

(2003) 07 P&H CK 0180

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 19053 of 2002

Sri Guru Nanak Dev
Charitable Trust and
Another

APPELLANT

Vs

State of Punjab and
Others

RESPONDENT

Date of Decision: July 1, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226
- Homoeopathy (Post Graduate Degree Course) Regulations, 1989 - Regulation 2, 5, 9
- Homoeopathy Central Council Act, 1973 - Section 20(2), 33

Citation: (2004) 1 ILR (P&H) 392

Hon'ble Judges: N.K. Sud, J; N.K. Sodhi, J

Bench: Division Bench

Advocate: P.S. Patwalia and T.P.S. Chawla, for the Appellant; Ashish Sharma, A.A.G. for Respondents Nos. 1 and 4, Atul Nehra and Sandeep Khunger, for the Respondent

Final Decision: Allowed

Judgement

N.K. Sodhi, J.

The primary question that arises for consideration in this petition filed under Article 226 of the Constitution is whether a Homoeopathic College having an undergraduate teaching facility is required to obtain a "no objection certificate" from the State Government for starting a Post Graduate course in Homoeopathy. Facts giving rise to this petition which lie in a narrow compass may first be noticed.

2. Petitioner No. 1 is a charitable Trust which is running the Sri Guru Nanak Dev Medical College at Canal Road, Ludhiana (hereinafter referred to as the College). The College was established in the year 1992 and it is claimed that it stands recognised by the Central Council of Homoeopathy (for short the Council) constituted under the

Homoeopathy Central Council Act, 1973 (for short the Act). Initially when the College was set up it started running a Diploma course in Homoeopathic Medical Science (D.H.M.S.) and it was with effect from the year 1996 that the College started running the Bachelor of Homoeopathic Medicine and Surgery Course (B.H.M.S.). It is also claimed that the College stands recognised by the Punjab Government in regard to the Diploma Course and for the Degree course it is affiliated to the Baba Farid University of Health Science, Faridkot (hereinafter called the University). The College applied for permission to the Council for starting Post Graduate M.D. Course in Homoeopathy for the academic year 2002-03 in the three subjects, namely, (i) Materia Medica, (ii) Repertory and (iii) Organon and Philosophy. On receipt of this request, the Council sent its Inspection team to inspect the premises of the College which carried out the inspection on 3rd August, 2002 and found that the College had sufficient funds and requisite infrastructure as per the Homoeopathy (Post Graduate Degree Course) Regulations, 1989 (as amended up to date and hereinafter referred to as the Regulations). The Inspection team recommended the grant of permission as prayed for by the College. The Executive Committee of the Council in its meeting held on 16th August, 2002 considered the report of the Inspection Committee and decided to grant recognition to the College for making admission of not exceeding six regular students and nine external students in each of the three speciality subjects. The College was informed that the course will have to be conducted strictly in accordance with the provisions of the Regulations and that the admissions would be made only after getting approval of the State Government and affiliation from the University. A copy of the letter dated 23th August, 2002 addressed by the Council to the College informing the latter about the grant of recognition for the Post Graduate courses in the aforesaid three subjects is Annexure P-3 with the writ petition. Since the recognition granted by the Council was subject to the College getting approval from the State Government, it (College) applied for the same and requested the State Government to inspect the premises for the purpose of granting a "no objection certificate". The State Government on receipt of the application, sent a communication to the College dated 24th September, 2002 stating therein as under:
Before taking further action in this case following information be supplied to this office.

1. Proper project report.
2. Copy of N.O.C issued by the Govt. Regd B.H.M.S Course.
3. Copy of Inspection report carried out by the University and Council.
4. Bank Draft of Rs. 6.00 lac in favour of Director, Research and Medical Education, Punjab payable at Chandigarh as Inspection fee.

In reply to this communication, the College represented to the State Government that there is no provision in any Rule or Regulation under which the amount of Rs. 6

lacs could be charged as inspection fee and that the demand made in this regard was unjustified. The Government did not accept the representation of the College and stated that the demand already made could not be reduced and that the College should deposit the aforesaid amount alongwith the documents asked for in its earlier letter dated 24th September, 2002. It was then that the present petition was filed for a mandamus directing the Respondents not to charge Rs. 6 lacs as inspection fee which, according to the Petitioners, is wholly unjustified. It was also contended by the learned senior counsel appearing for the Petitioners that the Council while granting recognition to the College for the Post Graduate courses could not impose the condition that it should obtain approval from the State Government. This, according to the learned senior counsel, is contrary to the Regulations governing the Post Graduate courses. Specific reference in this regard was made to Regulation 9 of the Regulations. He also produced during the course of arguments a copy of the letter dated 28th March, 2003 addressed by the Council to the State Government informing the latter that the former had in its meeting held on 26th March, 2003 resolved that if a Homoeopathic College is already running an undergraduate course then it need not obtain an NOC from the State Government for starting a Post Graduate course. A copy of this letter has been taken on record.

3. In reply to the notice issued by this Court, the State Government has filed its reply controverting the averments made by the writ Petitioners. It is averred that in response to the letter dated 24th September, 2002 the Petitioners have not supplied the requisite information asked for nor did they deposit the sum of Rs. 6 lacs as inspection fee. It is further averred that there is nothing on the record of the State Government to show that the College had been granted a "no objection certificate" or approval for the State Government for the purpose of conducting a Degree course. The College had been requested to supply the necessary information to the State Government in this regard but it has failed to furnish the information. It is pleaded that every institute which starts a new course in Homoeopathic Degree Sciences is required to deposit fee at the rate of Rs. 2 lacs for every new course and since the College wanted to start three new courses at the Post Graduate level, it was required to deposit a sum of Rs. 6 lacs as demanded. It is further pleaded that the Council was justified in imposing the condition that the College should first obtain a "no objection certificate" from the State Government before it could admit students to the Post Graduate courses. Reference in this regard is made to Clause 3(c) of Regulation 9 of the Regulations.

4. The University has been impleaded as Respondent No. 2 in the writ petition and even though it was represented by a counsel, it has chosen not to file any reply.

5. We have heard the learned Counsel for the parties and are of the view that the writ petition deserves to succeed. The answer to the question as posed in that opening part of the judgment depends upon the interpretation of Regulation 9 of the Regulations. These Regulations have been framed by the Council with the

previous sanction of the Central Government in exercise of the powers conferred by Section 33 and Sub-section (2) of Section 20 of the Act. Clauses (d) and (ea) of Regulation 2 and Regulation 9 of the Regulations, read as under:

2. Definitions:

In these regulations, unless the context otherwise requires--

(a) to (c) xxxx xxx xxx

(d) "Homoeopathic College" means a Homoeopathic Medical College or an institute affiliated to a University and recognised by the Central Council for post-graduate course;

(e) xxxx xxx xxx

(ea) "Post Graduation in Homoeopathy" means a Post Graduate qualification in Homoeopathy recognised as per the provisions of the Act.

(f) to (j) xxxx xxx xxx

9. Requirement for Post Graduate Teaching centre:

(1) The Central Council may after evaluation permit a Homoeopathy College or Institute or Hospital to start Post Graduate courses in Homoeopathy.

(2) Every such college, institute or hospital shall have a department of the concerned specialty and shall also have the following additional facilities, namely:

(i) one full time professor in the deartment of specialty.

(ii) one Reader/Assistant Professor.

(iii) staff such as Attendants, Technicians, etc. as deemed necessary depending upon the department.

(iv) departmental library.

(v) out-patient department and in-patient department with all facilities including separate clinical laboratory.

(vi) three beds shall be earmarked per student for each clinical object of specialty.

(3) (a) A Homoeopathic College, institute or hospital desirous to start a Post Graduate course in Homoeopathy, having no under graduate teaching facility, shall have a minimum of 25 bed hospital with attached laboratory for routine investigative procedure.

(b) It shall also have facility to teach general subjects as stated in regulation 5 or submit a certificate that they have a Memorandum of Understanding with a nearby undergraduate Homoeopathic college recognised by the Central Council.

(c) while submitting applications for permission to start such Post Graduate Course, they shall also submit a no objection certificate from the State Government and provisional affiliation from concerned University.

A reading of the aforesaid provisions leaves no room for doubt that a Homoeopathic College means a Homoeopathic Medical College or an Institute affiliated to a University and recognised by the Council for Post Graduate courses and that it is the Council which after affiliation, permits a Homoeopathic College or an Institute to start Post Graduate course in Homoeopathy. Every such college must have a department of the concerned specialty and shall also have the additional facilities referred to in Sub-clause (2) of Regulation 9. Clause 3 of Regulation 9 of the Regulations provides that a Homoeopathic College or Institute which desires to start a Post Graduate course in Homoeopathy and has no undergraduate teaching facility, must have a minimum of 25 bed hospital with attached laboratory for routine investigative procedure. Sub-clause (c) of Clause (3) makes it abundantly clear that while submitting application for permission to start Post Graduate courses the College shall also submit a "no objection certificate" from the State Government and the provisional affiliation from the concerned University. The word "such" used in subclause (c) refers to a Homoeopathic College or an Institute referred to in Clause (a). In that clause, reference is made to such Homoeopathic Colleges or Institutes which do not have an undergraduate teaching facility. It would, thus, mean that a College having no undergraduate teaching facility is required to comply with the requirement of subclause (c) as well. It necessarily follows that a Homoeopathic College which already has an undergraduate teaching facility and wants to start a Post Graduate course in Homoeopathy, is not required to comply with Sub-clause (c) of Clause (3) of Regulation 9 of the Regulations. In other words, it is only a Homoeopathic College having no undergraduate teaching facility which is required to obtain a "no objection certificate" from the State Government and provisional affiliation from the concerned University before starting a Post Graduate course but if such a College has arrangements for undergraduate teaching then the no objection certificate from the State Government is not required. In the case before us, the College is already running an undergraduate course since the year 1996 and had applied for starting Post Graduate course in the three subjects already referred to above. In such a case, there is no requirement for obtaining a no objection certificate from the State Government. The Council itself has communicated to the State Government by its letter dated 28th March, 2003 that if a College is already running an undergraduate course, it need not obtain a no objection certificate from the State Government for starting a Post Graduate course. In this view of the matter, the Council while granting recognition to the College for starting the Post Graduate course could not impose the condition on it to obtain a no objection certificate from the State Government. The learned State counsel could not point out any other provision in the Act or in the Regulations which made it obligatory for the College to obtain a no objection certificate from the State

Government before starting the Post Graduate courses. The view that we have taken finds support from the judgments of the Apex Court in *State of Tamil Nadu v. Adhiyaman Educational and Research Institute* 1995 (3) S.L.R. 752 and *Jaya Gokul Educational Trust v. The Commissioner and Secretary to Government, Higher Education Department, Thiruvananthapuram* 2000 (2) S.L.R. 670 and also from Division Bench judgments of this Court in *R.N. Gupta Technical Educational Society, Gurgaon v. State of Haryana* 2000 (8) S.L.R. 487 and *Mata Sudarshan Tilak Raj Dhawan Educational Trust, Panchkula v. State of Haryana. and Ors.* 2002 (4) S.L.R. 696.

6. In the result, the writ petition is allowed and the Respondents are directed to allow the Petitioners to start the Post Graduate courses in the three subjects without a no objection certificate from the State Government. There is no order as to costs.