed by the Backward Class Youth Relief Committee and Another against the order dated 9th August, 2012, passed by the Nagpur Bench of the Bombay High Court.

2. The common issue involved in all the Special Leave Petitions is in regard to the refusal by the Government of India, in its Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy, hereinafter referred to as AYUSH, to grant permission to the colleges to admit students for the academic year 2011-12, for the BAMS/ Post Graduate courses. Such permission appears to have been

refused on account of various deficiencies relating to the infrastructure and teaching staff, which had not been rectified and brought into line with the minimum standard norms.

3. From the materials as disclosed and the submissions made on behalf of the respective parties, it appears that in the case of Shri Morvi Sarvajanik Kelavni Mandal Sanchalit MSKM B.Ed. College v. National Council for Teachers' Education and Ors. [(2012) 2 SCC 16], this Court, while rejecting the prayer of the institutions to permit students to continue in unrecognized institutions, observed that mushroom growth of ill-equipped, under-staffed and unrecognized educational institutions has caused serious problems with the students who joined the various courses.

4. As far as medical institutions are concerned, the procedure relating to the recognition of medical colleges as well as admission therein was governed by the Indian Medicine Central Council Act, 1970, hereinafter referred to as the 1970 Act, which was amended in 2003, to incorporate Sections 13A, 13B and 13C, which provided the procedure for establishing new colleges and making provision for seeking prior permission of the Central Government in respect of the same. The amendment also attempted to bring in reforms in the existing colleges by making it mandatory for them to seek permission from the Central Government within a period of three years from their establishment. Having regard to the said amendments, the Central Council of Indian Medicine, with the previous sanction of the Central Government, framed Regulations, in exercise of the powers conferred on it by Section 36 of the 1970 Act. The said Regulations were named as 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, 2003, hereinafter referred to as the 2003 Regulations. Regulation 6(1)(e) of the 2003 Regulations provides for applications to be made by a medical college owning and managing a hospital in Indian medicines containing not less than 100 beds with necessary facilities and infrastructure. The Central Council of Indian Medicine further framed Regulations in 2006 called as the Indian Medicine Central Council (Permission to Existing Medical Colleges) Regulations, 2006, hereinafter referred to as the 2006 Regulations. Regulation 5(1)(d) of the 2006 Regulations provides that the applicant college would have to be owning and managing a minimum of 100 beds for undergraduate courses and 150 beds for post graduate courses, which conforms to the norms relating to minimum bed strength and bed occupancy for In-patients and the number of Out-patients.

5. When the 2003 Amendment was effected to the 1970 Act, three years' time was given to the existing colleges to remove the deficiencies. The 2006 Regulations provided a further period of two years to remove the deficiencies and even relaxed the minimum standards in that regard. Even after the expiry of two years, the colleges were given further opportunities to remove the shortcomings by granting them conditional permission for their students for the academic years, 2008-09, 2009-10 and 2010-11. It is only obvious that the minimum standards were insisted upon by the Council to ensure that the colleges achieved the minimum standards gradually.

6. It may be noted that there was little or no response from the institutions concerned in regard to removal of the deficiencies in their respective institutions and it is only when the notices were given to shut down the institutions that they woke up from their slumber and approached the courts for relief.

7. In many of these cases, permission was given by the Courts to the institutions concerned to accept admission forms, but they were directed not to pass any orders thereupon till the decision of this Court in these Special Leave Petitions.

8. Appearing for the Petitioners, Mr. R.N. Dhorde, learned Senior Advocate, tried to impress upon us that the deficiencies had already been removed and that is why permission was subsequently given for the admission of students for the year 2012-13. Mr. Dhorde submitted that since the deficiencies had been removed, there could be no reason for permission for the academic year 2011-12 to be withheld, since a large number of applications had been received from students intending to obtain admission for the said year. It was submitted that, although, the academic year had come to an end, the college authorities would make all arrangements for the applicants to be able to complete the course for the entire year within six months so as to bring them up to the level of the second year. Mr. Dhorde also submitted that in the event such permission was not granted, the continuity of the courses would be disrupted. Giving examples of how the deficiencies had been removed, Mr. Dhorde contended that the Department of AYUSH had taken a prior decision to reject the application for permission to admit students for the year 2011-12. It is pursuant to such decision that all the applications were rejected.

9. However, there is one matter (SLP(C) No. 31892 of 2012) filed by the Ayurved Shastra Seva Mandal and Another, wherein the prayer of the Petitioner-Institution had been rejected only on the ground that instead of recording the presence of 100

patients each day in the Out-Patient Department, the average had been found to be 98.55%.

10. Mr. Gopal Subramaniam, learned Senior Advocate, who had appeared with Mr. Dhorde, had submitted that the said figure was not absolutely accurate since the calculation had been based on 300 days and not 292 days, on account of certain holidays which had gone unnoticed. In the fact situation of the case, the said institution could be treated on a different level from the other institutions, whose applications had been rejected for various other deficiencies.

11. At this juncture, it may be noticed that we had occasion to dismiss SLP(C) No. 35367 of 2012, on 4th January, 2013, on the ground that orders as prayed for therein would have the effect of problems being created for the completion of semester, which was to end in the month of June, 2013, since more than six months had elapsed since the semester had begun.

12. The prayer made on behalf of the Petitioners was strongly opposed by Mr. Sidharth Luthra, learned Additional Solicitor General, who pointed out that despite a moratorium of five years since the amendment of the 1970 Act in 2003 and the framing of the 2006 Regulations in 2006, the institutions had failed to remove the deficiencies, as pointed out by the Council. The learned ASG submitted that the practice of medicine, in whatever form, which was recognised by the Central Government and was regulated by the 1970 Act and the Regulations framed thereunder, could not be compromised by lowering the standards required to maintain the excellence of the profession. The learned ASG submitted that once the deficiencies had been removed, permission was once again granted to admit students for the academic year, 2012-13. The learned ASG submitted that the sympathy towards the students, who had been allowed to file their application forms, could not be a ground to grant permission where more than half the period of study was already over. The learned ASG submitted that where a certain degree of professionalism was required, there was no scope of conducting bridge courses to enable the students for that particular year to catch up with the students of the subsequent semester. The learned ASG submitted that in the interest of the medical profession and those who are the beneficiaries of the system, the Special Leave Petitions were liable to be dismissed.

13. It is no doubt true, that applications have been filed by a large number of students for admission in the Institutions imparting education in the Indian form of medicine, with the leave of the Court, but it is equally true that such leave was

granted without creating any equity in favour of the applicants. Those who chose to file their applications did so at their own risk and it cannot now be contended that since they have been allowed to file their applications pursuant to orders passed by the Court, they had acquired a right to be admitted in the different Institutions to which they had applied. The privilege granted to the candidates cannot now be transformed into a right to be admitted in the course for which they had applied. Apart from anything else, one has to take a practical view of the matter since more than half the term of the first year is over. Though it has been contended on behalf of the Institutions concerned that extra coaching classes would be given to the new entrants, it is practically impossible for a student to pick up the threads of teaching for the entire first year when half the course had been completed.

14. It is not for us to judge as to whether a particular Institution fulfilled the necessary criteria for being eligible to conduct classes in the concerned discipline or not. That is for the experts to judge and according to the experts the Institutions were not geared to conduct classes in respect of the year 2011-12. It is also impractical to consider the proposal of the colleges of providing extra classes to the new entrants to bring them upto the level of those who have completed the major part of the course for the first year.

15. We are not, therefore, inclined to interfere with the orders of the High Court impugned in these Special Leave Petitions and the same are, accordingly, dismissed.

16. Having regard to the facts involved, the parties will bear their own costs.