

(2014) 03 AHC CK 0176

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 60738 of 2011, 26480, 31178, 36688 and 48027 of 2013

Kirti Rai and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Indian Medicine Central Council Act, 1970 — Section 13C

Citation : (2014) 4 ADJ 371 : (2014) 2 ESC 1106 : (2014) 2 UPLBEC 1571

Hon'ble Judges : Mahesh Chandra Tripathi, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : Vikrant Pandey and Jeetendra Dwivedi, Advocate for the Appellant; Neeraj Tiwari, Pratik Chandra, Triloki Singh and Vivek Varma, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Ashok Bhushan, J.—These six writ petitions, raising common questions of facts and law, have been heard together and are being decided by this common judgment. All these writ petitions relate to admission in BAMS (Bachelor of Ayurvedic Medicine and Surgery) Course for the academic year 2011-2012 in different Ayurvedic Colleges of State of U.P. (except Writ Petition No. 48027 of 2013 which relates to academic year 2012-13). In the above writ petitions, following Ayurvedic Colleges of the State of U.P. are involved:

(1) Lal Bahadur Shastri Ayurvedic College Handia, Allahabad (Writ Petition No. 31178 of 2013).

(2) Sham-e-Gaushia Minority Post Graduate Ayurvedic Medical College and Hospital, Sahaeri, Ghazipur, District Ghazipur (Writ Petition No. 60738 of 2011).

(3) Bundelkhand Government Ayurvedic College and Hospital, Gwalior Road, Jhansi (Writ Petition No. 48027 of 2013 and Writ Petition No. 36687 of 2013).

(4) Lalit Hari State Post Graduate Ayurvedic College and Hospital, Pilibhit (Writ

Petition No. 36688 of 2013).

(5) Swami Kalyan Deo Government Ayurvedic College, Rampur, Muzaffar Nagar (Writ Petition No. 26480 of 2013).

2. The Parliament enacted the Indian Medicine Central Council Act, 1970 (hereinafter referred to as the 1970 Act) to provide for constitution of a Central Council of Indian Medicines and the maintenance of a Central Register of Indian Medicine and also for matters connected therewith. By the said Act a statutory composite Central Council for Indian System of Medicines i.e. Ayurveda, Siddha, Unani and Homoeopathy have been constituted. The Act was amended by the Indian Medicine Central Council (Amendment) Act, 2003 with effect from 7th November, 2003 inserting new containing Sections 13A, 13B and 13C. Under the Amendment Act, 2003, the Central Government is the competent authority for grant of permission for establishing new Ayurvedic College, permission to existing colleges and subsequent renewal as per the 1970 Act and the norms/regulations. The regulations, namely, the Indian Medicine Central Council (Permission to existing Medical Colleges) Regulations, 2006 have been framed providing for permission to be obtained by an existing medical college. After the Amendment Act, 2003, the Central Government wrote to all the State Governments that now the permission of the Central Government is essential even for existing college in accordance with the provisions of Section 13C of the 1970 Act. The Government of India required all existing colleges to obtain permission with effect from the academic year 2008-2009.

3. The admission in BAMS Course in the State of U.P. is made on the basis of Combined Pre-Medical Test conducted by different Universities, as authorised by the State. The Bundelkhand University, Jhansi was authorised by the State Government to conduct the Combined Pre-Medical Test 2011. The admission to MBBS, BDS, BHMS, BAMS and BUMS courses is granted consequent to result of Combined Pre-Medical Test after counselling conducted by the Director General, Medical Education and Training, U.P. The Combined Pre-Medical Test for the academic year 2011-2012 was conducted on 25th May, 2011 result of which was declared on 15th June, 2011 and counselling was scheduled to take place on 11th July, 2011. All the petitioners in these writ petitions had appeared in the Combined Pre-Medical Test 2011 (except petitioners of Writ Petition No. 60738 of 2011 which is Management of the College and Writ Petition No. 48027 of 2013 which relates to academic year 2012-13) and after counselling they were allotted respective colleges for admission in BAMS course 2011. The petitioner-students, who were allocated different Ayurvedic Colleges, were permitted admission by respective colleges in BAMS course for the academic year 2011-12 after deposit of requisite tuition fee and other fees. The colleges also started imparting studies to the students admitted in the BAMS course 2011-12. The name of all the Ayurvedic Colleges, as noted above, involved in this group of writ petitions, were mentioned in the brochure of the Combined Pre-Medical Test 2011 as well as in the letter issued by the Director General, Medical Education and Training for

conducting the counselling. Although the Director General, Medical Education and Training asked the details of recognition of the colleges but the Director, Ayurvedic Sewayein, U.P. informed that no orders have been received from CCIM (Central Council of Indian Medicines) for cancelling the recognition of any of the Government Ayurvedic Colleges. It appears that on the strength of the letter from the Director, Ayurvedic Sewayein and on the strength of inclusion of the said colleges in the counselling, the students were allocated different Government colleges for admission in BAMS course. The aforesaid counselling was undertaken and admission completed despite the fact that none of the Ayurvedic Colleges, which were all existing colleges, were granted permission by the Central Government as required u/s 13C of the 1970 Act. In fact, the Central Council of Indian Medicines had conducted inspection of the colleges and had found various shortcomings in the teaching faculty and infrastructures and had submitted its report to the Central Government. After the inspection, the Central Government intimated the shortcomings to the colleges and required the colleges to submit its representation and further to participate for hearing before the Designated Hearing Committee. The Designated Hearing Committee considered the representations submitted by the colleges representatives and after giving hearing, had sent its recommendation to the Central Government. The Central Government, after taking into consideration the inspection report of the CCIM and report of the Designated Hearing Committee, had declined permission to all the aforesaid colleges for the academic year 2011-12. The report of the Designated Hearing Committee as well as the orders passed by the Central Government have been brought on the record which shall be referred to in detail while considering the respective submissions.

4. The State Government had granted affiliation to all the aforesaid Government Ayurvedic Colleges u/s 37(2) of the State Universities Act, 1973. The Chhatrapati Shahuji Maharaj University, Kanpur notified the scheme for conduct of examination of BAMS 2011-12. The University conducted the examination of BAMS students of only those colleges which had been granted permission by the Government of India. The students of none of the colleges, as noted above, were permitted to appear in the examination of first professional course of BAMS. The examination was to begin from 16th May, 2013. The petitioner-students who were not permitted to appear in the BAMS examination commencing from 16th May, 2013, rushed to this Court by filing the aforesaid writ petitions praying for a writ of mandamus directing the respondents to permit the petitioner-students to appear in the examination of first professional course of BAMS for the Sessions 2011-12. By amendment in some of the writ petition, the petitioners have also prayed for quashing the order of the Government of India refusing to grant permission for academic sessions 2011-12.

5. We have heard Sri Vikarant Pandey, Advocate, Sri S.C. Srivastava, Advocate, Sri Ashok Khare, Senior Advocate, Sri K.S. Kushwaha, Advocate and Sri Ranjit Saxena, Advocate for the petitioners. Sri C.B. Yadav, Additional Advocate General has appeared for the State of U.P., Sri Neeraj Tiwari, Advocate has appeared for

the Chhatrapati Sahuji Maharaj University, Sri Pratik Chandra has appeared for the CCIM, Sri Triloki Singh, Advocate, Sri Vaibhav Kausik and Sri Sudhir Mishra have appeared for the Union of India.

6. Learned counsel for the petitioners, in support of the writ petitions, have submitted that petitioner-students having been selected after being declared successful in Combined Pre-Medical Test and after participating in the counselling, they cannot be made to suffer on account of lapse of the colleges/ State Government in not fulfilling the requisite teaching faculty/infrastructures in the colleges. It is submitted that admission having been granted to them and they having undergone the professional course, they are entitled to appear in the examination of first professional. It is submitted that on account of the lapse of the colleges/State Government, the petitioner-students cannot be made to suffer. It is further submitted that the students having been granted admission and having allowed to complete their course, the right to appear in the examination cannot be denied. It is further submitted that in the same colleges where the petitioner-students are studying, the students of the earlier years are being permitted to appear in the second and third professional examination whereas the petitioners-students are denied to appear in the examination. Challenging the decision of the Central Government refusing to grant permission for the academic year 2011-12, it is submitted that the Central Government has taken too technical view of the matter while refusing permission. It is submitted that substantially all minimum requirements were fulfilled but the Central Government declined the permission without there being any sufficient reason.

7. Learned counsel appearing in Writ Petition No. 48027 of 2013, has submitted that CCIM has found all requirements fulfilled except not fulfilment of 40% of bed occupancy whereas bed occupancy was up to 39.62% which ought to have been rounded at 40%, hence the refusal of permission was unjustified.

8. With regard to Lal Bahadur Shastri Ayurvedic College Handia, Allahabad, it is submitted that all requirements were fulfilled and further the college having been granted permission in the subsequent year i.e. for 2002-13, it be treated that college fulfilled all necessary requirements in the year 2011-12 also.

9. In support of Writ Petition No. 60738 of 2011, Sri K.S. Kushwaha has submitted that recognition has already been granted for the next academic year i.e. 2012-13 despite the shortcomings pointed out for the academic year 2011-12, hence it has to be accepted that the institution was entitled for recognition for the year 2011-12 also. It is further submitted that the shortcomings pointed out by the CCIM were not of serious nature, hence permission ought to have been granted. The students have completed their one and half year course and the students of the academic year 2009-10 were permitted to appear in the examination.

10. Sri Ranjit Saxena appearing in Writ Petition No. 26480 of 2013 has submitted that for the year 2010-11 some of the students have filed a writ petition in this

Court being Writ Petition No. 15667 of 2012 where the Principal Secretary, Medical Education and Training has filed affidavit that Government is taking all steps for completing the infrastructure. It is submitted that students being meritorious students got their admission in the Government colleges and the seats were allocated by the Director General, Medical Education and Training. It is submitted that the affidavit of J.P. Sharma has mentioned that deficiencies have been removed.

11. Learned counsel for the Union of India, refuting the submissions of learned counsel for the petitioners, has contended that without permission by the Central Government u/s 13C of the 1970 Act, no admission could have been taken by the colleges and admission of the students in unrecognised colleges is of no value and such students of unrecognised colleges cannot be permitted to appear in any examination. He has submitted that the Central Government having taken decision on valid consideration, after considering the report of the CCIM, all the writ petitions deserve to be dismissed. He relied on the judgment of the Apex Court dated 6th March, 2013 in SLP No. 31892 of 2012 (Ayurveda Shashtra Seva Mandal and another v. Union of India and others) and some other judgments of the Apex Court which shall be referred to while considering the submissions in detail. It is further submitted that no equity is created in favour of the students on the ground that they have taken admission.

12. Sri Prateek Chandra, learned counsel appearing for the CCIM has submitted that job of CCIM is only to conduct the inspection whether the colleges fulfilled the minimum requirement for recognition and then submit a report to the Central Government which is the authority to take decision regarding recognition. The short counter affidavit filed on behalf of the CCIM brings on record extract of the inspection report relevant for different colleges involved in these writ petitions.

13. Sri C.B. Yadav, learned Additional Advocate General, appearing on behalf of the State, has submitted that the State has made all endeavour to complete the infrastructure of the different Governments colleges. He has submitted that requisition had been sent by the State Government to the U.P. Public Service Commission for selection of teachers in different Ayurvedic Colleges. He has further submitted that several appointments have also been made subsequent to the inspection made by the CCIM and information of the appointment has already been sent to the Government of India requesting to reconsider its decision regarding refusal of permission. Sri Yadav has further submitted that norms which have been prescribed, were norms for up to at least 60 students in a college whereas the seats sanctioned in different colleges are 30, 40 or 50, hence it cannot be said that the Central Government applied the norms correctly.

14. We have considered respective submissions of learned counsel for the parties and perused the record.

15. After 2003 amendment in the 1970 Act in accordance with Section 13C, the existing colleges are also required to take permission for each academic session.

There being statutory requirement u/s 13C of the 1970 Act to seek permission before commencing the course, it was incumbent on the colleges as well as the Director General, Medical Education and Training and the Director, Ayurvedic Sewayein to proceed with counselling and process of admission only after being satisfied that permission has been granted u/s 13C of the 1970 Act. The letter brought on the record written by the Director, Ayurvedic Sewayein states that no decision has been received from the CCIM cancelling the recognition, which indicates that the State authorities were not alive to statutory provisions nor conducted themselves in accordance with the mandate of the 1970 Act. The submissions of learned counsel for the petitioner that the petitioner-students having been declared selected consequent to the Combined Pre-Medical Test 2011 and having been allowed to participate in the counselling and allocated respective colleges by Director General, Medical Education and Training, cannot be made to suffer on account of lapse of the colleges, does not make out a case to issue any direction to the respondents to permit them to appear in the examination. The students who have taken admission in unrecognised college, have no right to compel the authorities to examine them for the professional course. Thus the mere fact that petitioner-students were admitted by the colleges in pursuance of allotment letters issued to them by the Director General, Medical Education and Training, does not entitle them to be granted the relief as prayed in the writ petition.

16. As noted above, the Central Government has, by express order, refused permission to the above noted colleges for the academic year 2011-12 and the learned counsels for the petitioners having challenged the said order also in the writ petitions, it is useful to advert to the orders of the Central Government including the reports of the Designated Hearing Committee for appreciating their submissions.

17. The Union of India alongwith its counter affidavit has brought on the record the minimum standard norms which is required to be fulfilled for conditional permission to an Ayurvedic College for the academic session 2011-12 by Government of India's letter dated 18th March, 2011. Since in these writ petitions (except Writ Petition No. 48027 of 2013) we are concerned with under graduate courses, it is useful to refer to the minimum norms as prescribed by letter dated 18th March, 2011 which are as under:

18. Now we proceed to examine the relevant materials on record to find out as to whether the colleges fulfilled the minimum requirement and the decisions taken by the Central Government rejecting permission for the academic year 2011-12 was justified or not. We proceed to examine the relevant facts with regard to each college separately.

Lal Bahadur Shastri Ayurvedic College, Handia, Allahabad:

19. The CCIM on 28/29th of April, 2011 inspected the college for renewal of permission for existing course for the year 2011-12. On the basis of the said

inspection, the notice of shortcomings was communicated to the college vide letter dated 21st June, 2011. The college was given hearing on 5th July, 2011. The overall observations of the Designated Hearing Committee, as contained in the report dated 26th July, 2011, are as follows:

Overall observation and comments:

Since the representative of the college has accepted the fact that they have only 8 higher faculty (including principal of the college, who was not considered as faculty member by the CCIM). He also accepted the fact that at the time of visitation there was not a single teacher in 02 Departments i.e. (i) Rasashastra and Bhaishajyakalpana and (ii) Panchkarma. However one lecturer has been appointed in the Department of Rasashastra and B.K. after the visitation. Still the Department of Panchkarma is without any faculty and thus not fulfilling the minimum requirements of at least one faculty in each Department.

With regards to IPD/OPD, the college records (not original but photocopies) to hearing committee the photocopies of some hospital records. IPD is running without nursing staff. The college representative did not produce nursing staff duty register, diet register, IPD case sheet and fee charge records.

In the light of above it seems that the college is not fulfilling the requirements in term of higher faculty as well as functionality of the hospital.

20. The Central Government, taking into consideration the inspection report as well as the observation of the Designated Hearing Committee, vide its order dated 26th August, 2011 refused to grant permission to the college for taking admission to BAMS course with 30 seats in the academic year 2011-12. In paragraph 9 of the order dated 26th August, 2011 following has been mentioned:

9. NOW, THEREFORE, in view of the shortcoming and deficiency particularly about the non-availability of 50% higher faculty, at least one teacher in each department, a genuinely functional Ayurveda hospital with the requirement of 100 patients per day in OPD and 40% bed occupancy in IPD in the year 2010, which violate the provisions of the IMCC Act, 1970 and IMCC (Amendment) Act, 2003 (Sub-section 8(C) of Section 13A) and the relevant regulations and are of such a serious and fundamental nature that they adversely affect the ability of the College to provide quality medical education in terms of the provisions of the IMCC Act and the relevant regulations. It has been decided not to grant permission to Lal Bahadur Shastri Rajkiya Ayurved Mahavidyalaya, Handia, Allahabad, Uttar Pradesh for taking admission to the BAMS course with 30 seats in the academic year 2011-12.

Sham-e-Gaushia Minority Post Graduate Ayurvedic Medical College and Hospital, Sahaeri, Ghazipur:

The college was granted permission for the academic years 2009-10 and 2010-11. On 28/29th March, 2011 the CCIM submitted recommendation for grant of permission for the academic year 2011-12. The Government of India

issued a notice dated 7th June, 2011 to the college informing about the shortcomings. The college was invited to participate in hearing by the Designated Hearing Committee. The Designated Hearing Committee, after examining the submission made by the college, submitted its report. The Government of India vide its order dated 6th September, 2011 refused to grant permission. It is useful to quote paragraphs 8 and 9 of the order dated 6th September, 2011 which are to the following effect:

8. WHEREAS, in view of the above observations of the Hearing Committee based on submissions made by the college during hearing and the recommendations and visitation report of the CCIM as in paras 5 to 7 above, it can be understood that as per the approved norms for 2011-12 session as mentioned in para 4 above, the college does not fulfil the eligibility conditions like, total requirement of teachers for 60 UG seats and 02 PG courses and a genuine functional Ayurvedic hospital with required of 100 patients per day in OPD and 50% IPD bed occupancy for UG and PG institution:

8. Now, Therefore, in view of the shortcoming and deficiency particularly about the non-availability of teachers for 60 UG seats and 0-2 PG courses and a genuine functional Ayurvedic hospital with required of 100 patients per day in OPD and 50% IPD bed occupancy for UG and PG institution, which violate the provisions of the IMCC Act, 1970 and IMCC (Amendment) Act, 2003 (Sub-section 8(C) of Section 13A) and the relevant regulations and are of such a serious and fundamental nature that they adversely affect the ability of the College to provide quality medical education in terms of the provisions of the IMCC Act and the relevant regulations, it has been decided not to grant permission to Shri SG Minority Ayurvedic Medical College & Hospital, Saheri, Nandganj, Ghazipur, Uttar Pradesh for taking admission to the BAMS course with 60 UG seats and 02 PG courses i.e. (i) Rognidan (4 seats) and (ii) Prasuti & Strirog) (4 seats) in the academic year 2011-12.

Bundelkhand Government Ayurvedic College and Hospital, Gwalior Road, Jhansi (Session 2011-12):

21. The CCIM had visited the college on 28/29th April, 2011 to re-assess the available facility of teaching and practical training. Certain deficiencies were found which were communicated to the college and the college was asked to appear on 19th July, 2011 before the Designated Hearing Committee. The college made its submission and the Designated Hearing Committee submitted its report. The Central Government vide its order dated 30th August, 2011 refused to grant permission for the academic year 2011-12. Following was mentioned in paragraph 8 and 9 of the order dated 30th August, 2011:

8. WHEREAS, in view of the above observations of the Hearing Committee based on submissions made by the college during hearing and the recommendations and visitation report of the CCIM as in paras 5 to 7 above, it can be understood that as per the approved norms for 2011-12 session as mentioned in para 4

above, the college does not fulfil the eligibility conditions like, 50% Higher faculty for the year 2011-12.

9. NOW, THEREFORE, in view of the shortcoming and deficiency particularly about the non-availability of 50% Higher faculty for the year 2011-12, which violate the provisions of the IMCC Act, 1970 and IMCC (Amendment) Act, 2003 (Sub-section 8(C) of Section 13A) and the relevant regulations and are of such a serious and fundamental nature that they adversely affect the ability of the College to provide quality medical education in terms of the provisions of the IMCC Act and the relevant regulations, it has been decided not to grant permission to Bundelkhand Government Ayurved College, Jhansi, Uttar Pradesh for taking admission to the BAMS course with 40 seats in the academic year 2011-12. Bundelkhand Government Ayurvedic College and Hospital, Gwalior Road, Jhansi (Session 2012-13):

22. The CCIM visited the college on 28/29th of February, 2012. The Central Government vide its letter dated 27th April, 2012 communicated the deficiencies and asked the college to appear on 14th May, 2012. The college appeared on 14th May, 2012. The report was submitted by the Designated Hearing Committee. The deficiencies were pointed out with regard to bed occupancy. It was found that the bed occupancy was only 39.62% against the approved minimum 40% bed occupancy for UG courses. The Designated Hearing Committee recommended that other norms are met except bed occupancy. The overall observations of the Designated Hearing Committee were noted by the Central Government in its order dated 13th August, 2012. In view of the overall observations, the permission was refused. It is useful to quote overall observations as noted in paragraphs 7 and 8 of the order dated 13th August, 2012 which are to the following effect:

7..... Overall observation and comments of hearing committee:

After verification of all documents, the hearing committee have reached on the conclusion that the submission of the college with regard to Dr. Chandrabhan Singh (S. No. 37) appears to be correct. He seems to be valid for the post of Reader {Higher Faculty} instead of lecturer. As far as, hospital IPD are concerned there is no irregularity/inconsistency found as reported, however, their bed occupancy is found below 40% i.e. 39.62%. Hence teaching hospital of the college does not appear to be a genuinely functional Ayurvedic hospital having 40% IPD bed occupancy during the period 1.1.2011 to 31.12.2011 (the period for consideration):

Overall Remarks:

In view of the above observation regarding hospital irregularities/inconsistencies, the teaching hospital of the college does not appear to be a genuinely functional Ayurvedic hospital having 40% IPD bed occupancy during the period 1.1.2011 to 31.12.2011 (the period for consideration). Therefore, the college is not meeting the required approved relaxed norms for granting conditional permission to take

admission in the BAMS course with 40 UG seats for the session 2012-13.

8. WHEREAS, in view of the above observation of the hearing committee based on submissions made by the college during hearing as in para 7 above and the recommendations and visitation report of the CCIM as in para 3 above, it can be understood that as per the approved norms for 2012 session as mentioned in para 4 above, the college does not appear to be genuinely functional Ayurveda hospital having the genuine patient load of 40% IPD bed occupancy during the period 1.1.2011 to 31.12.2012.

Lalit Hari State Post Graduate Ayurvedic College and Hospital, Pilibhit:

23. The CCIM made inspection on 28/29th of April, 2011. The shortcomings were communicated to the college which was asked to appear on 19th July, 2011 before the Designated Hearing Committee. The representations were made by the College and after hearing, the committee made its observations. Taking into consideration the overall observations of the Designated Hearing Committee, the Central Government vide its order dated 7th September, 2011 refused permission for the academic year 2011-12. It is useful to quote overall decision of the Designated Hearing Committee as mentioned in paragraphs 7, 8 and 9 of the order of the Central Government dated

7th September, 2011 which are to the following effect:

7.....Overall decision of the Hearing Committee : The Hearing Committee is with the view that the college is fulfilling the minimum requirement of teaching staff for having 34 teachers, if the medical officers are being considered eligible. The college is not having required number of higher faculty. Instead of 11, they are only having 8 higher faculties; however, they have at least 1 teacher in each Department. By cross verifying the chain of documents in different case sheets of different Departments, it seems that the college is having genuinely functional OPD and IPD.

8. WHEREAS, in view of the above observations of the Hearing Committee based on submissions made by the college during hearing and the recommendations and visitation report of the CCIM as in paras 5 to 7 above, it can be understood that as per the approved norms for 2011-12 session as mentioned in para 4 above, the college does not fulfil the eligibility conditions like, 50% higher faculty for 50 UG seats and 01 PG course for the year 2011-12;

9. NOW, THEREFORE, in view of the shortcoming and deficiency particularly about the non-availability of 50% higher faculty for 50 UG seats and 01 PG courses for the year 2011-12, which violate the provisions of the IMCC Act, 1970 and IMCC (Amendment) Act, 2003 (Sub-section 8(C) of Section 13A) and the relevant regulations and are of such a serious and fundamental nature that they adversely affect the ability of the College to provide quality medical education in terms of the provisions of the IMCC Act and the relevant regulations, it has been decided not to grant permission to Lalit Hari State PG Ayurvedic College and

Hospital, Pilibhit, Uttar Pradesh for 50 UG seats and 06 seats in one PG course (Dravyaguna) for taking admission to the BAMS course with 50 seats in the academic year 2011-12.

Swami Kalyan Deo Government Ayurvedic College, Rampur, Muzaffar Nagar:

24. The CCIM has visited the college on 5th June, 2011 and submitted its report to the Central Government. The deficiencies were communicated to the college which was given opportunity to appear on 22nd July, 2011 before the Designated Hearing Committee. Taking note of the overall observations of the Committee, the Central Government vide its order dated 6th September, 2011 refused recognition. It is useful to quote overall observation of the committee mentioned in paragraphs 8 and 9 of the order of the Central Government which are to the following effect:

8. WHEREAS, in view of the above observations of the Hearing Committee based on submissions made by the college during hearing and the recommendations and visitation report of the CCIM as in paras 5 to 7 above, it can be understood that as per the approved norms for 2011-12 session as mentioned in para 4 above, the college does not fulfil the eligibility conditions like 50% Higher faculty and a genuine functional Ayurvedic hospital with required of 100 patients per day in OPD and 40% IPD bed occupancy for the year 2011-12.

9. NOW, THEREFORE, in view of the shortcoming and deficiency particularly about the non-availability of 50% Higher faculty and a genuine functional Ayurvedic hospital with required of 100 patients per day in OPD and 40% IPD bed occupancy for the year 2011-12, which violate the provisions of the IMCC Act, 1970 and IMCC (Amendment) Act, 2003 (Sub-section 8(C) of Section 13A) and the relevant regulations and are of such a serious and fundamental nature that they adversely affect the ability of the College to provide quality medical education in terms of the provisions of the IMCC Act and the relevant regulations, it has been decided not to grant permission to Swami Kalyan Deo State Ayurvedic College and Hospital-Rampur, Muzaffarnagar for taking admission to the BAMS course with 30 seats in the academic year 2011-12.

25. From the details, as noted above, the refusal of permission by the Central Government u/s 13C of the 1970 Act is on the ground that institutions do not fulfil the minimum requirement of teaching staff and other requirements. The judgment of the Apex Court dated 6th March, 2013 in SLP No. 31892 of 2012 (Ayurveda Shashtra Seva Mandal and another v. Union of India and others) has been relied by the counsel for the Union of India. The Apex Court in the said case had occasion to decide the SLP filed against the judgment of the High Court wherein admission was not granted on the ground that the college could not get permission u/s 13C of the 1970 Act. The Apex Court had noted the regulations framed under the 1970 Act and while dismissing the SLP filed by the institution, laid down following in paragraphs 13, 14 and 15:

13. It is no doubt true, that applications have been filed by a large number of

students for admission in the Institutions imparting education in the Indian form of medicine, with the leave of the Court, but it is equally true that such leave was granted without creating any equity in favour of the applicants. Those who chose to file their applications did so at their own risk and it cannot now be contended that since they have been allowed to file their applications pursuant to orders passed by the Court, they had acquired a right to be admitted in the different Institutions to which they had applied. The privilege granted to the candidates cannot now be transformed into a right to be admitted in the course for which they had applied. Apart from anything else, one has to take a practical view of the matter since more than half the term of the first year is over. Though it has been contended on behalf of the Institutions concerned that extra coaching classes would be given to the new entrants, it is practically impossible for a student to pick up the threads of teaching for the entire first year when half the course had been completed.

14. 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 concerned discipline 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 2011-12. It is also impractical to consider the proposal of the colleges of providing extra classes to the new entrants to bring them upto the level of those who have completed the major part of the course for the first year.

15. 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.

26. The minimum eligibility for granting permission to a college u/s 13C of the 1970 Act has been circulated by the Central Government vide its letter dated 18th March, 2011 as has been noted above. In the orders passed by the Central Government refusing permission with regard to each institution deficiencies and reasons have been mentioned. The deficiency includes non fulfilling the requirement of 50% higher faculty, non availability of at least one teacher in each department, not having a functional hospital etc. The deficiencies have been found out by the Central Government after considering the report submitted by the CCIM and observations/decisions of the Designated Hearing Committee after considering the representations of respective colleges. We do not find sufficient ground in the writ petitions to interfere with the decision of the Central Government in refusing permission for the academic year 2011-12 to the different colleges as mentioned above.

27. There is only one petition i.e. Writ Petition No. 48027 of 2013 (Hemanshu Shri and another v. Union of India and others) which relates to academic year 2012-13. The petitioners of that writ petition, after being declared selected in Combined Pre-Medical Test 2012, were issued allotment letters dated 22nd July, 2012 and 24th July, 2012 in Bundelkhand Government Ayurvedic College and Hospital, Gwalior Road, Jhansi. The petitioners were admitted in the institution

and were imparted first year professional course education. They were not permitted to appear in the first year professional examination, hence they filed writ petition seeking direction to permit them to appear in the first year professional examination of the session 2012-13 with other Ayurvedic colleges. The order of the Central Government dated 13th August, 2012 has been filed as Annexure-4 to the writ petition by which the permission for the academic year 2012-13 for UG course of Bundelkhand Government Ayurvedic College and Hospital, Gwalior Road, Jhansi was refused. From the overall discussion and comments of the Designated Hearing Committee only reason for not recommending the college is that bed occupancy during the period 1.1.2011 to 31.12.2011 was only 39.62% whereas there is requirement of 40% bed occupancy. The reason given by the Central Government for refusing permission, as noted in paragraphs 8 and 9 of the order dated 13th August, 2012, as quoted above, was the only reason that bed occupancy was 39.62% whereas it was required 40%. The bed occupancy being 39.62% instead of 40% lead the Central Government to form opinion that the college does not appear to be a genuinely functional Ayurvedic hospital. Insofar as the requirement of higher faculty is concerned, it was found that the college fulfilled the minimum requirement of 10 higher faculties. The teachers were also found sufficient.

28. It is true that the Government order dated 18th March, 2011 required minimum 40% bed occupancy during the period 1.1.2011 to 31.12.2011 and admittedly the bed occupancy was 39.62%. When other requirements were fulfilled, refusal of permission on this ground alone is refusal on a too technical ground which do not advance substantial justice.

29. Sri Neeraj Tiwari, learned counsel appearing for the Chhatrapati Sahuji Maharaj University submitted that petitioners of Writ Petition No. 48027 of 2013 were rightly not permitted to appear in the examination since the institution was not recognised institution. He, however, submitted that in the event proper permission is accorded, their examination can be held by the University alongwith examination of other students.

30. In view of the peculiar facts of Writ Petition No. 48027 of 2013, we are of the view that the order of the Central Government dated 13th August, 2012, insofar as it refuses permission to the college for the academic year 2012-13 is unsustainable and is liable to be set-aside.

31. Now reverting back to the writ petitions relating to the academic year 2011-12. The facts reveal that petitioner-students were selected after being declared successful in Combined Pre-Medical Test 2011 and thereafter on the basis of counselling they were allocated different colleges where they took admission, deposited fee etc. The Director General, Medical Education and Training and the Director, Ayurvedic Sewayein were equally responsible for counselling and allocation of the students to different colleges without verification of the fact that permission has not been granted to the colleges for the academic year 2011-12. The said action is nothing but abdication of their responsibilities

towards the medical admission and towards the future of the students. The petitioners were lead to take admission and suffer loss of their valuable time and money. All the writ petitions, except writ petition being Writ Petition No. 60738 of 2011 relate to Government Ayurvedic Colleges which are controlled by the State Government as well as the Director General, Medical Education and Training and Director, Ayurvedic Sewayein. They had responsibility to ensure that colleges fulfilled the minimum norms for permission u/s 13C of the 1970 Act. In non fulfilling the requisite norms, the blame is to be laid on the State Government as well as the Director General, Medical Education and Training, Director, Ayurvedic Sewayein and the institutions. The students of such Government institutions, who were allowed to participate in the counselling and admitted in the institutions, have to be compensated and a remedial and appropriate decision by the State Government has to be taken in this regard.

32. In the result with regard to academic year 2011-12 in Writ Petition No. 31178 of 2013, Writ Petition No. 36687 of 2013, Writ Petition No. 36688 of 2013 and Writ Petition No. 26480 of 2013 following directions are issued:

(i) The Director General, Medical Education and Training shall consider the cases of those petitioners who opt to be transferred to any other Government Ayurvedic College and take appropriate decision in that regard. While adjusting the petitioner-students of respective colleges of the academic year 2011-12, the inter-se merit of the candidates in Combined Pre-Medical Test 2011 shall be taken into consideration. For example, a candidate higher in merit shall have precedence for adjustment as against the student lower in merit.

(ii) Those students who do not opt to be adjusted, shall be refunded the entire fee deposited by them towards admission for the academic year 2011-12 with interest at the rate of 9%.

(iii) The Director General, Medical Education and Training is directed not to allot the students to any college which does not have any permission u/s 13C of the 1970 Act in counselling which shall take place hereinafter.

(iv) The State Government may conduct an inquiry and fix responsibility against the officials who proceeded with allotment of colleges to the students of academic year 2011-12 without there being recognition of the respective colleges.

33. In Writ Petition No. 48027 of 2013, we are of the view that the order of the Central Government dated 13th August; 2012, insofar as it refuses permission to the college for the academic year 2012-13 is unsustainable and is hereby set-aside. The Government of India is directed to issue a fresh consequential order within a period of four weeks from the date of production of a certified copy of this order. The University and other respondents shall act in accordance with the order so passed by the Central Government.

34. With regard to Writ Petition No. 60738 of 2011, which is filed by a private Ayurvedic Medical College, no direction can be issued for transferring the

students. However, the Management is directed to refund the fee deposited by them towards admission for the academic year 2011-12 with interest at the rate of 9%. All the writ petitions are disposed of accordingly.