

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

WP(C).No. 20418 of 2012 (B)

PETITIONER(S):

**THE MANAGER,
VAIDYARATNAM AYURVEDA COLLEGE,
OLLUR, TRICHUR.**

**BY ADVS.SRI.KURIAN GEORGE KANNANTHANAM (SR.)
SRI.M.B.PRAJITH**

RESPONDENT(S):

- 1. THE UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
MINISTRY OF HEALTH & FAMILY WELFARE DEPARTMENT,
NEW DELHI-110 001.**
- 2. THE DIRECTOR,
DEPARTMENT OF AYURVEDA, YOGA, NATUROPATHY
UNAMI, SIDDHA & HOMEOPATHY (AYUSH), IRCS BUILDING,
NEW DELHI. -110 058.**
- 3. THE CENTRAL COUNCIL OF INDIAN MEDICINE,
REPRESENTED BY ITS ECRETARY, 61-65,
INSTITUTIONAL AREA, JANAKAPURI, N.DELHI-110 058.**
- 4. THE KERALA UNIVERSITY OF HEALTH SCIENCES,
REPRESENTED BY ITS REGISTRAR, TRICHUR.- 683385.**
- 5. THE COMMISSIONER FOR ENTRANNCE EXAMINATION,
GOVERNMENT OF KERALA , TRIVANDRUM-695001.**

*** ADDL. R6 IMPLEADED**

**R6. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
HEALTH & FAMILY WELFARE DEPARTMENT, GOVERNMENT SECRETARIAT,
TRIVANDRUM.**

ADDL. R6 IS IMPLEADED AS PER ORDER DATED 16/10/2012 IN IA 13377/12.

* ADDL. R7 TO R45 IMPLEADED

- ADDL.R7. BABY.P.U.
AGED 60 YEARS, S/O.ULAHANNAN, PATHUPALAYIL HOUSE,
KARIMPANA.P.O., NORTH PALAKUZHAY, ERNAKULAM -686 662.
- ADDL.R8 SURENDRAN.V.N.,
AGED 60 YEARS, S/O.V.K.NARAYANAN, ANANDA BHAVAN,
AVALUKKUNNU.P.O., ALAPPUZHA, PIN -688 006.
- ADDL.R9. BEENA RAVEENDRAN, AGED 48 YEARS,
D/O. SREEDHARAN.P.C., GANGOTHRI, CHOVVUR.P.O.,
TRICHUR, PIN -680 927.
- ADDL.R10. SARALA SATHYAN, AGED 47 YEARS,
D/O.KUTTAPPAN.T.M., MAUPARAMBIL HOUSE,
PALAZHI.P.O., TRICHUR, PIN -680 301.
- ADDL. R11. CHANDRASEKHARAN NAIR, AGED 60 YEARS,
S/O.RAJAPPA PANICKER, RAJI NIVAS, THIRUVIZHA,
KANICHIKULANGARA.P.O., ALAPPUZHA, PIN -688 544.
- ADDL.R12. BINNY RAPHI, AGED 43 YEARS, D/O.JOHN.Y.V.D.
CHIRAYATH CHELIPARAMBIL, ALAPPUZHA NAGAR.P.O.,
VENDORE, TRICHUR - 680 302.
- ADDL. R13. P.S.SIVARAMAN, AGED 52 YEARS, S/O.P.R.SANKARAN,
PADIKKEL HOUSE, EDATHIRUTHY.P.O., TRICHUR -680 703.
- ADDL.R14. T.KOMALA KUMAR, AGED 51 YEARS, S/O.NARAYANAN NAIR,
KEERTHI, 24/25, KOTTAPPURAM ROAD, TRICHUR - 680 703.
- ADDL.R15. P.S.SASI, AGED 50 YEARS, S/O.SANKARAN, PUTHENPURACKAL
HOUSE, RAMAVARMAPURAM.P.O., NELLIKKAD,
TRICHUR -680 031.
- ADDL.R16. MOHAMMED SHAREEF.K., AGED 50 YEARS, S/O.ABOOBACKER
HAJI, KANJIRAKKATTIL HOUSE, VELLIKUTH.P.O., MANJERI,
MALAPPURAM-676 122.
- ADDL. R17. K.M.IBRAHIM, AGED 52 YEAR, S/O.MAMU, KODENCHERRY
HOUSE, THOTTAPPU, P.O.MARADU, TRISSUR -680 572.
- ADDL. R18. P.A.MOHANAN, AGED 56 YEARS, S/O.ANANTHANKUTTAN,
PANTHIRUPARACHIRAYIL HOUSE, VELOOR.P.O., KOTTAYAM.
- ADDL. R19. K.F.ROYAPPAN, AGED 54 YEARS, S/O.FRANCIS, KALLARACKAL
HOUSE, POYYA.P.O., TRISSUR -680 733.
- ADDL. R20. JOY.T. KANJIRATHINGAL, AGED 52 YEARS, S/O.K.K.THOMAS,
KANJIRATHINGAL HOUSE, FATHIMA NAGAR, CHEVOOR.P.O.,
PIN -680 027.

- ADDL. R21. P.N.NARAYANAN, AGED 48 YEARS, S/O.P.V.NARAYANAN, POYIL MANA, CHEVAYUR.P.O., CALICUT -17.
- ADDL. R22. MEENA SURESH, AGED 48 YEARS, D/O.SIVARAMAN NAIR, CHERAT HOUSE, KUTTANELLUR.P.O., TRISSUR -680 014.
- ADDL. R23. RAMACHANDRAN.P., AGED 49 YEARS, S/O.SANKARAN, PALATHINGAL HOUSE, NELLIKATTIRI.P.O., (VIA), KOTTANAD, PALAKKAD -679 533.
- ADDL. R24. AJIKUMAR.S., AGED 44 YEARS, S/O.SATHYANESAN.S., MUKKAN PALAVILA VEEDU, CHOWARA.P.O., BALARAMAPURAM, TRIVANDRUM.
- ADDL. R25. NISA KAREEM, AGED 41 YEARS, D/O.ALI, KARIYAMPILLY HOUSE, NAYARAMBALAM.P.O., VYPIN, ERNAKULAM -682 509.
- ADDL. R26. SIBLES JAMES, AGED 43 YEARS, D/O.T.R.JOSE, CHALAKKAL HOUSE, VENGANELLUR.P.O., CHELAKKARA -680 586.
- ADDL. R27. SREEJA.P., AGED 40 YEARS, D/O.KRISHNAN NAIR, GOKULAM HOUSE, KAVANNOOR.P.O., AREAKODE, MALAPPURAM -673 639.
- ADDL. R28. C.ABDUL SALAM, AGED 46 YEARS, S/O.K.P.MOHAMMED @ BAVA MUSLIM, CHEKKATH HOUSE, VALAKKULAM.P.O., POKKIPARAMBA, MALAPPURAM -676 508.
- ADDL. R29. VARGHESE.V.O., AGED 52 YEARS, S/O.V.O.OUSEPH, UKKEN HOUSE, VELUTHUR.P.O., KUNNATHANGADI, TRICHUR.
- ADDL. R30. M.SIVADAS, AGED 47 YEARS, S/O.NARAYANAN NAMBOOTHIRI, SIVAKRIPA, NAIR THARA, VADAKKENCHERRY.P.O., PALAKKAD -678 683.
- ADDL. R31. RADHAMANI.P.N., AGED 56 YEARS, D/O.NARAYANAN, KADUVATHEL HOUSE, KOLANI.P.O., THODUPUZHA -685 608.
- ADDL. R32. KRISHNADAS.V.P., AGED 49 YEARS, V.J.P.NAMBOODIRI, VADAKKEDATH MANA, MANNAMPATTA.P.O., PALAKKAD -678 633.
- ADDL. R33. THANKAMANI.C.P., AGED 43 YEARS, D/O.THUPRAN, VETTANATHAYIL HOUSE, CHEMMANNOOR.P.O., (VIA), PUNNAYOORKULAM, TRICHUR-679 561.
- ADDL. R34. C.A.KOCHUPAUL, AGED 50 YEARS, S/O.C.V.ANTONY, GOURDIAN, FRANCIS.M.P., MUTHUPEEDIKA, NEAR COLLEGE, OLLUR, THAIKKATTUSSERY, TRISSUR.
- ADDL. R35. N.V.RAVINDRANATH, AGED 56 YEARS, S/O.E.R.WARRIER,NERUKKAVIL WARRIEM, E.K.V.LANE, N.V.PERUMBILLISSERY.P.O., CHERPU -680 561.
- ADDL. R36. S.MOHAMMED ALI, AGED 51 YEARS, S/O.MOIDEEN HAJI, SARAVATHINGAL HOUSE, PATTIKKAD.P.O., MALAPPURAM -679 325.

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- ADDL. R37. SREEDHARAN.M.V., AGED 52 YEARS, S/O.BHARATHA WARRIER, AISWARYA, MUNDUR.P.O., PALAKKAD.
- ADDL. R38. ABDUL KATHER, AGED 48 YEARS, S/O.MOIDEENKUTTY, PALAKKATT HOUSE, KODINHI.P.O., MALAPPURAM -676 309.
- ADDL. R39. AMBIKA.P., AGED 46 YEARS, D/O.SANKARAN NAIR, PANAVALAPPIL HOUSE, MANNUTHY.P.O., OLLUKKARA - 680 651.
- ADDL. R40. SUNITHA.P.P., AGED 42 YEARS, D/O.PUSHPARAJAN.P.A., KAIPPATTIL HOUSE, PALAZHI.P.O., (VIA0, PUDUKKAD, TRICHUR -680 301.
- ADDL.R41. CHANDRASEKHARAN.R., AGED 46 YEARS, S/O.RAGHAVAN, KOZHODU, THANNIMOODU.P.O., PIN- 695 123.
- ADDL. R42. JOB.P.J., AGED 49 YEARS, S/O.JOSEPH, PUTHENPURACKAL HOUSE, POLETHAI.P.O., ALAPPUZHA- 688 522.
- ADDL.R43. R.SUDHEERKUMAR ROY, AGED 48 YEARS, S/O.N.RAGHAVAN, AMRITHA, OPP.STELLA MARY'S COLLEGE, UDAYAMPEROOR.P.O., ERNAKULAM -682 307.
- ADDL. R44. GIRIJAN.M.G., AGED 53 YEARS, S/O.M.R.GOPALAN VAIDHYAR, MULLACKEL PARAMBU HOUSE, THALORE.P.O., TRISSUR.
- ADDL. R45. SAINUDHEEN.M.Y., AGED 52 YEARS, MELEDATH HOUSE, KORATHIKKARA.P.O., TRISSUR -680 543.

* ADDITIONAL R7 TO R45 ARE IMPEADED AS PER ORDER DATED 13/01/2015 IN IA 8663/14.

R1 & R2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R3 BY ADV. SRI.K.T.THOMAS
R4 BY SRI.P.SREEKUMAR,SC
R5 BY GOVERNMENT PLEADER SRI.RAFEEK.V.K.
ADDL R7- R45 BY ADV. SRI.M.NARENDRA KUMAR
BY ADV. SRI.C.RAMAN
BY ADV. SRI.V.S.ANU MON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

vmr.

APPENDIX

PETITIONERS EXHIBITS

- EXHIBIT P1:** TRUE COPY OF THE ORDER DATED 04/09/1976 OF GENERAL & ACADEMIC 'D' SECTION.
- EXHIBIT P2:** TRUE COPY OF THE ORDER DATED 09/11/1976 OF THE HEALTH (D) DEPARTMENT.
- EXHIBIT P3:** TRUE COPY OF THE ORDER DATED 06/05/1985 OF THE HEALTH 'D' DEPARTMENT.
- EXHIBIT P4:** TRUE COPY OF THE NOTIFICATION DATED 06/10/2006 OF CENTRAL COUNCIL OF INDIAN MEDICINE.
- EXHIBIT P5:** TRUE COPY OF THE CIRCULAR DATED 19/10/2006 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P6:** TRUE COPY OF THE LETTER DATED 09/10/2006 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P7:** TRUE COPY OF THE COVERING LETTER DATED 03/11/2006 ISSUED TO THE 1ST RESPONDENT.
- EXHIBIT P8:** TRUE COPY OF THE APPLICATION FOR PERMISSION TO AN EXISTING AYURVEDA MEDICAL COLLEGE.
- EXHIBIT P9:** TRUE COPY OR 5H3 LETTER DATED 16/05/2007 OF THE 3RD RESPONDENT.
- EXHIBIT P10:** TRUE COPY OF THE ORDER DATED 25/08/2008 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P11:** TRUE COPY OF THE ORDER DATED 29/12/1997 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P12:** TRUE COPY OF THE LETTER DATED 03/08/2006 ISSUED BY THE CENTRAL COUNCIL TO THE CALICUT UNIVERSITY.
- EXHIBIT P13:** TRUE COPY OF THE LETTER DATED 24/06/2009 FROM THE 3RD RESPONDENT.
- EXHIBIT P14:** TRUE COPY OF THE ORDER DATED 12/09/2011 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P15:** TRUE COPY OF THE COMMUNICATION DATED 18/03/2011 TO THE 3RD RESPONDENT.
- EXHIBIT P16:** TRUE COPY OF THE LETTER DATED 27/12/2011 FROM THE 1ST RESPONDENT TO THE 3RD RESPONDENT.

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EXHIBIT P17: TRUE COPY OF THE NOTIFICATION DATED 18/07/2012 OF THE CENTRAL COUNCIL OF INDIAN MEDICINE.

EXHIBIT P18: TRUE COPY OF THE NOTICE DATED 20/04/2012 ISSUED FROM THE 1ST RESPONDENT.

EXHIBIT P19: TRUE COPY OF THE ORDER DATED 30/04/2012 BY THE PRINCIPAL OF THE PETITIONERS COLLEGE.

EXHIBIT P20: TRUE COPY OF THE ORDER DATED 17/10/2011 ISSUED FROM THE 4TH RESPONDENT.

EXHIBIT P21: TRUE COPY OF THE APPLICATION DATED 14/05/2012 BY THE PETITIONER.

EXHIBIT P22: TRUE COPY OF THE ORDER DATED 27/08/2012 BY THE 1ST RESPONDENT.

EXHIBIT P23: TRUE COPY OF THE LETTER DATED 12/04/2005 ISSUED BY THE GOVERNMENT OF INDIA.

EXHIBIT P24: TRUE COPY OF THE ORDER DATED 28/09/2012 ISSUED BY THE KERALA UNIVERSITY OF HEALTH SCIENCES.

RESPONDENTS EXHIBITS:

EXHIBIT R1(A): TRUE COPY OF THE REPORT OF THE HEARING COMMITTEE.

EXHIBIT R1(B): TRUE COPY OF THE LETTER DATED 30/05/2008.

EXHIBIT R1(C): TRUE COPY OF THE LETTER DATED 18/03/2011 ISSUED BY THE DEPARTMENT OF AYUSH.

EXHIBIT R1(D): TRUE COPY OF THE LETTER DATED 29/07/2011 ISSUED BY THE DEPARTMENT OF AYUSH.

EXHIBIT R1(E): TRUE COPY OF THE LETTER NO.R-11011/5/2010-E.P.(IM-1) DATED 21ST MARCH, 2011.

/TRUE COPY/

P.A.TO JUDGE

vmr

A.V.RAMAKRISHNA PILLAI, J

WPC No.20418 of 2012

Dated this the 23rd day of March, 2015

JUDGMENT

The petitioner, who is the Manager of an Aided Ayurveda Medical College, has approached this Court seeking the following reliefs:

- i) to issue a writ of certiorari or other appropriate order or direction to quash Ext.P22;
- ii) to declare that no further permission of respondents 1 to 3 is necessary for the petitioner to effect admission to the petitioner's college for the year 2012-2013 and thereafter;
- iii) to declare that the petitioner is entitled to effect admissions in the petitioner's college without further permission from respondents 1 to 3 and to declare that respondents 1 to 3 are not competent to deny admissions in the petitioner's college as long as the permission granted under section 13(c) of IMCC Act, 1970 is not withdrawn under Section 21 of the Act.
- iv) issue a writ of mandamus or any other appropriate writ, order or direction to direct the 4th respondent to

pass appropriate orders on the petitioner's application for extension of affiliation without insisting on any further permission for admission from respondents 1 to 3.

v) issue a writ of mandamus or any other appropriate writ, order or direction to direct the 5th respondent to allot students to the petitioner's college for 2012-2013 without any permission for admission from respondents 1 to 3.

vi) to permit the petitioner to make admission to the petitioner's college, if the 5th respondent is not in a position to allot students to the seats available in petitioner's college.

2. The petitioner alleges that the college got permission under Section 13C of the Indian Medicines Central Council Act. According to the petitioner, once there is approval, till it is withdrawn under Section 21 of the Act for valid reasons, the petitioner is entitled to proceed with admissions. For last few years, preceding to the filing of this writ petition, the practice of seeking permission of respondents 1 to 3 to effect admissions was followed. Respondents 1 and 2 issued a notice in April 2012 pointing out some

deficiencies in the college. This was on the basis of a *suo motu* visit of the college by CCIM on 24-25.2.2012 to re-assess the available facilities of teaching and practical training as well as to verify the compliance report submitted by the college. It was observed by the inspection team that the college representatives could not bring department wise IPD register at the time of hearing and the hearing committee had randomly selected few case sheets in the month of May 2011 wherein it was found that one Omna Sundaran suffering from Katishula, Janu Shula (O.P.No.12966 and IPD No.101636) was admitted for 32 days only. This was found on cross checking of OPD register and case sheet. It was also observed that in the case sheet, no bed number has been mentioned. No progress has been indicated after treatment of 32 days of the patients in discharge slip. Therefore, it was observed as under:-

“It seems that the case sheet is not genuine”.

3. The petitioner gave an explanation in writing

stating that it was only a typographical inadvertent clerical mistake. The correct position was explained. The petitioner points out that even after so many months, no decision was taken by the authority. On account of this, the respondent university has not accepted affiliation for the year 2012 and the Commissioner of Entrance Examination has not allotted students. It is with this background, the petitioner has approached this Court. Subsequent to the filing of this writ petition, certain events have taken place.

4. When the matter came up for hearing on 18th of October 2012, the learned senior counsel for the petitioner prayed for permission to issue a notification calling for an application from eligible candidates from the list published by the Commissioner for Entrance Examinations, since the last date for admission would be over on 31.10.2012 and there was no scope for allotment by the 5th respondent. Such an arrangement was sought in the

light of the fact that if, ultimately, the writ petition is allowed, the petitioner would be able to make admission during the said year. Without going into the merits of the contentions, as an interim arrangement, the petitioner was permitted to publish the notification calling for applications making it clear in the notification that the same would be subject to the result of this writ petition which is filed challenging the order passed by the Central Government. Ext.P25 is the list prepared from the total number of applications received and Ext.P26 is the true copy of the list of applications prepared excluding the candidates who have got admissions in the various other Ayurveda Colleges. Ext.P27 is the true copy of the list of students in the management quota.

5. In the interim order dated 30th October 2012, this Court observed that the third respondent has recommended permission as far as that year was concerned and in the statement filed before this

Court also it was pointed out that the Central Council has also recommended for permission. The 4th respondent University has granted affiliation to the college for the year 2012-2013. Since the last date of admission would be over by 31.10.2012, the learned senior counsel for the petitioner made a submission before this Court seeking permission for directing the State Government to act through the Director of Medical Education (Ayurveda) to conduct a spot admission for enabling the petitioner to admit students before the cut off date, viz. 31.10.2012. Taking into account the balance of convenience in favour of the petitioner, this Court by the aforesaid interim order directed the additional 6th respondent to see that the spot admission conducted before the cut off date is over for enabling admission of students from Ext.P26 list. As far as the management quota candidates are concerned, the petitioner was permitted to make admissions from Ext.P27 list subject to the further orders to be passed in the writ

petition. It was also observed that after notifying the spot allotment, without insisting for the personal appearance of the candidates, admissions can be proceeded with. Later, by interim order dated 22nd May 2013, this Court directed the second respondent to include the name of the petitioner's college among the colleges to which allotments are to be made for the academic year 2013-2014.

6. Therefore, at present, except for the academic year 2012-2013, the petitioner college had got affiliation to BAMS course from the respondent University. The students, who were admitted to the course strictly in accordance with the rules as per the interim orders of this Court, are continuing their course. The defence pointed out in Ext.P22 is purely technical in nature that it was on the basis of that the respondent University has denied affiliation.

7. On a consideration of the entire materials now placed on record, this Court is of the view that a direction can be given to the respondents to

regularise the admission made pursuant to the interim orders of this Court and grant affiliation to the petitioner's college during the year 2012-2013.

In the result, this writ petition is disposed of directing the respondents to regularise the admission of students in the petitioner's college during the academic year 2012-2013 on the basis of the interim orders of this Court and grant affiliation to BAMS course in the petitioner's college during the year 2012-2013.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

CSS/

true copy

P.S.TO JUDGE