

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on 31st October, 2022

Pronounced on: 11th November, 2022

+ W.P.(C) 5339/2022 & C.M. APPL. 44265/2022

DHANALAKSHMI SRINIVASAN MEDICAL COLLEGE AND
HOSPITAL & ANR. Petitioners

Through: Mr. Maninder Singh, Senior
Advocate with Mr. Manik Dogra,
Ms. Srishty Kaul, Mr. Rishab Singh,
Mr. Prabas Bajaj and Mr. Harish,
Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through: Ms. Bharathi Raju, SPC for R-1.
Mr. T. Singhdev, Ms. Ramanpreet
Kaur, Mr. Bhanu Gulati,
Ms. Michelle B. Das and Mr. Abhijit
Chakravarty, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. Petitioner No. 1 – Dhanalakshmi Srinivasan Medical College and Hospital [hereinafter, “*Petitioner college*”] is a NABH and NABL accredited college affiliated with Tamil Nadu Dr. MGR Medical University, Chennai. *Vide* gazette notification dated 08th September, 2016, it was granted recognition to run MBBS course with an intake of 150 students. Desirous to increase its admission strength to 250 students from academic

year 2021-22, Petitioner college made an application on 02nd December, 2020 with Medical Assessment and Rating Board [“MARB”] of Respondent No. 2 – National Medical Commission [“NMC”]. The said request was processed, but on 31st December, 2021, MARB recommended increase by 50 seats only, taking total strength to 200. Dissatisfied with partial acceptance, Petitioner college preferred first appeal before First Appeal Committee, which was dismissed *vide* order dated 21st February, 2022 whereby the Committee not only disagreed with MARB, but also declined the request for increase of seats in entirety. As a result, original sanctioned intake of 150 seats was restored with observations pertaining to certain deficiencies in teaching faculty and occupancy of hospital beds. Petitioner college was also unsuccessful in second appeal before the Central Government, which, *vide* order dated 17th March, 2022, upheld the order of First Appeal Committee.

2. Aggrieved with denial of request for increased intake, present petition has been filed impugning the afore-noted orders and seeking a direction to NMC to issue a letter of approval with respect to Petitioner college's application for 250 students per year from academic year 2021-22.

PREVIOUS COURT ORDERS AND DIRECTIONS

3. On 30th March, 2022, by way of an interim order, pending final adjudication of the petition, for academic year 2021-22, Petitioner college was permitted to participate in counselling rounds of NEET UG 2021-22 and admit 50 more students (total 200) in MBBS course [*hereinafter*, “*interim order*”]. It was however clarified that interim permission will

remain subject to outcome of the present petition and will not, in any manner, preclude Respondents from initiating any action against Petitioners in respect of purported deficiencies in Petitioner college, after following due procedure, as per law.

4. The afore-noted order was not assailed by either of the parties. In fact, Respondents complied with the same and issued a letter of permission [“LOP”] dated 05th April, 2022 approving increase of 50 seats to Petitioner college. Thereafter, in respect of academic year 2022-23, Petitioner college sent a request letter dated 21st April, 2022 to NMC for increase in seats from 150 to 250. On 24th-25th August, 2022, a surprise inspection was conducted and a report was prepared, wherein for 200 seats, Petitioner college was found compliant with existing norms in all aspects, except for a minor deficiency in teaching staff [*hereinafter*, “**inspection report**”].¹ Subsequent thereto, Petitioner college submitted a representation dated 09th September, 2022 requesting NMC to consider increase up to 250 seats.

5. Since no final decision was rendered on its representation, Petitioners filed C.M. APPL. 44265/2022 seeking following reliefs:

*“(a) Allow the present application and direct the Respondent No.2- National Medical Commission to consider the Petitioner college for 250 medical students for the Petitioner College for the academic year 2022-2023 and/or;
(b) Alternatively, direct the Respondents to expeditiously pass an order on the representations dated 09.09.2022 sent by the Petitioners herein.”*

6. During the course of hearing on the above application, Mr. T. Singhdev, counsel for Respondent No. 2, argued that Petitioner college’s

¹ Annexure A-2 to C.M. APPL. 44265/2022.

request could only be processed for 200 seats, as it had accepted the reduced intake granted under interim order of the Court; and inspection was also conducted keeping that in mind. This submission was strongly controverted by Mr. Maninder Singh, Senior Counsel for Petitioners, who argued that Petitioner college did not, at any stage, amend its original request of 250 seats and the same remained valid, irrespective of partial increase granted by the Court as an interim measure. Mr. Maninder Singh also emphasised that Petitioner college is fully equipped for increase up to 250 seats and it would be a colossal waste of resources if permission for increased intake is not granted to enable the Petitioner college to participate in the ongoing counselling process. He argued that there is a deliberate attempt on Respondents' part to deny them this benefit; application for 250 seats was not considered despite repeated follow-ups, and the timelines stipulated by the Apex Court in *Ashish Ranjan v. Union of India and Ors.*² have been ignored. As time for admission was running out, on 13th October, 2022, taking note of minor deficiency (0.49%) in teaching staff of Petitioner college, as well as the policy of granting 5% relaxation to private medical colleges,³ following directions were issued:

“11. Considering the afore-noted submissions, NMC is directed to:

(a) Confirm whether afore-noted shortage in teaching staff or any other deficiency/aspect in the inspection report disentitles Petitioner-college from increasing its intake to 250 seats for academic year 2022-23.

(b) File an affidavit explaining the criteria for relaxation of deficiencies up to 5% in private medical colleges as noted in communication dated 07th July, 2017.”

7. Pursuant to aforesaid directions, NMC filed an affidavit highlighting the deficiencies that according to them, impede grant of 250 seats to

² (2016) 11 SCC 225.

³ As decided in communication dated 07th July, 2017 issued by Medical Council of India (predecessor of NMC).

Petitioner college [hereinafter, “*additional affidavit*”]. *Qua* direction (b), NMC acknowledged and confirmed that relaxation of up to 5% on faculty strength is applicable to Petitioner college; however, as regards direction (a), it is contended that if existing facilities available with Petitioner college as per the MARB inspection report are to be considered for 250 seats, faculty deficiency would substantially increase from 0.49% to 6.9%, which is beyond the permissible limit of 5%.

8. In the above background, considering the nature of relief sought in aforesaid application, and uncertainty that would result if only interim directions were issued, it was considered appropriate to hear and decide the main petition as well, to which both the counsel straightway agreed.

CONTENTIONS

9. Mr. Singhdev’s submissions are as follows:

9.1. For academic year 2022-23, there was no application for 250 seats on behalf of Petitioner college. MARB has been accepting applications with requisite fees in a particular format through its online portal and for renewal of permission, Petitioner college ought to have submitted an online application form on the designated portal containing specific link(s) for this purpose. Reliance is placed upon its earlier online application to contend that Petitioner college was aware of said procedure.⁴

9.2. Nevertheless, subsequent to grant of enhanced seats *vide* interim order, inspection was conducted for 200 seats on 24th-25th August, 2022

to ensure that Petitioner college did, in fact, meet statutory requirements. There are several aspects that disentitle increase in intake to 250. Having failed to meet statutory requirements, Petitioner college cannot be granted approval for 250 seats.

9.3. Petitioner college had submitted an affidavit/ undertaking on 06th October, 2022, accepting increase in seats to 200 for academic session 2022-23.⁵ Copy of an application-cum-undertaking/affidavit dated 30th August, 2022 for 200 seats for academic year 2023-24 is also relied upon.⁶

9.4. As per the '*Opening of a new or Higher Course of Study or Training (Including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (Including a Postgraduate Course of Study or Training) (Amendment) Regulations, 2016*', only those medical colleges whose medical qualification is recognized under Section 11(2) of the Indian Medical Council Act, 1956 [*"IMC Act"*] "*for that particular intake capacity/ increased intake capacity for which Letter of Permission was granted*" are eligible to apply for any increase. Since LOP for academic year 2021-22 was granted for 200 seats to Petitioner college, it is entitled to apply only for 200 seats in subsequent academic year(s).

9.5. Clause 3(1) of Part II of '*Opening of a new or Higher Course of Study or Training (Including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (Including a Postgraduate Course of Study or Training) (Amendment)*

⁴ Annexure R-2/17 to Additional Affidavit dated 18th October, 2022.

⁵ Annexure R-2/19 to Additional Affidavit dated 18th October, 2022.

Regulations, 2018’ states that a medical college shall be entitled to make an application to increase the admission capacity, once the concerned qualification against the sanctioned intake has been recognized under IMC Act. Notification dated 08th September, 2016 granted recognition to Petitioner college for annual intake of 150 MBBS students since 2016.

9.6. Once Petitioner college accepted increased capacity to the extent of 200 seats, in terms of Regulation 8(5) of the ‘*Establishment of Medical College Regulations (Amendment), 2019*’, it can only be permitted to seek renewal of same intake (*i.e.*, 200). Further, permission to admit certain number of students may be renewed on yearly basis, subject to achievements of annual targets.⁷ Such yearly evaluation of performance shall be carried out for first and third renewal, until recognition of said intake capacity is granted. Therefore, there is no provision for increase in seats midway – the same gets renewed up till third renewal and thereafter, until revised recognition is granted.

9.7. The Supreme Court has held that once experts, upon inspection, determine that a college is deficient, Courts of law cannot sit in appeal over such inspection report.⁸

10. In contrast, Mr. Maninder Singh, argues the following:

10.1. Petitioner college has augmented its infrastructural, teaching, and other facilities to fulfil the statutory parameters for 250 students.

10.2. Inspection conducted on 24th and 25th August, 2022 was in respect of

⁶ Annexure R-2/20 to Additional Affidavit dated 18th October, 2022.

⁷ Regulation 8(3)(1A) of Establishment of Medical College Regulations (Amendment), 2020.

250 seats, and on that basis, deficiencies noted in the inspection report are conclusive. A comparative analysis of inspection reports for academic years 2021-22 and 2022-23 shows that there is deficiency of 1.02% in faculty only, but the same is within the permissible limits. NMC has grossly erred in evaluation of its shortcomings.

- 10.3. No action was taken on Petitioner college's representation dated 09th September, 2022 to Respondents requesting them to reconsider its case for grant of permission for 250 seats. Respondents deliberately delayed consideration of Petitioner college's application. MARB maliciously passed order dated 10th October, 2022 granting 200 seats to Petitioner college after filing of C.M. APPL. 44265/2022.
- 10.4. Deficiencies brought out in the additional affidavit are non-existent and arbitrary. In some aspects, NMC has capriciously applied norms that are no longer in force. All requirements other than shortage of 1 Associate Professor in orthopaedic department, have been fully met by Petitioner college for 250 MBBS admissions.
- 10.5. Petitioner college was unable to upload its application for 250 seats on Respondents' web portal compelling it to send applications by way of letters dated 08th June, 2022 and 21st April, 2022 for increase in seats.
- 10.6. In the circumstances of the case where Petitioner college is within the permissible limit of deficiencies, a direction for its re-inspection would be unfruitful and contrary to law. Reliance is placed on ***Rajiv Memorial Academic Welfare Society v. Union of India***.⁹

⁸ *Manohar Lal Sharma v. Medical Council of India*, (2013) 10 SCC 60; *Medical Council of India v. Kalinga Institute of Medical Sciences*, (2016) 11 SCC 530 and *Medical Council of India v. Vedanta Institute of Academic Excellence Pvt. Ltd.*, (2018) 7 SCC 225.

⁹ (2016) 11 SCC 522.

10.7. Having regard to the dire need of more doctors, which has risen manifold in the recent times, the Government has adopted a lenient approach and is doing away with several conditions/ requirements for establishing new medical colleges/ increasing number of existing seats. Respondents' actions are in stark contradiction to said policy. Reliance is placed upon clause 3(1) of the '*Opening of a new or Higher Course of Study or Training (Including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (Including a Postgraduate Course of Study or Training) (Amendment) Regulations, 2018*' which provides that medical colleges which are not yet recognised for MBBS courses, can apply for start of post-graduate courses in various fields.

ANALYSIS

11. Under the scheme of National Medical Commission Act, 2019 [*"NMC Act"*], no medical college can increase its seats without obtaining a prior approval from the MARB. For the purpose of granting permission, MARB is entitled to conduct assessment/ inspection of such colleges for evaluation of their performance *vis-à-vis* benchmarks set out in law.¹⁰ Indeed, in matters of medical education, it is not for the Court to sit in appeal over deductions of an expert body in respect of insufficiencies found in an educational institute; but when it is demonstrated that Respondent-authorities have acted in defilement of extant rules, it is incumbent upon the Court to step in and

¹⁰ Section 28 of the NMC Act, 2019.

rectify the injustice so caused.¹¹ With that being the position, the Court has proceeded to evaluate the veracity of assertions of NMC *qua* deficiencies/ shortcomings pointed out for grant of 250 seats in the additional affidavit, keeping also in view the findings given in inspection report, which is relied upon by both the counsel.

12. NMC's primary opposition is that since the Petitioner college had accepted increased intake capacity of 50 seats from academic year 2021-22 onwards, it can only be considered for further increase after grant of revised recognition for said increased intake (50 seats) in terms of Regulation 8(5) of the Establishment of Medical College Regulations (Amendment), 2019. On this aspect, judgement of the Supreme Court in ***Sree Balaji Medical College & Hospital v. Union of India*** becomes pertinent, wherein it was held that permission and recognition are two distinct aspects – permission is for change in admission capacity, and recognition is of college/ institution.¹² A medical college, once recognised, is only required to obtain permission for enhancement. There is no merit in Mr. Singhdev's endeavour to distinguish the above-noted judgment on the ground that it pertains to repealed Sections 10A and 10B of the IMC Act, 1956. Sections 28 and 29 of the NMC Act which lay down the procedure for grant of permission to establish new medical colleges or increase admission capacity, are akin to Sections 10A and 10B of IMC Act. The distinction between permission and recognition, as explained in ***Sree Balaji Medical College & Hospital*** (*Supra*), would thus, hold good and is still relevant to facts of the present case. Therefore, for any

¹¹ See: ***M.K. Shah Medical College and Research Centre v. Union of India and Anr.***, 2022 SCC OnLine Del 938.

increase in the admission capacity, only permission is needed and there is no requirement of recognition of the degree. Pertinently, when the increased intake is objected to, and strongly contested by Petitioner college, it is a completely misconceived argument that increase is to be restricted only to recognized seats.

13. It must also be noted that LOP for academic session 2021-22 for increase of 50 seats was issued under interim order of the Court. The fact that Petitioner college accepted the same and submitted its undertaking as per applicable regulations cannot be read as a bar for further increase. Respondents did not challenge the interim order, instead, in compliance thereof, issued a LOP for increase of 50 seats; thus, just because Petitioner college submitted an affidavit of acceptance, it does not mean that its request for increase of seats stood reduced to 200 seats. Respondent's objection is based on illusory grounds, and is unsustainable. Insofar as acceptance of 200 seats for the year 2022-23 is concerned, the admission/ counselling process for said year is already ongoing. Petitioner college has submitted an affidavit of acceptance in order to participate in the admission process, but that also cannot be construed as a waiver of its rights to seek enhancement up to 250 seats.

14. Next, NMC has harped on lack of procedural compliance. Petitioner college had applied for 250 seats for the academic years 2021-22 as well as 2022-23. NMC's submission that Petitioner college did not submit an application for enhanced seat intake is entirely contrary to the records. NMC

¹² (2016) 1 SCC 434.

has stressed that MARB was accepting applications in a particular format only through its online portal and for 2022-23, this process was not adhered to during the window period; letters dated 21st April, 2022 and 08th June, 2022 cannot be considered as valid applications. On the other hand, Petitioner college has explained that online facility could not have been availed of as the same was restricted by NMC itself by disabling the link for applying for increase in seats in respect of Petitioner college, and for that reason, it had to send the afore-noted communications requesting consideration for 250 seats. The above reason is indeed plausible, considering that NMC regards Petitioner college to be ineligible for increase. Be that as it may, the afore-noted letters in the nature of applications, were received by NMC, but never responded. Further, an inspection has also been carried for the year 2022-23.

15. Now, coming to the question of whether inspection conducted on 24th-25th August, 2022 was in respect of 250 seats and whether the inspection report demonstrates satisfaction of statutory requirements by Petitioner college. In this regard, it must first be recorded that the inspection, if not done for 250 seats, ought to have been done keeping that in mind, since Petitioner college's request for increase remained the same. Nevertheless, since this aspect was strongly contested, the Court *vide* order dated 13th October, 2022 afforded NMC complete opportunity to consider the inspection report towards increasing intake to 250 MBBS students for academic year 2022-23, in reference to applicable regulations and point out deficiencies, if any, to the Court. In pursuance thereto, additional affidavit dated 18th October, 2022 filed by NMC, brings forth following deficiencies

which are regarded as grounds to deny the request by NMC:

“(i) Faculty Deficiency - 6.9%. The petitioner medical college is conducting various postgraduate courses and hence, the requirement of faculty for the said postgraduate courses shall also have to be added to the faculty requirements of MBBS course. Total faculty required is 202 and there is a deficiency of 14 faculty members. A detailed department-wise chart of faculty & resident deficiency is annexed herewith as **ANNEXURE R-2/22**.

(ii) Resident Deficiency - 3.9%. Total residents required is 102 and there is a deficiency of 4 residents.

(iii) 3 Examinations Halls are required, however, only 1 is available.

(iv) 1 Clinical Unit is short - required 35 Units but 34 Units are available. 35 Units are required for 1040 beds, however, 34 Units are available for 1050 beds.”

16. Thus, as per NMC, Petitioner college lacks in four aspects viz. faculty, residents, examination hall and clinical units. No other deficiency has been highlighted/ argued during the course of submissions. The afore-mentioned aspects are dealt separately, in detail hereinbelow.

DEFICIENCIES IN FACULTY AND RESIDENTS

17. Based on MARB's analysis, NMC has alleged 6.9% deficiency in teaching staff/ faculty, and contended that for 250 seats, faculty strength should be 202 seats. The deficiency for each department is tabulated as follows:

S. No.		Subject	Requirement UG Old/New MSR (Prof+Asso, Prof+Asst Prof+Res/Tutor)					Requirement PG (Prof+Asso, Prof+Asst Prof+Res/Tutor)					Affidavit Information Date					Total Requirement (UG+PG)					latest surprise visit Date					Remarks / Any deficiency (NOT AVAILABLE)				
			Pro	Asso	Asst	T/D	SR+IR	Pro	Asso	Asst	T/D	SR+IR	Pro	Asso	Asst	T/D	SR+IR	Pro	Asso	Asst	T/D	SR+IR	Pro	Asso	Asst	T/D	SR+IR	Pro	Asso	Asst	T/D	SR+IR
1	Pre Clinical	Anatomy	1	3	5	6												1	3	5	6		4	1	3	6				1		
		Physiology	1	2	5	4					+1							1	2	5	5		2	1	4	4				1	1	
		Biochemistry	1	2	4	4					+1							1	2	4	5		1	4	2	5						
	Para Clinical	Pharmacology	1	2	4	6												1	2	4	6		2	1	5	6						
		Pathology	1	4	5	6			+1	+1	+1							1	5	5	7		3	3	6	11						
		Microbiology	1	2	4	5												1	2	4	5		3	1	2	6			1			
		Forensic	1	1	2	4												1	1	2	4		1	2	1	4						
		PSM	1	3	7	6												1	3	7	6		3	4	5	4				2		
	Clinical	Medicine	1	7	8		8	+3	+7									1	8	15		8	5	7	13		19					
		Pediatrics	1	3	4		4	+1	+3									1	4	7		4	3	2	8		7					
		Dermatology	1	1	1		1											1	1	1		1	1	2	1		2					
		Psychiatry	1	1	1		1											1	1	1		1	1	1	1		2					
		Respiratory Medicine	1	1	1		1	+3	+2		+1							1	2	3		2	1	1	2		2		1	1		
		Surgery	1	7	8		8	+1	+7									1	8	15		8	4	5	14		13			1		
		Orthopedics	1	3	4		4	+2	+5		+1							1	5	9		5	3	1	8		6		2	1		
		ENT	1	1	2		2											1	1	2		2	2		2		2					
		Ophthalmology	1	1	2		2	+1	+1									1	2	3		2	1	1	2		2		1	1		
		OBG	1	4	5		5	+1	+4									1	5	9		5	5	4	6		6					
		Anaesthesia	1	4	6		4	+1	+1		+1							1	5	7		5	3	4	6		7					
		Radiodiagnosis	1	2	2		3	+1	+1		+1							1	3	3		4	2	2	3		4					
		Dentistry	1	1	1		1											1	1	1		1						1	1	1		1
		Emergency	1	1	1		9											1	1	1		9	1	1	1		11					

18. Although requirement of 202 faculty members is disputed by Petitioner college and basis for such computation has not been explained by NMC, however, since Mr. Maninder Singh has argued on demurrer regarding factual basis of NMC's claim of faculty strength, the Court has proceeded on the assumption that requirement under applicable regulations for Petitioner college is 202 faculty members. However, before proceeding further, it must be reiterated that as per the afore-mentioned communication dated 07th July, 2017 issued by Medical Council of India, private medical colleges, such as Petitioner college, are entitled to 5% relaxation in deficiency in teaching faculty and residents. NMC admits the above position in paragraph 33 of the additional affidavit.

19. As per the inspection report, only deficiency of 1 associate professor in the orthopaedic department was present in Petitioner college. However, when the said report is applied for 250 seats, it is contended that Petitioner college is lacking 14 faculty members. Nonetheless, as against required strength of 202, since Petitioner college would be entitled to the benefit of relaxation norms, it is required to have minimum strength of 192 teachers [*i.e.*, 202 - 10 (5% of 202 seats)]. In that light, afore-said shortcoming of 14 members is being scrutinized hereinafter:

Dentistry department

19.1. In dentistry department, NMC has recorded a shortage of 3 faculty members. As per Minimum Requirements for Annual MBBS Admissions Regulations, 2020 [*hereinafter*, “**MBBS Regulations, 2020**”], “a separate

*department of Dentistry/Dental faculty is not required where a dental college is available in same campus/city and run by the same management.”*¹³ Petitioner college has a separate and functioning dental college situated within its campus, as noted in the inspection report in following manner:

Department	Designation	Requirement as per MSR (UG)	Additional faculty required for running PG courses (if any)	Total (UG + PG)	Accepted	Deficiency
Dentistry	Professor	1	NA	0	NA	Separate Dental College is situated within the same campus and functioning
	Assoc. Prof.	1		0		
	Asstt. Prof.	1		0		
	JR	1		0		

19.2. The assessors also categorically mention in their report that since a dental college is functioning within the same premises, dental faculty is not required. Therefore, there is absolutely no basis for NMC to postulate that Petitioner college was not having the required teaching faculty for dentistry. The shortage of teachers in dentistry department being reckoned as deficiency is a flawed conclusion. The alleged deficiency of 3 faculty members must therefore be reduced from the figure of 14. In fact, the Court perceives NMC’s stance of including the dental faculty towards total deficiencies as an attempt to mislead the Court.

Physiology Department

19.3. NMC alleges that there is shortage of 1 assistant professor in

¹³ Annexure IV(A): Requirements of Faculty and Residents for 250 MBBS admissions annually.

physiology department. In this regard, inspection report records the following:

Department	Designation	Requirement as per MSR (UG)	Additional faculty required for running PG courses (if any)	Total (UG + PG)	Accepted	Deficiency
Physiology	Professor	1	-	1	2	One extra Professor Compensated for One Associate Professor No Deficiency
	Assoc. Prof.	2	-	2	1	
	Asstt. Prof.	4	-	4	4	
	Tutor	4	-	4	4	

19.4. MBBS Regulations, 2020 provides that for a college with 250 seats, 1 professor, 2 associate professors and 5 assistant professors, are required. As can be seen from the above tabulation, the inspection team has noted that there are only 4 assistant professors in Petitioner college in concerned department, however, apart from 2 professors, the Dean of Petitioner college viz. Dr. S. Venkidusamy, being a professor in Physiology, was not considered as part of the teaching staff. He was also present at the time of inspection. Mr. Singhdev explained that since for 200 seats, Petitioner college was found to be compliant, Dr. Venkidusamy was not considered. Irrespective, he ought to have been considered as part of the faculty as he possesses requisite qualifications and experience of a professor.¹⁴ Similar approach was adopted by a coordinate bench of this Court in **M.K. Shah Medical College and Research Centre (Supra)**. Therefore, his inclusion would take the total strength of professors in physiology department to 3. Further, undeniably, excess teaching faculty of higher cadre can

¹⁴ Refer: Teachers Eligibility Qualifications in Medical Institutions Regulations, 2022.

compensate the deficiency in lower cadre of the same department – therefore, dearth of 1 assistant professor stands compensated.¹⁵ NMC's finding in respect of shortage in physiology department has no lawful footing, and cannot be countenanced.

Microbiology Department

19.5. For microbiology department, the inspection report notes as follows:

Department	Designation	Requirement as per MSR (UG)	Additional faculty required for running PG courses (if any)	Total (UG + PG)	Accepted	Deficiency
Microbiology	Professor	1	-	1	3	Extra Professors Compensated for One Associate Professor 2 Assistant Professor on Maternity leave No Deficiency
	Assoc. Prof.	2	-	2	1	
	Asstt. Prof.	3	-	3	4	
	Tutor	4	-	4	6	

19.6. The department-wise chart of faculty and residents annexed with the additional affidavit by NMC mentions availability of 3 professors, 1 associate professor and 2 assistant professors. However, the same is at variance with findings in inspection report in as much as the assessors cite availability of 4 assistant professors and not 2. NMC has disregarded 2 assistant professors who were on maternity leave while ascertaining the deficiencies, which approach, in the opinion of the Court, is contrary to law and outrightly fallacious. No justification is demonstrated to exclude them. The said department is short of 1 associate professor, but the same

¹⁵ Refer: Minimum Requirements for Annual MBBS Admissions Regulations, 2022.

is compensated by extra professors and as such, there is no deficiency.

General Surgery

19.7. In general surgery department, NMC opined that Petitioner college must have 1 professor, 8 associate professors and 15 assistant professors, thus, it is short of 1 assistant professor. In the inspection report, faculty strength for general surgery department is as follows:

Department	Designation	Requirement as per MSR (UG)	Additional faculty required for running PG courses (if any)	Total (UG + PG)	Accepted	Deficiency
General Surgery	Professor	1	-	1	4	Two Extra Professors Compensated for Two Associate Professors No Deficiency
	Assoc. Prof.	6	1	7	5	
	Asstt. Prof.	7	6	13	14	

19.8. It is noted that there are 4 professors in the above-captioned department, against the requirement, as per NMC, of 1 professor. Mr. Maninder Singh had argued that Professor Dr. N. Vijayan, who was present during the inspection, has not been counted; however, examination of the inspection report and attendance sheet reveals that Professor Dr. N. Vijayan has been included in the 4 Professors of said department. Nevertheless, excess of professors in general surgery compensates deficiency of 1 assistant professor, and therefore, no deficiency as per norms is made out.

OTHER DEPARTMENTS

19.9. Mr. Maninder Singh has conceded to deficiency of only 1 associate professor in orthopaedics team of Petitioner college. However, insofar as deficiencies in respiratory medicine, orthopaedics and ophthalmology are concerned, the Court finds no reason to delve further, as after deducting alleged shortage of 6 faculty members in respect of the afore-discussed departments, shortage would come to 8, which falls within relaxation norms.

20. It manifests from the above discussion, that deficiencies in teaching staff of Petitioner college are far less than what NMC has portrayed, and is well within permissible/ relaxation limit of 5%. NMC's assertions, based on MARB's (expert assessors) findings, of deficiency of 6.9% in faculty, is demonstrably misconceived and erroneous. Petitioner college fulfils the criteria for increasing its admission capacity in MBBS course from 150 to 250, as per applicable norms.

21. With respect to residents, although NMC's finding of deficiencies amounting to 3.9% has been disputed by Petitioner college, however, as existing policy permits relaxation of up to 5% deficiency in residents, there is no reason for the Court to venture into the basis of such calculation.

PAUCITY OF EXAMINATION HALLS

22. According to NMC, Petitioner college is required to have 3 examination halls as per law, but only 1 is available. This assertion has no statutory backing and is contradicted by entry A.1.9 of schedule 1 to MBBS

Regulations, 2020 which provides that a separate examination hall is only desirable. The same when read along with the inspection report, which records that Petitioner college has 1 examination hall “*non-gallery type, available with 250 capacity*”, demonstrates that this is not a valid ground to preclude Petitioner college from holding 250 admissions in its MBBS program.

SHORTAGE OF CLINICAL UNITS

23. NMC contends that Petitioner college must have 35 units for 1040 hospital beds, but only 34 units are available. However, as per MBBS Regulations, 2020, for intake of 250 students, requirement is 1030 beds for 37 units. *Qua* total number of hospital beds available at Petitioner college, the inspection team observed as follows:

Department	Ward Nos.	Beds Required *	Total Beds Available	Remarks				
				Nursing Station Y/N	Exam/ Treat Room Y/N	Store Room Y/N	Duty Room Y/N	Demo Room (25 Capacity) Y/N
Gen. Medicine	7	195	240	Y	Y	Y	Y	Y
Pediatrics	4	100	120	Y	Y	Y	Y	Y
Respiratory Medicine	1	20	30	Y	Y	Y	Y	Y
Psychiatry	1	20	30	Y	Y	Y	Y	Y
Dermatology	1	10	30	Y	Y	Y	Y	Y
Gen. Surgery	7	195	240	Y	Y	Y	Y	Y
Orthopedics	4	100	120	Y	Y	Y	Y	Y
Ophthalmology	2	20	30	Y	Y	Y	Y	Y
ENT	2	20	30	Y	Y	Y	Y	Y
OB & GYN	4	120	150	Y	Y	Y	Y	Y
Emergency	1	30	30	Y	Y	Y	Y	Y
Total	34	830	1050					

24. The total number of beds available at Petitioner college are more than what is statutorily mandated for 250 seats *i.e.*, 1050 beds. Considering the same, this made-up deficiency is palpably misconceived and untenable.

25. From the foregoing discussion, it emerges that there is a deliberate effort on the part of NMC to somehow justify its entirely untenable / unsustainable and *ex-facie* arbitrary action of artificially raising deficiency in faculty to 6.9%, which falls outside relaxation limit (*i.e.*, 5%). Respondents' stand is not only incorrect, and flawed, but also depicts arbitrariness on their part. Petitioner college has demonstrated that it fulfils all the requirements for grant of 250 seats, and is entitled for that capacity for the academic year 2022-23.

CONCLUSION AND DIRECTIONS

26. Before issuing final directions for intake of students for academic session 2022-23 as prayed for C.M. APPL. 44265/2022, it would be apposite to address the issue of increase of intake for academic session 2021-22. As noted above, Petitioner college was permitted to undertake 200 admissions for the year 2021-22 by the interim order. The said academic session is over and students are enrolled against 200 sanctioned seats. On a fresh inspection in respect of academic session 2022-23, Petitioner college was found to be compliant for 200 seats. *Vide* communication dated 10th October 2022, NMC has conveyed approval/ permission of MARB for first renewal of admission with increased intake of 50 seats of second batch. In light of the above development, and considering the fact that there can be no increase of seats retrospectively for the academic year 2021-22, it would be a moot exercise to examine the infrastructural and other capacities of Petitioner college for that year *vis-à-vis* deficiencies pointed out in the second appeal order dated 17th March, 2022. In view thereof, the interim order dated 30th

March, 2022 is confirmed and it is held that Petitioner college is entitled to enhance its intake to 200 seats for academic year 2021-22.

27. As regards 2022-23, since the decision of NMC to deny increase in seats is *ex-facie* based on irrelevant considerations and in ignorance of relevant materials, it is a fit case for this Court to exercise its jurisdiction under Article 226 of the Constitution of India, 1950 and issue a writ of mandamus compelling performance of the discretion conferred upon NMC in order to prevent injustice to Petitioners. Since no other impediment has been brought forth, in the facts of the case, directing NMC/ MARB to re-inspect Petitioner college is not required as it fulfils all parameters established under extant regulations. Accordingly, the present petition is allowed with the following directions:

27.1 Impugned orders dated 31st December, 2021, 21st February, 2022 and 17th March, 2022 are set-aside.

27.2 Respondents are directed to permit Petitioner college to take admissions of 250 students in the ongoing counselling of NEET UG 2022 and for that purpose, Respondents shall forthwith issue necessary directions and intimate the order to competent authority/ body of the Government of Tamil Nadu to add 250 seats in its seat matrix.

28. Before parting, it must be noted that to meet the rising need of more qualified doctors to serve country's population, augmentation of medical infrastructure is crucial, and hence, role of regulatory bodies like NMC is unquestionably significant. The authorisation procedure must indeed be strictly adhered to ensure that there is no decline in the quality of medical

education. However, at the same time, deserving colleges must not be unfairly denied the opportunity to contribute in enhancing the strength of medical professionals. In the present case, NMC through its acts of omission and commission, has not only violated the norms laid down under relevant regulations, but also completely disregarded the legislative and policy decisions of the Government by issuance of afore-noted impugned orders. Although Mr. Singhdev has very ably assisted the Court, the attitude exhibited by NMC remains highly questionable. Instead of assisting the Court, the additional affidavit filed pursuant to directions of the Court has presented non-existent deficiencies, based on false and erroneous facts, in an attempt to deny Petitioner college, the relief it is entitled to, under law. NMC must not lose sight of its responsibility to maintain accuracy of facts/information presented to the Court. Having regard to the circumstances noted above, Chairperson of NMC is directed to enquire into the circumstances that have resulted in filing of the additional affidavit with inaccurate facts, and take appropriate action.

29. The present petition is disposed of along with pending application(s).

30. The next date of hearing *i.e.*, 15th November, 2022, stands cancelled

SANJEEV NARULA, J

NOVEMBER 11, 2022

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