

\$~

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

+ W.P.(C)6258/2012, W.P.(C)6259/2012, W.P.(C)6260/2012,
W.P.(C)6265/2012, W.P.(C)6266/2012 & W.P.(C) 335/2013

% **Judgment dated 25.02.2013**

NATIONAL INSTITUTE OF MEDICAL SCIENCES
AND RESEARCH AND ANR Petitioners

Through: Mr.Maninder Singh, Sr. Advocate with
Mr.Srikant Mishra and Ms.Charu
Ambwani, Advocates

versus

BOARD OF GOVERNORS IN SUPER SESSION OF MEDICAL
COUNCIL OF INDIA AND ANR Respondents

Through: Mr.Amit Kumar and Mr.Ashish Kumar,
Advocates for the MCI.
Mr.Amrit Pal Singh and Mr.Rupinder Pal
Singh, Advocates for the respondent no.2

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Although notice to show cause has only been issued in W.P.(C) 335/2013 and counter affidavit has been filed by the respondents in W.P.(C) 335/2013, short affidavits have been filed in all the matters. For the sake of convenience the facts of W.P.(C) 335/2013 are being noticed.
2. The necessary facts, to be noticed for disposal of these six writ petitions, are that the petitioner college was established in the year 2004 with a capacity of 100 seats. In the year 2010, on completion of the first batch of MBBS, Central Government recognised the college for conduct of MBBS Course with 100 seats. In the year 2010 the college applied to the MCI for enhancement of MBBS seats to 150. Permission was also sought to

commence various PG courses. Between the months of January, 2011, to March, 2011, inspection of PG Medical Courses was conducted and letters of permission for the academic session 2011-2012 were granted. In the month of March, 2011, inspection for enhancement of MBBS seats from 100 to 150 was also granted to the petitioner. The petitioner college again applied for renewal of permissions for the year 2012-2013 for increased admission capacity from 100 to 150. On 20.3.2012 a show cause notice was issued by the MCI to the petitioner pointing out various discrepancies in the running of the college. A reply was filed by the petitioner on 21.3.2012. Soon thereafter on 31.3.2012 letter of permission for increase of seats in the Post Graduate courses was granted. This permission was subject to the show cause notice, which was issued by the MCI on 20.3.2012.

3. On 25.5.2012, an application was made by the petitioner college for starting/increase of seats in the Post Graduate courses w.e.f. academic year 2013-2014. The MCI issued a second show cause notice to the petitioner on 30.5.2012 to which a detailed reply was filed by the petitioner on 5.6.2012. The petitioner was also granted a personal hearing on 18.6.2012. Meanwhile the petitioner received a communication dated 25.6.2012 seeking additional information for renewal of permission of MBBS course for 150 seats. The petitioner is stated to have supplied the necessary information and documents to the respondents.
4. It is the case of the petitioner that the MCI without affording any opportunity of hearing passed an order on 30.6.2012. The medical college of the petitioner was debarred from admitting students against the enhanced capacity in the MBBS course for two sessions being 2012-2013 and 2013-2014. On an application filed by the petitioner under the Right to Information Act a reply was received from the Medical Council of

India that any college, which is already recognised for 100 seats and which has applied for increase of seats to 150, has only to fulfil the requirement as per the minimum standard requirements for 100/150 admissions. The order of 30.6.2012 was challenged by the petitioner by filing a writ petition in the Supreme Court of India, which was disposed of as withdrawn on 10.7.2011. While it is the case of the petitioner that this writ petition was filed directly before the Supreme Court of India as the last date for deciding the application as per the regulations was 15.6.2011 and only the Apex Court could have extended the time and since the date had already elapsed, the counsel appearing for the petitioner on instructions had withdrawn the said writ petition as the current academic year was already lost. The petitioner thereafter made a representation on 12.7.2012 and 17.12.2012, pursuant to the order passed by this Court in W.P.(C) 4509/2012. Both the representations of the petitioners were directed to be decided, which were subsequently rejected, which has led to the filing of another W.P.(C) 6418/2012 seeking a mandamus to quash the order of 30.6.2012 and 12.9.2012.

5. The case of the respondent is that the order dated 30.6.2012 has attained finality as the matter was argued in detail by the petitioner and when the Court was not agreeing, the petitioner has chosen to withdraw the writ petition and to accept the order of 30.6.2012.
6. Learned senior counsel for the petitioner submits that even the Central Government had issued a letter to the Medical Council of India to consider the case of the petitioner afresh as Regulation 8(3)(1)(d) was not applicable. The application of the petitioner for starting/increase of seats in the Post Graduation course was rejected by an order dated 14.9.2012 for the academic session 2012-2013 [subject matter of the WP(C)Nos.6258, 6259, 6260, 6265 & 6266/2012] and by an order dated

3.12.2012 for the academic session 2013-2014 [subject matter of WP(C)335/2013]. Senior counsel further submits that the respondent has failed to apply their mind as while rejecting the request of the petitioner the respondent has mechanically only relied on the order dated 30.6.2012, which was passed on an application made by the petitioner seeking increase of MBBS seats from 100 to 150 and the aforesaid order has nothing to do with the increase of Post Graduate seats and for starting new Post Graduate courses by the petitioner college.

7. Mr.Maninder Singh, learned senior counsel for the petitioner, has also argued with great vehemence to show that the order dated 30.6.2012 has been passed without any application of mind, as the petitioner had fulfilled all the mandatory requirements of running a medical college and also the petitioner had given a satisfactory response to the show cause notice dated 20.3.2012 and 30.5.2012. Strong reliance is placed on the inspection reports to show that the inspections carried out for the undergraduate courses and the Post Graduate course showed that the petitioner had complied with all the mandatory requirements and fulfilled all the terms and conditions for running a medical college both under Graduate and Post Graduate. Copies of these reports have been placed on record and which are not disputed by learned counsel for the respondent, however, learned counsel for the respondent submits that the respondent had issued a show cause notice to the petitioner on the basis of compliance received and the respondent was completely dissatisfied with the reply and the record submitted to the respondent.
8. Counsel further submits that since the date of inspection are notified in advance, it is easy for the medical college to stage manage the facilities on the date of inspection, since the college has prior information of such inspections. Senior counsel for the petitioner submits that nothing has

been found in the inspections, which would disentitle the petitioner for the increase so sought, whereas counsel for the respondent submits that it is only pursuant to the inspection that the material was called from the petitioner and upon careful perusal and scrutiny of the various material deficiencies were detected, which led to the issuance of a show cause notice on 20.3.2012, which pertains to the strength of the faculty, nursing staff, bed strength, essentiality certificate, operation theatres and OPD strength.

9. Learned senior counsel for the petitioner submits that the orders dated 14.9.2012 and 3.12.2012 are illegal, arbitrary and have been passed in contravention of settled legal position. The orders have passed in a mechanical and pre-determined manner and, thus liable to be quashed and set aside. It is further submitted that the impugned orders dated 14.9.2012 and 3.12.2012 could not have been passed only on the basis of the order dated 30.6.2012, which was passed on an application made by the petitioner for increase of strength in the MBBS course from 100 to 150. It is also the case of the petitioner that when a fresh application for increase of seats for starting a new course is made a fresh inspection is required to ascertain the competence and eligibility of the medical college with regard to adequate teaching facilities infrastructure, bed strength, etc., and the prior inspection for an unrelated course cannot be relied upon to reject the case of the petitioner for increase in Post Graduate subjects and for starting of fresh Post Graduate course.
10. Senior counsel for the petitioner submits that the case of the petitioner has been rejected for increase of strength from 100 to 150 in the MBBS course whereas assuming that the respondent is not satisfied with the infrastructure and the strength of the faculty for increase of students from 100 to 150 in the previous inspection but for 100 students for which the

medical college is already functioning and is a recognised medical college, faculties are in place, including the faculty members, as prescribed for 100 MBBS seats and further the proposed increase in seats and proposed starting of additional course would be covered by the present faculty strength. It is also submitted that the earlier order dated 30.6.2012, which was passed as is evident from a bare reading of the order and the reasoning was only with respect to the increase of seats from 100 to 150 in the MBBS course and the said order can by no stretch of imagination cover the case of the petitioner for the Post Graduate course and the increase in intake of students and starting of additional courses. It is further submitted that for the academic year 2012-2013 the respondent had granted a conditional permission to run a few PG courses subject to the outcome of the show cause notice but the outcome of the show cause notice was not linked by the respondent with the increase of seats from 100 to 150 as after the case of the petitioner was rejected on 30.6.2012 the conditional permission granted was not revoked simultaneously and has been revoked as late as on 14.9.2012.

11. Learned senior counsel for the petitioner has clarified that if the conditional permission for running an additional Post Graduate Courses was dependent on the show cause notice and the result thereof, the respondent would have passed a composite order in relation to both i.e. rejection of increase from 100 to 150 seats for the MBBS course and the request for increase of PG course, and which would also have been evident from the language of the order so passed by them and not having done so there was no occasion for the respondent to pass an independent order of 14.9.2012.
12. Counsel for the petitioner further submits that the respondents have wrongly applied Clause 8(3)(1)(d) of the Regulations, while passing the

order dated 30.6.2012 and the subsequent orders 14.9.2012 and 3.12.2012. Counsel for the petitioner submits that not a single document has been placed on record, which is fake and forged and to place reliance on the record of EPF is also misplaced, as the document received from the EPF has not been considered by the respondent.

13. Counsel also submits that rejection for 100 to 150 seats will not come in the way of the petitioner for either increase in the PG course or the fresh courses, as even a minimum of 100 students in the MBBS course for which the college is recognized with the further required faculty for PG, would be sufficient for the said purpose. In other words, permission by MCI for 150 MBBS admissions is not a pre condition for the petitioner, college for seeking permission / increase in admission capacity in the PG Course applied for.
14. Counsel for the respondent submits that the teaching faculty is missing as the college has failed to show payment of salary to them and therefore, he submits that it would adversely affect the teaching both in MBBS and P.G. course.
15. Mr.Amit Kumar, learned counsel appearing on behalf of the respondent MCI, has raised a preliminary objection with respect to the maintainability of these six writ petitions. Mr.Kumar submits that the orders, which are the subject matter of the present writ petitions, have been passed on the basis of the order dated 30.6.2012 and the order dated 30.6.2012 has attained finality. Counsel also submits that the writ petition filed by the petitioner before the Supreme Court of India, challenging the order dated 30.6.2012 was simplicitor withdrawn without any leave to file a fresh petition in the High Court and further the Supreme Court of India has noticed that the matter was argued at length by the counsel for the petitioner. In support of this submission, Mr.Kumar has placed reliance on

Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior and Others, reported at (1987) 1 SCC 5, more particularly paras 5 and 9, which read as under:

“5. In this case we are called upon to consider the effect of the withdrawal of the writ petition filed under Articles 226/227 of the Constitution of India without the permission of the High Court to file a fresh petition. The provisions of the CPC, 1908 (hereinafter referred to as 'the Code') are not in terms applicable to the writ proceedings although the procedure prescribed therein as far as it can be made applicable is followed by the High Court in disposing of the writ petitions. Rule 1 of Order XXIII of the Code provides for the withdrawal of a suit and the consequences of such withdrawal. Prior to its amendment by Act 104 of 1976, Rule 1 of Order XXIII of the Code provided for two kinds of withdrawal of a suit, namely, (i) absolute withdrawal, and (ii) withdrawal with the permission of the Court to institute a fresh suit on the same cause of action. The first category of withdrawal was governed by Sub-rule (1) thereof, as it stood then, which provided that at any time after the institution of a suit the plaintiff might, as against all or any of the defendants 'withdraw' his suit or abandon a part of his claim. The second category was governed by Sub-rule (2) thereof which provided that where the Court was satisfied (a) that a suit must fail by reason of some formal defect, or (b) that there were sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it might, on such terms as it thought fit, grant the plaintiff permission to withdraw from such suit or abandon a part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. Sub-rule (3) of the former Rule 1 of Order XXIII of the Code provided that where the plaintiff withdrew from a suit or abandoned a part of a claim without the permission referred to in Sub-rule (2) he would be liable to such costs as the Court might award and would be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. Since it was considered that the use of the word 'withdrawal' in relation to both the categories of withdrawals led to confusion, the rule was amended to avoid such confusion. The relevant part of Rule 1 of Order XXIII of the Code now reads thus:

Rule 1. Withdrawal of suit or abandonment of part of claim(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

**** *
**** *
**** *
**** *

(3) Where the Court is satisfied

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff

(a) abandons any suit or part of claim under Sub-rule(1),or

(b) withdraws from a suit or part of a claim without the permission referred to in Sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

9. The point for consideration is whether a petitioner after with-drawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting

tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to *res judicata*, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open.”

16. Mr.Kumar has further relied upon ***Dr.Namit Bhargav v. Medical Council of India***, reported at 109 (2004) DLT 404, more particularly para 7, which reads as under:

“7. Having given the matter careful thought I am of the view that there is a significant distinction between the dismissal of a Petition in which Article 32 of the Constitution is invoked and where Special Leave to Appeal is declined under Article 136 of the Constitution. Even though a petition under Article 32 may have been dismissed in limine, and without any speaking orders, it must be assumed that the Court had looked into every averment of fact and submission of law raised in the Petition. This is not a judicial exercise akin to that under Article 136 of the Constitution. The approach in a petition under Article 32 would be similar to that in respect of a petition under Article 226 of the Constitution. Where

the Hon'ble Supreme Court finds that there are no merits in the factual matrix presented to it in the Petition under Article 32, it would be sanguine, if not improper and legally incorrect, for a High Court to entertain similar prayers. Learned Counsel for the parties are in agreement that there is no precedent on this issue; indeed, none was cited before me.”

17. Mr.Kumar has also relied upon *IDPL VRS and Retired Employees Federation Gurgaon v. The Secretary, Government of India and Ors.*, W.P.(C) 12665/2009, more particularly para 7, which reads as under:

7. First, I would deal with the preliminary objection raised by the counsel for the respondent that since no leave of the Apex Court was taken by the petitioners at the time of withdrawing the petition filed by them under Article 32 of the Constitution of India, therefore, the present petition filed under Article 226 of the Constitution of India based on the same facts and same cause of action would not be maintainable. In support of his arguments the learned Counsel for the petitioner placed reliance on the judgments of the Apex Court in *Sarguja Transport Service (Supra)* and *Upadhyay & Company (Supra)*. One of the earlier cases where this question came under consideration was the case of *Daryao Singh Vs. State of U.P. & Ors.* (1962) 1 SCR 574 where the Court was confronted with the question as to whether the dismissal of writ petitions filed by a party under Article 226 of the Constitution of India would create a bar of res judicata against a similar petition filed by the same party under Article 32 of the Constitution of India. Answering the said question the Apex Court held as under:-

“The next question to consider is whether it makes any difference to the application of this rule that the decision on which the plea of res judicata is raised is a decision not of this Court but of a High Court exercising its jurisdiction under Art. 226. The argument is that one of the essential requirements of Section 11 of the Code of Civil Procedure is that the Court which tries the first suit or proceeding should be competent to try second suit or proceeding, and since the High Court cannot entertain an application under Art. 32 its decision cannot be treated as res judicata for the purpose of such a petition. It is doubtful if the technical requirement

prescribed by Section 11 as to the competence of the first Court to try the subsequent suit is an essential part of the general rule of res judicata; but assuming that it is, in substance even the said test is satisfied because the jurisdiction of the High Court in dealing with a writ petition filed under Art. 226 is substantially the same as the jurisdiction of this Court in entertaining an application under Art. 32. The scope of the writs, orders or directions which the High Court can issue in appropriate cases under Art. 226 is concurrent with the scope of similar writs, orders or directions which may be issued by this Court under Art. 32. The cause of action for the two applications would be the same. It is the assertion of the existence of a fundamental right and its illegal contravention in both cases and the relief claimed in both the cases is also of the same character. Article 226 confers jurisdiction on the High Court to entertain a suitable writ petition, whereas Art. 32 provides for moving this Court for a similar writ petition for the same purpose. Therefore, the argument that a petition under Art. 32 cannot be entertained by a High Court under Art. 226 is without any substance; and so the plea that the judgment of the High Court cannot be treated as res judicata on the ground that it cannot entertain a petition under Art. 32 must be rejected.

It is, however, necessary to add that in exercising its jurisdiction under Art. 226 the High Court may sometimes refuse to issue an appropriate writ or order on the ground that the party applying for the writ is guilty of laches and in that sense the issue of a high prerogative writ may reasonably be treated as a matter of discretion. On the other hand, the right granted to a citizen to move this Court by appropriate proceedings under Art. 32(1) being itself a fundamental right this Court ordinarily may have to issue an appropriate writ or order provided it is shown that the petitioner has a fundamental right which has been illegally or unconstitutionally contravened. It is not unlikely that if a petition is filed even under Art. 32 after a long lapse of time considerations may arise whether rights in favour of third parties which may have arisen in the meanwhile could be allowed to be affected, and in such a case the effect of laches on the part of the petitioner or of his acquiescence may have

to be considered; but, ordinarily if a petitioner makes out a case for the issue of an appropriate writ or order he would be entitled to have such a writ or order under Art. 32 and that may be said to constitute a difference in the right conferred on a citizen to move the High Court under Art. 226 as distinct from the right conferred on him to move this Court. This

difference must inevitably mean that if the High Court has refused to exercise its discretion on the ground of laches or on the ground that the party has an efficacious alternative remedy available to him then of course the decision of the High Court cannot generally be pleaded in support of the bar of res judicata. If, however, the matter has been considered on the merits and the High Court has dismissed the petition for a writ on the ground that no fundamental right is proved or its breach is either not established or is shown to be constitutionally justified there is no reason why the said decision should not be treated as a bar against the competence of a subsequent petition filed by the same party on the same facts and for the same reliefs under Art. 32.

There is one more argument which still remains to be considered. It is urged that the remedies available to the petitioners to move the High Court under Art. 226 and this Court under Art. 32 are alternate remedies and so the adoption of one remedy cannot bar the adoption of the other. These remedies are not exclusive but are cumulative and so no bar of res judicata can be pleaded when a party who has filed a petition under Art. 226 seeks to invoke the jurisdiction of this Court under Art. 32. In support of this contention reliance has been placed on the decision of the Calcutta High Court in *Mussammat Gulab Koer v. Badshah Bahadur* [13 C.W.N. 1197.]. In that case a party who had unsuccessfully sought for the review of a consent order on the ground of fraud brought a suit for a similar relief and was met by a plea of res judicata. This plea was rejected by the Court on the ground that the two remedies though co-existing were not inconsistent so that when a party aggrieved has had recourse first to one remedy it cannot be precluded from subsequently taking recourse to the other. In fact the judgment shows that the Court took the view that an application for review was in the circumstances an inappropriate remedy and that the only

remedy available to the party was that of a suit. In dealing with the question of res judicata the Court examined the special features and conditions attaching to the application for review, the provisions with regard to the finality of the orders passed in such review proceedings and the limited nature of the right to appeal provided against such orders. In the result the Court held that the two remedies cannot be regarded as parallel and equally efficacious and so no question of election of remedies arose in those cases. We do not think that this decision can be read as laying down a general proposition of law that even in regard to alternate remedies if a party takes recourse to one remedy and a contest arising therefrom is tried by a court of competent jurisdiction and all points of controversy are settled the intervention of the decision of the Court would make no difference at all. In such a case the point to consider always would be what is the nature of the decision pronounced by a Court of competent jurisdiction and what is its effect. Thus considered there can be no doubt that if a writ petition filed by a party has been dismissed on the merits by the High Court the judgment thus pronounced is binding between the parties and it cannot be circumvented or by-passed by his taking recourse to Art. 32 of the Constitution. Therefore, we are not satisfied that the ground of alternative remedies is well founded”.

18. Learned counsel for the respondent submits that since the order of 30.6.2012 has attained finality the petitioner cannot be allowed to file the present writ petitions, as the impugned orders are based only on the order dated 30.6.2012. The second submission of counsel for the respondent is that the respondent has found grave discrepancies in the running of the petitioner college. Mr.Kumar also submits that a show cause notice was issued to the petitioner on 20.3.2012. It was brought to the notice of the petitioner that there was discrepancy in the strength of the faculty. A further discrepancy was found when the record pertaining to the Employees Provident Fund was compared to the record of the college, there was discrepancy in the number of nursing staff, bed strength,

number of operation theatres and the number of OPD (Out Door Patient). It is also submitted that the reply to the show cause notice, which was received, was found to be unsatisfactory and a second show cause notice was issued to the petitioner on 30.5.2012, response to which was also found to be satisfactory.

19. Mr.Kumar submits that since the strength of the teaching faculty is in doubt as the persons mentioned in the list of employees are not actually working for the college and the college has not been able to produce any evidence to show that the salary is being paid to the teachers. Mr.Kumar further submits that the order of 30.6.2012 has been passed placing reliance on the Clause 8(3)(1)(d) of the Establishment of Medical College Regulations, 1999, (as amended by gazette notification dated 16.4.2012). It is also submitted that since it has been found that the college has employed teachers with fake/forged documents, processing of the application of the petitioner for two academic sessions has been suspended. Counsel also contends that the discrepancies in the running of the petitioner college are glaring and serious, and thus, the petitioner has not been able to make out a case for grant of permission to increase the number of students in the Post Graduation and for starting new courses in the Post Graduation. Counsel also contends that the inquiry, which was conducted and the order so passed on 30.6.2011 was with respect to both the Under Graduate and Post Graduate courses. Counsel next contends that even otherwise the prayer to set aside the order dated 30.6.2012 has been given up in the earlier writ petition filed by the petitioner being W.P.(C) 4509/2012 and the orders passed in the present writ petitions are consequential orders arising out of the order dated 30.6.2012.
20. I have heard counsel for the parties and considered their rival contentions. Initially the petitioner, college was established in the year 2004 with the

capacity of 100 seats. On completion of the first batch of MBBS, MCI recognized the college for conduct of MBBS course with 100 seats. In the same year the college applied to the MCI for enhancement of MBBS seats from 100 to 150 and the permission was also sought to commence various PG courses, which led to an inspection between the months of January to March, 2011. For the PG medical courses a letter of permission was granted to the petitioner for the academic session 2011-12. In the month of March, 2011, the petitioner sought enhancement of MBBS seats to 150 and also made a request for starting / increase of seats in the post graduate course w.e.f. academic year 2013-14. The request of the petitioner for increase in number of MBBS seats to 150 admittedly stands rejected by an order dated 30.6.2012, which according to the respondent has attained finality, as the writ petition filed before the Supreme Court of India, challenging the aforesaid order was withdrawn by the counsel for the petitioner.

21. The case of the petitioner is that respondent has rejected the application made by the petitioner for increase in number of seats and starting new course for the post graduation, while relying on the order of 30.6.2012, which was passed on an application made by the petitioner requesting for increase of MBBS seats to 150 which has no bearing to the request so made. The submission of counsel for the respondent is that since the order dated 30.6.2012 has been passed under clause 8(3)(1)(d) of the Establishment of Medical College Regulations 1999 under which the petitioner, institute has been debarred for two academic sessions, the case of the petitioner for increase in number of students in the post graduation and for starting new courses in the post graduation cannot be considered by the respondent as clause 8(3)(1)(d) would cover the PG course as well.
22. Mr.Maninder Singh, learned senior counsel for the petitioner has

contended that firstly clause 8(3)(1)(d) is not applicable to the facts of the present case, either for the MBBS and definitely not for the post graduation, as there is no clear-cut finding that the college has employed teachers with fake / forged documents, nor the name(s) of the teachers have been disclosed, nor the documents have been detailed, which according to the respondents are fake and forged. Order dated 30.6.2012 is reproduced below:

“No.MCI-37(1)/2012-Med./ 115372 Date:- 30.06.2012

The Dean/ Principal,
National Institute of Medical Sciences & Research,
Shobha Nagar,
JAIPUR – 303001 (Rajasthan)

Ph: 01426-2604040, 2611020; Fax: 01426-213909, 231635;
Mobile: 09414044040
E-mail: vinodshah10@yahoo.com

Subject: **National Institute of Medical Sciences & Research, Jaipur – Renewal of permission for admission of 2nd batch of MBBS students against the increased intake i.e. from 100 to 150 for the academic year 2012-2013 – regarding.**

Sir,

I am directed to inform you that the after taking into consideration the Assessment Report (4th & 5th June, 2012) and the following material:-

- (i) Show Cause Notice dated 20.03.2012 issued by the Council to your college
- (ii) Reply of your college dated 21.03.2012;
- (iii) Council letter dated 30.05.2012;
- (iv) Written submission made by your college dated 05.06.2012;
- (v) Oral Submission made by the representative of the College in the personal hearing before the Board of Governors on 18.06.2012;
- (vi) Council letter dated 25.06.2012; and

(vii) Written submission made by your college dated 27.06.2012 the Board of Governors noted the following discrepancies/deficiencies/ shortcomings:-

- A. TDS Form – a total of 283 doctors of National Institute of Medical Sciences & Research, Jaipur (Rajasthan) (167 faculty and 116 residents) have been made available by the college as against the strength of 379 teachers as claimed by National Institute of Medical Sciences & Research, Jaipur (Raj.) in their earlier submission and also informed during the personal hearing before the Board of Governors on 18.06.2012. Thus, there is discrepancy in the figure of teachers.
- B. A list of 442 nursing staff employed from the period of April to December, 2011 and 471 from January to March 2012 has been furnished alongwith their salary details. It was noted that during April – December 2011, 315 nurses were paid salary in cash and only 127 were paid salary by cheque through bank.
- C. Out of 442 nursing staff, a total of 45 in April; 52 in May and 48 in June, 2012 were paid less than Rs.6500. By accepting this position the nursing staff who are getting salary less than Rs.6500 per month are supposed to be covered by EPFO scheme. Besides, 5 of these Nurses were receiving salary less than Rs.6500/- throughout the year i.e. from April, 2011 to March, 2012 and thus they are also covered under EPFO Scheme.
- D. In case of non-teaching staff out of 429 staff members 402 were paid through bank whereas 27 were paid in cash. In case of non-teaching staff also, while checking randomly, 9 staff members were found to be paid salary less than Rs.6500/- per month throughout the year. Therefore, these employees are also covered under EPFO scheme as per rules.
- E. Claim of the college has all along been that none of their Nurses/staff are covered under EPFO.

2 In view of the position stated in respect of nurses and non-teaching staff; the Board of Governors noted that there is a clear violation of EPFO scheme and also noted that the information furnished by National Institute of Medical Sciences & Research, Jaipur (Rajasthan) on two different occasions is also different.

The Board of Governors considered that the information provided by National Institute of Medical Sciences & Research, Jaipur (Rajasthan) vide their letter dated 27.06.2012 and this information is taken on record. The Board of Governors also noted that National Institute of Medical Sciences & Research, Jaipur (Rajasthan) has furnished wrong information to the Medical Council of India on different occasions, as per discrepancy noted above.

3. National Institute of Medical Sciences & Research, Jaipur (Rajasthan) has submitted a list of teachers and other staff members with details of their name, salary paid to them. At the same time National Institute of Medical Sciences & Research, Jaipur (Rajasthan) have also submitted bank statement issued by State Bank of India, Jaipur for the period of April 2011 to March, 2012. On comparing the statement of National Institute of Medical Sciences & Research, Jaipur (Rajasthan) about the payment of salary through Cheque and bank statement it was found that the salary cheque amount has not been withdrawn from the bank account. This raised doubts about the payment of salary to the teachers and other staff members through cheque.

4 The Board of Governors observed that National Institute of Medical Sciences & Research, (NIMS) Jaipur (Rajasthan) has submitted different information on different occasions which falls under clause 8 (3)(1) (d) of the Establishment of Medical College Regulations, 1999(as amended by Gazette Notification dated 16th April, 2010), that reads as under:-

“(d) Colleges which are found to have employed teacher with fake/forged documents.

If it is observed that any institute is found to have employed a teacher with fake/forged documents and have submitted the declaration Form of such a teacher, such an institute will not be considered for renewal of permission/recognition for award of MBBS degree/processing the applications for postgraduate courses for two Academic years – i.e. that Academic year and the next Academic Year also”.

5. In view of the foregoing, the Board of Governors have decided not to approve renewal of permission for increase of MBBS seats from 100 to 150 for the academic year 2012-13 due

to discrepancies/deficiencies/ shortcoming as stated above and the Board of Governors have also decided to impose penalty under Clause 8(3)(1)(d) of the Establishment of Medical College Regulations, 1999, by directing College not to admit students against enhanced admission capacity from 100 to 150 for the academic year 2012-13 and 2013-14.

6 Therefore, as directed by the Board of Governors the National Institute of Medical Sciences, Jaipur stands debarred from admitting students against the increased intake of MBBS seats from 100 to 150 for the academic sessions 2012-2013 and 2013-2014.

Yours faithfully,

**[Prof. Sanjay Shrivastava]
Secretary”**

23. A careful perusal of the order dated 30.6.2012 and more particularly the cause title i.e. subject shows that the order was passed on the request for renewal of permission for admission of second batch of the MBBS students against the increase intake from 100 to 150 for the academic year 2012-13. The concluding paragraph of this order would also show that this order has been passed with respect to MBBS seats and the college stands debarred from admitting students against the increase intake of MBBS seats. There is no mention in the order with regard to the P.G. course. Thus it is clear that this order did not pertain to the post graduate course.
24. The short point which comes up for consideration at this stage would be that assuming the order dated 30.6.2012 has been passed under clause 8(3)(1)(d) of the Regulations by which an institution is debarred for two academic years, would this order also debar the petitioner for increase in the number of seats for post graduate and for starting additional PG courses. Clause 8(3)(1)(d) reads as under:

“Colleges which are found to have employed teachers with faked / forged documents:

If it is observed that any institute is found to have employed a teacher with faked/ forged documents and have submitted the Declaration Form of such a teacher, such an institute will not be considered for renewal of permission / recognition for award of M.B.B.S. degree/ processing the applications for postgraduate courses for two Academic Years – i.e. that Academic Year and the next Academic Year also.

However, the office of the Council shall ensure that such inspections are not carried out at least 3 days before upto 3 days after important religious and festival holiday declared by the Central / State Govt.

(2) The recognition so granted to an Undergraduate Course for award of MBBS degree shall be for a maximum period of 5 years, upto which it shall have to be renewed.

(3) The procedure for ‘Renewal’ of recognition shall be same as applicable for the award of recognition.

(4) Failure to seek timely renewal of recognition as required in sub clause (a) supra shall invariably result in stoppage of admissions to the concerned Undergraduate Course of MBBS at the said institute.”

25. A careful reading of Clause 8(3)(1)(d) would show that in case any institute is found to have employed a teacher with faked (sic) fake /forged documents and has submitted the declaration form of such teacher, the institute would not be considered for permission / recognition for award of MBBS degree / processing the applications for post graduate courses for two academic years i.e. the present and the next year . Counsel for the respondent while relying on Clause 8(3)(1)(d) submits that not only the application for increase of seats in the MBBS course was rejected, but also as per clause 8(3)(1)(d) of Regulations there has to be an automatic

rejection for the post graduation courses as well.

26. The submission made by counsel for the respondent in my view is unacceptable, as Clause 8(3)(1)(d) is a penal provision, the same is to be read strictly and on bare reading of this provision would show that in case of any fake or forged document submitted for the employment of a teacher, the institute will not be considered for renewal of permission / recognition for award of MBBS degree/ processing the application for post graduate courses for two academic years, which means that in case the petitioner had only applied for increase in number of post graduate seats and it was found that certain forged documents of teachers had been submitted, the application for post graduate shall alone would be rejected and it would not have any effect on the running of the MBBS course, as in the present case, which is evident from the fact that the petitioner, college continues to run the medical college for 100 students.
27. It is the case of the respondent that forged and fake documents were found when the case of the petitioner was being considered for increase in MBBS seats. Concluding portion of the order dated 30.6.2012 also refers to the intake of MBBS seats, thus reading of the order would show that it restricts itself only to the MBBS seats. Even otherwise in case this order was applicable to both MBBS and the post graduate course, subject of this order would have said so also the concluding part of the order would have referred to the same and lastly the petitioner would have been simultaneously informed about the order as being applicable to the MBBS and post graduation especially in view of the fact that in all the writ petitions except WP(C)No.335/2013, the respondent had granted conditional approval to the petitioner for certain PG courses on 31.3.2012, subject to the outcome of the show cause notice issued to the petitioner. The respondents have informed the petitioner by separate order only on

14.9.2012, which reads as under:

“No. MCI-88(22)/2011-Med./129647

Dated: 14/9/12

The Dean/Principal,
National Institute of Medical Sciences & Research,
Shobha Nagar,
Jaipur-Delhi Highway No. 8,
Jaipur-303 121

Sub.: Increase of seats in MD (Biochemistry) course at National Institute of Medical Sciences & Research, Jaipur under NIMS University, Jaipur u/s 10A of the IMC Act, 1956 – Permission of Board of Governors – regarding.

Sir/Madam,

This is in continuation to the Conditional Letter of Permission issued vide Council letter dated 31/03/2012 for increase of seats in **MD(Biochemistry)** course from **01(One)** to **02(Two)** seats. It may be recalled that the Conditional LOP was subject to the outcome of proceedings initiated against your college. The Board noted that it had by its decision dated 30/06/2012 decided “not to approve the renewal of permission for increase of MBBS seats from 100 to 150 for the academic year 2012-13 and also debarred the college from admitting students against the increased intake of MBBS seats from 100 to 150 for the academic session 2012-2013 & 2013-2014.

As regards, the matter relating to increase of seats in **MD(Biochemistry)** course, the Board at its meeting held on 30/07/2012 decided that since the Conditional Letter of Permission was subject to outcome of the show cause notice and the Board has decided as above, regarding UG course offered by your institute, the Board deemed it appropriate to withdraw the Conditional Letter of Permission issued vide letter dated 31/03/2012.

Hence, compliance along with bank guarantee submitted by you vide letter dated 11/04/2012 is not accepted and above said Conditional Letter of Permission stands withdrawn/cancelled with immediate effect.

In view of the above, the college authorities are directed to discharge the students admitted against increased capacity in

MD(Biochemistry) course, if any for the academic year 2012-13 with an intimation to this Council, within two weeks from the date of issue of this letter.”

28. In the batch of five writ petitions on 14.9.2012, petitioner was informed that a conditional letter of permission was granted to the college subject to the outcome of proceedings initiated against the college and since the board has decided “not to approve the renewal of permission for increase of MBBS seats from 100 to 150 for the academic year 2012-13 and also debarred the college from admitting the students against the increase intake of MBBS seats from 100 to 150. The order dated 3.12.2012 rejecting the request of the petitioner for the academic session 2012-13 and 2013-14 reads as under:

“I am directed to inform you that the Board of Governors at its meeting held on 17.09.2012 considered the matter with regard to submission for starting of New PG courses/ increase in number of existing PG seats by the Institutions wherein adverse action has been taken by the BOGs on show cause notice and decided as under :

“after detailed discussion, considering the agenda note and documents on file the BOGs decided that the request for starting new postgraduate courses/ increase of postgraduate seats in existing medical colleges/ institutions where the BOGs has already taken decision in show cause notice by not permitting National Institute of Medical Sciences, Jaipur for increasing the admission capacity of MBBS course.”

In view of above decision application for starting/ increase of seats in the above PG courses are returned herewith along with application fee of Rs. 28.00 Lakhs vide Cheque Nos. 260170 to 260173 drawn on Syndicate Bank dated 21.11.2012.”

29. Both the orders of 3.12.2012 and 14.9.2012 have been passed while

placing reliance on the order dated 30.6.20012, which has relied upon Clause 8(3)(1)(d). The court cannot lose sight of the fact that despite the order of 30.6.2012, 14.9.2012 and 3.12.2012 the petitioner, institute continues to run the MBBS course for 100 students as a recognized college and one batch with 150 seats and further continues to have six post graduate courses all with the previous permission of the respondent. It is also not in dispute that the recognition of the petitioner, institute has also not been cancelled. In effect the order of 30.6.2012 has been passed only with respect to rejection of increase of MBBS seats from 100 to 150 and the petitioner has been debarred from seeking increase to 150 for two academic sessions. In my view, on an incorrect interpretation of Clause 8(3)(1)(d) where the slash (/) is being read as 'and' instead of 'or' and the effect of which is the order passed in the MBBS course has been extended to the PG course as well. The order dated 14.9.2012 and 3.12.2012 are accordingly set aside, however, it is clarified that in case upon inspecting of the premises of the college of the petitioner, or otherwise, respondents find any shortfall and / or any deficiency or reaches a conclusion that the college does not comply with the Regulations / Circulars of Medical Council of India, of Minimum Requirement, as per Regulation, the respondent will be free to decline the permission sought for by the petitioner on or before 28.2.2013.

30. The preliminary objection which has been raised by counsel for the respondent with respect to the maintainability of these writ petitions on the ground that the order dated 30.6.2012 has attained finality, is without any force firstly on the ground that the present writ petitions have challenged the order dated 14.9.2012 and 3.12.2012. This submission is also without any force on the ground that although the orders of 14.9.2012 and 3.12.2012 have placed reliance on the order passed on 30.6.2012, the

order of 30.6.2012, which has been reproduced in this order does not refer to the application made by the petitioner with respect to the post graduation courses and as noticed in the paragraphs foregoing, subject of this order pertains to the renewal of permission for admission of second batch of MBBS students against the increase intake from 100 to 150 and the concluding portion, which has debarred the petitioner for admitting students against the increase intake of MBBS seats from 100 to 150 for the academic session 2012-13 and 2013-14. While entertaining these writ petitions, the Court has intentionally not commented on the merits of the matter with regard to the order dated 30.6.2012, but have made observations only with regard to the applicability of the said order for the request of the petitioner for increase of sets in the post graduation and starting additional PG courses. The court has also arrived at a finding that Clause 8(3)(1)(d) of the Regulations, even if applies to the MBBS course cannot apply to the post graduate course, as the order of 30.6.2012 fails to indicate that the application of the petitioner for P.G. course also stands rejected.

31. It may also be noticed that at the outset an option was given to the petitioner to withdraw the order dated 14.9.2012 and 3.12.2012 and thereafter pass a speaking order for the PG course, however, this offer was not accepted, as the respondent was of the view that Clause 8(3)(1)(d) of the Regulations would be applicable to the PG courses as well.
32. The writ petitions stand disposed of, in above terms.

FEBRUARY 25, 2013

ssn

G.S.SISTANI, J