REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3964 OF 2016
(Arising out of S.L.P.(C) NO.5326 OF 2016)

Medical Council of India ... Appellant(s)

Versus

V.N. Public Health & Educational Trust & Ors ... Respondent(s)

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. The first respondent, V.N. Public Health & Educational Trust (for short, "the Trust"), vide letter dated 30.08.2015 submitted an application for establishment of a new medical college from the academic year 2016-17 to the competent

authority of the Central Government and the said application dated 30.08.2015 was forwarded by the Government of India to the appellant, Medical Council of India (MCI) vide letter dated 23.09.2015. After initial scrutiny of the application, MCI noticed that the Essentiality Certificate issued by the Government of Kerala in favour of the Trust was not valid as the same was not in accordance with the format prescribed by the Establishment of the Medical College Regulations, 1999 (for short, "the Regulations") of the MCI. Regard being had to the nature of the Essentiality Certificate and the decision of this Court in ***Royal Medical Trust (Registered) and another v. Union of India & another***[1], the MCI decided to recommend to the Central Government to disapprove the application submitted by the Trust for establishment of a new medical college commencing from the academic year 2016-17. The Government of India vide its letter dated 04.11.2015 called upon the Trust to appear before the Committee on 16.11.2015 to explain its stand. As the said respondent failed

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1 (2015) 10 SCC 19

to appear before the concerned Committee on the date fixed, the matter was decided *ex parte*.

3. As the factual score would depict, the Trust being aggrieved by the issuance of an invalid certificate by the State of Kerala and disapproval of its scheme for establishment of a new medical college from the academic year 2016-17 approached the High Court of Kerala at Ernakulam in Writ Petition (C) No. 35705 of 2015. The learned single Judge vide order dated 25.11.2015 issued the following directions:-

> "In the light of Ext.P1 renewal application and the renewed Essentiality Certificate, this court is of the view that petitioner's application for establishment of new Medical College shall not be rejected on account of any deficiency existed in the renewed certificate. In the meanwhile, there shall be a direction to the third respondent to pass appropriate orders on Ext.P6 within ten days. Post after two weeks."

4. Thereafter the learned single Judge took note of the fresh Essentiality Certificate and the following directions were issued as per the order dated 16.12.2015:-

> "The petitioner is an educational agency. They applied for establishment of a medical college.

> The original Essentiality Certificate issued by the State Government suffered from defects as it was not in the required format. Based on the interim order, the petitioner's application for Essentiality Certificate kept pending before the Central Government and the State Government was directed to consider the application for fresh revised Essentiality certificate. Now it is submitted that the petitioner has obtained a fresh Essentiality Certificate and it has been submitted before the first respondent. Therefore the first respondent shall consider the application and take a decision after hearing the petitioner and do the needful in accordance with the law."

5. Dissatisfied with the aforesaid order, the appellant preferred Writ Appeal No. 96 of 2016. It was contended before the Division Bench that pursuant to the order passed by the learned single Judge, the Central Government on 23.12.2015 had asked the MCI to review the recommendation but the said direction was not possible to be adhered to on account of the time schedule fixed pertaining to such matters. It was also urged that the letter of intent had to be issued by the Central Government on or before 15.01.2016 and sufficient time was not available for taking further steps in the matter. Additionally, it was argued that as per the time schedule, MCI was required to give the recommendation to the Central

Government for issue of letter of intent by 15.12.2015. The Division Bench, after noting the submissions, passed the following order:-

> "5. Though it is argued by the learned counsel for the appellant that the time schedule could not be changed, still the Central Government has sufficient power to extend the time schedule to a certain extent and when the Central Government had requested the MCI to consider the application in terms of the letter dated 23.12.2015, we do not think that this Court should interfere in the matter at this stage of the proceedings.
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> 6. As far as the judgment is concerned, the learned Single Judge had only directed the Central Government to consider the application of the petitioner and take a decision after hearing them. That process has already been completed and Annexure A2 dated 23.12.2015 has been issued by the Central Government."

Being of this view, it declined to interfere with the order passed by the learned single Judge and dismissed the appeal.

6. We have heard Mr. Vikas Singh, learned senior counsel along with Mr. Gaurav Sharma, learned counsel for the appellant, Ms. Pinky Anand, learned Additional Solicitor General along with Mr. B. Krishna Prasad, learned counsel for

respondent No. 2 and Mr. Huzefa Ahmadi, learned senior counsel along with Mr. Ranjiv Ranjan Dwivedi, learned counsel for respondent No. 1 and Mr. M.T. George, learned counsel for respondent No. 3.

7. The focal issue that arises for consideration is whether the learned single Judge was justified in directing the MCI to take into consideration the revised Essentiality Certificate submitted by the Trust after 30th of September, 2015, and whether the Trust had submitted a proper and requisite Essentiality Certificate along with the application on 30th of August, 2015. As is demonstrable, the Trust had submitted an incomplete application on 30th of August, 2015 which was forwarded by the Central Government to the MCI vide communication dated 23.09.2015. Be it stated that the MCI had noticed that the Essentiality Certificate was on record by the time the application was forwarded to it. The MCI on scrutiny found that the Essentiality Certificate was not in accordance with the format prescribed by the Regulations and accordingly did not recommend for the approval of the college.

8. Mr. Singh, learned senior counsel for the appellant, has drawn our attention to the renewed Essentiality Certificate granted by the Government of Kerala on 31.08.2015. The relevant part of the said Certificate reads as follows:-

> "The Managing Trustee-Secretary, V.N. Public Health & Educational Trust, NRT Nagar, Theni, Tamil Nadu State has applied for establishment of a Medical College at Walayar in Palakkad District. On careful consideration of the proposal, the Government of Kerala has decided to issue an Essentiality Certificate to the applicant for the establishment of a Medical College with 150 seats.
>
> It is certified that:
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> (a) The applicant owns and manages 300 bedded hospital at Palakkad District.
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> (b) It is desirable to establish a Medical College in the public interest.
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> (c) Establishment of a Medical College at Palakkad District by V.N. Public Health & Educational Trust is feasible.
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> (d) The Essentiality Certificate is issued on condition that all clinical materials as per Medical Council of India norms will be made available in the hospital within the stipulated time as fixed by the Medical Council of India.
>
> (e) The Management will share 50% of the total MBBS seats with Government to fill

students from the list prepared by the Commissioner for Entrance Examinations, Kerala.

It is further certified that in case the applicant fails to create infrastructure for the Medical College as per Medical Council of India norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the students already admitted in the College with the permission of the Central Government."

[Emphasis added)

9. The pertinent part of the communication dated 19.10.2015 made by the MCI to the competent authority of the Central Government is as follows:-

"It is to inform you that on perusal of the application/documents submitted by the applicant, it is noted that as per the Essentiality Certificate dated 31/08/2015 issued by the Government of Kerala *"The Essentiality Certificate is issued on condition that all clinical materials as per Medical Council of India norms will be made available in the hospital within the stipulated time as fixed by the Medical Council of India.*" However, prescribed proforma for Essentiality Certificate states that *"(d) Adequate clinical materials as per the Medical Council of India norms is available."*

In view of the above, it is clear that at the time of issuance of Essentiality Certificate, the applicant does not fulfill the mandatory qualifying criteria of the availability of the "Adequate clinical

material as per the Medical Council of India norms." Accordingly, the applicant does not meet the mandatory criteria prescribed under the regulations.

In this regard, it is further to inform you that the Hon'ble Supreme Court vide its judgment dated 20/08/2015 in W.P. (C) No. 705/2015-Royal Medical Trust (Regd.) and Another Vs. Union of India and Anrs. has passed the following Order:-

"… (A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent of affiliation and physical features like land and hospital requirement. If an applicant fails to fulfill these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfill the basic requirements would be considered at the next stage…"

In view of the above, the Council Office has decided to return the application for establishment of new medical college at Wayalar, Kerala (Palakkad Institute of Medical Sciences, Palakkad, Kerala) by V.N. Public Health & Education Trust, Tamilnadu to the Central Govt. recommending disapproval of the scheme u/s 10A of the IMC Act, 1956 for the academic year 2016-17, as the applicant fails to fulfill necessary requirement of availability of the adequate clinical material as per the Medical Council of India norms."

10. On a perusal of the Essentiality Certificate dated 31.08.2015, it is obvious that it is a conditional certificate.

The said fact has been reiterated by the appellant-MCI vide its communication dated 19.10.2015. A conditional certificate cannot be regarded as the requisite Certificate inasmuch as the conditions which are essential to the certificate are required to be fulfilled. On the basis of such a certificate, the MCI was not expected to approve the application submitted by an educational institution. It had clearly communicated that the prescribed format stipulates that adequate clinical material as per the MCI norms "is available". Thus, the availability has to be *in praesenti* but not to be a condition to be satisfied at a later stage. That is not the postulate in the Regulations. In ***Royal Medical Trust*** (supra), a three-Judge Bench referring to Section 10-A of the Indian Medical Council Act, 1956 (for brevity, "the Act') has ruled that:-

> "Section 10-A contemplates submission of a scheme to the Central Government in the prescribed form, which scheme is then to be referred by the Central Government to MCI for its appropriate recommendations. The scheme is to be considered having regard to the features referred to in sub-section (7) and is then placed before the Central Government along with the recommendations of MCI. In exercise of powers conferred by Section 10-A read with Section 33 of

> the Act, MCI with the previous sanction of the Central Government has made "Establishment of the Medical College Regulations, 1999" (hereinafter referred to as "the Regulations") which were published in the Gazette of India on 28-8-1999. Para 3 of the Regulations lays down that no person shall establish a medical college except after obtaining prior permission of the Central Government by submitting a scheme. The Regulations then deal with the scheme in extenso. Clauses 1 and 2 of the scheme deal with "eligibility criteria" and "qualifying criteria", respectively. Clause 3 then sets out certain requirement in parts (i), (ii) and (iii) concerning various details about the status of the applicant in terms of the eligibility criteria, name and address of the medical college including various facets of the infrastructure and planning and the details of the existing hospital including availability of various facilities and capacities as also upgradation and expansion programme."

After so stating, the Court referred to para 7 of the Regulations which deals with the report of the MCI, and para 8 that deals with grant of permission by the Central Government. Reference has also been made to the schedule for receipt of applications for establishment of new medical colleges and increase of admission capacity in an existing medical college and processing of the applications by the

Central Government and the Medical Council of India. Thereafter, Court has proceeded to observe:-

> "MCI and the Central Government have been vested with monitoring powers under Section 10-A and the Regulations. It is expected of these authorities to discharge their functions well within the statutory confines as well as in conformity with the Schedule to the Regulations. If there is inaction on their part or non-observance of the time schedule, it is bound to have adverse effect on all concerned. ..."

11. After so stating, the three-Judge Bench has directed the schedule must ideally take care of:-

> "(A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfil these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfil the basic requirements would be considered at the next stage.
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> (B) Inspection should then be conducted by the Inspectors of MCI. By very nature such inspection must have an element of surprise. Therefore sufficient time of about three to four months ought to be given to MCI to cause inspection at any time and such inspection should normally be undertaken latest by

January. Surprise inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

(C) Intimation of the result or outcome of the inspection would then be communicated. If the infrastructure and facilities are in order, the medical college concerned should be given requisite permission/renewal. However, if there are any deficiencies or shortcomings, MCI must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

(D) If compliance is reported and the applicant states that the deficiencies stand removed, MCI must cause compliance verification. It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of MCI and the Central Government. In cases where actual physical verification is required, MCI and the Central Government must cause such verification before the deadline.

(E) The result of such verification if positive in favour of the medical college concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still persist or had not been removed, the applicant will stand disentitled so far as that academic year is concerned."

12. Mr. Singh, learned senior counsel appearing for the appellant has drawn our attention to the order dated January

18, 2016 passed in I.A. Nos. 7 & 8 in Writ Petition (Civil) No. 76 of 2015 titled ***Ashish Ranjan & Ors. v. Union of India & Ors.*** wherein the Court had taken note of notification issued by the MCI with the previous sanction of the Central Government. The notification has prescribed the time schedule for receipt of applications for establishment of new medical colleges/renewal of permission and processing of the applications by the Central Government and the Medical Council of India. The schedule in this regard reads as follows:-

"S. No.	Stage of processing	Last date
1	Receipt of applications by the Central Government	Between 15th June to 7th July (both days inclusive) of any year
2	Forwarding application by the Central Government to Medical Council of India	By 15th July
3	Technical Scrutiny, assessment and Recommendations for Letter of Permission by the Medical Council of India	By 15th December
4	Receipt of reply/compliance from the applicant by the Central Government and for personal hearing thereto, if any, and forwarding of compliance by the Central Government to the Medical Council of India	Two months from receipt of recommendation from MCI but not beyond 31st January.

5	Final recommendations for the Letter of Permission by the Medical Council of India	By 30th April
6	Issue of Letter of Permission by the Central Government	By 31st May

Note 1. In case of renewal of permission, the applicants shall submit the application to the Medical Council of India by 15th July.

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In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956(102) of 1956, the Medical Council of India with the previous sanction of the Central Government, hereby makes the following Regulations to further amend the "Opening of a New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and increase of Admission Capacity in any Course of Study or Training (Including a Postgraduate Course of Study or Training) Regulations 2000", namely:-

(i) These Regulations may be called the "Opening of a New or Higher Course of Study or Training (Including Postgraduate Course of Study or Training) and increase of Admission Capacity in any Course of Study or Training (including Postgraduate Course of Study or Training (Amendment) Regulations 2015.

(ii) They shall come into force from the date of their publication in the Official Gazette."

13. The two-Judge Bench, after reproducing the entire notification which deals with various situations, has given the stamp of approval to the said Schedule.

14. In this context, we may profitably refer to the decision in ***D.Y. Patil Medical College v. Medical Council of India & Anr.***[2] wherein the controversy had arisen due to rejection of the application of the institution on the ground that Essentiality Certificate was not filed along with the application form. The Court dwelled upon the principles stated in ***Educare Charitable Trust v. Union of India & Anr.***[3], ***Royal Medical Trust*** (supra) and various other decisions and, after anaylsing the scheme of the Act, has held:-

> "It is apparent from the aforesaid decision and the regulations that the application at the first instance is required to be complete and incomplete applications are liable to be rejected. Thereafter, there has to be an inspection and other stages of decision-making process."

15. The impugned order passed by the High Court is to be tested and adjudged on the anvil of the aforesaid authorities.

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2 2015 (10) SCC 51

3 AIR 2014 SC 902 : (2013) 16 SCC 474

The application for grant of approval was filed with the Essentiality Certificate which was a conditional one and, therefore, a defective one. It was not an Essentiality Certificate in law. In such a situation, the High Court could not have directed for consideration of the application for the purpose of the inspection. Such a direction, we are disposed to think, runs counter to the law laid down in ***Educare Charitable Trust*** (supra) and ***Royal Medical Trust*** (supra). We may further proceed to state that on the date of the application, the Essentiality Certificate was not in order. The Schedule prescribed by the MCI, which had been approved by this Court, is binding on all concerned. MCI cannot transgress it. The High Court could not have gone beyond the same and issued any direction for conducting an inspection for the academic year 2016-17. Therefore, the directions issued by the learned single Judge and the affirmation thereof by the Division Bench are wholly unsustainable.

16. Consequently, the appeal is allowed and the judgments and orders passed by the High Court are set aside. It will be open to the Trust to submit a fresh application for the next

academic year in consonance with the provisions of the Regulations of the MCI and as per the time Schedule; and in that event, it will be considered appropriately. In the facts and circumstances of the case, there shall be no order as to costs.

.....J.
[Dipak Misra]

.....J.
[Shiva Kirti Singh]

New Delhi
April 18, 2016