

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7058 of 2022

Radha Devi Jageshwari Memorial Medical College and Hospital run by Society registered under Societies Registration act, 1860 in the name of J.M. Institute of Speech and Hearing (Registration No. 260/84-85) having its registered office at Indrapuri, Road No. 5, Patna - 800004 through its treasurer and authorized representative Alok Kumar Srivastava, S/o Shambhu Nath Sahay, Male, Aged 48 years, R/o Near R.N.S. College, Balughat, Yahiapur, Muzaffarpur, Bihar - 842001.

... .. Petitioner/s

Versus

1. National Medical Commission Pocket- 14, Sector - 8, Dwarka Phase- 1, New Delhi - 110077, INDIA.
2. Medical Assessment and Rating Board Pocket- 14, Sector - 8, Dwarka Phase- 1, New Delhi- 110077, INDIA.
3. State of Bihar Through Chief Secretary, Government of Bihar.
4. Union of India Through the Cabinet Secretary, Government of India, New Delhi.
5. Jageshwari Memorial Institute of Speech and Hearing having its registered office at Road No. 5, Indrapuri P.S.- Patliputra, District- Patna through its President Manisha Kumari, Wife of Dr. Manoj Kumar, Resident of Road No.5, Indrapuri, P.S.- Patliputra, District- Patna.
6. Aryabhatta Knowledge University, Patna through the Registrar, having its office at Mithapur Farm Area, Mithapur, Patna-800001.
7. Bihar Combined Entrance Competitive Examination Board (BCECE) through Controller of Examination, BCECE having its office at I.A.S. Association Building, Near Patna Airport, Patna-800014.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 8548 of 2022

1. Jageshwari Memorial Institute of Speech and Hearing a society registered under the Societies Registration Act 1, and having its registered office at Road No. 5, Indrapuri, P.O.- Keshrinagar, P.S. - Patliputra, Town and District- Patna 800024 (Bihar), through its President, Dr. (Mrs.) Manisha Kumari.
2. Dr. (Mrs.) Manisha Kumari, wife of Dr. Manoj Kumar, resident of Road No. 5, Indrapuri, P.O. - Keshrinagar, P.S. - Patliputra, Town and District - Patna 800024 (Bihar), President of Jageshwari Memorial Institute of Speech and Hearing.

... .. Petitioner/s

Versus



1. Union of India through the Secretary, Ministry of Health and Family Welfare, having office at Nirman Bhawan, Maulana Azad Road, P.O. - New Delhi, P.S.- Parliament Street, New Delhi- 110001.
2. National Medical Commission (a statutory body established under the National Medical Commission Act 2019), having its office at Pocket - 14, Sector - 8, Dwarka Phase - 1, New Delhi - 110077, through its Chairman.
3. Medical Assessment Rating Board (an Autonomous Board, Established by the Central Government under section 16(c) of the National Medical Commission Act 2019), having its office at having its office at Pocket - 14, Sector - 8, Dwarka Phase - 1, New Delhi - 110077, through its President.
4. Aryabhatta Knowledge University (AKU), a University established by the Government of Bihar, having its campus at CNLU Campus, P.S.- Mithapur, Patna - 800001 (Bihar), through its Registrar.
5. The State of Bihar, through the Additional Chief Secretary, Department of Health, Vikas Bhawan, Bailey Road, P.S. - Sachivalaya, Patna - 800015 (Bihar).
6. Radha Devi Jageshwari Memorial Medical College and Hospital through Mr. Rajeev Kumar, Son of Suresh Kumar Sharma, Resident of Chakkar Maidan, Mahammadpur Kazi, Muzaffapur Bihar- 842001 and the General Secretary of Society i.e., J.M. Institute of Speech and Hearing.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7426 of 2022

1. Shashwat Son of Shashi Bhushan Resident of Flat No. 302, Namaskar Kunj, Behind IGIMS, Patna-800025, Bihar.
2. Shubham Rai Son of Dhananjay Kumar Rai Resident of Sathiyaw, Fazil Nagar, District-Kushinagar, Uttar Pradesh-274401.

... .. Petitioner/s

Versus

1. The Chairman, National Medical Commission Pocket-14, Sector-8, Dwarka Phase-1, New Delhi-110077.
2. Medical Assessment and Rating Board, Pocket-14, Sector-8, Dwarka Phase-1, New Delhi-110077.
3. The State of Bihar through the Chief Secretary, Government of Bihar, Main Secretariat, Patna-800015,
4. Radha Devi Jageshwari Memorial Medical College and Hospital run by a Society Registered Under the Societies Registration Act, 1860 in the name J.M. Institute of Speech and Hearing (Registration NO. 260/84-85) having its registered Office at Indrapuri Road No.5, Patna-800004 through its Treasurer and Authorized Representative Alok Kumar Srivastava, S/o Shambhu Nath Sahay, Male, aged 48 Years, R/o Near R.N.S. College, Balughat, Yahiapur, Muzaffarpur, Bihar-842001.
5. The Union of India, represented through the Cabinet Secretary, Government



of India, Rashtrapati Bhawan, New Delhi-110004.

6. The Additional Chief Secretary, Health Department, Government of Bihar, Vikash Bhawan, Secretariat, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 8358 of 2022

1. Ujjawal Kumar Son of Rohit Kumar Resident of Bokane Kalan, East Champaran, Bihar- 845414.
2. Sushmit Bhardwaj Son of Sanjay Kumar Resident of E/2/4, Road No. 6-D, Sadhnepuri, Gardanibagh, Phulwari, Patna- 800001.
3. Adhiraj Singh Son of Jitendra Singh Resident of Lachhwai, Post Heonra, Etawah, Uttar Pradesh 206001.
4. Ishika Kumari Daughter of Chandeshwar Tiwari Resident of Holding No.100, Ward No.17 Asnabad, Near IBP Petrol Pump, Jhumri Telaiya, Koderma, Jharkhand- 825409.
5. Muskan Singh Onam Daughter of Madan Kumar Mohanpur Road, Near of Kranti Hotel, Ward No.13, Kashipur, Samastipur- 848101.
6. Kumar Shambhav Son of Bhal Chandra Mishra Resident of Sahiyar Dih, Samastipur, Rosera, Bihar- 848210.
7. Aakanksha Choubey Daughter of A. Choubey Resident of House No. 34/1878, Shyam Nagar, Telibandha, Raipur, Chhattisgarh- 492006.
8. Satyam Kumar Son of Rajeshwar Choubey Resident of Pandey Tola, Narkatiaganj, West Champaran- 845455.
9. Nidhinandini Daughter of Dayanand Prasad Resident of 63-C, Mustafabad, Post P.S. Rampur, District- Gaya, Bihar 823001.
10. Ojaswi Prakash Son of Om Prakash Opposite Shiv Mandir, Ram Sahay Lane, Mahendru, Patna- 800006, Bihar.
11. Kritika Raj Daughter of Vinod Kumar Resident of House No. 0083, Kashipur, Gali No.1, Ward No.8, Samastipur, Bihar- 848101.
12. Saema Eram Daughter of Md. Iftekhhar Ansari Resident of Barun Khemda Aurangabad, Bihar 824112.
13. Akanksha Priya Daughter of Hira Lal Sah Resident of Sant Nagar, Madhubani, Purnia- 854301.
14. Anamika Prakash Presently student of Radha Devi Jageshwari Memorial Medical College and Hospital, Manaria Chhajan, Turki, Muzaffarpur.
15. Gulshan Raj Son of Prabodh Kumar Singh Village Man Pursauli Post Isuapur, Saran, Bihar- 841411.
16. Ved Prakash Son of Lalit Prakash Resident of Ram Nagar Polytechnic, Purnea- 854301.
17. Nidhi Daughter of Sipahi Lal Verma Resident of Jainpur Bheekhepur, Ajitmal, Auraiya, Uttar Pradesh- 206129.
18. Nitin Kumar Son of Chandan Kumar Resident of Khajurbanna, Sampatchak,



Patna- 800006, Bihar.

19. Hrishikesh Kumar Son of Arvind Kumar Resident of Gram Ijarta, Paipura Kala, Bihar- 801110.
20. Manish Pushkar Son of Dineshwar Prasad Singh Resident of 201, Poonamjyoti Apartment, Vivekanand Park, Boring Road, Patliputra, Patna- 800013.
21. Ninad Vishwajit Kamble Son of Vishwajit Kamble Resident of Pandharkawada, Chintamani Lay out, Kelapur, Yavatmal, Maharashtra- 445302.
22. Komal Daughter of Binod Kumar Reesident of Near Durga Mandir, Sonpur Adam, Ward No.13, Sonapur, Saran, Bihar- 841101.
23. Shilpa Gautam Daughter of Ashutosh Kumar Singh Resident of Madhuaha Birit, East Champaran, Bihar- 845436.
24. Pragya Kumari Daughter of Dilip Kumar Chaudhary Resident of Gold Vatika Green City, Dimna Road, Mango, Jamshedpur, Jharkhand- 831012.
25. Shagun Daughter of Mithilesh Kumar Resident of G.C. Banerjee Road, Town, Bhikhanpur, Jagdishpur, District Bhagalpur- 812001.
26. Sonali Kumari Daughter of Harendra Sah Resident of Motipur, Samastipur, Bihar- 848130.
27. Saloni Srivastava Daughter of Mukesh Kumar Srivastava Resident of Banwa Tola, P.O. Belbagh, Bettiah, West Champaran- 845438.
28. Shrishti Raj Daughter of Ravi Ranjan Resident of 5, Jamalabad, Muzaffarpur, Mushari- 842004, Bihar.
29. Divyam Bhardwaj Son of Vikash Bhardwaj Resident of OM Colony, Bhagwanpur Chowk, Muzaffarpur- 842001.
30. Diptesh Patel Son of Srikanta Kumar Patel Resident of Industrial Estate, Beheramal, Jharsuguda, Odisha- 768203.
31. Rishabh Nandan Son of Nandan Kumar Roy Resident of Flat No.202, Poonam Jyoti Apartment, Vivekanand Marg, Behind Ladoo Gopal Sweets, Near Basudha Apartment, Patliputra Colony, Patliputra, Patna- 800013.
32. Ankit Raj Son of Jitendra Singh Resident of C-13, 14, 15, Kaveri Kunj, Near Pali Factory, Uttam Nagar, West Delhi- 110059.
33. Sharvi Shatakshi Daughter of Sanjay Kumar Resident of Road No.2, Durga Mandir, Azad Colony, Maripur, Bhagwanpur, Muzaffarpur- 842001, Bihar.
34. Shalini Daughter of Sudhir Kumar Ward No.13, Near Primary School, Thalha Gadhiya, Dakshin Thalha, Garhia, Triveniganj, Supaul- 852139.
35. Deepak Kumar Singh Son of Manoj Kumar Singh Resident of Ward No.7, TJKS College Pratap Nagar, Rajopatti, Sitamarhi, Rampatti, Sitamarhi- 843302.
36. Ved Prakash Himanshu Son of Gyan Prakash Himanshu Resident of Arya Samaj Mandir Road, S.K. Puram Lane, No.8, R.P.S. More, Ward No.38, Dinapur cum Khagaul, Bihar- 801503.
37. Ritik Raj Son of Arvind Kumar Singh Resident of 308 G, Vachaspati Nagar, Santh Path Kumhrar, Near Kumhrar Raily Gumati, P.S.- Bahadurpur,



Sampatchak, Patna- 800006.

38. Bishwanath Das Son of Abhaya Kumar Das Resident of Tainkul (Biridua) Sarana, Baharana, Balikuda, VTC, Sarana, P.O. Sarana, District-Jagatsinghapur, Odisha, Pin 754106.
39. Md. Tahrim Alfid Son of Md. Tafazzal Hussain Resident of SS Road, Navin Nagar, Ranga Gara Huzz, P.O.- Haiborgaon, District Nagaon, Assam-782002.
40. Nitin Kumar Son of Chandan Kumar Resident of Khajurbanna, Sampatchak, Mahendru, Patna- 800006, Bihar.
41. Vivek Kumar Son of Binda Paswan Resident of Mitramandal Colony, near Shiv Narayan Chowk, Phulwari, Patna- 800002, Bihar.
42. Sweety Kumari Daughter of Gopal Prasad Meharpur, Post Ranabigha, P.S. Laheri, Rana Bigha, Nalanda- 803101.
43. Harshita Hind Daughter of Sunil Kumar Resident of Near Shiv Mandir School, Naya Bazar, Ramzan Manzil, Dhanbad, Jharkhand.
44. Sajal Chandrakar Son of Liladhar Chandrakar Resident of Bazar Pada, Ward No.5, Jonk, Khariar Road, Nuapada, Odisha- 766104.
45. Pragya Bharti Daughter of Devendra Choudhary Resident of H.No. 78, Loknathpur, Dalsinghsarai, Samastipur- 8481144.
46. Alok Kumar Son of Ram Ekwil Choudhary Resident of Shivdaspur, Muzaffarpur- 843321.
47. Darsh Verma Son of Yashwat Deo Verma A-15, Gitanjali Nagar, Gudhiyari, Raipur, Chhatisgarh- 492009.
48. Ohm Anand Son of Suresh Prasad Sah Resident of Barbanna, Katihar, 854105.
49. Ravi Raj Raushan Son of Lalan Kumar Nirala P.S. Rajgir, Badi Mili, Nalanda- 803116.
50. Jayant Raj Son of Professor Madhurendra Resident of Aziz Lane, Post G.P.O., District Patna.
51. Abhinav Kumar Bhaskar Son of Brijesh Kumar Resident of Mahal Saray, Najibabad, Uttar Pradesh- 246763.
52. Vishal Tiwari Son of Arvind Kumar Tiwary student of Radha Devi Jageshwari Memorial Medical College and Hospital, Manaria Chhajan, Turki, Muzaffarpur.
53. Anamika Daughter of Pavan Kumar Saraswat Resident of Saraswat Hospital Runkata, Agra, Uttar Pradesh- 282007.
54. Ayush Kumar Shahi Son of Arun Kumar Shahi Resident of Gayatri Mandir Road, Near Hanuman Mandir, Akharaghat, Nazeerpur, Shekhpura, Muzaffarpur- 842002.
55. Utkarsh Govind Son of Dr. Jagdhar Mandal Resident of Superintendent Quarter, Prashal Bhawan, Parbati, Bhagalpur- 812007.
56. Harsh Singh Son of Brijpal Singh Resident of 117-P-1/572, Shivpuri, Kakadeo, R.K. Nagar, Kanpur Nagar, Uttar Pradesh- 208012.
57. Parag Kumar Deo Son of Ratneshwar Kumar Deo Resident of Village



- Tikapati, Post- Dasout, Darbhanga, Alinagar, 847405.
58. Avinash Kumar Son of Jitendra Ray Resident of Bharat Milap Chowk, Post Bhagwan Bazar, Chapra, Saran- 841301.
 59. Abhinav Raj Son of Ramanand Singh Resident of Ward No.1, Basanwara, Madhepura, Bihar- 852210.
 60. Suyash Mishra Son of Karunachal Mishra Resident of 289, Brahmapuri, Near R.M.P. Degree College, Sitapur, Uttar Pradesh- 261001.
 61. Uday Dnyandeo Tapre Son of Dhyandeo Tapre Resident of Sr. No. 73/1/1, Ganaraya Bunglow, Shivaji Park, New Sangvi, Pune City, Pune, Maharashtra- 411027.
 62. Aman Kumar Ranjan Son of Rajiv Kumar Ranjan Jamuna Flour Mills Campus, Kalibari Road, Binodpur, Katihar- 854105.
 63. Rajan Kumar Son of Sanjay Kumar Resident of DS 1-158, Railway Colony, Balidih, Tanr Balidih, Bokaro, Jharkhand- 827014.
 64. Nimisha Mishra Daughter of Narendra Mishra Resident of Nawhat, Ward No.5, Rampatti, Madhubani- 847236.
 65. Kajal Kumari Daughter of Ranjit Kumar Resident of Nasriganj, Mithila Colony, Dinapur cum Khagaul, Patna- 800018.
 66. Bagisha Daughter of Parimal Kumar Khan Resident of House No.26, Road No.14, Near Roxo Convent School, Indrapuri, Keshari Nagar, Patna- 800024.
 67. Lipika Kumari Daughter of Rajendra Prasad Keshari Resident of Village Sabour, Post Sabour, District Bhagalpur 813210.
 68. Aashutosh Ashok Gupta Son of Ashok Gupta Resident of Sai Sadan, Room No.1, Plot No.622, Kansai Section Road, Behind Datta Mandir, Ambernath East, P.O. Ambernath, Thane District, Maharashtra- 421501.
 69. Nammi Dattareya Pavan Sahit Son of Nammi Satya Siva Subhash Kumar Resident of MIG 2-A- 276, Vinayaka Nagar, Vuda Colony, Near Ayyappa Temple, Pedagantyada, Visakhapatnam, Andhra Pradesh- 530044.
 70. Boddeda Bharath Son of Boddeda Varaha Laxmi Narasimha Murthy Resident of H No.3- 36, Pottibeedu Center, Mungapaka, Mandeelhir, Nagulapalle, Visakhapatnam, Andhra Pradesh- 531001.
 71. Aditi Pandey Daughter of Manoj Pandey Resident of Kaudiya, Near Tulshi Udyan, Shahganj, Jaunpur, Uttar Pradesh- 223101.
 72. Sonal Kumari Daughter of Sarbeshwar Singh Resident of Village Narainiya, near Ram Janki Mandir, Narainian, Gopalganj, Bihar- 841438.
 73. Rishika Singh Daughter of Rajesh Kumar Singh Pali Road, Dehir, Dalmianagar, Rohtas, Bihar- 821305.
 74. Utkarsh Mishra Son of Shivakant Mishra Kath Taraon, Mau, Uttar Pradesh- 221602.
 75. Suraj Kumar Son of Rameshwar Singh Resident of Lauwa, Kalan, Saran, Bihar- 841403, Bihar.

... .. Petitioner/s

Versus



1. The Chairman, National Medical Commission Pocket-14, Sector- 8, Dwarka Phase- I, New Delhi- 110077.
2. Medical Assessment and Rating Board, Pocket- 14, Sector-8, Dwarka Phase- 1, New Delhi- 110077 through its President.
3. The State of Bihar through the Chief Secretary, Government of Bihar, Main Secretariat, Patna- 800015.
4. Radha Devi Jageshwari Memorial Medical College and Hospital Manaria Chhajan, Turki, District Muzaffarpur represented through its Principal.
5. The Principal, Radha Devi Jageshwari Memorial Medical College and Hospital, Manaria Chhajan, Turki, District Muzaffarpur.
6. The Union of India represented through the Cabinet Secretary, Government of India, Rashtrapati Bhawan, New Delhi- 110004.
7. The Additional Chief Secretary, Health Department, Government of Bihar, Vikash Bhawan, Secretariat, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 11946 of 2022

1. Neelabh Son of Sri Rameshwar Lal, Resident of Kishori Niketan, Jai Prakash Nagar, P.O.-G.P.O., P.S.- Jakkanpur, District-Patna-800001.
2. Rishabh Raj Son of Sri Raghunath, Resident of Village and P.O.-Shahar Rampur, P.S.-Naubatpur, District-Patna-801109.
3. Shweta Bharti Daughter of Sri Manoranjan Kumar Manohar, Resident of At and P.O.-Ara, P.S.-Nawada, District-Bhojpur.
4. Praveen Anand Son of Sri Vikrama Ram Resident of Village-Dhanahi, P.O.-Barmaswa, P.S.-Harsidhi, District-East Champaran, Bihar-845437.
5. Faiyaz Alam Son of Sri-Liyaquat Hussain, Resident of Village and P.O.-Marghiya Sadar Tola, P.S.-Barari, District-Katihar, Bihar-854104.
6. Tanishqu Shrivastava Son of Sri-Gyan Shankar Shrivastava, Resident of At-Kota Colony Behind Vivekanand Teachers Colony, P.S.-Sarswati Nagar Thana Raipur, District-Raipur, Chhatishgarh-492010.
7. Abdul Rab Son of Sri-Md. Waris Ali, Resident of Village and Post-Semrahiya, P.S.-Chauradano, District-East Champaran, Bihar-845302.
8. Ashhar Tarique, Son of Sri-Qaiser Imam Sajid, Resident of At-Pokhariya Pir Saidpura Near Bazar, P.O.-Ramna, P.S.-Kazi Mohamadpur, District-Muzaffarpur, Bihar-842002.
9. Rahbar Alam Son of Sri-Lal Mohammad, Resident of At Churbighat Chandwa, P.S.-Rohatara, District-Katihar, Bihar-854303.
10. Aarpit Suman Son of Sri-Rajesh Kumar Resident of At Laxmi Chowk Daudpur Kothi, P.S.-Brahampura, District-Muzaffarpur, Bihar-842003.
11. Narendra Bhabha Son of Sri-Prabhakar Prasad Singh Resident of At Ashok Nagar Khagariya Koshi College, P.S.-Chitragupt Nagar, District-Khagariya,



Bihar-851205.

12. Kundan Kumar Son of Sri-Naval Kishor Rai, Resident of At Bara Telpa Chapra, P.S.-Mustafir, District-Saran, Bihar-841301.

... .. Petitioner/s

Versus

1. The National Medical Commission through the Chairman, Pocket-14 Sector-8 Dwarka Phase-1 New Delhi-110077.
2. The Chairman, National Medical Commission, Pocket-14 Sector-8 Dwarka Phase-1 New Delhi-110077.
3. The Medical Assessment and Rating Board through its President Pocket-14 Sector-8 Dwarka Phase-1 New Delhi-110077.
4. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
5. The Additional Chief Secretary, Health Department, Government of Bihar, Patna.
6. The Bihar Combined Entrance Competitive Examination Board through its Chairman-Cum-Member, Board of Revenue, IAS Association Building, Near Patna Airport, District-Patna-800014.
7. The Chairman-Cum-Member, Board of Revenue, Bihar Combined Entrance Competitive Examination Board, IAS Association Building, Near Patna Airport, District-Patna-800014.
8. Radha Devi Jageshwari Memorial Medical College and Hospital, P.S. Turki, Muzaffarpur through the Principal.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 7058 of 2022)

For the Petitioner/s : Mr. Mrigank Mauli, Sr. Adv. With
Mr.Sanket, Adv. With
Mr. Varun Singh, Adv. With
Mr. Abhay Kumar, Adv.

For the State : Mr.Ramadhar Singh (Gp25) with
Mr. Anirudh Kumar Singh, AC to GP-25

For the Respondent AKU: Mr. Anand Kumar Ojha, Adv, with
Mr. Ashok Kumar Karna, Adv.

For the Respondents : Mr. Kumar Priyaranjan, Adv.

(In Civil Writ Jurisdiction Case No. 7426 of 2022)

For the Petitioner/s : Mr. Y.V. Giri, Sr. Adv. With
Mr. Vikash Kumar, Adv. With
Ms. Nitu Jha, Adv. With
Mr.Kumar Ravish, Adv.

For the State : Mr.Birju Prasad (Gp13) with
Ms. Shweta Anand, AC to GP-13 with
Mr. Ajit Anand, AC to GP-13

For the NMC : Mr. Kumar Priya Ranjan, Adv. With
Mr. Ankur Apurv Singh, Adv. With



Mr. Bibhuti Kumar, Adv.

(In Civil Writ Jurisdiction Case No. 8358 of 2022)

For the Petitioner/s : Mr.Kumar Ravish, Adv.
For the State : Mr. Mujtabaul Haque, GP-12 with
Mr. Pranoy Kumar, AC to GP-12

(In Civil Writ Jurisdiction Case No. 8548 of 2022)

For the Petitioner/s : Mr.Raushan, Adv.
For the State : Mr. Mujtabaul Haque, GP-12 with
Mr. Vasant Vikas, AC to GP-12

(In Civil Writ Jurisdiction Case No. 11946 of 2022)

For the Petitioner/s : Mr.Kumar Kaushik, Adv.
For the State : Mr. Ajay Behari Singh, G.A.-8 with
Mr. Neeraj Raj, AC to GA-8
For the BCECE : Mr. Prasoon Sinha, Adv.

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

C.A.V. JUDGMENT

Date : 23-12-2022

1. Heard the parties.

2. All the five writ petitions as above were heard together as the issue involved is common to all. The petitioners in C.W.J.C. No. 7058 of 2022 and C.W.J.C. No. 8548 of 2022 are petitions filed on behalf of Medical College and Hospital through Treasurer and by the Society namely Jageshwari Memorial Institute of Speech and Hearing through its President. In both the writ petitions the prayer is to quash and set aside the order dated 18.04.2022 issued by the Medical Assessment And Rating Board (hereinafter called as M.A.R.B.).

3. The other three Writ Petitions have been filed by the students of the Radha Devi Jageshwari Memorial Medical College



and Hospital praying for directing the State Government to take over the management of the College and directing the respondent no. 3 to accommodate the petitioners to some other Government Medical College. Almost similar prayer has been made in all the three cases. Vide order dated 14.06.2022 the impugned order was stayed by the Coordinate Bench of this Court on being prima facie satisfied with the submission that in terms of Section 26 (I) (f) of the NMC Act of 2019, the MARB could only have directed to stoppage of admission, but was not competent to direct for cancellation of admission already made after counselling. The case was thereafter heard finally by this Court. Before advertng to the issues, it would be appropriate to notice certain facts which have come on record.

4. The petitioners College Radha Devi Jageshwari Memorial Medical College and Hospital, Muzaffarpur is run by a Society namely Jageshwari Memorial Institute of Speech and Hearing. While a Hospital was in the same name was being run by for last five years on 03.07.2019, an essentiality certificate was issued by the State Government on a proposal submitted for establishment of Medical College by the Society. On 04.09.2021 assessment was conducted by the National Medical Commission (hereinafter referred as N.M.C.) and thereafter the Medical



Assessment and Rating Board (hereinafter M.A.R.B.) issued a letter of intent to the petitioners approving 150 M.B.B.S. seats for the College vide letter dated 22.09.2021. It also directed to fulfill the deficiency of completing the examination hall and recruiting one Tutor for Physiology. Letter of permission (L.O.P.) was issued on 01.11.2021 for new Medical College approving 150 M.B.B.S. seats for the Session 2021-2022. On 26.11.2021 and 27.11.2021 N.M.C. conducted a surprise inspection and on the basis of report of inspection it directed the State Government not to allot students to the Medical College, vide its letter dated 15.02.2022. A show cause notice was also issued to the petitioners College on 15.02.2022 referring to the inspection report. It was pointed out that a complaint had been received regarding fake faculty and patients arranged during assessment for issuing letter of intent and on inspection it was found having following major deficiencies:-

“1. Faculty deficiency of 85.18%, with no faculty in the departments of Physiology, Biochemistry, Pharmacology, Forensic Medicine, Community Medicine, General Medicine, Respiratory Medicine, Psychiatry, Otorhinolaryngology, Ophthalmology, Anaesthesiology, Radio-diagnosis and Emergency Medicine.

2. Deficiency of Residents/tutors are 90.69%.

3. Out patients registered are 430 against the requirement of 600 on the day of assessment.

4. In patient bed occupancy was 42% against the requirement of 60%.



5. Also against to the information submitted to the National Medical Commission in Sworn Affidavit Dt. 08.06.2021, which attracts legal proceedings.”

5. The management was asked to give reasons as to why letter of permission granted should not be withdrawn and should not stop admissions in the College as the minimum required faculty and facilities are not available on surprise assessment.

6. The management has submitted its reply on 17.02.2022 and stated that they had already taken admissions through counselling and the B.C.E.C.E. had during first counselling allotted all open 127 seats to the eligible candidates.

7. As regards the deficiencies, it was stated that the head count of faculties was low due to the sad demise of the mother of the President and majority of the faculty and staff were attending her funeral hence were not available before 11:00 A.M. on 26.11.2021. Further stated that they had reported in Afternoon. Residents were on night shift duty, the Hospital is situated in the rural area 10 K.M. away from the University and on account of cold wave the O.P.D. timings had been changed. Actual bed occupancy was 61% on the first day of inspection. It was also stated that the Medical Commission could verify by conducting a fresh inspection.



8. The National Medical Commission M.A.R.B. however found reasons as not convincing and decided to withdraw the letter of permission and cancel the admission in the College for the academic year 2021-22, vide its order dated 18.04.2022. The respondents M.A.R.B. thereafter issued another letter on 16.05.2022 approving reallocating of the students allotted by the Government of Bihar from the Medical College to private Medical Colleges.

9. Although, initially the President of the Society challenged the writ petition preferred by the Medical College through the Treasurer on the ground of locus, but later on it proceeded to resolve the matter in between the management.

10. The students preferred a writ petition claiming that they should be admitted and reallocated in Government Medical College alone and not in the existing Private Medical Colleges of the State. Same prayer has been made by the other students in their respective petitions.

11. Learned Senior Counsel appearing for the Medical College and the Management submitted that Section 26 (1) (f) of the National Medical Commission Act, 2019 empowers M.A.R.B. to recommend for imposition of monetary penalty reducing intake or stoppage of admissions and recommend to the Commission for



withdrawal of recognition against the Medical Institutions, but does not have the power to withdraw the letter of permission itself or cancel the admissions of the students in the M.B.B.S. course. It was further urged that the power of withdrawal of L.O.P. is not vested with the M.A.R.B. and the order dated 18.04.2022 was in excess to its jurisdiction.

12. It was further urged that as per Section 51 of the N.M.C. Act, it is the primary duty of the State to ensure health care in rural area and the N.M.C. has also a similar duty to promote primary health care in rural area.

13. Learned counsel further submits that the N.M.C. and M.A.R.B. ought to have conducted a fresh inspection after the petitioners submitted their reply to the show cause notice giving out the valid reason for incomplete faculty attendance on the day of surprise inspection. Learned counsel vehemently argued that the inspection team as per directions only examined the attendance up to 11:00 A.M. and does not take into consideration the bed occupancy nor the faculty attendance after 11:00 A.M., resultantly the faculty members who arrived after 11:00 A.M., and were on duty, were not considered to be valid faculty members in the inspection report. He also submitted that being Winters the O.P.D. strength of outdoor patient is expected to be much low in the



Morning time, while it gets increase by the Afternoon. The said aspect has been ignored by the inspecting team.

14. During the pendency of the writ petition the petitioners have filed supplementary affidavit and pointed out that after the interim order was passed, the M.A.R.B. has conducted a fresh surprise inspection on 07.09.2022 and 08.09.2022, which reflects that there is no deficiency in the College. The inspection report has been placed on record. It is further pointed out that the College has been further granted letter of permission for the academic year 2022-2023 for admission of 2nd batch against the annual intake of 150 M.B.B.S. students in the petitioners College under Section 11 (2) of the I.M.C. Act, 1956.

15. Learned counsel submits that since the 2nd batch permission has been granted, the letter of permission for starting the Medical College stands restored by the action of the M.A.R.B. vide order dated 18.11.2022 and, therefore, the students who have already studied of the first batch ought to be treated as regular students of the College and deserve to be allowed to participate in the examination for treating them as admitted for the academic year 2021-2022.

16. Learned counsel has relied on the Judgment passed by the Supreme Court in the case of **Rajiv Memorial Academic**



Welfare Society & Another Vrs. Union of India & Anr., 2016

(11) SCC 522 to submit that if deficiency is found in the previous inspection have been rectified then such deficiency of previous inspection has to be ignored.

17. Learned counsel has invited attention to Section 28(3) of the N.M.C. Act and to the proviso thereto, to submit that an opportunity ought to have been given to the College before cancelling the admission and withdrawing the letter of permission in order to rectify the deficiency. He relies on the **Swamy Devi Dayal Hospital and Dental College Vrs. Union of India & Ors., 2014 (13) SCC 506** and **Royal Medical Trust (Registered) and Another Vrs. Union of India & Anr., 2015 (10) SCC 19**.

18. Learned counsel has submitted that the N.M.C. Act is in successions of the M.C.I. Act and as per Section 10 (A) (4) of the M.C.I. Act, it is mandated not to disprove any scheme of establishment college except after giving the person of the College concerned, reasonable opportunity of being heard.

19. Learned counsel submits that opportunity in hearing would also include giving an opportunity to rectify the defects. It was further submitted that although, there is a provision of statutory appeal under Section 22 of the N.M.C Act, but the same cannot be said to be efficacious as both M.A.R.B. and the N.M.C.



have filed the reply together and are contesting the case. It is further submitted that the M.A.R.B. vide subsequent action have taken a contrary stand in the application for vacation of stay, whereby they have only stated that they have restrained petitioners Medical College from continuing admission of students by stopping them at that stage, whereas the impugned order mentions withdrawal of letter of permission. The students are studying in the College presently and their education is running smoothly. It has been argued that N.M.C. has granted sanction for reallocation of students mechanically. Learned counsel has also submitted that the students in the writ petitions have also stated that the College was running smoothly and there was no deficiencies of teachers.

20. It is also submitted that the students of the petitioners College who have been admitted and are continuing studies have not been registered by the affiliating University. The B.C.E.C.E. which has allotted the students to the petitioners College has not disbursed the fees to the Medical College of the students allotted to it.

21. Per contra, counter affidavit has been filed on behalf of respondent no. 6 Aryabhata Knowledge University and respondent no. 1, National Medical Commission (N.M.C.), M.A.R.B. and Bihar Combined Entrance Competitive Examination



Board (B.C.E.C.E.B), who were directed to be impleaded as respondent no. 7 in the petition.

22. Aryabhatta Knowledge University has stated that prior to granting affiliation to the petitioner College, the Government of Bihar had granted essentiality certificate to the College vide their letters dated 03.07.2019 and corrigendum dated 12.07.2019. The consent of affiliation was granted on 4th July, 2019. It submitted that no relief is sought as against the University and asserted that the M.A.R.B. is authority under Section 26 (1) (a) to determine the procedure for maintaining the standard of the Institution and grant permission for establishment of new Medical Institution and also to take decision with number of seats to be allotted to such a new Medical College. The M.A.R.B. sent a letter on 4th May, 2022 to the Additional Chief Secretary, Health and Family Welfare Department, Sri Pratya Amrit, I.A.S. stating about major deficiencies have been found in the surprise assessment for the academic courses in 2021-22. It specifically mentioned that the sensitivity of the situation was required to be noticed and the M.A.R.B. also asked the personal appearance of the Officer concerned to meet the President of the U.G.M.A.D., M.A.R.B. and the Chairman of the National Medical Commission. The



University has thus stated that they will await the decision and direction of this Court.

23. The M.A.R.B. and N.M.C. have filed their reply and learned counsel for the N.M.C. submitted that the M.A.R.B. had granted permission initially to the College with intake strength of 150 students. Vide order dated 01.11.2021 it received complaints regarding three faculties and patients of the College and, therefore, deputed a team of Assessors to conduct physical assessment of the petitioner Medical College, which was carried out on 26/27th November, 2021 and thereafter, issued a show cause notice dated 15.02.2022 to which reply was sent by the respondents on 17.02.2022.

24. Learned counsel submits that the reply was not acceptable as in a Medical College which is to impart medical education, it is impossible that practically all faculty members and residents leave the Hospital Medical College at the same time. Their absence before 11:00 A.M. was therefore unacceptable. After detailed consideration of the assessment report and the explanation, impugned decision was taken as it would impinge upon the standards of medical education being imparted by the Medical College. It has further been stated that the letter of permission has been canceled of the Medical College and so far as



the students, if any, admitted in the College would be the responsibility of the State Government in terms of essentiality certificate which provides for such a contingency.

25. Learned counsel submitted that the State Government sought no objection from the M.A.R.B. for accommodating the students admitted in Medical College for Session 2021-22 two different Medical Colleges of the State, whereafter no objection was granted to reallocate the students in different Medical Colleges of the State by the M.A.R.B. vide its letter dated 13th June, 2022.

26. This Court had asked the State Government to give reasons for not complying with the instructions issued by the N.M.C. in its letter dated 15.02.2022 not to allow students to the petitioner College for the Sessions 2021-22. In spite of the said directions, the State Government allotted 150 students to the petitioner College on 13th April, 2022, whereafter on 18th April, 2022, the permission for starting the Medical College has been withdrawn by the N.M.C. Two separate writ petitions were filed by the students stating that their career has been placed in jeopardy. They asked the show cause notice, as to why penalty should not be imposed on the State Government for wrongfully allocating students.



27. Thereafter, the State Government has filed an affidavit by the Additional Director and it is stated that after the publication of NEET results the Board issued notice and decided dates for under Graduate Medical admission Counselling for admission in M.B.B.S. Course and first round of Counselling was held on 02.02.2022. After completion of first round, N.M.C. issued letter on 15.02.2022 issuing show cause notice to the College with the copy to the Health Department, as to why the letter of permission may not be withdrawn. It is stated that by that time admission of certain students has been done in the petitioners College, whereafter vide letter dated 07.03.0222, the Government of Bihar sought specific directions from N.M.C. and no reply was received and 150 M.B.B.S. students were admitted for the Session 2021-22. N.M.C. has taken decision on 18.04.2022 and thereafter the students have sought to be admitted to other Medical Colleges.

28. Respondent has relied on the no objection certificate issued by the N.M.C. for reallocating of students. Further, it is stated that the admissions were actually made by the Bihar Combined Entrance Competitive Examination Board, who were impleaded as a party vide order dated 24.08.2022 on the basis of prayer made by the petitioners for directing Board to release the fees in favour of petitioners Institution. The Board has stated that



the advertisement was issued for admissions on the basis of marks obtained. The second round of counselling was conducted from 13.03.2022 to 16.03.2022. The third round of counselling was conducted as mop up counselling which was offline from 05.04.2022 onwards vide notification dated 03.04.2022 and it is stated in affidavit that pursuant to the said advertisement of 03.04.2022 seats were allotted to the students in Radha Devi Jageshwari Memorial Medical College and Hospital, Muzaffarpur and seats in the Institutions were filled up. Thus, it is apparent that the students were admitted in the College on 15th April, 2022 and not earlier in first or second round of counselling. The averment made by the college as well as by the State authorities that admissions had already been made before receiving letter dated 15.02.2022 from N.M.C. is found to be false and are misleading. In fact the respondent State has wrongly allotted students contrary to the directions of N.M.C.

29. The students who have been admitted in the College, have also preferred writ petition bearing C.W.J.C. No. 7426 of 2022 before this Court as noticed above. They have prayed for taking over of the management of the respondent no. 4 College and conduct assessment and recognition of the respondent no. 4 College and set aside the letter dated 18.04.2022 and



accommodate the petitioners in some other Government Colleges as an alternate remedy. Interestingly they do not mention the date on which they were admitted to the College.

30. In the other writ petition bearing C.W.J.C. No. 8358 of 2022 also there is no mention of the date of admission. However the prayer is same as noticed above. They have admitted that the students were admitted in the mop up counselling conducted between 05.04.2022 to 10.04.2022. The students have stated that they had been admitted as the respondent had highlighted respondents College to be one of the Colleges where he needs to it could be enrolled as it being a duly recognized Medical College the students were applied and were admitted.

31. Learned counsel for the petitioners College relied on the order passed by the **Rajasthan High Court** in a Civil Writ Petition No. **6068 of 2022 (Geetanjali Medical College & Hospital Vrs. Union of India & Ors.)** to submit that the N.M.C. had agreed there to conduct a fresh surprise inspection. It further relies on **2014 (13) SCC 506 (Swamy Devi Dayal Hospital & Dental College Vrs. Union of India & Ors.)**, **2015 (10) SCC 91 (Royal Medical Trust & Anr. Vrs. The Union of India & Anr.)**, **2016 (11) SCC 522 (Rajiv Memorial Academic Welfare Society And Anr. Vs. Union of India & Anr.)**, **2022 SCC online Delhi**



938 (Dr. M.K. Shah Medical College & Research Centre Vrs. Union of India & Anr.), it shall be referred to at the relevant stage. Relies on **Dhanalakshmi Srinivasan Medical College & Hospital & Anr. Vrs. Union of India & Anr.), W.P. (C) No. 5339 of 2022** decided on 11th November, 2022 by the High Court of Delhi. It is also **2022 SCC online Delhi 749 (Santosh Trust & Anr. Vrs. National Medical Commission & Ors.)**.

32. Learned Senior Counsel appearing for the Students has submitted that the State Government is bound to provide admission to the students in the Government run Medical Colleges instead of the Private Medical Colleges where they have allotted to the students after the withdrawal of permission to the Medical Colleges for the Session 2021-22. He has stressed on the promise contained in the essentiality certificate issued by the State Government to submit that the petitioners students cannot be shifted to Private Medical Colleges established in Bihar. He relies on **2004 (1) SCC 86, (Government of A.P & Anr. Vrs. Medwin Educational Society & Ors.)** to point out the importance of essentiality certificate by the State Government and refers to the Judgment passed by the **Madras High Court in R. Sivanesan Vrs. Ponnaiyah Ramajayam in Writ Petition No. 22111 of 2018** and other connected writ petitions decided on 13.12.2018, wherein



the similar decision of the State Government for shifting the students to self financing Colleges was held fatal to their future educational career and directions were issued to accommodate such students in 22 Government Medical Government Colleges functioning in the State of Tamil Nadu.

33. The Constitution Bench vide its Judgment passed in **2016 (7) SCC 353 (Modern Dental College & Research Centre & Ors. Vrs. State of Madhya Pradesh & Ors.)**, directed the Central Government to take appropriate action in terms of the recommendations of the group of experts and, therefore, the National Medical Commission bill was introduced and after making certain amendments the same was passed as a National Medical Commission Act, 2019. The National Medical Commission in short the N.M.C. was constituted for developments/ regulations of all aspects relating to medical education, profession and establishment and continuance of Medical Institutions. The Medical Autonomous Boards were constituted for performing functions in accordance with regulations framed by the N.M.C. and accordingly two Medical Education Boards, one for Under Graduate and other for Post Graduate were constituted. A Medical Assessment And Rating Board was constituted which had the powers and functions as per



under Section 26 of the Act and the permission was to be granted as per Section 28 of the Act. For the present purpose, it would be apposite to quote Sections 26 and 28 of the Act of 2019.

“26. Powers and functions of Medical Assessment and Rating Board:-

(1) The Medical Assessment and Rating Board shall perform the following functions, namely:

—
(a) determine the procedure for assessing and rating the medical institutions for their compliance with the standards laid down 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;

(b) grant permission for establishment of a new medical institution, or to start any postgraduate course or to increase number of seats, in accordance with the provisions of section 28;

(c) carry out inspections of medical institutions for assessing and rating such institutions in accordance with the regulations made under this Act:

Provided that the Medical Assessment and Rating Board may, if it deems necessary, hire and authorise any other third party agency or persons for carrying out inspections of medical institutions for assessing and rating such institutions:

Provided further that where inspection of medical institutions is carried out by such third party agency or persons authorised by the Medical Assessment and Rating Board, it shall be obligatory



on such institutions to provide access to such agency or person;

(d) conduct, or where it deems necessary, empanel independent rating agencies to conduct, assess and rate all medical institutions, within such period of their opening, and every year thereafter, at such time, and in such manner, as may be specified by the regulations;

(e) make available on its website or in public domain the assessment and ratings of medical institutions at regular intervals in accordance with the regulations made under this Act;

(f) 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.

(2) The Medical Assessment and Rating Board may, in the discharge of its functions, make such recommendations to, and seek such directions from, the Commission, as it deems necessary.”

“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.”

34. Section 29 provides the criteria for approving or disapproving the scheme.

“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.”

35. Section 30 provides the method and manner in which the recognition can be withdrawn of a medical qualification granted by the Medical Institutions:-

“30 State Medical Councils:-

(1) The State Government shall, within three years of the commencement of this Act, take necessary steps to establish a State Medical Council if no such Council exists in that State.

(2) Where a State Act confers power upon the State Medical Council to take disciplinary actions in respect of any professional or ethical misconduct by a registered medical practitioner or professional, the State Medical Council shall act in accordance with the regulations made, and the guidelines framed, under this Act:

Provided that till such time as a State Medical Council is established in a State, the Ethics and Medical Registration Board shall receive the complaints and grievances relating to any professional or ethical misconduct against a registered medical practitioner or professional in that State in accordance with such procedure as may be specified by the regulations:



Provided further that the Ethics and Medical Registration Board or, as the case may be, the State Medical Council shall give an opportunity of hearing to the medical practitioner or professional concerned before taking any action, including imposition of any monetary penalty against such person.

(3) A medical practitioner or professional who is aggrieved by any action taken by a State Medical Council under sub-section (2) may prefer an appeal to the Ethics and Medical Registration Board against such action, and the decision, if any, of the Ethics and Medical Registration Board thereupon shall be binding on the State Medical Council, unless a second appeal is preferred under sub-section (4).

(4) A medical practitioner or professional who is aggrieved by the decision of the Ethics and Medical Registration Board may prefer an appeal to the Commission within sixty days of communication of such decision.

Explanation.—For the purposes of this Act,—

(a) "State" includes Union territory and the expressions "State Government" and "State Medical Council", in relation to a Union territory, shall respectively mean the "Central Government" and "Union territory Medical Council";

(b) the expression "professional or ethical misconduct" includes any act of commission or omission as may be specified by the regulations."

36. From the conjoint reading of the aforesaid three provisions, it is apparent that the power of Medical Assessment and Rating Board (M.A.R.B.) is not only to grant permission for



establishment of the new Medical Institution but also has power to carry out inspections and also take such measures as provided under Section 26 (f). As per Section 28, the M.A.R.B. has power to approve or dis-approve scheme for admissions. As per Section 28 (7), the power adjust of conducting surprise inspection by the M.A.R.B.

37. Section 28 (3) also provides before disapproving a scheme, an opportunity to rectify the defects if any has to be given to the person concerned.

38. This Court further finds that before taking the action, the M.A.R.B. had cautioned the State Government from allotting students to the College. Thus, the College could not have been included in the counselling process and 150 students allotted to the College in the last round namely the mop up round conducted up to 10th April, 2022, were wrongly admitted. The State Government in its affidavit has although admitted that of having received copy of the show cause notice issued to the petitioners college withholding admission and withdrawal of L.O.P. but states that by that time the admissions had already been done in the petitioners College, when they received the letter on 25.02.2022 which goes contrary to the affidavits filed by the students, who states that they were admitted in the mop up round of counselling held in April,



2022. The N.M.C. had also written a letter to the Government of Bihar not to make admissions, but the same was flouted.

39. It is to be noticed that students do not opt for Private Medical Colleges unless their merit is lower those who have been admitted in the State Government Medical Colleges. In fact, in the first round of admission they did not find place and apparently their admission has been done in the third mop up round of counselling. Such students were wrongfully allowed to join petitioner Medical College which was known to be having deficiencies as communicated to the College as well as to the State Government and the State Counselling Board. In spite of knowledge that the College is likely to loose recognition for the year namely Session 2021-22, the State authorities have given admission to the students having much lower merit and thereafter the students are being sought to be adjusted in another Medical Colleges. The said students have also come before this Court for getting their admissions now in the Government Medical Colleges.

40. This Court, However finds that granting them admission now in the Government Medical College would deprive higher meritorious students from studying in those Government Medical Colleges and the petitioners students shall be getting



advantage over and above them by default if they were allowed to join the Government Medical College.

41. At the same time, this Court finds that the Radha Devi Jageshwari Memorial Medical College and Hospital has already been inspected by the M.A.R.B. after being interim order was passed by the Coordinate Bench of this Court, whereby the College continued to impart studies to the said students. On an inspection, the College was found to have the sufficient infrastructures to teach not only the first year students, but also the second batch of students. This Court notices that the criteria for granting sanction for the second batch of students is higher in terms of faculty requirement, the other amenities, and infrastructure. The College has been granted sanction to admit the second batch of students for Session 2022-23.

42. It is the contention of the learned counsel for the N.M.C. that the recognition is for the batch of students of Session 2022-23 alone and would not affect the cancellation and withdrawal letter dated 18.04.2022. The aforesaid contention of learned counsel is required to be examined on facts. The letter dated 18.04.2022 had the heading of withdrawal of letter of permission, cancellation of admission in 150 under Graduate M.B.B.S. course for academic year 2021-22 w.e.f. 19.04.2021-22.



Thus, it essentially meant that a College was not recognized as a Medical college at all and the college was required to obtain a fresh letter of permission, but the documents which have come on record now reflect that the M.A.R.B. conducted assessment under Section 61 (2) of the N.M.C. act, 2019 for first renewal of the Medical College. From the perusal of inspection report it is noticed that the faculties and infrastructure required for second batch was assessed.

43. As per the report, it is stated “ the College has got permission with intake of 150 seats for last academic year on 1st November, 2021, but L.O.P. was withdrawn by vide order dated 18.04.2022. The classes of 150 students are continuing till date. N.M.C. vide letter dated 15.02.2022 raised some queries which were deficiency of faculty, deficiency of resident, O.P.D. and bed occupancy was less as per norms. The Accessor has looked particularly this points and found them to be rectified by the College except mild deficiency of the O.P.D. attendance on the day of inspection 563 and required as 600.”

44. On the basis of such assessment report, the National Medical Commission has issued batch permission for M.B.B.S. course for the academic Session 2022-23 against the annual intake of 150 M.B.B.S. students under Section 11 (2) of the I.M.C. Act,



1956 read with Section 61 (2) of the N.M.C. Act, 2019 for the academic year 2022-23. The letter dated 18.11.2022 mentions of permission of second batch with the condition that the next batch of students will be admitted only after obtaining permission from Medical Assessment and Rating Board.”

45. In view of aforesaid assessment report and the letter, this Court finds the question regarding the College not having letter of permission and the admissions have been cancelled has become redundant on account of subsequent events. N.M.C. has proceeded to treat the petitioner as recognized Medical College from 2021 and second batch sanction would presume existence of first batch. While, this Court may not have allowed the Medical College petition earlier, but it cannot be denied that the subsequent action taken time by the N.M.C. and the M.A.R.B. reflect that the N.M.C. considers the petitioner College to be having permission to admit second batch of students for the Session 2022-23 by inference, therefore, the Medical College will be deemed to have been granted permission to impart medical education and would be deemed to have been already established.

46. In **Medical Council of India Vrs. Kalinga Institute of Medical Sciences KIMS) & Ors., (2016) 11 SCC 530**, the Apex Court observed as under:-



“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.

27. That apart, we are of the opinion that the High Court ought to have been more circumspect in directing the admission of students by its order dated 25-9-2015 [Kalinga Institute of Medical Sciences v. Union of India, WP (C) No. 15685 of 2015, order dated 25-9-2015 (Ori)] . There was no need for the High Court to rush into an area that MCI feared to tread. Granting admission to students in an educational institution when there is a serious doubt whether admission should at all be granted is not a matter to be taken lightly. First of all the career of a student is involved — what would a student do if his admission is found to be illegal or is quashed? Is it not a huge waste of time for him or her? Is it enough to say that the student will not claim any equity in his or her favour? Is it enough for student to be told that his or her admission is subject to



the outcome of a pending litigation? These are all questions that arise and for which there is no easy answer. Generally speaking, it is better to err on the side of caution and deny admission to a student rather than have the sword of Damocles hanging over him or her. There would at least be some certainty.”

47. In case of **Royal Medical Trust (Registered) & Anr. Vrs. The Union of India & Anr., (2015) 10 SCC 19**, the three Judges Bench following Swamy Devi Dayal (supra) observed as under:-

“26. While considering the scheme under Section 10-A of the Act, MCI and the Central Government are required to have due regard to the factors referred to in sub-section (7) thereof. If the initial scheme itself is found to be defective or is to be disapproved, sub-section (3)(a) and proviso to sub-section (4) of Section 10-A oblige MCI and the Central Government respectively to grant to the applicant reasonable opportunity to rectify the defects and of being heard. The statute thus recognises that before any adverse decision is taken as regards the scheme, the applicant must be afforded reasonable opportunity. This facet has been considered by this Court while dealing with issues under Section 10-A of the Dentists Act in Swamy Devi Dayal [Swamy Devi Dayal Hospital & Dental College v. Union of India, (2014) 13 SCC 506 : 6 SCEC



516] . It was laid down that the requirement of following the principles of natural justice is available at two stages, first where the Dental Council of India finds deficiencies during its inspection and secondly at the level of the Central Government before it passes any adverse orders after receipt of the recommendations by the Dental Council of India. The observations in Swamy Devi Dayal [Swamy Devi Dayal Hospital & Dental College v. Union of India, (2014) 13 SCC 506 : 6 SCEC 516] while considering provisions of Section 10-A of the Dentists Act which are in pari materia with Section 10-A of the Act, must apply with equal force in relation to cases under the Act.

28. The scheme under Section 10-A, with due regard to the factors referred to in sub-section (7), may contemplate putting in place necessary facilities at a later point of time. Paras 7(b) and 8(3) of the Regulations also speak of defining and achieving annual targets respectively. Naturally, it needs to be assessed and verified whether such annual targets are achieved or not. The timely assessment is integral to the scheme itself and MCI and the Central Government are therefore obliged and required to conduct renewal inspections every year so as to ensure that the establishment of the medical college and expansion of hospital facilities are completed in time and in accordance with the scheme. In Swamy Devi Dayal [Swamy Devi Dayal Hospital & Dental College v. Union of India, (2014) 13 SCC 506 : 6 SCEC 516] it was observed that the provision



requiring such opportunity being given to the applicant applies not only at the initial stage when permission for establishment of new college is under consideration but must apply even in cases of subsequent renewal of such permission. In our view, the ratio in Swamy Devi Dayal [Swamy Devi Dayal Hospital & Dental College v. Union of India, (2014) 13 SCC 506 : 6 SCEC 516] must apply as regards cases of renewal under the Act.”

48. However, in **Medical Council of India Vs. Vedanta Institute of Academic Excellence Pvt. Ltd. & Ors., (2018) 7 SCC 225** the two Judges Bench referred from the Judgment passed in Royal Medical Trust (supra) and did not allow rectification in fresh inspection.

49. The petitioners College has assailed inspection conducted stating that the attendance were noted only at 11:00 A.M. whereas thereafter the attendance of the staff was complete. Similarly, the question regarding bed strength has also been opposed. The respondents have stated that a running Medical College cannot afford to have complete absence of faculty, but this Court finds that the Medical College was not running at that time there was no student in College as it was a newly established Medical College which was to receive students only from the batch of 2021-22 and there is every possibility of the staff



attending the funeral of the mother of the President and not available at 11:00 A.M. Such possibility cannot be ruled out as, in Indian Society, people do attend funeral leaving their office hours of relatives of their employees. The inspecting team ought to have considered the said aspect and the report hinges to perversity. In the circumstances the M.A.R.B. ought to have sent for fresh surprise inspection.

50. Section 11(2) of the I.M.C. Act, 1956 which has been mentioned in the order granting annual intake of 150 M.B.B.S. students provides for recognizing the college for imparting medical education and recognition of medical qualification of such Institution.

51. Section 61 (2) empowers the N.M.C. and M.A.R.B. to continue the educational standards requirements and other provisions laid down under the I.M.C. Act, 1956. In the circumstances, this Court finds that the College has been able to rectify its deficiencies.

52. The students of Session 2021-22 although were wrongly admitted as noticed above, will have to be allowed to continue, keeping in view that an interim order was passed by this Court earlier vide order dated 14.06.2022 and the order of cancellation of admission was stayed by this Court on the premise



that M.A.R.B. have no power to cancel admission in terms of Section 26 (1) (f) of N.M.C. Act of 2019.

53. Although, this Court differs from the prima facie view taken earlier and finds that if the M.A.C.R.B. after inspection finds the Institute not to be up to the standard, it can take measures and stop admissions and recommend the Commission for withdrawal of recognition. Power of stopping admission and recommending withdrawal of recognition would include power of cancelling admission given in the college wrongfully also. The intent of the statute is required to be understood with reference to content.

54. Interim orders granted by the Court although does not create any equity, but in cases relating to students the Court cannot close its eyes to the fate of the young minds and their future. There is no fault of the students who have been admitted by the respondents State Government and its authorities without informing them about the impending action to be taken against the Institution by the M.A.C.R.B. The students have already put in more than 6 months of the studies after the interim order was passed by this Court. Error on part of Court, should not result in spoiling the lives of students who passed the competition.



55. In view of discussion as above, it is held that the State authorities action of making admissions was wrongful and they are bound by the instructions issued by the N.M.C./M.A.R.B. with regard to admissions in Medical Colleges. However, the admissions of such students are saved for the reasons as above.

56. In view of findings and conclusion arrived, the order dated 18.04.2022 is quashed and set aside. C.W.J.C. No. 7058 of 2022 and C.W.J.C. No. 8548 of 2022 filed by the College and the Management are allowed.

57. Consequent thereto, the writ petition filed by the students admitted to the Medical College for the Session 2021-22 praying for shifting them to Government Medical College is dismissed. The fees of the students shall be disbursed to the college by respondent no.7 and the Aryabhata University shall take steps to enroll the students and conduct their examinations.

(Sanjeev Prakash Sharma, J)

pravinkumar/-

AFR/NAFR	A.F.R.
CAV DATE	24.11.2022
Uploading Date	
Transmission Date	

