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

+ W.P.(C) 9760/2023 & CM APPL 37436/2023

NOVA EDUCATIONAL SOCIETY

..... Petitioner

Through: Mr.Maninder Singh, Senior Advocate
alongwith Mr.Kumar Shashank, Mr.Ramesh,
Mr.Nivesh Kumar, Mr. Aviral Kapoor, Mr. Piyush
and Mr.Nitish Rai, Advocates.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Arjun Mahajan, SPC for UOI with
Ms.Namisha Gupta and Mr.Apoorv Upamanyu,
Advocates for Respondent No.1

Mr.T.Singhdev, Mr.Abhijit Chakravarthy and
Ms.Anum Hussain, Mr.Bhanu Gulati and
Mr.Tanishq Srivastava Advocates for Respondent
Nos. 2 and 3

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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17.08.2023

1. The petitioner in the instant writ petition is aggrieved by the impugned order dated 21.07.2023 passed by respondent no.1, whereby the second appeal preferred by the petitioner under Section 28(6) of the National Medical Commission Act, 2019 (hereinafter '*NMC Act, 2019*') came to be rejected, affirming the order dated 30.06.2023 passed by the first appellate authority.

2. The facts of the case would show that the petitioner being desirous of establishing a new medical college, applied to respondent no.3/ Medical Assessment and Rating Board (hereinafter '*MARB*') for grant of approval for a new medical college with 150 seats for the Academic Year 2023-24.

3. The institution of the petitioner appears to have been inspected by *MARB* on 27.03.2023 and based on the assessors' report, certain deficiencies were noted. The petitioner was, thereafter, served with the provisional disapproval letter dated 11.04.2023.

4. The petitioner was called upon to furnish the desired information with respect to the points noted therein within a period of seven days from the date of receiving of the provisional disapproval letter. The petitioner claims to have submitted the response in terms of communication dated 22.04.2023, as according to the petitioner, the provisional disapproval letter was received only on 17.04.2023. The petitioner also claims to have sent the reply on the e-mail I.D. of the *MARB*.

5. In terms of the final disapproval letter dated 01.05.2023, the application of the petitioner came to be rejected mainly on the ground that certain deficiencies were noted which remained unanswered and in absence of any reply from the petitioner, the approval for setting up the medical college with 150 MBBS seats for the Academic Year 2023-24 cannot be granted.

6. On 02.05.2023, the petitioner sent an application to the President/Member, *MARB*, submitting therein that the clarification to the provisional disapproval letter dated 11.04.2023 was sent within seven days and therefore, arrangement for re-visitation of the assessors to the college campus was sought for.

7. Since the petitioner did not receive any response to the request made by it, therefore, on 14.06.2023, the first appeal under Section 28(5) of the NMC Act, 2019 was filed before the Chairman, National Medical Commission (hereinafter '*NMC*').

8. The first appeal of the petitioner came to be rejected *vide* order dated 30.06.2023, on the ground that under Section 28(5) of the NMC Act, 2019 the appeal should have been filed within 15 days from the date of order of disapproval. Accordingly, the petitioner filed the second appeal under Section 28(6) of the NMC Act, 2019. The said appeal was also rejected *vide* impugned order dated 21.07.2023, therefore, the petitioner has approached this court in the instant writ petition.

9. After the issuance of notice, the respondents have filed their counter affidavit.

10. Besides other grounds, the respondents have taken a categorical stand that the response to the provisional disapproval letter dated 11.04.2023 has not been received by them.

11. In addition, they have submitted that in accordance with Regulation 8 of the Establishment of Medical College Regulations, 1999 (hereinafter '*Regulations, 1999*'), as amended and published in the Official Gazette dated 18.03.2016, if it is observed during the inspection/assessment of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is less than 50% (45% in North East, Hilly terrain etc.), compliance of rectification of deficiencies from such an institute will not be considered for issue of Letter of Permission (hereinafter '*LOP*')/renewal of permission in that Academic Year.

12. The respondents, therefore, have taken a categorical stand that it is too late in the day to direct for inspection of the petitioner mainly for two reasons; (i) the petitioner did not give any response to the provisional disapproval letter within the stipulated time, and (ii) in view of the provisions laid down under Regulation 8 of the Regulations, 1999.

13. Learned senior counsel appearing on behalf of the petitioner opposes the submissions advanced by learned counsel for the respondents and while taking this court through the rejoinder, indicates that on 07.02.2023, the inspection was carried out with respect to *DRIEMS, Institute of Health Sciences and Hospital, Kairapari at Odisha*. On the basis of the inspection so carried out, in terms of the communication dated 10.03.2023, notice was given to the said institution for rectification, where the teaching faculty and residential doctors were found to be 100% deficient. He, then points out that the said institution thereafter was granted approval on 01.06.2023.

14. Similarly, while showing another example of *JMN Medical College at West Bengal*, he points out that in that case also, the teaching faculty and shortage of residential doctors was found to be in 100% deficit. Despite that, the Show Cause Notice was given to the said institution and upon rectification of the deficiencies, the LOP was issued on 17.06.2023. It is, therefore submitted that MARB, which is a statutory authority under the NMC Act, 2019 cannot be allowed to act arbitrarily, unreasonably and to the disadvantage of genuine institutions.

15. Learned senior counsel has also placed on record a copy of a list indicating as many as 52 institutions which have been granted LOPs between 20.01.2023 to 21.07.2023. He, therefore, submits that under the facts of the present case, when the petitioner is pleading before the MARB

for the re-inspection of its institution on the basis of rectification submitted well within time, the MARB is completely unjustified in not acceding to the request made by the petitioner.

16. Learned senior counsel has also placed reliance on the decisions of this court in the cases of *Index Medical College Hospital & Research Centre v. Union of India*¹, *Sri Lakshmi Narayana Institute of Medical Sciences v. Union of India*², *M.K. Shah Medical College & Research Centre v. Union of India*³, *Santosh Trust v. National Medical Commission*⁴, *Dhanalakshmi Srinivasan Medical College & Hospital v. Union of India*⁵, and *Sukh Sagar Medical College and Hospital v. National Medical Commission Medical Assessment and Rating Board MARB & Anr.*⁶ and a decision of the Division Bench of the High Court of Madhya Pradesh in the case of *Index Medical College Hospital & Research Centre v. Union of India*⁷.

17. I have considered the submissions made by learned counsel for the parties and have perused the record.

18. The stand taken by NMC is shocking. Once the NMC in its counter affidavit takes a categorical stand that in view of the position laid down in the extant Regulations, the institutions which are deficient to a certain level are not entitled to be re-inspected, the same principles have to be applied uniformly to all institutions. If, for any reason, there was departure from the application of the Regulations, 1999, it must have been fairly pointed out.

¹ W.P.(C) 4856/2019

² 2022 SCC OnLine Del 248

³ (2022) 2 HCC (Del) 325

⁴ 2022 SCC OnLine Del 749

⁵ 2022 SCC OnLine Del 3701

⁶ W.P.(C) 16617/2022

19. An apex body like NMC is not expected to assess different institutions on different yardsticks, based on grounds that seem wholly arbitrary. In the instant case, when NMC had taken a stand in its counter affidavit that in view of the Regulation position as referred to hereinabove, the notice for rectification of deficiency was not required, NMC was expected to have placed on record, the information with respect to the notices which have been issued to the other institutions having the same or higher level of deficiency.

20. The courts normally accord weightage to the stand or averments made by the statutory authorities. The fact that this court seems to have been misled due to the lack of disclosure of information by NMC shows that the NMC is completely lacking in its *bonafide* in taking a stand before this court. The same requires to be dealt with appropriately.

21. The action against the NMC officials is deferred for the time being, subject to further hearing. However, taking into consideration the facts in the instant case, this court, at this stage, finds it necessary to pass interim orders.

22. The petitioner in its communication dated 22.04.2023 (disputed communication) claims to have specifically replied to each deficiency pointed out in the provisional disapproval letter. Notwithstanding the fact regarding whether such communication was received by the MARB or otherwise, the petitioner on 02.05.2023, categorically submitted before the MARB that it had already filed the reply, giving point-wise clarification to the deficiencies. The communication dated 02.05.2023 reads as under:-

*“Sir,
You have directed us to submit the clarifications as to the Deficiencies mentioned in your letter date 11/04/2023 within 7 days of receipt of the*

⁷ 2013 SCC OnLine MP 7422

letter. we would like to submit to your good self that we did not receive any e-mail on the 11th or 13th of April 2023. Whereas we received your letter by post on the 18/04/2023. (We will enclose the cover of the speed post for your perusal) We have submitted the point-wise clarification, on 24/04/2023, by e-mail for the same within 7 days from the receipt of the letter. It may kindly be noted that our response is well within the stipulated time-schedule of 7 days. Further, you may please observe from the point-wise analysis submitted to you, that we have completed the construction of building structures, Labs and Library & appointed the Faculty, Resident doctors, Staff Nurses, Para-medical staff etc. and made the hospital Fully functional, besides providing Instruments, Equipments and Clinical Material and equipped with other infrastructural facilities as per the Norms to start the Medical College from the present academic year of 2023-24. As such we request you to arrange for re-visit of the Assessor to the College campus again on any date to review their decision.”

23. The petitioner then filed its first appeal and therein, the petitioner again reiterated its stand that the reply to the provisional disapproval letter was sent within time. The first appeal also came to be rejected *vide* order dated 30.06.2023 without considering the said aspect, only on the ground that the appeal was filed after 15 days from the date of receipt of the disapproval order.

24. The averments made in the first appeal dated 14.06.2023 read as under:-

"Respected Sir,

This letter is in continuation to our gentle reminder letter dated 10/06/2023 for reinspection of New Medical College namely Nova Institute of Medical Sciences & Research Centre, Abdullapurmet(M),Telangana under the Kaloji Narayana Rao University of Health Sciences, Warangal with 150 seats U/S 26(1)(a)(b) and 28(1)(2) And Section 61(2) of the NMC Act 2019 for the academic Year 2023-24.

We have already submitted the explanation to your recent letter dated 01/05/2023 mentioning the reply to your letter bearing no. NMC/UG/2023- 24/000046/018375, Dt.11/04/2023. (Speed post No.901-87- received on 17 /04/23.). We have submitted the point-wise clarification, on 24/04/2023, by e-mail for the same within 7 days from the receipt of the letter. It may kindly be noted that our response is well within the stipulated time-schedule of 7 days.

A gentle request to you to note that we have received the Show Cause Notice on the 18th of April 2023 by speed post, and the proof of which is attached herewith, and the reply was sent to you on the 24th April 2023 which is within the stipulated time of 1 week, the proof of this too is attached herewith for your perusal.

Further, you may please observe from the point- wise analysis submitted to you, that we have completed the construction of building structures, Labs and Library & appointed the Faculty, Resident doctors, Staff Nurses, Paramedical staff etc. and made the hospital Fully functional, besides providing Instruments, Equipment and Clinical Material and equipped with other infrastructural facilities as per the Norms to start the Medical College from the present academic year of 2023-24. As such we request you to arrange for revisit of the Assessor to the College campus again on any date to review their decision.

We further request you to consider our appeal and arrange for a reinspection and give us an opportunity to present our case in front of your good self for reinspection. We are also attaching some of the pictures of the labs and hospital for your perusal”

25. The petitioner, yet again in its second appeal, has explained the entire sequence of events and has pointed out that the point-wise explanation to the deficiencies was sent within time.

26. It appears that even the second appeal has been rejected only on the ground that the reply was not received in time and the deficiencies in infrastructure and clinical material and faculty were found to be 100%, therefore, no interference was called for in light of Regulation 8 of the Regulations, 1999.

27. It is thus, seen that in the instant case even if the reply was not submitted within seven days, the petitioner immediately thereafter had submitted the reply which has undisputedly been received by the respondents.

28. The respondents have taken the stand that after seven days had lapsed, they were not under an obligation to consider such a reply. If that be so, there was no reason to direct for re-inspection of the institutions mentioned

above in the month of January and February when the Regulation position exists that in case of certain levels of deficiency, no rectification opportunity is to be provided to the institutions. Since the stand of the respondents remains inconsistent at various stages, it is seen that in all fairness, under the facts of the present case, the respondents could have conducted the inspection of the petitioner-institution, so as to examine the veracity of the stand taken by the petitioner.

29. It is not the case of the respondents that even in the month of May, they did not direct for any rectification/inspection. According to the respondents' own statement, the inspections were carried out at least upto 22.05.2023 and rectifications were allowed upto 22.06.2023. It is thus seen that the action of the respondents in the instant case is found to be arbitrary and discriminatory.

30. There is no prescribed time-schedule for the last date to grant approval for the Academic Year 2023-2024. The application for permission was timely filed by the petitioner. The provision of seven days' time for rectification of deficiencies is not sacrosanct. When the petitioner claims to have sent the same, no prejudice would have been caused to either party had the reply been considered appropriately.

31. The NMC is entrusted with the functions and duties conferred under the provisions of the NMC Act, 2019. The NMC and all autonomous Boards constituted under the NMC Act, 2019 discharge public function. The action of statutory bodies must conform to the norms and standards stipulated therein and are to be uniformly made applicable to all the institutions. Their action must necessarily be reasonable and free from any prejudice.

32. There was no reason not to act upon the rectification/clarification made by the petitioner even on 02.05.2023. Had it been acted upon promptly, the correctness of the stand taken by the petitioner would have been examined. The outright rejection or non-acceptance of the rectification letter of the petitioner is found to be incorrect on the part of the respondents.

33. It is to be noted that in the case of *Sri Lakshmi Narayana Institute of Medical Sciences (supra)*, this court in paragraph nos.16 and 17 had directed the NMC to reconsider the matter in light of the observations made in that order and to pass a fresh order within four days from the date of passing of the order.

34. A similar view has been taken by this court in the case of *Santosh Trust (supra)*. Paragraph nos.51 to 54 of the said decision read as under:-

"51. During the course of the arguments, a grievance was raised by the petitioners that various other medical colleges, which too had been designated as covid hospitals in the State of Uttar Pradesh, were, unlike the petitioners, granted permission for increase in seats by either taking into account the occupancy of the covid 19 beds, or by altogether ignoring the deficiency in bed occupancy. The respondents were therefore, directed to furnish details in respect of these colleges, which details now form part of the record.

52. The details of similarly placed Covid dedicated hospitals, placed on record by the respondents, undoubtedly support the petitioners' plea that many of the colleges/hospitals which were similarly placed as the petitioners, were granted permission for increase in the seats, despite suffering from a similar deficiency in clinical material on account of the Covid. For the sake of brevity, and to avoid any likely prejudice to those colleges, a detailed reference thereto is being deliberately avoided. I, therefore, find merit in the petitioners' plea that the respondents have acted in a discriminatory manner by ignoring the similar deficiencies in clinical material in respect of various similarly placed Covid dedicated hospitals/colleges, while holding the petitioners ineligible on this very ground.

53. I, cannot also lose sight of the fact that on account of the lack of adequate number of medical institutions providing quality affordable education to cater to the needs of the aspiring students, they are often compelled to make the choice of leaving behind their home country and

pursuing their studies abroad. This reality has especially become a cause of concern at a time when due to the conflict between Ukraine and Russia, several thousand Indian medical students, who had gone to pursue their medical education in the now war-hit Ukraine have been rescued and brought home, have also lost their seats in medical colleges. No doubt the respondents cannot be asked to lower the standards prescribed under the regulations however, simultaneously, in a situation like the present, when it is found that an institute like the petitioner which has been running for the last more than 20 years is not lacking in any infrastructure and has also rectified the deficiencies which were found at the time of initial inspections, that too when the said deficiencies were only on account of the Covid pandemic, it would also be against public interest to deny permission to the petitioner to increase the seats. At a time when the ratio of medical profession as vis-a-vis the population of the country is abysmally low, an increase in the number of PG and UG seats would certainly contribute to the bigger goal of strengthening the medical infrastructure of the country.

54. For the aforesaid reasons, the two impugned orders dated 20.01.2022, as also the order dated 25.01.2022, are unsustainable and are accordingly quashed. Keeping in view that there is no deficiency in the infrastructure of the petitioner institute, coupled with the fact that the deficiency in clinical material, found during the initial inspections, also stood rectified in the inspection held on 26-27.11.2021, this Court, instead of remanding the matter back to the respondents for a fresh inspection, is inclined to direct the respondents to grant permission to the petitioner institute on the basis of the said inspection report, and to increase the seats from 4 to 7 in MS (Obstetrics & Gynaecology), from 3 to 7 in MS (Orthopaedics), and from 100-150 in the MBBS course at the petitioner institute. These directions are being issued only in the light of these peculiar facts, and by taking into account the fact that the petitioner institute has already missed the first two rounds of counselling, and any further delay at this stage would prevent it from participating even in the upcoming Mop-Up and Online Stray Vacancy rounds of counselling. The petitioner is therefore, granted permission to participate in the remaining rounds of counselling with the increased seats as noted hereinabove, without any further inspections."

35. In the case of ***M.K. Shah Medical College & Research Centre*** (*supra*), this court in terms of paragraph no.49 directed as under:-

"49. For the aforesaid reasons, the writ petition is allowed and all the impugned communications dated 11-2-2022 and 15-2-2022 are quashed. Keeping in view that as per the inspection reports, no deficiency was found either in the infrastructure or the clinical material of the petitioner Institute, this Court, instead of remanding the matter back to the

respondents for issuance of a fresh order, is inclined to direct the respondents to forthwith issue the letters of permission to the petitioner Institute to commence the courses in MD (Respiratory Medicine), MD (Dermatology, Venereology and Leprosy) and MS (Orthopaedics) and to increase the seats in MD (General Medicine), MS (General Surgery), MS (Obstetrics and Gynaecology), MD (Paediatrics), MD (Psychiatry) and MD (Radio-Diagnosis) as per the petitioner's applications. However in the peculiar facts of this case, when the petitioner Institute has already missed the first two rounds of counselling of the NEET 2021-2022, and any further delay at this stage would prevent it from participating even in the remaining rounds of counselling, the petitioner is granted permission to participate in the remaining rounds of counselling for the seats, as prayed for by them, in all the nine PG disciplines."

36. In the case of ***Dhanalakshmi Srinivasan Medical College and Hospital (supra)***, this court in paragraph nos.52 and 53 directed as under:-

"52. Respondents are directed to permit Petitioner college to take admissions of 250 students in the ongoing counselling of NEET UG 2022 and for that purpose, Respondents shall forthwith issue necessary directions and intimate the order to competent authority/body of the Government of Tamil Nadu to add 250 seats in its seat matrix.

53. Before parting, it must be noted that to meet the rising need of more qualified doctors to serve country's population, augmentation of medical infrastructure is crucial, and hence, role of regulatory bodies like NMC is unquestionably significant. The authorisation procedure must indeed be strictly adhered to ensure that there is no decline in the quality of medical education. However, at the same time, deserving colleges must not be unfairly denied the opportunity to contribute in enhancing the strength of medical professionals. In the present case, NMC through its acts of omission and commission, has not only violated the norms laid down under relevant regulations, but also completely disregarded the legislative and policy decisions of the Government by issuance of afore-noted impugned orders. Although Mr. Singhdev has very ably assisted the Court, the attitude exhibited by NMC remains highly questionable. Instead of assisting the Court, the additional affidavit filed pursuant to directions of the Court has presented non-existent deficiencies, based on false and erroneous facts, in an attempt to deny Petitioner college, the relief it is entitled to, under law. NMC must not lose sight of its responsibility to

maintain accuracy of facts/information presented to the Court. Having regard to the circumstances noted above, Chairperson of NMC is directed to enquire into the circumstances that have resulted in filing of the additional affidavit with inaccurate facts, and take appropriate action."

37. In the case of ***Sukh Sagar Medical College and Hospital, Jabalpur and Anr. (supra)*** the following directions were issued by this court:-

"18. Prima facie, there appears to be considerable merit in the submissions of the learned senior counsel for the petitioner that the show-cause notice was issued on the basis of a non-existent ground. The grounds on which the rejection of application for renewal of permission is premised viz. one delivery (including normal and LSCs were performed on the date of assessment) is also misconceived as there is no norm or requirement under any statutory regulations providing for minimum number of deliveries. It is not in dispute that all other deficiencies pointed out in the show-cause notice are within the relaxable limit. This being the position, I am of the view that the petitioners have made out a strong prima facie case for grant of ad interim relief.

19. At this stage it may be apposite to note that the counselling is already under process and the mop up round for the State Counselling is scheduled from 6th December, 2022 to 12th December, 2022. Therefore, there is an urgency involved. If despite having a prima facie case the petitioner is deprived of medical student for the current academic year, not only the petitioner but the interest of the public at large will suffer. Upon a finding of the prima facie case in favour of the petitioner, an interim order otherwise ought to follow. The balance of convenience is also in favour of the petitioner.

20. In view of the above, the petitioner/college, by way of this ad interim order, is permitted to participate in the on-going counselling process for the year 2022-23 and the respondents are accordingly directed to include the name of the petitioner/college with 150 MBBS admissions in the total seat matrix for the remaining counselling for the present academic session 2022-23.

21. It is made clear that this ad interim order in favour of the petitioner/college and hospital is subject to outcome of the writ petition and the parties are directed to inform the prospective candidates accordingly."

38. Therefore, subject to the outcome of this petition, at this stage, it is necessary to direct for examination of the rectification/clarification submitted by the petitioner by conducting an inspection of the petitioner-

institution, physically or otherwise, within seven working days from today. The infrastructure as on 22.06.2023 i.e. the last date for consideration of rectifications; will have to be examined as per the extant Regulations; meaning thereby, that any facility or infrastructure created after 22.06.2023 shall not be taken into consideration.

39. The MARB on the basis of the inspection is at liberty to take appropriate steps in accordance with law, either to grant the permission or to reject the same.

40. List on 20th September, 2023.

41. *Dasti.*

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 17, 2023

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