

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

**BEFORE
SHRI JUSTICE SUJOY PAUL
&
SHRI JUSTICE DWARKA DHISH BANSAL**

ON THE 09th MARCH, 2022

WRIT PETITION No.4292 of 2022

BETWEEN :-

1. People's College of
Medical Sciences and Research
Center, Bhanpur, Bhopal,
Bhanpur, Bhopal Madhya
Pradesh.

2. Peoples University,
Bhanpur, Bypass Road,
Bhopal(M.P)

Both through Dr. Neerja
Mallick,

.....Petitioners

(By Shri Amal Pushp Shroti, Advocate.)

AND

1. Union Of India Through
Secretary, Ministry of Health and
Family Welfare, Nirman Bhavan,
New Delhi-110001.

2. The National Medical
Commission Through its
Chairman, Pocket 14, Sector 8,
Dwarka Phase-1, New Delhi:
110077.

3. Commissioner Medical
Education, 6th Floor, Satpura
Bhavan, Bhopal (M.P.)

.....Respondents

(By Shri J. K. Jain, Assistant Solicitor General and Shri Anoop Nair, Advocate)

Whether approved for reporting	YES
<p>Law Laid down :-</p>	<p>1. <u>The National Medical Commission Act, 2019 (NMC Act)-</u></p> <p><u>Section 26 and 28</u> – <i>The Act recognizes power and functions of Medical Assessment and Rating Board (MARB) which is the original Competent Statutory Authority.</i></p> <p><i>MARB enhanced the seats of petitioner college in M.S. (Orthopedics) for 2020-2021 from 1 to 7 against the request to enhance 1 upto 9. Since two seats were not enhanced, limited appeal was filed for enhancement of two seats. Appellate Authority reduced the seats from 7 to 5 which is impermissible.</i></p> <p><u>Section 28 (5)-</u> <i>The Appellate Authority can exercise power where either scheme is disapproved or where no decision is taken. Appellate Authority cannot exercise power of appeal in a case of this nature where Competent Authority (MARB) has duly enhanced the number of seats.</i></p> <p>2. <u>Administrative Law-</u> <i>An authority higher in hierarchy or an Appellate or Revisional Authority cannot exercise the power of the original statutory authority.</i></p> <p><i>Section 28 does not permit the Appellate Authority to act as MARB for the purpose of reduction of seats unilaterally.</i></p> <p>3. <u>Interpretation of Statute:</u> <i>when language of Statute is plain and unambiguous, it has to be given effect to irrespective of a consequence.</i></p>

	<p>4. <u>Article 226 of the Constitution-</u> <i>Alternative Remedy- Not a bar when order impugned is passed by an Authority lacking competence.</i></p>
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O R D E R (Oral)

Sujoy Paul, J.:-

This petition filed under Article 226 of the Constitution takes exception to the order dated 01.02.2022 whereby the First Appellate Authority under the **National Medical Commission Act, 2019** (hereinafter called as ‘NMC Act’) has reduced the seats from 07 to 05. The orders passed by Medical Assessment and Rating Board (hereinafter referred to as ‘MARB’) in compliance of minutes dated 28.1.2022 on 2.2.2022 and 9.2.2022 (Annexures P/4 and P/5 respectively) are also called in question.

2. The admitted facts between the parties are that the petitioner-institution preferred an application seeking enhancement of seats in M.S. (Orthopedics) Course from 01 to 09. As per Section 26 of the NMC Act, the Statutory Authority i.e. MARB by communication dated 29.10.2021 (Annexure P/1) approved seats from 01 to 07 for academic year 2021-2022. Thus, petitioner got approval of seven seats against his prayer of nine seats. Aggrieved, petitioner preferred first appeal before the Appellate Authority on 27.12.2021 (Annexure P/2).

3. Shri Amal Pushp Shroti, learned counsel for the petitioner by placing reliance on the prayer of the appeal memo urged that the appeal was confined for approval of two seats i.e. from 07 to 09 in the petitioner institution.

4. The matter was taken up by first appellate committee on 28.1.2022 which decided to reduce the seats from 07 to 05. In furtherance thereto, the

MARB by impugned orders dated 2.2.2022 (Annexure P/4) and 09.02.2022 (Annexure P/5) reduced the seats from 07 to 05.

5. Learned counsel for the petitioner assailed the said decision dated 28.1.2022 mainly on twin grounds:-

(i) The appellate power given in the NMC Act does not authorize the Appellate Authority to reduce the seats from 07 to 05. The Appellate Authority was obliged to examine the decision of MARB to the extent it was called in question by the petitioner and not beyond it.

(ii) The Competent Authority to take a decision regarding allotment of seats and approval of scheme is the MARB. The Appellate Authority has no authority, jurisdiction and competence to take a decision on this aspect.

6. The ancillary arguments to meet the objection of other side regarding availability of second appeal is that since order of First Appellate Authority is without jurisdiction, petitioner cannot be relegated to avail the alternative remedy.

7. Shri J. K. Jain, learned Assistant Solicitor General for the respondent No.1 submits that at present, Union of India is a formal party.

8. Shri Anoop Nair, learned counsel for the respondent No.2 supported the impugned minutes and consequential orders by contending that no doubt the Competent Authority as per Section 28 of the NMC Act is the MARB but it cannot be forgotten that the Appellate Authority can exercise all such powers which an original authority can exercise.

9. In this view of the matter, no fault can be found in the decision of Appellate Authority founded upon the relevant report mentioned in para-25

of the reply. The Appellate Authority has acted in consonance with the statutory provision. Hence, no interference be made.

10. The parties confined their arguments to the extent indicated above.

11. We have heard the parties at length and perused the record.

12. Before dealing with rival contentions advanced at the Bar, it is apposite to take into account the relevant statutory provisions from the NMC Act on which reliance is placed by Shri Anoop Nair, learned counsel for the respondent No.2. Section 26(1)(f) thereof reads as under:

“(f) Take such measures, including issuing warning, imposition of monetary penalty, reducing intake or stoppage of admissions and recommending to the Commission for withdrawal of recognition, against a medical institution for failure to maintain the minimum essential standards specified by the Under- Graduate Medical Education Board or the Post-Graduate Medical Education Board, as the case may be, in accordance with the regulations made under this Act.”

Relevant portion of Section 28 reads as under:

28. Permission for establishment of new medical college. -

(1) No person shall establish a new medical college or start any postgraduate course or increase number of seats without obtaining prior permission of the Medical Assessment and Rating Board.

(2) For the purposes of obtaining permission under sub-section (1), a person may submit a scheme to the Medical Assessment and Rating Board in such form, containing such particulars, accompanied by such fee, and in such manner, as may be specified by the regulations.

(3) The Medical Assessment and Rating Board shall, having due regard to the criteria specified in section 29, consider the scheme received under sub-section (2) and either approve or disapprove such scheme within a period of six months from the date of such receipt:

Provided that before disapproving such scheme, an opportunity to rectify the defects, if any, shall be given to the person concerned.

(4) Where a scheme is approved under sub-section (3), such approval shall be the permission under sub-section (1) to establish new medical college.

(5) Where a scheme is disapproved under sub-section (3), or where no decision is taken within six months of submitting a scheme under sub-section (1), the person concerned may prefer an appeal to the Commission for approval of the scheme within fifteen days of such disapproval or, as the case may be, lapse of six months, in such manner as may be specified by the regulations.

(6) The Commission shall decide the appeal received under sub-section (5) within a period of forty-five days from the date of receipt of the appeal and in case the Commission approves the scheme, such approval shall be the permission under sub-section (1) to establish a new medical college and in case the Commission disapproves the scheme, or fails to give its decision within the specified period, the person concerned may prefer a second appeal to the Central Government within thirty days of communication of such disapproval or, as the case may be, lapse of specified period.

(Emphasis Supplied)

13. A careful reading of Section 26 makes it clear that statute recognizes MARB as the competent statutory authority for the purpose of certain functions which are enumerated in different clauses of the section 26.

14. The power of Appellate Authority can be traced from sub-section (5) & (6) of Section 28. A bare perusal of sub-section (5) makes it clear that it begins with the expression 'Where a scheme is disapproved' or 'where no decision is taken'. In the instant case, as noticed above, the scheme was approved to the extent extending the seats from 01 to 07. The Appellate Authority could have exercised its power under sub-section (5), if scheme was either disapproved or no decision was taken by MARB whereas in the

present case MARB has already taken a decision to enhance the seats from 01 to 07. The Appellate Authority has adopted a unique procedure which is unknown to law whereby the scheme already approved and seats already enhanced were directed to be reduced unilaterally. This runs contrary to the scheme and object of the Act. Apart from this, no enabling provision was brought to our notice which permits the Appellate Authority to travel beyond the prayer of appeal memo. Putting it differently, when appeal was confined for enhancement of two seats, nothing was pointed out which enables the Appellate Authority to take away the benefit of enhancement of seats already granted by MARB. For this reason also, we are unable to countenance the impugned minutes of first Appellate Authority.

15. We say so, in view of the language employed in Section 26 of the NMC Act, which gives exclusive power to a statutory authority which is MARB. A question cropped up before the Supreme Court, whether an Appellate or Revisional Authority which is higher in status can exercise the power of original statutory authority? The Apex Court in *Monohar Lal (Dead) by L.Rs. vs. Ugrasen (Dead) by L.Rs. And others (2010) 11 SCC 557* held as under :-

“23. **No higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the original statutory authority** nor can the superior authority mortgage its wisdom and direct the original statutory authority to act in a particular manner. If the appellate or revisional authority takes upon itself the task of the original statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act.”

[Emphasis Supplied]

16. This principle is recently followed by Division Bench of this Court in **Vishal D. Remeteke vs. State of M.P. and others [2021 (3) MPLJ (Cri.) 93]**. In this view of the matter, we are unable to persuade ourselves with the line of argument of Shri Anup Nair that Appellate Authority could have exercised all such powers which were exercisable by the original statutory authority namely MARB.

17. The language of the statute, in our opinion is clear and unambiguous, thus it should be given effect to irrespective of consequences. [See: **Nelson Motis Vs. Union Of India and another 1992 (4) SCC 711** which is recently followed in **P. Gopalkrishnan alias Dileep Vs. State of Kerala and another 2020 (9) SCC 161**].

18. Looking from any angle, we are unable to give stamp of approval to the minutes dated 28/01/2022 and further orders based thereupon issued on 02/02/2022 and 09/02/2022.

19. Resultantly, the minutes dated 28/01/2022 to the extent seats were reduced from 07 to 05 and subsequent orders dated 02/02/2022 (Annexure P/4) and 09/02/2022 (Annexure P/5) are set aside.

20. Needless to emphasize that the decision of enhancing the seats from 01 to 07 dated 29/10/2021 (Annexure P/1) is restored. The petitioner shall be entitled to reap all consequential benefits.

21. Writ petition is **allowed**.

(SUJOY PAUL)
JUDGE

(DWARKA DHISH BANSAL)
JUDGE

ahd/RS

Signature Not Verified
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