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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.14629 OF 2024
WITH
INTERIM APPLICATION NO.14526 OF 2024
IN
WRIT PETITION NO.14629 OF 2024**

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Ideal Institute of Medical Science, }
At Post- Poshneri, Taluka- Wada }
District-Palghar, Maharashtra 421 303 }
Through its Dean Dr. Girish A. Karmarkar }.. Petitioner

Vs.

1. The Union of India, }
Through the Secretary, }
Minister for Health and Family Welfare, }
Government of India, Nirman Bhawan, }
New Delhi 110 001. }
2. The National Medical Commission, }
Pocket 14, Sector 8, Dwarka, }
New Delhi 110 075. }.. Respondents

...

Mr. Anil V. Anturkar, Senior Advocate with Mr. Kashish Chelani,
Mr. Prashant V. Malik, Mr. Surendra C. Saple, Mr. Vijay Chauhan,
Mr. Shehzad Pathan, Mr. Paarth Bharadwaj, Mr. Suresh Shetty
i/by Justicorp, Advocates for the petitioner.
Mr. Rui Rodrigues with Mr. Ashutosh Mishra, Advocates for the
respondent no.1-UOI.
Mr. Ganesh K. Gole with Mr. Viraj Shelatkar, Advocates for the
respondent no.2-NMC.

**CORAM: A.S. CHANDURKAR &
RAJESH S. PATIL, JJ.**

DATE: 18th NOVEMBER, 2024

ORAL JUDGMENT: (Per A.S. Chandurkar, J.)

1] Rule. Rule is made returnable forthwith and heard learned counsel for the parties. The challenge raised in this writ petition is to the order dated 30/09/2024 passed by the Ministry of Health and Family Welfare, Government of India thereby dismissing the Second Appeal preferred by the petitioner under Section 28(6) of the National Medical Commission Act, 2019.

2] The petitioner with an intention to start a Medical College with 150 seats in Academic Year 2024-25 undertook the necessary exercise in that regard. On 04/07/2024, the National Medical Commission issued a Letter of Disapproval to the petitioner principally on the ground that though the proposed Institute was seeking permission for 150 seats, it did not have a CT Scan and AERB License. Another ground was that the Confidential Report submitted by three Assessors indicated that the patients shown to have been admitted in IPD & OPD of the Hospital appeared to be fake. The case sheets were blank. Being aggrieved, the petitioner preferred a First Appeal before the Appeal Committee. The Appeal Committee dismissed the said Appeal on 07/08/2024 by stating that there was no merit in the same. It further stated that a formal appeal order would be issued separately. The petitioner preferred a

Second Appeal which came to be dismissed on 30/09/2024. Hence, this writ petition challenging the said orders.

3] Shri Anil Anturkar, the learned Senior Advocate for the petitioner inter alia submitted that in terms of the first proviso to Section 28(3) of the Act of 2019, an opportunity to remove deficiencies ought to have been granted to the petitioner. Such opportunity was not granted. After the Letter of Disapproval was issued on 04/07/2024, the petitioner got information that on account of absence of CT Scan and AERB License, its application was dismissed. If an opportunity would have been given to the petitioner, such deficiencies would have been removed. He further submitted that the Confidential Report relied upon by the National Medical Commission was not supplied to the petitioner. Same has now been supplied along with the affidavit-in-reply filed by the respondents. In absence of any adverse material being supplied to the petitioner, there was no opportunity to meet the same. Further, by referring to the Assessor Guidelines, 2024-25, it was submitted that in the Confidential Report necessary details and adequate evidence ought to have been referred. This was also not done. Hence, on the ground that there was no sufficient opportunity to the petitioner to contest the Letter of Disapproval, great prejudice

had been caused to the petitioner. It is thus prayed that in accordance with the principles of natural justice, appropriate relief be granted to the petitioner.

4] Shri Ganesh Gole, learned counsel appearing for the National Medical Commission – respondent no.2 relied upon the affidavit-in-reply and opposed the writ petition. According to him, a show cause notice dated 04/04/2024 was issued to the petitioner which was duly replied on 30/04/2024. This indicated grant of necessary opportunity to the petitioner before issuance of the Letter of Disapproval. The Confidential Report prepared by three Assessors had been sent to the National Medical Commission for its perusal. Since sufficient opportunity was granted to the petitioner despite which the deficiencies were not removed, the impugned orders did not warrant interference.

5] Having heard the learned counsel for the parties and having perused the documents on record, we find that in terms of the first proviso to Section 28(3) of the Act of 2019, an opportunity to meet deficiencies indicated in the Letter of Disapproval was not granted to the petitioner. The Confidential Report sent by three Assessors was not supplied to it. It is further to be noted that under the

Assessors Guidelines, 2024-25, the Confidential Report ought to contain adequate evidence in support of its conclusion. Prima facie, this requirement does not appear to be satisfied in view of absence of necessary details. Another shortcoming which we have noticed is that though the First Appeal was dismissed on 07/08/2024 with an observation that a formal appeal order would be issued separately, such appeal order has not been produced before us even today. We therefore find that the authorities have not considered the matter in the proper perspective and as required by the relevant statutory provisions. The issuance of the show cause notice dated 04/04/2024 would not be of much consequence as the absence of CT Scan and AERB License was not referred to therein. We are therefore inclined to grant an opportunity to the petitioner to re-agitate its appeal before the National Medical Commission in the first appeal. This would ensure that the case of the petitioner for seeking a Letter of Approval is duly considered.

6] For aforesaid reasons, the order dated 07/08/2024 passed by the first Appellate Authority and the order dated 30/09/2024 passed by the second Appellate Authority are set aside. The proceedings are remitted to the first Appellate Authority which is the Appeal Committee to re-consider the petitioner's appeal in

accordance with law. The petitioner is granted time till 19/11/2024 to place before the First Appellate Authority additional documentary material, if so desired. The First Appellate Authority shall decide the said appeal in accordance with law after giving an opportunity to the petitioner by 26/11/2024. Needless to state that remedies of the petitioner are open in case of any adverse order. Keeping all points on merit open for consideration, the writ petition is allowed in the aforesaid terms. Rule is made absolute with no order as to costs. Interim Application No.14526 of 2024 is disposed of.

7] Parties to act on the authenticated copy of this judgment.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]