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W.P.No.22750 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.09.2023

Pronounced on : 28.03.2024

CORAM : JUSTICE N.SESHASAYEE

W.P.No.22750 of 2022
and WMP.Nos.21789, 21790 & 21791 of 2023

Vels Medical College & Hospital
Under Vels Institute of Science, Technology
& Advanced Studies (VISTAS)
(Deemed to be University)
12/123, Velan Nagar, Manjankaranai Village
Uthukottai Taluk, Tiruvallur District
Tamil Nadu - 601 102.

... Petitioner

Vs.

- 1.Union of India
Rep by its Secretary
Ministry of Health & Family Welfare
Department of Health & Family Welfare
Medical Education - 1
Nirman Bhawan
New Delhi - 110 011.
- 2.National Medical Commission (Admn. Section)
Rep by its Chairman
Pocket 14, Sector 8
Dwarka Phase-I
New Delhi - 110 077.



W.P.No.22750 of 2022

3.The Medical Assessment and Rating Board (MARB)

Rep by its Member / President

National Medical Commission

Pocket 14, Sector 8

Dwarka Phase-I

New Delhi - 110 077.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the entire records relating to the impugned order dated 05.08.2022 in No.V.11013/94/2022-ME-1 (FTS No.8177284) of the first respondent and quash the same.

For Petitioner : Mr.N.Muralikumaran, Senior Advocate
Assisted by Mr.R.Gopinath
of M/s.McGan Law Firm

For Respondents : Mr.AR.L.Sundaresan
Additional Solicitor General
Assisted by Mr.K.Ramanamoorthy
Central Government Counsel for R1

Ms.Shubharanjani Ananth for R2, R3

ORDER

The petitioner herein is a deemed university and challenges in this case the proceedings of the Ministry of Health and Family Welfare, Government of India dated 05.08.2022, by which it confirmed the proceedings of the National Medical Commission (hereinafter the NMC) dated 27.06.2022, reducing the number of seats for M.B.B.S. Course in the petitioner-college



from 150 to 100.

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2.1 The relevant facts and circumstances that led to the institution of this petition are stated below:

(a) On 22.11.2020, the petitioner applied to the Medical Assessment and Rating Board (MARB), the third respondent herein, for commencing a medical under graduate course (M.B.B.S). On 23.08.2021, MARB conducted a surprise inspection to ascertain the infrastructure facility and other requirements for commencing the medical course. On 13.10.2021, permission was accorded by the MARB for commencing a medical course with a total strength of 150 students for and from the academic year 2021 – 2022 and communicated it through its Letter of Permission.

(b) Owing to Covid Wave II, admission for the academic year 2021-2022 itself took place only in February, 2022. While so, after about a month, on 30.03.2022 to be precise, MARB conducted a second surprise inspection. This time it had listed few deficiencies or inadequacies in the petitioner's institution. As required, MARB prepared a report on the same day. According to the petitioner, in terms of the Assessor's Guide for UG Assessment for the year



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W.P.No.22750 of 2022

2021 - 2022, as has been provided for, the Dean of the college made his remarks in defence of the allegation made by MARB in its report.

(c) On 13.04.2022, MARB issued a show-cause notice based on the report earlier mentioned, and this was responded to by the petitioner vide its explanation dated 29.04.2022, accompanied by a 195 page annexure in defence of the allegations made in the show cause notice.

(d) This was followed by a proceedings of the MARB, dated, 30.05.2022, where under it reduced the number of seats allotted to the petitioner-college from 150 to 100 for the academic year 2021-2022 (very obviously after the competition of the admission process for the said academic year).

(e) The aforesaid proceedings of the MARB, dated 30.05.2022 is literally a non-speaking order in that it did not take into consideration either the specific remarks made by the Dean of the college on the report prepared on the date of the second inspection of the MARB, nor the Inspection Report of the MARB dated 30.03.2022, nor has it taken into account the explanation and the annexures provided by the petitioner vide its communication dated



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W.P.No.22750 of 2022

29.04.2022. Hence the petitioner challenged this proceedings of MARB under Section 22(3) of the National Medical Commission Act, before the 2nd respondent herein.

(f) The NMC, vide its order dated, 27.06.2022, confirmed the proceedings of MARB. The critical ground that had guided the NMC to its decision is the finding of the MARB that the bed occupancy was a bare 7.93% as against the minimum requirement of 60% besides 31% deficiency in the faculty strength and 51% in the residents. The petitioner preferred a second appeal to the Government (the first respondent) under Sec.22 of the NMC Act, and on 05.08.2022 the second appeal came to be dismissed after afforded an opportunity to hearing to the petitioner. This order of the first respondent is now under challenge in this writ petition.

(g) The present petition was filed on 24.08.2022. On 26.08.2022, this Court passed an interim Order in WMP 21789 of 2022 had enjoined the respondents from disturbing the interest of 50 students, whose fate hanged in uncertainty in view of the order reducing the number of seats from 150 to 100 as described hereinabove.



2.2 While the material facts necessary for deciding this case concludes here, to complete the narration, facts that relate to the subsequent academic years may now be stated:

- a) For the academic year 2022-2023, the petitioner made a fresh application for renewal of permission for admitting 150 students.
- b) On 07.09.2022 and 08.09.2022, MARB caused another surprise inspection and found the deficiencies that it had earlier found to continue and issued a show cause notice on the petitioner. These proceedings ended in a proceeding of the NMC under which the petitioner was granted permission to admit 100 students. The petitioner thereafter approached the NMC again for increasing the students strength from the sanctioned 100 to 150. Thereafter the MARB in its web portal notified the increase in student strength from 100 to 150 for the academic year 2022-2023.
- c) For the academic year 2023-2024, the petitioner again approached the MARB for permission for admitting 150 students. However, the MARB instead of acting on this request, had issued a notice dated 03.07.2023, requiring the petitioner to show cause why it admitted 150 students as against the sanctioned strength of 100 for the academic year 2022-2023. This was explained by reiterating the



W.P.No.22750 of 2022

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facts hereinabove stated. However, the MARB issued its proceedings dated 14.07.2023 not to grant permission for admitting any students for the academic year 2023-2024. The petitioner would then prefer a representation dated 18.07.2023 to the NMC to reconsider the same. Later the petitioner chose to prefer an appeal challenging the very order before the Government, the first respondent herein. On 10.08.2023, the first respondent returned the appeal and directed the petitioner to prefer the same before the NMC as per the relevant provisions of the NMC Act. This order of return of appeal was challenged by the petitioner in W.P.24671 of 2023. On 21.08.2023, a learned single Judge of this Court directed the NMC to enquire into the representation of the petitioner dated 18.07.2023 and disposed of W.P.24671 of 2023. And, the NMC began its enquiry on the same in terms of the direction given by this court. In view of this development, on 30.08.2023, the petitioner also withdrew W.P.22352 of 2023.

- d) Turning to the first appeal preferred by the petitioner before NMC, the latter vide its proceedings dated 01.09.2023, withdrew the proceedings of the MARB dated 14.07.2023 and restored the earlier order enabling the petitioner to admit 100 students for the academic



W.P.No.22750 of 2022

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year 2023.2024. This was challenged in a second appeal preferred by the petitioner before the Government. The petitioner followed it up with W.P 26749 of 2023 for directing the Government to dispose of the second appeal pending before it vis-a-vis the admission for the academic year 2023-2024. This was disposed of by this Court vide its order dated 11.09.2023 and it further directed the petitioner not to admit more than 100 students for the academic year 2023-2024 till the second appeal was disposed of by the first respondent.

e) This now leaves the first instituted petition, viz., the present petition alone for consideration.

3. The core issue that is required to be addressed in this proceedings however, is the legality of the proceedings of the first respondent dated 05.08.2022, reducing the seats from 150 to 100 for the academic year 2021-2022. Respondents 2 and 3 have filed their counter, and the essence of their contentions are summarised below:

- The scheme of the NMC Act, 2019 and Secs.26 and 28 of the Act permits the Respondents to take all such steps as are necessary to maintain the high standards of medical education in the country. The students admitted in the petitioner Medical College for the academic



year 2021-22, can never have sub-standard medical education.

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Section 38 of the Act, empowers the MARB to recommend to the NMC to withdraw the recognition of medical colleges that fails to reach the norms fixed.

- The MCI (the predecessor entity prior to the advent of the NMC) in discharge of its statutory obligations towards maintenance of highest standards in medical education in the country, by virtue of provisions of Sec. 33 of the Act, had been empowered to frame regulations with the prior approval of the Central Government for laying down minimum standards of infrastructure, teaching, and other requirements for conduct of courses in medicine. It is settled law that in case of any conflict between the MCI Act/ Regulations and any state rule/ regulation, the MCI Act/ Regulations shall prevail.
- Owing to the complaints received by the Respondents against the Petitioner medical college alleging that the latter has engaged fake faculty for the purpose of physical assessments and that it has poor infrastructure facilities besides very low clinical material and number of patients, MARB was constrained to conduct a surprise physical assessment on 30-03-2022, u/s 26 (1) (a) (b) and (2) and sec 61(2) of the NMC Act, 2019. Even if any college has been found to be



W.P.No.22750 of 2022

WEB COPY

compliant in earlier inspection, there is always a possibility that the college may be found to be deficient in the subsequent inspections.

The deficiencies mentioned in the inspection report makes it evident that the petitioner is incapable of running a medical college for imparting quality medical education.

- In their decisions respectively of MARB dated 30-05-2022, and the NMC dated 27-06-2022, it is explained that it was essentially due to gross deficiencies as noted persisted in the petitioner College, the number of seats were reduced from 150 to 100.
- The impugned decision has been taken by the MARB, after detailed consideration of the assessment report as well as explanation furnished by the Petitioner medical college.
- A mere perusal of the impugned decision of the Respondent no.1, clearly discloses that the college has been heard in detail and the submission of the college was appropriately considered by the first respondent.

Arguments for the Petitioner:

4. The learned senior counsel appearing for the petitioner made a solitary point in defence of his case. He submitted:



W.P.No.22750 of 2022

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a) When the second surprise inspection took place on 30.03.2022 and an inspection report was prepared in terms of the Assessor's Guidelines for UG Assessment for 2021 - 2022, the Dean had recorded his objection in the very report in terms of the guidelines. In terms of the Assessor's guide, an enquiry is contemplated if the Dean had made any remark in defence of the allegation made in that report. This apart, to the show-cause notice dated 13.04.2022, the petitioner had presented an elaborate explanation along with very many annexures running to about 195 pages, but not once either by MARB at the first stage, or by the NMC at the second stage, or by the Government at the final stage, had considered the case of the petitioner in defence of the report of the MARB, dated 30.03.2022. Even though, NMC had granted a right of hearing during the first-appellate stage, it did disclose that it had considered the explanations given by the petitioner, nor did it discuss why the petitioner's defence was not tenable. Cumulatively it affects the quality of the proceedings of the NMC, and this approach is seen replicated by the Government since even it did not the consider petitioner's defence as worthy of discussion.

b) Developing his argument, the learned counsel argued that MARB



W.P.No.22750 of 2022

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does not have any authority to speak of de-recognition, and under

Section 26(f) of the National Medical Commission Act, 2019, MARB *inter alia* can only recommend for de-recognition to the National Medical Commission. However, it is vested with the power to '*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 any medical institution for failure to maintain minimum essential standards. This power, however, cannot be exercised arbitrarily. So far as the present case is concerned, there was a first surprise inspection followed by grant of recognition, followed by admission of 150 students, and within about a month thereof the second surprise inspection took place. The second surprise inspection is separated from the first surprise inspection barely by four months.

It is not stated within this four months what is that which had necessitated MARB to pass its order dated 30.05.2022, over looking the remarks offered by the Dean. It is hence a right of hearing is mandatory. As earlier stated, notwithstanding the jottings of the Dean, and notwithstanding the long representation given by the petitioner, it was not given an opportunity. Placing reliance on the observation of



W.P.No.22750 of 2022

the Hon'ble Supreme Court in ***Priyadarshini Dental Collge and Hospital Vs Union of India and others*** [(2011) 4 SCC 623], where

the Hon'ble Supreme Court has held as follows:

"23.....Refusal of renewal of permission in such cases should not be abrupt nor for insignificant or technical violations. Nor should such applications be dealt in a casual manner, by either granting less than a week for setting right the "deficiencies" or not granting an effective hearing before refusal. The entire process of verification and inspection relating to renewal of permission, should be done well in time so that such existing colleges have adequate and reasonable time to set right the deficiencies or offer explanations to the four years, is to ensure that the infrastructural and faculty requirements are fulfilled in a gradual manner, and not to cause disruption."

Now the MARB has precisely done what the Hon'ble Supreme Court has required the erstwhile Medical Council of India not to do.

- c) This apart, at the relevant time, there were no regulations framed under the Act as has been provided for under Section 57(2) of the National Medical Commission Act, 2019 titled *"Establishment of New Medical Institutions, Starting of New Medical Courses, Increase of Seats for Existing Courses & assessment and Rating Regulations, 2023"* (in short the *Regulations, 2023*). These regulations were



W.P.No.22750 of 2022

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framed only on 02.06.2023. The relevant regulations are Regulations 30 and 31. In terms of the proviso to Regulation 31, it is required of the authorities constituted under the NMC Act that the medical institution should be granted reasonable opportunity to rectify the deficiencies, and any further action can be taken only if it fails to meet the requisite norms. Now even though these regulations are notified almost a year after the impugned proceedings of the MARB dated 30.05.2022, these regulations in essence capture the intent of the observation of the Hon'ble Supreme Court in ***Priyadarshini Dental College case***.

- d) What is significant in the context is that the petitioner ought to have been granted (i) a full and effective opportunity of being heard, and (ii) if MARB was not satisfied with the explanation given, then it should have been given time to rectify whatever deficiencies are highlighted. Neither was done, nor the defence met, contended the learned senior counsel. And, when the matter reached NMC, very unfortunately, it repeated what MARG had omitted to do. Reliance was also placed on the decision of the Hon'ble Supreme Court in ***Royal Medical Trust Vs Union of India*** [(2015) 10 SCC 19].



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(b) Arguments for the Respondents:

5.1 Since the first respondent had only confirmed by the proceedings of the second respondent, for narrative convenience, and for a sequential appreciation, this court deems it appropriate to record the arguments of the learned counsel for respondents 2 and 3 and the arguments of the learned Additional Solicitor General. made the following submissions:

- (a) For establishing the medical college, the petitioner had obtained an 'Essentiality Certificate' from the Government of Tamil Nadu dated 27.11.2020. It is one of the preliminary criteria required to be completed for the NMC to consider an application for grant of approval for establishment of a medical college in terms of Section 28 of the NMC Act, to be read with the Minimum Requirements for Annual MBBS Admission Regulations, 2020. This was preceded by a surprise inspection as contemplated under the provisions of the Act on 23.08.2021. Thereafter, on 30.10.2021, the NMC had issued a letter of permission for establishing the medical college and to commence the undergraduate programme in medicine with 150 seats in terms of Section 26(1)(ab) and 28(2) of the NMC Act, 2019. This proceedings granting a letter of permission has a rider attached to it,



and it reads as below:

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*"We are further directed to inform that you and your institution is fully responsible to fulfill and maintain norms including the infrastructure both physical and human resource, teaching faculty and clinical material, etc. throughout the academic year, as stipulated in Regulation of National Medical Commission (NMC). **In case false/wrong declaration or fabricated documents have been used for procuring permission of the MARB and the said misconduct is brought to the notice of National Medical Commission (NMC) or found during surprise assessment at any stage during the current academic year, Your institution is liable, not to be considered for recognition of the degree. This letter of permission will be revoked for the current academic year in such exigency arise.** Besides, National Medical Commission (NMC) is entitled to take all such measure against you and your college/institution as permissible under the law."*

This implies MARB has reserved to itself the right to revoke the permission granted in the eventuality of the petitioner breaching or found to be deficient in any of the parameters which are required to be in place for sustaining the letter of permission.

(b) Pursuant to this, the petitioner established its college and admitted 150 students. The MARB would now go for another surprise inspection following complaints it received vis-a-vis the compliance



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of conditions stipulated for grant of Letter of Permission for which it has every authority under the statute. This was on 30.03.2022. It is true in its report, the Dean of the college has jotted down certain remarks vis-a-vis certain aspects of deficiencies observed by the Assessors.

(c) The inspection dated 30.03.2022 resulted in MARB issuing a show-cause notice dated 13.04.2022 wherein, it lists as many as 19 deficiencies observed by the Assessors, and they are:

(a) *"Faculty deficiency found to be 31.48%. 02 Assistant Professors in Anatomy, 01 Assistant Professor in Physiology, 01 Assistant Professor in Biochemistry, 02 Associate Professors, 02 Assistant Professors in General Medicine, 01 Assistant Professor in Respiratory Medicine, 02 Assistant Professors in General Surgery, 01 Assistant Professor in Eye, 01 Assistant Professor in Obstetrics, 01 Assistant Professor in Anaesthesia, 01 Associate Professor in Radio-Diagnosis, 01 Assistant Professor in Dentistry and 01 Assistant Professor in Emergency Medicine.*

(b) *Resident deficiency found to be 53.48% - 01 Resident/Tutor in Anatomy, 01 Resident/Tutor in Physiology, -1 Resident/Tutor in Forensic Medicine, 02 Resident/Tutor in General Medicine, 02 Resident/Tutor in Psychiatry, 03 Resident/Tutor in General Surgery, 02 Resident/Tutor in Obstetrics, 02 Resident/Tutor in Anaesthesiology, 02 Resident/Tutor in Radiology, 01*



Resident/Tutor in Dentistry and 06 Resident/Tutor in Emergency Medicine.

- (c) Laboratory facilities in anatomy, physiology and bio-chemistry are not available. Laboratories and lecture theatres are not satisfactory.*
- (d) In Forensic Medicine, there is no Autopsy Block, departmental library and cold storage.*
- (e) The Laboratory facilities in anatomy including dissection hall and museum, physiology and bio-chemistry laboratories are not available and don't have furniture, microscopes and audio visual aids.*
- (f) Equipment, furniture audio-visual are not available*
- (g) Hostels for students, residents, nurses are not available*
- (h) Hospital has 290 beds against the requirement of 330 to start a medical college. The beds are not distributed to the different departments as per the requirements of a medical college. Number of 17 beds are occupies in medicine and allied branches against requirement of 110. Surgery and allied share common ward were 06 out of 90. Obstetrics and Gynaecology wards are under construction.*
- (i) Out-patients were registered 767 on the day of assessment. Bed occupancy was 7.93% as per requirement of 60%, which is grossly inadequate for teaching PG students. Beds are grossly deficient in ICU, ICCU, NICU, PICU and SICU. All beds are vacant.*
- (j) Number of 01 major, 00 minor, 00 normal delivery and 00 caesarean sections being performed on the day of assessment. No delivery being made since August, 2021. Clinical*



W.P.No.22750 of 2022

investigation are not recorded in Pathology, Histopathology and Cytopathology on the day of assessment.

- (k) Nursing, technical staff and para-medical staff are inadequate.*
- (l) Central library is under renovations without furniture, books are not available and computer terminus are not available. Indian and foreign journals are not available in the hospital.*
- (m) Deficiency of examination hall. There is no separate examination hall available.*
- (n) Equipped and lifesaving equipment like central suction, central oxygen, pulse oximeter, crash cart, ambubag are not available.*
- (o) Major and minor operation theatres were inadequate. Operation theatre are ill equipped with one Boyle's machine for the entire operation theatre complex and not having emergency and lifesaving equipment.*
- (p) In Radiology, 01 Mobile X-ray machine is deficient.*
- (q) Lecture theatres having small screen and there is no speakers in lecture theatre.*
- (r) Website was not developed, Sworn affidavit was not submitted.*
- (s) There was a deficiency of faculty, residents and buildings and infrastructure, they may be fulfilled and inform the National Medical Commission before 30th April, 2022.*

Of them, the critical aspect that requires to be highlighted relates to the faculty-deficiency to an extent of 31.48% and resident-deficiency to an extent of 53.48% among various other things. Now, if this is compared with the remark of the Dean jotted down in the Inspection Report of the Assessors, he had very conveniently omitted to address



W.P.No.22750 of 2022

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them: Therefore, it is wrong to contend that when the final decision

was taken by MARB, it did not consider the remarks of the Dean.

After all, in terms of the letter of permission granted by MARB on 13.10.2021, it has made known to the petitioner that any breach, even a solitary breach, will entitle MARB to intervene to revoke the permission granted.

(d) Turning to the allegation that before passing its proceedings dated 30.05.2022, petitioner was not given an opportunity of being heard or that MARB has not considered the explanations offered by the petitioner is concerned, this has been very elaborately addressed by MARB in its proceedings dated 30.05.2022. Indeed, MARB has taken a very balanced view, since it wants to ensure that certain investments which petitioner has made for establishing the college do not go entirely wasted, and that the students, who having been admitted, are not left in lurch. Therefore, it has brought down the total strength from 150 to 100 to ensure that the total student-strength reasonably matches the available infrastructure facility which the petitioner had complied at that relevant point of time. Reliance was placed on the ratio of the Hon'ble Supreme Court in *Manohar Lal Sharma Vs Medical Council of India and Others* [(2013) 10 SCC 60].



W.P.No.22750 of 2022

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(e) The petitioner would then prefer a first appeal to National Medical Council and NMC in its proceedings dated 27.06.2022 and it confirmed the proceedings of the MARB dated 30.05.2022 and directed the petitioner to meet the deficiencies indicated. Petitioner would now prefer a second appeal to the Government. The second appellate authority, namely the Government of India vide its proceedings dated 05.08.2022 confirmed the same.

(f) So far as the allegation that the Dean's remarks on the inspection report is not considered is concerned, the Dean's report essentially run tangentially to the major reasons listed which eventually led to the passing of the proceedings which is now impugned. For, instance, Dean's report is silent on the faculty-deficiency. Can this silence be taken as an admission by the Dean?

(g) The next allegation is that the 195 page representation of the petitioner to the show cause notice was not considered by MARB or the NMC and the Government. If the notice dated 03.07.2022 is considered it required the petitioner to show cause why the Letter of Permission enabling it to admit 150 students itself be withdrawn. And, because the representation of the petitioner was considered, a decision was made to reduce the total strength from 150 to 100 for the



W.P.No.22750 of 2022

WEB COPY

academic year 2021-2022. Today, the petitioner cannot use the 50 students whose admission became questionable as a shield to legitimise his defaults. Indeed in the interim order passed by this Court, it is underscored that '*no equities shall be claimed*'.

- (h) This Court may not engage in the judicial review of the Assessor's Report (MARB) since the Supreme Court has not been enthusiastic about Court interfering with the report prepared by the specialists. Reliance was placed on ***MCI Vs Kalinga Institute of Medical Sciences (KIMS) & Others*** [(2016) 11 SCC 530]
- (i) The allegation that MARB has no power to withdraw recognition and that it vests only with NMC is concerned, MARB has not withdrawn the recognition and has only modified the earlier permission it had granted and reduced the intake of students from 150 to 100.
- (j) The contention that until the Regulation of 2023 was framed, there was no regulation in place during the transition from MCI Act to NMC Act. Under Sec. 61(2) of the Act, the Regulations framed by the erstwhile MCI were saved. And the new Regulations are only prospective in nature. The petitioner has not pointed out any specific provision in any of the Regulations that were in force at the relevant time which according to it was violated.



W.P.No.22750 of 2022

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(k) The petitioner contends that it should have been granted an opportunity to rectify the defects not provided. In terms of Proviso to Section 28(2) of the Act, opportunity to rectify any shortcoming can be afforded only before grant of approval for establishing a college and not thereafter. In ***Kalinga Institute case*** [(2016) 11 SCC 530], the respondent before the Court was denied permission to establish a medical college. Here is a scenario where permission to commence a medical college had been granted, but is one where the petitioner brought about certain situation upon itself due to its default.

(l) The petitioner's general conduct in this regard cannot be overlooked. It is in a default mode to breach the norms which are mandated for running a medical college. It defied the directions of the respondents even in the next academic years. It makes evident that the conduct of the petitioner subsequent to the filing of this petition does not indicate that he has any respect for the rule of law. When the petitioner knew only too well that it has permission only to admit 100 students and also the circumstances in which 150 students were brought down to 100 students, in all fairness petitioner should have limited its admission to 100 students for the subsequent academic years, but it



did not.

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5.2 Appearing for the first respondent, the learned Additional Solicitor General made the following submissions :

- (a) The Government as the second appellate authority constituted under the NMC, has given its cogent reasons why it accepted the findings and decisions of the first appellate authority. the authorities under the NMC Act (formerly MCI Act) were essentially discharging the administrative functions and not any quasi-judicial functions, hence he could complain about breach of principles of natural justice is not contemplated. Reliance was placed on the ratio in ***Manohar Lal Sharma Vs Medical Council of India and Others*** [(2013) 10 SCC 60].
- (b) Turning to the allegation of the petitioner that the time for rectification has not been granted to it in terms of the regulations, this is intended for rectifying that which is already existing and it is not created for one that never existed.
- (c) In matters such as this, the Court in exercise of his jurisdiction under Article 226 of the Constitution is not required to meticulously analyse the reasons of the first appellate authority or



W.P.No.22750 of 2022

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any of the authorities constituted under the Act, as it is not sitting

in an appeal, but it is only sitting in the judicial review of administrative action. Reliance was placed in paragraph Nos.21, 22, 23 & 24 of the ratio in *Medical Council of India Vs Kalinga Institute of Medical Sciences (KIMS) and Others* [(2016) 11 SCC 530].

Discussion & Decision

6. The pleadings and arguments are long drawn, but the core issue is far too familiar to this Court: that the petitioner was denied a right of hearing to explain its case in response to the show cause notice issued by MARB at stage-1, or at any time before the first and second appeals were disposed of respectively by the NMC, the 2nd respondent and the Government, the 1st respondent. There are two aspects to it. The first relates to the extent to which the right of hearing must be extended, and the second is what needs to be done if the impugned proceedings are unassailable on its merit even if the kind of hearing the denial of which the petitioner complains of has not been granted. This outlines the scope of judicial review in this case.



7. In ***Medical Council of India Vs Kalinga Institute of Medical Sciences***

(KIMS) and Others [(2016) 11 SCC 530], the Hon'ble Supreme Court has emphatically declared that it is '*not within the domain of the High Court in exercise of its jurisdiction under Article 226 of the Constitution*' to interfere with the Assessor's Report (otherwise known as inspection report of the MARB). The inspection team that holds the inspection is constituted of doctors of considerable experience including in the field of medical education and of impeccable integrity, and unless it is established beyond doubt that they are all of doubtful integrity, it is necessary to accept the report they have made. It needs to be borne in mind that in judicial review of administrative action, this court may not have the expertise to interfere with any report that experts in a field prepare. It is hence in the Hon'ble Supreme Court in ***Kalinga Institute case*** has observed:

"24. Medical education must be taken very seriously and when an expert body certifies that the facilities in a medical college are inadequate, the courts are not equipped to take a different view in the matter except for very cogent jurisdictional reasons such as malafides of the Inspection Team, ex facie perversity in the inspection report, jurisdictional error on the part of MCI, etc. Under no circumstance should the High Court examine the report as an appellate body - this is simply not the function of the



W.P.No.22750 of 2022

High Court." (emphasis supplied)

This is a basic premise based on which other aspects may have to be considered. Turning to the allegation of breach of principles of natural justice is concerned, it is not the case of the petitioner that the third respondent had passed its order without giving it an opportunity to show cause of its intended action. The show cause notice dated 13.04.2022 indeed has been issued to the petitioner and the petitioner admits it. It also claims that it had filed its 195 page explanation to it. Here, it is required to be stated that right of hearing does not necessarily imply that there ought to be a personal hearing. It all implies that a person whose right is likely to be affected by an intended action is heard before the action is taken. Here the dictum of the Hon'ble Supreme Court in ***Manohar Lal Sharma Vs Medical Council of India and Others*** [(2013) 10 SCC 60] is apposite and it is as under:

*"25. MCI, while deciding to grant permission or not to grant permission, is not functioning as a quasi-judicial authority, but only as an administrative authority. **Rigid rules of natural justice are, therefore, not contemplated or envisaged.**"*

Now inasmuch as the petitioner had offered his explanations, the duty to hear him must have to be considered as concluded.



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8. The other question is that could affording a personal hearing have changed the decision now impugned in this case? In the show cause notice dated 13.04.2022, MARB has listed as many as 20 deficiencies or shortcomings. These deficiencies have obviously emanated from the Assessor report prepared pursuant to the inspection held on 30.03.2022. If this Court cannot go into the merit of the Assessor report when the assessing team's integrity is not proved to be suspicious, then the list of deficiencies pointed in the show cause notice necessarily have to be accepted. Nowhere in the course of his arguments, the counsel for the petitioner brought to the notice of the Court any specific portion of its explanation where it has pointedly addressed the stated deficiencies, more significantly the appalling deficiency in faculty - strength, bed occupancy, bed distribution among various departments. Therefore, what purpose would it have served even if the right of personal hearing was granted to the petitioner? It is necessary to notice the decision of the Supreme Court in ***Dharampal Satyapal Ltd. v. CCE*** [(2015) 8 SCC 519], wherein it was observed thus:

“47. In Escorts Farms Ltd. Vs Commr. [(2004) 4 SCC 281] , this Court, while reiterating the position that rules of natural justice are to be followed for doing substantial justice, held that, at the



same time, it would be of no use if it amounts to completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. It was so explained in the following terms :
(SCC pp. 309-10, para 64)

“64.Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India.”

9. The petitioner knew its obligations and at all times ought to have known



W.P.No.22750 of 2022

its obligation that complying with the mandatory norms for establishing and running a medical college is not a cosmetic exercise to provide a pleasing appearance to the Assessors of the MARB, but is an uncompromisable duty, not merely to the NMC or its authorities, but to the society. It is an undeniable aspect of Constitutional experience in this country that education has become an industry and that most private educational institutions have trimmed their attitude along commercial lines. This Court does not intend to state its opinion on the perceptual differences pertaining to the ethicality of converting education into an enterprise. It merely recognises the existence of this state of affairs. That however, does not imply that this Court should slip into *vipasana* to be a passive observer or to anaesthetise its consciousness and conscience to provide impetus to breach of the rule of law. Silence can never be a virtue when there is a duty to speak, and this Court realises its duty to act. When educational institutions such as the petitioner consciously bend the rules and attempt to adulterate education with their brand of mediocrity, Courts of law has an immediate duty to check such anti-societal temptations. After all, substandard medical institutions can hardly produce physicians of superior quality. The norms are prescribed for establishing and running medical colleges for the preservation and sustenance of the quality of education that



students obtain on their road to serve the society later. A wilful defaulter that the petitioner is, it now attempts to gloss over the same by taking umbrage behind the alleged breach of principles of natural justice. Indeed, the petitioner's reliance on the alleged violation of principles of natural justice is perhaps the weakest link in its case, but it has made this allegation its foundational fact for providing a cause for its present action. This Court is hardly impressed with this strategy. If a Court in judicial review must interfere in matters such as this, there must be something very substantial such as proof of malafide or incompetency of the assessors, to list a few. As was pointed out by the Supreme Court in ***Satyavir Singh v. Union of India*** [(1985) 4 SCC 252]

“6(34) The principles of natural justice must be confined within their proper limits and not allowed to run wild. The concept of natural justice is a magnificent thoroughbred on which this nation gallops forward towards its proclaimed and destined goal of “JUSTICE, social, economic and political”. This thoroughbred must not be allowed to turn into a wild and unruly horse, careering off where it lists, unsaddling its rider, and bursting into fields where the sign no pasaran is put up.”

10. The writing is very obviously on the wall for the petitioner: This petition faces an inevitable dismissal. But the petitioner will now present



W.P.No.22750 of 2022

the case of the 50 students whose lives will now be in jeopardy. These ill-fated students will be its cannon fodder when the Courts contemplate on enthroning the rule of law. Law, which up till now talked tough to discipline its breachers suddenly is overwhelmed by its sense of compassion for the students who might be affected by its action. Courts begin to torture their soul and hesitate to walk the talk with law. Compassion is not a bad word in justice dispensation, but it shall never be let to rule the judicial consciousness when there is a need to be stern. But, the Courts often was compassion as an aspect of its balancing act and invariably find a solution, but that precisely what these educational institutions aim at. They knew that when they are caught for breaking law, Courts will find a solution to avert the consequences flowing from the judicial action. They knew that courts will eventually carry the cross for the sins of former. But courts are not the outsourced solution finders for the sin that these educational institutions often consciously commit. The buck has to stop somewhere. And it stops here.

11. The petition is dismissed and along with it goes all the connected miscellaneous petitions. The 2nd respondent is now required to explore the possibility of identifying and relocating the 50 students who will now be



W.P.No.22750 of 2022

affected by this order to other medical colleges at the expense of the petitioner. For their relocation and upon such relocation, if these students are required to face any additional financial burden the same shall be borne by the petitioner. This direction is necessary to ensure that innocent students who are caught in the cross fire are not saddled with additional burden to finance their studies. After, all the jurisdiction of this Court must and will extend to meet and alleviate injustices wherever and whenever they are found. No costs.

28.03.2024

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Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

To

1.Union of India

Rep by its Secretary

Ministry of Health & Family Welfare

Department of Health & Family Welfare

Medical Education - 1

Nirman Bhawan

New Delhi - 110 011.

2.National Medical Commission (Admn. Section)

Rep by its Chairman

Pocket 14, Sector 8

Dwarka Phase-I

New Delhi - 110 077.

3.The Medical Assessment and Rating Board (MARB)

Rep by its Member / President



W.P.No.22750 of 2022

National Medical Commission
Pocket 14, Sector 8
Dwarka Phase-I
New Delhi - 110 077.

N.SESHASAYEE.J.,

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Pre-delivery order in
W.P.No.22750 of 2022

28.03.2024