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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2230/2013

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Judgment dated 30th May 2013

SH. RAM MURTI SMARAK TRUST

..... Petitioner

Through: Mr.Ashish Bhagat, Mr.Abdhes Chaudhary,
Mr.Nilendu and Ms.Geetanjali, Advs

versus

BOARD OF GOVERNORS IN SUPER –
SESSION AND ANR

..... Respondent

Through: Mr.Ashish Kumar, Advocate for MCI
Mr.Utsav Sidhu, Adv. for the R=2

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W.P.(C) 2231/2013

SH. RAM MURTI SMARAK TRUST

..... Petitioner

Through: Mr.Ashish Bhagat, Mr.Abdhes Chaudhary,
Mr.Nilendu and Ms.Geetanjali, Advs

versus

BOARD OF GOVERNORS IN SUPER –
SESSION AND ANR

..... Respondent

Through: Mr.Ashish Kumar, Advocate for MCI
Mr.Utsav Sidhu, Adv. for the R=2

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. With the consent of counsel for the parties present writ petitions are set down for final hearing and disposal.

2. The basic facts of both the cases are similar, hence, both the petitions

Signature Not Verified have been heard together and are being disposed of by a common order.

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the physical file and no page is missing.

The facts of WP(C)No.2230/2013 are being set out in detail.

3. Petitioner in WP(C)No.2230/2013 seeks a writ of mandamus directing the MCI/Central Government to issue letter of permission to increase M.S. (Obstetrics & Gynaecology)/seats from 2 to 4 in the speciality of Obstetrics and Gynaecology for the academic session 2013-2014. Mandamus is also sought to respondents no.1 and 2 to give a personal hearing/re-verify the petitioner's institute of medical science for increase of M.S. (Obstetrics & Gynaecology) from 2 to 4 in the speciality of Obstetrics and Gynaecology. Similar application was made by the petitioner in the WP(C)No.2231/2013 for increase of seats in M.S. (General Surgery) from 02 to 07.
4. The necessary facts, for disposal of the present writ petitions, are that the petitioner had commenced operation for the MBBS course for the academic session 2005-2006 and has been continuously conducting MBBS course after being duly recognised by the MCI and the Central Government. The petitioner being desirous of starting a medical college and Post-Graduate course in medical science approached the State Government for issuance of an essentiality certificate, which was issued by the State Government on 31.5.2004 for conducting MBBS course for 100 seats. Affiliation was granted for conducting the said course by the State University from time to time. The petitioner has also been applying to MCI for conducting MBBS course and has been regularly afforded permission to conduct MBBS course for the last seven years for 100 seats. The petitioner claims to have a fully equipped 750 bedded (590 teaching beds) hospital in an area of more than 26 acres of land in Bareilly, U.P. With a view to conduct courses of MD in various branches, as per the scheme of Post-Graduate Medical Education Regulation, 2000, it is the Central Government who accords permission for starting a new Post-

Graduate course. Petitioner applied for starting Post-Graduate courses in 19 disciplines, the petitioner was allowed to start courses and number of students allowed for MS/Obstetrics and Gynaecology was two. Vide application dated 24.4.2011, the petitioner had applied to MCI for seeking permission to increase the seats from 2 to 7 in the discipline of MS (General Surgery) for the year 2012-2013. The petitioner applied for increase of PG seats from 2 to 4 vide application dated 25.4.2012 in the discipline MS (Obstetrics & Gynaecology).

5. According to the petitioner the aforesaid increase was sought from the MCI keeping in view the availability of teaching staff and also inconsonance with the facilities available at the institute. Further according to the petitioner all the formalities were complete for increasing PG seats in M.S. Obstetrics and Gynaecology and General Surgery. The MIC appointed Dr.S.S. Trivedi, as the Inspector / Assessor, to inspect the petitioner institute of Medical Science, as per the regulations. Petitioner was also informed about the same. Similarly in the case of WP(C)No.2231/2013, Dr.R.K. Deka was appointed as an inspector to inspect the petitioner, institute of medical science. The institute of the petitioner was inspected on 15.12.2012 with respect to MS (Obstetrics and Gynaecology) and as per the Assessment/ inspection report prepared by the Assessor after physical inspection, all the facilities relevant to the course it was recorded inter alia:

“Final remarks by the Assessor

Facilities are adequate in respect of increasing the intake of 02 to 04 seats of PG.”

6. Similarly, the petitioner, institute of medical science was inspected for increase in the General Surgery on 12.12.2012 and as per the Assessment

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/ Inspection report prepared by the Assessor after physical inspection of all the facilities, it was recorded *inter alia*:

“Final remarks by the Assessor

PG teaching staff strength – 1 Professor, 6 Associate Professors (All have completed 8 years of teaching),

Clinical material – Adequate
Infrastructural facility – Adequate

Increase of PG seats to 7 from present 2 seats – Appears feasible”

7. Counsel for the petitioner has relied upon the report of the Assessor to show that the petitioner has a central library with large number of books. Petitioner subscribes to Indian and foreign journals, including 53 online journals. There was sufficient hostel facilities, besides a central research laboratory, which was well-equipped with operation theatre available for Obstetrics & Gynaecology. Counsel also submits that the assessors were satisfied with regard to the availability of teaching staff and all the facilities were adequate for increasing four (4) post graduate seats in M.S. (Obstetrics & Gynaecology).
8. Similar argument is raised by counsel for the petitioner that based on the report of the Assessor to show that the assessor had noticed that the petitioner has a central library with over 10000 books, 543 books pertaining to General Surgery. Petitioner has subscribed to 276 Indian and 61 foreign (print) and 53 online journals of which 4 Indian and 10 foreign journals were exclusively for General Surgery. The report also observed that petitioner has a central research laboratory with well-equipped equipments and presently research work using gel electrophoresis,

chromatograph (Paper), TCL, PCR, Fungus, Malaria, Herpes simplex virus, Human Papilloma virus are going on. As regards the operation Theatres, exclusively available for General Surgery department, petitioner has specifically mentioned that :

“*	AC/ Non AC	:	A/C
*	Numbers	:	4
*	Equipment (s)	:	Available
*	Pre-Anesthetic Clinic	:	Available
*	Post-Anesthetic Care	:	Available
*	Resuscitation arrange	:	Adequate
*	ICU	:	Available 2-3 Beds
*	Number of units functional	:	One day per unit Per day in the depart.
*	Average No. of cases	:	Major: 14 per day.
*	Operated per day	:	Minor: 17 per day”

9. It is next contended that although the assessment report was made on 15.12.2012 in the case of M.S. (Obstetrics & Gynaecology) and on 12.12.2012 in the case of M.S. (General Surgery), but the MCI took almost two months to examine the report of M.S. (Obstetrics & Gynaecology) and thereafter on 12.2.2013 while annexing the inspection report of the assessor, sent a covering letter denying the increase of seats in M.S. (Obstetrics & Gynaecology) on flimsy grounds, which read as under:

- “* Discrepancy in the salary structure of the faculty members, Salary of Dr.J.K. Goel : Rs.72,310/-, Dr.Kar : Rs.35,000/-, Dr.Namita : Rs.30,000/-, Dr.Arya : Rs.95,659/-, which is inconsistent.
- * Inadequate daily delivery load, this was also pointed out by the assessor in the assessment report of the Paediatrics from the same institute.”

10. The following grounds were taken for denying the increase in seats in M.S. (General Surgery) to the petitioner:

- “Since 2011 to 2012, there is no appreciable increase in the number of major surgeries and daily operative work.
- As there is discrepancy between salary of professor Assoc. Professor & Asstt. Professor. Salary of Professor D.Bajpai is 60,000/- Assoc. Professor Rs.1,51,794; Asstt. Professor; Rs.1,12,000/- salary of Professor is less than Assoc. Professor, Discrepancy in salary between two Assoc. Professors. From 16 not available for facility.
- Composition of until III is incomplete”

11. Aggrieved by the rejection letters, the petitioner made representations dated 14.2.2013 and 19.2.2013 respectively, wherein it was pointed out that the assessor appointed by the MCI had not reported any inadequacy or deficiency in infrastructure. It was clarified that although there was some discrepancy in the salary structure, but since there was regulation of the MCI which fixes the salary of the teachers of Unaided Medical Colleges, thus it cannot be said that the discrepancy in salary structure would be a ground for rejection.

12. Counsel for the petitioner has clarified that some of the faculty members had joined the institute post retirement and they are paid salary taking into account the fact of the pension received by them from the concerned government department, besides they are being provided fully furnished accommodation, transport facilities etc. It is also pointed out that as far as deficiency with regard to the workload and clinical material, the same was as per the requirements of the Post Graduate Committee. The petitioner also appeared before the MCI on 19.2.2013 in the case of M.S. (Obstetrics & Gynaecology) to explain its stand, but no response was received. The petitioner again sent a second reminder on 9.3.2013, reiterating its earlier

stand, however, the MCI rejected the representation of the petitioner and issued a rejection letter on 29.3.2013. It is thus submitted by counsel for the petitioner that there was no connection between the assessment report dated 15.12.2012 and the letter of denial of permission dated 9.2.2013 and 29.3.2013. It is submitted that the letter of rejection has been issued in a routine manner, while the assessment report would show that the infrastructure in the college is adequate for post graduate training and the average daily delivery load is as per the standard assessment. It is submitted that the reasons for declining the increase of seats have been fully explained by the petitioner.. Similar argument has been raised with regard to increase of seats in the discipline of M.S. (General Surgery).

13. *Per contra*, counsel appearing for the MCI submits that it is the duty and responsibility of the MCI to ensure maintenance of highest standard of medical education throughout the country. It is contended that with a view to check the unregulated, uncontrolled mushrooming growth of the medical colleges some of them with dubious track record and with a view to save the interest of the students and to maintain the minimum standard of education, the legislature has made amendments in the Act and incorporated new provisions making it absolutely mandatory and obligatory for any person desirous of establishing a medical college and / or to start a new or higher course of study in existing medical college, to obtain prior permission from the Central Government.
14. Relying on section 10A, Mr.Kumar, counsel for the respondent submits that the Medical Council of India has to satisfy itself as to whether an existing or proposed medical college would be in a position to offer the minimum standard of medical education, as prescribed by the Council under Section 19-A. The Council must also satisfy itself with regard to the staff, equipment, accommodation, training facilities for increased

admission capacity.

15. Counsel for the respondent also submits that the Board of Governors are well within their right to overrule the recommendation of the Committee constituted to assist the Board of Governors. It is submitted that even in the present case it is the Board of Governors, who have taken a final decision in the matter, while interpreting the report of the assessor. Reliance is placed on *Medical Council of India Vs. Hi-Tech Medical College and Hospital* [SLP (C)No.27595/2011]. Relevant portion of the judgment reads as under:

“..... No ground is made for interference under Article 136 of the Constitution of India as the order of the learned Single Judge merely requires the MCI to reconsider the entire matter in accordance with law. It can do so by taking independent decision and is not bound by the decision of either the Assessors or the Under Graduate Medical Education Committee. Needless to say, if the recommendations of the Undergraduate Medical Education committee have to be ignored, MCI may record valid reason there for.....”

16. It is thus contended by counsel for the respondent that the authority / power to take a final decision on the applications made under Section 10-A of the Act vests with the Board of Governors and any suggestion / recommendation by the Internal Committees constituted by the Board of Governors as per the Act and the regulations as provided in the Regulation 11.2 of P.G. Medical Education Regulations, which reads as under:

“11.2 (a) An institution conducting both Undergraduate and Post Graduate teaching shall fulfil the prescribed minimum requirements for undergraduate training and also additional requirements for Post Graduate training depending on the type of work being carried out in the Department.

(b) A Department imparting only Post Graduate training shall:

- (i) Provide facilities consistent with the all round training including training in basic medical science and other departments related to the subject of training as recommended by the Medical Council of India.
- (ii) have as many autopsies, biopsies and cytopsies as possible for teaching purposes; and
- (ii) make available facilities of ancillary department for coordination of Training."

17. Counsel contends that the Board of Governors has taken into consideration the following factors also for deciding various applications for start/increase of number of seats in the post graduate medical courses :

- "Consent of Affiliation for the no. of seats
- Note : We have to ensure that all the universities are mentioning # of seats in their Letters of consent.
- Number of Re M.S. (Obstetrics & Gynaecology)/cognised Postgraduate Teachers:
 - Professor
 - Associate Professor
 - Asstt. Professor
 - Tutors
 - Senior Residents/ Junior Residents
- No. of units/ teaching beds (40 or 30)
- Increase in seats in the last three years
- Proportionate increase in clinical work > 3 yrs.
 - 10%
 - 20%
 - 30%
- Proportionate increase in investigations > 3 yrs.
 - Biochemistry
 - Histopathology
 - X-ray
 - MRI, CT Scan, Scan, Sonography
 - Blood Consumption etc.

- Proportionate increase in Major / Minor Surgeries
- Proportionate increase in Normal delivery, LSCS etc.,
- Proportionate increase in scientific activities like publications in indexed / non indexed journals, participation in conference and poster/ paper presentations by residents/ PGs.
- Any refusal for increase in seats/ start of course in the previous assessment / years.
- Admission capacity in Postgraduate medical courses.”

18. It is strenuously urged by Mr.Kumar, counsel for the respondent no.1 that a post graduate medical course requires a high level of training and skill, so as to train students in the best possible manner, to produce qualified specialist in a particular field of medicine with practical experience. The training which is to be imparted at the post graduate level in medical education is at a higher footing and is directly relatable to the availability of clinical material, as at this level of education the curriculum involves more practical training than theoretical study. The medical science deals with learning on live patients for acquiring skills and competencies for generating a dedicated community oriented doctor and for this purpose exposure to abundant and versatile clinical material cannot be compromised.
19. It is the case of the respondent that the Board of Governors has, with the assistance of the Postgraduate Committee scrutinised the information / data contained in the Standard Assessment Form for the assessment carried out by the assessor appointed, inter alia, on the criteria mentioned in the IMC Act, the Regulations framed thereunder, the MCI Circular dated 30.11.2009 and the parameters mentioned in Paragraph 12 above and any approval/ disapproval is the result of proper application of mind by the experts of the field on such information.
20. It is also the case of the respondent that the Board of Governors consists of seven members who are eminent doctors/ medical teachers, who are

either holding or held distinguish positions in medical institutes universities of national repute with years of experience and they are best placed to assess the applications made by various colleges under Section 10-A of the IMC Act, 1956.

21. Mr.Kumar contends that the data collected in the assessment report was duly analyzed by the competent authority in an integrated manner for the different department of the entire college and the attached hostel in a holistic manner to ensure that the petitioner is in a position to run post graduate medical courses or not. It is thus the case of the respondent that for the post graduate medical education which produces specialists in their particular discipline cannot be equated with undergraduate course where admissions are made in hundreds and accordingly deficiency either in clinical material operative workload, investigative workload and facilities cannot be overlooked. It is also contended by counsel for the respondent that while considering the application the Board of Governors had considered the infrastructure and other facilities before arriving at a decision.
22. Mr.Kumar submits that pursuant to the application made by the petitioner an assessment was carried out on 15.12.2012 and the report was placed before the Post Graduate Committee for analysis and suggestions, thereafter the assessment report along with the recommendations / suggestions of PG Committee has been placed before the Board of Governors. The Board of Governors has examined the facilities, infrastructure, faculty strength and availability of clinical material along with other parameters and decided that on the basis of available infrastructure / material with the petitioner college no increase can be granted to the petitioner college in MS (Obstetrics & Gynaecology). Accordingly, the MCI vide its letter dated 12.2.2013 issued show cause

notice to the petitioner college seeking explanation as to why the scheme of the petitioner college be not disapproved for the deficiencies pointed out in the letter dated 12.2.2013 indicating inadequate delivery load noticed by the Assessor in his report; vide said letter the petitioner was also requested to appear before the Board of Governors in supersession of MCI on 19.2.2013 for personal hearing. It is submitted that the institute appeared for personal hearing on the aforesaid date. The petitioner also submitted explanation on 14.2.2013. It is stated that the MCI vide its letter dated 12.2.2013 pointed out that the scheme of the petitioner is defective as there are discrepancies in the salary structure of the faculty members and there are inadequate daily delivery for load increase from 2 to 4.

23. Mr.Kumar, counsel for the MCI further submits that the perusal of the report of assessors shows that there are discrepancies in the salary structure of the faculty members which gives rise to the suspicion of the presence of the faculty members. It is submitted that petitioner failed to give satisfactory explanation to the discrepancies pointed out by the petitioner. It is submitted that only explanation given by the petitioner is that since the Institute is run by a Charitable Trust, therefore, the faculty members have expressed their desire to serve the charitable cause of the trust. The petitioner further made an attempt to explain the anomalies by stating that since some of the faculty members have joined the Institute after superannuation from their earlier employment and thus their post retirement benefits are being taken into consideration for fixing their salary. However, it is submitted that the petitioner failed to bring on record any document to support the aforesaid explanation furnished by it. It is submitted that MCI perused the written explanation submitted by the petitioner and observed that there is gross disparity of payments made to

the faculty members.

24. Counsel for the respondent / MCI further submits that the MCI after perusing the Assessors report came to the conclusion that there are inadequate daily delivery load. Counsel further contends that the said fact is also borne out from the Assessment Report of the MS (Obstetrics & Gynaecology) of the petitioner institute which establishes that there is increase in the workload which warrants increase in the intake capacity of the petitioner institute in MS (Obstetrics & Gynaecology). It is submitted that teaching in Post Graduate Course is primarily based on exposure to the patient and disease and it is basically a training which cannot be imparted in absence of required clinical workload.
25. Mr.Kumar, submits that the Board of Governors examined the assessment report and has taken into consideration the relevant factors in deciding the application and having regard to the clinical workload, it did not approve the increase in admission capacity in MS (Obstetrics & Gynaecology) from existing two to four. It is submitted that from perusal of the data forming part of assessment report, it is evident that the medical report has 02 units in department of MS (Obstetrics & Gynaecology) with 30 teaching beds in each unit. The institute is running the course MS (Obstetrics & Gynaecology) with 02 (two) PG seats. On the day of assessment the average number of normal delivery per day was 03 to 04 and CS delivery was 01 to 02 whereas instrumental delivery was 0-1 only. It is also evident from the perusal of the report that there is no noticeable increase in available Clinical Materials from the previous years which entitles the petitioner for any increase in number of intake capacity from 02 to 04. It is not out of place to mention herein that the current intake admission capacity of the medical college is two students per year, thus for duration of 03 year of a degree course there would be six postgraduate students in

the Department of MS (Obstetrics & Gynaecology). Similarly, the institute is running the MBBS course with intake capacity of 100 seats. Thus, clinical workload may be just enough for the existing workload and does not support further increase in MS (Obstetrics & Gynaecology) seats.

26. Counsel for respondent also submits that there has been no proportionate increase in total Clinical materials/ workload since 2009 to 2012. This does not justify the increase in the existing postgraduate seats from 02 (two) to 04 (four) in the Department of MS (Obstetrics & Gynaecology).
27. Similar argument is raised by counsel for the respondent with respect to increasing seats in M.S. (General Surgery). It is contended that the Board of Governors examined the facilities, infrastructure, faculty strength and availability of clinical material along with other parameters and decided that on the basis of the available infrastructure and material with the petitioner college, no increase can be granted in the M.S. (General Surgery). Accordingly, the MCI issued a show cause notice dated 9.2.2013 to the petitioner, college, seeking an explanation as to why the scheme of the petitioner, college be not disapproved for the deficiencies pointed out in the letter dated 9.2.2013. Petitioner was called upon to appear before the Board of Governors in supersession of MCI on 19.2.2013 for personal hearing at 3:00 p.m. The institute appeared for personal hearing on the aforesaid date and submitted their explanation. The MCI vide its letter dated 9.2.2013 pointed out discrepancy on the ground of composition of unit 3, being incomplete, discrepancy in payment of salary and no appreciable increase in the number of major surgeries and daily operative workload. It is also the case of the respondent that perusal of the report of the assessor, shows that there are discrepancies in the salary structure of the faculty members which give

rise to suspicion of the presence of the faculty members and moreover, the petitioner failed to give a satisfactory explanation to the discrepancy pointed out to them. The respondents also did not find the explanation with regard to the discrepancies of salaries to be acceptable for the reason that the petitioner failed to bring on record any document in support of the explanation rendered by the petitioner with regard to disparity of payments made to the faculty members. Moreso, it was difficult to accept that professors were being paid lesser salary than the Assistant Professors.

28. Mr.Kumar, also submits that the Board of Governors, who are specialized in their fields examined the assessment report and based on the assessment report they have considered the relevant factors in deciding the application, for declining the increase of seats in MS (General Surgery).
29. Mr.Kumar also submits that the Board of Governors also took into account that the daily blood consumption was of only three units as against the claim of 14 major and 17 minor surgeries daily, as most of the major surgeries require blood transfusion even in cases of patients of Anaemia, Dengue and caesarean deliveries, and it would thus indicate that the increase shown by the petitioner is on paper only. In these circumstances, the Board of Governors decided not to approve increase in the admission capacity in M.S. (General Surgery) from existing 02 to 07. It is also that the Board of Governors in supersession of MCI considered the scheme of the petitioner and the assessors report and thereafter vide letter dated 9.2.2013 granted time to the petitioner to explain as to why the scheme of the petitioner be not dis-approved and also directed the petitioner to appear for personal hearing on 19.2.2013.
30. It is also contended by counsel for the MCI that pursuant to the show cause notice issued by the respondent No.1, the petitioner made a

representation on 19.2.2013 and tried to explain the deficiencies pointed out by the MCI, however, the petitioner miserably failed to explain the deficiencies satisfactorily.

31. I have heard counsel for the parties and considered their rival submissions. Mr.Bhagat, counsel for the petitioner submits that the institute of the petitioner was inspected by the assessors and a favourable report was made which is evident from the final remarks made by the assessors (that the facilities are adequate in respect of increasing the intake of 02 to 04 seats of P.G.) M.S. (Obstetrics & Gynaecology) and from 02 to 07 in the discipline of M.S. (General Surgery).
32. It is also the case of the petitioner that all other facilities and infrastructure in the institute was found in order and merely because there was some discrepancy in the salary structure of the faculty members that cannot be a ground for rejection, moreso, when the petitioner institute is an unaided self-finance institute, which is run and governed by a charitable trust. It is also the case of the petitioner that the adequate clinical material was available and thus the order has been passed without any application of mind. The report of the assessor has been placed on record. As per the report of the assessor the available clinical material for department of OBG is as under:

• Average daily OPD	132 per Unit / Day	
• Average daily IPD	14 Per Unit / Day	
• Average daily bed occupancy rate	94% (56 patients per day)	
• Average daily operations :	Major 05	Minor 09 per Unit/Day
• Available operative load/week/ unit	Major 15	Minor 27 / week / unit
• Average daily deliveries:	Normal (vaginal) 3-4	Operative (Caesareans) 1-2

- Year – wise available clinical materials (during previous three years

for the operative and the delivery load)

Parameters	2009	2010	2011	2012 Upto Nov. 12
Total number of Major Surgeries	891	1247	1389	1346
Total number of Minor Surgeries	1938	2664	2194	2342
Average daily operative load for Major & Minor Surgeries	3 & 6	4 & 9	4 & 8	5 & 9
Total number of deliveries – Normal, CS and Instrumental * (Abnormal)	1192 – 814,371 & 07	1366- 922, 439 & 05	1497- 912, 469 & 29 * (87)	1488- 840, 458 & 27 * (162)
Average number of deliveries per day- Normal	3 2	4 3	4 3	5 3-4
CS	1-2	1-2	1-2	1-2
Instrumental	0-1	0-1	0-1	0-1
Average daily histo – pathological workload	5	07	08	09
Average daily consumption of blood units	2	3	2	2

*(Surgeries calculation are on the basis of 300 working days in a year & six working days in a week)

33. A careful analysis of the details which have been provided above, would show that the average daily deliveries are 3 – 4, which are normal and 1 – 2 which are (Caesareans); the number of deliveries per day for the last three years would show that there was no substantial increase. The MCI is also not satisfied with the explanation rendered by the petitioner with regard to the discrepancies in the salary; and the explanation rendered by them that some of the professors have agreed to accept lesser salaries, as they are also drawing pension, is an explanation which is debatable. Thus in the absence of any supporting documents, the respondents cannot be faulted for arriving at an adverse inference.
34. In the case of WP(C)No.2231/2013 where increase of seats is sought from 02 to 07 in M.S. (General Surgery), the available Clinical Material in the

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department of General Surgery, is as under:

• Average daily OPD	172 patient per day	
• Average daily IPD	23 Patient per day	
• Average daily bed occupancy rate	97% (117 Patients per day occupancy)	
• Average daily operations (define it per unit):	Major 14	Minor 17 per unit
• Weekly operative load (define it per unit)	Major 28	Minor 34 / week / unit

- Year-wise available clinical materials (during previous three years) for the department of General Surgery.

Parameters	2009	2010	2011	2012 Upto Nov. 12
Total number of Major Surgeries	2632	3141	3772	3882
Total number of Minor Surgeries	4446	4697	4829	4866
Average daily total operative load for Major & Minor Surgeries	9 & 15	10 & 16	12 & 15	14 & 17
Weekly Operative workload per unit	18 & 30	20 & 32	24 & 30	28 & 34
Average daily histo – pathological workload	6	8	9	10
Average daily consumption of blood units	2	3	3	3

*(Surgeries calculations are on the basis of 300 working days in a year & 06 working days in a week)”

35. The relevant portion of the report of the Assessors, which has been extracted hereinabove, would show that there has been no substantial increase in surgeries – major and minor – over the past three years, which can entitle increase in the number of seats from 2 to 7. The average daily operative load for major surgeries is 9 and 15 in the year 2009, 10 and 16 in the year 2010, 12 and 15 in the year 2011, and 14 and 17 in the year 2012. Even assuming that for the year 2012 the Assessors have only included number of surgeries upto November, 2012, even in that case the number of increase in surgeries is to be considered for the last years.

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Similarly the weekly operative workload per unit is 18 and 20 in the year 2009, 20 and 32 in the year 2010, 24 and 30 in the year 2011 and 28 and 34 in the year 2012 except a feeble explanation that in modern day there are bloodless surgeries. The experts are not satisfied with the explanation, which have been rendered.

36. The court cannot lose track of the fact that the Supreme Court has repeatedly held that a Medical College and the hospital attached to it has to be well-equipped with competent teaching faculty and doctors so that a medical student should not be found wanting in any way after he qualifies. In the case of Medical Council of India Vs. State of Kerala 1998 6 SCC 131, it was held:

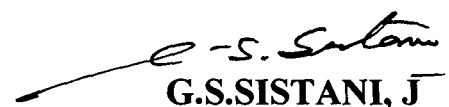
“A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study.....”

37. The IMC Act and the regulations framed thereunder has cast a heavy duty on the Medical Council of India to ensure that in an under graduate level or a post graduate level all the statutory norms are fulfilled. In a post graduate medical course a higher level of training and skill is required, so as to provide training to students at the best possible manner, to produce specialist in a particular field of medicine. At the post graduate level, clinical material for practical training is extremely necessary then the theoretical study since in the post graduate level learning on live patient is extremely important for acquiring skills. The existence of the clinical material cannot be compromised. It is no longer res integra that the scope

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for judicial review is very limited in matters relating to academic, as the courts cannot sit in appeal over the decision of the expert bodies, consisting of eminent doctors and professors with wide experience and who have been entrusted with the duty of maintaining high standard of education. The respondent has considered the report of the assessor and has rightly come to the conclusion that there is no substantial increase in the clinical material, so as to justify increase in the number of seats. In fact it has been concluded that the workload is just sufficient for existing PG seats. The respondents have also not accorded their satisfaction with regard to the explanation rendered by the petitioner on the discrepancy in the salary of the members of the faculty. The Board of Governors deal with large number of cases and the decision which they have taken in this matter is neither unreasonable, illegal, illogical and thus the court cannot substitute its own decision over the decision of the experts. There is no merit in these petitions and the same are accordingly dismissed.

MAY 30th, 2013
msr


G.S.SISTANI, J