

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

RP.No. 807 of 2014 () IN WA.1890/2013

AGAINST THE JUDGMENT IN WA 1890/2013 of HIGH COURT OF KERALA
DATED 03-06-2014

REVIEW PETITIONER(S)/APPELLANT :-

UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF HEALTH & FAMILY WELFARE
DEPARTMENT OF AYUSH, AYUSH BHAWAN, B-BLOCK
GPO COMPLEX, INA, NEW DELHI-110 023.

BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

RESPONDENT(S)/RESPONDENTS :-

1. P.N.PANICKER SOUHRUDA AYURVEDA MEDICAL COLLEGE,
PARAKKALAI, KANHANGAD, KASARAGOD DISTRICT, PIN-671 531
REPRESENTED BY ITS CHAIRMAN K.P.KUNHIKANNAN.
2. THE CENTRAL COUNCIL OF INDIAN MEDICINE,
61-65 INSTITUTIONAL AREA, JANAKPURI, NEW DELHI-110 058.
3. STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT
DEPARTMENT OF HEALTH & FAMILY WELFARE
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
4. THE COMMISSIONER OF ENTRANCE EXAMINATIONS,
THIRUVANANTHAPURAM-695 001.
5. KERALA UNIVERSITY OF HEALTH SCIENCES,
MULAMKUNNATHKAVU, MEDICAL COLLEGE.P.O
TRICHUR DISTRICT, REPRESENTED BY THE REGISTRAR.

BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS
BY ADV. SRI.P.SREEKUMAR
BY ADV. SRI.GEORGE POONTHOTTAM

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 20-03-2015,
ALONG WITH RP. 819/2014 & RP. 820/2014, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

**ASHOK BHUSHAN, Ag. C.J &
P.R. RAMACHANDRA MENON, J.**

**R.P. No.807 of 2014 in W.A. No.1890 of 2013,
R.P. No.819 of 2014 in W.A. No.16 of 2014
and
R.P. No.820 of 2014 in W.A. No.513 of 2014**

Dated this the 20th day of March 2015

O R D E R

Ramachandra Menon, J.

These review petitions have been filed by the Union of India mainly contending that when the verdict was passed by the Bench of this Court dismissing the concerned writ appeals on 3.6.2014, the correct factual position with regard to the issue was not brought to the notice of this Court and the submission was made by the then learned ASG, without getting concurrence of the Ayush Department. The sequence of events is as follows :-

The admission of students by the concerned College for the particular year in respect of the course 'BAMS' was the subject matter for consideration in the writ petitions. When action was taken by the concerned respondents against the College, it was sought to be challenged by filing the said cases. After hearing the matter, a common judgment was passed on

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11.3.2013. The contentions raised from the part of the respondents, particularly with reference to the inadequacies in the concerned colleges were taken note of in paragraph 4 of the judgment and elsewhere. As per the insinuation for the shortcomings referred to in paragraph 4 (with reference to W.P.(C) No.24512 of 2011), the main defect pointed out was that there were only 16 eligible teachers, as against the minimum requirement of 32 eligible teachers. Only 7 higher faculties were there, as against the minimum requirement of 10 higher faculties. So also, there was not even a single teacher in the department of 'Prasuti Tantra', 'Kaumarbhritya', 'Kayachikitsa', 'Shalya', 'Shalakya' and 'Panchkarma'. After considering the facts and figures, learned Single Judge of this Court observed in paragraph 13 of the judgment that the matter required to be considered afresh, in the light of the then existing position, also considering the situation of the students who were undergoing the said course. It was accordingly, that directions were given as contained in paragraph 15 of the judgment, dealing with each case separately. To the said extent, the impugned proceedings

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were quashed and the first respondent was directed to reconsider the matter after affording an opportunity of hearing to the writ petitioners, who put forth their grievance and in the light of the observations made therein. Being aggrieved by the said verdict, the Union of India approached this Court by filing writ appeals raising various contentions; particularly that the direction contained in the judgment was contrary to the policy of the Central Government and also the mandate of Sec.13A of the IMCC Act and Regulations. When the matter came up for consideration before this Court on 3.6.2014, it was submitted that the direction contained in the verdict passed by the learned Single Judge had already been complied with. It was recording the said submission made by the learned ASG, that the writ appeals were dismissed by this Court as infructuous. It is thereafter, that the Union of India has now come forward by filing the review petitions, stating that, before making the said submission, no instruction had been obtained from the Ayush Department and hence, the matters require to be reconsidered.

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2. Heard Sri.George Poonthottam, the learned counsel appearing for the College/institution in R.P. Nos.819 & 820 of 2014.

3. Learned counsel appearing for the institution points out that the main dispute was with regard to the admission given for the academic year 2009-2010, as raised in W.P.(C) No.30471 of 2009. On finalising the matter by the learned Single Judge, granting relief to the writ petitioner, it was sought to be challenged by the respondents in the W.P.(C) by filing writ appeal, wherein interference was declined. The matter was taken up before the Apex Court by way of SLP, which came to be dismissed on the ground of delay. Thereafter, the matter was considered and permission was given, ratifying the admission given, as per Annexure II order produced along with the counter affidavit dated 17.3.2015 filed by the first respondent in R.P. No.819 of 2014. The learned counsel also points out that permission has been given with regard to subsequent years as well, including 2013-2014 and 2014-2015 as per Annexures III and IV. This being the position, the attempt on the part of the review petitioner, to

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isolate a particular year alone and to deny the benefit, instead of considering the issue on a larger perspective, is only to harass the writ petitioners and more than that the concerned students, who cannot be found fault with under any circumstances.

4. During the course of hearing, Mr.Nagaresh, the present ASG points out that the grievance is more with regard to the observation made by the learned Single Judge in paragraph 13 of the verdict, that the matter required to be considered in the light of the 'present position'. It is pointed out that the matter had to be considered in the light of the availability of the infrastructure with reference to the particular academic year. This Court does not intend to express anything with regard to the said contention, as the scope of review before this Court is very limited. The only point to be looked into is, whether there is any "error apparent on the face of record". It cannot be a case for re-hearing as to the facts and figures or as to the course and events. The writ appeals filed before this Court were dismissed on the basis of the submissions made by the then ASG across the Bar. This

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Court finds that there was 'no error apparent on the face of the record', so as to invoke the power of review. If the review petitioner is aggrieved in any manner, the remedy is something else. It has been alerted by the Apex Court on many an occasion, that the scope of review is not liable to be misconstrued or misunderstood as a substitute for appeal. This Court finds support from the ruling reported in **Smt. Meera Bhanja v. Smt. Nirmala Kumari Choudhury** [AIR 1995 SC 455]. Interference is declined.

Review petitions stand dismissed accordingly.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

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P.A. TO JUDGE