

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 26106 of 2012 (K)

PETITIONER(S):

1. KANNAN.U, S/O UNNIKRISHNAN NAIR,
NAVAMI, ERAMALLOOR P.O, CHERTHALA,
ALAPPUZHA DISTRICT, PIN - 688537.
2. NIDESH.K, S/O LATE A.G. RAJAGOPAL, N.N. NIVAS,
MANITHARA, P.O, AVANOR, THRISSUR - 680 547.
3. SOUMIAMOL P.M, W/O DR. BINALKRISHNA K.B,
KOTHANGATH HOUSE, KOORIKKUZHI P.O,
THRISSUR - 680681.
4. RESHMI.I.S, D/O SASIKUMARAN NAIR,
KULATHINKARA VEEDU, VEETIKAVALA P.O,
KOTTARKKARA, KOLLAM - 691538.
5. VIJESH.K.V, S/O VIJAYAN K.V, KULANGAR HOUSE,
PARAKKATTUKUNNU, THUMPUR P.O,
THRISSUR DISTRICT.
6. RAJASEKHARAN M, S/O LATE MANIYAN.S,
M.S. BHAVAN, THERIVILA PUTHEN VEEDU,
PAYATTUVILA P.O., BALARAMAPURAM, PIN - 695591,
THIRUVANANTHAPURAM.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF HEALTH , GOVT. SECRETARIAT,
THIRUVANANTHAPURAM - 695001.
2. THE DIRECTOR OF MEDICAL EDUCATION,
AROGYA BHAVAN, THIRUVANANTHAPURAM - 695001.
3. THE COMMISSIONER OF ENTRANCE EXAMINATION,
HOUSING BOARD BUILDING, SANTHI NAGAR,
THIRUVANANTHAPURAM - 695001.

WP(C).No. 26106 of 2012 (K)

4. CENTRAL COUNCIL OF INDIA MEDICINE (CCIM),
JAWAHARLAL NEHRU BHARATHIYA CHIKITSA AVAM
HOMOEOPATHY ANUSANDAHN BHAVAN,
61-65 INSTITUTIONAL AREA, JANAKAPURI,
NEW DELHI - 110058.
5. UNION OF INDIA, MINISTRY OF AYUSH,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF AYUSH, ROOM NO 206,
IRCS BUILDING, ANNEX, I RED CORSS ROAD,
CP, NEW DELHI - 110001.
6. THE PRINCIPAL, GOVT. AYURVED COLLEGE,
THIRUVANANTHAPURAM - 695002.

R1 TO R3 BY GOVT. PLEADER SRI.RAFEEK V.K.
R5 BY SRI.N.NAGARESH, ASG OF INDIA
R4 BY ADV. SRI.K.T.THOMAS
ADV. SRI.V.M.KURIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-03-2015, THE COURT ON 27-03-2015 DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S) EXHIBITS:

- EXT. P1: TRUE COPY OF THE PROSPECTUS FOR POST GRADUATE COURSE IN AYURVEDA VACHASPATHI M.D (AY) 2012-2013
- EXT. P2: TRUE COPY OF THE RANK LIST PUBLISHED BY THE RESPONDENTS FOR THE POST GRADUATE COURSE IN AYURVEDA VACHASPATHI M.D (AY) 2012-2013
- EXT. P3: TRUE COPY OF THE CATEGORY-WISE LIST FOR THE POST GRADUATE COURSE IN AYURVEDA VACHASPATHI M.D (SY) 2012-2013.
- EXT. P4: TRUE COPY OF THE NOTIFICATION FOR COUNSELING ISSUED BY THE RESPONDENTS
- EXT. P5: TRUE COPY OF THE NOTIFICATION BEARING NO.2626/MDA/2012TA4/CEE DATED 13.9.2012.
- EXT. P6: TRUE COPY OF THE ORDER DATED 8.10.2012 IN CIVIL WRIT JURISDICTION CASE NO.16355 OF 2012.
- EXT. P7: TRUE COPY OF THE LETTER DATED 2.11.2012.
- EXT. P8: TRUE COPY OF THE LETTER DATED 7.11.2012.
- EXT. P9: TRUE COPY OF THE LETTER DATED 3.11.2012.
- EXT. P10: TRUE COPY OF G.O.(MS)NO.400/2012 DATED 28.11.2012.
- EXT. P11: TRUE COPY OF THE ORDER DATED 16.5.2012.
- EXT. P12: TRUE COPY OF THE LETTER DATED 20.10.2012.
- EXT. P13: TRUE COPY OF THE LETTER DATED 7.10.2012.
- EXT. P14: TRUE COPY OF THE ORDER DATED 5.12.2012.
- EXT. P15: TRUE COPY OF THE LETTER DATED 5.12.2012 SUBMITTED BY THE 6TH RESPONDENT BEFORE THE 5TH RESPONDENT.

RESPONDENTS' EXHIBITS & ANNEXURES:

- ANNEXURE R4(A) : TRUE COPY OF LETTER DATED 27.12.2011.
- ANNEXURE R4(B) : TRUE COPY OF THE RECOMMENDATION LETTER DATED 30.3.2012 ISSUED BY CCIM FOR THE SESSION 2012-13.

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ANNEXURE R4(C) : TRUE COPY OF THE ORDER DATED 13.8.2012 PASSED BY THE GOVERNMENT OF INDIA DATED 13.8.2012.

ANNEXURE R4(D) : TRUE COPY OF THE ORDER DATED 23.11.2012 PASSED BY THE APEX COURT IN S.L.P(C)NO.31892/2012 AND CONNECTED CASES.

EXT. R5(A): TRUE COPY OF THE DENIAL ORDER NO.R.17011/95/2012-EP (IM-1) DATED 13.8.2012.

EXT. R5(B): TRUE COPY OF THE LETTER NO.R.11011/1/2007-EP DATED 1.5.2007.

EXT. R5(C): TRUE COPY OF THE LETTER NO.R.11011/1/2007-EP DATED 30.5.2008.

EXT. R5(D): TRUE COPY OF THE LETTER NO.R.11011/5/2010-EP DATED 18.3.2011.

EXT. R5(E): TRUE COPY OF THE LETTER NO.R.1011/5/2010-EP DATED 29.7.2011.

EXT. R5(F): TRUE COPY OF THE LETTER NO.R.11011/5/2010-EP (IM-1)DATED 21.3.2011.

EXT. R5(G): TRUE COPY OF THE ORDER DATED 1.2.2012 IN SLP(C) NO.28689/2011 OF THE HON'BLE SUPREME COURT.

/TRUE COPY/

P.S.TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J

WPC No.26106 of 2012

Dated this the 27th day of March, 2015

JUDGMENT

The petitioners who are graduates in Ayurveda (they are holding DAMS Degree) applied for post graduate course in Ayurveda Vachaspathi M.D. during the academic year 2012-2013. As per Ext.P1 prospectus, applications were called for to fill up 69 seats in the general/merit quota and 20 seats for various communities including SC/ST. The last date of filing the application was 25th September 2012. The petitioners point out that strangely the respondents filled up only 65 seats out of 69 seats in the merit quota and 17 seats out of 20 seats in reservation quota. Thus, only 82 seats were filled up. In the entrance test, the petitioners secured the following ranks:

<i>Sl.No.</i>	<i>NAME</i>	<i>RANK NO.</i>
1	KANNAN U	92
2	NIDESH.K.	93

<i>Sl.No.</i>	<i>NAME</i>	<i>RANK NO.</i>
3	SOUMIAMOL P.M.	94
4	RESHMI I.S.	96
5	RAJASEKHARAN M.	1153(physically handicapped)
6	VIJESH KV.	260 (SC quota)

2. The petitioners allege that on the basis of the rank obtained by them, they are entitled to be admitted to the course. However, on account of the reduction in the number of seats, they were denied admission. Ext.P2 is the rank list and Ext.P3 is the categorywise rank list. Ext.P4 is the notification with respect to counselling. On the basis of Ext.P4, an interview was held on 30.10.2012. The petitioners attended the interview. After the interview, persons up to Rank No.91 in the general category were admitted. The petitioners allege that if all the 69 notified seats in the general category were filled up on the basis of the prospectus, petitioners 1, 2, 3 and 4 who are Rank Nos.92, 93, 94 and 96 in Ext.P2 rank rank list would have been admitted. Likewise, if all the 20 seats for reservation quota were filled up, petitioners 5 and 6 in Ext.P3 categorywise rank list also would have been admitted. Thus, the reduction of seats has directly

resulted in denial of admission to the petitioners. Therefore, according to the petitioners, the respondents have violated the promise given in the prospectus. The petitioners also rely on Ext.P5 which is a copy of the notification dated 13.9.2012 which states that the promise contained in the prospectus should be followed in the matter of seat allotment and admission. It is with this background, the petitioners have come up before this Court.

3. The fourth respondent filed a counter affidavit contending as follows:

The Government of India by order dated 13.8.2012 granted conditional permission to the Government Ayurveda College, Thiruvananthapuram to take admission with 70 seats in BAMS course and 56 seats in 11 PG courses for the academic session 2012-13. The Government also denied permission to the college to take admission for 5 seats in PG course in *Kaumarbhritya* and reduced 2 seats in PG course in *Agadathantra* for the academic session 2012-13 as the college failed to fulfill

the eligibility condition regarding faculty. In the light of the above facts, the prayers sought for in the writ petitions are *per se* not maintainable.

The Central Council of Indian Medicine is a statutory body constituted under the provisions of Indian Medicine Central Council Act, 1970 passed by the Parliament. The Indian Systems of Medicine consists of Ayurveda, Unani and Siddha Systems of Medicines.

Section 22(1) of IMCC, 1970 which provides as follows:

“22. Minimum standards of education in Indian Medicine - (1) The Central Council may prescribe the minimum standards of education in Indian medicine, required for granting recognized medical qualifications by Universities, Boards or medical institutions of India.”

Section 36(1) of IMCC, 1970 further provides as follows:

“36. Power to make regulations - The Central council may, with the previous sanction of the Central Govt., by notification in the Official Gazette make regulations generally

to carry out the purposes of this Act, and, without prejudice to the generality of this power, such regulations may provide for-

(a) to (h) xxxxxx

(i) the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in any University, Board or medical institution for grant of recognized medical qualification;

(j) the standards of staff, equipment, accommodation, training and other facilities for education in Indian medicine;

(k) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;"

The Council which is constituted with about 90 elected and nominated experts/practitioners from various states has formulated the curriculum/syllabi prescribed for post graduate course having duration of five and half years to include Pre-clinical subjects like *Rachna Sharir* (Anatomy), *Kriya Sharli* (Physiology) etc., Pre-clinical subjects like *Nidan* (Pathology), *Swasthavritta* (Hygiene),

Agadtantra & Vyavharayurveda (Forensic Medicine) etc. and Clinical subjects like *Shalya* (Surgery), *Kayaachikitsa* (Medicine), *Balroga* (Pediatrics) etc. Post graduate degrees in different specialities, all of three years duration, are also awarded. Great emphasis is also laid on clinical training and towards this end, all medical colleges imparting education are mandated to have affiliated hospitals located in proximity with prescribed bed strength, staff and patient turnover, to ensure that persons who acquire the recognized under/post graduate degrees in the systems of Indian medicine are competent, capable and are holding the recognized qualification to practice as doctors in their respective system of medicine.

The Central Council has prescribed only three courses at undergraduate level of 5 ½ years duration each which are as follows:

- (i) Ayurvedacharya - Bachelor of Ayurvedic Medicine and Surgery (B.A.M.S.)
- (ii) Kamil-e-tib-o-Jarahat- Bachelor of Unani Medicine and surgery (B.U.M.S.)
- (iii) Siddha Maruthuva Arignar- Bachelor of Siddha Medicine and Surgery (B.S.M.S.)

Similarly, the Central Council has prescribed only three Post-graduate courses of three years, duration each which are as follows:

- (i) Ayurveda Vachaspati - M.D.(Ay.)
- (ii) Mahir-e-tib - M.D.(Unani)
- (iii) Siddha Maruthuva Perignar - M.D. (Siddha)

The Government of India has been realizing the need and necessity of laying down uniform standards of education in the field of Indian system of medicine. Therefore CCIM was created by the enactment of 1970, which had been laying down minimum standards of education, infrastructure etc. in the said field of Indian System of Medicines. In furtherance of this endeavour, the Central Government brought amendments by introducing Sections 13A and 13B on 28.1.2003 and 13C of the IMCC Act, 1970 on 7.11.2003 to streamline the procedure for starting new colleges, PG courses and for increasing intake capacity in UG and PG courses. While new colleges or new courses or increased intake capacity are necessitated prior permission from the Government of India. Even existing colleges were brought under the

purview of the said amended provisions by the introduction of Section 13C.

Section 13B clarifies that if any medical college is established without the previous permission of the Central Government or existing colleges do not obtain such permission, medical qualification granted to any student of such medical college shall not be deemed to be a recognized medical qualification for the purposes of this Act.

Later, CCIM notified the establishment of New Medical College opening a new or higher course of study or training and increase of admission capacity by Medical College Regulations, 2003. Existing colleges were regulated by the Indian Medicine Central Council (Permission to existing medical colleges Regulations, 2006). Since many of the existing as well as new colleges were unable to meet the specifications stipulated, certain relaxations in the minimum standards and norms, both in terms of faculty strength and area of college and hospital etc. were effected by the executive committee, which has

since been ratified by the General body of CCIM. While processing the application of the colleges and to ensure the fulfillment of various other requisite norms, visitors are appointed by the CCIM to inspect and verify the claims of the colleges with regard to various norms claimed to have been implemented by them. The inspection is centered mainly on the areas, such as teaching facilities, faculty members and clinical facilities, required diagnostic tools etc., being possessed by these institutions.

As regards the visitation of the colleges of Indian medicine for the academic session 2012-2013 is concerned, the time bound schedule for grant of permission and the criteria for assessing the same were formalized after holding mutual discussions with the Government of India. The policy adopted for the previous session was continued and it was communicated to all concerned by Government of India vide letter dated 27.12.2011. True copy of the letter dated 27.12.2011 is produced as Annexure R4(a).

The visitation of the Government Ayurveda College,

Thiruvananthapuram for the session 2012-2013 was undertaken on 2/3.2.2012 and it was observed that the college was having certain deficiencies. Hence, CCIM recommended grant of conditional permission for UG course with intake capacity of 50 seats and intake capacity of 47 seats for PG courses, namely; (i) *Ayurveda Siddhant*-03 (ii) *Dravyaguna*-06 (iii) *Rasashastra*-06 (iv) *Bhaishjya Kalpana* -06 (v) *Prasuti & Striroga*-06 (vi) *Kayachikitsa*-06 (vii) *Swasthavritta*-6 (viii) *Shalya*-03 (ix) *Shalakya*-03 and (x)*Panchakarma*-02 seats for the session 2012-2013. True copy of the recommendation letter dated 30.3.2012 issued by the CCIM for the session 2012-2013 is produced as Annexure R4(b).

The Central Government granted hearing to the college and being satisfied with the explanation furnished granted conditional permission for 70 UG seats and 56 PG seats for the session 2012-2013 vide Ext.R4(a). The college was granted permission to admit 70 UG seats and 63 PG seats in the previous academic session. The reduction in PG seats for session 2012-13 is effected in

the subjects of *Agadtantra* (3 seats instead of 5 seats), and in *Kaumarbhritya* (nil instead of 5 seats). True copy of the order dated 13.8.2012 passed by the Government of India is produced as Annexure R4(c).

As per the policy formulated by CCIM, the last cut-off date for admissions, both for UG and PG courses is 31st of October, in the instant case being 31.10.2012. The said policy was formulated in the wake of the law laid down by the Apex Court in (***Medical Council v Madhu Singh & ors.***) reported in 2002(7) SCC 258 which has been circulated to all concerned. As such, fresh admission is impermissible at this juncture. Further, the Apex Court in (***Priya Gupta v State of Chattisgarh & others***) reported in 2012(7) SCC 433 which is a judgment *in rem* directed to ensure strict compliance without demur and default regarding cut off date for admissions.

4. The 5th respondent also filed a counter affidavit contending as follows:

The college of 6th respondent has been given permission to undertake admission with 70 seats in BAMS

(UG) course and 56 seats in PG courses for academic session 2012-2013 and the 6th respondent was not granted permission to take admission with 5 seats in PG course in *Kaumarabhritya* and seats are reduced from 5 to 3 in the Department of *Agadatantra* for the academic session 2012-13. Therefore, there is no question of giving any unauthorized admission to any student including the petitioners in the college in the absence of valid permission under the IMCC Act, 1970. Briefly, the facts of the 6th respondent for which the denial order dated 13.8.2012 is produced as Ext.R5(a) in the reply are as under:

i) the Government Ayurveda College, Thiruvananthapuram is an existing college as defined in section 13C of the IMCC Act, 1970. The 5th respondent, vide order No.17011/95/2011-EP(IM-1) dated 23.8.2011 related to admission matter for the academic session 2011-2012, intimated certain shortcomings for the rectification for the consideration of the academic session 2012-2013.

ii) The CCIM had carried out an inspection of the institution on 2/3.2.2012 to reassess the available facilities of teaching and practical training as well as to verify the compliance submitted by the college and

forwarded its recommendations and report to the department.

iii) The commendations and visitation report of the CCIM have been carefully examined in terms of the IMCC Act, relevant regulations and approved norms for grant of permission for the academic year 2011-12 for the UG/PG course(s) vide department's letter No.R.11011/05/2010 dated 18.3.2011 and 21.3.2011 and No.R.11011/10/2011 dated 27.12.2011, which were issued to all colleges, universities and State Governments and as per notification of new PG Regulation, 2012 approved by Hon'ble HFM vide F.No.11011/10/2011-EP it was found that the college is fulfilling the approved criteria as follows:

(i) Teachers:

(a) For UG:90% eligible teachers, 50% higher faculty (professor+ reader) and at least one teacher in each department (14 in Ayurveda/Siddha and 7 in Unani) and (b) for PG course (s): in addition to the UG requirement of teacher as above, 1 Higher faculty+ 1 lecturer, in concern department and fulfillment of teacher-student ratio (1:3 for Professor, 1:2 for reader, 1:1 for lecturer)

(ii) Beds in hospital:

(a) Minimum 100 beds in hospitals of Ayurveda/Siddha colleges up to 50 intake capacity + 1:2 student-bed ratio for 51-100 students intake capacity.

(b) Minimum 100 bedded hospital for PG colleges of Ayurveda/Siddha + 1:4 student-bed ratio for each PG clinical seat over the

total requirement of beds for UG student's intake capacity.

(iii) 100 patients per day in OPD

(iv) 40% bed occupancy for UG and 50% bed occupancy for PG institutions and

(v) Fulfillment of provisions including staff requirement under relevant PG Education Regulations.

It has, therefore, been decided to grant conditional permission to the Government Ayurveda College, MG Road, Thiruvananthapuram, Kerala to take admission with 70 seats in BAMS(UG) course and 56 seats in 11 PG courses viz. *Ayurved Siddhant* (6 seats), *Dravyaguna* (6 seats), *Rasashtra* (6 seats), *Bhaishajyakalpana* (6 seats), *Swasthavritta* (6 seats), *Agadtantra* (3 seats instead of 5 seats) *Prasuti Tantra & Striroga* (6 seats), *Kayachikitsa* (6 seats), *Shalya* (3 seats), *Shalakya* (3 seats) and *Panchkarma* (5 seats) for the academic session 2012-2013 under Section 13C/13A of the IMCC Act, 1970 subject to the condition that the college will fulfill the following requirements by 30th

November 2012 which will be verified for granting permission for the subsequent year(s):

(a) Full complement of teachers including required number of higher faculty in various teaching departments as per norms of the CCIM shall be available.

(b) Other staff, infrastructure, equipment, instruments, furniture and essential facilities for various components of an Ayurveda College like hospital, hostel, laboratories, library, herbal garden, teaching pharmacy & quality testing laboratory and other relevant component of the college as per norms of CCIM.

(c) All the requirements under the relevant Indian Medicine Central Council (Post graduate Ayurveda/Siddha/Unani Education) Regulations should be fulfilled in particular for teaching, non-teaching including laboratory staff and hospital staff.

However, on examining the case, it was observed that the 6th respondent college was not having minimum higher faculty in the Department of Kaumarabhritya as per approved criteria mentioned above for PG institutions and only one Reader and one Lecturer are available in Department of Agadatantra. Therefore, under provisions of the first proviso to sub section 5 of Section 13A of the

IMCC Act, 1970, an opportunity of hearing was granted to the college on 17.5.2012. The 6th respondent college through its representatives appeared before the Hearing Committee. In view of the observation of the hearing committee based on the submission made by the college during hearing and the recommendations and visitation report of the CCIM, it can be understood that as per the approved norms for 2012-13 session as mentioned above, the college of 6th respondent does not fulfill the eligibility conditions and has not produced sufficient documents to substantiate their claim of having a single higher faculty in the Department of Kaumarabhritya and teachers more than one reader & one lecturer in the Department of *Agadatantra*. It has, therefore, been decided to deny permission to the college to take admission with 5 seats in PG course in *Kaumarabhritya* and seats are reduced from 5 to 3 in the Department of *Agadatantra* for the academic session 2012-2013.

It is further stated that the question whether the colleges of 6th respondent has requisite number of eligible

teachers and a genuinely functional attached teaching hospital with minimum requirements of bed occupancy for in-patients department (IPD) and the number of patients in out-patients department (OPD) are matters of verifiable facts and cannot be adjudicated by this Court.

It is stated that the Indian Medicine Central Council Act, 1970 provides *inter alia* for constitution of a Central Council of Indian Medicine and for systematic development, regulation of education, training and practice of Ayurveda, Unani and Siddha (ASU) systems of medicine in India. The Act was amended through the Indian Medicine Central Council (amendment) Act 2002 (No.52 of 2002) and a new chapter IIA was inserted in the Act. The Amendment Act 2002 came into force from 28.1.2003. The Act, as amended by the amendment Act 2002, made it incumbent that prior permission of the Central Government is required to be obtained by a person intending to establish a medical institution or an existing medical college intending to open a new or higher course of study or training or to increase the admission

capacity in any existing course of study or training including a post graduate course of study or training. With a view to ensuring focused development and regulation of education, training and practice of Ayurveda, unani and Siddha systems, the existing Chapter IIA of the IMCC Act was amended further in 2003 by way of the Indian Medicine Central Council (Amendment) Ordinance, 2003 (No.8 of 2003) promulgated on 7.11.2003. The ordinance of 2003 came into force from 7.11.2003 and was repealed by the Indian Medicine Central Council (Amendment) Act 2003 (No.58 of 2003) which came into force from 7.11.2003. In the case of allopathic medical education, a provision similar to that as incorporated in the IMCC ACT, 1970, has been existing in the Indian Medical Council Act, 1956 since 1993.

By virtue of the IMCC (Amendment) Act, 2003 which came into force on 7.11.2003, a new chapter IIA was inserted in the IMCC Act containing three new sections -13A, 13B and 13C. Section 13A contains provisions for the grant of permission by the Central Government for

new ASU Medical colleges, higher courses of study and increases in admission capacity. Section 13B is a kind of penal provision which states that in the absence of the prior permission of the Central Government, the Medical qualification granted to a student of such a new medical college or a college which has started a higher course of study or a college which has increased its admission capacity would not be recognized.

Section 13C stipulates that (a) all existing medical colleges (b) colleges which had started higher courses of study and (c) colleges which had increased admission capacity would have to seek permission from the commencement of the Amendment Act, i.e. by 6.11.2006.

The Indian Medicine Central Council Act, 1970 as amended in 2003 in 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 to have due regards 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 conduction the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time 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 recognised 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.

Further, the said Act in sub section (5) of Section 13A provides that the Central Government may, after

considering the scheme and the recommendations of the Central Council and after obtaining, where necessary, such particulars as may be considered necessary from the applicant or the medical college concerned and having regard to the factors referred to in sub section 8 of Section 13A, either approve with such conditions, if any, as the Central Government considers necessary or disapprove the scheme any such approval shall constitute as a permission as required under sub section 1 of Section 13A. Provided that no scheme is to be disapproved by the Central Government except after giving the person or the medical college concerned a reasonable opportunity of being heard.

Sub section 3 of Section 13A of the IMCC Act provides that every person or medical college for the purpose of obtaining permission of the Central Government shall submit the requisite schemes (application) in such form with such particulars and manners as may be prescribed.

5. Arguments have been heard.

6. When the matter came up for hearing, the learned counsel for the petitioners, on instructions, submitted that at present only petitioners 3, 4 and 6 are interested in securing admission.

7. This writ petition was filed seeking a declaration that all the 89 seats notified in Ext.P1 are to be filled up from Ext.P2 ranked list and Ext.P3 category-wise list and

also for a declaration that all the petitioners are entitled to be admitted for the Post graduate course in Ayurveda Vachaspathi M.D.(Ay) 2012-2013. While the petitioners argued that the admission to the post graduate course in Ayurveda Vachaspathi M.D. during the academic year 2012 should be governed by the promise contained in Ext.P1 prospectus and therefore, the seats notified in Ext.P1 should have been filled up, the stand taken by the 5th respondent is that there cannot be any unauthorised admission to any student including the petitioners in the 6th respondent college in the absence of valid permission under the IMCC Act, 1970. As per Ext.R5(a), conditional permission was given to the Government Ayurveda College, Thiruvananthapuram to take admission with 70 seats in BAMS (UG) course and 56 seats in 11 PG courses viz. *Ayurveda Siddhant* (6 seats), *Dravyaguna* (6 seats), *Rasashtra* (6 seats), *Bhaishajya Kalpana* (6 seats), *Swasthavritta* (6 seats), *Agadtantra* (3 seats instead of 5 seats), *Prasuti Tantra & Striroga* (6 seats), *Kayachikitsa* (6 seats), *Shalya* (3 seats), *Shalakya* (3 seats), and

Panchkarma (5 seats) for the academic session 2012-13 under section 13C/13A of the IMCC Act, 1970. The stand of the 5th respondent was that the 6th respondent college was not having minimum higher faculty in the Department of *Kaumarabhritya* as per the approved criteria. Permission to take admission with 5 seats in PG course in *Kaumarabhritya* was denied and seats in Agadtantra were reduced from 5 to 3. It is true that the 5th respondent is competent to prescribe the criteria and deny the approval if a particular college does not fulfill the criteria. However, it was the duty of the respondents 1, 2 and 6 to see that adequate facilities were there in the college before seeking approval of the 5th respondent.

8. There are altogether 4 colleges in the State. They are (1) Government Ayurveda College, Thiruvananthapuram (2) Government Ayurveda College, Thrikkakkara (3) Government Ayurveda College, Kannur and (4) Kottakkal VIPS. The petitioners point out that the reduction of 7 seats was caused only in Government Ayurveda College, Thiruvananthapuram. According to the

petitioners, there are 63 seats for Post Graduate course in Ayurveda M.D. in the Government Ayurveda College, Thiruvananthapuram where admission was given and those seats were given affiliation. The petitioners point out that as per Ext.P1 prospectus, 89 seats including 20 seats for reservation quota were notified as per Ext.P5 and if any laches occurred either on the part of the respondents in seeking or granting affiliation, the petitioners shall not be responsible on account of that.

9. The petitioners have come out successful as seen from Ext.P2 rank list and Ext.P3 categorywise list. On publication of the rank list itself, the petitioners were sure that they would get admission to the Medical Ayurveda Post Graduate seats. The ranked list was published on 20.10.2012. After that Ext.P3 was issued asking them to appear for the interview. It was held on 30.10.2012. Even as on the said date, the petitioners were expecting admission. It is only after the interview that the petitioners were sent away stating that they cannot be admitted. All others in the rank list who are above the

petitioners were admitted on 31.10.2012. This has clearly led to frustration of the legitimate expectation of the petitioners. The denial of admission has occurred only due to the reduction of number of seats effected by the respondents at the eleventh hour. It has to be noted that it was on the basis of the promise contained in the prospectus that the petitioners have applied. Though it was argued by the learned counsel for the respondents that the inclusion in the selected list will not give any vested right to the petitioners, it has to be noted that the Apex Court in **Charles K.Skaria and others v. Dr.C.Mathew and others** (AIR 1980 SC 1230) has held that there cannot be any deviation from the prospectus after the initiation of the selection process.

10. In the instant case, the selection process started with 89 seats. The respondents have filled up only 82 seats. This Court is of the definite view that the petitioners are legitimately entitled to be admitted to the seats to which they should have been admitted on the basis of the promise contained in the prospectus.

11. It is relevant to note that at present only petitioners 3, 4 and 6 are interested. Petitioners 3 & 4 comes under general category whereas the 6th petitioner comes under the reservation category.

12. The learned standing counsel for the 5th respondent, on instructions, submitted that 5 seats are earmarked for discipline "*Kaumarabhritya*" and 5 seats are reserved for discipline "*Agadathanthram*" in Govt. Ayurveda College, Thiruvananthapuram.

13. As the course of the academic year 2012-2013 has already commenced, it may not be possible to admit the petitioners in the said batch. Therefore, the only possible course open is to accommodate the petitioners in the forthcoming selection.

14. One of the argument advanced by the learned counsel for the respondents was that the same would affect the right of the candidates who appear during the next selection. However, this Court is of the definite view that the petitioners who are prior in time stand on a better footing.

In the result, this writ petition is allowed.

It is hereby declared that the petitioners are entitled to the post graduate course in Ayurveda Vachaspathi M.D. (Ay) 2012-2013 in Government Ayurveda College, Thiruvananthapuram and the action of the respondents in denying admission to the petitioners cancelling the seats is arbitrary and illegal.

The respondents 1, 2, 3, and 6 are directed to admit the petitioners 3, 4 and 6 to the post graduate course in Ayurveda Vachaspathi M.D.(Ay) during the coming academic year on the strength of Ext.P2 rank list and Ext.P3 category list and to allow them to complete the course by treating their admission as legal and valid.

Regarding choice of discipline, it is hereby made clear that the option that would have been available to the petitioners, had they been admitted during the academic year 2012-2013, shall be given to them.

Sd/-A.V.RAMAKRISHNA PILLAI
JUDGE

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P.S.TO JUDGE