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

**Reserved on: 28.03.2022**

**Date of decision: 01.04.2022**

+ **W.P.(C) 3271/2022 & CM APPL. 9518/2022 (stay)**

**DR. M.K. SHAH MEDICAL COLLEGE AND RESEARCH CENTRE.** ..... Petitioner

Through Mr. Maninder Singh, Senior Advocate with Mr. Mahesh Aggarwal, Mr. Ankit Banati, Mr. Shravan Niranjana and Prabhas Bajaj, Advocates

versus

**UNION OF INDIA & ANR.** ..... Respondents

Through Mr. Harish V Shankar, CGSC with Ms. S. Bushra Kazi & Mr. Srish Kumar Mishra, Advocates for UOI

Mr. Vikas Singh, Senior Advocate with Mr. T. Singhdev, Mr. Bhanu Gulati & Ms. Michelle B. Das, Advocates for R-2/NMC

**CORAM:**

**HON'BLE MS. JUSTICE REKHA PALLI**

**REKHA PALLI, J**

**JUDGMENT**

1. The present petition under Article 226 of the Constitution of India assails nine communications dated 11.02.2022 alongwith the amendments thereto issued on 15.02.2022 by the Medical Assessment and Rating Board of the National Medical Commission. Vide three of these communications, the petitioner's applications for grant of permission for commencing PG disciplines in three disciplines i.e. MD (Orthopaedics), MD (Dermatology, Venereology & Leprosy) and MD

(Respiratory Medicine) disciplines have been rejected. Vide the other six communications, the petitioner's applications for running MD (Obstetrics & Gynaecology), MD (Radio-Diagnosis), MD (Psychiatry), MD (Paediatrics), MS (General Surgery), and MD (General Medicine), MD (Respiratory Medicine) and MD (Dermatology, Venereology & Leprosy) disciplines have been partially allowed.

2. The petitioner, Dr. M.K. Shah Medical College and Research Centre, is a medical educational and research institute, offering MBBS course since 29.05.2017. The respondent no.1 is Union of India (*hereinafter referred to as 'UOI'*) through the Ministry of Health and Family Welfare. The respondent no.2/Medical Assessment and Rating Board (*hereinafter referred to as 'MARB'*) is an autonomous board set up by the National Medical Council (*hereinafter referred to as 'NMC'*) for the purpose of assessing and rating medical institutions to ensure compliance with the standards laid down by the Under Graduate ('UG') as well as the Post Graduate ('PG') Medical Education Boards constituted as per the regulations under the NMC Act, 2019. Since it is mainly the respondent no.2 that has defended the impugned orders, for the sake of convenience, the respondent no.2 will hereinafter be referred to as the respondent.
3. Pursuant to the 'Letter of Permission' issued by the Ministry of Health and Family Welfare, Government of India on 29.05.2017 for establishment of a new medical college with an annual intake of 150 MBBS students, the petitioner commenced its 1<sup>st</sup> batch of MBBS course in the academic year 2017-18. The petitioner was thereafter, granted renewals for conducting the MBBS course from time to time, with the latest one having been granted on 08.12.2021.

4. On 04.04.2019, the Medical Council of India (*hereinafter referred to as the 'MCI'*) notified the '*Opening of a New or Higher Course of Study or Training (including Post-graduate course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Post-graduate Course of Study or Training) (Amendment) Regulations (hereinafter referred to as the 'MCI Regulations'), 2019*'. These regulations as on date, do not require an institute to obtain essentiality certificates from the concerned State Governments to start a new medical course. The said amended regulations also clearly say that an institute having permission for running an MBBS course, does not require any formal permission for starting a postgraduate course or for increase of annual intake of postgraduate course.
5. On 13.03.2020, the respondent no.1 issued a public notice no.23(1)(10A)/2019-Med/98730, inviting applications for increase of seats/commencement of PG medical disciplines by medical educational institutions in the academic year 2021-2022. Following this, a further notice was issued on 22.07.2020, whereby, institutions which did not have recognition were also granted liberty to submit their applications.
6. During this period, when the entire world was reeling under the effects of the Covid 19 pandemic, the petitioner hospital was on 16.05.2020, declared as a designated Covid hospital by the State Government, for the period between May-2020 to September-2020. The petitioner was once again designated as a designated Covid hospital for the periods between April-2021 to August-2021. Consequently, like all other Covid dedicated hospitals, it was also not permitted to undertake routine work and was even required to postpone pre-scheduled

surgeries so as to accommodate the large number of patients suffering from Covid.

7. Pursuant to these public notices, the petitioner institute on 29.08.2020 submitted applications seeking permission to admit students in 13 PG disciplines. The respondent no.2, through its assessors, carried out inspections in respect of the petitioner's application for only two of the disciplines i.e. for eight seats in MD (Pathology) and five seats in MD (Microbiology). Based on these assessments, the petitioner was initially issued disapproval letters for both the disciplines, but were subsequently granted permission for two seats in MD (Pathology) and four seats in MD (Microbiology). However, no inspection was carried out in respect of other eleven disciplines and instead the petitioner was issued letters of disapproval for the remaining eleven disciplines on 29.11.2021/30.11.2021. While the disapproval letter dated 29.11.2021 for MD(Anaesthesiology) was issued on the ground that the petitioner did not have a valid essentiality certificate, the disapproval letters dated 30.11.2021 in respect of MD(Obstetrics & Gynaecology), MD(Dermatology, Venereology & Leprosy), MD (Tuberculosis and Respiratory Disease), MD (Radio-Diagnosis), MD (Psychiatry), MD (Paediatrics), MD(Otorhinolaryngology), MS (General Surgery), MS (Orthopaedics) and MD (General Medicine) were issued on the ground that the existing PG Courses of the petitioner were yet to be recognized.
8. Being aggrieved, the petitioner approached the respondent no.2 on 03.12.2021 seeking review of the disapproval letters dated 29.11.2021 and 30.11.2021 in respect of all the eleven PG disciplines. However, since it received no reply thereto, the petitioner on 01.01.2022

preferred appeals before the Appellate Committee, which the respondent no.1, vide its letter dated 10.01.2022, refused to entertain on the ground that its earlier review applications dated 03.12.2021 were still pending. At this stage, it may also be noted that, in the meanwhile, based on assessments carried out on 29<sup>th</sup> & 30.11.2021, the petitioner, on 08.12.2021 was granted fourth renewal for its fifth batch of MBBS course.

9. Being aggrieved the petitioner approached this Court on 17.01.2022 by way of **W.P.(C)1106/2022**, wherein it sought quashing of the disapproval letters dated 29.11.2021 and 30.11.2021 issued by the respondent no.2 in respect of the 11 PG disciplines.
10. When the matter was taken up for preliminary consideration on 18.01.2022, this Court after finding *prima facie* merit in the petitioner's plea that both the grounds of rejection i.e. requirement of Essentiality Certificate and non-recognition of PG disciplines were erroneous, declined to accept the respondents' plea to relegate the petitioner to the remedy of statutory appeal under Section 28(5) and 28(6) of the National Medical Commission Act, 2019 (hereinafter referred to as the 'NMC Act'). The Court, therefore, keeping in view the limited time available for the upcoming PG counselling, granted time to the learned counsel for the respondent no.2 to obtain instructions. The relevant extract of the order dated 18.01.2022 reads as under:

*“4. The issue of the petitioner being relegated to pursue a statutory alternative remedy would essentially arise firstly in a situation where the respondents are able to satisfy the Court at the preliminary stage that the impugned decision would be sustainable on*



*jurisdictional grounds and in the sense of not being ex facie in violation of the statutory position would apply and govern. The Court also bears in mind the undisputed fact that the counselling process has already commenced.*

*5. Since the Court, prima facie, finds substance in the submissions addressed on behalf of the petitioner, the Court is of the view that before the petitioner is forced to pursue the alternative remedy, if at all, the respondents would have to establish at least at the threshold level that there would be a substantial dispute with respect to the legal position as articulated on behalf of the petitioner.”*

11. On the next date i.e. 24.01.2022, learned counsel for the respondent no.2 submitted before this Court that the letters dated 30.11.2021, vide which the respondents had refused to grant permission to the petitioner to start 10 PG disciplines on the ground that they were not yet recognized, was indeed in contravention to the applicable regulations. It was further, submitted that the reasons for rejecting the petitioner's applications for starting those ten disciplines were the same as mentioned in the disapproval letter dated 29.11.2021 qua MD(Anaesthesiology). The relevant extract of the order dated 24.01.2022 passed in W.P.(C)1106/2022 reads as under:

*“.....3. Today Mr.Singhdev, ld. Counsel for Respondent No. 2, while conceding that the reason mentioned in the impugned communication dt. 30.11.2021 are contrary to the present regulations, submits, that in fact, the reason for rejection of the Petitioner's request for commencement of the 10 PG medical disciplines referred to in the said communication are, the same as those contained in the communication dt. 29.11.2021 i.e. want of Essentiality Certificate...”*

12. Pursuant to this order dated 24.01.2022, the respondent no.2 filed a short affidavit on 28.01.2022, wherein it was stated that since it had granted approval to some other institutes for starting PG disciplines without the Essentiality Certificate, the letters of disapproval dated 29.11.2021 and 30.11.2021 having been incorrectly issued, stood recalled. In light of this stand then taken by the respondent no.2, the Court vide its order dated 01.02.2022 directed the respondent no.2 to carry out within one week the necessary inspections for deciding the petitioner's applications for starting the eleven PG disciplines by passing appropriate orders, so as to enable the petitioner to participate in the ongoing counselling process at least from 10.02.2022. The relevant extract of the said order, reads as under:

*“4. In the light of the aforesaid, learned senior counsel for the petitioner, submits, that once it is evident that the impugned communications were issued by the respondents in blatant disregard of this Court's decision in **Index Medical** (Supra), the respondents be directed to carry out the inspection and pass the consequential order within one week so as to enable the petitioner to participate in the ongoing counselling for the PG disciplines at least from 10.02.2022.*

*5. In view of the admitted position that the impugned communications were erroneously issued, and the petitioner's request was rejected on a wholly incorrect premise, it would be unjust to deny the petitioner an opportunity to participate in the counselling. The respondent no.2 is therefore directed to carry out the inspection of the petitioner institute at the earliest and pass an appropriate order on or before 10.02.2022.”*

13. Consequently, on 03.02.2022, 04.02.2022, and 05.02.2022, the assessors appointed by the respondent no. 2 carried out inspections in respect of all the eleven PG disciplines. While the writ petition i.e. W.P.(C)1106/2022 was still pending, the respondent no.2 issued the aforesaid communications on 11.02.2022, whereby the petitioner's applications for two of the PG disciplines i.e. MD (Otorhinolaryngology), MD (Anaesthesiology) were accepted while applications for the other six PG disciplines i.e. MD (General Medicine), MS (General Surgery), MS (Obstetrics & Gynaecology), MD (Paediatrics), MD (Psychiatry) and MD (Radio-Diagnosis) were only partially accepted. The applications in respect of the remaining three MD (Respiratory Medicine), MD (Dermatology, Venereology & Leprosy) & MS (Orthopaedics) disciplines were altogether rejected. For the sake of convenience, the same are being noted hereinbelow in a tabular form:-

<i>S. N O.</i>	<i>PG Course</i>	<i>Seats Applied</i>	<i>Seats Approved</i>
	<i>MD (Respiratory Medicine)</i>	<i>3</i>	<i>0 (Disapproved)</i>
	<i>MD (Dermatology, Venereology &amp; Leprosy)</i>	<i>3</i>	<i>0 (Disapproved)</i>
	<i>MS (Orthopaedics)</i>	<i>6</i>	<i>0 (Disapproved)</i>
	<i>MD (General Medicine)</i>	<i>10</i>	<i>5</i>
	<i>MS (General Surgery)</i>	<i>9</i>	<i>5</i>
	<i>MS (Obstetrics &amp; Gynaecology)</i>	<i>8</i>	<i>3</i>
	<i>MD (Paediatrics)</i>	<i>5</i>	<i>3</i>
	<i>MD (Psychiatry)</i>	<i>3</i>	<i>2</i>
	<i>MD (Radio-Diagnosis)</i>	<i>5</i>	<i>3</i>
	<i>MD (Otorhinolaryngology)</i>	<i>3</i>	<i>3 (Approved)</i>
	<i>MD (Anaesthesiology)</i>	<i>8</i>	<i>8 (Approved)</i>



14. Pursuant to the aforesaid communications, the petitioner on 15.02.2022, without prejudice to its rights and contentions, submitted the requisite Bank Guarantees along with Letters of Undertaking in respect of the 8 approved PG disciplines being MD (Obstetrics & Gynaecology), MD (Radio-Diagnosis), MD (Psychiatry), MD (Paediatrics), MD (Otorhinolaryngology), MD (Anaesthesiology), MS (General Surgery), and MD (General Medicine), for issuance of letter of permission for the number of seats approved in each discipline. However, on the very same day, the respondent no.2 on 15.02.2022 sought to revise the Letters of Intent as also the disapproval letters by incorporating further reasons for their decisions.
15. It is, in these circumstances, that the petitioner has approached this Court by way of the present petition, seeking quashing of the communications dated 11.02.2022 and 15.02.2022 and sought consequential permission for running the nine PG disciplines for the seats as per the applications submitted by them.
16. In support of the petition, learned senior counsel for the petitioner firstly submits that in the light of the admitted position that as per the inspections carried out on 03.02.2022, 04.02.2022, 05.02.2022, the petitioner institute fulfilled all infrastructural, clinical and faculty requirements in terms of the criteria laid down by the Regulations, it was entitled to be granted permission for commencing all the PG disciplines, and for increasing the number of seats, as sought in their applications. It is his contention that once the assessors had found no deficiency at the time of carrying out inspection of the petitioner institute for grant of permission to them to commence the PG disciplines as per their applications, the respondents could not ignore

these findings in the inspection reports and invent reasons to reject the petitioner's applications. When all the assessors were satisfied with the infrastructure and faculty of the petitioner, the respondent could neither issue the disapproval letters nor could it, on its own, reduce the number of seats while granting recognition for some of the PG disciplines, and that too without assigning any cogent reasons. In support of his plea that the report of the assessor is sacrosanct and must be given due credence, he places reliance on the decisions of the Apex Court in *Medical Council of India v. Vedanta Institute of Academic Excellence Pvt. Ltd. (2018) 7 SCC 225* and *Manohar Lal Sharma v. Medical Council of India (2013) 10 SCC 60*.

17. He submits that the respondent's action of overlooking the assessor's reports and deciding to reject the petitioner's applications, that too without issuing any notice or granting any opportunity of hearing to the petitioner, is wholly illegal. He submits, that if any deficiencies had been found or noted in the assessor's report, the petitioner would have been entitled to a hearing as per the procedure. However, since there were evidently no deficiencies recorded in any of the assessor's reports, the respondents never granted an opportunity of hearing and, therefore, cannot now defend the impugned orders by simply urging that the petitioner did not meet the laid down criteria.

18. He, further, submits that the action of the respondent clearly shows that it is trying to somehow deny permission to the petitioner on one ground or the other, which is evident from the fact that initially the respondents rejected the petitioner's application on the ground that it was not eligible as it did not have the requisite permission for commencing PG disciplines and did not possess any essentiality

certificate, despite being well aware that both these grounds were contrary to the statutory regulations. When confronted with this situation as noted in the order passed by this Court in ***W.P.(C)1106/2022*** on 24.01.2022, the respondents then reluctantly agreed to carry out the necessary assessments and, therefore, directed inspection of the petitioner institute by different teams of assessors for all the eleven disciplines.; after no deficiencies were reported in these inspections, the respondent has now, without giving any reasons, chosen to arbitrarily give permission in six of the PG disciplines for fewer seats than those prayed for by the petitioner and has altogether rejected the request for the other three disciplines by trying to overrule the reports of the assessor, which is just not permissible.

19.Mr. Singh, then, submits, that even otherwise the revised letters of disapproval and intent, which were issued on 15.02.2022, are a clear attempt on the part of the respondent to add more justifications or reasons for not accepting the petitioner's applications. The reasons contained in these revised letters are not only contrary to the assessor's reports, which have all given positive recommendations in favour of the petitioner, but clearly show that the respondent was well aware that the reasons mentioned in the communications dated 11.02.2022 would not stand judicial scrutiny.

20.Mr. Singh, then submits that the respondents, having rejected/partially allowed the applications of the petitioners on 11.02.2022, could not be permitted to justify these impugned orders by raising any new grounds, other than those mentioned in these impugned orders, as is now being sought to be done by way of the revised communications dated 15.02.2022.By placing reliance on the decision of the Apex Court in

***Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi and Ors. (1978) 1 SCC 405***, he submits that the respondents, having realized that the grounds mentioned in the impugned communication orders were wholly fallacious, have tried to introduce new grounds in the impugned revised communications dated 15.02.2022, an approach which has always been deprecated by the Courts.

21. By placing reliance on the decision of this Court in ***W.P.(C) 1458/2022*** titled as ***Sri Lakshmi Narayana Institute of Medical Sciences***, learned senior counsel for the petitioner submits that even in the said case, when the Court found that no deficiencies had been noted in the inspection report, the Court held that the petitioner's prayer for grant of recognition deserved to be allowed and could not have been rejected on any other extraneous grounds.
22. He, submits that, moreover, due to the petitioner being declared as a Covid dedicated hospital in 2020, the petitioner institute was vide an order passed by the state government necessitated to reserve a majority of its beds and resources for Covid patients which resulted in a sizeable decrease of patients in its other departments. However, the petitioner has still managed to fulfil all the requirements, as can be noted by the assessor's reports. He submits that even though this Court has, in ***W.P.(C) 1958/2022*** titled as ***Santosh Trust and Anr. v. National Medical Commission and Ors.***, already held that even when there is some deficiency in clinical materials on account of the hospital being a designated Covid hospital, it cannot be a ground to penalize the hospital, this very ground was a part of the rejection orders dated 11.02.2022. This clearly shows that not only do the impugned orders

suffer from non-application of mind by the respondents, but also depict the inherent predisposition on the respondent's part against the petitioner.

23. Finally, Mr. Singh submits that the respondent's plea that the writ petition is not maintainable on account of there being alternative statutory remedies available, cannot be countenanced in the light of the various decisions of the Apex Court as well as this Court, wherein it has been held that when there is a clear omission on the part of the authorities to either follow the laid down procedure or the settled position in law, a writ petition would be maintainable. In the present case, the action of the respondents is not only *mala fide* but also contrary to the laid down procedure, and therefore the petitioner has rightly approached this Court. In order to substantiate this plea, he places reliance on the decisions in **CAG v. K.S. Jagannathan (1986) 2 SCC 679**, **Rajiv Memorial Academic Welfare Society and Anr. v. Union of India & Anr, 2016 (11) SCC 522** and **Kanachur Islamic Education Trust v. Union of India (2017) 15 SCC 702**, wherein the Apex Court held that in such situations where an authority has failed to follow the procedure established by law or adhere to the principles of natural justice, then the High Court can intervene under its Writ jurisdiction. He further submits that on account of the deliberate delay on the part of the respondent in dealing with the petitioner's application, the petitioner has already missed out the initial rounds of counselling and therefore if the petitioner is relegated back to the appellate remedy at this stage, it will miss the chance to participate even in the remaining rounds of counselling.



24. *Per contra*, Mr. Vikas Singh, learned senior counsel for the respondent no.2 at the outset opposes the very maintainability of the petition by urging that the present petition is not maintainable as the petitioner has approached this Court without availing the statutory remedies of appeal under Section 28(5) and Section 28(6) of the NMC Act, 2019. He therefore contends that when there is an efficacious remedy of appeal available to the petitioner, there is no reason as to why this Court should entertain the present petition.

25. Mr. V. Singh, then, submits that the petitioner is trying to mislead this Court by relying on selective portions of the assessment reports. Further, the petitioner's plea that the inspection reports are sacrosanct overlooks the fact that the inspections carried out by the assessors between 3<sup>rd</sup> to 05<sup>th</sup> February, 2022 were not surprise assessments and, therefore, the data collected in these inspection reports had to be necessarily examined by the MARB. He, submits, that even otherwise as per the regulations, the MARB, upon receiving the assessor's reports, has to assess all the relevant factors and then come to a final decision to grant/reject permission. By placing reliance on section 28 and 29 of the NMC, Act, 2019, he submits that it is the MARB alone which has the power to take decisions regarding the permissions which are to be granted to the colleges in a particular academic year and it is not as if the assessor's report is the final word on the subject. In fact, the onus is on the MARB to take into account all other factors including the assessors report to determine whether a college should be granted permission, and if yes, the number of seats for which permission should be granted.

26. While conceding that there were certain omissions in the letters dated 11.02.2022, he submits that the same had crept in only on account of the very short time granted by this Court to the respondent on 01.02.2022 to pass appropriate orders deciding the petitioner's applications in respect of all eleven PG disciplines, which process included not only site inspections by different teams of assessors but also accumulation of the entire data thereof to enable the MARB to come to a decision. It is these inadvertent omissions, which were sought to be corrected by incorporating detailed reasons in the subsequent communications dated 15.02.2022. He contends that the petitioner's plea that the respondent had attempted to improve the grounds for not favourably considering the petitioner's applications by creating new grounds vide the revised communications dated 15.02.2022, is not only fallacious but another attempt to twist the facts and mislead this Court.

27. Learned senior counsel for the respondent, submits, that despite the petitioners having accepted the six letters of intent granting permission for six PG disciplines, albeit with a reduced intake, pursuant where to letters of permission for the academic year 2021-2022, were issued in respect of the 6 PG disciplines on 17.02.2022, they are now estopped from challenging these letters of intent and therefore, prays that the writ petition be dismissed on this ground alone.

28. Mr. V. Singh then contends that the decisions taken by the respondents qua all the nine PG disciplines were necessitated on account of noticeable inconsistencies recorded in the assessor's report in the data and medical reports provided by the petitioner to the assessors. The reasons for refusing to grant the number of seats as sought for to the

Obstetrics department for instance, is based on the difference in the number of deliveries/caesarean sections recorded by the Obstetrics department of the hospital and the Anaesthesiology department of the hospital and in certain other departments it is due to the number of X-Rays, which were reported as being 190 while the total number of the X-rays done in each department worked out to more than 300, making it evident that the numbers provided by the petitioner had been manipulated in order to obtain the permission, as sought for in its applications. It is only on account of these reasons, that the respondents were forced to be cautious while deciding whether to grant permission or not to the petitioner, and it is only, therefore, that the revised communications of 15.02.2022, were necessitated in order to clarify the grounds based on which the decisions dated 11.02.2022 had been taken.

29.Mr. V. Singh, thus contends that the deficiencies in the inspection reports dated 03.02.2022, 04.02.2022 and 05.02.2022, noted by the MARB were so grave in nature that the NMC would be remiss in its duties if it decided to ignore the same. These deficiencies would have a serious impact not only on the prospective students but would also directly impact the general public. The respondents were therefore, justified in issuing the impugned communications dated 11.02.2022 and 15.02.2022, which are also in public interest.

30.Mr.V. Singh, finally, submits, that the decision of the respondent to grant permission to the petitioner for fewer seats than that for which the application was submitted, is a considered decision taken by the MARB after taking into account all relevant factors and therefore the petitioner cannot urge that it must be granted permission for the exact

number of seats, as prayed for in the applications. There is nothing in the Regulations or the laid down procedure which prescribes that merely because no deficiencies are found at the time of inspection, an institution must be granted permission for the seats it applies for. Under the NMC Act and Regulations, a duty is cast on the MARB to take a holistic view of the matter and not just rely on the institute's claims of purported entitlement to a specific number of seats, per course. Furthermore, there is nothing to be found either in the petition or the rejoinder to suggest as to how the petitioner arrived at the number of seats that it sought permission for or why it must be granted only that number and not the number that the MARB has decided is appropriate per each course, given the petitioner's faculty, infrastructure, clinical material and publications. He therefore, prays that the present writ petition be dismissed.

31. Having considered the submissions of the parties, I may begin by dealing with the respondents' first objection regarding the maintainability of the writ petition. Even though the petitioner undoubtedly has a statutory remedy of filing both a first appeal and a second appeal under Section 28(5) and 28 (6) of the NMC Act, but the question is whether the same can be said to be an efficacious one at this stage, when the Central counselling for admission to these courses is almost about to end. The respondent has offered almost no explanation as to why, despite the petitioner having submitted applications seeking permission for the 13 PG disciplines way back in August, 2020, the respondent chose to pass orders on the same for the first time only on 29/30.11. 2021, thereby rejecting the applications after more than 15 months. Not only this, what emerges is that all these

rejection orders were based on wholly non-existent grounds. While the rejection order dated 29.11.2021 was premised on the petitioner not fulfilling the requirement of 'essentiality certificate'; the orders dated 30.11.2021 were passed on the ground of the petitioner not possessing any recognition of PG courses. It is only after the petitioner approached this Court by way of W.P. (C) 1106/2022 that the respondents changed their stand and stated that all the eleven applications had been rejected on the ground of non-availability of essentiality certificates. However, on 01.02.2022, the respondents again took a somersault and admitted before this Court that this ground of rejection on account of non-availability of essentiality certificate was contrary to the regulations. It was also conceded that the rejection orders had been passed in the teeth of the decision of this Court in ***W.P.(C) 4856/2019*** titled as ***Index Medical College Hospital and Research Centre vs. Union of India &Anr.*** It is only when this Court, after realising that much time had been wasted by the respondents in rejecting the petitioners application on wholly unsustainable grounds, directed the respondents to carry out necessary inspections within a week, that the respondents proceeded to carry out inspections for all the 11 disciplines between 03.02.2022 to 05.02.2022 and thereafter on 11.02.2022, while granting permission in respect of two disciplines, passed the nine impugned orders, which were then amended on 15.02.2022 to include reasons which form the basis of the respondents' decisions. It is the common case of the parties that by the time the impugned orders came to be passed, counselling had already commenced, and therefore, in my opinion, it would be a travesty of



justice if the petitioner were relegated to the remedy of appeal at this belated stage.

32. In this regard, reference may also be placed on a recent decision of this Court in *Santosh Trust (supra)* wherein a similar objection regarding the maintainability of the writ petition was rejected. The relevant extract thereof reads as under:-

*“At this stage, I may note that the respondents have, in their counter affidavit, also challenged the maintainability of the petition on account of the availability of the efficacious alternate remedy of first appeal and second appeal under Section 28(5) and (6) of the NMC Act. However, in view of the admitted position that the counselling has already begun and the fact that the impugned orders rejecting the petitioners’ application made in August 2019 have been passed only in end of January 2022, learned counsel for the respondents has not seriously pressed this ground during the course of the arguments. Even otherwise, I am of the view that, at this stage, when the initial rounds of counselling are already over, any further delay is likely to cause grave and irreparable loss, not only to the petitioner institute, who even as per the respondents was not found to be lacking in infrastructure, but also to the prospective students. I am therefore, not inclined to relegate the petitioner to the remedy of appeal at this belated stage, and proceed to deal with the petition on merits”*

33. In the light of the aforesaid, I have no hesitation in rejecting the respondents’ objection to the maintainability of the writ petition, and therefore, now proceed to deal with the submissions of the parties on merits.

34. As noted hereinabove, the petitioner has, in the present petition, impugned orders relating to nine different disciplines. Vide six of these

impugned orders, partial permission i.e., approval for lesser seats than those applied for by the petitioner has been granted in respect of MD (Obstetrics & Gynaecology), MD (Radio-Diagnosis), MD (Psychiatry), MD (Paediatrics), MS (General Surgery), and MD (General Medicine), MD (Respiratory Medicine), MD (Dermatology, Venereology & Leprosy). Since, there were no reasons provided in the initial communications dated 11.02.2022, it would be appropriate at this stage to note the reasons as furnished in the revised letter of intent dated 15.02.2022. It is by these latter communications that the respondents sought to provide reasons for their decisions to issue Letters of Intent for fewer seats in each of these disciplines than those applied for and therefore, for the sake of convenience the reasons in respect of these six disciplines, as mentioned in the communications dated 15.02.2022 are being noted hereinbelow in a tabular form -

S. No.	Subject	Seats Applied for/Granted	Remarks added on 15.02.2022	Assessor's Remarks
12.	MS (Obstetrics & Gynaecology)	8:3	<i>The following information submitted by the Principal appear inconsistent and suspicious:-</i> <i>Deficiency of Senior resident. The deliveries reported 05 and the Caeserean Section 02 done on the day of assessment not matching with anaesthesia departmental information of 03 deliveries and 03 Caeserean sections gives suspicious of wrong</i>	<b>Assessors' Remarks</b> <u>Faculty:</u> 1. No. of faculties professors-2, Associate Professors-3, Assistant Professors-4, Senior Resident-3 and Junior Resident- 7. 2. All sign before 10 AM. <u>Clinical Materials:</u> 3. Documentation of birth record are sent to Competent Authority of Gujarat (Municipal Corporation, Ahmadabad)

			<p>information to the NMC. Investigations also are not matching with the number of patients shown in the census.</p>	<p>4. Clinical data are as per information provided</p> <p>5. HDU is available.</p> <p>6. There are 3 Units; OPD is being run with facilities of Antenatal OPD, Postnatal OPD, Family planning services, Infertility Clinic and Cancer detection services.</p> <p>7. Number of deliveries are verified with the maintained records and cross checked with the birth registration certificate.</p> <p>8. Operative obstetrics and Gynaecology operation record are cross checked with the records</p> <p>9. PNDT records and MTP records are maintained.</p> <p>10. Departmental library and museum are physically checked.</p> <p>11. Record keeping of data is verifies.</p> <p><u>Infrastructure</u></p> <p>12. Building of Hospital and Medical College is well maintained and according to requirement.</p> <p>13. Faculty of Central Library, reading facility for students is there.</p> <p>14. Facility of Pathology, Biochemistry, Blood Bank and Radio Diagnosis including Sonography are</p>
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				verified. 15. Resident quarter's facility verified.
13.	MD (General Medicine)	10:5	<p><b>The following information submitted by the Principal appear inconsistent and suspicious:-</b></p> <p>Faculty are eligible. Out-patient are 102 and in-patients 75.5%. Total Emergency patients attended were reported 24 and 14 of them were General Medicine patients. The other clinical departments also have shown different numbers and not matching with the information provided in other departments, appear inconsistent and suspicious. The diagnostic tests done are not matching with the numbers with out-patients as well as in-patients. Example, the total number of X-Rays performed are 190 from entire hospital and 62 alone from General Medicine and other individual departments also entered in big numbers making them more than 300 on totalling them also is suspicious for the actual numbers of patients and the X-Rays done. Similarly, Ultrasounds, CT Scans and MRI tests are also less in total, whereas individual</p>	<p><b>Assessors' Remarks</b></p> <p>1. 1 professor is available.</p> <p>2. 6 Associate Professor are available where as required number is 5.</p> <p>3. 8 Assistant Professor are available where as required number is 9, However 1 extra associate professor may be considered for the one deficient assistant professor.</p> <p>4. SR's and JR's are as per required number.</p> <p>5. Bed Occupancy is 78% on the day of assessment.</p>

			departmental investigation numbers counting much higher on totaling them, also is suspicious for the actual numbers of patients as well as in Ultrasounds, CT Scans and MRI done.	
14.	MS (General Surgery)	9:5	<p><b>The following information submitted by the Principal appear inconsistent and suspicious:-</b></p> <p>Faculty are adequate, number of tests done are not consistent for general surgery out-patients and inpatients. Example, the total number of X-Rays performed are 190 from entire hospital and 59 alone from General Surgery and other individual departments also entered in big numbers making them more than 300 on totaling them also is suspicious for the actual numbers of patients as well as X-Rays done. Number of USG done for General Surgery patients also suspicious with 40 out of 110 USG done on the day. Similarly, 17 CT Scans are done for General Surgery patients out of 25 CT scans for whole hospital. 05 MRI for General Surgery patients out of total of 14 MRI done for whole hospital.</p> <p style="text-align: right;">08</p>	<p><b>Assessors' Remarks</b></p> <p>1. Clinical Material is adequate.</p> <p>2. Dr. RG Surela professor is not considered as he will attain age of 70 on 14-02-2022.</p> <p>3. As per faculty availability and unit constitution department, Petitioner is eligible for 12 seats.</p>



			<p><i>interventional procedures out of 13 of the whole hospital of General Surgery. The individual departmental investigation numbers counting much higher on totalling them also is suspicious for the actual numbers of patients as well as in Ultrasounds, CT Scans and MRI done. The information submitted by the Principal gives suspicious about the patient load and tests done. When we compared with the number of patients of Hematology (85), Cytology (5), Histopathology (4), appear small number of surgical procedures against the major and minor operations reported (20 in number).</i></p>	
15.	MD (Paediatrics)	5:3	<p><b><i>The following information submitted by the Principal appear inconsistent and suspicious:-</i></b></p> <p><i>Faculty publications in the declaration forms are not available. (Still waiting for the postal delay). Publications are not attached and not mentioned in the faculty table. The eligibility shall be further verified. Meanwhile, 03 seats may be approved subject to the verification and if</i></p>	<p><b>Assessors' Remarks</b></p> <p>1. This medical college has intake capacity of 150 MBBS students for year.</p> <p>2. The infrastructure, clinical material and faculties are adequate in Department of Paediatrics.</p>

			<i>necessary an appropriate action may be initiated.</i>	
16.	MD (Psychiatry)	3:2	<p><b>The following information submitted by the Principal appear inconsistent and suspicious:-</b></p> <p>Faculty are eligible. Outpatient number are only 38 and not adequate for the seats they have requested for and also found less number of patients in last 03 years. Investigations done for Psychiatry patients also confirms less number of patient load. The total number of patients in the hospital are 1195 out-patients as well as IP with 75% bed occupancy shown are higher but the number of investigations done in Haemotology, Cytology and Mircobiology as well as operations are much less.</p>	<p><b>Assessors' Remarks</b></p> <p>1. Department of Psychiatry has 1 Professor, 1 Associate Professor, 1 Assistant Professor.</p> <p>2. There are 2 senior residents and 1 junior resident.</p> <p>3. Deficiency of 1 junior resident is compensated by 1 additional senior resident in the same department.</p> <p>4. There is 1 qualified clinical psychologist to deal with psychological issues and assessment.</p> <p>5. There are 2 psychiatric social workers.</p> <p>6. The clinical material and infrastructure is adequate in the form of outpatients, inpatients, psychotherapeutics application and assessment.</p>
17.	MD (Radio-Diagnosis)	5:3	<p><b>The following information submitted by the Principal appear inconsistent and suspicious:-</b></p> <p>From the assessors report the CT Scan and MRI appear not under the control of the departmental faculty as per the records</p>	<p><b>Assessors' Remarks</b></p> <p>No deficiencies reported by Assessors.</p>

			<p>submitted by the Principal. Number of interventional procedures mentioned in the entire hospital are reported different. Those departments were inspected on the same day, some departments mentioned 08 and some are reported 10 and some are reported 13. Example, the total number of X-Rays performed are 190 from entire hospital and 59 alone from General Surgery and other individual departments also entered in big numbers making them more than 300 on totalling them also is suspicious for the actual numbers of patients as well as X-Rays done. Number of USG done for General Surgery patients also suspicious with 40 out of 110 USG done on the day. Similarly, 17 CT Scans are done for General Surgery patients out of 25 CT scans for whole hospital. 05 MRI for General Surgery patients out of total of 14 MRI done for whole hospital. 08 interventional procedures out of 13 of the whole hospital of General Surgery. The individual departmental investigation numbers</p>	
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			<i>counting much higher on totalling them also is suspicious for the actual numbers of patients as well as in Ultrasounds, CT Scans and MRI done.</i>	
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35.A perusal of the aforesaid chart makes it clear that in respect of all these six disciplines, the decision is based on an observation that certain information submitted by the principal of the petitioner institute appeared to be inconsistent and suspicious. Thus, in all these disciplines, permission for fewer seats than applied for has been granted only on the basis of suspicion and certain purported inconsistencies, which the MARB claims to have noted. There is no denial that the assessors appointed by the MARB itself had in the physical inspections found the infrastructure and faculty at the petitioner institute to be sufficient for the number of seats applied for. Not only this, the inspections were carried out as per the guidelines issued by the NMC itself, which guidelines contain a detailed procedure for noting the quality of clinical material, faculty and the infrastructure. The MARB has apparently not given any reasons as to why it was not agreeing with the observations made by the assessors.

36.Beginning with MD (Obstetrics and Gynaecology) what emerges is that the alleged suspicion and inconsistency is based on the difference between the number of deliveries and caesarean sections reported by the Obstetrics department *vis-à-vis* those reported by the Anaesthesiology department. It has been further observed by the MARB that the investigations were not matching with the number of patients shown in the census. It is on this basis that learned senior

counsel for the respondent no.2 contends that they suspected the institute's principal of furnishing wrong information to the NMC in order to secure the required approvals. Though on the first blush, this ground appears to be justified but when seen in the light of the explanation given by the petitioner, it becomes evident that the respondent has arrived at these conclusions, without finding the need to seek any explanation from the petitioner. In my view, the petitioner has rightly urged that if the respondents found any discrepancies in the inspection report, which was otherwise reported to be satisfactory, it was incumbent upon them to at least give an opportunity to the petitioner to explain its stand before making any such observation that the information given by the principal of the petitioner institute was suspicious. The petitioner has explained that simultaneous inspections were carried out on the same day though at different times both in the MS (Obstetrics and Gynaecology) and MS (Anaesthesiology) departments and therefore, naturally the number of deliveries and caesarean sections was bound to differ during the two inspections carried out at different points of time in the day. The petitioner has also explained that as per the Regulations, there was a requirement of only 100 X-rays to be carried out per day for grant of permission for commencement of MD (Radio-Diagnosis), whereas according to the petitioner's claim, the institute had conducted 190 X-rays on the date of its inspection; merely because the number was found to be higher as per some ad-hoc totalling done by the respondent, could not be a ground to discredit the data furnished by the petitioner. In fact it has not been denied by the respondents even during arguments that these observations regarding the discrepancies in the data of the investigation



had been arrived at without giving any opportunity of hearing to the petitioner.

37. In my view, when every institute is entitled to an opportunity to explain the deficiency found in an inspection report, there is no reason as to why a similar opportunity ought not to have been given to the petitioner to explain the so-called suspicious circumstances noted by the MARB from the inspection reports which were otherwise in order. Moreover, there is also no explanation given by the respondent as to why, if suspicious circumstances were indeed found to exist in the information provided by the petitioner, was permission granted for even those three seats in the Obstetrics department. The seats cannot be granted, without offering any justification as to how the MARB arrived at these specific number of seats especially when the numbers are neither in compliance with the assessor's reports nor with its own communications dated 15.02.2022.

38. Similar is the position, regarding the other five disciplines i.e. MD (General Medicine), MD (General Surgery), MD (Paediatrics), MD (Psychiatry) and MD (Radio-Diagnosis), where the conclusions arrived at by the MARB as recorded in the communications dated 15.02.2022, are based merely on suspicions and have been arrived at without even giving any opportunity to the petitioner to explain the same. If the MARB were to make such far-reaching observations, merely on the basis of suspicion and that too without even giving any opportunity to the institute, its action would not only be violative of the principles of natural justice but would also amount to giving unbridled power to the MARB to routinely overrule the assessors reports, which would be whole impermissible.

39. In the light of this position, it was put to learned senior counsel for the respondents as to whether there was any basis for the reduction of seats. However, the only plea that the learned senior counsel put forth in this respect was that the MARB, having been conferred with the power to take a decision for granting permission for commencement of PG courses, was entitled to take any decision after taking into account all the relevant factors, including the assessors' report, which is merely one of the inputs considered in the process. He was, however, not able to explain as to which other factors had actually weighed with the MARB while arriving at the decision of reducing the seats. While the MARB is undeniably competent to take such a decision as per the Regulations, and there is no requirement for the MARB to set out all the reasons in the impugned orders, however, in my considered view, being an authority entrusted with an important task of regulating medical education in India, it is expected to at least *prima facie* show some justification for its decisions, when the impugned orders are assailed before the Court. Once the assessors have found that the petitioner meets the requisite criteria prescribed in the Regulations, the MARB could not, on its *ipse dixit*, claim that it will still grant permission for lesser seats even though the petitioner institute had the adequate infrastructure as per the criteria laid down by the assessors' guide and regulations, for the number of seats for which permission was sought.

40. The aforesaid decision of the MARB appears to be nothing but arbitrary and cannot be countenanced as arbitrariness of any kind is antithetical to Article 14 of the Constitution of India. In this regard it may be apposite to refer to the Apex Court's observations in ***Ramana***

***Dayaram Shetty v. International Airport Authority of India (1979) 3 SCC 489*** which emphasises on the power of the Courts to intervene in cases where arbitrariness in the decision-making process of a Government Authority is writ large. Paragraph 10 of the same reads as under:

*“10.It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. The defined procedure, even though generous beyond the requirements that bind such agency must be scrupulously observed. This rule, though supportable also as emanating from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege“*

41.In the light of the aforesaid, I am of the considered opinion that the decision of the respondents to grant lesser number of seats than prayed for by the petitioner, in all the aforesaid six disciplines are unsustainable and are liable to be quashed.

42. Now coming to the three disciplines where the respondent has altogether refused grant of permission and had therefore issued disapproval letters dated 11.02.2022. The reasons, as contained in the said communications were thereafter sought to be supplemented by the reasons contained in the impugned communications dated 15.02.2022. For the sake of convenience, the reasons as contained in respect of these three disciplines i.e. MD (Respiratory Medicine), MD (Dermatology, Venereology and Leprosy) and MS (Orthopaedics) alongwith the relevant extracts of the assessor's reports are being noted hereinbelow in a tabular form:

<b><i>Subject</i></b>	<b><i>Seats applied/Seats granted</i></b>	<b><i>Reason for Disapproval</i></b>	<b><i>Assessor's Remarks</i></b>
<b><i>MD (Respiratory Medicine)</i></b>	<b><i>3:0</i></b>	<b><i>Deficiency as per LOD 11.02.2022.</i></b> 1. Professor and HOD Deepika Kumari's publications are not attached. 2. Dr. Lieva LT is full time director of the institute and cannot be considered as professor or associate professor for the units. 3. Faculty compliance are incomplete as the professor and HOD has not	1. Single unit of Respiratory medicine with two professors and one assistant professors, two senior residents and two junior residents. 2. Facility for PMDT and NTEP are present. 3. The data of National Programme

		<p>attached the publications.</p> <p><b>Deficiency as per Revised LOD 15.02.2022.</b></p> <p>4. The diagnostic tests done are not matching with the numbers with OPD as well as IPD.</p> <p>5. Similarly, Ultrasounds, CT Scans and MRI Tests are also less in total, whereas individual department investigation numbers counting much higher on totalling them also is suspicious for the actual numbers of patients as well as in Ultrasounds, CT scans and MRI done.</p>	
MD (Dermatology, Venereology & Leprosy)	3:0	<p><b>Deficiency as per LOD 11.02.2022</b></p> <p>1. Dr. Kirti Parmar's publications are not provided and not attached.</p> <p>2. Faculty deficiency of 01 associate professor.</p> <p>3. OPD numbers are less with the</p>	<p>1. The Department has 2 professors, 1 assistant professor, 2 Senior Resident and 1 Junior Resident. The 2<sup>nd</sup> professor has two publications in 2018 in Indian Journal of</p>



		<p>number of 52.</p> <p><b>Deficiency as per Revised LOD 15.02.2022.</b></p> <p>4. Less speciality work for Postgraduate training.</p>	<p>Research which is apparently not a speciality journal. And he has 3 case reports published as first author before 2014. However, he has experience as professor for over 10 years and he was accepted as professor in December 2021 by NMC in the same college. Besides, case reports were also acceptable before 2014.</p> <p>2. The department has three lasers; Q-switched Nd-Yag, Diode laser and Fractional CO2, Cryo therapy unit, whole body Phototherapy unit, Chemical peels and Derma rollers. There is no electro surgery equipment.</p>
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			<p>However, they have a radiofrequency equipment.</p> <p>3. There are adequate number of books and journals.</p> <p>4. The clinical material is adequate in the form of out patients, inpatients, therapeutic procedures and investigations</p>
<p>MS (Orthopaedics)</p>	<p>6:0</p>	<p><b>Deficiency as per LOD 11.02.2022</b></p> <p>1. Associate Professor Dr. Pratik Vishnu neither attached his publications nor available in the declaration forms.</p> <p>2. His ineligibility makes incomplete units.</p> <p>3. Only 01 publication was reported from the department in the last 03 years.</p> <p>4. The work output is very low in last 03 years since, only 02 units for</p>	<p><b>Assessors' Remarks</b></p> <p>1. Average daily OPD attendance around 110.</p> <p>2. Daily major surgeries 3 and minor surgeries 6 on an average.</p> <p>3. Bed Occupancy is adequate.</p> <p>4. Only online classes being taken for UG students</p>

		<p>150 students and incomplete 3<sup>rd</sup> unit not recommended for postgraduate seats.</p> <p><b>Deficiency as per Revised LOD 15.02.2022.</b></p> <p>5. The Clinical workload and investigations done are not matching.</p> <p>6. Number of interventional procedures mentioned in the entire hospital is reported different. Those departments were inspected on the same day.</p> <p>7. The individual departmental investigation numbers counting much higher on totalling them is suspicious for the actual numbers of patients as well as in Ultrasounds, CT scan and MRI done.</p> <p>8. The information submitted by the principal gives suspicious about the patient load and tests done.</p> <p>9. The total OPD</p>	
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		<p>were 114 and IPD were 75.5% bed occupancy and when we compared with the number of patients of Haematology (78), Cytology (2), Histopathology (4), appear small number of surgical procedures against the 09 major and 04 minor operations reported.</p>	
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43. Upon a bare perusal of the aforesaid table, it is evident that in so far as the respondents' letters dated 11.02.2022 are concerned, the same mainly refer to lack of availability of publications on the part of the HoD and professors, which publications are not only freely available on the internet but, were also noted by the assessors at the time of inspection and therefore could not be a ground for rejection of the petitioner's applications for grant of permission *vis-à-vis* these three disciplines. The respondents having realized this, chose to give additional reasons in the letter dated 15.02.2022 which either claim that there was a shortage of faculty by excluding the name of Dr. Lieva LT, on the ground that she could not be counted as a teaching faculty as she was a director of the institute, or that the investigation numbers were not sufficient.

44. The petitioner has explained that Dr. Lieva LT was actually the dean and not the director of the institute, and was duly considered as a

faculty member while granting the fifth recognition on 08.12.2021 and therefore, there was no reason to overlook her while calculating the faculty for the PG disciplines. Similarly, the other pleas regarding the discrepancies in the number of investigations, lack of clinical material as also non-verification of publications of some of the faculty members, are evidently grounds which appear to have been belatedly taken by the respondent only to justify their arbitrary decision of non-granting approval despite the inspection report being satisfactory. This action of the respondent is in contravention to the observations of the Apex Court in *Medical Council of India v. Vedanta Institute of Academic Excellence Pvt. Ltd. (2018) 7 SCC 225* wherein it has been noted that it is not for the Courts to either question the inspection report issued by an expert team of assessors, or to sit in appeal of the same.

45. The actions of the respondent no.2 thus, clearly show that they are acting as per their whims and fancies and are simply ignoring the information which has been already verified by the assessors, and that too without granting any opportunity to the petitioner institute to explain its stand. The three disapproval letters are also therefore, not sustainable and are liable to be quashed.

46. The manner in which the respondents have chosen to belatedly deal with the applications of the petitioner, by first taking grounds which to their own knowledge were not permissible and thereafter, taking grounds which are contrary to the inspection reports, cannot be appreciated by this Court. The cavalier approach taken by the respondent no.2 in the present case compels me to express my anguish at the manner in which the respondent no.2, which is under the NMC, a



commission that has been tasked with discharging such vital duties under the NMC Act, has dealt with the petitioner's applications.

47. Having found that none of the impugned orders are sustainable, what next? This Court is conscious of the fact that, while exercising writ jurisdiction, and that too in a matter like this where the standards of medical education are concerned, the Court should normally not interfere with the working of the experts or the conclusions arrived at by the statutory bodies like respondent no.2, specifically created for this purpose. However, in the present case, it evidently emerges that it is not as if the experts who had inspected the petitioner institute had found any deficiency with the petitioner institute, but it is the MARB which has chosen to ignore those reports and form its own arbitrary conclusions, without giving any opportunity to the petitioner to explain the so-called deficiency or suspicious information. In these circumstances, when the action of the respondent appear to be wholly arbitrary and not in consonance with the regulations, in light of the fact that the petitioner institute has all the requisite infrastructure and clinical material, as also the fact that it has worked as a Covid dedicated hospital for a long period, I am of the view that remanding the matter back to the respondent for reconsideration at this stage, when the only hope of the petitioner is to participate in the remaining rounds of counselling in the NEET 2021-2022 including the mop up counselling round and the stray counselling round, would be highly unfair not only to the petitioner but also to the prospective students, especially in a country like ours which is already struggling to provide the number of medical professionals required for meeting the growing needs of the general public. At this stage, I may also refer to decision of

the Apex Court in **Rajiv Memorial Academic Welfare Society (Supra)** wherein it has been held that the Court can, in certain cases, grant permission to a medical institute, without directing re-inspection of the same. Paragraphs 19 and 20 thereof read as under:

*“19. We are satisfied that in the aforesaid circumstances, there was no need to direct conducting of re-inspection by the Medical Council of India and for the academic year 2015-2016 direction could have been given by the High Court for grant of permission once the order of the Central Government was found to be contrary to law.*

*20. The offshoot of the aforesaid discussion would be to allow the appeal filed by the appellant Society and dismiss the appeal of the Medical Council of India. The Government of India is directed to pass appropriate orders granting permission to the appellant society in respect of the college in question for the academic year 2015-2016 within a period of two days, having regard to the fact that the last date for conducting the admissions is 30-09-2015. The college is also permitted to admit the students in accordance with law.”*

48. At this stage it would also be apposite to refer to the observations made by this Court in **Santosh Trust (supra)**, which read as under:

*“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*

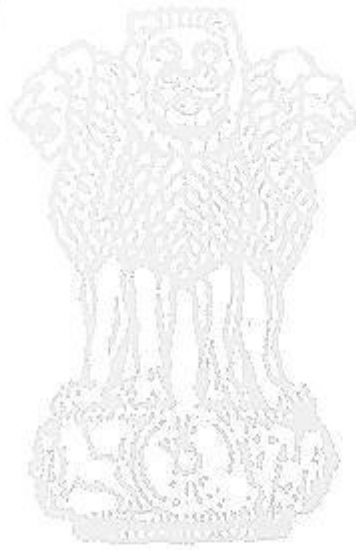
*however, simultaneously, in a situation like the present, when it is found that an institute like the petitioner which has been running for the last more than 20 years is not lacking in any infrastructure and has also rectified the deficiencies which were found at the time of initial inspections, that 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.”*

49. For the aforesaid reasons, the writ petition is allowed and all the impugned communications dated 11.02.2022 and 15.02.2022 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 & 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.

**(REKHA PALLI)**  
**JUDGE**

**APRIL 1, 2022**  
**acm/ms**



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