

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.Nos.25943 & 31793 OF 2023

Between:

Maheshwara Medical College and Hospital

... **Petitioner**

And

Union of India & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.Nos.25943 & 31793 OF 2023****% 03.06.2024****Between:**

Maheshwara Medical College and Hospital

... Petitioner**And**

\$ Union of India & others

... Respondents

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> Head Note:

! Counsel for the Petitioner : Sri Hemendranath Reddy**^ Counsel for Respondents** : Sri B.Narasimha Sharma,
Addl. Solicitor General of
India, for R1
Smt.Gorantla Sri Ranga
Pujitha, for R2
Sri A.Prabhakar Rao, for R3

? Cases Referred:

- | | |
|--------|-------------------------------|
| (i) | (2009) 12 SCC 40 |
| (ii) | (2004) 2 SCC page 447 |
| (iii) | (2023) 6 SCC 1 |
| (iv) | (1992) Supp (2) SCC Page 501, |
| (v) | (2001) 5 SCC 664 |
| (vi) | (1976) 1 SCC 1001 |
| (vii) | (2019) 15 SCC 1 |
| (viii) | (2010) 9 SCC 496 |
| (ix) | (1951) SCC 1088 |

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA**W.P.Nos.25943 & 31793 OF 2023****COMMON ORDER:**

Heard learned senior designate counsel
Sri Hemendranath Reddy, appearing on behalf of the
Petitioner and learned Addl. Solicitor General of India
appearing on behalf of 1st Respondent, Smt. Gorantla Sri
Ranga Pujitha appearing on behalf of 2nd Respondent and Sri
A.Prabhakar Rao, appearing on behalf of 3rd Respondent.

2. **The petitioner approached the court in W.P.No.
No.25943 OF 2023 seeking prayer as under:**

"...to pass an order or orders or direction more particularly one in the nature of a writ of Mandamus (a) Directing the Respondent No 1 to decide the second appeal Ref. Maheshwara/MoHFW-Appeal/2023/01 filed by the Petitioner on 23.08.2023 u/s 28(6), NMC Act, 2019, as expeditiously as possible, considering PG admissions for the Academic Year 2023-2024 are closing soon (b) Declare Letter No. NMC/MCI-751(22)/10A/2021-Med dated 24.02.2022 issued by Respondent No.2, subsequent Show Cause Cum Withdrawal of LoP notice dated 03.03.2022 and Order dated 08.02.2023 passed by the Respondent No.2 directing transfer of the PG

students studying in the Petitioner College to other private colleges in Telangana as wholly illegal, arbitrary, unjust, and contrary to provisions of the National Medical Commission Act, 2019 and consequently set aside the same and pass..."

3. The Petitioner approached the court in W.P.No. No.31793 OF 2023 seeking prayer as under:

"...to pass a Writ, order or orders or direction more particularly one in the nature of Writ of Mandamus declaring the order dated 13.11.2023 passed by 1st Respondent and subsequent letter dated 14.11.2023 of 1st Respondent directing the 3rd Respondent to shift the students studying at Petitioner's college as illegal, arbitrary, unconstitutional and being violative of Article 14 of Constitution of India and consequently set aside the same and pass..."

4. PERUSED THE RECORD :

i) Paras 4, 5 and 6 of the Counter affidavit filed by the 2nd respondent, in W.P.No.25943/2023 reads as follows :

4. It is most humbly submitted that the petitioner college was granted letter of permission for starting 12 PG medical courses from the academic year 2021-22 vide answering respondent's letter dated 27.01.2022, whereupon, as required by the statutory Regulations, the petitioner furnished

12 bank guarantees of Rs.85,00,000/- each. The said bank guarantees were, thereafter, found to be fake and forged, therefore, the answering respondent vide communication dated 24.02.2022, directed the petitioner to stop admission in PG courses, immediately. However, the petitioner on the strength of the above-mentioned letter of permission, by then had admitted students in PG courses for the academic year 2021-22. Thereafter, the petitioner vide letter dated 20.04.2022 and 20.07.2022, furnished 7 and 5 valid bank guarantees, respectively. However, the said fresh bank guarantees have never been accepted by the answering respondent. Despite specific direction by the answering respondent not to admit students, the petitioner has admitted students in PG medical courses for academic year 2022-23. After following the due procedure, the answering respondent vide impugned communication dated 08.02.2023, has directed the respondent university to shift the students admitted in the petitioner medical college in PG medical courses in academic year 2021-22 and 2022-23 to other medical colleges of the State.

5. It is most humbly and respectfully submitted that the petitioner medical college had tried to play fraud on the statutory body like NMC and had indulged in forgery by submitting fake and forged bank guarantees to the answering respondent to obtain letter of permission dated 27.01.2022 for starting 12 Postgraduate medical courses from the academic year 2021- 22.

6. It is submitted that in the said letter of permission, it had been categorically stated that in case it is found that any false/wrong statement and/or fabricated document has been used to procure permission from MARB, then the institution is liable not be considered for recognition of qualification as well the concerned letter of permission shall also be revoked and appropriate action, under law, shall be taken against the institution."

ii) Letter No.NMC/MCI-751(22)/10A/2021-Med./
dated 24.02.2022 issued by the 2nd Respondent to the
Petitioner reads as follows :

"Subject: Submission of Bank Guarantees(BGs) for starting of various PG courses by Maheshwara Medical College & Hospital, Sangareddy, Telangana based on Letters of Intention issued by NMC.

Sir/Madam,

With reference to the above I am directed to say that while verification of the BGs submitted by your college it has been confirmed by the Bank (Bank of Baroda, Vasai West, Palghar District) that they have not issued these BGs. The copy of the letter dated 18.2.2022 received in NMC from the bank is enclosed. The details of the courses for which the BGs were submitted and found to be not issued by the bank may be seen in the said letter. While NMC may consider appropriate action in the matter the college is requested to stop admissions to the said courses immediately till further communication from NMC."

iii) Show cause notice and withdrawal of letters of permission for Post-Graduate Board Specialties dated 03.03.2022, reads as under :

“Medical Assessment and Rating Board (MARB) of National Medical Commission Medical Assessment and Rating Board (MARB) has approved various Postgraduate broad specialties courses and issued the Letters of Intent requesting the college to submit bank guarantees to the National Medical Commission, for the academic year 2021-2022 to Maheshwara Medical College & Hospital, Sangareddy, Telangana under Kaloji Narayana Rao University of Health Sciences, Warangal.

We have received the bank guarantees for 12 courses from the Bank of Baroda, Samatanagar Vasai West Branch, District Palghar, Maharashtra for the sum of Rs.85 Lakhs. We have further issued Letters of Permission for the approved courses viz, MS (Obstetrics & Gynaecology), MD (Anaesthesiology), MD (Dermatology, Venerology & Leprosy), MD (General Surgery), MD (General Medicine). MS (Otorhinolaryngology), MS (Orthopaedics), MD (Radio Diagnosis), MD (Paediatrics), MS (Ophthalmology), MD (Pathology), and MD (Respiratory Medicine). When we have submitted the bank guarantees to the concerned Bank of Baroda, it was found that the bank guarantees were not issued by the said bank and confirm that the college has submitted fake bank guarantees to the National Medical Commission. We also have issued letters of Permission for MD (Microbiology) and MD (Community Medicine) receiving the undertaking from the college.

In view of the fraudulent action the MARB of NMC has withdrawn the letters of permission for all the courses with immediate effect with pending explanation from the college.”

iv) Order impugned dated 08.02.2023 in WP No.25943/2023 passed by the 2nd Respondent reads as under :

"It is informed that the above issue has been examined at length in the National Medical Commission and the following decisions have been taken: -

- i) Withdrawal of Certification of Affiliation by the University.
 - ii) The University will check the Merit list of PG Medical students admitted for the A.Y. 2021-22 and 2022-23 by the college. The students admitted strictly according to the Merit lists may be shifted from Maheshwara Medical College and Hospital, Chitkul, Sangareddy, Telangana to other Private Medical Colleges of the Telangana State. The students admitted without any merit list may be discharged from the University.
2. It is requested to take immediate action accordingly and send an action taken report to the National Medical Commission within 10 days.
 3. This issues with the approval of Competent Authority."

v) The last paragraph of the interim orders of this Court dated 03.10.2023 passed in I.A.No.3/2023 in W.P.No.25943/2023 is extracted hereunder :

"19. Taking into consideration of all the aforesaid facts and circumstances and further taking note of the fact that the writ petition itself would be infructuous in the event appropriate orders protecting the interest of the petitioner are not

granted by this Court at this stage and further taking into consideration that Section 28(6) of the National Medical Commission Act, 2019 clearly provides that in the event of the 2nd Respondent failing to give its decision within 45 days, the aggrieved may prefer an Appeal before the 1st Respondent, this Court opines that the 1st Respondent is statutorily bound to pass an order on merits as mandated under the statute instead of remanding the matter back to the 2nd Respondent. This Court opines that the rule of procedure as stipulated under statute cannot be ignored. Hence the I.A.No.3 is ordered as prayed for and accordingly there shall be stay of the letter dated 29.08.2023 forwarded by the 1st Respondent remanding Petitioner's 2nd Statutory Appeal Ref: Maheshwara/MoHFWAppeal/2023/01 to the 2nd Respondent to decide the same for a period of 3 weeks from the date of receipt of the copy of the order."

The order dated 03.10.2023 passed in I.A.No.3 of 2023 in W.P.No.25943 of 2023 may be read as part of the present writ petition.

vi) The interim orders of this Court dated 17.11.2023 passed in W.P.No.31793/2023 is as under :

"Status quo to be maintained in pursuance to the order dated 13.11.2023 passed by the 1st Respondent and subsequent letter dated 14.11.2023 of the 1st Respondent

directing the 3rd Respondent to shift the students studying at Petitioner's college, till 24.11.2023".

The said orders of status quo are in force as on date since the same had been till pronouncement of the judgment vide order dated 06.12.2023 passed in W.P.No.31793 and 25943 of 2023

vii) Relevant portion of the Order impugned in WP No.31793/2023 dated 13.11.2023 passed by the 1st Respondent is extracted hereunder :

"3. As per directions of the Hon'ble Court, communication from the Medical College dated 23/08/2023 is examined and it is observed that, withdrawal of LoPs was on the basis of invalid Bank Guarantees. MARB, NMC vide letter dated 24.02.2022 to stop admissions to the said courses immediately, till further communication from NMC. It was confirmed by the Bank that they have not issued the Bank Guarantees and the invalid bank guarantees were withdrawn and subsequently, new bank guarantees were submitted by the College without the Commission's approval.

4. The letter of permission was withdrawn and there was no permission in effect for admissions in Academic Year 2022-23, despite which the College has carried out admissions. As directed by the Hon'ble High Court of Telangana vide order dated 24/02/2023, those admitted students whose names

appeared in the merit list should have been be admitted in other private medical colleges of Telangana State and those students admitted without their name appearing in any merit list should have been discharged from the University.

5. The Hon'ble High Court of Telangana in WP No. 4453 of 2023 & Writ Appeal No. 223 & 224 of 2023 has already dismissed the request/ prayer of the Medical College in this regard.

6. Considering the above facts, the Central Government has found no merit in the 2nd appeal of **Maheshwara Medical College & Hospital, Hyderabad** dated 23/08/2023 filed under the Section 28(6) of the NMC Act, 2019 and decides to reject the same.

7. Further, the University shall immediately comply with the directions issued by MARB vide letter dated 08/02/2023 for reallocating the students of the College from 2021-22 and 2022-23 batches including the admissions, if any made during 2023-24 and submit compliance thereof in a time bound manner to this Ministry.

8. Accordingly, the second appeal dated 23/08/2023 of Maheshwara Medical College & Hospital, Hyderabad stands disposed of and the Medical College is advised to abide by the orders being issued by NMC from time to time."

viii) Order impugned in WP No. 31793/2023, dated 14.11.2023 passed by the 1st Respondent is extracted hereunder :

"I am directed to refer to 2nd appeal dated 23/08/2023 from Maheshwara Medical College and Hospital regarding restoration of LoP's for PG (MD/MS) courses for the academic year 2021-22 and 2022-23 and to forward herewith this Ministry's order dated 13/11/2023 (copy enclosed).

2. In this regard, it is stated that the appeal has been examined in this Ministry and it has been observed that the Maheshwara Medical College & Hospital, Hyderabad/ counselling authority of the State continuously made admissions in violation of the provisions of the NMC Act and Regulations made thereunder and without having any valid permission.

3. Accordingly, the Kaloji Narayana Rao University of Health Sciences is directed (ref: Ministry's order dated 13/11/2023) to reallocate, the students (Academic year 2021-22 and 2022-23 including the admissions, if any made during 2023-24) of the Maheshwara Medical College and Hospital to other medical colleges of the area.

4. Compliance of the above order may kindly be ensured and a compliance report in this matter may be submitted to

this Ministry and the National Medical Commission latest by today (i.e. A/N of 14/11/2023)."

ix) Relevant portion of the Order dated 17.02.2023 passed in I.A.No.1 & 2 of 2023 in W.P.No.4453/2023, paras VIII to XII are extracted hereunder :

viii) As stated above, it is not in dispute that forged Bank Guarantees were submitted by the Petitioner earlier. The question whether the Petitioner was involved in such forgery cannot be decided at this stage. Further, the Petitioner was aware of it not possessing the requisite LOPs in light of proceedings dated 24.02.2022 and the same is evident from its letters to Respondent No. 4 to grant LOPs. Filing of W.P. No.46782 of 2022 with a relief that LOPs shall be granted in favour of the Petitioner also clearly indicates that the Petitioner was aware that no LOPs were possessed by it. Despite the knowledge, the Petitioner admitted students not only for the academic year 2021-22 but also for the academic year 2022-23.

ix) Furthermore, the Petitioner in its explanation dated 14.12.2022 to Respondent No.4, the Petitioner stated that it continued with the admission process as the fresh Bank Guarantees were accepted by Respondent No.4's bank. *Prima facie*, it appears that the Petitioner accepted admissions on the assumption that the fresh Bank

Guarantees were accepted. However, at this stage, such a contention cannot be accepted. Therefore, *prima facie*, it appears that even after being aware that LOPs granted in its favour were withdrawn, the Petitioner continued with the admission process.

x) Further, *prima facie*, this Court finds that the fresh Bank Guarantees were unilaterally submitted by the Petitioner. There was no direction from Respondent No. 4 to re-submit fresh Bank Guarantees and continue with the admission process. Also, it cannot be decided at this stage whether such Bank Guarantees were accepted by Respondent No.4.

xi) The minutes of the meeting dated 18.01.2023 based on which the impugned proceedings were passed states the breaches committed by the Petitioner and also states that the original file of the Petitioner was missing. An investigation was lodged by CVC of Respondent No.4 into the missing file. This *prima facie* raises doubts about the actions of the Petitioner College and tilts the balance of convenience in favour of Respondent No.4.

xii) It is also relevant to note that admission of students had taken place in the Petitioner College which has no LOPs as on date. As stated. above, the question whether such LOPs accrued back to the Petitioner on submission of fresh Bank Guarantees and whether such Bank Guarantees were accepted can only be decided after the necessary pleadings are filed, till then the academic lives of the students cannot

be placed in a limbo. The Petitioners have failed to make out a prima facie case and balance of convenience favours Respondent No. 4 as education of the students is in question, Pendency of the present writ petition may hamper the academic lives of the students and cause them grave and irreparable loss. Therefore, the proceedings dated 08.02.2023 shifting the students admitted on merit for the academic years 2021-22 and 2022-23 cannot be suspended.

8. Conclusion:

In light of the aforesaid discussions, I.A.No.1 of 2023 and I.A.No.2 of 2023 are liable to be dismissed and are accordingly dismissed."

x) The Division Bench Order dated 27.02.2023 passed in W.A.No.223 and 224 of 2023, paras 22 to 26 are extracted hereunder :

22. Learned Single Judge considered the question as to whether the impugned proceedings should be suspended or not. Learned Single Judge noted that appellant itself admitted that the initial 12 bank guarantees which were submitted for obtaining letter of permission was forged whereafter letter of permission was withdrawn. After about two months of the communication dated 24.02.2022, appellant submitted 7 new bank guarantees; after about five months, 5 new bank guarantees were submitted. However, it appeared that

submission of the substitute bank guarantees was never acknowledged by the Commission. It was a unilateral act of the appellant without any direction from the Commission. Learned Single Judge took the *prima facie* view that mere submission of fresh bank guarantees would not purge the appellant from the wrong doing of submitting forged bank guarantees. Whether appellant was involved in such forgery or not would be decided in the course of the inquiry. But admittedly, forged bank guarantees were submitted for obtaining letter of permission. That apart, appellant went ahead with the admission of students on the belief that the substitute bank guarantees would be accepted by the Commission without any clearance from the Commission. The fresh bank guarantees were unilaterally submitted by the appellant without any direction from the Commission. According to learned Single Judge, admission of students had taken place in the appellant without there being any letter of permission as the earlier letter of permission was withdrawn. Thus, learned Single Judge concluded that appellant failed to make out a *prima facie* case; balance of convenience was clearly in favour of the Commission as education of the students in question was concerned. Therefore, learned Single Judge declined the prayer for stay.

23. We concur with the view expressed by the learned Single Judge. Commission has taken into account the future of the students who were admitted in the PG course of the appellant while directing that the students who were admitted and

whose names appeared in the merit list should be admitted in other private medical colleges of Telangana State. On the other hand, those students admitted without their name appearing in any merit list have been directed to be discharged from the University.

24. We therefore do not find any error or infirmity in the view taken by the learned Single Judge. Merely because appellant claims to have the adequate infrastructure and faculty in position would not be a ground to suspend the proceedings dated 08.02.2023 when admittedly the letter of permission was obtained on the basis of forged bank guarantees and upon discovery of the same, the letter of permission has been cancelled. As of now, there is no letter of permission and therefore, the students cannot be permitted to undergo PG course in the appellant.

25. That being the position, we find no merit in the writ appeals.

26. Writ Appeals are accordingly dismissed. However, there shall be no order as to costs."

xi) Order dated 20.07.2023 passed in

W.P.No.4453/2023, reads as under :

"Learned counsel for the petitioner filed a letter, dated 19.07.2023, in the Registry seeking permission of this Court to withdraw the writ petition with liberty to file a fresh writ

petition to challenge the orders passed by the National Medical Commission, if necessary.

2. Permission, as sought for, is accorded.

3. Accordingly, the Writ Petition is dismissed as withdrawn granting liberty as sought for by the petitioner through letter dated 19.07.2023. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this writ petition shall stand closed."

5. The case of the Petitioner in brief as per the averments made in the affidavit filed by the Petitioner in support of WP No. 25943/2023 and W.P.No.31793 of 2023, is as under :

a) Alleti Shrunitha Educational Society was registered with Registration No. 1448/2003 dated 09.10.2003 by the Registrar of Societies, Hyderabad and under its aegis, the Petitioner College was established at Chitkul Village, Patancheruvu Mandal, Sangareddy District for providing high quality medical education to students for both under graduate and post graduate courses upon duly obtaining permission of the 2nd Respondent under the provisions of the National Medical Commission Act, 2019.

b) Through vide reference dated 27.01.2022, the Petitioner College was issued Letters of Permission (hereinafter referred to as "LoP") for 30 PG seats in January 2022, for the academic year 2021-2022. In addition, 3rd Respondent granted affiliation for 92 PG seats in December 2021, which remains valid for three years as per the regulations.

c) The Petitioner College duly followed the required procedure and applied for recognition approval. As a prerequisite for recognition, and in accordance with the LoP, the Petitioner College submitted Rs. 85.00 Lakhs, third-party Bank Guarantee (hereinafter referred to as "BG") for each of the 12 PG Departments. Subsequently, the Petitioner College submitted 12 third-party BGs in February 2022 from Bank of Baroda, Mumbai, Maharashtra.

d) Thereafter, the Petitioner College was informed by 2nd Respondent vide Ref. NMC/MCI-751(22)/10A/2021-Med dated 24.02.2022 that aforementioned 12 third-party BGs were determined to be not genuine/inauthentic as they were not issued by the concerned branch of Bank of Baroda. Further, the 2nd Respondent directed the Petitioner College to stop admissions in the said PG courses immediately pending further communication. On

03.03.2022, the 2nd Respondent issued a Show Cause Notice cum Withdrawal of LoPs to the Petitioner college and as per the said Show Cause Notice, the LoPs were withdrawn for all PG courses pending explanation from the Petitioner College.

e) Consequently, the Petitioner College sent replies dated 05.03.2022 and 07.03.2022 to the 2nd respondent enclosing confirmation letter and e-mail purported to be sent from the official channels of the Bank of Baroda dated 28.02.2022 apparently confirming genuineness of the said third-party BGs and thus the Petitioner College requested the 2nd Respondent to re-issue LoPs in favour of the petitioner.

f) Thereafter, the 3rd Respondent sent a letter to the 2nd Respondent bearing Ref. No. 002008/Acad/KNRUHS/PG/2021-22 dated 16.03.2022 confirming that the PG admissions for the academic year 2021-2022 have already been completed by the time the Show Cause Notice Cum Withdrawal of Lop notice dated 03.03.2022 was issued by the 2nd Respondent. However, no directions were received from the 2nd Respondent.

g) Subsequently, the fraudulent 12 third-party BGs were duly replaced by the Petitioner College by duly providing 12 new BGs with 100% cash margin. The said 12 new BGs were issued to the 2nd Respondent and transmitted in two different lots, seven and five BGs which were duly issued and delivered on 21.04.2022 and 20.07.2022 respectively and the same was officially confirmed by the Canara Bank through its concerned branch sent official letters dated 21.04.2022 and 20.07.2022.

h) However, the 2nd Respondent has not regularized the LoPs, despite there being no legal impediment or embargo. Thus, the Petitioner College has filed a complaint against the auditor, consultants and bank officials under FIR No. 291/2022 dated 05.05.2022. The FIR records that, the Petitioner College became aware of fraudulent third-party bank guarantees (BGs) on 24.02.2022. The said 12 third-party BGs were arranged by Mr. Venkat, Ms. Shruthi Devanapalli, and Mr. Sridhar, who run Infra Vert Technologies Pvt. Ltd. The same forgery was done to commit a fraud on the Petitioner College.

i) Furthermore, the Petitioner College was misled with assurances that the initial inability to upload the said 12 third-party BGs was due to an ongoing merger involving Dena Bank and Vijaya Bank with Bank of Baroda. The Petitioner College, itself being a victim in the said matter suffered a financial loss of Rs. 2.06 crores which had been paid in advance as margin money to secure the said 12 third-party BGs, amounting to Rs.10.20 crores.

j) Subsequently, the Petitioner College had sent several e-mails and letters to the 2nd Respondent on 05.03.2022, 07.03.2022, 17.08.2022, 27.10.2022, 02.11.2022, 18.11.2022, and 14.12.2022 regarding the permission to commence 14 PG (MD/MS) Broad Specialty Courses and explaining the issue related to forged third-party BGs as well as emphasized that the Petitioner College was a victim of the same.

k) After receiving the letter dated 13.12.2022 from the 2nd Respondent, the Petitioner College filed W.P 46782 of 2022 before this Court on 29.12.2022, seeking a declaration regarding the conduct of the 2nd Respondent, wherein the withholding of the resumption of PG and the same was pending. While the above said writ petition was pending, the 2nd Respondent issued an order

dated 08.02.2023 addressing the 3rd Respondent, that the certifications granted to the Petitioner, allowing the admission of students for PG Courses, were being withdrawn. Additionally, 3rd Respondent was directed to transfer the students already admitted on merit from the Petitioner College to other private medical colleges in Telangana. However, the 2nd Respondent failed to disclose any reasons in the said letter dated 08.02.2023.

i) Thereafter the 3rd Respondent, sent a letter no. 2494/1/KNRUHS/ADMISSIONS/2021/2022 dated 10.02.2023 confirming that all the admissions for the years 2021 - 22 and 2022-2023 were conducted based on merit list in compliance with the Telangana State Counselling process and the Petitioner College was not involved in the said admission process. The Petitioner College had duly adhered to the 3rd Respondent's directions and allowed the students as per the course allotment letters issued by the University.

m) Furthermore, the petitioner college was not aware about the provision of section 28(6) of the NMC Act, 2019 and resultantly, wrote various e-mails to the 2nd Respondent requesting for an urgent hearing and a decision on the said appeal filed on

25.02.2022. The Petitioner College kept pressing on for an urgent hearing through various e-mail reminders dated 24.05.2023, 26.07.2023, 28.07.2023, 29.07.2023, considering the future of so many PG students.

n) On 18.08.2023, for the first time, the petitioner college was informed about the provisions of section 28(6) of the NMC, Act. On 28.08.2023, the Petitioner College sent a letter to the 2nd Respondent requesting not to shift the students during pendency of the 2nd Statutory Appeal before the 1st Respondent. Thereafter, the first Respondent vide letter dated 29.08.2023 forwarded the 2nd Statutory Appeal dated 23.08.2023 filed by the Petitioner College to the 2nd Respondent on the ground that as no order has been issued by the 2nd Respondent in respect of the 1st Statutory Appeal, the 2nd Statutory Appeal cannot be decided. Thereby, directing the Respondent No. 2 to take necessary action.

o) Moreover, Section 28(6) of the National Medical Commission Act, 2019 clearly provides that in the event of the 2nd Respondent failing to give its decision within 45 days, the aggrieved may prefer an appeal before the 1st Respondent. The 1st Respondent ought to have passed an order on merits instead of

remanding the matter back to the 2nd Respondent. Alongside, the 3rd Respondent has already begun with the PO Admissions for the Academic Year 2023-2024 and if the Petitioner's 2nd Statutory appeal on 23.08.2023 is not decided expeditiously, the Petitioner College's interest will seriously be hampered. Hence these two writ petitions had been filed with the respective prayers as extracted at page 1 and 2 of the present common order.

6. Counter Affidavit filed by the Respondent No. 2 in W.P.No.25943 of 2023, is as under:

a) The petitioner college was granted letter of permission for starting 12 PG medical courses from the academic year 2021- 22 vide the 2nd respondent's letter dated 27.01.2022, whereupon, as required by the statutory Regulations, the petitioner furnished 12 bank guarantees of Rs 85,00,000/- each. The said bank guarantees were found to be fake and forged, therefore, the 2nd respondent vide communication dated 24.02.2022, directed the petitioner to stop admission in PG courses, immediately. However, the petitioner has admitted the students.

b) Subsequently, the petitioner vide letter dated 20.04.2022 and 20.07.2022 furnished 7 and 5 valid bank guarantees,

respectively. However, the said fresh bank guarantees have never been accepted by the answering respondent. Thereafter, the 2nd respondent vide impugned communication dated 08.02.2023, has directed the respondent university to shift the students admitted in the petitioner medical college in academic year 2021-2022 and 2022-23 to other medical colleges of the state.

c) Moreover, the contention of the petitioner medical college that a letter of permission once granted is valid for three years, therefore, the college is free to admit students for subsequent three years is not tenable as in the case of the petitioner since the said letter of permission was withdrawn by the 2nd respondent. Alongside, the communication dated 08.02.2023 was also addressed to the respondent university, however the respondent university allotted students to the petitioner medical college.

d) Furthermore, the delay of 5 months in submitting the valid bank guarantees by the petitioner is itself evidence of the fact that the petitioner was involved in playing fraud on the 2nd respondent. Also, the petitioner has not put on record any document to evidence that it had no role to play in submission of fake and forged bank guarantees and the petitioner has submitted the valid bank

guarantees without any communication from the answering respondents to submit fresh/ valid bank guarantees.

e) Alongside, the contention of the petitioner that it has been found eligible to admit students in physical assessment carried out on 19.10.2022, is immaterial to present case, as the said inspection pertains to MBBS course, whereas the subject matter of the present petition of PG medical courses.

f) Likewise, for the effective implementation of the provisions of Section 10-A, on 20.09.93 the then MCI with the approval of the Central Government notified the regulations made under section 10-A read Section 33 of the Act providing for the detailed procedures to be followed and the criteria to be fulfilled for making application for establishing a Medical College and for starting new higher courses or training or increase of intake capacity in the existing Postgraduate/super-specialty courses. These regulations were further amended in 2000 and 2009. Opening of a New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increasing of Admission Capacity in any Course of Study or Training (including Postgraduate Course of Study or Training) (Amendment) Regulations, 2009 lays down the

schedule for processing of application/scheme and grant of permission for starting Postgraduate courses.

g) More so, the stipulate that every institute/medical college intending to start a Postgraduate medical course or increase in admission capacity in various Postgraduate courses has to mandatorily fulfill the all requirements of undergraduate courses at the time of submitting their application/scheme.

h) Therefore, as per the qualifying criteria clause, every medical college seeking to obtain permission for starting PG medical courses shall have to submit a bank guarantee from a Scheduled Commercial Bank of Rs. 85,00,000/-.

i) While the 2nd respondent vide circular dated 05.04.2022 and notice dated 05.05.2022, had directed all the colleges to upload their data pertaining to the admission in PG course for the academic year 2021-22, on the 2nd respondent's website, the petitioner college has failed to abide by the above- mentioned direction, therefore, the answering respondent vide communication dated 29.09.2022 and 22.10.2022 respectively issued show cause notice to the petitioner to show cause as to why action should not

be taken against the college for failing to comply with above mentioned directions.

j) Therefore, the case of the petitioner college was considered by the MARB NMC in its meeting held on 18.01.2023, wherein, the MARB after considering the whole gambit of facts pertaining to the petitioner college and due deliberation and discussion decided to direct the respondent university to shift the students allotted by respondent university and admitted in PG medical college in the petitioner medical college for academic year 2021-22 and 2022-23 to other private medical colleges of the state in order of merit.

k) The above stated decision of the MARB, NMC was communicated to the respondent university and the petitioner college vide impugned communication dated 08.02.2023. Thereafter the 2nd respondent has issued a reminder letter dated 04.10.2023 to the respondent university to shift the students of the Petitioner college and reiterated that the petitioner college has tried to play fraud not only to the 2nd respondent but also to the ex-chequer. Hence, the Writ Petition is devoid of merits and is liable to be dismissed.

7. The main contentions put-forth by the learned Senior Counsel appearing on behalf of the Petitioners in WP No.25943 and 31793/2023 is as follows :

- i. The Petitioner college has been providing quality medical education to students for both undergraduate and postgraduate courses by duly obtaining permission from the 2nd respondent - National Medical Commission, under the NMC Act in affiliation with the 3rd Respondent University with all necessary facilities and has been operating the college without any shortcomings whatsoever.
- ii. The petitioner college by duly following the required procedure under the NMC, Act, 2019 and by showing all the necessary infrastructural facilities, teaching faculty, human resources, etc., as required under the Act and the regulations made thereunder had applied to NMC for grant of Letter of Permission (LoP) to establish PG Medical Courses in the petitioner college by submitting Bank Guarantee (BGs) with Bank of Baroda worth of Rs.85 lakhs for each of the 12 PG departments along with the application, and the same was considered by the NMC and granted LoPs. dated 27.01.2022 under Sections 26(1)(a)(b), 28(1)(2) and 61(2) of the NMC

Act, 2019 for various specialty PG courses for a total of 30 seats.

- iii. Thereafter, the petitioner college received a letter dated 24.02.2022 from the MARB, NMC stating that it had received a communication from Bank of Baroda, Vasai West, Palghar District that Bank Guarantees submitted by the college were not issued by the said bank and further requested the petitioner college to stop admissions. Immediately, upon receipt of the said letter dated 24.02.2022, the petitioner college enquired with the Bank of Baroda Branch, and they informed that due to merger of different banks and system integration, the Bank Guarantees have not been uploaded in the system and they are in the process of uploading the BGs.
- iv. The Medical Assessment and Rating Board (MARB), NMC vide proceedings dated 03.03.2022 issued show cause notice and straight away resorted for withdrawal of the LoPs granted on 27.01.2022 without following the principles of natural justice and without providing an opportunity to rectify the defect to the petitioner's college.
- v. The 3rd respondent University also wrote a letter dated 16.03.2022 to MARB, NMC stating that by the time it had received the letter dated 24.02.2022, 17 students were already admitted to the petitioner's

college for the academic year 2021-2022 and requested MARB, NMC for further guidelines for the steps to be taken with regard to already admitted students and further action.

- vi. Subsequently, the petitioner college came to know that the Bank Guarantees arranged by the third party consultants were fraudulent and immediately took steps to replace the BGs and 12 new BGs were issued in favour of the NMC, 7 BGs on 21.04.2022 and 5 BGs on 20.07.2022 and the said BGs were accepted by the Canara Bank which is an authorized bank of NMC.
- vii. The petitioner college, immediately after it came to know about the forged BGs, and had filed a criminal complaint on 02.04.2022 against the auditor, consultants and bank officials which culminated into FIR No.291 of 2022 dated 05.05.2022.
- viii. The petitioner college was a victim of fraud committed by the third party consultant and had suffered a financial loss of Rs.2.06 crores, which was paid as a margin money to secure the BGs.
- ix. In the remand report filed by the police in FIR No.291 of 2022, it was categorically stated by the police that the accused third party consultants have confessed about the fraud committed by them upon the petitioner college.

- x. The NMC also lodged a complaint before Palam police station, New Delhi and the SHO of Palam Police Station wrote a letter to NMC explaining that the petitioner college itself was a victim of fraud committed by the third party consultants.
- xi. As per Section 29 of the NMC Act, 2019, priority is given to infrastructure, faculty and financial resources of a college to impart good quality medical education, and enable the NMC to meet its minimum threshold for the quality of medical education provided in the country.
- xii. As per sub clause (6) of clause (3) of Medical Council of India, the opening of a New of Higher Course of Study or Training (including Postgraduate course of study) regulations, 2000, a Bank Guarantee is only submitted to cater for additional infrastructure in the event college fails, and it is only to avert risk, and ensure that the first batch of students are able to graduate.
- xiii. The NMC Act, 2019 or the relevant applicable rules do not envisage a distinction between a curable and an incurable defect.
- xiv. As per Section 28(3) and the proviso therein, an opportunity to rectify the defects shall be given to the petitioner's college.

- xv. The NMC had also requested the petitioner's college as well as the 3rd respondent University to upload the details of admitted PG students for the academic years 2021-2022 and 2022-2023.
- xvi. Thereafter, the NMC wrote a letter dated 13.12.2022 to 3rd respondent University stating that PG LoPs granted to the petitioner college were withdrawn and admissions for academic year 2021-2022 should not have been taken, and if taken, university was sought to furnish reason.
- xvii. The petitioner challenged the NMC's letter dated 13.12.2022 by filing W.P.No.46782 of 2022 before this Court which is still pending.
- xviii. The NMC had issued an order dated 08.02.2023 to 3rd respondent to transfer PG students studying at petitioner's college which was challenged in W.P.No.4453 of 2023 and that the Single bench of this Court declined to grant relief in I.A.No.1 of 2023 seeking suspension of order dated 08.02.2023 and I.A.No.2 of 2023 seeking directing not to transfer the students in the said writ petition and the same were challenged in W.A.Nos.223 and 224 of 2023 before the Division Bench. Subsequently, the Division Bench, dismissing the W.As. and further held that the students cannot be permitted to undergo PG course in the

petitioner's college on the ground that as on then there was no LoP.

- xix. Thereafter, the petitioner's college wrote a letter dated 19.07.2023 to the Registry for withdrawal of W.P.No.4553 of 2023 during pendency of 1st appeal under Section 28(5) filed before the NMC.
- xx. Further, the petitioner's college filed W.P.No.10945 of 2023 before Delhi High Court for expeditious hearing of the 1st appeal filed on 25.05.2023 and during the pendency of the hearing, the petitioner college found out about the deemed dismissal of 1st Statutory Appeal under Section 28 (5), therefore the petitioner withdrew the writ before the Delhi High Court with liberty to seek appropriate recourse in accordance with law.
- xxi. Thereafter, the petitioner filed 2nd appeal on 23.08.2023 under Section 28 (6) of the NMC Act, 2019 before the Central Government. W.P.No. 11390 of 2023 was filed before the Delhi High Court seeking expeditious hearing of 2nd statutory appeal filed on 23.08.2023, but the same was dismissed by the Delhi High Court.
- xxii. Central Government vide its letter dated 29.08.2023 forwarded the 2nd Statutory Appeal dated 23.08.2023 to NMC on the ground that NMC didn't pass

any order in 1st Appeal and directed NMC to take necessary action.

- xxiii. The Learned Counsel for the Petitioner contended that the writ petition should be allowed as prayed for and placed reliance on the judgments reported in (i) (2023) 6 SCC 1 in "STATE BANK OF INDIA AND OTHERS v. RAJESH AGARWAL AND OTHERS", (ii) (2017) 15 SCC 719 in "KRISHNA MOHAN MEDICAL COLLEGE AND HOSPITAL & ANOTHER v. UNION OF INDIA AND ANOTHER", (iii) (2022) 0 Supreme (Del) 191 in "SANTOSH TRUST v. NATIONAL MEDICAL COMMISSION", (iv) (2017) 15 SCC 746 in "WORLD COLLEGE OF MEDICAL SCIENCES AND RESEARCH AND HOSPITAL AND ANOTHER v. UNION OF INDIA AND ANOTHER", (v) (2022) Supreme (MP) 671 in "L.N. MEDICAL COLLEGE AND RESEARCH CENTRE, BHOPAL v. UNION OF INDIA", (vi) AIR 1960 SC 415 IN "FEDCO (P) LTD. ANOTEHR v. S.N.BILGRAMI OTHERS", (vii) 2013 SCC Online, in "K. RAMAKRISHNAN ORIENTAL INSURANCE CO. LTD. v. SIVAN AND ANOTHER", (viii) (2022) 0 Supreme (MP) 103 in "PEOPLE'S COLLEGE OF MEDICAL SCIENCES AND RESEARCH CENTER v. UNION OF INDIA" (ix) (2004) 7 Supreme 126 in "BHARAT PETROLEUM CORPORATION LTD. v. N.R.VAIRAMANI" AND (x) 1981 3 SCC 528 in "B.R. RAMABHADRIAH v. SECRETARY, FOOD AND AGRICULTURE DEPARTMENT, A.P."

Based on the aforesaid submissions the learned counsel for the Petitioner contended that the two writ petitions be allowed as prayed for.

8. The learned Additional Solicitor General of India Sri Narasimha Sharma, appearing on behalf of 1st Respondent submits that W.P.No. 25943/2023 has virtually become infructuous in view of the fact that order dated 13.11.2023 had been passed by the 1st Respondent and further subsequent consequential letter dated 14.11.2023 had been issued by the 1st Respondent directing the 3rd Respondent to shift the students studying at Petitioner's college, on the basis of the order dated 13.11.2023 passed by the 1st Respondent herein, in pursuance and in implementation of the orders dated 03.10.2023 passed in I.A.No.3/2023 in W.P.No.25943 of 2023 and further the Petitioner had challenged the said proceedings dated 13.11.2023 and 14.11.2023 of the 1st Respondent herein by filing W.P. No.31793 of 2023 and hence it cannot be said that the orders impugned in W.P.No.31793 of 2023 are not legal.

Based on the above said pleas the learned senior counsel appearing on behalf of the 1st Respondent contends that the writ petitions No.25943/2023 and W.P.No.31793/2023 need to be dismissed.

9. The main contentions put-forth by the learned Standing Counsel appearing on behalf NMC i.e., the 2nd Respondent in both the writ petitions:

- 1) The present petition has been filed by the petitioner's college, inter alia, being aggrieved by the answering respondent's decision dated 08.02.2023, whereby, the answering respondent, in view of the forgery committed by the petitioner medical college, directed the respondent university to transfer students admitted in petitioner medical college in Postgraduate Medical Courses in the academic year 2021-22 and 2022-23 to other medical colleges of the State, as per merit list.
- 2) Despite specific direction by the answering respondent not to admit students, the petitioner college had admitted students in PG medical course for the academic year 2022-23 and after following the due procedure, the answering respondent vide impugned communication dated 08.02.2023, had directed the respondent university to shift the students admitted in the petitioner medical college in PG medical course in academic year 2021-2022 and 2022-2023 to other medical colleges of the State.
- 3) The petitioner medical college had tried to play fraud on the statutory body like NMC and had indulged in forgery by submitting

fake and forged bank guarantees to the answering respondent to obtain letter of permission dated 27.01.2022 for starting 12 Postgraduate medical courses from the academic year 2021-2022.

- 4) In view of the attempt of the petitioner college to play fraud on the answering respondent by submitting forged and fake bank guarantees (which is a statutory requirement) the answering respondent vide order dated 08.02.2023 had already withdrawn the permission.
- 5) Despite clear and unambiguous decision of the answering respondent vide order dated 24.02.2022, directing the petitioner medical college not to admit students in the academic year 2021-22 and 2022-23, the petitioner college had admitted students.
- 6) It is impossible for any medical college to submit a bank guarantee, where the genuineness of it is not known to such institution as there are several formalities involved in getting bank guarantees issued by the bank.
- 7) The delay of 5 months in submitting valid bank guarantees by the petitioner is itself evidence of the fact that the petitioner was infact involved in playing fraud on the answering respondent by submitting fake and forged bank guarantees.
- 8) The contention of the petitioner that it has been found eligible to admit students in physical assessment carried out on 19.10.2022, is immaterial to the present case, as the said inspection pertains to MBBS course, whereas the subject matter of the present case is P.G. Medical courses.

- 9) For maintaining highest standards in imparting medical education by the medical colleges/institutions in the country, the erstwhile Medical Council of India was constituted under the provisions of IMC Act, 1956.
- 10) The Medical Council of India has been dissolved and the answering respondent – National Medical Commission has been established to replace MCI. Though IMC Act, 1956, has been repealed vide Govt. of India Notification dated 25.09.2020, and NMC Act, 2019 has been enforced, however, section 61 of the NMC Act, 1956 provides that notwithstanding the repeal of the IMC Act, 1956.
- 11) The effective implementation of the provisions of Section 10-A, on 20.09.93 the then MCI with the approval of the Central Government notified the regulations made under Section 10-A read with Section 33 of the Act providing for the detailed procedures to be followed and the criteria to be fulfilled for making application for establishing a Medical College and for starting new higher courses of study or training or increase of intake capacity in the existing medical college and/or existing Postgraduate/Super-specialty courses and these Regulations were further amended in 2000 and 2009.
- 12) Every Institute/Medical College intending to start a Postgraduate medical course or increase in admission capacity in various Postgraduate courses has to mandatorily fulfill all requirements of undergraduate courses at the time of submitting their application/scheme.

- 13) The Central Government on the recommendations of the Council, may issue a Letter of Intent for opening a new or higher course of study in the medical college/institution with such conditions or modifications in the original proposal as may be considered necessary. The formal permission will be granted after the above conditions and modifications are accepted and the performance bank guarantee for required sums are furnished by the medical college/institution and after consulting the Council.
- 14) As per the above mentioned clause, every medical college seeking to obtain permission for starting PG medical course shall have to submit a bank guarantee from a Scheduled Commercial Bank of Rs.85,00,000/-.
- 15) Petitioner medical college submitted its schemes for starting 12 Postgraduate medical courses from academic year 2021-22.
- 16) The case of the petitioner medical college was considered by the answering respondent, including the reports of physical assessment of the petitioner medical college for starting 12 Postgraduate medical courses from academic year 2021-22.
- 17) Thereafter, the petitioner medical college vide separate communications dated 27.01.2022 was issued letter of intent to start 12 PG specialties with total intake of 30 seats, annually from the academic year 2021-22.

- 18) The scope of judicial review is limited in matters pertaining to decision of Expert Bodies and the Court cannot substitute its view.
- 19) Regulations of NMC are mandatory and have force of law.
- 20) Fake bank guarantees have been submitted by the Petitioner, hence no lenient view can be taken.
- 21) The bank guarantees submitted by the Petitioner college are admittedly fake, hence fraud vitiates everything.
- 22) The plea of the Petitioner placing reliance on a Police report that the Petitioner is a victim of fraud is immaterial since the very basis for issuance of letter of permission having been obtained fraudulently, the said letter of permission stands void and is nonest in law.
- 23) The letter of permission dated 27.01.2022 issued in favour of the Petitioner very clearly stipulates that if any statement made by the Petitioner college is found to be false, LOP will be forthwith cancelled since LOP would be void-ab-initio.
- 24) Fresh bank guarantees have never been accepted by NMC, unilateral submission of fresh bank guarantees by Petitioner is not a ground for condoning fraud.

- 25) W.P.No.25943/2023 is in fructuous since Second Appeal had been decided by Union of India against the writ petitioner vide order dated 13.11.2023.
- 26) Prayer sought in WP No.25943/2023 had already been declined in W.P.No.4493/2022 and in W.A.Nos. 223 and 224 of 2023.
- 27) Section 28(5) of NMC had not been violated.
- 28) Where fraud is admitted principles of natural justice do not come into place.
- 29) Section 28(5) of NMC is not violated since opportunity to rectify defects is provided under the Rules only where it is a defect pertaining to any infrastructure, not a disqualification owing to a statutory violation under the MCI Regulations. Submission of invalid bank guarantees by the Petitioner is itself a statutory disqualification.
- 30) Under Section 26(1)(f) of the Act, the Power of NMC/MARD includes stoppage of admissions and transferring students.
- 31) Petitioner did not approach with clean hands, Petitioner proceeded and made admissions contrary to the instructions of NMC, the malafide conduct of the Petitioner does not deserve equity.

- 32) The issue is barred by principles of resjudicata and constructive resjudicata.
- 33) Petitioner failed to qualify as per the qualifying criteria and thus incurred a disqualification and hence no further opportunity need be given and the relief sought for by the Petitioner has to be rejected at the threshold itself.
- 34) The scope of judicial review is limited.
- 35) In support of the above submissions the 2nd Respondent placed reliance in the judgments listed below :
- a. AIR 1960 SC 415 (Full Bench)
 - b. AIR 1988 Patna 26 (Full Bench)
 - c. 1993 SCC Patna 11
 - d. MCI vs SR Educational Trust 2018 SCC Online SC 2276 paras 26-38.
 - e. MCI vs Sarang (2001) 8 SCC 427 (para 6).
 - f. FEDCO vs S.N.Biligrami & Others (1960) 2 SCC 408
 - g. Rita Mishra vs. Director of Primary Education – AIR 1988 Patna 26.
 - h. Sai Components Pvt. Ltd., vs. Bihar State Financial Corporation – (1993) SCC Online Patna II.
 - i. UBV Infrastructures Ltd., vs. National Highways Authority of India (2019) SCC Online Delhi 10649.

j. KV & Another vs. Gurudharlal Yadav reported in (2004) 6 SCC 325.

k. NMC vs. Anna Saheb Chudamani Patil (2022) SCC Online SC 1859.

The learned counsel appearing on behalf of the 2nd

Respondent based on the aforesaid submissions sought for dismissal of the two writ petitions i.e., W.P.No. 25943 and 31793 of 2023.

DISCUSSION AND CONCLUSION:

10. The first limb (a) of the prayer in W.P.No.25943/2023 is extracted hereunder :

(a) Directing the Respondent No 1 to decide the second appeal Ref. Maheshwara/MoHFW-Appeal/2023/01 filed by the Petitioner on 23.08.2023 u/s 28(6), NMC Act, 2019, as expeditiously as possible, considering PG admissions for the Academic Year 2023-2024 are closing soon.

In view of the fact that in pursuance to the orders of this Court dated 03.10.2023 passed in I.A.No.3/2023 in W.P.No.25943/2023 (referred to and extracted above) 1st Respondent issued proceedings dated 13.11.2023 and

consequential letter dated 14.11.2023 rejecting the Second Appeal dated 23.08.2023 preferred by the Petitioner under Section 28(6) of National Medical Commission Act, 2013, seeking specific prayer which is extracted hereunder :

"1. Considering the above facts, documentary evidence, circumstances of the case, and Students are on the verge of completing their course as it is evident that the University allotted Registration Numbers to the AY 2021-22 PG's to submit their dissertation. Hence, the Appellant College, hereby humbly request you to please direct NMC MARB to reverse the withdrawal of the order dated 8th February 2023 and restore the LoPs for PG (MD/MS) Broad Specialty Courses for the year 2021-22 and 2022-23 in the best interest of the Students, their future and credibility of the Institution.

2. Further it is further prayed that the LoP for PG (MD/MS) Broad Specialty Courses be restored and permission maybe granted to the Appellant College for admission of the 2023-2024 batch of PG students."

This Court opines that the first limb (a) of the prayer in W.P.No.25943 of 2023 has become infructuous.

The second limb (b) of the prayer as sought for by the Petitioner in W.P.No.25943/2023 is extracted hereunder :

“Declare Letter No. NMC/MCI-751(22)/10A/2021-Med dated 24.02.2022 issued by Respondent No.2, subsequent Show Cause Cum Withdrawal of LoP notice dated 03.03.2022 and Order dated 08.02.2023 passed by the Respondent No.2 directing transfer of the PG students studying in the Petitioner College to other private colleges in Telangana as wholly illegal, arbitrary, unjust, and contrary to provisions of the National Medical Commission Act, 2019 and consequently set aside the same.”

11. A bare perusal of the record indicates that for a portion of second limb (b) of the prayer sought for by the Petitioner in W.P.No.25943/2023, pertaining to setting aside the order dated 08.02.2023 passed by the Respondent No.2 directing transfer of the P.G. Students studying in the Petitioner college to other private colleges in Telangana, Petitioner preferred Second Appeal dated 23.08.2023 before the 1st Respondent herein and the said prayer had been rejected vide proceedings dated 13.11.2023 passed by the 1st Respondent and the consequential letter dated 14.11.2023 was issued by the 1st respondent subsequently, and the Petitioner filed W.P.No.31793/2023 challenging the said two proceedings.

12. In so far as the portion of the 2nd limb of prayer pertaining to setting aside the letter dated 24.02.2022 issued by the 2nd

Respondent and subsequent show cause-cum-withdrawal of the LOP Notice dated 03.03.2022 is concerned, it is borne on record that in pursuance to the proceedings dated 24.02.2022 and 03.03.2022 issued to the Petitioner, Petitioner had submitted replies dated 05.03.2022 and 07.03.2022 to the concerned, but however, the proceedings dated 08.02.2023 had been issued by the NMC against the Petitioner observing as under :

“It is informed that the above issue has been examined at length in the National Medical Commission and the following decisions have been taken :

- i)** Withdrawal of Certification of Affiliation by the University.
 - ii)** The University will check the Merit list of PG Medical students admitted for the A.Y. 2021-22 and 2022-23 by the college. The students admitted strictly according to the Merit lists may be shifted from Maheshwara Medical College and Hospital, Chitkul, Sangareddy, Telangana to other Private Medical Colleges of the Telangana State. The students admitted without any merit list may be discharged from the University.
2. It is requested to take immediate action accordingly and send an action taken report to the National Medical Commission within 10 days.
 3. This issues with the approval of Competent Authority”.

Hence this Court opines that the issue that remains for consideration now is whether the Petitioner is entitled for the relief as sought for in W.P.No.31793/2023.

13. This Court takes note of the fact that the 1st limb of the prayer (a) sought for by the Petitioner in WP No.25943/2023 is a direction to the 1st Respondent to decide the second appeal Ref. Maheshwara/MoHFW-Appeal /2023/01, filed by the Petitioner on 23.08.2023 under Sec.28(6) NMC Act, 2019 as expeditiously as possible and in pursuance to the orders of this Court dated 03.10.2023 passed in I.A.No.3/2023 in WP No. 25943/2023, the order impugned dated 13.11.2023 in W.P.No.31793/2023 and the subsequent consequential order dated 14.11.2023 had been passed against the petitioner U/s.28(6) of NMC Act, 2019. Hence this Court opines that the plea of the petitioner that the 1st Respondent ought not have passed any order in the second statutory appeal dated 23.08.2023 during pendency of W.P.No.25943/2023 is not tenable and hence the said plea is rejected.

14. In so far as the legality of the proceedings dated 13.11.2023 and 14.11.2023 passed by the 1st Respondent against the Petitioner

on merits is concerned, this Court opines that a bare perusal of the impugned proceedings dated 13.11.2023 passed by the 1st Respondent, as borne on record, clearly indicates that it is an order passed without giving an opportunity of hearing to the Petitioner, in clear violation of principles of natural justice, contrary to the spirit and purport of the orders passed by this Court dated 03.10.2023 passed in I.A.No.3/2023 in W.P.No.25943/2023. This Court in its detailed order dated 03.10.2023 passed in I.A.No.3/2023 in W.P.No.25943/2023 very clearly observed that the 1st Respondent is statutorily bound to pass an order on merits as mandated under the statute instead of remanding the matter back to the 2nd Respondent.

15. This Court opines that inspite of the specific observations of this Court that the 1st Respondent is statutorily bound to examine the appeal preferred by the Petitioner before recording a final decision for grant of relief as prayed for in the said appeal dated 23.08.2023 seeking to direct NMC MARB to reverse the withdrawal of the order dated 08.02.2023 and restore the LOPs for P.G. (MD/MS) Broad Specialty Courses for the year 2021-2022 and 2022-2023 in the best

interest of the students, their future and credibility of the Petitioner's Institution, the record however does not indicate any effort having been made by the 1st Respondent since the 1st Respondent admittedly as borne on record did not undertake an objective and rational analysis of the relevant facts and material on record and dealt with the whole issue casually observing that the High Court of Telangana in W.P.No.4453/2023 and W.A.Nos.223 and 224 of 2023 had already dismissed the request/prayer of the Medical College in this regard.

16. This Court takes note of the observations of the learned Single Judge dated 17.02.2023 passed in I.A.Nos.1 and 2 of 2023 in W.P.No.4453 of 2023 in particular para (viii) and para (xii) wherein it is clearly observed that the question whether the Petitioner was involved in such forgery cannot be decided at this stage and further the question whether such LOPs accrued back to the Petitioner on submission of fresh bank guarantees and whether such bank guarantees were accepted can only be decided after the necessary pleadings are filed, and the said order of the learned Single Judge had been confirmed by the Division Bench vide its orders dated

27.02.2023 in W.A.Nos. 223 and 224 of 2023 holding that there is no error or infirmity in the view taken by the learned Single Judge. But the fact remains that the Petitioner herein withdrew W.P.No.4453 /2023 on 20.07.2023 with liberty to take appropriate action against any adverse orders passed by the Respondents.

17. This Court opines that in view of the fact that the *Lis* itself in W.P.No.4453/2023 had been withdrawn, without the W.P.No.4453/2023 being heard and adjudicated finally on merits, the 1st Respondent ought not have proceeded mechanically holding that High Court of Telangana in W.P.No.4453/2023 and W.A.Nos. 223 and 224 of 2023 had already dismissed the request/prayer of the Medical College in this regard without issuing notice to the Petitioner, without hearing the Petitioner, without providing reasonable opportunity to the Petitioner, to put-forth Petitioner's case since Petitioner specifically contended that the Petitioner college is a victim of a fraud and has not committed any fraud and further it is the specific case of the Petitioner that a remand report was submitted before the 1st Magistrate, Sangareddy for seeking custody of the accused persons in FIR No.291/2022 and as per the

said remand report the Petitioner college has evidently fallen victim to actions of the said accused persons involving acts of cheating and forgery and that the Petitioner college itself incurred huge loss of more than 2 crores.

18. This Court opines that the plea of the 2nd respondent that the subject issue is barred by principles of resjudicata and constructive resjudicata in view of the orders dated 17.02.2023 passed in I.A.Nos.1 and 2 of 2023 in W.P.No.4453 of 2023 filed by the petitioner herein and the Division Bench order dated 27.02.2023 passed in W.A.Nos.223 and 224 of 2023 and the observations made thereunder is not tenable and hence rejected in view of the simple fact that the said observations are not conclusive findings of the Court, but they are the findings at the interlocutory stage and in-fact it is very evident on perusal of the observations at para 8 and para 12 of the order dated 17.02.2023 passed in I.A.Nos.1 and 2 of 2023 wherein it is observed by the Court that the question that the petitioner was involved in such forgery cannot be decided at that stage and further the question whether such LoPs accrued back to

the petitioner on submission of fresh bank guarantees and whether such bank guarantees were accepted can only be decided after the necessary pleadings are filed. Hence, the plea of the 2nd respondent on resjudicata and constructive resjudicata is totally baseless and more so when W.P.No.4453 of 2023 had been withdrawn on 20.07.2023 without final adjudication on merits with liberty to take appropriate action against any adverse orders passed by the respondents against the petitioner herein.

19. This Court opines that the plea of the 2nd Respondent that the Petitioner need not be provided with any prior notice or opportunity of hearing since the Petitioner failed to comply with the qualified criteria is not tenable and hence rejected, in view of the observations of the Apex Court in the judgments referred to below :

a) The Apex Court in the judgment reported in (2009) 12 SCC 40 in "UMA NATH PANDEY & OTEHRS v. STATE OF UTTAR PRADESH & ANOTHER" at paras 10 & 11 observed as under :

“Para 10: The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as *audi alteram parte* rule. It says that no one should be condemned unheard. Notice is the best limb of this principle. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the “Magna Carta”. The classic exposition of Sir Edward Coke of natural justice requires to “vocate, interrogate and adjudicate”. In the celebrated case of Cooper v. Wandsworth Board of Works the principle was thus stated: (ER p.420). “Even God himself did not pass sentence upon Adam before he was called upon to make his defence. ‘Adam’ (says God), ‘where art thou? Hast thou not eaten of the tree whereof I command thee that thou shouldest not eat”.

Since then the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

Para 11 : "Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice".

B) In "MANGILAL V. STATE OF M.P., reported in (2004) 2 SCC page 447, a two-Judge Bench of Apex Court held that the principles of natural justice need to be observed even if the statute is silent in that regard. In other words, a statutory silence should be taken to imply the need to observe the principles of natural justice where substantial rights of parties are affected: (SCC pp.453-54, para 10) observed as under:

"10. Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the

*absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. **Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves.**"*

C) The Apex Court in the judgment reported in (2023) 6 SCC 1 in State Bank of India & Ors., Vs. Rajesh Agarwal & Ors., at paras 85 and 86 observed as under :

85. Fairness in action requires that procedures which permit impairment of fundamental rights ought to be just, fair, and reasonable. The principles of natural justice have a universal application and constitute an important facet of procedural propriety envisaged under Article 14. The rule of audi alteram partem is recognised as being a part of the guarantee contained in Article 14. A Constitution Bench of this Court in Tulsiram Patel has categorically held that violation of the principles of natural justice is a violation of Article 14. The

Court held that any State action in breach of natural justice implicates a violation of Article 14:

86. In Cantonment Board v. Taramani Devi, a two Judge Bench of this Court held that the rule of audi alteram partem is a part of Article 14. Similarly, in DTC v. Mazdoor Congress, this Court observed that the rule of audi alteram partem enforces the equality clause in Article 14. Therefore, any administrative action which violates the rule of audi alteram partem is arbitrary and violative of Article 14."

A Constitution Bench of this Court in Union of India and Anr. Vs. Tulsiram Patel and Ors., has categorically held that violation of the principles of natural justice is a violation of Article 14.

The Court held that any State action in breach of natural justice implicates a violation of Article 14: (SCC p. 476, para 95)

"95. The principles of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that article. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14: therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural

justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body or men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.

D) In "CANTONMENT BOARD v. TARAMANI DEVI", reported in (1992) Supp (2) SCC page 501, a two-judge Bench of this Court held that the rule of *audi alteram partem* is a part of Article 14. Similarly, in "DTC v. MAZDOOR CONGRESS" reported in (1991) Supp (1) SCC 600, the Apex Court observed that the rule of *audi alteram partem* enforces the equality clause in Article 14. Therefore, any administrative action which violates the rule of *audi alteram partem* is arbitrary and violative of Article 14.

20. This Court opines that the Petitioner ought to have been provided with an opportunity of personal hearing prior to issuing the impugned order dated 13.11.2023 and subsequent consequential order dated 14.11.2023 passed by the 1st Respondent herein in all fairness since admittedly as

borne on record the Petitioner had neither been put on notice nor heard prior to passing of the impugned order dated 13.11.2023 by the Respondent herein and therefore the order impugned dated 13.11.2023 and 14.11.2023 of the 1st Respondent is in clear violation of *audi alteram partem* rule. This Court opines that administrative proceedings which entail significant civil consequences must be read consistent with the principle of natural justice to meet the requirement of Article 14.

This Court opines that violation of principles of natural justice will have to bear the scrutiny of judicial review.

21. Reason is the soul of justice, reason is the heart beat of every conclusion, recording of reasons is principles of natural justice as it ensures transparency and fairness in decision making. A bare perusal of the impugned proceedings dated 13.11.2023 passed by the 1st Respondent clearly indicates that the 1st Respondent proceeded with the subject issue with a predetermined mind holding that the prayer of the Medical College earlier in the said regard had been negated by this Court, without assigning any reasons,

without even discussing the pleas put-forth by the Petitioner in the said Appeal dated 23.08.2023 casually, mechanically, without application of mind and the same is contrary to the observations of the Apex Court in the judgments given below :

22. Few Judgments of the Apex Court on the point of recording of reasons.

a) The Apex Court in the judgment reported in (2001) 5 SCC 664 in Tandon Brothers Vs. State of West Bengal & Others at para 34 observed as under :

“Governmental action must be based on utmost good faith, belief and ought to be supported with reason on the basis of the State of Law – if the action is otherwise or runs counter to the same the action cannot be ascribed to be *malafide* and it would be a plain exercise of judicial power to countenance such action and set the same aside for the purpose of equity, good conscience and justice. Justice of the situation demands action clothed with bonafide reason and necessities of the situation in accordance with the law.”

b) **(1976) 1 SCC 1001 M/s. Ajanta Industries & Others vs. Central Board of Direct Taxes, New Delhi, in particular, para 15, observed as under:**

“15. When law requires reasons to be recorded in a particular order affecting prejudicially the interests of any person, who can challenge the order in court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated.”

c) **Nareshbhai Bhagubhai & Others vs. Union of India – (2019) 15 SCC 1, the relevant portion at para 26, observed as under:**

“26. It is settled law that a valid order must be a reasoned order, which is duly communicated to the parties...”

d) **The Apex Court in the judgment reported in (2010) 9 SCC 496 in Kranti Associates Private Limited & Another v. Masood Ahmed Khan & Others at para 47 observed as under :**

Para 47 : *Summarising the above discussion, this Court holds:*

(a) *In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*

(b) *A quasi-judicial authority must record reasons in support of its conclusions.*

(c) *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*

(d) *Recording of reasons also operates as a valid restraint on any * possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*

(e) *Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*

(f) *Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*

(g) *Reasons facilitate the process of judicial review by superior courts.*

(h) *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually*

the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

*(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. **All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.***

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making,

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons, for the decision is of the essence and is virtually a part of "due process".

e) The Supreme Court in case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji reported in (1951) SCC 1088 observed as under :

"We are clear that the public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the Officer making the order of what he meant, or of what was in his mind, or what he intended to do. **Public orders made by public authorities are meant to have public effect and are intended to effect the acting's and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.**

23. A bare perusal of the subsequent consequential impugned letter of the 1st Respondent dated 14.11.2023 referring to the impugned order dated 13.11.2023 passed by

the 1st Respondent and directing the 3rd Respondent to shift the students studying at Petitioner's college indicates that the said order has been passed purely on the basis of the order dated 13.11.2023 passed by the 1st Respondent herein.

24. This Court opines that the Judgments relied upon by the counsel for the respondents do not have any application to the facts of the present case.

25. This Court opines that the Petitioner is entitled for the relief as prayed for in the present Writ Petition No.31793 of 2023 since the impugned order dated 13.11.2023 and subsequent consequential impugned letter dated 14.11.2023 of the 1st Respondent herein

a) Are in Breach of Rules of Natural Justice.

b) Since the same are passed without assigning any reasons by the 1st Respondent.

c) Since the same are contrary to the spirit and purport of the order dated 03.10.2023 passed in I.A.No.3/2023 in W.P.No.25943/ 2023, suffice to state that the impugned order dated 13.11.2023 of the 1st Respondent

does not inspire the confidence of this Court to be sustained in the attendant facts and circumstances.

d) Since the same are contrary to the observations of the Apex Court reported in the judgments referred to and extracted above, and which are again enlisted hereunder:

- (i) (2009) 12 SCC 40 in Uma Nath Pandey & Others Vs. State of Uttar Pradesh,
- (ii) (2004) 2 SCC page 447, in Mangilal Vs. State of M.P.,
- (iii) (2023) 6 SCC 1 in State Bank of India Vs. Rajesh Agarwal,
- (iv) (1992) Supp (2) SCC Page 501, in Cantonment Board Vs. Taramani Devi,
- (v) (2001) 5 SCC 664 in Tandon Brothers Vs. State of West Bengal & others,
- (vi) (1976) 1 SCC 1001 M/s. Ajanta Industries & Others Vs. Central Board of Direct Taxes, New Delhi,
- (vii) (2019) 15 SCC 1, Nareshbhai Bhagubhai & others Vs. Union of India,
- (viii) (2010) 9 SCC 496 in Kranti Associates Pvt. Ltd. Vs. Masood Ahmed Khan,
- (ix) (1951) SCC 1088 in Commissioner of Police, Bombay Vs. Gordhandas Bhanji.

26. Taking into consideration the above said facts and circumstances of the case and duly taking into consideration that fairness in action requires that procedures which permit impairment of Fundamental Rights ought to be just, fair and reasonable, this Court without going into the rival contentions put-forth by all the learned counsel on record and duly considering that since the issue pertains to the career of the students, their future and their academic lives, this Court opines that the subject issue requires reconsideration afresh by the 1st Respondent in the interest of justice, and hence the order impugned dated 13.11.2023 passed by the 1st Respondent and the subsequent consequential letter dated 14.11.2023 of the 1st Respondent are set aside and the matter is remitted to the 1st Respondent to decide the Second Appeal Ref. Maheshwara/MoHFW-Appeal/2023-01 filed by the Petitioner on 23.08.2023, U/s.28(6) of National Medical Commission Act, 2019, in accordance to law in conformity with principles of natural justice by providing an opportunity of personal hearing to the Petitioner within a period of four (04) weeks

from the date of receipt of the copy of the order and pass appropriate reasoned orders and duly communicate the decision to the Petitioner.

27. Accordingly, W.P.No.25943 of 2023 has become infructuous and W.P.No.31793 of 2023 is allowed. However there shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

SUREPALLI NANDA, J

Date: 03.06.2024

Note : L.R. Copy to be marked.
B/o. *Yvkr*

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

W.P.Nos.25943 & 31793 OF 2023
(L.R.copy to be marked)

Date: 03.06.2024.

Yvkr