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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on:-28.02.2022.**Date of Decision:-15.03.2022.*

+ W.P.(C) 1958/2022

SANTOSH TRUST & ANR.

..... Petitioners

Through Mr. Vikas Singh, Sr. Adv. with Mr.
Abhishek Agarwal, Adv.

versus

NATIONAL MEDICAL
COMMISSION & ORS.

..... Respondents

Through Mr. T. Singhdev, Mr. Bhanu Gulati,
Ms. Michelle B. Das, Mr. Abhijit Chakravarty &
Ms. Sumangla Swami, Adv. for R-1
Ms. Monika Arora, Adv. for R-3**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****JUDGMENT**

1. The present petition under Article 226 of the Constitution of India assails the disapproval letters issued by the respondent no.1/National Medical Commission (hereinafter referred to as 'NMC') rejecting the petitioners' request for grant of permission for increase of seats in the petitioner no.2 college in the Bachelor of Medicine and Bachelor of Surgery (hereinafter referred to as 'MBBS') course as also in post-graduate courses of MS (Obstetrics & Gynaecology) and MS (Orthopaedics). The petitioners also assail the order dated 22.12.2021 vide which the respondents have directed an interim inspection of the petitioner no.2 college for continuation of its existing recognition for 100 MBBS seats.



2. The petitioner no.1 (formerly known as the Maharaji Educational Trust) is a trust which runs and manages a group of medical, dental, paramedical, and paradental colleges/institutions in the National Capital Region, including the petitioner no.2, a medical educational institute, offering MBBS course and post-graduate courses like MD, MS, M.Sc. and Ph.D. On 13.06.2007, the petitioner no.2, along with the Santosh Dental College, Ghaziabad, which college is also managed by the petitioner no.1 trust, was on the recommendations of the University Grants Commission ('UGC'), granted the status of a 'Deemed to be University' by the Central Government, which university is known as the Santosh University.

3. The respondent no.1/NMC, constituted under the National Medical Commission Act, 2019 (hereinafter referred to as the 'NMC Act'), was set up in place of the erstwhile Medical Council of India (hereinafter referred to as 'MCI') with an aim to *inter alia* improve access to quality and affordable medical education, ensure availability of adequate and high-quality medical professionals in all parts of the country, and objectively assess the medical institutions periodically in a transparent manner. The respondent no.2/Medical Assessment and Rating Board (hereinafter referred to as 'MARB') is an autonomous board set up by the NMC for the purpose of assessing and rating medical institutions to ensure compliance with the standards laid down by the Under Graduate ('UG') as well as the Post Graduate ('PG') Medical Education Boards constituted as per the regulations under the NMC Act.

4. Based upon the permission granted to the petitioner no.1 trust on 15.01.1996 by the Government of India to establish a medical college for conducting MBBS course with a strength of 50 students, the petitioner no.2



college was set up. On 26.06.2001, the petitioner institute was granted recognition by the MCI for 50 seats in MBBS and thereafter for 3 seats in MD (Paediatrics) on 16.02.2004. The seats in MBBS were subsequently increased from 50 to 100 and the petitioner institute was also granted permission by the MCI for conducting PG courses in 18 disciplines.

5. The petitioner no.2 being desirous of seeking a further increase in the MBBS seats, applied to the MCI, pursuant where to, an inspection was carried out on 13.12.2018. As during the inspection, certain deficiencies were found by the assessors, a further inspection was carried out on 16.04.2019 where again, some deficiencies were reported. Consequently, the petitioner institute was, on 30.05.2019, issued a show cause notice under clause 8 (3)(1)(C) of the Establishment of Medical College Regulations (Amendment), 2010 (Part-II) by the MCI. This led to further inspections being carried out in the petitioner institute on 27.08.2019, 01.12.2019 and 03.12.2019. As all the deficiencies were found to have been rectified in these inspections, the show cause notice issued to the petitioner institute was withdrawn on 15.01.2020 and the petitioner institute was granted recognition for a period of 5 years.

6. While the petitioners' application seeking increase of seats in MBBS was pending, the world was in March, 2020 hit with the pandemic of Covid-19. The petitioner institute, the first private medical college in the State of Uttar Pradesh, was on 28.03.2020, designated as a Covid-19 dedicated hospital by the state government and was consequently not permitted to admit any non-covid patients. However, during the said period, when the petitioner institute was functioning as a Covid-19 dedicated hospital, it was, between 28.02.2020 and 30.07.2020, granted permission for further increase



in the intake in some PG courses, as also for conversion of the PG Diploma Courses to PG degree courses in the following subjects -

For starting Post Graduate Course:

MD (Dermatology, Venereology & Leprosy)

For increase of intake capacity in Post Graduate Courses:

- 1) MS (General Surgery)
- 2) MD (General Medicine)
- 3) MD (Psychiatry) &
- 4) MD (Paediatrics)

For conversion of Postgraduate Diploma Courses to Postgraduate Degree Courses:

- 1) MD (Pathology)
- 2) MD (Respiratory Medicine)
- 3) MD (Psychiatry)
- 4) MD (Paediatrics)
- 5) MS (Orthopaedics)
- 6) MS (Ophthalmology)
- 7) MS (ENT)
- 8) MD (Obstetrics & Gynaecology) &
- 9) MD (Anaesthesiology).

7. Soon thereafter, the petitioner institute, vide its application dated 25.08.2020, applied for an increase in the number of seats from 4 to 7 in MS (Obstetrics and Gynaecology) and from 3 to 7 in MD (Orthopaedics). This was followed by an application dated 26.11.2020 seeking an increase in the MBBS seats from 100 to 150. Since the petitioner, being a Covid hospital was not permitted to admit any non-Covid patients, the Santosh University on 10.12.2020, entered into a Memorandum of Understanding (hereinafter referred to as 'MoU') with the District Government Hospital and Mahila Chikitsalya, Ghaziabad. Under this MoU, the petitioner institute was permitted to avail of the teaching and training facilities for its UG and PG



medical students, and information in this regard was furnished to the respondents on 14.12.2020.

8. By its notification dated 01.02.2021 the State Government retained the petitioner as a Covid dedicated L-3 hospital and resultantly, the petitioner institute was still not permitted to admit any non-covid patients. It is during this period that a physical inspection of the petitioners' premise was carried out by the assessors nominated by the respondents for consideration of the petitioners' request for an increase in seats in MS (Orthopaedics) and MS (Obstetrics & Gynaecology). The said inspections were carried out on 08.03.2021 and 11.08.2021, and were followed by further inspections on 08.10.2021, 09.10.2021, 26.11.2021 and 27.11.2021, carried out for consideration of the petitioners' request for an increase in MBBS seats from 100 to 150.

9. On 22.12.2021, the respondent no. 1 issued the impugned order directing the petitioner to provide its schedule for the final MBBS practical examination so that an inspection of the college could be carried out for continuing the recognition granted to it. In response, the petitioner institute, vide its letter dated 31.12.2021, informed the respondents that the recognition for 5 years granted to it on 15.01.2020 was still valid and therefore, no fresh inspection was called for as no fresh recognition was being sought.

10. Though the petitioners received no reply thereto, the respondents vide the impugned letters, both dated 20.01.2022, disapproved the petitioners' request for an increase in seats in MS (Orthopaedics) and MS (Obstetrics & Gynaecology). This was followed by the impugned letter dated 25.01.2022, whereby the petitioners' request for an increase in MBBS seats from 100 to



150 was also rejected, thereby compelling the petitioners to approach this Court.

11. The two impugned orders dated 20.01.2022 are based on almost identical grounds i.e., reduction of workload and less clinical work with a very low bed occupancy. Insofar as the impugned order dated 25.01.2022 is concerned, the same is based on complaints stated to have been received against the petitioners, as also the pendency of some Court cases against them; a specific reference has been made therein to the petitioner trust's failure to repay the loan to M/s Muthoot Fincorp Ltd., and to the factum of the Santosh Hospital Pvt. Ltd., Chennai, having applied for voluntary insolvency.

12. In support of the petition, Mr. Vikas Singh, learned senior counsel for the petitioners, at the outset submits that the respondents cannot be permitted to justify the impugned orders by raising any new grounds, other than those mentioned in the impugned orders, as is now being sought to be done in the counter affidavit. He contends that the validity of the impugned orders has to be tested on the reasons mentioned therein. By relying on the decisions of the Apex Court in *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi and Ors. (1978) 1 SCC 405* and *63 Moons Technologies Ltd. & Ors. v. Union of India & Ors. (2019) 18 SCC 401*, he submits that the respondents, having realised that the grounds mentioned in the impugned orders are wholly fallacious and clearly show non-application of mind on their part, are now trying to defend the impugned orders on wholly new grounds, which is not permissible in law.

13. He, therefore, contends that the grounds now sought to be raised are merely an afterthought and are based on wholly motivated complaints



against the petitioners, which, even as per the respondents, are yet to be verified. The other plea now being raised by the respondents is regarding the pendency of Court cases against the petitioners, which plea is also wholly misconceived. The main case pending against the petitioners is an execution petition before the Debt Recovery Tribunal (hereinafter referred to as 'DRT') by the Housing and Urban Development Corporation (hereinafter, 'HUDCO'), wherein the petitioner has already moved an application seeking a refund of the excess payment made to HUDCO. He submits that in any event, this case has been pending for the last many years and information regarding the same was available with the MCI from 2016 itself. Despite that, not only was recognition granted to the petitioner, but also permission for an increase in some PG seats was granted. The respondents were always aware that the pendency of this case before the DRT against the petitioners, did not in any manner, affect the financial capacity of the institute which had enough resources to discharge its liabilities.

14. He further submits that even the plea of a pending FIR against the trustees of the petitioner no.1 on a complaint by M/s PM Fincap, has been raised for the first time in the counter affidavit without appreciating the fact that the said frivolous FIR, in a purely civil transaction, had been lodged on the basis of a wholly illegal demand of Rs 170 crores being raised by M/s PM Fincap. In furtherance of the same, Dr. Santosh Mahalingam, son of the chairman of the petitioner institute was arrested and subjected to custodial torture, thereby coercing Dr. P Mahalingam, his father and also his family members, to enter into an illegal MoU dated 29.07.2021, for a sum of INR 101 crores against the illegal claim of INR. 170 crores. The said FIR and MoU were challenged by the petitioners before the Punjab & Haryana High



Court, wherein not only were Dr. Mahalingam and his family members granted interim bail, but even the investigation in furtherance to the FIR was stayed on 13.08.2021. Moreover, the said MoU has also been directed to be kept in abeyance. Though this order of the High Court has been challenged before the Apex Court by way of SLP (Crl.) No. 6264/2021, the same is still pending adjudication and the investigation pursuant to the aforesaid FIR remains stayed.

15. Mr. Singh then submits that the grounds for rejection as contained in the impugned letters dated 20.01.2022, whereby, the respondents have declined the permission for enhancement in the PG seats on account of inadequate clinical work and low bed occupancy, are wholly perverse. The same overlooks the vital fact that the petitioner institute, having been declared as the only L-3 Covid hospital in Ghaziabad, was neither allowed to admit any non-Covid patients, nor provide any outpatient department treatments. This fact was duly noticed during the inspections carried out by the assessors but has been deliberately ignored by the respondents and that too, when other similarly placed Covid-19 hospitals, which also had inadequate clinical work, were granted permission for enhancement in seats. He however, submits that after 01.09.2021, when the petitioner institute was granted permission to admit non-Covid patients, the bed occupancy in the petitioner institute rose to 82%, which fact was duly recorded by the assessors in their report pertaining to the inspection carried out on 26-27.11.2021 for increase in the seats in the UG course. By placing reliance on ***Rajiv Memorial Academic Welfare Society & Anr. v. Union of India and Anr. (2016) 11 SCC 522***, he submits that once the deficiencies existing at the time of the earlier inspection stood rectified at the time of the subsequent



inspections on 26-27.11.2021, the same could not be a ground for rejection of the petitioners' request for enhancement of seats. He, therefore, contends that when the respondents had themselves duly acknowledged these extremely pertinent facts, both in the initial and the subsequent inspection reports, they ought not to have rejected the petitioners' request for an increase in the seats. He contends that on one hand, the petitioner has received awards, both from the State and the Central Government for its dedicated service during the Covid and on the other hand, it is being penalised on account of low bed occupancy and is being denied permission for increase in seats despite having the necessary infrastructure.

16. Mr. Singh then submits that the respondents, in their letter of disapproval dated 25.01.2022, have relied on the purported default in the repayment of loans availed from M/s Muthoot Fincorp Ltd. by the petitioner no.1 trust and Santosh Hospital Pvt. Ltd., Chennai, having filed for voluntary insolvency on account of its inability to repay the said loan. He submits that insofar as this allegation is concerned, the petitioner institute has not availed any loan from M/s Muthoot Fin Corp Ltd; the default in repayment of loan to M/s Muthoot FinCorp Ltd. is by Santosh Hospital Pvt. Ltd., which is a standalone Hospital at Chennai and is not in any manner, associated with the Santosh Medical College and Hospital i.e., the petitioner no.2 herein. Merely because some of the directors of both the hospitals and the trust are common, the same cannot be a ground to fasten the liabilities of Santosh Hospital Pvt. Ltd., Besant Nagar, Chennai on the petitioners, which are completely distinct legal entities from their directors. Moreover, the insolvency petition filed by Santosh Hospital Pvt. Ltd. in 2019 was admitted by the National Company Law Tribunal on 04.04.2019 and, till date, there



has not been any allegation that the petitioners are interlinked with the said hospital or that the assets of the petitioners can be used for repaying the loan taken by Santosh Hospital Pvt. Ltd., Chennai. He, therefore, contends that the respondents' plea regarding the petitioners being embroiled in financial irregularities is wholly without any basis, and has been made only to somehow refuse permission to the petitioners for an increase in the seats, despite it fulfilling the requisite criteria.

17. Mr. Singh then submits that even the decision of the respondents, as communicated by the impugned letter dated 22.12.2021, to inspect the petitioner institute for the continuation of recognition of 100 seats for the UG course for the academic year 2021-22, is without any basis and is only an attempt to harass the petitioners. The petitioner institute already enjoys a continued recognition for 100 seats for a period of 5 years, effective from 15.01.2020 till the year 2025. The petitioners have also been granted permission for increase in seats in various PG courses on 28.02.2020 and for conversion of PG Diploma seats to PG Degree seats on 30.07.2020. He, however, submits that since the petitioners have all the requisite infrastructure and maintain high educational standards, they, without prejudice to the plea that the fresh inspection is wholly uncalled for, are still ready for a fresh inspection to be carried out.

18. Finally, Mr. Singh submits that the petitioner institute has produced thousands of doctors in the last 28 years and enjoys an excellent reputation mainly due to the quality of medical education imparted therein. The respondents' plea that the petitioners have a dubious history of committing financial frauds is wholly without any basis and there has never been any misappropriation of funds. On the other hand, because of the hard work of



Dr. P. Mahalingam and Dr. Santosh Mahalingam, the petitioner trust has amassed several properties, including the buildings wherein its colleges, hospitals and staff quarters are located. He thus, prays that the present petition be allowed and the petitioner institute be permitted to participate in the ongoing counselling for admission to MBBS and PG courses, with increased seats as prayed for in its applications which have been wrongly rejected.

19. *Per Contra*, the respondents are opposing the petition on four primary grounds, the first being the non-availing of the statutory remedies by the petitioners, the second being suppression of material facts in the petition, the third being the petitioners' embroilment in various financial irregularities and insolvency proceedings, and the fourth being the lack of clinical material in the inspection reports.

20. Mr. Singhdev, learned counsel for the respondent no.1, submits that the petitioners, having not availed their statutory remedy of first appeal to the NMC and of the second appeal to the Central Government as prescribed in sections 28 (5) and 28 (6) of the NMC Act, the present petition is not maintainable and deserves to be dismissed on this ground alone.

21. He then submits that even otherwise, there is a material suppression of facts by the petitioners, who have placed on record only selective documents to further their case. He submits that the petitioners have, in the writ petition, only referred to the outstanding dues of M/s Muthoot FinCorp Ltd. and without disclosing anything about the pending cases before the Supreme Court and the DRT. It is only in the rejoinder affidavit that the petitioners have, for the first time, disclosed about the cases pending against them before the Supreme Court and the DRT and, thus, it is evident that they have



not approached this Court with clean hands and are therefore, not entitled to any relief from this Court.

22. He further submits that the petitioners' plea that the respondents are raising new grounds is factually incorrect; by referring to the impugned letter dated 25.01.2022, it is contended that the same clearly shows that the respondents' decision to reject the increment of seats in the MBBS course from 100 to 150 was based on three grounds. The impugned letter first refers to the several complaints of a serious nature pertaining to financial irregularities against the petitioners, as also to the auction notices issued by the DRT for sale of land/buildings/equipment of the petitioner institute. It then refers to the petitioner trust being embroiled in many Court cases initiated by M/s HUDCO and M/s PM Fincap against them. The order also clearly refers to the default in repayment of loan availed by the petitioners from M/s. Muthoot Fincorp Ltd. which has resulted in voluntary insolvency being filed by Santosh Hospital Pvt. Ltd., Chennai. He, therefore, contends that once all these grounds find mention in the order dated 25.01.2022, there was no need for the NMC to furnish new grounds at a later stage, as is sought to be contended by the petitioners.

23. Without prejudice to his aforesaid plea that no new grounds have been raised by the respondents to defend the impugned orders, Mr. Singhdev submits that even otherwise, when the future of thousands of students is involved, the respondents, in public interest, are certainly entitled to rely even on subsequent material to support their decisions. He submits that the respondents are under a statutory obligation under the NMC Act to ensure that only those medical institutions which meet the criteria under Section 29 of the Act are granted permission for increase in seats. He submits that the



respondents are acting in public interest and therefore, the decision in *Mohinder Singh Gill (supra)*, relied upon by the petitioners is not applicable to the facts of the present case. On the other hand, the decisions in *Chairman, All India Railway Recruitment Board & Anr. Vs. Shyam Kumar & Ors. (2010) 6 SCC 614* and *PRP Exports & Ors. Vs. Chief Secretary, Government of Tamil Nadu & Ors. (2014) 13 SCC 692*, clearly entitles the respondents to rely on subsequent facts, in a case like the present one, where public interest is involved.

24. He further submits that the petitioners have also concealed the fact that during the course of the DRT proceedings, successive auction notices have been issued for the sale of the assets of the petitioner trust including but not limited to the petitioner institute, and the same have not materialised on account of the non-cooperative conduct of the petitioners as also the lack of bidders in the e-auctions. By drawing my attention to the order dated 11.08.2021 passed by the DRT, he submits that the list of assets which were proposed to be e-auctioned, includes not only the premises where the petitioner institute is being run but also all the equipment in every department thereof, and therefore, contends that the very future of the students studying at that college is at stake. The relevant extract of the said order reads as under:

*“OFFICE OF THE RECOVERY OFFICER-II
DEBTS RECOVERY TRIBUNAL-II DELHI
4th Floor, JeevanTara Building,
Parliament Street, New Delhi-110001*

R.C. No. 39/2011

Dated 11.08.2021

HUDCO vs. Maharaji Educational Trust



ORDER

As per my order dated 11.08.2021, the under mentioned property will be sold by public auction on 30.09.2021 in the said Recovery Certificate:

The auction sale will be "online e-Auctioning" through website www.tenderwizard.com

Date and Time of Auction: 30.09.2021, between 3.00 pm and 4.00 pm (with extensions of 5 minutes duration after 4.00 pm, if required)

DESCRIPTION OF PROPERTY

<i>Lot no.</i>	<i>Property Detail</i>	<i>Reserve Price</i>	<i>Earnest Money</i>
<i>1</i>	<i>Multi Storey Building/Hospital Complex bearing Plot 1-2, Ambedkar Road, Opposite Bus Depot, Ghaziabad (UP) measuring 60 0 9 .3 6 sq. mtrs, together with superstructure</i>	<i>Rs. 243 crore</i>	<i>Rs.24.30 crores</i>
	<i>constructed thereon (Rs.61.59 Crores)</i>		
	<i>Land measuring 20234.25 sq. mts. (5 acres) at Block No. K, Pratap Vihar, Sector-12, Ghaziabad (UP) together with super structure constructed thereon (Rs.43.84 crores)</i>		
	<i>Land measuring 20234.25 sq. mts. (5 acres) at Block No. J, Pratap Vihar, Sector-12, Ghaziabad (UP)</i>		



	together with super structure constructed thereon (Rs.68.57 crores) Land measuring 5.766 Acres at Pratap Vihar, Plot No J & K Block, Sector-12, Ghaziabad (UP) together with super structure constructed thereon (Rs.56.10 crores) Land measuring 111.52 sq. mtrs. at 16, HIG Houses bearing no. H1-H16 at H-Block, Pratap Vihar, Sector-12, Ghaziabad (UP) together with super structure constructed thereon (Rs.13.12 cr)		
2.	Equipments (available at property no. 2)(available as annexure 1 on the website www.hudco.org & www.tenderwizard.com	Rs. 29 lacs	2.90 lacs
3.	Equipments (available at property no. 3)(available as annexure 1 on the website www.hudco.org & www.tenderwizard.com	Rs. 2.95 crores lacs	29.50 acs

25. Mr. Singhdev, then submits that the petitioners have wrongly tried to make out a case that the Santosh Hospital Pvt. Ltd. in Besant Nagar, Chennai was a standalone hospital and not a part of the group of institutes being run by the petitioner no.1 trust, of which group, the petitioner no.2 is



admittedly a part. This, he contends, is only an attempt by the petitioners to substantiate their misconceived plea that the complaints and irregularities discovered in the functioning of Santosh Hospital Pvt. Ltd. should make no impact on the assessment of the petitioner institute. He places reliance on the authorization letters issued by Dr. P. Mahalingam, the chairman and managing trustee of the petitioner trust to point out that the two addresses mentioned on the letterhead are of the hospitals situated at Chennai and Ghaziabad respectively, thus, making it clear that both these hospitals are being run by the petitioner no.1 trust and are a part of the same group of institutions. Furthermore, the complaints received by the respondents regarding both the colleges show that their management is common. He, thus, submits that the petitioners' stand regarding it being a distinct legal entity from the Santosh Hospitals Pvt. Ltd. is a sheer attempt to mislead the Court.

26. He, therefore, contends that this is a fit case for the corporate veil to be pierced so that the real legal status of Maharaji Trust and Santosh Trust can be examined. The false impression given by the petitioners of these two trusts being distinct legal entities is negated by the fact that the assets of the petitioner institute are being included in the name of the Maharaji Trust's assets in the DRT proceedings. On account of the legal status of the trusts not being clarified, the management of the trust has used the assets not only of the trust, but also of the college, to secure a variety of loans from M/s HUDCO, M/s PM FinCap Ltd., M/s Muthoot FinCorp, Punjab and Sind Bank and M/s SGS Constructions, most of which have either not been repaid at all or have been repaid but not in a timely manner. He, thus, contends that unless the petitioner no.1 and Maharaji Trust provide a clear answer as to



the ownership and management of the petitioner no.2, the college will have to bear the burden of all the outstanding liabilities of both the trusts.

27. Mr. Singhdev, then submits that the lack of clinical material discovered during the inspections carried out by the NMC would essentially amount to the PG students in MS (Obstetrics and Gynaecology) and MS (Orthopaedics) courses having no patients to oversee or treat, which reason was sufficient for rejecting the petitioners' application for an increase in seats, for the academic session 2021-22. He submits that the factum of the petitioners having entered into an MoU with the District Government Hospital and Mahila Chikitsalya, Ghaziabad for the training of students on account of the petitioner institute being declared as a Covid dedicated hospital, is irrelevant for the purposes of the respondents as it is not permitted to carry out inspections of the state hospitals. He, thus, submits that this course of action adopted by the petitioners to train its students in other hospitals would result in the PG students being admitted to the petitioner institute but being trained at a different, unknown, and untested institution which does not fall under the purview of the respondents and cannot be inspected by the NMC.

28. Finally, Mr. Singhdev submits that the inspection process was fair and it is not as if the status of the petitioner institute as a 'Covid dedicated Hospital' is being held against it but, once there was a complete absence of clinical material in the petitioner institute, the respondent no.1, even though entitled to reduce the number of seats already allotted to the petitioner no.2, has only rejected the request for increased intake of seats. He, therefore, contends, that no prejudice is being caused to the petitioner institute by rejecting this request and once the petitioner institute is declared as a non-



Covid hospital, it would be free to apply for increased intake of seats for the next academic session. By placing reliance on the decisions of the Apex Court in *Medical Council of India v. Vedanta Institute of Academic Excellence Pvt. Ltd.* (2018) 7 SCC 225 and *Manohar Lal Sharma v. Medical Council of India* (2013) 10 SCC 60, he submits that the Apex Court has consistently opined that it is not for the Courts to either question the inspection report issued by an expert team of assessors, if it records deficiencies in any institute, or to sit in appeal of the same. He, thus, contends that this Court ought not to interfere with the inspection reports which clearly found the petitioner institute lacking in the requisite clinical material necessary for training its students and therefore, prays that the writ petition be dismissed.

29. Having considered the submissions of learned counsel for the parties and perused the record, I find, that though the petitioners have in the writ petition, assailed four orders passed by the respondents, during the course of the arguments, there was no serious challenge to the order dated 22.12.2021. Learned senior counsel for the petitioners, while contending that the order dated 22.12.2021 directing inspection for continued recognition of the 100 MBBS seats, was *mala fide*, had submitted that the petitioners, who had all the necessary infrastructure, have no objection to a fresh inspection of the college being carried out.

30. This Court is therefore, considering only the challenge to the remaining three impugned orders; the first two being orders dated 20.01.2022 vide which the petitioner institute has been denied permission for an increase from 4 to 7 seats in MS (Obstetrics and Gynaecology), and from 3 to 7 seats in MS (Orthopaedics); the third being the order dated



25.01.2022 whereunder the petitioners' request for an increase in the MBBS seats from 100 to 150 has been rejected. Before dealing with the submissions of the parties, it would be first necessary to refer to the three impugned orders in extenso. The letter of disapproval dated 20.01.2022 in respect of the petitioners' prayer for increase in seats in MS (Obstetrics & Gynaecology) reads as under-

**NATIONAL MEDICAL COMMISSION
Medical Assessment & Rating Board (MARB)**

PG Hearing Date: 29.10.2021

No.: NMC/MCI-651(22)/10A/2021-Med./005973

Date: 20.01.2022

LETTER OF DISAPPROVAL

The Dean/Principal,
Santosh Medical College, Ghaziabad,
No. 1, Santosh Nagar, Ghaziabad-201009 (Uttar Pradesh)
Email: santosh@santoshuniversity.com;
santosh@santoshdeemedtobeuniversity.com

Sub: Increase of seats in MS (Obstetrics & Gynaecology) course at Santosh Medical College, Ghaziabad, Uttar Pradesh under Santosh University u/s 26(1)(a)(b), 28(1) (2) and 61(2) of the NMC Act, 2019 for academic year 2021-22 permission of Medical Assessment and Rating Board- Regarding.

Sir/Madam

*I am directed to refer your application for **Increase of seats in MS (Obstetrics & Gynaecology) course at Santosh Medical College, Ghaziabad, Uttar Pradesh under Santosh University u/s 26(1)(a)(b), 28(1) (2) and 61(2) of the NMC Act, 2019 for academic year 2021-22.***

*It is to inform that the **Medical Assessment and Rating Board (MARB)** reviewed the Commission Assessor's report (11th August 2021) together with the recommendation of the PG*



*Expert Group regarding faculty, their experience, publication and other teaching facilities available at **Santosh Medical College, Ghaziabad, Uttar Pradesh under Santosh University** for Increase of seats in MS (Obstetrics & Gynaecology) course for the academic year 2021-22 and decided as under:*

"The Medical Assessment and Rating Board (MARB) has observed the following:

Reduction of workload and committee has discussed and decided not to approve PG seats.

*In view of the above, the **Medical Assessment and Rating Board (MARB)** has further deliberations and constrained not to grant letter of Permission in view of the limitations observed due to special circumstances- Covid 19 pandemic for Increase of seats in **MS (Obstetrics & Gynaecology)** course for academic year 2021-22.*

If you have any concerns on this observation and disapproved letters, you have option under section 28 (5), (6) of the NMC Act 2019.

Sd/-

Member /President
Medical Assessment and
Rating Board {MARB}
National Medical
Commission

31. A reference may now be made to the second letter of disapproval dated 20.01.2022 which relates to the petitioners' prayer for increase in MS (Orthopaedics). The same reads as under-

No.: NMC/MCI-651(22)/10A/2021-Med./005973

Date: 20.01.2022

**LETTER OF DISAPPROVAL**

The Dean/Principal,
Santosh Medical College, Ghaziabad,
No. 1, Santosh Nagar, Ghaziabad-201009 (Uttar Pradesh)
Email:santosh@santoshuniversity.com;
santosh@santoshdeemedtobeuniversity.com

Sub: Increase of seats in MS (Orthopaedics) course at Santosh Medical College, Ghaziabad, Uttar Pradesh under Santosh University u/s 26(1)(a)(b), 28(1) (2) and 61(2) of the NMC Act, 2019 for academic year 2021-22 permission of Medical Assessment and Rating Board- Regarding.

Sir/Madam

I am directed to refer your application for **Increase of seats in MS (Orthopaedics) course at Santosh Medical College, Ghaziabad, Uttar Pradesh under Santosh University u/s 26(1)(a)(b), 28(1) (2) and 61(2) of the NMC Act, 2019 for academic year 2021-22.**

It is to inform that the **Medical Assessment and Rating Board (MARB)** reviewed the Commission Assessor's report (08th March 2021) together with the recommendation of the PG Expert Group regarding faculty, their experience, publication and other teaching facilities available at **Santosh Medical College, Ghaziabad, Uttar Pradesh under Santosh University** for Increase of seats in **MS (Orthopaedics)** course for the academic year 2021-22 and decided as under:

"The Medical Assessment and Rating Board (MARB) has observed the following:

In view of the disapproved very less clinical work with the bed occupancy of 2.7% and no surgeries.

In view of the above, the **Medical Assessment and Rating Board (MARB)** has further deliberations and constrained not to grant letter of Permission in view of



the limitations observed due to special circumstances- Covid 19 pandemic for Increase of seats in MS (Orthopaedics) course for academic year 2021-22.

If you have any concerns on this observation and disapproved letters, you have option under section 28 (5), (6) of the NMC Act 2019.

Sd/

*Member /President
Medical Assessment and
Rating Board {MARB}
National Medical
Commission*

32. Finally, I may now refer to the letter of disapproval dated 25.01.2022, wherein the petitioners' prayer for increase in MBBS seats has been rejected. The same reads as under-

No. NMC/UGI/2020/000031/006816

Date: 25.01.2022

LETTER OF DISAPPROVAL

*The Principal/ Dean,
Santosh Medical College,
No. 1 Santosh Nagar, Ghaziabad,
Uttar Pradesh - 201009
E-mail:*

Sir/Madam,

Subject: *Application for Increase of MBBS seats from 100 to 150 at Santosh Medical College, Ghaziabad under the Santosh Deemed to be University, Ghaziabad by Santosh Medical College u/s 26(1)(a)(b) & 28(1)(2) and section 61(2) of the NMC Act, 2019 for the academic year 2021-*



*2022 - Permission of Medical Assessment and Rating Board
- Disapproval Regarding.*

*Please refer your application for Increase of MBBS seats at
Santosh Medical College,*

*Ghaziabad under the Santosh Deemed to be University,
Ghaziabad u/s 26(1)(a) (b) & 28(1)(2) and section 61(2) of the
NMC Act, 2019 for the academic year 2021-2022.*

*The Medical Assessment and Rating Board (MARB) of
NMC examined the reports on infrastructure facilities of the
College, laboratories, library, Hospital facilities and availability
of the faculty, their experience, publications and residents/tutors,
availability of nursing and paramedical staff hostels, with other
facilities available at Santosh Medical College, Ghaziabad under
the Santosh Deemed to be University, Ghaziabad for Increase of
MBBS seats for the academic year 2021-22.*

*The Medical Assessment and Rating Board (MARB) of
NMC has received several complaints on the college and
hospital. Also found on record that the trust has been identified
with many court cases against them including complaints from
students and faculty.*

*"It was alleged that Santosh Trust had defaulted in
repayment of a Loan availed from M/s Muthoot Fincorp Ltd.
And that the possession of Hospital of the college is with
Muthoot Fincorp Ltd. and due to inability to repay the loan
the Santosh Hospital had filed for voluntary insolvency and
under liquidation now. The allegations seem to be of serious
nature, as if found to be true, the future of the Santosh
Medical College and Hospital certainly becomes doubtful
which may lead to disruption in careers of hundreds of
students of the college"*

.

*In view of above, the Medical Assessment and Rating Board
(MARB) and the committee has further deliberations on the
available information and constrained not to grant Letter of*



Intent for increase of MBBS seats for the academic year 2021-22, as per sec 29 (a),(b),(c).

If you have any grievances on the decisions of the MARB of NMC, you are suggested to follow the Sec 28 (5) (6) and (7) of the NMC Act 2019.

Kindly acknowledge receipt of this letter.

*Sd/-
Member/President
Medical Assessment
and Rating Board
(MARB) National
Medical Commission*

33. The respondents have sought to justify all the three impugned orders by not only referring to the grounds mentioned in the impugned orders i.e., regarding insufficient clinical work, the purported default on the part of the petitioner trust in repayment of a loan to M/s Muthoot Fincorp Ltd., and the voluntary insolvency proceeding initiated by Santosh Hospital Pvt. Ltd., Chennai, but have in their counter affidavit, referred to in detail, to the various complaints received by them against the petitioners, as also the details of cases filed against the petitioners, including the pending execution petition before the DRT.

34. At this stage, I may note that the respondents have, in their counter affidavit, also challenged the maintainability of the petition on account of the availability of the efficacious alternate remedy of first appeal and second appeal under Section 28(5) and (6) of the NMC Act. However, in view of the admitted position that the counselling has already begun and the fact that the impugned orders rejecting the petitioners' application made in August



2019 have been passed only in end of January 2022, learned counsel for the respondents has not seriously pressed this ground during the course of the arguments. Even otherwise, I am of the view that, at this stage, when the initial rounds of counselling are already over, any further delay is likely to cause grave and irreparable loss, not only to the petitioner institute, who even as per the respondents was not found to be lacking in infrastructure, but also to the prospective students. I am therefore, not inclined to relegate the petitioner to the remedy of appeal at this belated stage, and proceed to deal with the petition on merits.

35. In light of the aforesaid, three questions now arise for consideration in the present petition. The first being as to whether the respondents can defend the impugned orders by raising additional grounds other than those mentioned in the impugned orders; the second being whether in the light of the admitted position that the petitioner institute was declared as a dedicated Covid hospital, denial of permission for enhancement of seats in the two post graduate medical courses on the ground of insufficiency of clinical material was justified, and, the third and final issue being whether the pendency of some Court cases and receipt of complaints against the petitioner institute would be a sufficient ground to reject its request for an increase in seats in MBBS as also in MS (Obstetrics and Gynaecology) and MS (Paediatrics).

36. In support of his first plea that the respondent cannot be permitted to urge any new grounds to support the impugned orders, Mr. Vikas Singh, learned senior counsel for the petitioner has heavily relied on the decisions of the Apex Court in *Mohinder Singh Gill (supra)* and *63 Moons (supra)*. On the other hand, Mr. T. Singhdev has, besides urging that no new grounds



are being sought to be raised as the order dated 25.01.2022 clearly referred to the complaints and the pending Court cases against the petitioners, relied on ***Chairman, All India Railway Recruitment Board (supra)*** and ***PRP Exports (supra)***, submits that when larger public interest is involved, the authority can rely on any subsequent fact which comes to its knowledge.

37. In order to appreciate the rival submissions of the parties on this issue, I may first refer to the observations of the Apex Court as contained in para 8 of ***Mohinder Singh Gill (supra)***, which reads as under:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji' :

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.”

38. I may now refer to para 44 and 45 of ***Chairman, All India Railway Recruitment Board (supra)*** relied upon by the respondents, wherein the Apex Court held that when a larger public interest is involved, the Courts



can certainly examine subsequent facts in support of the impugned order. The said paras read as under:

*“44. We also of view that the Court has committed grave error taking the view the order of the Board could be judged only on basis the reasons stated the impugned order based on report of Vigilance not on the subsequent materials furnished by CBI. Possibly. The High Court had in mind Constitution Bench judgment this Court **Mohinder Singh Gill v. Chief Election Commr. (1978) 1 SCC 405***

*45. We are the view that the decision-maker can always rely upon subsequent materials to support the decision already when larger public interest is involved. This Court in **Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasara Samiti (1998) 9 SCC 236** found no irregularity in placing reliance on a subsequent report to sustain the cancellation the examination conducted where there were serious allegations of mass copying. The principle laid down in **Mohinder Singh Gill** case is not applicable where larger public interest is involved and such situations, additional grounds be looked into the validity of an order. The finding recorded by High Court the report of CBI cannot be looked into to examine the validity of the order dated 4-6-2004, cannot be sustained.”*

39. The decision in **Chairman, All India Railway Recruitment Board (supra)** was followed in **PRP Exports (supra)**, wherein the Apex Court reiterated that when a larger public interest is involved, the Court can look into subsequent events. The relevant observations as contained in paragraphs 7 and 8 thereof read as under:

7. The Division Bench of the Madras High Court formulated two questions which read as follows:

“(1) Whether the appellants can place reliance on the



subsequent events viz. passing of the suspension orders dated 14-12-2012 and the issuance of the show-cause notice dated 14-12-2012 to the respondents/ writ petitioners firm and (2) Whether the provisions under the special law viz. the Mines and Minerals (Development and Regulation) Act, 1957 and other Rules, can override the general law viz. the penal provisions under the Penal Code and the provisions under the Code of Criminal Procedure in respect of the initiation of parallel proceedings viz. departmental proceedings and criminal proceedings?"

8. Shri Harish Salve, learned Senior Counsel appearing for the petitioner, submitted that he is more concerned with the first question and arguments were advanced by him as well as Shri C. Sundaram, learned Senior Counsel appearing for the State, on that point. In our view, the Division Bench of the High Court is right in examining the subsequent events as well in a case where larger public interest is involved. This Court in **All India Railway Recruitment Board v. K Shyam Kumar** distinguished **Mohinder Singh Gill** case, stating when a larger public interest is involved, the Court can always look into the subsequent events. Relevant paragraph of the judgment is extracted hereinbelow. (K. Shyam Kumar case, SCC p. 631, para 45)

40. A reference may now be made to para 100 and 102 of **63 Moons Technologies Ltd. (supra)**, wherein, the Apex Court, while explaining the decision in **Mohinder Singh Gill (supra)** and **PRP Exports (supra)** held as under-

"100. Valiant attempts have been made by counsel in the High Court as well as counsel in this Court to support the order on grounds which are outside the order, stating that such grounds make it clear that in any case, the government order has been made in public interest. The celebrated passage in Mohinder Singh Gill states that: (SCC p. 417, para 8)

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity



must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji (SCR p. 140 : AIR p. 18, para 9)

9. public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.’

Orders are not like old wine becoming better as they grow older.”

We are of the view that it is the Central Government that has to be “satisfied” that its order is in the public interest and such “satisfaction” must, therefore, be of the Central Government itself and must, therefore, appear from the order itself. All these valiant attempts made to sustain such order must be rejected.

102. *It will be seen that there is no broad proposition that the case of Mohinder Singh Gill will not apply where larger public interest is involved. It is only subsequent materials i.e. materials in the form of facts that have taken place after the border in question is passed, that can be looked at in the larger public interest, in order to support an administrative order. To the same effect is the judgment in PRP Exports v. State of T.N., SCC para 8. It is nobody's case that there are any materials or facts subsequent to the passing of the final order of the Central Government that has impacted the public interest, and which, therefore, need to be looked at. On facts, therefore, the two judgments cited on behalf of the respondents have no application. Thus, it is clear that no reasonable body of persons the facts of this case, that properly instructed in law could possibly hold, on would be in public interest. Compulsory amalgamation between FTIL and NSEL would be in the public interest.”*



41. Thus, what emerges is that in *Mohinder Singh Gill (supra)*, the Supreme Court laid down the broad principle that the validity of an order must be tested by the reasons mentioned therein and the authority cannot be allowed to supplement new reasons to defend the same. However, when public interest is involved, facts emerging from subsequent events can be looked into. Thus, a pre-requisite for examining subsequent material is the likely impact of the impugned orders on public interest.

42. In the present case, the petitioner is seeking permission of the enhancement of seats in a medical college. It is a well-known fact that in our country, a large number of aspirants, desirous of seeking medical education, apply every year for each additional seat and undoubtedly, admission to these medical colleges is much sought after. These medical colleges are also therefore, shouldered with the responsibility to provide quality medical education to its students and also ensure that the standards of professional ethics as required in the medical profession are adhered to. The respondent no.1 NMC is discharging an important statutory function which enjoins it with a duty to ensure that only those institutions are granted permission which meet the parameters prescribed in Section 29 of the NMC Act, which reads as under: -

“29. While approving or disapproving a scheme under section 28, the Medical Assessment and Rating Board, or the Commission, as the case may be, shall take into consideration the following criteria, namely: -

(a) adequacy of financial resources;

(b) whether adequate academic faculty and other necessary facilities have been provided to ensure proper



functioning of medical college or would be provided within the time-limit specified in the scheme;

(c) whether adequate hospital facilities have been provided or would be provided within the time-limit specified in the scheme;

(d) such other factors as may be prescribed:

Provided that, subject to the previous approval of the Central Government, the criteria may be relaxed for the medical colleges which are set up in such areas as may be specified by the regulations”.

43. In my considered opinion, there can be no doubt about the fact that there is an element of public interest in the decision taken by the respondents. It has been urged by the respondents that if the allegations made in the complaints against the petitioner institute are found to be correct, the career of students who seek admission in the college would be at stake and therefore, they were justified in rejecting the petitioners' application on the basis of subsequent material, which though already mentioned in one of the impugned orders i.e., 25.01.2022 has now been explained in detail. I am, therefore, of the view that merely because no reference has been made to these complaints and Court cases pending against the petitioners, in two of the impugned orders. i.e., orders dated 20.01.2022, it cannot be said that the respondents cannot rely on these grounds specially when there is a clear reference to these grounds in the third impugned order, i.e., order dated 25.01.2022. I, therefore, have no hesitation in holding that the respondents are justified in trying to support all the three impugned orders by relying on the pending complaints and Court



cases against the petitioners. It is clearly in public interest that, permission for enhancement of seats is given only after the due satisfaction of the respondent no.1, that the petitioner is meeting the eligibility criteria as per procedure laid down in law.

44. Having said so, I may now proceed to consider whether the reasons given by the respondent for passing the impugned orders can be said to be arbitrary and perverse, so as to warrant interference from this Court.

45. The respondents have vehemently urged that not only have they received complaints from a number of persons against the petitioners, but they are also involved in various Court cases and therefore, their prayer for an increase in the seats has rightly been rejected. The grant of permission to such a college which is already embroiled in various Court cases, and with its building and infrastructure on the verge of being auctioned, is likely to disrupt the career of students who may take admission against these seats and therefore, the action of the respondents cannot be questioned. On the first blush, no doubt, this ground appears to be valid. However, in order to appreciate the petitioners' case that all the complaints are motivated and that none of the Court cases referred to by the respondents show that there was any inadequacy of financial resources, or any other valid reason to deny permission for increase in seats, it would be necessary to briefly refer to the complaints and the Court cases relied upon by the respondents. Even though, it is not for this Court to either examine these complaints in detail or to comment on any of the pending Court cases, a brief scrutiny of these aspects is necessary so as to appreciate whether the pendency of these Court cases and complaints can be treated as a valid ground to deny permission to the petitioners to increase the seats in UG and PG medical courses. The



reference to the complaints and Court cases made hereinafter is only for this limited purpose.

46. What emerges is that there are primarily two complaints referred to by the respondents in their counter affidavit. The first complaint dated 06.10.2021 is from one Shri Ajit Singh, a resident of Palwal, Haryana, who claims to be a social worker. This complaint, which alleges that the trustees of the petitioner institute have been charging high capitation fees from its students and have been siphoning money through various shell companies, is clearly generic in nature and has, admittedly, not been verified by the respondents till date. In their rejoinder, the petitioners have urged that the complaint is a motivated one, and is a verbatim copy of the FIR lodged at the behest of M/s PM FinCap Ltd., which has tried to not only coerce the petitioners to pay huge amounts, which were not even payable by them, but had also made an attempt to embroil the petitioners' directors in a false criminal case, which has been stayed by the Punjab and Haryana High Court as well as the Apex Court. A perusal of this complaint shows that the same, besides referring primarily to the dues of M/s PM Fincap Ltd., also makes a reference to the proceedings before the DRT, initiated at the behest of M/s HUDCO, to which a detailed reference will be made hereinafter. The respondents have vehemently urged that if the allegations levelled in the complaints are subsequently found to be correct, the very existence of the petitioner institute would be at stake and is likely to cause grave prejudice to the students, and therefore, they are justified in rejecting the petitioners' request for the enhancement of seats. Even though, this Court is not examining the veracity of these complaints in these proceedings, the fact remains that the criminal proceedings initiated by M/s PM FinCap Ltd. were



stayed by the Punjab and Haryana High Court on 13.08.2021. Despite, the said order having been assailed, by way of an SLP, the Apex Court has, on 28.10.2021 once again directed that the proceedings pursuant to the FIRs are stayed. Once the proceedings emanating out of the FIR continue to be stayed by the High Court and the Apex Court, coupled with the fact that the MoU with M/s PM FinCap Ltd., which the petitioners claim they had signed under coercion, has been kept in abeyance at the directions of the Court, it would not be appropriate at this stage to simply discard the petitioners' plea that the complaints by M/s PM Fincap Ltd. were filed to harass them and extract exorbitant amounts from them. In my view, the respondents, before simply rejecting the petitioners' request on the basis of these complaints, ought to have taken into account the orders passed by the Punjab and Haryana High Court as well as the Apex Court. The respondents have however, simply ignored these vital facts, for reasons best known to them.

47. As noted hereinabove, this complaint by Shri Ajit Singh also refers to the various orders passed by the DRT in the execution proceedings initiated by M/s HUDCO from whom the petitioners had availed a loan of Rs.41 crores. These orders are a matter of record and in fact there is no denial thereto by the petitioners; it is also correct that a part of the building of the petitioner institute alongwith the equipment was sought to be auctioned, which auction has not materialized till date. The petitioners have however urged that M/s HUDCO, despite having received a sum of Rs.416.22 crores against the disbursed loan amount of Rs.41 crores, is still illegally demanding further amounts from them and the issue regarding the amount, if any, payable by the petitioners is already pending adjudication before the DRT. It is the petitioners' case that in the present situation, it is not as if they



do not have the means to settle their dues, but since the demand raised by M/s HUDCO is apparently exorbitant and unjustified, the petitioners have decided to exercise their legal remedies to challenge the demand which they perceive to be illegal. In my view, merely because execution proceedings at the behest of M/s HUDCO are pending before the DRT, wherein the petitioners have filed an application seeking refund, it cannot be presumed that they do not have adequate financial resources to run the institute or discharge their liabilities. The other Court cases referred to by the respondents are mostly decided cases and, in any event, do not show that there is irregularity in the functioning of the petitioner institute. The mere pendency of some Court cases against a medical institution at the behest of banks/financial institutions, in the absence of any restraint orders passed by a Competent Court, cannot *per se* be a ground to hold the institution as not meeting the eligibility criteria under Section 29 of the Act. Moreover, the petitioner institute is not seeking recognition as a new college, but is only seeking an increase in the number of seats on the basis of the available infrastructure, which infrastructure has been found to be satisfactory in the inspection carried out by the respondents itself.

48. I may now refer to the complaint dated 22.09.2021 from one Dr. Monica Kumar and her brother, which is the only other complaint referred to by the respondents. This complaint refers to incidents of alleged harassment at the hands of the petitioners' officials in 1995; the petitioners have submitted that these allegations, besides being completely false, are also stale as all these complaints were duly examined not only by the Authorities in the USA, but also by the Police Authorities in Lucknow, as also the



Ministry of External Affairs in 2005 itself, when no merit was found in them.

49. The fact remains that the petitioner institute is an institution running for the last 28 years having produced a considerable number of doctors for the country, which is still unable to meet the aspirations of the younger generation to pursue medical studies. It is the respondents' own case that the petitioner institute has a valid permission for admitting students not only against 100 seats in MBBS but also in different PG courses. I, therefore, find merit in the petitioners' plea that these complaints, which are yet to be verified by the respondents, cannot be a ground to either presume that any illegalities are being committed by the college or the Trust or to refuse permission for enhancement of seats despite the availability of the necessary infrastructure. Merely because the petitioners are still trying to pursue its legal remedies against the illegal demands raised by M/s HUDCO, it cannot be construed that the petitioners are unable to discharge its financial liabilities. Furthermore, the auction notices issued by the DRT proposed to sell the petitioner institute as a running college and therefore, the addition of a few more seats, is only likely to add to its value. Moreover, the impugned orders have been passed without granting any opportunity to explain their stand on the complaints and the Court cases. Had the petitioners been granted an opportunity to respond to the allegations contained in the complaints, the result, in all likelihood could have been different. It is thus evident that the respondents' decision to reject the petitioners' request for increase in seats in MBBS and the two PG courses on account of the pending complaints and Court cases, has been arrived at by not only ignoring crucial factors, including the interim stay granted by the Apex



Court on 28.10.2021, but also in gross violation of the principles of natural justice. I am therefore, of the considered view that the decision of the respondents to reject the petitioner's request on the ground of pending complaints and court cases having been passed without consideration of all relevant aspects and without following the principles of natural justice, is perverse.

50. I may now deal with the respondents' plea that once the petitioner institute did not have the adequate clinical material, and the bed occupancy was highly insufficient, the rejection of its request for enhancement of seats by the respondents was justified. This plea, again has to be seen in the context of the circumstances prevailing today. The petitioner has urged that it was declared as a dedicated Covid L-3 hospital by the State Government and was not allowed to admit any other patients except for those suffering from Covid-19. This fact, apart from not being denied by the respondents, has also been noted by the assessors in their inspection report. In fact, the exemplary work done by the petitioner institute during this trying time of Covid has been highly appreciated by one and all, including the State and Union Government, as is evident by the fact that the petitioner has received the Ayushman Award from the Central Government in 2021 as well as an award from the State Government in 2022 for its persistent and dedicated service in combating the Covid pandemic. The respondents, in my opinion, ought to have sufficiently considered these aspects, instead they have chosen to penalise the petitioners for coming forward to serve the nation in its hour of need. It is an admitted position that when the inspection was initially carried out on 08.03.2021 for PG courses and thereafter, on 08.10.2021/09.10.2021 for the MBBS course, the petitioner institute being



an L-3 dedicated Covid hospital was not permitted to admit any non-Covid patients and since at that time the Covid wave had ebbed to some extent, there were fewer patients in the hospital. On account of this, the State Government, in order to ensure that the shortage of patients in the hospital did not affect the teaching curriculum of the students enrolled in the petitioner institute, had entered into an MoU, and consequently, the petitioner institute was permitted to provide its students, the practical experience required to complete their course and specialize in their chosen field, at the Mahila Chikitsalya and the District Government hospital, Ghaziabad, thus providing an opportunity to deal with the problem of insufficient clinical material which had arisen in the petitioner institute. It is also undisputed that once, the petitioner was granted permission to admit non-covid patients on 01.09.2021, the bed occupancy in the petitioner institute rose to 82%, which is evident from the subsequent inspections carried out on 26-27.11.2021, wherein no deficiency was found in the bed occupancy. Further, it is pertinent to note that even during the inspection conducted on 11.08.2021, when all the patients admitted in the hospital were covid positive, the assessor had given a satisfactory report. In my considered view, these aspects cannot just be brushed aside as has been sought to be done by the respondents. Ultimately, since the petitioner, while functioning as a dedicated covid hospital, has only discharged its duty to the society by catering to the needs of patients suffering from Covid-19, for which it has also been appreciated by the State and the Central Government, it would be a travesty of justice if this ground were to be used to deny the petitioner its rightful entitlement. It is not a case where the available infrastructure was found to be deficient and therefore the decision in *Vedanta Institute*



(*supra*), heavily relied upon by the respondents to contend that the Court should not interfere with the assessment report of the medical experts, would not be applicable in the present situation.

51. During the course of the arguments, a grievance was raised by the petitioners that various other medical colleges, which too had been designated as covid hospitals in the State of Uttar Pradesh, were, unlike the petitioners, granted permission for increase in seats by either taking into account the occupancy of the covid 19 beds, or by altogether ignoring the deficiency in bed occupancy. The respondents were therefore, directed to furnish details in respect of these colleges, which details now form part of the record.

52. The details of similarly placed Covid dedicated hospitals, placed on record by the respondents, undoubtedly support the petitioners' plea that many of the colleges/hospitals which were similarly placed as the petitioners, were granted permission for increase in the seats, despite suffering from a similar deficiency in clinical material on account of the Covid. For the sake of brevity, and to avoid any likely prejudice to those colleges, a detailed reference thereto is being deliberately avoided. I, therefore, find merit in the petitioners' plea that the respondents have acted in a discriminatory manner by ignoring the similar deficiencies in clinical material in respect of various similarly placed Covid dedicated hospitals/colleges, while holding the petitioners ineligible on this very ground.

53. I, cannot also lose sight of the fact that on account of the lack of adequate number of medical institutions providing quality affordable education to cater to the needs of the aspiring students, they are often



compelled to make the choice of leaving behind their home country and pursuing their studies abroad. This reality has especially become a cause of concern at a time when due to the conflict between Ukraine and Russia, several thousand Indian medical students, who had gone to pursue their medical education in the now war-hit Ukraine have been rescued and brought home, have also lost their seats in medical colleges. No doubt the respondents cannot be asked to lower the standards prescribed under the regulations however, simultaneously, in a situation like the present, when it is found that an institute like the petitioner which has been running for the last more than 20 years is not lacking in any infrastructure and has also rectified the deficiencies which were found at the time of initial inspections, that too when the said deficiencies were only on account of the Covid pandemic, it would also be against public interest to deny permission to the petitioner to increase the seats. At a time when the ratio of medical profession as *vis-a-vis* the population of the country is abysmally low, an increase in the number of PG and UG seats would certainly contribute to the bigger goal of strengthening the medical infrastructure of the country.

54. For the aforesaid reasons, the two impugned orders dated 20.01.2022, as also the order dated 25.01.2022, are unsustainable and are accordingly quashed. Keeping in view that there is no deficiency in the infrastructure of the petitioner institute, coupled with the fact that the deficiency in clinical material, found during the initial inspections, also stood rectified in the inspection held on 26-27.11.2021, this Court, instead of remanding the matter back to the respondents for a fresh inspection, is inclined to direct the respondents to grant permission to the petitioner institute on the basis of the said inspection report, and to increase the seats from 4 to 7 in MS



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(Obstetrics & Gynaecology), from 3 to 7 in MS (Orthopaedics), and from 100-150 in the MBBS course at the petitioner institute. These directions are being issued only in the light of these peculiar facts, and by taking into account the fact that the petitioner institute has already missed the first two rounds of counselling, and any further delay at this stage would prevent it from participating even in the upcoming Mop-Up and Online Stray Vacancy rounds of counselling. The petitioner is therefore, granted permission to participate in the remaining rounds of counselling with the increased seats as noted hereinabove, without any further inspections.

(REKHA PALLI)
JUDGE

MARCH 15, 2022

ms/acm/kk