



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 15.09.2021

PRONOUNCING ORDERS ON : 16.09.2021

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.No.19005 of 2021

Sri Lakshmi Narayana Institute of
Medical Sciences
Rep by its Dean Dr.G.Jayalakshmi
Osudu, Agaram Village
Villianur Commune
Kudapakkam Post
Puducherry - 605 502.

...Petitioner

.Vs.

1. Union of India
Rep by its Secretary
Ministry of Health and
Family Welfare
Nirman Bhawan, New Delhi.

2. National Medical Commission
Rep by Its President
Pocket-14, Sector-8,
Dwarka, Phase-I,
New Delhi - 77.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings in NMC / UGI / 2020 / 000006 / 019319 dated 27.08.2021 and quash the same as illegal and arbitrary and consequently directing the Respondents to issue a Letter of Permission for increase in intake of students from 150 to 250 for the academic year 2021-2022 on the basis of the application submitted by the petitioner college dated 12.11.2020.

For Petitioner : Mr.M.S.Krishnan
Senior Counsel
for Mr.N.Senthil Kumar

For Respondents : Mr.T.V.Krishnamachari
CGSC for R 1
Mrs.Subharanjani
CGSC for R 2



O R D E R

1.This Writ Petition has been filed challenging the impugned proceedings of the 2nd Respondent dated 27.08.2021 wherein the Petitioner institution was informed that their request for increase in intake of students for the academic year 2021-22 is being carried forward to the next academic year namely 2022-23, in view of the fact that the physical inspection of the college cannot be carried out for the present due to the pandemic situation.

2. The Petitioner institution is a constituent of Bharat Institute of Higher Education and Research, a deemed to be university under Sec.3 of the UGC Act. The Petitioner institution is conducting MBBS course with an annual intake of 150 students from the academic year 2006-07. The Petitioner institution is also conducting 8 PG programmes after obtaining the necessary permission from the Respondents between the years 2017 and 2020.

3.The Petitioner institution made an application before the Respondents seeking for increase in intake of students in the MBBS course from 150 to 250 students per year. This application was submitted on 12.11.2020. The further case of the Petitioner is that the Medical Assessment and Rating Board (MARB) had sought for various documents and the same was also submitted by the Petitioner on 26.05.2021.

4.It is stated that, in the meantime, a physical inspection was also carried out by the 2nd Respondent for the purpose of considering the request for starting new PG courses and to increase the strength in 2 existing PG programmes. The Petitioner has made an averment that the 2nd Respondent has also issued letter of intent for 3 PG programmes after being satisfied with the infrastructure facilities available. At this point of time, the last inspection was done on 19.06.2021.

5.The Petitioner was expecting the 2nd Respondent to take a decision on the request made by the Petitioner for increase in intake of students from 150 to 250 for the academic year 2021-22. However the 2nd Respondent issued the impugned proceedings dated 27.08.2021 and the same has been put to challenge in the present Writ Petition.

6.Heard Mr.M.S.Krishnan, learned Senior counsel for the petitioner, Mr.T.V.Krishnamachari, learned Central Government Standing Counsel for the 1st respondent and Mrs.Subharanjani, learned Central Government Standing Counsel for the 2nd Respondent.

7.The learned Senior Counsel appearing on behalf of the Petitioner submitted that there is a duty cast on the 2nd Respondent under Section 26 of the National Medical Commission



Act, 2019 (hereinafter referred as "the Act") to carry out inspections of medical institutions in accordance with regulations and by virtue of the impugned order, the 2nd Respondent has failed to perform that duty. It was further submitted that the Petitioner had made the application in November 2020 itself and there was no delay on the part of the Petitioner. Therefore, the delay on the part of the 2nd Respondent to conduct the inspection cannot be put against the Petitioner by throwing the blame on the pandemic situation. If the 2nd Respondent was able to conduct an inspection as late as on 19.06.2021, there is no reason as to why a further inspection cannot be done thereafter to take a decision more particularly since the NEET examination itself was held only on 12.09.2021. The learned Senior Counsel further contended that there is a huge requirement for doctors and the same was felt during the challenges faced while handling the COVID-19 Virus. Under such circumstances, the 2nd Respondent must be more vigilant in increasing the number of doctors and the inaction on the part of the 2nd Respondent goes against public interest. The learned Senior Counsel submitted that nearly 6 inspections were carried out in the Petitioner college and what remains is only a decision to be taken by the 2nd Respondent for the increase in intake of students and hence this court must issue directions to the 2nd Respondent to pass orders on the application submitted by the Petitioner within a time frame.

8. Per contra, the learned Standing Counsel appearing on behalf of the 2nd Respondent brought to notice of this court, the minutes of the meeting held on 03.08.2021 and the decision taken in the meeting. For proper appreciation, the relevant portions of the minutes of the meeting are extracted hereunder:

"The suggestion for the challenges about assessment MARB was facing were invited.

The MBBS (UG) assessments have started by end of June. After 2nd wave of pandemic COVID-19 new assessment have been initiated. The earlier suggestion (in the last meeting) to invite assessors though the emails at a time rather than in succession was put in place and has yielded the results. Some of the colleges to be assessed have been assigned the dates & assessors.

As regards old colleges asking for increased seats there was unanimous opinion to put it off altogether as we may either not complete all colleges and many colleges may have deficit with respect to OPD attendance due to COVID. It was also agreed to carry over their application to next academic year 2022-23 with the same fees



court is as to whether the decision taken by the 2nd Respondent to postpone the request made by the Petitioner for increase in intake of the students, to the next academic year is reasonable and whether it requires the interference of this court.

12. When this court exercises its jurisdiction under Art. 226 of the Constitution of India, this court must be convinced that the decision taken by the authority is unreasonable, capricious, arbitrary or it is in violation of any statutory requirements and only then the decision taken by the authority will be interfered with by this court.

13. In the present case, the Petitioner institution had sought for increase in intake of students in the MBBS course from 150 to 250 and an application was submitted in this regard on 12.11.2020. It is clear from the records that there was some development after this application was submitted and the MARB had also sought for some documents from the Petitioner and inspections were also conducted. Ultimately, through the impugned proceedings dated 27.08.2021, the 2nd Respondent informed the Petitioner that taking into consideration the pandemic situation, it was decided to carry forward the application and fees paid to the next academic year. The above decision was conveyed by the 2nd Respondent to the Petitioner college pursuant to the decision taken in the meeting held on 03.08.2021 and the relevant portions in the minutes of the meeting has also been extracted supra.

14. It is true that the 2nd Respondent is vested with the powers and duties under Section 26 of the Act to consider granting permission for increase in intake of students in the MBBS course in an existing institution. For this purpose, necessary inspection must be done to satisfy that the institution has the necessary infrastructure and fulfils all the requirements. Under normal circumstances, this procedure is undertaken in a routine manner without any difficulty. However, during the pandemic situation, everything becomes a challenge and no one is aware as to how the virus will react and when the cases will go up. It must be borne in mind that the 2nd Respondent while taking a decision must consider the situation of the entire country and take a decision, which will be applied across the board. Therefore, it is possible that the inspection would have been completed in some colleges or it is mid-way or it is yet to commence in other colleges. It also involves pooling assessors who have to travel to various places for conducting the assessment and filing the report before the 2nd Respondent. Such congregation and travel also becomes a challenge during this pandemic situation.

15. In view of the above, the 2nd Respondent has taken a decision not to process any applications seeking for increase in



intake during the present academic year and to postpone it to the next academic year namely 2022-23. The 2nd Respondent has taken into considerations lot of factors and has made this decision applicable throughout India for all institutions who are seeking for increase in intake of students. This court does not find the decision taken by the 2nd Respondent to be unreasonable, capricious or arbitrary. Under the given circumstances, this was the best decision that could have been taken by the 2nd Respondent in order to avoid any controversy. If the 2nd Respondent had considered certain applications and granted permission and postponed the other applications by citing the pandemic situation, that could have given rise to arbitrariness.

16. While dealing with this case, this court cannot keep only the interest of the Petitioner in mind and this court is duty bound to take into consideration the prevailing situation. In other words, this court must take the larger interest into consideration. By postponing the decision to permit the increase in intake to the next academic year, no real prejudice will be caused to the Petitioner institution. It is not as if the Petitioner institution will be put to irreparable loss and hardship which cannot be recouped. The Petitioner institution can very well continue with the existing strength for the present academic year and renew its claim for increase in intake during the next academic year. Infact, the same has also been made clear in the impugned proceedings of the 2nd Respondent.

17. In view of the above discussion, this court does not find any ground to interfere with the decision taken by the 2nd Respondent and the impugned proceedings dated 27.08.2021 does not require the interference of this court.

18. In the result, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KP



To

1. The Secretary
Union of India
Ministry of Health and
Family Welfare
Nirman Bhawan,
New Delhi.

2. The President,
National Medical Commission
Pocket-14, Sector-8,
Dwarka, Phase-I,
New Delhi - 77.

+3cc to M/s.N.Senthil Kumar, Advocate, S.R.No.47020

+2cc to M/s.T.V.Krishnamachari, Advocate, S.R.No.47045

+1cc to M/s.Shubharanjani Ananth, Advocate, S.R.No.47665

W.P.19005 of 2021

AJS (CO)
RGA(06/10/2021)