

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16800 of 2024

1. Madhuri Sewa Nyas, Having its Head Office at G 3-80, Prem Nagar, Phase III. P.S. Nangoloi, District New Delhi, 110041 and having its Branch Office at Shaheed Prabhu Narayan Multi Speciality Hospital, N.H. 31, Parmanandpur, P.S. Koshi Cllege, Khagaria, District - Khagaria through its President and Director Dr. Swami Viveka Nand (Male), aged about 61 Years, Son of Chandra Shekhar Prasad Yadav, Resident of 319, Ranko Tola, Awas Board Ranko Tola, Ward No. 1, Ranko, P.S. Koshi College, Khagaria, District Khagaria.
2. Dr. Swami Viveka Nand Son of Chandra Shekhar Prasad Yadav Resident of 319, Ranko Tola, Awas Board Ranko Tola, Ward No. 1, Ranko, P.S. Koshi College, Khagaria, District - Khagaria, President and Director of Madhuri Sewa Nyas.

... .. Petitioner/s

Versus

1. The Union of India, Through its Secretary Ministry of Health and Family Welfare, Nirman Bhawan New Delhi- 110001.
2. National Medical Commission, (Through the Chairperson) Pocket-14, Sector-8, Dwarka Phase-1, New Delhi-110077.
3. Undergraduate Medical Education Board, (Through the President) National Medical Commission Pocket-14, Sector-8, Dwarka Phase-1, New Delhi-110077.
4. Medical Assessment and Rating Board, (Through the President) National Medical Commission Pocket-14 Sector-8, Dwarka Phase-1, New Delhi-110077.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Adv. Mr. Arun Kumar, Adv.
For the U.O.I.	:	Mr. K.N. Singh, ASG Mr. Alok Kumar, CGC
For the N.M.C.	:	Mr. Kumar Priya Ranjan, Sr. Sc. Mr. Sudarshan Bharadwaj, Adv. Mr. Sandeep Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 20-03-2025

Heard Learned Counsel for the Parties.

2. Having heard learned counsel for the parties and for the reasons stated in the interlocutory application, the interlocutory application no. 01 of 2024 and I.A. No. 02 of 2025 are allowed



and the reliefs prayed in this interlocutory application shall also be treated as a part of the relief prayed in the main writ petition.

3. The Present Writ Petition has been filed for seeking the following reliefs :

i. *For issuance of an appropriate Writ in the nature of certiorari for quashing the order dated 30.09.2024 passed by the Respondent No. 1 whereby a decision has been made to disapprove the Application of the Petitioner college to start a new medical college and to admit 100 students in MBBS course for the Academic year 2024-2025 in the Petitioner Medical College at Khagaria, Bihar, namely Shyamlal Chandrashekhar Medical College & SPNM Hospital established by the Madhuri Sewa Nyas (Petitioner No. 1).*

ii. *For issuance of order or direction in the nature of Mandamus directing the Respondents herein to grant Letter of Permission to the Petitioner College for admitting 1 batch of 100 students in MBBS course for the Academic year 2024-25.*

iii. *For issuance of an appropriate Writ in the nature of certiorari quashing the letter of Disapproval dated 04.07.2024 (Annexure -P/5 to the Writ Petition) issued under the signature of the Member/President of the Medical Assessment and Rating Board (MARB), National Medical Commission by which it has been communicated to the Petitioner that MARB has taken a decision to disapprove the Application of Shyamlal Chandrashekhar Medical College & SPNM Hospital for establishment of new medical college/Institution.*

iv. *For issuance of an appropriate Writ in the nature of certiorari quashing the letter/communication dated 07.08.2024 (Annexure -P/20 to the Writ Petition) as issued under the signature of the Secretary of the National Medical Commission by which the decision of the MARB dated 04.07.2024 to disapprove the establishment of new medical college/institution has been upheld.*

v. *For issuance of an appropriate Writ/order/direction in the nature of Mandamus*



commanding the Respondents herein to grant Letter of Permission in favour of Shyamlal Chandrashekhar Medical College & SPNM Hospital, N.H. 31, Parmanandpur Khagaria (Established under Madhuri Sewa Nyas, a Trust formed under Indian Trust Act, 1882) for admitting 1st batch of 100 students in M.B.B.S. course for the Academic year 2025-26 since the College has all the necessary requisite infrastructure & fulfils each and every criteria for the same.

vi. For issuance of any other relief/s for which the Petitioner is entitled in the eye of law.

4. The Learned Senior Counsel for the Petitioners submits that the Petitioner No.1 is Madhuri Sewa Nyas, a Trust duly formed under Indian Trust Act, 1882 which has established Shyamlal Chandrashekhar Medical College & SPNM Hospital, situated at- N.H. 31, Parmanandpur Khagaria and is being represented by the Petitioner No. 2 i.e. Dr. Swami Viveka Nand who is the President & Director of the Petitioner No. 1 Trust, and the Respondent No (s). 2, 3 and 4 are the “State” within the meaning of Article 12 of the Constitution of India.

5. The brief facts of the case are that the Petitioner Trust after fulfilling all the prerequisite and eligibility as prescribed under the provisions laid down under Section 28(1) & 2 of the National Medical Commission Act, 2019 (hereinafter referred to as the said Act), applied before the Respondent No. 4 namely Medical Assessment and Ratings Board (in short MARB) duly constituted by the Respondent No. 2 on 16.09.2023, for grant of



Letter of Permission to establish a new Medical College at Khagaria, Bihar in the name of Shyamlal Chandrashekhar Medical College & S.P.N.M. Hospital (Hereinafter referred to as the Petitioner's College) for admitting first batch of 150 Students in MBBS Course for the academic year 2024-25. Herein below I reproduced the aforesaid Sections 28(1) and 28(2) of the said Act for the convenience of this Court-

28. Permission for establishment of new medical college. —

(1) No person shall establish a new medical college or start any postgraduate course or increase number of seats without obtaining prior permission of the Medical Assessment and Rating Board.

(2) For the purposes of obtaining permission under sub-section (1), a person may submit a scheme to the Medical Assessment and Rating Board in such form, containing such particulars, accompanied by such fee, and in such manner, as may be specified by the regulations.

6. The MARB (Respondent No. 4) after screening of the application form of the Petitioner College issued a show cause notice dated 04.04.2024. The copy of the same has even been attached as an Annexure R2/H of the Counter Affidavit so filed by the Respondent No. 2, 3 & 4. The show cause pointed out the following points as reproduced herein below for the convenience of the court: -



S.No.	Parameter/Including Supporting Documents	Information provided in the online application		
		Adequate	Inadequate	Remarks (if any)
3.	Application Fees (including GST)		Inadequate	Rs. 15,00,000/- paid (Required to include GST amount) As per the public notice for inviting applications on NMC website dated 18 th August 2023. For 50 seats : Rs. 5 Lakhs 100 seats : Rs. 10 Lakhs 150 seats : Rs. 15 Lakhs (Excluding GST)
4.	Bank GUARANTEE / Undertaking as applicable		Inadequate	Should be furnished after issue of LOI
21.	Bed Strength and Equipment Program (room wise list of equipment complete with year wise schedule of quantities and specifications)		Inadequate	Beds not mentioned As per UG-MSR 2023, dt. 16.08.2023 50 seats: 220 beds 100 seats: 420 beds 150 seats: 605 beds

The Petitioner submitted its reply along with an Undertaking/Affidavit to the above show cause notice on 09.04.2024, stating that the application fees, Bank Guarantee, and Bed Strength, as submitted by the Petitioner, are adequate for the approval of 100 seats. Accordingly, the Petitioner requested



Respondent No. 4 to process the application as per the criteria for an intake of 100 seats. **Thereafter, the Respondents proceeded with the process for granting approval for 100 seats in MBBS Course.**

7. Then on 28.06.2024, the assessment team of the Respondent No. 4 conducted a Physical Inspection of the Petitioner College for grant of letter of permission for admitting 1st Batch of 100 Students in MBBS Course for the academic year 2024-25. This action of the Respondent No. 4 was conducted after nine months from the date of submission of the Application and subsequently an Assessment Report dated 28.06.2024 was provided to the Petitioners. (Annexure P/2 of the Writ Petition) Further, the Petitioners were given hearing opportunity by the Respondent No. 2 with respect to the Inspection so conducted by the assessment team of the Respondent No. 4. (Annexure P/3 of the Writ Petition) and on 03.07.2024, the representatives of the Petitioner College appeared before the hearing committee of the Respondent No. 2, virtually, however, the things didn't go as planned by the Petitioners, and the Petitioners failed to provide the detailed explanations and reasoning towards the observations made by the assessment team in the aforesaid Assessment Report to the Respondent No. 2. (Annexure P/4 of the Writ Petition)



8. Pursuant thereto, Respondent No. 4 issued a Letter of Disapproval dated 04.07.2024 to the petitioner college, in accordance with Section 28(3) of the said Act. (Annexure P/5 of the Writ Petition). Below are the remarks provided by the Review Committee based on the Standard Assessment Form (SAF), as per the MARB Regulation 2023, published on 2nd June 2023, and UG – MSR 2023, issued on 16th August 2023, for the convenience of this Court –

11.	Review committee remarks	1 <u>College has requested for 100 seats</u> 2. Faculty deficiency of 39% 3. Resident/Tutor deficiency of 39.5% 4. No CT Scan machine available 5. No valid Blood Bank license available 6. No. of delivery is only one. Hence, Denied
12.	<i>Final Remarks by Committee</i>	<i>Committee Reviewed the Standard Assessment Form (SAF) and Scrutiny form of Expert and all relevant parameters found not satisfactory so decided to disapprove the establishment of new medical college/institution on dated 03.07.2024.</i>

(Emphasis Applied)

9. The learned Senior counsel for the Petitioner submitted that, with regard to “Faculty Deficiency and Resident/Tutor Deficiency,” the alleged deficiency was based solely on the fact that, although all the faculty members and residents/tutors were duly approved and registered on AEBAS, 39% and 39.5%, respectively, were not physically present on the date of the inspection. Since there is no requirement for faculty



members to be physically present during such an inspection in a new college that has yet to commence its courses, this should not have been considered a ground for disapproval.

Regarding the “Blood Bank,” the Assessors noted that the Petitioner College had already applied for approval, and an inspection of the Blood Bank had been conducted by the Central Drugs Standard Control Organization, East Zone, Kolkata, on June 4, 2024. Despite this, it was still cited as a reason for disapproval.

As for the “CT Scan,” the Assessors reported that CT scan facilities were available through an outsourced Memorandum of Understanding (MoU), yet this was also used as a ground for disapproval.

Finally, concerning the “Number of Deliveries” mentioned in the order of disapproval, the same is inconsistent with the Assessors’ Report. In Column 2.39 under the heading “Clinical Material” of the Assessors’ Report, it is explicitly stated that the number of normal deliveries recorded was two, and the number of caesarean sections was one. Nevertheless, the MARB relied on incorrect data to justify disapproval to the Petitioner College.

10. Learned Senior Counsel for the Petitioners further submits that the being aggrieved by the decision of disapproval



dated 04.07.2024, the Petitioners preferred First Appeal on dated 18.07.2024 before the Respondent No. 2 under Section 28(5) of the said Act. Herein below I reproduced the aforesaid Section 28(5) of the said Act for the convenience of this Court –

28. Permission for establishment of new medical college. –

.....

(5) Where a scheme is disapproved under sub-section (3), or where no decision is taken within six months of submitting a scheme under sub-section (1), the person concerned may prefer an appeal to the Commission for approval of the scheme within fifteen days of such disapproval or, as the case may be, lapse of six months, in such manner as may be specified by the regulations.

11. In the first Appeal the Petitioners clearly demonstrated that the cited deficiencies as noted by the Respondent No. 4 in its Disapproval letter dated 04.07.2024 are unfounded, perverse and arbitrary. (Annexure P/19 of the Writ Petition) However, the Respondent No. 2 vide its order dated 07.08.2024 upheld the decision dated 04.07.2024 passed by the Respondent No. 4 and disapproved the application of the Petitioner for grant of Letter of Permission. (Annexure P/20 of the Writ Petition) The operative part of the order dated 07.08.2024 passed by the Respondent No. 2 is reproduced herein below for the convenience of this Court –



“Decision of 1st Appeal Committee:

Appeal Committee heard the college authority and re-verified documents and records.

The college appealed against the decision of MARB.

They claimed that the blood bank and CT scan issue has been resolved However, there is a gross deficiency observed on AEBAS and also by the assessors.

The AEBAS data indicates that most of the departments do not have a professor.

During the hearing the college authorities requested to consider for 50 seats. However, looking at the magnitude of the gross faculty deficiency and other parameters the college does not even qualify for 50 MBBS seats.

Committee upholds the decision of the MARB to disapprove the establishment of new medical college/institution.”

12. The Learned Senior Counsel further submits that being aggrieved by the decision dated 07.08.2024 issued by the Respondent No. 2, the Petitioners preferred a Second Appeal on dated 12.08.2024 before the Respondent No. 1 under Section 28(6) of the said Act. Wherein they have demonstrated about the earlier disapproval dated 04.07.2024 passed by the Respondent No. 4 and the decision dated 07.08.2024 issued by the Respondent No. 2 in the First Appeal. (Annexure P/21 of the Writ Petition) Herein below I reproduced the aforesaid Section 28(6) of the said Act for the convenience of this Court.

28. Permission for establishment of new medical college. –



.....

(6) The Commission shall decide the appeal received under sub-section (5) within a period of forty-five days from the date of receipt of the appeal and in case the Commission approves the scheme, such approval shall be the permission under sub-section (1) to establish a new medical college and in case the Commission disapproves the scheme, or fails to give its decision within the specified period, the person concerned may prefer a second appeal to the Central Government within thirty days of communication of such disapproval or, as the case may be, lapse of specified period.

13. The Petitioners were informed by the Respondent No. 1 vide letter dated 27.08.2024 that an opportunity of hearing is being given on 29.08.2024 at 10:00 AM in the Chamber of Additional Secretary (Medical Education) (Room No. 254-A Wing), Nirman Bhawan, New Delhi to present their case (Annexure P/24 of the Writ Petition). Subsequently, the representative of the Petitioners attended the hearing on 29.08.2024 with all the relevant documents as well as the prescribed norms in the Minimum Standard Regulations, 2023 (MSR, 2023) i.e., on which the Petitioners relied upon (Annexure P/25 of the Writ Petition). In pursuant thereto the Respondent No. 1 vide its order dated 30.09.2024 rejected the Second Appeal of the Petitioner College (Annexure P/26 of the Writ Petition). The operative part of the order dated 30.09.2024 passed by the



Respondent No. 1 is reproduced herein below for the convenience of this Court –

9. Combined meeting of the TEG and COO was held on 29.08.2024. Based on the documents presented, following was observed:

- *The College applied for establishment of Medical College with 100 MBBS seats for the academic year 2024-2025.*
- *MARB conducted an inspection of the college. Based on the inspection report dated 28/06/2024, MARB issued a Letter of Disapproval dated 06/07/2024 on the basis of following deficiencies:*
 - ◆ *OPD 918 only on the day of assessment.*
 - ◆ *Faculty deficiency of 39%*
 - ◆ *Residents/Tutor deficiency of 39.5%*
 - ◆ *No CT Scan machine available*
 - ◆ *No valid Blood Bank license available.*
 - ◆ *No. of delivery is only one.*
- *College filed 1st appeal against the order of MARB before NMC. In 1st appeal, NMC upheld the decision of MARB vide order dated 07/08/2024.*
- *Thereafter, the college has filed second appeal dated 12/08/2024 against the order dated 07/08/2024 passed by the National Medical Commission in first appeal for establishment of new medical college with annual intake of 100 MBBS seats for the academic year 2024-2025.*
- *The College in its second appeal informed that the shortage regarding Blood Bank, CT scan has been resolved.*
- *The College also submitted that with regard to deficiency of Professors and other faculty in various Departments, had some technical issues in AEBAS attendance and an email confirming the AEBAS registration of 20 professor of different department was sent to NMC on 03/07/2024.*



- *The College further added that they have 149 faculty, but only 90 were present on the day of assessment.*
- *The Committee observed that as per assessment report, the College had 39 faculty (Professor-07, Associate Professor-09, Assistant Professor-23) and 22 SR/ Tutors against the requirement of 85 (Professor-17, Associate Professor-27, Assistant Professor-41) and 65 SR/Tutors for 100 seats as per NMC norms.*
- *The Committee also observed that as per the assessment report, the College has only 03 deliveries (normal-2, caesarean-1). Further, the College did not have CT scan and Blood bank at the time of assessment.*
- *The Committee noted that as per the assessor's remarks, there was faculty deficiency of 39% and tutor/ residents deficiency of 39.5%. Further NMC in first appeal also observed gross deficiency of faculty and AEBAS.*

10. The documents and submissions made by the appellant have been considered by the Central Government. The Central Government after due examination has decided to reject the 2nd appeal of Shyamlal Chandrashekhar Medical College & SPNM Hospital, Khagaria, Bihar regarding starting of College with 100 MBBS seats for the academic year 2024-2025.

11. Accordingly, the 2nd Appeal dated 12/08/2024 of Shyamlal Chandrashekhar Medical College & SPNM Hospital, Khagaria, Bihar stands disposed of.

14. That being aggrieved by the rejection order dated 30.09.2024 passed by the Respondent No. 1, the Petitioners preferred a Writ Petition bearing W.P. (C) No. 14137/2024 before the High Court of Delhi Under Article 226 asking for similar reliefs as prayed in this present case at hand. However,



the High Court of Delhi without going into the merits of the case dismissed the Writ Petition for lack of territorial jurisdiction vide its order dated 14.10.2024. (Annexure P/31 of the Writ Petition) Thereafter, the Petitioners approached the Hon'ble Apex Court under Article 32 as Writ Petition (C) Diary No. 48489/2024 however, the same has been dismissed by the Hon'ble Apex Court vide order dated 21.10.2024 with a liberty to move a Petition under Article 226 of the Constitution before the Jurisdictional High Court.

15. Thus, the Petitioners filed this present Writ Petition before this Court.

16. Learned Senior counsel for the Petitioners further submits that the Respondent No. 4 herein while rejecting the application of the Petitioners for grant of Letter of Permission flouted the provisions of the said Act, 2019, particularly the Section 28(3) of the said Act.

17. Learned Senior Counsel also submitted that on 30.09.2024 Respondent No. 1 has also approved the Second Appeal of three other similarly situated medical colleges such as of P.A. Sangma International Medical College, KPC Medical College & Hospital, and of School of Medical Sciences, Sri Satya Sai University of Technology & Medical Science, despite



several major deficiencies as per the MSR, 2023 (Annexure P/27, P/28, and P/29 of the Writ Petition).

18. Learned Senior Counsel for the Petitioners submits that the Respondent No. 1 while passing its order dated 30.09.2024 did not follow precedent laid down by the Constitutional Bench of the Hon'ble Supreme Court in ***Mohinder Singh Gill v. Chief Election Commr.***, reported as in **(1978) 1 SCC 405 at page 417 -**

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”



Orders are not like old wine becoming better as they grow older.

A CAVEAT

19. Further, the Learned Senior counsel submitted that Respondent No. 1 while passing its rejection order dated 30.09.2024 has not applied its mind independently and passed an unreasonable order in a Wednesbury sense, and for this contention the Learned counsel relied on the judgment of Hon'ble Apex Court in the case of ***Rameshwar Prasad (VI) v. Union of India*** reported as in **(2006) 2 SCC 1, at page 166 & 167 –**

241. It is an unwritten rule of law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. (See Shalini Soni v. Union of India [(1980) 4 SCC 544 : 1981 SCC (Cri) 38] .)

242. The Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principle is often misunderstood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principle is that a decision will be said to be unreasonable in the Wednesbury [Associated Provincial Picture



Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it.

243. As observed by Lord Diplock in CCSU case [(1996) 4 SCC 104 paras 9-10] a decision will be said to suffer from Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] unreasonableness if it is

“so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it” (All ER p. 951a-b).

20. Lastly, the learned Senior counsel for the Petitioner cited the judgment of the High court of Judicature for Rajasthan at Jodhpur S.B. Civil Writ Petition No. 16822/2024 dated 16.10.2024 and further relied upon the judgment of Hon’ble Apex Court in the case of ***Royal Medical Trust v. Union of India***, reported as in **(2015) 10 SCC 19**, wherein it is held that if compliance is reported by any college, then the Medical Commission of India (erstwhile statutory body dealing with the issue of grant of permission to establish medical institution as the Respondent No. 1), must conduct compliance verification of that college. However, in the present case the compliance verification



of the Petitioner College has never been done by the Respondent No(s). 2,3 & 4, and without conducting any compliance verification of the Petitioner College, the Respondent No. 1 and 2 both rejected the second appeal as well as the first appeal vide their impugned rejection order dated 30.09.2024 and 07.08.2024 respectively. The relevant paragraphs of the aforesaid judgment are reproduced herein below-

31. MCI and the Central Government have been vested with monitoring powers under Section 10-A and the Regulations. It is expected of these authorities to discharge their functions well within the statutory confines as well as in conformity with the Schedule to the Regulations. If there is inaction on their part or non-observance of the time schedule, it is bound to have adverse effect on all concerned. The affidavit filed on behalf of the Union of India shows that though the number of seats had risen, obviously because of permissions granted for establishment of new colleges, because of disapproval of renewal cases the resultant effect was net loss in terms of number of seats available for the academic year. It thus not only caused loss of opportunity to the students community but at the same time caused loss to the society in terms of less number of doctors being available. MCI and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving various stages and time-limits must accommodate every possible eventuality and at the same time must comply with the requirements of observance of natural justice at



various levels. In our view the Schedule must ideally take care of:

(A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfil these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfil the basic requirements would be considered at the next stage.

(B) Inspection should then be conducted by the Inspectors of MCI. By very nature such inspection must have an element of surprise. Therefore, sufficient time of about three to four months ought to be given to MCI to cause inspection at any time and such inspection should normally be undertaken latest by January. Surprise inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

(C) Intimation of the result or outcome of the inspection would then be communicated. If the infrastructure and facilities are in order, the medical college concerned should be given requisite permission/renewal. However, if there are any deficiencies or shortcomings, MCI must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

(D) If compliance is reported and the applicant states that the deficiencies stand



removed, MCI must cause compliance verification. *It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of MCI and the Central Government. In cases where actual physical verification is required, MCI and the Central Government must cause such verification before the deadline.*

(E) The result of such verification if positive in favour of the medical college concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still persist or had not been removed, the applicant will stand disentitled so far as that academic year is concerned.

(Emphasis applied)

21. Per contra Learned Counsel for the Respondent No.(s) 2, 3 & 4 has submitted that by virtue of Section 57 of the said Act, the National Medical Commission (NMC) has been empowered to frame regulations for laying down minimum standards of infrastructure, teaching and other requirements for conduct of medicine courses along with the criteria for admission and the minimum standards of knowledge/ competence. Further, the Hon'ble Supreme Court in various judgments has held that the Regulations framed by the NMC are statutory in character and therefore binding and mandatory on all the concerned Universities and Colleges conducting Medicine courses.



22. Learned Respondent's Counsel submits that the Petitioner College on 16.09.2023 submitted their application to the Respondent No. 4 seeking Letter of Permission against establishment of new medical college with an intake of 100 seats for the academic year 2024-25 in terms of public notice dated 18.08.2023 as issued by the NMC-MARB bearing No. NMC/MARB-UG/2024-2025/047984. (Annexure R2/G of the Counter Affidavit)

23. Learned Counsel then submits that the Respondent No14 pt. 4 has issued a show cause notice dated 04.04.2024 against the application of Petitioner College for establishment of New Medical College for the academic year 2024-25 as per the Section 28(3) of the said Act. (Annexure R2/H of the Counter Affidavit) In this notice the Petitioner College was informed about the various deficiencies and was directed to provide following details –

“

1. *To perform self-assessment of your application on the basis of beds and others parameters as mentioned above for MBBS seat capacity as per UG-MSR 2023 and submit duly filed and signed report by Dean/Principal (preferable digital signatures) within 10 days from the date of issuing this show cause notice.*



2. *If on self-assessment (for example hospital beds available to proposed intake of MBBS seats you wish to revise your request), please indicate the same.*
3. *To submit the duly filled and signed compliance report by Dean/Principal (preferably digital signatures) on the deficiencies/inadequacies as stated above within a time period of 10 days from the date of issuing this show cause notice.*
4. *To submit the AEBAS registered faculty report along with the joining letters signed by the competent authority within 10 days from the date of issuing this show cause notice.*
5. *To submit the duly filled and signed affidavit (format attached as Annexure-1) within 10 days from the date of issuing this show cause notice.”*

24. It is further submitted that pursuant to the issuance of show cause notice dated 04.04.2024, the Petitioner College duly admitted the deficiencies as pointed out in the said cause notice and by way of letter dated 09.04.2024 along with an email dated 10.04.2024 they submitted its compliance along with the Standard Assessment Form. (Annexure R2/I of the Counter Affidavit) Further, it is pointed out by the Learned counsel that the Petitioners have been deliberately suppressed the material facts in this present petition, thereby they are guilty of col4



ptmmitting *suppressio veri suggestio falsi* (suppressing the truth; suggesting the false).

25. Learned counsel further submits that on a bare perusal of the AEBAS (Aadhar Enabled Biometric Attendance System) data of the Petitioner college, read with the Standard Assessment Forms Submitted by the Petitioner college and the statutory requirements shall clearly demonstrate that inter alia, the Petitioner college has the following deficiencies – (Annexure R2/J & R2/K of the Counter Affidavit).

- a. Faculty Deficiency of 62.4% as per the AEBAS data & 39 % as per the Inspection Report dated 28.06.2024
- b. Resident Deficiency of 58.5% as per the AEBAS data & Deficiency of 39.5% in Tutors/SR/JR as per the Inspection Report dated 28.06.2024
- c. Blood Bank & Blood Unit Component not available

26. The Learned Counsel for the Respondents lastly submitted that the Petitioner College during the filling of the Application form for establishment of new college was admittedly not ready for establishment of a new Medical College with 100 intake capacity for the academic year 2024-25. Further the relying on the various judgments of the Hon'ble Apex Court such as *Anand Yadav v. State of Uttar Pradesh* reported as in *AIR 2020 SC 5383*; and *Zahoor Ahmed v. Sheikh Imtiyaz*



Ahmed reported as in **(2019) 2 SCC 404** submitted that the judging of mechanism to ensure maintenance of standard of education in medical colleges is exclusively within the domain of the experts of the concerned field, and it is not the function of this court to sit as an expert body over the decision of all eminent people who are experts of the concerned subject matter.

27. Lastly the Learned Counsel for the Respondent No. 2, 3 & 4 filed a supplementary Counter Affidavit bringing on record a public notice bearing No. M-19011/11/2023-MARB/NMC(e-8244596) dated 19.12.2024 issued by the Govt. of India National Medical Commission in the subject ***“Inviting Applications for establishing a new medical college/institution intending to offer under-graduate course and increase in the number of UG seats in an established medical institution for the Academic Year (AY) 2025-2026”*** (Annexure R2/O of the Supplementary Counter Affidavit) and from the records, it appears that the petitioner has not applied fresh for 2025-26, after disapproval of its earlier application for 2024-25. Since his earlier application for 2024-25 has lost its effect after inspection and disapproval, the Petitioner College is required to apply fresh for the academic year 2025-26 as per the norms.

28. A counter affidavit has also been filed by the Respondent No. 1 stating that the hearing of the Respondent No.



1 and the Petitioner College was done before the Technical Expert Group (TEG) and Committee of Officials (COO) on 29.08.2024 and the Technical Expert Group consists of senior faculty / subject experts of the Central Government Medical Colleges / Institutions / Hospitals, subsequently vide Order dated 30.09.2024 the Respondent No. 1 rejected the second appeal of the Petitioner College under Section 28(6) of the said Act, 2019 for establishment of new medical college namely Shyamlal Chandrashekhar Medical College & S.P.N.M Hospital, Khagaria, Bihar with 100 MBBS seats for the academic year 2024-25.

29. Learned Counsel for Respondent No. 1 further submitted that no discrimination was exercised against the petitioner college or other institutions in the process of granting Letter of Permission for establishing a new medical college to offer medical courses for the academic year 2024-25.

30. Learned Counsel lastly submits, that in the present case, the institution fails to meet the minimum standards prescribed by the National Medical Commission during the physical inspection. Additionally, the requisite faculty members were not registered in the Aadhaar-Enabled Biometric Attendance System (AEBAS). On the day of the physical assessment, the petitioner college had only 39 faculty members (07 Professors, 09 Associate Professors, and 23 Assistant Professors) against the required 85 faculty members (17 Professors, 27 Associate Professors, and 41 Assistant Professors). Furthermore, as per the



assessor's report, the college had only three recorded deliveries (Normal deliveries 02 and Caesarean Sections 01). In view of these deficiencies, this Writ Petition is liable to be dismissed.

31. Heard the arguments advanced of both the parties.

32. I have identified a crucial issue pertaining to the mandatory issuance of a show cause notice prior to the disapproval order by Respondent No. 4, which requires careful consideration. In this regard, the relevant statutory provision is Section 28(3) of the said Act. Before proceeding with a detailed discussion on the applicability and interpretation of Section 28(3), I deem it appropriate to reproduce the provision herein for the convenience of this Hon'ble Court -

28. Permission for establishment of new medical college. —

.....

*(3) The Medical Assessment and Rating Board shall, having due regard to the criteria specified in section 29, consider the scheme received under sub-section (2) and either approve or disapprove such scheme within a period of six months from the date of such receipt:
Provided that before disapproving such scheme, an opportunity to rectify the defects, if any, shall be given to the person concerned.*

(Emphasis applied)

The proviso clause of the section expressly stipulates that before issuing a letter of disapproval, MARB is mandated to



provide the applicant with an opportunity to rectify the deficiencies identified, thereby enabling the applicant to proceed with the process of obtaining a Letter of Permission for the newly established medical college. Herein I relied upon the Judgments of Hon'ble Apex Court in the case of *Swamy Devi Dayal Hospital & Dental College vs The Union of India and Ors.* reported as in *2014 (13) SCC 506* and *Royal Hospital Trust (Supra)*.

However, in the present case, Respondent No. 4 failed to grant such an opportunity to the Petitioner College to rectify the deficiencies noted during the physical assessment conducted on 28.06.2024. The aforesaid provision is of a mandatory nature, as evidenced by the use of the term “shall,” which imposes an unequivocal legal obligation to act in accordance with the provision.

A perusal of the record clearly indicates that the required action under this mandatory statutory provision has not been undertaken. Consequently, the Petitioner College was deprived of the opportunity to rectify the deficiencies, resulting in a direct violation of the statutory mandate of the said Act by the Respondent No. 4.



Furthermore, it is pertinent to note that in the order of the Second Appeal dated 30.09.2024, Respondent No. 1 explicitly recorded in Point No. 5 that “no show cause notice was issued by MARB.” However, despite acknowledging this critical procedural lapse, Respondent No. 1 failed to duly consider its implications and, in an erroneous manner, without any application of mind proceeded to reject the Second Appeal of the Petitioner College. Henceforth, the Petitioner has not been issued any show cause on the deficiencies on the basis of which the approval has been rejected.

33. The Respondents No. 2, 3, and 4 asserted that a show cause notice was issued to the Petitioner College. Upon examination of the records submitted by the concerned parties, it is evident that a show cause notice dated 04.04.2024 was issued to the Petitioner College with the subject: **“Office Order Regarding Your Online Application for Establishment of a New Medical College (150 Seats) After Completion of Scrutiny Process.”**

Pursuant to this show cause notice, the Petitioner College was directed to conduct a self-assessment of its application based on bed strength and other parameters for MBBS seat capacity, in compliance with the UG-MSR, 2023, and



to submit a duly filled and signed report by the Dean/Principal (preferably with digital signatures) within ten (10) days from the date of issuance of the notice. In compliance with the aforesaid direction, the Petitioner College submitted a letter bearing No. SLMC/Letter/2024/074 dated 09.04.2024, with the subject: **“Regarding Self-Assessment as per the Show Cause Notice Vide Application ID No. NMC/UG/2024-25/000093 and Decision to Claim for Only 100 Seats, not for 150 Seats.”**

Additionally, the Principal of the Petitioner College, Dr. Uma Shankar Singh, representing the Petitioner College, submitted an Undertaking/Affidavit affirming that the college had applied for the establishment of a new medical college for the Academic Year 2024-25 with an intake capacity of 100 seats (Annexure R2/I Series of the Counter Affidavit).

A prima facie examination of Annexure R2/I Series establishes that the Petitioner College, through its self-assessment, has unequivocally decided to seek a Letter of Permission for an intake capacity of 100 MBBS seats. Furthermore, the Petitioner College explicitly requested the MARB to conduct the necessary inspection and all other related processes in accordance with the prescribed criteria for the said intake capacity.



In view of the foregoing facts and circumstances, upon perusal of the Disapproval Order dated 04.07.2024 and the Rejection Order dated 30.09.2024, it is evident that the Petitioner College sought approval for an intake of 100 MBBS students. This fact was duly acknowledged by the Respondents, who proceeded accordingly in the matter.

It is further evident that the show cause notice dated 04.04.2024 was issued only after the verification of the application form duly submitted by the Petitioner College on 16.09.2023, which pertained to an intake capacity of 150 MBBS students. Consequently, Respondent No. 4, after considering the reply to the show cause notice dated 04.04.2024, did not issue any subsequent show cause notice to the Petitioner College with respect to the revised intake capacity of 100 MBBS students.

The failure to issue such a mandatory show cause notice, as required under Section 28(3) of the said Act, renders the Disapproval Order dated 04.07.2024 issued by Respondent No. 4 legally untenable. It is, therefore, apparent that the show cause notice dated 04.04.2024 does not pertain to the mandatory show cause notice that ought to have been issued prior to the passing of the Disapproval Order by the MARB (Respondent No. 4) dated 04.07.2024.



Accordingly, the contention of Respondent Nos. 2, 3, and 4 that the mandatory show cause notice was duly issued to the Petitioner College is untenable as the purpose of the show cause notice dated 04.04.2024 is distinct from that of the mandatory show cause notice required under Section 28(3) of the said Act, which ought to have been issued subsequently to the Petitioner College, but they failed to act as per the said provision of the Act.

34. It is an established fact that the Petitioner College is a newly established institution seeking approval for the establishment of a new medical college. There exists no mandatory requirement for the physical presence of all faculty members on the date of physical inspection. This position is further substantiated by the letter dated 25.01.2023, bearing No. D-130024/07/2022/NMC/DMMP002558, issued by the National Medical Commission.

In this letter, it is explicitly stated under Point No. 2 that:

“NMC in its previous communications has already advised the Medical Colleges that for consideration of any applications for renewals, recognition, CoR (Continuation of Recognition), surprise inspections, increase in UG/PG seats, approval of PG courses, college applying for new establishments, the data of AEBAS, HMIS, and CCTV integration with NMC will be used for decision making.”



The said document has been annexed as Annexure R2/E of the Counter Affidavit, further reinforcing the fact that the assessment and decision-making process are primarily based on AEBAS, HMIS, and CCTV integration data, rather than the physical presence of faculty members at the time of inspection.

35. Based on the applicable rules and regulations, the Petitioner College has duly adhered to the prescribed framework for faculty attendance through the AEBAS portal and has submitted all requisite documents to facilitate the creation of faculty profiles on the said portal. Furthermore, the Respondents have failed to produce any statutory or regulatory requirement mandating the physical presence of all faculty members on the date of inspection. Consequently, there exists no deficiency in faculty compliance.

The Petitioner has placed on record the Assessors' Report dated 28.06.2024 (Annexure - P/6), which explicitly establishes that 149 faculty members are duly registered on the AEBAS portal, thereby meeting the requisite threshold for the grant of a Letter of Permission to the Petitioner College. It is pertinent to clarify that only those faculty members who have undergone due verification, scrutiny, and approval by the Respondent National Medical Commission (NMC)—as



communicated via official correspondence—are permitted to be registered on the AEBAS portal.

This Court also notes that as per UG-MSR 2023, a medical college is required to have faculty strength of 85, for the purpose of admitting 100 students. This is evident from the following extract from UG-MSR 2023:

TOTAL STRENGTH						
	PROF	ASSOC. PROF	ASST. PROF	TOTAL	TUT:DEMO	SR
50 SEATS	14	20	25	59	15	23
100 SEATS	17	27	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

On the date of physical assessment i.e., on 28.06.2024, the assessors duly verified and confirmed that 149 faculty members of the Petitioner College were registered on the AEBAS portal. However, the physical presence of faculty members was recorded as deficient by 39% and 39.5%, respectively.

It is also important to mention here that once the faculty members have been duly approved by the Respondents and registered on the AEBAS portal, the absence of certain faculty members on the specific date of inspection cannot be construed as a deficiency warranting adverse action. Further, from the bare perusal of the above-mentioned tabular chart only 85 faculties are required and in the case at present Petitioner College has the



strength 149 faculties, thus this court finds herein merit in the contention of the Petitioner.

36. With respect to the remaining two deficiencies, which were not initially identified by the assessors but were subsequently cited in the disapproval letter, the Petitioner has duly provided a comprehensive explanation before the Respondents. The Respondents have acknowledged that both the CT scan and the Blood Centre are in existence, thereby establishing that no deficiency exists in relation to these facilities.

On a perusal of the record it reveals that the Petitioner College submitted an application for the grant of a license to operate a Blood Centre on 11.12.2023 (Annexure P/14). After fulfilling all requisite prerequisites, the Central Drugs Standard Control Organisation (CDSCO-East Zone) issued a communication dated 04.06.2024, specifying that a joint inspection of the Petitioner's Blood Centre was scheduled for 06.06.2024. Pursuant thereto, CDSCO-East Zone issued another letter dated 08.07.2024, directing the Petitioner's Blood Centre to undergo a subsequent round of joint inspection on 16.07.2024. Ultimately, on 22.08.2024, the Petitioner's Blood Centre was granted a license for operational purposes, rendering it fully functional.



With respect to the CT Scan facility, it is evident from the record that the same was duly installed on 01.08.2024 and has remained functional since that date (Annexure P/13). Accordingly, there exists no valid ground for disapproval based on deficiencies concerning the Blood Centre and the CT Scan facility.

37. From the foregoing facts and circumstances, it is also evident that the Respondents have failed to adhere to the prescribed time schedule due to delay and laches on their part, also did not consider the material facts brought by the Petitioner on record during the First and Second Appeal, and consequently, the Petitioner College has suffered prejudice, resulting in its inability to secure admissions for the academic session 2024-25.

38. It is evident from the record that the Respondents have engaged in gross discrimination. In cases involving similar deficiencies or more as those identified by the Assessors and the Review Committee of MARB, the Second Appeal of other institutions was allowed by Respondent No. 1 without any compliance verification, rectification, or fresh inspection. The approval was granted solely based on the information provided by those institutions before the Appellate Authority, along with their



undertakings and affidavits asserting compliance with faculty requirements.

However, in the case of the Petitioner College, despite consistent submissions from the outset affirming the availability of the requisite faculty, the installation of the C.T. Scan machine, and the issuance of the Blood Centre license, the Respondents have arbitrarily rejected the appeal without due consideration of the Petitioner's submissions.

39. In an era where there is an acute shortage of doctors in society, the Petitioner College has not only established the requisite infrastructure but has also appointed faculty members in accordance with the prescribed requirements for an intake of 100 MBBS students. This Court acknowledges the significance of these highly skilled professionals who have chosen to serve as faculty at the Petitioner College. If the college is denied the student intake it is legally entitled to, the engaged faculty members would be rendered idle and redundant, serving neither the institution nor the broader medical community. Such an outcome would constitute a substantial waste of valuable human resources, particularly in the field of medicine, where the demand for qualified professionals far exceeds the supply. Ensuring the optimal utilization of trained medical faculty is imperative to



addressing the prevailing healthcare crisis and upholding the larger public interest.

40. Further, I do not intend to interfere with the norms established by the Respondents, nor do I seek to question the opinion of experts. Consequently, the contentions raised by the Respondents with respect to “opinion of experts”, as well as the judgments of the Hon’ble Apex Court cited in their support, are neither relevant nor applicable for consideration by this Court in the present case.

41. Prima facie, I find that the attitude of MARB (Respondent No.4) is not of model litigant as the MARB is an organ of the State and is expected to act in a fair and reasonable manner.

42. In light of the aforesaid facts and circumstances, and upon a meticulous examination of the entire record, it is evident that the disapproval order dated 04.07.2024 (Annexure P/5) issued by Respondent No. 4, the disapproval order dated 07.08.2024 (Annexure P/20) passed by Respondent No. 2 in the First Appeal, and the rejection order dated 30.09.2024 (Annexure P/26) rendered by Respondent No. 1 in the Second Appeal suffer from manifest illegality and arbitrariness. The said orders, being violative of the principles of *audi alteram partem* and *nemo debet*



esse judex in propria causa, warrant interference by this Court. Accordingly, in the interest of justice, equity, and good conscience, the aforesaid impugned orders dated 04.07.2024, 07.08.2024 and 30.09.2024 are liable to be quashed and set aside as being *non est* in the eyes of law.

43. Moreover, the Second Appeal has been allowed in favor of other similarly situated institutions, despite their having similar or even greater deficiencies compared to the Petitioner College, and considering that their appeals were allowed solely on the basis of the information provided by them, along with their undertakings and affidavits, the same principle of parity must be applied to the Petitioner College. Given that the Petitioner College has duly furnished all requisite documents and is willing to submit an undertaking/affidavit in the same manner as the other institutions, it is incumbent upon the Respondents to grant the Letter of Permission to the Petitioner College for the intake of 100 MBBS seats for the upcoming academic year.

44. With respect to the determination of the pertinent academic year, it is manifest from the factual matrix and evidentiary record that the academic year 2024-25, for which the Petitioner College had sought the grant of the Letter of Permission, has already lapsed. Consequently, with the



commencement of the new academic year 2025-26, the doctrine of *actus curiae neminem gravabit* mandates that no party should suffer due to procedural delays will apply here. In light of the foregoing, I am of the considered view that the Petitioner College's earlier application dated 16.09.2023 for the grant of the Letter of Permission ought to be duly considered for the current Academic Year 2025-26, ensuring compliance with the principles of *ex debito justitiae*.

45. Further it is evident from the records presented by Respondents No. 2, 3, and 4 that the National Medical Commission has issued a fresh Public Notice dated 19.12.2024 for the establishment and recognition of new medical colleges for the Academic year 2025-26, stipulating a one-month period for the submission of applications from the date of its issuance. Since the deadline for submitting applications along with all requisite documents has lapsed, thus considering the facts and circumstances of the case, the following directions are hereby issued, which shall be duly implemented and complied with by the concerned parties: –

- i. The Respondents No. 2, 3, and 4 are hereby directed to treat the Petitioner College's earlier application dated 16.09.2023 for the grant of a Letter of Permission for an intake of 100 MBBS seats as being for the academic year 2025-26.



ii. For this the Respondent No. 4 shall ensure that the Petitioner's application for the aforesaid purpose is duly accepted for the current academic year 2025-26 and shall process the same within seven days from the date of receipt or production of a copy of this order, in accordance with the principles of fairness and procedural justice.

iii. The National Medical Commission is hereby directed to conduct a special inspection/physical assessment within twenty days from the date of receipt or production of a copy of this order to verify and ascertain whether all deficiencies previously identified in the disapproval order dated 04.07.2024 have been duly rectified and whether the Petitioner College complies with the requisite norms prescribed for the academic year 2025-26 for the grant of the Letter of Permission for an intake of 100 MBBS seats.

iv. The concerned Respondent shall communicate a tentative date for the scheduled inspection to the Petitioner College in advance to ensure the smooth and orderly conduct of the process.

v. The entire process for granting the Letter of Permission must be concluded by the concerned Respondents before the commencement of the current Academic year 2025-26, i.e., by 31.08.2025.

vi. In the event that any further deficiencies are identified during the special inspection/physical assessment, the Respondent authorities shall issue a show cause notice to the



Petitioner College, granting a period of one month to rectify the deficiencies. Upon the expiration of this period, a subsequent inspection/physical assessment shall be conducted to verify whether the deficiencies have been duly addressed.

vii. However, if the deficiencies are of such a nature that they cannot be rectified within the stipulated one-month period, the concerned Respondents shall grant the Letter of Permission for the Academic Year 2025-26 for an intake of 100 MBBS seats upon the submission of an undertaking/affidavit by the Petitioner College, affirming compliance, in the same manner as permitted for other similarly situated institutions by Respondent No. 1.

viii. The Respondent authorities are further directed to strictly adhere to the statutory provisions prescribed under the said Act and to diligently comply with the applicable guidelines governing the requisition and grant of the Letter of Permission.

ix. The Petitioner College is further directed to comply with all requisite prerequisites and deposit the prescribed fees in accordance with the norms governing the Academic year 2025-26 to ensure that the process for the grant of the Letter of Permission proceeds smoothly and in a lawful manner.

46. In the result, this writ petition is allowed based on aforesaid observations and terms and pending applications, if any, shall also stands disposed of.



(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.03.2025
Transmission Date	NA

