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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 11159/2024**

IQ CITY MEDICAL COLLEGE

.....Petitioner

Through: Mr. Amit Sibal, Senior Advocate with
Mr. Pranaya Goyal, Mr. Dharav Shah, Mr. Suyash
Goverdhan, Mr. Rishabh Sharma and Mr. Ankit
Handa, Advocates

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. T.P. Singh, Senior Panel Counsel
with Mr. Rishesh M. Tripathi, Government
Pleader for R-1.

Mr. T. Singhdev, Mr. Abhijit Chakravarty, Mr.
Sourabh Kumar and Ms. Ramanpreet Kaur,
Advocates for R-2 and 3.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

12.08.2024

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1. This writ petition has been preferred on behalf of the Petitioner/IQ City Medical College under Article 226 of the Constitution of India seeking the following reliefs:

“(a) issue a writ in the nature of mandamus or such other appropriate writ / order / direction to Respondent No.2 to hear and dispose the First Appeal dated 18.04.2024 filed by the Petitioner by passing a speaking / reasoned order within a period of 7 days;

(b) issue a writ in the nature of mandamus or such other appropriate writ / order / direction to Respondent No.1 to take on record the withdrawal made by the Petitioner and consequent disposal of the Second Appeal, and intimate such withdrawal / disposal to the Petitioner and Respondent No.2.”



2. It is averred in the petition that Petitioner/College was set up in the year 2013 by IQ City Foundation, a not-for-profit society, with an intake of 150 MBBS students. On 23.12.2022, Petitioner made an application to Respondent No.3/Medical Assessment and Rating Board for increase in seats for MBBS (UG) course from 150 to 250. On 15.03.2023, an inspection was conducted at the premises of Petitioner/College and upon assessment, no deficiency was found in the infrastructure *albeit* allegedly there were some deficiencies with respect to the faculty and resident doctors. On 01.08.2023, Respondent No.2/National Medical Commission issued the Letter of Intent to the Petitioner to increase the seats from 150 to 200 for Academic Year 2023-24. On 16.08.2023, Respondent No.2 issued “Guidelines for Under Graduate Courses under Establishment of New Medical Institutions, Starting of New Medical Courses, Increase of Seats for Existing Courses & Assessment and Rating Regulations, 2023” (‘UG-MSR 2023’). As per Regulation 10 thereof, all new medical institutions shall have an intake of 150 students except the medical institutions that had applied for higher intake but had failed to receive permission. Such institutions were granted a one-time opportunity to apply for the same number of seats in Academic Year 2024-25.

3. It is further averred that on 07.09.2023, Petitioner made an application to Respondent No.3 seeking an increase in seats in MBBS (UG) Course from 200 to 250 for Academic Year 2024-2025. Respondent No.3 vide its letter dated 04.04.2024 declined to grant approval on the application on the ground that Petitioner was permitted an increase in seats from 150 to 200 in the previous academic year. Aggrieved with this decision, Petitioner filed an Appeal before Respondent No.2 under Section 28(5) of the National



Medical Commission Act, 2019 ('NMC Act') on 18.04.2024. Statutory period of 45 days for deciding the First Appeal, stipulated under Section 28(6) of the NMC Act expired on 02.06.2024, however, the Appeal was not decided. Constrained with this, Petitioner filed the Second Appeal before Respondent No.1/Ministry of Health and Family Welfare, Government of India, under Section 28(6) of NMC Act on 12.07.2024.

4. It is further averred that by an email dated 30.07.2024, Respondent No.1 informed the Petitioner that the Second Appeal shall be heard on 02.08.2024 and immediately, Petitioner confirmed its participation at the hearing. On 31.07.2024, Respondent No.2 informed the Petitioner that the First Appeal shall be heard on the same day from 11:30 AM onwards. In response, Petitioner sent an email to Respondent No.2 *inter alia* requested that the First Appeal be heard on 02.08.2024. As scheduled, Second Appeal was taken up by Respondent No.1 for hearing on 02.08.2024 and during the course of hearing, the representatives of Petitioner received an email from Respondent No.2 *inter alia* informing that First Appeal will be taken up for hearing on the same day. In this light, Petitioner withdrew the Second Appeal, without prejudice to its right to file a fresh appeal in case the First Appeal was not favourably decided.

5. It is stated in the petition that the request for withdrawal of the Second Appeal was made orally during the course of hearing but was subsequently followed up by e-mails and consequently, Petitioner informed Respondent No.2 on 02.08.2024 itself that Petitioner had withdrawn its Second Appeal and shall participate in the hearing in the First Appeal. However, when the First Appeal was taken up for hearing on 02.08.2024, Respondent No.2 refused to hear the Petitioner and simply deferred the hearing awaiting the



order in the Second Appeal. Immediately, the Petitioner addressed an e-mail to Respondent No.1 intimating that Respondent No.2 had refused to adjudicate the First Appeal till an order is passed disposing of the Second Appeal. There was no response from Respondent No.1 and having no option, the Petitioner has approached this Court.

6. Mr. Amit Sibal, learned Senior Counsel for the Petitioner submits that the order passed by Respondent No.2 refusing to hear the First Appeal is arbitrary inasmuch as Petitioner clearly informed Respondent No.2 that the Second Appeal had been withdrawn and it is not in the control of the Petitioner to ensure that the order to that effect is passed and/or communicated to Respondent No.2. Unnecessary deferment of the First Appeal has put the entire admission process for Academic Year 2024-25 in jeopardy as Petitioner is unclear of the number of students it can admit for the forthcoming academic year and in this light, it is submitted that a direction be issued to Respondent No.2 to hear and dispose the First Appeal dated 18.04.2024 expeditiously. Mr. Sibal further submits, on instructions, that the Second Appeal was withdrawn before Respondent No.1 and this can be recorded by the Court as a part of judicial order.

7. Issue notice.

8. Mr. T.P. Singh, learned Senior Panel Counsel accepts notice on behalf of Respondent No.1.

9. Mr. T. Singhdev, learned counsel accepts notice on behalf of Respondents No.2 and 3 and submits that the only hinderance in the way of deciding the First Appeal is that Petitioner had earlier filed the Second Appeal before Respondent No.1 and no formal communication has been received by Respondent No.2 that the appeal was withdrawn or otherwise



disposed of. It goes without saying that during the pendency of the Second Appeal, Respondent No.2 cannot hear or decide the First Appeal.

10. Heard learned Senior Counsel for the Petitioner and learned counsels for the Respondents.

11. Reading of the decision of the Appeal Committee of Respondent No.2 dated 06.08.2024, annexed as Annexure 'P-3' to the writ petition shows that the only reason for deferring the hearing of the First Appeal was that the Second Appeal was pending before Respondent No.1 and for this reason, Respondent No.2 considered it appropriate to await the decision on the Second Appeal. This impediment, however, in my considered view, no longer exists as the Second Appeal was withdrawn by the Petitioner on 02.08.2024 during the course of hearing before Respondent No.1 as soon as intimation was received of the hearing of the First Appeal. *Albeit* it is a matter of record that till date, no formal order has been communicated by Respondent No.1 either to Respondent No.2 or the Petitioner in respect of the withdrawal but the Court takes on record the averment to this effect made in paragraph 22 of the writ petition on an affidavit sworn by the authorized signatory of the Petitioner as well as the statement made by learned Senior Counsel, on instructions from the Authorized Representative of the Petitioner. Mr. Sibal is right in his submissions that once the Second Appeal stands withdrawn, there is no reason why Respondent No.2 should not take up the First Appeal for hearing and decide the same considering that the outcome of the appeal will have an impact on the number of seats for MBBS (UG) Course in the Academic Year 2024-25.

12. Accordingly, this writ petition is disposed of directing Respondent No.2 to take up the First Appeal for hearing and decide the same on or



before 23.08.2024. The date of hearing will be intimated to the Petitioner latest by 13.08.2024 through the electronic mode. The order passed on the First Appeal will be communicated to the Petitioner without any delay and Petitioner will be at liberty to take recourse to legal remedies depending on the outcome of the appeal.

JYOTI SINGH, J

AUGUST 12, 2024/kks