



2025:DHC:9774



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

% *Judgment Delivered on: 08.11.2025*

+ W.P.(C) 14821/2025 & CM 62984/2025

DR B S KUSHWAH INSTITUTE OF MEDICAL SCIENCES

.....Petitioner

Through: Mr. Vikas Singh, Senior Advocate with Mr. Ashutosh Thakur, Ms. Deepika Kalia, Mr. Sudeep Chandra, Mr. Abhishek Pandey, Mr. Chandra Pratap, Mr. Amit Kumar and Mr. Ritesh Singh, Advocates

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Mukul Singh, CGSC with Mr. Adhiraj Singh, GP, Ms. Ira Singh and Mr. Aryan Dhaka, Advocates for R-1.
Mr. Kirtiman Singh, Senior Advocate with Mr. T. Singhdev, Mr. Bhanu Gulati and Mr. Sourabh Kumar, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J

1. The present writ petition was filed by the petitioner institute initially seeking direction to respondents to grant permission to petitioner institute to increase 100 MBBS UG seats i.e., from 150 to 250 for the Academic Year 2025-26. It was consequently prayed that



petitioner institute be allowed to participate in the ongoing UP-NEET counselling for the increased intake of 100 UG MBBS seats.

2. During the pendency of the writ petition, the respondent no. 3 i.e. Medical Assessment and Rating Board (hereinafter referred to as '**MARB**') vide Letter of Disapproval (hereinafter referred to as '**LoD**') dated 24.09.2025 disapproved the application of the petitioner institute for increase of sanctioned intake capacity of MBBS Course of 100 seats from 150 to 250 seats for Academic Year 2025-26.

3. Accordingly, petitioner institute filed the amended writ petition inserting Clause (c) in the prayer:

“(a) Issue appropriate directions/writs or a writ in the nature of mandamus to the respondents to grant permission to increase 100 MBBS UG seats, 150 to 250 for the academic year 2025-26 in the petitioner college on the basis of the inspection report dated 26.06.2025 and compliance dated 21.07.2025 submitted by the petitioner institute.

And/or

(b) Direct the respondents to allow the petitioner institution to participate in the ongoing UP NEET counselling for the increased intake of 100 UG MBBS seats, i.e. 150 to 250 which is presently scheduled for admission till dated 30.09.2025, as per UP NEET UG Counselling 2025 dated 15.09.2025, issued by Respondent No.5.

(c) Issue appropriate directions/writ or a writ in the nature of certiorari thereby setting aside the Letter of Disapproval No.N-22011/68/2024- Assessment Cell/MARB (8277439) dated 24.09.2025 issued by the Respondent No.3 as illegal, arbitrary and unconstitutional.”

(emphasis supplied)



4. The case as set out by the petitioner is that the respondent no. 2/ National Medical Commission (hereinafter referred to as ‘NMC’) *vide* circular dated 19.12.2024 invited applications for establishing a new medical institute/increase in the number of UG seats for Academic Year 2025-26.

5. The petitioner institute having already availed 150 UG MBBS seats in Academic Year 2024-25, applied for an increase in intake of 100 seats for the current Academic Year i.e., 2025-26, on 17.01.2025, for which it provided relevant documents and deposited fees of Rs. 11,80,000/-.

6. The NMC thereafter called for a ‘Self-Declaration Form’ to be submitted by the petitioner institute, which was duly submitted by the petitioner institute on 08.05.2025. Sequel thereto, a Show Cause Notice (hereinafter referred to as ‘1st SCN’) dated 11.06.2025 was issued to the petitioner institute by the NMC observing the following deficiencies:

- the Society Registration Certificate has expired;
- no document showing that the petitioner institute is owned by a society has been found.

7. It is the case of the petitioner institute that *vide* reply/compliance report dated 16.06.2025 to 1st SCN, petitioner institute furnished all the relevant documents, which led to the fulfilment of the deficiency pointed out by the NMC.

8. On 26.06.2025, the NMC undertook the physical inspection at the petitioner institute for the increased 100 seats. In the ‘Summary of Assessment’ of the said Report, the only deficiency pointed out was in the Teaching Faculty, which was to an extent of ‘2.97%’.



9. In the meanwhile, *vide* letter dated 14.07.2025, UG Medical Education Board-NMC whilst granting conditional renewal to the petitioner institute for 150 seats for the Academic Year 2025-2026 imposed a penalty of Rs. 10,00,000/-, in terms of Chapter-III, Clause-8 of the MSMER—2023 for the persisting deficiencies not cured by the petitioner institute.

10. Consequently, *vide* public notice dated 15.09.2025 MARB granted approval for intake of 150 UG MBBS seats to the petitioner institute for the Academic Year 2025-2026.

11. As regards intake of 100 additional seats, another Show Cause Notice dated 18.07.2025 (hereinafter referred to as '2nd SCN') was issued by MARB to the petitioner institute seeking additional information, as well as, compliance of deficiencies mentioned therein within 3 days.

12. The petitioner institute submitted the additional information, as well as, the compliance of deficiencies *vide* its letter dated 21.07.2025.

13. Thereafter, the petitioner institute made a representation to the NMC *vide* letter dated 17.09.2025, requesting the NMC to take a final decision on its application for intake of 100 additional UG seats in the petitioner institute for the Academic Year 2025-2026.

14. On 24.09.2025, the impugned Letter of Disapproval was issued by the NMC on the basis of following deficiencies:

- i. Aadhaar Enabled Biometric Attendance System (hereinafter referred to as 'AEBAS') of three months (June-August 2025) with at least 75% attendance shows only 49 faculties available and the department wise



deficiency of faculty is 70.83%, calculated as per MSR of faculty for 250 seats;

- ii. AEBAS attendance on the day of inspection also shows only 80 faculty; and
- iii. 10 Lakh penalty was imposed at the time of renewal of UGMEB for the academic year 2025-2026.

15. Mr. Vikas Singh, learned senior counsel appearing on behalf of the petitioner institute submits that the inspection report dated 26.06.2025 issued by the respondent no.2/NMC shows that there were proper infrastructural facilities; adequate faculty; and the clinical loads in the Hospital attached with the medical institute was found to be as per the norms and standards prescribed by the NMC. Moreover, in the surprise inspection conducted by the respondents, the assessors recorded a categorical finding that the deficiency is 'ZERO'.

16. He submits that the respondent no.3 /MARB *vide* its public notice dated 15.09.2025 issued a list of institutions along with final UG (MBBS) seat Matrix for Academic Year 2025-2026, wherein the name of petitioner institute is reflected at Sl. No. 696 with 150 UG seats approved for Academic Year 2025-2026, however, there is no remark as to why only 150 seats were granted to the petitioner institute instead of 250 seats for which the petitioner institute had applied.

17. He submits that immediately thereafter, the petitioner made a representation dated 17.09.2025 to the respondents requesting them to take a final decision in respect of increased intake of 100 seats applied by the petitioner institute as even after a lapse of more than two and half



months, no decision was taken/ communicated to the petitioner institute on the basis of Inspection Report dated 26.06.2025.

18. He submits that there is no deficiency with respect to the AEBAS attendance database because as per the Assessor Guidelines 2024-2025, issued by NMC, only the medical institute having at least 75% faculty attendance on AEBAS for three months prior to the last date of application is eligible for physical inspection and the inspection for the petitioner institute was already done by the respondent no. 2/NMC.

19. He further submits that the LoD dated 24.09.2025 was issued by the respondent no. 2/NMC only after filing of the present writ petition with an intent to render this petition infructuous. He submits that the LoD is also not in conformity with physical inspection carried out at the petitioner institute on 26.06.2025. Elaborating on his submission, he contends that physical inspection revealed 2.97% deficiency in teaching faculty, whereas department wise deficiency as mentioned in LoD is 70.83%.

20. He submits that 2nd SCN was issued on 18.07.2025 whereas LoD is predicated on AEBAS data of June-August 2025, therefore, LoD has exceeded 2nd SCN.

21. He places reliance on the decision of Hon'ble Supreme Court in ***Rajiv Memorial Academic Welfare Society and Anr. vs Union of India and Anr, (2016) 11 SCC 522.***

22. *Per contra*, Mr. Kirtiman Singh learned Senior Counsel appearing on behalf of the respondent no. 2 /NMC submits that the present petition is not maintainable as the entire cause of action has arisen within the State of Uttar Pradesh, where the petitioner institute is situated and



where all consequential actions, including counselling and seat allocation would take place.

23. He submits that mere location of the NMC's office in Delhi does not confer jurisdiction upon this Court. The appropriate forum, applying the doctrine of *forum conveniens*, is the High Court of Allahabad, before which the matter ought to have been filed.

24. He submits that filing a writ petition is not the proper remedy as alternative efficacious remedy is available to the petitioner institute under Section 28 of the NMC Act. Therefore, the petitioner institute cannot bypass the statutory remedy.

25. He submits that as the petitioner institute cannot ask for inspection at the fag-end of the counselling and admission process, as the inspection by its very virtue must have an element of surprise.

26. He submits that the petitioner institute being a medical institute ought to have been ready with the requisite infrastructure, faculty, residents, clinical material and infrastructure at the time of submission of the application itself i.e. on 17.01.2025.

27. He submits that from a perusal of the AEBAAS attendance data as per inspection report dated 26.06.2025 and also of the period June-August 2025, it is apparent that the petitioner institute was grossly deficient in respect of faculty. Elaborating further, he submits that on the day of inspection only 80 faculty members were found, whereas the requirement was of 168 faculty members for 250 MBBS seats. Similarly, for the period June-August 2025, only 49 faculty members were found.

28. He submits that petitioner institute, if given opportunity of another inspection, may at this point of time showcase all facilities superficially



by making temporary arrangements, without reflecting true and continuous functioning of the institution.

29. He further submits that the counselling process for students is already underway and no new inspections for the purpose of establishment of medical institute or for increase intake are being conducted at this stage.

30. Lastly, he submits that the inspection can be conducted physically and even on the basis of digital records like AEBAS. He further submits that findings of inspection are binding and not subject to judicial re-evaluation, as the inspection reports are factual and conclusive, reflecting the actual state of compliance. He places reliance on the decision of the Hon'ble Supreme Court in ***Manohar Lal Sharma vs. Medical Council of India, (2013) 10 SCC 60.***

31. In rejoinder, Mr. Vikas Singh submits that the respondent nos. 1, 2 and 3 are situated in Delhi. The impugned order dated 24.09.2025, because of which a cause of action has arisen, was passed in Delhi, i.e., within the territorial jurisdiction of this Court. Therefore, it is incorrect to say that this Court does not have the territorial jurisdiction.

32. He submits that the impugned order dated 24.09.2025 was passed by the respondents at the fag-end of the ongoing counselling process, and due to paucity of time and nature of urgency in the matter, the petitioner institute could not prefer an appeal before the respondent no.1 under Section 28(5) of the NMC Act.

33. He submits that perusal of the Physical Inspection Report dated 26.06.2025 would evince that there is a deficiency of 2.97 % in Teaching Faculty, which is within the 5% relaxation permissible to



medical institutes as per MCI circular dated 07.07.2017, therefore, the LoD could not have been issued. He places reliance on the decision of this Court in ***Dhanalakshmi Srinivasan Medical Institute and Hospital & Anr., vs. Union of India and Anr., 2022 SCC OnLine Del 3701.***

34. He further submits that prior to the issuance of LoD dated 24.09.2025, at no point of time, the issue of deficiency of faculty as per AEBAS data was ever raised by the respondent no. 2/NMC.

35. I have heard the rival contentions of the parties and perused the material on record.

36. The respondents have raised a preliminary objection regarding the maintainability of the present writ petition. Insofar as the issue of territorial jurisdiction is concerned, it has been strongly argued by the Mr. Vikas Singh, learned senior counsel for the petitioner that the matter requires immediate hearing. It has been contended that NEET UG counselling process is in its final stages and is scheduled to conclude imminently. Considering the urgency, this Court finds that any delay in hearing the matter would render the substantive prayers infructuous. Given this exceptional exigency and the impending deadline, the Court deems it fit to deal with the controversy on merits leaving the question of territorial jurisdiction open. Similarly, with regard to the plea of alternative remedy being available to the petitioners, this Court is of the view that since the extensive arguments were addressed on merits as well, and further considering the aforementioned factors showing urgency, it would be a travesty of justice if the petitioners are relegated to the remedy of appeal at this belated stage, particularly when under



section 28(6) the Act NMC can take upto 45 days to decide the first appeal. Therefore, the Court is inclined to examine the matter on merits.

37. The primary grievance which has been articulated by the petitioner is that prior to the issuance of LoD dated 24.09.2025, at no point of time, the issue of deficiency in faculty as per AEBAS data was ever raised by the respondent no.2/NMC. Further, the deficiencies on which the LoD is predicated were not pointed out in the two show cause notices dated 11.06.2025 (1st SCN) and 18.07.2025 (2nd SCN), therefore, the petitioner did not get any opportunity to comply with the same. Furthermore, the LoD is not in conformity with physical inspection report which mentions deficiency in teaching faculty to an extent of 2.97% as against observations in the LoD that only 49 faculties are available and the department wise deficiency of faculty is 70.83% calculated for 250 seats as per Minimum Standards of Requirements (hereinafter 'MSR'), besides AEBAS showing only 80 faculty on the day of inspection.

38. Before considering the above grievance of the petitioner, apt would it be to refer to the statutory framework under which a person, desiring to establish a new medical college, may apply to the National Medical Commission, and the procedure to be followed thereafter. Section 28 of the NMC Act (hereinafter 'the Act'), 2019 provides the substantive scheme for any person seeking to establish a new medical college. Section 29 thereof, broadly encapsulates the criteria to be followed while deciding on a scheme preferred by any person. For the sake of ready reference, the relevant sections are reproduced hereunder:



“28. Permission for establishment of new medical college.—(1) No person shall establish a new medical college or start any postgraduate course or increase number of seats without obtaining prior permission of the Medical Assessment and Rating Board.

(2) For the purposes of obtaining permission under sub-section (1), a person may submit a scheme to the Medical Assessment and Rating Board in such form, containing such particulars, accompanied by such fee, and in such manner, as may be specified by the regulations.

(3) The Medical Assessment and Rating Board shall, having due regard to the criteria specified in section 29, consider the scheme received under sub-section (2) and **either approve or disapprove such scheme within a period of six months from the date of such receipt:**

Provided that before disapproving such scheme, an opportunity to rectify the defects, if any, shall be given to the person concerned.

(4) Where a scheme is approved under sub-section (3), such approval shall be the permission under sub-section (1) to establish new medical college.

(5) **Where a scheme is disapproved under sub-section (3), or where no decision is taken within six months of submitting a scheme under sub-section (1), the person concerned may prefer an appeal to the Commission for approval of the scheme within fifteen days of such disapproval or, as the case may be, lapse of six months, in such manner as may be specified by the regulations.**

(6) **The Commission shall decide the appeal received under sub-section (5) within a period of forty-five days from the date of receipt of the appeal and in case the Commission approves the scheme, such approval shall be the permission under sub-section (1) to establish a new medical college and in case the Commission disapproves the scheme, or fails to give its decision within the specified period, the person concerned may prefer a second appeal to the Central Government within thirty days of communication of such**



disapproval or, as the case may be, lapse of specified period.

(7) The Medical Assessment and Rating Board may conduct evaluation and assessment of any medical institution at any time, either directly or through any other expert having integrity and experience of medical profession and without any prior notice and assess and evaluate the performance, standards and benchmarks of such medical institution.

Explanation.—For the purposes of this section, the term “person” includes a University, trust or any other association of persons or body of individuals, but does not include the Central Government.

29. Criteria for approving or disapproving scheme.—While approving or disapproving a scheme under section 28, the Medical Assessment and Rating Board, or the Commission, as the case may be, shall take into consideration the following criteria, namely:—

- (a) adequacy of financial resources;
- (b) **whether adequate academic faculty and other necessary facilities have been provided to ensure proper functioning of medical college or would be provided within the time-limit specified in the scheme;**
- (c) **whether adequate hospital facilities have been provided or would be provided within the time-limit specified in the scheme;**
- (d) **such other factors as may be prescribed:**

Provided that, subject to the previous approval of the Central Government, the criteria may be relaxed for the medical colleges which are set up in such areas as may be specified by the regulations.”

(emphasis supplied)

39. Exercising powers conferred under Section 57 of the Act, NMC also notified the “*Establishment of New Medical Institutions, Starting of New Medical Courses, Increase of Seats for Existing Courses & Assessment and Rating Regulations, 2023*, dated 02.06.2023 [hereinafter



the “**Regulations of 2023**”] for regulating *inter alia* the procedure for establishing new medical college or increase in seats under Section 28 of the Act. The provisions contained therein, relevant for the present case, are reproduced hereunder:

“2. Definitions – In these Regulations, unless the context otherwise requires the terms defined herein shall bear the meaning assigned to them below and their cognate expressions and variations shall be construed accordingly –

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b. “Assessment” shall mean the process of evaluating a medical institution by the concerned authorities, as **being compliant with the applicable Regulations, guidelines/standards, and/or orders and circulars issued by the NMC and other authorities as the case may be from time to time.**

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h. “Inspection” — the expression or activity of ‘inspection’ shall include virtual and/or physical inspection and/or evaluation of actual and/or digital records or information.

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i. “MSR” shall mean the Minimum Standards of Requirements as Notified either by UGMEB or PGMEB as the case may be from time to time, which shall also include, explanatory notes, circulars, advisories, etc. issued by the corresponding Boards or the Commission.

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5. MARB inviting applications - The MARB may invite applications for one or more of the following-

a. **Establishing a new medical institution intending to offer undergraduate courses.**

b. Establishing a new medical institution intending to offer postgraduate medical courses.



- c. Establishing a new medical institution intending to offer both undergraduate and postgraduate medical course/s.*
- d. For starting undergraduate course or increase or decrease in the numbers of UG seats in an established medical institution.*
- e. For starting postgraduate medical course/s or increase or decrease in the numbers of PG seats in an established medical institution.*

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10. Eligibility criteria –

- a. No medical institution shall be provided permission unless they satisfy the conditions pertaining to but not limited to physical infrastructure, teaching staff, clinical material and hospital as detailed in the MSRs notified from time to time.*
- b. Without prejudice to anything stated in the sub-section (a) above, the UGMEB or PGMEB as the case may be, shall from time to time publish the MSR with such modifications or amends required, keeping in mind the overall objectives of the Act.*
- c. Notwithstanding anything stated above in Section 10, all modified or amended MSRs shall have to be implemented.*

11. MARB evaluating the application – keeping in mind the objective of the Act, without prejudice to anything stated elsewhere in the Regulations, the MARB shall evaluate the applications received from the eligible entity under Section 9 above, based on all of the following broad criteria viz.,

- a. The desirability and feasibility of setting up the medical institution at the proposed location.*
- b. Assess whether the eligible entity fulfils the required conditions prescribed by the corresponding MSRs in vogue, which shall include physical infrastructure, qualified faculty, and adequate clinical material in*



terms of hospital, laboratory, patients, clinical procedures and others as specified in the corresponding MSR/s.

c. Assess whether the scheme submitted by the applicant shows that, **once established the medical institution will reasonably sustain itself.**

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14. Assessment for Permission: Notwithstanding anything stated elsewhere, the **MARB determines the appropriate method of assessment and/or inspection, before granting permission to the applicant to establish a medical institution.**

Provided such methods shall include, but not be limited to verification of documents in digital or another form, Aadhar-based attendance register, verification of live video feed, photographs, Hospital Management Information System (HMIS) data, or a surprise physical assessment etc.

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15. Evaluation result and issuance of letter of approval — based on the assessment carried out; the MARB shall communicate its decision of permission or otherwise to the eligible entity within a period of six months from the date of receipt of the completed application.

Provided if approved, the MARB shall issue a letter of permission to the eligible entity under its seal, with such conditions as it may deem fit.

Provided further, the letter of permission shall also be notified on the National Medical Commission's website.

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29. Non-compliance defined—following acts or omissions of a medical institute shall amount to non-compliance—

a. Non-compliance with any of the regulations, and notifications of the National Medical Commission issued from time to time.

b. The medical institution has conducted in a manner



which is not in accordance with the objectives of the medical institution and practices like ragging, exploiting students on fees etc.

c. Deficiency in infrastructure, teaching staff, clinical material and others as prescribed by way of MSR or otherwise by UGMEB and/or PGMEB.

d. Any act of misbehavior, non-cooperation, forbidding the inspection process etc., with the assessors representing the MARB or such other designated agency by the MARB in this regard.

e. Physical misbehavior by teaching staff with the students, harassment of faculty and/or students by the management etc.

f. False information declared for obtaining permission for any of the schemes including the establishment of a medical institution.

g. Falsifying information or fabricating evidence at the time of inspection by the MARB or constituent autonomous boards or NMC-appointed third parties.

h. Any attempt to bribe or pressurize or threaten assessors or officials of NMC.

i. Any such act or omission as notified by the NMC in this regard.

30. Penalties—for any of the non-compliance or intentional attempt of non-compliance act or omission by the medical institution, the MARB shall either penalize the medical college or medical institution as per sub-section (f) of section 26 of the Act and/or conduct further enquiry into such incident or act, and wherever needed provide an opportunity to rectify the same.”

(emphasis supplied)

40. Having gone through the above scheme of statutory and regulatory framework, it may be observed that Section 28 of the Act provides the procedure for persons to apply for permission from the respondent no. 3/MARB prior to establishing a new medical college or



increase in number of seats. It further provides the timelines for the procedure, including the six-month period for the MARB to take a decision on any scheme preferred before it. Notably, an appellate mechanism has been envisaged wherein the applicant has the right to appeal against rejection of the scheme, or in case of non-adherence to the timeline. Right of second appeal has also been provided before the Central Government.

41. Sub-section (7) of Section 28 of the Act enables the MARB to conduct evaluation and assessment of any medical institution at any time, either on its own or through any other expert, to ensure performance, standards and benchmarks are being maintained by the institute. Such evaluation and assessment may be done by MARB without notice. Further, the said provision, read with Section 29 of the Act, clearly indicates that it is the duty of MARB to ensure that in pursuit of maintaining standards in the medical education field, any scheme preferred before it must be assessed on the foundational criteria laid down in Section 29, which *inter-alia* includes adequacy of – (i) financial resources; (ii) academic faculty and other necessary facilities; (iii) hospital facilities; and (iv) and such other factors as may be prescribed.

42. Regulation 2(h), 11 & 14 of the Regulations of 2023 reproduced hereinabove provide the method in which MARB may conduct evaluation and assessment of the applications received from the eligible entity which includes physical/virtual verification and verification of documents in digital and other forms including AEBAS to be maintained



by the applicants as specified in corresponding Minimum Standards of Requirements notified by UGMEB or PGMEB.

43. Regulation 10 delineates eligibility criteria and provides that no medical institution shall be provided permission to either establish new institution or increase of seats, unless conditions such as physical infrastructure, teaching staff, clinical material and hospital as detailed in MSRs notified from time to time, are satisfied.

44. Insofar as AEBAS is concerned, to be noted that NMC had issued Circular dated 01.08.2022 whereby it implemented NIC AEBAS, Hospital Management System (HMS) in all medical colleges and connecting CCTV feed to Command and Control center at NMC. The decision to implement the same was reiterated by the NMC *vide* its subsequent Circular dated 25.01.2023 and following directions were issued:

“2. NMC in its previous communications has already advised the Medical Colleges that for consideration of any applications for renewals, recognition, CoR (Continuation of Recognition) surprise inspections, increase in UG/PG seats, approval of PG courses, college applying for new establishments, the data of AEBAS, HMIS and CCTV integration with NMC will be used for decision making.

3. Minister of Health and Family Welfare in its virtual address to all medical colleges on 22 September, 2022 & its interaction meeting with medical colleges on 5th Jan 2023 have conveyed that it is mandatory for all medical colleges to implement the same expeditiously. Further directions were given in senior officers meeting that batches should not be allowed in case of non compliance.

4. All colleges are therefore, again directed to take necessary steps to fully implement Aadhaar Enabled



Biometric Attendance System (AEBAS), Hospital Management Information System (HMIS) and connection of CCTVs feed to Command & Control Centre at National Medical Commission immediately in order to prevent adverse actions against them.”

(emphasis supplied)

45. Sequel to above, the “*Guidelines for Under Graduate Courses under Establishment of New Medical Institutions, Starting of New Medical Courses, Increase of Seats for Existing Courses & Assessment and Rating Regulations, 2023 (in short UG – MSR 2023)*” dated 16.08.2023 [hereinafter as “**Guidelines of 2023**”] were issued by the NMC defining the MSRs for medical colleges and institutes, which also provide statutory backing AEBAS. Clause 3.1 of the Guidelines provides that the AEBAS must be installed in all medical colleges and institutions which shall be linked to the Command-and-Control center of NMC and the data therefrom be made available to the NMC on a daily basis. Clause 3.2 stipulates the minimum attendance requirements. The entire Clause 3 of the Guidelines is reproduced hereinunder:

“3. Aadhar Enabled Biometric Attendance System (AEBAS) & Close Circuit TV Monitoring of Medical Colleges /Institutions and Hospitals:

The medical college/institution shall also be responsible for the installation and maintenance of AEBAS, close circuit camera and HMIS and other Information Technology as prescribed from time to time.

3.1 AEBAS:

- i) All Medical Colleges/Institutions shall install AEBAS to be linked to Command-and-Control center of NMC.***
- ii) The daily AEBAS of the required staff (faculty, residents***



and supporting staff, preferably along with face linked recognition, shall be made available to NMC as well as on the Medical College Website in the form of daily attendance dashboard.

3.2 Minimum requirement of attendance:

It shall be mandatory to have at least 75% attendance of the total working days (excluding vacations) for all faculty and resident doctors. During vacation period, other than sick leave or leaves availed due to emergency situations, the faculty on duty shall not be availing any leave. Emergency leaves shall be certified by Head of the department or Head of the institution.

AEBAS, preferably with fact recognition of all students attending every lecture/teaching class/seminar shall be recorded and linked to NMC.”

(emphasis supplied)

46. It is thus, evident that AEBAS (the digital attendance system introduced by the respondents) is a part of the mandatory requirement under the Guidelines & Regulations of 2023 [together referred to as ‘MSRs 2023’] which should be in place for enabling the MARB to evaluate and assess the criteria in terms of Section 29 of the Act.

47. The petitioner has placed reliance Assessor Guidelines 2024-2025 to contend that only the medical institute having at least 75% faculty attendance on AEBAS for three months prior to the last date of application is eligible for physical verification, and since the physical inspection for the petitioner institute was done, it shows that the petitioner was compliant with the requirement of attendance. To appreciate the said contention, the relevant portion of the said Assessor Guidelines is also reproduced as under:

“Role of assessor:



A. Verification of Teaching faculty and residents

□ Only the medical colleges having at least 75% faculty attendance on AEBAS for three months prior to the last date of application will be eligible for physical inspection.

□ In case of establishment of new medical college AEBAS registration for the faculty should be complete before inspection. AEBAS attendance of registered faculty for ten working days prior to (and including) the date of inspection will be an essential criterion to be taken into consideration during the inspection.”

48. Having taken note of the statutory scheme regulating the rights, duties and powers of the MARB, as well as, of the medical institutes, the grievance of the petitioners has to be considered in light thereof.

49. Coming to the facts of the case, the petitioner institute was issued the 1st SCN dated 11.06.2025 pointing out certain deficiencies, by which it appears that the petitioner institute rectified by submitting its compliance report on 16.06.2025.

50. Subsequently, a physical inspection was carried out at the petitioner's institute on 26.06.2025 by a team of three independent assessors, after which the physical inspection report dated 26.06.2025 came and in the 'Summary of Assessment' of the physical inspection report dated 26.06.2025, the deficiency of teaching faculty was pointed out as 2.97%.

51. After a gap of 18 days, *vide* letter dated 14.07.2025 petitioner institute was given conditional renewal in respect of existing 150 UG seats with an imposition of Rs. 10,00,000/- penalty for gross deficiencies both in faculty and clinical parameters.

52. Thereafter, the petitioner institute was issued 2nd SCN dated 18.07.2025 pointing out various deficiencies, and again it was given an



opportunity to rectify the same. A reading of 2nd SCN reveals that before sending the said SCN, the experts assessed and evaluated the documents pertaining to the petitioner institute. The documents assessed *inter alia* included the AEBAS data, application form submitted by the petitioner institute. In the 2nd SCN some additional information was sought and certain deficiencies were also pointed out. The deficiencies pointed out in the 2nd SCN reads thus:

*“Whereas, **Dr. B.S. Kushwah Institute of Medical Sciences** has submitted application to Medical Assessment and Rating Board (MARB) of NMC for increase in existing intake of number of admissions from 150 to 250 for A.Y. 2025-26.*

*2. Whereas, **experts have done assessment/evaluation** of the documents w.r.t. application submitted by the college on relevant NMC regulations, MSR guidelines, MARB guidelines and relevant circulars, **AEBAS data** and notices issued time to time and you are asked to **provide below mentioned additional information and compliance of below mentioned deficiencies within 3 days**. Virtual hearing may be conducted for verification of compliance:*

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“Deficiencies:

i. Teaching Modalities: Examination result last three years not provided

(LOP granted in 08.11.2024).

ii. Examination Hall: Under construction as per the Assessors.

iii. Department of radio diagnosis:

a. Mobile X ray (60 mA) not available.

b. use two machine deficiencies.

c. Mammography not available.

iv. Central casualty! Emergency services: Non availability of adequate numbers of beds.

v. Operation theatres: Deficiencies of two major OT.



- vi. Labor Room: L.R. is inside the OT Complex.
- vii. RHTC: Not affiliated to Government Medical Health Centers.
- viii. **AEBAS data based faculty in the existing admission capacity.....”**

(emphasis supplied)

53. The petitioner institute sent its compliance report dated 21.07.2025, however, the NMC, *vide* impugned LoD disapproved the application of the petitioner institute seeking increase in intake of 100 UG seats from 150 to 250 for the Academic Year 2025-2026.

54. Evidently, in the impugned LoD, it was pointed out that AEBAS data of petitioner institute’s faculty for the period of June-August 2025 was analysed and it showed that only 49 faculties with at least 75% attendance were available and the department wise faculty calculated as per MSR of faculty for 250 seats was noted to be 70.83%. It further pointed out that AEBAS attendance on the day of inspection also showed only 80 faculties. The LoD is reproduced herein below in extenso:

“WHEREAS, the medical college has submitted application to Medical Assessment and Rating Board (MARB) of NMC for increase in intake of 100 (One Hundred) MBBS seats (from 150 to 250 seats) for A.Y. 2025-26.

2 WHEREAS, the medical college has been granted an opportunity vide Show Cause Notice (SCN-1) dated 11.06.2025 & (SCN-2) dated 18.07.2025 to comply with and rectify the deficiencies noted by MARB during the scrutiny of documents submitted with the application and submit a compliance report.

3. WHEREAS, the medical college has submitted the compliance report dated 16.06.2025 & 21.07.2025 against



SCN-1 & SCN-2 respectively, which have been examined in MARB.

4. WHEREAS, experts have done assessment/evaluation of the documents w.r.t application submitted by the college on relevant NMC regulations, MSR guidelines, MARB guidelines and relevant circulars, AEBAS data and notices issued time to time and observed following deficiencies:

Sr. No.	Parameters	Deficiencies
(a)	Faculty	• AEBAS attendance of three months (June-Aug 2025 with atleast 75% attendance) shows only 49 faculty available and the department wise deficiency of faculty is 70.83%, calculated as per MSR of faculty for 250 seats • AEBAS attendance on the day of inspection also shows only 80 faculty.
(b)	Other	• 10 LAKH penalty imposed at the time of renewal by UGMEB for the academic year 2025-26.

5. AND THEREFORE, on the basis of above cited deficiencies Medical Assessment and Rating Board (MARB) has decided to issue the **LETTER OF DISAPPROVAL (LoD)** against application No. NMC/UGI/2025-26/000093 of of **Dr. B.S. Kushwah Institute of Medical Sciences, Kanpur, Uttar Pradesh** for increase in intake of **100 (One Hundred) MBBS seats (from 150 to 250 seats)** for A.Y. 2025-26, u/s 28 (3) of NMC Act, 2019.

6. In case the Medical College does not agree with the above decision of MARB, it may prefer an appeal under section 28(5) of NMC Act, 2019; addressed to Secretary, NMC; within 15 days of this order, through online mode only as per NMC's Public notices dated 21.05.2024 and 30.05.2024."

55. The submission of Mr. Vikas Singh on behalf of the petitioner in this regard is that issue of deficiency of faculty as per AEBAS data was never raised by the NMC in any of the SCNs sent by it to the petitioner institute before passing of the impugned LoD. Thus, NMC ought to have



adhered to its finding in the physical inspection report dated 26.06.2025, which only showed deficiencies to the extent of 2.97%. He further contended that primacy should always be given to the physical inspection report.

56. This submission of Mr. Vikas Singh on a first blush, looks appealing, but on a keener scrutiny, pales into total insignificance. This Court is disposed to think so inasmuch *vide* 2nd SCN dated 18.07.2025 the issue of deficiency in faculty as per AEBAS was indeed pointed out under the heading of “Deficiencies”, but deficiency in clear terms was not mentioned. Even the petitioner in its compliance report dated 21.07.2025 did not specify the faculty which fulfilled the criteria of 75% in terms of Clause 3.2 of the Guidelines of 2023.

57. However, from the letter dated 14.07.2025 sent by NMC to the petitioner institute granting conditional approval as regards to the intake of 150 UG seats for Academic Year 2025-2026, it is evident that there was clear deficiency in faculty as per AEBAS. Furthermore, the letter dated 14.07.2025 specifically mentioned that *vide* notice dated 15.06.2025, the petitioner institute was notified about the following deficiencies noticed by the experts during assessment - (i) 19 out of 20 department are deficient in faculty/resident/tutor as per AEBAS record data; (ii) 02 out of 20 department are deficient as per self-declaration data (Radio-diagnosis).

58. Perusal of letter dated 14.07.2025 also reveals that the petitioner institute was given a physical hearing on 01.07.2025 and it was observed that gross and substantive deficiencies in both faculty and clinical parameters were found in the petitioner institute. The petitioner institute



also accepted the deficiencies and assured to fulfil the same within a very short span of time. Since the deficiencies included deficiency pertaining to faculty as per AEBAS data, were found to be persisting, the NMC imposed the penalty of Rs. 10,00,000/- on petitioner institute and granted it conditional renewal.

59. In the said letter it was also observed that after a gap of two months, re-assessment of the petitioner institution will be conducted and if deficiencies still found to exist, then action as deemed fit as mandated under MSMER-2023 Chapter-III, Clause-8 (Penalties) shall be imposed without further notice.

60. The relevant paras of letter dated 14.07.2025 reads as under:

“2. Based on the details furnished by your college, the experts assessed the submissions, and accordingly, a Notice dated 15.06.2025 was issued highlighting the following deficiencies observed during the assessment:

- i. Nineteen (19) out of Twenty (20) departments are deficient in faculty/Resident/tutor as per AEBAS record data.*
- ii. One 01 out of 20 Departments are deficient as per self declaration data (Radio-diagnosis)*
- iii. Data filled in number of deaths appears disproportionate.*
- iv. Family adoption program - 03 villages clubbed together and number of visit 24/hr. while LOP date is 08/11/2024. Data appears unreliable explanation should be sought.*
- v. Examination data not applicable.*
- vi. Clinical data and faculty data appears to be too close to NMC parameters. Physical verification should be done.*

3. Subsequently, the compliance report submitted by your Institution was also evaluated by the Assessors; however,



amongst other deficiencies, following key deficiencies were again highlighted w.r.t. your College/Institution:

- i. **Some departments are deficient in faculty/Resident/tutor as per AEBAS record data, however your explanation has been accepted therefore, the college may adhere to the deficiencies found in the AEBAS.**
- ii. Data of the no. of deaths is still inadequate.
- iii. Clinical data and faculty data are still inadequate.

4. In the physical hearing, your college was represented by the Dean/Principal/Vice—Principal/HoD, who appeared before the Board on 01.07.2025. It is observed that gross and substantive deficiencies in both faculty and clinical parameters were found in your medical colleges/Institute. And the clarifications furnished by your institution were not found convincing and satisfactory. The college also accepted the deficiencies and assured to fulfill the same within a very short span of time. As per the standards prescribed under the extant regulations, a medical college shall be deemed grossly deficient if significant shortcomings are observed in any of the following key parameters:

- I. Data/Details submitted by the Colleges in Annual Declaration Form on the NMC portal.
- II. AEBAS Analysis (Aadhaar Enabled Biometric Attendance System) for the AY 2024-25.
- III. Reply of the College Authorities to the Show Cause Notice
- IV. Physical Hearing of college authorities.
- V. Verification of Form-16 and Form 26AS as provided by college authority.

4. Further, it is to convey that the college was earlier cautioned during the academic year 2024-25 that stringent action, as mandated under Chapter-III, Clause-8 of the MSMER—2023 under the heading "Penalties", would be imposed if the deficiencies continued to exist. Despite this, the deficiencies have persisted and no significant



improvement has been noted. Since the medical college has been found deficient in one or more of the parameters stated in Paragraph 3 above, the Board has decided to impose penalty of Rs. 10,00000/- and to grant conditional renewal of 150 undergraduate (MBBS) seats for the academic year 2025-26, Subsequently, after a gap of two months, a re—assessment of the college will be conducted. If deficiencies are still found to exist, then action as deemed fit as mandated under MSMER-2023 Chapter-III, Clause-8 (Penalties) shall be imposed without further notice.

5. As per, it is directed to remit the penalty amount within seven days (7 days) into "NMC Own Resources, Canara Bank Account No.No. 90682160000025, IFSC code CNRB0019109 and forward confirmation of payment along with transaction details to ugrenewal@nmc.org.in.

6. If you are not satisfied and aggrieved with the decision of the Board, you are free to prefer an appeal before the Commission under Section 9, Chapter IV of the Maintenance of Standards of Medical Education Regulations, 2023, (MSMER, 2023) within sixty days of the issue of this letter.”

(emphasis supplied)

61. Incidentally, the petitioner in the writ petition also admitted grant of conditional approval vide letter dated 14.07.2025 and having deposited the penalty amount of Rs. 10,00,000/- without any protest.

The relevant para from the amended writ petition reads thus:

“VI. That it is relevant to mention herein that the UG Medical Education Board, NMC vide its letter dated 14.07.2025 granted conditional renewal of permission of 150 Undergraduate Seats for the academic year 2025-26 to the petitioner institute and imposed cost of Rs.10,00,000 was deposited by the petitioner without any protest.”

(emphasis supplied)



62. The petitioner has thus, admitted the existence of deficiency in faculty even *qua* 150 MBBS seats during the physical hearing on 01.07.2025, which were found to persist while imposition of penalty of Rs. 10,00,000/- and granting conditional approval in respect of above 150 seats *vide* letter dated 14.07.2025. The 2nd SCN was issued immediately thereafter on 18.07.2025 wherein again it was pointed out that there is deficiency in terms of AEBAAS, therefore, 2nd SCN has to be seen in light of the persisting deficiency in faculty, as noted in letter dated 14.07.2025, which has been accepted by the petitioner without contest.

63. When there was deficiency in faculty as on 14.07.2025 *qua* 150 seats, obviously deficiency in faculty *qua* 250 MBBS seats (including 100 of which increase is sought) would have definitely existed as on 18.07.2025. Therefore, the petitioner cannot feign ignorance about deficiency in faculty.

64. On the contrary, it appears that deficiency in the faculty was repeatedly pointed out by MARB *vide* notice dated 15.06.2025; during personal hearing on 01.07.2025, and again *vide* conditional approval letter dated 14.07.2025 *qua* 150 seats. Therefore, this Court finds that deficiency in faculty was well within the knowledge of the petitioner, and it is difficult to visualize any real prejudice to the petitioner on that count.

65. Consequently, it is difficult to accept the argument of Mr. Singh that the petitioner institute was never informed about deficiency in faculty and given opportunity to rectify the same, and the same is accordingly, rejected.



66. That apart, given inherent dynamic nature of faculty, its strength cannot remain static and would undergo change as and when any teacher joins or leaves the institute. It is in this context that the deficiencies noted by MARB in relation to AEBAS attendance of three months (June-Aug 2025) in the impugned LoD dated 24.09.2025, has to be seen. In terms of Section 28(7) of the Act, MARB is well within its power to conduct evaluation and assessment of any medical institution on its own without any prior notice and assess and evaluate the performance, standards and benchmarks of such medical institution. Such assessment or inspection could be done by MARB by way of verification of AEBAS data in terms of Regulation 14 read with 2(h) of the Regulations of 2023.

67. The purpose of implementing AEBAS through MSRs is to substitute physical attendance registers, which are susceptible to manipulation. It constitutes a crucial and objective parameter for determining the actual physical presence and regularity of teaching faculty, residents and staff in the medical college. It provides verifiable, tamper-proof evidence of attendance over a continuous period and is a core compliance of requirement under the MSRs.

68. Notably, the fundamental rationale for maintaining AEBAS and minimum 75% attendance at all working days, as it appears, is that the medical colleges and institutes must have requisite regular permanent faculty, to ensure that standard of education is maintained. Regularity and permanency nurture consistency and stability. Such biometric authenticated attendance system i.e., AEBAS, cannot thus, be seen as a mere formality, but an integral regulatory mechanism to enforce the mandate under Section 28(7) read with Section 29 of the Act.



69. Therefore, if MARB has done inspection/assessment of petitioner's AEBAS data for June-August 2025 without giving any prior notice to the petitioner to ascertain as to whether the deficiency still persist or not, and has based its finding of deficiency in faculty on such data and concomitantly passed an order of Disapproval, no fault could be found in the same. Further, repeated opportunities cannot be given to medical institutes to rectify the deficiencies in faculty and that too when the counselling is at its fag end.

70. The MARB observed that the AEBAS attendance data for the preceding three months (June–August, 2025) indicated that only 49 faculty members were available on consistence basis, resulting in a department wise deficiency of 70.83%, when calculated in terms of required faculty strength as per the MSR Norms for 250 MBBS seats, which way beyond permissible limit of 5%. Even on the day of inspection, the AEBAS data reflected the presence of only 80 faculty members, which is grossly inadequate to maintain the requisite teaching standards and to ensure compliance with statutory norms. These findings have been buttressed by the respondents with the AEBAS data of 26.06.2025 i.e. the date of inspection, as well as, of three months i.e. June-August, 2025.

71. Incidentally, the petitioner has not disputed the findings of faculty deficiency recorded in the impugned LoD, or the AEBAS data, particularly of June-August 2025, placed on record by the respondents. In that view of the matter, the submission of Mr. Vikas Singh that only physical inspection report is to be seen for granting permission, does not hold any water.



72. MARB is an autonomous board of experts constituted in terms of Section 16 and 17 of the Act and once the deficiency in faculty is found by the MARB with reference to AEBAS, there is no reason for this Court to take a different view, when such findings are supported by the AEBAS data, and there are no allegations of bias *mala fide* against MARB. The law is well settled that it is not within the writ jurisdiction of this Court to sit in appeal over, re-evaluate, or substitute its own findings for those of the expert assessors. The assessment and conclusions drawn by such expert teams, which are based on their direct, factual evaluation of facilities and personnel, are binding and must be given due deference. Reference in this regard may beneficially be had to the decision in ***Kalinga Institute of Medical Sciences (supra)***, wherein following pertinent observations were made:

*“21. A perusal of the decision of the High Court clearly indicates that it considered the latest report of the Inspection Team as if it was hearing an appeal against the report. In doing so, the High Court went into great details on issues relating to the number of teaching beds in the hospital, the limitations in the OPD Department, the number of units available in the subjects of General Medicine, Pediatrics, etc., bed occupancy, number of caesarean sections, discrepancy in data of major and minor operations, computerisation in the institution, number of patients in the ICU, number of static x—ray machines, deficiency of examination halls, lecture theatres, library, students hostel, interns hostel, playground, etc. etc. **Surely, this was not within the domain of the High Court in exercise of its jurisdiction under Article 226 of the Constitution.***

*22. **The High Court did not appreciate that the inspection was carried out by eminent Professors from reputed medical institutions who were experts in the field and the best***



persons to give an unbiased report on the facilities in KIMS. The High Court under Article 226 of the Constitution was certainly not tasked to minutely examine the contents of the inspection report and weigh them against the objections of KIMS in respect of each of its 18 items. In our opinion, the High Court plainly exceeded its jurisdiction in this regard in venturing into seriously disputed factual issues.

23. *The learned counsel for KIMS and the students submitted that the High Court was left with no option but to critically examine the report of the Inspection Team since it was factually erroneous and did not deserve to be relied on either for the increase in intake of seats for the academic year 2015—2016 or the academic year 2016—2017. We see no reason to accept the submission of the learned counsel.*

24. *Medical education must be taken very seriously and when an expert body certifies that the facilities in a medical college are inadequate, the courts are not equipped to take a different View in the matter except for very cogent jurisdictional reasons such as mala fides of the Inspection Team, ex facie perversity in the inspection report, jurisdictional error on the part of MCI, etc. Under no circumstance should the High Court examine the report as an appellate body — this is simply not the function of the High Court. In the present case there was no ground made out at law for setting aside the report of the Inspection Team.”*

(emphasis supplied)

73. Similar view was taken by Hon’ble Supreme Court in ***Manohar Lal Sharma v. Medical Council of India, (2013) 10 SCC 60***, wherein it was observed thus:

“26. We have already dealt with, in extenso, the deficiencies pointed out by the MCI team in its report dated 6-7-2013. In our view, the deficiencies pointed out are fundamental and very crucial, which cannot be ignored in the interest of medical



education and in the interest of the student community. **MCI and the College authorities have to bear in mind, what is prescribed is the minimum, if MCI dilutes the minimum standards, they will be doing violence to the statutory requirements. MCI is duty-bound to cancel the request if fundamental and minimum requirements are not satisfied or else the College will be producing half—baked and poor quality doctors and they would do more harm to the society than service.** In our view, the infirmities pointed out by the inspection team are serious deficiencies and the Board of Governors of MCI rightly not granted approval for renewal of permission for the third batch of 150 MBBS students for the academic year 2013-2014.

27. We are also of the view that such an order is not vitiated by violation of principles of natural justice, especially, when no allegation of bias or mala fide has been attributed against the two doctors who constituted the inspection team, which conducted the surprise inspection on 6.7.2013. When the inspection team consists of two doctors of unquestionable integrity and reputation, who are experts in the field, there is no reason to discard the report of such inspection. In such circumstances, we are of the View that MCI has rightly passed the order rejecting the approval for renewal of permission for the third batch of 150 MBBS students granted for the academic year 2013-2014. Consequently, Writ Petition (C) No. 590 of 2013 is allowed and IA No. 2 of 2013, filed in SLP (C) No. 28480 of 2012, is disposed of, as above.”

(emphasis supplied)

74. Reliance placed by Mr. Vikas Singh on the judgement of this court in **Dhanalakshmi Srinivasan Medical Institute and Hospital & Anr., vs Union of India and Anr., 2022 SCC OnLine Del 3701** is misplaced as in the said case the court found that the petitioner therein was within the permissible limit, which is not the situation in the present case. In the present case the petitioner contends that it was well within the relaxation limit as deficiency in faculty at the time of physical inspection was



found to be 2.97%. But at the same time the said deficiency gradually increased to the department-wise deficiency of 70.83%, which is not within relaxation limit.

75. Similarly, reliance placed by Mr. Vikas Singh on the decision of the Hon'ble Apex Court in ***Rajiv Memorial Academic Welfare Society and Anr. Vs Union of India and Anr. (2016) 11 SCC 522*** to contend that no further inspection is required if minor deficiencies are there, is misplaced. In the said case the deficiencies were minor and it was a new college, therefore, Hon'ble Supreme Court observed that minor/irrelevant deficiencies do not justify disapproval of a new medical college. Whereas, in the present case deficiency is neither minor nor the institute is new. As noted above, the deficiency in respect of faculty is a major deficiency and the petitioner college is 70.83% deficient in department-wise faculty.

76. In the view of the above discussion and the law expounded by the Hon'ble Supreme Court as noted above, the writ petition is found to be devoid of merit.

77. Accordingly, the petition along with pending application(s), is dismissed.

VIKAS MAHAJAN, J

NOVEMBER 08, 2025

N.S. ASWAL