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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Decided on: 31<sup>st</sup> May, 2023*

+ **W.P.(C) 4033/2021**

VIVEK COLLEGE OF AYURVEDIC  
SCIENCE AND HOSPITAL

..... Petitioner

versus

UNION OF INDIA AND OTHERS

..... Respondents

**with**

W.P.(C) 3771/2021, W.P.(C) 3789/2021, W.P.(C) 3798/2021,  
W.P.(C) 3804/2021, W.P.(C) 3832/2021, W.P.(C) 3833/2021,  
W.P.(C) 4027/2021, W.P.(C) 4123/2021, W.P.(C) 8635/2021,  
W.P.(C) 4053/2021, W.P.(C) 4064/2021, W.P.(C) 4113/2021,  
W.P.(C) 4118/2021, W.P.(C) 4119/2021, W.P.(C) 4122/2021,  
W.P.(C) 4124/2021, W.P.(C) 4126/2021, W.P.(C) 4127/2021,  
W.P.(C) 4130/2021, W.P.(C) 4133/2021, W.P.(C) 4170/2021,  
W.P.(C) 4287/2021, W.P.(C) 4242/2021, W.P.(C) 4277/2021,  
W.P.(C) 4445/2021, W.P.(C) 4279/2021, W.P.(C) 4408/2021,  
W.P.(C) 4509/2021, W.P.(C) 4572/2021, W.P.(C) 4602/2021,  
W.P.(C) 4626/2021, W.P.(C) 4637/2021, W.P.(C) 4650/2021,  
W.P.(C) 4685/2021, W.P.(C) 4708/2021, W.P.(C) 4754/2021,  
W.P.(C) 4819/2021, W.P.(C) 4983/2021, W.P.(C) 5964/2021,  
W.P.(C) 7449/2021, W.P.(C) 7513/2021, W.P.(C) 12650/2021

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***Appearance:-***

**For the Petitioners**

Mr. Uddyam Mukherjee & Mr. Swapnil Pattanayak, Advocates.

Mr. A. Mariarputham, Senior Advocate with Mr. Avneesh Arputham, Advocate.

Mr. Animesh Kumar, Mr. Nishant Kumar, Mr. Rishabh Gupta & Ms. Rushali Agarwal, Advocates.

Mr. Siddharth Mittal & Mr. Prabhat Kumar, Advocates.

Ms. Mukti Chowdhary, Advocate.

Mr. Vivek Singh & Mr. Pratap Shanker, Advocates.

Mr. Jasbir Singh Malik, Advocate.

Ms. Devyani Ashra & Mr. Utkarsh Kaushik, Advocates.

Mr. Shantanu Parashar, Advocate.

**For the Respondents**

Mr. Chetan Sharma, Additional Solicitor General for UOI.

Mr. Ripu Daman Bhardwaj, CGSC for UOI.

Mr. Vijay Joshi & Mr. Abhishek Khanna, Advocates for UOI.

Mr. Akshay Amritanshu, Mr. Kartikey Singh & Mr. Ashutosh Jain, Advocates for UOI.

Mr. Apoorv Kurup, Ms. Nidhi Mittal & Mr. Ojaswa Pathak, Advocates for the UOI.

Mr. Dev P. Bhardwaj, CGSC with Ms. Anubha Bhardwaj, Mr. Sarthak Anand & Mr. Kunal Seth, Advocates.

Mr. Tanveer Ahmed Ansari, Senior Panel Counsel for UOI.

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Mr. Sushil Kumar Pandey, Senior Panel Counsel with Mr. Rahul Mourya, Advocate UOI.

Mr. Rajesh Kumar, Advocate for UOI.

Mr. Bhagvan Swarup Shukla, CGSC with Mr. Sarvan Kumar & Mr. Kamaldeep, Advocates for UOI.

Mr. Vikrant N. Goyal, Advocate for UOI.

Ms. Monika Arora, Mr. Yogesh Panwar & Ms. Manpreet Kaur Bhasin, Advocates for the UOI.

Mr. Anurag Ahluwalia, CGSC with Mr. Danish Faraz Khan, Advocate for UOI.

Mr. Sanjeev Sabharwal, Senior Govt. Counsel with Mr. Anirudh Shukla, Advocate for UOI.

Mr. Madhu Sudan Bhayana, Advocate for Shri Krishna AYUSH University, Kurukshetra.

Mr. Jivesh Kr. Tiwari, Senior Standing Counsel with Mr. Anirudh Shukla, Govt. Pleader & Ms. Samiksha, Advocate for UOI.

Ms. Nidhi Raman, CGSC with Mr. Zubin Singh, Advocate for UOI.

Ms. Manisha Aggarwal Narain, CGSC with Ms. Rakshita Goyal & Mr. Aditya Deshwal, Advocates for UOI.

Ms. Divya Kapur, Advocate (Govt. Pleader) and Mr. Jitender Kumar Panchal, Advocate.

Mr. Ajay Jain and Ms. Tannu, Advocates for UOI.

Mr. Alok Singh, Senior Panel Counsel for UOI with Mr. Gaurav Bhardwaj, Advocate.

Mr. Neeraj Sahaj, Mr. Vedansh & Mr. Rudra, Advocates for the UOI.

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Mr. Ruchir Mishra, Mr. Mukesh Kumar Tiwari, Mr. Sanjiv Kr. Saxena, Mr. Ramneek Mishra, Advocates for the UOI.

Mr. Satya Ranjan Swain, Central Govt. Senior Panel Counsel with Mr. Kautilya Birat, Advocate.

Mr. Virender Pratap Singh Charak, Ms. Shubhra Parashar, Mr. Pushpander Singh Charak & Mr. Kapil Gaur, Advocates for UOI.

Ms. Archana Pathak Dave, Mr. Kumar Prashant, Mr. Parmod Kumar Vishnoi & Mr. Avnish Dave, Advocates for the NCISM/CCIM.

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**CORAM:**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

### **JUDGMENT**

1. This batch of writ petitions concerns orders of the Union of India [hereinafter, "the Union"] declining permission to the petitioner-institutions to admit students in their Ayurveda/Unani Colleges for the academic session 2020-2021.

#### **A. Background:**

2. For many of the petitioners, this is the third or fourth round of challenge before this Court in this connection.

3. Litigation first commenced at the stage of consideration of the petitioners' applications for permission to admit students. Writ petitions were filed in view of delays in disposal of the applications, particularly where counselling for admission was in progress, and the Court passed necessary directions in this regard.

4. In the next round of litigation, the petitioners challenged earlier show cause notices/orders of the Union, rejecting their applications

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either fully or partially [i.e., permitting admissions of fewer students than sought by the institution]. Although this Court originally declined interim relief by an order dated 01.02.2021 in one of those writ petitions<sup>1</sup>, the matter was carried in appeal, and the Division Bench, by an order dated 04.02.2021<sup>2</sup>, directed as follows:-

*“9. In view of the above, we are of the considered opinion that the appellant has made out a prima facie case in its favour for grant of interim relief. Balance of convenience is also in favour of the appellant. If the appellant is not permitted by way of interim relief to participate in the ongoing counselling, irreparable harm and injury shall be caused to the appellant.*

*10. We, therefore, stay the operation, implementation and execution of the order of the learned Single Judge dated 01.02.2021 passed in WP(C) No.1265/2021, till the next date of hearing.*

*11. We hereby direct that the appellant shall be permitted to participate in the counselling process which is ongoing in the State of Madhya Pradesh as pointed out by the learned senior counsel for the appellant.”*

5. Following the aforesaid order of the Division Bench, this Court granted similar interim relief to several of the petitioners in the earlier round of litigation, after examination of a *prima facie* case. It may be mentioned that, by an order dated 26.04.2021, LPA 49/2021 was ultimately disposed of by the Division Bench, in terms of the modalities outlined in a “*Status Note*” dated 01.03.2021 [hereinafter, “the *Status Note*”], which is discussed below. The respondent authorities accepted the Division Bench order dated 04.02.2021, and subsequent orders of this Court. However, while disposing of the appeal, the Division Bench made it clear that the interim order dated

<sup>1</sup> W.P. (C) 1265/2021

<sup>2</sup> LPA No. 49/2021 [*Shivang Homeopathic College vs. Union of India & Others*].

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04.02.2021 was passed in the facts and circumstances of the particular case, and in view of the disposal of the appeal, the said interim order was also no longer in existence.

6. Having regard to the large number of cases, and to the fact that continued litigation would ultimately lead to uncertainty and confusion, both for the institutions and for the students admitted pursuant to interim orders, Mr. Chetan Sharma, the learned Additional Solicitor General of India was requested to assist the Court in finding a resolution. After extensive deliberations between the parties and before the Court, the learned ASG submitted the Status Note, which was reproduced in an order of the same date by which a batch of writ petitions was disposed of<sup>3</sup>. The principal premise of the Status Note was that the impugned show cause notices and denial orders would stand withdrawn, and fresh show cause notices would be issued, consistent with the terms of the Status Note. The last date for admission of students in AYUSH colleges was also extended to 31.03.2021, to enable counseling to proceed after the decisions were rendered by the Union. Another batch of petitions was disposed of on the same basis on 04.03.2021<sup>4</sup>.

7. As the present writ petitions flow out of the Status Note, provisions thereof are reproduced below:-

*“1. That, at the outset, the Respondent- Union of India humbly submits that AYUSH education is medical education and, as such, the Respondent is acutely concerned about the standard of AYUSH*

<sup>3</sup> W.P. (C) 2110/2021 [Glocal College of Unani Medical Science Hospital And Research Centre vs. Union of India & Others] and connected matters.

<sup>4</sup> W.P. (C) 514/2021 [Pt. Shivshakti Lal Sharma Ayurved Medical College And Hospital vs. Union of India & Others] and connected matters.

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*education that is imparted to students across the country. To that end, the Respondent-Union of India is making every effort to ensure that the quality of AYUSH education is not compromised due to the Covid -19 pandemic.*

*2. That, however, considering the unprecedented circumstances created due to the Covid-19 pandemic, the AYUSH Ministry/CCIM has introduced certain special measures as a one-time exception to deal with institutions offering programs in the academic year 2020-2021, namely:*

*a. The AYUSH Ministry has granted a 10% relaxation in the teacher requirement stipulated in the Regulations of 2016 vide O.M. dated 02.03.2020 (copy annexed as ANNEXURE - I herein).*

*b. The AYUSH Ministry has also afforded institutions an opportunity to obtain approval for a reduced number of seats, along with the aforesaid relaxed norms, vide O.M. dated 15.04.2020 (copy annexed as ANNEXURE – II herein).*

*3. That, in addition, to obviate further difficulties/complexities as a result of the Covid-19 pandemic and to allay any/all reservations (without prejudice to the AYUSH Ministry/CCIM's stand before this Hon'ble Court), the Respondent-Union of India now proposes the following onetime measures by treating the academic year 2020 - 2021 as an exceptional/unprecedented year:*

*a. The AYUSH Ministry will grant a conditional approval/permission for the academic year 2020-21 to W.P.(C) 2110/2021 & connected matters Page 9 of 14 those institutions which have continuously received permission from Ministry of AYUSH for the preceding 5 academic years, on the basis of the affidavits/ documents already submitted by them. The existing show cause notices and any consequent orders issued against such institutions will stand withdrawn, and no fresh show cause notices will be issued to such institutions.*

*b. The remaining aggrieved institutions would be issued a fresh show cause notice categorically pointing out the deficiencies in detail, along with the documents required for scrutiny and the date of hearing. It is made clear that no new deficiencies would be identified by the AYUSH Ministry/ CCIM, other than those which have been identified in the previous show cause notices/consequent orders of denial of approval and which remain unaddressed.*

*i. Since regular teaching faculty is the most important requirement or element of an educational institution, such fresh show cause notices will now only require the institution to establish that their faculty members have complied with the requirement of*

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*Regulation 26 of the Practitioners of Indian Medicine (Standards of Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982. (copy of extract of the Regulation 26 is annexed as ANNEXURE - III herein)*

ii. *Such compliance requirement, albeit reduced, will be necessary because the AYUSH sector is dealing with a significant problem of fake teachers in AYUSH colleges who exist only on paper in various colleges because they are actually practicing or doing other business far away from the colleges where they are being claimed as teachers. CCIM had therefore conducted a due diligence exercise and thereafter debarred / not certified such teachers as regular faculty members in the intent of AYUSH education and Public Health since they adversely affect the quality of AYUSH education.*

c. *Since the Ministry of AYUSH has already extended the last date/ cut off date for admission upto 15th March for academic year 2020 - 2021, vide order no. F.No. L11011/1/2021-EP-1 (Part-1) dated 23.02.2021, and will further extend the last date of admission by 05 days, the following steps will be taken by the Union of India with corresponding deadlines:*

i. *Service of fresh show cause notices (by email) upon the aggrieved institutions: 02.03.2021 to 08.03.2021*

ii. *Conduct of online hearing: 05.03.2021 to 12.03.2021*

iii. *Issue of final orders u/s 13A/ 13C of the IMCC Act: 10.03.2021 to 15.03.2021*

iv. *Last date of admission: 20.03.2021*

d. *The AYUSH Ministry will also constitute a Grievance Redressal Committee/ Appellate Body as special one-time measure for the academic year 2020 - 2021 to address any grievances arising out of a denial of permission following the issue of fresh show cause notices as described above. The GRC will consist of representatives of the AYUSH Ministry (preferably, an Additional Secretary and Dr. Shashi Ranjan Vidyarthi, Director) and Chairperson, BoG, CCIM and Chairperson, BoG, CCH.*

e. *Since all States deal with counselling according to their local requirements and State Govt. rules, the Union of India will request all States concerned to suitably reschedule their counselling in light of the Ministry of AYUSH's decision to extend the last date/ cutoff date for admission upto 20th March for academic year 2020 -2021 to ensure that the session is not delayed*

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*much. However, for increase in seats or grant of fresh permission to colleges, counselling will be conducted.*

*4. This Hon'ble Court may be pleased to consider the aforesaid proposals as special one-time measures that are not to be treated as precedent in light of the Covid- 19 pandemic and, as such, none of the aforesaid concessions/ relaxations and nothing stated herein will affect any case pending before any other Hon'ble High Court, nor should such proposals/ measures be binding upon the AYUSH Ministry/ CCIM in future academic years. Ministry of AYUSH reiterates its commitment to maintain and improve quality and standards of AYUSH education.”*

8. During the hearing on 01.03.2021, some of the petitioners had expressed an apprehension with regard to paragraph 3(b)(i) of the Status Note, which was dealt with in paragraphs 8 to 10 of the order of the same date, which reads as follows:

*“8. However, an apprehension has been expressed by counsel for some of the petitioners with regard to the contents of paragraph 3(b)(i) of the Status Note, insofar as it seeks to place sole reliance upon compliance of Regulation 26 of the Practitioners of Indian Medicine (Standards of Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982, [“the PIM Regulations, 1982”] for the purpose of determining whether a particular faculty member of an institution concerned is in fact a regular teacher at the said institution or not. They submit that in the absence of a physical inspection in this particular year owing to the COVID-19 pandemic, the availability of the teachers at their respective colleges has not been physically verified. Their further contention is that strict compliance of Regulation 26 of the PIM Regulations, 1982 has never been insisted upon in the past, and that pursuant to notices/orders of the regulatory bodies, the institutions and the members of their faculties have made detailed representations and submitted detailed documentation to establish the fact that the members of the faculty are regularly teaching at the respective colleges, as claimed. Learned counsel for the petitioners also submit that in several cases, the faculty members have made applications for registration in the Central Register, or filed intimations of change of address from one State to another, or made applications for registration in another State, which have not been considered by the Union or by the concerned regulator, being the CCIM or the Central Council of Homeopathy [“CCH”].*

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9. *The submission of Ms. Archana Pathak Dave, learned counsel for the CCIM, however, is that there has been a significant problem of registered practitioners claiming to be teaching at a particular institution while also declaring that they are in fact practising in another State. Ms. Dave submits that in such a situation, the CCIM has come to the conclusion that the teachers could not be regularly teaching at the colleges where they have claimed to be teaching.*

10. *Rather than pre-empting the fresh consideration of the issues pursuant to the submissions made by the Union today, suffice it to say in this regard that the Union, the CCIM and the CCH have proposed a onetime solution, keeping in mind the peculiar circumstances arising out of the COVID-19 pandemic. It is expected that their decisions on the question of whether an institution has the requisite number of faculty, and the status of faculty members, will also be made in the same spirit, cognisant of the peculiar circumstances obtaining in this year. While leaving the matter to them, the Court commends a pragmatic approach which would ensure adherence to the required standards of AYUSH education, without visiting procedural lapses with disproportionate consequences.”*

9. The aforesaid approach was reiterated in paragraph 5 of the order dated 04.03.2021, in the following terms:-

“5. *Learned Senior Counsel and learned counsel appearing for the petitioners have made certain further suggestions with regard to the process proposed by the Union of India in the Status Note as recorded in the order dated 01.03.2021. Mr. Apoorv Kurup, learned counsel appearing for the Union of India in several of these matters, Ms. Archana Pathak Dave, learned counsel appearing for the Central Council of Indian Medicine and Mr. Sunil Narula, learned counsel for the Central Council of Homoeopathy have taken note of these suggestions. I do not propose to pre-empt the consideration of the matters afresh by the Union of India at this stage, except to reiterate the contents of the order dated 01.03.2021, particularly paragraph 10 thereof. It is for the respondents to consider the responses submitted by the petitioners to any show cause notices that may be issued, and deal with the contentions raised by the petitioners in accordance with law.”*

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10. Pursuant to the Status Note, show cause notices were issued to the petitioners herein, which have culminated in the impugned orders, partially or fully denying their request for admission of students for the academic year 2020-2021. The factual details pertaining to the petitioners' cases would be evident from the following table:-

S. No.	W.P. (C) No.	Name of Institution	Earlier WP Nos.	Date of disposal of earlier WPs	Date of Fresh Show Cause Notice	Date of impugned denial order	Denial whether partial or full, if partial [in seats]
1.	3771/2021	SKS Ayurvedic Medical College & Hospital	1539/2021 3516/2021	04.03.2021 19.03.2021	09.03.2021	17.03.2021	30/100
2.	3789/2021	Mahaveer Ayurvedic Medical College and Hospital	1649/2021	04.03.2021	08.03.2021	18.03.2021	30/100
3.	3798/2021	Baba Hira Das Ji Ayurvedic Medical College & Hospital	2223/2021	04.03.2021	09.03.2021	18.03.2021	0/60
4.	3804/2021	SCPM Ayurvedic Medical College & Hospital	2205/2021	01.03.2021	03.03.2021	18.03.2021	30/100
5.	3832/2021	Sri Sai Institute of Ayurvedic Research & Medicine	2406/2021	01.03.2021	03.03.2021	19.03.2021	30/100
6.	3833/2021	M.D. Ayurvedic	1644/2021	04.03.2021	08.03.2021	19.03.2021	0/60

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		College & Hospital					
7.	4027/2021	Glocal College of Ayurvedic Medical Sciences and Research Centre	2419/2021	01.03.2021	03.03.2021	17.03.2021	0/100
8.	4033/2021	Vivek College of Ayurvedic Sciences & Hospital	2217/2021	01.03.2021	03.03.2021	19.03.2021	60/100
9.	4053/2021	Vijayshree Ayurvedic Medical College and Hospital	1920/2021	04.03.2021	08.03.2021	22.03.2021	0/60
10.	4064/2021	Dev Bhoomi Medical College of Ayurveda & Hospital	2454/2021	04.03.2021	08.03.2021	18.03.2021	0/60
11.	4113/2021	Saraswati Ayurveda Hospital and Medical College	2432/2021	01.03.2021	03.03.2021	24.03.2021	30/60
12.	4118/2021	Uttanchal Unani Medical College & Hospital	2071/2021	04.03.2021	09.03.2021	23.03.2021	0/60
13.	4119/2021	Bhagwant Ayurvedic College and Hospital	2316/2021	04.03.2021	08.03.2021	18.03.2021	0/60
14.	4122/2021	R.B. Ayurvedic Medical College	1854/2021	04.03.2021	09.03.2021	19.03.2021	30/100

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		& Hospital					
15.	4123/2021	Haridwar Ayurvedic Medical College & Research Center	1905/2021	04.03.2021	11.03.2021	23.03.2021	0/60
16.	4124/2021	Rehbar Ayurvedic and Unani Tibbi Medical College Hospital and Research Centre	2313/2021	04.03.2021	10.03.2021	24.03.2021	0/50
17.	4126/2021	Prem Raghu Ayurvedic Medical College & Hospital	1622/2021	04.03.2021	09.03.2021	22.03.2021	0/60
18.	4127/2021	Desh Bhagat Ayurvedic College & Hospital	2271/2021	01.03.2021	03.03.2021	19.03.2021	30/60 for Under Graduate
19.	4130/2021	Om Ayurvedic College & Research Centre	1736/2021	04.03.2021	12.03.2021	25.03.2021	0/60
20.	4133/2021	Dr. Krishna Gopal Dwivedi Ayurvedic Medical College & Hospital	1819/2021	04.03.2021	09.03.2021/ 10.03.2021	24.03.2021	0/50
21.	4170/2021	Doon Ayurvedic Medical College & Hospital	2245/2021	04.03.2021	10.03.2021/ 12.03.2021	25.03.2021	0/100
22.	4242/2021	National College of	2347/2021	04.03.2021	10.03.2021	26.03.2021	30/60

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		Ayurveda					
23.	4277/2021	Urmila Devi Ayurvedic College Medical Sciences & Hospital	2080/2021	04.03.2021	10.03.2021	27.03.2021	0/60
24.	4279/2021	Shree Satya Ayurvedic Medical College & Hospital	1616/2021	04.03.2021	11.03.2021	25.03.2021	0/100
25.	4287/2021	WTM Ayurvedic Medical College & Hospital	1619/2021	04.03.2021	10.03.2021	27.03.2021	0/100
26.	4408/2021	Harmony Ayurvedic Medical College & Hospital	2052/2021	04.03.2021	12.03.2021	27.03.2021	0/60
27.	4445/2021	Saint Sahara Ayurvedic Medical College & Hospital	2081/2021	04.03.2021	10.03.2021	31.03.2021	0/60
28.	4509/2021	Dr. Anar Singh Ayurvedic Medical College & Hospital	1958/2021	04.03.2021	10.03.2021	25.03.2021	0/100
29.	4572/2021	Shri Satya Sai Murlidhar Ayurved College & Hospital	2182/2021	01.03.2021	03.03.2021	24.03.2021	30/60
30.	4602/2021	Bhanwar Lal Nahata Samriti	3131/2021	09.03.2021	12.03.2021	26.03.2021	60/100

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		Sansthan					
31.	4626/2021	Seth Murari Lal Rasiwasia Ayurvedic College & Hospital	2334/2021	04.03.2021	09/10.03.20 21	31.03.2021	0/60
32.	4637/2021	SAM College of Ayurvedic Sciences and Hospital	3214/2021	10.03.2021	19.03.2021	25.03.2021	30/60
33.	4650/2021	Ishan Ayurved Medical College & Research Centre	1714/2021	04.03.2021	12.03.2021	27.03.2021	0/60
34.	4685/2021	KVS Institute of Ayurvedic Medical Science & Research Centre	1965/2021	04.03.2021	11.03.2021	31.03.2021	0/100
35.	4708/2021	Dr. Vijay Ayurvedic Medical College	1988/2021	04.03.2021	09.03.2021	26.03.2021	30/100
36.	4754/2021	Sanjeevani Ayurvedic Medical College	1794/2021	04.03.2021	10.03.2021	25.03.2021	0/100
37.	4819/2021	Om Ayurvedic Medical College & Hospital	1736/2021	04.03.2021	12.03.2021	31.03.2021	0/40
38.	4983/2021	Parashar Ayurvedic Medical College & Hospital	2350/2021	04.03.2021	12.03.2021	24.03.2021	0/60

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39.	5964/2021	R.K. Ayurvedic Medical College and Hospital	1893/2021 5159/2021	04.03.2021 28.05.2021	12.05.2021	27.05.2021	0/60
40.	7449/2021	Bhartiya Ayurvedic Medical College	1900/2021	04.03.2021	08.03.2021	26.03.2021	30/100
41.	7513/2021	Divya Jyoti Ayurvedic Medical College & Hospital	1976/2021	04.03.2021	11.03.2021	26.03.2021	30/100
42.	8635/2021	Khalsa Ayurvedic Medical College & Hospital	2270/2021	04.03.2021	08.03.2021	27.03.2021	0/60
43.	12650/2021	Dhanvantari Ayurvedic Medical College & Hospital	1978/2021	04.03.2021	11.03.2021	24.03.2021	30/60

11. These orders are under challenge in this batch of writ petitions.

12. While issuing notice in these petitions, however, no interim relief was granted, recording the statement of the learned ASG that in the event the petitioners are successful in the writ petitions, the Union will facilitate an additional round of counselling at that stage<sup>5</sup>.

13. The Central Council of Indian Medicine [hereinafter, “the CCIM”], entrusted with the recognition and functioning of colleges in the Indian system of medicine under the Indian Medicine Central Council Act, 1970 [hereinafter, “IMCC Act”], also took action against individual teachers in respect of their non-compliance with Regulation

<sup>5</sup> Recorded in order dated 26.03.2021 in W.P. (C) 4033/2021 and connected matters.

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Signing Date: 01.06.2023  
16:50:32





26 of the *Practitioners of Indian Medicine (Standards of Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982* [hereinafter, “the 1982 Regulations”], and consequent non-certification under Regulation 3(1)(f) of the *Indian Medicine Central Council (Requirements of Minimum Standard for under-graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016* [hereinafter, “the 2016 Regulations”]. The orders against the individual teachers were challenged in several petitions before various High Courts, including this Court. The writ petitions filed in this Court were heard by a co-ordinate Bench, and judgment delivered on 26.07.2021, setting aside the orders passed by CCIM, and remanding the matters for reconsideration<sup>6</sup>.

14. During the pendency of these petitions, CCIM has been replaced by the National Commission for Indian System of Medicine [hereinafter, “NCISM”]. The IMCC Act was repealed by virtue of the NCISM Act, 2020. NCISM was also thereafter represented in these proceedings by Ms. Archana Pathak Dave, learned counsel, who had earlier appeared for the CCIM.

**B. Statutory and Regulatory Provisions:**

15. The IMCC Act provided for constitution of the CCIM and its composition. Section 13A of the IMCC Act prohibited establishment of a medical college<sup>7</sup>, or opening of any new or higher course of study or, increase in the intake of the students, without the previous

<sup>6</sup> In W.P.(C) 837/2021 and connected petitions [*Anil Kumar Singh Bhadoria v. Union of India and Another*].

<sup>7</sup> As defined in Section 2(ea) of the IMCC Act.



permission of the Central Government. The relevant provisions of the IMCC Act were as follows:-

**“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 post-graduate 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

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NAGPAL  
Signing Date: 01.06.2023  
16:50:32



*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:—*

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NAGPAL  
Signing Date: 01.06.2023  
16:50:32



(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.

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**17. Rights of persons possessing qualifications included in Second, Third and Fourth Schedules to be enrolled.—**(1) Subject to the other provisions contained in this Act, any medical qualification included in the Second, Third or Fourth Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine.

(2) Save as provided in section 28, no person other than a practitioner of Indian medicine who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian Medicine,—

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NAGPAL  
Signing Date: 01.06.2023  
16:50:32



*(a) shall hold office as Vaid, Siddha, Hakim or [physician or] any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;*

*(b) shall practise Indian medicine in any State;*

*(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by a law to be signed or authenticated by a duly qualified medical practitioner;*

*(d) shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872 (1 of 1872), on any matter relating to Indian medicine.*

*(3) Nothing contained in sub-section (2) shall affect,—*

*(a) the right of a practitioner of Indian medicine enrolled on a State Register of Indian Medicine to practise Indian medicine in any State merely on the ground that, on the commencement of this Act, he does not possess a recognised medical qualification;*

*(b) the privileges (including the right to practise any system of medicine) conferred by or under any law relating to registration of practitioners of Indian medicine for the time being in force in any State on a practitioner of Indian medicine enrolled on a State Register of Indian Medicine;*

*(c) the right of a person to practise Indian medicine in a State in which, on the commencement of this Act, a State Register of Indian Medicine is not maintained if, on such commencement, he has been practicing Indian medicine for not less than five years;*

*(d) the rights conferred by or under the Indian Medical Council Act, 1956 (102 of 1956)[including the right to practise medicine as defined in clause (f) of section 2 of the said Act], on persons possessing any qualifications included in the Schedules to the said Act.*

*(4) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*

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**22. Minimum standards of education in Indian medicine.—(1)** *The Central Council may prescribe the minimum standards of education in Indian medicine, required for granting recognised medical qualifications by Universities, Boards or medical institutions in India.*

*(2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Central Council to all State Governments and the Central Council shall, before submitting the regulations or any amendment thereof, as the case may be, to the Central Government for sanction, take into*

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NAGPAL  
Signing Date: 01.06.2023  
16:50:32



*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.*

**23. The Central Register of Indian Medicine.—***(1) The Central Council shall cause to be maintained in the prescribed manner, a register of practitioners in separate parts for each of the system of Indian medicine to be known as the Central Register of Indian Medicine which shall contain the names of all persons who are for the time being enrolled on any State Register of Indian Medicine and who possess any of the recognised medical qualifications.*

*(2) It shall be the duty of the Registrar of the Central Council to keep and maintain the Central Register of Indian Medicine in accordance with the provisions of this Act and of any orders made by the Central Council, and from time to time to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed.*

*(3) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872 (1 of 1872), and may be proved by a copy published in the Gazette of India.*

**24. Supply of copies of State Register of Indian Medicine.—***Each Board shall supply to the Central Council three printed copies of the State Register of Indian Medicine as soon as may be after the commencement of this Act and subsequently after the first day of April of each year, and each Board shall inform the Central Council without delay of all additions to and other amendments in the State Register of Indian Medicine made from time to time.*

**25. Registration in the Central Register of Indian Medicine.—***The Registrar of the Central Council may on receipt of the report of registration of a person in a State Register of Indian Medicine or on application made in the prescribed manner by any person, enter his name in the Central Register of Indian Medicine, provided that the Registrar is satisfied that the person concerned is eligible under this Act for such registration.*

**26. Professional conduct.—***(1) The Central Council may prescribe standards of professional conduct and etiquette and a code of ethics for practitioners of Indian medicine.*

*(2) Regulations made by the Central Council under sub-section (1) may specify which violations thereof shall constitute infamous*

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Signing Date: 01.06.2023  
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*conduct in any professional respect, that is to say, professional misconduct, and such provision shall have effect notwithstanding anything contained in any law for the time being in force.*

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**29. Privileges of persons who are enrolled on the Central Register of Indian Medicine.**— Subject to the conditions and restrictions laid down in this Act regarding practice of Indian medicine by persons possessing certain recognised medical qualifications, every person whose name is for the time being borne on the Central Register of Indian Medicine shall be entitled according to his qualifications to practise Indian medicine in any part of India and to recover in due course of law in respect of such practise any expenses, charges in respect of medicaments or other appliances or any fees to which he may be entitled.

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**31. Persons enrolled on Central Register of Indian Medicine to notify change of place of residence and practice.**—Every person registered in the Central Register of Indian Medicine shall notify any transfer of the place of his residence or practice to the Central Council and to the Board concerned, within ninety days of such transfer, failing which his right to participate in the election of members to the Central Council or a Board shall be liable to be forfeited by order of the Central Government either permanently or for such period as may be specified therein.”

16. The 1982 Regulations were notified by the CCIM under Section 36(1) of the IMCC Act, read with Section 26(1) and (2) thereof. Part-IV of the 1982 Regulations, entitled “*Code of Ethics*”, is reproduced hereunder:-

**“24. Advertising.**—Solicitation of patients directly or indirectly either personally or by advertisement in the newspaper, by placards or by distribution of circular cards or hand bills by a practitioner of Indian medicine is unethical. A practitioner Shall not make use of or aid or permit others to make use of him or his name and/or photograph as subject of any form or manner of advertising or publicity. This provision shall not apply to authors of purely medical literature written for the advancement of the profession and science.

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**26. Change of address and announcement relating thereto**—A notice of change of address shall be intimated by every practitioner of Indian medicine to the concerned State Board or Council and the Control Council.

A practitioner may issue a formal announcement in the Press one-insertion in one or more papers, regarding the following :—

- (a) On starting practice;
- (b) On change of type of practice;
- (c) On change of address;
- (d) On temporary absence from duty;
- (e) On resumption of practice;
- (f) On succeeding to another practice.”

17. Regulation 32 of the 1982 Regulations, which is in Part-V [“Disciplinary Action”], provides as follows:-

“32. (1) The Central Council desires to bring the notice of the practitioners of Indian Medicine the following list of offences which constitute professional misconduct and may warrant disciplinary action against them under the Act or under any law for the time being in force in any State regulating the registration of such practitioners.”

18. Under Section 36(1)(j) of the IMCC Act, the CCIM also notified the 2016 Regulations, which lay down the minimum standards required of Ayurveda colleges and attached hospitals. The regulations relevant for the present case are reproduced below:-

**“3. Requirements of Minimum Standard to grant of permission-**

- (1) (a) The Ayurveda colleges established under section 13A and existing under section 13C of the Act and their attached hospitals shall fulfill the requirements of minimum standard for infrastructure and teaching and training facilities referred to in the regulations 4 to 11 upto the 31<sup>st</sup> December of every year for consideration of grant of permissions for undertaking admissions in the coming academic session;
- (b) the Central Council shall visit the college suo moto three months before the expiry of permission;

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NAGPAL  
Signing Date: 01/06/2023  
16:50:32





- (c) the proforma of visit as prescribed by the Central Council on its website shall be filled online by the colleges and visitors respectively followed by submission of a hard copy of the same as per visitors guidelines issued by Central Council from time to time;
- (d) the videography and photography of staff and infrastructure during the visit shall be made by the visitors and submitted along with detailed report and observations to the Central Council;
- (e) after submission of online detailed report and observations by the visitors to the Central Council, the Central Council shall submit its recommendation along with detailed report to the Central Government within a period of one month from the submission of report by the visitors;
- (f) the Central Council shall certify that teaching faculty present in the college is not working at any other place;
- (g) the position prevailed on the date of visit to assess the fulfilment of requirements as specified in these regulations except sub-regulation (2) of regulation 7 shall be taken into consideration for grant of conditional permission or permission for a period of five years to the colleges.

**(2) Requirements of Minimum Standard to grant of permission for a period of five years-**

- (a) After fulfilment of the requirement as per these regulations by the college, the permission shall be granted to undertake admissions for a period of five years. The college shall be randomly inspected within the said period on receipt of any complaint; or if from online Bio-metric attendance it is found that teaching, non-teaching staff, hospital staff not present regularly, or hospital is not properly functional, or otherwise as required by the Central Government or by the Central Council;
- (b) any deficiencies arising within the said period shall be fulfilled by the college within hundred-fifty days under intimation to the Central Council otherwise the permission for a period of five years deemed to be withdrawn;
- (c) colleges which were permitted for a period not exceeding five years from the academic session 2014-15 to 2018-19 and 2015-16 to 2019-20 shall be maintain the requirements as specified under the regulations 4 to 11 otherwise the permission for a period of five years deemed to be withdrawn.

**(3) Requirements of Minimum Standard to grant of conditional permission of one year-**



*(a) The conditional permission of one year for particular academic session shall be granted only to those colleges which are fulfilling following requirements on the basis of the inspection by the Central Council between the 31st December to the 31st March for the succeeding academic session:*

- (i) the requirement of teachers as specified in the Schedule-V;*
- (ii) the requirement of teaching hospital as specified under sub-regulation (2) of regulation 7;*
- (iii) availability of minimum seventy-five percent. of required equipment as specified in the Schedule-VII;*
- (iv) availability of herbal garden as specified in the Schedule-III;*
- (v) availability of hospital staff as specified in the Schedule-IV,*
- (vi) availability of technical and other staff as specified in the Schedule-VI;*
- (vii) availability of college council as specified in sub-regulation (1) of regulation 9;*
- (viii) availability of college website as specified in sub-regulation (2) of regulation 9;*
- (ix) availability of biometric attendance as specified in sub-regulation (3) of regulation 9; and*
- (x) availability of minimum constructed area of college and hospital as specified in regulation 5.*

*(b) the colleges, which have been granted conditional permission or which have been denied permission for the academic session 2015-16 shall be required to fulfill the requirements as specified above in clause (a) to obtain the conditional permission of one year for particular academic session or for a period of five years as specified in the regulations 4 to 11.*

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## **8. Requirements of College-**

*(1) (a) **Teaching staff:** There shall be minimum thirty full time teachers and fort- five full time teachers appointed on regular basis for admissions of up to sixty students and sixty-one to hundred students respectively with the addition of ten part time teachers (eight teachers of Modern Medicine, one Yoga teacher and one Biostatistician) for each slab as specified in the Schedule-V, the teacher fulfilling the eligibility norms of the related teaching post or subject teacher shall be appointed on deputation or contractual basis.*

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NAGPAL  
Signing Date: 01.06.2023  
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*(b) Age of superannuation of teachers: The age of superannuation of teachers shall be as per the order of the Central Government or State Government or University Grant Commission. The retired teachers, fulfilling the eligibility norms of teachers may be re-employed up to the age of sixty-five years as full time teacher.*

*(c) The detail of every teacher such as academic qualification, total teaching experience along with name of previous institutions, date of joining shall be on the website of college.*

*(d) The list of all the teachers with complete detail such as Code allotted by the Central Council, academic qualification, total teaching experience along with name of previous institutions and present institute, shall be displayed at the website of the Central Council.”*

### **C. Submissions of the parties:**

19. On behalf of the petitioners, arguments were advanced by Mr. Sandeep Sethi, Mr. Akhil Sibal, Mr. A. Mariarputham, Mr. Vivek Tankha and Ms. Aparajita Singh, learned Senior Counsel, and by Mr. Jasbir Singh Malik and Mr. Animesh Kumar, learned counsel. The stand of the Union was placed by the learned ASG, and Mr. Apoorv Kurup, learned Central Government Standing Counsel. Ms. Dave made submissions on behalf of CCIM/NCISM.

20. The principal arguments raised by learned counsel for the petitioners may be summarized as follows:-

- a) The contention of the petitioners was that the Union's insistence upon compliance of Regulation 26 of the 1982 Regulations, as a pre-condition for permission to admit students, is unjustified. They submitted that the respondent-authorities have never used Regulation 26 for this purpose in the past. In support of the contention that Regulation 26 is directory rather than mandatory, learned counsel relied upon the judgments of the



Supreme Court in *State, represented by Inspector of Police, Chennai vs. N.S. Ganeswaran*<sup>8</sup> and *M/s Rubber House vs. M/s Excelsior Needle Industries Private Limited*<sup>9</sup>. They submitted that past practice and conduct of the authorities can give rise to a legitimate expectation on the part of the affected party, as held by a Division Bench of the Orissa High Court in *G. Sreenivasan & Others vs. Principal, Regional Engineering College, Rourkela & Others*<sup>10</sup>.

- b) In any event, Regulation 26 of the 1982 Regulations cannot lead to a conclusion that the institution concerned does not possess the requisite faculty. Regulation 26, which has been relied upon by the Union, does not provide a disqualification in law in respect of a member of the faculty. Not only is such a provision absent from the IMCC Act and the Regulations, but the rigour of Regulation 26 has admittedly not been applied in respect of government institutions. In the event it is regarded as a legal disqualification, the respondents would not be entitled to exempt government institutions from the consequences thereof. In fact, consequences of non-compliance of Regulation 26 are indicated in Section 31 of the IMCC Act. Regulation 32 of the 1982 Regulations also does not provide for disciplinary action on such grounds.
- c) Regulation 3(1)(f) of the 2016 Regulations is applicable in the context of a physical inspection, which has not been undertaken

<sup>8</sup> (2013) 3 SCC 594 (paragraph 22).

<sup>9</sup> (1989) 2 SCC 413 (paragraphs 31 and 32).

<sup>10</sup> AIR 2000 Ori 56 (paragraph 21).

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NAGPAL  
Signing Date: 01.06.2023  
16:50:32



for most of the institutions in the year 2019-20, due to the COVID-19 pandemic. In the absence of physical inspection, Regulation 3(1)(f) cannot be pressed into service to deny permission to the institutions. In the Status Note, Regulation 3(1)(f) of the 2016 Regulations has not been relied upon, and the said regulation also does not find place in the show cause notices or the impugned orders of the Union.

- d) It was also submitted that the allegation of violation of Regulation 26 of the 1982 Regulations is premised upon the basis that the concerned persons have changed their address, shifting from one State to another, without notifying the State Board and the Central Council. The allegation against the teachers is thus that they have shifted from their original place of residence to the location of the college without notifying the authorities. It follows from this allegation that the teachers are, in fact, living at the place of the college, which negates the respondent's argument regarding availability of faculty.
- e) Learned counsel emphasized that in response to the Union's show cause notices, the petitioners submitted detailed documents to demonstrate the authenticity of their contentions regarding availability of faculty. These included *inter alia* documents relating to payment of salary, attendance of faculty, arrangements made for residential accommodation near the institution, and information lodged by the teachers with the CCIM in respect of the mandatory teacher codes issued to them. Learned counsel submit that the Union has disregarded this



evidence, and proceeded only on the question of compliance with Regulation 26 of the 1982 Regulations. Learned counsel referred to the CCIM guidelines dated 31.01.2019, and an email communication dated 19.12.2019, stating that all data regarding teachers would be taken from the Online Teacher Management System [hereinafter, “OTMS”]. They submitted that all these materials have ultimately been disregarded by the Union while issuing the impugned orders. The findings in the impugned orders are thus not based upon adequate factual foundation. The respondents have come to conclusions based upon notional considerations, rather than an assessment of the factual materials placed before them.

- f) There is no factual finding in the impugned order to the effect that the teachers are not working in the petitioner colleges, or that they are working in any other college or place. The report of CCIM dated 25.11.2020 in respect of “*on paper teachers*” which has been referred to even in the impugned denial orders, was never furnished to the petitioner institutions.
- g) The Status Note expressly proceeds on the basis that the circumstances of the COVID-19 pandemic required an exceptional and unique response. The issue with regard to non-compliance of Regulation 26 of the 1982 Regulations by many teachers in the field of Ayurveda was already within the knowledge of the respondents, and to proceed on that basis alone without any consideration of the substantive evidence placed by the institution concerned, renders the policy decision



reflected in the Status Note fruitless. The adherence to the minimum standards of education requires physical presence of the faculty available to teach in the colleges, and has little to do with compliance of documentation.

- h) The teachers had, in fact, submitted their changed addresses on the OTMS portal of the CCIM, which was launched on 27.09.2019, and as such, the details of their addresses and employment were duly furnished to CCIM.
- i) The show cause notices issued to the petitioner institutions pursuant to the orders dated 01.03.2021 and 04.03.2021, specifically refer to an “*independent exercise*” to verify the teachers, notwithstanding the information received from the CCIM that the teachers have not been certified.
- j) Factually, learned counsel pointed out that in some of the cases, although the institutions were physically inspected, and no lacuna was found, the respondents have still proceeded on the basis of notional compliance under Regulation 26 of the 1982 Regulations. They submitted that the approach of the Union has been wholly inconsistent, inasmuch as several teachers who have registration in the same State have also not been considered, and the faculty which has been duly certified in past inspections has been held to be “*on paper*”, only on the basis of non-compliance of Regulation 26.
- k) The requirement of registration in the State Council where the college is located is also misconceived. A proper interpretation of the IMCC Act makes it clear that any practitioner registered



with a State Board is entitled to be enrolled in the Central Register, and therefore, can practice in any part of the country.

- l) The impugned orders offend the principle of proportionality, as no opportunity has been given to the petitioners to replace the teachers found to be ineligible.
- m) The refusal of permission should not be based upon technical violations. In this regard, reliance was placed upon judgments of the Supreme Court in *Priyadarshini Dental College and Hospital vs. Union of India & Others*<sup>11</sup> and *Royal Medical Trust (Registered) & Another vs. Union of India & Another*<sup>12</sup>.
- n) The approach of the respondents is wholly inconsistent with the observations of the Court in the orders dated 01.03.2021 and 04.03.2021, by which the earlier round of litigation was disposed of. The Court commended a pragmatic approach which did not visit procedural lapses with disproportionate consequences.
- o) Learned counsel relied upon the order of the Supreme Court in *Index Medical College, Hospital and Research Centre vs. The State of Madhya Pradesh & Others*<sup>13</sup> to submit that the actions of the respondents implicate the fundamental rights of the institutions under Article 19(1)(g) of the Constitution of India and, therefore, must be scrutinized on the anvil of Article 19(6).
- p) With reference to the order of the Court dated 26.03.2021, learned counsel urged that, in the event the petitioners are

<sup>11</sup> (2011) 4 SCC 623 (paragraph 23).

<sup>12</sup> (2015) 10 SCC 19 (paragraph 31).

<sup>13</sup> 2021 SCC OnLine SC 318.

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Signing Date: 01.06.2023  
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successful in the writ petitions, the Union is obliged to facilitate counselling even at this stage. They submitted that the Court may itself grant such relief, particularly having regard to the concept of deemed approval incorporated in Section 13A(6) of the IMCC Act. It was submitted that the respondents have already been granted two opportunities to consider the petitioners' applications in accordance with law. In the event the petitioners are found to have yet again passed an order which does not withstand scrutiny, the consequence would be that the orders passed by the Union are *void*, and that the petitioners are entitled to deemed approval under the aforesaid provision.

21. On the other hand, the following submissions were made on behalf of the Union:-

- a) The availability of trained and qualified faculty is naturally of prime importance in deciding an application for permission to admit students. This is clear from the factors for consideration enumerated *inter alia* in Sections 13A(8)(a), (c) and (e) of the IMCC Act.
- b) Although Regulation 8 of the 2016 Regulations, read with Schedule-V thereof, stipulates the requirement of teaching staff, no specific indicators have been prescribed to determine whether the teaching staff, in fact, exists in the college or not.
- c) Regulation 3(1) of the 2016 Regulations requires the substantive conditions of Regulations 4 to 11 to be fulfilled by 31<sup>st</sup> December of the year prior to the academic session for



which permission is sought. The Regulation contemplates physical inspection, but an alternative procedure was required to meet the exigencies of the situation in the COVID-19 pandemic year.

- d) Although Regulation 26 of the 1982 Regulations would not, in normal circumstances, be taken as the sole criterion to determine the eligibility of teachers, it provided an objective and reliable criterion to be considered in the absence of physical inspection. Dependence upon Regulation 26 permitted uniformity and avoided subjective assessment of the disparate materials which have been produced by the institutions in support of their case.
- e) The respondents have not applied the rigour of Regulation 26 of the 1982 Regulations in the same manner to government colleges because the problem of teachers existing on the rolls of the institution, but not, in fact, teaching at the college, has not been reported in government institutions.
- f) Reliance was placed upon the judgments of the Supreme Court in *Shivaji University vs. Bharti Vidyapeeth & Others*<sup>14</sup>, *Union of India vs. Era Educational Trust & Another*<sup>15</sup> and *Medical Council of India, New Delhi vs. State of H.P. & Another*<sup>16</sup>.

22. Learned counsel for the CCIM/NCISM, while reiterating the contentions advanced on behalf of the Union, emphasized the following points:

<sup>14</sup> (1999) 3 SCC 224 [paragraph 11].

<sup>15</sup> (2000) 5 SCC 57 [paragraph 7].

<sup>16</sup> (2000) 5 SCC 63 [paragraph 2].

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Signing Date: 01/06/2023  
16:50:32



- a) CCIM is an expert regulator whose views should normally be accepted by the Court within its domain of expertise, particularly where the matter concerns the standards of education in medical colleges, with a direct bearing upon the public health.
- b) The procedure for grant of annual permission *inter alia* includes submission of report by the CCIM to the Union which is then considered independently by the Union. The procedure commences with the submission of data by the applicant institution in a proforma known as Part 1. In the absence of physical inspection, CCIM scrutinizes the data with reference to the material available with it. In the face of several complaints regarding absence of teachers, CCIM was compelled to undertake the verification exercise on the basis of the material available.
- c) The colleges and the teachers were informed of the exercise being undertaken by CCIM over a relatively long period of time, including *inter alia* through letters dated 02.03.2020 and 31.03.2020, highlighting the problem of teachers working “*on paper*” without physical presence in the institution. Colleges were also required to identify such teachers and replace them with genuine teachers. In the light of the correspondence placed on record with the counter affidavit, learned counsel submitted that the issue was not one that was sprung upon the colleges, but one of which they were aware for a considerable period. She



submitted that, in the light of the non-certification of the teachers, the colleges cannot be granted permission.

- d) Compliance of Regulation 26 of the 1982 Regulations, and the requirement of registration in respective State Registers cannot be characterized as technical or formal infractions, but constitute regulatory violations, which render the teacher liable to be discounted, while computing the faculty available in the institution in question.

23. The following judgments were cited on behalf of CCIM/NCISM:-

- i. *Basavaiah (Dr.) vs. Dr. H.L. Ramesh & Others*<sup>17</sup>.
- ii. *Ayurved Shastra Seva Mandal & Anr. vs. Union of India & Others*<sup>18</sup>.
- iii. *Medical Council of India vs. Kalinga Institute of Medical Sciences (KIMS) & Others*<sup>19</sup>.
- iv. *Medical Council of India vs. Principal, KMCT Medical College & Another*<sup>20</sup>.
- v. *Medical Council of India vs. Chariman, S.R. Educational and Charitable Trust*<sup>21</sup>.

#### **D. Analysis:**

- a) *Effect of the decision in Anil Kumar Singh Bhadoria*<sup>22</sup>:

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<sup>17</sup> (2010) 8 SCC 372.

<sup>18</sup> (2013) 16 SCC 696.

<sup>19</sup> (2016) 11 SCC 530.

<sup>20</sup> (2018) 9 SCC 766.

<sup>21</sup> (2020) 17 SCC 717.

<sup>22</sup> Supra (note 6).

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Signing Date: 01.06.2023  
16:50:32



24. Although the statutory provisions and submissions of learned counsel for the parties have been noted in detail hereinabove, I am of the view that many of the arguments canvased before me are covered by the decision of this Court in *Anil Kumar Singh Bhadoria*<sup>23</sup>.

25. In the denial orders which have been challenged by the petitioner institutions in this batch of petitions, the respondents have proceeded on the following two principal grounds:-

- a. That the institutions did not submit documents required in terms of Regulation 26 of the 1982 Regulations and;
- b. That the institutions did not submit valid registration certificates showing the registration of their faculty members on the register of practitioners in the states where they are employed.

26. These grounds are closely linked with the decision of the CCIM not to certify individual teachers under Regulation 3(1)(f) of the 2016 Regulations. The aggrieved teachers had challenged these orders of CCIM dated 14.01.2021 and 15.01.2021, which was decided by the judgment in *Anil Kumar Singh Bhadoria*<sup>24</sup>. In the communications by which the teachers' certifications were denied, CCIM noticed its earlier correspondence with the teachers and with the Ayurveda/Unani colleges.

27. This Court ultimately remanded the matter for reconsideration by the CCIM on the following findings:-

- a. The Court did not accept the contention of the teachers that Regulation 3(1)(f) of the 2016 Regulations would have effect

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<sup>23</sup> *Ibid.*

<sup>24</sup> *Id.*



only upon the colleges, and not upon the certification of the teachers. It was held that Regulation 3 has a twin effect i.e., non-certification of faculty/teacher, and also denial of permission to the particular college. The Court noted that, by virtue of orders impugned before it, many colleges have been declined permission to conduct the courses which has also been challenged before this Court<sup>25</sup>.

- b. The Court did not consider it necessary to examine the scope of Regulation 26 of the 1982 Regulations, as the actions impugned before it arose under Regulation 3(1)(f) of the 2016 Regulations. The Court held that under the said regulation, CCIM was within its right to carry out inquiry and find out through that process whether or not the particular member of the faculty/practitioner is engaged or not engaged at any other place<sup>26</sup>.
- c. The Court also negated the contention that the insistence of the CCIM upon registration in the State where the faculty member is teaching is contrary to its own office guidelines dated 29.01.2021, which dispenses such requirement in respect of those teachers who have obtained central registration in terms of Sections 23, 24, 25 and 29 of the IMCC Act<sup>27</sup>.
- d. Relying upon the judgment of the Supreme Court in *State of Bihar and Others vs. Kameshwar Prasad Singh and Others*<sup>28</sup>,

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<sup>25</sup> *Id.*, paragraph 255.

<sup>26</sup> *Id.*, paragraph 256.

<sup>27</sup> *Id.*, paragraph 257.

<sup>28</sup> (2000) 9 SCC 94.

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Signing Date: 01.06.2023  
16:50:32



the Court also rejected the contention based on Article 14 of the Constitution that some identically placed teachers had not been affected<sup>29</sup>.

- e. The Court also held in favour of the CCIM that certification of the same teachers at prior physical inspections would not preclude the CCIM from examining the matter afresh in the present year, notwithstanding that compliance with Regulation 26 had not been insisted upon earlier<sup>30</sup>.

28. Having come to these conclusions on interpretation, the Court, nonetheless, remanded the matters to CCIM for fresh consideration on the finding that CCIM had not considered the evidence placed before it by the teachers in response to the show cause notices. The Court came to the conclusion that the materials/documents relied upon by the petitioners were not reflected in the impugned orders<sup>31</sup>. The orders dated 14.01.2021 and 15.01.2021, declining to certify teachers under Regulation 3(1)(f) of the 2016 Regulations were, therefore, set aside, and CCIM was directed to pass fresh orders by considering the materials submitted by the petitioners therein. At the instance of the teachers who had approached the Court, the individual orders passed against them were also set aside by the said judgment and remanded.

29. The issue of certification of teachers and approval being granted to colleges are very clearly related. It is on account of non-certification of individual teachers that the concerned institution has been found to

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<sup>29</sup> Supra (note 6)(paragraph 259).

<sup>30</sup> *Ibid.*, paragraph 260.

<sup>31</sup> *Id.*, paragraph 269.



be short of the minimum faculty requirement. This has been expressly recognized in para 255 of *Anil Kumar Singh Bhadoria*<sup>32</sup> in the following terms:-

*“255. It is the submission of the Counsel for petitioners that Regulations 3(1)(f) of Regulation 2016 could not have been invoked given the overall scheme of Regulation 3 of Regulations of 2016, which contemplate that it is the college/institution which shall be denied the permission to run an Ayurvedic College and not an action against the teacher, as has been taken in these cases, is not appealing. A perusal of Regulation 3(1)(f) of the Regulations of 2016 as reproduced in Para 7 above being part of Regulation 3 which deals with the Requirements of Minimum Standards to grant permission to an Ayurvedic College, such a permission can be granted only if the College fulfils the requirement for the faculty(s) under the norms. But if the faculty/teacher is not in place, the same would result in CCIM denying the certification that the faculty/teacher is not working at any other place, which otherwise is contemplated under Regulation 3(1)(f) of the Regulations of 2016. Such a certificate is in relation to the concerned faculty/teacher, though the non-certification of a teaching faculty may have the effect on a particular college not meeting the requirement of the faculty under the norms resulting in the denial of the permission as per the Regulations of 2016. Thus, Regulation 3 of Regulations of 2016, shall have a twin effect, i.e., non-certification of the faculty/teacher and also the denial of permission to a particular college to function. It is a matter of record that the impugned orders passed by the CCIM dated January 14, 2021 and January 15, 2021 have resulted in many colleges, not getting the permission to conduct the course and in fact such colleges have also approached this Court challenging the denial of permission to them for conducting the course.”*

30. The approach of the respondents in the present batch of petitions also demonstrates the same position. The petitioner/colleges have been declined permission, not for any failure or omission committed by them, but because the paper work to be submitted by the

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<sup>32</sup> *Id.*





faculty member was not in order, and their certification under Regulation 3(1)(f) of the 2016 Regulations was, therefore, denied. Once the orders declining certification were set aside by this Court, the very substratum of the orders challenged in these petitions is eroded.

31. It was argued on behalf of CCIM/NCISM that, in terms of the judgment in *Anil Kumar Bhadoria*<sup>33</sup>, the proceedings have, in fact, been concluded by CCIM on remand, and all the individual petitioners before this Court have been declined relief. Learned counsel submitted that any order of remand in the present case would, therefore, be futile. I am not impressed by this submission because the faculty members who approached this Court individually were few in number. Even if the orders against those faculty members were ultimately sustained on remand, there are other faculty members whose non-certification has also been taken to the basis of the orders against the colleges, which are impugned here. It cannot be presumed that all members of the faculty of the petitioner institutions would suffer the same fate, or that the orders which have been sustained would be sufficient to demonstrate inadequacy of faculty in the petitioner-institutions. If the orders declining certification to the faculty had “*twin effect*”, it must be open both to the individual concerned and to the institution which suffers a consequential denial of permission, to seek recourse against the order.

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<sup>33</sup> *Id.*



32. For the aforesaid reasons, I am of the view that the judgment in *Anil Kumar Bhadoria*<sup>34</sup> renders the impugned orders in this batch of petitions also liable to be set aside.

**b) Relief:-**

33. The next question to be determined concerns the consequential directions required to be passed. In *Anil Kumar Bhadoria*<sup>35</sup>, the Court remanded the matter to CCIM for fresh consideration. Keeping in mind the lapse of time, however, learned counsel for the parties in these writ petitions were requested to address the Court on the appropriate manner in which the matters should be resolved. As recorded in the orders dated 27.09.2021 and 21.10.2021, the petitioners were also given an opportunity to make their suggestions in this regard for the Union and the NCISM to consider. Unfortunately, a consensus eluded the parties, as a result of which the matters had to be placed before the Court for further consideration.

34. The proceedings have taken regrettably long in view of the intervention of various phases of the COVID-19 pandemic, and other preoccupations of the Court. Even with the delays in admissions in that year, students had unfortunately lost several months of the first year by the time the petitions were being heard on this point.

35. On behalf of the petitioners, it was urged that, in the event the Court finds in their favour, the matters must be remanded to the Union, or indeed writs of *mandamus* be issued to grant permission. Learned counsel sought to emphasise the statement of the learned

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*



ASG, recorded in the order of this Court dated 26.03.2021 to the effect that the Union would facilitate an additional round of counselling, if the petitioners were successful in these writ petitions. Some learned counsel for the petitioners also submitted that, in view of Regulation 13(A)(6) of the IMCC Act, the denial orders having been set aside, the writ court would be justified in granting relief.<sup>36</sup>

36. Learned counsel for the CCIM/NCISM, on the contrary, submitted that a remand of all the petitions at this stage would be unjustified. She referred to the judgment of the Supreme Court in *Ayurved Shastra Seva Mandal and Another vs. Union of India and Others*<sup>37</sup> to submit that reopening of admissions at such a belated stage was not called for. On this basis, she argued that the only matters which require a remand are those in which students have been admitted by virtue of interim orders of this Court.

37. Having regard to the overall facts and circumstances of the case, neither of the positions articulated by learned counsel appears to me to provide a practical and equitable resolution of the issue. The petitioners sought a fresh round of counselling despite the lapse of considerable time. The respondents, on the other hand, sought to reopen the admission of students admitted by interim orders, despite

<sup>36</sup> It was also submitted that in several of these cases, the petitioners have been granted approval for the 2021-2022 session. Reliance was placed upon a judgment of the Bombay High Court in *Motiwala Homeopathic Medical College & Hospital and F.G. Motiwala P.G. Institute of Homeopathy & Research Centre vs. Union of India & Others* [Judgment dated 05.10.2021 in W.P.(Civil) 11390/2017] to the effect that the permission granted in a subsequent year would lead to the presumption that the institution in question has the requisite infrastructure and has rectified the deficiencies found in the prior year. I have not considered this submission as a similar submission has been conclusively rejected by the Supreme Court in *Central Council for Indian Medicine v. Karnataka Ayurveda Medical College* (2022) 7 SCC 46.

<sup>37</sup> (2013) 16 SCC 696.

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NAGPAL  
Signing Date: 01.06.2023  
16:50:32



the fact that the impugned denial orders passed by them have been set aside. The case is one which, in my view, calls for moulding of the relief.

38. The Supreme Court has considered the question of moulding of relief on account of developments during the pendency of litigation in several judgments, including the following:-

a) The principles were laid down by the Supreme Court in *Pasupuleti Venkateswarlu v. Motor and General Traders*<sup>38</sup> in the following terms:-

*“4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions the High Court, in revision, correctly took this view. The later recovery of*

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<sup>38</sup> (1975) 1 SCC 770.



*another accommodation by the landlord, during the pendency of the case, has as the High Court twice pointed out, a material bearing on the right to evict, in view of the inhibition written into Section 10(3)(iii) itself. We are not disposed to disturb this approach in law or finding of fact.”*

- b) In *Ramesh Kumar v. Kesho Ram*<sup>39</sup>, the Supreme Court reiterated that a court can take “*cautious cognizance*”<sup>40</sup> of subsequent changes of fact and law to mould the relief in view of developments during the pendency of the proceedings.
- c) The judgement in *Pasupuleti Venkateswarlu*<sup>41</sup> was followed by the Supreme Court in *Gaiv Dinshaw Irani v. Tehmtan Irani*<sup>42</sup>, wherein the Court came to the conclusion that the courts would be justified in moulding the relief in accordance with changed circumstances for shortening litigation, or doing complete justice, when relief which may have been justified at the commencement of the litigation, would become inappropriate due to changed circumstances<sup>43</sup>.
- d) The conditions for exercise of such jurisdiction have been enumerated by the Supreme Court in *Om Prakash Gupta v. Ranbir B. Goyal*<sup>44</sup>, in the following terms:-

*“11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of*

<sup>39</sup> 1992 Supp (2) SCC 623.

<sup>40</sup> *Ibid*, page No. 626-627 (paragraph 6).

<sup>41</sup> *Supra* (note 38).

<sup>42</sup> (2014) 8 SCC 294.

<sup>43</sup> *Ibid*, page No. 318 (paragraph 53).

<sup>44</sup> (2002) 2 SCC 256.

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*subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In Pasupuleti Venkateswarlu v. Motor & General Traders [(1975) 1 SCC 770 : AIR 1975 SC 1409] this Court held that a fact arising after the lis, coming to the notice of the court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the court cannot be blinked at. The court may in such cases bend the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The Court speaking through Krishna Iyer, J. affirmed the proposition that the court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed.”*

39. In the context of educational institutions, Mr. Mariarpurtham placed reliance upon several decisions which concern continuation of students in professional institutions:-

- (i) In *Rajendra Prasad Mathur v. Karnataka University*<sup>45</sup>, the Supreme Court upheld the decision of the universities to the effect that the admission of students to some affiliated colleges was illegal. However, keeping in mind the fact that students had, in fact, prosecuted their studies for considerable time in those colleges, and were not to blame for the fact that they were wrongly admitted, the Court protected their further education.

<sup>45</sup> 1986 (Supp) SCC 740.



This judgment was relied upon in by the Supreme Court *inter alia* in *A. Sudha v. University of Mysore*<sup>46</sup>.

- (ii) The Supreme Court, in *State of Punjab v. Anshika Goyal*<sup>47</sup>, protected the admission of the students who had been granted admission by interim orders, even though the question of law raised in the case was not ultimately decided.
- (iii) Mr. Mariarpurtham emphasised that the powers of the High Court under Article 226 of the Constitution are available to do complete justice between the parties, notwithstanding the absence of a power corresponding to Article 142 of the Constitution for the Supreme Court. In this connection, he cited the concurrent opinion of Hansaria, J. in *B.C. Chaturvedi v. Union of India*<sup>48</sup>.

40. Viewed from this perspective, I am of the view that an order of remand at this stage would be unjustified. In the event the respondents hold in favour of the petitioners on remand, the exercise would be futile as further counselling, at this stage, is impossible. Conversely, if the respondents hold against the petitioner institutions, I am of the view that it would be a travesty of justice to unseat the students who have been admitted by virtue of interim orders passed by the Court, particularly because the impugned orders declining permission to the petitioner institutions have been set aside for the reasons outlined

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<sup>46</sup> (1987) 4 SCC 537.

<sup>47</sup> (2022) 3 SCC 633 (paragraph 7.1).

<sup>48</sup> (1995) 6 SCC 749 (paragraphs 21-22).



hereinabove. An earlier round of denial orders led to the Status Note, wherein the respondents undertook to reconsider the matters. Thus, there have already been two rounds of consideration by the respondent authorities, both of which have ultimately been infructuous.

41. In the meanwhile, in the light of the order of the Division Bench dated 04.02.2021 in LPA 49/2021, students were admitted to some of the institutions, and interim orders were passed following the said order of the Division Bench. In the decisions of the Supreme Court noted above, the position of students in similar situations has been protected despite findings against the colleges in question on merits. In the present case, in contrast, the finding on merits is that the impugned orders against the petitioner colleges are unsustainable in law.

42. In such circumstances, I am of the view that the petitioners can be granted a consequential order continuing the students who have already been admitted, but not to any further relief, whether by way of remand, further counselling, or otherwise.

**E. Conclusion:-**

43. In the light of the above, and following the decision of this Court in *Anil Kumar Singh Bhadoria*<sup>49</sup>, the impugned decisions of the Union of India are set aside, and the petitioners are permitted to continue with the admission of the students who were admitted pursuant to the interim orders passed by this Court.

44. In the facts and circumstances of the case, no further relief is considered appropriate.

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<sup>49</sup> Supra (note 6).





45. The writ petitions and all the pending applications are disposed of with these directions.

46. A copy of this judgment be kept in the file of each of the writ petitions.

**PRATEEK JALAN, J.**

**May 31, 2023**

*'Hkaur/Bhupi/Pv/Sv/£mm'/'*

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