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

+ **W.P.(C) 16617/2022**

**SUKH SAGAR MEDICAL COLLEGE AND HOSPITAL,
JABALPUR AND ANR.**

..... Petitioners

Through: Mr. Maninder Singh, Sr. Advocate
with Mr. Manik Dogra, Ms. Srishty
Kaul, Mr. Vierat K. Anand, Mr.
Kumar Shashank, Mr. Harish Nadda,
Mr. Vikalp Singh, Mr. Prabhas Bajaj,
Mr. Dhruv Pandey and Mr. Anant
Singh, Advocates.

Versus

**NATIONAL MEDICAL COMMISSION MEDICAL ASSESSMENT
AND RATING BOARD MARB & ANR.**

..... Respondents

Through: Mr. T. Singhdev, Mr. Bhanu Gulati,
Mr. Abhijit Chakravarty, Ms.
Michelle B. Das and Ms. Ramanpreet
Kaur, Advocates for R-1/NMC.

**CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN**

ORDER

% **05.12.2022**

CM APPL. 52311/2022(for exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 16617/2022 & CM APPL. 52310/2022(ad-interim ex parte relief)

3. The petitioner/college and hospital is aggrieved by an order dated 28.10.2022, whereby, the application of the petitioner for renewal of permission for 2nd Batch (1st renewal) for 150 MBBS seats for academic

year 2022-23 was rejected. The rejection was preceded by an issuance of a show-cause notice dated 11.10.2022 issued by the Medical Assessment and Rating Board (MARB) of the National Medical Commission (NMC) wherein the following deficiencies had been pointed out:-

“2. The Medical Assessment and Rating Board (MARB) has conducted an assessment of the college on 5th & 6th September, 2022. As per the assessor report, there has been deficiency of Teaching faculty (5%), deficiency of Resident doctors (2%), Bed occupancy was (61%) and only 1 delivery (including normal and LSCS on the day of assessment.”

4. The grievance of the petitioner is that the rejection of its application is arbitrary and there was no application of mind. Mr. Maninder Singh, the learned senior counsel for the petitioner submits that the show-cause notice was premised on four deficiencies which were virtually non-existent. In support of his submissions, he invited the attention of the Court to the proceedings of the Lok Sabha (Annexure-P-23) wherefrom the Government's stand on the steps being taken to increase MBBS seats is evident. The then Health Minister in response to a question raised that – *“whether the Government proposes to enhance MBBS and PG seats in equal numbers in Medical Colleges in the country, if so, the details in this regard, State/UT-wise”*, had stated that the Central Government had taken several steps to increase the number of MBBS and PG seats in the country, including relaxation of norms for setting up of medical colleges in terms of requirement for faculty, staff, bed strength and other infrastructure. He further submits that the action of the respondents in pointing out non-existent deficiencies in the show-cause notice is contrary to the efforts being made by the Government to set-up more medical colleges' post-COVID 19

pandemic.

5. The learned senior counsel for the petitioner also referred to the public notice dated 06.09.2022 (Annexure-P-7) issued by NMC, to contend that *albeit* a policy decision has been taken by the National Medical Commission to grant renewal of permission only on the basis of sworn affidavits for the academic year 2022-23, but in the case of the petitioner, not only one but two inspections have already been carried out, which is contrary to said policy decisions. The public notice dated 06.09.2022 reads as under:-

“No.NMC/MARB/2022/

Dated: 6/09/2022

Public Notice

As the counselling of NEET (UG) is going to start in the month of September/October 2022, there are colleges where we are waiting for 1st, 2nd, 3rd, 4th renewals, for all of them, it has been decided to give/allow of renewal of permission on the basis of sworn affidavit for the academic year 2022-23.

However, random surprise inspections may be carried out on the basis of the track record of the medical colleges for the Academic Year 202-2023 and on the basis of the inspection reports decision will be taken.”

Referring to the second paragraph of the aforesaid public notice, the learned senior counsel submits that despite having taken a policy decision to allow renewal of permission on the basis of sworn affidavit for the academic year 2022-23, the NMC has reserved to itself the power and discretion to carry out random surprise inspections based on the previous track record of the medical colleges. This, according to the learned senior counsel, is arbitrary and discriminatory, inasmuch as the same yardstick is not being

applied across the board and such a decision to undertake random surprise inspections defeats the objectivity.

6. Inviting the attention of the Court to the first Assessment Report dated 06.09.2022 (Annexure-P-6), which was submitted pursuant to the inspection carried out on 05.09.2022 and 06.09.2022, he submits that *albeit* Clause 3.16 of the Report indicates deficiency of teaching faculty to the extent of 5% and deficiency of resident doctors to the extent of 2% but the ‘Summary of Assessment’ records ‘Nil’ deficiency on these counts, inasmuch as, the deficiencies of the above nature are well within the relaxable limit. He submits that it is for this reason that the above shortcomings have not been treated as deficiencies. At this stage, it will be apt to reproduce the ‘Summary of Assessment’ from the First Assessment Report dated 06.09.2022, which is as under:-

“Summary of Assessment

1. *Sukh Sagar Medical College & Hospital, Jabalpur College Name, is run by Government/Trust/Society/Company*
2. *The college has got Permission from GOI/MCI with intake of 150 seats for the last academic year. Yes*
3. *Type of assessment: 1st Renewal No.of seats:150*
4. *PG courses: No.*
5. *Deficiency of teaching staff if any:
Shortage of teaching faculty is - Nil*
6. *Deficiency of resident doctors if any:
Shortage of resident doctors is -Nil.*
7. *Deficiency of the infrastructure of college and hospital if any: Pl. Mention category wise – Nil.*
8. *Deficiency of clinical material if any: Pl mention category wise -*

Nil.

9. *Any other Remarks*”

7. To fortify his contention that the relaxation of upto 5% on faculty strength is permissible and the same is not to be treated as any deficiency, the learned senior counsel invited the Court’s attention to a judgment of a Coordinate Bench of this Court in *Dhanalakshmi Srinivasan Medical College & Hospital Vs. Union of India* bearing no. WP(C) 5339/2022 dated 11.11.2022, wherein this Court had directed the NMC to place its stand on affidavit before the Court in relation to the permissibility of relaxation of 5% shortage. In response, the NMC filed its affidavit on 18.10.2022 and clarified that it allows deficiency up to 5% for faculty and residents in all cases. The relevant portion of order dated 11.11.2022 reads as under:-

“6.....As time for admission was running out, on 13th October, 2022, taking note of minor deficiency (0.49%) in teaching staff of petitioner college, as well as the policy of granting 5% relaxation to private medical colleges, following directions were issued:

“11. Considering the afore-noted submissions, NMC is directed to:

(a) Confirm whether afore-noted shortage in teaching staff or any other deficiency/aspect in the inspection report disentitles petitioner-college from increasing its intake to 250 seats for academic year 2022-23.

(b) File an affidavit explaining the criteria for relaxation of deficiencies up to 5% in private medical colleges as noted in communication dated 07th July, 2017.”

7. Pursuant to aforesaid directions, NMC filed an affidavit highlighting the deficiencies that according to them, impede grant of 250 seats to petitioner college [hereinafter, “**additional**

affidavit”]. Qua direction (b) NMC acknowledged and confirmed that relaxation of up to 5% on faculty strength is applicable to petitioner college; however, as regards direction (a), it is contended that if existing facilities available with petitioner college”

8. If this was the position, the learned senior counsel submits that the objection with regard to deficiency of teaching faculty to the extent of 5% and deficiency of resident doctors to the extent of 2% ought not to have been mentioned in the show-cause notice as a premise for the action proposed.

9. Further referring to the **Minimum Requirement for Annual M.B.B.S. Admissions Regulations, 2022** (“MSR 2020”) (Annexure-P-12), he submits that for 1st renewal (2nd Batch), the requirement of bed occupancy is 60% whereas in the show-cause notice, one of the grounds for the proposed rejection of the application is that bed occupancy in the petitioner’s hospital has been found to be 61%. According to him, this shows complete non-application of mind and highhandedness of the respondent as the respondent has chosen to proceed against the petitioner on a non-existent ground.

10. In respect of another objection of the respondent that only one delivery case (including normal and LSCs) was done on the day of assessment, the learned senior counsel for the petitioner submits that there is no norm or requirement in statutory regulations providing for minimum number of deliveries, therefore, it cannot be treated as a deficiency for rejecting petitioner’s application for 1st renewal. In this regard, he relied upon the decision of the Supreme Court in **Rajiv Memorial Academic Welfare Society Vs. Union of India and Anr.** 2016 (11) SCC 522, wherein

the Supreme Court held that lesser deliveries in a day cannot be treated as a deficiency. The relevant part of the order reads as under:

18. With this we come to the deficiencies which are pointed out by the High Court in para 14 of the impugned judgment and taken note of above. As far as the first deficiency is concerned, it is stated that on the previous day (that is, day prior to the date of inspection) there was nil normal delivery and nil caesarean section. Likewise, second deficiency which is pointed out is to the effect that in the month of January, there were only 45 total deliveries and in the month of April there were only 38 deliveries which were inadequate and further special investigation like Ba, IVP were not carries out./ The Hospital cannot be faulted with, in case there was no normal delivery or no caesarean section on a particular day. That can hardly be treated as any deficiency. Same would be the position in respect of number of deliveries in the month of January and April. Insofar as third deficiency is concerned, it is clarified by the learned Senior Counsel for the Society that the Hospital is having sonography and ultrasound facilities, etc. And, therefore, Ba/IVP are not carries out and, it would be hardly of any significance.”

11. The learned senior counsel also submits that, in any case, the petitioner had duly informed the NMC vide its communications dated 11.10.2022, 19.10.2022 and 27.10.2022, that it is on account of the *National Health Missions’ Scheme Janani Suraksha Yojna (JSY)/Prasuti Sahayata Yojna (PSY)*, that the expecting mothers despite undergoing pre-delivery consultation at the petitioner/college throughout the period of pregnancy, preferred to undergo deliveries at State Government Centres in view of the incentive of Rs.16,000/- given by the State Government of Madhya Pradesh. According to the learned senior counsel, now the petitioner’s request to the State Government for empanelment of its college under the aforesaid scheme has been favourably considered and the implementation of the same

is being under progress. He further submits that once the implementation is complete, the delivering mothers will also get the incentive benefits of Rs.16,000/- if their deliveries are carried out at the petitioner/college, and consequently, the number of deliveries will drastically increase at the petitioner/college.

12. The learned senior counsel also submits that another inspection was also carried out by the respondents on 19.10.2022 after the petitioner had submitted its reply to the show-cause notice dated 11.10.2022. Referring to the second Report of the Assessors (Annexure-P-14), he contends that the strength of the faculty stood improved at the stage of second inspection and no deficiency was observed by the Assessors on this count.

13. Learned senior counsel for the petitioner also submits that against the rejection of the 1st Renewal, the petitioner had preferred a statutory appeal on 28th October, 2022 but as the same was not disposed of even after considerable lapse of time and the State Counselling had already started on 17th October, 2022, the petitioner is compelled to file the instant writ petition. He further submits that it is the consistent view of this Court that at the stage when the counselling is under process and likely to conclude soon, the remedy of appeal will not be an efficacious remedy and it shall not preclude the petitioner from invoking the jurisdiction of this Court under Article 226 of the Constitution of India. Reliance was placed by the learned senior counsel on the decisions of this Court in *Dr. M.K.Shah Medical College & Research Centre Vs. Union of India & Anr.* 2022 SCC Online Del 938; *Santosh Trust & Anr. Vs. National Medical Commission & Ors.*, 2022 SCC Online Del 3380 and *Santosh Trust & Anr. Vs. National Medical Commission & Ors.*, 2022 SCC Online Del 749.

14. Issue notice.
15. Learned counsel above-named accepts notice on behalf of the respondents.
16. The learned counsel for the respondents submits that the only surviving objection against the petitioner/college is that at the time of first inspection on 6th September, 2022, there was one delivery. Further, at the time of second inspection on 19th September, 2022 no case of delivery was reported. He further submits that only five deliveries took place at the Hospital between 1st September, 2022 to 26th October, 2022 which position is also reflected in the impugned order.
17. On a Court's query, the learned counsel for the respondents fairly concedes that there is no statutory norm prescribed for minimum number of deliveries for grant of renewal of permission for admission.
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.

22. Counter affidavit be filed within four weeks from today.

23. Rejoinder thereto, if any, be filed within two weeks thereafter.

24. List on 23rd January, 2023.

VIKAS MAHAJAN, J

DECEMBER 5, 2022

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