

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13473 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	Yes
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	Yes

INNER VISION EDUCATION AND CHARITABLE TRUST
Versus
UNION OF INDIA

Appearance:

MR DC DAVE, learned Senior Advocate assisted by MR UDAYAN P VYAS(1302) for the Petitioner(s) No. 1,2

MR HARSHEEL D SHUKLA(6158) for the Respondent(s) No. 2,3

MR SIRAJ R GORI(2298) for the Respondent(s) No. 5

MR. KM ANTANI(6547) for the Respondent(s) No. 4

NOTICE SERVED BY DS for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 09/09/2022

ORAL JUDGMENT

1. The present writ petition is filed praying for the following reliefs:

“(A) That, this Hon’ble Court be pleased to issue writ of Certiorari or writ in the nature of Certiorari or any other appropriate writ, order or direction quashing and setting aside an Order dated 30th May, 2022 (Annexure “Q”) passed by Ministry of AYUSH, Central Government confirming an Order dated 7th April, 2022 (Annexure “O”) communicated by the Secretary, National Commission for Indian System of Medicine confirming the Order dated 11th February, 2022 (Annexure “I”) as well as the order dated 21st December, 2021 (Annexure “F”) passed by President, Medical Assessment and Rating Board for Indian System of Medicine rejecting the Application for permission to open new College in the name and style of “Shridhar Atulkumar Jani Ayurvedic Medical College and Hospital” with an intake of 60 seats in BAMS Course on and from the Academic Year 2022-23;

(B) That, this Hon’ble Court be pleased to issue writ of Mandamus or writ in the nature of Mandamus or any other appropriate writ, order or direction commanding Respondents herein to grant permission to open new College in the name and style of “Shridhar Atulkumar Jani Ayurvedi Medical College and Hospital” with an intake of 60 seats in BAMS Course on and from the Academic Year 2022-23;

(C) That, this Hon’ble Court be pleased to issue writ of Mandamus or writ in the nature of Mandamus or any other appropriate writ, order or direction commanding the

Admission Committee, Respondent No.4 herein, to include the name of and allot students to “Shridhar Atulkumar Jani Ayurvedic Medical College and Hospital” run and managed by Petitioner No.1 in the centralized process of admission for BAMS Course from the academic year 2022-23 with an intake of 60 seats with a further direction to Gujarat Ayurved University, Jamnagar to enroll students so admitted;

(D) That, pending admission, hearing and. final disposal of this Petition, this Hon’ble Court be pleased to allow “Shridhar Atulkumar Jani Ayurvedic Medical College and Hospital” run and managed by Petitioner No.1 to admit students with an intake of 60 seats to BAMS course for the Academic Year 2022-23 through the centralized process of admission undertaken by Admission Committee of the State with a further direction to Gujarat Ayurved University to enroll students so admitted on such terms and conditions as the Hon’ble Court may deem fit and proper;

(E) That, this Hon’ble Court be pleased to grant such further and other relief as the nature and circumstances of the case may require;

(F) That, this Hon’ble Court be pleased to award the cost to this Petition.”

2. The brief facts of the case are that:

2.1 The petitioner No.1 is registered Public Trust and the petitioner No.2 is a Managing Director (Trustee) of the petitioner No.1-Trust. One of the principal objective of the petitioner-Trust is to provide medical services and assistance and in furtherance of the said objective, the petitioners have established an Educational Institution for imparting education in the discipline of Ayurvedic Medicine.

2.2 Pursuant thereto, they made an application to the respondent No.3 for permission to open the new college in the name and style of "*Shridhar Atulkumar Jani Ayurvedic Medical College and Hospital*" with an intake of 60 seats in BAMS Course for the academic year 2022-23.

2.3 The respondent No.2 declared vide its letter dated 30.06.2021 that the renewal-application for new Ayurvedic College should be made from 01.10.2021 to 31.10.2021 for the academic year 2022-23. The petitioners herein made an application to the Health and Family Welfare Department, Government of Gujarat, Gandhinagar on 12.10.2021 for No

Objection Certificate for opening a new Ayurvedic College. The “No Objection Certificate” of the State Government came to be issued on 30.10.2021 to the petitioners. Further by letter dated 26.10.2021, the petitioners herein also made an application to the Ayurvedic University for affiliation. The said affiliation came to be rejected for want of “No Objection Certificate” from State Government on 30.10.2021. Therefore, a new application for affiliation was made to respondent No.5 on 16.11.2021.

2.4 Simultaneously, the petitioners also made an application to the respondents herein for starting the new Ayurvedic Medical College and Hospital with an intake of 60 seats for imparting education in Ayurvedic Medicine for the degree of BAMS for the academic year 2022-23. The said application was made on the last date i.e. 31.10.2022 of the submission of forms. By its letter dated 21.12.2021, the respondent No.2 informed the petitioners that their application dated 23.10.2021 seeking permission of respondent Nos.2 and 3 under Section 29 of the National

Commission for Indian System of Medicine Act, 2020 (for short “**the Act**”) and the relevant regulations thereunder to start the Ayurvedic College is ineligible and incomplete as the consent of affiliation of the concerned University is not available with the proposal submitted by them. Accordingly, the petitioners’ application for opening new Ayurvedic Medical College was to be rejected and returned to the petitioners.

2.5 That thereafter, the petitioners received the consent of affiliation from the Gujarat Ayurvedic University, Jamnagar vide order dated 27.01.2022. Accordingly, by letter dated 29.01.2022, the petitioners herein forwarded the Consent of Affiliation to the respondent Nos.1 and 2. The respondents by a letter dated 11.02.2022 intimated to the petitioners that since their application was already rejected and returned back on 21.12.2021, the consent of affiliation dated 27.01.2022 cannot be accepted at this stage. Accordingly the request of the petitioners came to be rejected.

2.6 Aggrieved the petitioners preferred an appeal under Section 29(5) read with Section 24(3) of the Act before the respondent No.2 challenging the rejection of their application with the following prayers:

(A) That, Application in the form of a Scheme for permission to open new College in the name and style of *Shridhar Atulkumar Jani Ayurvedic Medical College and Hospital*” with an intake of 60 seats in BAMS Course on and from the Academic Year 2022-23 be allowed;

(B) That, an Order ated 11th February, 2022 confirming the order dated 27th December, 2021 passed by President, Medical Assessment and Rating Board for Indian System of Medicine, inter alia rejecting the Application for permission to open new College in the name and style *Shridhar Atulkumar Jani Ayurvedic Medical College and Hospital*” with an intake of 60 seats in BAMS Course on and from the Academic Year 2022-23 be quashed and set aside;

(C) That, such further and other relief be granted as the nature and circumstances of the case may required;

2.7 Accordingly, the hearing was given by the designated committee to the petitioners on 04.04.2022. By its letter

dated 07.04.2022, the respondent No.2 informed the petitioners about its decision as under:

“Hearing committee enquired with the College authority for not submitting the Consent of Affiliation (Form-5) issued from Concerned University on scheduled time.

In response of the same College clarified that after receiving Consent of Affiliation from Concerned University on dated 27.01.2022 college has submitted the same to NCISM. But Hearing Committee observed that the date of submission Consent of affiliation was 27.01.2022 which is after 31.10.2022 which was not acceptable as the last date of submission of all requisite documents for establishment of a new Ayurveda Medical College was till 31.10.2021 which was communicated through Ministry of Ayush website.

For this hearing committee concluded that as per 13A Regulation under 7(1) The after receipt fo the applications shall be 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, only eligible applications should be considered for further process and the ineligible and incomplete applications shall be rejected and returned to the applicants”.

Hence, the submission of the college cannot be considered and college is not entitled any relief.”

2.8 Aggrieved the petitioners preferred an appeal under Section 9(6) of the Act against the order dated 07.04.2022 before the Secretary Ministry of Ayurveda, Yoga, Naturopathy, Unani, Siddha, Sowa-Rigpa and Homoeopathy, Government of India.

2.9 By letter dated 30.05.2022, the Government of India was pleased to reject the second appeal of the petitioners to the Central Government. The petitioners have therefore, preferred the present writ petition for aforementioned reliefs.

3. Mr.D.C. Dave, learned Senior Advocate assisted by Mr.U.P. Vyas, learned advocate for the petitioner submits that nowhere in the procedure and the application, there was stipulation that the submission of the necessary approval was mandatory at the time of submission of the application for new Ayurvedic College. He further submits

that even if it is accepted that the approvals from the State Government as well as from the University were mandatory, still the Proviso to Section 29(3) of the Act provides for an opportunity to rectify the defects before rejecting the scheme seeking permission to start a new college and Section 29 (3) Act provides maximum three months time to decide the application for permission to open new college. However, the respondents herein rejected the application of the petitioners before the expiry of three months without providing any opportunity to the petitioners to cure such defects which were in the application/scheme.

4. He further submits that three months period for curing the defects would have ended on 31.01.2022. If the petitioners would have been granted an opportunity to rectify the defects, the same were already submitted before 31.01.2022 and the application of the petitioners would not have been rejected for want of necessary documents. The learned Senior Advocate further submits that the action of the respondents is bad in law and contrary to the provisions

of Section 29(3) of the Act and more particularly, the proviso.

5. Learned Senior Advocate has relied on the judgment in the case of **Royal Medical Trust Versus Union of India and another**, reported in (2014) 14 SCC 675 and the judgment dated 09.08.2018 passed by the Co-ordinate Bench of this Court in **Special Civil Application No.10523 of 2018**. It is further submitted that in the case of **Royal Medical Trust** (supra), the Hon'ble Supreme Court has held that since the college was not at fault but was constrained due to the delay on the part of the university regarding non-issuance of the Consent of Affiliation, the application of the college ought to have been considered. He further submits that Co-ordinate Bench of this Court in **Special Civil Application No.10523 of 2018** while relying on the judgment of the Hon'ble Apex Court in **Royal Medical Trust** (supra) has also granted similar relief to the petitioner therein allowing the petition and to consider the application/scheme dated 28.04.2017 submitted by the petitioner therein for

establishing new Ayurvedic Medical College.

6. He further submits that as on date, the respondents are still in the process of assessing the schemes received by them for academic year 2022-23 and are in the process of issuing letter of intent. If this Court directs the respondents to consider the application/scheme of the petitioners, there would not be any delay and the same can be processed on its own merits for the academic year 2022-23.

7. Per Contra, Mr.Harsheel Shukla, learned advocate for the respondent Nos.2 and 3 has placed reliance on Regulation 7 of 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. He submits that as per the said Regulation, the respondents scrutinize all the applications on the basis of eligibility criteria like application fee, No Objection Certificate of the State Government and Consent of Affiliation of the University etc. and only those

applications which are eligible and complete in all respect are taken for further consideration and ineligible and incomplete applications are rejected and returned.

8. He further submits that in the present case, on the date when the application was filed, there was no “No Objection Certificate” of the State Government and the consent of affiliation from the concerned University with the application form. No Objection Certificate of the State Government was forwarded later on. On the date of scrutiny of the application, the application of the petitioners was lacking the necessary consent of affiliation from the concerned University and therefore, in terms of Regulations 7, the application of the petitioners came to be rejected and the same was returned to the petitioners. Thereafter, by the email, the consent of affiliation from the University was forwarded which was much later after the rejection of the application of the petitioners. Since the application of the petitioners was already rejected by the respondent Nos.2 and 3, the said Consent of Affiliation document was not

taken on record by the said respondents.

9. Mr.Shukla, learned advocate for the respondent further submits that the application forms are scrutinized as per the Regulation 7 whereas the application form complete in all respects is assessed under Section 29 of the Act as a scheme. He relies on Section 29(2) of the Act which provides for submission of a scheme. He further submits that proviso to Section 29 (3) of the Act is applicable to the scheme as submitted by the new college and not to the application form which is assessed under Regulation 7.

10. He submits that Section 29 (3) of the Act and proviso are applicable only on the acceptance of the application form and cannot be read in isolation of Regulation 7. He further submits that the judgment relied upon by the petitioners in the case of Royal Medical Trust (supra) as well as the judgment of the Co-ordinate Bench of this Court in Special Civil Application No.10523 of 2018 dated 09.08.2018 has no application in the facts and

circumstances of the present case. He submits that in the present case on the date of making application for opening of the new college, the petitioners did not have either the No Objection Certificate from the State Government nor the Consent of Affiliation from the concerned University. The application form came to be submitted without these two vital documents. One vital document was obtained before the rejection of the application and another vital document i.e. Consent of Affiliation was obtained two months after the rejection the application of the petitioners.

11. He further submits that the judgments relied upon by the petitioner indicate a gross delay on the part of the relevant authorities in issuing Consent of Affiliation despite repeated reminders. In the present case, it cannot be said that there is any delay on the part of the relevant authorities for issuing No Objection Certificate as well as Consent of Affiliation, and therefore, the judgments relied upon by the petitioners are not applicable in the present case.

12. Learned Senior Advocate appearing for the petitioners submits that the details of the scheme has to be submitted along with the application form which is not to be separately submitted. Even if accepting the arguments of the learned counsel for the respondent in respect of Regulation 7, he submits that the said Regulations cannot overwrite Section 29 of the Act. Therefore, the petitioners herein ought to have been granted three months time as provided in Section 29(3) of the Act to rectify the defects. He submits that the necessary documents have been obtained before 31.01.2022 which would be deemed last date to rectify the deficiencies/ defects in a scheme. He submits that the respondent Nos.2 and 3 could not have rejected the application form along with the scheme as submitted by the petitioners before 31.01.2022.

13. He further submits that hence, looking to the provisions of the Act, the scheme as submitted by the petitioners ought to have been considered by the respondent

Nos.2 and 3 for the academic year 2022-23. He submits that even as on date, the respondent Nos.2 and 3 are assessing the schemes so submitted to them and the letter of intent for starting college are being issued and therefore, if appropriate directions are passed by this Court, the new college of the petitioners can still be considered for admissions for the academic year 2022-23.

14. Heard the learned counsels for the respective parties at length and perused the documents on record.

15. It is admitted position that the applications for obtaining permission to open new Ayurvedic College was to be submitted from 01.10.2021 till 31.10.2021. It is further the case of the petitioners that the application for No Objection Certificate from the State Government was made to the Health and Family Welfare Department Government of Gujarat, Gandhinagar on 12.01.2021. It is further stated that in the petition that the application for obtaining consent for affiliation to the respondent No.5 was made on

26.10.2021. In the absence of No Objection Certificate and Consent of Affiliation, the petitioners herein submitted their application form to respondent Nos.2 and 3 on 31.10.2021 i.e. last date of submission of application to obtain permission for starting new Ayurvedic College. Therefore, on the date of submission of application form to the respondent Nos.2 and 3, the application made for the relevant documents was few days old and was under process by the relevant Authorities.

16. The No objection Certificate from the State Government was granted on 30.10.2021 i.e. within a period of three weeks. The application for Consent of Affiliation was rejected on 30.10.2021 immediately within four days for non-submission of No Objection Certificate from State Government. Thereafter, fresh permission for Consent of Affiliation was submitted to the respondent No.5 on 16.11.2021, which came to be processed and issued to the petitioners on 27.01.2022.

17. Regulation 7 of the Establishment of New Medical College, Opening of New and Higher Course of Study or Training and Increase of Admission Capacity by a Medical College Regularization, 2019 reads as under:

“7 Recommendation of Central Council:- (1) The Central Government, after receipt of the applications shall scrutinized the application on the basis 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.

(2) The Central Council of Indian Medicine shall inspect colleges and issue Letter of Intent at their level in Form-6, if the college is found eligible as specified in the regulations 6 and the Central Council of Indian Medicine shall again inspect or verify the compliance of requirement of minimum standards as specified in concerned regulations and other conditions of letter of Intent and sen the recommendations only once for denial or issued Letter of Permission as the case may be in Form-7, by the 31st March for approval of the Central Government.

The aforesaid Regulation 7 recommends the forwarding

of only eligible applications to the Central Council for further consideration of the scheme and the ineligible and incomplete application are rejected and returned to the Applicant. In the present case as per the Regulation 7, the application form of the petitioners came to be assessed and was rejected for want of Consent of Affiliation of the University.

18. Section 29 of the Act reads as under:

(1) xxx

“(2) For the purpose of obtaining permission under subsection (1), a person may submit a scheme to the Medical Assessment and Rating Board for Indian System of Medicine in such form, containing such particulars, accompanied by such fee, and in such manner, as may be specified by regulations.

(3) While considering the scheme received under subsection (2), the Medical Assessment and Rating Board for Indian System of Medicine shall have regard to the standards of education and research, the standards and norms for infrastructure and faculty, the guidelines on setting up of medical institutions and other requirements determined by the Board of Ayurveda or, as the case may be, the Board of Unani, Siddha and Sowa-Rigpa under

section 26, and pass an order either approving or disapproving the scheme within three months from the date of receipt of such scheme:

Provided that before disapproving such scheme, an opportunity to rectify the defects, if any, shall be given to the person concerned.”

(4)xxx

(5) xxx

(6)xxx

(7)xxx

Thus, the eligible applications as assessed under Regulation 7 and so forwarded to the Central Council are assessed under Section 29 (2) and (3).

19. In the present case since the application form of the petitioners was rejected and returned under Regulation 7, there was no question of assessing the scheme of the petitioners herein under Section 29(2) and (3) of the Act. The Regulation 7 has to be read in conjunction with Section 29(2) and 3 of the act. The said Regulation is in the aid of Section 29(2) and (3). Therefore, the contentions of learned Senior Advocate Mr.D.C. Dave that Regulation 7 cannot

override the provisions of Section 29 of the Act has to be rejected since Section 29(2) specifically makes a reference to the Regulations for submission of scheme as specified. The proviso to Section 29 provides for three months time to consider the scheme so submitted by the applicant. The scheme as envisaged under Section 29 would mean the scheme which is forwarded after scrutiny under Regulation 7 to the Central Council and the time limit in the proviso would apply to such a scheme as submitted. In the present case, the application of the petitioners was itself rejected on scrutiny under Regulation 7, and therefore, there is no question of applicability of the provisions of Section 29(3) of the Act. Thus, the reliance placed upon the proviso to Section 29(3) of the Act by the learned Senior Advocate is misplaced cannot enure any benefit to the petitioners.

20. The learned Senior Advocate appearing for the petitioner also argued that it was not mandatory to submit the No Objection Certificate from the State Government as well as the Consent of Affiliation along with the application

form at the time of making application for establishment of new medical college. The said argument is also not tenable for the reason that the application form also has a list for enclosures which is to be submitted by the applicant. Serial Nos.7 and 8 of such list of enclosures reads thus:

“7. Certified copy of the ‘No Objection Certificate’ issued by the respective State Government/ Union Territory Administration.

8. Certified copy of the consent of affiliation issued by a recognized University.”

21. Therefore, the submission of No Objection Certificate as well as Consent of Affiliation was mandatory as per the list of enclosures and the applicant had to submit the same along with the application form. Admittedly in the present case at the time of submitting the application on the last date of submission i.e. 31.10.2021, the petitioners herein have not submitted the said two documents. Hence, the said argument also has to be rejected.

22. Learned Senior Advocate has relied heavily on the judgment of the Hon'ble Apex Court in the case of Royal Medical Trust (supra). In the opinion of this Court, the said judgment has no applicability in the facts and circumstances of the present case. Para 9 of the said judgment reads as under:

“(9) It is neither in dispute nor can it be disputed by the Council that the appellant herein had filed an application before KUHS for grant of affiliation certificate well in time. It is apparent from the record that the said affiliation certificate was not furnished to the appellant in time in spite of sending reminder to KHUS to furnish the affiliation certificate inter alia bringing to its notice the urgency involved in the matter. For reasons best known to it, as we have already mentioned, KHUS did not furnish the said certificate to the appellant. This promoted the appellant to make an application before the Central Government for registration of its application lest the cut-off dates prescribed by the statutory regulations would have expired and the appellant in that case would have been remediless in light of the dictum of this Court in Mirudal Dhar (5) v. Union of India and Priya Gupta v. State of Chhattishgarh requiring strict adherence to the said prescribed deadlines.

23. In the present case, it is an admitted position that the

application for No Objection Certificate to the State Government was made on 12.10.2021 and was given to 30.10.2021. Further the application for Consent of Affiliation was made to the respondent No.5 on 26.10.2021 and it was rejected on 30.10.2021 for want of No Objection Certificate from the State Government. After the receipt of the No Objection Certificate from the State, the petitioners made a fresh application for Consent of Affiliation on 16.11.2021 which came to be submitted to the respondent No.5 on 17.11.2021.

24. The Consent of Affiliation application was thereafter duly processed by the respondent No.5 and Consent of Affiliation was issued to the petitioners on 27.1.2022 i.e. within a period of around ten weeks. Therefore, in the present case, it cannot be said that there was any undue delay on the part of the respondent No.5 to process for Consent of Affiliation which has caused any prejudice to the petitioners.

25. Further there is no averment on behalf of the petitioner that there was any undue delay on the part of the respondent No.5 in processing its application for Consent of Affiliation and therefore, they could not submit the complete application form to respondent Nos.2 and 3. In the present case, the Consent of Affiliation was rejected earlier and a fresh application for Consent of Affiliation was made only after the last date of submission of the application for permission to open the new medical college.

26. Therefore, the judgment of the Royal Medical Trust (supra) is not applicable in the present facts and circumstances of the case. Further the judgment of the Coordinate Bench of this Court passed in Special Civil Application No.10523 of 2018 is also not applicable in the facts of the present case since there was no application of the petitioner for grant of Consent of Affiliation pending before the Respondent No.5 on the date of submission of the Application for permission to open the New college.

27. In view of the aforementioned observations, the petitioners herein are not entitled to any reliefs as prayed for. The present writ petition is without merits and is accordingly dismissed. Notice is discharged. There shall be no order as to costs.

ALI

Sd/-
(ANIRUDDHA P. MAYEE, J.)

