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R.N.R.

*Before Permod Kohli, J.*

**SAINT SAHARA COLLEGE OF AYURVEDA,  
BATHINDA,—Petitioner**

*versus*

**UNION OF INDIA AND ANOTHER,—Respondents**

**CWP No. 17149 of 2009**

19th May, 2011

*Constitution of India, 1950—Art. 226—Indian Medicine Centre Council Act, 1970—Ss. 13-A & 22—Central Government granting permission to establish Medical College for B.A.M.S. Course with intake capacity of 50 seats—University granting provisional affiliation to College—College making admissions and participating in counselling—Deficiencies in College—Government declining permission to College for making admissions—Challenge thereto—College complying with minimum standards laid down under provisions of 1970 Act—Central Government simply endorsing recommendations of Central Council without due application of mind and consideration—Central Government failing to furnish recommendation of Council to enable College to effectively reply for a meaningful hearing—Violation of principles of natural justice—Petition allowed, impugned orders set aside and matter remitted to Central Government for reconsideration of case of grant far recognition.*

*Held*, that from the perusal of the impugned order dated 30th October, 2009, it appears that Central Government has simply acted as a post office and based its decision simply on the recommendations of the CCIM and hardly the Central Government examined and considered the case of the petitioner at its own level. Assuming the Central Council pointed out certain deficiencies, Sub Section (5) of Section 13A enjoins a duty upon the Central Government to seek further information from the petitioner before approving or disapproving the Scheme. No such exercise was ever carried out by the Central Government. Sub Section (8) of Section 13A further requires the Central Government to take into consideration all the factors enumerated therein and thereafter to formulate its own opinion. Of course the recommendations of the Central Council should also be taken into consideration. However, from the impugned order, it appears that the Central Government has simply endorsed the recommendation of the Central Council without due application of mind and consideration by the Central Government itself. There is substance in the contention of the petitioner that the Central Government while granting opportunity to the petitioner, did not furnish the recommendation of the Central Council to enable the petitioner to effectively reply for meaningful hearing. This should be the minimum requirement that a person is furnished with the grounds on which a decision is to be taken against him. Hearing without furnishing the grounds on which rejection order has been based amounts to violation of principles of natural justice.

(Para 31)

*Further held*, that it is also admitted case of the respondents that at the time of establishment of the College, the petitioner had completed all the formalities and the required infrastructure and other facilities were available with the petitioner. If there were any deficiency for future implementation of the Scheme, the petitioner should have been provided sufficient opportunity to remove the deficiency. The petitioner has placed on record its reply and even the documents to canvass that all deficiencies have been removed. The approach of the Central Government seems to be too mechanical. It is pertinent to mention here that the Central Government as the ultimate decision making authority is under obligation to act according to law and in a fair, rational and non-arbitrary manner, though it is not required to compromise the minimum standards which an institution is required to observe particularly, in the matter of Medial Education which

is of utmost public importance. The Central Government is also not required to merely act as a “post office” without discharging its statutory obligations enjoined upon it under Sections 13A and 27 of the Act.

(Para 32)

Rajiv Atma Ram, Senior Advocate with Arjun Partap Atma Ram,  
Advocate, for Petitioner

S. S. Sandhu, Advocate for Union of India.

Amar Vivek, Advocate, for R-2.

Ms. Kavita Arora, AAG.

**PERMOD KOHLI, J.**

(1) Petitioner has challenged validity legality and proprietary of Show Cause Notice dated 27th August, 2009 (Annexure P-6) and a Final Order dated 30th October, 2009 (Annexure P-14); with a further relief of Writ in the nature of *Mandamus* for a direction to the respondents to permit the petitioner-College to admit the students allocated to it in the Course of Second Counselling, in terms of the interim order passed by this Court and if necessary by modification/clarification of the Order dated 30th October, 2009 (Annexure P-15) passed by the High Court.

**FACTS OF THE CASE, RELEVANT FOR THE PURPOSE OF THE PRESENT PETITION :**

(2) Petitioner is an unaided self-financed Ayurvedic Medical College located at Bathinda. The College was established to start a new Medica College for Bachelor of Ayurvedic Medicine and Science (B.A.M.S.) Course with the annual intake capacity of 50 students for the Session 2007-08. Establishment and commencement of the Bachelor of Ayurvedic Medicine and Science Course is governed and regulated by the Indian Medicine Central Council Act, 1970. Section 13-A was introduced in the Act in respect to establishment of the new College by Act 52 of 2002 (with effect from 28th January, 2003) and substituted by Act No. 58 of 2003 with effect from 7th November, 2003) On application of the petitioner in the prescribed manner, Government of India granted permission *vide* Letter of Intent dated 24th April, 2007 to establish Medical College for Bachelor if Ayurvedic Medicine and Science Course with intake capacity of 50 seats in

Ayurvedacharya for the Session 2007-08 under the provisions of Section 13-A of India Medicine Central Council Act, 1970, subject to the stipulations contained therein.

(3) One of the stipulations contained in Para (2) is that the admissions of the students will be valid till such time as the first batch of students admitted against the Course appears for the first final examination of the Course and at that time, the question of recognition of the qualifications may be taken up.

(4) The petitioner was required to ensure teaching and non-teaching staff in enough number with requisite qualification as per the relevant CCIM Regulations well before the start of the admissions of the first batch of students in the 1st Professional Bachelor of Ayurvedic Medicine and Science Course, under intimation to the Central Government and CCIM.

(5) The petitioner also approached respondent No. 3 University for affiliation and accordingly respondent No. 3. University *vide* its Letter dated 6th August, 2008 granted provisional affiliation to the petitioner for running the Course during the Sessions 2008-09. As a consequence of recognition from the Government of India and affiliation from the University, the petitioner admitted 50 students to Bachelor of Ayurvedic Medicine and Science Course for the Session 2007-08. These students are promoted to the Second Professional Course on completion of 18 months of study in March 2009. It is alleged that another batch of 50 students was admitted to Bachelor of Ayurvedic Medicine and Science Course for the academic Session 2008-09. The University granted affiliation for the Session 2008-09 subject to renewal of permission by Government of India. Petitioner, accordingly, applied to Government of India for renewal of its permission *vide* College Letter dated 29th August, 2008. In response to this Letter, Government of India communicated to the petitioner *vide* Letter dated 9th September, 2008 (Annexure P-4) that there is no requirement to obtain permission on annual basis and admissions may be made in terms of the procedure laid down by the affiliated University/State Government. On the basis of the aforesaid Letter, respondent No. 3. University included the name of the petitioner-College in the Prospectus issued for Common Entrance Test. An intimation for commencement of the Counselling for the academic Session 2009-10 was given by the respondent No. 3. University to the

petitioner-College *vide* its Letter dated 21st August, 2009. It was stated that the Session 2009-10 would commence from 31st August, 2009 and the College was asked to attend the Counselling. It is further case of the petitioner that the College participated in the first Counselling held on 2nd September, 2009 wherein 15 students were allocated to the petitioner-College. It seems that in the meantime, 5 students shifted to other Colleges and remaining 10 students took admission with the petitioner-College.

(6) Respondent No. 1 carried out a surprise Inspection on 30th January, 2009. Based upon such Inspection, a Letter dated 27th August, 2009 was issued communicating following five deficiencies to the petitioner-College and petitioner were afforded opportunity of hearing in terms of Section 13-A(5) of the Indian Medicine Central Council Act, 1970.

- “(i) The College has been allowed to make admission from 2007-08 onwards. As per decision of the CCIM, 80% of full complement of teaching staff up to second professional i.e. at least 16 teachers should be there but there are only 13 eligible teachers.
- (ii) There is only 02 higher faculty (Professor+Reader) whereas at least 50% higher faculty i.e. 06 should be there. Therefore, there is no higher faculty as per norms of the CCIM.
- (iii) Daily average attendance in OPD is less whereas at least it should be 100 patients per day.
- (iv) No separate sitting space is available for Professors, Readers and Lectures in the departments.
- (v) Non teaching staff is also not as per norms of the CCIM.”

(7) It is stated that the petitioner submitted Reply/Compliance Report dated 1st September, 2009. Reply to each of the five deficiencies communicated was given in the following manner :—

- “(i) at the time of inspection on 30th of January, 2009, the petitioner-College had only First Professional Classes. Even the last practical examination for the First Professional was on 20th February, 2009, whereafter this batch was promoted to Second

Professional. Accordingly, there was no requirement of Teachers for Second Professional Classes on the date of inspection *viz.* 30th January, 2009. For First Professional Course, as per requirement of CCIM-Respondent No. 2, only seven Teachers were required.

It was further pointed out that the petitioner-College had submitted a list of 20 Teachers at the time of inspection, who had given their consent to join the petitioner-College. It was further stated in the reply that 19 Teachers had been appointed regarding which, information had already been sent to Respondent Nos. 1 and 2 *vide* letter dated 3rd July, 2009, a copy of which is being annexed herewith as Annexure P-7/A.

- (ii) It was pointed out that there were three Professors and three Readers in the petitioner-College, as per the CCIN norms.
- (iii) With regard to O.P.D. patients, it was stated that O.P.D. patients, at the time of inspection, were 88 and not 58, as mentioned. The mistake had happened by not including the Camp organized within the Hospital Campus and in nearby villages.
- (iv) That so far as different rooms for Professors, Readers and Lecturers is concerned, it was stated that the College Building is as per the CCIN norms and including different rooms for Professors, Readers and Lectures.
- (v) In regard to non-teaching staff, it was stated that the non-teaching staff was as per CCIN norms and list of staff was attached.”

(8) As desired by the respondent, petitioner-College appeared before the designated Hearing Committee of respondent No. 1 on 2nd September, 2009. During the course of hearing, a Record Note of hearing was prepared Petitioner placed on record copy of the same as Annexure P-8.

(9) From the perusal of the aforesaid Record Note, it appears that the petitioner contradicted the deficiencies communicated to it on each count and claimed that it has satisfied all the requirements of law. It appears

that copy of Show Cause Notice (Annexure P-6) was also sent to the respondent-University. On receipt of the Copy of the Show Cause Notice, respondent-University *vide* its letter dated 16th September, 2009 asked the petitioner to inform the final outcome of the Show Cause Notice. Petitioner responded to the Letter of the University claiming that there are no deficiencies, however, the University refused to allow the petitioner to participate in the Second Counselling for admission to Bachelor of Ayurvedic Medicine and Science Course which was schedule to be held on 17th September, 2009. This Counselling was, however, postponed to 14th October, 2009.

(10) Aggrieved of the action of the University, petitioner filed Civil Writ Petition No. 15759 of 2009. Prayer made in this Writ Petition was for a direction to respondent No. 2 to admit the students in the petitioner-College for Bachelor of Ayurvedic Medicine and Science Course through 2nd Counselling for the academic Session 2009-10.

(11) Notice of Motion of this Petition was issued by this Court on 13th October, 2009. While issuing the Notice of Motion, following interim order also came to be passed :—

“In the meantime , the petitioner will be permitted to participate in the Counselling and the University will allocate the students to the petitioner-College, but the petitioner-Institution shall not formally admit the students till the next date of hearing.

A copy of this order be given *dasti* to the Counsel for the parties duly authenticated by the Court Secretary of the Bench for immediate compliance.”

(12) It is stated that pursuant to the interim order of this Court, 33 students were allocated by the University to the petitioner-College in Bachelor of Ayurvedic Medicine and Science Course whereas 10 students had already been admitted pursuant to the first Counselling Petitioner simultaneously submitted Representation dated 24th September, 2009 (Annexure P-12) to respondent No. 1. Along with Representation, petitioner also attached Affidavits of the five of the Teaching Staff of the petitioner-College. Respondent No. 1, however, passed the impugned order dated 30th October, 2009 (Annexure P-14), declining the permission to the petitioner for admission in Bachelor of Ayurvedic Medicine and Science Course.

(13) When this Writ Petition came up for hearing before the Court on 30th October, 2009, respondent No. 1 produced copy of the order impugned dated 30th October, 2009 and the Writ Petition was disposed of on the same date, with the following observations :—

“During the course of this petition, the Union of India pursuant to the show cause notice issued to the petitioner has informed the petition *vide* letter dated 30th October, 2009, copy whereof has been placed on record today in Court, that the Government of India has declined the permission to the petitioner college for making admissions for the academic session on account of the shortcomings referred to therein. In view of the fact that the Government of India has already passed an order in this regard, no relief can be granted to the petitioner for the current academic session. Dismissed. The student allocated by the University to the petitioner-institution may be allocated to some other college/institution for further studies. However, the petitioner is at liberty to seek appropriate remedy in respect to the order dated 30th October, 2009.”

(14) In view of the liberty granted by this Court to the petitioner to seek appropriate remedy in respect of Order dated 30th October, 2009, present Writ Petition has been filed to challenge the same.

(15) The impugned Show Cause Notice and the Order are challenge, *inter alia*, on the following grounds :—

(1) The petitioner has complied the minimum standards laid down under Section 22 of the Act and relaxed *vide* Meeting dated 12th/14th June, 2008 by respondent No. 2. The relaxation granted in respect to the prescribed norms is as under :—

“\*There should be at least 80% of complement of teaching staff in accordance to the intake capacity regarding UG Course.

\*33% as higher faculty (Processor + Reader).

Additional teaching staff for PG should be as per prescribed norms of CCIM.



\*Area of College and Hospital should not be less than 80% of area i.e. 32,000 of 40,000 sq. ft covered area of the College and Hospital.

\*100-bedded hospital is pre-requisite, Students-bed-ratio should be observed 1:2 further.”

- (2) It is contended that the withdrawal of recognition is governed by Section 21 of the Act, however, the respondent while passing the impugned order have not complied with the provisions of Section 21 of the Act. It is further stated that the Representation of Central Council was not sent to the State Government or the affiliating University etc. nor any explanation was sought by the State Government from the petitioner-College. Even no recommendation was made by the State Government.
- (3) All the issues raised by the petitioner in its Representation have not been dealt with particularly in regard to the number of teachers and non-teaching staff employed by the petitioner. The Order impugned “Annexure P-14” is non-speaking in this regard. Petitioner has also placed reliance upon the Division Bench Judgment of this Court dated December, 09, 1996 passed in CWP No. 19050 of 1996 (Annexure P-18).

(16) Petitioner has also referred to the relaxed norms and stated that the petitioner fulfills the norms of CCIM regarding teaching and non-teaching staff, following details have been mentioned in the Chart given below :—

Sr. No.	As per norms of CCIM	As possessed by the Petitioner-College
1	Teaching Staff for First Professional : 7	6
2	Teaching Staff for the First and Second Professionals : 16	19
3	Non-teaching Staff : 98	102

(Permod Kohli, J.)

(17) It is, accordingly, submitted that petitioner fulfills the requirement of at least 80% staff as per the relaxed norms laid down by the respondent.

(18) The contention of Mr. Rajiv Atma Ram, learned Senior Advocate appearing for the petitioner is that when the Inspection was carried out, only first Professional Course was going on and thus only 7 teachers were required as per the norms and not 16 as mentioned in the Show Cause Notice and impugned order, However, for the Second Professional, the petitioner had engaged 19 teachers as against the requirement of 16. Similarly, regarding non-teaching staff the petitioner had 102 employees as against 98 required. Only 1 teacher was less from the teaching staff during the course of Inspection i.e. 6 teachers were available as against required 7.

(19) Petitioner has further alleged contravention of the provisions of Section 22 of the Indian Medicine Central Council Act and violation of principles of Natural Justice. In support of the contention regarding violation of the principles of Natural Justice, it is stated that Government of India while passing the impugned order has relied upon recommendations of CCIM based on a visitation as also on CCIM's comments on the compliance submitted by the College, however, the comments of the CCIM were never disclosed to the petitioner-College before or during the course of hearing and thus reliance placed upon such comments without putting it to the petitioner-College is in serious violation of the principles of Natural Justice.

(20) Government of India and CCIM have filed separate Replies to this Writ Petition.

(21) Reply filed by the Central Council of Indian Medicine refers to various provisions of the Act and regulations framed by the Council to carry out the purposes of the Act. It is alleged that since the petitioner did not comply with the regulations prescribing minimum standards and norms both in terms of Faculty Strength and area of College and Hospital and thus CCIM did not recommend extension of recognition to Government of India. Deficiencies communicated to the petitioner have been specified, it is stated that the deficiencies have not been removed. It is submitted that during the

course of visitation, College submitted list of 20 teachers whereas to the Hearing Committee, College has submitted a list of 19 teachers by adding 4 and deleting 5 teachers. The additional 5 teachers were ineligible. It is stated that the Original Affidavits, copies of Certificate of PG Degree and copies of Certificates of UG & PG not submitted and thus the College had only 14 teachers and not 16 as claimed. Similarly, it is stated that Dr. Gopalani Das had submitted Affidavit of passing "Kayachikitsa" whereas he is actually Post-graduate in MD (Manasroga).

(22) Union of India in its Reply primarily relied upon the recommendations of the CCIM. It is stated that since the CCIM recommended not to continue recognition in favour of petitioner-College, the Government of India on consideration of the deficiencies also declined to continue recognition.

(23) I have heard learned counsel for the parties at length.

(24) It is common case of the parties that the petitioner-College was granted Provisional Permission to commence the Course in Bachelor of Ayurvedic Medicine & Science *vide* Annexure P-1. It was to remain in force till the first batch of the students admitted by the College to complete the course. The Council *vide* its Letter dated 8th/9th September, 2008 (Annexure P-4) clarified that there is no necessity to seek or obtain permission on annual basis. Admittedly when the initial permission was granted for establishment of the College and commencement of the Course, the petitioner had allegedly fulfilled all the requisite norms and standards to establish the College and commence the Bachelor of Ayurvedic Medicine & Science Course. It was only on the basis of a subsequent surprise Inspection that deficiencies were pointed out. Petitioner claims to have removed the deficiencies and communicated to the respondent.

(25) Respondent, however, disputed the factum of removal of deficiencies. Even during the pendency of this Writ Petition, a fresh Inspection was conducted and CCIM considered the case of the petitioner for continuation of the recognition. A recommendation based upon the fresh Inspection was also communicated *vide* Letter dated 13th June, 2010 to the Government of India, Ministry of Health & Family Welfare Department

of AYUSH again refusing to recommend grant of permission for the Bachelor of Ayurvedic Medicine & Science Course. Following are the deficiencies pointed out, which read thus :—

- “1. There are only 14 eligible teacher whereas as per decided policy by Government of India 32 teachers are required at the moment Moreover, there is 04 higher faculty (Professor+ Reader) whereas as per policy at least 13 higher faculty is required at the moment.
2. There is 2.35% bed occupancy whereas as per decided policy by Government of India at least 60% bed occupancy should be at the moment.
3. Not a single teacher in the Department of Prasuti and Stiroga, Kaumar Bhritya Kayachikitsa, Shalya, Shalakyia and Panchkarma.”

(26) While this Petition was pending, an application being CM No.7992 of 2010 was made on behalf of the petitioner pleading that the norms, on the basis of which Central Council of Indian Medicine has denied recognition, have not been notified.

(27) Section 22 of the Indian Medicine Central Council Act, 1970 provides for minimum standard of education in Indian Medicines. Under this Section, the Central Council has been authorized to prescribe minimum standards of education in Indian medicines required for granting recognized medical qualification of Universities, Boards of Medical Institutions in India. Sub Section (2) deals with the method and manner of notifying the regulations which, *inter alia*, requires the draft regulations to be considered by all the State Governments and comments of the State Government are required to be forwarded to the Central Government before the sanction of regulations. Section 36 deals with the power to make regulations. Central Council has been authorized to make regulations in respect of matters enumerated therein with the previous sanction of the Central Government by notification in the Official Gazette. Clause (j) of Section 36 deals with minimum requirements to be notified by regulations Clauses (i) and (j) of Section 36 read as under :—

- “(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 of medical institutions for grant of recognized medical qualifications ;

- (j) the standards of staff, equipments, accommodation, training and other facilities for education in Indian medicine.”

(28) The respondents have placed on record Notification dated 15th March, 2004 notifying the regulations in respect of making of applications, the eligibility of applicants, fee to be paid by the applicants and so on. Respondents have also placed on record copy of the norms regarding minimum standard and requirements for Ayurvedic College and attached hospital. These norms have not been framed by means of regulations nor it is evident from the norms placed on record as Annexure R-2 that provisions of Sections 22 and 36 have been complied with. These norms have also not have been published in any government gazette. Mr. Amar Vivek, learned counsel for the CCIM has not been able to place on record any material to suggest that these norms were ever notified in accordance with the provisions of Sections 22 and 36 of the 1970 Act. It is argued on behalf of the petitioner that the petitioner is required to comply with only such norms as are prescribed. Under Section 2(g), the expression “prescribed” has been defined and reads as under :—

“2. **Definitions.**—(1) In this Act, unless the context otherwise requires,—

xxx xxx xxx

(g) ‘prescribed’ means prescribed by regulations.”

(29) It is accordingly contended on behalf of the petitioner that the norms sought to be enforced having not been prescribed by way of regulations, the same are not enforceable. Though apparently, it appears that the norms relied upon by the respondents have not been prescribed by regulations, but the fact remains that the Act requires some minimum standards to be observed by the College established under Section 13-A of the Act. Assuming that the norms prescribed by respondents have no statutory force having not been formulated by way of regulations that does not permit the petitioner not to adhere to the minimum standard which may be required in the larger public interest, even if such standards are by way of executive guidelines. I do not think that this argument can carry any weight or promote the cause of the petitioner in any manner.

(30) The main thrust of the argument of counsel for the petitioner is that the petitioner-College has not been accorded consideration by the competent authority in accordance with the provisions of Section 13-A and 22 of the 1970 Act. According to Mr. Rajiv Atma Ram, learned Sr. Advocate under Section 13-A of the Act, Central Government is the final authority to take decision on the application of a person for establishment of the College or introduction of a new course etc. and CCIM is only required to make recommendations to the Central Government to enable the Central Government to formulate its opinion, including in respect of deficiencies, removal thereof and other factors. Learned counsel has taken the Court extensively to the provisions of Section 13-A of the 1970 Act. Relevant extract is reproduced here under :—

“13A. (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 students 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 provision of this section.

xxx

xxx

xxx

(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 fees, 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 medical college concerned, and thereafter, if 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 recommendation of the Central Council under sub-section (4) and after obtaining, where necessary, such other particulars as may be considered necessary such other particulars as may be considered 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 provision of this section shall apply to such scheme, as if such scheme had been submitted for the first time under sub-section (2).

- (8) The Council while making its recommendation 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 have 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.”



(31) Sub-section (i) of Section 13-A starts with *non obstante* Clause and has over-riding effect on all other laws dealing with the establishment of medical college or course etc. It prohibits establishment of a College or a Course without the previous permission of the Central Government obtained in accordance with the provisions of this Section. Sub-section (2) requires a person interested to establish medical College to apply for permission to Central Government by presenting a Scheme, in accordance with the sub-section (3). The Central Government on receipt of the Scheme is to refer the same to the Central Council for its recommendations. Sub Section (3) of the Act requires the Scheme to be prepared in the form and contain such particulars as may be prescribed and be accompanied with the prescribed fee. Sub-section (4) enjoins a duty upon the Central Council to examine the Scheme on receiving the same from the Central Government and if Scheme is defective to give reasonable opportunity to the person or medical college concerned to rectify the defects as may be specified by the Central Council and to submit the same to the Central Council together with its recommendations. Sub-section (5) requires the Central Government to consider the scheme alongwith the recommendations of the Central Council having regard to the factors referred in sub-section (8) to either approve or disapprove the Scheme. This sub section further provides that the Central Government where necessary may ask for further particulars from the applicant. In the event, the Scheme is to be disapprove, the Central Government is required to provide reasonable opportunity to the concerned Medical College under first Proviso to sub-section (5). Sub-section 8 requires the Central Government to consider various factors enumerated therein before any decision for approving or disapproving the Scheme is taken by the Central Government. From the perusal of sub section (8), it appears that it is primarily the Central Government who has to formulate an opinion whether a particular medical college applying for establishment or commencement of a course possess minimum standards of medical education as prescribed by the Central Council under Section 22 of the Act with all other requisite facilities envisaged under the Act. In view of the provisions of sub-section (5) and sub-section (8) of Section 13A, it is argued on behalf of the petitioner that in the present case, the opinion has been formulated by the Central Council and not by the

Central Government, the competent authority. Thus, the entire exercise is vitiated by non-consideration by the competent authority. It is further contended that the Central Government while passing the impugned order has relied upon the recommendations of the Central Council. These recommendations were never disclosed to the petitioner-College to enable to explain or submit its response. The opportunity of being heard granted by the Central Government without furnishing a copy of the recommendation of the Central Council is an exercise in futility and amounts to violation of principles of natural justice. The petitioner has been asked to explain without disclosing recommendations of Central Council. In this manner, the petitioner has been deprived of effective opportunity of being heard. From the reading of sub-sections (5) and (8), it is apparent that the ultimate authority to accept or reject the Scheme vests with the Central Government on consideration of the factors prescribed under sub-section (8). From the perusal of the impugned order dated 30th October, 2009, it appears that Central Government has simply acted as a post office and based its decision simply non the recommendations of the CCIM and hardly the Central Government examined and considered the case of the petitioner at its own level. Assuming the Central Council pointed out certain deficiencies, sub-section (5) of Section 13A enjoins a duty upon the Central Government to seek further information from the petitioner before approving or disapproving the Scheme. No such exercise was ever carried out by the Central Government. Sub-section (8) of Section 13A further requires the Central Government to take into consideration all the factors enumerated therein and thereafter to formulate its own opinion. Of course the recommendations of the Central Council should also be taken into consideration. However, from the impugned order, it appears that the Central Government has simply endorsed the recommendations of the Central Council without due application of mind and consideration by the Central Government itself. There is substance in the contention of the petitioner that the Central Government while granting opportunity to the petitioner, did not furnish the recommendation of the Central Council to enable the petitioner to effectively reply for meaningful hearing. This should be the minimum requirement that a person is furnished with the grounds on which a decision is to be taken against him. Hearing without furnishing the grounds on which rejection order has been based amounts to violation of principles of natural justice.

(32) Much emphasis has been laid in the reply filed by the council on certain deficiencies and one of the deficiency in paragraph 15 of the reply is that petitioner-College failed to produce the original affidavits and copies of qualification, certificates of five doctors employed by it as faculty. Sub-section (4) requires the Council to seek further information. Similarly, sub-section (5) also requires the Central Government to seek further information from the applicant regarding any deficiency. One of the grounds for denying the recognition to the petitioner is that one Dr. Goplani Dass was Post Graduate in Manasroga whereas he has been engaged for teaching Kayachikitsa. The petitioners have placed on record Annexure P-21 which indicates that "Kaya Chikitsa" is an allied subject of Manasroga. Similarly, Affidavits of doctors form part of the writ petition at pages 109, 78, 62, 88 and 144. In view of the fact that the Central Government has simply endorsed the recommendations of the Central Council, it can be safely concluded that the case of the petitioner has not been effectively considered by the competent authority (Central Government) in accordance with mandate of Secs. 22 and 13-A of the Act and the action of Central Government is also vitiated for non-observance of the principles of natural justice. It also appears that the material produced by the petitioner regarding removal of deficiencies, particularly, in view of the relaxed standard referred to above has not been appropriately examined and considered by the Central Government while passing the impugned order. It is relevant to note that permission granted to the petitioner *vide* letter dated 24th April, 2007 was in fact for a period of five years. As explained by the Central Government *vide* letter dated 9th September, 2008 (Annexure P-4), the petitioner was not required to obtain permission on annual basis. It is also admitted case of the respondents that at the time of establishment of the College, the petitioner had completed all the formalities and the required infrastructure and other facilities were available with the petitioner. If there were any deficiency for future implementation of the Scheme, the petitioner should have been provided sufficient opportunity to remove the deficiency. The petitioner has placed on record its reply and even the documents to canvass that all deficiencies have been removed. The approach of the Central Government seems to be too mechanical. It is pertinent to mention here that the Central Government as the ultimate decision making authority is

under obligation to act according to law and in a fair, rational and non-arbitrary manner, though it is not required to compromise the minimum standards which an institution is required to observe particularly, in the matter of Medical Education which is of utmost public importance. The Central Government is also not required to merely act as a "post office" without discharging its statutory obligations enjoined upon it under Sections 13A and 27 of the Act.

(33) For all these reasons, the impugned orders dated 13th October, 2009 and 30th October, 2009 (Annexure P-6 and P-14) are hereby set aside and the matter is remitted back to the Central Government for reconsideration of the case of the petitioner for grant of recognition for the Session 2009-2010 and subsequent years. Before reconsideration is accorded, the petitioner shall be furnished with the copy of the recommendations of the Central Council. If the Central Government is of the opinion that there are still deficiencies, it may provide further opportunity to the petitioner to remove the deficiencies within the specified time and after seeking response from the petitioner and affording an effective and meaningful opportunity of being heard, Central Government shall pass a fresh order. Suffice it to say that if the Central Government, on consideration, thinks that a fresh inspection is to be conducted, it shall direct the Central Council to do so. the Central Council, if so directed, will depute a team of experts of proven integrity for conducting fresh inspection. In such an eventuality, The Central Council will make fresh recommendations and on receipt of such recommendations and after affording an opportunity of being heard to the petitioner in the manner referred to above, the Central Government will pass a fresh order.

(34) Since some of the students are studying in the petitioner-College, they shall be allowed to continue with their study, subject to outcome of the fresh consideration. The students will also be allowed to appear in the examination, in view of the orders of the Hon'ble Division Bench dated 26th October, 2010 passed in LPA No. 1397 of 2010 and order dated 10th December, 2010 passed in CM No. 17572 of 2010.