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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6351/2012

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Judgment dated 30.10.2012

D.Y.PATIL COLLEGE OF AYURVED AND
RESEARCH CENTRE AND ANR

..... Petitioner

Through : Mr.Shree Prakash Sinha, Adv.

versus

UNION OF INDIA AND ANR

..... Respondents

Through : Mr.Ruchir Mishra and Mr.Mukesh

Tiwari, Advs. for respondent no.1.

Mr.T.K. Joseph, Adv. for respondent
no.2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Rule. With the consent of the parties, writ petition is set down for final hearing and disposal.
2. By the present petition, the petitioners seek issuance of a writ, order or direction for quashing the order dated 24th August, 2012 passed by the respondent No.1 declining permission to the petitioner No.1 for admission to under graduate/post graduate courses for the academic session 2012-2013 as the same is not in accordance with Section 13-C read with Section 13-A of the Indian Medicine Central Council Act, 1970 and consequently violative of Articles 14, 19 (1) (g) and 41 of the Constitution of India.
3. It is the case of the petitioners that the petitioner college is continuously imparting education in B.A.M.S. course since the academic session 2000-

2001 and was granted permission by the respondents. For the academic session 2012-2013, respondent No.2-C.C.I.M had recommended the case of the petitioners college for permission. It is also the case of the petitioners that the respondent No.1 has denied permission to the petitioner on the basis of a self-contained note of Central Bureau of Investigation, Pune dated 1st December, 2011. In the said order dated 24.08.2012 it has been stated that CBI team visited the petitioner college on 26th April, 2011 to re-assess the facilities available of teaching and practical training and to verify the compliance submitted by the college.

4. Mr.Sinha submits that it is on the basis of the said report of the CBI that respondent No.1 has come to the conclusion that the petitioner college does not have a genuinely functional hospital and, therefore, the requisite permission for the academic session 2012-2013 was denied to the petitioner college on the ground that the deficiency is of such a serious and fundamental nature which, at this stage, effects the ability of the college to provide quality medical education in terms of the provisions of the I.M.C.C. Act,1970 and the regulations.
5. Counsel further submits that neither the self-contained note date 1st October, 2011 of the CBI was provided to the petitioners during the statutory hearing nor the CBI has any role to play under the provisions of I.M.C.C. Act, 1970. Reliance by the respondent No.1 on the self-contained note of the CBI is itself sufficient to quash the impugned order passed by the respondent No.1. Relying on the provisions of the Indian Medicine Central Council Act, 1970, it is contended that respondent No.2 is the sole authority entrusted with regulating the field of Indian medicine by prescribing minimum standard of education.
6. It is next contended that petitioner No.1 college was established in the year 2000 and is part of a society which runs institutes of Engineering,

Hotel Management and Catering Technology, Management, Research, Pharmaceuticals and others. The Society boasts of a state of the art infrastructure and an excellent faculty. It is submitted that the Ayurved College has its own building of more than 1,30,000 sq.ft including a complete hospital set up with 14 recognized departments with required equipments, faculty and it fulfils all the norms laid down by respondent No.2 as under Section 22 of the IMCC Act, 1970. Petitioner was granted permission, for the first time, on 14th July, 2000 for the academic session 2000-2001 for B.A.M.S. course for 50 students subject to the affiliation to the university and permission of the State Government. Both permissions were received. For the subsequent academic sessions permissions were granted by respondent No.2.

7. Counsel further contents that vide notification dt.6th October, 2006, respondent No.2, in exercise of its powers conferred under Section 36 of the IMCC Act, 1970 framed regulations for existing colleges with the previous sanction of the Central Government. As per Regulation No.7 of the said Regulation, after inspection the respondent No.2 recommends to the Central Government with respect to the fulfilment of regulations and rules by a concerned college. Respondent No.1 issues letter of permission in accordance with Regulation No.8.
8. Further, as per Regulation No.8, such permission can be granted subject to certain conditions as may be necessary which have to be fulfilled in a time bound schedule. Regulation 9 also prescribes the consequences of failure to rectify deficiencies.
9. While placing reliance on Chapter IIA of the IMCC Act, 1970 as well as the regulations, counsel contends that the respondents cannot deny permission to an existing medical college for a given academic session without giving them an opportunity to remove the short comings alleged.

10. Counsel further contends that the object of the Act is to regulate education and not to stop imparting of education on flimsy grounds.
11. Mr.Sinha next submits that in the year 2007 respondent No.1 accorded permission to the petitioner college to start two new Post Graduate courses for the academic session 2007-2008. In the academic session 2008-2009, respondent No.1 renewed permission to the petitioner college for conducting Under Graduate level course (B.A.M.S) subject to the petitioner curing the deficiencies listed therein by 31st December, 2008, failing which permission was directed to be withdrawn.
12. For the academic session 2009-2010, respondent No.1 granted requisite permission. Petitioner was directed that deficiencies qua non-teaching staff of the college should be rectified by the end of October, 2009 and non-fulfilment of the conditions attached to the permission within the time specified may entail withdrawal of permission. Similarly, conditional permission was granted for the academic session 2011-2012 subject to rectification of deficiencies.
13. Counsel submits that while pointing out the deficiencies, time was granted to the petitioners to rectify the same and not that permission was withdrawn.
14. Mr.Sinha submits that a joint surprise inspection in the premises of the petitioner college was conducted by an official of the rank of Assistant Director of respondent No.1 and C.B.I, on 26th April, 2011 to verify the functioning of the petitioner college.
15. The petitioner No.2 was also present during the surprise inspection which continued from 10.00 hrs to 22.00hrs. During inspection, it was noticed that interior work was going on at the 4th Floor and O.P.D and I.P.D were operating near Ayurvedic College campus. With regard to I.P.D. register, it was mentioned that the same was checked for the calendar year 2009-

2010 in which it was found that bed numbers were not mentioned in the register. The team also noticed that even though as per the I.P.D. register, 195 in-patients stood admitted on 25th April, 2011 and six patients were admitted on 26th April, 2011, on physical verification, it was found that no patient was available on the hospital beds. The team recorded the statement of the petitioner No.2 who justified the absence of patients due to construction work, the patients were discharged abruptly to avoid inconvenience to the patients. Counsel contends that the duties and functions of CBI are restricted to investigation of certain offences and there is no power vested with the CBI to conduct a surprise check of any institution including the college of the petitioner. Even otherwise, there is no offence committed by the petitioner college which requires investigation by the CBI.

16. It is also contended by Mr.Sinha that for the academic session 2012-2013 respondent No.2 inspected the college of the petitioner on 28th/29th March, 2011 and recommended the case of the petitioner college for the said academic session. During inspection it was found that the petitioner college fulfilled all the conditions for under-graduate and post- graduate courses, as mentioned in letters dated 18th March, 2011 and 21st March, 2011 of respondent No.1. Accordingly, the petitioner college was granted permission for admitting 75 students in under-graduate courses and 20 students in post-graduate courses for academic session 2011-2012 subject to removal of certain deficiencies which were to be inspected by the C.C.I.M in November/December, 2011. It is submitted that the shortcomings which were pointed out were not in respect of bed occupancy in indoor patient department although it was mentioned that non-fulfilment of conditions attached to the permission within the time specified, may entail withdrawal of permission.

17. Counsel for the petitioner has highlighted the fact that respondent No.1 vide letter dated 19th January, 2012 issued a letter of intent to the petitioner college for permission to establish new post-graduate courses in five more subjects, subject to the condition, amongst others, that the petitioner college must succeed in getting the approval of the Central Government and even at that stage no reference was made to the findings of the Central Bureau of Investigation during the alleged surprise check dated 26th April, 2011. It is also contended that the respondent No.2 visited the petitioner college on 13th/14th February, 2012 for ascertaining the fulfillment of the requisite norms for the academic session 2012-2013 and found the same satisfactory. Accordingly, vide letter dated 11th April, 2012, respondent No.2 recommended the case of the petitioner for conditional permission for 75 seats in under-graduate course and 15 seats in post graduate course subject to fulfilling certain shortcomings, by 31st December, 2012. In the assessment report attached, it was mentioned that the bed occupancy in IPD was 66.32%.
18. It is also the submission of learned counsel for the petitioner that in all the years from the academic session 2000-2001 onwards, the respondent No.2 always granted recognition to the petitioner college as it was fulfilling the requisite norms. The recommendations of respondent No.2 were also accepted by respondent No.1 throughout but for the academic session 2012-2013. The petitioners were informed vide letter dated 14th May, 2012 by respondent No.1 that certain shortcomings were observed in the I.P.D. functioning of the college based on the report of the C.C.I.M dated 10th April, 2012 and a self-contained note of C.B.I. Pune dated 1st December, 2011. It is submitted that the note of the CBI has no legal sanctity under the I.M.C.C. Act, 1970. Counsel contends that C.C.I.M after perusing the entire records including the record of I.P.D. concluded

that the bed occupancy in I.P.D was 66.32% during the period 1st Januray, 2011 to 31st December, 2011.

19. Mr.Sinha submits that letter of 14th May, 2011 relies upon the findings of the C.B.I. qua two shortcomings viz. bed numbers were not mentioned in the I.P.D register and on checking the I.P.D. register 195 patients were found admitted on 25th April, 2011 and six patients were admitted on 26th April, 2011 but on physical verification, no patients were found on patient bed in the I.P.D and thus concluded that the hospital was not functioning genuinely. Respondent No.1 directed the petitioner college to appear before the Hearing Committee on 24th May, 2012 along with the relevant records. The petitioners submitted their written reply to the respondent No.1 on 5th June, 2012 with respect to the two alleged deficiencies. The petitioner explained that the bed numbers were not mentioned in the I.P.D register for the calendar year 2009-2010 but the same were mentioned in I.P.D. case papers and from the year 2011 onwards bed numbers were mentioned in every I.P.D.register.
20. So far as the second short coming was concerned, the petitioners clarified that due to shifting and construction work, the patients were discharged abruptly for avoiding inconvenience to the admitted patients.
21. It is next contended that the hearing took place on 6th June, 2012. The Hearing Committee consisting of Research Officer (Ay) and Assistant Director (U)(CCRUM), while no person was present from the C.C.I.M. It is contended that the entire hearing revolved around the report of the CBI, a copy of which was not furnished to the petitioner, wherein it had been pointed out that on 26th April, 2011 none of the admitted patients were at their beds even though there should have been 201 patients available. The Hearing Committee also examined the case record sheets and noted that the treatment prescribed was not proper. It is thus strongly urged before

this court that while affording an opportunity of hearing under proviso to Section 30 (A) 5 of the I.M.C.C. Act, 1970, the treatment prescribed could not have been examined. More so, when one of the Members in the Hearing Committee was from the stream of unani system of Indian medicinal system and prescribing a wrong treatment was also considered as one of the reasons to reach the conclusion that the petitioner college does not have a genuinely functional hospital, accordingly, vide the impugned order of 24th August, 2012, respondent No.1 declined permission to the petitioner for the academic session 2012-2013 for conducting both under-graduate as well as post –graduate course. It is submitted that the petitioners could not have been declined permission unless they were given an opportunity to rectify the deficiencies in a given time-frame as was being done in the past.

22. It is also the case of the petitioner that assuming on a particular date, the occupancy of the beds was not as per the requirement, it does not mean that such percentage would be found on each and every day.
23. Arguments of learned counsel for the petitioner can be summarised as under:-
 - i. The impugned order is liable to be set aside as it is based on a self-contained note of CBI dated 1st December, 2011 and the CBI is neither empowered nor it is the statutory authority under the I.M.C.C. Act, 1970 to conduct the inspection of the petitioner College.
 - ii. Even otherwise, self contained note was never provided to the petitioner.
 - iii. Time should have been granted to the petitioners to rectify the shortcomings prior to denying them permission.

- iv. The respondent have failed to appreciate the explanation rendered during the personal hearing with regard to the number of patients admitted in the I.P.D.
- v. The respondent No.1 was not in a position to decide whether proper treatment was being provided to the patient nor the same can be a ground for rejecting the permission.

24. Counsel for the respondent no.1 has vehemently opposed this petition. It is submitted that strong reliance has been placed by counsel for the petitioner on his submission that the report of the Joint Surprise Check Proceedings cannot be the basis for declining permission to admit students to UG and PG Course during the academic session 2012-13, however, the petitioner has failed to state that the Joint Surprise Check Proceedings are either false or incorrect, neither any relief has been sought qua the Joint Surprise Check Proceedings. It is contended that since it is not the case of the petitioner that the Joint Surprise Check Proceedings are false and incorrect, thus, there is no infirmity or illegality committed by the Central Government by taking into consideration the joint surprise check proceedings, according to which there is no infrastructure facility in the college. It is further submitted that the Joint Surprise Check Proceedings were forwarded to the Government in December, 2011, the Central Government took cognizance and acted under Section 13A (5) of the IMCC Act and issued notice dated 14.05.2012 calling upon petitioner to *inter alia* produce valid documents / records and proof to substantiate its claim against the deficiencies which were pointed out in the notice. Thus the basis of the impugned order is not the surprise check proceedings or the note of the CBI, but the inability of the petitioner to satisfy the respondent no.1 with regard to the serious deficiencies in the college.

25. In response to the notice dated 14.05.2012 the petitioner filed written

submissions and thereafter appeared before the hearing Committee on 06.06.2012 along with the records. The Hearing Committee examined the records produced by the petitioner, college considered the written and oral submissions made by their representatives and recorded its finding. The overall observations and comments of the Committee on which reliance is placed by counsel for the respondent no.1 read as under:

“From the observations on hospital data and other irregularities and inconsistencies, it appears that the teaching hospital of the college does not appear to be a genuinely functional Ayurvedic Hospital having 40% IPC bed occupancy days during the period 01.01.2011 to 31.12.2011 (period for consideration).”

(Emphasis added)”

26. Mr.Mishra also submits that the contention of the petitioner that the order dated 24.08.2012 has been passed on the basis of a CBI raid is of no merit and substance as the decision dated 24.04.2012 has been taken after issuance of notice to petitioner, granting petitioner opportunity of hearing before hearing committee and overall observations and comments of hearing committee based on the petitioner’s submission.”
27. Mr.Mishra, counsel for the Union of India further submits that petitioner college has not been granted permission to admit students in BAMS and PG courses for the academic year 2012-13, on account of serious deficiencies in the functioning of the college. It is submitted that the petitioner college was visited by the CCIM on 13-14.02.2012 to reassess the facilities available with respect of teaching and practical training as well as to verify the compliance report submitted by the college. Mr.Misra also submits that even in the previous year the petitioner college was granted conditional permission. Thus, the petitioner college has been given ample time and opportunities to rectify the deficiencies pointed out

with respect to the college. It is submitted that despite time and opportunities having been granted to the petitioner college, still it has failed to rectify those deficiencies. Mr. Mishra submits that every time conditional permission was granted to the petitioner college, it was reminded to remove the earlier deficiencies.

28. It is contended that the submission of counsel for the petitioner that the respondent no.1 has declined permission to the petitioner, college solely on the basis of the Joint Surprise Check Proceedings, is misleading for the reasons that after the report was received, a show cause notice was issued to the petitioner, clearly pointing out the deficiencies. The petitioner thereafter filed written submissions and time was granted to the petitioner for a personal hearing and petitioner was also requested to produce records. It is contended that on examining the CCIM report and the CBI report, the respondent no.1 observed the following shortcomings, which required an explanation/clarification by the petitioner:

“ (i) Bed numbers were not mentioned in the IPD registers.

(ii) On checking the IPD registers it was found that 195 patients admitted on 25.04.2011 and 6 patients admitted on 26.04.2011 but on physical verification, no patients existed on patient's bed in IPD, it appears that the data of the teaching hospital provided by the college has been manipulated & exaggerated and does not appear to be a genuinely functional Ayurvedic hospital having the genuine patient load of 100 patient per day in the OPD and 40% IPD bed occupancy during the period 01.01.2011 to 31.12.2011.”

29. During the course of hearing granted and in the written submissions filed the petitioner had given clarifications point-wise to the respondents. Since the entire controversy revolves around the deficiencies pointed out and the explanation rendered, it would be useful to reproduce paragraph 5 of the counter affidavit, wherein this issue has been dealt with:

“5.xxx

i. **Bed numbers were not mentioned in the IPD registers**

Submission: It was submitted by college representatives that the bed numbers were not mentioned in the IPD register for the calendar year 2009-10 but they were mentioned in IPD Case Papers. Further from the year 2011 onwards they are mentioning the bed numbers on every IPD register. The CBI report also specifically mentions absence of bed numbers for calendar year 2009-10.

ii. **On checking the IPD registers as on date, it was found that 195 patients admitted on 25.04.2011 and 6 patients admitted on 26.04.2011 but on physical verification, no patients existed on patient's bed in IPD, it appears that the data of the teaching hospital provided by the college has been manipulated & exaggerated and does not appear to be a genuinely functional Ayurvedic hospital having the genuine patient load of 100 patient per day in the OPD and 40% IPD bed occupancy during the period 01.01.2011 to 31.12.2011.**

Submission: It was submitted by college representatives that due to shifting and construction work the patients were discharged abruptly for avoiding the inconvenience to the admitted patients. It was further intimated that during 2011 their 270 bedded hospital was functional and now it is a 300 bedded hospital. On this submission the Hearing Committee asked that before discharging 195 admitted patient abruptly, any meeting was convened in which it was decided to evacuate the hospital? The college representatives replied that no such meeting was conducted due to shortage of time. Hearing committee further asked as why there was a shortage of time and abruptly all patients were discharged? The construction work of such a huge building is always planned and some arrangements are usually made before construction is started, whether your college management did not plan this work? The college representatives replied that during April month, the water supply gets disrupted and there was minimum water available in the hospital. Therefore, they had to evacuate hospital abruptly. The hearing committee asked

that when it is a periodical problem (as it happens in the month of April every year), why no standby arrangement was made by college authorities? The college representatives replied that during that time they did not have any standby arrangement available however, now they have made such arrangement. It was asked by hearing committee that on 26th April, when all 195 admitted patients were discharged within a few hours suddenly, why there were 6 new admitted patients in the hospital? The college representatives replied that at least some patients should remain in the hospital that's why they have admitted a few (6) new patients. All old patients were under panic situation and were insisting for discharge. However, as per CBI report, even these newly admitted six patients were not found on the beds. It was asked by hearing committee to produce case record sheets of patients discharged on 26th April 2011. The college representatives produced all 195 case record sheets of discharged patients. On review of randomly selected a few case record sheets following questions were asked by Hearing Committee;

Q- Why there is no discharge summary mentioned on case record sheets of discharge patients?

Reply- The college representatives replied that they give discharge ticket to patient hence they do not write discharge note on case record sheet. Clinical examination notes were available on case record sheets even on last day i.e. on day of discharge. However, this not an acceptable reply as Discharge summary /discharge note is an essential part of doctors noting and in a genuine discharge case it needs to be mentioned. The absence of Discharge summary /discharge note points towards a non-genuinely functional hospital.

Q- Why on case record sheets of patients discharged on 26th April 2011, no entry is made that patient is discharged due to ongoing construction / shortage of water or any other problem.

Reply- The college representatives replied that they had mentioned this on IPD register and it was not possible to

write this on so many case record sheets, which again shows that essential procedures were not followed in the hospital.

Q- Whether it is possible to discharge 195 patients within a span of 1-2hrs with completing all formalities?

Reply- The college representatives replied that due to shortage of time they could not complete all formalities of completing case record sheets, however, in further submission, they could not prove any urgency which could have led to this unorganized or abrupt procedure.

Q- When it was not possible to discharge so many patients after completing all formalities then why the all patients were discharged abruptly even when there was no urgency?

Reply- The college representatives replied that due to acute shortage of water and hygiene problems patients were discharged abruptly to avoid any inconvenience to the patients.

Q- Why shortage of water was not brought forward to CBI team?

Reply- It was not asked by CBI team, that's why we did not tell CBI team.

The submission of the college principal's indicates that the all patients were abruptly discharged due to emergent conditions does not look logical and especially the statement that due to water shortage, patients were discharged seems absolutely illogical and an afterthought to justify the absence of patients in the IPD on surprise visit. Had absence of water been the major reason for discharging the patients, it would had been brought forward to the CBI visiting team and CBI team would have verified the actual situation about availability of water in the building. Nowhere in CBI report it is mentioned that there was any shortage of water neither it is mentioned that college authority gave shortage of water as the main reason for evacuation of hospital building. Therefore, it seems that in reality there were no admitted patients. Further, admission of six new patients on the same

day also hints that there was no actual problem and college authorities gave the reason that due to on-going construction work the patients were discharged as a reason to hide the fact that actually there were no patients. This fact is further substantiated on review of Case Record Sheets of so called discharge patients on 26th April 2011. The Case Record Sheets were deficient in many manners such as-

- (1) The records seemed manipulated as at many places the date on Case record sheets were changed, this indicates that Case Record Sheets are tempered to show increased number of bed days without actually admitting the patients.
- (2) Follow ups were missing, which indicates that patients were not followed up on daily basis, which is an indication that it not a genuinely functional hospital as it is not possible that any admitted patient is not seen by any doctor daily etc.
- (3) Pathological investigations advised on Case Record Sheets but not carried out as results not mentioned anywhere in Case Record Sheets or Investigation report is not attached / enclosed with Case Record Sheets.
- (4) Medicine mentioned on Case Record Sheet is different from Medicine mentioned for same patient in Medicine Dispensing Register.
- (5) In female patient having gynaecological disorder, examination of / history taking is not done and Case Record Sheet is left blank.
- (6) In most of the case record sheets, no relevant investigations were done, no discharge summary / discharge note were put on case record sheets, reason of discharge was not mentioned etc. On absence of relevant investigations in many admitted patients (such as for patients diagnosed as having Renal Stone, no investigation of Urine was carried out, even essential investigations for diagnosis such as X-ray KUB or Ultrasound were not done) it was asked by hearing committee that why such essential investigations were not carried out. The college representatives replied that since the clinical response was seen, no investigations were done and

diagnoses in such cases were made on clinical symptoms basis. However, in opinion of hearing committee, not conducting essential investigations, for making appropriate diagnosis, that too when all facilities of conducting such essential and not very costly investigations were available, is a gross error which cannot be accepted as a normal mistake and creates doubt on genuine functioning of hospital.

(7) It was also observed by hearing committee that a few cases of Corn (Kadar) were admitted for four-five days whereas generally it is a condition where excision is done as a day care procedure and no admission is usually required in such cases. When it was asked by hearing committee that why these patients were admitted for such long periods, the college representatives replied that to promote the healing process, the patients were kept admitted for 4-5 days which seems unjustified and unethical as well. Similarly in one case of Department of Shalakya, diagnosis was made as Ear Wax, however, tympanoplasty was advised to this patient which is unjustified treatment. Audiometry and other investigations were advised, however no investigation was done and neither was found recorded in the case record sheet.

In view of above observation, it can be concluded that random review of Case Record Sheets of patients discharged during 26th April 2011, points towards that these records were not of genuine patients and were made without actually admitting the patients to exaggerated number of bed occupancy days.

The hearing committee decided to review some Case record sheets of patients admitted after the month of April and hence asked to produce case record sheets of September 2011 for the department of Kayachikitsa. On random review of these case record sheets, it was found that one patients (IPD No- 3024 Rao Saheb Jagganath Coudhury 33/M), was having diagnosis Prameha (Diabetes Mellitus), however, the Blood sugar level on the day of OPD visit were within normal limits i.e. (Fasting 90 and PP- 130), further no Blood Sugar investigation was carried out for whole admission period of 20 days. No such complaint is found in record for which the patient needs hospitalization for such a long period. This case

record sheet was shown to college representatives and they did not give any technically justifiable reply for admission of this patient for such long period. Another Case Record Sheet was randomly picked by Hearing Committee. On its review, it was found in the Case Record Sheet that the patient had requested to go out of hospital on 25.09.2011 and he came back on 6.10.11 (after a gap of almost 10 days). For such a long period of absence, no discharge was made and on coming back on 6.10.11, no new admission was made. Surprisingly on further review of the Case Record Sheet it was seen that the medicine dispensing chart attached along with the Case Record Sheet, shows that the patient was continuously receiving medicines even for the duration for which he was absent from the college hospital. The college representatives were unable to explain the reason for this discrepancy in the records and submitted that it may be due to human mistake. Similarly Case Record Sheets for the month of August of Department of Shalakya and of Department of Shalya for the month of July were asked to produce. The college representatives produced all case record sheets of desired period. The various short comings were found such as No Operative procedures were done in patients admitted in the Department of Shalya patients suffering from Cervical Spondylitis were admitted in Shalya whereas no surgical procedure was carried out. In Shalakya ward patient suffering from conditions which do not require admission were admitted such as Karnasrava (Discharge form Ear), Lingnasha (Cataract) etc. These conditions do not require any Indoor admission. When asked why these patients were admitted for such long periods, it was replied that these patients were kept in the IPD till the infection was eliminated and to give clinical experience to students. All above observations on review and examination of case record sheets clearly indicate that many case record sheets were prepared without the presence of actual patients, to exaggerate bed occupancy days (as was seen by CBI team on surprise visit) and many case records sheets were of non-genuine patients, unnecessarily kept in IPD to show higher bed occupancy days. Other records as produced by college representatives such as attendance register of doctors and hospital staff, the date wise OPD and IPD registers, the case sheets of all IPD patients, sample of discharge ticket/card of

patients, the lab registers and record of lab findings, nursing duty register, IPD medicines dispensing register, IPD diet register, IPD medicine indent register, IPD diet register, IPD duty rosters of Doctors for the whole year 2011 were also reviewed by hearing committee. On review of these records, it was found that there was no page numbering on the Streerog Duty Register of paramedical staff, and on examination of register it was found that the pages of the register were torn off. Similarly, there were no pages numbering on the Kayachikitsa Female Ward Duty Register, whereas on duty register of Balaroga Department, papers were pasted on the names of staff. All these were shown to college representatives. This indicates that the records produced before Hearing Committee, were tempered records and were not genuine records. The hearing committee retained the photocopies of many such Case Record Sheets.”

30. Upon hearing granted to the petitioner, the overall observations of the Hearing Committed reads as under:

“From the observations, on hospital data and other irregularities and inconsistencies, it appears that the teaching hospital of the college does not appear to be a genuinely functional Ayurvedic hospital having 40% IPD bed occupancy days during the period 01.01.2011 to 31.12.2011 (period for consideration)”

31. Counsel for respondent no.1, has justified the order passed by respondent no.1 on the ground that the explanations rendered by the petitioner were not convincing and unreliable; the said order was passed to safeguard the interest of the students and further the shortcomings and the defects in the petitioner college were of such a nature that the college would not be in a position to impart good quality education to the students.
32. Counsel further submits that the existing medical colleges as well as the new colleges set up after the Indian Medicine Central Council (Amendment) Act, 2003 came into force had been enjoying the benefit of

the norms not being strictly enforced during the academic years 2007-08 to 2010-11, however, the Central Government and the Central Council of Indian Medicine were jointly of the view that the norms should be strictly followed and further the respondent no.1 was flooded with complaints leveling allegations against the inspection team of CCIM. In order to verify and to ascertain the irregularities if any, the CBI jointly with the Department of AYUSH conducted surprise checks randomly in 16 selected colleges. On inspection, results were shocking, in one college it was found that the hospital equipment like beds, medicines etc. were found stashed in a locked room where they were gaining dust. In other colleges also, it was observed that the attached teaching hospital suffered grave inadequacy and discrepancies and could not be taken as genuinely functional teaching hospitals. During the check the CBI and AYUSH team came across fabricated records maintained by the colleges. From these surprise check it became apparent that there was foul play, as many of these colleges had been recommended by CCIM for the grant of permission for the academic session 2010-11. On being faced with this serious/shocking situation desperate need was felt to take remedial steps of cross checking the claim of the college and report/recommendations of CCIM by framing norms under which the college would have to produce the complete record before the hearing committee of the Answering Respondent.

33. In response to the submissions made by counsel for the petitioner that time should have been granted, counsel for the respondent submits that petitioner, college had been granted time for the past many years and accordingly conditional permission was granted, but the petitioner, college did not remove the deficiencies and in the larger public interest and to ensure better education and trained professionals pass out from this

institutions, the Act and the Regulations are being enforced strictly and uniformly.

34. Counsel for the respondent submits that the provisions of the Indian Medical Council Act, 1956, concerning the allopathic system of medicine are more or less similar to those of the Indian Medicine Central Council Act, 1970, concerning the Indian systems of medicine. Counsel has relied upon the order passed by the Supreme Court of India dated 11th January, 2012, in Civil Appeal No.274 of 2012 (@ SLP(C) 27239 of 2011) titled Medical Council of India v. JSS Medical College & Anr., by which an interim order dated 24.8.2011 passed by a Division Bench of the Karnataka High Court, wherein the Hon'ble High Court passed the following order was, set aside:

“The petitioner institution is permitted to increase the intake of MBBS students from 150 to 200 for the academic year 2011-2012. Medical Council of India is at liberty to indicate any deficiency if it comes across for the intake of 200 seats in MBBS for the academic year 2011-2012 and direct compliance of the same within three months from the receipt of their communication. This order is subject to final result in the writ petition.”

35. Counsel for the respondent further submits that the Hon'ble Supreme Court has set aside the aforementioned interim order of the High Court with the following observations:

“10. Without adverting to the aforesaid issues and many other issues which may arise for determination, the High Court, in our opinion, erred in permitting increase in seats by interim order. In normal circumstances the High Court should not issue interim order granting permission for increase of the seats. High Court ought to realize that granting such permission by an interim order has a cascading effect. By virtue of such order students are admitted as in the present case and though many of them had taken the risk knowingly but few may be ignorant. In most of such cases when finally the issue is decided against the College the welfare and plight of the students are ultimately projected to arouse

sympathy of the Court. It results in very awkward and difficult situation. If on ultimate analysis it is found that the College's claim for increase of seats is untenable, in such an event the admission of students with reference to the increased seats shall be illegal. We cannot imagine anything more destructive of the rule of law than a direction by the court to allow continuance of such students, whose admissions is found illegal in the ultimate analysis. This Court is entrusted with the task to administer law and uphold its majesty. Courts cannot by its fiat increase the seats, a task entrusted to the Board of Governors and that too by interim order. In a matter like the present one, decisions on issues have to be addressed at the interlocutory stage and they cannot be deferred or dictated later when serious complications might ensue from the interim order itself. There are large number of authorities which take this view and instead of burdening this judgment with all those authorities it would be sufficient to refer to a three Judge Bench decision of this Court in the case of Medical Council of India v. Rajiv Gandhi University of Health Sciences, (2004) 6 SCC 76, in which it has been held as follows:

"14. In the normal circumstances, the High Court ought not to issue an interim order when for the earlier year itself permission had not been granted by the Council. Indeed, by grant of such interim orders students who have been admitted in such institutions would be put to serious jeopardy, apart from the fact whether such institutions could run the medical college without following the law. Therefore, we make it clear that the High Court ought not to grant such interim orders in any of the cases where the Council has not granted permission in terms of Section 10-A of the Medical Council Act. If interim orders are granted to those institutions which have been established without fulfilling the prescribed conditions to admit students, it will lead to serious jeopardy to the students admitted in these institutions."

11. For all these reasons we are of the opinion that the interim order passed by the High Court is unsustainable. Any observation made by us in this judgment is for disposal of the present appeal and shall have no bearing on the

merits of the case. Further, as the matter pertains to increase in seats in educational institution, we deem it expedient that the High Court considers and disposes of the case on merit expeditiously.

12. Resultantly, we allow this appeal, set aside the impugned interim order of the High Court with the observation aforesaid. However, there shall be no order as to costs.”

36. Reliance in support of this plea is placed on the case of **Medical Council of India Versus JSS Medical College &Anr.** [Civil Appeal No. 274 of 2012 (@ SLP(C) 27239 of 2011)] and also in the case of **Medical Council of India v. Rajiv Gandhi University of Health Sciences,** (2004)6 SCC 76, in which it has been held as follows:

"14. In the normal circumstances, the High Court ought not to issue an interim order when for the earlier year itself permission had not been granted by the Council. Indeed, by grant of such interim orders students who have been admitted in such institutions would be put to serious jeopardy, apart from the fact whether such institutions could run the medical college without following the law. Therefore, we make it clear that the High Court ought not to grant such interim orders in any of the cases where the Council has not granted permission in terms of Section 10-A of the Medical Council Act. If interim orders are granted to those institutions which have been established without fulfilling the prescribed conditions to admit students, it will lead to serious jeopardy to the students admitted in these institutions."

37. Counter affidavit has also been filed by respondent no.2. Counsel for the respondent no.2 has also opposed the petition for grant of any interim relief in view of the explicit law, which has been laid down in a catena of judgments passed by the Supreme Court of India. Right has been reserved by respondent no.2 to file a detailed counter affidavit on merits of the matter.

38. I have heard counsel for the parties and considered their rival submissions, and perused the pleadings which have been placed on record together with the relevant annexures.
39. The first question which comes up for consideration before this court and as raised by counsel for the petitioner, is whether the CBI is empowered to carry out inspection of a college under the provisions of the Indian Medicine Central Council Act, 1970 and the regulations framed therein.
40. Counsel for the respondent has failed to point out any provisions in the Act or Regulations, which empowers the CBI to carry out inspection of a college to ascertain whether the college meets the requirements for establishment or continuation of a college with regard to amongst others the infrastructure faculty and other conditions. There is force in the submission made by counsel for the petitioner.
41. The second question which is closely connected with the first question is whether the respondent no.1 could have declined permission to the petitioner for admission of students to the under graduate / post graduate courses for the academic session 2012-13 on the basis of the report of the Joint Surprise Check Proceedings. The answer to this question lies in the show cause notice which was issued to the petitioner herein. In my view in case the respondent no.1 blindly relied upon the report of the inspection conducted by the CBI and declined the permission to the petitioner, the said act would be illegal and the order liable to be set aside. The CBI team which visited the college on 26.04.2011 comprised of Inspector of Police, CBI/ACB/Pune; Sub-Inspector of Police, CBI/ACB/Pune; Assistant Director (Ay), Central Council of Research in Ayurvedic Sciences, Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH); Police Constable, CBI/ACB/Pune; two Senior Telecom Office Assistants, BSNL, Pune; and Principal,

Padmashree, Dr.D.Y.Patil College of Ayurved & Research Centre, Pimpuri, Pune. However, the report of the CBI was only a tip of the ice berg. On examining the report the respondent issued a show cause notice to the petitioner, granted an opportunity to file reply and thereafter afforded an opportunity of a personal hearing. Petitioner was also allowed to produce documents. Thus, in my opinion to say that the impugned order was passed on the basis of the report of the CBI is misplaced. In case the respondent no.1 did not grant any opportunity of hearing to the petitioner, the submission of Mr.Sinha would be acceptable. Even if the respondent no.1 received a complaint against the petitioner college the respondents no.1 and 2 would be well within their rights to examine the complaint and in case they are prima facie satisfied with the complaint a show cause notice can always be issued.

42. In the show cause notice the petitioner was informed with regard to the major discrepancies. The order of rejection passed by the respondent no.1 is not on the basis of the report of the CBI, but it is based upon the proceedings held during the hearing granted to the petitioner and the explanation rendered, which was found to be highly unsatisfactory. The objective of reproducing and examining the questions raised and the explanation rendered in the paragraphs aforequoted is to satisfy the conscience of the Court as to whether the explanations rendered by the petitioner were satisfactory or not. To say that merely because the genesis of the proceedings was the CBI inspection and thus since CBI had no role to play, as per the Act the remaining proceedings would become vitiated, cannot be accepted by this court. The respondent no.1 could not have been a passive spectator after the glaring deficiencies which were pointed out in the report.

43. The respondent no.1 would be empowered to issue a show cause even on

the basis of a complaint, leaving alone the report of the CBI, and in case respondent no.1 is prima facie of the view that matter would require explanation from a college. The explanation rendered by the college with regard to discrepancy in the IPD register, which showed that 195 patients were admitted on 25.04.2011 and six patients were admitted on 26.04.2011, but no patient existed on physical verification, the explanation rendered by the college that on account of the construction work the patients were discharged abruptly to avoid inconvenience to the admitted patients is not a probable explanation, more so, when 195 patients were abruptly discharged, as it is not the case of the college that the construction activities commenced on account of some emergency are completely unacceptable. Ordinarily it is expected that construction activities would be carried out in a planned manner and sure enough the college could have made an alternate arrangement. Another explanation rendered was that during the month of April the water supply gets disrupted and on account of shortage of water the patients had to be evacuated, there was no explanation as to why in case the water problem was periodic the hospital did not make stand-by arrangement. There was also no explanation as to why when 195 patients were discharged abruptly why six new patients were admitted and even the new six admitted patients were not found on the bed.

44. Even assuming the stand taken by the college was correct, the supporting documents completely bely the factual position, as on the basis of record produced there was no discharge summary mentioned on the case record-sheets of the discharge patients. The respondent no.1 rightly found that it was impossible to discharge 195 patients within a span of two hours after completing the formalities and moreso, if shortage of water was the reason for discharging the patients this fact could have been brought to the

notice of the CBI team, as the team visiting the college could have easily ascertained the shortage of water and accepted the version of the College. On inspection of record it has been observed that the case record-sheets were deficient in many ways they seem manipulated, dates were changed, record-sheets were tampered to increase number of beds, days, follow ups were missing, medicine mentioned on case record-sheets was different from medicine mentioned for some patient in medicine dispensing register.

45. Patients suffering from corn (Kadar) were shown admitted for 4-5 days, whereas ordinarily it would only require day care procedures and various other deficiencies as no investigative record etc. were available. All of which have been reproduced, above would show that it is these discrepancies based on lack of record which actually led to the final order and not the CBI report.
46. Mr.Sinha, learned counsel for the petitioner, had also laid strong emphasis on the fact that one of the reasons for rejection was that wrong treatment was being given to some of the patient whereas the persons who made the observations were not competent to reach such a conclusion as one of the members of the Committee was from Unani medicine. This submission of learned counsel for the petitioner is also without any force for two reasons. Firstly, administering wrong treatment was not the only ground for rejection and secondly the observations made were extremely elementary in nature and did not require a specialist to find out that the treatment prescribed was sham only to show admission and nothing else.
47. Another submission, which has been made by learned counsel for the petitioner, is that the petitioner should have been given an opportunity to rectify shortcomings, which were pointed out in the show cause notice.
48. Having regard to the nature of deficiencies, which have been pointed out,

which are serious in nature, and also taking into consideration the explanation, which has been rendered, which is half baked and unsatisfactory, the petitioner cannot be permitted to run the college nor having regard to the nature of shortcomings it would be in the fitness of things to grant time to the petitioner to rectify the defects. It may also be noticed that since the year 2006, each year, conditional permission was granted to the petitioner on the petitioner rectifying the defects and shortcomings so pointed out. In my view this is a long period of time, which was allowed to the petitioner to put its house in order.

49. In the case of **Medical Council of India Vs. State of Karnataka**, reported at (1998) 6 SCC 131, it has been held by the Apex Court that a medical student requires intense study, which can only be done if proper facilities are available in the college and the hospital attached to it. It has further been held that in the absence of proper facilities rejection of permission was justifiable. Para 29 of the judgment reads as under:

“29. A Medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study.....”

50. The aim and objective of respondent is to control medium of standards of education and regulate their observance. Respondent is duty bound to supervise the qualifications, eligibility standards, infrastructure and other facilities in the college at the hospital. The explanation rendered to the show cause notice and the written submissions, which were filed before

the Hearing Committee, reveal a sorry state of affairs. The explanation, which has been rendered, is not convincing and the same is inadequate. Lame excuses have been rendered by the petitioner to show that the patients admitted had to be discharged on account of construction activities and shortage of water. Supporting documents and records are incomplete and the same are evident enough to belie the tall claims of the petitioner. The petitioner cannot be granted permission in the current state of affairs. Resultant, the writ petition is without any merit and the same is accordingly dismissed. No costs.

G.S.SISTANI, J

OCTOBER 30, 2012
SJS/SSN