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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV
+ **W.P.(C) 13031/2019 and CM APPLs. 53154/2019, 5659/2020 & 11075/2021**

Between: -

ADITYA AYURVED COLLEGE AND RESEARCH CENTRE
SARDA ESTATE, PIMPALNER ROAD,
DISTRICT BEED, MAHARASHTRA - 431122
THROUGH ITS AUTHORISED SIGNATORYPETITIONER

(Through: *Mr.Siddhartha Shankar Ray and*
Mr.Suryadeep Singh, Advocates.)

AND

UNION OF INDIA, THROUGH THE SECRETARY, AYUSH
MINISTRY OF AYUSH,
AYUSH BHAWAN (B- BLOCK),
GPO COMPLEX, I.N.A.,
NEW DELHI - 110023RESPONDENT NO.1

CENTRAL COUNCIL OF INDIAN MEDICINE,
THROUGH ITS REGISTRAR-CUM-SECRETARY,
61-65, INSTITUTIONAL AREA,
JANAKPURI, NEW DELHI - 110054RESPONDENT NO.2

(Through: *Ms.Monika Arora, CGSC with Mr.Subhodeep Saha,*
Advocate for R-1.
Ms.Archana Pathak Dave and Mr.Pramod Kumar
Vishnoi, Advocates for R-2/NCISM.)

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J U D G M E N T

1. The petitioner has preferred this petition under Article 226 of the Constitution of India assailing the order dated 03.10.2019, passed by respondent no.1-Union of India (*hereinafter referred to as 'UOI'*) through the Secretary, AYUSH, Ministry of AYUSH, whereby, its application dated 29.08.2018 for increase of the intake capacity in Bachelor of Ayurvedic Medicine and Surgery (Ayurvedacharya) Course [*hereinafter referred to as the 'UG (BAMS) Course'*] from 50 seats to 100 seats for the academic session 2019-20 under Section 13-A of the Indian Medicine Central Council Act, 1970 (*hereinafter referred to as the 'IMCC Act, 1970'*) has been rejected.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner had submitted its application dated 29.08.2018 under Section 13-A of the IMCC Act, 1970 for increase of the intake capacity from 50 to 100 seats for the academic year 2019-2020 onwards for UG (BAMS) Course. According to him, as per Regulation 5 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, 2019 (*hereinafter referred to as the 'ENM Regulations, 2019'*), the last date for taking the final decision on issuance of Letter of Permission was 31.05.2019, however, no decision was taken by the respondents within the said period and it was only on 03.10.2019, much later than the prescribed period, that the application of the petitioner was rejected.

3. He further submits that as per the mandate of Section 13-A (6) of the IMCC Act, 1970, if the Central Government fails to

have been approved by the Government in the form in which it was submitted. He submits that even if the exclusion of time provided under Section 13-A (7) is taken into consideration, the cutoff date for communicating the decision to the petitioner would expire on 03.09.2019 itself.

4. Learned counsel also submits that though the application of the petitioner relates back to the academic year 2019-20, however, the same has not rendered infructuous as, in case, the present petition is allowed, the petitioner would only be required to seek annual renewal and not go through the entire process of applying afresh. He, therefore, contends that since the prescribed period of one year for taking the final decision had already lapsed before the rejection was communicated to the petitioner, there is deemed approval of the petitioner's application dated 29.08.2018 as per Section 13-A (6) and (7) of the IMCC Act, 1970.

5. Learned counsel for the petitioner has placed reliance upon a decision passed by the High Court of Gujarat in the case of **Parul University v. Union of India¹**, wherein, considering a similar deeming provision in the Homeopathy Central Council Act, 1973, the Court allowed the petitioner-University therein to establish the University in accordance with Section 12-A(5) of the said Act within a year. The petitioner has relied upon paragraph no.25 of the said decision, which is reproduced hereunder as:-

"25.From the aforesaid provisions and more particularly from Section 12-A(5) of the Act of 1973, it is clear that if no order is communicated by the Central Government to the medical institution which has submitted the scheme within a period of one year from the date of submission of the scheme, such scheme shall be deemed to have been approved by the Central Government. In the present case, as discussed hereinabove, the respondent No. 1 -

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Government has not passed any order communicating to the petitioner with regard to grant or refusal of the scheme within a period of one year from the date of submission of scheme by the petitioner and therefore in the present case the deeming provisions contained in Section 12-A(5) of the Act of 1973 would be attracted."

6. Learned counsel appearing on behalf of the respondents vehemently opposes the submissions made by learned counsel for the petitioner. She submits that the application of the petitioner was forwarded by respondent no.1-UOI to respondent no.2-CCIM on 20.11.2018 for further examination and inspection of the institution and accordingly, respondent no.2-CCIM had visited the petitioner on 13-14.02.2019 and duly forwarded its report *vide* letter dated 09.04.2019. According to the learned counsel, respondent no.2-CCIM recommended to respondent no.1-UOI for not issuing the Letter of Intent (LoI) in the light of existence of various deficiencies.

7. She further submits that an opportunity of hearing was subsequently provided by respondent no.1-UOI *vide* hearing notice dated 03.05.2019, wherein, while pointing out certain deficiencies, the petitioner was called upon to appear on 08.05.2019 before the designated hearing committee. She submits that in pursuance of the said show cause notice, the representatives of the petitioner appeared before the committee and advanced their submissions in oral as well as in writing form against the deficiencies indicated therein.

8. Learned counsel for the respondents contends that after duly considering the submissions made by the petitioner before the hearing committee, it was decided that the LoI for increasing the seats, as desired by the petitioner, could not be issued due to non-fulfillment of certain basic requirements to run the institution.

9. Learned counsel also submits that the controversy involved in the present case is squarely covered by a decision passed by the

Division Bench of this court in *LPA 301/2021* titled as ***Union of India v. Shri Ram Krishna Paramhansshiksha Parishad & Anr.***,² wherein, while distinguishing the case of *Parul University (supra)*, the Division Bench had refused to extend the benefit of the deeming clause.

10. I have heard learned counsel appearing on behalf of the parties and perused the record.

11. The brief controversy involved in the instant petition is whether the petitioner is entitled for deemed approval as per Section 13-A (6) of the IMCC Act, 1970 by virtue of delayed communication of the decision on the application for permission after a lapse of prescribed period of one year.

12. It is pertinent to advert to the legal framework necessary for adjudication of the present case. The medical education relating to Indian system of medicine and other ancillary issues was earlier governed by the provisions of the IMCC Act, 1970. For the sake of convenience, the relevant sub-Section 6 of Section 13-A of the IMCC Act, 1970 is extracted hereunder as:

“13-A. Permission for establishment of new medical college, new course of study, etc.—

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(6) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order is communicated by the Central Government to the person or medical college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it was submitted, and, accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.”

13. A perusal of the aforesaid provision i.e., Section 13-A (6) suggests that if any medical college or person submits the scheme to the Central Government under Section 13-A (2) of the IMCC Act,

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1970 for obtaining permission, the central government has to communicate the order within a period of one year. It stipulates that if the Central Government fails to do so, the submitted scheme shall be deemed to have been approved and the permission shall also be deemed to have been granted. Therefore, the question which arises for consideration of this court is whether all the applications submitted by any person or medical college have to be dealt with strictly in accordance with the straight-jacket formula of one-year prescribed period or certain other relevant considerations may lose the water-tight compartment of the period envisaged as per Section 13-A (6) of the IMCC Act, 1970.

14. The aforesaid aspect has been extensively discussed by the Division Bench of this court in the case of ***Shri Ram Krishna (supra)***, wherein, it was held that the deeming provision was not enacted to ensure that each and every application made by a prospective college, regardless of whether they are fit to function, would be deemed to be accepted in case the Central Government does not pass an order within one year. The relevant paragraphs of the said decision are reproduced as under:-

“28. The purpose sought to be achieved by the legislature by enacting the deeming provision needs to be the primary consideration while giving effect to it. The purpose of enacting Section 13A(6) is to avoid a scenario where the Central Government delays passing an order either accepting or rejecting applications made by prospective colleges. This is lent credence by Section 13A (7) which states that in computing the time-limit specified in subsection (6), the time taken by the person or medical college concerned submitting the scheme, in furnishing any particulars called for by the Central Council, or by the Central Government, shall be excluded. By way of Section 13A(7) any time taken by the prospective college or Central Government while actively engaging with the application process has been specifically excluded. The intention of the Legislature was not to accept all applications even though there are deficiencies in the applications which have not been rectified. The purpose of the deeming provisions was simply to ensure that the Central Government does not

applications thereby causing inordinate delay in the setting up of medical colleges.

29. The deeming provision was not enacted to ensure that each and every application made by a prospective college, regardless of whether they are fit to function, would be deemed to be accepted in case the Central Government does not pass an Order within one year. Interpreting the deeming provision in a manner which allows colleges to take undue advantage of a delay on the part of the Central Government would lead to absurd situations affecting the credibility of institutions imparting ayurvedic education. Interpreting Section 13A6 in this manner would also negate the import of the objective sought to be achieved by IMCC Act i.e., to regulate the dissemination of ayurveda as an alternate mode of medicine, to ensure the safety of the end consumers, and instil trust in this alternate mode of treatment.”

15. The decision in the case of **Parul University (supra)**, which is relied upon by the petitioner, has also been distinguished in **Shri Ram Krishna (supra)**, wherein, in terms of paragraph no.30, it was held as under:-

“30. The Learned Single Judge and the learned Counsel for the Respondent have relied heavily on the judgment rendered by the Coordinate Bench of the High Court of Gujarat in Parul University (supra) wherein the High Court of Gujarat gave the Petitioner i.e., Parul University the benefit of a similar deeming clause in the Homoeopathy Central Council Act, 1973 as the Central Government had in fact made no attempt to communicate anything to the Petitioner i.e., Parul University within the prescribed period of one year. In Parul University (supra), the Central Government only issued a show cause notice to the University after the passing of an entire year, and only after the university had approached the High Court of Gujarat. Till such point, the Central Government had not even communicated whether the university’s application had any deficiencies. Further, it is important to take note of the fact that in Parul University (supra) the actions of the Central Government were riddled with lapses. It has specifically been noted that the Deputy Secretary who has passed the order which eventually rejected the application of the University therein, had not given an opportunity of hearing to the University therein. Moreover, the copy of the report submitted by the team of Medical Inspectors sent by the Central Government was not given to the University therein and even the copy of the recommendations given by the Hearing Committee was also not supplied to the University therein. Therefore, not only did the Central Government cause inordinate delay by sitting on the application for over a year, it also did not follow the principles of natural justice. This Court also finds it appropriate to highlight that in Parul University (supra) High Court of Gujarat had specifically stated that after can

appropriate inspection, if the Central Government finds deficiencies, it is open for the Council to take appropriate action in accordance with law. In light of the fact that in the instant case, the Central Government was not sitting on its decision, and took timely action to not only point out deficiencies in Respondent No. 1's application but also give it an appropriate chance to fix such deficiencies, the facts of the instant case are entirely distinguishable from Parul University (supra). Giving effect to the deeming clause in Parul University (supra) did not do violence to the intent of the Homoeopathy Central Council Act, 1973, the same does not hold true for the facts of the instant case."

[Emphasis supplied]

16. The Hon'ble Supreme Court in the case of ***Central Council for Indian Medicine v. Karnataka Ayurveda Medical College***³, has discussed at length the provisions and the scope of the IMCC Act, 1970. In paragraph no.30 of the said judgement, it has been observed that Section 13-A has to be read in conjunction with Sections 22 and 36 (1)(j) which provide a complete scheme for the establishment of medical college, opening a new or higher course of study or training, including a postgraduate course of study or training and also increasing the admission capacity. It has been further observed by the Hon'ble Supreme Court that no medical college can increase its admission capacity in any course of study or training, without previous permission of the Central Government. The relevant paragraphs read as under:-

22.Sub-section (6) of Section 13-A of the said Act, which is a deeming provision, provides that if no order is communicated by the Central Government to the person or medical college submitting the scheme, within a period of one year from the date of submission of the scheme, such a scheme shall be deemed to have been approved by the Central Government in the form in which it was submitted.It further provides that the permission of the Central Government required under sub-section (1) of Section 13-A of the said Act shall also be deemed to have been granted.

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26. At this stage, it will also be relevant to refer to Section 22 of the said Act, which reads thus:

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“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 recognised medical qualifications by universities, Boards or medical institutions in India.

(2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Central Council to all State Governments and the Central Council shall, before submitting the regulations or any amendment thereof, as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

(3) Each of the Committees referred to in clauses (a), (b) and (c) of sub-section (1) of Section 9 shall, from time to time, report to the Central Council on the efficacy of the regulations and may recommend to the Central Council such amendments thereof as it may think fit.”

30. It could thus clearly be seen that Section 13-A read with Sections 22 and 36(1)(j) of the said Act provides a complete scheme for establishment of medical college, opening a new or higher course of study or training, including a postgraduate course of study or training, and also increasing the admission capacity. From the perusal of the scheme of the aforesaid provisions, it is clear that no person is entitled to establish a medical college except with the previous permission of the Central Government. Similarly, no medical college can open a new or higher course of study or training, including a postgraduate course of study or training without the previous sanction of the Central Government. Likewise, no medical college can increase its admission capacity in any course of study or training, including a postgraduate course of study or training.

31. Sub-sections (2) to (5) of Section 13-A of the said Act prescribe a detailed procedure for submitting a scheme and consideration thereof by the Central Council and the Central Government. **It also provides for in-built safeguards inasmuch as the principles of natural justice are provided at two stages, one before the Central Council and another before the Central Government. The second proviso to sub-section (5) of Section 13-A of the said Act also enables a person or medical college whose scheme has not been approved by the Central Government, to again submit a fresh scheme, which is required to be considered as if the same is made for the first time under sub-section (2) of Section 13-A of the said Act.**

32. Sub-section (6) of Section 13-A of the said Act provides that when no order is communicated within a period of one year from the date of submission of the scheme, by a deeming provision, such scheme shall stand approved and it will be deemed that the permission of the Central Government has been granted.

Central Government as required under sub-section (1) of Section 13-A of the said Act has been granted. Sub-section (7) of Section 13-A of the said Act provides for exclusion of the period for the time taken by the person or medical college concerned to furnish any particulars called by the Central Council, or by the Central Government. Sub-section (8) of Section 13-A of the said Act provides the factors to be taken into consideration. Sub-section (9) of Section 13-A of the said Act provides for the communication of the order approving or disapproving the scheme, to the person or medical college concerned.

33. The statutory scheme is thus clear that no medical college can open a new or higher course of study or training, including a postgraduate course, except with the previous permission of the Central Government. Prior to such permission being granted, the procedure as prescribed under Section 13-A has to be followed.

34. The legislative intent is further clarified by the provisions made in Section 13-B of the said Act. Subsection (1) of Section 13-B of the said Act provides that where any medical college is established without the previous permission of the Central Government in accordance with the provisions of Section 13-A of the said Act, medical qualification granted to any student of such medical college shall not be deemed to be a recognised medical qualification for the purposes of the said Act. Likewise, sub-section (2) of Section 13-B of the said Act provides that where any medical college opens a new or higher course of study or training including a postgraduate course of study or training without the previous permission of the Central Government in accordance with the provisions of Section 13-A of the said Act, medical qualification granted to any student of such medical college on the basis of such study or training shall not be deemed to be a recognised medical qualification for the purposes of the said Act. Likewise, sub-section (3) of Section 13- B of the said Act provides that 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 13-A of the said Act, 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 the said Act.

[Emphasis Supplied]

17. A bare perusal of the facts of the present case exhibit that the application for increasing the intake capacity from 50 to 100 seats for UG (BAMS) course was submitted to respondent no.1-UIO on 29.08.2018. Thereafter, in pursuance of the inspection carried out by

issued by respondent no.1-UOI to the petitioner on 03.05.2019 vide which certain deficiencies were pointed out by the respondent authority. The relevant portion of the said show cause notice highlighting the deficiencies is culled out as under:

"2. After careful consideration of the scheme, recommendations of the CCIM and visitor's report, in terms of the provisions of regulation 6 and 9 of regulations namely "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 Regulations of 2013, provisions under the IMCC Act, 1970, relevant Regulations made thereunder, it is observed that the applicant is not fulfilling following pre-requisites:

- i. 36 eligible teachers are available against the requirement of 45 teachers as per RMS, 2016.*
- ii. No higher faculty available in the dept. of Ayurvedsamhita and siddhant, RogaNidan and Vikruti Vigyan against the minimum requirement of 02 in each as per RMS, 2016.*
- iii. 01 higher faculty available in the department of Kriya Sharir, Agad Tantra, SwasthyaVritta & Yoga, Shalya Tantra and Shalakya Tantra against the minimum requirement of 02 in each as per RMS, 2016.*
- iv. No lower faculty available in the department of Prasuti Tantra and StriRoga against the minimum requirement of 02 as per RMS, 2016.*
- v. There is no lecturer in Sanskrit against the minimum requirement of 01 as per RMS, 2016.*
- vi. Functional Quality Testing Lab not available as per RMS, 2016.*
- vii. Operation theatre details: anesthesia/consent records not available in Operation theatre as per RMS, 2016.*
- viii. Hospital is not fully functional as per RMS, 2016.*
- ix. OT is non functional as per RMS, 2016!*
- x. Clinical laboratory not available as per RMS, 2016.*
- xi. Bio-metric attendance is not available for teaching, non-teaching and hospital staff as per RMS, 2016.*
- xii. Documentary evidence in support of additional financial resources is not available (Regulation 6(3)(c)).*
- xiii. The ratio of teaching staff and student is maintained as laid down in the regulation on Minimum Standards and requirements for admission in the medical college are not available (Regulation 6 (3 (1))).*
- xiv. Undertaking to furnish a bank guarantee in favour of the CCIM, New Delhi, from a Scheduled Commercial Bank for a period equivalent to the duration of the course is not available (Regulation 6 (3) (h))."*

18. It is vividly seen that a fair opportunity of hearing was also provided to the petitioner on 08.05.2019 to present its case against the

deficiencies communicated to the petitioner *vide* the show cause notice. Thereafter, based upon the recommendations provided by respondent no.2-CCIM and the oral and written submissions produced by the petitioner before the hearing committee, the decision of rejection of the petitioner's application was passed by respondent no.1-UOI. Notably, the existing deficiencies have been duly recorded in the final order of rejection passed on 03.10.2019. The relevant paragraph of the said order reads as under:

"9. In view of the observation of the Hearing Committee based on submission made by the college representatives during hearing and the recommendations and visitation report of the CCIM referred in para 4 above, it is found that the said college is persisting with the deficiencies related to the following basic minimum requirements:

(i) Teachers: Required number of eligible teachers are not available against the minimum requirement of 45 teachers as per RMS, 2016 for 100 seats in UG (BAMS) course.

(ii) No higher faculty available in the the dept. of Ayurvedsamhita and siddhant, RogaNidan and Vikruti Vigyan against the minimum requirement of 02 in each as per RMS, 2016 for 100 seats in UG (BAMS) course.

(iii) 01 higher faculty available in the department of Kriya Sharir, Agad Tantra, SwasthyaVritta & Yoga, Shalya Tantra and Shalakya Tantra against the minimum requirement of 02 in each as per RMS, 2016 for 100 seats in UG (BAMS) course.

(iv) No lower faculty available in the department of Prasuti Tantra and StriRoga against the minimum requirement of 02 as per RMS, 2016 for 100 seats in UG (BAMS) course.

(v) There is no lecturer of Sanskrit against the minimum requirement of 01 as per RMS, 2016.

(vi) Functional Ayurveda Hospital is not available as per RMS, 2016 for 100 seats in UG (BAMS) course.

(vii) Functional Quality Testing Lab not available as per RMS, 2016.

(viii) Operation Theatre is non-functional as per RMS, 2016.

(ix) Functional Clinical laboratory not available as per RMS, 2016.

(x) Bio-metric attendance is not available for teaching, non-teaching and hospital staff as per RMS, 2016."

19. Considering the foregoing, this court is of the considered opinion that the deeming clause as per Section 13-A (6) of the IMCC Act is not applicable as per the given facts and circumstances, as the concerned authorities scrutinised the application with due diligence well within a period of one year and the necessary steps were taken accordingly. The deeming clause will come into play only if after filing of the application for enhancement of intake capacity, the respondent authorities would have sat over the application and did not take any action, which is not the situation in the instant case.

20. Admittedly, the application was processed, inspection was carried out and the deficiencies were noticed by the concerned authorities. Despite the opportunity of hearing being provided to the petitioner, it was unable to satisfy as to how the scheme submitted by the petitioner was complete for the purpose of increase of seats.

21. Even otherwise also, the present writ petition relates to the academic year 2019-2020. At this belated stage, no directions can be passed to the effect of allowing the petitioner college to admit students at an increased intake capacity of 100 seats.

22. In view of the aforesaid facts and circumstances and the judicial pronouncements, this court is not inclined to entertain the instant writ petition. The same is, accordingly, dismissed along with the pending applications.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 07, 2023
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