



2025:DHC:9766



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

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Judgment Delivered on: 06.11.2025+ **W.P.(C) 14939/2025 & CM APPL. 61499/2025****SHRINIVAS G EDUCATIONAL AND RESEARCH
INSTITUTE OF MEDICAL SCIENCES & ANR.....Petitioners****Through: Mr. Gaurav Bhatia, Sr. Adv. with
Mr. Utkarsh Jaiswal, Mr. Vikas
Tiwari, Mr. Shubh Sharma, Mr.
Prashanjay J. Sahani and Mr.
Aakash Nandwani, Advs.**

versus

NATIONAL MEDICAL COMMISSION & ORS.....Respondents**Through: Mr. Kirtiman Singh, Sr. Adv. with
Mr. T. Singhdev, Mr. Bhanu
Gulati, Mr. Sourabh Kumar and
Mr. Vedant Sood, Advs. for R-1
to 3/NMC.****CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J**

1. The present petition has been filed seeking following reliefs:

- “a. Certiorari, quash and set aside the impugned Letter of Disapproval dated 21.09.2025 issued by Respondent No. 2 (MARB/NMC), whereby the Petitioners’ scheme dated 04.01.2025 for establishment of a new medical college with an intake of 150 MBBS seats for AY 2025–26 has been disapproved;*
- b. Mandamus directing Respondent Nos. 1 and 2 to grant/issue the Letter of Permission (LoP) to the Petitioner College to establish a new medical college with an intake of 150 MBBS students for the academic year 2025–26, on the basis of the assessment/inspection report dated 10.07.2025 and the*



- contemporaneous record, and, or*
- c. *Mandamus, in the alternative, directing Respondent Nos. 1 and 2 to forthwith conduct a compliance-verification inspection, consider the Petitioner College's compliance on record, and thereafter pass a fresh, reasoned order within a short, fixed timeline, after affording the Petitioner a reasonable opportunity of being heard and to rectify in terms of the proviso to Section 28(3) of the National Medical Commission Act, 2019."*

2. Grievance ventilated in the present petition is against the impugned Letter of Disapproval dated 21.09.2025 issued by respondent no.1/National Medical Commission [hereinafter 'NMC'], whereby the application/scheme under Section 28 of the National Medical Commission Act, 2019 [hereinafter 'Act'] of the petitioner for establishment of a new medical college, i.e. Shrinivas G Educational and Research Institute of Medical Sciences, was rejected by respondent no. 2/Medical Assessment and Rating Board [hereinafter 'MARB'].

3. It is stated that NMC, *vide* Public Notices dated 05.12.2024 and 19.12.2024, invited applications for establishment of new medical colleges or to seek an increase in UG seats for the academic year 2025-26. In pursuance thereof, petitioner institute submitted its application dated 04.01.2025 seeking permission to establish a new medical college with an annual intake of 150 MBBS seats for the academic session 2025-26 at Chapra, Bihar.

4. Subsequently, respondent nos.1 & 2 directed all applicant institutions to submit self-declaration forms. In compliance with the same, petitioner institute duly submitted its self-declaration form dated



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08.05.2025. Thereafter, respondent no. 2 issued a Show Cause Notice dated 07.06.2025 informing the petitioner of certain deficiencies. In response to the said Show Cause Notice, the petitioner institute submitted its compliance report dated 13.06.2025 along with accompanying documents.

5. Subsequently, a compliance verification inspection was conducted on 10.07.2025 for the petitioner institute, following which the impugned Letter of Disapproval dated 21.09.2025 was issued by respondent no 2, whereby the petitioner's scheme/application dated 04.01.2025 for the establishment of a new medical college was disapproved. The deficiencies on which disapproval is predicated reads thus:

Sr. No.	Parameters	Deficiencies
(a)	Faculty	- As per assessor's report-26.32% of faculty and 34.44% SR/Tutor and 01 clinical psychologist deficient for 150 seats. - AEBAS attendance for three months(Jun-Aug 2025 with atleast 75% attendance) is zero.
(b)	Clinical Material	- Ventilators not available in ICU and ICCU. - Museum charts, specimens etc not available - Deficient in variety of surgical procedures - OT register not properly maintained. - OT list shows 05 patients but no patients on OT table.
(c)	Infrastructure	02 Lecture halls under construction
(d)	College Litigation	College Litigation as per MARB Notices dated 05-12-2024 & 19-12-2024 is not found.

6. Mr. Gaurav Bhatia, learned Senior Counsel appearing on behalf of petitioners' submits that the disapproval of petitioner's application *vide* letter dated 21.09.2025 is unsustainable, as the statutory scheme laid down under the Act, in particular Section 28(3), has not been complied with inasmuch as the mandatory six-month timeline stipulated therein



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has not been adhered to by the respondents. He submits that petitioner institute's application was filed on 04.01.2025 and accordingly, the six-month outer limit expired on 04.07.2025. However, no decision was communicated within the said period. Instead, an adverse decision was communicated after a period of eight and a half months on 21.09.2025.

7. He submits that respondents' failure to adhere to the six-month statutory timeline for deciding the petitioners' application has effectively nullified the appellate remedies provided under the Act. Therefore, belated disapproval practically leaves no window for the petitioners' to avail the appellate mechanism contained under sub-sections (5) and (6) of Section 28. He submits that the first appeal is required to be preferred within 15 days of disapproval while another 45 days are provided for deciding the appeal. The petitioners' right of appeal, in effect, stands defeated considering the delay in issuance of Letter of Disapproval as well as, the counselling process having already begun and set to conclude in November. It is urged that the petitioners' has been rendered remediless, necessitating invocation of this Court's writ jurisdiction.

8. Mr. Bhatia further submits that the petitioner institute did not prefer a first appeal earlier, having acted *bona fide*ly on repeated assurances of officials of the NMC that an order on the application would be issued imminently, i.e. within a day or two. In light of these assurances, petitioner institute refrained from initiating appellate proceedings.

9. He submits that the alleged 'shortfall' of faculty (26%) and residents (24%) recorded in the assessors' inspection report dated



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10.07.2025 is artificial, context-induced and stems from a truncated headcount. He submits that the assessment occurred on the very next morning of a State-wide *Bihar Bandh* on 09.07.2025, which caused extensive road and rail blockades. He contends that the assessors, who visited the petitioner institute for inspection, restricted the headcount to only those personnel who were present up to 12:00 PM and excluded the faculty and residents who reported for duty thereafter, after having assessed the situation and waiting for the conditions to normalise.

10. He further submits that the finding in the assessors inspection report dated 10.07.2025, which recorded AEBAS as deficient, is wholly attributable to the inaction of the respondents and cannot be held fatal to the petitioner institute. He submits that well before the date of inspection, petitioner institute repeatedly sought activation and rectification of the AEBAS system from the respondents, apprising them that biometric attendance was not reflecting on the portal.

11. To buttress his contention, he invites the attention of the Court to the email dated 15.06.2025, wherein the petitioner institute pointed out specific issues being faced with regard to the biometric activation key. Referring to NMC's response email dated 16.06.2025, Mr. Bhatia submits that the NMC had merely noted the request and stated it would "get back to the petitioner shortly".

12. He additionally draws the Court's attention to the email sent by the petitioner to the respondent no.1 on 14.07.2025 to submit that the technical glitches pointed out by the petitioner institute were still being looked into by the NMC as late as 14.07.2025, i.e. after the compliance



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verification inspection had already concluded on 10.07.2025.

13. He submits that despite these persistent requests, the AEBAS system at the petitioner institute was activated by the respondents only on 19.07.2025, nine days after the inspection. He therefore contends that since the inspection was conducted on 10.07.2025, respondent/NMC could not have raised an objection regarding the AEBAS attendance considering that the technical issues raised by the petitioner had not yet been redressed by the NMC itself.

14. He submits that the observation regarding a shortage of ventilators does not warrant an adverse conclusion. In any event, the petitioner finalized procurement and issued a purchase order on 23.09.2025 for the requisite ventilators immediately upon receipt of the impugned disapproval.

15. Referring to the finding regarding Museum, he submits that the same is factually incorrect and misconceived. The Museum stands established and is functional, comprising a curated collection of wet and dry specimens. He submits that the assessors' own inspection report dated 10.07.2025 records the availability and functional status of the Museum, thereby directly contradicting the observation in the impugned disapproval.

16. Further, referring to the finding regarding "OT Records / Variety of Surgical Procedures being Inadequate" he submits that the same is patently erroneous and bespeaks non-application of mind. The OT registers, intra-operative notes and anaesthesia records placed on record evidence nine (09) major surgeries on the day of assessment, satisfying



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MSRs-2023 benchmarks. Critically, the assessors' report dated 10.07.2025 itself records nine (09) major surgeries. It is, therefore, unclear how the figure of five (05) finds mention in the impugned disapproval, as it is directly contradicted by the contemporaneous primary documents that were before the authority.

17. Furthermore, referring to the deficiency of lecture theatre, he submits that as per MSRs-2023, four (04) lecture theatres are required for an intake of 150 MBBS students. However, on the date of inspection i.e. 10.07.2025, two (02) lecture theatres were fully operational, while the remaining two (02) were at an advanced finishing stage with all civil works, fixtures and fit-outs nearing completion.

18. Referring to the deficiency of college litigation, he submits that no litigation was pointed out inasmuch as the college is not involved in any litigation.

19. He submits that notwithstanding the inspection conducted on 10.07.2025, no post-inspection communication, whether a deficiency letter, show-cause notice, or call for compliance, was ever issued to the petitioner prior to the issuance of the impugned Letter of Disapproval dated 21.09.2025. The impugned disapproval is thus vitiated for being in clear breach of the proviso to Section 28(3) of the Act, as no pre-decisional opportunity to rectify was afforded, and is further vitiated for having been rendered beyond the six-month statutory outer limit. To buttress his contention, he places reliance on the decision of Hon'ble Supreme Court of India in *Royal Medical Trust v. Union of India*, (2015) 10 SCC 19.



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20. Furthermore, reliance has also been placed on the decision of this Court in ***IQ City Medical College v. NMC***, (W.P.(C) 12906/2024 decided on 19.09.2024); ***NMC v. NCR Institute of Medical Sciences & Ors.*** (LPA563/2025 decided on 04.09.2025) and ***NMC v. Index Medical College & Ors.*** (LPA564/2025 decided on 04.09.2025) and on the Hon'ble Supreme Court's order dated 08.09.2025 in ***Madhuri Sewa Nyas & Anr. v. Dr. Abhijat Sheth & Ors.*** in Contempt Petition (Civil) in SLP (Civil) No. 15865 of 2025, to submit that in similar circumstances, NMC has been directed to forthwith conduct a fresh inspection and take a time-bound decision so that counselling is not derailed.

21. He further submits that the criteria for approving or disapproving a scheme under Section 28 are stipulated under Section 29 of the Act. In this regard he submits that the petitioner institute is fully compliant with all the conditions as laid down under Section 29 and possesses all necessary standards and infrastructure required to admit 150 students in the MBBS course for the academic session 2025-26. The petitioners' have invested significantly to develop the required infrastructure, ensuring that all facilities and resources are in place to effectively support the first batch of 150 students.

22. He further submits that in the preceding academic year, respondent no.4, in exercise of its second-appellate jurisdiction, granted permission to three similarly situated medical colleges despite those colleges having deficiencies far greater than those alleged against the petitioner institute. This disparate treatment discloses gross irregularities



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in the respondents' decision-making process. Reliance has been placed on the decision of *P.A. Sangma International Medical College* (Second Appeal, 30.08.2024), *KPC Medical College* (Second Appeal, 30.08.2024) and *Sri Satya Sai University* (Second Appeal, 30.08.2024).

23. He submits that recently in respect of *Viraat Ramayan Medical College*, LoP was granted in the first appeal itself, even after issuance of the disapproval letter on 24.09.2025 citing deficiencies that were graver than the deficiencies pointed out in the case of the petitioner.

24. *Per contra*, Mr. Kirtiman Singh, learned Senior Counsel appearing on behalf of the respondents raises a preliminary objection regarding maintainability of the present writ petition on the ground of lack of territorial jurisdiction. He submits that petitioner institute is situated within the State of Bihar, therefore, the mere location of the answering respondents' office within this Court's jurisdiction does not, in itself, confer jurisdiction under Article 226, particularly when the petitioner institute is, in essence, seeking relief against the Directorate of Medical Education, Government of Bihar.

25. He submits that due to the existence of an equally efficacious and specific statutory remedy available to the petitioners' under the Act, the present petition is not maintainable. He submits that under the scheme of the Act, any medical institution aggrieved by the decision of the MARB, may prefer an appeal before the NMC under Section 28(5). He submits that the said right of appeal has been spelt out in the impugned order as well. He further submits that Section 28(6) of the Act provides a second appellate remedy before the Central Government against the decision of



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NMC.

26. Mr. Singh contends that the petitioner institute was afforded many opportunities to rectify the deficiencies, initially pointed out through the Show Cause Notice dated 07.06.2025 and subsequently, by way of the compliance verification inspection conducted on 10.07.2025 under Section 28 of the Act. However, despite the same, the petitioner institute continued to exhibit major non-compliances.

27. He submits that the plea now sought to be raised by the petitioners', alleging that the inspection on 10.07.2025 coincided with local disruptions and could not be meaningfully conducted, is false, and a deliberate afterthought. This is evidenced by the fact that the petitioner institute was formally informed about the said verification inspection at 07:55 AM on 10.07.2025 itself, through an official email clearly intimating the schedule, names of assessors and the procedural requirements.

28. Furthermore, he submits that a perusal of the assessors' inspection report dated 10.07.2025 demonstrates gross deficiencies *inter alia* a 26.32% deficiency in teaching faculty, a 34.44% deficiency in Senior Residents/Tutors and absence of a Clinical Psychologist. The assessors also recorded critical infrastructural and operational flaws, including two lecture theatres under construction, non-functional ventilators in the ICU/ICCU, incomplete Museum facilities, absence of proper OT records, OT lists showing surgeries without corresponding patients, unmaintained blood registers, inadequate clinical material, no documents regarding college litigation as per MARB Public Notices dated



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05.12.2024 and 19.12.2024.

29. He submits that petitioner's non-compliance is further evidenced by the AEBAS attendance data for June-August 2025, which shows nil/zero attendance for all faculty and residents. This deficiency in AEBAS is critical as the system has been made mandatory since August 2022 and applications are strictly evaluated on such verified data. He submits that this requirement is not a new or contingent obligation, having been mandated by the respondents *vide* Circular dated 01.08.2022 and reinforced *vide* Circular dated 25.01.2023, which explicitly made applications for renewals or seat increases contingent on full and accurate AEBAS data, etc.

30. Furthermore, he submits that the petitioner's application dated 04.01.2025 and the Self Declaration Form dated 08.05.2025, attested to petitioner possessing the requisite faculty, residents and infrastructure at the time of application itself, however, the same came out to be false and misleading. The faculty strength and facilities declared therein were proven grossly deficient by subsequent 10.07.2025 inspection and the AEBAS verification (June-August 2025). Majority of the declared faculty were absent, untraceable on AEBAS or below the mandatory 75% attendance threshold, contravening Section 29 of the Act. This deliberate misrepresentation demonstrates a lack of *bona fides*, and in view of these persistent deficiencies, MARB rightly issued the Letter of Disapproval dated 21.09.2025.

31. Refuting the petitioner's claim that the AEBAS system only became operational on 19.07.2025, he submits that a perusal of AEBAS



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data from March-May 2025 shows two faculty members were successfully marking attendance on the same system. It is thus apparent that the petitioner initiated new faculty appointments only in June/July, which is why the June-August AEBAS data shows attendance below the required 50% threshold.

32. On the aspect of re-inspection, Mr. Singh submits that inspections cannot be allowed at this stage as the essential element of surprise, which is the foundation of regulatory inspections, would be entirely lost. The petitioner, if given this opportunity, may present superficial or temporary arrangements rather than reflecting the true, continuous functioning of the institution, whereas a surprise inspection ensures facilities are permanently in place and not borrowed or temporarily acquired. To buttress his argument reliance has been placed on the decision in *Royal Medical Trust v. Union of India & Anr. (2015) 10 SCC 19*.

33. He further submits that last leg of counselling is already underway as per the MCC schedule and the National Medical Commission is not conducting any new establishment inspections nationwide at this juncture. Permitting an inspection for the petitioner now would undermine the sanctity of the regulatory framework, violate prescribed timelines and frustrate the purpose of the Act. He contends that allowing petitioner institute such repeated opportunities at this stage would be arbitrary, unfair and prejudicial to other colleges that have adhered to all regulatory requirements and timelines.

34. Lastly, he submits that it is not within the scope of jurisdiction of



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this Court to sit in appeal, re-evaluate or substitute its own findings for those of the expert assessors. The assessment and conclusions drawn by such expert teams are binding and must be given due deference. Any attempt by the petitioners' to challenge these factual reports cannot override the finality of the expert evaluation. To buttress his contention, reliance has been placed on the decision of *Manohar Lal Sharma v. Medical Council of India*, (2013) 10 SCC 60 and *Medical Council of India v. Kalinga Institute of Medical Sciences*, (2016) 11 SCC 530.

35. In rejoinder, Mr. Bhatia submits that this Court possesses territorial jurisdiction under Article 226(2) as the impugned Letter of Disapproval dated 21.09.2025 was issued by respondent no.2/MARB, NMC, from its headquarters located in Dwarka, New Delhi. He submits that the entire decision-making process, all communications and the statutory delay in deciding the scheme also occurred in New Delhi. Therefore, a substantial, material and integral part of the cause of action has arisen wholly within the jurisdiction of this Court.

36. Further, he invites the attention of the Court to the impugned letter of 21.09.2025 wherein it has been noted that as per the Assessors' Report, there is a 26.32% deficiency of faculty, a 34.44% deficiency of SR/tutors, and deficiency of 01 clinical psychologist for 150 seats. Thereafter, referring to the summary in the inspection report of the assessors, Mr. Bhatia contends that the deficiency of teaching faculty is assessed at 26% and the deficiency of tutors/residents at 24%. He submits that these figures from the report's own summary are patently contrary to the figures cited in the impugned letter.



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37. He further submits that claim of the respondents in their reply affidavit alleging that no faculty achieved 50% attendance for the period between 01.06.2025 to 31.08.2025, is factually untenable and misleading. He submits that this erroneous conclusion is derived from calculating percentages over the entire 78 working day period, whereas the AEBAS system was activated by the respondents only on 19.07.2025. The system was thus, active for only 36 working days in the above window period of 78 days taken into consideration.

38. He submits that the NMC has wrongly treated the “absence of data” for June to mid-July, when the system was non-operational due to the respondents’ own inaction, as “absence of faculty”, which unfairly deflates the attendance figures. He points out that the manual attendance registers for the pre-activation period, which recorded over 90% attendance, were submitted to the respondents but due weightage was not given to them.

39. In response to the contention of the respondents that two faculty members marked AEBAS attendance between March and May 2025, Mr. Bhatia submits that the same is misleading as the said isolated entry reflects, at most, a technical trial run and does not establish the system was operational. He contends that it defies logic that a college functioned for three months with only two staff.

40. Placing reliance on the NMC’s Assessors’ Guidelines 2024-25, he submits that the relevant data to be considered are the 10 working days prior to inspection, making the respondent’s extrapolation of a non-operational period to a three-month deficiency against its own protocol,



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which is grossly unfair. Seen in the light of periods, following the 19.07.2025 activation, petitioner institute is verifiably fully compliant. Furthermore, the current AEBAS reports for July-October 2025, accessible to the NMC, show faculty and resident attendance consistently well over the 75% threshold, demonstrating zero shortfall and providing irrefutable proof that the requisite personnel are in position. Thus, the earlier depicted “deficiency” was solely a result of NMC’s own failure to timely operationalize AEBAS and not any actual lack on part of the petitioner.

41. I have carefully examined the material on record, as well as, the rival contentions of the parties.

42. The respondents have raised a preliminary objection regarding the maintainability of the present writ petition. Insofar as the issue of territorial jurisdiction is concerned, it has been strongly argued by the petitioners’ that the matter requires immediate hearing. It has been contended that NEET UG counselling process is in its final stages and is scheduled to conclude imminently. Considering the urgency, this Court finds that any delay in hearing the matter would render the substantive prayers infructuous. Given this exceptional exigency and the impending deadline, the Court deems it fit to deal with the controversy on merits leaving the question of territorial jurisdiction open. Similarly, with regard to the plea of alternative remedy being available to the petitioners, this Court is of the view that since the extensive arguments were addressed on merits as well, and further considering the aforementioned factors showing urgency, it would be a travesty of



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justice if the petitioners are relegated to the remedy of appeal at this belated stage. Therefore, the Court is inclined to examine the matter on merits.

43. As noted above, the grievance of the present petitioners is against the issuance of the impugned Letter of Disapproval dated 21.09.2025 by respondent no. 2, whereby the scheme of the petitioners' institute under Section 28 of the Act for the establishment of a new medical college with an intake of 150 MBBS seats for the academic year 2025-26 was rejected. The primary objection of the petitioners' is with regard to non-granting of a meaningful opportunity to rectify the deficiencies pointed out by the respondents. Rather, it is contended that the deficiencies noted in the Letter of Disapproval were not communicated to the petitioners at any earlier stage, thereby defeating the statutory requirements under Section 28(3) of the Act.

44. Before proceedings further, apt would it be to refer to the statutory framework under which a person, desiring to establish a new medical college, may apply to the National Medical Commission, and the procedure to be followed thereafter. Section 28 of the NMC Act, 2019 provides the substantive scheme for any person seeking to establish a new medical college. Section 29 thereof, broadly encapsulates the criteria to be followed while deciding on a scheme preferred by any person. For the sake of ready reference, the relevant sections are reproduced hereunder:

“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.

*(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.

(4) Where a scheme is approved under sub-section (3), such approval shall be the permission under sub-section (1) to establish 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.

*(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.***

(7) The Medical Assessment and Rating Board may



conduct evaluation and assessment of any medical institution at any time, either directly or through any other expert having integrity and experience of medical profession and without any prior notice and assess and evaluate the performance, standards and benchmarks of such medical institution.

Explanation.—For the purposes of this section, the term “person” includes a University, trust or any other association of persons or body of individuals, but does not include the Central Government.

29. Criteria for approving or disapproving scheme.—
While approving or disapproving a scheme under section 28, the Medical Assessment and Rating Board, or the Commission, as the case may be, shall take into consideration the following criteria, namely:—

- (a) adequacy of financial resources;*
- (b) whether adequate academic faculty and other necessary facilities have been provided to ensure proper functioning of medical college or would be provided within the time-limit specified in the scheme;*
- (c) whether adequate hospital facilities have been provided or would be provided within the time-limit specified in the scheme;*
- (d) such other factors as may be prescribed:*

Provided that, subject to the previous approval of the Central Government, the criteria may be relaxed for the medical colleges which are set up in such areas as may be specified by the regulations.”

(emphasis supplied)

45. Furthermore, exercising powers conferred under Section 57 of the Act, NMC notified the “Establishment of New Medical Institutions, Starting of New Medical Courses, Increase of Seats for Existing Courses & Assessment and Rating Regulations, 2023, dated 02.06.2023



[hereinafter the “Regulations of 2023”] for regulating *inter alia* the procedure established under Section 28 of the Act. The provisions contained therein, relevant for the present case, are reproduced hereunder:

“2. Definitions – *In these Regulations, unless the context otherwise requires the terms defined herein shall bear the meaning assigned to them below and their cognate expressions and variations shall be construed accordingly –*

xxx

xxx

xxx

b. **“Assessment”** shall mean the process of evaluating a medical institution by the concerned authorities, as **being compliant with the applicable Regulations, guidelines/standards, and/or orders and circulars issued by the NMC and other authorities as the case may be from time to time.**

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h. **“Inspection”** — the expression or activity of ‘inspection’ shall include virtual and/or physical inspection and/or evaluation of actual and/or digital records or information.

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i. **“MSR”** shall mean the Minimum Standards of Requirements as Notified either by UGMEB or PGMEB as the case may be from time to time, which shall also include, explanatory notes, circulars, advisories, etc. issued by the corresponding Boards or the Commission.

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10. Eligibility criteria –

a. No medical institution shall be provided permission unless they satisfy the conditions pertaining to but not limited to physical infrastructure, teaching staff, clinical material and hospital as detailed in the MSRs notified from time to time.

b. Without prejudice to anything stated in the sub-section



(a) above, the UGMEB or PGMEB as the case may be, shall from time to time publish the MSR with such modifications or amends required, keeping in mind the overall objectives of the Act.

c. Notwithstanding anything stated above in Section 10, all modified or amended MSRs shall have to be implemented.

11. MARB evaluating the application – keeping in mind the objective of the Act, without prejudice to anything stated elsewhere in the Regulations, the MARB shall evaluate the applications received from the eligible entity under Section 9 above, based on all of the following broad criteria viz.,

a. The desirability and feasibility of setting up the medical institution at the proposed location.

b. Assess whether the eligible entity fulfils the required conditions prescribed by the corresponding MSRs in vogue, which shall include physical infrastructure, qualified faculty, and adequate clinical material in terms of hospital, laboratory, patients, clinical procedures and others as specified in the corresponding MSR/s.

c. Assess whether the scheme submitted by the applicant shows that, once established the medical institution will reasonably sustain itself.

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14. Assessment for Permission: Notwithstanding anything stated elsewhere, the MARB determines the appropriate method of assessment and/or inspection, before granting permission to the applicant to establish a medical institution.

Provided such methods shall include, but not be limited to verification of documents in digital or another form, Aadhar-based attendance register, verification of live video feed, photographs, Hospital Management Information System (HMIS) data, or a surprise physical



assessment etc.

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29. Non-compliance defined—following acts or omissions of a medical institute shall amount to non-compliance—

a. Non-compliance with any of the regulations, and notifications of the National Medical Commission issued from time to time.

b. The medical institution has conducted in a manner which is not in accordance with the objectives of the medical institution and practices like ragging, exploiting students on fees etc.

c. **Deficiency in infrastructure, teaching staff, clinical material and others as prescribed by way of MSR or otherwise by UGMEB and/or PGMEB.**

d. Any act of misbehavior, non-cooperation, forbidding the inspection process etc., with the assessors representing the MARB or such other designated agency by the MARB in this regard.

e. Physical misbehavior by teaching staff with the students, harassment of faculty and/or students by the management etc.

f. **False information declared for obtaining permission for any of the schemes including the establishment of a medical institution.**

g. Falsifying information or fabricating evidence at the time of inspection by the MARB or constituent autonomous boards or NMC-appointed third parties.

h. Any attempt to bribe or pressurize or threaten assessors or officials of NMC.

i. Any such act or omission as notified by the NMC in this regard.

30. Penalties—for any of the non-compliance or intentional attempt of non-compliance act or omission by the medical institution, the MARB shall either **penalize** the medical college or medical institution as per sub-section (f) of section 26 of the Act **and/or conduct**



further enquiry into such incident or act, and wherever needed provide an opportunity to rectify the same.”

(emphasis supplied)

46. Having gone through the above scheme of statutory and regulatory framework, it may be observed that Section 28 of the Act provides the procedure for persons to apply for permission from respondent no.2/MARB prior to establishing a new medical college. It further provides the timelines for the procedure, including the six-month period for the Medical Assessment and Rating Board (MARB) to take a decision on any scheme preferred before it. Notably, an appellate mechanism has been envisaged wherein the applicant has the right to appeal against rejection of the scheme or in case of non-adherence to the timeline. Right of second appeal has also been provided before the Central Government.

47. Sub-section (7) of Section 28 enables the respondent no.2/MARB to conduct evaluation and assessment of any medical institutions to ensure performance, standards and benchmarks are being maintained by the institute. This evaluation and assessment may be done by MARB without notice. Further, the said provision, read with Section 29 of the Act, clearly indicates that it is the duty of respondent no.2/MARB to ensure that in pursuit of maintaining standards in the medical education field, any scheme preferred before it must be assessed on the foundational criteria laid down in Section 29, which inter alia includes adequacy of – (i) financial resources; (ii) academic faculty and other necessary faculties; (iii) hospital facilities; and (iv) and such other



factors as may be prescribed.

48. Regulation 2(h), 11 & 14 of the Regulations of 2023 reproduced hereinabove provide the method in which MARB may conduct evaluation and assessment of the applications received from the eligible entity which includes physical/virtual verification and verification of actual/digital records required to be maintained by the applicants as specified in corresponding Minimum Standards of Requirements notified by UGMEB or PGMEB.

49. Having taken note of the statutory scheme regulating the rights, duties and powers of the respondent no.2/MARB, as well as, of the petitioners, the grievance of the petitioners has to be considered in light thereof. As noted above, the primary objection of the petitioners is that it was not afforded an opportunity to rectify the deficiencies basis which the scheme of the petitioner was rejected *vide* the impugned letter dated 21.09.2025.

50. Letter of Disapproval dated 21.09.2025 points to several deficiencies *inter alia* deficiency in faculty; deficiency in ventilators in ICU/CCU; charts, specimens etc. not being available in the Museum; discrepancy in OT records; and 02 lecture halls being under construction. The said deficiencies, as contended before this Court, have subsequently been rectified by the petitioner institute. On the said ground, it has been argued that if an opportunity had been afforded to the petitioner prior to the final decision taken by the respondents, the same could have been complied with, particularly when the defects were curable and minor.



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51. It must, however, be noted that the deficiencies in infrastructure and equipment pointed out are necessary requirements that the petitioner institute ought to have known prior to even submitting the application/scheme dated 04.01.2025 under Section 28 of the Act. It is not the case of the petitioner that the said infrastructure and equipment found deficient are not essential requirements, and rightly so, as minimum requirements have been notified by the respondents in corresponding MSRs, in line with the statutory and regulatory framework discussed above. Rather, the petitioner institute, in its application itself as well as the subsequent Self-Declaration Form dated 08.05.2025, has made a declaration that – *the college has fulfilled all requirements as per the applicable Minimum Standard Requirements for Annual M.B.B.S. Admissions Regulations, 2023 (UG MSR-2023)*.

52. The petitioners own submissions, far from refuting infrastructural and operational deficiencies, inadvertently serve as admission to the same. The contention that two of the four required lecture theatres were merely at an “advanced finishing stage” is a clear admission that the infrastructure was not fully complete and operational as required on the date of inspection. Similarly, the submission that the petitioner finalized procurement and issued a purchase order for requisite ventilators on 23.09.2025, i.e. after the impugned disapproval, is a tacit admission that the said ventilators were either non-functional or absent at the time of the compliance inspection on 10.07.2027.

53. Likewise, the declaration of the petitioner institute with regard to possessing the requisite faculty and tutors/residents *vide* its application



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dated 04.01.2025 and Self-Declaration Form is also misleading, inasmuch the assessors' inspection report dated 10.07.2025 and AEBAS verification shows position to the contrary.

54. The petitioner institute's claim of being "fully compliant" under Section 29 is thus, directly contradicted by the findings in the assessors' inspection report. This Court therefore, finds merit in respondents' submission that the petitioners' have been unable to show their *bona fides*.

55. At this stage, it will not be out of place to note that Regulation 29 of the Regulations of 2023, defines non-compliance, and the penalties therefor have been enumerated in Regulation 30. Clause (c) of Regulation 29 provides that any deficiency in infrastructure, teaching staff, clinical material and others as prescribed by way of MSRs constitutes non-compliance. Likewise, clause (f) thereof provides that false declarations for obtaining permission for any scheme would also be viewed as non-compliance.

56. Regulation 30 delineates the powers of MARB to penalize for such non-compliances as per Section 26(f)¹ of the Act or to conduct further enquiry into an act of non-compliance. It further provides that if the need arises, MARB may allow the non-compliances to be rectified. The said regulation is thus, in consonance with the proviso to Section

¹ Section 26(f) of the Act reads as - take such measures, including issuing warning, imposition of monetary penalty, reducing intake or stoppage of admissions and recommending to the Commission for withdrawal of recognition, against a medical institution for failure to maintain the minimum essential standards specified by the Under-Graduate Medical Education Board or the Post-Graduate Medical Education Board, as the case may be, in accordance with the regulations made under this Act.



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28(3) which also mandates that before disapproval of a scheme, the person concerned shall be given an opportunity to rectify the defects, if any. In this context, I find substance in the submission of Mr. Bhatia that opportunity ought to have been granted to the petitioners' to rectify the curable defects as to infrastructure and equipments before disapproving the scheme of the petitioner institute *vide* impugned letter dated 21.09.2025.

57. There, however, still remains the issue of inadequate faculty and tutors/residents as mandated by way of several MSRs.

58. To be noted that NMC had issued Circular dated 01.08.2022 whereby it implemented NIC AEBAS, Hospital Management System (HMS) in all medical colleges and connecting CCTV feed to Command and Control center at NMC. The decision to implement the same was reiterated by the NMC *vide* its subsequent Circular dated 25.01.2023 and following directions were issued:

“2. 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.

3. Minister of Health and Family Welfare in its virtual address to all medical colleges on 22 September, 2022 & its interaction meeting with medical colleges on 5th Jan 2023 have conveyed that it is mandatory for all medical colleges to implement the same expeditiously. Further directions were given in senior officers meeting that



batches should not be allowed in case of non compliance.

4. All colleges are therefore, again directed to take necessary steps to fully implement Aadhaar Enabled Biometric Attendance System (AEBAS), Hospital Management Information System (HMIS) and connection of CCTVs feed to Command & Control Centre at National Medical Commission immediately in order to prevent adverse actions against them.”

(emphasis supplied)

59. Sequel to above, the “*Guidelines for Under Graduate Courses under Establishment of New Medical Institutions, Starting of New Medical Courses, Increase of Seats for Existing Courses & Assessment and Rating Regulations, 2023 (in short UG – MSR 2023)*” dated 16.08.2023 [hereinafter as “Guidelines of 2023”] were published by the respondent no.3/UGMEB defining the MSRs for medical colleges and institutes. Clause 3.1 of the Guidelines provides that the AEBAS must be installed in all medical colleges and institutions which shall be linked to the Command-and-Control center of NMC and the data therefrom be made available to the NMC on a daily basis. Clause 3.2 stipulates the minimum attendance requirements. The entire Clause 3 of the Guidelines is reproduced hereinunder:

“3. Aadhar Enabled Biometric Attendance System (AEBAS) & Close Circuit TV Monitoring of Medical Colleges /Institutions and Hospitals:

The medical college/institution shall also be responsible for the installation and maintenance of AEBAS, close circuit camera and HMIS and other Information Technology as prescribed from time to time.



3.1 AEBAS:

i) All Medical Colleges/Institutions shall install AEBAS to be linked to Command-and-Control center of NMC.

ii) The daily AEBAS of the required staff (faculty, residents and supporting staff, preferably along with face linked recognition, shall be made available to NMC as well as on the Medical College Website in the form of daily attendance dashboard.

3.2 Minimum requirement of attendance:

It shall be mandatory to have at least 75% attendance of the total working days (excluding vacations) for all faculty and resident doctors. During vacation period, other than sick leave or leaves availed due to emergency situations, the faculty on duty shall not be availing any leave. Emergency leaves shall be certified by Head of the department or Head of the institution.

AEBAS, preferably with fact recognition of all students attending every lecture/teaching class/seminar shall be recorded and linked to NMC.”

(emphasis supplied)

60. It is thus, evident that AEBAS (the digital attendance system introduced by the respondents) is a part of the mandatory requirement under the Guidelines of 2023 & Regulations of 2023 [together referred to as ‘MSRs 2023’] which should be in place for enabling the MARB to evaluate and assess the criteria in terms of Section 29 of the Act.

61. The petitioners have placed reliance on the Assessor Guidelines 2024-25 to suggest that AEBAS data for only 10 working days prior to the date of physical inspection would be taken into consideration. To appreciate the said submission of the petitioners’, the relevant portion of the said Assessor Guidelines is reproduced as follows:

“Role of assessor:

A. Verification of Teaching faculty and residents



□ *Only the medical colleges having at least 75% faculty attendance on AEBAS for three months prior to the last date of application will be eligible for physical inspection.*

□ *In case of establishment of new medical college AEBAS registration for the faculty should be complete before inspection. AEBAS attendance of registered faculty for ten working days prior to (and including) the date of inspection will be an essential criterion to be taken into consideration during the inspection.”*

62. A bare perusal of the above quoted clauses from the Assessor Guidelines suggests that the attendance of 10 working days prior to the date of inspection is a criteria relevant to be taken into consideration by the assessor(s) at the time of inspection, but the medical college is not absolved from having at least 75% faculty attendance on AEBAS for three months prior to the last date of application to be eligible for physical inspection, as other quoted clause from the Assessor Guidelines mandates. Further, requirement of at least 75% attendance of total working days for all faculty and resident doctors is mandatory in terms of Clause 3.2 of the Guidelines of 2023. Therefore, petitioners’ contention that only 10 working days data would be the relevant data is misconceived.

63. As noted earlier, the method of evaluating and assessing an application preferred under Section 28 of the Act is in the absolute discretion of MARB. Regulations 2(h) and 14 of the Regulations of 2023 specifically mention that evaluation and assessment may be done not only through surprise physical inspection, but also through evaluation of digital records or information including AEBAS, verification of live video feed, photographs, Hospital Management



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Information System (HMIS) data etc.

64. In this backdrop, application dated 04.01.2025 and Self-Declaration Form, again assume relevance, wherein the petitioner confirmed that it fulfils all the criteria. On the basis of the documents submitted by the petitioner, as well as, the data from AEBAS which is to be submitted by the petitioner to the NMC on a daily basis, the respondents assessed the deficiencies at the outset and issued a Show Cause Notice dated 07.06.2025. In the said Show Cause Notice, with reference to the head of 'Manpower Programme', it was specifically informed to the petitioner that '*Required details not available in the attachment*'. In response to the deficiency pointed out, the petitioner through its compliance report dated 13.06.2025 mentioned that all necessary faculty were present. Thereafter, physical inspection was conducted at the petitioner institute on 10.07.2025, and at the time of inspection, with reference to AEBAS data, it was found that the deficiency still persisted in the Teaching Faculty and Tutors/Residents, to the following extent:

1) Deficiency of Teaching Faculty for UG seats:____26____%

Deficiency of Teaching Faculty for additional PG seats (Department wise):

2) Deficiency of Tutors/Residents for UG seats:____24____%

Deficiency of Tutors/Residents for additional PG seats (Department wise):

65. The petitioner has offered a justification for such shortfall by contending that the observation of the assessor is 'artificial' and 'context-induced' as a result of a State-wide *Bihar Bandh* on the preceding day. The respondents, on the other hand, have attempted to



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controvert the stance of the petitioner by stating that the petitioner was formally informed of the said inspection at 07:55 AM on 10.07.2025 itself and thus, the argument of the petitioner is a deliberate afterthought to nullify the findings of the expert assessors.

66. Be that as it may, the significant lapse on part of the petitioner institute that comes to the fore is the deficiency of teaching faculty, as well as, tutors/residents based on AEBAS data analysed in light of the MSRs 2023. The assessors deployed by the respondents to inspect, assess and analyse compliance by the petitioner institute submitted the assessors' inspection report dated 10.07.2025. In the said report, the deficiency in the AEBAS data has clearly been recorded which shows inadequate faculty, thereby substantiating the said deficiency found on physical inspection as well. Such deficiency of faculty in terms of AEBAS data cannot be cured in *presenti* as the deficiency in terms of Clause 3.2 of the Guidelines of 2023 read with Assessor Guidelines relates back to previous months/quarter, and there cannot be removal of such deficiency with retrospect effect. Therefore, reliance placed by the petitioners on **Royal Medical Trust** (supra) to contend that no opportunity to cure the deficiencies was given is misplaced, as no actual opportunity can be given to rectify a deficiency that cannot, by its very nature, be cured in the present.

67. Further, the argument of the petitioners that the manual attendance register is complete does not find favour with this Court. The physical attendance register cannot be a substitute of AEBAS, as same would not depict the real picture and is susceptible to manipulation. Pertinently,



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when the MSRs mandate the implementation of AEBAS, there has to be strict compliance of the same. Notably, the fundamental rationale for maintaining AEBAS and minimum 75% attendance at all working days, as it appears, is that the medical colleges and institutes must have requisite regular permanent faculty, to ensure that standard of education is maintained. Regularity and permanency nurture consistency and stability. Such biometric authenticated attendance system i.e., AEBAS, cannot thus, be seen as a mere formality, but an integral regulatory mechanism to enforce the mandate under Section 28 (7) read with Section 29 of the Act.

68. The petitioner has further asserted that the AEBAS system was technically non-functional due to the respondents' own inaction and was activated only on 19.07.2025, after physical inspection had been carried on 10.07.2025. It is on this basis that the petitioner contends 'nil/zero' data reflects an 'absence of data', not 'absence of faculty'. In this regard, this Court finds substance in the respondents' submission that the system was indeed operational, as the AEBAS data from March-May, 2025, handed over across the bar during the course of arguments with copy to the petitioners', shows two faculty members were successfully marking attendance on the same system on multiple occasions. This also leads to an inference that the petitioner institute did not have the requisite adequate faculty on a permanent basis, either at the time of application, or at the time of inspection. The justification thus, put forth by Mr. Bhatia that the isolated entries in AEBAS data reflects, at most, a technical trial run and does not establish the system was operational,



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does not find favour with this Court.

69. Insofar as petitioners' contention as regard technical glitches in the AEBAS and non-reflection of biometric attendance on the portal is concerned, suffice it to say that this contention pales into insignificance once AEBAS data for the month 01 March – 31 May 2025 shows two faculty members successfully marking their attendance on the same system. In any case, such contention having been refuted by the respondents, constitutes a disputed question of fact, that would require this Court to embark upon a fact-finding inquiry, which a writ court should eschew while exercising jurisdiction under Article 226 of the Constitution.

70. Once the deficiency in faculty and tutors/residents is found in the assessors' inspection report dated 10.07.2025, there is no reason for this Court to take a different view, when no perversity has been found in the said report, and there are no allegations of bias or *mala fide* against the assessors who are doctors from the reputed medical colleges/hospitals. The law is well settled that it is not within the writ jurisdiction of this Court to sit in appeal over, re-evaluate, or substitute its own findings for those of the expert assessors. The assessment and conclusions drawn by such expert teams, which are based on their direct, factual evaluation of facilities and personnel, are binding and must be given due deference. Reference in this regard may beneficially be had to the decision in ***Kalinga Institute of Medical Sciences*** (*supra*), wherein following pertinent observations were made:

“21. A perusal of the decision of the High Court clearly



indicates that it considered the latest report of the Inspection Team as if it was hearing an appeal against the report. In doing so, the High Court went into great details on issues relating to the number of teaching beds in the hospital, the limitations in the OPD Department, the number of units available in the subjects of General Medicine, Pediatrics, etc., bed occupancy, number of caesarean sections, discrepancy in data of major and minor operations, computerisation in the institution, number of patients in the ICU, number of static x—ray machines, deficiency of examination halls, lecture theatres, library, students hostel, interns hostel, playground, etc. etc. Surely, this was not within the domain of the High Court in exercise of its jurisdiction under Article 226 of the Constitution.

22. The High Court did not appreciate that the inspection was carried out by eminent Professors from reputed medical institutions who were experts in the field and the best persons to give an unbiased report on the facilities in KIMS. The High Court under Article 226 of the Constitution was certainly not tasked to minutely examine the contents of the inspection report and weigh them against the objections of KIMS in respect of each of its 18 items. In our opinion, the High Court plainly exceeded its jurisdiction in this regard in venturing into seriously disputed factual issues.

23. The learned counsel for KIMS and the students submitted that the High Court was left with no option but to critically examine the report of the Inspection Team since it was factually erroneous and did not deserve to be relied on either for the increase in intake of seats for the academic year 2015—2016 or the academic year 2016—2017. We see no reason to accept the submission of the learned counsel.

24. Medical education must be taken very seriously and when an expert body certifies that the facilities in a medical college are inadequate, the courts are not equipped to take a different View in the matter except for very cogent



jurisdictional reasons such as mala fides of the Inspection Team, ex facie perversity in the inspection report, jurisdictional error on the part of MCI, etc. Under no circumstance should the High Court examine the report as an appellate body — this is simply not the function of the High Court. In the present case there was no ground made out at law for setting aside the report of the Inspection Team.”

(emphasis supplied)

71. Similar view was taken by Hon’ble Supreme Court in ***Manohar Lal Sharma v. Medical Council of India, (2013) 10 SCC 60***, wherein it was observed thus:

“26. We have already dealt with, in extenso, the deficiencies pointed out by the MCI team in its report dated 6-7-2013. In our view, the deficiencies pointed out are fundamental and very crucial, which cannot be ignored in the interest of medical education and in the interest of the student community. MCI and the College authorities have to bear in mind, what is prescribed is the minimum, if MCI dilutes the minimum standards, they will be doing violence to the statutory requirements. MCI is duty-bound to cancel the request if fundamental and minimum requirements are not satisfied or else the College will be producing half—baked and poor quality doctors and they would do more harm to the society than service. In our view, the infirmities pointed out by the inspection team are serious deficiencies and the Board of Governors of MCI rightly not granted approval for renewal of permission for the third batch of 150 MBBS students for the academic year 2013-2014.

27. We are also of the view that such an order is not vitiated by violation of principles of natural justice, especially, when no allegation of bias or mala fide has been attributed against the two doctors who constituted the inspection team, which conducted the surprise inspection on 6.7.2013. When the inspection team consists of two doctors of unquestionable



integrity and reputation, who are experts in the field, there is no reason to discard the report of such inspection. In such circumstances, we are of the View that MCI has rightly passed the order rejecting the approval for renewal of permission for the third batch of 150 MBBS students granted for the academic year 2013-2014. Consequently, Writ Petition (C) No. 590 of 2013 is allowed and IA No. 2 of 2013, filed in SLP (C) No. 28480 of 2012, is disposed of, as above.”

(emphasis supplied)

72. Further, Mr. Bhatia had argued that in case of another college viz., *Viraat Ramayan Medical College*, Letter of Permission (LoP) was granted *qua* 50 seats despite an initial disapproval letter dated 24.09.2025 issued based on deficiencies which are graver than petitioner institute. This Court finds petitioners reliance on above instance to be entirely misplaced. Notably, in case of *Viraat Ramayan Medical College* the letter of disapproval was issued on 24.09.2025 i.e. three days after the letter of disapproval issued in the case of petitioners. The said medical college, instead of approaching this Court, successfully availed the statutory first appeal under Section 28(5) of the Act, whereas present petitioners chose not to avail the said remedy. This rather, demonstrates that the appellate remedy was indeed viable and efficacious.

73. Next, placing reliance on *Madhuri Sewa Nyas & Anr.* (supra) it was argued by Mr. Bhatia that fresh inspection may be permitted. Having perused the decision in *Madhuri Sewa Nyas & Anr* (supra), this Court finds that deficiency in faculty in the said case was only 8%, and it was specifically observed by the Hon'ble Supreme Court that the said order was passed in the peculiar facts of the said case. Therefore, the



benefit of said decision will not enure to the petitioners.

74. At the same time this Court finds merit in the respondents' submission, buttressed by the decision of the Hon'ble Supreme Court in ***Royal Medical Trust*** (supra), that directing an inspection at this advanced stage would completely erode the "element of surprise," which is the cornerstone of regulatory inspections. Such a pre-announced inspection would only allow the petitioner to present superficial or temporary arrangements, rather than reflecting the true, continuous functioning of the institution with facilities that are permanently in place and not "borrowed or temporarily acquired." The relevant excerpts from the decision reads thus:

"31(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."

(emphasis supplied)

75. Reliance has also been placed by the petitioners on the decision of this court in ***IQ City Medical College*** (Supra); ***NCR Institute of Medical Sciences & Ors.*** (Supra) and ***Index Medical College & Ors.*** (Supra), to contend that fair opportunity ought to have been afforded to remove the deficiencies. This Court has found favour with the submission of the petitioners that opportunity ought to have been granted to the petitioners to rectify the curable defects as to infrastructure and equipment before disapproval of petitioners' application/scheme. Insofar as deficiency in



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faculty and tutors/residents, is concerned, this Court has taken a view that the same is incurable in the *presenti*, therefore, the benefit of said decisions will not enure to the petitioners to that extent. Further, there is another distinguishing feature in the present case vis-à-vis above decisions. In the said decisions petitioners therein had availed the appellate mechanism, whereas in the present case petitioners did not exhaust the remedy of appeal before approaching the Court.

76. As regards petitioners' contention on disparate treatment by the respondents, for which reliance has been placed by the petitioner on the second-appeal orders in *P.A. Sangma International Medical College* (Supra); *KPC Medical College* (Supra); and *Sri Satya Sai University* (Supra), this Court finds the facts of the said cases to be clearly distinguishable. The approvals in those decisions were granted by the respondents while exercising their appellate jurisdiction. The present petitioners did not, however, avail the remedy of appeal, where the scope and considerations are different from a writ petition. Having failed to exhaust the statutory remedy, the petitioner cannot claim parity with orders passed at the appellate stage. The said orders, therefore, do not advance petitioners' case.

77. Lastly, the petitioners' contention that the alleged delay by the NMC in issuing the impugned Letter of Disapproval has frustrated the appellate remedy, as counselling is underway, cannot be accepted for two reasons. *Firstly*, petitioners' plea of being left without remedy due to delay is untenable on a plain reading of Section 28(5), which provides that where no decision is taken within a span of six months of submitting



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a scheme, an appeal can be preferred after the lapse of said six months. Indubitably, the petitioners failed to avail this remedy. *Secondly*, the justification put forth for not ventilating the said grievance through an appeal is that there were repeated assurances from NMC officials that an order on the application would be issued imminently. This Court finds such a submission to be unsubstantiated and, in any event, legally insufficient. Oral assurances, even if presumed to have been given, cannot be accepted as a valid ground for not availing remedy of statutory appeal, an efficacious mode available to the petitioners to speed-up the process of approval of their application/scheme.

78. In view of the above discussion, the petition is devoid of merit. Accordingly, the petition alongwith pending application, is dismissed.

VIKAS MAHAJAN, J

NOVEMBER 06, 2025/jg