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

Date of Decision:- 07.04.2022

+ W.P.(C) 5353/2022 & CM APPL. 16016/2022 -Stay.

RAMA MEDICAL COLLEGE HOSPITAL AND RESEARCH
CENTRE HAPUR Petitioner

Through Mr. Vikas Singh, Sr. Adv. with Mr. Abdhesh Chaudhary, Mr. Meenesh Dubey, Mr. Amit Jaiswal, Ms. Manisha Suri, Ms. Deepika Kalia, Mr. Nishi Kant Singh and Ms. Geetanjali Setia, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. Rakesh Kumar, CGSC for R-1 with Mr. Sunil Kumar, Adv.
Mr. T. Singhdev with Mr. Bhanu Gulati, Ms. Michelle Biakthansangi Das, Mr. Abhijit Chakravarty and Ms. Sumangla Swami, Advs. for respondent no. 2/NMC

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner has approached this Court assailing the order dated 17.03.2022 passed by the respondent no. 1 rejecting its second appeal against the respondent no.2's order dated 14.02.2022 dismissing the petitioner's first appeal against the order dated 16.11.2021 passed by the Medical Assessment and Ratings Board (MARB), permitting only increase of 50 seats for the MBBS course, as against the petitioner's application seeking increase of 100 seats for the MBBS course.

2. The petitioner is a private, unaided medical college being run under the aegis of Rama Educational Society being represented through its authorized representative, one Mr. Akash Kumar. The respondent no.1 is the Union of India through the Ministry of Health and Family Welfare and the respondent no.2/NMC, the main contesting respondent, has been constituted under the National Medical Commission Act, 2019 (hereinafter referred to as the 'NMC Act'), and was set up in place of the erstwhile Medical Council of India (hereinafter referred to as 'MCI') with an aim to *inter alia* improve access to quality and affordable medical education, ensure availability of adequate and high-quality medical professionals in all parts of the country, and objectively assess the medical institutions periodically in a transparent manner. Respondent no.3 is the authority entrusted to conduct counselling for the UP NEET-UG 2021. The respondent no.3 conducts counselling for 85% quota seats in the state medical colleges.
3. Mr. Vikas Singh, learned senior counsel for the petitioner, submits that the Letter of Intent dated 16.11.2021, vide which the permission was granted to the petitioner to increase MBBS seats from 150 to 200 only, as against its application for 250 seats, has been passed without assigning any reason as to why the petitioner's request for enhancement of seats to 250 was not being accepted and that too without referring to any deficiency in the Assessors' report. He, submits, that without prejudice to the petitioner's plea that the respondents could not include any new reasons in the appellate orders, other than those mentioned in the order dated 16.11.2021 passed by

the MARB, a perusal of the impugned orders, passed in the petitioner's first and second appeal, shows that the impugned decisions to permit only increase of 50 seats is based on three purported deficiencies, which he contends are in fact non-existent.

4. He submits that out of the three deficiencies, two deficiencies pertain to shortfall of 1.84% faculty in teaching staff and 3.83% in the resident doctors. Insofar, as the third deficiency, the same relates to the purported shortfall in the number of minor OTs on the premise that the petitioner has only two minor OTs *vis-a-vis* the requirement of minimum five minor OTs. Once the Assessors, at the time of inspection, were of the view that for seeking increase of MBBS seats from 150 to 250, only two minor OTs were required, the petitioner despite having more minor OTs, had shown them only the two minor OTs, as per their directions. He further contends that even the finding in the inspection report that there was a deficiency in the faculty of teaching staff and resident doctors, was taken without examining the leave applications and other documents, which the petitioner had furnished during the inspection proceedings.
5. By placing reliance on the proviso to section 28(3) of the National Medical Council Act, 2019 (the Act), he contends that in case the respondents were of the opinion that there was any deficiency as per the assessors report, they were required to grant an opportunity to the petitioner to rectify the purported deficiencies found by the MARB, which they admittedly failed to do.
6. Mr. Singh, submits, that all the alleged three deficiencies are non-existent, as the petitioner has the necessary number of faculty

members as also the requisite number of minor OTs. In view of this position, the Principal of the petitioner has already filed an undertakings before this Court, clearly stating that there is neither any deficiency in the teaching faculty nor in the number of minor OTs required for grant of increase in MBBS seats to 250. He, therefore, prays that the respondents, having blatantly violated the provisions of Section 28(3) of the Act as also the principles of natural justice, may be directed to carry out a fresh inspection of the petitioner institute, to ascertain the aforesaid two aspects, and in the meanwhile, the petitioner be granted permission to participate in the ongoing round of counselling for the Academic Year 2021-2022.

7. Per contra, Mr.T.Singhdev, appearing on behalf of the respondent no. 2, vehemently opposes the petition and while conceding that even though no reasons were provided in the Letter of Intent dated 16.11.2021 as to why an increase of only 50 seats was being permitted, as against the petitioner's application for increase of 100 seats, he submits that both the first appellate order dated 14.02.2022 and the second appellate order dated 17.03.2022, have clearly referred to the three deficiencies, in respect of the shortfall in teaching faculty, resident doctors and minor OTs. He contends that as per the 'Minimum Requirements For Annual MBBS Admissions Regulations', 2020, the petitioner was required to have five minor OTs in order to be granted permission to increase seats to 250, but as per the assessors report it has only two minor OTs. He thus contends that the deficiencies recorded in the impugned orders are based on the assessor's report, pursuant to the inspections having been conducted

on 08.10.2021 and 09.10.2021. As these deficiencies could not be brushed aside in larger public interest and the MARB was constrained to, vide its letter of intent dated 16.11.2021, permit increase of only 50 MBBS seats as opposed to the 100 MBBS seats, as sought by the petitioner medical college for the academic year 2021-22.

8. He, further, submits that even otherwise, the petitioner, having accepted the Letter of Intent for increase of 50 MBBS seats, by furnishing its undertaking on 25.11.2021, is now estopped from challenging the decision of the respondent. In support of his plea, he places reliance on regulation 8(5)(i) of the Establishment of Medical College Regulation, 1999, as amended in June 2019, which provides that permission for reduced intake than applied for can only be granted upon the furnishing of an undertaking by the applicant medical college, to the effect that the reduced intake is acceptable to it. He therefore prays that the writ petition be dismissed.
9. In the light of the submissions of learned counsel for the parties, what emerges is that even though the respondents have chosen to only partially accept the Assessors' report dated 8/9.10.2021, as per which the petitioner college had the adequate infrastructure to impart education to 250 MBBS students, and have therefore granted permission to the petitioner for increasing its intake only by 50 seats, on account of certain deficiencies which it is claimed is based on the deficiencies recorded in the assessor's report, it has chosen to simply ignore the requirement of granting any opportunity to the petitioner to deal with the deficiency of faculty as per the mandate of the proviso to Section 28(3) of the Act.

10. It also emerges from the record that even though the petitioner had obtained an essentiality certificate from the state for increase of 100 seats in November 2020, the respondent issued the first order for increase of 50 seats only on 16.11.2021 i.e. after one year. Not only this, the respondents also delayed the disposal of the petitioner's two statutory appeals, thereby compelling the petitioner to approach this Court to seek directions for expeditious disposal of its appeal so as to enable the petitioner to participate in the ongoing counselling.

11. In my view, this failure of respondents to comply with the specific provision in Section 28(3) of the Act in itself *prima facie* shows that the respondents have chosen to act in an arbitrary manner and have failed to even comply with the principles of natural justice. On account of the delay on the part of the respondents in passing the first order and disposing of its appeals, the petitioner has already lost out on the initial rounds of counselling, and therefore any further delay in adjudication of the matter is likely to cause grave prejudice not only to the petitioner but also to the aspiring students. The petitioner's stand before this Court is that the finding in the assessors reports that there was a shortfall in faculty members, was given without examining the relevant records. It has been further urged that there was no deficiency qua the requirement of minor OTs, which plea of the petitioner is *prima facie* borne out from the Assessors' report itself. The petitioner has already filed undertakings to this effect before this Court. However, the respondent's apprehensions that the petitioner might still contain certain deficiencies, which would be against the interest of medical students, cannot just be brushed aside

and rejected. It will therefore, be in the interest of justice to permit the respondent to once again inspect the petitioner institute to determine if the deficiency regarding faculty and minor OTs, still exists and in the meanwhile permit the petitioner to participate in the remaining rounds of counselling for the seats as sought for.

12. Therefore, while permitting the petitioner to participate in the remaining rounds of the ongoing counselling, the respondent is granted four weeks' time from today to verify regarding the deficiency in minor OT as also the faculty members. A copy of the inspection report will be placed on record within a week from the date of inspection. Response thereto, if any, be filed by the petitioner before the next date.

13. Needless to state, this interim permission to the petitioner would be subject to outcome of the present petition. The petitioner will therefore issue a notice on its web portal informing the general public that this interim permission granted to the petitioner for participating in the remaining rounds of counselling, would subject to the outcome of the present petition. It is further made clear that this order shall not create any equity in favour of the petitioner.

14. List on 18.05.2022.

(REKHA PALLI)
JUDGE

APRIL 7, 2022

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