

40 21-09-2023
AKG
Ct. 238

WPA 19581 of 2023
Shri Ramkrishna Institute of Medical Sciences & Sanaka
Hospital & Anr.
Vs.
The Union of India & Ors.

Mr. Srijib Chakraborty,
Mr. Rittick Chowdhury,
Mr. Sanjoy Sarkar

...For the Petitioners

Mr. Indranil Roy,
Mr. Sunit Kr. Roy

...For National Medical Commission

Mr. Indrajit Dasgupta,
Ms. Tanusree Ghosh

...for Union of India

Mr. D. N. Maiti,

...for WBUHS

Mr. Somnath Ganguli,
Ms. Priyamvada Singh

...for the State

Petitioner no.1 is a Private Medical College. By filing this writ petition, the writ petitioners sought to introduce reservation for the “Economically Weaker Sections” in the college for the MBBS Course by the increase in a number of seats and to participate in the NEET-UG -2023 counselling conducted by the State. The college applied for the same on December 21, 2022, before the National Medical Commission. Following such application, an inspection was carried out by the National Medical Commission on May 3, 2023. The summary assessment of the said inspection as appearing at page 83 of the writ petition suggests that the college was otherwise found fit for the increase of seats. Subsequently, however, the National Medical

Council by the impugned order dated May 24, 2023, declined to increase the students' strength on the following grounds:

“Further, the request for issue of “Recognition” letter for award of medical degree by the college is considered only after the grant of 5th batch (4th Renewal). In your case, the College has been granted permission for 5th Batch (4th Renewal) during AY 2023-24 and hence in the first instance, college may apply for issue of “Recognition” letter to “Under-Graduate Medical Education Board” of the National Medical Commission after completing the necessary formalities.

In so far as sanctioning of EWS seats to your college is concerned, the Government of India vide letter No. V. 11025/10/2019-MEP dated 29.10.2022 (copy enclosed) has clarified that “..... Apart from Government medical colleges, EWS reservation may be implemented in Government funded Municipal Bodies College and Colleges run by PPP mode.....”. Hence, your request for sanctioning of 50 MBBS seats under EWS quota cannot be acceded to.”

Though the State as well as the West Bengal University of Health Science has supported the case of the petitioner, Mr. Indranil Roy, learned advocate appearing on behalf of the National Medical Commission has vehemently opposed such prayer.

Mr. Roy has submitted that the decision taken by the Medical Assessment and Rating Board is an appealable order in terms of Section 28 (5) of the National Medical Commission Act, 2019. The writ petitioners ought to have availed the alternative remedies as provided under the statute before approaching this Court.

It has been further argued by Mr. Roy that as a matter of policy, the reservation for the “Economically Weaker Sections” has not been introduced in any self-financed or private medical college.

In support of his submission, Mr. Roy has relied on the decision reported at **(2019) SCC Online Del 9479**. Mr. Roy has submitted that various notifications mentioned in the said judgment make it absolutely clear that there is no government order/notification/scheme in place to facilitate “Economically Weaker Sections” quota in a private medical college. He submits that it is not within the domain of the National Medical Commission to introduce any reservation quota. The National Medical Commission is authorised only to consider the prayer for increase in number of seats within the statutory parameters. He has also added that it is open for the State to introduce the said quota within the existing students’ strength of a college.

It has been forcefully argued by Mr. Roy that there cannot be any increase in number of seats without relevant medical college being recognized under Section 35 of the National Medical Commission Act, 2019, and unless, the first batch of students of the college passes out, recognition under Section 35 of the National Medical Commission Act, 2019 cannot be granted.

To substantiate his argument, Mr. Roy has referred to the regulations namely, “The Opening of a New or Higher Course of Study or Training (including Post-graduate 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) Regulations, 2000.” He refers to the “Qualifying Criteria” under Part-II of the said Regulations. The relevant part of the said Regulations read:

“A Medical College/Medical Institution shall be entitled to make an application to increase the admission capacity for MBBS/PG Diploma/PG Degree/Higher Specialty Courses, once the concerned qualification against the sanctioned intake has been granted recognition under section 11 (2) of the Act and included in the First Schedule of the Act.”

Mr. Roy has also placed reliance upon the Regulations namely, Establishment of Medical College Regulations, 1999. He has referred to the following part of the Regulations.

“This process of renewal of permission will continue till such time the establishment of the medical college and expansion of the hospital facilities are complete and a formal recognition of the medical college is granted. Further admissions shall not be made at any stage unless the requirements of the Council are fulfilled. The Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies.”

To refute the argument of the petitioners, Mr. Roy submits that the college namely, Jagannath Gupta Institute of Medical Science was allowed to increase the student intake since the said college was granted recognition under Section 35 of the National Medical Commission Act, 2019 after its first batch of students had completed their MBBS Course.

By referring to the letter No. V. 11025/10/2019-MEP dated 29.10.2022 as mentioned in the impugned order, Mr. Roy has submitted that there is no existing scheme or policy to introduce the “Economically Weaker Sections” quota in a private medical college.

I am of the view that the impugned order dated May 24, 2023, cannot be sustained since a medical college like petitioner no.1 does not require any recognition under Section 35 of the said Act of 2019.

In order to establish a new medical college or for increase of number of seats, permission is required under Section 28 of the National Medical Commission Act, 2019. It is true that unless an institute or a university is recognized under Section 35 of the National Medical Commission Act, 2019, no prayer for an increase of seats can be considered, but an affiliated medical college is never granted recognition under the said section.

A recognition under Section 35 of the National Medical Commission Act, 2019 is granted with regard

to medical qualifications granted by universities or medical institutions of India. The medical institutes or the universities so recognized are listed under Schedule-I of the National Medical Commission Act, 2019.

On the other hand, a medical college, affiliated with these universities or institutes requires permission under the Establishment of Medical College Regulations, 1999 to run a medical college.

The recognition under Section 35 of the National Medical Commission Act, 2019 to a medical institute or a university is separate and distinct from the permission granted to a medical college under the Establishment of Medical College Regulations, 1999. The name of West Bengal University of Health Science has been listed under Schedule-I of the said Act, but no medical colleges affiliated with the said university are listed under Schedule-I.

Given the aforesaid facts, the National Medical Council was not justified in rejecting the prayer of petitioner no.1 for want of its recognition under Section 35 of the said Act of 2019 ignoring the fact that it possesses permission under the Establishment of Medical College Regulations, 1999 to run the college. The said permission is renewable from time to time unless the final-year students of the college complete their course.

To deal with the second issue with regard to the applicability of the reservation policy in a private medical college, it is necessary to take note of the Constitution (One Hundred and Third Amendment) Act, 2019. The relevant part of the said Act is quoted below:

“(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses(4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause(1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent, of the total seats in each category.

Explanation. – For the purposes of this article and article 16, “economically weaker sections” shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.”

A bare reading of the aforesaid provision makes it absolutely clear that the said reservation policy has been extended to unaided or private educational institutes as well.

In fact, a notification dated June 25, 2019, issued by the National Medical Commission explicitly states its intention to extend the reservation policy for the self-finance Medical Colleges. The relevant part of the said letter dated June 25, 2019 reads:

“Sub: Extension of last date for receiving application for Increases of MBBS seats to implement EWS quota – reg.

Madam/ Sir,

This is with reference to Ministry's letter No. U.12012/350/2019-ME-I, dated 24.06.2019 granting approval of the proposal of BoG, MCI to extend the benefit of additional seats under EWS quota to the colleges which are being run by Government controlled Societies, Municipal Bodies, Public Private Partnership and under Self-Financing mode, and these institutions (a) provide reservation of seats for SC/ST/OBC, implement reservation guidelines of State, (b) charge fee fixed by the State Government and (c) also contribute 15% of seats to All India Quota(AIQ).

2. In view of above, it has been decided to extend the date of receiving application for increase of MBBS seats to implement EWS quota to the colleges which are being run by Government controlled societies, municipal bodies, public private partnership and under self financing mode which also follow reservation of seats for SC/ ST / OBC, charge fee fixed by the State Govt. concerned, and also contribute 15% of seats to AIQ, as specified above.”

(emphasis added)

It is irrelevant whether there is any scheme of the Union to implement the said reservation policy. In

my view, the State retains its authority to implement a constitutional mandate for a reservation policy even in the absence of a scheme or notification of the Union.

The stand of the State before this Court is unequivocally in favour of the petitioner. In fact, the State itself forwarded the name of petitioner no.1 for the introduction of the “Economically Weaker Sections” quota.

Therefore, I am of the view, that the judgment referred by Mr. Roy reported at **(2019) SCC Online Del 9479** is not applicable in the facts of this case.

I also accept the contention of Mr. Srijib Chakraborty, learned advocate appearing on behalf of the petitioners that the memo dated October 29, 2022, as mentioned in the impugned order does not deal with the issue of introduction of the said quota in a private medical college. The said notification only clarifies that reservation for the “Economically Weaker Sections” may be introduced in Government funded Municipal Bodies and Colleges run by PPP Mode without imposing the condition of contribution of seats in the All India Quota and Fee Regulations.

I am also of the view that since petitioner no.1 has already been deemed suitable for increasing the number of seats by the National Medical Commission, there cannot be any justification to deny such right on the grounds mentioned in the impugned order.

Admittedly, the said quota has already been introduced in a private medical college of the State namely, Jagannath Gupta Institute of Medical Sciences & Hospital by the National Medical Commission. Petitioner no.1 cannot be discriminated against as a Private Medical College.

In view of the urgency involved, I have entertained this writ petition notwithstanding the alternative remedies available to the petitioners.

Accordingly, this writ petition is allowed with the following directions:

a) The impugned order dated May 24, 2023 appearing at page 83 is set aside.

b) The National Medical Commission shall increase the seats of petitioner no.1 following the application on December 21, 2022, and communicate the same to respondent no. 3 within a period of three days from the date of communication of this order.

c) Respondent no.3 shall immediately thereafter include the name of petitioner no.1 in the seat matrix for ongoing NEET-UG Counselling-2023 conducted by the State.

Accordingly, **WPA 19581 of 2023** is disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)

LATER

After delivering the judgment, Mr. Roy prays for stay of operation of the order, such prayer is considered and rejected.

(Kausik Chanda, J.)