

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 23879 of 2014 (H)

PETITIONER(S):

**K M C T AYURVEDA MEDICAL COLLEGE,
(RUN BY KUNHITHARUVAI MEMORIAL CHARITABLE TRUST)
MANASSERY, KOZHIKODE, KERALA - 673 602,
REPRESENTED BY ITS CHAIRMAN AND MANAGING TRUSTEE.**

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:-:

**1. UNION OF INDIA,
REPRESENTED BY THE UNDER SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE
(DEPARTMENT OF AYUSH), B-BLOCK, GPO COMPLEX
INA, NEW DELHI - 110 023.**

**2. THE SECRETARY,
CENTRAL COUNCIL OF INDIAN MEDICINE, 61-65
INSTITUTIONAL AREA, JANAKPURI, NEW DELHI - 110 058.**

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

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-03-2015
ALONG WITH WPC. 23880/2014, THE COURT ON 10-04-2015, DELIVERED
THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE APPLICATION DATED 29.06.2014 GIVEN BY THE PETITIONER WITH ENCLOSURES.**
- EXHIBIT P2. TRUE COPY OF THE COMMUNICATION NO.R.14011/28/2014-EP(IM-I) DATED 21.07.2014.**
- EXHIBIT P3. TRUE COPY OF THE REGULATIONS FOR NEW COLLEGES - NOTIFICATION DATED 15.03.2014.**

RESPONDENT(S)' EXHIBITS

- EXHIBIT R1(A): TRUE COPY OF JUDGMENT DATED 23/7/12 IN WRIT PETITION NO.6330/2012 OF HONOURABLE HIGH COURT OF BOMBAY**
- EXHIBIT R1(B): TRUE COPY OF ORDER DATED 3/7/14 IN SPECIAL LEAVE APPEAL © NO.1435/2013 PASSED BY THE HONOURABLE SUPREME COURT OF INDIA**
- EXHIBIT R1(C): TRUE COPY OF THE ORDER DATED 7/9/12 PASSED BY THE HONOURABLE SUPREME COURT IN SLP NO.165/91 OF 2012**
- EXHIBIT R1(D): TRUE COPY OF REGULATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGE OPENING OF NEW OR HIGHER COURSE OF STUDY OR TRAINING AND INCREASE OF ADMISSION CAPACITY BY A MEDICAL COLLEGE REGULATIONS 2003**
- EXHIBIT R1(E): TRUE COPY OF THE JUDGMENT OF HONOURABLE SUPREME COURT OF INDIA IN SLP NO.31892/12**
- EXHIBIT R1(F): TRUE COPY OF ORDER DATED 19/11/13 IN SLP BEARING NO.31758/12 OF THE HONOURABLE SUPREME COURT OF INDIA.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) Nos.23879 and 23880 of 2014

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Dated this the 10th day of April, 2015

JUDGMENT

The stipulations contained in the regulation for new colleges issued by the Central Council of Indian Medicine, in exercise of powers under Section 36 of the Indian Medicine Central Council Act, 1970 (Act 48 of 1970), insisting for consent of affiliation for establishing new medical college from a University established under a Central or State statute and concurrence of the University established under any Central or State statute for increasing the admission capacity of the medical colleges are under challenge in these writ petitions filed by KMCT Ayurveda Medical College, Kozhikode run by Kunhitharuvai Memorial Charitable Trust which conducts educational institutions under self financing streams.

2. In W.P(C) No.23789 of 2014, it is alleged that the petitioner college which is permitted to have an intake of 50 seats has completed its first batch and, therefore, is entitled to apply for

post graduate course. The grievance of the petitioner is that the application given has been returned on the basis of an unsustainable prescription in the regulations that the petitioner college should produce consent of affiliation from the University concerned.

3. In the other writ petition, the petitioner alleges that on completion of the first batch, the petitioner institution is entitled to apply for increasing the intake. However, the application for the same was also returned for the reason that concurrence of the University concerned has not been obtained. In these writ petitions, the petitioner has produced the copy of the regulation as Ext.P3. The petitioner is challenging Regulations 6(1)(d) and 6(2)(b) of Ext.P3.

4. In the counter affidavit filed by the first respondent, they maintained the stand that the following deficiencies were noticed for returning the application of the petitioner college:

- i. Consent of Affiliation/Concurrence of University (Form-5) prescribed in Regulation 6(3)(b) of

Regulations, 2003 was not available to increase in UG seats from 50 to 100.

ii. No document was produced in support of additional financial resource, staff, space, equipment and infrastructure as per CCIM norms (Regulation 6(3) of Regulations, 2003)

iii. No document was produced in support of Consent/undertaking for performance of Bank Guarantee of 50 lakhs from a Scheduled Commercial Bank valid for a period of five years in favour of CCIM, New Delhi (Regulation 6(3) of Regulations, 2003).

5. According to the first respondent, the Central Government is fully empowered to scrutinize the application/scheme of the colleges submitted. According to them, the regulations were intended to maintain the standard of Indian Medical Education. Therefore, they prayed for a dismissal of the writ petitions.

6. I have heard the learned counsel for the petitioner and the learned standing counsel for the first respondent.

7. Before meeting the arguments, it is useful to quote the impugned regulations. Regulation 6 deals with the eligibility for

making applications which reads as under:

6. Eligibility for making an application.-

(1) for making an application under sub-regulation (1) of regulation 4, a person or a medical college shall be eligible if

- (a) his one of the objectives is to impart education about Ayurveda or, Siddha or Unani Tibb;
- (b) owns or possesses on lease of ninety nine years, a suitable single plot of land, measuring not less than ten acres if the proposal is for admitting up to fifty student, and not less than fifteen acres, if the proposal is for admitting up to one hundred students, and undertake to establish the medical college in the said plot of land;
- (c) has obtained 'No Objection Certificate' in form-4 from the concerned State Government for establishing a new medical college at the proposed site;
- (d) has obtained a 'consent of Affiliation' in form-5 for establishing a new medical college from a University established under any Central or State statute.

(emphasis added)

- (e) owns and manages a hospital in Indian medicines containing not less than one hundred beds with necessary facilities and infrastructure;
- (f) has not already admitted students in any class or standard or course or training of the proposed medical college; and

(g) is in a position to provide two performance bank guarantees from a Scheduled Commercial Bank valid for a period of five years in favour of the Central Council of Indian Medicine, New Delhi as follows;

(i) for the establishment of medical college-

upto 50 seat - rupees one crore

51-100 seats - rupees twenty lakhs per ten or less seats

(ii) for the establishment of the teaching hospital and its infrastructure facilities-

upto 150 beds - rupees one and a half crore

additional beds - rupees 10 lakhs per 10 or less beds

Exemption: The above condition shall not apply to the persons who are State governments/Union territories if they give an undertaking to provide funds in their plan budget regularly till the requisite facilities are fully provided as per the time bound programme.

(2) For making an application under sub-regulation (2) of regulation 4, a medical college shall be eligible if,-

(a) has obtained the permission of the concerned State Government or the Union Territory Administration (Form-4):

(b) has obtained the concurrence of the University established under any Central or State Statute (Form-5);

(emphasis added)

(c) is able to produce documentary evidence in support of additional financial resources, staff, space,

equipment and other infrastructure as per Central Council norms;

(d) is recognized by the Central Council for running Undergraduate or Postgraduate course in Ayurveda/ Siddha/Unani for at least 5 ½ and 3 years respectively.

(f) selection of students for post-graduate courses is made strictly on the basis of academic merit as prescribed by Central Council.

(g) the nomenclature of post-graduate degree or diploma and superspecialty courses and teacher-student ratio is as laid down in the concerned Regulations.

(h) the Ayurved/Siddha/Unani Tibb College/institution provides a bank guarantee in favour of the Central Council of India Medicine from a Scheduled Commercial Bank for providing Additional infrastructural facilities for each discipline as follows:-

Post-graduate course	rupees fifty lakhs
Super-specialty course	rupees one crore
Any other recognized course	rupees thirty lakhs

Exemption: the above condition shall not apply to colleges.-

(i) who are governed by the State Governments; provided that they given an undertaking to provide funds in their Plan Budget regularly till facilities are fully provided as per the time bound programme indicate by them, and

(ii) for opening any course in the subject where the Council has already recognized the post-graduate course

on the same subject.

(3) For making application under sub-regulation (3) of regulation 4, a medical college shall be eligible if,

(a) has obtained the permission of the concerned State Government or the Union Territory Administration (Form-4).

(b) has obtained the concurrence of the University established under any Central or State Statute (Form-5).

(c) has produced documentary evidence in support of additional financial resources, staff, space, equipment and other infrastructure as per Central Council norms:

(d) has contemplated a period of five and a half year in case of Undergraduate course and three years in case of Postgraduate course (s).

(e) recognized by the Central Council for running Under-graduate / Post-graduate / Super-speciality / any other recognized course;

(f) the ratio of teaching staff and students is maintained as laid down in the regulation of Minimum Standards and requirements for admission in the medical college.

(g) the maximum number of admissions in Undergraduate course does not exceed 100 ;

(h) provides a bank guarantee in favour of the Central Council of Indian Medicine, New Delhi from a Scheduled Commercial Bank for providing additional infrastructural facilities for each course/discipline as follows:-

Under-graduate course	Up to 50 seats	rupees twenty five lakhs
	Between 51 to 100 seats	rupees fifty lakhs
Post-graduate degree:	per seat	rupees five lakhs
Super-specialty course	per seat	rupees ten lakhs
Any other recognized course	per seat	rupees two lakhs

Exemption: The above condition shall not apply to colleges who are governed by the State/UT Governments provided that they give an undertaking to provide funds in their Plan Budget regularly till facilities are fully provided as per the time bound programme indicated by them.”

8. It was argued by the learned counsel for the petitioner that under sub-regulation (1)(c) of Regulation 6, it is provided that the application shall be accompanied by the permission of the concerned State Government in Form No.2. The petitioner is challenging the stipulation for obtaining consent of affiliation from the University as provided in sub-regulation (1)(d) of Regulation 6 and concurrence of the University as provided in sub-regulation 2 (b) of Regulation 6. According to the petitioner, the said

regulations are unreasonable and illegal since a duty is cast upon every statutory University to affiliate courses and colleges. According to the petitioner, essentially the function of the University is to conduct examinations and award degrees.

9. It was argued that the facilities required for an institution for sanctioning a course or when an institution is applying for increase of intake, all relevant aspects are to be examined, verified and ensured by the agency constituted under the Central Legislation, and the University cannot superimpose any additional or further requirements when they consider an application for affiliation and in the event of insisting any such condition, the same would be unconstitutional. This, according to the petitioner, is on account of the fact that permission is granted by the Central Agency only after thorough scrutiny regarding the availability of infrastructural, instructional and other facilities.

10. The petitioner alleges that no useful purpose would be served by insisting for concurrence of the University concerned as the petitioner has already offered the course and affiliated to the

University.

11. These writ petitions cover two different situation.

12. In W.P(C) No.23880 of 2014, the petitioner applied for a larger intake as the petitioner is already running a graduate course in Ayurveda with an intake of 50 seats. Affiliation was given by the concerned University to the aforesaid course. Therefore, there was no justification for insisting affiliation to the same course for further intake.

13. As rightly pointed out by the learned counsel for the petitioner, no useful purpose would be served by insisting concurrence of the University as provided in sub-regulation (1)(d) of Regulation 6 when the petitioner college has applied for a larger intake. Of course, Regulation 6(1)(d) can be pressed into service when a new medical college is being established as it is within the competence of the respondent to ensure that the said course proposed by the college is with the concurrence of the University and it is in accordance with the norms prescribed by the University.

14. However, as far as larger intake is concerned, such a concurrence is unwarranted as it is for the first respondent to consider whether the petitioner has sufficient facilities, either infrastructural or otherwise, for accommodating more seats granting permission.

15. However, starting of post graduate course stands on a different footing. Merely because of the fact that a University has granted affiliation to the graduate course offered by an institution, it cannot be said that affiliation shall automatically follow in the case of a post graduate course offered by the same institution. It is true that it is within the competence of the second respondent in fixing the standards for starting courses in Indian Systems of Medicine. That does not mean that the University concerned cannot prescribe higher standards. {see Ashar v. Kerala University of Health Science [2014 (1) KLT 969]}. Therefore, the first respondent would be justified in insisting for concurrence of the University concerned, for opening higher course of study.

16. The Indian Medicine Council Act, 1970 (for short the IMCC Act) 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. It was with a view to ensure focused development and regulation of education, training and practice of Ayurveda, Unani and Siddha systems, the Act was amended in 2003 and the powers to grant permission for setting up of new medical colleges, opening of higher courses of studies in existing colleges and increases in admission capacity in existing colleges etc., is vested with the Central Government.

17. Sub-section (1) of Section 13A stipulates that no medical college shall increase its admission capacity without the permission of the Central Government. Sub-section (2) of Section 13A provides that every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of sub-section (3) and the Central Government shall

refer the scheme to the Central Council for its recommendation. These provisions would indicate that it is for the respondents to insist for methods and the same cannot be taken away. Therefore, this Court is of the view that the returning of the application for opening post graduate course in Ayurveda in the petitioner's college without the concurrence of the University concerned requires no intervention by this Court.

18. However, as already pointed out, the insistence for further concurrence from the University for higher intake, for the same course which has already been affiliated to the University concerned is quite unnecessary and is an empty formality.

In the result, the writ petitions are disposed of as under:

W.P(C) No.23879 of 2014 is dismissed making it clear that it is open to the petitioner to resubmit the application after curing the defects made mention of in Ext.P2. In the event of making such an application, the respondents shall process and consider the same in accordance with law, without much delay.

W.P(C) No.23880 of 2014 is allowed. Ext.P2 is quashed. The respondents are directed to process the application on the same being resubmitted and consider the same for increase of intake for the academic year 2015-16. The respondents are also directed to consider the same on merits without insisting for the consent of affiliation as provided in sub-regulation (1)(d) of Regulation 6; if the petitioner's college is otherwise eligible.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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