

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.08.2016

Delivered on : 30.08.2016

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.33024 of 2015

and

M.P.No.1 of 2015 and WMP.No.5962 of 2016

- 1.A.T.S.V.S. Siddha Medical College & Hospital,
(Run by Akila Thiruvudhancode Siddha
Vaidhya Sangam), Munchirai,
Pudukkadai (P.O.)
Kanyakumari District-629 171.
Rep. by its Interim Administrator,
Justice A.Ramamurthi.
- 2.The Principal,
A.T.S.V.S. Siddha Medical College & Hospital,
(Run by Akila Thiruvudhancode Siddha
Vaidhya Sangam), Munchirai,
Pudukkadai (P.O.),
Kanyakumari District-629 171. ...Petitioners

Vs.

- 1.The Secretary,
Government of India,
Ministry of Health & Family Welfare,
Department of Ayush,
Ayush Bhavan, 'B' Block,
GPO Complex, INA,
New Delhi-110023.

- 2.The Secretary,
Central Council of Indian Medicine,
(Government of India),
61-65, Institutional Area, Janakpuri,
New Delhi-110058.

- 3.The Government of Tamil Nadu
Rep. by Secretary to Government,
Health & Family Welfare Department,
Fort St.George, Chennai-600 009.

4.The Registrar,
Tamil Nadu Dr.M.G.R. Medical University,
No.69, Anna Salai,
Guindy, Chennai-600 032.

***5.The Commissioner of Indian Medicine
& Homeopathy,**

Arumbakkam, Chennai-106.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent herein in respect of the conditional permission F.No.R-17013/04/2015-EP(IM-I), Government of India, Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH), "Ayush Bhawan", B-Block, GPO Complex, INA, New Delhi-110 023 dated 16.09.2015 issued by the Under Secretary to the Government of India, with the approval of the competent authority, along with the print out of Assessment Report for the year 2015-16 of the Central Council of Indian Medicine based on the Report of the Annual Visitation under Sec.13C/13A of the IMCC Act for the Academic Year 2015-16 in respect of the petitioner College, quash the same insofar as it relates to shortcomings mentioned therein in respect of the petitioner college on the ground it is contrary to MSR 2013, along with the direction to grant permission for admission of 60 students in every academic year starting from the academic year 2015-16 in BSMS undergraduate course conducted by the petitioner college with a consequential direction to the respondents to grant permission for five years to the petitioner college from the academic year 2015-16 as per Regulation 3(6) of the Indian Medicine Central Council (Minimum Standard Requirements of Siddha Colleges and Attached Hospitals) Regulation 2013.

For Petitioners	:	Mr.T.R.Rajagopalan, Senior Counsel assisted by Mr.C.V.Vijayakumar
For Respondents	:	Mr.K.Gunasekar, Senior Central Govt. Panel Counsel for R1 and R2 Mrs.P.Rajalakshmi, Government Advocate (Education) for R3 and R5 Mr.D.Ravichander for R4

O R D E R

The Interim Administrator has sworn to the affidavit on behalf of the petitioner institution stating among other things that he has been appointed by this Court to look after the management and administration of Akila Thiruvithancode Siddha Vaidhya Sangam, which runs A.T.S.V.S. Siddha Medical

College & Hospital. The petitioner College was established in the year 2001 with permission to admit 40 students every year in the course of Bachelor of Siddha Medicine and Surgery [in short "BSMS"] - a 5½ years degree course and it is also affiliated to the fourth respondent University. It is further stated by the Interim Administrator that Sections 13-A, 13-B and 13-C were inserted in the Indian Medicine Central Council Act, 1970 [in short "IMCC Act"] by virtue of amendment made to the said Act in the year 2002 and the Indian Medicine Central Council (Permission to Existing Medical Colleges) Regulations, 2006 came into effect from 06.10.2006 and as per the Regulations, existing medical colleges, which came to be established prior to 07.11.2003, is required to submit the application on or before 06.11.2006 to the Central Government for grant of permission and accordingly, the petitioner College applied for permission on 02.11.2006 and was granted conditional permission for the academic year 2006-07 and the same has been extended for the next three years. However, for the academic years 2011-12 and 2012-13, the first respondent denied permission and it was put to challenge in W.P.No.20232 of 2011 and W.P.No.23743 of 2012 and the impugned proceedings were quashed by this Court, vide common order dated 30.10.2012 with a further direction to accord permission to the said academic years on the ground that the petitioner institution is having minimum requirement of teachers as per Central Council of Indian Medicine norms.

2. The first respondent once again denied permission for admission to BSMS degree course for the academic year 2013-14 on account of the alleged shortcomings especially with regard to non-availability of required number of higher faculties and once against the petitioner was constrained to file W.P.No.28626 of 2013 questioning the alleged shortcomings and deficiencies. This Court has entertained the said writ petition and granted an order of ad-interim direction directing the fourth respondent as well as the Commissioner of Indian Medicine, Homeopathy, Chennai-600106 to include the petitioner college in the seat matrix for the academic year 2013-2014 with an intake of 40 seats and accordingly 40 students were admitted in the said academic year and they are pursuing their studies. The first respondent, pendency of W.P.No.28626 of 2013, had accorded conditional permission for admission of 40 students with alleged short falls, namely (a) only 6 part-time teachers are available against the requirement of 11 part-time teachers and (ii) only 220 equipments and instruments are available in the college and hospital against the requirement of minimum 264 equipment and instruments and the petitioner College would state that it had complied with the above said deficiencies.

3. The second respondent had sent a show cause notice to four of the faculties attached to the petitioner college calling upon them to submit a written clarification/explanation as to their experience of faculties in Siddha Medical College for allotting Teacher Code Number as

per the CCIM Regulation and challenging the legality of the same, they filed W.P.Nos.8084 to 8086 and 8301 of 2015 and this Court, while entertaining the writ petitions, has granted interim stay of the impugned show cause notices issued to the said faculties until further orders. The petitioner would further state that the first respondent had notified Indian Medicine Central Council (Minimum Standard Requirements of Siddha Colleges and Attached Hospitals) Regulations, 2013 on 19.02.2013 in and by which the Central Government had notified 11 Regulations along with VII Schedules in respect of Siddha Colleges established under Sections 13-A and 13-C of existing Siddha Colleges under the IMCC Act, 1970 and as per Regulation No.5, the annual intake of capacity for Undergraduate course will be the slabs of 60 and 100 and if any college has the intake capacity of less than 60 or between 61 and 100 seats and if any college is having lesser intake capacity between 60 or in between 61 and 100 seats, it has to comply with the Regulations prescribed in Schedules I to VII. The ratio between the number of students, number of beds, number of outpatients is 1:1:2 in terms of Section 7(2) of the MSR Regulation 2013. The petitioner institution in the light of the said new Regulations, 2013, submitted letters/representations dated 10.03.2014, 17.04.2014, 01.09.2014, 11.09.2015 and 16.06.2015 to the first respondent praying for necessary permission to admit 60 students to the undergraduate courses of BSMS as it has complied with all the requirements in terms of the new Regulations.

4. The second petitioner, namely the Principal of the College, has issued conditional permission from the first respondent dated 23.09.2015 along with annexures. According to the petitioner, there are no shortcomings as mentioned in the above said conditional permission and it is also contrary to the facts for the reason that the petitioner college came into being as early as in the year 2001 and it is having all necessary infrastructure facilities for conducting undergraduate BSMS course with a positive recommendation by the visiting team of CCIM in the years 2013 and 2014 and being one of the oldest Siddha Medical College in the country, it is entitled to fill up 60 seats in terms of the new Regulations, 2013. The petitioner institution has also placed reliance upon the order dated 12.03.2012 made in W.P.Nos.3589 and 4452 of 2012, in support of their contentions. The petitioner, aggrieved by the contents of the conditional permission granted by the first respondent dated 16.09.2015, came forward to file this writ petition.

5. Mr.T.R.Rajagopalan, learned Senior Counsel assisted by Mr.C.V.Vijayakumar, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that admittedly the petitioner is one of the oldest Siddha Medical Colleges in the country and it is having all necessary infrastructure facilities for running Undergraduate Courses and despite repeated communications sent pointing out the said fact, the

respondents 1 and 2 turning a blind eye and started insisting for compliance of the alleged deficiencies. It is the further submission of the learned Senior Counsel appearing for the petitioner that in the earlier round of litigation in W.P.No.28626 of 2013, the said fact was taken into consideration and an order of ad-interim direction was passed on 21.10.2013, directing the fourth respondent therein, namely the Commissioner of Indian Medicine and Homeopathy to include the name of the petitioner college in the seat matrix for the academic year 2013-14 with an intake of 40 students and accordingly, they have been admitted and even as per the Visitation Proforma for assessment of available facilities of teaching and practical training of Siddha college and attached hospital prepared by the Central Council of Indian Medicine, New Delhi in pursuant to the date of visitation on 03.02.2014 and 04.02.2014, an unanimous positive recommendation was made on 04.02.2014 permitting the petitioner institution to admit 60 students for the academic year 2014-2015 and despite that, the impugned communication according conditional permission to the college was granted only to fill up 40 seats as against 60 seats in terms of the New Regulations, 2013. The learned Senior Counsel appearing for the petitioner has also drawn the attention of this Court to the interim order dated 20.11.2015 passed in this writ petition and would submit that the said order of interim direction came to be passed according permission to the petitioner College for admission of 60 students instead of 40 and they have been admitted also and pursuing their studies and therefore, prays for quashment of the impugned order with a direction to accord permission to admit 60 students in the said academic year starting from 2015-16 for BSMS course conducted by the petitioner institution.

6. Per contra, Mr.K.Gunasekar, learned Central Government Standing Counsel appearing for the respondents 1 and 2 has invited the attention of this Court to the counter affidavit filed on behalf of the first respondent and would submit that as per the Amended Regulations, 2013 the petitioner College is under obligation to submit a proposal for enhancement of 60 seats from 40 seats as per the Amended Act, 2013 and admittedly, did not submit any proposal. According to the learned counsel appearing for the respondents 1 and 2, Section 13A exhaustively deal with grant of permission by the Central Government for establishing a new Ayurvedha, Siddha and Unani medical college higher course of study and increase in admission capacity and Section 13B is a kind of penal provision which deals with consequences for non-compliance of Section 13A and it is for the petitioner institution to apply as per the provisions of notified regulations under Regulation 4(3) and submit the schemes to the Secretary to the Government of India, AYUSH under Regulation 5 and shall fulfill the requisites under Regulation 6(3) for increase of it's admission capacity in any course of study or training with prescribed fee under Regulation 8(c) of the "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" read with Amendment Regulation, 2013 and so far, it is yet to do so and that apart, the petitioner College had to provide No Objection Certificate from the Central Government whether it is established and situated and also valid affiliation from the concerned University for the purpose of issuance of letter of permissible by the Central Government for enhancement of seats and unless and until the petitioner institution complies with the said procedural formalities, it cannot admit 60 seats as against permissible intake of 40 seats. It is the further submission of the learned Standing Counsel appearing for the respondents 1 and 2 that the said conditions are insisted for the purpose of providing quality education and training and therefore, it cannot be faulted with.

7. The learned Standing Counsel appearing for the respondents 1 and 2 has placed reliance upon the judgment of the Hon'ble Supreme Court of India in Medical Council of India v. JSS Medical College and Another [(2012) 5 SCC 628] and would submit that this Court, while granting interim orders, had virtually allowed the main writ petition and in the above cited decision, it has been held that it is impermissible to grant interim relief without adverting to the issues involved. It is also contended by the learned Standing Counsel appearing for the respondents 1 and 2 that even now the petitioner can apply under Form-3 of the New Regulations, 2013 and in case of positive result, it can regularize admission even with retrospective effect as it has admitted 60 students in pursuant to the interim direction passed in this writ petition.

8. The petitioner has filed a rejoinder stating that for the first time, by way of amendment, Sections 13-A, 13-B and 13-C were incorporated in the IMCC Act in the year 2003 and it came into force from 07.11.2003 and as per the said Regulations, two slabs were notified i.e., upto 60 students and upto 100 students and also availability of infrastructure facilities for such increase and in the light of the fact that the Visitation Team has made a positive recommendation for admission of 60 students, followed by very many representations submitted by the petitioner coupled with Clause 6 of the Amended Regulations, 2013, the petitioner is entitled to admit 60 students and at no point of time, the first respondent insisted for submission of application for increase in seat capacity and therefore, prays for allowing of the writ petition.

9. This Court has carefully considered the rival submissions and also perused the entire materials placed before it.

10. The primordial question arises for consideration is whether the petitioner institution, in the light of Indian Medical Central Council (Minimum Standard Requirements of

Siddha Colleges & Attached Hospitals, Regulations 2013, has to apply under Form-3 for increase in seat capacity to admit 60 students?

11. It is relevant to extract certain clauses in the above said Regulations 2013:

"3. Minimum Standards Requirement.-

(1) The Siddha colleges established under section 13A of the Act and existing Siddha colleges under Section 13C of the said Act and their attached hospitals shall fulfill the minimum standards requirement of infrastructure and teaching and training facilities referred to in the regulation 4 to 11 by the 31st December, 2014 for consideration of grant of permission for undertaking admissions in the coming academic years.

(2) If a college fulfills the requirement by the 31st December, 2014 as per these notified regulations, it shall be granted permission to undertake admissions for a period not exceeding five years during which the college shall not be inspected, except for random checks on receipt of any complaint, or otherwise as deemed necessary either by the Central Government or by the Central Council of Indian Medicine.

(3) The Central Council shall visit the college suo moto three months before the expiry of permission.

(4) The conditional permission shall be granted only to those colleges which are fulfilling at least the requirement of teachers as specified in the Schedule-V, the requirement of functional hospital as specified at sub-regulation (2) of regulation 7 and availability of equipment as specified in the Schedule -VII for each academic year 2013-14 and 2014-15 on the basis of the separate inspections to be carried by the Central Council of Indian Medicine after the 15th May, 2013 for the academic year 2013-14 and after the 31st December, 2013 for the academic year 2014-15.

(5) Such conditionally permitted colleges or which have been denied permission during academic year 2013-14 and/or 2014-15, will be required to fulfill the requirements as specified in these regulations by the 31st December, 2014.

(6) All the existing colleges, which are not able to achieve full compliance of the requirement as specified in these regulations by the 31st December 2014, shall be denied permission from academic year 2015-16 onwards and action as envisaged under Section 21 of the said Act shall be initiated against all such colleges apart from rejection of their applications under Sections 13A or 13C, which have been under consideration by way of conditional permissions or denials.

6. Admission Capacity.-

The annual intake capacity in under graduate course will be in the slabs of sixty and hundred, and if any college has the intake capacity of less than sixty or between sixty one and hundred seats, it has to comply with the requirements for sixty or hundred seats respectively, as mentioned in Schedule-I to Schedule-VII"

12. It is also relevant to extract the following clauses of Establishment of New Medical Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity by a Medical College Regulations, 2003:

"4. Application Form of scheme-

(1) Any person intending to establish a medical college shall submit the scheme along with an application in Form-1.

(2) Any medical college intending to open a new or higher course of study or training shall submit the scheme along with an application in Form-2.

(3) Any medical college intending to increase its admission capacity in any course of study or training shall submit the scheme along with an application in Form-3."

5. Authority to whom the schemes and applications is to be submitted.-

Applications and schemes under regulation 4 shall be submitted to the Secretary to the Government of India, Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (AYUSH) as per the schedule annexed to the regulations.

13. It is the submission of the learned Senior Counsel appearing for the petitioner that in the light of Clauses 3 and 6 of the new Regulations, 2013, if a college fulfills the requirement by 31st December 2014, it shall be granted permission to undertake admissions for a period not exceeding five years during which the college shall not be inspected except for random checks on receipt of any complaint etc., and the conditional permission shall be granted only to those colleges which are fulfilling at least the requirement of

teachers as specified in the Schedule V, the requirement of functional hospital as specified at sub-regulation (2) of regulation 7 and availability of equipment as required in Schedule -VII for each academic year 2013-14 and 2014-15 on the basis of the separate inspection and annual intake of undergraduate course will be in the slabs of 60 and 100 and if any college has the intake capacity of less than 60 or between 60 and 100 seats, it has to comply with the requirements for 60 or 100 seats respectively as mentioned in Schedule I to Schedule VII of present regulations.

14. It is the stand of the petitioner that in the light of the positive recommendation made by the Visitation Team sent by the second respondent dated 04.02.2014 recommending permission and admission up to 60 seats for the academic year 2014-15, there is no need for them to apply under Form-3 of the Regulations, 2003, as it is automatic and taking into consideration of the said fact, this Court, while entertaining the writ petition, has granted interim orders permitting the petitioner institution to admit 60 seats and accordingly it admitted 60 students and they are pursuing their undergraduate studies. However, it is the stand of the first respondent that unless and until the petitioner institution applies under Form-3 for increase in seat capacity in the light of Sections 13-A, 13-B and 13-C of IMCC Amendment Act, 2013, it cannot suo motu increase the admission capacity from 40 seats to 60 seats.

15. The Visitation Team has taken note of the shortcomings pointed out by the Department of Ayush and CCIM and in the light of the interim orders dated 21.10.2013 made in W.P.No.28626 of 2013, it felt that the issue is subjudice and final decision can be taken after the pronouncement of the final verdict and however, taking into consideration the infrastructure and availability of teaching faculties, the Visitation Team has unanimously recommended for permission upto 60 students for the academic year 2014-15.

16. Section 13A(ii) of the IMCC (Amendment) Act, 2003 states that "no medical college shall increase its admission capacity in any course of study or training including a postgraduate course of study or training including the postgraduate course of study or training except with the previous permission of the Central Government obtained in accordance with the provisions of this Section". Sub-section (2) of Section 13A states 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 recommendations". Sub-section (8) to Section 13A says that the "Central Council while making its recommendations under clause (b) of sub-section (4) and the Central Government while passing an order, either approving or

disapproving the scheme under sub-section (5), shall have due regard to the following factors, namely:

(a) Whether the propose 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".

17. Section 13-B states about Non-Recognition of Medical Qualification in Certain Cases. As per Sub-section (3) to Section 13-B "Where any medical college increases its admission capacity in any course of study or training without the previous permission of the Central Government in accordance with the provisions of Section 13A, medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall not be deemed to be a recognised medical qualification for the purposes of this Act".

18. Sub-Regulation (3) of Regulation 4 of MCR, 2003 says that "any medical college intending to increase its admission capacity in any course of study or training shall submit the scheme along with an application in Form-3". It is relevant to extract Form-3 as under:

FORM-3

(See sub-regulation (3) of regulation 4)

Application for permission to increase the admission capacity

1.Name of the applicant
(in BLOCK letters)

2.Complete Address with PIN code,
telephone nos., fax and e-mail
(in BLOCK letters)

3.Address of Head Office and
Branch Office, if any, with Pin code,
telephone nos, telex, fax and e-mail.

4.Status of applicant whether
State Government/Union Territory/
or University or Trust

5.Registration/incorporation
(Number and date, if any)

6.Name and address of Affiliating University

7.Year of admission of first batch for undergraduate course

8.Month & year of completion of first admitted UG batch

9.No. Of seats approved and date of Recognition by CCIM for existing UG/PG course(s)

10.Name of the course(s) of study applied for increase in admission capacity

11.Number of seats applied for in each subject/course

12.Details of:

- (a) additional financial allocation-
- (b) provision for additional space, equipment and other infrastructural facilities-
- (c) provision of recruitment of additional staff-

13. Any other relevant information

Date:

Place:

Signature of Applicant
Full Name
Designation.

19. Substantive provisions namely Sections 13A(1)(ii), 13(A)(2), 13A(8)(a) & (b) read with Section 13B(3) mandates that for increase in admission capacity also, previous permission of the Central Government is required and the said procedure is prescribed in Regulation 4(3) of Regulations, 2003, as stated supra. 2013 Regulations no way is silent as to the procedure to be followed for increase in annual intake capacity and it no way exclude the applicability of the procedure prescribed in the earlier Regulations, 2003.

20. No doubt, the Visitation Team deputed by the second respondent made a positive recommendation on 04.02.2014 for increase in seat capacity up to 60 for the academic year 2014-15 and it does not mean the petitioner institution can suo motu increase the admission capacity from 40 to 60.

21. The Hon'ble Supreme Court of India, in Rajasthan Pradesh Vaidya Samiti Sardarshahar and Another v. Union of India and Others [(2010) 12 SCC 609], observed that "State or statutory authority can lay down conditions for recognition of educational institution, namely, that the institution must have particular amount of funds or properties or number of students or standard of education and so on and so forth subject to provisions of the Constitution.

22. In Manohar Lal Sharma v. Medical Council of India and Others [(2013) 10 SCC 60], the Hon'ble Supreme Court of India has considered the role of Medical Council of India [MCI] and also Section 19A of the Indian Medical Council Act, 1956 and observed that "It is the legislative mandate that when a new medical college is established or the existing medical college seeks to open a new or higher course of study or training, for accommodating the increased admission capacity it would be in a position to offer the minimum standards of medical education as prescribed by MCI under Section 19A or, as the case may be, under Section 20 in the case of postgraduate medical education".

23. A faint attempt is made by the learned Senior Counsel appearing for the petitioner by placing reliance upon the common order dated 12.03.2012 made in W.P.Nos.3589 and 4452 of 2012 [Dr.T.Arutselvam and 26 others v. The Govt. of Tamil Nadu, represented by Secretary, Health and Family Welfare Department, Chennai-9, The Secretary to Government, Department of AYUSH, Government of India, Ministry of Health and Family Welfare, New Delhi-1 and The Secretary, Central Council of Indian Medicine, New Delhi and Others] by submitting that in the above cited order, the significance of indigenous system of medicine has been traced and it was also observed that the Department of AYUSH should made a distinction between colleges teaching Allopathy and colleges teaching Ayurveda, Siddha and Unani and a distinction between the colleges of Ayurveda, Siddha and Unani run by the Government and those run by private institutions and if this is not done, it will sound the death knell for the rich traditional systems of medicine of the country and in the light of the same the increase in students capacity from 40 to 60 is to be approved. In the considered opinion of the Court, the said submission lacks merit for the reason that the students undergoing BSMS course, after successful completion of their course, will become medical practitioners treating numerous illness through indigenous system of medicine and the said field is occupied by Indian Medicine Central Council Act, 1970 and the regulations framed thereunder namely, 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 and Indian Medicine Central Council (Minimum Standard Requirements of Siddha Colleges & Attached Hospitals) Regulations, 2013 and therefore, every institution

imparting education in indigenous system of medicine has to comply with the mandate prescribed under the said Statute and Regulations framed thereunder.

24. It is also a well settled position of law that if a Statute prescribes a thing to be done in a particular manner, it should be done in that way and not in any other manner. In the considered opinion of the Court, unless and until the petitioner complies with the mandatory requirements contemplated under Sections 13A, 13B and 13C of the above said Act read with the above cited Regulations, it cannot suo motu increase its admission capacity.

25. The Hon'ble Supreme Court of India in Medical Council of India v. JSS Medical College and Another [(2012) 5 SCC 628] has frowned upon the decision rendered by a Division Bench of Karnataka High Court permitting the institution to increase the medical seats from 150 to 200 in MBBS course and it is relevant to extract paras 12 and 13 of the said decision:

"12. Without adverting to the aforesaid issues and many other issues which may arise for determination, the High Court, in our opinion, erred in permitting increase in seats by an interim order. In normal circumstances the High Court should not issue interim order granting permission for increase of the seats. The High Court ought to realise that granting such permission by an interim order has a cascading effect. By virtue of such order students are admitted as in the present case and though many of them had taken the risk knowingly but few may be ignorant. In most of such cases when finally the issue is decided against the College the welfare and plight of the students are ultimately projected to arouse sympathy of the Court. It results in a very awkward and difficult situation. If on ultimate analysis it is found that the College's claim for increase of seats is untenable, in such an event the admission of students with reference to the increased seats shall be illegal. We cannot imagine anything more destructive of the rule of law than a direction by the Court to allow continuance of such students, whose admissions is found illegal in the ultimate analysis.

13. This Court is entrusted with the task to administer law and uphold its majesty. Courts cannot by its fiat increase the seats, a task entrusted to the Board of Governors and that too by interim order. In a matter like the present one, decisions on issues have to be addressed at the interlocutory stage and they cannot be deferred or dictated later when serious complications might arise from the interim order itself. There are

large number of authorities which take this view and instead of burdening this judgment with all those authorities it would be sufficient to refer to a three-Judge Bench decision of this Court in Medical Council of India v. Rajiv Gandhi University of Health Sciences [(2004) 6 SCC 76] in which it has been held as follows: (SCC p. 84, para 14)

"14. In the normal circumstances, the High Court ought not to issue an interim order when for the earlier year itself permission had not been granted by the Council. Indeed, by grant of such interim orders students who have been admitted in such institutions would be put to serious jeopardy, apart from the fact whether such institutions could run the medical college without following the law. Therefore, we make it clear that the High Court ought not to grant such interim orders in any of the cases where the Council has not granted permission in terms of Section 10-A of the Medical Council Act. If interim orders are granted to those institutions which have been established without fulfilling the prescribed conditions to admit students, it will lead to serious jeopardy to the students admitted in these institutions."

26. It is to be noted at this juncture that this Court, vide interim order dated 20.11.2015, has granted permission to the petitioner institution to admit 60 students and accordingly, as against conditional permission granted to admit 40 students, the petitioner institution had admitted 60 students and they are also pursuing their studies. Be that as it may, it is still open to the petitioner institution to apply under Form-3 of the New Regulations, 2013 seeking necessary permission for increase in admission capacity of students from 40 to 60 and the respondents 1 and 2 shall entertain the said application if the papers are otherwise in order and give disposal in accordance with the relevant norms and regulations, after taking note of the report/recommendation of the Visitation Committee dated 04.02.2014 deputed by the second respondent and pass appropriate orders as expeditiously as possible by taking into consideration the interest and welfare of the students, who have been admitted in pursuant to the interim order passed by this Court in this writ petition.

27. This Writ Petition is dismissed subject to the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

jvm

Sd/-
Asst.Registrar

***Corrected order as per
letter dated 12.09.2016
in WP.No.33024/15**

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary, (To be Substituted order already
Government of India, (despatched on 02.09.2016)
Ministry of Health & Family Welfare,
Department of Ayush,
Ayush Bhavan, 'B' Block,
GPO Complex, INA, New Delhi-110023.
- 2.The Secretary,
Central Council of Indian Medicine,
(Government of India),
61-65, Institutional Area, Janakpuri,
New Delhi-110058.
- 3.The Secretary to Government,
The Government of Tamil Nadu
Health & Family Welfare Department,
Fort St.George, Chennai-600 009.
- 4.The Registrar,
Tamil Nadu Dr.M.G.R. Medical University,
No.69, Anna Salai,
Guindy, Chennai-600 032.

***5.The Commissioner of Indian Medicine
& Homeopathy,
Arumbakkam, Chennai-106.**

+ 1 cc to MR.K.GUNASEKAR, ADVOCATE SR 49020
+ 1 CC TO MR.C.V.VIJAYAKUMAR, ADVOCATE SR 49323

KR/1/9/16
aa14/09/2016

W.P.No.33024 of 2015