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

+ W.P.(C) 9115/2020

NATIONAL M.SC. MEDICAL TEACHERS ASSOCIATION
(REGD)

Petitioner

Through: Mr J. Sai Deepak with Mr Avinash
Sharma, Mr Ankur Vyas and Mr
Shashikant Yadav, Advocates.

versus

NATIONAL MEDICAL COMMISSION & ORS. Respondents

Through: Ms Monika Arora with Mr Yogesh
Panwar, Advocates for R-2.

Mr T Singhdev, Ms Michelle B. Das
and Ms Mrinmoi Chatterjee,
Advocates for R-3.

Mr Darpan Wadhwa, Sr. Advocate
with Mr Ashok Nijhawan, Mr Arun
Batra, Mr Rohan Sharma, Mr Amir
Vaid and Mr Abdul Vahid, Advocates
for R-4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

% **08.04.2022**

The hearing has been conducted through hybrid mode (physical and
virtual hearing).

CM APPL. 17657/2022 (for stay)

1. The petitioners had sought a stay of the amendments brought about by the "Minimum Requirements for Annual M.B.B.S. Admissions Regulations, 2020". They are already faculty members, therefore, they were not affected by the said amendment in the said Regulations.



2. Some teachers had said that though their services had not been terminated, they had been asked to leave the educational institution.
3. Para 8&9 of this court's order dated 17.02.2021 records that they would have the rights to challenge such precipitate action against them, for which this petition would not be the appropriate remedy.
4. Insofar as the other issues raised by the petitioners were concerned, this court was *prima facie* of the view that the petition would therefore be in the nature of a PIL.
5. In view of the above, the petitioners did not press their application for stay of the Regulations.
6. Ten days thereafter, they approached the National Medical Commission (NMC) seeking modification of the Regulations and/or reversion to the old regime. The latter declined to oblige, in view of the pendency of these proceedings.
7. The petitioner then approached the Central Government which has issued a letter through the Director, (ME) on 03.01.2022 purporting to advise the NMC that it may continue to adopt the old pattern with regard to percentage of non-medical teachers/members of the faculty, in the Department of Anatomy, Physiology and Bio-Chemistry would continue as per the Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998, subject to the outcome of the pending court cases in the matter.
8. *Prima facie*, the said letter of 03.01.2022 seeks to overreach the court proceedings which declined stay of the Regulations. Indeed, the stay application was not pressed by the petitioners.



9. Pursuant to the said letter, the NMC had issued a corrigendum on 06.04.2022 which, *inter-alia* reverts to the old regime. The corrigendum reads, *inte- alia*, as under:

*“National Medical Commission
(Undergraduate Medical Education Board)*

No. 20910(Legal)/2022/ 015254

Dated the 6th April, 2022

Corrigendum

Subject: *Giving effect to the order dated 03.01.2022 of Ministry of Health & Family Welfare.*

The undersigned is directed to refer NMC public notice dated 29th March, 2022 on the subject cited above and to say that para-5 of the above referred public notice may kindly be read as under:

5. In compliance of the above mentioned directions issued by Ministry of Health & Family Welfare vide order dated 03.01.2022, the provisions regarding percentage of non-medical teachers/number of faculty in the Department of Anatomy, Physiology & Bio-Chemistry, Microbiology and Pharmacology would continue as per the Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998, subject to outcome of pending court cases in the matter.

*(Shambhu Sharan Kumar)
Deputy Secretary”*

10. Evidently, the NMC has issued the said letter possibly falling under compulsion from the Government. Insofar as a Regulation has been brought about through the prescribed statutory process, it cannot be



altered, amended or retracted in any manner except by the procedure prescribed.

11.To that effect, the corrigendum of NMC would *prima facie* be of no consequence as it has not followed the procedure.

12.The Regulation has been promulgated in terms of the procedure prescribed under section 57 of the NMC Act, 2019, whereunder, a draft regulation is put in the public domain seeking suggestions/objections, as may be; which is considered by the Commission and the Final Regulation as is approved is then Gazetted.

13.Mr. Darpan Wadhwa, learned Senior Advocate for the applicant, submits that insofar as this process has not been followed by the NMC before issuing the purported modification letter of 06.04.2022, the said Corrigendum is without authority of law and should therefore be declared as void, illegal and *non-est*.

14.The learned counsel for the petitioners contend that the Regulation itself was not framed, strictly in terms of the procedure prescribed under section 57 of the Act, the Draft which was modified was at much variance with the Final Notification.

15.Issue notice.

16.The learned counsel named above accepts notice on behalf of their respective respondents. Counter affidavit be filed in two weeks. Rejoinder thereto, if any, be filed before the next date.

17.The learned counsel for the Union of India seeks a week's time to file a reply.

18.In view of the above, till the next date, said Corrigendum dated 06.04.2022 shall be kept in abeyance.



19. List on 26.04.2022.

NAJMI WAZIRI, J

SWARANA KANTA SHARMA, J

APRIL 8, 2022

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