IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

BEFORE
SHRI JUSTICE SUJOY PAUL
&
SHRI JUSTICE ARUN KUMAR SHARMA
ON THE 3rd FEBRUARY, 2022

WRIT PETITION No. 1324 of 2022

Between :-

L.N. Medical College & Research Centre,
Through its Authorized Signatory,
Mr. Siddharth Rai, S/o Shri R.K. Rai,
Aged about 33 years,
R/o Savadham, C-Sector, Kolar Road,
J.K. Town, Bhopal, (M.P.).

……..**Petitioner**

(By Shri Siddharth Radhe Lal Gupta, Advocate)

AND

1. Union of India
Through Secretary,
Ministry of Health & Family Welfare,
Nirmaan Bhawan, New Delhi-110001

2. National Medical Commission
Through its Chairman,
Pocket 14, Sector 8, Dwarka Phase-I,
New Delhi- 110077

3. State of Madhya Pradesh,
Through its Commissioner/Counselling Authority,
Directorate of Medical Education,
6th Floor, Satpura Bhavan, Bhopal (M.P.)

4. State of Madhya Pradesh
Through its Principal Secretary,
Department of Medical Education, 4th Floor,
Vallabh Bhavan, Bhopal (M.P.)

…..**Respondents**

(By Shri J.K. Jain, Assistant Solicitor General for respondent No.1-Union of India,

Shri Anoop Nair, Advocate for respondent No.2.

Shri Akshay Pawar, Panel Lawyer for respondents No.3 & 4-State)

(Heard through Video Conferencing)

Whether approved for reporting	Yes.
Law Laid down :-	1. **The National Medical Commission Act, 2019** – The application of petitioner-College seeking increase of MBBS seats from 150 to 250 is turned down based on a complaint from CBI. The question was whether this complaint/CBI note can be a reason for rejecting the prayer for increase of MBBS seats. 2. **Section 28 & 29 of NMC Act –** The Medical Assessment and Rating Board on the basis of criteria specified in Section 29 can take a decision of either approving or disapproving the scheme for establishing or increase of seats in a college. Any decision of the Board/NMC, which is beyond the scope of Section 28 and 29, is bad in law. 3. **Section 28(5) of the NMC Act –** Remedy of appeal – petitioner cannot be relegated to avail the alternative remedy of appeal because - (i) The rejection order is not based on relevant parameters based on Section 28(3) r/w Section 29 of the Act. (ii) Since, impugned order is based on extraneous reason, it was without jurisdiction and hence it was not proper to relegate the petitioner to avail the appellate remedy. (iii) In view of time constraint, the remedy of appeal which provides 45 days to the appellate authority to take a decision, cannot be treated to be an efficacious remedy. 4. **The Establishment of Medical College Regulations 1999 – Penalty –** The punishment cannot be imposed in absence of any enabling statutory provision. Since, no enabling provision was brought to the notice of the Court, the impugned order was set aside.
	5. **Article 226 of the Constitution : Writ of Mandamus :** In appropriate cases the writ Court

	itself can issue direction in place of respondent. However, in the factual backdrop of this case direction is issued to take a fresh decision.

O R D E R

Sujoy Paul, J.:-

This petition filed under Article 226 of the Constitution takes exception to the order of National Medical Commission (in short 'NMC') dated 10.01.2022 whereby, the request of the petitioner institution for increase of MBBS seats from 150 to 250 is turned down. It is prayed that this Court may issue appropriate writ/direction to the respondent- NMC to issue a formal approval letter of increase in intake of their seats for the MBBS -UG Course from 150 to 250 for the current academic year 2021-22 by accepting the application filed by the petitioner as complete and meeting the requirements.

2. Draped in brevity, the relevant facts for adjudication of this matter are that the petitioner Medical College and Hospital preferred an application seeking permission to increase the MBBS seats from 150 to 250. The NMC obtained an inspection report and thereafter, by 'letter of disapproval' dated 10.01.2022, rejected the prayer of increase of seats in MBBS course.

Arguments of the petitioner :

3. Shri Siddharth Radhe Lal Gupta, learned counsel for the petitioner, by placing reliance on the relevant portions of Section 28 & 29 of the NMC Act submits that the NMC was obliged to take a decision regarding approval or disapproval for increase of seats by taking into account the criteria mentioned in Section 29 of the said Act. The impugned order is not based on

relevant criteria and is based on an extraneous reason and consideration and therefore, the impugned order is passed without jurisdiction. Thus, the remedy of statutory appeal is not a bar. Reliance is placed on ***Ram and Shyam Company v. State of Haryana and Ors.*** **[AIR 1985 SC 1147],** ***U.P. State Spinning Co. Ltd. v. R.S. Pandey & Ors.*** **[(2005) 8 SCC 264],** ***Cipla Ltd. and Ors. v. Union of India (UOI) and Ors.*** **[MANU/UP/2482/2004],** ***Manpowergroup Services India Pvt. Ltd. v. Commissioner of Income Tax*** **[2020 SCC OnLine Del 1844] &** ***Radha Krishan Industries v. State of H.P.*** **[(2021) 6 SCC 771].**

4. The remedy of appeal is not efficacious is the second limb of argument of Shri Gupta. To bolster this, it is submitted that the counselling and admission process has already commenced and next round of counselling is scheduled in the second week of February, 2022. Thus, relegating the petitioner to alternative remedy of appeal will cause injustice because no time is now left to avail such remedy. Reliance in this regard is placed on ***Royal Medical Trust and Ors. v. Union of India (UOI) and Ors.*** **[(2015) 10 SCC 19],** ***Priyadarshini Dental College and Hospital v. Union of India and Ors.*** **[(2011) 4 SCC 623] &** ***Parshavanath Charitable Trust and Ors. v. All India Council for Tech. Edu. and Ors.*** **[(2013) 3 SCC 385].**

5. The appellate remedy is illusory is the next contention of the petitioner based on the finding of the impugned order. It is submitted that a decision is taken at the apex level by the NMC when Chairman and President of four autonomous Boards were present. In this backdrop, sending the petitioner to avail the said remedy before the said authorities will be a futile exercise.

6. Pendency of CBI enquiry/investigation cannot be a ground to deny approval to petitioner institution is the next contention of the counsel for the petitioner. No penalty can be imposed on the institution in absence of any express substantive provision empowering the authorities to do so. In support of this contention, Shri Gupta relied upon ***State of Bihar and others v. Industrial Corporation (P) Ltd. and Ors.*** **[(2003) 11 SCC 465],** ***Bijaya Kumar Agarwal v. State of Orissa*** **[(1996) 5 SCC 1],** ***Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise and Anr.*** **[(2016) 3 SCC 643],** ***Principal, R.R. Educational Trust's College of Education and Research B.Ed. College, Mumbai v. Registrar, University of Mumbai and Anr.*** **[2014 (4) Mh. L.J.],** ***Balaji Society v. All India Council for Technical Education*** **[2011 SCC OnLine Bom 1604],** ***Kollengode Educational and Charitable Trust v. All India Council for Technical Education*** **[2012 SCC OnLine Ker 12107],** ***R.V. Northland Institute v. State of U.P. and Others*** **[2012 SCC OnLine All 4122] &** ***Index Medical College Hospital & Research Centre v. Union of India and Ors.*** **[MANU/MP/1561/2013].** Criticizing the impugned letter of disapproval, Shri Gupta submits that the penalty imposed in the impugned order is without authority of law. Even The Establishment of Medical College Regulations, 1999 (in short 'Regulations') do not permit the NMC to impose such a punishment. The punishment could have been imposed when institution employed teachers with fake/forged documents which is not the case of the respondents.

7. Shri Gupta further submits that on the one hand, increase of seats for the petitioner's institution is declined on the basis of CBI's letter dated 22.07.2021 (Annexure-P/11) addressed to the State Government and on the other hand, other colleges who were similarly situated were given the benefit

of increase of seats. Example of *People's College of Medical Science and Research Centre, Bhopal* and *Index Medical College Hospital and Research Centre, Indore* is cited. It was also pointed out that same letter of CBI dated 22.07.2021 in which the name of the petitioner institution and other institutions were mentioned did not become the impediment for increase of seats for other institutions. The petitioner was given a discriminatory treatment.

8. During the course of hearing, Shri Gupta, learned counsel for the petitioner placed heavy reliance on the inspection report of NMC and the 'summery of assessment' of petitioner's institution. It is urged that the shortage of teaching faculty was found to the tune of only 1.25% (2 out of 159) which is negligible in a case of sudden inspection. The infrastructure facility, clinical material, library, laboratory and teaching faculties were found to be appropriate/adequate. In this backdrop, the petitioner's application may be allowed by this Court itself and it may not be relegated to respondents for taking a fresh decision. Reliance is placed on ***Secretary, Cannanore District Muslim Educational Association, Karimbam vs. State of Kerala & others, 2010 (6) SCC 373, Hari Krishna Mandir Trust vs. State of Maharashtra & Ors., 2020(9) SCC 356*** and ***Rajiv Memorial Academic Welfare Society & Anr. vs. Union of India & Anr., 2016 (11) SCC 522.***

Arguments of respondents :

9. Shri J.K.Jain, learned Assistant Solicitor General supported the impugned order and contended that in view of CBI's letter mentioned in the

said order, petitioner is not entitled for any relief. The State Government is a formal party.

10. Shri Anoop Nair, learned counsel for respondent No.2 submits that petitioner has a statutory remedy of appeal. It is incorrect to say that said remedy is illusory. In a similar matter - **W.P. No.1107/2022** (***People's College of Medical Science vs. Union of India***) the directions sought for was to take a decision on the pending appeal. The impugned order therein was containing same reason based on CBI's self contained note in CBI Case No. RC2172015A0108. This Court vide order dated 13/01/2022 directed the appellate authority to decide the appeal within statutory time limit and in turn, the appellate authority allowed the appeal and increased the seats to some extent. Thus, petitioner can very well avail the said remedy.

11. In rejoinder submissions, Shri Gupta urged that in People's College case other than CBI note, there were other deficiencies and therefore their matter was different. In People's College case, the appellate authority has not increased the seats to the extent it was prayed for by the said institution. If petitioner is relegated either to avail the remedy of appeal or for passing a fresh order by NMC, they will not permit increase of 250 seats. Thus, this Court itself can issue directions/mandamus for increase of seats.

12. Parties confined their arguments to the extent indicated above.

13. We have bestowed our anxious consideration on rival contentions and perused the record.

FINDINGS -

14. Relevant portion of Section 28 and Section 29 read as under :-

> "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.
> (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 month from the date of such receipt:
> 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**)

15. Section 28 of the NMC Act makes it clear that the Medical Assessment and Rating Board (in short 'Board') was required to take a decision to approve or disapprove the scheme of establishing any course or increase of numbers of seats based on the criteria mentioned in Clause (a) to (d) of Section 29 of the said Act. Thus, language of statute is plain and clear that the decision of the Board must be based on the touch-stone of yardsticks mentioned in Section 29. A bare perusal of said criteria leaves no

room for any doubt that CBI's self contained note by no stretch of imagination can be a reason for approving or disapproving the scheme or to disallow an application. Thus, we find substance in the argument of Shri Siddharth Gupta, learned counsel for the petitioner that decision taken by NMC declining increase of seats is based on a reason which is beyond the scope of Section 28 and 29 of the NMC Act. Thus, the impugned order is clearly based on extraneous consideration/reason, which is outside the scope and ambit of the NMC Act. In that event, the petitioner cannot be relegated to avail the remedy of appeal under Sub Section 5 of Section 28 of the Act. Putting it differently, the impugned decision of disapproval is not taken within the four corners of Section 28(3) read with Section 29 of the Act. Hence, in a case of this nature, the petitioner cannot be compelled to avail the alternative remedy.

16. The impugned order contains singular reason based on CBI's self contained note. Despite the fact that said note dated 22.7.2021, (Ann. P-11) contains the name of petitioner college and other five colleges, the respondents have granted benefit to People's College and Index Medical College. The decision is discriminatory and hits Article 14 of the Constitution.

17. This is trite that the statutory remedy is not a bar for exercising of jurisdiction under Article 226 of the Constitution of India. If order is passed without following principles of natural justice, it hits any fundamental right, it is passed by an incompetent authority or constitutionality of a provision is called in question, despite availability of alternative remedy, writ petition can be entertained, (See **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others 1998 (8) SCC 1**).

18. We are not inclined to relegate the petitioner to avail the alternative remedy for yet another reason that there is no disputed question of fact is involved so far impugned order is concerned. The relevant portion of impugned order dated 10.01.2022 reads as under :-

> "The Medical Assessment and Rating Board (MARB) of NMC pleased to inform you that there was a complaint from CBI self-contained note in CBI case RC2172015A0108. The matter has been discussed in NMC by the Chairman with the Presidents of four autonomous boards and resolved to impose penalties for allowing irregular admissions. Due to the above circumstances further increase of seats cannot be considered and hence this disapproval.
>
> In view of the above, the Medical Assessment and Rating Board (MARB) has further deliberations on the available information and constrained not to grant any increase of MBBS seats for the academic year 2021-22. If you have any difference of opinion / information on the decisions by the MARB of NMC, you are suggested to follow the Sec. 28(5) (6) and (7) of the NMC Act 2019.
>
> Kindly acknowledge receipt of this letter."
>
> (**Emphasis Supplied**)

19. Once, it is held by us that CBI's self contained note cannot form basis for 'letter of disapproval', there is no justification in sending the matter for consideration to the appellate authority. During the course of hearing, Shri Nair also fairly admitted that very short time is left for the competent authority/appellate authority to take a decision because next counselling is starting shortly. For these cumulative reasons, in our view, the petitioner cannot be relegated to avail the alternative remedy of appeal.

20. The impugned order dated 10.01.2022 is founded upon CIB's self contained note, mentioned hereinabove. The said note, as noticed above cannot be a reason to approve or disapprove the scheme or prayer for increase of seats. Thus, the impugned order based on an extraneous reason

cannot sustain judicial scrutiny. The impugned order also hits Wednesbury principles. Resultantly, the said order deserves to be jettisoned.

21. We also find substance in the argument of learned counsel for the petitioner that penalty can be imposed by a statutory authority provided there exists an enabling provision in the governing statute. In absence thereof, the punishment cannot sustain judicial scrutiny. The impugned order is liable to be interfered with for this reason also.

22. The ancillary question is whether this Court in the present case itself should pass order directing increase of MBBS seats from 150 to 250 ? The principles laid down by the Apex Court and High Courts in ***Royal Medical Trust and Ors. vs. Union of India (UOI) and Ors.*** **[(2015) 10 SCC 19],** ***Priyadarshini Dental College and Hospital vs. Union of India and Ors.*** **[(2011) 4 SCC 623]** **&** ***Parshavanath Charitable Trust and Ors. vs. All India Council for Tech. Edu. and Ors.*** **[(2013) 3 SCC 385]** cannot be doubted. Common string based on these judgments shows that writ of mandamus can be issued in appropriate cases *where there exits circumstances for issuance of such writ*. The judgment of **Rajeev Memorial Academic Welfare Society (supra)** was heavily relied upon by Shri Gupta. A plain reading of this judgment shows that the High Court directed re-inspection by the MCI, whereas there was no need to do the same in the said case. Since inspection in the present case has already taken place, we are not inclined to issue any direction for re-inspection. In the peculiar facts of this case, in our opinion, while setting aside the impugned order, proper course would be to issue a direction to the NMC to take a fresh decision forthwith on the application of petitioner strictly within the four corners of Section 28, 29 and other provisions of NMC Act.

23. So far argument of Shri Siddharth Gupta, Advocate that if the matter is remitted back for re-consideration regarding increase of seats, the NMC will not increase the seats upto 250 as prayed for by the petitioner is concerned, we do not see any reason for such assumption. NMC being the statutory authority in our view, is best suited to take an appropriate decision in this regard. Since we have disapproved the impugned order based on CBI's note, the only course available to the NMC is to take into account, the existing inspection report and consider the application for increase of MBBS seats from 150 to 250 on the touch stone of Section 28 and 29 of the NMC Act.

24. Considering the time constraint, this Court can very well fix a time limit within which the NMC can be directed to take a decision. Pertinently, in the case of **People's College & Medical Science (supra)**, the direction of this Court to decide the appeal within statutory time limit was followed by NMC and therefore, we find no reason to issue a mandamus for increase of seats.

25. In view of foregoing analysis, the impugned order dated 10.01.2022 is set aside. The NMC is directed to take a decision on the application of petitioner for increase of MBBS seats from 150 to 250 in accordance with law before 8th February, 2022. The outcome of such consideration shall be communicated to the petitioner.

26. The **petition is allowed** to the extent indicated above.

(SUJOY PAUL)
JUDGE

(ARUN KUMAR SHARMA)
JUDGE

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PARITOSH KUMAR

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