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

Reserved on- 07.05.2018.

Date of Decision- 21.05.2018.

+ W.P.(C) 2795/2018 & C.M.No.11290/2018

KPC MEDICAL COLLEGE AND HOSPITAL Petitioner

Through Mr.Arun Bhardwaj, Sr.Adv
with Mr.J.S.Bhasin and Mr.Nishant
Shokeen, Adv.

versus

UNION OF INDIA AND ANR. Respondent

Through Ms.Shubhra Parashar with
Mr.V.P.S.Charak, Advs for R-1.
Mr.Vikas Singh, Sr.Adv with
Mr.T.Singhdev and Ms.Puja Sarkar, Advs
for R-2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. The Petitioner, a medical college, has preferred the present petition under Article 226 of the Constitution of India *inter alia* seeking quashing of the Respondent No. 1/Union of India's decision dated 28.02.2018 (hereinafter referred to as the "Impugned Decision"), whereby it has rejected the Petitioner's scheme for starting a post-graduate course in MS (General Surgery) with an intake of 14 students. The Petitioner has also sought quashing of the Respondent No. 2/Medical Council of India's recommendation dated

28.11.2017 (hereinafter referred to as the “Impugned Recommendation”), whereby the Respondent No. 2/Medical Council of India (hereinafter referred to as “MCI”) has recommended disapproval of the Petitioner’s aforementioned scheme on various grounds, including that one of its faculty members did not have the requisite teaching experience to hold the post of 'Professor' in the department of MS (General Surgery). The Petitioner also seeks a direction to the Respondent No. 1 to issue a Letter of Permission (hereinafter referred to as “LOP”) to it, for starting a post-graduate course in MS (General Surgery) with an intake of 14 students for the academic session 2018-19.

2. The facts essential for the adjudication of the present petition are that the Petitioner/Institute, which is affiliated with West Bengal University of Health Sciences, first received a LOP from the Respondent No. 1 to admit 150 students in its MBBS course for the academic session 2008-09 on 10.07.2008. Thereafter, the Respondent No. 1, after continuously renewing the permission for the Petitioner's MBBS course for the subsequent academic sessions, on 13.07.2013 finally granted recognition to the Petitioner under Section 11(2) of the Indian Medical Council Act, 1956 (hereinafter referred to as the "Act") for the award of a MBBS degree from West Bengal University of Health Sciences.

3. On 05.04.2017, the Petitioner submitted an application/scheme under Section 10A of the Act to the Respondent No. 1, for starting a post-graduate course in MS (General Surgery) with an intake of 14 students for the academic session 2018-19. Based on the Petitioner's

application, the Respondent No. 2's Assessor on 03.07.2017 carried out an inspection of the Petitioner/Institute and in his assessment report dated 03.07.2017 (hereinafter referred to as the "Assessment Report") noted some deficiencies. Based on the Assessment Report, the Respondent No. 2, vide its letter dated 19.07.2017, pointed out certain deficiencies in the Petitioner's scheme and directed it to comply with the same before 18.08.2017. For the sake of ready reference, the relevant extract of the Respondent No. 2's letter dated 19.07.2017 is reproduced hereinbelow:-

" In this connection, I am directed to convey herewith the following decision of the Postgraduate Medical Education Committee for your information and necessary action:-

The Postgraduate Medical Education Committee considered the Council Assessor's Report (3rd July 2017 and noted the following):

- 1. Promotion of Dr. Dipak K. Chakrabarti, Assoc.Prof., is not as per regulations. He has been straightaway appointed as Assoc. Prof. without any experience as Asst.Prof.*
- 2. Both senior residents of Unit I-Dr.Sudershna Das Routh & Dr. Anindya Ghosh do not possess any experience as Resident before appointment as Senior Resident; hence not qualified to hold this post.*
- 3. Dr.Debasis Kundu, Senior Resident of Unit II does not possess any experience as Resident in a teaching hospital before appointment as Senior Resident; hence not qualified to hold the post.*
- 4. Dr.J.R.Mukherjee, Senior Resident of Unit III does not possess any experience as Resident before appointment as Senior Resident; hence not qualified*

to hold the post. There is no other eligible Senior Resident in the Unit.

5. Dr.D.K.Chaudhary, Senior Resident of Unit IV does not possess any experience as Resident before appointment as Senior Resident; hence not qualified to hold the post. There is no other eligible Senior Resident in the Unit.

6. Dr.Sumanta Majumder, Senior Resident of Unit V does not possess any experience as Resident before appointment as Senior Resident; hence not qualified to hold the post. There is no other eligible Senior Resident in the Unit.

7. Attendance at Speciality clinic like Surgical Oncology clinic is NIL.

8. MRI were only 6 in the entire hospital on the day of assessment.

9. Total numbers of patients admitted in 2016 were 23883 as per table 8 page 6. However, they were 5886 as per table 18, page 9. This is date mismatch.

10. From 3 year data in 2016, there 8807 major operations which mean 30 per day. However, on assessment day there were only 11 major operations. This is data mismatch.

11. Other deficiencies as pointed out in the Assessment Report.”

4. It is the Petitioner's case that, after complying with all the deficiencies mentioned in the Respondent No. 2's letter dated 19.07.2017, the Petitioner had vide its letter dated 07.08.2017 submitted its compliance report to the Respondents. The Respondent No. 2's assessor carried out a compliance verification assessment of

the Petitioner/Institute on 18.09.2017, and specifically found that all the deficiencies that had been pointed out by the Respondent No. 2 in its letter dated 19.07.2017 had been rectified. The relevant portions of the compliance verification assessment report dated 18.09.2017 (hereinafter referred to as the “Compliance Verification Report”), are reproduced hereinbelow:-

“(1) I have verified the eligibility of all faculty members for the post they are holding (Based on experience Certificates issued by competent authority). Their experience Details in Different Designations and unit wise Distribution attached in the faculty table enclosed.

(2) Any other specific observation which the Assessor want to mention

Note- The Department has following faculty on the day of Inspection has 5 Units of 30 beds each. Total Strength-150 beds (30 beds each)- Professor-6; Associate Professor-2; Assistant Profession-7; Senior Resident -6; Junior Resident-11 and Senior Medical Officer-1.”

5. Upon a consideration of the initial Assessment Report dated 03.07.2017, the Petitioner’s compliance report dated 07.08.2017 as also the Compliance Verification Report dated 18.09.2017, the Respondent No. 2 vide the Impugned Recommendation dated 28.11.2017 recommended disapproval of the Petitioner’s scheme, on the following grounds:-

“1. Dr.Jahar Majumdar, Prof, has misrepresented that he worked as Asst. Prof. and Assoc. Prof. at Chitaranjan Cancer Research Centre which gave an impression that it is a teaching institution. However, as per Pension Pay Order issued by the Director of the Institute he has retired as Specialists given a designation of Asst Prof. & Assoc. Prof. at Chitaranjan Cancer Research Centre as it is a non-teaching independent institute of the Central Government

and PG courses are being run there. Resultantly, he is not eligible to be appointed as Professor in General Surgery.

2. *Unit IV is left with only 2 Asst. Prof. and it cannot be considered as a teaching PG Unit.*

3. *There are no demotion order and fresh joining report of Dr.Dipak Kumar Chakrabarti, from Assoc.Prof to Asst.Prof. without which he cannot be considered as Asst. Prof.*

4. *Dr.S.K.Mondal in Unit IV does not have 3 years post DNB experience as JR in a teaching institute and hence cannot be considered.*

5. *Other deficiencies as pointed out in the Assessment Report.”*

6. It emerges from the record that on 14.12.2017, the Respondent No. 2's Impugned Recommendation was approved by the Oversight Committee constituted by the Supreme Court, whereafter the same was forwarded to the Central Government on 16.01.2018.

7. It further transpires that the Petitioner, vide its letter dated 30.01.2018, also submitted a detailed representation to the Respondent No. 1, in respect of the various deficiencies pointed out in the Respondent No. 2's letter dated 19.07.2017 as well as the Impugned Recommendation dated 28.11.2017. However, the Respondent No. 1 did not prefer any response to the same and, thus, being aggrieved by the Respondent No. 1's inaction with respect to its aforesaid representation, the Petitioner preferred a writ petition being WP (C) No. 958/2018 before this Court. Although the Petitioner had also challenged the Respondent No. 2's Impugned Recommendation at that stage, since a final decision in respect of the Petitioner's application dated 05.04.2017 was yet to be taken by the Respondent No. 1, the Petitioner confined its reliefs to the issuance

of a direction to the Respondent No. 1 to decide its representation dated 30.01.2018 as per law in a time bound manner. Based on the limited relief sought by the Petitioner at that stage, this Court had vide its order dated 02.02.2018, while directing the Respondent No. 1 to pass a reasoned and speaking order on the Petitioner's representation, granted liberty to the Petitioner to take legal recourse as permissible under law if it was aggrieved by the Respondent No. 1's decision on its representation dated 30.01.2018.

8. Pursuant to this Court's order dated 02.02.2018, the Petitioner approached the Respondent No. 1 vide its letter dated 06.02.2018, with a prayer to decide its representation dated 30.01.2018. It appears that, on 13.02.2018, the Respondent No. 1 forwarded the Petitioner's aforesaid representation along with all the accompanying supporting documents to the Respondent No. 2, with a request to consider the same and advise it in passing a final order on the Petitioner's scheme. In response to the Respondent No. 1's request, the Respondent No. 2, vide its letter dated 20.02.2018, reiterated its disapproval of the Petitioner's scheme. It has been averred in the petition that the Respondent No. 1 has merely accepted the recommendations of the Respondent No. 2 and has, despite the directions of this Court to pass a reasoned order, passed the Impugned Decision on 28.02.2018 without due application of mind and without assigning any reasons. It is in these circumstances that the Petitioner has approached this Court by filing the present petition, impugning not only the final decision of the Respondent No. 1 but also the recommendations of the Respondent No. 2.

9. At this stage, it may be appropriate to refer to the Respondent No. 1's Impugned Decision dated 28.02.2018, which reads as under:-

“No.U.12012/33/2017-ME-I (Pt.VIII) (FTS: 3144664)

*Government of India
Ministry of Health & Family Welfare
(Department of Health & Family Welfare)*

Nirman Bhawan, New Delhi-11

Dated the 28th February, 2018

ORDER

Subject- Starting of MS (General Surgery) course at KPC Medical College, Jadavpur, Kolkata – Disapproval of schemes for the academic session 2018-19 – reg.

Whereas the KPC Medical College made an application to the Ministry of Health & Family Welfare, New Delhi for Starting of MS(General Surgery) course for the academic session 2018-19 which was forwarded to MCI for evaluation and making recommendation to the Ministry u/s 10A of the IMC Act, 1956 for the academic session 2018-19;

2. Whereas the Medical Council of India (MCI) vide letter 19.07.2017 conveyed its recommendation not to grant letter of permission to the college u/s 10A of the IMC Act, 1956 for the academic year 2018-2019 in view of deficiencies noted during the inspection;

3. Whereas, u/s 10A (4) of IMC Act, 1956, the Ministry granted an opportunity of hearing to the College on 11.09.2017 though an expert Hearing Committee constituted for the purpose and the Hearing Committee after considering the written and oral submission of the college, agreed with the MCI recommendation for disapproving the course;

4. Whereas separately on the basis of compliance submitted by the College directly to MCI, MCI conducted compliance verification of MS (General Surgery) course on

18.09.2017 and vide letter dated 19.12.2017 reiterated its earlier recommendation for disapproval of the scheme u/s 10A of IMC Act, 1956 for the academic year 2018-19;

5. Whereas the College made a representation to the Ministry on 30.01.2018 for grant of permission stating that they have complied with all alleged deficiencies pointed out by MCI and also moved Hon'ble Delhi High Court through WP(C) No.958/2018 and C.M. Nos.4036-37. The High Court vide Order dated 02.02.2018 directed as under:-

.....It is deemed appropriate to direct the respondent No.1 to decide the representation of the petitioner by passing a reasoned and speaking order within a period of ten days and a copy of the decision shall be communicated to the petitioner.....

6. Whereas, after considering the representation, the Ministry vide letter dated 13.02.2018 forwarded the documents submitted by the Institute to MCI with request to advise the Ministry in passing a reasoned and speaking order;

7. Whereas, MCI vide letter dated 20.02.2018 again reiterated its earlier recommendation for disapproval of MS (General Surgery) course and also indicated as under:-

“It is further to inform that a personal hearing was also given to Dr.Jahar Majumdar, Professor, Deptt. of General Surgery by the Postgraduate Committee at its meeting held on 24/01/2018 wherein the PG Committee informed him that a teaching experience gained by him from Chitranjan National Cancer Institute, Kolkata is not recognized by the MCI for any postgraduate qualification including M.Ch. (Surgical Oncology). Hence, the teaching experience as claimed by him is not valid for teaching purpose.”

8. Now, therefore, the Ministry, accepting the recommendation of MCI hereby conveys its disapproval to

the MS (General Surgery) scheme of KPC Medical College, Jadavpur, Kolkata for the year 2018-19.

9. The college is free to apply afresh for next academic session strictly as per the provisions of IMC Act, 1956 and Regulations framed thereunder.”

10. Having set out the facts, I may now refer to the various contentions raised by the learned Senior Counsels for the parties. Mr. Arun Bharadwaj, learned Senior Counsel for the Petitioner, by relying on the Compliance Verification Report dated 18.09.2017 of the Respondent No. 2's Assessor, submits that the Petitioner has duly fulfilled all the deficiencies that had been pointed out in the Assessment Report dated 03.07.2017 as also the Respondent No. 2's letter dated 19.07.2017. He thus contends that all the deficiencies having been removed, the Petitioner was entitled to the grant of a LOP for starting a post-graduate course in MS (General Surgery) with an intake of 14 seats for the academic session 2018-19.

11. Mr. Bharadwaj further submits that the alleged deficiencies, on the basis of which the Respondent No. 2 has now recommended disapproval of the Petitioner's scheme, were raised for the very time in the Impugned Recommendation itself, without giving the Petitioner an adequate opportunity to clarify or remove the same. He, therefore, contends that the Impugned Recommendation was passed without following the procedure stipulated in Section 10A of the Act and is, therefore, contrary to law. He submits that the entire scheme of grant of recognition, as set out in the Post Graduation Medical Education Regulations, 2000 (hereinafter referred to as the "PGME

Regulations"), clearly not only mandates an opportunity to remove the deficiencies but also prescribes that an opportunity of hearing be given to the institute to clarify its stand in respect of any deficiency which is sought to be made the basis for rejection of its scheme. He thus contends that, since the Petitioner was never given any such opportunity, the Impugned Decision as well as the Impugned Recommendation are liable to be quashed.

12. Mr. Bhardwaj further submits that, while the Respondent No. 2's Impugned Recommendation refers not only to the alleged deficiencies regarding Dr. Jahar Majumdar and two other faculty members, it very vaguely also refers to other deficiencies pointed out in the Assessment Report dated 03.07.2017. However, he submits, the final decision of the Respondent No. 1 refers to only one deficiency pertaining to Dr. Jahar Majumdar. He thus contends that, since the deficiency qua Dr. Jahar Majumdar is the sole basis for the Respondent No. 1's Impugned Decision, which was admittedly never before put to the Petitioner, it could not have been considered against the Petitioner while passing the Impugned Decision dated 28.02.2018.

13. Without prejudice to his aforesaid contentions, Mr. Bharadwaj submits that, even if the deficiency pertaining to Dr. Jahar Majumdar in the Impugned Decision is found to be correct, the Petitioner is still entitled to the grant of a LOP to start a post-graduate course in MS (General Surgery) with an intake of not less than 13 students, as opposed to the intake of 14 students initially sought vide its application dated 05.04.2017. He has placed reliance on Regulations

11.1(a) and 12(1) of the PGME Regulations in support of his contention that, irrespective of whether Dr. Jahar Majumdar meets the criteria for being treated as a 'Professor' or not, the Petitioner/Institute has the requisite faculty strength for approval of its scheme for a post-graduate course in MS (General Surgery) with an intake of 13 students.

14. On the other hand, Mr. Vikas Singh, learned Senior Counsel for the Respondent No. 2, at the outset contends that, as per the decision of the Hon'ble Supreme Court in *Ashish Ranjan and Ors. v. Union of India and Ors.* [(2016) 11 SCC 2016], the last date for the Respondent No. 2 to submit its recommendations to the Central Government and the last date for the Central Government to issue the LOPs have already expired and, therefore, on this ground alone the writ petition is liable to be rejected outrightly. By relying on the decisions of the Hon'ble Supreme Court in *Mridul Dhar and Anr. v. Union of India and Ors.* [(2005) 2 SCC 65] and *Priya Gupta v. State of Chhattisgarh* [(2012) 7 SCC 433], he contends that it is imperative to strictly adhere to the aforementioned timelines for the submission of recommendations and issuance of LOPs and, therefore, the same cannot be done now at such a belated stage.

15. By relying on the Assessor's Report, Mr. Singh further submits that the Respondent No. 2 was justified in recommending disapproval of the Petitioner's scheme, since it had failed to fulfill the prescribed minimum requirements with respect to infrastructure and teaching faculty as also other mandatory facilities. In this regard, he places reliance on the decision of the Hon'ble Supreme Court in

the case of *Manohar Lal Sharma v. MCI and Ors.* [(2013) 10 SCC 60], to contend that the Assessors of the MCI are experts in the field of medicine with unquestionable integrity and, therefore, their findings in the assessment report cannot be disputed. Taking his aforementioned plea further, he relies on the decision of the Hon'ble Supreme Court in *MCI v. Kalinga Institute of Medical Sciences and Ors.* [(2016) 11 SCC 530], to contend that this Court cannot be tasked with minutely examining the contents of the Assessment Report and to consider the same against the objections of the Petitioner.

16. Mr. Singh further submits that, upon a perusal of the Compliance Verification Report, the Respondent No. 2 discovered that the prior teaching experience of Dr. Jahar Majumdar, who was one of the teaching faculty at the Petitioner/Institute, had been misrepresented and he did not have the requisite teaching experience to qualify for the post of Professor, which was the designation that he was enjoying. He thus contends that, even though no deficiency with respect to Dr. Jahar Majumdar had been raised by the Assessor in the Assessment Report, there is nothing that precludes the Respondents from rejecting the Petitioner's scheme on the basis of deficiencies that were factually found to exist, even if the same were for the very first time pointed out at the final stage. In this regard, he relies on a decision of the Supreme Court in the case of *IQ City Foundation and Ors. v. Union of India and Ors.* [2017 (8) SCALE 369] to contend that the Supreme Court had categorically held that the MCI cannot turn a Nelson's eye to any new deficiencies in the concerned

medical college that are discovered during the compliance verification assessment. Thus, his contention is that the application for starting a post-graduate course may be rejected at any stage, if it is found that the concerned medical college does not possess the requisite facilities prescribed by the Act and the regulations framed thereunder.

17. Finally, Mr. Singh relies on Regulation 6 of the Opening of a New or Higher Course of Study or Training (including PG course of study or training) and Increase of Admission Capacity in any Course of Study or Training (including a PG course of study or training) Regulations, 2000 (hereinafter referred to as the "ONHC Regulations") as also Regulation 11.2(a) of the PGME Regulations, to contend that a college seeking to start a new post-graduate course must first comply with requirements for the award of a MBBS degree and, thereafter, comply with the additional requirements for the award of the post-graduate degree in question. He submits that the Petitioner has been found to be deficient with respect to necessary requirements for the MBBS degree itself and, therefore, its scheme for starting a post-graduate course just cannot be approved. He submits that even though the Respondents had already recognized the Petitioner's MBBS course and no deficiency with respect to the same had ever been pointed out to the Petitioner, the fact is that various minor deficiencies exist in the Petitioner, which had been ignored while granting it recognition for a MBBS degree course. He thus contends that merely because, by way of a concession, the Respondent No. 2 had allowed the Petitioner to conduct the MBBS

course, the same cannot imply that the said deficiencies should be overlooked while considering the grant of approval for the post-graduate course.

18. Having heard the learned Senior Counsels for the parties at length and having perused the record, I find that three primary issues arise for consideration before this Court, the first being whether the deficiencies discovered and pointed out subsequent to the compliance verification assessment can be a ground for rejecting an application under Section 10A of the Indian Medical Council Act, 1956. The second issue is whether, in light of Regulation 6 of the ONHC Regulations as also Regulation 11.2(a) of the PGME Regulations, the Respondents can be allowed to refuse the grant of a LOP to a medical institute for starting a post-graduate course on the ground that its undergraduate MBBS degree course is deficient, when the Respondents have already approved the said MBBS course. The third issue which arises for consideration is whether, notwithstanding the deficiency pertaining to Dr. Jahar Majumdar's appointment, which as has been noted above is the only deficiency referred to in the Respondent No. 1's Impugned Decision, the Petitioner still meets the requirements for the grant of a LOP to conduct a post-graduate course in MS (General Surgery) with an intake of 13/14 students.

19. Before dealing with the rival contentions of the parties, it may be appropriate to refer to the relevant provisions that are necessary for the adjudication of the present petition. The relevant provisions of the ONHC Regulations read as under:-

"6. EVALUATION BY MEDICAL COUNCIL OF INDIA

The Council shall evaluate the application to accept the desirability and prima facie feasibility for opening a new or higher courses of study or training (including a post- graduate course of study or training) at the existing medical college/institution and the capability of medical college/institution to provide the necessary resources and infrastructure for the Scheme.

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“While evaluating the application, the Council may seek further information, clarification or additional documents from the applicant as considered necessary and shall carry out an inspection to ascertain and assess the facilities of teaching faculty, residents, clinical material, hostels and other infrastructure facilities vis-à-vis the minimum standard requirements for the number of students for which the college recognized for the award of MBBS Degree as per the Minimum Standard Requirements for the Medical College for 50/100/150 Regulations, 1999.

The Council shall process the application for starting of a Post Graduate Course or for increase of annual intake of Post Graduate courses only in case the college meet with the facilities for teaching faculty, residents, clinical material, hostels and other infrastructure facilities as required under the Regulations for the respective number of students for which the college is recognized for the award of MBBS degree and then shall carry out the physical inspection to verify the information, clarification, additional documents supplied by the medical college teaching faculty, residents, clinical material and instrumentation and other infrastructure facilities in the concerned department in which the Post Graduate Course is proposed to be established or increase of seats in the concerned Post Graduate Course is proposed.

The dates of receipt of application for increase in admission capacity in Post Graduate Courses and processing dates are given in the schedule. The dates of receipt of application and processing of applications in respect of application and processing of applications in respect of increase of seats in MBBS Course shall be as per the Schedule included in the Establishment of Medical College Regulations, 1999.”

20. At this stage, reference may also be made to the relevant provisions of the PGME Regulations, which read as under:-

“11.1 Staff – Faculty

(a) A clinical department or its unit training candidates for Broad or Super Specialities, shall have a minimum of three full time faculty members belonging to the concerned disciplines of whom one shall be a Professor, one Associate Professor/ Reader and one Astd. Professor/ Lecturer, possessing requisite qualification and teaching experience prescribed by the Medical Council of India.

Provided that the second or subsequent unit may be headed by an Associate Professor alongwith two Assistant Professors/Lecturers.

Of these faculty members only those who possess a total of eight years teaching experience, of which at least five years teaching experience is as Assistant Professor gained after obtaining Post Graduate Degree, shall be recognised as Post Graduate teachers.

* * *

11.2 Minimum requirements for a Post Graduate institution:

(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. The additional staff required to be provided in following Departments shall be as under:-

1) Department of Pathology

i) Associate Professor/Reader - 1

ii) Assistant Professor/Lecturer - 1

iii) Tutor/Demonstrator - 1

2) Department of Radio-diagnosis

i) Associate Professor/Reader - 1

ii) Assistant Professor/Lecturer - 1

iii) Tutor/Demonstrator - 1

3) Department of Anaesthesiology

i) Associate Professor/Reader - 1

ii) Assistant Professor/Lecturer - 1

iii) Tutor/Demonstrator - 1

** * **

“12. Number of Post Graduate Students to be admitted.

(1) The ratio of recognised Post Graduate teacher to number of students to be admitted for the degree and diploma courses shall be 1:1 each for degree and diploma courses in each unit per year, to the extent that in no circumstances more than two students for degree and one for Diploma shall be registered in a unit in one academic year.”

21. A perusal of the record shows that the deficiency pertaining to Dr. Jahar Majumdar's appointment was neither pointed out in the Respondent No. 2's letter dated 19.07.2017 nor had been mentioned in the Assessment Report dated 03.07.2017, and was indeed raised for the very first time in the Impugned Recommendation dated 28.11.2017. While it is the Petitioner's contention that the Respondents cannot be allowed to reject its scheme on a deficiency that was pointed out for the very first time in the Impugned

Recommendation, and that too without giving it an adequate opportunity to clarify or remove the same, the Respondents contend that they cannot ignore any deficiency which comes to their notice at any time before granting approval to the scheme in question.

22. In deciding this issue, the Court has to keep in mind the public interest attached to the medical profession, as a result of which it is imperative that medical colleges meet the prescribed criteria for conducting recognized medical courses, so as to provide the requisite academic and training facilities to students to churn out not only qualified but also competent medical professionals. Having given my thoughtful consideration to the issue, I am inclined to accept the contention of the Respondents that, even if a deficiency is discovered after the Assessor's Report, the same can be a ground for rejecting a scheme submitted under Section 10A of the Act. I am fortified in my aforesaid conclusion by the observations of the Supreme Court in the case of *IQ City (supra)*, the relevant paragraph 29 of which reads as under:-

"29. On a reading of Section 10-A of the Act, Rules and the Regulations, as has been referred to in Manohar Lal Sharma (supra), and the view expressed in Royal Medical Trust (supra), it would be inapposite to restrict the power of the MCI by laying down as an absolute principle that once the Central Government sends back the matter to MCI for compliance verification and the Assessors visit the College they shall only verify the mentioned items and turn a Nelson's eye even if they perceive certain other deficiencies. It would be playing possum. The direction of the Central Government for compliance verification report should not be construed as a limited remand as is understood within the framework of Code of Civil Procedure or any other law. The distinction between the principles of open remand and limited remand, we are disposed to think, is not attracted. Be it clearly

stated, the said principle also does not flow from the authority in Royal Medical Trust (supra). In this context, the objectivity of the Hearing Committee and the role of the Central Government assume great significance. The real compliant institutions should not always be kept under the sword of Damocles. Stability can be brought by affirmative role played by the Central Government. And the stability and objectivity would be perceptible if reasons are ascribed while expressing a view and absence of reasons makes the decision sensitively susceptible.”

23. In view of my aforesaid conclusion as also the observations of the Supreme Court in *IQ City (supra)*, I find that the deficiency pertaining to Dr. Jahar Majumdar cannot be ignored and, merely because the same was discovered and pointed out for the first time only in the Impugned Recommendation, cannot be a reason to simply brush aside the same. Therefore, in my considered opinion, the said deficiency pertaining to Dr. Jahar Majumdar can be a ground for rejecting the Petitioner’s scheme, even though the same was only brought up for the first time in the Impugned Recommendation dated 28.11.2017.

24. At this stage, I may now deal with Mr. Singh’s contention that the Respondent cannot, even otherwise, approve the Petitioner’s scheme for a post-graduate course, since it does not even meet the prescribed criteria for the MBBS degree. On a perusal of Regulation 6 of the ONHC Regulations and Regulation 11.2(a) of the PGME Regulations, it is evident that there can be no doubt about the fact that a medical college seeking to start a post-graduate degree must first comply with all the necessary requirements for an undergraduate MBBS course. Once the MCI finds that the concerned medical college

meets all the requirements for a MBBS degree, it must then examine whether the concerned college meets the *additional* requirements for starting a post-graduate degree. The question in the present case, however, is whether in view of the admitted position that the Respondent No. 1 had already approved the Petitioner's MBBS degree on 13.07.2013, can it be permitted to refuse approval of a post-graduate course on the ground that the Petitioner was found to have deficiencies in respect of its MBBS degree, and that too when till date no notice of any kind has been given to the Petitioner informing it regarding any deficiencies in meeting the prescribed criteria for the said MBBS degree.

25. It has been vehemently contended by Mr. Singh that the aforementioned approval was granted despite the presence of certain deficiencies only by way of a concession, and therefore such approval does not preclude the Respondents from rejecting the Petitioner's scheme for starting a post-graduate course. However, I find absolutely no merit in this contention of Mr. Singh, since there is nothing on record to show that there were any deficiencies qua the approval granted to the Petitioner for its MBBS degree. On the other hand, the record reveals that till date even no show cause notice has been served to the Petitioner regarding any alleged deficiency in its MBBS course. Even otherwise, in my opinion, once the Respondents had approved the Petitioner's MBBS course, despite being aware of certain alleged deficiencies, they cannot now be allowed to contend anything to the contrary and refuse to grant it a LOP for the post-graduate course, despite its meeting the additional requirements for the same, on the

specious ground that its undergraduate MBBS degree is deficient in some respect. Thus, in the facts of the present case, the Respondents cannot rely on Regulation 6 of the ONHC Regulations and Regulation 11.2(a) of the PGME Regulations, and refuse to grant the Petitioner a LOP for starting a post-graduate degree in MS (General Surgery) on the ground that there is any deficiency qua the requirements for its MBBS course.

26. However, the issue which still remains to be determined in the present case is, whether the Petitioner meets the requirements for the grant of a LOP for starting a post-graduate degree in MS (General Surgery) with an intake of 13 students. As noted above, while the Impugned Recommendation of the Respondent No. 2 had mentioned various grounds for recommending disapproval of the Petitioner's scheme, the only ground on which the Impugned Decision of the Respondent No. 1 rejects the Petitioner's scheme is that Dr. Jahar Majumdar does not have the requisite teaching experience to hold the post of Professor and, therefore, his appointment to the said post cannot be treated as valid for the purposes of a post-graduate degree course. Since, as per the scheme of the Act, the Respondent No. 2/MCI is only a recommendatory authority and the final binding decision is that of the Central Government, it is evident that the deficiency mentioned in the Impugned Decision is the sole basis for the rejection of the Petitioner's scheme for the post-graduate course. Any other alleged deficiencies in the Petitioner's scheme referred to in the Respondent No. 2's recommendations need not be referred to,

since they do not form the basis of the rejection order of the Respondent No. 1.

27. Even though learned Senior Counsel for the Petitioner had taken great pains to contend that Dr. Jahar Majumdar is qualified to hold the post of 'Professor', this Court does not propose to examine the question of his eligibility for that post, as in the absence of sufficient material to determine the question, it would not be appropriate to interfere in such matters which fall exclusively in the domain of the concerned experts. Even otherwise, the question as to whether Dr. Jahar Majumdar was qualified to hold the post of 'Professor', pales into insignificance in view of the primary contention raised by learned Senior Counsel for the Petitioner that, even if the deficiency qua Dr. Jahar Majumdar is held against the Petitioner, it still qualifies for the grant of a LOP for a post-graduate course in MS (General Surgery) with an intake of 13 students. In support of his contention that the Petitioner duly fulfills the faculty requirement as per the PGME Regulations, Mr. Bharadwaj has drawn my attention to a tabular compilation of unit-wise faculty strength available in the Petitioner/Institute, which is reproduced hereinbelow:-

<i>S.No.</i>	<i>Unit</i>	<i>Professor</i>	<i>Associate Professor</i>	<i>Assistant Professor</i>	<i>Senior Resident</i>	<i>Junior Resident</i>
<i>1.</i>	<i>Unit-1</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>2</i>
<i>2.</i>	<i>Unit-2</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>2</i>	<i>2</i>
<i>3.</i>	<i>Unit-3</i>	<i>1</i>	<i>-</i>	<i>1</i>	<i>1</i>	<i>3</i>
<i>4.</i>	<i>Unit-4</i>	<i>-</i>	<i>-</i>	<i>3</i>	<i>1</i>	<i>2</i>
<i>5.</i>	<i>Unit-5</i>	<i>2</i>	<i>-</i>	<i>2</i>	<i>-</i>	<i>2</i>

28. Thus, the question which needs to be considered is whether, with the faculty as available with the Petitioner, does it fulfill the criteria for the grant of a LOP for a post-graduate course, in accordance with the requirements as laid down in the PGME Regulations? Mr. Bharadwaj has, by placing reliance on the decision of the Supreme Court in the case of ***Cannanore District Muslim Educational Assn. v. State of Kerala [(2010) 6 SCC 373]***, vehemently contended that this Court should decide the question of the Petitioner's eligibility for the grant of a LOP for a post-graduate course with an intake of 13 students, in light of the Petitioner's available faculty. However, even though *prima facie* I find merit in the plea of Petitioner in this regard, in my opinion, this task ought to be first carried out by the concerned subject experts and not by this Court. The primary role in such academic matters is that of the experts and not of the Court, and it is only when the decision of the authorities is found to be arbitrary or perverse, can the Court examine the same. In the present case, what I find is that Respondent No. 1 has not at all opined as to whether, irrespective of Dr. Jahar Majumdar eligibility for the post of Professor, the Petitioner still fulfills the mandatory criteria for the grant of a LOP for a post-graduate course with an intake of 13 students. Therefore, I am of the considered view that it is not for the Court to examine this question at this stage but for the Respondent No. 1 to first consider the same.

29. At this stage, it may also be appropriate to refer to the relevant portions of the Petitioner's representation dated 30.01.2018, wherein it had been specifically averred that, even if the deficiency pertaining to

Dr. Jahar Majumdar's appointment was taken at its face value, the Petitioner still meets the prescribed criteria for the grant of a LOP for running a post-graduate degree course. The relevant portions of the Petitioner's representation dated 30.01.2018 to the Respondent No. 1 read as under:-

"Even otherwise also, if Dr.Jahar Majumdar is not considered to be a Professor in the Medical College, he will be accepted as an Associate Professor as the same Designation was given to him vide Circular No.HA-171/3266 dated 15.01.2013 by CNCI which is after the approval dated 04th August, 2011 of the Ministry of Health and Family Welfare, Govt. of India.

Thus, the total strength of Faculty in the Department of General Surgery of the Medical College is 5 Professors (if Dr.Jahar Majumdar is counted Associate Professor), 4 Associate Professors, 9 Assistant Professors and 6 Senior Residents, entitling the Medical College eligible for 14 seats in MS (General Surgery) Course as per the Postgraduate Medical Education Regulations, 2000 (Amended upto July, 2017), sub- clause 12 (1)...

** * **

With respect to the alleged deficiency that Unit-IV cannot be considered as a teaching PG Unit, it is most respectfully submitted that with inclusion of Dr.Jahar Majumdar as Professor, Unit IV consists of one Professor and two Assistant Professors and thus, becomes a teaching PG unit as per the MCI norms. Even otherwise also, if Dr.Jahar Majumdar is not considered to be a professor in the Medical College, he will be accepted as an Associate Professor as the same Designation was given to him vide Circular No.HA-171/3266 dated 15.01.2013 by CNCI which is after the approval dated 04th August, 2011 of the Ministry of Health and Family Welfare, Govt. of India. The total strength in Unit IV will be one Associate Professor and two Assistant Professors which makes it a Teaching Unit as per the Postgraduate Medical Education Regulations, 2000 (Amended upto July, 2017), sub-clause 11.1..."

30. A perusal of the Impugned Decision shows that the same rejects the Petitioner's scheme by merely holding that the prior teaching experience claimed by Dr. Jahar Majumdar is not valid for teaching purposes. What emerges is that, even though the Petitioner had in its representation dated 30.01.2018 specifically contended that it met the prescribed criteria for the grant of a LOP notwithstanding the deficiency pertaining to Dr. Jahar Majumdar's appointment, the Respondent No. 1 has in its Impugned Decision not even referred to this vital contention of the Petitioner. Thus, the question now is whether it was incumbent upon the Respondent No. 1, while passing the Impugned Decision, to deal with the aforementioned categorical averments in the Petitioner's representation dated 30.01.2018. In my considered opinion, given that the Petitioner's aforesaid contention was not merely peripheral to the issues emphasized in its representation but was, in fact, one of the most vital issues raised in the said representation, the Respondent No. 1 could not have neglected to deal with the same. Therefore, I have no hesitation in holding that the Respondent No. 1, has passed the Impugned Decision in a most mechanical manner without even applying its mind to the key issues raised in the Petitioner's representation.

31. Thus in view of my aforesaid finding, the Impugned Decision of the Respondent No. 1 cannot be sustained. It may be appropriate to refer to paragraph 30 of the decision of the Hon'ble Supreme Court in the case of *IQ City (supra)*, wherein upon finding that the decision of the Central Government in similar circumstances was an unreasoned order, the following directions were given:-

"30. Having said this, we are not inclined to close the matter. The petitioners have been running the College since 2013-14. We have been apprised that students who have been continuing their education shall continue for 2017-18. As we find the order of the Central Government is not a reasoned one. It is obligatory on its part to ascribe reasons. For the said purpose, we would like the Central Government to afford a further opportunity of hearing to the petitioners and also take the assistance of the newly constituted Oversight Committee as per the order dated July 18, 2017 passed by the Constitution Bench in Writ Petition (Civil) No. 408 of 2017 titled Amma Chandravati Educational and Charitable Trust and others v. Union of India and another and thereafter take a decision within two weeks. Needless to say, the decision shall contain reasons. We repeat at the cost of repetition that the decision must be an informed one."

32. For the aforementioned reasons, the Respondent No. 1's Impugned Decision dated 28.02.2018 is quashed and the matter is remanded back to the Respondent No. 1 to consider the Petitioner's contention that, notwithstanding the deficiency pertaining to Dr. Jahar Majumdar's appointment, it meets the requisite criteria for the grant of a LOP for a post-graduate course in MS (General Surgery) with an intake of 13 students. The Respondent No. 1 is directed to specifically deal with the Petitioner's aforesaid contention and, thereafter, pass a reasoned and speaking order within a period of 7 days. After passing an order in respect of the Petitioner's contention as aforesaid, the Respondent No. 1 is also directed to expeditiously take all the consequential steps, including the issuance of a LOP if the Petitioner's contention is found to be correct, by keeping in view the prescribed time-schedule.

33. In view of my aforesaid directions, I have deemed it appropriate not to deal with the legality of the Impugned Recommendation dated 28.11.2017 at this stage. It is, however, made clear that incase the Petitioner is still aggrieved by the decision of the Respondent No. 1, it may take legal recourse as permissible under law. Keeping in view the position that the legality of the Impugned Recommendation has not been examined at this stage, the Petitioner will also have the liberty to challenge same, if the need so arises.

34. The writ petition is allowed in the aforementioned terms with no order as to costs.

(REKHA PALLI)
JUDGE

MAY 21, 2018/ss/mj