

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.703-704 OF 2021
ARISING OUT OF
SPECIAL LEAVE PETITION (C) NOS. 14219-14220 OF 2020

V.N. PUBLIC HEALTH AND APPELLANT(S)
EDUCATIONAL TRUST ETC.

VERSUS

STATE OF KERALA & ORS. ETC. RESPONDENT(S)

J U D G M E N T

KRISHNA MURARI, J.

Leave granted.

2. These appeals arises out of the Judgment and Order dated 03.11.2020 passed by the Kerala High Court in Writ Appeal Nos. 1401 and 1413 of 2020, wherein the Division Bench of the said High Court modified the directions of the learned Single Judge to the extent of consideration for establishment of Medical College by the appellant for the Academic Year 2021-2022.

3. The issue arising for consideration before us is whether Essentiality Certificate (hereinafter referred to as 'EC') and Consent of Affiliation (hereinafter referred to as 'CoA') should be granted for the year 2020-2021 to the appellant. The other issues which need to be addressed are :-

(i) Whether grant of Essentiality Certificate by the State Government is only a Ministerial Act?

(ii) Whether Essentiality Certificate, once issued, can be withdrawn?

4. **Facts in brief :-**

The appellant is a trust set up with the object of promoting education in Health and Medicine. To start a Medical College, the appellant claims to have set up a 300 bedded hospital in Walayar, Palakkad District in 2006. According to the case set up by the appellant, the requisite infrastructure was put in place and it has been trying to establish a Medical College from the year 2006 onwards but due to the arbitrary and discriminatory action of the State Government and the Kerala University of Health Sciences by denying the EC and CoA, it has miserably failed in its attempt. It has been asserted in the pleading that in presenti, the appellant's hospital has 76 doctors, 380 nurses and paramedical staff, 4 major operation theatres, 2 minor operation theatres, along with all other facilities and infrastructure required to run a Medical College.

The EC was granted for the first time to the appellant on 24.01.2004 for 100 seats. However, since the same was not in the prescribed format, therefore, Medical Council of India (hereinafter referred to as 'MCI') refused to accept the application of the appellant. The EC was again issued to the appellant on 18.06.2009 for 100 seats. Since the same was beyond the prescribed time limit, hence it was again rejected by the MCI. The appellant was again issued an EC dated 12.01.2011. However, the Kerala University of Health and Allied Science (hereinafter referred to as 'KUHS') granted CoA belatedly much after the time schedule as such the college could not be established. It may be pertinent to point out that the Essentiality Certificate dated 12.01.2011 was valid only for the Academic Year 2011-2012 and 2012-2013. It is an admitted fact that the appellant failed to establish the college during the Academic Year 2011-2012 and 2012-2013 for which the EC was valid. On 10.06.2014, the State Government issued a renewed EC which contained a clerical error which was corrected belatedly on 11.12.2015 much after the date for submission of the application to the Central Government for establishment of Medical College. As a consequence, the MCI returned/ rejected the application for the Academic Year 2014-2015. Application made by the appellant for establishment of the Medical College for the year 2015-2016 was returned by the Government of India vide letter dated 17.10.2014, on the ground that CoA submitted along with the proposal was not valid for the Academic Year 2015-2016 leaving it open to the appellant to submit a fresh application for the Academic Year 2016-2017. It may be pertinent to note at this

stage that the appellant had preferred Writ Petition No. 29462 of 2014 before the High Court, wherein an interim order dated 22.11.2014 was passed directing the MCI to consider the application provisionally and further direction was issued to KUHS to conduct inspection for grant of fresh CoA. However, the fresh CoA could not be granted and with the elapse of time the petition was rendered infructuous. The appellant was granted provisional CoA by KUHS for the Academic Year 2016-2017. Insofar as EC is concerned, it was issued by the State Government for the said Academic Year on 31.08.2015 which was the last date for submission of the application and it was in a wrong format. The appellant approached the High Court by filing Writ Petition No. 25705 of 2015. The High Court vide order dated 25.11.2015 directed the State Government to correct the format and also directed the Central Government to consider the application of the appellant. A revised EC was issued to the appellant on 11.12.2015. However, MCI filed an SLP (C) No. 5326 of 2016 on the ground that the certificate had been issued belatedly, hence the application was not liable to be considered. Civil Appeal No. 3964 of 2016 arising out of the said SLP was allowed vide Judgment dated 18.04.2016 and the orders impugned by the High Court were set aside. It was left open to the appellant to submit a fresh application for the next Academic Year in consonance with the provisions of the Regulations of the MCI as per the time schedule.

The appellant again moved the High Court by filing Writ Petition (C) Nos. 21581 of 2017 and 22103 of 2017 alleging non-consideration of his application by the State

Government and KUHS. Vide order dated 28.09.2017, the State Government rejected the application of the appellant for renewal of EC. The appellant filed yet another Writ Petition (C) No. 40290 of 2017, challenging the order dated 28.09.2017 which was disposed of. However, the orders passed therein were stayed by the Division Bench of the High Court in Writ Appeals i.e., Writ Appeal No.1371 of 2018 and Writ Appeal No. 1370 of 2018.

For the Academic Year 2020-2021, the appellant again made an application for grant of EC and CoA before the State Government and KUHS, respectively. When no action was taken, appellant filed Writ Petition No. 18238 of 2019 seeking direction to KUHS to consider his application. Another Writ Petition No. 23460 of 2019 was also filed seeking direction to the State Government to consider the application for grant of EC. Writ Petition No. 18238 of 2019 seeking direction against the KUHS was dismissed vide order dated 05.09.2019 on the ground that last date for submission of application before the Medical Council of India was over. Insofar as, Writ Petition No. 23460 of 2019, the same was disposed of vide order dated 04.09.2019 directing the State Government to take a decision in the matter at the earliest and at any rate, within 45 days from the date of receipt of the order. In the meantime, the appellant received a letter dated 09.09.2019 from the MCI granting it further 10 days time to submit the relevant documents. The appellant again preferred Writ Petition No. 25254 of 2019 seeking a direction to KUHS to revise CoA for Academic Year 2020-2021, wherein an interim

direction was issued to consider the application of the appellant. Vide order dated 27.09.2019, KUHS rejected the application of the appellant. Ultimately, Writ Petition No. 25254 of 2019 was withdrawn by the appellant with liberty to challenge the order dated 27.09.2019. Vide order dated 01.10.2019, the State Government rejected the application of the appellant for grant of EC. The appellant again approached the High Court by filing Writ Petition No. 27266 of 2019 seeking quashing of the order dated 01.09.2019 passed by the State Government rejecting the application for grant of EC. A further relief of mandamus was also prayed to command the State Government to renew the EC. The order dated 27.09.2019 passed by KUHS was challenged in Writ Petition No. 29098 of 2019. Vide order dated 19.11.2019, the High Court disposed of Writ Petition No. 27266 of 2019 directing the State Government to issue EC to the appellant on or before 30.11.2019 and further directed the MCI to accept the renewed EC as one received on time. Writ Appeal filed by the State against the said order was dismissed by Division Bench vide Judgment dated 05.12.2019, which was challenged in SLP (C) No. 3008 of 2019. The appellant filed yet another Writ Petition No. 34275 of 2019 seeking a direction to the MCI for processing of the application of the petitioner without insisting upon EC and CoA. The said Writ Petition was disposed of vide Judgment 13.12.2019 directing the MCI and the Union of India to process the application of the appellant without insisting on EC and CoA which was made subject to the outcome of the SLP (C) No. 30008 of 2019. The State Government challenged the interim order dated 13.12.2019

before this Court. Vide Judgment and Order dated 07.08.2020, this Court set aside the orders passed in Writ Petition (C) No. 34275 of 2019 and Writ Appeal No. 2443 of 2019 and directed that the Writ Petitions, namely, the three Petitions i.e., Writ Petition No.27266 of 2019, Writ Petition No.29098 of 2019 and Writ Petition No. 34275 of 2019, to be heard together and finally decided.

In pursuance to the aforesaid judgment and order of this Court, the learned Single Judge of the High Court heard the matters and by a common judgment and order dated 12.10.2020 dismissed Writ Petition No. 29098 of 2019 and WP No. 34275 of 2019 and whereas the Writ Petition No. 27266 of 2019 was allowed to the extent that order dated 01.10.2019 of the State Government denying NOC and EC for starting a new Medical College, was set aside and quashed, and the State Government was directed to issue/renew the EC of the appellant. The learned Single Judge further gave opportunity to apply for the Academic Year 2022-2023 instead of Academic Year 2020-2021 for which the dispute was being raised. The Review Petition filed by the appellant was dismissed. The appellant challenged the order of the learned Single Judge by filing two Writ Appeals i.e., Writ Appeal No. 1413 of 2020 and Writ Appeal No. 1401 of 2020. The main challenge was to the finding by the learned Single Judge in paragraph 32 of the Judgment that since the time schedule prescribed for starting a medical college in the year 2020-2021 is already over, and as such no relief in respect of the said Academic Session can be granted. Vide common Judgment and final Order dated 03.11.2020, the Division

Bench of Kerala High Court modified the directions of the learned Single Judge to the extent of directing the respondents to consider the application for the petitioner for establishment of a Medical College for the Academic Year 2021-2022. While refusing to grant permission to the appellant to start the Medical College for the Academic Year 2020-2021, the Division Bench gave time bound directions to the State and the University to jointly carry out an inspection to see whether Essentiality Certificate could be issued and whether consent for Affiliation could be given for 2021-22.

5. Aggrieved by the refusal of relief for the Academic Year 2020-2021, the appellant is in appeal before us.

6. The primary arguments advanced by Shri Shyam Divan, learned Senior Counsel for the appellant is that issue of Essentiality Certificate is a ministerial job and the purpose of EC is limited to certify to the Central Government that it is essential to establish a Medical College. It was further submitted that since the appellant was issued EC by the State Government and also CoA by the University in the year 2015 itself, therefore, it was entitled for the same in 2020 as well. It is also submitted at the time of issuance of EC, the State Government has to only consider the desirability and feasibility of establishment of Medical College in the proposed location and certify as to the availability of infrastructure and other clinical material required to run a Medical College and the same cannot be withheld by the State Government on any policy consideration.

Reliance was placed on the following observations made by this Court in ***Thirumuruga Kirupananda Variyar Thavathiru Sundara Sawmigal Medical Educational & Charitable Trust Vs. State of Tamil Nadu & Ors.***¹ ;

“34. It is no doubt true that in the scheme that has been prescribed under the Regulations relating to establishment of new medical colleges one of the conditions for the qualifying criteria laid down is that Essentiality Certificate regarding desirability and feasibility of having the proposed college at the proposed location should be obtained from the State Government.....

For the purpose of granting the Essentiality Certificate as required under the qualifying criteria prescribed under the scheme, the State Government is only required to consider the desirability and feasibility of having the proposed medical college at the proposed location. The Essentiality Certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone.”

7. It was further argued on behalf of the appellant that the State does not have the power to withdraw the EC once granted and once issued, the same shall remain valid. To support the contentions, reliance was placed on following observation in the decision in ***Chintpurni Medical College & Hospital & Anr. Vs. State of Punjab & Ors.***² ;

“It would be impermissible to allow any authority including a State Government which merely issues an Essentiality Certificate, to exercise any power which could have the effect of terminating the existence of a Medical College

1 (1996) 3 SCC 15

2 (2018) 15 SCC 1

permitted to be established by the Central Government. Thus, the State Government may not do either directly or indirectly. Moreover, the purpose of the Essentiality Certificate is limited to certifying to the Central Government that it is essential to establish a Medical College. It does not go beyond this. In other words, once the State Government has certified that the establishment of a Medical College is justified, it cannot at a later stage say that there was no justification for the establishment of the College. Surely, a person who establishes a Medical College upon an assurance of a State Government that such establishment is justified cannot be told at a later stage that there was no justification for allowing him to do so. Moreover, it appears that the power to issue an Essentiality Certificate is a power that must be treated as exhausted once it is exercised, except of course in cases of fraud. The rules of equity and fairness and promissory estoppel do not permit this Court to take a contrary view.”

8. Our attention was also drawn towards the scope of examination by the respondent no.2/University for issuance of CoA by the learned Counsel for the Petitioner. It was put forth that the entire field in respect of Establishment of Medical College is governed by the MCI Act and all aspects regarding establishment of a Medical College rests with the Medical Council and Central Government, as such the role of the University is limited to granting of affiliation. Further, the affiliation is only a qualifying criterion and the University cannot abrogate to itself the role of MCI, as found in the present case. He submits that the MCI Act and Regulations thereunder provides for inspection by the MCI which has to evaluate the infrastructure facilities, managerial and financial capabilities, etc. and submit its recommendation.

9. Shri Jaideep Gupta, learned Senior Advocate appearing for the State-Respondent submits that grant of EC/CoA are by no means a ministerial job. The State Government not only has to also to verify and certify that the norms of Medical Council of India are satisfied by the appellant and that infrastructure and other clinical materials are sufficiently available for setting up a new Medical College. It has also to give an undertaking that if the Medical College is unable to provide proper facility as prescribed by the MCI, in subsequent year it would be bound to find place for the students admitted in alternative medical colleges. To support the aforesaid, reliance is placed upon the judgment of this Court in ***Government of Andhra Pradesh & Anr. Vs. Medwin Educational Society & Ors.***³

10. Mr. Gupta further contends that the Judgment in ***Thirumuruga's Case (Supra)*** was not rendered with reference to the responsibility cast upon the State Government and the local university by the Regulations framed in 1999. The rationale of the said judgment is only that after the introduction of Section 10 (A) of Medical Council Act, 1956, the policy decision to permit a Medical College was to be taken up by the Central Government on the recommendation of the MCI and the State Government cannot reject such applications on a ground of policy. Our attention was also drawn to the observations made by this Court in the Judgment and Order dated 07.08.2020 passed in Civil Appeal No. 2920 of 2020 along with Civil Appeal No. 2921 of 2020 between the

3 (2004) 1 SCC 86

parties; wherein it has been held that by quashing of order based on policy, the grant of EC or CoA does not follow automatically. It may be relevant to extract the following observations from the said judgment as under :-

“As several considerations may be common, the grant for consent of affiliation and Essentiality Certificate may depend upon several factors. As per the guidelines of the Government and of the University , various aspects are to be examined. By merely quashing of an order passed on policy, the grant of Essentiality Certificate or consent for affiliation does not follow automatically. They have to be considered as per prevailing norms”.

11. Learned Counsel appearing for the Respondent No.2-University, submitted that the contentions on behalf of the appellant that since it has been given CoA by the University in the year 2015 and, therefore, it is entitled to the same in 2020 is without merits. It is pointed out that consent in the year 2015 was given in view of the Order passed by the High Court, directing to give provisional Affiliation to apply to the Medical Council of India. After giving provisional Affiliation, the appellant institution was inspected in the year 2015 and it was found that it is neither having infrastructure nor fulfills the other essential requirements for starting the Medical College. He vehemently contended that MCI Regulations as well as Statutes of Kerala University of Health and Sciences emphatically mandates that the CoA could be given only after the institution fulfills the essential requirements. In the present case, the appellant institution did not fulfill any of the requirements till date and, therefore, is not entitled

for grant of CoA.

12. Reliance was placed upon the inspection of the institution carried out by the officials of the University on 07.11.2020, wherein it was found that the institution does not have the requisite infrastructure. It was having only 18 ICU Beds as against the requirement of 60 and there is no Blood Bank in the hospital, even the required laboratory was not there and most of the tests are outsourced by the appellant. The bed occupancy was only 24 out of 72 beds and a remark has been made by the inspection team that genuineness of some of the patients for IP admission is doubtful and documentation do not co-relate with the inspection findings. With respect to faculty, there was a deficiency of 32% and Tutor, Demonstrator-SR Deficiency of 78%. The Scrutiny Committee categorically recorded a finding that the appellant institution is not entitled for establishing a medical college. He also made a reference to the objections submitted by the appellant to the Inspection Report, wherein the findings of the Inspection Report have been virtually admitted. He also placed reliance on the judgment rendered by this Court in ***Medical Council of India Vs. Principal, KMCT Medical College & Anr.***⁴ and ***Medical Council of India Vs. The Chairman, S.R. Educational and Charitable Trust and Another***⁵.

4 (2018) 9 SCC 766

5 (2018) SCC Online SC 2276

13. In the case of ***Medical Council of India (Supra)***, it has been held that the Court has repeatedly observed that the decision taken by the Union of India on the basis of the recommendation of the expert body, cannot be interfered with lightly and interference is permissible only when the college demonstrates jurisdictional errors ex-facie perversity or malafides. In the case of ***The Chairman, S.R. Educational and Charitable Trust & Anr. (Supra)***, this Court observed as under : -

“High Court at the same time has ordered inspection and if the deficiencies are found to existence then the Medical Council of India and Govt. of India have been given liberty to take appropriate decision. Such orders may ruin the entire carrier of the students. Once permission to admit students is granted, it should not be such conditional one. Considering the deficiencies, it would be against the efficacious medical education and would amount to permit the unequipped medical College to impart Medical education without proper infrastructure and faculty, patients serve as the object of teaching by such an approach ultimately interest of the society would suffer and half- baked doctors cannot be left loose on society like drones and parasites to deal with the life of the patients in the absence of proper educational training. It would be dangerous and again the right to life itself in case unequipped medical colleges are permitted to impart substandard medical education without proper facilities and infrastructure.”

14. We have considered and analyzed the rival contentions of the parties.

15. Before proceeding any further in the matter, it may be relevant to refer the apposite Sections and Rules of the Medical Council of India Act, 1956 and Medical

Council of India Establishment of Medical College Regulations, 1999 and the First Statue, 2013 of the KUHS Act :-

“Section 10-A of the Indian Medical Council Act 1956 (Hereinafter MCI Act) is reproduced hereunder’

SECTION 10-A . PERMISSION FOR ESTABLISHMENT OF NEW MEDICAL COLLEGE, NEW COURSE OF STUDY ETC.

(1) Notwithstanding anything contained in this Act or any other law for the time being in force:-

(a) no person shall establish a medical college or

(b) no medical college shall:-

(i) open a new or higher course of study or training (including a postgraduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a postgraduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1-. For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2.- For the purposes of this section "admission capacity" in relation to any course of study or training (including postgraduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(2) (a) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance

with the provisions of clause (b) and the central Government shall refer the scheme to the Council for its recommendations.

(b) The Scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-section (2) the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may –

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council.

(b) consider the scheme, having regard to the factors referred to in sub-section (7) and submit the scheme together with its recommendations thereon to the Central Government.

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(7) The Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely:-

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council under section 19A or, as the case may be under section 20 in the case of postgraduate medical education.

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course or study or training or accommodating the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme.

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or course of study or training by persons having the recognised medical qualifications;

(f) the requirement of manpower in the field of practice of medicine; and

(g) any other factors as may be prescribed.

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(B) Medical Council of India Establishment of Medical College Regulations, 1999 (Regulations)

3. The establishment of a medical college – No person shall establish a medical college except after obtaining prior permission from the Central Government by submitting a Scheme annexed with these regulations.

“Scheme For Obtaining Permission of the Central Government to Establish a Medical College”

.....

2. Qualifying Criteria - The eligible persons shall qualify to apply for permission to establish a medical college if the following conditions are fulfilled:-

(1) that medical education is one of the objectives of the applicant in case the applicant is an autonomous body, registered society, charitable trust & companies registered under Company Act.

(2) XXXXX

(3) that Essentiality Certificate in Form 2 regarding No objection of the State Government/Union Territory Administration for the establishment of the proposed medical college at the proposed site and availability of adequate clinical material as per the council regulations, have been obtained by the person from the concerned State Government/ Union Territory Administration.

(4) that Consent of affiliation in Form-3 for the proposed medical college has been obtained by the applicant from a University.

(5) That the person owns and manages a hospital of not less than 300 beds with necessary infrastructural facilities capable of being developed into teaching institution in the campus of the proposed medical college.

(6) that the person has not admitted students to the proposed medical college.

(7) That the person provides two performance bank guarantees from a Scheduled Commercial Bank valid for a period of five years, in favour of the Medical Council of India, New Delhi, one for a sum of rupees one hundred lakhs (for 50 admissions), rupees one hundred and fifty lakhs (for 100 admissions) and rupees two hundred lakhs (for 150 annual admissions) for the establishment of the medical college and its infrastructural facilities and the second bank guarantee for a sum of rupees 350 lakhs (for 400 beds), rupees 550 lakhs (for 500 beds) and rupees 750 lakhs (for 750 beds) respectively for the establishment of the

teaching hospital and its infrastructural facilities : Provided that the above conditions shall not apply to the persons who are State Governments/Union Territories if they give an undertaking to provide funds in their plan budget regularly till the requisite facilities are fully provided as per the time bound programme.

(8) Opening of a medical college in hired or rented building shall not be permitted. The Medical college shall be set up only on the plot of land earmarked for that purpose as indicated.

6. EVALUATION BY MEDICAL COUNCIL OF INDIA

The Council will evaluate the application in the first instance in terms of the desirability and prima facie feasibility of setting up the medical college at the proposed location. Therefore, it shall assess the capability of the applicant to provide the necessary sources and infrastructure for the scheme. While evaluating the application, the Council may seek further information, clarification or additional documents from the applicant as considered necessary and shall carry out physical inspection to verify the information supplied by the applicant.

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(C) The Kerala University of Health Sciences First Statute, 2013 (KUHS Act)

Chapter XXI Clause 10. Grant of Affiliation

(1) The University may appoint a commission to inspect the proposed site of a new college/or to make a physical verification of the facilities that may exist for starting the new college/course if the application is considered favorably by the University. The Commission will inspect the suitability of the proposed site, verify the title deeds as regards the proprietary rights of the management over the land(and buildings if any) offered, building accommodation provided if any, assets of the management, constitution of

the registered body, capability of maintaining academic standards and all other relevant matters.....

2) The Grant of affiliation shall depend upon the fulfillment by the management of all the conditions that are specified here or that may be specified later for the satisfactory establishment and maintenance of the proposed institution/courses of studies and on the reports of inspection by the Commission or commission which the university may appoint for the purpose.

.....

(5) The Management shall be prepared to abide by such conditions and instructions as regards staff, infrastructure facility, hospital, Internet and audiovisual facilities, equipment, library, reading room, playground, hostel etc. as the University may, from time to time impose or issue in relation to the college.

(8) After Considering the commission report and other enquiries if any and after obtaining the essentiality certificate from the Central and/or State Councils or authorities in the concerned discipline and after obtaining the essentiality certificate from the Government, the Governing Council shall decide whether the affiliation be granted or refused either in whole or part.”

16. Thus, an EC is mandatorily required by a person before he receives permission for establishment of a Medical College. The Legislative scheme that imposes the requirement of the EC is prescribed in Section 10(A) of the Medical Council of India Act, which requires the previous permission of the Central Government for establishing a Medical College or opening a new course of study or training. Every person or Medical College must submit to the Central Government a scheme as prescribed. The Central Government then refers the scheme to the MCI for its recommendations. The

Medical Council is required to consider the same and satisfy itself by obtaining any particulars as are necessary and after having the defects if any removed, make its recommendations to the Central Government. The Central Government, may on receipt of the scheme, approve it conditionally or disapprove the same.

17. The power to permit the establishment of a Medical College is thus conferred on the Central Government by the MCI Act. The Regulations referred above, were framed in exercise of powers conferred under Section 10(A) read with Section 33 of the MCI Act prescribed the qualifying criteria. These criteria lay down the eligibility to apply for permission to establish a Medical College. One of the criteria is that the person who is desirous of establishing a Medical College should obtain an Essentiality Certificate as prescribed in Form 2 of the Regulations, certifying that the State Government/Union Territory Administration has no objection for the establishment of the proposed Medical College at the proposed site and availability of adequate clinical material. Thus, the State Government is required to certify that it has decided to issue an Essentiality Certificate for the establishment of a Medical College with a specified number of seats in public interest and further such establishment is feasible.

18. Form 2 in which the EC must be obtained indicates the facts which are considered relevant for determining whether the establishment of a proposed college is justified. Form 2 is reproduced hereunder :-

"Form-2 Subject: Essentiality Certificate No.

Government of _____ The Department of Health, Dated, the ____
To (applicant), Sir, The desired certificate is as follows:

(1) No. of institutions already existing in the State.

(2) No. of seats available or No. of doctors being produced annually (3) No. of doctors registered with the State Medical Council.

(4) No. of doctors in Government Service

(5) No. of Government posts vacant and those in rural/difficult areas.

(6) No. of doctors registered with Employment Exchange.

(7) Doctor population ratio in the State.

(8) How the establishment of the college would resolve the problem of deficiencies of qualified medical personnel in the State and improve the availability of such medical manpower in the State.

(9) The restrictions imposed by the State Government, if any, on students who are not domiciled in the State from obtaining admissions in the State be specified.

(10) Full justification for opening of the proposed college.

(11) Doctor-patient ration proposed to be achieved. The (Name of the person)_____has applied for establishment of a medical college at_____. On careful consideration of the proposal, the Government for_____has decided to issue an essentiality certificate to the applicant for the establishment of a Medical College with_____(no.) seats. It is certified that:

(a) The applicant owns and manages a 300 bedded hospital which was established in _____.

(b) It is desirable to establish a medical college in the public interest;

(c) Establishment of a medical college at _____ by (the name of Society/Trust) is feasible.

(d) Adequate clinical material as per the Medical Council of India norms is available. It is further certified that in case the applicant fails to create infrastructure for the medical college as per MCI 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.

Yours faithfully, (Signature of the Competent Authority)"

19. Whether issuance of an Essentiality Certificate is only a Ministerial Act :-

This Essentiality Certificate in the prescribed form is crucial for avoiding cases where the colleges despite grant of initial permission could not provide the infrastructure, teaching and other facilities as a result whereof the students who had already been admitted suffered serious prejudice.

Medical Council of India Regulations as well as Kerala University Health Sciences Statutes very emphatically mandate that the consent of affiliation can only be given after the Institution fulfills the essential requirements. The contention of the Appellant that the absence of Essentiality Certificate is not one of the factors for consideration and is extraneous to the decision-making process cannot be accepted. Whilst granting the Essentiality Certificate, the State Government undertakes to take

over the obligations of the private educational institution in the event of that institution becoming incapable of setting of the institution or imparting education therein. Such an undertaking on the part of the State Government is unequivocal and unambiguous. An Essentiality Certificate by the State Government legitimizes a medical college declaring it fit to impart medical education and gives accouchement to the expectation amongst the stakeholders that the Applicant College shall fulfill basic norms specified by the MCI to start and operate a medical college. Bearing in mind that the question of justified existence of a college and irregular/illegal functioning of an existing college belong to a different order of things and cannot be mixed up. We come to the conclusion that the issuance/re-issuances of an essentiality certificate is not in any way a ministerial job and while dealing with a case of maintaining standards in a professional college, strict approach must be adopted as these colleges are responsible for ensuring that medical graduate has the required skill set to work as a doctor in the country. Poor assessment system; exploding number of medical colleges; shortage of patients/clinical materials; devaluation of merit in admission, particularly in private institutions; increasing capitation fees; a debilitated assessment and accreditation system, are problems plaguing our Medical Education system. Allowing such deficient colleges to continue to function jeopardizes the future of the student community and leading to incompetent doctors to graduate from such colleges and ultimately pose a bigger risk to the society at

large defeating the very purpose of the Essentiality Certificate issued by the State. The State would be deterring from its duty if it did not conduct an inspection from time to time to ensure that the requisite standards as set by the MCI are met before issuing/renewing the Essentiality certificate. That is by no stretch of imagination 'merely a ministerial job'. Considering especially that while issuing the Essentiality Certificate the State Govt undertakes that should the Medical College fail to provide the requisite infrastructure 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.

Same is the position with respect of CoA by the University. The First Statute of KUHS prescribes that University may appoint a Commission to inspect the proposed site to make a physical verification of the existing facilities and suitability of proposed site. The grant of affiliation is dependent upon fulfillment of all the conditions that are specified in Clause X(I) of First Statutes or that may be specified which includes staff, infrastructure facility, hospital, internet, library, playground, hostel, etc. Thus, even grant of CoA by the University also cannot be said to be merely a ministerial act.

In view of above, we are of the considered opinion that grant of EC by the State Government and CoA by the University is not simply a ministerial act and we do not find any merit in the argument of the appellant in this regard.

20. **Whether Essentiality Certificate once issued, can be withdrawn :-**

Much emphasis has been laid by the learned counsel for the appellant on decision of this Court in *Chintpurni Medical College (Supra)*. In the said case, Medical College was granted permission to break ground for Academic Year 2011-2012 and consequently the first batch was admitted. However, it was denied Essentiality Certificate for the subsequent years 2012-13 and 2013-14. In this circumstances, this Court observed as under:-

“It would be impermissible to allow any authority including a State Government which merely issues an essentiality certificate, to exercise any power which could have the effect of terminating the existence of a medical college permitted to be established by the Central Government. This the State Government may not do either directly or indirectly. Moreover, the purpose of the essentiality certificate is limited to certifying to the Central Government that it is essential to establish a medical college. It does not go beyond this. In other words, once the State Government has certified that the establishment of a medical college is justified, it cannot at a later stage say that there was no justification for the establishment of the college. Surely, a person who establishes a medical college upon an assurance of a State Government that such establishment is justified cannot be told at a later stage that there was no justification for allowing him to do so. Moreover, it appears that the power to issue an essentiality certificate is a power that must be treated as exhausted once it is exercised, except of course in cases of fraud. The rules of equity and fairness and promissory estoppel do not permit this Court to take a contrary view.”

21. In Paragraph 36, it was observed:-

“We may not be understood to be laying down that under no circumstances can an essentiality certificate be withdrawn. The State Government would be entitled to withdraw such certificate where it is obtained by playing fraud on it or any circumstance where the very substratum on which the essentiality certificate was granted disappears or any other reason of like nature.”

22. A two-Judge Bench decision in the case of ***Chintpurni Medical College*** (*Supra*) was considered by a three-Judge Bench in the case of ***Sukh Sagar Medical College and Hospital Vs. State of Madhya Pradesh and Ors.***⁶ In paragraph 13 of the reports, the three-Judge Bench though agreed with the dictum in ***Chintpurni Medical College*** (*Supra*) that the act of the State in issuing EC is a quasi-judicial function. It further went on to note the exception carved out in the case of ***Chintpurni Medical College*** (*Supra*), wherein the State Government can cancel/revoke/withdraw the EC in paragraph 36. It was finally observed in paragraph 25 of the reports in ***Sukh Sagar Medical College and Hospital*** (*Supra*) as under:-

*“25. We are conscious of the view taken and conclusion recorded in ***Chintpurni Medical College*** (*Supra*). Even though the fact situation in that case may appear to be similar, however, in our opinion, in a case such as the present one, where the spirit behind the Essentiality Certificate issued as back as on 27.08.2014 has remained*

*unfulfilled by the appellant-college for all this period (almost six years), despite repeated opportunities given by the MCI, as noticed from the summary/observation in the assessment report, it can be safely assumed that the substratum for issuing the Essentiality Certificate has completely disappeared. The State Government cannot be expected to wait indefinitely, much less beyond period of five years, thereby impacting the interests of the student community in the region and the increased doctor-patient ratio and denial of healthcare facility in the attached hospital due to gross deficiencies. Such a situation, in our view, must come within the excepted category, where the State Government ought to act upon and must take corrective measures to undo the hiatus situation and provide a window to some other institute capable of fulfilling the minimum standards/norms specified by the MCI for establishment of a new medical college in the concerned locality or within the State. Without any further ado, we are of the view that the appellant-college is a failed institute thus far and is unable to deliver the aspirations of the student community and the public at large to produce more medical personnel on year to year basis as per the spirit behind issuance of the subject Essentiality Certificate dated 27.08.2014. To this extent, we respectfully depart from the view taken in **Chintpurni Medical College (Supra)**.”*

Let us make it clear that there can be no analogy drawn between the facts of *Chintpurni case (Supra)* and the present case. The *Sukh Sagar Case (Supra)* actually expanded the circumstances in which the State Government may withdraw the EC. The dictum of *Sukh Sagar (Supra)* actually supports the case of respondents.

23. The law thus stand settled that the State Government has power to withdraw the EC where it is obtained by playing fraud on it or where the very substratum on which the EC was granted vanishes or any other reason of like nature.

24. In the case at hand, even though initially a conditional EC was granted in the year 2004 subject to removal of deficiencies and since then 17 years elapsed, the appellant has been unsuccessful in removing the deficiencies. Reference may be made to the last joint inspection carried out on 07th November, 2020, wherein a number of deficiencies were noted and the facilities were found inadequate for consideration of an application for the year 2021-2022. What is true in case of vanishing of substratum applies with equal force where the substratum is missing right from the very inception.

25. In view of above, this issue is also answered against the appellant and in favour of the respondents.

26. Once again reverting back to the factual matrix of the present case, an inspection of the appellant institution was carried out on 09.11.2020 and following deficiencies were found :

“I. Infrastructure

- i. Needs thorough refinement to start a medical college.
Construction of the building is not completed.

II. Equipments

- i. Needs refined equipments in theatre, Laundry, Labs, Histopathology and Radiology.
- ii. Blood Bank – Nil
- iii. Practical Laboratories- Available 1 (required 3)
- iv. Journals - Nil
- v. ICU/ICCU/PICU/NICU/SICU/Obstetric ICU/ICU – Available 18 beds (required -60 beds)
- vi. X-Ray Mobile Unit- Available 1 (required 2)
- vii. No in house facilities are available and spaced are available most requirement are out sourced for Microbiology and Pathology Laboratories.

III. Clinical Materials

As per records, it is not clear whether a 300 bedded hospital (NMC Norms) is running for past 2 years. Records shows hospital is functioning only from 2019 onwards. On the day of inspection, Bed occupancy is 30 % only. OPD required is 600 and there is only less than 200 attendance on the day of inspection.

IV. Faculty Deficiencies

The following faculty deficiencies was noted:

- i. One Professor in the Dept. of Biochemistry.
 - ii. Associate Professor -8 (Anatomy-1, Physiology-1, Pharmacology-1, Pathology-1, General Medicine-1, Orthopaedics-1, Anaesthesia-1, Radiodiagnosis-1)
 - iii. Assistant Professor-11 (Anatomy-2, Physiology-3, Forensic Medicine-1, Community Medicine-1, General Medicine-1, Respiratory Medicine-1, OBG-1, Anasthesiology-1)
 - iv. Tutor/Demonstrator/SR-29 (Anatomy-4, Physiology-2, Biochemistry-4, pathology-1, Microbiology-1, Forensic Medicine-1, General Medicine-3, Paediatrics-1, Pulmonary Medicine-1, DVL-1, Psychiatry-1, General Surgery-3, ENT-1, OBG-2, Anasthesia-1, Radiodiagnosis-1, Dentistry-1)
4. There is total Faculty deficiency of 32% and Tutor/Demonstrator/SR deficiency of 78%.”

27. The appellant institution was duly intimated about the deficiencies calling for their remarks. No objection was raised regarding inspection though a compliance report was submitted contending that facilities available are sufficient to grant affiliation. However, noting gross deficiencies found during inspection the application for grant of CoA for Academic Year 2021-22 was rejected vide letter/order dated 23.11.2020.

28. In the case at hands, the Essentiality Certificate was first issued in the year 2004 and over 17 years later the appellant College is not in a position to secure requisite permissions from the MCI. It is quite apparent that the Appellant Institution has been long trying to escape its responsibility and fill up the lacuna through judicial process by getting Orders from the High Court for consent of affiliation and consideration of its belated half-baked applications before the MCI. In both the inspections in 2015 and 2020, it was found that the Appellant Institution lacks proper facilities. Even though the Appellant claims to be running a hospital since 2006 neither adequate amenities nor infrastructure on inspection was found to be in existence. This lackadaisical attitude is testament to the fact that the Appellant has no real interest in running a Hospital in that place and has no ground to call foul upon rejection of EC, CoA or its applications before MCI.

29. There is yet another aspect of the matter not only proper facilities and infrastructure including teaching faculty is absolutely necessary but adherence to time schedule is also equally important. This Court in the case of ***Mridul Dhar (Minor) & Anr. Vs. Union of India & Ors.***⁷ has observed in Paragraph 13 as under:-

“It cannot be doubted that proper facilities and infrastructure including a teaching faculty and doctors is absolutely necessary and so also the adherence to time schedule for imparting teaching of highest standards thereby making available to the community best possible medical practitioners.”

30. Regulation 8(3) of the 1999 Regulations provides a schedule for the receipt of applications for establishment of new Medical Colleges and processing of the applications by the Central Government and the Medical Council of India.

31. Initial time schedule fixed under the Regulations for establishment of a new Medical College was amended in 2015 vide Establishment of Medical College Regulations (Amendment), 2015. The said amendment substituted the following schedule :-

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

Sl. Nos.	Stage of Processing	Last Date
1.	Receipt of applications by the Central Government	Between 15 th June to 07 th July (both days inclusive) of any year
2.	Forwarding application by the Central Government to the Medical Council of India.	By 15 th July
3.	Technical scrutiny, assessment and recommendations for letter of permission by the Medical Council of India	By 15 th 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 31 st January
5.	Final recommendations for the letter of permission by the Medical Council of India	By 30 th April
6.	Issue of letter of permission by the Central Government.	By 31 st May

32. Time and again, this Court has emphasized that time schedule either for establishment of new Medical College or to increase intake in existing colleges shall be adhered to strictly by all concerned. There is no manner of doubt that the time schedule prescribed in receipt of starting a new Medical College for the year 2020-2021 is already over long back. Even the last date for the Academic Year 2021-2022 which was extended to 15.12.2020, in view of prevailing Covid-19 Pandemic is also over by now. Thus the State Government of the University cannot be directed to issue EC or CoA to the appellant for the year 2020-2021 even notionally as suggested by the learned counsel for the appellant.

33. In view of the facts and circumstances discussed herein above, the relief prayed for by the appellant for the Academic Year 2020-2021, is not liable to be granted. The appeals, accordingly, fail and stand dismissed. It is left open to the appellant to make an appropriate application for grant of EC and CoA for the next Academic Year before the concerned Authority in accordance with the time schedule after removing the alleged deficiencies and in case any such applications are made, the same shall be disposed of by the concerned authorities in accordance with law and the procedure prescribed.

34. In the circumstances, we do not make any order as to costs.

.....J.
(A.M.KHANWILKAR)

.....J.
(B.R.GAVAI)

.....J.
(KRISHNA MURARI)

**NEW DELHI;
24 FEBRUARY, 2021**