

Dhanalakshmi Srinivasan Medical ... vs Union Of India & Anr on 13 October, 2022

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5339/2022

DHANALAKSHMI SRINIVASAN MEDICAL COLLEGE AND
HOSPITAL & ANR.

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Through: Mr. Maninder Singh,
Advocate with Mr. Manik Dogra,
Srishty Kaul, Mr. Rishab Singh
Dhruv Pandey, Mr. Harish Nadda
Ms. Srishti Bajpai and Mr. Aja
Sabarwal, Advocates.

versus

UNION OF INDIA & ANR.

....

Through: Ms. Bharthi Raju, SPC w
Alina and Mr. Shivam Dw
Advocates and Mr. Devvr
G.P. for R-1.
Mr. T. Singhdev, Ms. Mi
Das, Mr. Ramanpreet Kau
Abhijit Chakravarty and
Gulati, Advocates for R

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 13.10.2022 CM APPL. 44265/2022 (seeking appropriate directions against Respondent No. 2)

1. Issue notice. Ms. Bharthi Raju, Advocate accepts notice on behalf of Respondent No. 1 and Mr. T. Singhdev, Advocate accepts notice on behalf of Respondent No. 2 - National Medical Commission ["NMC"]. Reply to present application be filed within a period of four days from today.

2. Petitioner No. 1 [hereinafter, "Petitioner-college"] desirous of increasing intake of seats in MBBS course from 150 to 250, applied to Medical Assessment and Rating Board ["MARB"] of NMC on 02nd December, 2020, which request was partially allowed vide order dated 31st December, 2021 and Petitioner-college was recommended for an additional intake of only 50 seats (i.e., total of 200 seats) for the academic year 2021-

22. Aggrieved, Petitioner-college preferred first appeal against decision of MARB wherein First Appeal Committee decided not to approve any increase in seats from the original number of 150, noting deficiencies in faculty and hospital beds in Petitioner-college.¹ Thereafter, on a second appeal preferred by Petitioner-college under the scheme of National Medical Commission Act, 2019, the Central Government upheld the order of First Appeal Committee.²

3. In the present writ petition, the above-noted orders have been assailed. On 30th March, 2022, an interim order was passed permitting Petitioner- college to admit 50 additional students (total 200) for academic session 2021-22, operative portion whereof reads as follows:

"10. Having considered the submissions of the learned counsel for the parties, I find prima facie merit in the petitioners' plea that even if the respondents were entitled to reduce the seats already approved, they could not have passed any such direction without following the principles of natural justice and issuing at least a show cause notice to the petitioners informing them that such a course of action was being proposed. A similar view was taken by the Division Bench of the High Court of Madhya Pradesh, in Medical Sciences and Research Centre & Anr. (supra) while dealing with the same proposition regarding the power of the NMC to reduce the seats. I am therefore of the view that the balance of convenience is in the favour of the petitioner. Grave and irreparable loss will be caused not only to the petitioner college but also to the prospective medical students, if the petitioner college is not permitted to admit 200 students in the Vide order dated 21st February, 2022.

Vide order dated 17th March, 2022.

MBBS course, as already approved by the respondent no.2/Board on 31.12.2021, by considering the assessor's report furnished after a physical inspection.

11. The interim application is accordingly disposed of by permitting the petitioner to admit 50 more students in the MBBS course, by participating in the now remaining rounds of counselling of the NEET 2021-2022.

12. Needless to state, this interim permission will remain subject to the outcome of the present petition and will not in any manner, preclude the respondents, from taking any action against the petitioners on account of its purporting deficiencies after following the due procedure, as per law."

4. For academic year 2022-23, on 21st April, 2022, Petitioner-college applied for increase in seats from 150 to 250. The request letter dated 21st April, 2022 reads as under:

"To The Chairman, National Medical Commission, Pocket - 14, Section-8, New Delhi - 110077.

Respected Sir, Sub: Requisition to open online application for increase of seats from 150 M.B.B.S to 250 M.B.B.S Seats - for the academic year 2022 - 2023 - Dhanalakshmi Srinivasan Medical College and Hospital, Perambalur - reg.

We, Dhanalakshmi Srinivasan Medical College & Hospital, Perambalur, Tamil Nadu got Letter of Permission for 150 annual intake in the academic year 2011-2012 and got recognition approval on 2016. We have applied for increase of seats from 150 M.B.B.S to 250 M.B.B.S annual intake and we have got approval for 200 M.B.B.S annual intake vide orders from the Hon'ble High Court, New Delhi on 30.03.2022 for the academic year 2021

- 2022. In this regard, we kindly request you to provide an opportunity for us to apply for increase of seats from 150 M.B.B.S to 250 M.B.B.S seats through online for the academic year 2022 - 2023.

Kindly do the needful."

5. On above application, MARB passed an order on 10th October, 2022 (received by Petitioners on 11th October, 2022), as follows:

"To Dean/ Principal, Dhanalakshmi Srinivasan Medical College & Hospital, NH - 45, Trichy - Chennai Highway, Siruvachur, Perambalur, Tamil Nadu - 621113.

E-mail: dsmedicalcollege@gmail.com Sub.:- Renewal of permission for MBBS course for 2nd batch (1st renewal) of Dhanalakshmi Srinivasan Medical College & Hospital, Perambalur under the Tamil Nadu Dr. MGR Medical University, Chennai against the increase intake of seats from 150 to 200 seats u/s 11(2) of the IMC Act, 1956 to be read with section 61(2) of the NMC Act, 2019 for the academic year 2022-23.

Sir/ Madam, I am directed to convey the approval of Medical Assessment & Rating Board (MARB) for renewal of permission for admission of 2 batch (1st renewal) against the increase intake of seats from 150 to 200 MBBS seats at Dhanalakshmi Srinivasan Medical College & Hospital, Perambalur u/s 11(2) of the IMC Act, 1956 to be read with section 61(2) of the NMC Act, 2019 for the academic year 2022-23. The MARB has granted approval after consideration of the Affidavit submitted by you.

2. The permission is valid for one year and for admitting only one batch of MBBS students against the increased intake i.e. from 150 to 200 MBBS seats during the academic year 2022-2023. The next batch of students in MBBS course will be admitted in the college only after permission of Medical Assessment & Rating Board of NMC for renewal/recognition.

3. Admissions made in violation of the above condition will be treated as irregular and action will be initiated under NMC Act & Regulations made there under.

4. Discrepancies, if any, may be immediately brought to the notice of the Medical Assessment & Rating Board of the NMC and the State Govt."

6. Copies of afore-noted communications dated 21st April, 2022 and 10th October, 2022 have been handed over across the board and are taken on record.

7. Mr. Maninder Singh, Senior Counsel for Petitioners, states that MARB has grossly erred in limiting Petitioner-college's seat intake to only 200 seats for academic year 2022-23. He explains that an institute's request/ application for increase in intake is valid for a period of five years and therefore, irrespective of rejection of request for 2021-22, which is being agitated before the Court, Petitioner-college's application for academic year 2022-23 was for 250 seats, but the same has been absurdly restricted to 200 seats.

8. In response thereto, Mr. T. Singhdev, counsel for NMC, contends that since Petitioner-college's request has been processed for 200 seats only, inspection was conducted keeping that in mind and accordingly, MARB granted 200 seats for 2022-23 session. The same is controverted by Mr. Maninder Singh who submits that Petitioner-college never amended its request, as is evident from afore-extracted letter dated 21st April, 2022 which reiterates request for 250 seats.

9. At this juncture, it must be noted that for the academic year 2022-23 in terms of the inspection report, deficiencies in Petitioner-college are as under:

"Summary of Assessment

1. Dhanalakshmi Srinivasan Medical College and Hospital is run by Government / Trust/ Society / Company

2. The college has got Permission from GOI/MCI with intake of 200 seats for the last academic year.

3. Type of assessment: First Renewal - 200 Admission & Continuation of Recognition - regular for No. of seats: 150 Seats

4. PG courses: Yes - in all Pre Clinical, Para Clinical & Clinical Departments except Forensic Medicine

5. Deficiency of teaching staff if any: Shortage of teaching faculty is: 0.49 %

6. Deficiency of resident doctors if any: Shortage of resident doctors is: Nil

7. Deficiency of the infrastructure of college and hospital if any: PL mention category wise - Adequately available

8. Deficiency of clinical material If any: PL mention category wise: Bed Occupancy - 84.11%

9. Any other Remarks"

10. The afore-noted summary of inspection notes a meagre deficiency in teaching staff of 0.49%. In this regard, Mr. Maninder Singh draws attention of the Court to a communication dated 07th July, 2017 issued by Medical Council of India (predecessor of NMC), which provides for 5% relaxation in case of private medical colleges, and 10% in case of Government medical colleges in respect of deficiency in teaching faculty and residents. On the strength of the said communication, Mr. Maninder Singh states that the afore-noted deficiency must be ignored, an order directing increase in seats must be passed by the Court. The said communication is taken on record.

11. Considering the afore-noted submissions, NMC is directed to:

(a) Confirm whether afore-noted shortage in teaching staff or any other deficiency/aspect in the inspection report disentitles Petitioner-college from increasing its intake to 250 seats for academic year 2022-23.

(b) File an affidavit explaining the criteria for relaxation of deficiencies up to 5% in private medical colleges as noted in communication dated 07th July, 2017.

12. The above directions shall be carried out within four days from today.

13. Re-notify on 19th October, 2022.

SANJEEV NARULA, J OCTOBER 13, 2022 as