

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JANUARY, 2024

PRESENT

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE T.G. SHIVASHANKARE GOWDA

WRIT PETITION NO.17254 OF 2023 (EDN-RES)

C/W

WRIT PETITION NO. 22397 OF 2023

WRIT PETITION NO.17254 OF 2023

BETWEEN:

G.R. MEDICAL COLLEGE
HOSPITAL AND RESEARCH CENTRE
SPONSORED BY G.R. EDUCATION TRUST (REGD)
NEERMARGA, MANGALORE-575 029
REPRESENTED BY ITS
ADMINISTRATIVE OFFICER
MR. ANIL KUMAR
S/O LATE K. GOPINATH PILLAI
AGED 55 YEARS

...PETITIONER

(BY SHRI. D.R. RAVI SHANKAR, SENIOR ADVOCATE FOR
SHRI. S.A. SUDHINDRA, ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF HEALTH AND
FAMILY WELFARE
NIRMAN BHAWAN
MOTILAL NEHRU MARG AREA
NEW DELHI-110 011
REPRESENTED BY ITS SECRETARY

2. NATIONAL MEDICAL COMMISSION
POCKET-14, SECTOR 8
DWARAKA PHASE-I
NEW DELHI-110 077
REPRESENTED BY ITS
SECRETARY
3. MEDICAL ASSESSMENT AND RATING BOARD
UNDER-GRADUATE SECTION
NATIONAL MEDICAL COMMISSION
POCKET-14, SECTOR 8
DWARAKA PHASE-I
NEW DELHI-110 077
REPRESENTED BY ITS
PRESIDENT
4. STATE OF KARNATAKA
DEPARTMENT OF HEALTH AND FAMILY
WELFARE, MEDICAL EDUCATION
VIKASA SOUDHA
BANGALORE-560 001
REPRESENTED BY ITS
PRINCIPAL SECRETARY
5. DIRECTORATE OF MEDICAL EDUCATION
ANAND RAO CIRCLE
GANDHINAGAR
BANGALORE-560 009
REPRESENTED BY ITS DIRECTOR
6. KARNATAKA EXAMINATIONS AUTHORITY
SAMPIGE ROAD, 18TH CROSS
MALLESHWARAM
BENGALURU-560 012
REPRESENTED BY ITS
EXECUTIVE DIRECTOR
7. RAJIV GANDHI UNIVERSITY OF
HEALTH SCIENCES
4TH 'T' BLOCK, JAYANAGAR

BENGALURU-560 041
REPRESENTED BY ITS REGISTRAR

...RESPONDENTS

(BY MS. B.G. NAYANA TARA, CGC FOR R1;
SHRI. N. KHETTY, ADVOCATE FOR R2 & R3;
SHRI. SUDEV HEGDE, AGA FOR R4 & R5;
SHRI. N.K. RAMESH, ADVOCATE FOR R6;
SMT. FARAH FATHIMA, ADVOCATE FOR R7)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OR ORDER OR DIRECTION IN THE NATURE OF CERTIORARI QUASHING THE IMPUGNED ORDER NO.NMC/UGRENEWAL.2022-23/000686/045646/048165 DATED 26.10.2022 ISSUED BY THE MEDICAL ASSESSMENT AND RATING BOARD OF THE NATIONAL MEDICAL COMMISSION-RESPONDENT NO.3 VIDE ANNEXURE-N AND ISSUE A WRIT OR ORDER OR DIRECTION IN THE NATURE OF CERTIORARI QUASHING THE IMPUGNED ORDER DATED 08.12.2022 PASSED BY THE NATIONAL MEDICAL COMMISSIONER-RESPONDENT NO.2 VIDE ANNEXURE-Q AND ETC.

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SPONSORED BY G. R. EDUCATION TRUST (REGD.)
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REPRESENTED BY ITS
ADMINISTRATIVE OFFICER
MR. ANIL KUMAR
S/O LATE K. GOPINATHA PILLAI
AGED ABOUT 59 YEARS

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(BY SHRI. D.R. RAVI SHANKAR, SENIOR ADVOCATE FOR
SHRI. S.A. SUDHINDRA, ADVOCATE)

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MOTILAL NEHRU MARG AREA

NEW DELHI-110 011.
REPRESENTED BY SECRETARY

2. NATIONAL MEDICAL COMMISSION
POCKET-14, SECTOR 8
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BY ITS SECRETARY
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REPRESENTED BY ITS PRESIDENT
4. STATE OF KARNATAKA
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REP. BY ITS PRINCIPAL SECRETARY
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REP. BY IT REGISTRAR.

...RESPONDENTS

(BY SHRI. S. RAJASHEKAR, CGC FOR R1;
SHRI. N. KHETTY, ADVOCATE FOR R2 AND R3;
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THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OR ORDER OR DIRECTION IN THE NATURE OF CERTIORARI QUASHING THE IMPUGNED ORDER NO.NMC/UGI/2023-24/OFFLINE DATED 26.09.2023 ISSUED BY THE DEPUTY SECRETARY GOVERNMENT OF INDIA IN SHIFITNG THE 150 STUDENTS TO OTHER MEDICAL COLLEGE IN THE STATE OF KARNATAKA RESPONDENT NO.1 VIDE ANNEXURE-P AND ETC.

THESE WRIT PETITIONS, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.11.2023, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **P.S. DINESH KUMAR, J.**, PRONOUNCED THE FOLLOWING:-

ORDER

G.R. Medical College, Hospital and Research Centre ('Medical College') has presented these two Writ Petitions *inter alia* challenging the disapproval of renewal of permission for 150 1ST year MBBS Seats for the academic year 2022-23; and the transfer of 150 students to different Medical Colleges in the State. They are heard simultaneously and disposed of by this common order.

2. W.P. No.17254/2023 is filed *inter alia* with following prayers:

"i. Issue a writ or order or direction in the nature of certiorari quashing the impugned order No.NMC/UGRENEWAL/2022-23/000686/045646/048165 dated 26/10/2022 issued by the Medical Assessment and Rating Board of the National Medical Commission – Respondent No.3 vide Annexure-N; and

ii. Issue a writ or order or direction in the nature of certiorari quashing the impugned order dated 08/12/2022 passed by the National Medical Commission – Respondent No.2 vide Annexure-Q; and

iii. Issue a writ or order or direction in the nature of certiorari quashing the impugned communication dated 27/02/2023 issued by the National Medical Commission vide Annexure-T; and

iv. Issue a writ or order or direction in the nature of certiorari quashing the impugned communication dated 06/01/2023 issued by the Government of India vide Annexure-T1; and

v. Issue a writ or order or direction in the nature of certiorari quashing the impugned order dated 28/07/2023 communicated by the Respondent No.3 – Medical Assessment and Rating Board of the National Medical Commission vide Annexure-X; and

vi. Issue a writ or order or direction in the nature of certiorari quashing the impugned communication dated 28/07/2023 issued by the Respondent No.3 – Medical Assessment and Rating Board of the National Medical Commission to the State Government, vide Annexure-X1; and

vii. Issue a writ or order or direction in the nature of mandamus, directing the Respondents No.1, No.2 and No.3 to consider the application dated 14/03/2023 issued by the petitioner institution for Renewal for Third Batch of MBBS Course with an intake of 150 seats for the academic year 2023-24 vide Annexure-U; and if necessary by causing a

verification inspection and subject to the same, grant permission to admit students for the academic year 2023-24.”

3. W.P. No.22397/2023 is filed *inter alia* with the following prayers:

"i. Issue a writ or order or direction in the nature of certiorari quashing the impugned order No. NMC/UGI/2023-24/Offline dated 26/09/2023 issued by the Deputy Secretary Government of India in shifting the 150 students to other medical colleges in the state of Karnataka – Respondent No.1 vide Annexure-P; and

ii. Issue a Writ or Order or direction in the nature of Mandamus not to conduct counselling by the 6th Respondent with respect to 150 students who are studying in the petitioner college AY 2022-23 permit them to write the academic examinations being conducted by Rajiv Gandhi University (respondent No.7) in the petitioner college.”

4. Heard Shri. D.R. Ravishankar, learned Senior Advocate for the petitioners/Medical College; Ms. Nayana Tara, learned CGC for the Union of India; Shri. N. Khetty, learned Standing Counsel for NMC¹ and Medical Assessment and Rating Board; Shri. Sudev Hegde, learned AGA for the

¹ National Medical Commission

State; Shri. N.K. Ramesh, learned Advocate for the KEA²; and Ms. Farah Fathima, learned Advocate for RGUHS³.

5. Brief facts of the case are, on 13.12.2021, G.R.Medical College, Mangaluru was granted permission by the NMC to establish the Medical College for an intake of 150 students from the academic year 2021-22. On September 5 & 6, 2022, inspection was conducted by NMC. Based on the Inspection Report, the renewal of permission has been disapproved for the academic year 2022-23.

6. The main grievance of the College is that the inspection was conducted during the Onam festival and the same is in violation of Regulation 8(3)(1) of the establishment of Medical Colleges Regulation, 1999.

7. It is averred in the writ petition that on 26.10.2022, the NMC rejected the permission for renewal. The appeal filed by the College was rejected by the NMC. The Government of India also refused to consider the second

² Karnataka Examinations Authority

³ Rajiv Gandhi University of Health Sciences

appeal. The KEA has notified the commencement of first round of counselling on 04.08.2023 without including petitioner's Medical College.

8. Shri. D.R. Ravishankar, for the Medical College, mainly urged that:

- the inspection could not have been conducted and completed in two days as the data of the entire academic year has to be taken into consideration;
- the show-cause notice issued by the NMC is vague in nature as no opportunity was given to the Medical College to cure the deficiencies;
- the order does not spell out the grounds for disapproval and it is a non-speaking order; and
- the order passed by the GOI on the second appeal is also bereft of reasons.

9. Shri. N. Khetty, for the NMC, submitted that:

- NMC has conducted a 'surprise inspection'. Therefore, there is no need to consider the data of the whole academic year;

- petitioner's contention with regard to Regulation 8(3)(1) is untenable because, Onam Festival was on September 8, 2022 and the Inspection was conducted on September 5 & 6, 2022;
- Onam was not declared as a Holiday either by the State or Central Governments and as it was a restricted holiday;
- the show-cause notice contains all the necessary requirements and it is not vague.

10. Shri. Sudev Hegde and Ms.Nayana Tara, for the State and Central Government respectively, supported State Government's proposal and approval by the Central Government for transfer of students to different colleges in Karnataka.

11. In the light of rival contentions, the following points arise for consideration.

- Whether inspection conducted by NMC is contrary to Regulation 8(3)(1)?*
- Whether reasonable opportunity was provided before passing the order of disapproval?*

- (iii) *Whether disapproval of renewal of permission for academic year 2022-23 calls for any interference?*
- (iv) *Whether the order transferring the students to different colleges calls for any interference?*

Re: Point (i):

Whether inspection conducted by NMC is contrary to Regulation 8(3)(1)?

12. In substance, the Medical College is aggrieved by the inspection by the NMC and its Report; and disapproval of renewal. According to the Medical College, the inspection is in violation of Regulation 8(3)(1), because, as per the said Regulation, Inspection cannot be carried out at least two days before and two days after important religious and festival holidays. Relevant portion of Regulation 8(3)(1) reads as follows:

"12. It is pertinent to mention, at this stage that, the conduct of the inspection of the institution on 5th and 6th of September is in clear violation of the Regulation 8(3)(1) of the Establishment of Medical Colleges Regulation 1999. Extract of the said regulations read as under:

"In terms of Gazette Notification dated 18.03.2016 the following

additions/modifications/deletions/substitutions, shall be, as indicated therein:

3.(1) In Clause 8(3)(1)(a) under the heading of "Colleges in the stage upto II renewal (i.e. Admission of third batch)" shall be substituted as:-

(a) xxxxxxxx

In Clause 8(3)(1)(b) under the heading of "Colleges in the stage from III renewal (i.e. Admission of fourth batch) till recognition of the institute for award of M.B.B.S. degree" shall be substituted as:-

(b) Colleges in the stage of III & IV renewal (i.e. Admission of fourth & fifth batch)

If it is observed during any inspection of the Institute that the deficiency of teaching faculty and/or Residents is more than 20% and/or bed occupancy is <65%, compliance of rectification of deficiencies from such an institute will not be considered for renewal of permission in that Academic Year.

In Clause 8(3)(1)(c) under the heading of "Colleges which are already recognized for award of M.B.B.S. degree and/or running Postgraduate courses" shall be substituted as:-

(c) Colleges which are already recognized for award of M.B.B.S. degree and/or running Postgraduate courses.

If it is observed during any inspection/assessment of the institute that the deficiency of teaching faculty and/or Residents is more than 10% and/or bed occupancy is <70%,

compliance of rectification of deficiency from such an institute will not be considered for issue of renewal of permission in that Academic Year and further such an institute will not be considered for processing applications for Postgraduate courses in that Academic Year and will be issued show cause notices as to why the recommendations for withdrawal of recognition of the courses run by that institute should not be made for undergraduate and postgraduate courses which are recognized u/s 11(2) of the IMC Act, 1956 along with direction of stoppage of admissions in permitted postgraduate courses.

"However, the office of the Council shall ensure that such inspections are not carried out at least 2 days before and 2 days after important religious and festival holidays declared by the Central/State Govt."

(Emphasis Supplied)

13. NMC's stand is that as per the above Regulation, inspection must be avoided two days before and two days after any Holiday declared by Central or State Government. The inspection was conducted on September 5 & 6, 2022 and no Holiday was declared either two days prior or two days after the inspection.

14. Annexure-G is the Notification⁴ issued by the State Government containing the list of General Holidays sanctioned by the Government for the year 2022. As per the said Notification, Onam is not declared as a Holiday. No other material is placed on record to establish that there was any holiday declared by the Central or State Governments during the relevant period. Therefore, Medical College's contention that inspection was contrary to Regulation 8(3)(1) is untenable. Accordingly, we answer point No.(i) in the ***negative***.

Re.Point No.(ii):

Whether reasonable opportunity was provided before passing the order of disapproval?

15. Petitioner-Medical College has placed on record the notice dated October 11, 2022 as Annexure-K to the writ petition. Paragraph No. 5 of the notice reads thus:

"5. You are hereby called to submit your explanation on the deficiencies mentioned above within a period of 3 (three) days from the date of receiving this show cause notice."

⁴ DPAR 37 HHL 2021

16. The Medical College has also placed on record, Annexure-L, the reply dated October 13, 2022 to the show-cause notice. It is averred in para 18 of the writ petition that pursuant to Medical College's reply, a virtual hearing was scheduled and an appearance was made on behalf of the college during the hearing. The details of the hearing is also averred in para 19 of the writ petition. Thus, we hold that reasonable opportunity was provided to the Medical College and we answer point No.(ii) in the ***affirmative***.

Re: point No.(iii)

Whether disapproval of renewal of permission for academic year 2022-23 calls for any interference?

17. The disapproval of renewal of petitioner's college for the academic year 2022-23 is based on the inspection conducted by the NMC on September 5 & 6, 2022. We have recorded hereinabove that after the inspection, a show cause notice was issued and the College has submitted its reply. It is also admitted that a virtual hearing was conducted and the College had participated in it. College has pleaded in para 19

of this writ petition that the Hearing Committee specifically noted that there was no public Holiday on September 5, 2022 and the Onam Festival was on September 8, 2022. It is further pleaded that the NMC had failed to note that the Institution had celebrated the Onam function on September 3, 2022 and the college had declared September 5, 2022 as Holiday for staff. According to the College, the Hearing Committee has arbitrarily refused to consider College's explanation. We may record that the whole contention urged by the Medical College is untenable because, Regulation 8(3)(1) speaks about Holidays declared by Central and State Governments. We may further record that the Medical College is seeking to muster support on technical argument that it had declared a Holiday and therefore, the inspection report is vitiated which is a self serving assertion. In view of our finding that the plea with regard to Holiday is untenable, the contention with regard to Holiday and Regulation 8(3)(1) must fail. The NMC has clearly recorded the deficiencies found during the inspection, in para 2 of the show cause notice

dated October 11, 2022, which include deficiency of Teaching Staff by 71%, deficiency of resident Doctors of 79%, OPD attendance of only 30%, Bed occupancy of 10% etc. The very Regulation 8(3)(1) upon which the Medical College has placed reliance, makes it clear that renewal of permission for that academic year shall not be considered if the deficiency in different parameters is less than the percentage mentioned therein. The relevant portion of the Regulation reads thus:

"3.(1) In Clause 8(3)(1)(a) under the heading of "Colleges in the stage upto II renewal (i.e. Admission of third batch)" shall be substituted as:-

(a) Colleges in the stage of Letter of Permission upto II renewal (i.e. Admission of third batch)

If it is observed during any inspection/assessment of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is <50% (45% in North East, Hilly terrain, etc.), compliance of rectification of deficiencies from such an institute will not be considered for issue of Letter of Permission (LOP)/renewal of permission in that Academic Year."

(Emphasis Supplied)

18. It is relevant to note that along with the reply to the show cause notice, the College has submitted explanation with regard to the deficiencies pointed out by the NMC as per Annexure-L. A careful reading of the same shows that the Medical College has attempted to attribute the deficiencies to the Holiday said to have been declared by the Medical College. Thus, there is no denial of deficiencies. NMC is a statutory authority and is vested with the power of Regulation.

19. In a case of this nature, this Court under Article 226 of the Constitution of India can examine whether NMC has the power of regulation, whether petitioner had reasonable opportunity to put forth its case and whether NMC's order suffers from gross legal infirmity.

20. There is no dispute with regard to NMC's power to Regulation. For reasons recorded hereinabove, we have held that reasonable opportunity was given to the Medical College. It is also not in dispute that there is no denial with regard to

the deficiencies pointed out by the NMC except an explanation that the Medical College had declared Holiday.

21. Therefore, in our view, no ground is made out for exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and accordingly, we answer point No. (iii) in the **negative** and against the Medical College.

Re: point No.(iv)

Whether the order transferring the students to different colleges calls for any interference?

22. Admittedly, 150 students were admitted for 1ST year MBBS course for the academic year 2021-22. The permission for renewal has been disapproved by the NMC for the academic year 2022-23. This would place the career of the students enrolled in petitioner-College in jeopardy. Hence, no exception can be taken to the State Government's action in re-locating the candidates in different colleges in the State to enable them to pursue their next academic year. Accordingly, we answer this point in the **negative**.

23. In the light of above discussion, we find no merit in these writ petitions and accordingly W.P. No.17254/2023 and W.P. No.22397/2023 are ***dismissed***.

No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SPS