

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 27191 of 2024

PKG Medical College & Hospital & anr.

Versus

Union of India & Ors.

For the petitioners

Mr. Saumya Majumder
Mr. Chayan Gupta
Mr. K. De
Mr. D. Basu
Ms. Mohini Majumder
Mr. R. Munshi

For the NMC

Mr. Indranil Ray
Mr. Sunit Kr. Roy

For the WBUHS

Mr. D. N. Maiti
Mr. A. Santra

For the Union of India

Mr. Kumarjyoti Tiwari
Mr. Manabendranath Bandyopadhyay

Heard on : 21.11.2024

Judgment on : 21.11.2024

JAY SENGUPTA, J:

This is an application praying for direction upon the respondent authorities to grant approval to the petitioners for establishment of a new medical college with 100 MBBS seats and for setting aside the orders rejecting such prayer.

A copy of show cause purportedly in terms of Section 28 (3) of the NMC Act, 2019 and a format for scrutiny of assessment report of UG seats prepared after a purported inspection of the college as filed on behalf of the National Medical Commission are taken on record.

Copies of the same are supplied to the learned counsels for the other side.

Learned senior counsel representing the petitioners submits as follows. The petitioners have established a state of the art medical college and hospital in New Town, Kolkata. They had applied for 100 seats for the medical college. The competent authority first rejected the petitioners' prayer. The Appellate Authority have also rejected the petitioners' prayer. A show cause was issued purportedly in terms of Section 28 (3) of the NMC Act even before a full-fledged inspection was done. It referred to only the question of bank guarantee and the number of beds. The petitioners have 430 number of beds while the requirement for having 100 seats in the medical college is to have 420 number of beds. Subsequently, the respondent authorities came up with certain other alleged deficiencies,

which actually did not exist. The petitioners made this clear in their pleadings before the Appellate Authorities. However, the Appellate Authorities did not consider the same. Any inspection at this stage would reveal that all the parameters for running a medical college are satisfied. A special stray round of counselling is to take place from 25 to 29 of this month. Appropriate orders may be passed so that the petitioners can avail of such benefit.

Learned counsel appearing on behalf of the NMC denies the allegations and submits as follows. It is true that the show cause notice that preceded a physical inspection did not mention all the deficiencies. It was only after an inspection was done that the other deficiencies could be found. For instance, sufficient number of faculty members in certain department was not there. The blood bank was not functioning. There was deficiency in the working number of beds and the operation theatres were not working. Admittedly, a building was incomplete. Because of these, the Appellate Authorities confirmed the original order disapproving the petitioners' prayer for certain medical college. Reliance is placed on a decision passed by the Bombay High Court in Writ Petition No. 14629 of 2024. If an inspection is at all to be carried out at any stage, the same has to have an element of surprise in it.

Learned counsel appearing on behalf of the Union of India denies the allegations made in the writ petition and supports the contentions of the NMC.

It appears from the scrutiny of assessment report for the college that there were some alleged inadequacies.

However, it is evident from a plain reading of Section 28 (3), Proviso that before disapproving an application, an opportunity has to be given to cure the deficiencies. The purported show cause notice issued in this regard does not fulfil the criteria as it has been made clear that before disapproval, an opportunity like that has to be given.

The time from now till 25th of this month when the special stray counseling will start is too short to allow the petitioners to avail of such benefit. However, instead of making afresh application, a further inspection and an opportunity in terms of proviso of Section 28 (3) of the NMC Act can remedy the purported wrong.

In view of the above discussions, the original order and the orders passed by the Appellate Authority that did not consider the question of opportunity to remedy the defect in terms of proviso to Section 28 (3) of the NMC Act are, thus, set aside. Let the NMC carry out a surprise inspection with the aid of experts *engaged* by them on a working day at the working hours within one month of the date of communication of this order. The NMC shall make videography of the said inspection, which shall be carried out in presence of a representative of the petitioners. The petitioners shall also be permitted to make a videography of the said inspection. The NMC shall place the report in question before the Medical Assessment and Rating Board, which will decide the issue afresh after taking into consideration the

report and upon hearing the parties in accordance with law and as expeditiously as possible, preferably within one month from the date of communication of the report.

As affidavits were not called for, allegations contained in the writ petition are deemed not to have been admitted.

With these observations, the writ petition is disposed of.

Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta, J)