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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7881/2011 & CM 17837/2011

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Judgment dated 06.02.2013

**SRI SAI AYURVEDIC MEDICAL COLLEGE
AND HOSPITAL AND ANR**

..... Petitioners

Through : Mr.Amit Khemka, Mr.Rishi Sehgal and
Ms.Sanorita D. Bharali, Advs.

versus

UOI AND ORS

..... Respondents

Through : Mr.Jatan Singh, Advocate for the
respondent no.1
Mr.T.K. Joseph, Advocate for the
respondent no.2

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Pleadings are complete in the matter. With the consent of counsel for the parties, present writ petition is set down for final hearing and disposal.
2. Petitioner no.1 is stated to be an Ayurvedic Medical college and hospital. The college was established by petitioner no.2, which is stated to be a fully charitable society duly registered under the Societies Registration Act. The petitioner has been constituted with the primary object of the service of the cause of re-establishment and spread of Ayurveda, which is an aged old Indian Medical Science. The college is imparting knowledge to the students through under graduate course of BAMS and two post graduate courses of MD/MS. The college and hospital was established in the year 2002. The college is permanently affiliated with the Chhatrapati Shahu Ji Maharaj University, Kanpur. Initially the petitioner no.1 was granted permission by the respondents no.1 and 2 for admission of 50

students for conducting BAMS course in the year 2002. Thereafter the said permission was given fresh every year. The petitioner no.1, college and college, was granted permission every year on certain conditions.

3. In the year 2010 the number of students were allowed to be increased from 50 to 75 and the petitioner no.1 was allowed to run courses in two post graduate courses to four students for each course without any condition. The petitioner no.1, college boasts to be a well organized and well managed college and hospital built on a land measuring 5.27 acres, besides a built up residential and hospital accommodation for the students, teachers and other staff. Petitioner also has a herbal garden. The college comprises of 14 departments, which consist of eight non-clinical and six clinical departments. The hospital comprises of an Out-door Patient Department and Indoor Patient Department as well. The college and hospital is equipped with an operation theatre, labour-room, Panchkarma Centre, X-ray, ECT, ultra-sound, pathology and microbiological laboratories and a vast library. The college also has an auditorium.
4. After the year 2002, when the Petitioner No.1 was established, the procedure for obtaining permission from the Respondent Nos. 1 and 2 for establishment/ continuation of any college to impart instructions in Ayurveda/ Indian Medicine was provided by the Amending Act 58 of 2003, whereby Chapter II-A was inserted in the Act mandating in Section 13A that no person shall establish a medical college in Indian Systems of Medicines, except with the previous permission of the Central Government obtained in accordance with the provisions of S. 13-A of the Indian Medicine Central Council Act, 1970.
5. The Respondent No.2 (CCIM) has been inspecting the Petitioner No.1 college and hospital every year and sending recommendations to Respondent No. 1 (AYUSH) for granting permission to the petitioners

every year for admission to the students.

6. In the year 2009-10, the Petitioner No. 1 applied for establishing/ opening of new PG courses in 2 subjects of Ayurveda viz. Prasuti Tantra & Stree Rog and Shalya Tantra and to increase the admission capacity of the existing BAMS course from 50 to 75. It is submitted that detailed inspections were carried out by the Respondent No. 2 and after careful consideration of recommendation of Respondent No. 2, in terms of the provisions of the Indian Medicine Central Council Act, 1970 and relevant regulations, permission was granted for opening new PG courses in the above mentioned two subjects and permission was also granted to increase the seats in the BAMS course to 75 with effect from the academic session 2010-11 under the provisions of Section 13A of the Indian Medicine Central Council Act, 1970.
7. It is also contended that as and when deficiencies were pointed out to the petitioner after inspection, the same were attended to and compliance report submitted to the respondents.
8. That the Petitioner No. 1 submits that in spite of the fact that the Petitioner had already been granted the permission under Section 13 A of the Indian Medicine Central Council Act, 1970 with effect from academic year 2011-2012 as per the communication dated 02.12.2010, after the Petitioner No. 1 was found to be complying with all the requirements, a suo moto inspection was carried out of the Petitioner No. 1 College by the Respondent No. 2 on 2nd & 3rd May 2011.
9. The above mentioned suo moto inspection was carried out on 02.05.2011 & 03.05.2011 purportedly for granting permission to admit students for the 2011-12 academic session although by the letter dated 02.12.2010, the permission had already been granted by the Respondent No. 2 and the same was not limited to a single year. It is submitted that the approval/

permission under section 13A of the Indian Medicine Central Council Act, 1970 is not to be granted every year, however the Petitioner No. 1 complied with the direction of inspection.

10. Before the inspection by the inspectors on 2 & 3 May 2011, a Performa for available facility of teaching and practicable training was received from the Respondent No. 2 by the Petitioner No. 1, which was to be duly filled and submitted to the inspectors for their convenience. The inspectors appointed by the Respondent No. 2 carried out detailed inspection of the Petitioner No. 1 College and Hospital on the above mentioned two dates which was partly videographed by the videographer with the permission of the inspectors.
11. Mr.Khemka, submits that under the provisions of Section 19(3) of the Indian Medicine Central Council Act, 1970, a copy of the report was required to be supplied to the Petitioner No.1, however no such copy was supplied to the petitioner. In fact if any defects were found then also an opportunity to rectify as contemplated vide Regulation 8 (4) of the Regulation for Existing Colleges 2006 was required to be granted, which was impossible without supply of a copy.
12. It is next submitted that almost more than 2 months after the inspection a letter dated 05.07.2011 was received by the Petitioner No. 1 wherein it was pointed out that certain deficiencies were found and the Petitioner No.1 was not fulfilling the alleged basic qualifications. The Petitioner No. 1 was called upon to produce all the records and documents and present their case before a hearing committee constituted by the Respondent No. 1 for the said purpose.
13. It is contended by Mr.Khemka, counsel for the petitioner that copy of the recommendation of respondent no.2 to respondent no.1 dated 31.05.2011 are totally self-contradictory. On the one hand respondent no.1 has given

a finding that the petitioner no.1 fulfils criteria of the policy, but on the other hand, the recommendation are otherwise, without giving any substantive or cogent reason for the same.

14. Mr.Khemka, learned counsel for the petitioners, submits that in the inspection carried out in the month of December, 2010, which was barely a few months before the inspection of May, 2011, petitioner no.1 college was found to have complied with all the requirements and standards, which resulted in permission to increase the seats in the existing BAMS course as well as permission to start two new PG courses. Counsel further contends that there was no occasion for undertaking another inspection and the deficiencies so pointed out are not only vague but no opportunity was granted to the petitioners to rectify the same. Counsel also contends that petitioner no.1 through its Principal and Chairman appeared before the Hearing Committee on 13.7.2011 together with the record and rendered its explanation for the alleged deficiencies.
15. Mr.Khekmka further submits that the 1st objection/ alleged deficiency which was pointed out in the letter of 05.07.2011 was that the college did not maintain various records and did not provide the details of the OPD/IPD documentation and that the Petitioner No. 1 College does not have a genuinely functional hospital with the required OPD and IPD patients and further that the data of OPD & IPD are false and fabricated.
16. Mr.Khemka submits that a bare reading of the said deficiencies pointed out would show that the same are contradictory, vague, uncertain and incapable of any specific reply. Mr.Khemka further submits that it has been alleged that the records were not maintained and not provided to the inspector on the other hand it is alleged that the OPD and IPD data is false and fabricated. Counsel next submits that since no specific deficiencies were pointed out therefore the petitioner was unable to give any specific

reply, however on 13.07.2011, the representatives of the Petitioner No. 1 not only produced whatever documents and records were asked for by the Hearing Committee of the Respondent No. 1 in the said letter dated 05.07.2011, but all the records were also produced. It is also the case of the petitioner that since the petitioner was not aware of the contents of the alleged inspection report, therefore, the petitioner was forced to produce all the registers in respect of the college, hospital, OPD and IPD. Mr.Khemka also contends that petitioner No. 1 produced Central OPD Register, Departmental OPD Register, IPD Departmental Register, Attendance Register of Doctors, Attendance Register of the hospital staff, nursing duty register, IPD Medicine dispensing registers, IPD Medicine indent registers, IPD Diet Register, Laboratory Register and even the case sheets of every patient in original before the hearing committee. It is submitted that the hearing committee randomly checked the IPD, OPD, Diet and Laboratory registers and cross- checked it with selected case sheets and found no fabrication or falsity whatsoever in the records as would be apparent from the minutes of the said meeting.

17. Mr.Khemka also contends that during the hearing it was alleged that the Petitioner was not maintaining the Central IPD register and the OPD Dispensing Register. Counsel submits that no such registers are prescribed to be maintained under any rule or regulation of the Respondent Nos. 1 or 2. It is also the case of the petitioner that it has been vaguely alleged that proper follow-up has not been done in case sheets, without specifying as to what follow-up was not done and in which case sheet. Similarly it was alleged that the discharge tickets were not made available, it was explained by the representatives of Petitioner No. 1 College that the discharge tickets are given on the basis of records of the hospital to the outgoing patient, that is why it was not in the records of Petitioner No. 1,

however all the record on the basis of which Discharge Tickets are given, was available in the hospital and were produced before the Hearing Committee. It is submitted that there is no legal obligation upon the Petitioner No. 1 for maintaining a copy of the Discharge Tickets in addition to the original data. All records except one register containing the X-Ray Records were produced. The said X-ray record could not be produced on the said date as the representative of the Petitioner No. 1 had not brought the same by mistake. It is submitted that the records produced by the representatives of the Petitioner No.1 before the hearing committee were so voluminous that they had to be brought in 3 Toyota Innova vans.

18. As far as the allegation that the number of patients recorded in the Central OPD Register and the Departmental OPD Register do not tally it is clarified that Central OPD Register and the Departmental OPD Register are bound to have different figures for the reason that when the patients approach the Petitioner No. 1 Hospital, they first go to the reception where the Central OPD Register is maintained and on the basis of their primary complaints entry is made in the Central OPD Register and thereafter the patient is directed to a particular department. It is clarified that number of patients do not actually go to the concerned Department due to various reasons including a long wait or change of mind. It is submitted that both the Central OPD Register and the Departmental OPD Register were made available to the inspectors as well as the Hearing Committee. On the basis of the calculations made from the figures of the Central OPD Register, the average figure of patients per day in OPD comes out to be 154 patients per day and if the same is calculated on the basis of the Departmental OPD Register, it is 144 patients per day. The minimum requirement as under the policy statement dated 18.03.2010 of the Respondent No. 1 was 100 patients. It is submitted that at no stage the

Petitioners concealed any records from the Inspectors or Hearing Committee. In fact the marginal differences in Central & Departmental Records show the genuineness of the data.

19. With regard to 2nd objection of not having required non-teaching staff in Shalya Tantra, the details of the staff along with their respective appointment letters, joining reports, educational certificates, copy of the attendance register and the salary register were produced before the hearing Committee and the hearing committee was fully satisfied with regard to the same.
20. That similarly the deficiencies pointed out about college not having non Clinical Registrar was also explained satisfactorily during the said hearing and the committee was fully satisfied.
21. Mr.Khemka submits that on 14.07.2011 the Petitioner No. 1 College also submitted copies of the X-Ray register, the Gynecology Department Register, the delivery Register, Piles (Chhar Sutra) Operation Register and the Central IPD Register to the hearing committee, however, the X-Ray Register was not brought inadvertently, whereas the rest of the registers were produced on the date of the hearing i.e. 13.07.2011, but as the hearing was concluded by 9:00 PM therefore they could not get the same photocopied.
22. Counsel for the petitioner next submits that after the hearing was concluded efforts were made to find out the outcome of the hearing as the representatives of the petitioners were assured by the hearing committee that they were fully satisfied with the records produced and they would submit their report on 15.07.2011 to the Department of AYUSH of the Respondent No. 1. However no communication was received by the Petitioner No. 1 from the Respondent No. 1 and therefore after 40 days the Chairman of the Petitioner No. 1 personally met the Secretary & Joint

Secretary of the Respondent No. 1 on 26.08.2011, who called for the records and checked the same, however, he was surprised to see that there were two divergent reports, both dated 15.07.2011 and signed by the same members of the hearing committee, submitted by the hearing committee on record. In one report the Hearing Committee had decided that the Petitioner No. 1 College has a functional OPD and IPD, 3 staff members were available in the Department of Shalya Tantra & Clinical Registrar was available in the IPD of the Petitioner No. 1 College whereas in the other report the Hearing Committee had decided that the Petitioner No. 1 College did not have a functional OPD & IPD. At the request of the Chairman of the Petitioner, the officials handed over copies of the two contradictory reports of the same date i.e. 15.07.2011 to the petitioner.

23. It is also the case of the petitioner that when the Chairman of the Petitioner No. 1 College did not receive any communication as assured by the Ld. Joint Secretary, the Chairman of the Petitioner No. 1 College on 01.09.2011 again went to the office of the Ld. Joint Secretary. It was then, when the Ld. Joint Secretary pointed out that there are certain differences in the number of the patients in the register of the Departmental OPD and Central OPD, after which the Chairman of the Petitioner explained that the data was taken from the Central OPD Register by the Petitioners and the comparison was made by the Inspectors later on with the Department OPD Register. It is submitted that if the data was taken from the Central Register no difference would have been found. Therefore Chairman of the Petitioner No. 1 also made a representation to the Secretary, Department of AYUSH of Respondent No.1, explaining the difference of numbers in the Central OPD Register figures and also making the complaint about the delay.

24. On 05.09.2011 another representation was made by the representatives of

the Petitioner No. 1 to the Minister of Health of the Respondent No. 1. Mr.Khemka submits that however none of the representations or personal meeting had any positive results.

25. It is next submitted that a huge amount of money has been spent by Petitioner No. 1 for the establishment of the institution in a totally under developed area not only providing quality education to students but also providing affordable health services with the help of traditional medicine system for the benefit of the poor population of the area.
26. It is submitted that the present market value of the land on which the Medical College and Hospital, Petitioner No. 1, is established is approximately Rs 25 Crores and the Petitioners have already made a capital expenditure of more than Rs. 10 Crores on the establishment of the College and Hospital and facilities. It is also submitted that it is customary with the Respondent No. 1 to grant permission to all Colleges to admit students whenever certain minor deficiencies are found giving such an Institution time for making up the deficiencies. In support of the above submission Mr.Khemka has pointed out that in fact in the year 2011-2012 permission to five ayurvedic colleges in different states were granted permission by the Respondent No. 1 on the report of the Hearing Committee, although the same colleges were not recommended by the Respondent No. 2, who found a number of deficiencies while inspecting the same. The names of those colleges are Govindbahi Jorabhai Patel Ayurvedic College, District Anand, Gujarat; Seth Govindji Roaji Ayurvedic Mahavidyalaya, Sholapur, Maharashtra; SRM Government Ayurvedic College, Bareilly, U.P.; Government Ayurvedic Medical College, Lucknow, U.P. & Institution of PG Ayurvedic Education & Research, Kolkata, West Bengal.
27. Mr.Khemka also submits that the petitioner has already made payment of

Rs.3,50,000/- to the Association of Private Ayurvedic/Unani & Homeopathic Medical College and Rs. 50,000 to the Government of Uttar Pradesh towards their respective common entrance examinations. The said association conducting common entrance examination has brought out Information Brochure and Application Form for BAMS/MD/MS Courses.

28. It is also the case of the petitioner that the method of selection with the Petitioner No. 1 is by 3 modes, one by the Combine Pre-Medical Test conducted by the State Government, the other is through a combined entrance test conducted by the Association of Ayurvedic and Homeopathic Colleges and the third mode is by the nomination by the EdCIL (India) Limited, a government of India Enterprise of NRI students. It is submitted that the counseling of both tests is over and the prospective students are waiting and even the EdCIL (India) Limited is calling upon the Petitioner No. 1 to inform about the admission of 3 Nepalese Nationals sponsored by the Ministry of External Affairs, Government of India into Undergraduate Courses in Traditional System of Medicines (AYUSH) for the academic year 2011-12 – BAMS to the Petitioner No. 1 College.
29. It is submitted that Petitioner No. 1 College with bonafide belief, believed that as it has already been granted unconditional permission for opening 2 new PG courses and to increase the seats in the BAMS course to 75 with effect from the academic session 2010-11 under the provisions of Section 13A of the Indian Medicine Central Council Act, 1970, vide letter dated 02.12.2010.
30. Mr.Khemka next submits that otherwise also the Petitioner No. 1 College had not received any communication from the Respondent No. 1 regarding the decision of the Respondent No. 1 upon the report of the

hearing committee. It is submitted that even otherwise all admissions were required to be made before 30.10.2011 as prescribed by the Hon'ble Supreme Court of India., The Petitioner No. 1 College has already granted admission to the students who had cleared the requisite entrance examinations and also to those foreign students who are financed by the Central Government, as their future and career would have otherwise been ruined.

31. It is also submitted that on 31.10.2011 at around 2:30 PM, when the whole admission process had already been completed, the Petitioner No. 1 College received an order of the Respondent No. 1 not granting permission to the Petitioner No. 1 College for granting admission in the 2 PG courses and 75 seats in the BAMS for the academic session 2011-12.
32. It is submitted that in Para 5 of the order dated 18.10.2011 there are a number of allegations as mentioned in paragraphs (i), (ii), (iii), (v), (vi), (vii),(ix), (x), (xi), (xii), which were never even communicated to the Petitioner No. 1 College even in the show cause notice dated 05.07.2011. It is submitted that the Petitioner No. 1 College did not even get an opportunity to present its case in relation to the above mentioned allegations. Thus the order is likely to be set aside on this ground alone.
33. Mr.Khemka also contends that the contents of the Para 7 of the said order are totally self contradictory, contradictory to the minutes of the meeting held on 13.07.2011 and the first report dated 15.07.2011 of the hearing committee which decided that the Petitioner No. 1 College has a functional OPD & IPD. In fact the self contradictions are so blatant that on Page No. 5 of said order in Column 3 at the end of Row 2 reads "From the above point of view, it seems that the OPD & IPD of the said college are functional" whereas on Page No. 6 of said order in Column 3 at the end of Row 3 reads that "it may be concluded that the college is not

having functional OPD and IPD, 3 staffs are available in the Department of Shalya Tantra & Clinical Registrars are available in the IPD of the College.”

34. The arguments of counsel for the petitioner can thus be summarized as under:

- (i) That the order dated 18.10.2011 is totally arbitrary, without application of mind, contrary to the material placed on record and in violation of the principles of natural justice.
- (ii) The order dated 18.10.2011 is unreliable and contrary to the permission already granted to the petitioner college on 2.12.2010 and there was no occasion for the respondents to re-examine the question of grant of permission.
- (iii) The report of the hearing committee is contrary and the committee has failed to take a reasonable approach in the matter pertaining to the discrepancy in the Department, OPD and the Central OPD register in spite of plausible explanation rendered and the documents placed on record were not considered in the right prospective.
- (iv) There is no deficiency in the minimum standards required either in respect of the teaching staff, documentation, maintenance of records and, thus, the hospital of the petitioner is fully functional with OPD and IPD patients.
- (v) The hearing committee itself had given a positive report and after the filing of the report the same could not have been changed.
- (vi) The students were admitted prior to the order of cancellation as the order of cancellation was received only on 31.10.2011 by which time the students have already been admitted.

35. The mere fact that two divergent reports were prepared on the same day by the same expert itself creates a doubt on the final report.
36. Mr.Jatan Singh, learned counsel for respondent no.1, submits that the petitioner was not granted permission for admission on account of the fact that the inspection conducted by the Central Council of Indian Medicine reveal that the college did not maintain various records and the details provided were false and fabricated. The college did not have the required teaching staff in the Department of Shalya Tantra and the college did not have any clinical register as against the requirement of two clinical registers for the two existing clinical PG courses. These deficiencies were communicated to the petitioners and an opportunity of hearing was granted before the designated hearing committee. During the hearing the college produced the following documents.

- (i) Central OPD Register;
- (ii) Departmental OPD Registers;
- (iii) IPD Departmental Register;
- (iv) Attendance Register of the doctors;
- (v) Attendance Register hospital staff;
- (vi) Nursing duty Register;
- (vii) IPD medicine dispensing;
- (viii) IPD medicine indent Registers;
- (ix) IPD Diet Registers;
- (x) Laboratory Register; Normal Delivery Register;
- (xi) Cesarean Section Register and
- (xii) Surgery Register.

37. Mr.Jatan Singh submits that the hearing committee checked all the documents and verified the same with the originals. The hearing committee also randomly checked departmental IPD/OPD registers, pathology register and diet register. Such checking revealed that case sheets had not been properly filled up. Although, the consent forms with

signature thumb impression of the patients existed but properly follow up was not done in the case sheets. The checking of month-wise bed days of patients of each department of IPD was done. The committee observed major variation between the data of CCIM and the data produced by the College in the case of the department of Shalya, Shalakya and Panchakarma. In the department of Shalya, for the month of July, Shalakya for the month of May, Panchakarma for the month of January, the total number of patients in OPD as per the original registers were 879, 677 and 298, whereas the number of patients as per the list submitted by the college to the CCIM were 914, 884 and 368 respectively.

38. Mr.Jatan Singh submits that it is the case of respondent no.1 that the hearing committee has come to a definite conclusion that the college does not fulfill the eligibility condition of having a genuinely functional Ayurvedic hospital with the requisite number of patients in the OPD and the bed occupancy in the IPD of the attached teaching hospital. It is further contended that the factual aspect of the matter cannot be adjudicated upon by this Court. It is further the case of respondent no.1 that having regard to the above circumstances the Central Government decided to restrain the petitioner college from making fresh admissions to the BAMS course with 75 seats and in 2 PG courses for the academic session 2011-2013.
39. Mr.Jatan Singh submits that the IMCC Act as amended in 2003 sub-section(8) of section 13A requires the Central Council while making recommendations and the Central Government while passing an order or approval or disapproval shall have due regard to the relevant factors namely (a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical

education as prescribed by the Central Council under section 22; (b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources; (c) whether necessary facilities in respect of staff, equipment, accommodation, training, hospital or other facilities to ensure proper functioning of the medical college or for conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme; (d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or the increased admission capacity have been provided within the time-limit specified in the scheme; (e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or the course of study or training by persons having recognized medical qualifications; (f) the requirement of manpower in the field of practice of Indian Medicine in the medical college; (g) any other factor as may be prescribed. It is also submitted by Mr. Jatan Singh that a medical college is duty bound to ensure, at all times, that the college conforms to the requirements of the Act, the regulations there under and the CCIM norms.

40. Mr. Jatan Singh also submits that undisputedly the petitioner Sri Sai Ayurvedic Medical College and Hospital, Aligarh is an existing college as defined in section 13C of the IMCC Act, 1970. The petitioner college had, in compliance with the provisions of section 13C of the IMCC Act, submitted an application dated 3.11.2006 for requisite permission for undertaking BAMS course (UG in Ayurveda with intake capacity of 50 seats). The application was taken up for consideration, as per the

procedure. The petitioner college, like others who had applied for the permission under section 13C of the IMCC Act, was given conditional permission for the academic year 2007-08 by way of common order dated 1st May, 2007 of the Department of AYUSH. Subsequently, the college was inspected by the CCIM on 1st April, 2008. The CCIM recommended grant of permission to the petitioner college. The Central Government in the Ministry of Health & Family Welfare granted conditional permission to the college for the academic year 2008-09. In pursuance of the aforesaid conditional permission for 2008-09 and the provisions of sections 19 and 20 of the IMCC Act, the Central Council of Indian Medicine visited the petitioner college for the purposes of the academic year 2009-10. The Central Government after consideration of the report and recommendations of the Central Council of Indian Medicine and following the due process granted conditional permission for the academic year 2009-10 vide letter No.R-17011/203/2009-EP dated 28.5.2009 of the Department of AYUSH. The petitioner college had been clearly informed that it was required to appoint the full complement of teaching staff as per norms of the CCIM. The Central Council of Indian Medicine thereafter visited the petitioner college on 17th and 18th January, 2010 for the purpose of re-assessing the infrastructure for the purposes of conducting BAMS course for the academic year 2010-11. The Central Government after considering the report and recommendation of the Central Council of Indian Medicine again granted conditional permission to the petitioner college for effecting admission to BAMS course in 2010-11 vide letter No.R-17011/203/2009-EP dated 18.8.2010 of the Department of AYUSH. The aforesaid conditional permission clearly stipulated that the college was required to rectify the deficiencies by the end of December, 2010. In terms of the conditional permission, the

petitioner college was required to appoint the full complement of teachers including required number of higher faculty in various teaching departments as per norms of the CCIM for UG course. The petitioner college was also granted permission with conditions for opening two new post-graduate courses namely, (1) Prasuti Tantra & Streeroga with four seats and (2) Shalya Tantra with four seats and to increase the intake capacity from 50 to 75 seats in UG course(BAMS course) from the academic year 2010-11 vide letter No.R-14011/24/2009-EP dated 2.12.2010 of the Department of AYUSH. The Central Council of Indian Medicine visited the petitioner college on 2nd-3rd May, 2011 to assess the availability of the facilities of teaching and practical training for conducting UG and PG courses . The CCIM at the level of its Executive Committee considered the report of the visitation and recommended to the Central Government for not granting permission for UG and PG courses for the session 2011-12.

41. Counsel for respondent no.1 further submits that on examination of the report and recommendations of the CCIM, it was observed that the college was suffering from serious deficiencies and was not fulfilling the basic eligibility conditions. The deficiencies observed were communicated to the petitioner college and the college was given an opportunity of personal hearing on 13.7.2011 in the Ministry of Health & Family Welfare(Department of AYUSH) vide letter dated 5.7.2011. The college was represented by Shri Rakesh Gupta, Chairman and Dr.K.P.Sharma, Principal, who attended the hearing and made submissions before the hearing committee. After consideration of all aspects including the recommendations of the Central Council of Indian Medicine and the submissions of the petitioner college made during the personal hearing held on 13.7.2011, the Central Government in the

Ministry of Health & Family Welfare decided not to grant permission to the petitioner college for taking admission to the BAMS course with intake capacity of 75 and to the two post-graduate courses namely, Prasuti & Striroga and Shalya Tantra with 4 seats in each subject in the academic year 2011-12. The petitioner college has been informed that time was allowed upto 31.12.2011 to rectify the deficiencies so that the CCIM can carry inspection during January-February,2012 for consideration of the matter of granting permission for admission during the academic year 2012-13.

42. The main thrust of the arguments of learned counsel for the respondent no.1 is that the petitioner college does not have a genuinely functional attached teaching hospital with requisite clinical material in terms of patients in the OPD and IPD and therefore, could not be allowed to make fresh admission of students.
43. It has also been clarified by counsel for respondent no.1 that there was no change of mind of the Hearing Committee, the Hearing Committee clarified that initially, it had prepared a Draft Report proposing to recommend the case of the college. However, the Draft Report was discussed among the Hearing Committee Members and on observing deficiencies, the Hearing Committee decided not to recommend the case, and accordingly, prepared the final report not recommending the case of the petitioner, college, and submitted it to the Department for further processing. And the previous Hearing Note, as prepared by them was also placed by the hearing committee in the file for record. After this clarification of the Hearing Committee, the case was processed for decision of the Central Government and it was decided not to grant permission to the Petitioner College for the Academic Year 2011-12.
44. In response to the submission made by Mr.Khemka that the order dated

18.10.2011 mentioned 12 shortcomings whereas the show cause notice only detailed three deficiencies, Mr.Jatan Singh has not disputed the same, however, he submits that the final order dated 18.10.2011 mentioned as many as 12 items of shortcomings and deficiencies in the petitioners college as against only three items of deficiencies mentioned in the show cause notice dated 5.7.2011. The Answering Respondent submits that the decision of denial of permission to the petitioner college for the academic year 2011-12 was based on the non-availability of a genuine functional Ayurvedic hospital with requisite clinical material in terms of patients in the OPD and IPD, which violated the provisions of IMCC Act and the relevant regulations of the CCIM. The show cause notice clearly indicated that the examination of the visitation report of the CCIM indicated deficiencies namely, (1) The college authorities did not maintain the various records and did not provide the details of the OPD, IPD documentation and therefore, it appeared that the college did not have a genuinely functional Ayurvedic hospital with required OPD, IPD patients. Further, the visitors had found the OPD and IPD data as false and fabricated; (2) The college did not have the required non-teaching staff in the department of Shalya Tantra and (3) The college did not have any clinical registrar as against the requirement of two clinical registrars for two existing clinical PG courses. The college had full opportunity of presenting its case before the hearing committee and in fact, the hearing committee accepted the claim of the petitioner college that the requirement of the clinical registrar have since been met.

45. Mr.Joseph, learned counsel for respondent no.2, submits has supported the case of respondent no.1. Mr.Joseph submits that no institution should be permitted to run an Ayurvedic college with sub-standard infrastructure. Since the lack of infrastructure and allied resources for imparting

minimum standards of education and to admit students would frustrate the very basic legislative intent in introducing Sections 13A to 13C of the Indian Medical Council Act, 1970.

46. I have heard learned counsel for the parties and given my thoughtful consideration to the matter. Petitioner no.2 has established an Ayurvedic Hospital and subsequently a Medical College at Aligarh, Uttar Pradesh, in the year 2002. Initially approval/permission was granted by the respondents for admitting 50 students in the BAMS course in the year 2002. Thereafter permission was granted to the petitioner no.1 institution every year on conditional basis since the year 2002. In the year 2009-2010 the petitioner applied for establishing and opening of a new PG course in two subjects of Ayurveda viz. Prasuti Tantra and Striroga, and Shalya Tantra and to increase the admission capacity of existing BAMS course from 50 to 75. Pursuant to the inspections carried out in this regard by respondent no.2 and on consideration of the recommendations of respondent no.2 unconditional approval was granted by respondent no.1 for opening new PG courses in two subjects. Permission was also granted to increase the seats in BAMS course to 75 from the academic session 2010-2011.
47. On 2.5.2011 and 3.5.2011 a *suo moto* inspection was carried out by the Inspectors of petitioner no.1 college and hospital for granting permission to admit students for the academic session 2011-2012. Pursuant to the inspection, which was carried out, deficiencies found at the time of inspection were pointed out. Petitioner no.1 was called upon to present all the records and documents before a Hearing Committee constituted by respondent no.1 for the said purpose.
48. The first submission of learned counsel for the petitioner is that the show cause notice is vague and lacks material particulars and the deficiencies

pointed out were baseless. It is also strongly urged before this Court that only a few months prior in the month of December, 2010, the petitioner no.1 college was found to be complying with all the requirements and standards, and on the basis of the material placed before the respondents permissions to increase the seats in the existing BAMS course as well as to start two new PG courses were granted.

49. It is also the case of the petitioners that in response to the show cause notice the petitioner no.1 through its Principal and Chairman appeared before the Hearing Committee along with the relevant records on 13.7.2011. Explanation to the satisfaction of the Hearing Committee was rendered on the basis of the record, which was presented on 13.7.2011. Further documents were submitted on the following day as well.
50. Learned counsel for the petitioners submits that after the hearing was concluded the Chairman of the petitioner no.1 repeatedly made enquiries with respondent no.1 in order to ascertain the outcome of the hearing. The inquiries revealed that the Committee was duly satisfied with the explanation rendered and the records produced. Learned counsel further submits that the report of the Hearing Committee, which is sought to be relied upon by respondent no.1 and which form the basis of the order dated 18.2.2011, according to which respondent no.1 rejected the permission to the petitioner for taking admission to the BAMS course with 75 seats and 2 PG courses for the academic year 2011-2012, is unreliable.
51. Attention of the Court is invited to the two almost identical reports of the Hearing Committee both dated 15.7.2011, which were duly signed by Dr.Abdul Rehman and Dr.I. Ghosh Mondal. While in one of the reports the overall decision of the Hearing Committee has concluded that the college has a fully functional OPD and IPD, in another report of the same

day signed by the same persons, the overall decision is that petitioner no.1, college does not have a functional OPD and IPD.

52. Respondent no.1 has relied upon the report, which has held that the college does not have a functional OPD and has passed a detailed order. It is also the case of the petitioner that the detailed order, which has been passed, has taken into consideration the deficiencies communicated on 15.7.2011, the submissions made by the college on 13.7.2011, the observations of the Hearing Committee and the remarks. It is also submitted that the submissions made on behalf of petitioner no.1 college clearly establish that none of the deficiencies, as pointed out, exist in the college and the hospital, and in fact even the observations of the Hearing Committee supports the case of the petitioners.
53. In the light of these submissions, learned counsel for the petitioners has submitted that initially he had prayed that the impugned order dated 18.10.2011, which was delivered to the petitioner on 31.10.2011, be set aside, but on instructions he has submitted that it would be in the fitness of things that the matter may be remanded back to the Hearing Committee for re-hearing in the matter.
54. Petitioner no.1 has been running the college and medical hospital since the year 2002 barring the permission which was declined to the college for the academic session 2011 and 2012. Permission has been granted to Petitioner no.1 for the next academic session as well. The show cause notice dated 5.7.2011 was issued to the petitioners based on a surprise inspection conducted on 2.5.2011 and 3.5.2011. The relevant portion of the show cause notice reads as under:

“2. On examining the same in terms of the provisions under the IMCC Act and relevant regulations and approved norms of the CCIM, it is observed that the college is not fulfilling the basic

eligibility conditions as under:

- (i) On perusal of the visitation report as submitted by the CCIM, it is observed that the college authorities have not maintained the various records and not provided the details of OPD/IPD documentation and accordingly it appears that the college does not have the genuinely functional Ayurvedic hospital with required OPD and IPD patients. Further visitor has found the OPD & IPD data as false and fabricated.
- (ii) It has been observed from the inspection report the college is not having the required non-teaching staff in the department of Shalya Tantra.
- (iii) The college is not having any clinical Register against the requirement of two clinical Registers for two existing (clinical) PG courses i.e. Parsuti-stiroga (04 seats) and Shalya Tantra (04 seats).

55. A bare perusal of the show cause notice shows that the petitioner was informed that the college authorities have not maintained various records, has not provided details of OPD/IPD documentation and petitioners were informed that the college does not have a genuinely functional Ayurvedic hospital with required OPD and IPD patients besides other deficiencies. The show cause notice has failed to clearly point out as to which record has not been maintained and to that extent the show cause notice is vague for as to say that various records are not maintained would make difficult for a person to answer to the show cause notice.
56. Be that as it may, the petitioner was called upon to produce the various documents which were detailed in the show cause notice. With respect to the first deficiency pointed out in the show cause notice relevant documents were produced by the college on 13.7.2011.
57. The order dated 18.10.2011 is a detailed and comprehensive order and in paragraph 7 four columns have been made (i) Deficiencies communicated on 5.7.2011; (ii) Submissions made by the College on

13.7.2011; (iii) Observations made by the Hearing Committee; and (iv) Remarks.

58. The detailed analysis in the order brings out the factual position with regard to the maintenance of records, number of patients and the deficiencies. Carefully going through this analysis and more particularly the observations of the Hearing Committee would show that as many as 13 registers were produced by the petitioner, which were checked and verified with the originals. The Hearing Committee has also observed that case-sheet of each department was randomly checked with the Department IPD register, OPD register, pathology register and Diet register. It has further been observed that case-sheets have not been filled up, although consent forms with signatures / thumb impressions of the patient were there, but the proper follow up was not done in the case-sheet. *Prima facie*, in my view this is an irregularity, as it has not been observed that the case-sheets were not genuine. The Hearing Committee has also observed that month-wise bed days of patients of each department in IPD was checked and calculated. It has been observed that “the figure has been compared with the data provided by the CCIM. It seems that the majority of the data matched with the data of CCIM, only some minor variations were there in some departments, which is negligible.” Thereafter as per the observations of the Hearing Committee, there were major variance in the OPD Department, as some discrepancies have been pointed out. Even assuming the deficiencies are correct, even then the number of patients as per the observations of the Hearing Committee are far more than required, as per the eligibility criteria.
59. The Hearing Committee also observed that in the OPD Register 879 patients were shown. The numbers of patients shown in the month of January in the original number were 879, 677 and 298 whereas the

patients as per the list submitted by the college to the CCIM were 914, 884 and 368, respectively. The concluding portion, however, reads that “*from the above point of view it seems that the OPD and IPD of the said college are functional*”.

60. Taking into consideration that a large number of patients are attending the OPD, as observed by the Hearing Committee, *prima facie* does not appear to match with the final observations of the Hearing Committee that the college does not have a genuinely functional Ayurvedic hospital. The reports of 15.7.2011 of the Hearing Committee duly signed by Dr.Abdul Rehman and Dr.I. Ghosh Mondal have been placed on record. Perusal of both the reports do not support the submissions of Mr.Jatan Singh that one of the reports was a draft report, as the report does not suggest that it is a draft report.
61. Both the reports have considered identical material on record and the mere fact that they have arrived at a diametrically opposite decision on the same day requires that the matter be remanded back to the Hearing Committee. Impugned order dated 18.10.2011 is set aside. The Hearing Committee shall re-consider the matter, granting one opportunity to the petitioner to explain its stand. An additional affidavit has been filed by the petitioner to show that the impugned order dated 18.10.2011 was received on 31.10.2011 at around 2:30 and in the absence of any order, students were admitted. It is made clear that the Hearing Committee will also take this factor into consideration at the time of passing of the order.
62. The writ petition and the application are disposed of, in above terms.

G.S.SISTANI, J

FEBRUARY 06, 2013 msr/ssn