Central Council For Indian Medicine vs Karnataka Ayurveda Medical College on 11 April, 2022

Author: B.R. Gavai

Bench: B.R. Gavai, L. Nageswara Rao

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2892 OF 2022
[Arising out of SLP(C) No. 4618 of 2021]

CENTRAL COUNCIL FOR INDIAN
MEDICINE ...APPELLANT(S)

VERSUS

KARNATAKA AYURVEDA MEDICAL
COLLEGE AND OTHERS ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 2895 OF 2022
[Arising out of SLP(C) No. 4447 of 2021]

CIVIL APPEAL NO. 2894 OF 2022
[Arising out of SLP(C) No. 3742 of 2021]

CIVIL APPEAL NO. 2893 OF 2022
[Arising out of SLP(C) No. 4346 of 2021]

CIVIL APPEAL NO. 2897 OF 2022
[Arising out of SLP(C) No. 20181 of 2021]

CIVIL APPEAL NO. 2896 OF 2022
[Arising out of SLP(C) No. 20453 of 2021]

JUDGMENT

B.R. GAVAI, J.

1. Leave granted in all the Special Leave Petitions.

2. The present appeals challenge the following:

> (i) judgment dated 21st December 2020 passed by the Division Bench of the High Court of Karnataka in Writ Appeal Nos. 541 of 2020 (EDN□REG) and 542 of 2020

(EDN-REG), thereby dismissing the writ appeals filed by the present appellant- Central Council for Indian Medicine, which was in turn filed, challenging the order dated 24th September 2020 passed by the learned Single Judge in Writ Petition No.50772 of 2018 (EDN-REG-P), thereby allowing the writ petition filed by the respondent No.1 herein-Karnataka Ayurveda Medical College; and

(ii) judgment dated 24th September 2020 passed by the learned Single Judge of the High Court of Karnataka in Writ Petition Nos. 50828 of 2018 (EDN-EX) thereby allowing the writ petition filed by the petitioner therein and Writ Petition No.50772 of 2018 (EDN-REG-P), thereby allowing the writ petition filed by the respondent No.1 herein-Karnataka Ayurveda Medical College.

3. For the sake of convenience, we refer to the facts as are found in civil appeal arising out of SLP(C) No.4618 of 2021.

4. The respondent No.1 herein had applied to the respondent No.4-State Government, respondent No.3-Rajiv Gandhi University of Health Sciences and the appellant herein for permission to start Post-Graduate course for the academic year 2014-15. The appellant granted permission to start five new Post Graduate Ayurvedic disciplines with five seats each in accordance with the then prevalent Indian Medicine Central Council (Post-Graduate Ayurveda Education) Regulations, 2012 (hereinafter referred to as "2012 Regulations"). These 2012 Regulations came to be superseded by the Indian Medicine Central Council (Post-Graduate Ayurveda Education) Regulations, 2016 (hereinafter referred to as "2016 Regulations").

5. As per 2016 Regulations, it was a requirement that an institution should possess a Central Research Laboratory and an Animal House. The 2016 Regulations provided that the Animal House could be either owned by the institution or it could be in collaboration with any other institution. Accordingly, the respondent No.1 collaborated with Sri Dharmasthala Manjunatheshwara College of Ayurveda, Udupi, which permitted respondent No.1 the usage of Animal House set up by it. As such, the appellant and the respondent No.2-Union of India, continued permission to respondent No.1 for the academic years 2016-17 and 2017-18. The Union of India directed the appellant to inspect the facilities available with the respondent No.1 in accordance with the relevant Regulations and submit its recommendations and the inspection report to it. This was to be done by the end of March 2018 so that the matter pertaining to grant of permission for the academic year 2018-19 could be considered before the start of the next academic year. The appellant inspected the facilities available with the respondent No.1 on 2nd February 2018 and again on 23rd-24th May 2018. On the basis of the said inspection, the Union of India issued a notice dated 3 rd August 2018, which was received by respondent No.1 on 16 th August 2018. Vide the said notice dated 3rd August 2018, certain deficiencies were pointed out. The respondent No.1 was given an opportunity of hearing on 24th August 2018 before the designated Hearing Committee. After the hearing, the Union of India, vide order dated 5th September 2018, rejected the permission to respondent No.1 to admit students to the Post Graduate courses for the academic year 2018-19 on the ground of non-availability of Central Research Laboratory and Animal House. However, vide the said order dated 5th September 2018, the Union of India granted permission to respondent No.1 to admit students to Under

Graduate (BAMS) Course with an intake of 50 seats for the academic year 2018–19 subject to it fulfilling the deficiencies mentioned therein by 31 st December 2018.

6. The respondent No.1 therefore filed a writ petition being Writ Petition No. 50772 of 2018 (EDN–REG–P) before the learned Single Judge of the High Court of Karnataka. It is to be noted that in the interregnum, the Union of India granted permission to the respondent No.1 to admit students for the Post Graduate Course for the academic year 2019–20. The learned Single Judge, relying on the judgments of the Division Bench of the High Court of Karnataka in the cases of Bahubali Vidyapeeths JV Mandal Gramin Ayurvedic Medical College v. Union of India and Others1 and Central Council of Indian Medicine v. Union of India and Others2, wherein the Division Bench held that if the permission was granted for the subsequent years, the benefit should enure in respect of the previous year also, allowed the said writ petition. The same was carried in an appeal by the present appellant before the Division Bench of the High Court of Karnataka, which was dismissed vide the impugned judgment. Hence, the appellant approached this Court by way of the present appeals.

7. This Court, while issuing notice in the present matter, recorded the statement of Smt. Aishwarya Bhati, learned Additional Solicitor General (for short "ASG"), appearing on 1 Writ Petition No. 107076/2018 (EDN–ADM) dated 01.07.2019 behalf of the appellant that the students who have been granted admission in the respondent No.1 college for the Post Graduate Ayurveda courses for the academic year 2018–19, will not be disturbed. The learned ASG, however, requested that the question of law arising in these matters needs consideration by this Court. As such, by the said order dated 19th April 2021, this Court issued notice.

8. We have heard Smt. Aishwarya Bhati, learned ASG appearing on behalf of the appellant, Smt. Madhavi Divan, learned ASG appearing on behalf of the Union of India and Shri Chinmay Deshpande, learned counsel appearing on behalf of respondent No.1.

9. Smt. Bhati submitted that the said 2016 Regulations were made by the appellant in exercise of the powers conferred by clause (j) of Section 36 of the Indian Medicine Central Council Act, 1970 (hereinafter referred to as the "said Act") with the previous sanction of the Central Government. She submitted that the 2016 Regulations prescribe the requirements of minimum standard for grant of permission. The learned ASG submitted that unless the institution applying possess the required minimum standards, it would not be entitled for permission. It is submitted that the minimum standards, as required, are to be fulfilled for the particular academic year and in the event, such minimum standards are not fulfilled for the relevant academic year, the institution would not be entitled for permission. The learned ASG submitted that merely because for the subsequent academic year, the requirements were fulfilled, it cannot efface the deficiencies that were found in the previous academic year. It is therefore submitted that the view taken by the High Court of Karnataka, that if the permission is granted for a subsequent academic year, it would also be available for the previous year and such an institute would be entitled for permission even for the earlier year in which the deficiencies were found to have existed, does not lay down a correct proposition of law. She submitted that though a judgment of this Court in the case of Ayurved Shastra Seva Mandal and Another v. Union of India and Others3, was pointed out to the learned

Single Judge and the Division Bench 3 (2013) 16 SCC 696 of the High Court of Karnataka, they have failed to apply the law laid down in that judgment and as such, the judgment and order of the Division Bench and the Single Judge are liable to be set aside.

10. Smt. Divan, learned ASG appearing on behalf of the Union of India, also supported the submissions made on behalf of the present appellant.

11. Shri Deshpande, learned counsel appearing on behalf of respondent No.1, on the contrary, submitted that the view taken by the Division Bench of the High Court of Karnataka is taken on the basis of its earlier judgment and as such, no interference is warranted in the present appeal.

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

13. As per the provisions of Section 3 of the said Act, the Central Government was required to constitute, for the purpose of the said Act, a Central Council consisting of the Members specified therein. Chapter IIA of the said Act deals with “Permission for new Medical College, Course, etc.”. The earlier Chapter IIA of the said Act came to be substituted by new Chapter IIA containing Sections 13A to 13C by the Indian Medicine Central Council (Amendment) Act, 2003 (Act No. 58 of 2003). It will be relevant to refer to Sections 13A to 13C of the said Act, which read thus:

> “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,—
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> (a) no person shall establish a medical college; or
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> (b) no medical college shall—

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

(ii) increase its admission capacity in any course of study or training including a postgraduate course of study or training, except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

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

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

(2) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of sub-section (3) and the Central Government shall refer the scheme to the Central Council for its recommendations. (3) The scheme referred to in sub-section (2), shall be in such form and contain such particulars and be preferred in such manner and accompanied with such fee, as may be prescribed.

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

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

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

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

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

Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme as if such scheme had been submitted for the first time under sub-section (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 sub-section (5), shall have due regard to the following factors, namely:—

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Central Council under Section 22;

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training, hospital or other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or the course of study or training by persons having recognised medical qualifications;

(f) the requirement of manpower in the field of practice of Indian medicine in the college;

(g) any other factors as may be prescribed.

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

13B. Non-recognition of medical qualifications in certain cases.—(1) Where any medical college is established without the previous permission of the Central Government in accordance with the provisions of Section 13-A, medical qualification granted to any student of such medical college shall not be deemed to be a recognised medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training including a postgraduate course of study or training without the previous permission of the Central Government in accordance with the provisions of Section 13-A, medical qualification granted to any student of such medical college on the basis of such study or training shall not be deemed to be a recognised medical qualification for the purposes of this Act. (3) Where any medical college increases its admission capacity in any course of study or training without the previous permission of the Central Government in accordance with the provisions of Section 13-A, medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall not be deemed to be a recognised medical qualification for the purposes of this Act.

13C. Time for seeking permission for certain existing medical colleges.—(1) If any person has established a medical college or any medical college has opened a new or higher course of study or training or increased the admission capacity on or before the commencement of the Indian Medicine Central Council (Amendment) Act, 2003, such person or medical college, as the case may be, shall seek, within a period of three years from the said commencement, permission of the Central Government in accordance with the provisions of Section 13-A. (2) If any person or medical college, as the case may be, fails to seek permission under sub-section (1), the provisions of Section 13-B shall apply, so far as may be, as if permission of the Central Government under Section 13-A has been refused."

14. The perusal of sub-section (1) of Section 13A of the said Act, which is a non-obstante clause, would show that no person is entitled to establish a medical college except with the previous permission of the Central Government obtained in accordance with the provisions of the said

Section. Similarly, no medical college can open a new or higher course of study or training, including a post-graduate course or training, which would enable a student of such course or training to qualify himself for the award of any recognized medical qualification without the previous permission of the Central Government. Likewise, there is also a prohibition for the medical colleges to increase its admission capacity in any course of study or training, including a post-graduate course of study or training except with the previous permission of the Central Government obtained in accordance with the provisions of the said Section. Explanation 1 to the said Section clarifies that the "person" stated therein includes any University or a trust, but does not include the Central Government. Explanation 2 to the said Section clarifies that the "admission capacity" means the maximum number of students as may be fixed by the Central Government from time to time for being admitted to such course or training.

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

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

17. Sub-section (4) of Section 13A of the said Act provides that on receipt of a scheme from the Central Government under sub-section (2) of Section 13A of the said Act, the Central Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned. It further provides that if the scheme is defective and does not contain necessary particulars, it shall give a reasonable opportunity to the person or medical college concerned for making a written representation. It further provides that it shall be open to such person or medical college to rectify the defects, if any, specified by the Central Council. It also requires the Central Council to consider the scheme with regard to the factors referred to in sub-section (8) of Section 13A of the said Act and submit the same 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.

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

proviso to sub-section (5) of Section 13A of the said Act also enables the person or medical college, whose scheme has not been approved by the Central Government, to submit a fresh scheme. It further provides that the provisions of the said Section shall apply to such scheme as if such scheme had been submitted for the first time under sub-section (2) of Section 13A of the said Act.

19. Sub-section (6) of Section 13A of the said Act, which is a deeming provision, provides that if no order is communicated by the Central Government to the person or medical college submitting the scheme, within a period of one year from the date of submission of the scheme, such a scheme shall be deemed to have been approved by the Central Government in the form in which it was submitted. It further provides that the permission of the Central Government required under sub-section (1) of Section 13A of the said Act shall also be deemed to have been granted.

20. Sub-section (7) of Section 13A of the said Act provides that in computing the time-limit specified in sub-section (6) of Section 13A of the said Act, 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.

21. The perusal of sub-section (8) of Section 13A of the said Act would show that the Central Council while making its recommendations under clause (b) of sub-section (4) of Section 13A of the said Act and the Central Government while passing an order, either approving or disapproving the scheme under sub-section (5) of Section 13A of the said Act, shall have due regard to the factors mentioned therein. Various factors have been mentioned in clauses (a) to (g) including as to 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 of the said Act. It could be seen that clauses (a) to (f) of sub-section (8) of Section 13A of the said Act relate to specific factors to be taken into consideration, whereas clause (g) thereof is a residuary clause, which permits the Central Council and the Central Government to take into consideration any other factors that may be prescribed.

22. Sub-section (9) of Section 13A of the said Act provides that where the Central Government passes an order either approving or disapproving a scheme under the said Section, a copy of the order shall be communicated to the person or medical college concerned.

23. At this stage, it will also be relevant to refer to Section 22 of the said Act, which reads thus:

> "22. Minimum standards of education in Indian medicine.—(1) The Central Council may prescribe the minimum standards of education in Indian medicine, required for granting recognised medical qualifications by Universities, Boards or medical institutions in India.
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> (2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Central Council to all State Governments and the Central Council shall, before submitting the regulations or any amendment thereof, as the case may be, to the Central Government for sanction, take into consideration the comments of

> any State Government received within three months from the furnishing of the copies as aforesaid. (3) Each of the Committees referred to in clauses
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> (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."

24. It can thus be seen that under sub-section (1) of Section 22 of the said Act, the Central Council is entitled to prescribe the minimum standards of education in Indian medicine, required for granting recognized medical qualifications by Universities, Boards or medical institutions in India. Sub-section (2) of Section 22 of the said Act would reveal that the copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Central Council to all State Governments. It further provides that before submitting the regulations or any amendment thereof, to the Central Government for sanction, the Central Council shall take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid. Sub-section (3) of Section 22 of the said Act provides that each of the Committees referred to in clauses (a) to (c) of sub-section (1) of Section 9 of the said Act, 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.

25. Section 36 of the said Act empowers the Central Council "to make regulations" to carry out the purposes of the said Act, which reads thus:

> "36. Power to make regulations.— (1) The Central Council may, with the previous sanction of the Central Government, by notification in the Official Gazette, make regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such regulations may provide for—
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> (a) .....
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> (b) .....
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> (c) .....
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> (d) .....
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> (e) .....
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> (f) .....
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> (g) .....
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> (ga) .....

(gb) any other factor under clause (g) of sub-section (8) of Section 13-A;

(h) the appointment, powers, duties and procedure of inspectors and visitors;

(i) the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in any University, Board or medical institutions for grant of recognised medical qualifications;

(j) the standards of staff, equipment, accommodation, training and other facilities for education in Indian medicine;

(k) .....

(l) .....

(m) .....

(n) .....

(o) .....

(p) .....

(2) The Central Government shall cause every regulation made under this Act to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be;

so, however, not any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

26. It can be seen that such regulations are to be made by the Central Council with the previous sanction of the Central Government. Clause (gb) of sub-section (1) of Section 36 of the said Act enables the Central Council to make regulations with regard to any other factor as provided under Clause (g) of sub-section (8) of Section 13A of the said Act. Clause (i) of sub-section (1) of Section 36 of the said Act enables the Central Council to make regulations providing for the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein etc. It can further be seen from the perusal of Clause (j) of sub-section (1) of Section 36 of the said Act that the Central Council, with the previous sanction of the

Central Government, is entitled to make regulations prescribing for the standards of staff, equipments, accommodation, training and other facilities for education in Indian medicine. Sub-section (2) of Section 36 of the said Act requires the Central Government to cause every regulation made under the said Act to be laid, as soon as after it is made, before each House of Parliament. It reserves the power of both the Houses of Parliament to make any modification in the regulations.

27. It could thus clearly be seen that Section 13A read with Sections 22 and 36(1)(j) of the said Act provides a complete scheme for establishment of medical college, opening a new or higher course of study or training, including a post-graduate course of study or training, and also increasing the admission capacity. From the perusal of the scheme of the aforesaid provisions, it is clear that no person is entitled to establish a medical college except with the previous permission of the Central Government. Similarly, no medical college can open a new or higher course of study or training, including a post-graduate course of study or training without the previous sanction of the Central Government. Likewise, no medical college can increase its admission capacity in any course of study or training, including a post-graduate course of study or training. Sub-sections (2) to (5) of Section 13A of the said Act prescribe a detailed procedure for submitting a scheme and consideration thereof by the Central Council and the Central Government. It also provides for in-built safeguards inasmuch as the principles of natural justice are provided at two stages, one before the Central Council and another before the Central Government. The second proviso to sub-section (5) of Section 13A of the said Act also enables a person or medical college whose scheme has not been approved by the Central Government, to again submit a fresh scheme, which is required to be considered as if the same is made for the first time under sub-section (2) of Section 13A of the said Act. Sub-section (6) of Section 13A of the said Act provides that when no order is communicated within a period of one year from the date of submission of the scheme, by a deeming provision, such scheme shall stand approved and it will be deemed that the permission of the Central Government as required under sub-section (1) of Section 13A of the said Act has been granted. Sub-section (7) of Section 13A of the said Act provides for exclusion of the period for the time taken by the person or medical college concerned to furnish any particulars called by the Central Council, or by the Central Government. Sub-section (8) of Section 13A of the said Act provides the factors to be taken into consideration. Sub-section (9) of Section 13A of the said Act provides for the communication of the order approving or disapproving the scheme, to the person or medical college concerned.

28. The statutory scheme is thus clear that no medical college can open a new or higher course of study or training, including a post-graduate course, except with the previous permission of the Central Government. Prior to such a permission being granted, the procedure as prescribed under Section 13A has to be followed.

29. The legislative intent is further clarified by the provisions made in Section 13B of the said Act. Sub-section (1) of Section 13B of the said Act provides that where any medical college is established without the previous permission of the Central Government in accordance with the provisions of Section 13A of the said Act, medical qualification granted to any student of such medical college shall not be deemed to be a recognized medical qualification for the purposes of the said Act. Likewise, sub-section (2) of Section 13B of the said Act provides that where any medical college opens a new or higher course of study or training including a post-graduate course of study or

training without the previous permission of the Central Government in accordance with the provisions of Section 13A of the said Act, medical qualification granted to any student of such medical college on the basis of such study or training shall not be deemed to be a recognised medical qualification for the purposes of the said Act. Likewise, sub-section (3) of Section 13B of the said Act provides that where any medical college increases its admission capacity in any course of study or training without the previous permission of the Central Government in accordance with the provisions of Section 13A of the said Act, medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall not be deemed to be a recognised medical qualification for the purposes of the said Act.

30. It could further be seen that the legislature itself has taken care of a situation, where any person has established a medical college or any medical college has opened a new or higher course of study or training, or increased the admission capacity prior to the commencement of the Indian Medicine Central Council (Amendment) Act, 2003. It has provided that such person or medical college, as the case may be, shall seek, within a period of three years from the said commencement, permission of the Central Government in accordance with the provisions of Section 13A of the said Act.

31. The impugned judgment of the Division Bench and the Single Judge of the High Court of Karnataka, so also the other judgments of the High Court of Karnataka, which are relied on by the Division Bench, do not take into consideration the scheme of Section 13A of the said Act.

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

> "3. Requirements of Minimum Standard to grant of permission-(1)(a) The Ayurveda colleges established under Section 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 up to the 31 st December of every year for consideration of grant of permissions for undertaking admissions in the coming academic session."

33. It could thus clearly be seen, that Regulation 3(1)(a) of the 2016 Regulations specifically provides that the Ayurveda colleges established under Section 13A and existing under Section 13C of the said 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 up to 31st December of every year for consideration of grant of permissions for undertaking admissions in the coming academic session. It is thus clear that in order to be eligible for grant of permission for undertaking admissions in a particular academic session, the institution must fulfill the requirements of minimum standard as on 31st December of the earlier year. For example, if the institution is seeking grant of permission for undertaking admissions for the academic session 2022-23, it must have fulfilled the requirements of minimum standard as on 31 st December 2021. It could thus be seen that the finding that the permission granted for a subsequent academic year would also enure to the benefit of earlier academic year though the said institution was not fulfilling the criteria of minimum standard, is totally erroneous.

34. We further find that the High Court has also erred in not correctly applying the law laid down by this Court in the case of Ayurved Shastra Seva Mandal (supra). In the said case, the petitioner Ayurved Shastra Seva Mandal had approached the Bombay High Court being aggrieved by the refusal by the Government of India to grant permission to the colleges to admit students for the academic year 2011□12. Such permission was refused on account of various deficiencies relating to infrastructure and teaching staff, which had not been rectified and brought into line with the minimum standard norms.

35. It is further to be noted that in paragraph (10) of the said judgment, this Court had specifically observed that the petitioner therein tried to impress upon that the deficiencies had already been removed and that is why permission was specifically given for the admission of students for the academic year 2012□13. It was therefore urged that there was no reason for withholding the permission for the academic year 2011□12. This Court specifically noticed that a large number of students had applied for admission for the academic year 2011□12 and that too with the leave of this Court. However, this Court found that the privilege granted to the candidates could not be transformed into a right to be admitted in the course for which they had applied. While dismissing the petition and refusing to interfere with the judgment of the High Court, this Court observed thus:

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

36. It can be seen from the conjoint reading of various paragraphs of the said judgment that the contention that since the deficiencies stood already removed and the permission granted for the academic year 2012□13, the said permission should also be construed as having been granted for the academic year 2011□12, was not accepted by this Court.

37. We are at pains to say that though the judgment in the case of Ayurved Shastra Seva Mandal (supra) was specifically relied on by the appellant herein, the learned Single Judge and the Division Bench of the High Court of Karnataka have chosen to rely on the earlier judgments of the Division Bench of the same High Court rather than a judgment of this Court.

38. It will further be relevant to note that this Court in the case of Ayurved Shastra Seva Mandal (supra) has also referred to the amended provisions of the said Act. It will be relevant to refer to paragraphs (5) to (9) of the said judgment, which read thus:

> "5. As far as medical institutions are concerned, the procedure relating to the recognition of medical colleges as well as admission therein was governed by the

Indian Medicine Central Council Act, 1970 (hereinafter referred to as "the 1970 Act"), which was amended in 2003, to incorporate Sections 13-A, 13-B and 13-C, which provided the procedure for establishing new colleges and making provision for seeking prior permission of the Central Government in respect of the same. The amendment also attempted to bring in reforms in the existing colleges by making it mandatory for them to seek permission from the Central Government within a period of three years from their establishment.

6. Having regard to the said amendments, the Central Council of Indian Medicine, with the previous sanction of the Central Government, framed Regulations, in exercise of the powers conferred on it by Section 36 of the 1970 Act. The said Regulations were named as the Establishment of New Medical College, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity by a Medical College Regulations, 2003 (hereinafter referred to as "the 2003 Regulations"). Regulation 6(1)(e) of the 2003 Regulations provides for applications to be made by a medical college owning and managing a hospital in Indian medicine containing not less than 100 beds with necessary facilities and infrastructure.

7. The Central Council of Indian Medicine further framed Regulations in 2006 called as the Indian Medicine Central Council (Permission to Existing Medical Colleges) Regulations, 2006 (hereinafter referred to as "the 2006 Regulations"). Regulation 5(1)(d) of the 2006 Regulations provides that the applicant College would have to be owning and managing a minimum of 100 beds for undergraduate courses and 150 beds for postgraduate courses, which conforms to the norms relating to minimum bed strength and bed occupancy for in-patients and the number of out-patients.

8. When the 2003 Amendment was effected to the 1970 Act, three years' time was given to the existing colleges to remove the deficiencies. The 2006 Regulations provided a further period of two years to remove the deficiencies and even relaxed the minimum standards in that regard. Even after the expiry of two years, the colleges were given further opportunities to remove the shortcomings by granting them conditional permission for their students for the academic years 2008–2009, 2009– 2010 and 2010–2011. It is only obvious that the minimum standards were insisted upon by the Council to ensure that the colleges achieved the minimum standards gradually.

9. It may be noted that there was little or no response from the institutions concerned in regard to removal of the deficiencies in their respective institutions and it is only when the notices were given to shut down the institutions that they woke up from their slumber and approached the courts for relief. In many of these cases, permission was given by the courts to the institutions concerned to accept admission forms, but they were directed not to pass any orders thereupon till the decision of this Court in these special leave petitions."

39. We are, therefore, of the considered view that the learned Single Judge as well as the Division Bench have grossly erred in not taking into consideration the scheme of the said Act so also the judgment of this Court in the case of Ayurved Shastra Seva Mandal (supra).

40. In the result, the appeals are allowed. The common judgment and order dated 21st December 2020, delivered by the Division Bench of the High Court of Karnataka in Writ Appeal No. 542 of 2020 (EDN□REG) and Writ Appeal No.541 of 2020 (EDN□REG), and the judgment and order dated 24 th September 2020 passed by the Single Judge in Writ Petition No. 50772 of 2018 (EDN□REG□P) and Writ Petition No. 50828 of 2018 (EDN□EX) are quashed and set aside. The writ petitions filed by the original writ petitioners in the High Court are dismissed.

41. Pending application(s), if any, shall stand disposed of in the above terms. No order as to costs.

.....J. [L. NAGESWARA RAO] .....J. [B.R. GAVAI] NEW DELHI;

APRIL 11, 2022.