

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1280 OF 2022

Annasaheb Chudaman Patil Memorial
Medical College through its
Secretary Mamta Shailendra Patil .. Petitioner

Versus

Medical Assessment and Ratings
Board (MARB) and others .. Respondents

Shri Nidhesh Gupta, Senior Advocate a/w Shri Arijit Tripathi,
Advocate with Shri A. D. Sonkawade, Advocate i/by Shri A. V.
Hon, Advocate for the Petitioner.

Shri Gaurav Sharma, Advocate a/w Shri Dhawal Mohan,
Advocate i/by Shri S. K. Kadam, Advocate for Respondent Nos. 1
and 2.

Shri A. G. Talhar, A.S.G for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.**

CLOSED FOR ORDERS ON : 01.03.2022

ORDER PRONOUNCED ON: 04.03.2022

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

. The petitioner assails the order dated 19.01.2022 passed by the respondent No. 1/Medical Assessment and Rating Board (for short "MARB") withdrawing letter of permission for increase of 50 MBBS seats for the academic year 2021-2022 and further not recommending for admission of 100 MBBS students for academic year 2021-2022.

2. The petitioner is running a medical college since the year 1990 with 100 MBBS intake capacity. The degree of the petitioner college is recognized by the Government of India U/Sec. 11(2) of the Indian Medical Council Act, 1956 (for short "Act of 1956) with respect to 100 seats and the degree is included in Schedule-I of the Act as recognized medical degree. The recognition of the degree has been renewed from time to time. Under letter of intent, issued by the respondent No. 1/MARB on 16.11.2021, the MBBS seats at the petitioner medical college are increased from 100 to 150. Under letter dated 25.11.2021, the respondent No. 1/MARB conveyed its approval for 50 MBBS seats (increase from 100 to 150 MBBS seats).

3. Surprise inspection was conducted by the respondent No. 1 on 14.01.2022. Pursuant to surprise inspection conducted, the respondent No. 1 passed the impugned order.

4. Mr. Gupta, the learned senior advocate for the petitioner in erudite manner canvassed the submissions. The learned senior advocate contends that, the impugned order of the respondent No. 1 withdraws permission for increase of seats from 100 to 150 and recommends stoppage of admission to 100 seats. No order is passed till date qua 100 seats pursuant to the recommendation of MARB. MARB cannot direct stoppage of admission of 100 recognized seats. MARB has no power to stop admission in recognized medical college. The permission is required for establishment of medical college and for admitting students. The

process of renewal of permission continues till such time for establishment of medical college and expansion of hospital facilities are completed and a formal recognition of medical college is granted. Reliance is placed on Clause 8(3)(i) of Establishment of Medical College Regulations 1999 (for short "Regulations 1999). The power of MARB is limited to permission, therefore, it can stop admissions only in permitted colleges/courses and not recognized ones. The power to grant recognition is with UG Medical Education Board U/Sec. 24(1)(i) of NMC Act, 2019 and the power to withdraw is with the respondent No. 2/NMC upon recommendation of the respondent No. 1/MARB U/Sec. 38 r/w Section 26(1)(f) of the National medical Commission Act, 2019 (for short "NMC Act, 2019").

5. The learned senior advocate further submits that, the power to grant permission to establish medical college, increase seat capacity and starting of post graduate courses is as per Section 10-A of the Act of 1956. The recognition of medical qualification granted by university or medical institutions in India which are included in the first schedule shall be recognized medical qualification for the purpose of act. Reliance is placed on Section 11 of the Act of 1956. The degree of the petitioner college is included in first schedule. The learned senior advocate submits that, the power of MARB U/Sec. 26(1)(f) of the MNC Act, 2019 is to be read with its power to grant permissions only and that relates only to the permitted seats and recommending to the Commission for withdrawal of recognition against a medical institution. It does not have power to order stoppage of

admissions. It is further submitted by the learned senior advocate for the petitioner that, the recognition is not withdrawn. For the period of recognition no permission for establishing medical college and admitting student is required. Reliance is placed on Clause 8(3)(3) of the Regulations 1999. Under Clause 8(3)(1)(c) as amended on 04th February, 2019, if recognized college is found deficient, it will not be considered for renewal of permission and processing of PG application and it will be issued a show cause notice as to why recommendation for withdrawal of the recognition of the courses run by that institute should not be made for under graduate and post graduate courses which are recognized U/Sec. 11(2) of the Act of 1956 along with stoppage of admission in permitted post graduate courses. The proviso further mandates that before taking any action show cause notice should be issued to the college and it should be disposed of after granting opportunity of hearing by reasoned order. Under Clause 8(3)(2) of the Regulations 1999, recognition is for upto five years and to be renewed thereafter. Under Clause 8(3)(4) of Regulations 1999 failure to seek renewal shall result into stoppage of admission only after the period of recognition and not during the period of recognition. To buttress his submissions, the learned senior advocate relies upon the judgment of the Apex Court in a case of M.C.I. Vs. Rama Medical College Hospital and Research Center reported in *(2012) 8 SCC 80*, in a case of Royal Medical Trust Vs. Union of India reported in *(2015) 10 SCC 19* and in a case of M.C.I. Vs. Kalinga Institute of Medical Sciences reported in *(2016) 11 SCC 530*.

6. The learned senior advocate further submits that, the letter of renewal of recognition for 100 seats for current session does not mention anything about revocation at all. While letter of intent dated 16.11.2021 and letter of permission dated 25.11.2021 for 50 permitted seats mentions that if college is found deficient, the permission may be revoked. The learned senior advocate, thus, submits that, MARB has no power to order stoppage of admissions and as such has not stopped admissions for 100 students and has only recommended to the NMC. The NMC has not taken decision as yet with regard to the stoppage of admission and/or withdrawal of recognition.

7. The learned senior advocate further submits that, the inspection report pursuant to which the impugned order is passed is malafide, perverse and against the procedure, thereby stands vitiated. According to the learned senior advocate, proviso to clause 8(3)(1) of the Regulations 1999 prohibits inspection before and after two days of religious and important holidays declared by State/Central Government. That 14th January, 2022 was Makar Sankranti and same has been declared as holiday by the Central Government. That learned senior advocate relies on the judgment of the Apex Court in a case of **Kanachur Islamic Education Trust Vs. Union of India** reported in ***(2017) 15 SCC 702*** to submit that inspection near important religious holiday is not irrelevant consideration.

8. It is further submitted that, the selection of assessors was erroneous and not in consonance with guidelines for assessors

issued by NMC. As per the said guidelines three assessors who are either professors/additional professors/associate professors (six years teaching experience as associate or above) from the Government Medical Colleges are required to be members of the inspection team. The learned senior advocate refers to the observations of the Apex Court in a case of MCI Vs. Kalinga Institute of Medical Sciences (supra) to contend that the assessors are selected from reputed Government Colleges who are eminent medical professors and are randomly selected by computer software. In the present case, two members of the assessment team were the employees of the Central Government. They were not having teaching experience and nor any experience whatsoever of an inspection of medical college. They were officials of Government of India. These assessors were not competent to carry out inspection of the petitioner college. The entire inspection stands vitiated. The learned senior advocate submits that, infrastructure found sufficient for last three decades and verified in more than 100 inspections and found existing in the inspection conducted in October 2021 have been reported non existent. The inspection report suffers from many illegalities, such as columns relating to clinical material left blank for manipulation. Reasons for not considering faculty present on the day left blank. The summary of assessment is left blank qua infrastructure and clinical material. The deficiency of faculty and residents were not counted as per latest statutory regulations. Faculty suffering from Covid was counted, but the faculty and residents who were on Covid duty qua 240 reserved beds for treatment of Covid patients and those who were

quarantined post covid duty were not counted. It is further submitted that, assessment is not as per the guidelines of NMC. The daily average clinical data was not verified. It was not uploaded on NMC Portal as mandated by guidelines. All declaration forms are not checked. The alleged discrepancies are not brought to the knowledge of Dean and his signature was not obtained. The report is not submitted within 48 hours.

9. The learned senior advocate further submits that, the inspection report and the findings of the inspection can be challenged before Court under Article 226 of the Constitution of India on the ground of malafides, perversity and jurisdictional error. The learned senior advocate relies on the judgment of the Apex Court in a case of MCI Vs. Kalinga Institute of Medical Sciences (supra), MCI Vs. Vedanta Institute Academic Excellence Pvt. Ltd. reported in *(2018) 7 SCC 225* and in a case of Manohar Lal Sharma Vs. MCI and others reported in *(2013) 10 SCC 60*. The learned senior advocate further submits that, in the present case, the inspection report is perverse, malafide and suffers from jurisdictional error also. The petitioner has pleaded malafides.

10. The learned senior advocate further submits that, subsequent inspection is on the basis of an undated, unsigned and unsubstantiated complaint. The allegations were not only made against the college, but all assessors of NMC, who inspected the college in past and against NMC as well. It is alleged that college is run by congress MLA. The contents of complaint clearly show that they were motivated and have been

specifically created. There was no reason for subsequent inspection after grant of permission and within a short span of three months. In a case of Kanachur Islamic Education Trust Vs. Union of India (supra), the Apex Court observed that, subsequent inspection within short time of an inspection where no substantial deficiencies were found is convincingly not forthcoming. The inspection is botched and biased.

11. The learned senior advocate further submits that, the respondents have violated principles of natural justice. Opportunity to rectify the defects is not granted. Reliance is placed on Section 28(3). Even opportunity to take corrective action as stipulated is not yet granted as contemplated U/Sec. 38(1)(b). The show cause notice, hearing, etc. mandated under clause 8(3)(1)(c) of the Regulations 1999 is not granted before stopping admissions. The compliance with principles of natural justice are ingrained in the statutory provisions in so far as permissions and admissions for medical colleges are concerned and are hence mandatory. Reliance is placed on the judgment of the Apex Court in a case of Royal Medical Trust Vs. Union of India (supra), Swamy Devi Dayal Hospital and Dental College Vs. Union of India reported in *(2014) 12 SCC 506*, Kanachur Islamic Education Trust Vs. Union of India (supra), State of Uttar Pradesh Vs. Sudhir Kumar Singh reported in *(2004) 3 SCC 553*. The Apex Court has held that prejudice should be caused to the person complaining of the breach of natural justice. No prejudice is caused to the person complaining breach of principles of natural justice, where such person does not dispute case against him or it. In the present

case, the mandatory and statutory provisions are violated. The petitioner has not admitted the facts as alleged by respondents. Grave prejudice has been caused to the petitioner college. The impugned order is in violation of principles of natural justice also.

12. The learned senior advocate further submits that, running college cannot be stopped abruptly. Reliance is placed on the judgment of the Apex Court in a case of Priyadarshini Dental College and Hospital Vs. Union of India reported in *(2011) 4 SCC 623*. The petitioner medical college is running for last 32 years with several permissions and then recognitions, including recognition and permission for PG courses.

13. The learned senior advocate further submits that, after the college was placed in no admission category in the year 2017-2018 and 2018-2019, the management of college and its trust was changed and thereafter, it has received permissions in the year 2019-2020 by the MCI and in the year 2020-2021 by the NMC and also received permission for increase in intake capacity from 100 to 150 seats under order dated 25.11.2021. In last three years, the petitioner college has received NABL certifications for two of its laboratories. The petitioner college and attached hospital has received accreditation from National Accreditation Board of Hospital and Healthcare (NABH). The learned senior advocate further submits that, the result of the students of petitioner medical college in university examinations have substantially improved, which shows the standards of

education being imparted by the petitioner medical college. The result is 96%. The petitioner has been declared as a Covid hospital during all the three waves of pandemic and has reserved 240 beds exclusively for Covid patients. The petitioner has received several accolades and appreciation letters from the District Administration and the Municipal Corporation for its self-less service to the society during the pandemic. The learned senior advocate submits that directions be given to the respondent No. 4 to include all 150 MBBS seats of petitioner medical college for admissions in MBBS course in 02nd round of counseling commencing from 05th March, 2022. The impugned order be quashed and set aside. It be declared that the petitioner is entitled to admit 150 MBBS seats for the academic year 2021-2022.

14. Mr. Gaurav Sharma, the learned advocate for respondent Nos. 1 and 2 lucidly put forth his submissions. Relying on Section 10-A of the Act of 1956, it is submitted that letter of permission is required to be obtained. After the letter of permission, every medical college is required to seek renewal of permission every year in order to admit students every year. The increase in the annual intake capacity of medical college is when the college is seeking enhancement of number of seats in their college i. e. after being granted recognition U/Sec. 11 of the Act of 1956 for the sanctioned intake. For the increase intake capacity/seats, first LOP is issued, then annual renewal. The recognition as contemplated U/Sec. 11(2) of the Act of 1956 is technically of the degree of the students who have studied in the

medical college for five years during which the college has developed the requisite infrastructure as also obtained LOP and regular annual permission. The recognition is valid for five years. Medical colleges have to seek renewal of recognition every five years. The respondent No. 1/MARB is an autonomous board. The functions ascribed to the MCI and MoHFW have been taken over by the autonomous board. The respondent No. 1/MARB under the NMC Act has been given the power to grant the permissions for conducting course, increase of intake capacity/seats, renewal of permission, letter of permission which were granted by the Ministry of Health and Family Welfare on the recommendation of Medical Council of India under the erstwhile Act of 1956.

15. The learned advocate further submits that, in the present case, the petitioner medical college is granted recognition in respect of 100 MBBS seats. The recognition was valid till academic year 2020-2021. The undergraduate Medical Education in view of the ongoing pandemic extended the recognition of the college for the batch admitted in the year 2016-2017 for the period of 1 year. This recognition was on the basis of undertaking furnished by the petitioner medical college. It is submitted that, there is no withdrawal of recognition as it would adversely affect the career of students admitted in the above batch. Withdrawal of recognition is not to be confused with stoppage of admission. Stoppage of admission is to ensure that fresh batches of students are not admitted in a deficient medical college. U/Sec. 28(1) of the NMC Act 2019, the respondent No. 1/

MARB has the power to grant letter of permission, renewal of permission, increase in intake capacity/seats and against the said order the petitioner has remedy of appeal. The NMC functions through four autonomous boards. The MARB is one of autonomous boards. Section 26(f) of NMC Act 2019 empowers MARB to take such measures, actions, including withdrawal of LOP and stoppage of admission as in the present case. The learned advocate further submits that, the contention of the petitioner that MARB has only not recommended for admission of 100 seats and not stoppage of admission is fallacious. The MARB has power to direct stoppage of admission and “not recommended” means not allowed. The contention of the petitioner that no final order has been passed by the NMC pursuant to the impugned order dated 19.01.2022 does not stand to reason, since the procedure under Regulation 8(3)(1)(c) of Regulations of 1999 contemplates the action to be taken against recognized medical college. However, before initiation of those proceedings, the petitioner has approached this Court. The reliance on regulation 8(3)(1)(c) of the Regulations of 1999 by the petitioner is misplaced. Regulation 8(3)(1)(c) deals with grant of LOP/annual renewal of permission/recognition and if deficiencies are found beyond a certain limit, then LOP/renewal of permission would not be granted. Regulation 8(3)(1)(c) of Regulations of 1999 relied by the petitioner itself makes it unequivocally clear that MARB can direct stoppage of admission in cases where the bed occupancy is less than 70%, deficiency of teaching faculty/residents is more than 10% then the college already recognized for award of MBBS degree can be considered

for stoppage of admission and will not be considered for renewal of permission in that academic year.

16. The learned advocate further submits that, the issue in the present case is not grant or refusal of LOP or renewal of permission, but it is a case where respondent No. 1 has withdrawn LOP already granted to the college and directed stoppage of admission on account of gross deficiencies noticed during surprise inspection conducted on 14/15.01.2022 and pendency of the action proposed to be taken under Regulation 8(3)(1) of Regulations of 1999. The compliance for rectification of deficiencies as sought to be claimed by the petitioner is required to be given while considering the case of medical college for grant of permission or renewal of permission or recognition.

17. The learned advocate for respondent Nos. 1 and 2 further submits that, Makar Sankranti has been shown as restricted holiday in the list of holidays published by Government of India and is not a holiday in the State of Maharashtra. So restricted holiday does not qualify as important religious and festival holidays like Holi, Diwali, Dussehra, Eid, Ganesh Chaturthi in Maharashtra. Under Regulation 8(3)(1)(d) of Regulations of 1999 inspection is not to be conducted two days before or after important religious and festival holidays declared by the Central/ State Government. The same would not apply to restricted holidays. The plea of the petitioner that inspection was carried out on holiday is after thought in order to get one more opportunity so that it sets up cosmetic infrastructure. The

principal of the petitioner college did not raise such objection during the course of inspection on 14.01.2022.

18. The learned advocate for respondent Nos. 1 and 2 further submits that, U/Sec. 26(c) of the NMC Act 2019 MARB can appoint a third party agency or person to conduct inspection as it deems fit and U/Sec. 28(7) of the NMC Act 2019, the MARB can either directly or through any expert person conduct physical inspection of the medical college at any time. The argument of the petitioner that inspection was not conducted by three doctors from Government Medical College is not sustainable in view of the statutory provision in NMC Act 2019. The reliance on Assessors Guide would be of no help to the petitioner as it is an act to simplify and streamline the assessment process. While under the NMC Act 2019, the MARB has power to appoint third parties to conduct assessment. The learned advocate submits that, the assessment report prepared by the assessors who are reputed doctors and experts, their findings cannot be disputed. The learned advocate relies on the judgment of the Apex Court in a case of **M. L. Sharma Vs. Medical Council of India** reported in ***(2013) 10 SCC 60*** and in a case of **MCI Vs. Kalinga Institute of Medical Sciences** (supra). The contention of the petitioner of jurisdictional error in conducting inspection is devoid of merits. It is open for the regulatory body to conduct subsequent inspection of any college at any time to verify as to whether medical college is maintaining requisite infrastructure. The same has been approved by the Apex Court in a case of **Madha Medical College and Research Institute through its Managing Director Vs. Union of India and another** reported in

(2017) 15 SCC 791.

19. The physical inspection of the petitioner medical college continued till late night on 15.01.2022. The inspectors have to thereafter compile the data, type their comments, which is time consuming. The assessment report along with separate comments were received in the office of the NMC on 17.01.2022 i. e. within 48 hours. The learned advocate further submits that, inspection cannot be questioned on bald allegations of malafides. The entire inspection has been videographed and photographed. The same was recorded in the presence of the Dean/Principal and other staff of the petitioner medical college. The petitioner in the petition has nowhere pleaded bias and malafides against the inspectors. The inspection has been carried out in accordance with law.

20. It is further submitted by the learned advocate for respondent Nos. 1 and 2 that, during the surprise inspection the college was found grossly deficient. These deficiencies indicate that the college has played fraud on the respondents to secure permission and later on a surprise inspection was conducted when the college was not expecting it and the actual state of affairs came out. The faculty deficiency was 28%. The senior residents deficiency was 54%. The junior resident/tutors data is not provided by the college. The out patients were only 22 by 2.00 p.m. and in patients were only about 39% (bed occupancy rate). The patients admitted appear to be healthy and without any significant clinical symptoms. All these deficiencies have

been recorded. The doctor on duty in the surgical ward Dr. Swati Patil was having BHMS degree and she was not regular employee of the hospital. In the paediatric ward, there were 13 admitted patients of whom 10 were admitted on the day of inspection. According to assessors all the children were looking apparently well and having their lunch. The symptoms reported did not match with the records. In view of the large scale deficiencies, the petitioner cannot claim any right to admit the students. In view of the serious deficiencies found, the decision has been rightly taken. The petition deserves to be dismissed.

21. We have considered submissions canvassed by the learned advocates for the parties.

22. It is not debatable issue that the petitioner is granted permission for establishing a new medical college in the year 1990. It is also not disputed that the degree of the petitioner college is recognized and is included in Schedule I of the Indian Medical Council Act, 1956. The recognition of the degree has been renewed from time to time. It appears that, the petitioner since beginning has intake capacity of 100 students for the MBBS course. The petitioner had necessary letter of permission and renewal to admit students for the academic year 2019-2020 and 2020-2021 and the letter of permission was also issued to admit the students in the academic year 2021-2022. The renewal of recognition is also extended and in force. The petitioner applied for increase in the seats for its MBBS course from 100 to 150 from academic year 2021-2022 on or about 30th September,

2020. On or about 08/09 October, 2021, the inspection was carried out. Pursuant to the inspection and the inspection report the letter of intent was issued on 16.11.2021 for increase in seats from 100 to 150 and on 25th November, 2021 letter of permission is issued for increase of seats from 100 to 150 for the academic session 2021-2022. It appears that, pursuant to the complaint received by the Health Minister, Government of India, inspection was again carried out on or about 14th January, 2022. Pursuant to the said inspection on 19.01.2022, the respondent No. 1/MARB passed the impugned order withdrawing the letter of permission for increase of 50 MBBS seats for the academic year 2021-2022 and not recommended for admission of 100 MBBS seats for the academic year 2021-2022.

23. As per Section 28(7) of the NMC Act 2019, MARB may conduct evaluation and assessment of any medical institute either directly or through any other expert having integrity and experience of medical profession and without any prior notice and assess and evaluate the performance, standard and benchmark of such medical institute. The Assessors Guide relied by the petitioner is a guideline issued for the academic year 2021-2022. The guidelines provide that assessors are either professors, additional professors, associate professors with six years teaching experience as associate or above from Government Medical Colleges. In the present case, out of three assessors, two were the Central Government employees. Nonetheless, they were doctors. Individual malafides are not alleged against these assessors. Though pleading is made about

malafides, but the malafides are not directed against the assessors in their individual capacity. We do not find that, the inspection would be completely vitiated on account of the fact that three assessors were not the professors or associate professors of a Government Medical college. More particularly Section 28(7) of the NMC Act 2019 empowers MARB to conduct inspection through experts. Another ground of the petitioner is that inspection is carried out on holiday. Makar Sankranti is not declared as holiday by the Government of Maharashtra. Makar Sankranti is declared as restricted holiday by the Central Government. It cannot be said to be an important religious event or festival, where individuals or doctors would join their families for festivities.

24. The summary of the inspection report dated 08/09th October, 2021 is as under :

Summary of Assessment

1. JMF's *A.C.P.M. Medical College & Hospital, Dhule*
(College Name) is run by
Government/Trust/Society/Company – **Trust**
2. The college has got Permission from GOI/MCI with intake of **100** seats and applied **for increase intake of 150 seats** for the last academic year : **2021-22**
3. Type of assessment : **Increase Intake & Compliance for Continuation of Recognition** No. of seats : **150**
4. PG courses :- **Yes**

5. Deficiencies of teaching staff if any :
Shortage of teaching faculty is **1.04%**
6. Deficiency of resident doctors if any:
Shortage of resident doctors is **3.7%**
7. Deficiency of the infrastructure of college and hospital if any : Pl. mention category wise; : **NIL**
8. Deficiency of clinical material If any : Pl mention category wise : **NIL**
9. Any other Remarks : **Due to COVID- 19 pandemic 240 Beds are being kept reserved for COVID -19 patient as per Govt. Orders, Documents enclosed herewith.**

25. Summary of the inspection report pursuant to inspection dated 14.01.2022 is as under :

Summary of Assessment

1. JMF's *A.C.P.M. Medical College & Hospital, Dhule* (College Name) is run by Government/Trust/Society/Company – **Trust**
2. The college has got Permission from GOI/MCI with intake of **150** seats for academic year : **2021-22**
3. Type of assessment : Increase Intake & Compliance for Continuation of Recognition No. of seats : **NA**
4. PG courses :- **Yes**
5. Deficiencies of teaching staff if any :
Shortage of teaching faculty is **28.24%**
6. Deficiency of resident doctors if any:

Shortage of resident doctors is **53.83%**

7. Deficiency of the infrastructure of college and hospital if any : Pl. mention category wise; :
8. Deficiency of clinical material If any : Pl mention category wise :
9. Any other Remarks :

26. This court would not certainly sit as an appellate authority over the report of experts. However, within a span of three months, there are contradictory inspection reports and both by the experts.

27. The learned counsel for respondents accepted that, the deficiencies as pointed out in the inspection report dated 14.01.2022 are considering intake capacity of 150 seats. The inspection report dated 14.01.2022 is on the premise that dedicated Covid ward of the petitioner institution is of 120 beds, whereas, according to the petitioner due to Covid 19 pandemic 240 beds are reserved for Covid-19 patients as per the Government orders. The inspection of 08/09th October, 2021 considers that 240 beds are reserved for Covid-19 patients as per the Government orders. It does not appear that faculty and the senior resident doctors on duty in the Covid ward of 240 beds were considered or that those quarantined after duty in the Covid ward. In the first inspection report of October 2021 the infrastructure, hostel rooms and staff quarters are shown to be adequate. The same is shown as inadequate in the second

inspection report. The clinical material OPD and IPD, etc. are verified and found to be adequate in the report of October 2021, whereas the same does not so depict in the report dated 14.01.2022.

28. The inspection report of October 2021 pursuant to which increase in intake of seats from 100 to 150 was granted, was conducted by experts and within a span of three months the deficiencies have been found. The result of the petitioner college also appears to be good. In the academic years 2019-2020 and 2020-2021, the petitioner institute has admitted 100 seats every year. The institute is running for more than thirty years with PG courses also. If both the inspection reports are placed *in juxta* position, there is large scale difference between the two. As far as minimum immovable infrastructure is concerned, there ought not to be any difference between the inspection reports. However, both the reports appear to be inconsistent in that regard. Two reports contrary to each other are on record. Number of nurses are found to be adequate. The recognition of the petitioner institution is still intact and no steps are yet initiated for withdrawal of recognition and the college is functioning with its PG courses also.

29. MARB U/Sec. 26 of the NMC Act 2019 performs various functions. U/Sec. 26(1)(f) of the NMC Act, 2019, MARB can take such measures including issuing warning, imposition of monetary penalty, reducing intake or stoppage of admissions and recommending to the Commission for withdrawal of

recommendation against a medical institute for failure to maintain minimum essential standards. As per Clause 8(3)(1)(c) of the Regulations 1999 (as amended by Establishment of Medical Regulations (Amendment) 2019, if it is observed during regular inspection of institute that the deficiency of teaching faculty and/or residents is more than 10% and/or bed occupancy is less than 70% such an institute will not be considered for issue of renewal and permission for that academic year and further such an institute will not be considered for processing application for post graduate course in that academic year and will be issued show cause notices as to why recommendation for withdrawal of recognition of courses run by that institute should not be made for under graduate and post graduate courses, which are recognized U/Sec. 11(2) of the Act of 1956 along with direction of stoppage of admission in permitted post graduate courses. The proviso thereto provides that prior to applying the said clause a show cause notice shall be issued to the institute seeking an explanation as to why punitive provisions contained in the above mentioned clause shall not be applied and same shall be disposed of after granting opportunity of hearing by reasoned order.

30. It would be appropriate to reproduce Section 26(1)(f) of the NMC Act 2019 and Clause 8(3)(1)(c) of Regulations 1999 as under :

National Medical Commission Act, 2019

1.
2.

26. (1) The Medical Assessment and Rating Board shall perform the following functions, namely:—

(a) determine the procedure for assessing and rating the medical institutions for their compliance with the standards laid down by the Under-Graduate Medical Education Board or the Post-Graduate Medical Education Board, as the case may be, in accordance with the regulations made under this Act;

(b) grant permission for establishment of a new medical institution, or to start any postgraduate course or to increase number of seats, in accordance with the provisions of section 28;

(c) carry out inspections of medical institutions for assessing and rating such institutions in accordance with the regulations made under this Act:

Provided that the Medical Assessment and Rating Board may, if it deems necessary, hire and authorise any other third party agency or persons for carrying out inspections of medical institutions for assessing and rating such institutions:

Provided further that where inspection of medical institutions is carried out by such third party agency or persons authorised by the Medical Assessment and Rating Board, it shall be obligatory on such institutions to provide access to such agency or person;

(d) conduct, or where it deems necessary, empanel independent rating agencies to conduct, assess and rate all medical institutions, within such period of their opening, and every year thereafter, at such time, and in such manner, as may be specified by the regulations;

(e) make available on its website or in public domain the assessment and ratings of medical institutions at regular intervals in accordance with the regulations made under this Act;

(f) take such measures, including issuing warning, imposition of monetary penalty, reducing intake or stoppage of

admissions and recommending to the Commission for withdrawal of recognition, against a medical institution for failure to maintain the minimum essential standards specified by the Under-Graduate Medical Education Board or the Post-Graduate Medical Education Board, as the case may be, in accordance with the regulations made under this Act.

(2) The Medical Assessment and Rating Board may, in the discharge of its functions, make such recommendations to, and seek such directions from, the Commission, as it deems necessary.

Establishment of Medical College Regulations, 2019

1. ...
2. ...

8. Grant of Permission :

3. (1) In Clause 8(3)(1)(a) under the heading of “Colleges in the stage upto II renewal (i.e. Admission of third batch)” shall be substituted as:-

- (a) ...
- (b) ...

(c) Colleges which are already recognized for award of M.B.B.S. degree and / or running Postgraduate courses :

If it is observed during any inspection / assessment of the institute that the deficiency of teaching faculty and / or Residents is more than 10% and / or bed occupancy is <70%, compliance of rectification of deficiency from such an institute will not be considered for issue of renewal of permission in that Academic Year and further such an institute will not be considered for processing applications for Postgraduate courses in that Academic Year and will be issued show cause notices as to why the recommendations for withdrawal of recognition of the courses run by that institute should not be made for undergraduate and postgraduate courses which are recognized

u/s 11(2) of the IMC Act, 1956 along with direction of stoppage of admissions in permitted postgraduate courses.

Provided that prior to applying the above clause, a show cause notice shall be issued to the institute seeking an explanation as to why the punitive provisions contained in above mentioned clause should not be applied against it and the same shall be disposed of after granting an opportunity of hearing by a reasoned order.

31. Relevant part of the impugned order dated 25.11.2022 passed by the MARB reads as under :

“The MARB has reviewed the assessors’ reports and had deliberations with UMGEb of NMC on all the available information. The college had been denied admission for AY 2017-18 & 2018-19. Keeping the track record of the college and the above mentioned serious deficits MARB constrained to withdraw the Letter of Permission for increase of 50 MBBS seats for the academic year 2021-22. Further, the ACPM Medical College, Dhule, Maharashtra is not recommended for admission of 100 MBBS students for the academic year 2021-22.”

32. It would appear from the order passed by the MARB that, MARB has withdrawn letter of permission for 50 MBBS seats for the academic year 2021-2022 and further has not recommended the petitioner for admission of 100 seats for the academic year 2021-2022. It has not withdrawn the letter of permission for admission of 100 MBBS seats as it has done in case of increase of 50 MBBS seats. In case of regular 100 seats, it has “not recommended” for admission for 100 MBBS students. The same appears to have been made as per Sub Section 2 of Section 26 of the NMC Act 2019, wherein in discharge of its functions, MARB

may make such recommendations and seek such directions from the Commission. For the colleges which are already recognized for award of MBBS degree and/or running post graduate courses as in the present case, the Commission has the powers to stop admissions and withdraw the recognition and it may not consider for issue of renewal of permission in that academic year. So also withdraw the recognition. Section 26(1)(f) of NMC Act 2019 and clause 8(3)(1)(f) of Regulations 1999 as amended in the year 2019 shall be read conjointly. That MARB as observed, did not recommend petitioner for admission of 100 MBBS students. The same appears to be in tune with Section 26(2) of the NMC Act 2019 and further steps are to be taken by the Commission as contemplated under Clause 8(3)(1)(c) of Regulations 1999. It is admitted that, the Commission has not yet initiated any process for withdrawal of recognition or steps as contemplated under clause 8(3)(1)(c) of Regulations 1999. Prior to taking action under said clause a show cause notice is required to be issued to the institute.

33. In the light of the above, as letter of permission for regular 100 MBBS seats for the academic year 2021-2022 is not withdrawn and was at the stage of MARB not recommending for admission of 100 students and that Commission has not initiated any further steps under clause 8(3)(1)(c) of Regulations 1999. The respondents are bound to include the name of the petitioner institute for admitting 100 MBBS students.

34. As far as order withdrawing letter of permission for

increased 50 MBBS seats for the academic year 2021-2022 is concerned, same needs no interference by this Court. In the inspection report following anomalies were also observed.

I. Out-patients are only about 22 by 2 PM and in-patients are only about 39% (bed occupancy rate), even the patients admitted appear healthy and without any significant clinical symptoms, most of the patients were sent out of hospital by 5 PM. There are no surgeries and no deliveries conducted. There were only three X-rays and two ultrasounds done in the hospital on the day of assessment.

II. The nurses' charts had pre-recorded vitals of the patients and also treatment instructions as administered in advance till 16.01.2022 (recorded on 14.01.2022).

III. The patients admitted on 14.01.2022 were not genuine. They were looking healthy and gave evasive replies. Case records of many patients were not available. In the available records case history and treatment in many patients were not signed by any doctor or consultant. Nature of symptoms did not seem to merit admission. Orthopaedic wards had 'admissions' for physiotherapy for knee pain. Basic and essential parameters were not recorded in the case files and the assessors suspected the genuineness of the records. Patients were afebrile and no record of fever was found in the files. In some files the temperature was recorded in advance till 16th January; so also the treatment given to have been administered in advance till 16th January.

IV. The doctor on duty in the surgical ward, Dr. Swati Patil was having BHMS degree, and she was not a regular employee of the hospital.

V. In the pediatric ward there were 13 admitted patients of whom 10 were admitted on the day of inspection 14.01.2022. Assessors opine that the children were looking apparently well and were having their lunch. Symptoms reported did not match with the records. The children said they were not given medicines though the case files recorded IV fluids and medicines being given. When the

assessors revisited this ward at 5 o'clock, nearly all patients admitted on 14.01.2022 were not found in the ward. At 5.00 p.m. the orthopedics ward had no patients who were admitted in the morning for physiotherapy.

VI. Census reports of medical, surgical, pediatric and orthopedic wards had even more serious errors. Daily census reports were entered using pencil. The census report of obstetrics and gynecology ward in the last five days had new admissions raging between three and thirteen. However, on 14.01.2022, there were already 32 admissions till 5 p.m. In admission list of 14.01.2022 at 11.30 a.m. there were no contact details of the patients with numbers like 1111111111, 6666666666, etc., suggesting that the patients were not genuine.”

35. In view of the above observations in the inspection report, we are not inclined to interfere in the order of the MARB withdrawing letter of permission for increased 50 MBBS seats.

36. The NMC has not taken action against the petitioner. It is accepted by respondents that as yet no process has been initiated by them for withdrawing the recognition of the petitioner institution. The show cause notice is also not issued to the petitioner in that regard as contemplated under Clause 8(3)(1)(c) of Regulations 1999.

37. In the light of the above, the impugned order to the extent of withdrawing letter of permission for increase of 50 MBBS seats for the academic year 2021-2022 of the petitioner institution is not interfered with and upheld. As far as admission of 100 MBBS seats is concerned, letter of permission is not withdrawn and as such, the petitioner would be entitled to

admit 100 MBBS students for the academic year 2021-2022. Necessary steps for said purpose be undertaken by the respondent authorities.

38. The present order would not be an impediment for the respondent/Commission and/or competent authority to take further action in accordance with law.

39. In view of the above, the writ petition is disposed of. No costs.

[S. G. DIGE, J.]

[S. V. GANGAPURWALA, J.]

bsb/March 22