



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14654 OF 2023

Ratnadeep Homoeopathic Medical
College and Hospital
(Previously known as Jamkhed Homeopathic
Medical College)
Through its Authorised Representative / Principal,
Ratnapur, Tq. Jamkhed,
Dist. Ahmednagar, Maharashtra

.. Petitioner

Versus

- 1] Union of India Ministry of Ayush,
Through its Secretary,
GPO Complex, Ayush Bhawan,
B Block, Ina, New Delhi,
Delhi 110 023.
- 2] National Commission for Homeopathy,
Through its Secretary 61-65,
Institutional Area, Opp. 'D' Block,
Janak Puri, New Delhi – 110 058.
- 3] Medical Assessment and Rating Board for
Homoeopathy, National Commission for
Homoeopathy, Through its President,
61-65, Institutional Area, Opp. 'D' Block,
Janak Puri, New Delhi – 110 058
- 4] State Common Entrance Test Cell,
Government of Maharashtra,
Through Commission,
8th Floor, New Excelsior Building,
A.K. Nayak Marg, Fort Near CSMT,
Mumbai – 400 001
- 5] Admissions Regulating Authority,
Government of Maharashtra,
Through its Secretary,
9th Floor, New Excelsior Building,
A.K. Nayak Marg, Fort,
Mumbai – 400 001
Maharashtra, India
- 6] Maharashtra University of Health Sciences,
Through its Registrar,
Mhasrul, Vani Dindori Road,
Nashik – 422 004

.. Respondents

...
Advocate for petitioner : Mr. Animesh Kumar with Mr. D.S. Bagul
DSGI for the respondents 1 to 3 : Mr. A.G. Talhar
Advocate for the respondent no. 4 and 5 : Mr. Sachin V. Kuptekar
Advocate for respondent no. 6 : Mr. A.S. Bayas
...

**CORAM : MANGESH S. PATIL &
NEERAJ P. DHOTE, JJ.**

**RESERVED ON : 05 DECEMBER 2023
PRONOUNCED ON : 15 DECEMBER 2023**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith.

3. Mr. Talhar, DSGI waives service for the respondents 1 to 3 which are the Ministry of Ayush, National Commission for Homoeopathy and Medical Assessment and Rating Board for Homoeopathy (hereinafter '**Rating Board**'), respectively, constituted under the National Commission for Homoeopathy Act, 2020 (hereinafter '**Act of 2020**'). Mr. Sachin V. Kuptekar waives service for respondents 4 and 5 which are the State Common Entrance Test Cell and the Admissions Regulating Authority respectively and Mr. Bayas waives service for respondent no. 6 which is the Maharashtra University of Health Sciences.

4. Petitioner – institution which already runs a Homeopathic Medical College with requisite permission, affiliation and approval, is aggrieved by the decision of the respondent no. 3 – Rating Board

refusing to grant permission and rejecting the scheme to admit students for the first year of the current academic year. The petitioner is also aggrieved by dismissal of its first appeal preferred under sub section 5 of section 29 by the respondent no. 2 – Commission and the second appeal by the respondent no. 1 - Central government, preferred under sub section 6 of section 29.

5. Learned advocate Mr. Animesh Kumar for the petitioner would submit that the college was established in the year 2017 for the BHMS course which was subsequently granted permission to 30 more students since the academic year 2020-21. During the last year pursuant to the direction of the Delhi High Court, it could admit 100 students. For the current academic year, the Board undertook statutory inspection on 19-07-2023 and 20-07-2023. It rejected the scheme on 01-09-2023 without extending any opportunity to comply with the shortcomings. First appeal was preferred on 13-09-2023 but again it was dismissed on 13-10-2023. Second appeal preferred to the respondent no. 1 – Central government on 16-10-2023 was not being heard expeditiously. Since the time was running out, petitioner had approached this Court in writ petition no. 13323 of 2023. In spite of the specific order of this Court on 06-11-2023, whereby the respondent no.1 was directed to decide the second appeal expeditiously and in any case within two weeks. The appeal was not decided promptly and

when the petitioner had taken out an application and obtained circulation, the second appeal was dismissed on 28-11-2023.

6. He would submit that though a drastic decision not to accord permission to a running institution was being taken, no opportunity of either complying with the shortcomings or of being heard was ever extended to it. The decisions have been taken behind the back and suffer from the vice of being arbitrary. He would submit that at every stage, there was delay even when the respondents 1 to 3 were aware about the timeline for the central admission process being undertaken by the respondents 4 and 5, was progressing. They could not be said to be oblivious of this fact and still, the board took about 1-1/2 month for taking the decision. First appellate authority took another month and the respondent no. 1 – second appellate authority took another 44 days to decide the proceedings before them and in the process, they made the petitioner to suffer inasmuch as the entire admission process for the current academic year has finally come to an end on 30-11-2023.

7. He would submit that even if the petitioner has now preferred this writ petition on 29-11-2023, challenging the order passed by the respondents 1 to 3, afore-mentioned facts would enable this Court to exercise the powers under Article 226 of the Constitution of

India to extend the date of admission so that the petitioner would be able to admit the students for the current academic year.

8. He would submit that in spite of specific proviso to sub section 3 of section 29, which expects an opportunity to be extended before disapproving the scheme, the authorities at every stage flouted the provision. Even the provision of regulation 4(5) of MSR (Amendment) of 2019 (hereafter '**Regulation of 2019**') contemplates that the decision of the Central government that the college was not fit to be continued, should be preceded by a reasonable opportunity of being heard. In view of the transitory provision contained in section 59 of the Act of 2020 of this provision of the Regulation 2019 would continue to operate. The objectives of the Act to adopt to the changing needs and to have an effective grievance redressal mechanism has been given a complete go-bye by the respondents 1 to 3. Their conduct is violative of the petitioner's right to practice trade or business and is in violation of Article 19(1)(g) of the Constitution of India and the orders are liable to be quashed and set aside.

9. Mr. Animesh Kumar, apart from the above basic submissions, made strenuous attempts to demonstrate as to how the objections or the shortcomings noticed were not factually sustainable. He requested us even to examine this aspect on facts and adverted our attention to such objective scrutiny of each shortcomings

undertaken by the Supreme Court as well as various High Courts from time to time. He would advert our attention to following decisions :

i) Kanachur Islamic Education Trust (R) Versus Union of India and another (writ petition (C) no. 468 of 2017); (2017) 15 SCC 702

ii) Dr. Jagat Narain Subharti Charitable Trust and another Vs. Union of India and others (writ petition (Civil) no. 513 of 2017; (2017) 16 SCC 666

iii) Shri Gangajali Education Society and Another Vs. Union of India and others (writ petition (civil) no 709 of 2017); (2017) 15 SCC 656

iv) Royal Medical Trust (Registered) and another Vs. Union of India and another with connected appeals; (2015) 10 SCC 19.

v) Shivang Homoeopathic Medical College Vs. Union of India and others (writ petition no. 29237 of 2023) orders dated 23.11.2023 and 28.11.2023 - High Court of Madhya Pradesh at Jabalpur

vi) Veena Vadini Ayurved College and Hospital Vs. Union of India and others (writ petition no. 29227 of 2023) orders dated 23.11.2023 and 28.11.2023 - High Court of Madhya Pradesh at Jabalpur

vii) Pt. Shivshakti Lal Sharma Ayurvedic College and Hospital through its Auth. Representative Vs. Union of India and others (writ petition no. 29602 of 2023) order dated 29.11.2023 - High Court of Madhya Pradesh at Indore

viii) Ayujiyoti Ayurvedic College and Hospital, Jodhpuria, Sirsa Vs. The Union of India and others [Civil writ petition no. 24072 of 2023 (O and M)] - order dated 19.10.2023 - High Court of Punjab and Haryana

ix) National College for Ayurveda and Hospital Barwala, Haryana Vs. Union of India through its Secretary and others [CWP no. 23980 of 2023 (O and M)] - order dated 19.10.2023 – High Court of Punjab and Haryana

x) Ratnadeep Homoeopathic Medical College Vs. Union of India and others (writ petition (C) 127 of 2023) - order dated 06.01.2023 – High Court of Delhi

10. Mr. Animesh Kumar would further submit that apart from the fact that the impugned order suffers from the vice of having been

passed without following the principles of natural justice, even some grounds which did not form basis for the Rating Board have also been subsequently taken into consideration at the appellate stages which they could not have resorted to. He would, therefore, submit that the impugned orders be quashed and set aside and the respondents be directed to permit the petitioner to admit students by extending the time fixed by the respondents 4 and 5 regarding the admission process.

11. The learned DSGI Mr. Talhar as also the learned advocates for the other two respondents, would strongly oppose the petition. They would submit that this Court can only go into the decision making process and cannot undertake sustainability of the objections / shortcomings noticed by the authorities who are empowered to take a conscious decision regarding grant of permission by approving the scheme.

12. In order to appreciate the issue, it would be apt to understand the scheme of the Act.

13. The object is to provide for medical education system that improves the access to quality and affordable medical education and with a view to provide for an effective grievance redressal mechanism in the matters connected with such object and incidental thereto, the Act was passed.

14. Chapter II contains the provisions regarding National Commission for Homoeopathy, its constitution and composition of the Rating Board. It lays down the modalities of appointments of the Chairman and powers and functions of the Rating Board and Commission. Chapter III contains provisions regarding constitution, composition and functions of Advisory Council of Homoeopathy. Chapter IV provides for National Eligibility Cum Entrance Test. Chapter V contains enabling provision for the Central government to constitute three autonomous Boards viz. The Homoeopathy Education Board, Medical Assessment and Rating Board and Board for Ethics and Registration for Homoeopathy. Again it lays down the provisions regarding qualification of the presidents and the members and their term of office and delegation of powers. Section 28 from that chapter lays down the provisions regarding the powers and functions of Medical Assessment and Rating Board of Homoeopathy which is the respondent no. 3 herein. Section 29 lays down the provisions for establishment of new medical institution. Section 30 speaks about criteria for approving or disapproving the scheme. These three provisions are relevant and read as under :

Section 28 - Powers and functions of Medical Assessment and Rating Board for Homoeopathy

(1) The Medical Assessment and Rating Board for Homoeopathy shall perform the following functions, namely:-

(a) determine the process of assessment and rating of medical institutions on the basis of their compliance with the standards laid down by the Homoeopathy Education Board, in accordance with the regulations made under this Act;

(b) grant permission for establishment of a new medical institution or to start any post-graduate course or to increase number of seats, in accordance with the provisions of section 29;

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

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

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

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

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

(f) take such measures, including issuing warning, imposition of monetary penalty, reducing intake or stoppage of admissions and recommending to the Commission for withdrawal of recognition, against a medical institution for its failure to maintain the minimum essential standards specified by the Homoeopathy Education Board, in accordance with the regulations made under this Act.

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

Section 29 - Permission for establishment of new medical institution

(1) No person shall establish a new medical institution or start any post-graduate course or increase number of seats without obtaining prior permission of the Medical Assessment and Rating Board for Homoeopathy.

Explanation.-- For the purpose of this sub-section, the term "person" includes any University or a trust or any other body but does not include the Central Government.

(2) For the purpose of obtaining permission under sub-section (1), a person may submit a scheme to the Medical Assessment and Rating Board for Homoeopathy in such form, containing such particulars, accompanied by such fee, and in such manner, as may be specified by regulations.

(3) While considering the scheme received under sub-section (2), the Medical Assessment and Rating Board for Homoeopathy shall have regard to the standards of education and research, the standards and norms for infrastructure and faculty, the guidelines on setting up of medical institutions and other requirements determined by the Homoeopathy Education Board, and pass an order either approving or disapproving the scheme within six months from the date of receipt of such scheme:

Provided that before disapproving such scheme, an opportunity to rectify the defects, if any, shall be given to the person concerned.

(4) Where a scheme is approved under sub-section (3), such approval shall be the permission under sub-section (1) to establish a new medical institution.

(5) Where a scheme is disapproved under sub-section (3) or where no order is passed within six months of submitting a scheme under sub-section (2), the person concerned may prefer an appeal to the Commission within fifteen days of such disapproval or, as the case may be, after lapse of six months, in such manner as may be specified by regulations.

(6) Where the Commission has disapproved the scheme or no order has been passed within fifteen days from the date of preferring appeal under sub-section (5), the person concerned may prefer a second appeal to the Central Government within seven days of communication of such disapproval or, as the case may be, lapse of specified period of fifteen days.

(7) The Medical Assessment and Rating Board for Homoeopathy may conduct evaluation and assessment of any University or medical institution at any time, either directly or through any other expert, having integrity and experience in medical profession without any prior notice and assess and evaluate the performance, standards and benchmarks of such University or medical institution.

Section 30 - Criteria for approving or disapproving scheme

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

(a) adequacy of infrastructure and financial resources;

(b) whether adequate academic faculty, non-teaching staff and other necessary facilities have been provided to ensure proper functioning of medical institution 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 institutions which are set up in such areas as may be specified by the regulations.

15. A careful reading of these provisions particularly clause b of sub-section 1 of section 28 contemplates grant of permission for establishment of a new medical institution or to start any post graduate course or to increase number of students in accordance with provisions of section 29. As can be gathered, even section 29 for that matter contemplates permission for establishment of new medical institution and prior permission for starting new medical institution or starting of post graduate course or increase in number of students. As per sub-section 3 of section 29, the Rating Board is expected to take a decision having regard to the standards of education and research, the standards and norm for infrastructure and faculty, the guidelines for setting up of medical institution and other requirements determined by

the Homoeopathy Education Board, and is thereafter supposed to pass appropriate order either approving or disapproving the scheme within six months from the date of receipt of such scheme. The proviso to it also contemplates opportunity to be extended to the institute to rectify the defects, if any. Sub-section 4 of section 29 expressly declares that a scheme approved under sub-section 3 shall be the permission contemplated under sub-section 1 for establishment of new medical institution. Sub section 5 of section 29 then proceeds for appeal to the Commission within 15 days of the order of the Board disapproving the scheme. Sub-section 6 of section 29 then provides for a second appeal to the Central government within 7 days of the decision of the claim of disapproval or if the Commission does not decide the appeal within 15 days from the date of preferring the appeal under sub-section 5. Sub-section 7 of section 29 then provides the Rating Board to conduct evaluation and assessment even without missing any prior notice and assess and evaluate. The priorities and standards and the benchmarks of the institution.

16. Section 30 then lays down four criteria to be considered by the Rating Board or the Commission while approving or disapproving the scheme, namely, adequacy of infrastructure and financial resources, faculty, hospital facilities and such other factors as may be prescribed.

17. The proviso to section 30 lays down criteria for granting relaxation to the institution in peculiar cases, with the previous approval of the Central government.

18. It is also necessary to advert to the Regulations of 2019 framed under the Homoeopathy Central Council Act, 1973 which regulations, as rightly submitted by Animesh Kumar would continue to occupy the field by virtue of transitory provision contained in section 59 of the Act *albeit*, it seems that a fresh regulations of 2023 have come into being with effect from September 2023. Be that as it may, the Regulations of 2019 expressly provided in regulation 3 clause 5, that if existing college is fulfilling the requirements by 31-12-2014 as per this regulation, they shall be granted permission to undertake admission for a period not exceeding five years during which the college shall not be inspected except a random check on receipt of some complaints. It also contains provisions regarding conditional permissions etc.

19. The Act as well as Regulations of 2019 also contemplate revocation or cancellation of permission once granted and the Rating Board has been conferred with the powers to undertake inspection and take appropriate steps including issuing the warnings, reducing intake capacity or stoppage of admission or withdrawal of recognition as is contemplated under clause (f) of section 1.

20. Having understood the scheme of the Act and the Regulations, we shall advert to the case in hand. Admittedly, the admission process for the current academic year is over. The time has played its role. Irrespective of the sustainability of the orders under challenge, if all the admissions for the Homoeopathy Medical College happen by following centralized admission process, in our considered view, in exercise of the powers under Article 226 of the Constitution of India, it would not be legal and appropriate for this Court to issue any mandamus to the respondents to undertake any process hereafter and to permit the petitioner to admit the students *de hors* the centralized admission process.

21. True it is, as has been rightly demonstrated by the learned advocate for the petitioner, the practice for seeking permission to take part in the admission process is being followed on the premise that the provisions of section 28 and 29 of the Act and the Regulations of 2019 are applicable. The aims and objectives of the Act is to have an effective grievance redressal mechanism and provides for initial inspection by the Board and approval of the scheme by it. Against its decision, the remedy of first appeal under sub section 5 of section 29 and second appeal under sub section 6 of section 29 is available. There is also an additional provision of undertaking a surprise inspection contained in clause (c) of sub-section 1 of section 28. The basic inspection of the petitioner institution was undertaken by the

respondent no. 3 - Rating Board on 19.07.2023 and 20.07.2023. Respondent no. 3 - Rating Board refused permission on 01.09.2023. Though first appeal was preferred within the statutory time, on 13.09.2023, the Commission decided it after another 30 days i.e. on 13.10.2023. The second appeal was preferred on 16.10.2023 again within the limitation period provided and the respondent no. 1 had to be directed by this Court to decide the appeal expeditiously since time was running out for the petitioner to participate in the centralized admission process. In spite of directions of this Court, the second appeal was decided ultimately on 28.11.2023 i.e. after 44 days of its institution. It is thus apparent that though a mechanism for redressal of the grievance has been provided, if the permission by the institution is expected to be had before admission process starts, one wonders as to how the mechanism being provided by the Act can be said to be an effective one.

22. The Supreme Court in the matter of ***Royal Medical Trust*** (supra) had an occasion to deal with a similar situation. It was a matter under the Indian Medical Council Act, 1956, however, the following observations, in our considered view, with respect, are applicable even to the matter in hand.

31. *MCI and the Central Government have been vested with monitoring powers under Section 10-A and the Regulations. It is expected of these authorities to discharge their functions well within the statutory confines as well as in conformity with the Schedule to the Regulations. If there is inaction on their part or*

non-observance of the time schedule, it is bound to have adverse effect on all concerned. The affidavit filed on behalf of the Union of India shows that though the number of seats had risen, obviously because of permissions granted for establishment of new colleges, because of disapproval of renewal cases the resultant effect was net loss in terms of number of seats available for the academic year. It thus not only caused loss of opportunity to the students community but at the same time caused loss to the society in terms of less number of doctors being available. MCI and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving various stages and time-limits must accommodate every possible eventuality and at the same time must comply with the requirements of observance of natural justice at various levels. In our view the Schedule must ideally take care of:

(A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfill these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfill the basic requirements would be considered at the next stage.

(B) Inspection should then be conducted by the Inspectors of MCI. By very nature such inspection must have an element of surprise. Therefore sufficient time of about three to four months ought to be given to MCI to cause inspection at any time and such inspection should normally be undertaken latest by January. Surprise inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

(C) Intimation of the result or outcome of the inspection would then be communicated. If the infrastructure and facilities are in order, the medical college concerned should be given requisite permission/renewal. However, if there are any deficiencies or shortcomings, MCI must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

(D) If compliance is reported and the applicant states that the deficiencies stand removed, MCI must cause compliance verification. It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of MCI and the Central Government. In cases where actual physical verification is required, MCI and the Central Government must cause such verification before the deadline.

(E) The result of such verification if positive in favour of the medical college concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still persist or had not been removed, the applicant will stand disentitled so far as that academic year is concerned.

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33. The cases in hand show that the Central Government did not choose to extend the time-limits in the Schedule despite being empowered by Note below the Schedule. Though the Central Government apparently felt constrained by the directions in *Priya Gupta v. State of Chhattisgarh*, (2012) 7 SCC 433, it did exercise that power in favour of government medical colleges. The decision of this Court in *Priya Gupta v. State of Chhattisgarh*, (2012) 7 SCC 433 undoubtedly directed that the Schedule to the Regulations must be strictly and scrupulously observed. However, subsequent to that decision, the Regulations stood amended, incorporating a Note empowering the Central Government to modify the stages and time-limits in the Schedule to the Regulations. The effect of similar such empowerment and consequential exercise of power as expected from the Central Government has been considered by this Court in *Priyadarshini Dental College and Hospital v. Union of India*, (2011) 4 SCC 623. The Central Government is thus statutorily empowered to modify the Schedule in respect of class or category of applicants, for reasons to be recorded in writing. Because of subsequent amendment and incorporation of the Note as aforesaid, the matter is now required to be seen in the light of and in accord with *Priyadarshini Dental College and Hospital v. Union of India*, (2011) 4 SCC 623 where similar Note in *pari materia* Regulations was considered by this Court. We therefore hold that the directions in *Priya Gupta v. State of Chhattisgarh*, (2012) 7 SCC 433 must now be understood in the light of such statutory empowerment and we declare that it is open to the Central Government, in terms of the Note, to extend or modify the time-limits in the Schedule to the Regulations. However the deadline, namely, 30th of September for making admissions to the first MBBS course as laid down by this Court in *Medical Council of India v. Madhu Singh*, (2002) 7 SCC 258 and *Mridul Dhar (5) v. Union of India*, (2005) 2 SCC 65 must always be observed.

34. Since the deadline for making admissions was over and there was no formal permission to establish new medical colleges or to increase the intake capacity in respect of existing colleges, applicants in Categories I and II were not considered fit for grant of any interim relief. For the same reasons, no relief can be granted to them. Consequently, the writ petitions and appeals arising from the special leave petitions in Categories I and II

except one arising out of SLP (C) No. 23512 of 2014 are dismissed. The said appeal from SLP (C) No. 23512 of 2014 at the instance of MCI is allowed and the order Vikas Walawalkar v. Union of India, 2014 SCC OnLine Bom 4656, WP (C) No. 7503 of 2014, order dated 13-8-2014 (Bom) passed by the High Court is set aside. No orders are required in Transfer Petition No. 1217 of 2014 and it stands dismissed. The relief granted in respect of those falling in Category III, vide orders dated 18-9-2014 and 25-9-2014 [Hind Charitable Trust Shekhar Hospital (P) Ltd. v. Union of India, (2015) 2 SCC 336 Orders dated 18-9-2014 and 25-9-2014 published together.] is made absolute in terms of those orders and the writ petitions and appeals arising from special leave petitions in Category III stand disposed of in such terms.

35. *MCI and the Central Government are directed to discharge their functions in accord with the Regulations and the statute concerned and in keeping with the observations made hereinabove. All matters stand disposed of in above terms. No order as to costs.*

23. Bearing in mind the fact that the petitioner institution, as observed herein-above was granted initial permission in the year 2017 which was not a conditional one but was expected to seek permission for admitting students for taking part in the centralized admission process, it was expected of the respondents to start that process well in advance so that it would fulfill the avowed objective declared in the preface of the Act of providing for adequate mechanism for redressal of the grievances. The process could start may be about a year or two prior to the admission process for the next academic year so that the Rating Board will have sufficient opportunity to undertake inspection / surprise inspection and the institutions whose schemes have not been approved could resort to the first appeal to the Commission and if necessary, a second appeal to the Central government in which case

even these appellate authorities would get sufficient time to take decision.

24. The present case is an example as to how in spite of such mechanism having been provided, the petitioner has not been able to derive any benefit. As described herein-above, the process itself started as late as on 19.07.2023 and 20-07-2023 therefore one need not be required to delve deep to reach a conclusion that at every moment, the petitioner was losing time, in view of the centralized admission process scheduled by the respondents 4 and 5.

25. It is to be borne in mind that as can be seen from the proviso to sub-section 3 of section 29, the Act contemplates an opportunity to the institution to rectify defects which even possibly could be met with, by an institution before the Commission in the first appeal or the Central government in the second appeal and in turn, even they may have to consider this aspect and undertake objective scrutiny, may be by resorting to a fresh inspection if it is thought fit or is requested by the institution. Therefore, even if this statutory provision is to be followed in letter and spirit, it has the potential of adding to the delays.

26. If such is the scheme of the Act and the Regulations framed thereunder, it was imperative for the respondents to have started the process in advance, for failure of which an irretrievable

situation has occurred wherein the petitioner has not been able to admit the students for the current academic year in spite of the fact that till the last year they were able to do it.

27. Of course, we have our own reasons as to why the petitioner is unable to salvage any ground by simply pointing out the afore-mentioned aspects. Admittedly, in the last academic year i.e. 2022-2023, permission was refused to admit students against 100 seats. Aggrieved thereby, it had filed a similar petition in the High Court of Delhi and was able to secure interim relief and the respondents were directed to permit the petitioner to participate in the admission process which was to commence from 27.12.2022 and was to end on 10.01.2023. The order granting the interim relief was passed on 06.01.2023 in writ petition (civil) no. 127 of 2023 of the High Court of Delhi. It appears that for whatever reason, the writ petition was not subsequently heard on merits and is still pending, as can be noticed, by directing listing the matter on 21.02.2023. Though it is not clear, writ petition (civil) no. 9235 of 2023 was also subsequently filed in the High Court of Delhi. It appears that since the admissions were already granted to the students pursuant to the interim relief in the earlier writ petition still their admissions were perhaps sought to be disturbed and by filing this second petition, the petitioner had obtained interim relief on 21.07.2023 and the admissions were directed not to be disturbed.

28. We are pointing out these facts and circumstances to demonstrate that the petitioner cannot be said to be unscrupulous so that any equities would work in its favour. For whatever reason, in the last academic year, it was able to secure admissions under the interim relief granted by the High Court of Delhi. The matter was for whatever reason kept pending. Faced with a similar rejection / refusal, the petitioner thought it fit to approach this Court when its second appeal was not being decided and then has chosen to file the present petition once it was decided on 28-11-2023. As the present petition was filed on 29.11.2023 and was circulated before us on 30.11.2023 which was the last date in the centralized admission process, instead of granting any relief and in the backdrop of the afore-mentioned circumstances, the matter was fixed for final disposal with the consent of the parties.

29. Bearing in mind the peculiar nature of the issues involved, one wonders how when it is a matter of grant of permission to participate in the admission process and when the Rating Board and the Commission are expected to monitor the standard of education as contemplated in the Act and even refuse permission, the admissions can happen smoothly either without affecting the institution adversely or creating an awkward situation where the students are allowed to be admitted by way of interim relief and successive petitions remain pending. Of course, we do not intend to make any observations in

respect of the petitioner's writ petition pending in the High Court of Delhi. But if it was a similar issue regarding refusal of permission which obviously was on the basis of objective considerations by the Rating Board, the Commission and even the Central government, the petitioner can be allowed to participate in the admission process. Precisely for this reason, we were not inclined to grant any interim relief and have proceeded to decide the matter finally.

30. The conduct of the petitioner, apart from the delays occasioned in the present matter at every stage preceding the order of rejection of the permission, in our considered view, when similar dispute for the previous academic year is still sub-judice before the High Court of Delhi, an independent scrutiny much less objective, of the specific objections raised by the respondents, to refuse permission, could be undertaken.

31. It is trite that in exercise of the powers under Article 226, a High Court should normally be concerned only with the decision making process and is not expected to sit in appeal over the decision of the authorities constituted under the special statutes. It does appear that the Supreme Court in the matter of ***Kanachur Islamic Trust, Dr. Jagat Narain*** and ***Gangajali*** (supra), had undertaken an objective scrutiny of the specific objections raised by the authorities under the Indian Medical Council Act, 1956 read with Establishment of Medical

College Regulations, 1999. In ***Gangajali Education Society***'s matter (supra), the Supreme Court undertook such scrutiny under its power under Article 142 of the Constitution, to do complete justice and in the larger public interest, which powers cannot be exercised under Article 226. For this reason, it would not be legal and appropriate for this Court to go into the factual disputes wherein the authorities have concurrently noted several shortcomings and which the petitioner claims either duly complied with or factually incorrect.

32. Needless to state that it is a matter of grant of permission to an educational institution running a professional course under such special statutes and the regulations framed thereunder, particularly in the health sector and the authorities are expected to bear in mind several aspects so that these institutions maintain expected standard and impart quality education. This Court in exercise of powers under Article 226, being not an expert in the field, would not be in a position to assess importance of each of such objections raised by the respondents. Looked upon singularly, an objection may appear to be trivial, however, if there are other objections like in the present matter, those objections cumulatively may be sufficient for the authorities to reach an objective conclusion that the petitioner - institution has not been able to stand up to the expected standard. This is another reason why in our considered view, we cannot persuade ourselves to accept

the submission of the learned advocate for the petitioner to examine for ourselves, sustainability of each of these objections.

33. The petition is dismissed.

34. Rule stands discharged.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/