

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

Date of decision: 10th APRIL, 2023

IN THE MATTER OF:

+ **LPA 301/2021 & CM APPLNs. 29048/2021, 29050/2021, 2038/2023, 2039/2023**

UNION OF INDIA

.... Appellant

Through: Mr. Apoorv Kurup, CGSC with
Ms.Nidhi Mittal, Mr. Ojaswa Pathak,
Ms. Swati Bhardwaj, Ms. Aparna
Arun, Mr. Amit Gupta, Ms. Kirti
Dadheech, Mr. Saurabh Tripathi &
Mr. Rishav Dubey, Advocates.

versus

SHRI RAM KRISHNA PARAMHANSSHIKSHA PARISHAD &
ANR

..... Respondents

Through: Mr. Amitesh Kumar, Ms. Priti
Kumari, Advocates for R-1.
Ms. Archana Pathak Dave, Mr.Kumar
Prashant, Mr. Parmod Kumar
Vishnoi, Advocates for R-2/CCIM.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant Appeal has been preferred by the Union of India impugning the Order dated 21.01.2021 passed by the Learned Single Judge in Review Petition No. 474/2018 in W.P. (C) No. 7954/2017 ('Impugned Order'). The Learned Single Judge has allowed the review and reversed the Order dated 06.12.2018. The learned Single Judge by Order dated

06.12.2018 had dismissed W.P. (C) No. 7954/2017. The effort of the impugned Judgment in W.P. (C) No. 7954/2017 has been allowed and the Respondent college has been given deemed approval to operate a new ayurveda medical college, despite deficiencies in the application submitted by the Respondent No. 1 to the Central Council of Indian Medicine ('Respondent No. 2').

2. The Respondent No. 1 applied to Appellant No. 1 under Section 13A of the Indian Medicine Central Council Act, 1970 ('IMCC Act'), which lays down the permission for establishment of a new medical college, to establish an ayurveda medical college. For the sake of convenience, Section 13A of the IMCC is being reproduced below:-

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

(1)Notwithstanding anything contained in this Act or any other law for the time being in force,—

(a) no person shall establish a medical college; or

(b) no medical college shall—

(i) open a new or higher course of study or training, including a post-graduate course of study or training, which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training including a postgraduate course of study or training,

except with the previous permission of the Central Government obtained in accordance with the

provisions of this section.

Explanation 1.—For the purposes of this section, “person” includes any University or a trust, but does not include the Central Government.

Explanation 2.—For the purposes of this section, “admission capacity”, in relation to any course of study or training, including post-graduate course of study or training, in a medical college, means the maximum number of students as may be fixed by the Central Government from time to time for being admitted to such course or training.

(2) 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.

(3) The scheme referred to in sub-section (2), shall be in such form and contain such particulars and be preferred in such manner and accompanied with such fee, as may be prescribed.

(4) On receipt of a scheme from the Central Government under sub-section (2), the Central Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may,—

(a) if the scheme is defective and does not contain necessary particulars, give a reasonable opportunity to the person or medical college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Central Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (8) and submit it to the Central Government together with its recommendations thereon within a period not exceeding six months from the date of receipt of the reference from the Central Government.

(5) The Central Government may, after considering the scheme and recommendations of the Central Council under sub-section (4) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or medical college concerned and having regard to the factors referred to in sub-section (8), either approve the scheme with such conditions, if any, as it may consider necessary or disapprove the scheme and any such approval shall constitute as a permission under sub-section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or medical college concerned a reasonable opportunity of being heard:

Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme as if such scheme had been submitted for the first time under subsection (2).

(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.

(7) In computing the time-limit specified in sub-section (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.

(8) 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 subsection (5), shall have due regard to the following 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 conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit 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 or would be 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 college;(g) any other factors as may be prescribed.

(9) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or medical college concerned.”

(emphasis supplied)

3. In the first instance, the Appellant examined the application in terms 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 (*hereinafter referred to as the ‘Regulations’*) and found deficiencies. The Respondent No. 1 wrote back to the Appellant stating that the deficiencies had been rectified. While responding to the same, the Appellant pointed out that the relevant time to make proposals was from the 1st of April to 30th of April of every year, and that the application was now beyond such period. The Respondent No. 1 filed WP(C) No. 9076/2015 in the Hon’ble High Court of Punjab and Haryana. *Vide* Order dated 17.06.2015, the Hon’ble High Court of Punjab

and Haryana disposed of WP(C) No. 9076/2015, directing the Appellant to consider the application of Respondent No. 1 if moved again between 01.04.2015 to 30.04.2015.

4. The Respondent No. 1 applied again in 2016. It submitted another application on 29.04.2016 under Section 13A of the IMCC Act seeking permission to start a new Ayurvedic College at Digrota with 100 seats in Bachelor of Ayurvedic Medicines & Surgery (BAMS). The Appellant again scrutinised the application on 08.09.2016 and pointed out 11 deficiencies, which the Respondent No. 1 was asked to cure within 10 days. Thereafter, the Respondent No. 1 *vide* letter dated 12.09.2016 replied that they had allegedly cured the defects. However, an Expert Committee visited the Respondent No. 1's college on 21.09.2016 and 22.09.2016 to evaluate whether the Respondent No. 1's college satisfied the minimum eligibility criteria for establishing the proposed college, and *vide* its Report dated 24.03.2017, the Committee recommended not to approve the application submitted by the Respondent No. 1. The Appellant *vide* Show Cause Notice dated 05.04.2017 informed Respondent No. 1 that the deficiencies persisted despite the alleged curing of defects, as claimed by Respondent No.1. The Appellant also invited the Respondent No. 1 for a hearing in compliance with Section 13A(5) of the IMCC Act to show cause. The Respondent No. 1 sought postponement of such hearing which was accepted by the Appellant *vide* Letter dated 25.04.2017. Accordingly, the hearing was conducted on 05.05.2017, and the Respondent No. 1 was given the opportunity to defend its case at length.

5. Thereafter, the Appellant on 10.08.2017 passed a final order rejecting the Respondent's application for setting up a new college as it did not satisfy

the basic criteria under Regulation 6 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. Being aggrieved by the rejection, the Respondent No. 1 filed WP(C) No. 7954/2017 challenging the Order rejecting the Respondent No.1's application. During the pendency of WP(C) No. 7954/2017, Respondent No. 1 filed an application seeking directions for deemed approval. *Vide* judgment dated 06.12.2018, the Learned Single Judge was pleased to dismiss W.P.(C) No. 7954/2017 with the following observation,

“8. In view of the above discussion, I am unable to find any infirmity, in the impugned order dated 10th August, 2017, as issued by Respondent No 1, or the rejection, of the petitioner's application for permission to establish the Ayurveda College at Digrota, thereby.

9. Needless to say, this would not inhibit the petitioner from applying afresh, for the said purpose. Any such application, if made, W.P.(C) 7954/2017 would, obviously, be considered by the respondents in accordance with the provisions of the JMCC Act and the 2003 Regulations, as amended.

10. Subject to the above, the writ petition is dismissed, with no order as to costs.”

6. Thereafter, on 20.12.2018, the Respondent No.1 preferred a Review Petition No. 474/2018 in WP(C) No. 7954/2017 seeking a recall/review of the judgment dated 17.12.2018. After hearing the detailed submissions advanced by both sides, the Learned Single Judge was pleased to allow the review petition vide Order dated 17.12.2018, in the following terms:-

“39. Resultantly, the respondents having failed to reject the petitioner's application for approval,

submitted on 28 Conclusion the April, 2016, within one year of such submission, the petitioner is entitled to the benefit of Section 13A(6) of the IMCC Act, and its application was, therefore, deemed to stand approved on and after 28th April, 2017. The impugned communication dated 10th August, 2017, rejecting the application cannot, therefore, sustain legal scrutiny and has, therefore, necessarily to be set aside.

40. As a consequence, the judgment, dated 17th December, 2018, passed by this Court, is recalled. The review petition, as well as the writ petition, succeed and are allowed.

41. Needless to say, all admissions, and other related exercises, permitted to be undertaken on a provisional basis during the pendency of this Review Petition, stand duly regularized.”

7. Being aggrieved by the recall/review of the judgment dated 17.12.2018, the instant Appeal was filed.

8. Heard Mr. Apoorv Kurup, learned CGSC for the Appellant, Mr. Amitesh Kumar, learned Counsel for Respondent No.1, Ms. Archana Pathak Dave, learned Counsel for Respondent No.2, and perused the material on record.

9. Mr. Kurup contends that the impugned judgment goes against the spirit of the IMCC Act and the Regulations, which is to ensure that the quality of education in institutions imparting education in ayurvedic medicine is of a high quality as students passing out of these colleges treat human beings. The purpose of the IMCC Act and the Regulations is also to prevent mushrooming of sub-standard institutions. He further contends that the learned Single Judge could not have resorted to Section 13A (6) of the IMCC Act without considering that the Expert Committee, which had

inspected the college had given its recommendation disapproving the application for seeking permission to start new ayurvedic college. He states that Section 13A (6) of the IMCC Act would apply only in such cases where there is no deficiency that has been pointed out and in spite of the fact that there is no deficiency, the Central Government sits on the application without passing any order.

10. Mr. Kurup contends that Section 13 A (6) of the IMCC Act cannot be applied mechanically regarding the application. He states that if such an interpretation is allowed it would result in cases where colleges with deficiencies would be permitted to impart education in ayurvedic medicine. He further contends that only an application submitted in compliance with the statutory and mandatory preconditions including minimum eligibility conditions, can be entitled to the benefit of deemed approval under Section 13A of the IMCC Act. However, as has already been submitted, Respondent No.2/CCIM after scrutinising Respondent No.1's application for seeking permission to start a new Ayurveda College at Digrota, with 100 seats in UG-BAMS for the academic session 2017-2018 had recommended *vide* letter dated 24.03.2017 that a Letter of Intent should not be issued to the Respondent No.1 on account of the infrastructural deficiencies in the college and the non-fulfilment of other minimum eligibility conditions under Section 13A of the IMCC Act. In view of the same, the Appellant had issued a show cause notice on 05.04.2017 and had granted an opportunity of hearing to Respondent No.1 in terms of Section 13A (5) of the IMCC Act. The Respondent No.1 attended the physical hearing and admitted that its application had failed to fulfil the basic eligibility criteria.

11. Mr. Kurup, therefore, submits that the Respondent/Applicant whose application was deficient *inter alia* on account of infrastructural deficiencies and had failed to comply with the minimum eligibility standards to start a new Ayurveda College with 100 seats in UG-BAMS could not have been given the benefit of deemed approval under Section 13A (6) of the IMCC Act. Mr. Kurup also places reliance on the judgment of the Apex Court in Union of India & Ors. v. All India Children Care & Educational Development Society, Azamgarh & Anr., 2002 (3) SCC 649, wherein the Apex Court was dealing with Section 10-A(5) of the Medical Council Act, 1956 which also provides that if no orders are passed by the Central Government within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2) then such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted and accordingly the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted. The Apex Court has interpreted Section 10-A(5) of the Medical Council Act to mean that that an application submitted in full compliance with the statutory and mandatory preconditions laid down under Section 10-A of the Act alone would be entitled to the benefit of deemed approval. He also distinguishes the judgment of the Gujarat High Court in Parul University v. Union of India, 2017 SCC OnLine Guj 77, wherein the Gujarat High Court while considering a deeming provision under the Homeopathy Central Council Act, 1973, by drawing to attention to the fact that in that case the institution had no deficiencies.

12. *Per contra*, Respondent No.1 has defended the propriety of the Impugned Judgment by highlighting that the Central Government failed to

communicate the decision within the prescribed period of one year, thereby deeming it approved by virtue of Section 13A6 of the IMCC Act. In this regard, the Respondent No. 1 has placed reliance upon the judgment of Parul University (supra).

13. The short question before this Court is whether the deeming provision in Section 13A5 of the IMCC Act would apply to the instant case to allow the Respondent No. 1 to establish an ayurveda college, despite deficiencies in its applications.

14. The Apex Court in Union of India & Ors. v. All India Children Care & Educational Development Society, Azamgarh & Anr (supra), while dealing with the contention that if an application which has been filed with the Central Government is not decided within one year from the date of submission of the application, observed that it will then be deemed to have been approved by the Central Government in the form in which it had been submitted. Relevant portion of the said judgment reads as under:

“5. From a perusal of the scheme contained in Section 10-A of the Act, it is evident that an application submitted in full compliance with the statutory and mandatory preconditions laid down under Section 10-A of the Act alone would be entitled to the benefit of deeming approval. In the present case, the respondent Society had to fulfil the requirement of owning and managing a 300-bed hospital the details whereof should have been incorporated in the application as made under Section 10-A(2) of the Act to the Central Government. The respondent has not till date fulfilled all the requirements, which it is under an obligation to fulfil on the date of making of the application. On the date of submission of the application, the respondent Society did not own and possess a hospital of 300 beds apart from not having sufficient staff and enough clinical facilities. The High Court lost sight of the fact

that there was a mere proposal from the respondent Society for grant of permission for establishing a new medical college. At that stage, examination of the claims for approval had not been made and the Central Government had asked for proof relating to the ownership and management of a 300-bed hospital as also the required land and, therefore, a letter was sent on 4-10-1996 by the Central Government to the respondent Society to submit the proof in this regard and there was no response to that letter till 17-2-1997, when the Central Government received a reply from the respondent Society indicating that the Department of Health, State of U.P. was willing to create an arrangement by providing the District Hospital, Azamgarh, for the purpose of teaching hospital, on certain conditions. But the norms of the Council were that the teaching hospital should be owned and managed by the applicant. On 21-3-1997, the Central Government was informed that the arrangement sought to be made between the Department of Health, State of U.P. and the respondent Society was revoked. Thus when there was no fulfilment of the condition required under the Act and that aspect not having been examined by the High Court, we cannot sustain the order made by the High Court.....”

15. Recently, in Central Council for Indian Medicine v. Karnataka Ayurveda Medical College, (2022) 7 SCC 46, the Hon’ble Supreme Court of India discussed at length the purpose for the enactment of the IMCC Act, and the import of its various Sections. In this regard, the following necessitates reproduction:-

“14. For appreciating the rival submissions, it will be necessary to refer to the background in which the said Act came to be enacted. The Union of India, after noticing that the minimum standards for admission, duration of courses of training, details of curricula and

syllabi of studies and the title of the degree or diploma, vary from State to State and even from institution to institution in the same State, had appointed various Committees to consider problems relating to the Indian system of medicine and Homoeopathy. The said Committees had recommended that a statutory Central Council, on the lines of the Medical Council of India for modern system of medicine, was a pre-requisite for the proper development of these systems of medicine. It was noticed that though some States have constituted State Boards or Councils, either by legislation or by executive orders for the purpose of registration of practitioners in the various systems of Indian Medicine and Homoeopathy as well as recognition of qualifications, there was, however, no central legislation for the regulation of practice or for minimum standards of training and conduct of examinations in these systems of medicine on an all-India basis. It was also noticed that in the absence of such legislation, there was no effective control over the large number of unregistered practitioners in these systems. In June 1966, the Central Council of Health, in its 13th meeting, while discussing the policy on Ayurvedic education, has recommended the setting up of a Central Council for Indian systems of Medicine to lay down and regulate standards of education and examinations, qualifications and practice in these systems. In this background, the said Act came to be enacted on 21-12-1970.

15. As per the provisions of Section 3 of the said Act, the Central Government was required to constitute, for the purpose of the said Act, a Central Council consisting of the members specified therein. Chapter II-A of the said Act deals with "Permission for new medical college, Course, etc." The earlier Chapter II-

A of the said Act came to be substituted by new Chapter II-A containing Sections 13-A to 13-C by the Indian Medicine Central Council (Amendment) Act, 2003 (58 of 2003).

16. It will be relevant to refer to Sections 13-A to 13-C of the said Act, which read thus:

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17. The perusal of sub-section (1) of Section 13-A of the said Act, which is a non obstante clause, would show that no person is entitled to establish a medical college except with the previous permission of the Central Government obtained in accordance with the provisions of the said section. Similarly, no medical college can open a new or higher course of study or training, including a postgraduate course or training, which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification without the previous permission of the Central Government. Likewise, there is also a prohibition for the medical colleges to increase its admission capacity in any course of study or training, including a postgraduate course of study or training except with the previous permission of the Central Government obtained in accordance with the provisions of the said section. Explanation 1 to the said section clarifies that the “person” stated therein includes any university or a trust, but does not include the Central Government. Explanation 2 to the said section clarifies that the “admission capacity” means the maximum number of students as may be fixed by the Central Government from time to time for being admitted to such course or training.

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18. Sub-section (2) of Section 13-A of the said Act provides that a person or a medical college, who desires to seek permission as provided under sub-section (1) of Section 13-A of the said Act, shall submit a scheme to the Central Government in accordance with the provisions of sub-section (3) of Section 13-A of the said Act. It further provides that the Central Government shall refer the scheme to the Central Council for its recommendations.

19. Sub-section (3) of Section 13-A of the said Act provides that the scheme shall be in such form and contain such particulars and be preferred in such manner and accompanied with such fee, as may be prescribed.

21. It can be seen from perusal of sub-section (5) of Section 13-A of the said Act, that the Central Government may, after considering the scheme and recommendations of the Central Council under sub-section (4) of Section 13-A of the said Act and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or medical college concerned and having regard to the factors referred to in sub-section (8) of Section 13-A of the said Act, either approve the scheme with such conditions, if any, as it may consider necessary or disapprove the scheme. It further provides that any such approval shall constitute as a permission under sub-section (1) of Section 13-A of the said Act. The first proviso to sub-section (5) of Section 13-A of the said Act provides that no scheme shall be disapproved by the Central Government, without giving the person or medical college concerned, a reasonable opportunity of being heard. The second proviso to sub-section (5) of Section 13-A of the said Act also

enables the person or medical college, whose scheme has not been approved by the Central Government, to submit a fresh scheme. It further provides that the provisions of the said section shall apply to such scheme as if such scheme had been submitted for the first time under sub-section (2) of Section 13-A of the said Act.

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:

“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 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 a 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. Sub-section (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.

37. It could further be relevant to notice Regulation 3(1)(a) of the 2016 Regulations, which reads thus:

“3. Requirements of Minimum Standard to grant of permission.—(1)(a) The Ayurveda colleges

established under Section 13-A and existing under Section 13-C of the Act and their attached hospitals shall fulfil the requirements of minimum standard for infrastructure and teaching and training facilities referred to in Regulations 4 to 11 up to the 31st December of every year for consideration of grant of permissions for undertaking admissions in the coming academic session.”

38. It could thus clearly be seen, that Regulation 3(1)(a) of the 2016 Regulations specifically provides that the Ayurveda colleges established under Section 13-A and existing under Section 13-C of the said Act and their attached hospitals shall fulfil the requirements of minimum standard for infrastructure and teaching and training facilities referred to in Regulations 4 to 11 up to 31st December of every year for consideration of grant of permissions for undertaking admissions in the coming academic session... ”
(emphasis supplied)

16. It emerges that the said Act was enacted to exercise control over unregistered ayurveda practitioners, and lay down and regulate the standards of education, examination, and qualification for setting up ayurvedic medical colleges. The eligibility for making an application to establish a new medical college is provided under Regulation 6 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. It lays down *inter alia* that one of the objectives of such a college should be to impart education about Ayurveda or Siddha or Unani Tibb (Regulation 6(a)).

17. After fulfilling these requirements, the application process has been delineated in Section 13A of the IMCC Act. Sub clause (a) provides that that to obtain permission, interested colleges must submit applications to the Central Government, which shall refer such scheme to the Central Council for its recommendation. Upon receipt of a scheme from the central Government, the Central Council may obtain other particulars from the college, to either ask the college to rectify the defects, if any, or submit its recommendations to the Central Government, in accordance with Section 13A(8). Section 13A(5) provides that the Central Government, after considering the Scheme and the recommendations of the Council, either approve the scheme or disapprove the scheme, provided that any disapproval is given after giving the requisite medical college a reasonable opportunity of being heard.

18. Pertinently, Section 13A(6) accounts for the possibility of bureaucratic delay. It provides that in case no order is communicated by the Central Government to the interested college within a year, the application/scheme submitted by the College 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.

19. It appears that the IMCC Act, and the subsequent Regulations promulgated in pursuance of it have been enacted keeping in mind the objective of regulating how individuals/entities impart knowledge of *inter alia* ayurveda. It is becoming increasingly important to regulate this alternate mode of medicine to ensure the safety of the patients. Regulating this market is also important to check the claims made by practitioners of

ayurveda. Further, having safeguards in place also not only ensures efficiency but also helps in developing trust in this alternate mode of treatment.

20. In the instant case, Respondent No.1 had submitted a scheme/applicant to the Appellant to establish a medical college with 100 seats in UG-BAMS course on two occasions. On both such occasions, there were deficiencies in the application submitted by Respondent No. 1. In the second occasion, the Appellant, in accordance with the scheme of Section 13A(6) asked the Council to inspect the premises of the Respondent No.1 college. Such inspection resulted in a report dated 24.03.2017 whereby the Council did not recommended the approval of the application submitted by the Respondent No. 1 due to the following deficiencies in its application:-

“Whereas, on examining the case, it was observed that the applicant isnot fulfilling the following basic eligibility criteria:

1. The society / trust does not have objective to impart to education to Ayurveda discipline as per Regulation 6 (1) (a) the application has submitted objective written on their letter head which is not registered in Society Act.

2. Visitors have observed that there is no concept of departmental OPD / IPD computerized OPD / IPD registration system not available. Records of OPD / IPD not available and even does not correlate with available documents. Further, the IPD data as submitted by the Applicant shows that the no. IPD pt. admitted and no. of bed days occupied are same, which seems impractical. In view of these, it appears that the Applicant does not have functional hospital

***of concerned systems specified in the relevant notified
MSR Regulations.”*** (emphasis supplied)

21. Thereafter, in accordance with Section 13A(5) of the IMCC Act, the Appellant issued show cause notices to the Respondent No. 1 informing Respondent No. 1 that the deficiencies persisted despite the alleged curing of defects on 04.09.2016. The Appellant also invited Respondent No. 1 for a hearing in compliance with the show cause notice. The observations recorded by the Hearing Committee also warrant reproduction. A perusal of the Hearing Committee's meeting indicates that with regards to the first issue, the representatives of the Respondent No. 1 accepted that the Respondent No. 1 does not have the objective to impart education in Ayurveda discipline as per Regulation 6 (1) (a). It was further admitted by the Representatives that the college did not have computerised OPD/IPD registration. The representatives further could not furnish lab investigation register, kay chikitsa IPD sheets etc. Due to this, the Hearing Committee reached the conclusion that,

“i. The college / society .does not have objective to impart toeducation to Ayurveda discipline as per regulation 6 (1) (a)

ii. The OPD data seems to be manipulated hence unreliable.

iii. IPD is non functional.”

22. After such hearing was conducted, the Appellant passed a final order rejecting the Respondent's application for setting up a new college as it did not qualify the following basic criteria under Regulation 6 of the Establishment of New Medical College, opening of New or Higher Course

of Study or Training and Increase of Admission Capacity by Medical College, Regulations, 2003. The following observations gain prominence:-

“9. whereas, in view of the above observations of the hearing committee based on submissions made by the college during hearing as in para 8 above and the recommendations and visitation report of the CCIM referred in para 3 above, it can be understood that the above said Trust does not have the objective to impart education in Ayurveda discipline and functional Ayurveda hospital as specified in the notified relevant regulations(which violate the provisions of the IMCC act and the relevant regulations and is of such a serious and fundamental in nature that they adversely affect the ability of the proposed college to provide quality medical education in terms of the provisions of the IMCC act and the relevant regulations. The college representatives were given opportunity of hearing to present the case, but they could not produce sufficient documents / evidences to substantiate their claim of having functional Ayurveda hospitals which is not only required to have at the time of application but is required to be functional one year before making an application for running an Ayurveda College. Hence, the Applicant is not fulfilling the basic eligibility criteria as per the Regulation 6 of the regulation 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 the amendment regulations of 2013, to establish a new Ayurveda college.

10. Now therefore, in view of the shortcoming and deficiency particularly about the non availability of functional Ayurveda hospital and objective to impart education in Ayurveda discipline, which are essential pre requisite to make application and to establish a

new Ayurveda college in terms of the provisions of the IMCC act and the relevant regulations therefore, it has been decided not to issue letter of intent to the secretary, Shri Ram Krishan Parmhans Shiksha Parishad, Diwan Colony, Railway Road, Mohinder Garh, Haryana to start a new Ayurveda College in the name of Shri Ram College of Medical Science & Research at Digrota, Distt. Mohindergarh, Haryana with 100 seats in BAMS course from the Academic session 2017-18 under section 13 A of the IMCC Act, 1970. Hence, the Applicant / Scheme dated 28.04.2016 of the Applicant for the above purpose is disapproved.

11. However, second proviso to sub section (5) of the section 13 A of the IMCC Act does not prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme for permission of the central Government in subsequent year in accordance with the schedule prescribed for receipt and processing of the applications under Regulation 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 the amendment regulations of 2013. ”

(emphasis supplied)

23. It was at this point that the Respondent No. 1 filed WP(C) No. 7954/2017 challenging the deficiency pointed out by the Appellant. It is apposite to state that deficiencies such as the basic requirement of having the objective of imparting education in Ayurveda discipline, and having verifiable OPD Data are pre-requisites to making the application, and cannot be overlooked. Such deficiencies most definitely negate the possibility of the Respondent No. 1 being able to operate a college successfully, and necessitate a rejection of the application/scheme of Respondent No. 1.

24. In light of this, the question which arises for consideration is whether the deeming provision in Section 13A(6) of the IMCC Act can come to the rescue of the Respondent No. 1. In the considered opinion of this Court, allowing Respondent No. 1 to function despite the existence of deficiencies would go against the import of the IMCC Act and the Regulations. The purpose of having a deeming provision in a statute has been dealt with in Ittianam v. Cherichi, (2010) 8 SCC 612, in the following terms:-

“15. It is well known that when the legislature uses a deeming provision to create a legal fiction, it is always used to achieve a purpose. In State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory [AIR 1953 SC 333] , the Constitution Bench opined, when a legal fiction is created, one is led to ask at once for what purpose it is created (see AIR p. 343, para 38).

16. In this case the obvious purpose is to avoid intestacy in respect of properties referred to and comprised in the will. Once the purpose is ascertained, the Court must give full effect to the statutory fiction and the fiction is to be carried to its logical end. In State of Bombay v. Pandurang Vinayak [AIR 1953 SC 244 : 1953 Cri LJ 1094] this Court laid down the aforesaid propositions at p. 246 of the Report. In doing so, this Court relied on the famous dictum of Lord Asquith which has virtually become locus classicus on statutory interpretation of “deeming” provisions.

(emphasis supplied)

25. Similarly, in Consolidated Coffee Ltd. v. Coffee Board, (1980) 3 SCC 358, the Hon’ble Supreme Court held as under:-

“11. It is not possible to accept the aforesaid contention for the reasons we shall presently indicate. It is true that the word “deemed” has been used in Section 5(3) but the same word has been used not merely in Section 5(1) but also in the other two Sections 3 and 4 of Chapter II of the Central Sales Tax Act which has the heading “Formulations of principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of export or import”; the heading of Chapter II on the face of it suggests that what is done under Sections 3, 4 and 5 including sub-section (3) is formulation of principles. Secondly, the word “deemed” is used a great deal in modern legislation in different senses and it is not that a deeming provision is every time made for the purpose of creating a fiction. A deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail, but in each case it would be a question as to with what object the legislature has made such a deeming provision. In St. Aubyn v. Attorney-General [1952 AC 15, 53 : (1951) 2 All ER 473, 498] Lord Radcliffe observed thus:

“The word ‘deemed’ is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible.” ...”(emphasis supplied)

26. In Bangaru Laxman v. State, (2012) 1 SCC 500, the Supreme Court evaluated the purpose of the deeming provision in Section 5(2) of the PC Act in the following manner:-

“20. It is well known that a deeming provision is a legal fiction and an admission of the non-existence of the fact deemed. (See J.K. Cotton Spg. and Wvg. Mills Ltd. v. Union of India [1987 Supp SCC 350 : 1988 SCC (Tax) 26 : AIR 1988 SC 191] , SCC p. 365, para 40 : AIR at p. 202, para 40.) Therefore, while interpreting a provision creating a legal fiction, the court has to ascertain the purpose for which the fiction is created.

21. The law on this aspect has been very neatly summed up by Lord Justice James in Levy, In re, ex p Walton [(1881) 17 Ch D 746 : (1881-85) All ER Rep 548 (CA)] . At Ch D p. 756, the learned Judge formulated as follows:

“... When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.”

22. The aforesaid formulation has been approved by a Constitution Bench of this Court in State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory [AIR 1953 SC 333] . At p. 343 of the Report the aforesaid principles have been referred to by this Court along with the various other decisions and which are set out: (AIR para 38)

“38. ... ‘... When a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.’

The above observations were quoted with approval by Lord Cairns and Lord Blackburn in Hill v. East and West India Dock Co. [(1884) 9 AC 448 (HL)] Lord Blackburn went on to add at AC p. 458:

‘I think the words here “shall be deemed to have surrendered” ... mean, shall be surrendered so far as is necessary to effectuate the purposes of the Act and no further....’ ” (emphasis added)

23. Following the aforesaid well-settled principle, as we must, we hold that the deeming provision introduced in Section 5(2) of the PC Act is not for fettering the power of the Special Judge to grant pardon in terms of Section 306 of the Code. The purpose of introducing the deeming provision in Section 5(2) of the PC Act is manifest from the text of Section 5(2), namely, the same is introduced only for the purposes of sub-sections (1) to (5) of Section 308 of the Code and it is only for the said purpose that the sanction is deemed to have been tendered under Section 307 of the Code.” (emphasis supplied)

27. Even though Courts have relied on the judgment of the well known case of East End Dwellings Co. Ltd. v. Finsbury Borough Council, **1952 AC 109 : (1951) 2 All ER 587**, wherein Lord Asquith observed the following:-

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative, state of affairs had in fact existed, must inevitably have flowed from or accompanied it. ... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

Yet this principle cannot be blindly applied in every case which contains a deeming clause, as the same could defeat the purpose of the Act. The sections in a statute get their colour from the purpose for which the statute was enacted. A deeming provision cannot be permitted to do violence to the purpose of the enactment, as the same could lead to absurdities. It is equally settled that Courts must not lean towards any interpretations which will have the effect of nullifying the statute itself.

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 sub-section (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 sit on 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.

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) the High Court of Gujarat had specifically stated that after carrying out 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.

31. In light of the above observations, this Court is of the opinion that the deeming clause in Section 13A(6) will not come to the rescue of Respondent

No.1 to establish a university. To this extent, the judgment dated 17.12.2018 in Review Petition No. 474/2018 in WP(C) No. 7954/2017 is set aside.

32. While reversing the importing of the Impugned Judgment, this Court finds it apposite to state that the Respondent No. 1 is at liberty to file a fresh application with the Appellant, with the requisite qualifications, between 1st April and 30th April of the following years.

33. In light of the above, this Court is allowing the instant appeal, with pending applications, if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

APRIL 10, 2023

hsk/Sh

