

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 8009 of 2021

In the matter of:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of:

Dr. Mohib Ullah Khondoker
Principal (Acting) Gonoshasthaya
Somaj Vhittik Medical College,
Mirzanagar, Savar, Dhaka.
..... Petitioner.

Vs.

The Government of People's Republic of Bangladesh represented by the Secretary, Ministry of Health and Population Control (Health Education and Family Welfare Division), Medical Education-2, Secretariat, Ramna, Dhaka and others.

.....Respondents.

Mr. A.K.M. Fakhru Islam, Advocate
.....for the petitioner

Mr. M.A Amin Uddin, Attorney General

Mr. Noor Us Sadik Chowdhury, D.A.G

with Mr. Md. Awlad Hossain, A.A.G

with Mr. Rashedul Islam, A.A.G and

Mr. Purnindu Bikash Das, Advocate

... for the respondents No. 1

Mr. Mohammad Sazzad Hossain, Advocate

.... for the respondent No. 2.

**Heard on: 23.05.2022, 29.05.2022, 02.06.2022,
07.06.2022, 08.06.2022, 12.06.2022, 14.06.2022,**

**15.06.2022, 19.06.2022, 21.06.2022 and
judgment on: 28.06.2022.**

Kashefa Hussain, J:

Rule nisi was issued calling upon the respondents to show cause as to why the Memo contained in 41/কপ dated 14.01.2020 (Annexure-F) and 115/কপ dated 119.01.2021 issued by respondent No. 3 (Annexure-G) allowing 50 (fifty) students (110 students were allowable under for last 8 years) to be admitted in M.B.B.S. courses and memo contained in 293/ কপ dated 22.08.2021 (Annexure-J) allowing 60 students instead of 110 may kindly be declared to have been done without lawful authority and is of no legal effect and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner Dr. Mohib Ullah Khondoker Son of Sehab Ullah Khondoker and Hosne Ara Khondoker, Principal (Acting) Gonoshasthaya Somaj Vhittik Medical College, Mirzanagar, Savar, Dhaka is a citizen of Bangladesh.

The respondent No. 1 is the Secretary, Ministry of Health and Population Control (Health Education and Family Welfare Division), Medical Education-2, Bangladesh Secretariat, Ramna, Dhaka, Respondent No. 2 is the Vice Chancellor, University of Dhaka, Administrative Building, University of Dhaka, Dhaka-1000, the respondent No. 3 is the Officer of the Inspector of Colleges 205, Administrative Building, University of Dhaka, Dhaka-1000, the respondent No. 4 is the Deputy Secretary, (Health Education and Family Welfare Division), Medical Education-2, Bangladesh

Secretariat, Ramna, Dhaka, the respondent No. 5 is the Director General, Directorate of Health, Mohakhali, Dhaka.

The petitioner's case inter alia is that Gonoshasthaya is a trust and its founding trustee is Dr. Jafarullah Chowdhury. During war of liberation he came to India from England to provide medical care to Bangladesh refugees in India and during post war period Father of the Nation Banga Bandhu Sheikh Mujibor Rahman donated 30 (thirty) acres of land in Savar as a recognition of Dr. Jafarullah Chowdhury's contribution during great war of liberation in 1971. So that Dr. Jafarullah Chowdhury provide health care to under privileged population of the country and Banga Bondhu himself selected the name "Gonoshastho". That Gonoshasthaya contribution to provide health care was recognized by the oldest Medical journal (the lancet) and by different publications of World Health Organization (WHO). That ministry of Health and Family Welfare in 1989 gave approval to establish first non-profitable private medical college গণস্বাস্থ্য সমাজ ভিত্তিক মেডিকেল কলেজ vide memo No. চি: শি: হা/এম-২০/৮৮/৪৯৮ dated 23.10.1989. That to establish a full fledged medical college infrastructure was constructed for teaching facilities, recruited qualified medical teachers and purchased equipments and Gonoshasthaya Medical college with all approval started admitting students for M.B.B.S course in 1998 and in Sessions 1998-1999 and Bangladesh Medical and Dental Council gave approval and recognition vide memo No. বি এম ডি সিসি / ১১-সি-২০০০/৭০৬ dated 26.04.2001 and the institution is still providing medical education to students to become doctors. That Bangladesh

Medical and Dental Council by observing the provisions of law under the Medical and Dental Council, 1980, following an inspection and various enquiries gave approval and Gonoshastha Samaj Bhattik Medical College and Dental unit has made its place in the schedule of the Medical and Dental Council Act, 1980. That Gonoshasthaya did not only establish a Hospital in Savar but also established a 400 bed Nagar Hospital in Dhaka as well as 250 bed Hospital and academic buildings with 65943 sft and the work of extension of academic building was in progress to extend another 623000 Square Feet space in 2010. That since 1998 until now Gonoshasthaya Samaj Bhattik Medical College successfully produced hundreds of qualified doctors with a motivation to provide medical care in village and cities. At this point of time during devastating covid-19 situation Hospital in Savar and Nagar Hospital are providing health care to under privileged population round the clock. That 6(six) Medical Colleges have been recognized by World Health Organization in the whole world to be ideal and recognized as community based health care institution which was published in the community based education in health professions: Global perspectives 2014. That permission to admit 100 students was accorded in 2003 by increasing the number of students from 80 to 100 and since then Gonoshasthayta Medical College has been admitting 100 students for M.B.B.S and other courses. That upon an inspection conducted by a committee comprising of two members from Directorate of Health submitted an inspection report on 25.04.2010 where the committee found proper qualified infrastructure for academic purpose and recommended to increase the number of

students intake from 100 to 110. That in 2019 Gonoshathaya Somaj Bittik medical college got affiliated with university of Dhaka. But the university of Dhaka without considering its efficiency, capacity and ability to provide medical education to 110 students for last 8 years, subsequently took the view that the petitioner Medical College is a new Medical College and gave a long list to comply with. That the admitted position of the Gonoshasthaya Medical College is that for last 8 years 110 students have been getting enrolled in an academic year and they are in 2nd years, 3rd years and 4th years. That all on a sudden reducing the numbers of students to 50 from 110 is a colorable exercise of power of the respondents. That Gonoshasthaya Medical College being affiliated with Gonobishobidalay has been performing its teaching in M.B.B.S and other courses but in 2019 Gonoshasthaya Medical College was affiliated with university of Dhaka upon a decision made by the Ministry of Health and Family Planning. That the respondent No. 4 on 02.11.2020 wrote a letter to the petitioner allowing only 50 students for admission. That inspector of colleges of University of Dhaka on 14.01.2020 wrote a letter to the petitioner wherein only 50 students could be permitted to get admitted in M.B.B.S 1st year. However the report does not state any inspection date to inspect the existing infrastructure and facilities for providing education for M.B.B.S and other courses. That after getting the above letter the petitioner and Dr. Jafarullah Chowdhury met with the respondent No. 2 twice seeking permission to admit 110 students and promised to comply with the conditions mentioned in the letter despite the fact that Gonoshasto Medical College already has existing

infrastructure, teaching staff, library and laboratory which are capable enough to provide standard education to 110 students or more in the 1st year since in the other years there are already 110 students. That the respondent No. 2 was however kind and gave assurance to look into the matter. That the petitioner on 31.01.2021 filed an application with a prayer to reverse the order by way of letter dated 19.01.2021 with a prayer to allow 110 students instead of 50 to get admitted into different courses at Gonoshasthaya Medical College. That this application in the form of an appeal was not heard and was neither disposed of. That thereafter the petitioners submitted another representation on 21.06.2021 since closing date for admission would end soon. That subsequently earlier appeal was disposed of by letter dated 22.08.2021 vide memo No. 293/কপ of increasing only 10 students. That the petitioner filed another representation /appeal to the respondent No. 2 to increase the number of students to admit 110 students in M.B.B.S course in the current year which is pending. Being aggrieved by the order and decisions reducing the number of students of the Medical College the instant petitioner filed the writ petition which is instantly before this bench for disposal.

Learned Advocate Mr. A.K.M Fakhrul Islam appeared on behalf of the petitioner while learned Attorney General Mr. M.A. Amin Uddin along with learned D.A.G Mr. Noor Us Sadik Chowdhury with Mr. Md. Awlad Hossain, learned A.A.G along with Mr. Rashedul Islam. Learned A.A.G with learned Advocate Mr. Purnindu Bikash Das appeared for the respondents No. 1 and learned

Advocate Mr. Mohammad Sazzad Hossain appeared for the respondent No. 2.

Learned Advocate for the petitioner submits that the memo dated 14.01.2020 which is marked as annexure E and memo dated 19.01.2021 which is marked as Annexure G issued by the respondent No. 3 reducing the number of students 110 to 50 in the M.B.B.S. courses is completely unlawful and without lawful authority. He submits that the respondent No. 3 by memo dated 22.08.2021 which is marked as annexure J pursuant to an application to raise the original approved number of students of 110 however increased the number of students only by 10. He continues that increasing the number by 10 only the respondents eventually allowed only 60 students in the M.B.B.S course and which increasing number by 10 is also without any logical basis or factual finding. He submits that prior to reduction of the number of students from 110 to 50 also followed by the increasing of the number to 60 students, however no show cause notice was ever issued upon the petitioner giving any chance to explain their position. He submits that the respondent Nos. 2 and 3 acted arbitrarily and violated the fundamental rights of the petitioner by not affording them due process. He agitates that the respondent seized away a right which was earlier accorded to the petitioner without giving them any opportunity for hearing. He agitates that it is a principle of law settled by our Appellate Division that a right given to a person can not be taken away arbitrarily. In this context he cited a decision in the case of Dhaka University Vs. Jalal Uddin reported in

62 DLR(AD)(2010) 222 wherefrom he draws upon the principle that when a legal right has accrued to a person that right cannot be taken away in an arbitrary manner. He also cites a decision in the case of Dacca University versus Zakir Ahmed reported in 16 DLR (SC)(1964)722 in support of his Submission. He submits that due process of hearing was not afforded to the petitioner before issuance of the impugned orders which orders amounts to seizing him of a right which was given to him upon approval by the concerned authorities. He draws attention to the materials before us. He initially draws attention to annexures A,B,C wherefrom he points out that it is clear from the Annexures that Gonoshastho which is a world renowned Organization was lawfully approved by the respondents.

He contends that from some of these documents which has been marked as annexures A, B and C, it is evident that the objective of the organization is clear and known to all including the respondents particularly that গণস্বাস্থ্য সমাজ ভিত্তিক মেডিকেল কলেজ and non-profitable organization is in service of the nation with the objective to improve medical facilities all over the country including providing medical education to students to train them to be doctors. He reiterates that Annexure A, B and C including some other documents annexed herewith make it clear that গণস্বাস্থ্য সমাজ ভিত্তিক মেডিকেল কলেজ is recognized by the respondents pursuant to their approval thereto. He points out to Annexure D of the writ petition which is an inspection conducted by a committee comprising of two members from Directorate of Health who submitted an inspection report dated

25.04.2010. He submits that from Annexure D a পরিদর্শন প্রতিবেদন (inspection report) and pursuant to the inspection report dated 25.04.2010 the respondent No. 5 (Directorate General Health) allowed the petitioners to admit 110 students subject to some conditions. He draws attention to the কলেজ ও হাসপাতালের অবকাঠামো and submits that upon being satisfied by the infrastructural facilities of Gonoshasthaya, the respondent No. 5 gave his recommendation upon some conditions. He points out to the মতামত ও সুপারিশ (opinion and recommendation) part and also points out to the conditions that have been clearly stated in Annexure D. He argues that although the respondents after more than 10 years reduced the number of students from 50 or 60 whatsoever from 110, but nevertheless it is clear that the conditions stated in Annexure D dated 25.04.2010 do not contemplate any infrastructural inadequacy nor lacking in the petitioner's organization. He points out to the conditions No. 1, 2, 3 and 4 and agitates that all four শর্তাবলী are essentially procedural and do not indicate any infrastructural inadequacy which may require to be fulfilled. He submits that therefore the respondents' refusal to admit students after more than 10 years is a colorable exercise of power and does not reflect actual state of affairs. He next draws attention to Annexure F and shows an order dated 14.01.2020 passed by the respondent No. 3 who is the College পরিদর্শক (inspector) University of Dhaka which is the order reducing the number of students from 110 to 50. He assails that Annexure F makes some vague references to the prerequisites needed to determine the criteria of number of students but however Annexure F does not specifically state any (deficit) ঘাটতি or inadequacy in the petitioner's

organizations infrastructural set up. He submits that Annexure F is not at all clear as to on what basis and on what findings the respondent No. 3 came to his conclusion of infrastructural deficit and thereafter reduced the number of students from 110 to 50. He takes us to the first three lines of Annexure F and points out that from annexure F it is clear that there is no reasonable factual basis of the reduction of the number of students from 110 to 50. He particularly points out to the “একাডেমিক পরিষদ ও সিডিকেটে রিপোর্ট সাপেক্ষে”. He submits that by the word সাপেক্ষে (subject to) it is clear there was no inspection conducted prior to reducing the number of students from 110 to 50. He agitates that such arbitrary decision under the signature of the respondent No. 3 is unacceptable and beyond the ambits of constitutional right including all other legal rights.

He next takes us to Annexure E which is an order under the signature of the respondent No. 4 Deputy Secretary, Ministry of Health. Relying on Annexure ‘F’ he assails that it is a fact that on 2.11.2020 which is in pursuance to an application made by the petitioner to allow them to continue the number of students from 100 to 110 which was previously allowed since the previous 8 years from 2010 upon approval by the respondent. He agitates that although the respondents also pointed out to some procedural gaps including infrastructural deficits of the petitioner as reason for refusal to allow them to continue to admit 110 students, but nevertheless it is clear from Annexure E that the respondents have granted renewal of Academic approval for the year 2019-2020. He contends that from

Annexure F it is clear that the respondents themselves gave their approval to allow renewal on the basis of continuity ensuing from academic year 2009-210 till 2019-2020. He submits that inter alia it is the respondent's allegation that after 2010 however the petitioners did not comply with the preconditions for admitting 110 students nor did it fulfill procedural compliances which are required to receive recognition of the medical college. In this context, he argues that it is clear that the respondent's position is self contradictory. On the same strain he continues that for even for arguments' sake if it is to be presumed that the petitioners did not comply with the mandatory requirements inter alia (in pursuance of the Rules of 2011) from 2010 till 2020 in that event the conduct of the respondents is most inconsistent given that by virtue of Annexure E the Respondents themselves approved the renewal of the academic year on the basis of continuity from 2009-2010. He submits that however inspite of granting approval of continuity, the decision of the respondents reducing the number of students from 110 to 50 does not have any factual basis.

On the same issue on absence of factual basis, the learned counsel for the Respondents agitates that while arriving upon their decision to reduce the number of students from 100 to 110 to 50-60, the Dhaka University represented by the Respondent No.2 and under the signature of the Respondent No.3 (পরিদর্শক) however did not rely upon any prior Inspection Report whatsoever.

He next draws our attention to Annexure G and shows us that Annexure G is also practically a repetition of Annexure F. He takes us to the first line of Annexure G and points out that Annexure G repeats the same language as Annexure F as একাডেমিক পরিষদ ও সিন্ডিকেটে রিপোর্ট সাপেক্ষে .

The learned Advocate for the Respondents attempted to persuade that although the petitioners were allowed 100 to 110 students by way of Annexure D in the year 2010 but however the petitioner eventually having failed to comply with the conditions and requirements consequently the number of students were reduced by the Respondents.

The learned Advocate for the petitioner controverts such arguments of the respondents. He persuades that if at all the petitioner would not or did not fulfill the procedural compliances and conditions set out in Annexure 10 in that case the number of students is not relevant for purpose of procedural compliance or non-compliance whatsoever. The learned Advocate for the petitioner asserts that if at all the petitioner suffers from procedural deficit and lacuna in that case approval and furthermore continuity of approval by way of annexure E would not have been given by the respondents. He points out that neither Annexure F nor Annexure G do not indicate any fact found basis of reducing the number of students from 110 to 50 and then increasing it later to 60. He next points out to Annexure H and I which are applications made by the petitioner dated 30.01.2021 and 17.06.2021 respectively praying to restore the number of students to

its prior number of upto 110 which was granted in the year 2010 by way of Annexure D.

He next draws us to Annexure J which is an order by the respondent No. 3 college পরিদর্শক, University of Dhaka. From Annexure J the petitioner agitates that Annexure J is another example of the whimsical and arbitrary tendency and propensity of the respondents. He submits that the respondent No. 3 in Annexure J pursuant to the application to restore the number of students to the original number however increased the number only by 10 that is allowing 60 students in one academic year. He submits that however while allowing the number of students from 50 to 60 the respondents do not anywhere state the reason of their decision to increase the number of students by 10 only. He contends that the respondents do not indicate any prior inspection report whatsoever. He submits that from all these self contradictory and inconsistent orders in the absence of any inspection report only shows the arbitrary and whimsical conduct of the respondents in their dealings with the petitioner.

To substantiate his claim to the arbitrary conduct of the respondents, he points out to the affidavit in compliance which was filed by the respondents pursuant to an order of this division during issuance of the Rule. He takes us to the Rule issuing order of this division dated 23.11.2021. He particularly draws attention to the ad-interim direction given by this division directing the Respondent No.2 to dispose of the petitioner's letter dated 06.09.2021 (Annexure 'K') in accordance with law and rules within 15(fifteen) working days

from the receipt of the instant order. He draws our attention to Annexure 1 of the affidavit in compliance which is the reply to Annexure K pursuant to order of the court and which reply is again under the signature of the college পরিদর্শক , University of Dhaka. He asserts that from the very language of Annexure 1 it is clear that the respondents' conduct is arbitrary and not based on any materials facts. He submits that the respondent No. 3 while disposing of Annexure 'K' here just gives a vague indication hinting that the petitioner's application by way of annexure K might be considered depending on an inspection and pursuant to the inspection report following such inspection some time in an uncertain future. He asserts that although this division directed the Respondent No. 2 to dispose of the application but the respondents by way of annexure 'I' did not substantially dispose of the application, rather they only perfunctorily followed the order of this division by hinting through a vague and uncertain indication of the future of the application in a most uncertain, superficial and derogatory manner.

There were some queries to the learned Advocate for the petitioner from this bench regarding some materials marked as Annexure Ka 'ক' and Annexure Kha 'খ' which is the নীতিমালা-২০১১ issued by the respondents and also inspection report which has been annexed as Annexure Kha-1 in the affidavit in opposition. The learned Advocate for the petitioner in his reply to our query regarding the নীতিমালা-২০১১ which was formulated on 22.06.2011 argued that the petitioners abided by the terms of the নীতিমালা-২০১১ and did not

derogate from the prerequisites set out in the নীতিমালা-২০১১ . There were several queries from this bench regarding annexure Kha-1 which is an inspection report conducted by a committee constituted by the respondent No. 5 (D.G health) followed by মতামত (opinion). He points out from the different columns in Annexure Kha-1 wherefrom he shows that the columns substantively manifest the infrastructural requirements with the facilities in the petitioner's organization. He tries to persuade that from this column it shows that there are no substantive deficit or inadequacies in their infrastructure. He points out to column 1, 2, 5, 8 and 11 and shows that in column 1, 2, 5, 8 and 11 the ঘাটতি column is vacant and which entail that there no ঘাটতি of the petitioner could be found in those columns. He next argues that the respondent No. 3 made a 'false' statement in the inspection report dated 10.09.2020 stating that the petitioners do not have an Orthopedic department. He continues that in reality the petitioners do have an Orthopedic department. However he next submits that although not having an Oxygen plant has been shown as ঘাটতি (deficit), but as per the নীতিমালা-২০১১ an oxygen plant is not mandatory for admitting certain number of students in the medical college. Regarding column- 6, 4 wherein a lacuna of the license of not being up to date হালনাগাদ is alleged, the learned Advocate for the petitioner argues that if there are any procedural flaws of the petitioner in that event the license of the Medical college Hospital would not have been recommended by the concerned authorities along with recommendation of continuity by the respondents by way of documents including Annexure E. Regarding the bed occupancy

column not being fulfilled with requisite numbers the learned Advocate for the petitioner argued that it is not logical nor reasonable to presume that bed occupancy with number of sick persons will always be the same.

Next he draws us to column 9 and points out that although the respondents alleged that there are some professors in the faculty beyond the prescribed age limit, but however the respondents quite ambiguously made the statement since they did not specifically mention any particular number of faculty beyond the prescribed age limit. Regarding column 10 pertaining to the respondents' allegation of non fulfillment in requisite of a proper lecture gallery inter alia with air conditioner, the learned Advocate for the petitioner argued that lecture gallery with air conditioner is not mentioned anywhere as a pre-condition in the নীতিমালা-2011 . He submits that it is clear from the inspection report dated 10.09.2020 that the petitioners do not have any substantive lacuna or deficit in the infrastructural facility of the petitioner's organization. He further points out from the materials that it is clear that the petitioner organization has adequate land, teaching staff, library and laboratory. He points out to the মতামত (opinion) in the later portion of the report in Annexure Kha-1 and submits that the condition which has been imposed in the মতামত to allow the increase of the number of students to 110 such issue has already been discussed in the petitioner's argument. He next points out that there are some marked inconsistency and self contradiction in Annexure Kha-1. He contends that in the মতামত the respondents made an

observation that from 12.05.2010 till currently the respondents have been giving admission to 110 students. He submits that such claim of the respondents in their মতামত is totally self contradictory given that from Annexure E it is evident that the respondents allowed the number of students to 50 at that time by way of continuity till 2019-2020. He submits that the conduct of the respondents particularly the respondent no. 3 who issued all the 3 impugned orders having not been transparent at any stage are just whimsical and arbitrary orders without factual basis. He concludes his submission upon assertion that therefore the impugned orders given by the respondent No. 3 is unlawful ought to be cancelled and set aside and the Rule bears merits ought to be made absolute for ends of justice.

On the other hand learned Advocate Mohammad Sazzad Hossain upon filing an affidavit in compliance appeared for the respondent no. 2 and opposes the Rule. He asserts that all the three orders issued by the respondent No. 3 are lawful orders and therefore need not be interfered with in writ jurisdiction. He submits that no fundamental rights of the petitioner have been violated in the reduction of number of students since the petitioner's organization suffers from deficit and lacunas in infrastructural facility in the medical college. He contends that therefore reducing the number of students to 50 and then increasing the number of students to 10 amounting to a total of 60 are all lawfully done. He submits that pursuant to the ad-interim direction issued by this division the respondent No. 3 gave a reply to annexure Ka and correctly stated that

the matter of the petitioner shall be considered sometime in the future whenever enquiry may be conducted. He concludes his submission upon assertion that the Rule bears no merits ought to be discharged for ends of justice.

Learned Advocate Mr. Purnindu Bikash Das upon filing affidavit in opposition appeared for the respondent No. 1 Ministry of Health and vehemently opposes the Rule. He submits that all the orders were issued by the respondent No. 3 lawfully since the petitioner suffers from serious infrastructural deficits and inadequacy in their facility not having fulfilled the requirements of the নীতিমালা of 2011. He contends that hence they cannot be lawfully allowed to admit more than 50-60 students. Upon a query from this bench he submits that from the inspection report marked as Annexure-Kha-1 in the affidavit in opposition it is clear that the petitioner's capacity to admit students is presently 50 to 60 in number. He also agitates that the infrastructural lacunas revealed in the inspection report and which is specifically stated in column 3, 6, 7, 9 and 10 makes it clear that the petitioner does not currently hold the capacity to admit more than 50 students in any one academic year given the deficits found in their present infrastructure.

Upon a query from this bench as to the absence of any requirement of Oxygen plant including lecture gallery, air conditioner etc. in the নীতিমালা of 2011, he could not give a satisfactory reply. Upon further query from the Bench regarding the orthopedic department, he remains non committal and submits that whether an orthopedic

department is required or not is the concern of the BMDC. He argues that however the petitioner did not obtain the required permission from the B.M.D.C.

He next argues that the মতামত opinion in Annexure Kha-1 clearly indicate that the petitioner did not take the approval of the Ministry of Health nor the University of Dhaka prior to admitting 110 students. He submits that therefore it is clear that without the approval and without proper infrastructural facility within the terms of the নীতিমালা which can currently allow admission of only 50 - 60 students consequently the decision of the respondent No. 3 is correct and need not be interfered with in this writ petition. He concludes his submission upon assertion that therefore the orders of the respondent No. 3 pursuant to inspection report and without infrastructural lacuna and following non-compliance of the procedural flaws the Rule bears no merit ought to be discharged for ends of justice.

Learned Attorney General Mr. M.A. Amin Uddin appeared in this matter following in pursuance to some query from this bench. The learned Attorney General in his contention submits that increasing or decreasing the number of students essentially depend on the terms of the নীতিমালা dated 22.06.2011. He submits that if the infrastructure of the petitioner's organization is not within the terms of the নীতিমালা in that case the number of students shall be increased or decreased according to the infrastructural facilities available relying on the number of students allowable under the নীতিমালা of 2011. Upon another query of this bench he however concedes that Oxygen plant

and installing air conditioner in a gallery are not mandatory requirements and also do not feature in the নীতিমালা of 2011. Upon another query from this bench he submits he is not in a position to represent the University of Dhaka and therefore he cannot make any submissions in this matter and concludes his submissions there upon.

We have heard the learned counsels from both sides, also heard the learned Attorney General, perused the writ petition, materials on records, decisions cited by the learned counsel including the affidavit in opposition and also affidavit in compliance and the orders and annexures annexed in the writ petition.

Admittedly গণস্বাস্থ্য সমাজ ভিত্তিক মেডিকেল কলেজ was originally established upon approval in the year 1989 which is evident by way of Annexure A, Annexure B is the approval given by the Bangladesh Medical and Dental Council on 26.04.2001. Annexure C which is the list approved by the recognized Medical and Dental Colleges and Dental Units (Govt. and Non-Govt.) issued by the Bangladesh Medical and Dental Council wherein the petitioner's organization also feature as a recognized institution. However our main contention in this writ petition is not the existence of the institution itself. Nor are we concerned over the issue of recognition or non recognition of the institution isolatedly. Rather the number of allowable students in an academic year is under challenge here. The writ petitioner challenged the propriety of some of the orders passed by the respondent no. 3, College পরিদর্শক University of Dhaka which orders are annexed as Annexure-F, G and J. These are primarily the orders whereby the

number of students which was admittedly raised to 110 was later reduced to 50-60.

Before embarking upon a scrutiny of these orders we are inclined to examine Annexure D which is the initial order based on inspection report dated 25.04.2010. We have perused annexure D which presupposes an inspection report following which the petitioner's organization was allowed to admit maximum 110 students per academic year in the organization. Notably and significantly enough in Annexure 'G' (which was issued by the respondent No. 5) (D.G health) did not state any prior preconditions regarding infrastructural facility. We have noted that in the মতামত and সুপারিশ wherein the number of students was recommended to be allowed to be raised from 100 to 110, the conditions that have been stated therein are essentially procedural. The relevant portion of the Annexure D is reproduced hereunder:

শর্তাবলী

১.কলেজটি নীতিমালা অনুযায়ী সরকারী ইউনিভার্সিটির অধিভুক্তি হইতে হইবে।

২.নিয়ম অনুযায়ী নবায়ন ফি সরকারী কোষাগারে জমা দিতে হইবে।

৩.বিএমডিসির স্বীকৃতি হালনাগাদ করার প্রয়োজনীয় ব্যবস্থা নিতে হবে।

৪.নীতিমালা অনুযায়ী শিক্ষক/ শিক্ষিকার বয়স নির্ধারণ করে নিয়োগ প্রদান করিতে

হইবে। ” From a clear reading of the conditions herein, it is clear that these are essentially procedural conditions.

The learned Advocate for the respondent No. 1 Mr. Purnindu Bikash Das argued that the petitioner did not comply with the procedural preconditions subsequently after 2010. He contended that the number of students were allowed in one academic year upto 110 in the year 2010 subject to some conditions which are afore mentioned. He asserted that however the petitioners did not comply with those conditions.

To assess the merit of his submissions we have examined some of the documents annexed hereto. To that effect in this context we have drawn our attention to Annexure- E, F, G and J. We have drawn attention particularly to annexure-E which is the order issued by the Ministry of Health under the signature of the respondent No. 4. The relevant portion of the Annexure-E for our purpose is reproduced below :

“উপর্যুক্ত বিষয়ে নির্দেশক্রমে জানানো যাচ্ছে যে, ২৫-১০-২০২০ খ্রি: তারিখে মাননীয় মন্ত্রীর সভাপতিত্বে অনুষ্ঠিত বেসরকারি মেডিকেল/ ডেন্টাল কলেজ/আইএইচটি/ম্যাটস প্রতিষ্ঠান, আসন সংখ্যা বৃদ্ধি , নতুন কোর্স অনুমোদন ইত্যাদি সংক্রান্ত কমিটির সভার সিদ্ধান্ত মোতাবেক ঢাকা বিশ্ববিদ্যালয়ের কলেজ পরিদর্শন টীম অনুমোদনের পরিপ্রেক্ষিতে ২০১৯-২০২০ শিক্ষাবর্ষ হতে গণস্বাস্থ্য সমাজভিত্তিক মেডিকেল কলেজকে ৫০(পঞ্চাশ) টি আসনের অনুমোদন প্রদান করা হলো এবং ২০০৯-২০১০ শিক্ষাবর্ষ হতে ধারাবাহিক ভাবে ২০১৯-২০২০ শিক্ষাবর্ষ পর্যন্ত একাডেমিক অনুমোদন নবায়ন করা হলো। এ শিক্ষা বর্ষগুলোর অন্যান্য শিক্ষার্থীদের (১১০-৫০) অর্থাৎ ৬০ জন শিক্ষার্থীর বিষয়ে পূর্বের নিয়মে গণস্বাস্থ্য সমাজভিত্তিক মেডিকেল কলেজ কর্তৃপক্ষ প্রয়োজনীয় ব্যবস্থা গ্রহণ করবেন মর্মে অবহিত করা হলো।”

It is clear from the order in Annexure ‘E’ that although the number of seats were reduced to 50 but nevertheless renewal of

academic year on the basis of continuity is contemplated from the academic year 2009-2010 till the year 2019-2020.

Our considered view is that when it comes to permission or approval of the authority pertaining to the procedural compliances regarding the procedures by the permission of the respondent No. 1 Ministry of health or the respondent No. 5 or the respondent No. 2 and 3 whatsoever, however while granting permission of continuity of academic session the number of students is not so relevant if there are procedural flaws. Upon following logic and reason, it may be held that if there are procedural flaws, in that event approval of the academic year on continuity basis whatsoever such approval would not be given at all even if the number of students admitted is only one in number.

Upon perusal of Annexure 'E' by the respondent No.4 (under whose signature the Annexure E was issued) representing the Ministry of Health, it clearly states that they gave their approval following approval of the কলেজ পরিদর্শক টীম (Inspector of Colleges Team) of Dhaka University. But however the Respondents do not state anywhere nor assign any rhyme or reason for the basis of reducing the number of students from 110 to 50.

The Learned Advocate for the Respondent No.1 repeatedly persuaded that the reason for reducing the number of students was the inspection report Annexure 'I', wherein infrastructural deficits and lacunas of the petitioners organization are revealed. But inspite of his assertions no reasons nor any report is stated in any of the Annexures

(by way of several orders) marked as Annexures including the impugned orders.

The learned Advocate for the respondent No. 1 persuaded that after 2010 the petitioner did not comply with the procedural and infrastructural conditions as per the নীতিমালা of 2011. It is necessary to remind the respondents upon reiteration, that if the petitioners did not at all comply with the mandatory requirements particularly the procedural requirements as contemplated as annexure D in the year 2010 in that event the respondents would not have recommended the approval of the academic year on the basis of continuity from the year 2009-2010 till 2019-2020. Our considered view is that if any illegality is found or revealed anywhere in the conduct of the petitioner in that case the question of continuity of approval from the academic year 2009-2010 till 2019-2020 (which entails a decade of continuity) would not have been given at all by the respondents. Our further considered finding is that Annexure E by way of giving approval on the basis of continuity for long 10 years, it is to be presumed that the petitioners organization do not suffer from any procedural flaws.

Now let us address the issue raised by the respondents regarding some gaps and deficits (ঘাটতি) in the infrastructural facility and the requisites required for a particular number of students allowed to be admitted in the organization in any academic year. The respondent No. 1 by way of the affidavit in opposition particularly relied upon Annexure Kha-1 the inspection report in support of his submissions regarding gaps in the infrastructural facility. Drawing

upon the infrastructural facility which is reflected in Annexure-Kha-1 in the inspection report dated 10.09.2020 read with the মতামত it shows that infrastructural facility that is available in the organization presently can only allow up to 50 students. Upon a query from this bench as to why the respondent No. 3 by way of annexure 'J' raised the number of students from 50 to 60 the learned Advocate for Respondent No. 1 however could not give any satisfactory reply.

Anyhow we have perused Annexure-Kha-1 that is the inspection report dated 10.09.2020 by the Ministry of Health. It appears that the respondents have mentioned some(deficit) ঘাটতি and inadequacy in the infrastructural facilities which are stated in the column. We have examined the columns 1 and 2 which presupposes the amount of land to be required to enhance the number of students and the square feet required. The ঘাটতি in column 1 and 3 presupposes an Oxygen plant and the Orthopedic department. In this context we have examined the নীতিমালা issued by the Ministry of Health regarding establishment of private medical colleges being the নীতিমালা dated 20.06.2011. Although there are some requirements mentioned in the infrastructural facility as formulated in the নীতিমালা pertaining to medical colleges, but nevertheless we do not find any mandatory requirement of Oxygen plant nor Orthopedic department in the নীতিমালা. We have also examined column 10 wherein the respondent mentions a ঘাটতি (deficit) and inadequacy in not having a lecture gallery with air conditioner set up inter alia others. Parallely we have examined the নীতিমালা. There is no such requirement to set up air

conditioner whatsoever in the নীতিমালা of 2011. The learned Advocate for the respondent also drew our attention to column 9 of the inspection report wherein the respondents stated inadequacy ঘাটতি regarding some professors who were who were part of the faculty being 65 years old or older and therefore beyond the age limit allowed. Although there is requirement in the নীতিমালা that teachers more than 65 years old and above cannot be employed for academic purpose, but in the ঘাটতি column the respondents do not specifically mention as to exactly how many teachers are beyond the retirement age of 65. Evidently it is not at all clear as to exactly how many teachers as part of the faculty are beyond the prescribed age limit. The learned Advocate for the respondents pointed out to column 4 and column 6 wherefrom he contended that the organization did not comply with some procedural requirements inter alia approval of the BMDC and has also not yet renewed its license. Upon perusal, it appears that column 6 however states that the renewal of license is under process. It can be logically concluded that number of students is not a factor for receiving approval to run an institution. If at all the institution suffers from any procedural irregularity in that event approval to run the institution would not have been given at all and not even one student would be allowed to be admitted. Therefore we are inclined to repeat that the factor of number of students is irrelevant so far procedural lacunas are concerned. If at all the petitioners committed any illegality, even one student would not be allowed.

Upon overall examination of annexure-Kha-1 it appears that among ঘাটতি (deficit) stated in the column, some of those requirements are beyond the requirements contemplated in the নীতিমালা. While the procedural ঘাটতি are not applicable so far as the number of students are concerned.

Our overall impression of the inspection report is that it is not at all a clear and is rather a vague and ambiguous report on the infrastructure of the organization. Moreover although in the মতামত (opinion) the respondents have mentioned the requirements of fulfilling the terms of the নীতিমালা of 2011, but nevertheless the respondents did not specify the specific column or clause as to which terms of the নীতিমালা 2011 has been violated. In annexure Kha(1) in the মতামত (opinion) the respondents stated that the petitioners from 12.05.2010 till 2019-2020 admitted students without the approval of the Ministry of Health and University of Dhaka. The relevant portion of the নীতিমালা ২০১১ is hereunder:

“নীতিমালা অনুযায়ী ছাত্র-ছাত্রী ভর্তির পূর্বে মন্ত্রণালয় ও ঢাকা বিশ্ববিদ্যালয়ের অনুমোদন নেয়া বাধ্যনীয় ছিল। কিন্তু গণস্বাস্থ্য সমাজ ভিত্তিক মেডিকেল কলেজ, মন্ত্রণালয় ও ঢাকা বিশ্ববিদ্যালয়ের অনুমোদন ছাড়াই ছাত্র-ছাত্রী ভর্তি করেছে এবং ১২/০৫/২০১০ ইং হতে ১১০(একশত দশ) জন ছাত্র-ছাত্রী ভর্তি করে আসছে। সর্বশেষ ২০১৯-২০২০ ইং শিক্ষা বর্ষে কলেজ পরিদর্শন টীম, ঢাকা বিশ্ববিদ্যালয়, গণস্বাস্থ্য সমাজভিত্তিক মেডিকেল কলেজকে ৫০(পঞ্চাশ)টি আসনে ছাত্র-ছাত্রী ভর্তির নির্দেশ প্রদান করে।”

Going back to Annexure-E, F and G our considered view is that particularly by way of annexure-E the respondents granted renewal of

approval based on continuity which was already been mentioned elsewhere in this judgment. Therefore our considered view is that the মতামত in Annexure খ '1' is not sustainable nor acceptable given that if the respondents did not comply with the provisions of the নীতিমালা from the year 2011 till date, the respondents would not have granted renewal on the basis of continuity from the academic year 2009-2010 till 2019-2020.

Our over all considered view is also that the position taken by the respondents and statements made by them are totally inconsistent. However it is to be noted that the impugned orders were issued by the respondent No. 3 representing University of Dhaka. We have examined Annexure-G and J. We have read the Annexures. We do not find anywhere from these orders by which it may be presupposed nor presumed that in the respondent No. 3 initially allowed 50 students by reducing the student 110 based on reason. Subsequent by another order the respondents allowed 60 students that is increasing it by 10 in number and thereby reducing it from 110 to 60. However strangely enough nowhere in the impugned orders did the respondent No. 3 state the basis of their findings.

It is logical to presume that before reaching a finding as to number of students whatsoever and taking away a persons right which was afforded to them previously, such conduct must have been followed by an inspection report since these are essentially factual matters. However in neither of the impugned orders do we find any such reference to any inspection report. Rather both annexure F and G

both the Annexures contemplate allowing the number of student to 50 subject to a report of the সিভিকিট prospectively. It however does not clarify when the report may be submitted.

The relevant portion of Annexure-F is reproduced hereunder:

“পরিদর্শন কমিটি ও ডিনস কমিটির (২৯ পৌষ ১৪২৬/২০১৩ জানুয়ারি ২০২০) সুপারিশ কর্তৃপক্ষের অনুমোদনক্রমে জানানো যাচ্ছে যে, একাডেমিক কাউন্সিল ও সিভিকিটে রিপোর্ট সাপেক্ষে আপনার কলেজের অধিভুক্তিসহ ২০১৯-২০২০ শিক্ষাবর্ষে ১ম বর্ষ এমবিবিএস কোর্সে ৫০(পঞ্চাশ) টি আসনে ছাত্রছাত্রী ভর্তির অনুমতি প্রদান করা হয়েছে।”

The relevant portion of Annexure G is also reproduced hereunder:

“পরিদর্শন কমিটি ও ডিনস কমিটির (২৯ পৌষ ১৪২৭/২০১৩ জানুয়ারি ২০২১) সুপারিশ কর্তৃপক্ষের অনুমোদনক্রমে জানানো যাচ্ছে যে, একাডেমিক কাউন্সিল ও সিভিকিটে রিপোর্ট সাপেক্ষে আপনার কলেজের ২০২০-২০২১ শিক্ষাবর্ষের অধিভুক্তি নবায়নসহ এমবিবিএস কোর্সে গত বছরের অনুরূপ ৫০(পঞ্চাশ)টি আসনে ছাত্রছাত্রী ভর্তির অনুমতি প্রদান করা হয়েছে।”

Annexure G and F reflect the same language.

Annexure J also impugned by the petitioner) was issued pursuant to the petitioner’s application to restore the original number of student 110s. However by way of Annexure-J the respondent No. 3 allowed the number of students to be enhanced by 10. In this order also the respondent No. 3 did not give any fact finding basis of increasing the number of students from 50 to 60. Our considered view is that whatever the number of students may be reduced to, before

taking such a step it is the respondents lawful and constitutional duty to give specific reasons based on fact finding inspection.

It is evident from the materials that no show cause was ever issued by the respondents to the petitioner prior to reducing the number of seats from 110 to 50 and later 60 whatsoever. It is a principle of law settled by some decisions of our Apex court including the principle held out in the 62 DLR(AD) (2010) 222 and also cites 16DLR(SC)(1964) pages 722 wherein the general principle held is that a legal right that has been accorded upon a person cannot be taken away in an arbitrary manner, if a right is at all to be taken away it must be in accordance with law after affording due process.

In the instant case it is evident that the respondent No. 3 never issued any show cause to the petitioner. Another significant fact that has been brought to our notice is that Annexure-F which is dated 14.01.2020 by which permission 50 students only was allowed, however Annexure 'F' was issued even before the inspection report which was ultimately conducted on 10.09.2020.

From Annexure Kha-1it shows that an inspection was conducted on 05.02.2020 although the report was submitted 7(seven) months later.

However it is clear that Annexure F dated 14.01.2020 was issued even before the inspection. Our anxiety arises from the revelation as to how the respondents issued Annexure F allowing only

50 students by reducing the number to more than half even when no inspection at all had taken place by the respondent No. 5 whatsoever.

Moreover whatever inspection report by way of annexure Kha- '1' has been placed before us in the affidavit in opposition filed by the learned Advocate for the respondent No. 1, but however in the impugned order there is no mention or reflection of any inspection report at any stage. Moreover due process by way of show cause notice was not served upon the petitioner. It is also admitted by the respondents that গণস্বাস্থ্য সমাজ ভিত্তিক মেডিকেল কলেজ is a সমাজ ভিত্তিক organization for providing medical college to train future doctors. Needless to state that medical service and qualified doctors is imperative for the benefits of the health sector of the country and evidently for the benefits of the public at large.

Our attention was also drawn to the affidavit in compliance filed by the respondent No. 3 pursuant to ad-interim direction by this division during issuance of the Rule. We have perused the affidavit in compliance which has been annexed as annexure 1. Regrettably enough the language of the affidavit in compliance shows that the application dated 26.12.2021 has been disposed of in a very slip shod manner. The language of the affidavit in compliance contemplates the consideration of the petitioner's application to restore the number of students to its original number of students of 100 to 110 at an uncertain future and there is no certainty nor any definite indication as when the inspection may be conducted. The relevant portion in

Annexure-1 from the affidavit in compliance is re-produced hereunder:

“১। কলেজের অধিভুক্তি ও অধিভুক্তির নবায়নপত্রে আরোপিত শর্তসমূহ পূরণ করে কলেজ কর্তৃপক্ষ জানালে পরিদর্শন কমিটি কর্তৃক কলেজটি সরজমিনে পরিদর্শনের পর সন্তোষজনক রিপোর্টের ভিত্তিতে বিশ্ববিদ্যালয়ের সংশ্লিষ্ট বিধি-বিধান অনুসরণ করে কলেজের আসন সংখ্যা বৃদ্ধির বিষয়টি পরবর্তীতে বিবেচনা করা হবে।”

Evidently there is no certainty in the view expressed in Annexure-1 in the affidavit in compliance. The respondent No. 3 mentioned some conditions but however it is the same as its previous orders which also did not specifically state the conditions thereto. Our overall considered view is that the conduct of the respondents particularly the respondent No. 1 and 3 against whom the impugned orders that is the respondent No. 3 impugned order rule was issued, those orders suffer from arbitrary misuse of authority and also suffer from lack of propriety. Moreover as mentioned elsewhere due process was not given to the petitioner. It is a settled principle that before seizing away a person of his right that was afforded to him earlier without giving him show cause is arbitrary and in violation of his fundamental rights.

It is also well settled by now that it is a principle of natural justice that every person be entitled be fairness and transparency in administrative decisions by giving adequate reason before adversely affecting a right of any persons, particularly those which was or were granted priorly. Moreover any order issued or decision taken by the authorities must be a reasonable one, based on logic and rationality.

As discussed elsewhere in this judgment, in the petitioners case the reasons cited by the respondents leading to the impugned order, decisions whatsoever do not appear to be based on reasonable grounds nor on factual basis.

In the light of the aforesaid findings observation and discussions, we find merits in this Rule. In the result, the Rule is made absolute. The Memo contained in 41/কপ dated 14.01.2020 (Annexure-F) and 115/কপ dated 119.01.2021 issued by respondent No. 3 (Annexure-G) allowing 50 (fifty) students (110 students were allowable under for last 8 years) to be admitted in M.B.B.S. courses and memo contained in 293/ কপ dated 22.08.2021 (Annexure-J) allowing 60 students instead of 110 is hereby declared to have been issued without lawful authority and is of no legal effect.

Communicate the Judgment at once.

(Kashefa Hussain,J)

I agree

(Kazi Zinat Hoque,J)