



2024:DHC:7276



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

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Date of Decision: 19.09.2024

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W.P.(C) 12906/2024 & CM APPL. 53760/2024**IQ CITY MEDICAL COLLEGE**

.....Petitioner

Through: Mr. Maninder Singh and Mr.
Akhil Sibal, Senior Advocates
with Mr. Dharav Shah, Mr.
Suyash Goverdhan, Mr. Ankit
Handa, Mr. R Mohan,
Advocates

versus

**NATIONAL MEDICAL COMMISSION
& ORS.**

.....Respondents

Through: Mr. T. Singhdev, Mr. Bhanu
Gulati and Mr. Aabhaas
Sukhramani, Advocates for R-
1 and 2

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J. (ORAL)**

1. By way of the present writ petition, filed under Article 226 of the Constitution of India, the petitioner institute i.e IQ City Medical College has sought following reliefs:

“(a) issue a writ in the nature of mandamus or such other appropriate writ / order / direction setting aside and quashing the Letter of Disapproval dated 11.09.2024 issued by Respondent No.2 to the Petitioner refusing to permit increase



2024:DHC:7276



in the seats in the Petitioner's MBBS UG course from 200 to 250 for the AY 2024-25;

(b) issue a writ in the nature of mandamus or such other appropriate writ / order / direction to the Respondent No.1 and 2 to forthwith issue the Letter of Permission ["LOP"] to the Petitioner increasing the seats in the Petitioner's MBBS UG course from 200 to 250 for the AY 2024-25;

(c) issue a writ in the nature of mandamus or such other appropriate writ /order/direction to Respondent No.3 directing it to amend the seat matrix for the counselling process for A.Y. 2024-25 and forthwith conduct counselling for admission of additional 50 students (Total 250 students) in the UG MBBS programme of Petitioner's institute for the AY 2024-25."

FACTUAL BACKDROP

Introduction

2. The petitioner, a postgraduate private medical college established by IQ City Foundation, is located in Durgapur, West Bengal. The petitioner offers both undergraduate (UG) and postgraduate (PG) medical courses. It had admitted its first batch of MBBS students in 2013 and had received recognition for an intake of 150 students in 2018. Prior to this, the petitioner had become a post-graduate college with an intake of 54 PG students.

3. Respondent No. 1 is the National Medical Commission (NMC), which is responsible for regulating and developing medical education, medical institutions, and the medical profession across India.

4. Respondent No. 2, the Medical Assessment and Rating Board (MARB), is one of the four autonomous boards under NMC, constituted under Section 16 of the NMC Act. MARB has the authority to assess medical colleges, grant or deny permission for



2024:DHC:7276



their establishment, renewal, and increase of seats, as well as oversee PG course approvals. This process is governed by Sections 28(2) to 28(4) of the NMC Act, with Section 28(3) empowering MARB to approve or disapprove schemes submitted by medical colleges based on the criteria outlined in Section 29 of the Act.

Facts of the Case

5. On 23.12.2022, the petitioner had made an application to the Respondent No. 2, seeking an increase in the intake capacity for the MBBS (UG) course from 150 to 250 seats. Subsequently, on 15.03.2023, an inspection was conducted at the petitioner's premises. Following the assessment, no significant deficiencies were found, except for some minor issues related to faculty and resident doctors. On 01.08.2023, Respondent No. 2 had issued a Letter of Intent to the petitioner, approving an increase in seats from 150 to 200 for the academic year 2023-24.

6. Meanwhile, on 16.08.2023, Respondent No. 1 had issued the 'Guidelines for Establishment of New Medical Institutions, Starting of New Medical Courses, Increase of Seats for Existing Courses & Assessment and Rating Regulations, 2023' [*UG-MSR 2023*]. According to these regulations, all new medical institutions could only have an intake of 150 students, except for those institutions that had previously applied for a higher intake but had failed to secure permission. Such institutions were granted a one-time opportunity to apply for the same number of seats for the academic year 2024-25. In light of this, on 07.09.2023, the petitioner had filed an application



2024:DHC:7276



with Respondent No. 2, seeking an increase in seats for the MBBS (UG) course from 200 to 250 for the academic year 2024-25. However, on 04.04.2024, Respondent No. 2 had disapproved the application, citing that the petitioner had already been granted an increase from 150 to 200 seats in the previous academic year. The petitioner states that this disapproval was contrary to established legal precedents.

7. Aggrieved by this decision dated 04.04.2024, on 18.04.2024, the petitioner filed an appeal before Respondent No. 1 under Section 28(5) of the NMC Act. The statutory period of 45 days for deciding the appeal, as per Section 28(6) of the NMC Act, had expired on 02.06.2024, without any decision. Consequently, on 12.07.2024, the petitioner had filed a second appeal before the Central Government under Section 28(6) of the NMC Act, as Respondent No. 1 had failed to adjudicate the First Appeal. Despite multiple emails from the petitioner seeking expedited resolution, the second appeal was not heard. On 31.07.2024, the Respondent No. 1 had informed the petitioner *via* email that the First Appeal would be heard the same day, 31.07.2024, at 11:30 AM. The petitioner had responded by requesting a rescheduling of the hearing to 02.08.2024. On 02.08.2024, while the second appeal was being heard by the Central Government, the petitioner had received an email from Respondent No. 1 stating that the First Appeal would be taken up for hearing on the same day. As a result, the petitioner had orally withdrawn the second appeal during the hearing, reserving the right to file a fresh appeal if the First Appeal was decided unfavorably. The withdrawal



2024:DHC:7276



was followed by an email from the petitioner to Respondent No. 1 confirming the withdrawal of the second appeal.

8. However, on the same day, 02.08.2024, when the First Appeal was taken up for hearing, Respondent No. 1 refused to proceed, citing the lack of a formal order regarding the withdrawal of the second appeal.

9. Consequently, on 10.08.2024, the petitioner had filed a writ petition i.e. W.P.(C) No. 11159/2024 before this Court, seeking directions to Respondent No. 1 to hear and dispose of the First Appeal. On 12.08.2024, this Court disposed of the petition by directing the Respondent No. 1 to hear and adjudicate the First Appeal before 23.08.2024 and to communicate the order to the petitioner immediately.

10. On 13.08.2024, the Respondent No. 1 had informed the petitioner that the First Appeal would be heard on 22.08.2024. Meanwhile, on 21.08.2024, the first round of counseling for West Bengal NEET (UG) admissions under the state, private, and NRI quotas had commenced. On 22.08.2024, Respondent No.1 heard and disposed of the First Appeal, directing Respondent No. 2 to immediately send the Standard Assessment Form (SAF) to the petitioner. The petitioner was instructed to submit the required information within three days of receiving the SAF, and Respondent No. 2 was to decide the petitioner's application as soon as possible in light of the ongoing counseling process for MBBS admissions. In compliance with these directions, on 23.08.2024, Respondent No. 2 had sent the SAF to the petitioner, requesting detailed information



2024:DHC:7276



and requisite annexures, along with an affidavit, within three days. The petitioner had complied with the same by submitting the requested documents on 26.08.2024 and had sought an early decision in view of the ongoing counseling process.

11. On 28.08.2024, Respondent No. 2 had sent another email at 3:42 PM, seeking further information regarding deliveries (births) in the petitioner's institution and instructing that the information be provided within two hours. The petitioner had complied with the same by submitting the requested information *via* email at 5:43 PM on the same day. The first round of counseling for WB NEET (UG) under state, private management, and NRI quota seats had concluded on 05.09.2024. However, as no decision had been communicated to the petitioner, the petitioner had addressed an email to Respondent No. 2 on 06.09.2024, requesting an early decision and issuance of the Letter of Permission (LOP).

12. On 11.09.2024, the seat matrix for the second round of WB NEET (UG) counseling was published. However, on the same day, Respondent No. 2 had issued a Letter of Disapproval to the petitioner, refusing the increase of seats to 250 MBBS seats, citing deficiencies in average daily deliveries and a faculty deficiency in 10 departments based on AEBAS data from June and July 2024.

13. The petitioner contends that these alleged deficiencies are erroneous and that the average daily delivery rate is not a criterion for assessing an increase in MBBS seats. Furthermore, the petitioner also contends that the faculty deficiency is within the permissible 5% deviation, as per settled legal principles.



2024:DHC:7276



14. Aggrieved by the Letter of Disapproval dated 11.09.2024, the petitioner has now filed the present writ petition seeking appropriate reliefs.

SUBMISSIONS BEFORE THIS COURT

Submissions on Behalf of Petitioner

15. Learned Senior Counsel appearing on behalf of the petitioner argues that the impugned decision is *ex-facie* arbitrary, whimsical and in complete ignorance of Section 29 of the NMC Act read with UGMSR 2023. It is submitted that the impugned decision has been passed by Respondent No. 2 on wholly unsustainable and erroneous grounds, which are in contravention with the settled principles of law, and is, therefore, liable to be set aside.

16. It is stated that the impugned decision *inter alia* records that there was a deficiency in the average delivery per day at the Petitioner's institute, however, the criterion for assessment of medical college's application for increase in seats is provided in UG-MSR 2023 in which there is no criterion of average delivery per day which is to be considered by Respondent No. 2 while granting increase in number of seats. It is, therefore, submitted that the purported deficiency in average delivery per day is wholly irrelevant and immaterial for considering the petitioner's application. It is further submitted that the impugned decision has been passed by Respondent No. 2 by misapplying the provisions of PG-MSR 2024 to the petitioner's application, which was for increase in the MBBS (UG) course seats and not for PG seats, and thus, the application



2024:DHC:7276



would be governed by UG-MSR 2023 and the petitioner is fully compliant with the rules thereof. Pertinently, since the information relating to average delivery per day was not a relevant criterion, the same was not originally provided. However, the said information was sought subsequently by Respondent No. 2 *vide* its email dated 28.08.2024, which makes it evident that Respondent No. 2 has passed the impugned decision with a pre-conceived mind by relying on irrelevant material and on extraneous reasons. It is also submitted that Respondent No. 2 has granted permission for increase in MBBS (UG) seats to other colleges and institutes having average delivery per day which is less than the average delivery per day of the petitioner. In support of these arguments, reliance is placed on the following decisions: (i) ***Dhanalakshmi Srinivasan Medical College & Hospital v. Union of India***, 2022 SCC Online Del 3701; (ii) ***Rajiv Memorial Academic Welfare Society & Anr. v. Union of India & Anr.***, (2016) 11 SCC 522

17. In addition, it is argued that the impugned decision has been passed in complete ignorance of the settled law that relaxation of up to 5% deviation shall be granted to the medical colleges towards deficiencies/defects notified by Respondent No. 2. It is submitted that Respondent No. 2 has wholly erred in holding that there was deficiency in AEBAS attendance of faculty in 10 departments for the month of June and July 2024. It is stated that a perusal of the AEBAS attendance for the entire period under consideration would evince that the faculty attendance is within the 5% relaxation permissible to medical colleges. As such, the petitioner is fully compliant with the



2024:DHC:7276



requirements and hence, the impugned decision is wrong, incorrect and is liable to be set aside.

18. It is contended that the conduct of Respondent Nos. 1 and 2 reeks of malice and ulterior motives. The deliberate delay in passing the impugned decision has put the entire admission process of the petitioner for academic year 2024-25 in jeopardy as the petitioner shall not be able to admit additional 50 MBBS students despite meeting all requirements for such admissions.

Submissions on Behalf of National Medical Commission

19. Learned counsel appearing on behalf of the NMC (Respondent No. 1) and MARB (Respondent No. 2) has handed over a document in this Court today. Let the same be taken on record. Copy of the same has been supplied to the learned Senior Counsel for the petitioner.

20. Learned counsel appearing on behalf of the Respondent Nos. 1 and 2 submits that the petitioner had initially applied for an increase in seats from 150 to 250 for the academic year 2023-24. However, due to certain deficiencies, only an increase from 150 to 200 seats was granted. It is further contended that the petitioner had applied again for an increase in seats from 200 to 250 for academic year 2024-25. During the processing of the renewal of 200 seats, the Undergraduate Medical Education Board (UGMEB) of NMC had found several deficiencies in the petitioner institute as per the Minimum Standards Requirements (MSR) 2020 and MSR 2023.



2024:DHC:7276



21. It is argued that among these deficiencies, four out of twenty departments were found to lack adequate faculty, residents, or tutors for 200 seats. It is further submitted that the data related to indoor beds and average occupancy requires further clarification. Additionally, it was found that facilities such as cytopathology, culture sensitivity, and serology were inadequate. The institute's X-ray and MRI services were also found to be insufficient.

22. It is also contended that the number of major and minor surgeries being performed at the institute is inadequate, and that there is a significant deficiency in the number of surgeries in various specialties, including ophthalmology, ENT, obstetrics and gynecology, and orthopedics. Additionally, the number of births at the institute is inadequate.

23. It is submitted that, in light of these deficiencies, a show cause notice dated 06.05.2024 was issued to the College, and a virtual hearing was conducted to provide the College with an opportunity to explain the deficiencies. However, UGMEB was not satisfied with the explanations provided by the College. Nevertheless, taking a lenient approach, the Board had imposed a penalty of Rs 8,00,000/- as the first step.

24. It is further argued that, as per the letter dated 15.05.2024, the College was cautioned that stringent measures would be taken if compliance was not ensured during subsequent inspections.

25. It is also submitted that the MARB of NMC, while considering the institute's subsequent application for an increase in seats, had re-assessed the Self-Assessment Form submitted by the institute. During



2024:DHC:7276



inspections conducted in June and July 2024, it was found that 10 departments in the institute had only 75% faculty attendance. Even though the institute had recruited excess faculty in certain departments, significant deficiencies remained in others.

26. It is contended that the deficient departments include Anatomy, Community Medicine, Dermatology, Forensic Medicine, General Surgery, Microbiology, Ophthalmology, ENT, Pharmacology, Physiology, and Psychiatry.

27. It is further argued that the recruitment of excess faculty in some departments cannot compensate for the lack of teaching faculty in other deficient departments. Further, the institute had only 50 associate professors when 62 were required as per the data from June 2024.

28. Therefore, it is submitted that the institute, having been found non-compliant even for the renewal of 200 seats, cannot justify an increase to 250 seats.

29. This Court has **heard** arguments on behalf of both the parties and has perused the material placed on record by either side.

ANALYSIS & FINDINGS

30. The petitioner-institute herein is aggrieved by Respondent No. 2's decision to deny an increase in MBBS seats from 200 to 250 for the academic year 2024-25, citing deficiencies in average daily deliveries and faculty attendance. Since the petitioner has sought quashing and setting aside the Letter of Disapproval dated



2024:DHC:7276



11.09.2024, it shall be relevant to take note of its contents. The same reads as under:

“... **National Medical Commission**
Medical Assessment & Rating Board (MARB)

Application ID: NMC/UGI/2024-25/000008

LETTER OF DISAPPROVAL

The Dean/Principal,
IQ-City Medical College, Durgapur, Burdwan
Sovapur, Bijra Road, Jaymua, Dirgapur-Distt Burdwan
PIN - 713206 (West Bengal)
EMAIL ID- principal.medcol@iqct.in

Subject: Decision of MARB (consequent to the direction of 1st Appeal Committee dated 22.08.2024) - Letter of Disapproval in respect of online application: NMC/UGI/2024-25/000008 for Increase of MBBS seats at IQ-City Medical College, Durgapur, Burdwan (W.B.) for Academic Year 2024-25- Reg.

Refs:

- i. Your Online application: NMC/UGI/2024-25/000008
- ii. MARB Letter of Disapproval dated 03-04-2024

Dear Sir/Madam,

In pursuance to the direction of Hon ble High Court, Delhi in W.P.(C) 11159/2024 dated 12.08.2024, wherein the Hon'ble High Court had directed the NMC to take up the First Appeal for hearing and decide the same on or before 23.08.2024. In compliance, 1st Appeal Committee of NMC vide order dated 22-08-2024 (the aforesaid decision has already been communicated to you through e-mail by the Policy and Coordination Division of NMC), has, inter-alia, decided that;
“.....In the absence of the required SAF, the committee decided to direct MARB to send the Standard Assessment Form (SAF) forthwith to the college at the earliest with instruction to the college comply with detailed information within 3 days of receiving of SAF.

On receiving the duly filled SAF and the prescribed fees, MARB to assess and take a decision on merit regarding the increase of seats from 200 to 250.



2024:DHC:7276



The process should be completed at the earliest possible time keeping in view the ongoing counselling process of MBBS admission.”

2. Consequent to the decision of 1st Appeal Committee, IQ-City Medical College, Durgapur, Burdwan was asked to submit the requisite documents /information and on receipt of the same the college was again evaluated by MARB for increase of 50 MBBS seats for the Academic Year 2024-25. The evaluation was based on data viz Form A-I, Form A-II, Annexures and the fresh data provided by the medical college especially towards delivery details as furnished by the college and AEBAS Data for the months of June & July, 2024. The observation of the Board is as under:

S. No.	Parameter on which evaluation carried out	Information provided by the College
(a)	Delivery details as furnished by the medical college for the period from 1st July, 2024 to 31 st July, 2024 (One Month)	The board has found deficiency in Average Delivery per Day.
(b)	AEBAS attendance for the months of June & July, 2024	The board has observed deficiency of faculty in 10 Departments on the basis of AEBAS data for the months of June & July, 2024.

3. Accordingly, in view of the aforesaid deficiencies, the Medical Assessment and Rating Board (MARB) has observed that the college is not eligible for increase of seats asked for and decided to issue "Letter of Disapproval" against application ID NMC/UGI/2024-25/000008 in respect of IQ-City Medical College, Durgapur, Burdwan for increase of MBBS seats for the academic year 2024-25. Hence this letter of disapproval is being issued.

4. This issues with the approval of the Competent Authority.
5. Kindly acknowledge the receipt of this letter.”



2024:DHC:7276



31. The petitioner argues that the cited deficiencies, specifically in average daily deliveries and faculty attendance, are both erroneous and irrelevant under the UG-MSR 2023 regulations, which govern undergraduate medical courses and do not include average delivery rates as a criterion for seat increases. Furthermore, the petitioner contends that the faculty deficiency falls within the permissible 5% deviation, as allowed by settled legal principles. It contended that the impugned decision was passed with malice, jeopardizing its admissions process despite meeting all the necessary requirements.

32. To substantiate the contention that there is no criteria of average delivery per day in UG-MSR 2023, to be considered by respondents while granting increase in number of seats, learned Senior Counsel for the petitioner has drawn this Court's attention to the observations, extracted hereinbelow, of Hon'ble Supreme Court in case of *Rajiv Memorial Academic Welfare, Society & Anr: v. Umon of India & Anr. (2016) 1 SCC 522* wherein it was observed that average deliveries per week was not a relevant criterion for increase in seats in UG course.

“18. ...As far as the first deficiency is concerned, it is stated that on a previous day (i.e., day prior to the date of inspection) there was nil normal delivery and nil cesarean section. Likewise, second deficiency which is pointed out is to the effect that in the month of January, there were only 45 total deliveries and in the month of April there were only 38 deliveries which were inadequate and further special investigation like Ba, IVP were not carried out. **The Hospital cannot be faulted with, in case there was no normal delivery or no caesarean section on a particular day. That can hardly be treated as any deficiency. Same would be the position in respect of number of deliveries in the month of January and April...**”



2024:DHC:7276



(Emphasis Supplied)

33. This Court also notes that in the UG-MSR 2023, there is no requirement mentioned with respect to average deliveries in medical colleges/institutes. Though such requirement is stipulated in the PG-MSR 2024, however, in this Court's opinion, the provisions of PG-MSR 2024 shall have no applicability in the present case, since the petitioner herein had sought increase of seats in the MBBS course, which is a UG course and governed by provisions of UG-MSR.

34. In this regard, this Court has also perused the order dated 15.12.2022, passed in case of *Sukh Sagar Medical College and Hospital, Jabalpur & Anr v. National Medical Commission, W.P.(C) 16617/2022*, wherein the Coordinate Bench of this Court had recorded the submission of the learned counsel for the respondents therein i.e. NMC, that he had conceded, that there was no statutory norm prescribed for minimum number of deliveries for grant of renewal of permission for admission. The relevant observations read as under:

“17. On a Court's query, the learned counsel for the respondents fairly concedes that there is no statutory norm prescribed for minimum number of deliveries for grant of renewal of permission for admission.

18. Prima facie, there appears to be considerable merit in the submissions of the learned senior counsel for the petitioner that the show-cause notice was issued on the basis of a non-existent ground. The grounds on which the rejection of application for renewal of permission is premised viz. one delivery (including normal and LSCs were performed on the date of assessment) is also misconceived as there is no norm or requirement under any statutory regulations providing for minimum number of deliveries...”

(Emphasis Supplied)



2024:DHC:7276



35. Thus, having taken note of the statement given by the learned counsel for the NMC before the Coordinate Bench in the aforesaid case, this Court is of the view that there cannot be two stands taken by the NMC before different Benches of the same High Court and, therefore, considering the same as well as the fact that NMC has not been able to produce on record any regulation or any provision of UG-MSR in this regard, this requirement of average deliveries per day or per month could not have been the basis of denial of approval to the petitioner institute for the purpose of increase of seats for the MBBS course. It is also not disputed that no such deficiency was mentioned in the letter of disapproval dated 04.04.2024, issued by NMC, which was eventually challenged by the petitioner by way of an appeal.

36. Insofar as the other ground for issuance of Letter of Disapproval dated 11.09.2024, regarding deficiency of faculty in 10 Departments on the basis of AEBAS data is concerned, before examining the rival contentions raised before this Court, it shall be appropriate to take note of a few relevant provisions/clauses of UG-MSR 2023, circulars, relevant judicial precedents.

37. This Court notes that as per UG-MSR 2023, a medical college/institute is required to have faculty strength of 168, for the purpose of admitting 250 students. This is evident from the following extract from UG-MSR 2023:



2024:DHC:7276



TOTAL STRENGTH

	PROF	ASSOC. PROF	ASST. PROF	TOTAL	TUT/DEMO	SR
50 SEATS	14	20	25	59	15	23
100 SEATS	17	23	41	85	25	40
150 SEATS	19	40	55	114	32	58
200 SEATS	20	51	70	142	40	73
250 SEATS	20	62	86	168	43	80

38. Also, in the Standard Assessment Form submitted by the petitioner institute, to the respondent herein, the faculty strength was mentioned as 227, as against the required number of 168. The application of the petitioner has, however, been rejected on the ground that in some particular departments of the petitioner institute, there is deficiency of faculty as per the available AEBAS data, and it has been argued on behalf of NMC that excess number of faculties cannot compensate the deficiency of any teaching faculty in any other department.

39. In this regard, this Court deems it apposite to also take note of clause A(5) of Schedule II of UG-MSR 2023, which provides as follows:

“5. Post of junior cadre faculties up to Assistant Professors can be filled by senior cadre faculties; for example Assistant Professor, by Associate Professor or Professor. Similarly Associate Professor by Professor. Tutors/Demonstrators and S.Rs. together shall meet the total number of required persons.”

40. Thus, it is clear from the reading of the aforesaid clause that the positions of junior cadre faculties, up to Assistant Professors, can be filled by senior cadre faculties and accordingly, the surplus senior



2024:DHC:7276



cadre faculties can be adjusted towards vacancies in junior cadre faculties.

41. This Court's attention was further drawn by learned Senior Counsel for the petitioner towards Clause 3.2 of UG-MSR 2023 which *inter alia* requires the faculty to have at least 75% attendance of total working days (excluding vacations).

42. Moreover, it is also to be noted that as per Circular issued by MCI dated 07.07.2017, which was also taken note of and considered by Coordinate Bench of this Court in case of *Dhanalakshmi Srinivasan Medical College and Hospital & Anr. v. Union of India & Anr 2022 SCC OnLine Del 3701*, a 5% relaxation in the faculty is permitted. The relevant extract of the decision reads as under:

“32. Although requirement of 202 faculty members is disputed by Petitioner college and basis for such computation has not been explained by NMC, however, since Mr. Maninder Singh has argued on demurer regarding factual basis NMC's claim of faculty strength, the court has proceeded on the assumption that the requirement under applicable regulations for Petitioner college is 202 faculty members. **However, before proceeding further, it must be reiterated that as per the aforementioned communication dated 7th July 2017 issued by Medical Council of India, private medical colleges such as Petitioner college, are entitled to 5% relaxation in deficiency in teaching faculty and residents. NMC admits the above position in paragraph 33 of the additional affidavit.**”

(Emphasis Supplied)

43. Petitioner has also placed reliance on the following observations in case of *Dhanalakshmi Srinivasan Medical College and Hospital (supra)*, to contend that for computing 5% relaxation, NMC i.e. is required to take into account the leaves availed by the



2024:DHC:7276



faculty and leaves which are approved by the head of the institution on AEBAS portal:

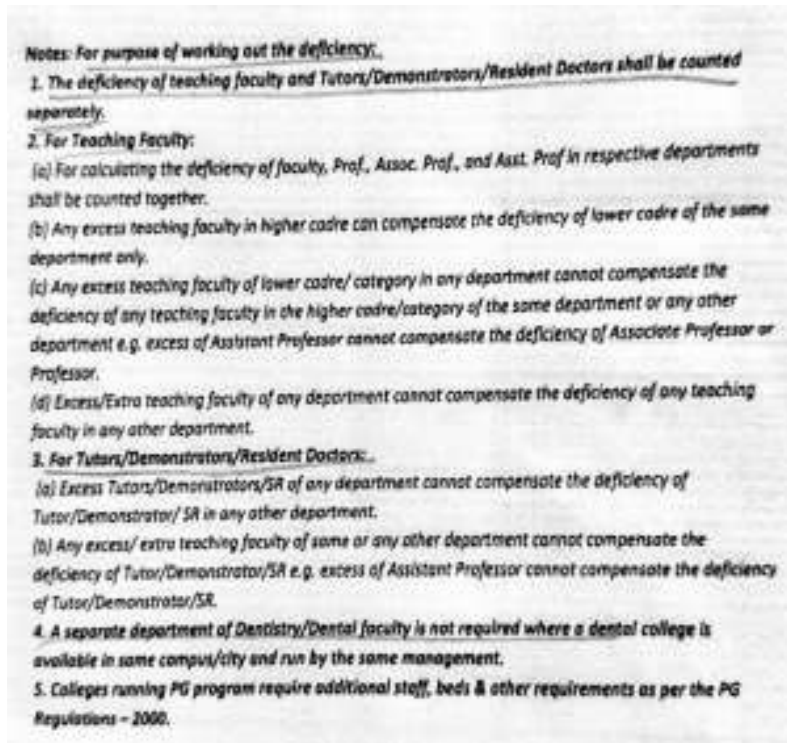
“39. The department-wise chart of faculty and residents annexed with the additional affidavit by NMC mentions availability of 3 professors, 1 associate professor and 2 assistant professors. However, the same is at variance with findings in inspection report in as much as the assessors cite availability of 4 assistant professors and not 2. NMC has disregarded 2 assistant professors who were on maternity leave while ascertaining the deficiencies, which approach, in the opinion of the Court, is contrary to law and outrightly fallacious. No justification is demonstrated to exclude them. The said department is short of 1 associate professor, but the same is compensated by extra professors and as such, there is no deficiency.

43. It manifests from the above discussion, that deficiencies in teaching staff of Petitioner college are far less than what NMC has portrayed, and is well within permissible/relaxation limit of 5% NMC's assertions, based on MARB's (expert assessors) findings, of deficiency of 6.9% in faculty, is demonstrably misconceived and erroneous. Petitioner college fulfils the criteria for increasing its admission capacity in MBBS course from 150 to 250, as per applicable norms. 44. With respect to residents, although NMC's finding of deficiencies amounting to 3.9% has been disputed by Petitioner college, however, as existing policy permits relaxation of up to 5% deficiency in residents, there is no reason for the Court to venture into the basis of such calculation.”

44. In this background, this Court notes that for the month of June 2024, the learned counsel for NMC has submitted a chart before this Court, as per which, there were deficiencies in faculty attendance in 11 Departments. However, learned Senior Counsel for the petitioner, during the course of arguments, pointed out that the respondent has erroneously considered the strength of Tutors/Residents Doctors etc. in computing the strength of faculty, which is not permissible. This Court finds merit in this contention, as the same is supported by the



document titled '*AEBSAS Status of IQ-City Medical College, Burdwan, 200 Seats (As per MSR 2020) - 01.01.2024 to 29.02.2024*' issued by respondents itself, which has been handed over to the Court by the learned counsel for the respondent, authenticity of which has not been disputed by him. The contents of the same are as under:



45. It provides that Teaching Faculty includes Professors, Associate Professors and Assistant Professors, and that the same is different from Tutors, Demonstrators and Senior Residents.

46. Therefore, this Court is of the opinion that the respondent has erroneously included 05 Departments i.e. Community Medicines, Dermatology, General Surgery, Microbiology and Physiology, in the list of deficiency of faculty.

47. For the department of Oto-Rhinolaryngology (or ENT), it has been pointed out by the petitioner that the data handed over in the



2024:DHC:7276



Court by respondents is incorrect and the correct AEBS data posted on the portal shows that one professor was available in the month of June, 2024 which fulfills the relevant requirement. This is further supported by the fact that in the impugned Letter of Disapproval dated 11.09.2024, the deficiencies of faculty were mentioned in 10 Departments, and not 11 as shown in the chart handed over in the Court by the learned counsel for respondent/NMC. Further, in the Ophthalmology department, although there was a shortfall of one Associate Professor, this was compensated by the presence of an extra Professor. As such, no deficiencies exist in these two departments.

48. As far as remaining 04 Departments are concerned, it has been conceded on behalf of the petitioner that after adjusting leaves in accordance with the relevant rules and procedures, there was indeed a deficiency of six faculty members. However, given that the required faculty strength for awarding 250 MBBS seats is 168, this deficiency represents 3.5%, which falls within the permissible range of 5% as per the MCI Circular dated 07.07.2017. Consequently, the finding of the MARB in its Letter of Disapproval dated 11.09.2024, which cited faculty deficiencies based on AEBS data for June 2024, is without merit.

49. Similarly, for the month of July 2024, the learned counsel for NMC has submitted a chart before this Court, as per which, there were deficiencies in faculty attendance in 09 Departments.

50. However, this Court notes that as in the case of June 2024, the respondent has erroneously considered the strength of Tutors/



2024:DHC:7276



Residents Doctors etc. in computing the strength of faculty, in respect of 03 Departments i.e. Dermatology, General Surgery and Physiology, for July 2024 also.

51. Furthermore, in 02 departments i.e. Community Medicine and Microbiology, the petitioner has demonstrated that while there was a shortfall of one Associate Professor in each department, this was compensated by the presence of one extra Professor in both these Departments. Therefore, no deficiencies exist in these two departments either.

52. As far as remaining 04 Departments are concerned, it has been conceded on behalf of the petitioner that after adjusting leaves in accordance with the relevant rules and procedures, there was indeed a deficiency of six faculty members. However, given that the required faculty strength for awarding 250 MBBS seats is 168, this deficiency represents 3.5%, which falls within the permissible range of 5% as per the MCI Circular dated 07.07.2017. Consequently, the finding of the MARB in its Letter of Disapproval dated 11.09.2024, which cited faculty deficiencies based on AEBS data for July 2024, is without merit.

53. As a *sequitur* to aforesaid, the impugned Letter of Disapproval dated 11.09.2024 cannot be sustained in law, and the same is hereby quashed and set aside.

54. Since the petitioner-institute fulfills the criteria for increase of seats in MBBS course, the respondents herein are directed to issue Letter of Permission to the petitioner, thereby increasing the seats in the petitioner's MBBS (UG) course from 200 to 250 for the academic



2024:DHC:7276



year 2024-25. The respondents are also directed to amend the seat matrix for the counselling process for academic year 2024-25 and conduct counselling for admission in respect of these additional 50 seats, as per rules and regulations.

55. With the above directions, the present petition alongwith pending application stands disposed of.

56. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J
SEPTEMBER 19, 2024/at