



2023:DHC:4022

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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**BEFORE**

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

+ **W.P.(C) 2000/2023 & & CM APPLs. 7605/2023, 9235/2023,  
11664/2023, 22168/2022 & 22169/2023**

Between: -

DEV BHOOMI COLLEGE OF MEDICAL  
SCIENCE AND HOSPITAL, THROUGH ITS  
AUTHORIZED REPRESENTATIVE,  
32/4 EC ROAD, DEHRADUN,  
UTTARAKHAND – 248001

.....PETITIONER

*(Through: Mr. Siddharth R. Gupta and Mr. Mrigank  
Prabhakar, Advocates)*

AND

UNION OF INDIA,  
MINISTRY OF AYUSH,  
THROUGH ITS SECRETARY,  
AYUSH BHAWAN, B BLOCK,  
GPO COMPLEX, INA, NEW DELHI - 110023

....RESPONDENT NO.1

NATIONAL COMMISSION FOR INDIAN SYSTEM OF  
MEDICINE,  
THROUGH ITS SECRETARY/REGISTRAR  
JAWAHAR LAL NEHRU BHARTIYA CHIKITSA BHAWAN,  
61-65, INSTITUTIONAL AREA, JANAKPURI “D” BLOCK,  
NEW DELHI – 110058

.... RESPONDENT NO. 2

STATE OF UTTAR PRADESH,  
DIRECTORATE OF AYURVEDA  
THROUGH ITS DIRECTOR,  
HOMEOPATHIC DIRECTORATE, 9TH FLOOR,  
INDIRA BHAWAN, ASHOK MARG,  
LUCKNOW, UTTAR PRADESH – 200005

.....RESPONDENT NO.3

STATE OF UTTAR PRADESH,  
UP AYUSH NEET UG COUNSELLING - 2022  
THROUGH ITS COORDINATOR  
2, NABIULLAH ROAD, NEAR CITY STATION,  
LUCKNOW, UTTAR PRADESH - 226018

.....RESPONDENT NO.4

MAHAYOGI GURU GORAKHNATH AYUSH UNIVERSITY,  
THROUGH ITS REGISTRAR,  
TRANSPORT NAGAR CHAURAHA,  
GORAKHPUR, UTTAR PRADESH - 273001

....RESPONDENT NO. 5

*(Through: Mr. Rahul Sharma, CGSC with Ms. Archana Shinde, GP, Mr. C.K. Bhatt and Mr. Ayush Bhatt, Advocates for R-1.*

*Ms. Archana Pathak Dave and Mr. Parmod Kumar Vishnoi, Advocates for R-2. )*

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Pronounced on: 02.06.2023  
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**J U D G M E N T**

1. The petitioner-college, in the instant writ petition, is aggrieved by the order dated 23.09.2022, whereby, its application for the issuance of Letter of Intent (hereinafter referred to as 'LOI') to establish an Ayurveda Medical College with 60 seats of UG Bachelor of Ayurvedic Medicine and Surgery Course (hereinafter referred to as 'BAMS Course') was denied by the Medical Assessment and Rating Board for Indian System of Medicine (hereinafter referred to as

'MARB') of the National Commission for Indian System of Medicine (hereinafter referred to as 'NCISM') and the order of affirmation in the first appeal dated 16.11.2022 passed by the NCISM and the second order of affirmation by the second Appellate Authority- Government of India, Ministry of Ayush in terms of order dated 16.02.2023.

2. The NCISM has been established under the provisions of **The National Commission for Indian System of Medicine Act, 2020** (hereinafter referred to as '**NCISM Act, 2020**'). The petitioner-college being desirous of opening a new Ayurveda Medical College with 60 seats of BAMS course, applied on 28.10.2021 for the Academic Year 2022-2023 to the NCISM. The application submitted by the petitioner-college was required to be considered by the MARB which is one of the autonomous bodies constituted under Section 18 of the NCISM Act, 2020. The MARB is empowered under Section 28 of the NCISM Act, 2020 to perform various functions *inter alia*:

*“(a) determining the procedure for assessment and rating of medical institutions on the basis of their compliance with the standards laid down by the Board of Ayurveda or, as the case may be, the Board of Unani, Siddha and Sowa-Rigpa, in accordance with the regulations made under.*

*(b) grant permission for establishment of a new medical institution or to start any postgraduate course or to increase number of seats, in accordance with the provisions of Section 29;*

*(c) carry out inspections of medical institutions for assessing and rating such institutions in accordance with the regulations made under the NCISM Act, 2020.”*

3. The application so submitted by the petitioner-college was processed and in order to verify the infrastructural facilities, a visitation team of the NCISM, conducted the inspection of the petitioner-college on 23.05.2022 and 24.05.2022 in hybrid mode.

4. As per the directions of the MARB, the visitation report and other related documents were assessed in terms of Regulations known 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, 2019 (hereinafter referred to as 'Establishment Regulations, 2019') and the Indian Medicine Central Council (Requirements of Minimum Standard for Under-Graduate Ayurveda Colleges and attached Hospitals) Regulations, 2016 (hereinafter referred to as 'Minimum Standard Regulations, 2016') alongwith the provisions under the NCISM Act, 2020 and relevant regulations thereunder.

5. Certain shortcomings were noted and the observations of the visitation team were also considered. The assessment report was placed before the 4<sup>th</sup> Board meeting of the MARB on 11.08.2022.

6. The petitioner-college was provided an opportunity of hearing to explain the deficiencies noted in the assessment report. On 23.08.2022, the petitioner-college presented its case through its Principal and made the submissions through virtual mode against the shortcomings communicated *vide* hearing notice dated 18.08.2022.

7. On the clarification given by the petitioner-college, the following observations were made by the Hearing Committee:-

<b>CLARIFICATION GIVEN BY THE COLLEGE</b>	<b>OBSERVATION OF THE HEARING COMMITTEE</b>
<p>Clarifications</p> <p>Submitted <i>vide</i> letter no.DBCMSH/adm/190</p> <p>Dated</p> <p>21-08-2022</p>	<p>The hearing was attended by Dr. Deepali Moharll, Principal of the college.</p> <ul style="list-style-type: none"> <li>• Principal submitted that the college website has been updated and the Information has been uploaded on the website Accordingly, hearing committee verified website and the information found correct.</li> </ul> <p><b>TEACHING STAFF:</b></p> <ul style="list-style-type: none"> <li>• Principal submitted that college has taken consent of 07 facultles (03 higher faculties and 03 lower faculties) including Sanskrit teacher. Principal also informed the hearing committee that except Dr. Smita Ramarao Patil, Assoclate Professor, Dept. Of Samhita and Siddhant (Teacher Code: AYSS00600), all the consented teachers are currently working in Dev BhoomI College</li> </ul>

	<p>of Ayurveda, Dehradun. The society/trust of both the Dev Bhoomi Colleges are the same. Hence, the strength of teaching faculty may also be assessed with regard to Dev Bhoomi College of Ayurveda, Dehradun.</p> <ul style="list-style-type: none"> <li>• College submitted bank statement of the trust account (M/s. Dev Bhoomi Group of Institutions). As per verification of the bank statement it has been found that only bulk transaction amount is reflected in the statement but the details of the salary transferred or credited in the account of individual employee has not been reflected in the statement.</li> </ul> <p>Accordingly, hearing committee asked to the Principal to submit detailed bank statement with regard to salary transferred to the employees account. College submitted the manually generated details of salaries of staff for the period of JAN 2020 TO Dec 2021 and same is stamped by the bank (shivallk Finance bank). Manual generated statement verified by the committee and it was observed that the salary of panchkarma Masseur is mentioned Rs.47,000 while the salaries of all Nursing staff, Dark Room Attendant, Pharmacist and all specialist consultants are mentioned as Rs.22,000 only in the Month of Jan-2020. In other month's salary there is no difference in salary amount grant to the Nurses, Panchakarma Assistants and Consultants. <b>Accordingly, hearing committee observed that the manual generated salary statement of the hospital staff is manipulated and cannot be considered.</b></p> <ul style="list-style-type: none"> <li>• College submitted that the consultant (Dr. Divya) was appointed in Prasuti &amp; Stri Roga but before 15 days of NCISM inspection, she has resigned the hospital due to her personal health issues and now the college has appointed Dr. Babita Roy as Consultant in the Deptt. of Prasuti &amp; Stri Roga w.e.f. 01-08 2022. Principal also submitted that the consultant of Dept. of Shalya also attended Prasuti &amp; Stri Roga OD during visitation i.e. 01 consultant was attending 02 OPDS.</li> <li>• Regarding functionality of the hospital OPD. &amp; IPD the college submitted data of last year (only 01-01-2021 and 31-12-2021), which is signed by the visitors i.e. Annexure which was uploaded with part-2 of visitation. Submission not considered.</li> <li>• Principal admitted that dissection tables and preservation tank was not available at the time of visitation but now the college has purchased 08 half size, 04 full size dissection tables and 01 preservation tank. The documents related to the purchase of above mentioned table and tank has been verified by the committee and found correct.</li> <li>• Principal submitted that keeping in view of Covid-19 pandemic the biometric attendance system was not installed the college. Now, the college has purchased biometric attendance system but registration of the employees on biometric attendance system yet to be completed. Hence, hearing committee observed that biometric attendance system is not functional till date.</li> </ul>
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8. Thereafter, the MARB considered the visitation report and the observations of the Hearing Committee and decided not to issue the LOI to the petitioner-college under Section 29 of the NCISM Act, 2020 and relevant regulations thereunder for the Academic Year 2022-

2023. Accordingly, the application/scheme submitted by the petitioner-college dated 28.10.2021 was disapproved.

9. The following shortcomings were essentially the reason for denial of the LOI :-

*“Due to Shortcomings as under:-*

**Teaching Staff:-**

- a) *Out of 03 teachers, consent letter of 01 teaching staff is found in proposal submitted by the college.*
- b) *There Is no consent for lower faculty and Sanskrit teacher available in the department of Ayurved Samhita & Siddhant.*
- c) *There is no consent for lower Faculty and Higher Faculty each in Rachna Sharir and Kriya Sharir department.*

**Functionality of the Hospital:-**

- a) *There is Shortage Of 03 OPD: - I) Shalya (I) Prasúti & Stri Roga III) Shalakyā- Mukh, Nasa & Dant against the minimum requirement of 08.*

S.NO.	Name of OPD	Status	Reason
	Shalya	Non Functional	Not correlating with central OPD register
	Shalakyā- Mukh, Nasa & dant	Non Functional	Not correlating with central OPD register
	Prasuti and Stri Roga	Non Functional	Consultants/Valdya/MD not available

**Hospital staff:**

- a) *Bank remitted Salary statement has not been submitted to prove the 2 year existing fully functional hospital.*
- I. *as per MSR-2016, regulation 10 (a)(I)*  
*"at the time of submission of application, there shall be a fully developed hospital building as specified regulation 4 and 5 with functional ayurveda hospital prior two years from the date of application, having appropriate number of beds, bed occupancy and Out-Patient Department attendance corresponding to the, annual students intake capacity as specified in the sub-regulation (2) of regulation 7"*
- II. *The Last date for submission of application was 31.10.2021. College submitted salary statement from Jan 2020 to Dec 2021 which is 3 months less than the required period of Two years prior to the date of submission of application.*

III. *It is pertinent to mention here that the college was asked to submit the salary remitted bank statement of hospital staff to prove 2 years existing fully functional hospital before the last date of submission of application vide letter no 3-4/MARB/2022-Ay. (166) dated:18-08-2022, In response College has submitted the manually generated details of salaries of hospital staff for the period of Jan 2020 to Dec 2021 and same is stamped by the bank (Shivalik Finance bank). Manual generated statement verified by the hearing committee and it was observed that the salary of panchkarma Masseur is mentioned Rs. 47,000 while the salaries of all Nursing staff, Dark Room Attendant, Pharmacist and all specialist consultants are mentioned as Rs. 22,000 only in the month of Jan-2020. In other month's salary there is no difference in salary amount grant to the Nurses, Panchakarma Assistants and Consultants. Accordingly, hearing committee observed that the manual generated salary statement of the hospital staff is manipulated and cannot be considered.”*

10. The petitioner-college thereafter, filed the first appeal before the NCISM constituted under Section 3 of the NCISM Act, 2020. The NCISM, so constituted is empowered under Section 10(g) of the NCISM Act, 2020 to exercise appellate jurisdiction with respect to the decisions of the autonomous boards. The petitioner-college in its first appeal tried to elaborately explain the deficiencies noted by the MARB.

11. The NCISM, while deciding the first appeal, called upon the petitioner-college to explain its case and accordingly, the proceedings were conducted virtually on 21.10.2022 and the Principal of the petitioner-college again appeared and furnished certain clarifications. The first appellate authority i.e. the NCISM in terms of the order dated 16.11.2022 dismissed the appeal while recording the following observations:-

<b><i>Proceeding of hearing committee</i></b>
<ul style="list-style-type: none"> <li>• <i>Committee asked principal about her joining details in response of the same she submitted the date of joining i.e. 01.05.22.</i></li> <li>• <i>On asking the details of previously working M.S. and DMS, It is observed by the committee that there was no appointment of MS and DMS in the year 2020. However, DMS, Dr. Dharmender Singh was appointed on 01.11.2021, if it is so, then how the hospital was functioning and managing was not</i></li> </ul>

*clarified.*

- *Further, committee asked about the status of the hospital, for the same principal submitted that hospital has been started in March 2018 and it is fully functional then only.*
- *Committee asked for the salary statement and attendant register of total hospital staff since Nov 2019 but no record has been submitted by the college.*
- *Committee asked to submit the proof of salary given to the staff from the college account for the month of Jan 2020, in response of the same college showed the statement which was consistently mismatch with the documents sent by them before hearing to MARB.*
- *While communicating with Dr. Amrita Bhattarai, consultant Panchkarma (joined on 01.01.2020), committee observed that transaction of salary submitted to the account of Dr. Amrita Bhattarai and details sought while hearing was totally mismatched. In the above facts, it is observed that the records are manipulated.*
- *Further, the shortcoming of OPD can not be verified virtually, it needs physical visit.*

12. The petitioner-college thereafter, filed its second appeal before the respondent no.1-Government of India, Ministry of AYUSH under Section 29(6) of the NCISM Act, 2020. The petitioner-college had taken various grounds in its appeal and had explained that the petitioner-college fulfils all the requirements and had sought permission to physically present its case, however, no decision thereon was taken and, therefore, the petitioner-college approached this court.

13. During the pendency of the petition, *vide* order dated 16.02.2023, the appeal under Section 29(6) of the NCISM Act, 2020 was also dismissed by the Government of India, Ministry of Ayush, therefore, the petitioner-college amended its writ petition incorporating the challenge to the order dated 16.02.2023 on various grounds.

14. Learned counsel appearing for the petitioner-college submits that the entire decision-making process by the NCISM, MARB and the Union of India is illegal, improper and the same is contrary to the principles of natural justice. He states that before taking the decision



dated 23.09.2022, the petitioner-college was not furnished with the inspection report which forms the basis for rejection of its LOI. He further states that had the inspection report been provided to him, he would have clarified the deficiencies so noted therein and the impugned order dated 23.09.2022 would not have been arrived at. He has placed reliance on various decisions of the Hon'ble Supreme Court in the cases of *T. Takano v. SEBI*<sup>1</sup> and *Kanachur Islamic Education Trust v. Union Of India*<sup>2</sup> and decisions of this court in the cases of *G.D. Memorial Homoeopathic Medical College & Hospital v. Union Of India*<sup>3</sup>, *Homoeopathic Medical College, Hanumangarh v. Union Of India*<sup>4</sup> and *Mangla Kamla Homoeopathic Medical College & Hospital v. Union Of India*.<sup>5</sup>

15. Learned counsel for the petitioner-college also submits that it was entitled to a physical hearing as a virtual hearing given by the respondents did not suffice the purpose of granting an opportunity to explain its deficiencies. He submits that the petitioner-college, *vide* communication dated 11.02.2023 had requested respondent no.1-the first appellate authority to afford a physical hearing instead of a virtual hearing and had, in detail, demonstrated how a virtual hearing would be detrimental to them.

16. He also submits that, the second appellate authority did not provide the petitioner-college any opportunity of hearing, virtual or otherwise. It is submitted that in the absence of any rules or regulations or a provision in a Statute that mandates a virtual hearing, a physical hearing, if requested, should be provided, especially in the case of institutions imparting medical education. The petitioner-

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<sup>1</sup>2022 SCC OnLine SC 210

<sup>2</sup>(2017) 15 SCC 702

<sup>3</sup>2023 SCC OnLine Del 984

<sup>4</sup>2023 SCC OnLine Del 985

<sup>5</sup>2023 SCC OnLine Del 1028,

college has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of *Swamy Devi Dayal Hospital and Dental College v. Union of India And Ors.*<sup>6</sup> and *Krishna Mohan Medical College And Hospital v. Union Of India*<sup>7</sup>, decisions of the Bombay High Court in the cases of *Saraswati Education Society's Saraswati College Of Engineering v. All India Council For Technical Education*<sup>8</sup> and *Diamond Education Society's Shri. Chhaganrao Bhujbal Ayurvedic Medical College v. State Of Maharashtra*<sup>9</sup>, a decision of the Gauhati High Court in the matter of *Subarna Bhattacharjee v. Siddartha Biswas*<sup>10</sup> and a decision of this court in the case of *Union Of India v. Anubhav Sharma*<sup>11</sup>.

17. The last prong of the petitioner-college's arguments is that the order of rejection by the second appellate authority is based on new and additional grounds that do not form part of the reasons of either the order of the MARB or the first appellate authority. The reasons assigned by the second appellate authority, besides being based on hyper-technical grounds, also include calling for documents that have not been sought for by the MARB or the first appellate authority. Reliance is placed on a decision of this court in *C.L. Chouksey Homoeopathy Medical College and Hospital v. Union Of India*<sup>12</sup> wherein the court had deprecated the practice of the appellate authority assigning different reasons for rejecting the appeal from those assigned by the original authority. The court had set aside the order of the second appellate authority on the ground that it must

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<sup>6</sup>2013 SCC OnLine SC 771

<sup>7</sup>(2017) 15 SCC 719

<sup>8</sup> 2015 SCC OnLine Bom 4733

<sup>9</sup>2009 SCC OnLine Bom 1242

<sup>10</sup> 2017 SCC OnLine Gau 788

<sup>11</sup> 2021 SCC OnLine Del 3731

<sup>12</sup>2022 OnLine Del 1188

confine itself to the reasons that had been raised by the first appellate authority.

18. Learned counsel for the petitioner-college further submits that even otherwise, the second appellate authority failed to fully appreciate the documents that have been provided by the petitioner-college to explain the deficiencies noted by the first appellate authority in its order. Hence, he prays that in view of the aforesaid contentions, the matter be remitted to the MARB for fresh consideration of the same.

19. Learned counsel appearing on behalf of respondent nos.1 and 2, have vehemently opposed the submissions made by the petitioner-college.

20. Learned counsel for respondent no.1 submits that the petitioner-college has been provided exhaustive hearings through video conferencing and the impugned decisions cannot be vitiated solely due to the absence of personal hearings. Moreover, the petitioner-college has not raised any objection with regard to the non-supply of the inspection report. No prejudice is shown to have been caused due to a virtual hearing. In this regard, reliance is placed on the decisions of the Hon'ble Supreme Court in the cases of *Ganesh Santa Ram Sirur v. State Bank Of India & Anr*<sup>13</sup> and *State Bank Of Patiala v. Mahendra Kumar Singhal*<sup>14</sup> to state that the opportunity of a personal hearing is not mandated in all circumstances, especially if the concerned statute or regulations thereunder do not call for one to be given.

21. Learned counsel for respondent no.1 also raises the issue of maintainability of the present petition and states that it involves various disputed questions that the court cannot entertain under its writ jurisdiction. Further, it is argued that once an expert body such as the

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<sup>13</sup>(2005) 1 SCC 13

<sup>14</sup>[1994 SCC, Supl.(2) 463],

NCISM has held that the facilities in a medical college are inadequate, courts should not interfere in the decisions taken by the expert bodies. Reliance is placed on the decisions of the Hon'ble Supreme in the cases of *Medical Council of India v. Kalinga Institute of Medical Sciences*<sup>15</sup> and *Medical Council of India v. Vedantaa Institute of Academic Excellence Pvt. Ltd. and Ors.*<sup>16</sup>

22. Learned counsel for respondent no.2 submits that the application for one Academic Year cannot be rolled-over for the subsequent Academic Year and the concerned institution has to apply afresh for the same. She places reliance on a decision of the Hon'ble Supreme Court in the case of *Central Council for Indian Medicine v. Karnataka Ayurveda Medical College and Ors.*<sup>17</sup>

23. It is also submitted that the petitioner-college failed to satisfy two expert bodies that it possessed the facilities required to run a medical college as per Section 10(1)(a)(i) of the Minimum Standard Regulations, 2016 -in the first instance, the MARB and in the first appeal, the NCISM. Adequate opportunity of hearing as well as notice about the specific deficiencies was provided to the petitioner-college and it failed to rectify those deficiencies at both the stages.

24. It is also argued that merely not providing the inspection report will not amount to causing a prejudice so grave, that it requires court's intervention. Reliance has been placed on the decision of the Hon'ble Supreme Court in the case of *State of Uttar Pradesh vs. Sudhir Kumar Singh.*<sup>18</sup> Learned counsel for respondent no.2 also cites a decision of this court in the case of *Baba Hira Das Ji Ayurvedic Medical College and Hospital vs. Union of India and Ors.*<sup>19</sup> wherein

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<sup>15</sup> (2016) 11 SCC 530

<sup>16</sup> (2018) 7 SCC 225

<sup>17</sup> (2022) 7 SCC 46

<sup>18</sup> 2020 SCC OnLine SC 847

<sup>19</sup> 2023 SCC OnLine Del 564

it has been held that writ courts should not interfere in academic matters unless the decision, so challenged, is found to be arbitrary or unreasonable.

25. I have heard learned counsel appearing for the parties and perused the pleadings.

26. It is pertinent to give a brief background about the legal framework governing the present case. The medical education relating to Indian System of Medicine and other ancillary issues was earlier governed by the provisions of the **Indian Medicine Central Council Act, 1970** (hereinafter referred to as '**IMCC Act, 1970**') however, after coming into force of the NCISM Act, 2020, the IMCC Act, 1970 stands repealed subject to the savings clause under Section 58 of the NCISM Act, 2020.

27. Sub-Section 2 of Section 59 of the NCISM Act, 2020 provides that, notwithstanding, the repeal of the IMCC Act, 1970, the medical standards, requirements and other provisions of the IMCC Act, 1970 and the rules and regulations made thereunder shall continue to be in force and operate till new standards or requirements are specified under the NCISM Act, 2020 or the rules and regulations made thereunder.

28. It is thus understood that the NCISM Act, 2020 has come into force w.e.f. 11.06.2021, however, the Establishment Regulations, 2019 and the Minimum Standard Regulations, 2016 shall continue to remain in operation.

29. Section 29 of the NCISM Act, 2020 prohibits the establishment of a new medical institution or starting of any post-graduate course or increase in the number of seats without obtaining the prior permission of the MARB. Under sub-Section 2 of Section 29 of the NCISM Act,

2020, an application is required to be made for obtaining the permission under sub-Section 1.

30. For the sake of convenience, Section 29 of the NCISM Act, 2020 is reproduced as under:-

*“Section 29. Permission for establishment of new medical institution.*

*(1) No person shall establish a new medical institution or start any postgraduate course or increase number of seats without obtaining prior permission of the Medical Assessment and Rating Board for Indian System of Medicine.*

*Explanation.-- For the purpose of this sub-section, the term "person" includes any University, trust or any other body, but does not include the Central Government.*

*(2) For the purpose of obtaining permission under sub-section (1), a person may submit a scheme to the Medical Assessment and Rating Board for Indian System of Medicine in such form, containing such particulars, accompanied by such fee, and in such manner, as may be specified by regulations.*

*(3) While considering the scheme received under sub-section (2), the Medical Assessment and Rating Board for Indian System of Medicine shall have regard to the standards of education and research, the standards and norms for infrastructure and faculty, the guidelines on setting up of medical institutions and other requirements determined by the Board of Ayurveda or, as the case may be, the Board of Unani, Siddha and Sowa-Rigpa under section 26, and pass an order either approving or disapproving the scheme within three months from the date of receipt of such scheme:*

*Provided that before disapproving such scheme, an opportunity to rectify the defects, if any, shall be given to the person concerned.*

*(4) Where a scheme is approved under sub-section (3), such approval shall be the permission under sub-section (1) to establish a new medical institution.*

*(5) Where a scheme is disapproved under sub-section (3), or where no order is passed within three months of submitting a scheme under sub-section (2), the person concerned may prefer an appeal to the Commission within fifteen days of such disapproval or, as the case may be, after lapse of three months, in such manner as may be specified by regulations.*

*(6) Where the Commission has disapproved the scheme or no order has been passed within fifteen days from the date of preferring appeal under sub-section (5), the person concerned may prefer a second*

*appeal to the Central Government within seven days of communication of such disapproval or, as the case may be, lapse of specified period of fifteen days.*

*(7) The Medical Assessment and Rating Board for Indian System of Medicine may conduct evaluation and assessment of any University or medical institution at any time, either directly or through any other expert, having integrity and experience in medical profession, without any prior notice and assess and evaluate the performance, standards and benchmarks of such University or medical institution.*

31. Besides other stipulations, the scheme of Section 29 of the NCISM Act, 2020 evinces that a person desirous of obtaining permission under sub-Section 1 of Section 29 of the said Act is required to submit a scheme to the MARB. The MARB after receiving the scheme shall have regard to the standards of education and research, the standards and norms for infrastructure and facility, the guidelines on setting up of medical institutions and other requirements determined by the respective Boards and pass an order either approving or disapproving the scheme within three months from the date of receipt of such scheme. It is unequivocally clear that the Establishment Regulations, 2019 stand superseded so far as they are inconsistent with the provisions of Section 29 of NCISM Act, 2020. The procedure laid down in the Establishment Regulations, 2019 required the application to be submitted to the Central Government which on scrutiny was to be forwarded to the CCIM (now MARB). The CCIM (now MARB) was to conduct the inspection and to issue the LOI and the CCIM (now MARB), after re-inspection was to recommend for denial or issuance of the Letter of Permission (hereinafter referred to as 'LOP') as the case may be by 31<sup>st</sup> March for approval of the Central Government. It is thus understood that to the extent of the application being submitted to the Central Government and the role assigned to the CCIM (now MARB), Regulation 7 of the

Establishment Regulations, 2019 stands superseded in view of the provisions of Section 29 of the NCISM Act, 2020.

32. The mandate of Section 29 of the NCISM Act, 2020 requires the application to be submitted to the MARB. The MARB has to consider the same as per Regulation 7 of the Establishment Regulations, 2019 and to take a decision thereon. However, the requirement of issuance of LOI and LOP remains intact. Even Section 29 does not require any other mechanism to be followed, than the one prescribed in the Regulation 7 of the Establishment Regulations, 2019.

33. Hence, the mandate of Section 29 and the scheme of Regulation 7 of the Establishment Regulations, 2019 can operate in tandem, in their respective spheres without being inconsistent with each other, in order to achieve the objects of the NCISM Act, 2020.

34. The Establishment Regulations, 2019 provide for submissions of a scheme to the Central Government along with an application in the form specified in Regulation 4 to any person intending to establish a medical college or any medical college intending to open a new or higher course of study or training or intending to increase admission capacity in any course of study or training.

35. Regulation 4 of the Establishment Regulations, 2019 provides for the application form of the scheme and Regulation 5 provides for the authority to whom the scheme and application is to be submitted. Regulations 3 to 5 of the Establishment Regulations, 2019 are reproduced as under:-

*"3. The permission for establishment of a medical college, opening of new or higher course of study or training an increase of admission capacity.-Any person intending to establish a medical college or any medical college intending, open a new or higher course of study or training or intending to increase admission capacity in any course of study training shall follow the procedure and criteria mentioned in regulations 4 to 6 and submit a*



*scheme to the Central Government along with an application in the form specified in regulation 4.*

*4. Application Form of scheme - (1) Any person intending to establish a medical collegé shall submit the application online in Form-1 as amended from time to time along with non-refundable application fee.*

*(2) Any medical college intending to open a new or higher course of study or training shall submit the application online in Form-2 as amended from time to time along with non-refundable application fee.*

*(3) Any medical college intending to increase its admission capacity in any course of study or training shall submit the application online in Form-3 as amended from time to time along with non-refundable application fee.*

*5. Authority to whom the schemes and applications is to be submitted.-Applications and schemes under regulation 4 shall be submitted online to the Secretary to the Government of India. Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH), as per the schedule annexed to the regulations."*

36. It is thus seen that as per Regulation 4 of the Establishment Regulations, 2019, there can be three categories of applications. at the first category is by any person intending to establish a medical college. The second category is by any medical college intending to open a new or higher course of study or training and the third category is by any medical college intending to increase its admission capacity in any course of study or training.

37. The present case falls in the category of sub-Regulation 1 of Regulation 4 of the Establishment Regulations, 2019 as the petitioner-college is a person intending to establish a medical college.

38. Regulation 5 of the Establishment Regulations, 2019 stipulates the submission of the scheme as per the schedule annexed to the Regulations. The schedule annexed to the Regulations reads as under:-

**“SCHEDULE**

*[see regulation 5]*

**SCHEDULE FOR RECEIPT AND PROCESSING OF THE APPLICATIONS**

S. No.	State of processing	Last Date
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<b><i>New Applications Under Section 13A of IMCC Act, 1970</i></b>		
1.	<i>Receipt of applications by the Central Government</i>	<i>The 1<sup>st</sup> July to the 31<sup>st</sup> August (both days inclusive) of any year</i>
2.	<i>Forwarding of eligible applications by Central Government to Central Council of Indian Medicine for technical scrutiny.</i>	<i>The 30<sup>th</sup> September</i>
3.	<i>Recommendations of Central Council of Indian Medicine to Central Government for issuing Letter of Permission denial order</i>	<i>The 31<sup>st</sup> March (of following year)</i>
4.	<i>Issue of Letter of Permission by the Central Government</i>	<i>The 31<sup>st</sup> May (of following year)</i>

*Note: (1) The information given by the applicant in Part-I of the application for setting up Ayurveda or Siddha or Unani Tibb or Sowa Rigpa college that is information regarding organization, basic infrastructure facilities, managerial and financial capabilities of the applicant shall be scrutinized by the Central Council through an application and thereafter the Central Council may recommend issue of Letter of Intent by the Central Government.*

*(2) Renewal of permission shall not be granted to the new Medical College if the above Schedule for opening Ayurveda or Siddha or Unani Tibb or Sowa Rigpa College is not adhered to and admissions are made without prior approval of the Central Government.*

*SHAMSHAD BANO, Registrar-cum-Secy.  
[ADVT.-III/4/Exty./138/19]*

**Note:** *If any discrepancy is found between Hindi and English version of “Establishment of New Medical College, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity by a Medical College (Amendment) Regulations, 2019”, the English version will be treated as final”.*

39. Regulation 6 of the Establishment Regulations, 2019 deals with the eligibility for filing an application. For submitting an application under sub-Regulation 1 of Regulation 4 of the Establishment

Regulations, 2019 under which the present petitioner-college falls, a person is only eligible to apply if he fulfils the requirements mentioned under sub-Regulation 1 of Regulation 6 of the Establishment Regulations, 2019 which reads as under:-

*"6. Eligibility for making an application -*

*(1) For making an application under sub-regulation (1) of regulation person shall be eligible if,*

*(a) his one of the objectives is to impart education about Ayurveda or Siddha or Unani Tibb or Sowa Rigpa;*

*(b) owns or possesses the land on lease of not less than thirty years, in the name of college and renewal shall be required on expiry of lease;*

*(i) for intake capacity upto sixty seats, a single piece of land, not less than three acres;*

*(ii) for intake capacity from sixty one to hundred seats, land shall not be less than five acres and not more than two plots at a distance not exceeding two kilometers;*

*(iii) plot, if separated by a road or canal or rivulet but connected with a bridge, shall be treated as one piece of land.*

*(c) has obtained 'No Objection Certificate in Form- 4 from the concerned State Government for establishing a new medical college at the proposed site;*

*(d) has obtained a 'Consent of Affiliation' in Form-5 for establishing a new medical college from a University established under any Central or State statute;*

*(e) owns and manages a hospital in Ayurveda or Siddha or Unani or Sowa Riga and in a position to establish infrastructure and manpower in phased manner as specified in the notified requirements of Minimum Standard regulations of concerned systems of Indian Medicine.*

*(f) furnishes an undertaking that, selection or admission of students will be made strictly on the basis of academic merit as prescribed by Central Council;*

*(g) furnishes an undertaking that, the nomenclature of courses and teacher-student ratio will be kept as laid down in the concerned regulations;*

*(h) has not already admitted students in any class or standard or course or training of the proposed medical college: and*

*(i) is in a position to furnish fixed security deposit valid for a period of five years in favour of the Central Council of Indian Medicine. New Delhi as follows:-*

*(i) for the establishment of medical college: upto 60 seats - rupees one crore;*

*(ii) in between 61 - 100 seats - rupees two crores;*

*Provided that it shall not apply to the colleges governed by the State Governments or Union Territories, if they give an Undertaking to provide funds in their plan budget regularly till requisite facilities are fully provided as per time bound programme indicated by them."*

40. Regulation 7 of the Establishment Regulations, 2019 deals with the recommendations of CCIM (now MARB); Regulation 8 deals with the fees to be submitted along with the application under Regulation 4 and Regulation 9 deals with the permission order.

41. If the scheme of section 29 of the NCISM Act, 2020 read with Regulation 7 of the Establishment Regulations, 2019 is construed in the right perspective, the same would indicate that the MARB, after receipt of the application, shall scrutinise the application on the basis of eligibility criteria like application fees, no objection certificate of the State Government and consent of affiliation of the University etc. and the MARB shall consider eligible applications for processing them further for the issuance of LOI.

42. In the instant case, the application of the petitioner-college has crossed over the barrier of sub-Regulation 1 of Regulation 8 of the Establishment Regulations, 2019 as the application was not found to be incomplete, thereafter, the inspection was carried out.

43. Sub-Regulation 2 of Regulation 7 of the Establishment Regulations, 2019 envisages that the CCIM (now MARB) shall inspect colleges and issue an LOI at their level in Form-6 if the college is found to be eligible as specified in Regulation 6. It further provides that the CCIM (now MARB) shall again inspect or verify the compliance of requirement of minimum standards as specified in concerned regulations and other conditions of LOI and send the recommendations only once for denial or issuing LOP, as the case may be, in Form-7 by the 31<sup>st</sup> March for approval of the Central Government. For the sake of clarity, Regulation 7 is reproduced as under:-

*"7. Recommendation of Central Council-(1) The Central Government, after receipt of the applications shall scrutinized the application on the basic of eligibility criteria like Application Fee, X6 Objection Certificate*

*of the Sine Comes and Consent of Affiliation of the University etc, and the Central Government shall forward only eligible applications to the Central Council of Indian Medicine for further consideration and the ineligible and incomplete applications shall be rejected and returned to the applicants by the Central Government.*

*(2) The Central Council of Indian Medicine shall inspect colleges and issue Letter of Intent at their level in Forms the college is found eligible as specified in the regulations 6 and the Central Council of Indian Medicine shall again inspect or verify the compliance of requirement of minimum standards as specified in concerned regulations and the conditions of Letter of Intent and send the recommendations only once for denial or issuing Letter of Permission 33 case may be in Form-7, by the 31st March for approval of the Central Government.*

44. It is the basic principle of interpretation that when the words of a statute are clear, plain and unambiguous, i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of its consequence. Reliance can be placed on the decision of the Hon'ble Supreme Court in the cases of *Nelson Motis v. Union of India*<sup>20</sup>, *Gurudevdatte VKSSS Maryadit v. State of Maharashtra*<sup>21</sup> and *Nathi Devi v. Radha Devi Gupta*.<sup>22</sup>

45. On a simple reading of the Establishment Regulations, 2019, it is seen that on receipt of the complete application under sub-Regulation 1 of Regulation 7 of the Establishment Regulations, 2019, the following procedure is to be followed:-

- i. The CCIM (now MARB) has to inspect the college and issue the LOI at its level in Form-6 if the college is found eligible as specified in Regulation 6. That would mean that the eligibility before issuance of LOI is to be considered as per the requirement under Regulation 6. Regulation 6, as has been discussed, would indicate that the same is in three parts. In the instant case, only sub-Regulation 1 of Regulation 6 will have application which requires fulfilment of certain conditions

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<sup>20</sup> (1992) 4 SCC 711

<sup>21</sup> (2001) 4 SCC 534

<sup>22</sup> (2005) 2 SCC 271

stipulated therein. The inspection which is required to be conducted in the first place by CCIM (now MARB) under sub-Regulation 2 of Regulation 7 of the Establishment Regulations, 2019 is only confined to the issues specified in Regulation 6 as applicable on a case to case basis, and not beyond that.

- ii. If the CCIM (now MARB) decides to issue the LOI thereafter, the CCIM (now MARB) is again empowered/obliged to inspect or verify the compliances of requirements of minimum standards as specified in concerned regulations and other conditions of LOI and depending upon the same, to issue the LOP as the case may be, in Form-7.

46. It is thus seen that the second inspection, after issuance of LOI empowers the CCIM (now MARB) to verify the compliance of the requirement of minimum standards as specified in the concerned regulations and other conditions of LOI; which stage, in the instant case, has not arrived.

47. The Minimum Standard Regulations, 2016 come into play at the stage of the second inspection and not at the stage of the first inspection.

48. To put it differently, sub-Regulation 2 of Regulation 7 of the Establishment Regulations, 2019 applies to inspections at two stages; the first inspection to verify the compliance of Regulation 6 and the second inspection i.e. after issuance of LOI to verify the compliance of requirement under the Minimum Standard Regulations, 2016 and the conditions of LOI etc.

49. The requirements under the Minimum Standard Regulations, 2016 are substantial in nature. They necessitate the infrastructure to be in place. However, Regulation 6 of the Establishment Regulations, 2019 mainly provides for various undertakings, NOCs and a *prima*

*facie* assessment of the applicant to adjudge whether the concerned applicant is in a position to operate a hospital and medical college. If the requirements under Regulation 6 of the Establishment Regulations, 2019 are considered in juxtaposition with the requirements under the Minimum Standard Regulations, 2016, there is a marked distinction between them. The pre-LOI stage is a 'preliminary evaluation' or a 'feasibility study' focusing on evaluating the potential for running a college and hospital. Whereas, the post-LOI and pre-LOP inspection is strictly regulated by the Minimum Standard Regulations, 2016 and other conditions under the LOI etc to see that the college and hospital are actually functioning as per the laid down norms.

50. In the instant case, if the order of rejection dated 23.09.2022 is perused, the same is at the pre-LOI stage. However, the order has been passed by considering the requirements under the Minimum Standard Regulations, 2016 which are not required to be followed at the pre-LOI stage.

51. The shortcomings noted in the order dated 23.09.2022, relate to teaching staff functionality of the hospital, operation of OPD of three departments, hospital staff etc. The reproduced paragraphs of order dated 23.09.2022 clearly indicate that the Minimum Standard Regulations, 2016 have specifically been taken into consideration at the pre-LOI stage. As per sub-Regulation 2 of Regulation 7 of the Establishment Regulations, 2019, at the pre-LOI stage, the eligibility is to be assessed only as per the criteria specified in Regulation 6.

52. As can be seen from Regulation 6(1) of the Establishment Regulations, 2019, what is required by the applicant is to have his/its own land on lease and not less than 30 years in the name of the college, an NOC in Form-4 from the concerned State Government, consent of affiliation in Form-5 for establishment of a new medical

college from the University, owning and managing a hospital in Ayurveda, Sidda, Unani, Sowa or Rigpa and a position to establish infrastructure and manpower in a phased manner as specified in the notified requirements of the Minimum Standard Regulations, 2016, including furnishing of an undertaking regarding selection or admission on the basis of merit etc.

53. It is thus seen that at the pre-LOI stage, there is no mandatory requirement of fulfilling the criteria under the Minimum Standard Regulations, 2016. Even clause (e) of sub-Regulation 1 of Regulation 6 of the Establishment Regulations, 2019 states that the applicant either should be owning or managing a hospital and should be in a position to establish infrastructure and manpower in a phased manner as per the Minimum Standard Regulations, 2016. It is thus clear that at the stage of obtaining an LOI, compliance of the Minimum Standard Regulations, 2016 is not necessitated by law.

54. To consider this aspect pragmatically, it is to be seen that no institution intending to establish a medical college and hospital, can be expected to deploy teaching faculty immediately at the time of application or to follow the requirement stipulated in the Minimum Standard Regulations, 2016, awaiting the decision of the Central Government for the issuance of LOI. The institution should be capable of developing and maintaining all applicable standards before the issuance of LOP. Once the LOI is issued, only then is the institution required to fulfil the requirements of the Minimum Standard Regulations, 2016.

55. Regulation 7 requires, in the first place, that a fair assessment is required to be made before the LOI is issued and thereafter, a rigorous inspection is conducted to assess the full compliance of the Minimum Standard Regulations, 2016 and other applicable regulations. The



institution can only be expected to be complying with the Minimum Standard Regulations, 2016 once the same is in possession of LOI.

56. Since the entire understanding of the NCISM, while denying the petitioner-college an LOI, is found to be in ignorance of the scheme of Regulation 7 of the Establishment Regulations, 2019 therefore, the order in original dated 23.09.2022 itself suffers with material illegality and the same deserves to be set aside.

57. Since the first appellate authority and the second appellate authority have not considered the aforesaid aspect and have also made the Minimum Standard Regulations, 2016 applicable at the pre-LOI stage therefore, both the orders passed by the first and second appellate authority also suffer with the same material illegality and therefore, they also deserve to be set aside.

58. This matter deserves to be remitted to the MARB for reconsideration on this ground alone. However, the parties have also argued on the procedure followed in the decision making process, therefore, those aspects also require consideration by this court.

59. Having perused the material on record, this court is of the view that the respondents have failed to follow the principles of natural justice in the present case. Firstly, the inspection report, which is the underlying document on which the deficiencies have been based, has not been provided to the petitioner-college. Since a thorough investigation, spanning over a period of two days had been carried out by the respondents, it was incumbent upon them to provide the same to the petitioner-college to enable it to remedy the deficiencies enumerated therein.

60. The Hon'ble Supreme Court in *Kalinga Institute of Medical Sciences(supra)* has expounded that primacy is to be assigned to the report of the inspection committee. This court in the case of *G.D.*

*Memorial Homoeopathic Medical College (supra)* has also held that not providing a copy of the inspection report causes prejudice to the institute.

61. Since the petitioner-college was not provided the very basis on which its application was rejected at the first stage, the same certainly put the petitioner-college in a disadvantageous position. Therefore, on this ground as well, the impugned action is unsustainable.

62. Secondly, the petitioner-college was not provided with a physical hearing, when it had specifically requested for one. It is not denied that the NCISM Act, 2020 does not explicitly provide for a physical hearing to be given. However, given that the purpose of a hearing is to explain the deficiencies and keeping in mind that the deficiencies sought to be explained by an institute imparting education, more specifically, medical education, relate to technical facilities that may be better verified through an in-person hearing, there is no reason as to why a physical hearing should not have been granted to the petitioner-college if the same is specifically requested.

63. Moreover, when the petitioner-college had made a request emphasizing that the voluminous documents relied upon to explain its deficiencies could not be properly explained in a virtual hearing, the respondents should have provided them a personal physical hearing. In any case, if the respondents were not inclined to do so, a reasoned order, rejecting their request for the same, should have been communicated to them.

64. If the statement of objects and reasons of the NCISM Act, 2020 is perused, the same *inter alia* ensures an effective grievance redressal mechanism. The objectives of the NCISM Act, 2020, read as under:-

*“An Act to provide for a medical education system that improves access to quality and affordable medical education, ensures availability of adequate and high quality medical professionals of*

*Indian System of Medicine in all parts of the country; that promotes equitable and universal healthcare that encourages community health perspective and makes services of such medical professionals accessible and affordable to all the citizens; that promotes national health goals; that encourages such medical professionals to adopt latest medical research in their work and to contribute to research; that has an objective periodic and transparent assessment of medical institutions and facilitates maintenance of a medical register of Indian System of Medicine for India and enforces high ethical standards in all aspects of medical services; that is flexible to adapt to the changing needs and has an effective grievance redressal mechanism and for matters connected therewith or incidental thereto.”*

(ADD)

65. Report No. 115 of the Parliament of India, Rajya Sabha, 'Department-Related Parliamentary Standing Committee on Health and Family Welfare on the National Commission for Indian System of Medicine Bill, 2019' has pointed out various reasons for introduction of the said Bill *inter alia* envisaging a system that has an objective, periodic and transparent assessment of medical institutions and further accentuating that in order to streamline the functioning of the erstwhile CCIM, transparency in the mechanism for grant of permission to medical institutions is necessary. It was noted therein that such steps are necessary to improve the standard of medical education in the Indian system of medicine.

66. It is thus seen that the appeal mechanism provided under the scheme of NCISM Act, 2020 is to ensure that the institutions are assessed in a transparent mode. An unfair or non-transparent treatment to any institution would not only be detrimental to the institution but the same would be against public interest at large. A fair opportunity of hearing is necessary. If requested, the same cannot be dispensed with, unless reasons are recorded as to why the opportunity of hearing cannot be afforded.

67. The decision in the case of **Ganesh Santa Ram** (*supra*) relied upon by the respondent no.1 relates to a service dispute and

department appeal hearing, however, in paragraph 31 of the said decision, it has been held as under:-

“31 xxxxxxxxxx

*The decisions relied on and cited above make one thing clear namely principles of natural justice cannot be reduced to any hard and fast formulae and as said in Russel v. Duke of Norfolk (1949) 1 All ER 109, these principles cannot be put in a strait jacket. Their applicability depends upon the context and the facts and circumstances of each case. The objective is to ensure a fair hearing, a fair deal to a person whose rights are going to be affected. In our opinion, the approach and test adopted in Karunakar's case (supra) should govern all cases where the complaint is not that there was no hearing, no notice, no opportunity and no hearing) but one of not affording a proper hearing that is adequate or a full hearing or violation of a procedural rule or requirement governing the enquiry.”*

68. Another decision relied upon by learned counsel for respondent No. 1 in the case of **State Bank of Patiala** (supra) also relates to departmental appeal and does not support the case of the respondents. The principle to be applied in the cases of departmental appeal would be governed by the applicable service law and the orders in departmental appeal are normally passed after conducting a full-fledged inquiry.

69. Under the NCISM Act, 2020, an appeal is maintainable when no order is passed within three months of submitting a scheme under sub-Section 5 of Section 29 of the NCISM Act, 2020. If the opportunity of hearing is excluded from the scheme of Section 29 and an appeal is preferred against non-consideration of the scheme within the stipulated time, the appellate authority cannot, plausibly, be in a position to reasonably and fairly adjudicate the concerned appeal. Similarly the second appeal is also maintainable under sub-Section 6 of Section 29 to the Central Government within seven days of communication of disapproval by the NCISM or within 15 days from the date of presetting appeal. A time bound mechanism is provided under the scheme of Section 29. An endeavour appears to have been

made by the Parliament to ensure that genuine institutions must get a reasonable opportunity to explain their case if they fulfil the necessary requirements under the provisions of the Act and the applicable Rules and Regulations.

70. It is thus seen that the principles of natural justice cannot be reduced to any hard and fast formula and cannot be put in a straight jacket formula. Their applicability depends upon the context, facts and circumstances of each case. The objective is to ensure a fair hearing to the person whose rights are going to be affected by the decision taken thereon.

71. If a regulatory body makes an arbitrary decision to disallow an educational institution without valid justification, it can have adverse effects on various stakeholders and the community at large. This can deprive individuals of opportunities for learning and personal development, potentially affecting their future prospects and aspirations. Educational institutions also contribute to the local economy by creating jobs, generating revenue and attracting students to shape their career.

72. Providing an opportunity of hearing at the appeal stage in the matters of refusal of grant of recognition or denial of LOI/LOP, even if not explicitly mandated by the statute, is justified for several reasons such as:-

- (i) This fundamental principle ensures that decisions are reached based on a full understanding of the facts, arguments and perspective of all parties.
- (ii) The institution is allowed to present additional evidence, clarify any misconceptions and address any concerns or objections raised during the initial recognition process.

(iii) It safeguards the institutions' rights and interests by ensuring that the arguments and evidence provided by it are given proper consideration.

(iv) This serves as a mechanism for reviewing and rectifying any errors or deficiencies that may have occurred during the initial recognition process.

(v) It enhances transparency and accountability in the recognition process. It allows the decision making process to be subject to scrutiny and ensures that decisions are based on valid and justifiable grounds. This promotes public confidence in the recognition process and helps maintain the integrity of the educational system.

73. To put it straight, while the statute may not explicitly provide the provisions of a hearing at the appellate stage, the aforesaid illustrative justifications are based on fundamental principles of fairness, due process and equitable recognition process, specifically for educational institutions. By providing an opportunity of hearing at the appellate stage, institutions can address any potential shortcomings or errors in the initial decision making process, ultimately leading to a fairer and more accurate determination of the institutions' recognition status.

74. In the instant case, keeping in mind the reasons and objects of the NCISM Act, 2020 and the nature of decisions taken by the respondents, it is held that an adequate opportunity of hearing is necessary before deciding the appeal by the first appellate and second appellate authority.

75. Coming to the argument that the second appellate order, in particular, was based on grounds that had not been raised in any of the stages beforehand, it is seen that the order of the first appellate authority is mostly confined to the deficiencies related to the salary

paid to its faculties. However, the second appellate authority has raised additional grounds related to furnishing of the TDS certificate, records of biometric attendance etc.

76. This court is of the opinion that the second appellate authority should have restricted its scope of scrutiny to the grounds that had been noted in the order of first appeal. The purpose of availing the chance of a second appeal is to show that the deficiencies raised previously have been cured. If the appeal order raises new grounds, the appellant does not have any avenue to explain the same. If new grounds are culled out at every stage of appeal, this might lead to a never-ending cycle that makes the whole established process of granting recognition, futile.

77. Learned counsel for respondent no.1 has also raised the ground of maintainability of the present petition. The law is fairly well settled that normally the courts should be slow to interfere with the opinions expressed by the experts. This approach has been adopted by the courts with the understanding that it is wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. Reliance can be placed on a decision of the Hon'ble Supreme Court in the case of *University of Mysore v. C.D. Govinda Rao and Another*<sup>23</sup>.

78. However, as has been held by the Hon'ble Supreme Court in the case of *Kalinga Institute of Medical Sciences(supra)* and reiterated in *Vedantaa Institute of Academic Excellence (supra)*, courts can interfere in matters relating to educational institutions on cogent grounds such as, if the actions of the authorities are found to be manifestly arbitrary, perverse or borne out of *mala fide*. Paragraph 24 of *Kalinga Institute of Medical Sciences(supra)* reads as under:

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<sup>23</sup> AIR 1965 SC 491

*“24. Medical education must be taken very seriously and when an expert body certifies that the facilities in a medical college are inadequate, the Courts are not equipped to take a different view in the matter except for very cogent jurisdictional reasons such as mala fides of the Inspection Team, ex facie perversity in the inspection report, jurisdictional error on the part of the MCI etc.”*

79. The aforementioned grounds have also been propounded by the Hon’ble Supreme Court in the case of ***Indian Institute of Technology Kharagpur v. Soutrik Sarangi***.<sup>24</sup> Paragraph 19 of the same reads as under:

*“19.xxxxxx*

*This Court has repeatedly emphasized that in matters such as devising admissions criteria or other issues engaging academic institutions, the courts’ scrutiny in judicial review has to be careful and circumspect. Unless shown to be plainly arbitrary or discriminatory, the court would defer to the wisdom of administrators in academic institutions who might devise policies in regard to curricular admission process, career progression of their employees, matters of discipline or other general administrative issues concerning the institution or university.”*

80. In the instant case, the decision making process adopted by the MARB and the other appellate authorities has been found to be arbitrary and *de hors* the provisions of the NCISM Act, 2020 and the applicable regulations. The very fact that the authorities, at all levels, applied the regulations differently to decide the application of the petitioner-college, without taking note of the marked distinction, thereby completely altering the parameters upon which the application was to be decided constitutes sufficient ground to merit interference by this court. If an institution imparting education is prejudiced by the erroneous approach of the authorities, there is no bar on entertaining a

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<sup>24</sup> 2021 SCC OnLine SC 826



writ petition under Article 226 of the Constitution to correct the decision-making process and direct the authorities to apply the applicable procedure in a fair manner.

81. An argument has been made by learned counsel for respondent no.2 that the application for issuance of LOI was for a particular Academic Year, 2022-2023. Since the same has lapsed, therefore, at this stage, the application for LOI cannot be considered. The aforesaid argument needs to be rejected for the reason that the application for the petitioner-college has not been considered in accordance with the applicable regulations, therefore, once the decision of denial is rejected, the application needs to be restored.

82. No doubt, as per the requirement under the applicable regulation, if the petitioner-college has to submit updated information, the respondent can always call upon the petitioner-college to provide the same by way of supplementary information but the application of the petitioner-college cannot be treated to have become infructuous once the decision thereon has not been found to be not, in accordance with law.

83. The time schedule for grant of LOI or LOP will have to be governed by the applicable regulations and administrative instructions of the respondents.

84. This court had pointedly inquired from learned counsel appearing for the NCISM, as to what was the last date of issuance of LOP for the Academic Year 2022-2023 and what the last date for issuance of the LOP for the present Academic Year 2023-2024 was. She fairly stated that for the Academic Year 2022-2023 ,the LOPs were granted upto the month of March, 2023. She also stated that for the present Academic Year, the new LOPs have not yet been issued, however, the inspections etc. are being carried out and as of now there

is no last date prescribed by the MARB or by the NCISM to issue the LOP.

85. It is thus seen that any direction for consideration of the case of the petitioner-college for the present Academic Year 2023-24 for the issuance of LOI will not violate the time schedule applicable to the respondent.

86. Under the facts of the present case, this court is inclined to issue the following directions:-

- i. The impugned orders dated 23.09.2022, 16.11.2022 and 16.02.2023 are hereby set aside.
- ii. The application of the petitioner-college for the issuance of LOI dated 28.10.2021 is restored.
- iii. The respondents are directed to consider the same in accordance with Regulation 7 of the Establishment Regulations, 2019 as has been interpreted by this court in this order, within 10 days from today.
- iv. If the petitioner-college fulfils the requirements under Regulation 6 of the Establishment Regulations, 2019, the same be considered for issuance of LOI to be followed by further steps as per the Regulations 7 to 9 of the Establishment Regulations, 2019 for the issuance of LOP for the Academic Year 2023-2024.

87. Accordingly, the instant petition stands disposed of alongwith the pending applications in the aforesaid terms.

**(PURUSHAINDRA KUMAR KAURAV)**  
**JUDGE**

**JUNE 02, 2023**  
**MJ**