


**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 1032/2024

1. National Medical Commission, through its Secretary General, Pocket 14, Sector 18, Dwarka Phase-I, New Delhi-110077.
2. Medical Assessment and Rating Board, through its President, Pocket 14, Sector 18, Dwarka Phase-I, New Delhi-110077.
3. Under Graduate Medical Education Board, through its President, Pocket 14, Sector 18, Dwarka Phase-I, New Delhi-110077.

----Appellants

Versus

1. Tirupati Balaji Educational Trust, Bhilon Ka Bedla, Udaipur, Rajasthan through its Authorized Representative Puneet Makhija S/o Shri Mohan Makhija aged about 38 Years r/o Pacific Hills, Pratap Nagar, Airport Road Udaipur (Raj).
2. Pacific Medical College and Hospital, Bhilon Ka Bedla, Udaipur, Rajasthan through its Deputy Registrar Puneet Makhija son of Shri Mohan Makhija aged about 38 Years r/o Pacific Hills, Pratap Nagar, Airport Road Udaipur (Raj).
3. Office of the Chairman, NEET UG Medical and Dental Admission/Counseling Board-2024 and Principal and Controller SMS Medical College and Attached Hospitals, Jaipur.
4. Union of India, through its Secretary, Ministry of Health and Family Welfare, Nirman Bhavan, New Delhi.

----Respondents

For Appellant(s) : Mr. R.D. Rastogi, Additional Solicitor General of India with Mr. B.P. Bohra and Mr. Devesh Yadav, Advocates

For Respondent(s) : Mr. Manoj Bhandari, Sr. Advocate with Mr. Hemant Ballani, Advocate Mr. Sandeep Shah, Sr. Advocate with Mr. Abhimanyu Singh, Advocate

**HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MS. JUSTICE REKHA BORANA**

Order

05th November 2024

Per, Rekha Borana, J:

The present appeal arises out of the judgment dated 8th October 2024 passed by the learned Single Judge in S.B. Civil Writ Petition No. 12053/2024.

2. On 23rd October 2024, we heard the matter on the point of "interim relief" and directed the Registry to post the matter on 5th November 2024 for pronouncement of order on that point.

3. A narration of the brief facts to conclude whether the appellants are entitled for any interim relief, is essential.

4. The respondent no.1-Trust was granted permission to run MBBS course with intake capacity of 150 seats for the academic year 2014-15. By a public notice dated 18th August 2023, applications for establishing new medical colleges and for increase/enhancement of intake capacity were invited in pursuance to which the respondent-College also submitted an application on 16th September 2023 for enhancement of intake capacity from 150 to 250. Although, the said application was rejected/disapproved at the first instance vide order dated 3rd April 2024 but then, the same was withdrawn vide order/letter dated 13th May 2024.

5. In response to the application dated 16th September 2023, show cause notice dated 17th May 2024 was served upon the respondent-College calling upon it to furnish self assessment in terms of Regulations of 2023 governing the process of

establishment/increase of seats. In response, the self assessment report was submitted by the respondent-College on 27th May 2024.

6. However, before taking any decision on the application for enhancement of seats, the respondent-College was served with a show cause notice dated 30th May 2024 calling upon it as to why the existing number of seats be not reduced from 150. The said notice was served on basis of the report of experts who were nominated for evaluating the annual declaration form, virtual recording of examination and AEBAS report. The experts' report pointed out several deficiencies and after considering the reply as furnished by the respondent-College to the said notice and hearing the respondent-College virtually, the renewal of 150 seats was granted to the respondent-College subject to a deposit of a fine of Rs.6,00,000/- (Rupees Six Lacs only) with a condition that the reassessment of the respondent-College will be carried out after two months and if the deficiencies are found to exist then stringent action would be taken.

7. In view of the fact that a penalty was imposed on the respondent-College for deficiencies even for 150 seats and further because of faculty deficiency found to be existing in 11 departments and resident deficiency in 10 departments, vide order dated 29th June 2024, the application of the respondent-College for enhancement of seats was rejected. Aggrieved of the said order, the writ petition was jointly preferred by the respondent-Trust and the College which came to be allowed vide the impugned judgment dated 8th October 2024.

8. Mr. R.D. Rastogi, learned Additional Solicitor General of India appearing for the appellants, firstly submitted that the writ petition could not have been entertained for the sole reason that a first appeal against the order dated 29th June 2024 had already been preferred by the respondents before the First Appellate Authority which remained pending and during the pendency of the said first appeal, the writ petition was filed. Learned ASG submitted that two parallel remedies could not have been availed by the respondents and hence, the writ petition could not have been entertained.

9. Learned ASG further submitted that after filing of the writ petition on 20th June 2024, the first appeal was decided on 5th August 2024. Despite the same, the writ petition was not amended and without the writ petition being amended, the same could not have been entertained to the extent of the challenge to the order dated 5th August 2024.

10. On merits, learned Additional Solicitor General of India, while supporting the order dated 29th June 2024, submitted that the said order was rightly passed as it is clear from the materials on record that the respondent-College is not able to cater the required essentials even for 150 seats and hence, could not have been granted permission for enhancement of seats to 250. Learned ASG referred to the observation of learned Single Judge in para 47 of the judgment while submitting that the fact of deficiencies being existing was even taken note of by the learned Single Judge. Therefore, once it was found from the records that there were several deficiencies existing as on the date of applying

for enhancement of seats, the permission for the same could not have been granted.

11. Per contra, Mr. Manoj Bhandari and Mr. Sandeep Shah, learned Senior Counsels representing the respondent-Trust and College submitted that the application for enhancement of seats was wrongly rejected by the appellants while taking into consideration the faculty position between the period from 1st January 2024 to 29th February 2024 whereas it ought to have been considered on the date when the counselling for the seats was to commence that is in the month of August 2024. Learned Senior Counsels further submitted that even the attendance of the faculties was considered from the period of 20th May 2024 to 20th June 2024 and that too only of those faculties who had more than 75% attendance whereas the same also ought to have been considered either on the date of counselling or on the date of decision of the appeal (by the first appellate authority). Learned Senior Counsels submitted that the faculty position as on the date of decision of the appeal was definitely as per the required norms.

12. So far as the imposition of fine/penalty qua the deficiencies pertaining to renewal of 150 seats is concerned, learned Senior Counsels submitted that the said imposition of fine could not have been a ground to reject the application for enhancement of seats.

13. Learned Senior Counsels further submitted that even otherwise, no opportunity/notice to meet out/cure the deficiencies was given/served to/on the college in terms of proviso to Section 28 (3) of the National Medical Commission Act, 2019 (hereinafter referred to as, 'the Act of 2019'). Learned Senior Counsels also referred to the permission granted to four different colleges which

also suffered with the similar deficiencies but ignoring the same they were granted the permission to establish new medical colleges. Learned Senior Counsels therefore urged the ground of parity.

14. Learned Senior Counsels, while praying for declining of interim relief to the appellants, submitted that after the impugned judgment dated 8th October 2024 was passed, more than 70 students have already deposited their fee with the Counselling Board and hence, their admission be protected.

15. Learned ASG in rejoinder, submitted that the application for enhancement of seats was filed by the respondent-College on 16th September 2023 and therefore, the infrastructure and requirements as per the guidelines of UG MSR-2023 had to be strictly adhered to on the date of inspection and not on the date of passing the orders dated 29th June 2024 and 5th August 2024.

16. Responding to the argument pertaining to the minimum requirement of 75% attendance of all faculties and resident doctors, learned ASG submitted that the said was a mandatory condition as per Clause 3.2 of the guidelines of 2023 but the said condition escaped attention of the learned Single Judge. Learned ASG submitted that no challenge to Clause 3.2 of the guidelines of 2023 was laid by the respondents and hence, they were bound by the same and they cannot now set up a plea that the same was arbitrary or not in accordance with law.

17. Lastly, learned ASG submitted that as of date no student over and above 150 seats has been admitted to the respondent-College and even the regular classes for the current session have

not yet commenced therefore, no right of any student would be affected.

18. Heard learned senior counsels for the parties and perused the material available on record.

19. This Court is *prima facie* of the opinion that the order impugned deserves to be stayed at this stage for the following reasons:

- i. It is *prima facie* clear from the records that there were faculty as well as resident deficiencies qua even the existing capacity of 150 seats in the respondent-College for which even a fine of Rs.6,00,000/- was imposed. The said fact has even been taken note of by the learned Single Judge while observing that had the college been granted time to cure the deficiencies, it could have done so.
- ii. The faculty position has to be considered prior to the months when the college applied for enhancement of seats. The application for enhancement of seats was filed by the respondent-College on 16th September 2023 and, as per Clause 3.2 of the Regulations of 2023, it was mandatory for the College to have at least 75% attendance of the total working days (excluding vacations) for all faculties and resident doctors. But the attendance was admittedly deficient even qua the existing capacity of 150 seats. The subsequent appointment of the faculties/residents could have been of no avail for the purposes of the application filed on 16th September 2023.
- iii. As is the settled position of law, the academic regulations and the action of specialized bodies/experts in terms of such

regulations ought not be interfered by the Courts. Herein, a finding has been recorded by the regulatory authority regarding the deficiencies in the college for running of the session qua 150 number of seats. The Courts, in writ jurisdiction, are not conferred with the jurisdiction to interfere with the findings of fact as recorded by the expert body.

- iv. So far as the ground of not affording any opportunity to cure the defects in terms of Section 28(3) of the Act of 2019 is concerned, the same also *prima facie* does not hold much water as when once the respondent-College was found with deficiencies qua 150 existing seats also, the grant of time to cure the defects for enhanced capacity of 250 could not even have been considered.
- v. The balance of convenience also does not lie in favour of the college. It is admitted on the record that as of date, no final admission has been granted to the students and neither has the regular session commenced. Therefore, it cannot be held that any legal right in favour of any student has accrued which deserves protection as of date. No legal right of any student can be said to have been violated.
- vi. Further, enhancement of seats as prayed for by the respondent-College is not a statutory right which deserves to be granted mandatorily.
- vii. So far as the permission granted to the other colleges is concerned, *prima facie* it seems that the said permission was for opening of new colleges with intake capacity of 100 seats and were not the cases of enhancement of seats. No parity

with the said colleges can therefore be claimed by the respondent-College.

20. In the overall circumstances and the peculiar facts of the present matter, we do find a *prima facie* case in favour of the appellants and hence, the effect and operation of the order dated 8th October 2024 shall remain stayed till further orders. However, the students who have already deposited the fee with the Counselling Board shall be at a liberty to pray for refund of the same and if any such prayer is made, the appellants/Counselling Board shall be under an obligation to refund the same with immediate effect. Further, the said students shall also be at liberty to pray for admission to the other colleges as per their merit if any vacancy still exists in any college within the approved intake and the appellants may consider their request and accommodate them if they fall in merit.

21. Admit.

22. The writ Court's records have been produced but notwithstanding that, the respondents may file their affidavits within 2 weeks.

23. Post the matter for final hearing on 10.12.2024.

(REKHA BORANA),J

(SHREE CHANDRASHEKHAR),J

T.Singh/-