

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF DECEMBER, 2020

PRESENT

THE HON'BLE MRS.JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE MR.JUSTICE NATARAJ RANGASWAMY

WRIT APPEAL NO.542 OF 2020 (EDN-REG)**BETWEEN:**

THE CENTRAL COUNCIL OF INDIAN MEDICINE,
61-65, INDUSTRIAL AREA, JANAKAPURI,
NEW DELHI - 110 058
REPRESENTED BY ITS SECRETARY.

... APPELLANT

(BY SMT. MANASI KUMAR, ADVOCATE)

AND:

1. KARNATAKA AYURVEDA MEDICAL COLLEGE,
A UNIT OF KARNATAKA EDUCATIONAL &
CHARITABLE TRUST,
K.E.C.T. TOWERS, HOLGEBAIL,
ASHOKNAGAR P.O.,
MANGALORE - 575006
REPRESENTED BY ITS PRINCIPAL,
DR. SANTOSH KUMAR. J.,
S/O SRI. JAGANNATH SHETTY. N,
AGED ABOUT 43 YEARS
2. THE UNION OF INDIA
MINISTRY OF AYURVEDA, YOGA AND
NATUROPATHY, UNANI SIDDHA AND
HOMEOPATHY (AYUSH),
'AYUSH BHAWAN', 'B' BLOCK,
G.P.O. COMPLEX, INA,

NEW DELHI – 110 023
 REPRESENTED BY ITS
 SECRETARY / SPECIAL SECRETARY

3. THE RAJIV GANDHI UNIVERSITY OF
 HEALTH SCIENCES,
 4TH T BLOCK, JAYANAGAR,
 BENGALURU-560 041
 REPRESENTED BY ITS REGISTRAR
4. THE STATE OF KARNATAKA
 DIRECTORATE OF AYUSH,
 DHANAVANTRI ROAD,
 BENGALURU – 560 009
 REPRESENTED BY ITS DIRECTOR.

... RESPONDENTS

(BY SRI. C.SHASHIKANTHA, ASSISTANT SOLICITOR
 GENERAL FOR RESPONDENT NO.2
 SRI T.L. KIRAN KUMAR, ADDITIONAL GOVERNMENT
 ADVOCATE FOR RESPONDENT NO.4)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF
 THE KARNATAKA HIGH COURT ACT, 1961 PRAYING TO
 ALLOW THE PRESENT APPEAL AND SET ASIDE THE
 IMPUGNED JUDGMENT DATED 24.09.2020 IN WRIT
 PETITION NO.50772/2018 AND PASS SUCH OTHER
 ORDERS.

THIS APPEAL COMING ON FOR PRELIMINARY
 HEARING THIS DAY, **NATARAJ RANGASWAMY J.,**
 DELIVERED THE FOLLOWING:

JUDGMENT

The legality and correctness of Order dated
 24.09.2020 passed by learned Single Judge in W.P.

No.50772/2018 is assailed by the Central Council of Indian Medicine (CCIM) in this appeal.

2. The appellant is a statutory regulator of education and practice of the Indian System of Medicine in India. Respondent No.1 is an Institution imparting education in Ayurveda system of Indian medicine.

3. Respondent No.1 herein claimed in the writ petition that it applied to the State Government, respondent No.3 (Rajiv Gandhi University of Health Sciences) and the appellant herein to start Post Graduate course for the academic year 2014-2015. The appellant granted permission to start five new Post Graduate Ayurvedic disciplines with five seats each, as per the then prevalent Indian Medicine Central Council (Post-graduate Ayurveda Education) Regulations, 2012 (hereinafter referred to as the 'Regulations of 2012'). It is stated that under the Regulations of 2012, there was no requirement to establish a Central Research Laboratory or an Animal House, for the post graduate students of one discipline. These Regulations were superseded by the Indian Medicine Central Council (Post Graduate Ayurveda Education)

Regulations, 2016 (hereinafter referred to as the 'Regulations of 2016') which mandated that an institution should possess a Central Research Laboratory and an Animal House. It also provided that the Animal House could be either owned or could be in collaboration with any other institution. Therefore, respondent No.1 collaborated with Sri Dharmasthala Manjunatheshwara College of Ayurveda, Udupi, which permitted respondent No.1, the usage of the Animal House set up by it. Hence, the Union of India and the appellant continued permission to respondent No.1 for the academic years 2016-2017 and 2017-2018. It is stated that as per the permission letter dated 08.08.2017, the appellant was directed by the Central Government to inspect respondent No.1 in accordance with the relevant Regulations *suo moto* after 31.12.2017 and to submit the recommendations and the inspection report to the Central Government by the end of March-2018 so that the matter pertaining to grant of permission for the academic year 2018-2019 could be considered well before the start of the next academic session.

4. It is stated that after the conclusion of admission to respondent No.1 - Institution for the academic year 2017-2018, respondent No.1 was directed by the appellant to file an online application for renewal of permission for the academic year 2018-2019 which was accordingly done by it within the time granted. The appellant conducted a *suo moto* inspection of respondent No.1 - Institution on 02.02.2018 and again another inspection was conducted on 23-24.05.2018. The Under Secretary to the Government of India issued a notice dated 03.08.2018 stated to be received by the respondent No.1 on 16.08.2018 i.e., long after the admission process for the year 2018-2019 had commenced, thereby notifying some deficiencies and giving respondent No.1 an opportunity of hearing on 24.08.2018 before the designated Hearing Committee to comply with the provisions of the Indian Medicine Central Council Act, 1970. Respondent No.1 participated in the enquiry before the appellant and it was found that though the appellant had conducted the second inspection on 23/24.05.2018, yet it had forwarded its recommendations to the Central Government on 25.07.2018. The Union of India / Secretary

to Government of India thereafter passed the impugned order dated 05.09.2018 rejecting the permission to respondent No.1 to admit students to the post graduate courses (in five disciplines, namely, (i) *Dravyaguna Vigyana* (ii) *Rasa Shastra & Bhaisajya Kalpana* (iii) *Kayachikitsa* (iv) *Panchakarma* (v) *Shalya Tantra* with an intake of 05 seats in each subject) on the ground of non-availability of Central Research Laboratory and Animal House while in the same order permitted admission of students to Under Graduate (BAMS) Course with an intake of 50 seats for the academic year 2018-2019 subject to respondent No.1 fulfilling the deficiencies mentioned therein by 31.12.2018.

5. Respondent No.1, therefore, challenged the aforesaid order before learned Single Judge. During pendency of the writ petition, it was submitted that the Central Government had granted permission to admit Post Graduate students for the academic year 2019-2020 and therefore, relying upon the judgment of the Division Bench of this Court in the case of ***Central Council of Indian Medicine vs. Union of India and others in Writ Appeal***

No.736/2011 and connected matters, wherein it was held that the permission, if it was granted for the subsequent years on the premise that there was no deficiency or that the deficiency was removed, the benefit should enure in respect of the previous academic year also. It was also stated that this Judgment of the Division Bench was followed by another Division Bench of this Court in **Bahubali Vidyapeeths JV Mandal Gramin Ayurvedic Medical College vs. Union of India and others** in Writ Petition No.107076/2018 disposed of on 01.07.2019 at Dharwad Bench. Hence, respondent No.1 sought that the benefit of the order of the Division Bench be granted to it.

6. *Per contra*, learned counsel for the appellant submitted before learned Single Judge that the Judgment of the Division Bench of this Court in Writ Appeal No.736/2011 as well as the judgment of the Division Bench of this Court in **Bahubali Vidyapeeths' case** referred supra, did not take into consideration the judgment of the Apex Court in the case of **Ayurved Shastra Seva Mandal and Another vs. Union of India**

and others (*Ayurved Shastra Seva Mandal's case*) reported in (2013) 16 SCC 696.

7. Learned Single Judge of this Court rejected the contention of the appellant and held that in the absence of challenge to the Orders of the Division Bench in the aforesaid cases, the appellant could not contend to the contrary. Thus, learned single Judge allowed the writ petition and quashed the impugned order dated 05.09.2018 in so far as it related to denial of permission to respondent No.1 herein with respect to admission of students to Post Graduate Courses in five disciplines with five seats in each of the disciplines for the academic year 2018-2019. The appellant has hence, challenged the order of learned single Judge in this appeal.

8. We have heard Smt. Manasi Kumar, learned counsel for the appellant and Sri C.Shashikantha, learned Assistant Solicitor General of India, for respondent No.2 and Sri T.L. Kiran Kumar, learned Additional Government Advocate for respondent No.4 and perused the material on record.

9. Learned counsel for the appellant contended that that the requirements stipulated in the Regulations of 2016, are not without any purpose and that if post graduate students, who are undergoing training at respondent No.1 are not provided with enough facilities, then the students would turn out to be half baked and they would not be able to cope up with the challenges. Learned counsel therefore contended that if the appellant found that if respondent No.1 did not have the facilities, then, respondent No.1 should not be permitted to continue with the said course. However, learned counsel for the appellant did not dispute the fact that respondent No.1 was granted permission to admit students to the post graduate courses during the year 2019-2020. Learned counsel invited the attention of this Court to paragraph No.10 of the judgment of the Apex Court in the case of ***Ayurved Shashtra Seva Mandal's case*** (referred supra) which is extracted below:

"10. Appearing for the petitioners, Mr. R.N. Dhorde, learned Senior Advocate, tried to impress upon us that the deficiencies had already been removed and that is why permission was subsequently given for the

admission of students for the year 2012-2013. Mr. Dhorde submitted that since the deficiencies had been removed, there could be no reason for permission for the academic year 2011-2012 to be withheld, since a large number of applications had been received from students intending to obtain admission for the said year. It was submitted that, although, the academic year had come to an end, the college authorities would make all arrangements for the applicants to be able to complete the course for the entire year within six months so as to bring them up to the level of the second year. Mr. Dhorde also submitted that in the event such permission was not granted, the continuity of the courses would be disrupted."

10. Learned counsel, therefore, contended that the Apex Court had impliedly rejected the contention of the Institution and therefore, the permission granted in respect of the academic year 2019-20, could not efface the deficiencies that respondent No.1 had to rectify in the previous years to sanctify the admission made in those years. Learned counsel also contended that in the light of the implied rejection of similar such contention in **Ayurved Shashtra Seva Mandal's case**, the finding of the two

Division benches of this Court, referred *supra*, deserves to be revisited.

11. It is relevant to note that para No.10 of the Judgment of the Apex Court, extracted above, was only the argument advanced by counsel for the institution in ***Ayurved Shastra Seva Mandal's*** case. However, the reasoning of the Apex Court is found in para No.17 of the Judgment and the same is extracted below:

"17. It is not for us to judge as to whether a particular institution fulfilled the necessary criteria for being eligible to conduct classes in the discipline concerned or not. That is for the experts to judge and according to the experts the institutions were not geared to conduct classes in respect of the year 2011-2012. It is also impractical to consider the proposal of the colleges of providing extra classes to the new entrants to bring them up to the level of those who have completed the major part of the course for the first year. We are not, therefore, inclined to interfere with the orders of the High Court impugned in these special leave petitions and the same are, accordingly, dismissed."

12. In the case on hand, once respondent No.1 was permitted to admit students for the academic year 2018-2019, subject to conducting an inspection, the inspection ought to have been conducted before the commencement of the academic year and appropriate order must have been passed restraining the Institution from admitting students. However, the appellant has procrastinated the issue by allowing the admissions to be conducted and in the meanwhile, permission for the academic year 2019-20 was granted, thereby indicating that respondent No.1 had fulfilled and rectified all the deficiencies. Though an argument as noted in para No.10 of the judgment extracted above was canvassed before the Apex Court in ***Ayurved Shastra Seva Mandal's case***, yet, no finding thereon was recorded. Hence, the question of an implied rejection would not arise and at best, it could be stated that the question was left unanswered. The appellant has accepted the judgments of Division Bench of this Court, in the cases referred supra, which apply on all fours to the fact situation in the present case and hence, learned Single Judge was justified in following the law as declared by the Division Bench of this

Court in ***Central Council of Indian Medicine's case.***
referred supra.

13. In view of the above discussion, we do not find any merit in this appeal and it is accordingly *dismissed*.

14. In view of dismissal of the appeal, I.A. No.1/2020 stands dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

sma