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

\+ W.P.(C) 6898/2019 & CM APPL. 28680/2019.

Judgment reserved on : 13.08.2019
Date of decision : 30.08.2019

GOURI DEVI INSTITUTE OF MEDICAL SCIENCES & HOSPITAL .... Petitioner

Through: Mr. Sidharth Luthra, Sr. Adv. and Mr. Vivek Sarin, Sr. Adv. with Mr. Anshuman Sharma, Mr. Shivanshu Singh, Advs.

versus

UNION OF INDIA & ANR ..... Respondents

Through: Mr. Rajesh Gogna, CGSC with Mr. Kamal Deep, Adv. for R-1. Mr. Vikas Singh, Sr. Adv. with Mr. T. Singhdev, Ms. Puja Sarkar, Advs. for MCI.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner institute vide the present petition seeks the quashing of the impugned order dated 18.05.2019 passed by the respondent no.2, the Board of Governors in supersession of the MCI, vide which the permission sought by the petitioner for renewal for the 4th Batch (150 MBBS students) for the petitioner's institute situated at Kolkata, West Bengal under Section 10A of the Indian Medical

Council Act, 1956 for the academic year 2019-20 was declined and the petitioner institute was directed not to admit any student in the MBBS course for the academic year 2019-20, though it was stated in the impugned order that the college was free to apply afresh for the next academic year strictly as per the provisions of the Indian Medical Council Act, 1956 and Regulations framed thereunder.

2. The petitioner has further sought directions to the respondent no.2 for the grant of renewal of the letter of permission to the petitioner institute for admitting the second batch of the MBBS students against the intake of 150 seats or such other appropriate student seats for the academic year 2019-20.

3. The respondent no.1 arrayed on record is the Union of India through its Secretary, Ministry of Health and Family Welfare, Delhi.

4. The establishment of the petitioner's institute was approved vide letter dated 20.08.2016 issued by the respondent no.1 with permission accorded for an intake of 150 students in the MBBS course for a period of one year i.e. for the academic year 2016-17 under Section 10A of the IMC Act, 1956 and it was stated vide the said letter that the permission would be renewed on yearly basis subject to verification of the achievement of the annual target as indicated in the scheme of the petitioner and revalidation of performance bank guarantee and this process of renewal would continue till such time the establishment of the medical college and expansion of the hospital facilities was completed and a formal recognition of the Medical College was granted.

5. The said letter dated 20.08.2016 bearing no. U-12011/13/2016-ME-l also stated to the effect that the next batch of students in the MBBS course for the academic year 2017-18 would be admitted in the college only after obtaining the permission of the Central Government and fulfilling the condition of OC stipulated in para 2 of the letter and that admissions made in violation of conditions mentioned in the letter would be treated as irregular and action under the IMC Act, 1956 and Regulations framed thereunder would be initiated.

6. Vide letter dated 09.06.2017, the respondent no.1 debarred the petitioner institute from admitting students in the MBBS course in the academic sessions 2017-18 and 2018-19 and informed the petitioner that the next batch of students could be admitted in the college only after obtaining the permission of the Central Government for renewal.

7. Vide order dated 23.05.2018 of the Hon'ble Supreme Court, the petitioner herein was allowed to withdraw WP (C) 256/2018 with liberty to approach the appropriate authority by way of a formal application for renewal for the academic session 2019-20 and with further observations to the effect that the appropriate authority would process the application to be filed by the petitioner's institute in accordance with law and no expression on the opinion on the merits of the controversy either way was expressed through the order dated 23.05.2018 of the Hon'ble Supreme Court.

8. The petitioner is indicated to have moved a formal application for the renewal for the academic year 2019-20 under Section 10A of the IMC Act, 1956 on 02.07.2018, pursuant to which, the respondent no.2 conducted the inspection of the medical college on 26-27.11.2018

and the assessment report dated 27.11.2018 of the Assessors of the respondent no.2 pursuant to a surprise inspection for renewal of permission of 4th batch, noted the deficiencies as under:

(a) Deficiency of teaching staff – 57.26%
(b) Deficiency of resident doctors – 100%
(c) Deficiency of the infrastructure of college and hospital was reflected as bed occupancy is 125/410= 30.5% only, UG Hostel: Out of the required capacity of 360, 210 was available and 150 was deficient, Residents hostel:100% deficient, Residential quarters for Non-teaching staff 100% deficient, Medical Superintendent has no administrative experience, Audiometry (AC &Sound proof) & Speech Therapy are not available and Space was available tor Pantry and Storeroom but were not in usage in all the clinical wards."

9. A dissent note was submitted by the petitioner to the effect that there was sufficient availability of hostels for students for subsequent batches. The said note reads to the effect:

"Ref No; GIMSH/MCI/18/H/01 *Date: 29/11/2018*
To
The Secretary General
Medical Council of Indfa
Pocket- 14 , Sector - 8,
Dwarka Phase -1
New Delhi – 110077
INDIA
Sub: Submission of Dissent Note with relevant documentary evidence against Inspection at Gauri Devi Institute of Medical Sciences & Hospital, Rajbandh, Durgapur on 26th & 27th November, 2018; Reg:
Respected Sir
This is to bring to your kind notice that the assessment for the academic session 2019-2020, held at Gouri Devi Institute of Medical Sciences & Hospital, Rajbandh, Durgapur on 26th &

27th November, 2018. In view of the Assessment Report prepared by the Assessors, we would like to put forward few of our observations and clarifications before you which are as follows:-

SI. No.	*Observation by the Assessors*	*Observation & Clarification of GIMSH, Durgapur*
1.	*Point No:1.13 UG Residents @ 60% Capacity Out of the required capacity of 360, 210 is available and 150 is deficient.*	*There is sufficient availability of hostels for students for subsequent 02 batches. For the Academic Sessions 2017-2018 and 2018-0019 there had been no permission for intake of students. Hence only one batch of students are there and second batch is expected.*
2.	*Point No: 1.13 Interns @ 50% Capacity*	*Not required at this stage.*
3.	*Point No.1.13 Resident @ 100% Capacity including PG Deficiency is 100%. 15 Rooms are available not occupied.*	*All of the resident hostels were not visited inspite of the fact that there is accommodation for 66 residents in 33 rooms. It may please be noted that 100% deficiency has been shown despite reflecting 15 rooms in the assessment report. At the time of visit all the residents had been called upon to reach the hospital for the sudden inspection. Video Attached as Annexure-1* *Further it is hereby informed that during our last inspection there was no deficiency with respect to resident hostel.*

4.	*Point No:1.13 Nurses @ 20% Capacity*	*All the rooms in the Nurses hostel are fully furnished. Provisions for visitor Room, Study room and indoor games are also available.*
5.	*Point No 113 Non Teaching Staff @ 20% Capacity*	*The required accommodation for the non teaching is available within the campus. Video taken during the Inspection is attached as Annexure - 2.*
6.	*Point No:2.4 ENT Audiometry Speech Therapy*	*a. Audiometry room with AC and sound proof is available in the first floor of the hospital building along the ENT OPD Department. Photograph and Video attached as Annexure - 3A Audiometry Technician Mr. Prakash Kumar was on leave on 26th November, 2018 hence the machineries were kept In the Speech Therapy almirah. Copy of leave application form is attached as Annexure - 3B. b. Separate room for speech therapy Is also available. Video attached as Annexure - 3C c. Photocopies of Invoice, Bank Statement of Payment, Purchase Order & Quotation or Audiometric Equipments are attached herewith as Annexure - 3 D*
7.	*Point No.2.5 Facilities available*	*We are having centralized store and pantry and the*

	in each ward Pantry and Store Room.	*ward side store and pantry are being used for distribution of food and other articles to the respective wards.*
8.	*Point No:2.6 Clinical Material Bed Occupancy% at 10.00 a.m. on First Day Bed Occupancy has been reported as 125/410 = 30.5%*	*Many patients were not counted who were not on the bed for the following reasons: a. Many of the patients were sent to the Radiology, Laboratory Services, Anesthesia Check Up, Operation Theater, OPD Consultation and Counseling. b. Children admitted under the Pediatric Department were in the child play room, and some had been sent to the vaccination room for scheduled immunization. c. Clinical Material of Gouri Devi Hospital &. Research Institute as mentioned in "Form A" which is in the same campus and under the control of the Dean PI. Principal of the medical college were not counted and was not visited by the Assessors.*
9.	*Point No.3.3 Anatomy Capacity in Demonstration Room 2 Available, Capacity 63 and 75*	*Both the demo rooms have seating capacity of 75 Students each.*
10.	*Point No:3.3 Anatomy Number of*	*We are having 75 number of microscopes. An entire row of*

	Microscopes Available is 50	*microscopes were mistakenly not counted.*
11.	*Point No.3.6 Pathology Speciments*	*Number of specimens are not mentioned in the 12 Minimum Standard Requirement as well as in the ASF II.*
12.	*Point No:3.7 Microbiology Demonstration Room 1 Available, Capacity 50*	*Demo room have seating capacity of 75 students.*
13.	*Point No.3.11 RHTC Panagarh Rooms for Interns*	*As we are having only one batch of students who are in to 05th Semester, hence rooms for Interns are not required at this stage.*
14.	*Point No:3.16 Deficiency in Teaching Faculty & Residents.*	*A) All the medical M.Sc. faculty members in pre clinical and para clinical departments are not counted in view of lack of clarity on eligibility of Assistant Professor though considered during the previous Mel Inspections.* *B) Faculties coming 5 to 10 minutes late are not counted.* *C) 100 % Residents were present, but since they were not in the hostel (as they were called in the hospital hence they were not accounted.* *So there is nil deficiency of residents.* *D) All faculty members and residents were asked to produce Government 10 Cards along with College 10*

		Card. Many of them were not carrying Government 10 Cards and they went to bring the same. This resulted In 5 to 10 minutes delay In arrival and they were not accepted. *E) Residents who were on duty preceding night were late and were not considered.* *F) There are 24 fiats but due to typological error it has been typed 20. This may please be treated as pure human error.*
15.	*Point No2.2 Medical Superintendent - No Administrative .Experience*	*Prof. Dr Arun Ghosh, Department of Microbiology has earlier worked as Medical Superintendent at G.B. Panth Hospital, Tripura which is a Government Hospital and hence we promoted him to the post of Medical. Superintendent and the Government Notification of his earlier appointment Is attached herewith as Annexure – 5.*

Thus, we would like to request you that the facts presented and documents attached herewith for your kind perusal may please be considered and we may be accorded an opportunity. Moreover Sir, we were debarred for the last two academic sessions and the college is running with only one batch of students admitted In the academic year 2016-2017.Therefore, we are seeking your kind empathy for the future of our medical college."

10. The respondent no.2 is indicated to have called upon the petitioner on 14.06.2018 to submit the SAF and declaration forms, Form-A & B for the academic year 2019-20, which were so submitted by the petitioner institute. In terms of the Indian Medical Council Amendment Ordinance, 2018, which was promulgated on 26.09.2018, the Board of Governors were appointed in supersession of MCI on 26.08.2019.

11. The respondent no.2 is indicated to have asked for submission of the documentary evidence vide communication dated 24.01.2019 and the petitioner vide letter dated 19.02.2019 submitted its compliance, which was to the effect:

SI.No.	*Deficiencies pointed out in the inspection field on 26 & 27 November,2018*	*Compliance submitted by the Institute on 19th February, 2019.*
	Out of UG accommodation for 360, accommodation, available for 210, deficient by 150	*Despite the fact that there is only one batch of students got admitted in the academic session 2016-17. Hostel accommodation is available for 60% of the students as required at the time of 3rd renewal for 360 students there are three hostels for UG MBBS students Girls' Hostel-capacity 126 (42 three seats rooms) Boys' Hostel l-capacity 174(58 three seats rooms) Boys' Hostel Il-capacity 63(21 three seats rooms) Total capacity for UG students is (126+237) =363, as per MSR.* ***Annexure -1:*** *a. Photographs and Videography of UG*

	For Residents 100% deficiency of accommodation.	*Hostel for Boys* *b. Photograph and Videography for UG* *Hostel for Girls.* *There is a 100% accommodation available for 66 resident doctors. 36 double seats rooms with capacity of 72 resident doctors are available in the campus. Further the assessors have written in the assessment report that 15 rooms are available for the resident doctors but pointed out 100% deficiency.* ***Annexure - I:*** *c. Photographs and Videography of Resident Hostel* *d. Copy of Allotment Register of Resident Hostel*
2.	*Residential Quarters for non teaching staff 100% deficient*	*The required accommodation for the non -teaching staff is available within the campus* *Documents attached as **Annexure - II** are as under:* *a. Photographs & Videography of Non-teaching staff accommodation .* *b. Copy of Allotment Register of Non-Teaching Staff Accommodation.*
3.	*Audiometry & Speech Therapy - not available.*	*Air conditioned sound proof Audiometry room is available in the first floor of the hospital building along the ENT OPO Department, which is fully functional.*

		Separate room for speech therapy is also available. ***Documents attached as Annexure - III are as under:*** *a. Photographs and Videography of fully equipped Audiometry Room and Speech Therapy.* *b. Photocopies of Invoice. Bank Statement of Payment, and Purchase Order & Quotation for Audiometry Equipment's are attached.* *c. Enclosed Photocopy of records of Audiometry & Speech therapy*
4.	*Pantry and store room not in use for all clinical wards.*	*We are having centralized store and pantry and the ward side store and pantry are being used for distribution of food and other articles to the respective wards. However. the store rooms & pantries are in use for all clinical wards.* ***Annexure - IV*** *Photographs of ward side store and pantry .*
5.	*Bed Occupancy is 30 .5%*	*Bed occupancy has been under-reported by the Assessors and does not match with the actual bed occupancy as submitted by the Medical superintendent because of following reasons,* *a. Many of the patients were sent to the Radiology, Laboratory Services, and Anesthesia Check Up, Operation Theater. OPO Consultation and Counseling* *b. Children admitted under the Pediatric Department were in the*

		child play; OC in, and some had been sent to the vaccination room for scheduled immunization. *c. Many patients were on the discharge process on the day of the visit and therefore were not included in the count of Bed Occupancy.* *d. Patients admitted after 11 a.m. after the physical visit by the assessors were not counted. Hence, it is requested that the actual bed occupancy may be accepted.* ***Annexure-V:*** *Actual bed occupancy as submitted by the Medical superintendent.*
6.	*Normal deliveries and Caesarian - Nil*	*One patient was seen by assessor Dr. Shiv kumar who visited the labor room at around 12.30pm. The same patient had normal delivery at 6 pm in the evening which could not be verified by the assessors since by that time they were in the process of leaving the Institute. Further one LSCS procedure was performed at 08 :00PM. Documents attached as Annexure - VI are as under:* ***a. OT Register.*** ***b. Birth Register.*** ***c. New born details.***
7.	*Ba & IVP - Nil in OPD*	*The clinical material submitted by the Institute clearly indicates that one case of Barium Swallow an d one case of IVP were done for 2 OPD cases which has been duly accepted by the assessors. Hence there is no deficiency as far as no.*

		of special tests done in the OPO in the department of Radiology is concerned (please see Assessors form A II, page no. 17) Hence no compliance is required in this case. ***Annexure - VII*** *Copy of Assessors' Form A II, Page No. 17*
8.	*USG machines not available in casualty.*	*The USG machine was placed in the Casualty Examination Room which was overlooked by the Assessors. Presently also, the USG machine is placed there to maintain the privacy of the patients instead of keeping it in the Casualty Ward.* *Hence, no compliance is required.* ***Annexure - VIII*** *a. Photographs of USG machine at Casually Ward.* *b. PC & PNDT License of the USG machine*
9.	*Bed occupancy in septic labour room and Eclampsia room is nil.*	*It is very rare to find cases in the Septic Labour Room due to availability of prophylactic antibiotics. Similarly, patients are rarely available in the Eclampsia Room due to preventive treatment of Pre-Eclampsia. Hence most of the time, there are no patients available in Septic Labour Room & Eclampsia Room in most of the hospitals as is true for our hospital too.*
10.	*In Pathology Museum mounted specimen only 40*	*Presently, we have adequate specimens for the Pathology museum as per the Minimum*

	against 300 (260 short) un-mounted only 30, against 150 (120 short).	*Standard Requirement.* ***Annexure - IX*** *Photographs of the Pathology Museum.*
11.	*No cold chain equipment, no accommodation in RHTC.*	*Cold Chain equipment is available at RHTC.* ***Annexure – X*** *Purchase order copy of ILR, and Vaccine Carrier attached.* *Accommodation is not required at RHTC at the time of 3rd renewal as per MSR. However, it will be made available at the time of Recognition inspection when the Interns will be posted at RHTC.*
12	*Deficiency of Faculty by 57% (67/117).*	*Shortage of faculty reported is not factual and is under reported because of the following reasons:* *a. Seven (07) faculty members having M.Sc. degree in concerned specialties were not considered by the assessors, although as per Teachers Eligibility* *Qualification, their qualification with 3 years Tutor's experience makes then; eligible for the post of Asst. Professor. Despite repeated requests, the* *Assessors did not count them as faculty members which contributed to faculty deficiency.* *b. Since the inspection was surprise in nature, some of Faculty members were not carrying the ID issued by Govt. agencies, which resulted into their non-acceptance by the Assessors. This was another*

		reason for Faculty deficiency. *c. About 10 faculty members who came 5-10 minutes late because of long distance from the Institute also rejected by the Assessors.* *We would like to state that there is no deficiency of Faculty in the Institution.* ***Annexure - XI:*** *a. Declaration Forms.* *b. Faculty List.* *c. Videography during Faculty head count by the Assessors.*
13.	*Deficiency of Resident by 100% (66/66).*	*We would like to state that there is no deficiency of Resident Doctors in the Institute. All the Resident Doctors were rejected by the Assessors because they did not visit their hostels and hence they presumed that there is no Resident Doctors in the Institute. Many Resident doctors have also signed in the attendance sheet available with the Assessors before 11.00 am. This con1radiction in reporting of hostel accommodation as nil as well as reporting 100% deficiency of Resident Doctors has seriously disturbed the interest of the Institution. Resident Doctors (30 in no.) had performed night duty and were post duty off. They should have been allowed to come for attendance upto 12:00 noon but they were marked absent at 11:00am. There is serious contradiction between the statements of the Assessors where*

		they have mentioned that there are 15 rooms available for the Resident doctors (Page No. 10 of Assessors' report A-II). *So it is being clarified that the adequate accommodation for all the Resident Doctors is available as well as the required number of Resident Doctors were present on the day in Assessment. Annexure XII* *a. Declaration Forms.* *b. Resident doctors' List.* *c. Videography during Faculty head-count by the Assessors.* *d. Hostel Allotment List for Resident Doctors.* *e. Copy of Page no 10 of Assessors Report A-II.*
14.	*Other Deficiencies as pointed out: Medical Superintendents' inadequate administrative experience*	*New M.S with requisite qualification along with administrative experience as per TEQ has been appointed on 14.02.2019 vide letter Ref. No. GIMSfMCfHRfOLl02/19f972 dated 12.02 .2019 . I* *Annexure - XIII* *a. Appointment Letter of New Medical Superintendent*

All the factors combined together has resulted into a detrimental impact on the assessment report submitted by the Assessors, which need a sympathetic consideration and re-evaluation of the Institute which already suffering a great hardship and financial loss for last two years as it is debaired for admission for the academic year 2017-2018 and 2018-2019. Based on the above facts with evidences along with the dissent note from College authorities, the Board of Governors are requested that the Show Cause notice 8(3)(1)(b) should not be applied to our Institution

and we should be granted a fair chance for inspection for verification of compliance which is being submitted, along with a Demand Draft amounting Rs. 3,54,000/- (Rupees Three Lacs Fifty Four Thousand only) drawn in favour of The Secretary, Medical Council of India (DO No 237498, payable at New Delhi) is enclosed for compliance verification inspection."

12. The Verification Compliance Report indicated that for the deficiency of teaching faculty of 18.8% and deficiency of residents of 21.2% a dissent note dated 09.04.2019 was put forth by the petitioner medical college to the effect that if the Faculty Members in the department of dentistry and the faculty members on leave and those who came a little after 11 am and those residents who came a little after 11 am had been considered by the Assessors for which the petitioner had pleaded many a times before the Assessors, there would have been only one deficiency (Associate Professor in the department of Radiology) and the petitioner submitted that it was apparent that with respect to clinical material, resident hostel, student hostel, non-teaching accommodation and all other deficiencies as pointed out during the previous Assessment held on 26th & 27th November, 2018 had been rectified to the satisfaction of the Assessors.

13. The petitioner institute was called for a hearing vide letter dated 01.05.2019 under Section 10A(4) of the IMC Act, 1956. The petitioner submitted a written representation of the college before the Hearing Committee to contend to similar effect that:-

"

Point1 – Faculty Deficiency of 18.8%

A) Following two Faculty members were not accepted by the Assessors as both of them are having experience in Dental Colleges only.

Sl. No	Name	Designation	Department	Remarks/ Reasons for not considering
1	Dr. Deepak Bansal	Professor	Dentistry	Both these Faculty Members were not accepted by the Assessors although they are eligible for their respective designation having requisite qualification as well as experience as per the TEQ (Teachers Eligibility Qualification) prescribed by the Medical Council of India. No where it is mentioned in that a Faculty in the dental department has to have experience of a medical college. We are earnestly requesting you to accept both these Faculty Members as per the Medical Council of India norms. ANNEXURE – I A) Copy of declaration forms and all teaching experience certificates of both the doctors. B) Bank Statement reflecting salary disbursement C) Copy of Attendance Registers.
2	Dr. Shruti Sharma	Associate Professor	Dentistry	

B) Following Faculty Members were not accepted even though they were on authorized sanctioned leave by the Institution.

Sl. No	Name	Designation	Department	Remarks/ Reasons for not considering
1	Dr. B Ashoke Kumar	Associate Professor	General Medicine	Five senior doctors were on leave and their "Leave Application" were furnished before the Assessors but the Assessors did not consider them. In this context it is to be considered that out of five, four faculty members are from Hyderabad where during that period Ugadi (Gudi Padwa) festival was being celebrated, which is New Year festival to them and celebrated in a big manner and they took leave to celebrate the festival with their family. ANNEXURE - II A) Copy of Sanctioned Leave Applications. B) Bank Statement reflecting salary disbursement. C) Copy of Attendance Registers.
2	Dr. A.S. Srinivas	Associate Professor	Pharmacology	
3	Dr. K Sambhasivam	Associate Professor	Pathology	
4	Dr. K. Avinash	Assistant Professor	TB & Chest	
5	Dr. Indranil Mukherjee	Assistant Professor	ENT	

C) Following Faculty Members were not accepted by the Assessors who came little late after 11 a.m.

Sl. No	Name	Designation	Department	Remarks/ Reasons for not considering
1	Dr. Rousan Kumar	Tutor	Physiology	All these faculty members are full time employees, which may be verified from the day to day attendance records as well as the salary paid to them every month by the Institution. Please appreciate the problems of the Institution which has been debarred for the last two Academic Years (2017-2018 and 2018-2019) and the disturbed psyche of the faculties who are totally demoralized because of no admissions for last two years. Under these circumstances some leverage/discounts are given to the faculties to visit their families during weekends. Few minutes delay in their arrival time may be considered sympathetically so as to retain the Faculty in such remote areas under adverse circumstances. Once the Institution comes back on track, such delays can be strictly dealt with. Dr. Sashikant Dahifalkar, Associate Professor of the department of Anesthesia was in OT along with Dr. G Eshwar, Professor of the department of Radiology for continuous intra operative USG monitoring of a patient. The Assessors neither visited the OT to verify nor accepted their late attendance. <u>Annexure - III</u> A) Bank Statement reflecting salary disbursement B) Copy of Attendance Registers. C) BHT of the OT patient as stated above.
2	Dr. Ajoy Kumar	Tutor	Physiology	
3	Dr. Barun Patel	Tutor	Biochemistry	
4	Dr. Mithilesh Kumar	Tutor	Microbiology	
5	Dr. Kajal Murmu	Assistant Professor	Pediatrics	
6	Dr. G Nageshwar Rao	Professor	Pathology	
7	Dr. P Vinay Anand Sagar	Associate Professor	Pathology	
8	Dr. C. Kranthi Kumar	Assistant Professor	Forensic Medicine & Toxicology	
9	Dr. K Shravan Kumar	Associate Professor	General Medicine	
10	Dr. E Ravindra Reddy	Professor	Pediatrics	
11	Dr. Anita Verma	Professor	Pharmacology	
12	Dr. Prabhakar	Associate Professor	Psychiatry	
13	Dr. G Eshwar	Professor	Radiology	
14	Dr. Sashikant Dahifalkar	Associate Professor	Anesthesia	

Point 2. Residents Deficiency of 21.2%

Following Residents were not accepted by the Assessors who came little late after 11 a.m.

Sl. No	Name	Designation	Department	Remarks/ Reasons for not considering
1	Dr. Pallab Mukhopadhyay	Junior Resident	Pediatrics	Resident Doctors who were on duty on previous night were called back from their resident hostel and as per MCI norms they should have been accepted till 12 noon. Unfortunately for us they were rejected by the Assessors even when they all came by 11.15 a.m. This has greatly put the Institution under a heavy loss making it a deficiency of Resident Doctors to the extent of 21.2%.
2	Dr. Rakesh Kumar Yadav	Senior Resident	TB & Chest	
3	Dr. Anuranjan Kumar	Junior Resident	TB & Chest	
4	Dr. Jaison Jaykaran	Senior Resident	Dermatology	
5	Dr. Annanya Amrit	Senior Resident	OB&G	
6	Dr. Akansha Verma	Senior Resident	OB&G	
7	Dr. Majid Equbal	Junior Resident	OB&G	
8	Dr. Parthib Mukhopadhyay	Junior Resident	OB&G	ANNEXURE - IV
9	Dr. Kamal Kant Nath	Junior Resident	General Medicine	A) Duty Roaster for the month of April 2019.
10	Dr. Rajesh Kumar Singh	Junior Resident	General Medicine	B) Bank Statement reflecting salary disbursement.
11	Dr. Ravi Raushan	Junior Resident	General Surgery	C) Copy of Attendance Registers.
12	Dr. Anurag Mishra	Senior Resident	General Medicine	
13	Dr. Rajoo Saroj	Senior Resident	Psychiatry	
14	Dr. Hanif Mohammad	Senior Resident	Radiology	

Point 3: Bed Occupancy 74.8%

There is no deficiency with respect to Bed Occupancy which has been reported by the Assessors as deficiency of 24.2% which obviously signifies that the bed occupancy was 75.8% and not 74.8%. This gross anomaly in the calculation of Bed Occupancy may kindly be corrected since it is a pure typographical error.

If the above mentioned Faculty Members and Residents who were present and were on leave, had been considered by the Assessors for which we have pleaded many a times before the Assessors, there would have been only one deficiency (Associate Professor in the department of Radiology).

Therefore, from the above submission it is apparent that with respect to all other deficiencies as pointed out during previous Assessment held on 26th & 27th November, 2018 have been rectified to the satisfaction of the Assessors……"

The petitioner thus contended that all deficiencies had been rectified.

14. Vide the impugned communication dated 18.05.2019, the Board of Governors decided not to renew the permission for admission of the 4th batch. A representation dated 20.05.2019 was made by the petitioner to the respondent no.2 wherein it was stated to the effect that whilst adverting to the dissent note submitted on 10.04.2019 to the respondent no.2 that the petitioner had clarified that evidences had been submitted before the Hearing Committee and it had clarified that four faculty members were not accepted by the Assessors though there were genuine valid reasons for accepting them and rest of the faculty members were not accepted by the Assessors for coming 10-15

minutes late though all of them were regular faculty members of the college which could be verified from their regular attendance and regular salary payment through bank as submitted during the hearing before the MCI on 7th April, 19. The petitioner further submitted that as most of them belonged to Pre and Para clinical departments they did not have regular classes for a prolonged period as the petitioner had only one batch of students who were now into their 6th semester, therefore, they came little late on Monday (8th April, 2019) while returning back from their hometowns. The petitioner further submitted that being debarred for last two academic sessions, retaining faculties has become very difficult for it and that little leniencies are extended towards their duty rejoining time on Monday so as to retain them which the petitioner would definitely not allow after obtaining permission for the current academic session. The petitioner further submitted that the Residents who were on night duty on the previous night were also not accepted after 11 a.m. though as per the Assessors Guide of the MCI they should have been allowed to sign upto 12 o'clock which impacted the residents count to 21.2% deficient whereas actually there was no deficiency. The petitioner further submitted that it gave immense importance towards the academics of the students which it submitted was evident from the fact that it has provided all required infrastructural facilities both in the college and the hospital with only one batch of students and that the petitioner institute had been debarred for two academic sessions, The petitioner also submitted vide the said representation made to the respondent no.2 dated 20.05.2019 that the Minimum Standards Requirement for the 4th

Renewal are very high in comparison to the 3rd Renewal requirements, for which the petitioner had to develop the infrastructures of both the college and the hospital upto the recognition level requirements and thus, the admission for the academic session 2019-20 was extremely crucial for the petitioner. The petitioner institute further submitted that the petitioner college is providing free treatment to the patients of a large surrounding area which would also be greatly impacted due to financial constraints in case of denial of permission.

15. Vide the representation dated 6.6.2019, the petitioner also called upon the respondent No.1 to consider the grant of renewal for the academic session 2019-20 for the 4th batch of 150 MBBS students and in the alternative requested for the permission with reduced intake capacity as it was submitted that the number of faculty members accepted by the assessors would fulfill the faculty criteria with respect to the reduced intake capacity for the current academic session. A further representation dated 11.6.2019 was made by the petitioner institute to the respondent No.2 for the reduced intake of seats reiterating that the number of faculty members accepted by the assessors would fulfill the faculty criteria with respect to the reduced intake capacity for the current academic session.

16. Vide a communication dated 12.6.2019, the Director of Medical Education, Department of Health & Family Welfare of the Government of West Bengal forwarded the appeal of the petitioner institution and requested the respondent institution to take necessary action regarding the grant of permission for the academic year 2019-20 for the petitioner college observing that 33% (50 nos.) of the total

seats were reserved for students provided by the West Bengal Government admitted through NEET for whom the tuition fees will be subsidized by the college which would be of much help to the students of West Bengal.

17. Vide communication dated 18.6.2019, the respondent No.2 informed the Director of Medical Education of the Government of West Bengal informing that the respondent No.2 could not consider the representation dated 11.6.2019 of the petitioner institute with regard to the renewal of permission for admission of the 4th Batch of 150 MBBS students for the academic session 2019-20 at that stage as the last date for the academic year 2019-20 i.e. 31.5.2019 was already over.

18. Written submissions have been submitted on behalf of the petitioner and the respondent No.2 and arguments were extensively addressed by the learned senior counsel for either side. The respondent No.1 adopted the submissions made by the respondent No.2.

19. A catena of verdicts has also been relied upon by both on behalf of the petitioners and the respondents in support of their respective contentions:

The verdicts relied upon on behalf of the petitioner are:

- ***Shashikant Lakshman Kale v. Union of India*****:** AIR 1990 SC 2114
- ***Municipal Council of Sydney v. Margaret Alexandra Troy***: AIR 1928 PC 128
- ***Jahiruddin and Ors. V. K.D. Rahti, Factory Manager and Ors.:*** AIR 1966 SC 907
- ***Sylvania and Laxman Ltd. V. UOI & Ors.;*** 1987 (30) ELT 697 Del

- ***Shashikalabai v. State of Maharashtra and Anr***.; (1998) 5 SCC 332
- ***CIT v. Shelly Products and Anr***.: (2003) 5 SCC 461
- ***Ramji Purshottam v. Laxmanbhai D. Kurlawala****:* (2004) 6 SCC 455
- ***CIT V. Alom Extrusions Ltd***. ; (2010) 1 SCC 489
- ***CIT v. Vatika Township Pvt. Ltd*.:** (2015) 1 SCC 1
- ***Shanti Conductors v./ Assam State Electricity Board*:** (2019) SCC Online SC 68
- ***Dr.A. Franklin Joseph V. State of Tamil Nadu;*** (1994) 2 SCC 387
- ***Y. Srinivas Rao V. J. Veeraiah ; (***1992) 3 SCC 63
- ***State of U.P.v. Singhara Singh***; AIR 1964 SC 358
- ***Golcal Medical College v. Union of India***; (2018) 1 SCC 108
- ***B.A. Linga Reddy v. Karnataka State Transport Authority & Ors***.; (2015) 4 SCC 515
- ***Mekaster Trading Corporation v. Union of India***; (2003) 106 DLT 573
- ***Shri Ganganjali Education Society v. Union of India***; (2017) 16 SCC 656

The verdicts relied upon on behalf of the respondent No.2 are :

- ***Hindustan Paper Corporation Ltd. v. Government of Kerala & Ors. ,*** *AIR 1986 SC 1541*
- ***Indian Drugs & Pharmaceuticals Ltd. & ors. v. Punjab Drugs Manufacturers Association & Ors.*** (1999) 6 SCC 247
- ***ASPI Jal & Anr. v. Khushroo Rustom Dadyburjor*** (2013) 4 SCC 333
- ***Glaxosmithkline Consumer Healthcare Ltd. & Ors. v Heinz India (P) Ltd.*** (2009) 156 DLT 330
- ***Royal Medical Trust & Anr. v. Union of India & Anr.*** (2017) 16 SCC 605

- ***Karthi P Chidambaram & Ors. v. Superintendent of Police*** 2017 LawSuit (Mad) 1353
- ***Medical council of India v. N.C. Medical College & Hospital*** 2018 SCC OnLine SC 1468

20. Whereas the factum of existence of deficiencies commensurate to the 4th Batch of 150 MBBS students for the academic session 2019-20 in the petitioner institute as per the Minimum Standards Requirements (MSR) for the medical college for 150 Admissions Annually Regulations 1999 are not in dispute, the petitioner submits that the MSR Regulations for admission of 150 MBBS students which requires a faculty and resident strength to the effect:

Designation	LOP (1st Batch)	1st Renewal (2nd Batch)	2nd Renewal (3rd Batch)	3rd Renewal (4th Batch)	4th Renewal (5th Batch)	Recognition
Faculty Total	65	94	100	117	132	132
Resident Total	45	47	49	66	80	80

is irrational and defies logic and is against the dominant intent under Section 10A(7) of the Indian Medical Council Act, 1956 of the legislature thereby or to ensure proportionate staff and infrastructure in relation to number of students currently in the college.

21. The petitioner submits that the respondent No.2 is treating the petitioner college as if it has already admitted 450 students i.e., the 3rd renewal (4th Batch) though in fact the petitioner has only 150 students and the petitioner submits that it should be evaluated as per the

Minimum Standards Requirements Regulations, 1997 of the 1st renewal (2nd Batch) and thus the deficiencies of faculty were only minimal.

22. The response of the respondent No.2 in relation to this aspect is categorical to the effect that the medical colleges are required to maintain faculty, residents, clinical material as well as other physical infrastructure for 150 MBBS students Annually Regulations framed under the Indian Medical Council Act, 1956 and since the 1st Batch of 150 MBBS students admitted in 2016-17 is now in their 4th year and all faculty, residents clinical material as well as other physical infrastructure needs to be commensurate with the 4th Batch and it was thus incumbent upon the petitioner medical college when it applied for the recognition for its MBBS course at the third time, the students from the 1st Batch would appear in the final examination during the academic year 2020-21 and that it had enhanced/augmented infrastructure/faculty to full capacity. It has been submitted on behalf of the respondent No.2 that the medical colleges either at the very stage of inception/establishment are required to possess enhanced infrastructure/faculty and apply for recognition or they could enhance/augment their infrastructure /faculty in a phase wise manner till the time the 1st Batch progress and reaches the stage of recognition. The respondent No.2 has submitted that the petitioner had in all its letters conceded at the stage of grant of 3rd renewal for admission of 4th Batch of the MBBS students for the academic year 2019-20 its deficiencies and that the medical college vide communication dated 14.6.2018 had by itself submitted the Standard Inspection Forms 'A'

& ‘ B’ along with the declaration form towards grant of 3rd renewal for admission of 4th Batch of MBBS students for the academic year 2019-20 and that the Regulations 3 and 8 (3)(1) of the Establishment of Medical College Regulations, 1999, also made it amply clear that there was deficiency in the faculty and resident doctors.

23. The respondent No.2 has submitted that the contentions raised by the petitioner that it has only one batch of 150 MBBS students studying does not take into account the factum that in the next academic year, the first batch admitted in 2016-17 would be appearing in its final examination whereafter in case the MBBS qualification of the petitioner is not recognized, the future of that batch would be in jeopardy.

24. It is apparent on a consideration of the submissions that have been made on behalf of either side that the Minimum Standards Requirement Regulations, 1999, which are framed by the Medical Council of India with the previous sanction of the Central Government in exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956 have essentially to be adhered to by the medical colleges and medical institutions which have been approved for 150 admissions of the MBBS students only for the stipulations of the minimum requirements of accommodation in the colleges and their associate teaching hospital staff (teaching and technical, both)and equipment in the college departments and hospitals.

25. As regards the contention that has been raised on behalf of the petitioner institute that in view of the notification dated 25.6.2019 published on 27.6.2019, the reduced intake could be allowed on the

basis of the faculty and resident doctors for the academic year 2019-20, it is essential to observe that the notification published on 27.6.2019, which is to the effect:

> *"**BOARD OF GOVERNORS IN SUPER-SESSION OF MEDICAL COUNCIL OF INDIA AMENDMENT NOTIFICATION***
>
> *New Delhi, the 25th June, 2019*
>
> ***No.MCI-34(41)/2019-Med./126165**.— In exercise of the powers conferred by Section 33 of the Indian medical council Act, 1956 (102 of 1956), the Board of Governors in super-session of Medical Council of India with the previous sanction of the Central Government, hereby makes the following Regulations to further amend the "Establishment of medical college Regulations, 1999", namely:-*
>
> *1. (i) These Regulations may be called the "Establishment of medical college Regulations (Amendment), 2019".*
>
> *(ii) They shall come into force from the date of their publication in the Official Gazette.*
>
> *2. In Clause 8, under the heading of "Grant of permission", sub-Clause 5 shall be added as under:*
>
> *8(5)*
>
> *(i)The Board of Governors in super-session of Medical Council of India or the Central Government on the recommendation of Medical Council of India as the case may be may consider grant of permission for establishment of a new Medical College or renewal of permission of existing Medical College to the lower prescribed*

intake capacity, in the event the applicant college falls short of the requirements prescribed in the Minimum Standard Requirement Regulations for the intake capacity for which the Medical College has applied. Such permission shall be granted only on the furnishing of an undertaking by the applicant that the grant of permission with reduced intake is acceptable to it for that academic session.

Further, the application for renewal of permission by the permitted medical college for the subsequent academic year shall be for the intake capacity for which it has been granted Letter o Permission.

(ii) The Medical College shall be entitled to apply for increase in intake capacity only after the MBBS qualification of the college is included in the First Schedule of the Indian Medical Council Act, 1956.

can relate only and applies only from the academic session 2020-21 onwards and cannot be made retrospectively applicable, as there is nothing in the notification to so indicate and even otherwise, the last date for grant of permission as per the judgment of the Hon'ble Apex Court in ***Ashish Ranjan & Ors. V. Union of India*** & Ors.: (2016) 11 SCC 225 being 31.05.2019, the petitioner cannot avail of any benefit of the said notification published on 27.06.2019 for the academic year 2019-20.

26. Thus the contention raised on behalf of the petitioner that the reduced intake for the academic year 2019-20 be allowed on the basis of the notification dated 27.6.2019 – cannot be granted.

27. Further more, as laid down by the Hon'ble Supreme Court in ***Ashish Ranjan & Ors. V. Union of India*** & Ors.: (2016) 11 SCC

225, the last date of grant of permission by the respondent No.1 for approval of intake of students to the MBBS course being 31.5.2019 and the notification being published on 27.6.2019, it is apparent that the notification cannot be used for the benefit of the academic year 2019-20 and as rightly contended on behalf of the respondent No.2, the application of the petitioner medical college was rejected vide the impugned order of the respondent No.2 dated 18.5.2019 and the notification was issued only on 27.6.2019.

28. A contention has further been raised on behalf of the petitioner that there were only two assessors who conducted the inspection on 8.4.2019 and that for 150 MBBS students, inspection is required to be carried out by at least three professors/additional professors and associate professors and the Operation Theatre visit is mandatory which it is submitted was not conducted in the instant case.

29. The petitioner also submits that the experts of the Dental College would be sufficient for the faculty strength.

30. Qua this aspect, it has been submitted on behalf of the respondent No.2 that all the inspections of the petitioner medical college took place in the presence of the management including the Dean/Principal who counter signed on each page of the inspection reports dated 26-27.11.2018 and 8.4.2019 and thus all the deficiencies pointed out by the Medical Council of India had been duly accepted by the petitioner college which included faculty strength, resident doctors strength, bed occupancy, infrastructure and other physical facilities.

31. Apparently, the deficiencies that have been pointed out in the instant case being a deficiency of 18.8% for the faculty strength and 21.2% for the resident doctors strength for the renewal of the 4th Bacth of 150 MBBS students for the academic year 2019-20 cannot be overlooked and cannot pale into insignificance.

32. Reliance in relation to this aspect has been placed on behalf of the respondent No.2 on the verdicts in the ***Royal Medical Trust v. Union of India***; (2017) 16 SCC 605 and ***MCI v. N.C. Medical College;*** (2018) SCC Online SC 1468.

33. In view thus of the deficiencies that have been pointed out by the respondent No.2 in relation to the faculty strength and the resident doctors strength, the other contentions sought to be raised on behalf of the petitioner become insignificant in as much as the respondent No.2 has the duty to regulate and maintain the standards for excellence in medical education.

34. In view thereof, the petition and the accompanying application are declined.

35. Copy of the judgment be given Dasti, as prayed.

ANU MALHOTRA, J.

AUGUST 30th, 2019/vm/sv