HIGH COURT OF JUDICATURE AT BOMBAY

`IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1981 of 2016

1. Maharashtra Medical Education &
Research Centre
a registered Public Trust, through its
Joint Secretary, Dr. Mushtaque Mukadam
Age Adult, Occ: Joint Secretary,
Having its office at 2390-B.
K.B.Hidayatullal Road,
New Modikhana,
Azam Campus, Camp,
Pune 411 001

2. Maharashtra Medical Education &
Research Centre's
Z.V.M. Unani Medical College
and Hospital,
through its Principal,
Hkm Jalis Ahmad,
Age Adult, Occ: Service,
having its office at 2390-B,
K.B.Hidayatullal Road,
New Modikhana,
Azam Campus, Camp,
Pune 411 001 .. Petitioners

v/s.

1. Union of India
through the Secretary,
Ministry of Health & Family Welfare,
Ministry of AYUSH,
IRCS Building,
1 Red Cross Road,

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New Delhi 110 001.

2. Central Council of Indian Medicine,
A statutory body, constituted under
Section 3 of the Indian Medicine
Central Council Act, 1970
having its office at 61-65
Institutional Area, Opposite D- Block,
Janakpuri, New Delhi 110 058.

3. The State of Maharashtra,
through the Secretary,
Department of Medical Education & Drugs,
9th Floor, G.T. Hospital Campus,
Lokmanya Tilak Road,
Mumbai 400 001.

4. Maharashtra University of Health Science,
Nashik, through its Registrar,
Mhasrul, Dindori Road,
Nashik. ..Respondents

Shri S.R.Ganbhavle i/b. Sangramsingh Yadav for the Petitioner.
Mr. Rui Rodriques a/w. Pranil Sonawanve for the Respondent No.1.
Mr.R.V.Govilkar for the Respondent No.4.
Mr. P.P.Kakde, AGP for the State.

CORAM : SHRI RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
RE$ERVED ON : JUNE 23, 2016.
DATED : AUGUST 10, 2016.

JUDGMENT (PER ANUJA PRABHUDESSAI, J.):

1. Rule, With consent of parties matter taken for hearing.

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2. The petitioners, being aggrieved by order dated 5.1.2016 issued by the respondent no.4 Maharashtra University of Health Sciences- Nashik, have sought direction to the respondent no.4 to grant affiliation to the two seats of Ilmul Quabalat-Wa-Amraz-E-Niswan, Post Graduate Unani course from the academic year 2015-2016.

3. The petitioner no.1 is a public trust registered under the Bombay Public Trust Act, 1950. The petitioner no.2 is a private partly aided Unani Medical College run by the petitioner no.1 trust since the year 1984-85. The petitioner no.2 was desirous of starting a post graduate Unani course in the subject of Ilmul Qabalat-Wa-Amraz-E-Niswan, (hereinafter referred to as "Post Graduate course"). The petitioner submitted the application to the respondent no.2 Central Council seeking permission to start the said post graduate course for the academic year 2015-16. On the basis of the recommendation of the medical Council, the respondent no.1 vide permission/recognition dated 29.10.2015, granted permission to the petitioner no.2 to start post graduate course with intake of two students for the year 2015-16.

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4. By letter dated 30.10.2015, the petitioners requested the respondent no.4 to grant affiliation for the two students/seats for the said Post Graduate course. The respondent no.3 issued a Government Resolution on 11.12.2015 communicating its permission to start a new Post Graduate course, for the academic year 2015-16. Vide letter dated 01.01.2016 the petitioners again requested the respondent no.4 MHUS to take necessary action to grant affiliation to the post graduation course.

5. By letter/ communication/ order dated 5.1.2016 the respondent no.4 university refused to grant affiliation for the said Post Graduation course on the ground that the last date for admission for the students was scheduled on 07.12.2015 and that the respondent no.3 had issued G.R. on 11.12.2015, hence it would not be possible for the respondent no.4 to carry out necessary inspection for granting affiliation. The petitioners were informed that it should secure permission from the respondent nos.1 to 3 for the academic year 2016-17 so as to enable it to start the process of affiliation. Being aggrieved by the said communication, the petitioners have invoked the writ jurisdiction of this court under Article 226 of the

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Constitution of India, 1950.

6. Shri Ganbhavale, the learned Counsel for the petitioners has taken us through the relevant provisions of Indian Medicine Central Council Act, 1970 (for short MCC Act, 1970), the Maharashtra University of Health Sciences Act. 1999 (for short MUHS Act, 1999) and Establishment of New Medical College, Opening of New Higher Secondary Course of Study or Training and Increase of admission capacity by Medical College Regulations, 2003 (in short "Regulations 2003"). He has challenged to the impugned order/communication mainly on the following grounds.

i) The MCC is the final authority to grant permission to open a new or higher course of study. The State or the University cannot enact any provision or impose any condition which is inconsistent with the provisions of the MCC Act and the conditions imposed by the MCC.

ii) The petitioners had complied with all the relevant statutory requirements, the respondent no.3 had issued no objection and the respondent no.4 had issued the consent of affiliation for starting a post graduate course.

iii) The respondent no.1 which is a primary statutory body having granted

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permission to start the Post Graduation course, it was imperative for the respondent nos.3 and 4 to grant permission/affiliation for the first academic year 2015-2016.

iv) The respondent no.4 was not justified in rejecting the affiliation on the grounds stated in the impugned communication, particularly when it had issued the consent of affiliation after inspecting the institution/campus. The consent of affiliation was valid till 29.8.2016.

v) The petitioners were not responsible for the delay in issuance of G.R. by the respondent no.3. The petitioners have incurred huge infrastructure in appointment of faculty/staff etc. The decision to deny affiliation is arbitrary and unreasonable.

vi) The respondent no.4 could not have over turned the decision of the statutory authority. It was within the powers of the respondent no.4 to grant conditional affiliation for the first year. In the facts and circumstances of the present case, such power was coupled with the duty to exercise the same.

vii) The respondent no.4 has refused affiliation, without placing the same before the Academic Council. The action of the respondent no.4 is ultra vires, besides being arbitrary and unjust.

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7. He has relied upon the pronouncements of the Apex Court in

i) ***Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education and Charitable Trust v. State of Tamil Nadu & ors. (1996) 3 SCC 15***

ii) State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyala & Ors. (2006) 9 SCC 1

iii) Parshvanath Charitable Trust & Ors. v. AICTE & Ors. (2013) 3 SCC 385

iv) Maa Vaishno Devi Mahila Mahavidyalaya vs. State of Uttar Pradesh & Ors. (2013) 2 SCC 617

As well as the decisions of Division Bench of this Court in

v) ***Shri Shivaji Education Society and anr. v. Maharshtra University of Health Sciences and ors. 2012(1) Mh.L.J. 799***

vi) Syadwad Education Society, Washim v. State of Maharashtra & Anr. 2014(3) Mh.L.J. 333

vii) Sinhagad Technical Education Society and anr. vs. Maharashtra University of Health Science & Ors. 2014(3)

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Mh.L.J. 470

8. The gist of submissions of Shri Govilkar, the learned Counsel for the respondent no.4 is as under :

i) The respondent no.4 has not refused affiliation. Since the G.R. dt. 11.12.2015 was received after the last date of admission i.e. 7.12.2015, it was not possible for the respondent no.4 University to inspect the institution/campus. In view of which the petitioners were informed to seek fresh permission from the respondent nos.1 to 3 for the academic year 2016-2017. It was therefore not necessary to place the matter before the Academic Council.

ii) The affiliation is not a mere formality. The statutory powers of the respondent no.4 to grant or refuse affiliation are independent and distinct from the powers of the Council to grant or refuse permission or recognition.

iii) The role of the University is well defined. It was within the domain of the University to inspect the campus and examine the availability of infrastructural, institutional and instructional amenities.

iv) The G.R. dated 11.12.2015 was received after the last date of

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admission i.e on 7.12.2015 and hence the University did not have sufficient time to carry out the inspection which was essential for grant of affiliation.

v) The University has no powers to grant conditional/ provisional affiliation and in such circumstances the only course open for the petitioners was to secure permission /affiliation for the next academic year.

vi) It was not permissible for the petitioner to admit students without affiliation and such illegal act cannot be protected by granting ex-post facto affiliation.

9. Before adverting to the issues raised by the respective parties, it would be advantageous to refer to the relevant provisions of the Indian Medicine Central Council Act, 1970 (in short MCC Act) and The Establishment of New Medical College, opening of New or Higher Course of Study or Training and Increase of Admission capacity by a Medical College Regulations, 2003 relating to permission for a higher course. Chapter 2A of MCC Act deals with permission for new medical college, courses etc. Section 13A of IMCC Act, 1970 reads as under:

Section 13 A. Notwithstanding anything contained in this Act or any other law for the time being in force

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(a) ……
(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 provisions of this section.

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

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

(2) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of sub-section (3) and the Central Government shall refer the scheme to the Central Council for its recommendations.

(3) The scheme referred to in sub-section (2), shall be in such form and contain such particulars and be preferred in such manner and accompanied with such 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, it may-

(a) if the scheme is defective and does not contain necessary particulars, give a reasonable opportunity to the person or

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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 by it from the person or college concerned and having regard to the factors referred to in sub-section (8), either approve the scheme with such conditions, if any, as it may consider necessary or disapprove the scheme and any such approval shall constitute as a permission under sub-section (1) :

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

Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provision of this section shall apply to such scheme, as if such scheme had been submitted for the first time under sub-section (2).

(6) …..

(7) ….

(8) The Central Council while making its recommendations under clause (b) of sub¬section (4) and the Central Government while passing an order, either approving or disapproving the scheme under sub-section (5), shall have due regard to the following factors, namely:-

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of

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study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Central Council under section 22;

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

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

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

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

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

(g) any other factors as may be prescribed.

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

10. The Establishment of New Medical College, Opening of New or Higher Course of Study or Training and Increase of Admission capacity by a Medical College Regulations, 2003 are the regulations

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framed in exercise of powers under Section 36 of the MCC Act. The regulations relevant to decide the petition are as under :

> **3. The permission for establishment of a medical college, opening of new or higher course of study or training and increase of admission capacity -**
>
> 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 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) …
> (2) Any medical college intending to open a new or higher course of study or training shall submit the scheme along with an application in Form - 2.
> (3) ..
>
> **5. Authority to whom the scheme and application is to be submitted -**
>
> Applications and schemes under regulation 4 shall be submitted to the Secretary to the Government of India, Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy (AYUSH) as per the schedule annexed to the regulations.
>
> **6. Eligibility for making an application -**
>
> (1) For making an application under sub-regulation (1) of regulation 4, a person or a medical college shall be eligible if, -

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(a) …..;

(b) …...;

(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) …...

(f) …..

(g) …..

(2) For making an application under sub-regulation (2) of regulation 4, a medical college shall be eligible if, - …..

7. Recommendation of the Central Council -

On receipt a scheme from the Central Government under sub-section (2) of section 13 A, the Central Council shall submit its recommendations to the Central Government in Form-6.

8. Fee to be submitted along with application -

An application and scheme to be submitted under regulation 4 shall be accompanied by the following admission fee by way of a demand draft/pay order payable to the 'Central Council of Indian Medicine' New Delhi :-

(a) … …

(b) to open a new or higher course of study or training- Rupees Two lakhs per course.

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(c) … …

9. Permission Order- The order passed by the Central Government under sub-section (9) of section 13A shall clearly indicate the preliminary requirement about setting up of buildings, infrastructural facilities, medical and allied equipments, faculty and staff before admitting the first batch of students.

11. In so far as the University is concerned, it would be apposite to refer to the provisions of the Maharashtra University of Health Sciences Act, 1998 relating to affiliation of colleges, courses etc

S-63. Conditions for Affiliation and Recognition

(1) The management applying for affiliation or recognition, and management whose college or institution has been granted affiliation or recognition, shall give and comply with the following undertaking :
(a) that the provisions of the Act and Statutes, Ordinances and Regulations thereunder and the standing orders and directions of the university shall be observed.
(b) that there shall be a separate local managing committee provided for an affiliated college as provided by section 67.
(c) that the number of students admitted for courses of study shall not exceed the limits prescribed by the university and the State Government from time to time.
(d) that there shall be suitable and adequate physical facilities such as buildings, laboratories, libraries, books, equipment required for teaching and research hostels, gymnasium, as may be prescribed by statutes.
(e) that the financial resources of the college or institution shall be such as to make due provision for its continued maintenance and working.
(f) that the strength and qualifications of teaching and non-teaching staff of the affiliated colleges and recognised

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institutions and the emoluments and the terms and conditions of service of the staff of affiliated colleges shall be such as prescribed by the university and which shall be sufficient to make due provision for courses of study, teaching or training or research, efficiently.
(g) that the services of all teaching and non-teaching employees and the facilities of the college to be affiliated shall be made available for
conducting examinations and for promoting other activities of the university.
(h) that the directions, and orders issued by the Chancellor, Vice-Chancellor and other officers of the university in exercise of the powers conferred on them under the provisions of the Act, Statutes, Ordinances and Regulations shall be complied with.
(i) that there shall be no transfer of the management without previous permission of the university.
(j) that the college or institution shall not be closed without previous permission of the university.
(k) that in the event of disaffiliation or derecognition or closure of the college or institution under section 74, all the assets of the college or institution including building and equipment which have been constructed or created out of the amount paid as a grant-in-aid by the State Government or University Grants Commission shall vest in the State Government.

S-65. Procedure for Affiliation

(1) On receipt of the permission from the State Government under section 64 the Academic Council of the university shall consider grant of first time affiliation to the new college or institution by following the prescribed procedure given in sub-section (2) and after taking into account whether and the extent to which the stipulated conditions have been fulfilled by the college or institution. The decision of the Academic Council in this regard shall be final.
(2) For the purpose of considering the application for the

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grant of affiliation the Academic Council shall cause an inquiry by a committee constituted for the purpose by it.
(3) The Academic Council shall decide—
(a) whether affiliation should be granted or rejected;
(b) whether affiliation should be granted in whole or part;
(c) subjects, courses of study, the number of students to be admitted;
(d) conditions, if any, which may be stipulated while granting or for granting the affiliation.
(4) The Registrar shall communicate the decision of the Academic Council to the applicant management with a copy to the Secretary, Medical Education and Drugs Department, and if the application for affiliation is granted, alongwith an intimation regarding—
(a) the subjects and the courses of study approved for affiliation;
(b) the number of students to be admitted;
(c) the conditions, if any, subject to the fulfillment of which the approval is granted.
(5) The procedure referred to in section (1) to (6) of section 64 shall apply, mutatis mutandis, for the permission to open new courses, additional faculties, new subjects and additional divisions.
(6) No students shall be admitted by the college or institution unless the first time affiliation has been granted by the university to the college or institution.
(7) The procedure referred to in sub-sections (1) to (4) shall apply, mutatis mutandis, for the consideration of continuation of affiliation, from time to time."

12. We may also briefly refer to the judgments of the Apex Court dealing with the issue. In Adhiyaman Education and Research Institute (supra), the challenge was to the constitutional validity of some of the provisions of Tamilnadu Pvt. College (Regulation) Act 1976, Madras University Act

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1923, and the Rules framed thereunder on the ground that the same were inconsistent with the provisions of the AICTE Act 1987. The Apex Court has held that:

> *"the provisions of the State Act which impinge upon the provisions of the Central Act are void and, therefore, unenforceable".*

The Apex Court further held that after coming into operation of the Central Act, the provisions of the University Act would be deemed to have become unenforceable in case of technical colleges like the engineering colleges. It was however held that:

> *"The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act."*

These principles were reiterated in Jai Gokul and Thirumuruga Kirupananda and approved by a three Judge Bench of the Apex Court in Sant Dnyaneshwar (supra), and followed in Parshawanath (supra).

13. In Maa Vaishnodevi Mahila Mahavidyalay (supra) the Apex Court,

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while considering the issue of functioning of three principal bodies viz. NCTE, the State Government and the affiliating body or the University regarding grant of recognition, permission and affiliation of teacher training course, held that under the Act each of these three principle bodies have been assigned a definitive role and even the stage at which such role is required to be prescribed. The Apex Court observed that:

> "t*o put it simply, the NCTE is a supreme body and is vested with wide powers to be exercised with the aid of its expertise, in granting or refusing to grant recognition to an educational institution. NCTE is the paramount body for granting the approval /recognition not only for commencing of fresh courses but even for increase in intake, etc. The council has to ensure maintenance of educational standards as well as strict adherence to the prescribed parameters for imparting of such educational courses including the infrastructure. The provisions and scheme of the NCTE Act are in para materia with that of the Medical Council of India Act 1986 and All India Council for Technical Education Act 1987, etc.*"

14. In para 59 the Apex Court has observed as under:

> *"59. The above enunciated principles clearly show that the Council is the authority constituted under the Central Act with the responsibility of maintaining education of standards and judging upon the infrastructure and facilities available for imparting such professional education. its opinion is of utmost importance and shall take precedence over the views of the State as well as that of the University. The concerned Department of the State and the affiliating University have a role to play but it is limited in its application. they cannot lay down any*

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guideline or policy which would be in conflict with the central statute or the standards laid down by the Central body. State can frame its policy for admission to such professional courses but such policy again has to be in conformity with the directives issued by the Central body. in the present cases, there is not much conflict on this issue, but it needs to be clarified that while the State grants its approval, and University its affiliation, for increased intake of seats or commencement of a new course/college, its directions should not offend and be repugnant to what has been laid down in the conditions for approval granted by the Central authority or Council. What is most important is that all these authorities have to work ad idem as they all have a common object to achieve i.e. of imparting of education properly and ensuring maintenance of proper standards of education, examination and infrastructure for betterment of educational system. only if all these authorities work in a coordinated manner and with cooperation, will they be able to achieve the very object for which all these entities exist."

15. In para 77 and 79 of the judgment the Apex Court has further held as follows :

"To put it simply, the requirements which have been examined and the conditions which have been imposed by the NCTE shall prevail and cannot be altered, re-examined or infringed under the garb of the State law. The affiliating /examining body and the State Government must abide by the proficiency and command of the NCTE's directions. To give an example, existence of building library, qualified staff, financial stability of the institution, accommodation, etc. are the subjects which are specifically covered under Section 14(3)(b) of the Act. Thus, they would not be open to re-examination by the State and the University. If the recognition itself was conditional and

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> *those conditions have not been satisfied, in such circumstances, within the ambit and scope of Sections 46 and 16 of the Act, the affiliating body may not give affiliation and inform the NCTE forthwith of the shortcomings and non-compliance of the conditions. In such situation, both the Central and the State body should act in tandem and, with due coordination, come to a final conclusion as to the steps which are required to be taken in regard to both recognition and affiliation… But certainly, the State Government and the University cannot act in derogation to the NCTE.*
>
> *79 …. .Once it grants recognition, then such grant attains supremacy viz-a-viz the State Government as well as the affiliating body. Normally, these questions cannot be re-agitated at the time of grant of affiliation. Once the University conducts inspection in terms of its Statutes or Act, without offending the provisions of the Act and conditions of recognition, then the opinion of the State Government at the second stage is a mere formality unless there was a drastic and unacceptable mistake or the entire process was vitiated by fraud or there was patently eminent danger to life of the students working in the school because of non-compliance of a substantive condition imposed by either of the bodies. In the normal circumstances, the role of the State is a very formal one and the State is not expected to obstruct the commencement of admission process and academic courses once recognition is granted and affiliation is found to be acceptable."*

16. Reverting to the facts of the present petition, it is not in dispute that the petitioner no.2 is a private partly aided medical college, which was imparting education of Unani medicines since the year 1984-1985. The petitioner, in accordance with the provisions of IMCC Act, 1970 and the

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Regulations, 2003 submitted a scheme along with application dated 28.6.2014 and sought permission for starting a postgraduate degree course for the academic year 2015-2016. The petitioner obtained no objection certificate of the Respondent no.3 State Government in Form IV, for opening the post-graduation course. The local committee of the Respondent No.4-University inspected the Petitioner No.2-Institution and recommended affiliation. Accordingly Respondent No.4-University issued consent of affiliation in form V for opening the said post-graduation course. The validity of the said consent affiliation which was for a period of one year, was by letter dated 31.10.2014 extended till 29.8.2016.

17. It is a matter of fact that the respondent no.2 visited and inspected the medical college and on 31.10.2014 it communicated its recommendations to the respondent no.1. On assessment of the visitation report of the respondent no.2 CCIM, the respondent no.1 noted some deficiencies and issued a notice to the petitioner in terms of sub section 5 of Section 13A of MCC Act, 1970. The petitioner no.2 was given a personal hearing. The petitioner clarified compliance of the said deficiencies noted by the Respondent no.1.

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18. In the interregnum the respondent no.1 on 5.5.2015, took a policy decision to grant conditional permission under the amended regulation no.9 of Regulation 2003 to colleges whose visitation reports were obtained by it prior to 23.3.2015. The visitation report of the Petitioner No.2 College was obtained by respondent No.1 on 31.10.2014. The Petitioners were therefore entitled for the grant of benefit of the policy decision dated 5.5.2015. The respondent no.2 was also instructed to convey the said decision to the Respondent no.3 State Government, the respondent no.4 University the and to place the same on the website of the respondent no.2 for wider publicity.

19. The respondent No.1 also issued a letter dt. 29.10.2015 thereby granting permission to start the post graduate course with intake of two students from the academic year 2015-2016. The copy of the said permission was forwarded to the respondent no.2-CCIM and the Registrar of the respondent no.4 University. On 30.10.2015 the Petitioners requested the respondent no.4 University to grant affiliation for the post graduate course with intake of two students. In view of the said permission and consent of affiliation, the petitioner, admitted two students for the said post graduation course.

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20. The respondent No.3 issued the Government resolution on 11.12.2015 granting permission to start the post graduation course. The Petitioners have claimed that they received the said GR dated 11.12.2015 on 31.12.2015. Accordingly, on 1.1.2016 they once again requested the respondent No.4 university to grant affiliation to the post graduate course. The vice chancellor of the respondent no.4-University, vide letter dated 5.1.2016 informed the petitioners that it had received the GR dated 11.12.2015 on 31.12.2015. The petitioners were also informed that since the last date for admission for the academic year 2015-16 was 7.12.2015, it would not be possible for the local committee to inspect the premises. The respondent no.4-University instructed the petitioners to secure approval/permission of respondent Nos.1 to 3 for the academic year 2016-2017 and submit the same to respondent no.4-University so as to enable it to start the process of affiliation for the academic year 2016-2017.

21. The above referred facts which are not in dispute, reveal that the petitioners had complied with all the requirements under the statute and Regulations, 2003. The respondent no.2 being satisfied that the petitioner

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no.2 had all essential infrastructural and institutional facilities, recommended grant of permission. Accordingly the respondent no.1 granted conditional permission to the petitioner no.2 to open a new post graduate course from the academic year 2015-2016. The college was also permitted to permit admissions for the said post graduation course along with already permitted courses for the academic year 2015-2016. The college administration was directed to ensure availability of sufficient qualified teachers as prescribed in the CCI and Regulations, before admitting students in the above mentioned Post Graduation course.

22. Primarily the controversy is over refusal of affiliation by respondent no.4 University as communicated to the petitioners vide communication dated 5.1.2016. We cannot accede to the contention of the learned Counsel Shri Govilkar that the respondent has not refused affiliation. It is pertinent to note that by the impugned communication the respondent no.4 university had instructed the petitioner college to initiate the process for permission and affiliation for the next academic year 2016-2017. This is nothing but a point blank refusal of affiliation of the post-graduate course for the academic year 2015-2016.

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23. We do not dispute the contention of the learned Counsel Shri Govilkar that affiliation is not a mere formality. In fact, in *Parshvanath Charitable Trust* (supra) the Apex court while reiterating the principles in ***Omnikrishnan JP vs. State of AP 1993 (1) SCC 645*** has held that :

> *"...the right to establish an educational institution does not carry within it the right to recognition or the right to affiliation. Grant of recognition or affiliation is neither a matter of course nor is it a formality. Admission to the privileges of a university is a power to be exercise with great care keeping in view the interest of the public at large and the nation. Recognition has to be as per the statutory prescribed conditions and their strict adherence by all concerned. These conditions of recognition and the duly notified direction controlling the admission process are to be construed and applied stricto sensu. They cannot be varied from case to case".*

24. Similarly, in ***Maa Vaishnodevi*** (supra) the Apex Court has held that:

> *"It cannot be said that affiliation is insignificant or mere a formality on the part of the examining body. It is the requirement of the law that affiliation should be granted by the affiliating body in accordance with the prescribed procedure and upon proper application of mind. Recognition and affiliation are expression of distinct meaning and consequences. In Bharatia Education Society Vs. State of H.P. 2011 4 SCC 527 this Court held that "19. The purpose of 'recognition' and 'affiliation' is different. In the context of NCTE Act, 'affiliation' enables and permit an institution to send its students in public examination conducted by the examining body and secure the qualification in the nature of degrees, diplomas and certificates. On the other hand 'recognition' is the license to*

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> *the institution to offer a course of training and teaching education".*
> *The court also emphasized that the affiliating/examining body does not have any discretion with reference to any of the factors which have been considered by NCTE while granting recognition.*
> *...Despite that recognition itself covers the larger precepts of affiliation, still the affiliating body is not to grant affiliation automatically but must exercise its description fairly and transparently while ensuring that conditions of the law of the university and the functions of the affiliating body should be complimentary to the recognition of NCTE and ought not to be in derogation thereto. "*

25. It is to be noted that in terms of Regulations 6(1) (d) of Regulation 2003, a consent of affiliation in form V is one of the essential eligibility conditions for making an application under sub regulation (1) or (2) of Regulation 4. Furthermore while issuing consent of affiliation in form V the university is required to provide a detailed inspection report of the proposed medical college. This mandate, clearly fortifies that affiliation is not a mere formality.

26. In the instant case, the respondent no.4 University had rejected affiliation on the sole reason that the G.R. dated 11.12.2015 was issued after the last date of admission, viz. 7.12.2015, hence there was no sufficient time for the Committee to inspect the college campus. It is not in dispute that the

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local Committee of the respondent no.4 had inspected the petitioner no.2 college and prepared a detailed list of the available faculty and the other infrastructural amenities for starting the Post Graduate course. The local Committee did not notice any deficiencies but observed that infrastructural facilities available with college is sufficient for starting of Post Graduate degree course. Accordingly, the Committee prepared a detailed report, based on which the respondent no.4 University granted consent of affiliation and thereby agreed in principle to affiliate the proposed Post Graduate course with intake capacity of two students subject to permission by the Government of India under Section 13A of Indian Medicine Central Council Act and final permission with the Government of Maharashtra. The said consent of affiliation is valid till 29.8.2016. It is true that consent of affiliation cannot be equated with the final affiliation. Nonetheless, issuance of consent of affiliation is in fact an acknowledgment that the college fulfilled all the requisite conditions of affiliation and the University in principle agreed to affiliate the higher course, subject to grant of permission /recognition by the Central Council.

27. We may state at this stage that the expert committee of the

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respondent no.2 Council had also inspected the petitioner no.2 college and being satisfied that the Petitioner college had all the essential facilities and amenities as per the norms, it communicated its recommendation to the respondent no.1. The respondent No.1 pointed out certain deficiencies, and upon satisfying the respondent no.1 on compliance of the said deficiencies, the respondent no.1 being the final Competent Authority under the Act, granted permission to the petitioner no.2 to start the Post Graduate course for the academic year 2015-2016 and permitted admission for academic year 2015-2016.

28. In view of the permission granted by the statutory authority, the condition in the consent of affiliation was fulfilled. Hence, the respondent No.4 was bound to grant affiliation to petitioner no.2 college unless there was any valid and genuine reason to refuse such affiliation. In the instant case, as stated earlier, the only reason assigned by the University was that there was no sufficient time for the local committee to inspect the campus. It is true that the fact that the local committee of the University had inspected the college for the purpose of granting consent of affiliation is not an embargo for a subsequent inspection for the purpose of grant of

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affiliation. Nevertheless, as stated earlier, the facts of the present case indicate that the local committee had not noticed any deficiencies and the consent of affiliation was not subject to removal of deficiencies. Under these circumstances, the subsequent inspection at the most would be to verify whether the facilities and amenities which existed at the time of the previous inspection were available at the time of grant of affiliation.

29. Furthermore, the copy of the permission dt. 29.10.2015 granted by respondent no.1 was already marked to the Registrar of the university. The petitioner no.2 by letter dated 30.10.2015 had also requested the respondent no.4 university to grant affiliation. The respondent no.4 therefore had ample time to inspect the college and ascertain or verify whether the college fulfilled all the essential conditions/ requirements for affiliation. It was not necessary for the respondent no.4 to wait for the issuance of the GR to carry out such inspection as the State could not have taken any contrary decision. Reference can be made to ***Mata Gujari Memorial College Vs. State of Bihar (2009) 16 SCC 309*** wherein the Apex Court has held that:

> *"Having regard to the purpose for which the Indian Medical Council Act has been enacted and looking at the*

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> *procedure adopted by the said Council before granting the permission in question as engrafted in the regulation referred to earlier, it would be difficult for us to hold that notwithstanding the stringent provisions and stringent requirements being complied with and the medical council on being satisfied, yet the State Government has its say in the matter of affiliation of the institution to the University in exercise of its powers under the second proviso to section 21 of the Act."*

30. In the instant case the Petitioner having complied with all the requirements under the Act and the regulations, the Respondent No.2, which is the Apex body granted permission under sub section 9 of section 13(A) of the MCC Act 1970. The petitioners by letter dated 30.10.2015 communicated this decision to the respondent no.4 University and requested for affiliation. There was no statutory bar for the respondent no.4 University to cause an inqury by a committee constituted for the purpose during the pendency of issuance of GR/Permission by the State, since the State Government did not have any say in the matter and the permission of the state government or issuance of GR was only a formality. There was also no impediment, either legal or otherwise, in granting affiliation after the last date of admission particularly when the Government had issued the G.R. and granted permission and the consent of affiliation was valid till 29th August, 2016. Under the circumstances, Respondent No.4 was not justified

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in rejecting the affiliation for the reasons stated in the impugned communication .

31. It is also to be noted that in terms of Section 65 of the Maharashtra University of Sciences Act, 1998, the decision of grant or refusal of affiliation is to be taken by the Academic Council. In the present case, the application for affiliation was rejected by the Vice Chancellor of the University without even placing the same before the Academic Council. The action of the respondent no.4 University is arbitrary, mechanical, unjust and unreasonable. In Maa Vaishnodevi (supra) the Apex Court has held that all authorities are required to function ad idem as they have a common object of imparting education and ensuring maintenance of proper standards of education. However, once the Apex body, IMCC, as in the present case, grants permission/recognition, such grant attains primacy vis-a-vis State Government as well as the affiliating body. Normally the questions looked into and accepted at the stage of recognition cannot be revisited by the State Government or the affiliating body. Whilst, each of the three authorities may have a role to play, once CMCC grants recognition, neither the State Government nor the University can frustrate

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the same on ground of some alleged delay or due to lack of inter se co-ordination between the authorities.

32. The petitioners had complied with all the requirements under the statute and the regulation. The petitioners were not responsible for the delay in issuance of GR or the delay in communicating the GR to the respondent no.4. In fact, the petitioners have been placed in these unfortunate circumstances because of the failure of the respondent no.4 University to carry out the inspection as well as on account of the delay on the part of the respondent no.3 State in communicating the GR to respondent no.4. The petitioners have already invested huge amount in infrastructure, appointment of teaching and non-teaching staff, etc. The petitioners have also admitted the students in view of the permission granted by the respondent no.1 and the consent of affiliation, which was valid till 29th August, 2016. Under these circumstances, the respondent no.4 was not justified in directing the petitioners to go through the entire rigmarole for seeking permission and affiliation for the academic year 2016-2017. Furthermore, the interest of the students cannot be jeopardized because of lack of co-ordination between the State Government and the University.

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33. In view of these peculiar facts and circumstances, the petition is allowed.

i) The communication /order dated 5/6/2016 is hereby quashed and set aside.

ii) Pending the final affiliation, the respondent no.4 university is directed to grant provisional affiliation to the Petitioner No.2 college w.e.f. 29.10.2015, to start a new Post Graduate degree Course Ilmul Quabalat-WA-Amraj-E-Niswan with intake capacity of two students for the academic year 2015-2016.

iii) The respondent no.4 university to send the local committee to inspect the petitioner no.2 college within a period of 7 days from the date of the receipt of this order.

iv) The Academic Council of the university shall thereafter take the appropriate decision on the issue of affiliation.

Rule is made absolute in above terms.

(ANUJA PRABHUDESSAI, J.) **(SHRI RANJIT MORE, J.)**

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At this stage Mr. Govilkar, learned Counsel for the respondent no.4 seeks stay of this order. Since the consent of affiliation is valid only upto 29.08.2016, we are not inclined to stay this order. The request is therefore rejected**.**

(ANUJA PRABHUDESSAI, J.) **(SHRI RANJIT MORE, J.)**

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