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IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 21.04.2022.
Date of Decision: 22.04.2022.*

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W.P.(C) 5690/2022 & CM APPL. 16913/2022 -Int. relief.
SUMANDEEP VIDYAPEETH, AN INSTITUTE DEEMED TO BE
UNIVERSITY Petitioner

Through: Mr.Maninder Singh & Mr.Dayan
Krishnan, Sr. Advs. with Mr. Rishi Aggarwal,
Mr.Ankit Banati, Mr.Shravan Niranjana,
Mr.Prabhas Bajaj & Mr.Pranav Saigal, Mr.
Karmanbir Singh and Mr. Sukrit Seth, Advs.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr.Aakanksha Kaul, Mr.Manek
Singh, Mr.Aman Sahani & Mr.Deepak Tawar
(GP), Mr. Hitesh Batra, Advs. for UOI
Mr.Archana Pathak Dave, Mr.Kumar Prashant,
Mr.Pramod Kumar Vishnoi & Mr.Avnish Dave,
Advs. for R-2

**CORAM:
HON'BLE MS. JUSTICE REKHA PALLI**

REKHA PALLI, J

JUDGMENT

1. The petitioner, who is desirous of starting a new Ayurvedic Medical College with 100 seats in the undergraduate (UG) programme Bachelor of Ayurveda Medicine and Surgery ("BAMS") for the Academic Year 2021-2022, has approached this Court assailing the denial order dated 31.01.2022 passed by the Medical Assessment and Rating Board of the Indian System

of Medicine of the respondent no.2 (hereinafter referred to as the “*MARBISM*”), vide which its scheme for commencement of the said course was rejected. The petitioner also assails the orders dated 24.02.2022 and 31.03.2022 passed by the respondent no. 2 and respondent no. 1, respectively, whereby its first appeal and second appeal against the denial of Letter of Permission (“*LOP*”) dated 31.01.2022, have been rejected.

2. The petitioner approached the Health and Family Welfare Department, state of Gujarat (H&FWD, Gujarat) seeking a ‘No Objection Certificate’(hereinafter referred to as *the “NOC”*) as required under the Indian Medicine Central Council (Requirements of Minimum Standard for undergraduate Ayurveda Colleges and attached Hospitals), Regulations, 2016 (hereinafter referred to as “*MSR, 2016*”). On 29.08.2020, the state government, after satisfying itself with the infrastructure and clinical material in the petitioner institute issued a NOC for establishment of an ayurveda college with the admission capacity of 60 seats in BAMS course to the petitioner.

3. On 23.09.2020, the petitioner, armed with this NOC, submitted an application to respondent no.2 under section 13A of the Indian Medical Central Council Act, 1970 (hereinafter referred to as *the “IMCC Act”*) for establishment of Sumandeep Ayurveda Medical College and Hospital. The said application was rejected by the respondent no.1 on 18.11.2020 for want of an updated ‘Consent of Affiliation’ from the affiliating university as it was the petitioner’s case that on account of being a ‘Deemed to be University’ as per the UGC norms, it did not require a ‘Consent for Affiliation’. Aggrieved thereby, the petitioner approached this Court by way of W.P.(C) 10942/2020 against the respondents’ refusal to consider its

application on the aforesaid ground and it is only after the intervention of this Court that the respondent no.1 agreed to process the petitioner's application without insisting on a 'Consent for Affiliation'.

4. In the meanwhile, the petitioner received a fresh NOC dated 26.03.2021, now with an increased intake of 80 seats in BAMS. However, since this NOC inadvertently referred to the academic year 2022-2023, a corrigendum was issued by the government of Gujarat on 03.08.2021, clarifying therein that the NOC, in favour of the petitioner, had in fact, been issued for the academic year 2021-2022.

5. In accordance with the procedure mentioned under the MSR, 2016 the petitioner, on 25.08.2021, sent its duly filled up Part-I visitation proforma alongwith the institute and hospital's layout, as also the visitation fees, so that the necessary inspection could be conducted for issuance of a Letter of Intent ("LOI") in its favour.

6. Based on the petitioner's application, and the NOC granted by the Government of Gujarat, the MARBISM appointed a team of visitors to undertake an online verification of the petitioner's faculty and infrastructure on 14.09.2021. During this inspection, the petitioner claims to have shown all the relevant records in respect of both the In-Patient Department ("IPD") and Out-Patient Department ("OPD"), as also the doctors and nursing staff roster, to the members of the visitors' team. After consideration of the report of this visitors' team, the petitioner was issued an LOI on 03.11.2021 by the respondent no.2, in accordance with 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 "Medical College Regulations, 2019"*),

by the Ministry of AYUSH, clearly informing the petitioner that its scheme for 80 seats in its UG BAMS course had been approved.

7. After the LOI had been issued in the petitioner's favour on 03.11.2021 for 80 seats, a further virtual inspection of its premises, for the purpose of issuance of a letter of permission ("LOP"), was carried out on 13.12.2021 by the MARBISM. It may be noted that by this stage, the petitioner had received a revised NOC on 10.12.2021 from the state government, this time for an intake of 100 seats in BAMS course. Based on this inspection, the petitioner was issued a hearing notice dated 13.01.2022 by the MARBISM to explain certain purported deficiencies, for which an opportunity of hearing was granted to it on 17.01.2022, before the designated hearing committee appointed by the MARBISM. As per this notice, the petitioner was informed that it was not fulfilling the following requirements:

"Further, in view of above, the college has been assessed on the basis of concerned regulations and Relaxation policy issued by the Ministry of AYUSH. On examining it appears that, the college is not fulfilling the following requirements:-

1. Biometric attendance record is not available.

2. Functionality of hospital

- *OPD and IPD entries of Hospital were not maintained, properly.*
- *Consultant of Balaroga was not present in OPD during the time of visitation.*
- *Roster for doctor and nursing staff were not maintained properly.*
- *Out of 79 hospital staff only 54 staff were present at the time of visitation as verified by the visitor.*
- *Name in the attendance register of hospital staff was not matching with the name mentioned in the part – 2 visitor's*

proforma.

3. Teaching staff

- Availability of total teaching staff is 50% against the minimum requirement of 90%
- There is no higher faculty in the department of Ayurveda Samhita Siddhanta and RachanaSharir against the minimum requirement of 02.
- There is shortage of 01 lecturer in the department of Ayurveda Samhita Siddhanta.
- Visitor verified 13 teachers in part 2. Out of them 06 teachers are not considered. The details are as under:

S.No.	Teachers Name	Teachers Code	Designation/Department	Remarks
1	Dr. Mukund Shankar	AYST00884	Professor, Shalaky Tantra	Not considered as teacher is linked with KJ INSTITUTE OF AYURVEDA AND RESEARCH, GUJARAT from 01/Jan/2021 till 22/Nov/ 2021
2	Dr.Sachin Vinod Kumar	AYRS00290	Lecturer/ Rachanash arir	Not considered as teacher is linked with Eva College of Ayurved, GUJARAT from 23/Jan/2021 till 16/Nov/2021
3	Dr.Hridya P.P.	AYSS00967	Lecturer/Ayurved Samhita & Siddhant	Not considered as teacher is linked with Dhanvantari Ayurved College, Koydam, Gujarat from 04/May/2021 till 17/Nov/2021
4	Dr.Manish Kumar Duriabhjibhai	AYSS00056	Lecturer/Ayurved Samhita & Siddhant	Not considered as teacher is linked with Gokul Ayurvedic College, Patan, Gujarat from 01/Jun/2021 till 18/Nov/2021
5	Dr.DharabenShankar bhai	AYSS005DJ	Reader/Ayurved Samhita &	Not considered as teacher is linked with Noble Ayurved College

			<i>Siddhant</i>	<i>& Research Institute Junagadh, Gujarat from 05/Jan/2021 till 20/Nov/2021</i>
6	<i>Dr.Dhanya T.</i>	<i>AYSS01291</i>	<i>Lecturer/Ayurved Samhita & Siddhant</i>	<i>Not considered as teacher is linked with Sri Paripoorna Sanathana Ayurveda Medical College, Hospital and Research Centre, Bengaluru from 15/Mar/2021 till 21/Nov/2021</i>

4. Hospital Staff

**Shortcomings observed in hospital are as under:-*

<i>Assistant matron</i>	<i>2</i>
<i>Pharmacist</i>	<i>2</i>

8. The petitioner, however, claims that none of these deficiencies, in the notice dated 13.01.2022, in fact existed, which fact was duly explained during the course of hearing granted to it, but, the respondent no. 2, who somehow wanted to penalise the petitioner for approaching this Court by way of W.P.(C) 10942 of 2020, issued a denial LOP to the petitioner for starting the (UG) BAMS course on 31.01.2022. Aggrieved thereby, the petitioner preferred a first appeal under Section 29(5) of the National Commission for Indian System of Medicine Act, 2020 (hereinafter referred to as “the NCISM Act”) which came to be rejected by the Appellate Authority of the respondent no.2 on 24.02.2022, thus, compelling the petitioner to prefer a second appeal under section 29(6) of the NCISM Act on 28.02.2022; which, too, has been rejected by the Central Government vide the impugned order dated 31.01.2022.

9. It is in these circumstances that the petitioner has approached this Court by way of the present petition.

10. In support of the petition, Mr. Maninder Singh and Mr. Dayan Krishnan, learned senior counsel for the petitioner, has made the following submissions:

(i) At the outset, Mr. Singh submits that once the Central Government, after satisfying itself that the petitioner was a duly established medical college, which had been running for the last two years, having the necessary infrastructure to cater to students for the UG BAMS course, issued it the NOC on 29.08.2020, it could not now be said that the petitioner hospital was not functional. He submits that the hospital of the petitioner is functional since July, 2018 and is not only maintaining all its IPD and OPD registers properly, but is also successfully following the Computerized Central Registration System, as required under Regulation 7(3) of the MSR, 2016, which aspect was also duly verified by the visitors' team, both on 14.09.2021 and 13.12.2021.

(ii) By drawing my attention to the impugned letters dated 13.12.2021 and 15.12.2021 from the MARBISM, he submits that once the petitioner was asked only to submit the scanned copies of the first and the last pages of the IPD and OPD registers for the period between January 2020 and December, 2020, which requirement the petitioner has duly complied with, the respondent cannot now be permitted to urge that the petitioner did not furnish the relevant record pertaining to the last two years. He further submits that even otherwise, the respondent no.1 had itself issued a relaxation policy vide circular dated 26.03.2021 clarifying that the records of the OPD and IPD shall not be taken into consideration for grant of

permission for the academic session 2021-2022 due to the Covid-19 pandemic. He, therefore, contends that the purported deficiencies in the OPD and IPD records is non-existent, and this ground has been taken by the respondent only to somehow deny permission to the petitioner, which is a well-established college running for the last two years.

(iii) Mr. Singh then submits that even the duty roster for the hospital's Doctors and Nursing staff is being properly maintained right from the very beginning, and the same was duly inspected by the visitors' team appointed by the MARBISM. He submits that not only is the respondents' objection that the staff duty roster register is not being properly maintained, absolutely vague, but, even otherwise, the petitioner was never put to any notice that there was any purported deficiency in maintaining the duty roster. He therefore contends that in view of the admitted position that copies of neither of the two inspection reports were supplied to the petitioner, the petitioner had no opportunity to explain its position in this regard.

11. Mr. Singh then submits that the respondents' plea is contrary, not only to the record, but also to the inspection report dated 13.12.2021 itself. By drawing my attention to the specific observations of the visitors' team, he submits that after examination of all the documents and registers, it was categorically found by the two visitors' teams that the college was having the required number of teaching and non-teaching staff. He contends that the presumption of there being a shortage of teaching staff has been arrived at by the respondents by ignoring the six faculty members, whose names are clearly linked with the petitioner institute on the web portal of the respondent no.2, after delinking of their names from the erstwhile institutions where they were earlier employed. It is only after those teachers

have been delinked from their erstwhile institutions that the petitioner could have employed them and therefore, once the respondent no.2 has linked the names of these six teachers with the petitioner college, it cannot now be permitted to contend that merely because these six teachers had earlier given affidavits in respect of their erstwhile institutions, they cannot now be considered as members of the petitioner's faculty. He, thus, contends that if all these six teachers who are wrongly being excluded from the petitioner's institute, are also included in the petitioner's faculty, as per the opinion of the visitors' team, the petitioner institute fully meets all the requirements and, therefore, prays that the writ petition be allowed.

12. *Per contra*, Ms. Aakanksha Kaul and Ms. Archana Pathak Dave, learned counsel for the respondent nos. 1 and 2, respectively, vehemently oppose the petition and make the following submissions:

(i) Ms.Dave submits that once various deficiencies in the petitioner college were found by the MARBISM, the respondents are justified in denying permission to the petitioner to establish a new Ayurvedic Medical College with 100 seats in the (UG) BAMS course. She submits that the NCISM being an expert commission for assessing the availability of infrastructure and faculty in a hospital/ medical institute as per the MSR, 2016, this Court ought not to interfere with its decision to deny permission to the petitioner institute, which decision was based on an inspection of the institute's premises by the visitors' team constituted by the MARBISM. Since the petitioner was unable to explain or rectify all the defects noted by the MARBISM, even during the hearings granted to it on 17.01.2022, and 07.02.2022 pursuant to the first appeal, the petitioner does not deserve to be granted any relief as it is the report of the visitors that has to be given

primacy vis-à-vis the stand taken by the petitioner college. In support of her plea, she seeks to place reliance on the decision of the Apex Court in *Medical Council of India v. Kalinga Institute of Medical Sciences & Ors. (2016) 11 SCC 530* and *Medical Council of India vs. The Chairman, S.R. Educational and Charitable Trust and Anr. (2018) SCC OnLine 2276*.

(ii) Ms.Dave then submits that all the three deficiencies noted in the impugned order passed by respondent no.1 on 31.03.2022 are serious deficiencies which could not be ignored by the respondents. She claims that since the petitioner institute does not have the minimum infrastructure and faculty as mandated under the MSR, 2016 and the Medical College Regulations, 2019, they have rightly been denied permission to establish a new college. Her contention, thus, is that without having a fully functional college, the petitioner institute will not be able to provide its students with the necessary practical knowledge to its students, and therefore, granting permission to such an institute would lead to imparting of substandard education in the field of Indian system of medicine.

(iii) She then submits that even though the petitioner's failure to properly maintain the duty roster and the record of the OPD/ IPD have also been correctly treated as deficiencies by the respondent no.1, the shortfall in the teaching staff is a major deficiency which just cannot be overlooked. She submits that the Regulation 3(1)(f) of the MSR, 2016 clearly provides that the Central Council of Ayurveda must certify that teaching staff present in the concerned institute is not working in any other institute. In the present case, even though the visitor's team had identified the thirteen teachers mentioned in the part-II of the proforma filled by the petitioner at the time of seeking issuance of the LOP, as eligible but, once it was found that six of

them had already furnished their affidavits in July/August 2021 regarding their engagement for the very same academic session in institutes other than the petitioner's, the respondent no.2 was justified in not considering these six teachers.

(iv) She submits that in order to maintain the quality of education and curtail the practice of 'on paper teachers' the commission has to, in accordance with Regulation 3(1)(f) of the MSR 2016, certify that the teacher is not working anywhere else. In the present case since it has been found that the six out of the thirteen teachers verified by the visitation team, had furnished affidavits in respect of their employment with other colleges, during this very academic session, merely because after their resignation from the erstwhile institutes, they have now been linked with the petitioner college on the web portal of the respondent no.2, cannot be a ground to ignore their earlier affidavits.

(v) She submits that these six teachers have in fact given false affidavits by concealing the facts that they had earlier submitted similar affidavits for the very same academic session in respect of other institutes and, therefore, strict action must be taken not only against them, but even against the trustees and the principal of the petitioner college. In support of her plea, she relies on the decision of a Coordinate Bench of this Court in *Anil Kumar Bhadoria vs. Union of India, W.P.(C)837/2021* and other connected petitions. She, therefore, prays that the present petition be dismissed.

13. Before dealing with the submissions, I may, at the outset, note that it is the common case of the parties that most of the deficiencies as noted in the denial order dated 31.01.2022 issued by the MARBISM, and the first appellate order dated 24.02.2022 issued by the respondent no.2, except those

referred to in the impugned order dated 31.3.2022, stood rectified and only the deficiencies mentioned in the order dated 31.03.2022 remained. It may, therefore, be apposite to briefly note the three deficiencies contained in the impugned order dated 31.03.2022 issued by the respondent no.1 for denying permission to the petitioner for commencement of the new Ayurvedic Medical College with 80 seats in the (UG) BAMS course, which read as under:-

- (i) Functionality of hospital and maintenance of IPD/OPD records were not as per the minimum standard requirements prescribed in the regulations;
- (ii) Roster of Doctors and Nursing staff was not maintained properly; and;
- (iii) The teaching staff was 50% as against the minimum requirement of 90% for conditional permission as per MRS, 2016.

14. I also find that though the impugned order dated 31.03.2022, as noted hereinabove, refers to three deficiencies, the respondents have in their counter affidavit, as also, during the course of arguments, opposed the petition mainly on account of the purported shortfall in the petitioner's teaching staff and, I am, therefore, first dealing with this plea of the respondents regarding the shortfall in the teaching staff of the petitioner.

15. At this stage, it would be necessary to note the relevant extracts of the observations of the visitors' team qua the teaching staff in its report of the inspection conducted on 13.12.2021, which read as under:

"Certification Details

Certification by visitation team on teaching staff

The required documents and registers are examined thoroughly in relation to list of available number of teachers submitted by the college. On examining all the necessary documents, the names of

teachers mentioned in the list are correlating with the required documents. On the basis of all these documents, it is certified that the college is having 12 teachers.

Dr. Harshal Sampatrao Sabale-V01138

Status: Agree

Dr. Suman Yadav - V00468

Status: Agree

Certification by visitation team on non-teaching staff

The required documents and registers are examined thoroughly in relation to list of available number of non-teaching staff submitted by the college. On examining all the necessary documents, the names of non-teaching staff mentioned in the list are correlating with required documents. On the basis of all these documents, it is certified that college is having 15 non-teaching staff.

Dr. Harshal Sampatrao Sabale-V01138

Status: Agree

Dr. Suman Yadav -V00468

Status: Agree”

16. From the submission of the parties, and the record, what emerges is that the respondents do not deny that the visiting team had specifically observed that all the thirteen teachers, whose names were mentioned by the petitioner in Part – II of the proforma submitted by the petitioner, were eligible as per the MSR, 2016. It is also not denied by the respondents that if all these thirteen teachers are treated as eligible, there would no shortfall of teaching staff in the petitioner institute. The respondents, however, contend that six out of the thirteen teachers held to be eligible by the visitors’ team cannot be taken into consideration, as these six teachers had furnished affidavits in July/August 2021 clearly testifying that they were engaged in

other institutes for this academic session, and could therefore, not be considered a part of the petitioner institute. On the other hand, the petitioners have vehemently urged that once these teachers, after resigning from their earlier institutes, have joined the petitioner institute as full-time salaried teachers, and are as on date employed with the petitioner institute, the mere fact that they were engaged in other institutes prior to being linked with the petitioner institute, cannot be a ground to exclude these six teachers from the available teaching faculty of the petitioner.

17. Having given my thoughtful consideration to the rival submissions of the parties, I find that even though the respondents may be justified in urging that these six teachers had earlier submitted affidavits regarding their engagement in some other institutes, the fact remains that these teachers are today employed with the petitioner institute, which is a part of the respondents' record as these teachers are linked with the petitioner institute on the respondents' own web portal. The factum of their engagement with the petitioner institute has admittedly been duly notified by these very teachers on the respondent no.2's portal, and has been verified by the respondent. Though, the respondents cannot take the responsibility of the veracity of the correctness of the statement made by the concerned teachers on its web portal, but, at the same time, they cannot simply overlook the fact that it is these very teachers who have categorically stated on its website about their existing employment with the petitioner institute.

18. Since heavy reliance has been placed by the respondent on the earlier affidavits furnished by these six teachers to institutes other than the petitioner's, it may, at this stage, be apposite to note the relevant extract of the affidavit dated 31.07.2021 of one of these six teachers, namely

Dr.Dharaben Shankarbhai Patel, so as to appreciate the rival submissions of the parties on this aspect.

“I hereby solemnly affirm that the above information is correct as per my records and knowledge. I am regular teach in above mentioned college presently resident at PARTH VATIKA”, Bhesan Road, Near Bamangam, Taluka – Junagadh, Dist. – Junagadh, Pincode – 362310, Gujarat (Distance from college – 00 KM.) and I am not practicing within regular college hours. My salary is credited in my salary account number 110000361152. I further affirm that I have not presented myself as a teaching faculty to any other institution for the visitation of same academic session. I will follow/ already following the requirement of regulation 26 of Practitioners of Indian Medicine (Standards of Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982. I can substantiate these claims with documentary proof as and when asked by THE NATIONAL COMMISSION FOR INDIAN SYSTEM OF MEDICINE. If any information given in this affidavit is found to be false, I shall be liable for any disciplinary action like debarring from teaching and cancellation of registration in addition to initiating action under the provisions of sections 406 and 420 of Indian Penal code and other relevant provision of the Act.

Place Junagadh

Date 31.07.2021

signature of Deponent/Teacher”

19. From a bare perusal of the aforesaid extract of the affidavit, it becomes evident that the concerned teacher in her affidavit dated 31.07.2021 has merely stated that she had not presented herself as a teaching faculty to any other institution for the visitation for the same academic session. There is however, nothing in this affidavit to suggest that the teacher was, in any

manner, barred from resigning from her erstwhile institution thereafter, or for that matter, from joining any other institute as a full-time teacher.

20. I may also note that the averments in the affidavit are made in respect of the period prior to the date on which the affidavit was furnished, and do not, in any manner, refer to the future course of action which the teacher may choose to adopt. The furnishing of the said affidavit did not put any embargo on the teacher from joining any other institution, after the date on which the said affidavit was submitted to the erstwhile institute. During arguments, it was put to learned counsel for the respondents as to whether there was any provision in the regulation which imposed any such embargo on the teachers from resigning from an institute after he/she furnished an affidavit there at the time of visitation. The answer was a clear no. In the light of this position, I am unable to appreciate as to how the respondent can choose to ignore these six teachers, or put the blame on the petitioner for the action of the teachers of shifting to some other institute right before the institute's visitation was due. Merely because the respondents want to curtail this practice of teachers joining one institute at the commencement of the academic session, and thereafter shifting to another during the same academic session, cannot be used as a ground to penalise the petitioner, when there is enough material to show that these teachers are currently engaged with the petitioner. The onus on the petitioner was limited to ensure that the teachers were not engaged with other institutes before hiring any teachers, which due diligence the petitioner appears to have done. I am, therefore, constrained to hold that the respondents' finding qua this purported deficiency of the petitioner's teaching faculty is wholly perverse and shows non-application of mind on the part of the respondents. However,

this will not preclude the respondents from issuing appropriate guidelines or amending their regulations, to prevent teachers who have given affidavits for one institute during a particular academic session from joining another institute during the same academic session, if they deem it necessary.

21. Now coming to the other two deficiencies which form the basis of the impugned order. The order passed by the respondent no.1 records that the petitioner is not properly maintaining the OPD and IPD records, as also the staff duty roster, and is therefore, not a functional institute. Even though the respondents have really not pressed these aspects either in their counter affidavit or during their course of arguments, I find that, even otherwise, these grounds are extremely vague. None of the three impugned orders refer to the defects in the manner in which the petitioner is maintaining the OPD and IPD records, as also the doctors and nursing staff roster. In fact even the observations of the visitors' team are equally vague. Moreover, I cannot also lose sight of the fact that the state government while issuing the NOC, as also the respondent no.1 while forwarding the petitioner's application, had clearly found the hospital to be functional, which is evident from the certification given by the state government in the NOC, the relevant extract whereof reads as under:

"It is certified that:

7. The applicant owns and manages a hospital, which was established in the Year -July, 2018

8. It is desirable to establish Ayurveda College in the Public interest with admission capacity of 60 seats for B.A.M.S. Course.

9. Establishment of Ayurveda College with admission capacity of 60(Sixty) seats for B.A.M.S. Course at Sumandeep Ayurved Medical College and Hospital, At-Pipria, Tal-Waghodia, District-Vadodara-391760 is feasible.

It is also certified that adequate clinical material as per norms of the Central Council of Ayurveda is available with the proposed/existing Medical College. It is further certified that in case the applicant fails to create infrastructure for the Ayurveda College as per Central Council of Ayurveda norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the student already admitted in the College with the permission of the Central Government.”

22. I may now also refer to the decisions of the Apex Court in ***Medical Council of India v. Kalinga Institute of Medical Sciences &Ors. (2016) 11 SCC 530*** and ***Medical Council of India vs. The Chairman, S.R. Educational and Charitable Trust and Anr. (2018) SCC OnLine 2276*** relied upon by the respondents. I find that in the said decisions, the Apex Court has emphasized on the primacy to be given to the report of the inspection committee. In the present case, it is an admitted position that the inspection committee did not find any deficiency in the teaching staff of the petitioner. On the other hand, the visitation committee had not only specifically observed that each of the 12 teachers was fully eligible as per the MSR, 2016 but had also, in no uncertain terms certified that the college was having the requisite 12 teachers. I, therefore, find that these decisions do not, in any manner, forward the case of the respondent.

23. I have also considered the decision of a Coordinate Bench of this Court in ***Anil Kumar Singh Bhadoria (supra)*** but find that this decision does not deal with the issues as raised in the present petition. In the said case, the Court was dealing with the power of the respondent no.2 to take action against the teachers, which aspect is not the subject matter of the present petition.

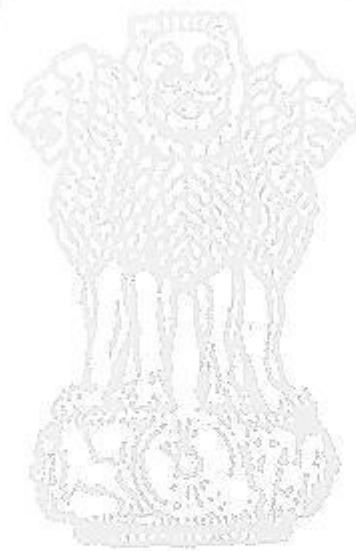
24. In the light of aforesaid, I am of the considered opinion, that the conclusion arrived at by the respondent regarding the three purported deficiencies is wholly perverse and it would be against the interest of justice of the students as well as the general public to deny permission to the petitioner institute to establish the Ayurvedic Medical College with 80 seats, for which two inspections have been carried out on 14.09.2021 and 13.12.2021. The fact that the application of the petitioner, which was submitted way back on 23.09.2020, alongwith an NOC received from the State Government on 29.08.2020, which application was forwarded to the respondent no.2 on 27.01.2021, also shows that the respondent no.1 itself was prima facie satisfied that the petitioner hospital had been running for the last two years. Our country has, after the outbreak of the covid-19 pandemic, been staunchly promoting the Ayurvedic system of medicine, and therefore, it is the need of the hour to encourage such institutes as the petitioner, which possess the necessary infrastructure for running ayurvedic medical colleges, to contribute to the bigger goal of strengthening the infrastructure of this system of medicine in the country. I am, therefore, of the opinion that it would be against public interest to deny permission to the petitioner college and let these 80 precious seats in BAMS to go waste.

25. The writ petition is, accordingly, allowed by quashing the impugned order dated 31.03.2022 passed by the respondent no.1. However, no orders are called for in respect of the impugned orders which 31.1.2022 and 24.02.2022 as they stand merged in the impugned order dated 31.03.2022. The respondents are directed to forthwith issue a letter of permission to the petitioner institute to participate in the remaining rounds of counselling for admission to 80 seats in BAMS for the academic year 2021-2022.

26. The pending application being C.M. APPL. 16913/2022 for interim relief, is rendered infructuous and is disposed of.

(REKHA PALLI)
JUDGE

APRIL 22, 2022
acm/kk



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